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National Employment Law Project

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My fellow panelists have made very clear the stark realities facing restaurant and other tipped workers – as well as the real threat these realities pose to public health and our economy if no action is taken.

While these injustices suggest multiple policy recommendations, I would like to discuss just one today. Raising the minimum wage for tipped employees is the right thing to do, the economically sound thing to do – and is long *overdue*.

My remarks are based on NELP's report: *Restoring the Minimum Wage for America's Tipped Workers*. The report reviews the history of the lower tipped minimum wage as well as the resulting hardships for workers who reply on it. In the report, we offer policy recommendations that speak directly to the serious problems uncovered by the ROC reports we have heard about today.

The gap between the minimum wage for tipped employees and the rest of us is wider than it's ever been: a whopping $5.12 difference. At $2.13 an hour, the current federal minimum wage for tipped workers is less than a third of the full minimum wage. It doesn't have to be this way - and, in fact - it didn't used to be.

When Congress first extended minimum wage protections to most service and retail workers in 1966, it established a special lower minimum wage for tipped employees set at 50% of the full minimum wage standard (For years prior to that, Congress had been successfully lobbied by the service industry to exempt tipped workers altogether – leaving them to make ends meet on tips alone). In 1980, Congress phased the tipped minimum up to 60% of the full minimum wage. In establishing this wage floor, Congress recognized that tipped income is erratic; tips depend on larger economic trends – like people eating out less in a recession- they differ from season to season and even from shift to shift. Without a guaranteed base wage, workers would be forced to subsist on tipped income alone and subject to wide swings in pay as their tips fluctuated. So, the tipped minimum wage was established to guarantee a base income that employers must pay their workers at all times, regardless of tips received.

As the minimum wage came under increasing attack by powerful industry lobbyists, subsequent overall increases were coupled with rollbacks of coverage under the Fair Labor Standards Act. Over time, whole categories of workers were carved out of minimum wage coverage – and similarly, businesses interests succeeded in freezing the tipped minimum wage, even as the minimum wage rose for other workers. This created a growing gap between those who count on tips for a living and non-tipped employees that has calcified. The minimum wage for tipped workers has now been frozen for over 19 years. So, when the minimum wage went up most recently in July of last year, millions of tipped workers were not included. These workers - the waitress who served you when you last ate out, the bellhops at hotels all over this city saw no change in their paychecks.

Despite their stagnant wages, most tipped workers still can and should earn at least the full minimum wage once their tips are added in. The way it works is if the $2.13 plus tips don't add up to the full minimum wage, their employers are required to make up the difference. But the tipped minimum wage meant to do more – to provide a cushion and to bring tipped workers closer to a living wage. Plus, because tips fluctuate widely and tracking them is complicated – employers can make mistakes or purposefully deny wages, leaving many tipped employees with less than the minimum wage even after tips are included.

The low minimum wage for tipped workers, which forces them to subsist almost entirely on tips, is a key factor behind falling living standards and growing economic insecurity for workers in tipped industries. The frozen tipped minimum wage drags down pay for millions of working adults – 2.9 million waiters and waitresses alone -- who spend their careers in tipped jobs. As a result, waiters and waitresses have nearly triple the poverty rate of the workforce as a whole. And other tipped workers – like car wash attendants and baggage handlers - make even less.

The solution is to restore a strong minimum wage for tipped workers as many states have done – and as the federal minimum wage used to do.

As industry continues to dig in its opposition and elected officials abdicate their responsibility to tend to the nation's wage floor, grassroots activists and workers themselves have stepped into the gap – fighting successfully to raise wages at the city, state and federal level – including for tipped workers. For instance, voter-approved ballot measures in CO, AZ and FL provided that the gap between tipped workers and non-tipped workers could never exceed $3.12 an hour. This not only corrected for the frozen tipped minimum wage, but guaranteed that tipped workers benefit from annual increases in the state minimum wage along with other workers.

An impressive 32 states now have higher tipped worker minimum wages than federal law requires. Of these, seven states guarantee tipped workers the full minimum wage. This is a best practice, which brings tipped jobs closer to paying a living wage at a time when our economy needs those jobs the most.

The states whose laws treat tipped employees more equitably have found that raising the tipped worker minimum wage enables a growing segment of the workforce to pay the bills without causing the job losses that opponents like to predict. In fact, despite their job loss arguments and efforts to thwart wage increases of any kind – the restaurant industry's own data often tell a different story. For example, 4 out of the 5 states named by the National Restaurant Association – a major opponent of wage increases – as top "growth states" for restaurant jobs are ones that have substantially higher minimum wages for tipped workers: AZ, FL, NV and AK.

Other studies that compare higher minimum wage states with those that allow lower rates have found that the states with higher rates – even among tipped workers – had faster small business job growth than states with lower minimums. Still more convincing is the experience of San Francisco – a city that raised its minimum wage to $8.50 in 2004 *and* requires employers to pay tipped employees that whole amount. Following that substantial increase, a University of California study found that employment of tipped workers at restaurants actually increased.

Despite these realities, opponents still seek to prevent enactment or even repeal wage increases won by worker advocates. As a testament to the strong public support of fair wages, these attempts have been largely unsuccessful. In Missouri for example, every year since voters approved a minimum wage increase in 2006, industry opponents have attempted to deny or rollback the gains for tipped workers. Tipped workers and their advocates – including Jobs with

Justice and others who had helped win the increase at the ballot – fought back with a "Save Our Tips" campaign that tapped into the broad public support for these workers and beat back the attempts to strip the increase.

Despite progress in some states, the federal minimum wage for tipped employees remains at a shamefully low $2.13 an hour. *Any future increase in the federal minimum wage must include a provision to restore the value of the minimum wage for tipped employees at least to its historic level of 60% to insure that as the federal minimum wage rises over time, it does not leave tipped workers behind.*

Tips are erratic. Workers incomes – and their lives - should not be erratic as a result. Tipped workers need to be guaranteed a substantial minimum wage that is paid directly by their employer in order to protect them and their families against economic instability.

Restoring and protecting the value of the tipped minimum wage is a simple and prudent step – with clear historic precedence - that will provide an immediate boost to workers in an important growth sector of our economy. Such a move would mean greater wage stability to millions of workers who are in the best position to deliver increased purchasing power at a time when our economy needs it most.