NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

TESTIMONY IN OPPOSITION TO BILL 22-913

Submitted October 1, 2018

TO: Philip Mendelson, Chair, and Members of the District of Columbia Council

FROM: Julie Vogtman, Director of Job Quality & Senior Counsel, National Women's Law Center

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Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center, a non-profit organization that has been working since 1972 to secure and defend women's legal rights, and to help women and their families achieve economic security. The National Women's Law Center strongly supports ending the unfair, two-tiered minimum wage system that allows employers to transfer responsibility for paying their tipped employees' wages onto the customer. We applauded the passage of Initiative 77, and we are confident that adopting One Fair Wage—so that everyone is entitled to the same minimum wage, regardless of tips—will benefit working people throughout the District of Columbia. Implementing Initiative 77 represents an especially important step toward equal pay for women and people of color in the District and economic security for their families.

We are extremely disappointed, therefore, by this Council's move to ignore the will of D.C. voters and overturn a democratically enacted measure that would improve the lives of so many women, men, and families in the District. In cosponsoring Bill 22-913, a majority of this Council has signaled its willingness to silence the majority of voters in every ward but the wealthiest and whitest; to silence the women and men who have tolerated the worst from their customers and their bosses, just to make a living; and to pretend that D.C. is different in some way—that sexual harassment, wage theft, and poverty don't happen to tipped workers here—when both hard data and working people tell us just the opposite.

Indeed, the numbers make clear that claims of ample compensation simply do not hold true for most people working for tips in the District—especially for women and people of color. Overall, the median hourly wage for tipped workers in D.C., including tips, is just $14.41—less than half the median wage for nontipped workers in the District—and tipped workers experience a 13.7 percent poverty rate, more than three times the rate (4.5 percent) for nontipped workers.[1] As in virtually every other occupation, women in tipped jobs are typically paid less than their male peers; they also typically work fewer hours, which for many women is likely to be involuntary and/or due to constraints posed by caregiving obligations.[2] As a result, women tipped workers face an even greater risk of economic insecurity: nearly

[1] David Cooper, Econ. Policy Inst. (EPI), Why D.C. Should Implement Initiative 77, at 9-10 (Sept. 2018), https://www.epi.org/files/pdf/154391.pdf. Estimates in this report are based on American Community Survey (ACS) microdata, pooled years 2012-2016, and refer to workers whose place of work is the District of Columbia. Wage and annual income values are inflated to 2017 dollars. *Id.* at 3, 6.

[2] *Id.* at 13. *See also, e.g.,* Anne Morrison & Katherine Gallagher Robbins, NWLC, Part-Time Workers Are Paid Less, Have Less Access to Benefits—and Two-Thirds Are Women, at 2-3 (Sept. 2015), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/part-time_workers_fact_sheet_8.21.1513.pdf.

one in six (15.7 percent) women tipped workers in the District has income below the poverty line, compared to 11.8 percent of men tipped workers.[3]

Tipped workers of color, too, are typically paid less than their white counterparts and experience poverty at higher rates: Black tipped workers in the District, for example, have a median hourly wage of just $12.68, and nearly one in five (18.5 percent) lives in poverty.[4] People of color represent the majority of D.C.'s tipped workforce, but white tipped workers have the highest wages, and only Latino tipped workers experience lower rates of poverty than white tipped workers.[5]

Although employers are obligated to ensure that their tipped employees receive at least the regular minimum wage—making up the difference when tips fall short—this requirement is complex to administer, difficult to enforce, and employers often fail to comply.[6] Studies have shown that the food service industry in particular is plagued by wage theft.[7] In D.C., one of the largest restaurant groups recently settled a $1.5 million lawsuit with nearly 1,000 employees for failing to bring their tipped workers' wages up to the minimum.[8] And even when tipped workers do make minimum wage on a weekly basis, the volatile nature of income from tips and the high cost of living in the District often leave them struggling to make ends meet.

Fortunately, abundant evidence demonstrates that when servers, bartenders, and other tipped workers are paid more by their employers, they in fact bring home more money. This pattern is evident not only in statewide trends in the states that already have One Fair Wage,[9] but also in examining major cities like San Francisco and Seattle that are comparable to D.C. in important ways. Like

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[3] Cooper, *supra* note 1, at 13-14.

[4] *Id.* at 14-16.

[5] *Id.*

[6] *See generally, e.g.,* Sylvia A. Allegretto & David Cooper, Econ. Policy Inst. (EPI) & Ctr. on Wage & Employment Dynamics, Univ. of Ca., Berkeley, Twenty-Three Years and Still Waiting for Change, at 17-18 (2014), *available at* http://s2.epi.org/files/2014/EPI-CWED-BP379.pdf.

[7] Cooper, *supra* note 1, at 5. *See also* David Cooper & Teresa Kroeger, EPI, Employers Steal Billions from Workers' Paychecks Each Year, at 24-26 (May 2017), https://www.epi.org/files/pdf/125116.pdf; Annette Bernhardt et al., Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities, at 3, 26 (2009), https://www.labor.ucla.edu/wp-content/uploads/2018/06/BrokenLawsReport2009.pdf.

[8] Jon Steingart, *Restaurant Group Agrees to $1.49M Pay, Sick Leave Settlement*, Bloomberg Law (Aug. 22, 2018), https://news.bloomberglaw.com/daily-labor-report/restaurant-group-agrees-to-149m-pay-sick-leave-settlement-5/.

[9] The states that currently have One Fair Wage are Alaska, California, Hawaii, Minnesota, Montana, Nevada, Oregon, and Washington. In Hawaii, employers may pay tipped workers $1.00 less than the regular minimum wage, but only if their combined base wage plus tips is at least $7.00 per hour above the regular minimum wage. Relative to states that have the $2.13 tipped minimum cash wage set by federal law, working women fare notably better in the states that have already adopted One Fair Wage: the poverty rate for women tipped workers is 27 percent lower (31 percent lower for tipped workers who are women of color)—and wage gaps for women tipped workers as well as women overall are considerably smaller—than in states that follow the federal standard. *See* NWLC & ROC United, Raise the Wage: Women Fare Better in States with Equal Treatment for Tipped Workers (Oct. 2016), http://nwlc.org/wp-content/uploads/2016/10/Tipped-Wage-10.17.pdf. Waiters, waitresses, and bartenders in the states that already have One Fair Wage earn 17 percent more per hour (including both tips and base pay) than their counterparts in states with a $2.13 tipped minimum wage. David Cooper, Econ. Policy Inst. (EPI), Valentine's Day Is Better on the West Coast (at Least for Restaurant Servers) (Feb. 9, 2017), https://www.epi.org/blog/valentines-day-is-better-on-the-west-coast-at-least-for-restaurant-servers/. *See also, e.g.,* Elise Gould & David Cooper, EPI, Seven Facts About Tipped Workers and the Tipped Minimum wage (May 31, 2018), https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/.

D.C., San Francisco and Seattle have a high base minimum wage; the wage reached $15 per hour this year citywide in San Francisco, and for large employers in Seattle. But unlike D.C., tipped workers in San Francisco and Seattle receive that high base minimum wage directly from their employers—and they typically earn more than their counterparts in the District and face a substantially lower risk of poverty.[10] This is particularly true for restaurant servers; in San Francisco, for example, median earnings for servers, including tips, are 21.5 percent higher than earnings for their counterparts in D.C.[11]

It is important to note, too, that sexual harassment is a pervasive problem in the restaurant industry in particular and in other industries where women rely on tips to survive.[12] Women who rely on tips for much of their income often feel forced to tolerate inappropriate behavior from customers so as not to jeopardize that income; they understand that tips frequently depend more on server appearance and friendliness and customer mood than on quality of service.[13] Equal Employment Opportunity Commission (EEOC) data reveal that workers in the accommodation and food service industry—mostly women—filed more sexual harassment charges than in any other industry between the years 2005 and 2015.[14] But the strong financial incentive to tolerate harassment from customers that reliance on tips creates is diminished in the states that have already adopted a One Fair Wage system, where survey data show that tipped workers experience less sexual harassment on the job.[15]

These numerous benefits for workers have not come at the expense of business in the jurisdictions that have implemented One Fair Wage. In the states with one minimum wage for all workers, both the number of full-service restaurants and the number of restaurant jobs have grown more than in states with a separate, lower minimum wage for tipped workers.[16] And recent evidence of the effects of phasing in a significant wage increase for tipped workers affirms that the end of the tipped minimum wage will not mean the end of tips: when the tipped minimum wage for food service workers in New York went from $5 to $7.50 an hour in 2016,[17] tipping rates in the year that followed the increase were

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[10] *See generally* Cooper, *supra* note 1, at 16-19.

[11] *Id.* at 17.

[12] *See generally, e.g.,* Catrin Einhorn & Rachel Abrams, *The Tipping Equation*, N.Y. Times (March 12, 2018), https://www.nytimes.com/interactive/2018/03/11/business/tipping-sexual-harassment.html; ROC United & Forward Together, The Glass Floor: Sexual Harassment in the Restaurant Industry (2014), http://rocunited.org/wp-content/uploads/2014/10/REPORT_TheGlassFloor_Sexual-Harassment-in-the-Restaurant-Industry.pdf.

[13] *See, e.g.,* Michael Lynn & Michael McCall, Cornell U. School of Hotel Admin., *Beyond Gratitude & Gratuity: A Meta-Analytic Review of the Predictors of Restaurant Tipping* (Jan. 2016), https://scholarship.sha.cornell.edu/workingpapers/21/.

[14] Jocelyn Frye, Ctr. for Am. Progress, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment Across Industries Affects All Workers (Nov. 20, 2017), https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/. In addition, in every year between 2002 and 2016, women working in the accommodation and food services sector filed more sexual harassment charges than women in any other sector. NWLC calculations based on unpublished U.S. Equal Employment Opportunity Commission data on sexual harassment charges by industry for 1996-2016.

[15] *See generally* ROC United & Forward Together, et al., *supra* note 13.

[16] Gould & Cooper, *supra* note 9. *See also, e.g.,* ROC United, The Impact of Raising the Subminimum Wage on Restaurant Sales & Employment (March 2014), http://rocunited.org/wp-content/uploads/2014/03/ROC-United_FactSheet-on-TMW.pdf; Yannet Lathrop, Nat'l Employment Law Project, St. Paul Should Reject a Lower Minimum Wage for Tipped Workers (May 2018), https://www.nelp.org/publication/st-paul-reject-lower-minimum-wage-tipped-workers/.

[17] *See* Katie Lobosco, *Tipped Workers in New York Will Get a Raise,* CNN Money (Feb. 24, 2015), http://money.cnn.com/2015/02/24/news/economy/new-york-tipped-minimum-wage/index.html.

essentially unchanged.[18] Moreover, a recent study comparing restaurant industry performance in bordering counties in New York and Pennsylvania (where the tipped minimum wage has not risen in 20 years) found that, in the year following New York's tipped wage increase, counties on the New York side of the border saw both take-home pay and employment rates for restaurant workers rise, while restaurant workers in Pennsylvania border counties saw a smaller average pay increase and a slight *decline* in employment.[19] In San Francisco and Seattle, restaurant employment in recent years has risen at rates comparable to D.C., while average weekly pay (base wages and tips) grew much faster in Seattle and San Francisco restaurants than in the District—and both Seattle and San Francisco have maintained a larger share of small local restaurants than has D.C.[20]

The doomsday scenarios promised by initiative opponents—of a District with scarce restaurants and paltry tips—thus run counter to all evidence from the jurisdictions that already have One Fair Wage, where tipped workers have higher wages and lower poverty rates compared to their peers in other states and restaurants still thrive. Given that the National Restaurant Association has worked to keep the federal tipped minimum wage at $2.13 an hour for 27 years, it is not surprising that it banded together with the local industry to spend hundreds of thousands of dollars[21] attempting to defeat Initiative 77 and led a potent misinformation campaign directed to voters, Councilmembers, and tipped workers themselves. But most D.C. voters were not fooled; in Wards 7 and 8, Initiative 77 passed with more than 60 percent of the vote, and it garnered a majority in every ward but Ward 3 (where it failed by a very slim margin). This Council—which rightly and vocally opposes the lack of voice that their constituents have in the halls of Congress—should, at a minimum, respect the votes of the more than 47,000 District residents who supported Initiative 77. To overturn the initiative is to ignore the will of the people in favor of the power of the restaurant industry, and to dismiss the weight of the evidence in favor of the industry's scare tactics and conjecture.

Adopting One Fair Wage in D.C. would fulfill the promise of a $15 minimum wage for everyone and mark another vitally important step toward truly equal treatment under the law for the women and people of color who make up most of the District's tipped workforce. People working for tips would

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[18] Analysis of millions of transactions using Square data found an average tipping rate in New York of 15.8 percent in 2014 and 15.6 percent in 2017. *See* Roberto A. Ferdman, *Which US States Tip the Most (and Least), Based on Millions of Square Transactions*, Quartz (March 21, 2014), https://qz.com/189458/the-united-states-of-tipping/, and David Johnson, *Find Out Which States Give the Worst Tips*, Time (Aug. 15, 2017), http://time.com/4886489/states-tips-square/.

[19] Specifically, counties on the New York side of the border saw restaurant workers' take-home pay go up an average of 7.4 percent and employment go up 1.3 percent, while Pennsylvania border counties saw an average pay increase of only 2.2 percent and a *decline* in employment by 0.2 percent. Michael Paalberg & Teofilo Reyes, *Paying Tipped Workers Better Wouldn't Lead to Fewer Restaurant Jobs*, Wash. Post (Jan. 16, 2018), https://www.washingtonpost.com/news/posteverything/wp/2018/01/16/paying-tipped-workers-better-wouldnt-lead-to-fewer-restaurant-jobs/?tid=ss_tw-bottom&utm_term=.4a37acbc35a1. *See also* Sylvia Allegretto & Carl Nadler, *Tipped Wage Effects on Earnings and Employment in Full-Service Restaurants*, 54 Ind. Rel. 622-47 (Oct. 2015), http://irle.berkeley.edu/files/2015/Tipped-Wage-Effects-on-Earnings-and-Employment-in-Full-Service-Restaurants.pdf (finding in an analysis of the impacts of higher tipped minimum wages on restaurant industry workers over 20 years of data that higher tipped minimum wages were associated with higher industry wages and little, if any, change in employment levels).

[20] *See* Cooper, *supra* note 1, at 20-24.

[21] *See* Gov't of the Dist. Of Columbia Office of Campaign Finance, Report of Receipts & Expenditures for Candidates, Principal Campaign or Political Committees, et al., "Save Our Tip System Initiative 77" (report covering Apr. 11 through June 11, 2018), https://efiling.ocf.dc.gov/FinancialReports/EntireReport/16232/.

know they have a paycheck they can depend on and feel less vulnerable to the sexual harassment that is too often part of the job when the bulk of your income depends on customers' whims. Families throughout the District could move from poverty toward economic security—which can have lasting benefits for the next generation: study after study shows that when parents with low incomes get a boost, they are better able to meet their children's needs, and their children are healthier and perform better in school.[22] These are all goals that this Council—which has enacted laws to guarantee paid family and medical leave and paid sick days, combat discrimination, provide universal pre-K, protect women's access to health care, and so much more—should wholeheartedly support, not stand ready to undermine.

On behalf of the National Women's Law Center, I urge you to listen to your constituents, and side with them rather than with the restaurant industry. I ask you to listen especially to the working people who have risked their jobs by speaking up in support of Initiative 77, and to understand that many more felt unable to do so.[23] And I ask you not to take away a raise that so many tipped workers in the District need and deserve. Thank you for your consideration.

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Note: *This testimony supplements remarks delivered in person at the hearing on B22-913 before the Committee of the Whole on September 17, 2018.*

[22] *See generally, e.g.,* Julie Vogtman & Karen Schulman, NWLC, Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success (Jan. 2016), http://nwlc.org/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf.

[23] *See, e.g.,* Casey Quinlan, *D.C. Servers and Bartenders Say the Tipped Wage System Isn't Working for Them,* Think Progress (June 12, 2018), https://thinkprogress.org/should-dc-restaurants-pay-minimum-wage-these-servers-and-bartenders-think-so-c560d2269e7f/.