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AN ACT REQUIRING ONE FAIR WAGE

*Written Testimony for the Committee for Labor & Workforce Development,
Massachusetts General Court, in Support of S. 1213 and H. 1971*

October 24, 2021

Thank you, Chairwoman Jehlen, Chairman Cutler, Vice Chairman Timilty, and Vice Chairwoman Nguyen, for the opportunity to write today in support of Senate Bill 1213 and House Bill 1971, otherwise known as An Act Requiring One Fair Wage. We are students in the Boston College Law School Civil Rights Clinic, working under the supervision of Attorney Reena Parikh.¹ We write on behalf of Matahari Women Workers' Center in support of An Act Requiring One Fair Wage (“the One Fair Wage Act”).

As of 2021, the federal minimum wage for tipped workers under the Fair Labor Standards Act (FLSA) stands stagnant at \$2.13 and has been for almost four decades.² In Massachusetts, that number is \$5.55.³ The COVID-19 pandemic and its economic and social aftermath have shown Massachusetts residents, more clearly than ever before, that this wage floor is so low as to be unlivable. The tipped minimum wage leaves MA’s citizenry vulnerable to natural and economic disasters and undermines the Commonwealth’s moral charge to protect the dignity of labor.

The One Wage Fair Act will lift scores of workers out of destitution, shrink the gender pay gap among tipped workers, and decrease rates of workplace sexual harassment.⁴ Step by step, the Act would phase out the tipped minimum wage — also known as the subminimum wage — by January 2027. The proposed bills, S. 1213 and H. 1971, accomplish this by raising the subminimum wage to \$6.45/hour by January 2022, after which it would be raised by \$1.50 every year until 2027, when tipped workers would be entitled to the regular minimum wage in effect at any given time plus tips. Additionally, the One Fair Wage Act will benefit all Massachusetts residents by supporting economic growth, poverty reduction and public health, as has been demonstrated in

¹ The views stated here do not purport to represent the opinions of Boston College Law School.

² Sylvia A. Allegretto & David Cooper, *Twenty-Three Years and Still Waiting for Change: Why It’s Time to Give Tipped Workers the Regular Minimum Wage*, Economic Policy Institute (Jul. 10, 2014), <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage>.

³ Department of Labor Standards, *Minimum wage and overtime information*, Mass.gov, <https://www.mass.gov/service-details/minimum-wage-and-overtime-information>.

⁴ The True Cost Accounting For Food: Balancing The Scales 244 -250 (Barbara Gemmill-Herrin, Laura E. Baker & Paula A. Daniels eds., 2021) <https://library.oapen.org/bitstream/handle/20.500.12657/48768/9781000389968.pdf?sequence=1#page=283>.

other states who have passed similar measures. It is time for Massachusetts to join states who have answered the call to action, and pass the One Fair Wage Act now.

I. The Subminimum Wage Exacerbates Existing Social Harms

The subminimum wage for tipped workers in the restaurant industry causes a variety of social harms affecting the most vulnerable communities in MA, including people of color, women and low-income families — who disproportionately occupy those jobs. In the Commonwealth, the restaurant industry is one of the biggest and fastest-growing industries in the state, but also provides its workers with one of the lowest wages of any industry in the state.⁵ The subminimum wage for tipped workers supports this problematic dynamic, simultaneously trapping workers in a cycle of hard labor for unjustly low compensation and fueling the growth of the very industry that creates these conditions.⁶ Moreover, the subminimum wage helps create a work environment that is rife with exploitation including sexual harassment and wage theft, issues already disproportionately affecting people of color, women, and under-resourced individuals.⁷

A. Subminimum Wage Does Unique Damage to People of Color and Women

The subminimum wage scheme, relying on tips to bring workers' wages up to the regular minimum wage, is a legacy of slavery and the Jim Crow era.⁸ In the late 1800s, it was common in the South for employers to recreate the economic shackles of slavery by relying on the tipping of Black employees instead of paying them fair wages for their work.⁹ The Fair Labor Standards Act of 1938 codified this practice by excluding most restaurant workers from minimum wage, including tipped workers.¹⁰ Seeing as women and Black Americans were often tipped workers in restaurants, this exemption further enshrined systemic racism and gender inequality.¹¹

⁵ US Bureau of Labor Statistics. (2020). Report 1085: Characteristics of minimum wage workers, 2019. <https://www.bls.gov/opub/reports/minimum-wage/2019/pdf/home.pdf>.

⁶ Sylvia A. Allegretto & David Cooper, *Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage*, Economic Policy Institute (Jul. 10, 2014), <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage>; Department of Labor Standards, *Minimum wage and overtime information*, Mass.gov, <https://www.mass.gov/service-details/minimum-wage-and-overtime-information>.

⁷ Justin Schweitzer, *Ending the Tipped Minimum Wage Will Reduce Poverty and Inequality: One Fair Wage States Are Better for Workers in Tipped Industries*, Center For American Progress, (Mar. 30, 2021), <https://cdn.americanprogress.org/content/uploads/2021/03/29133657/Ending-Tipped-Minimum-Wage1.pdf>.

⁸ Andre Manual, *The Tipped Subminimum Wage has Sexist and Racist Origins: It's Time to End it*, ON LABOR: WORKERS, UNIONS, AND POLITICS (Feb. 17, 2021), <https://onlabor.org/the-tipped-subminimum-wage-has-sexist-and-racist-origins-its-time-to-end-it/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

This legacy continues today, as almost 70% of subminimum wage earners in the United States are women, many of whom work in salons and restaurants.¹² Most of these women are people of color, and studies have shown that they suffer from a poverty rate that is triple that of other workers in the nation.¹³ Furthermore, these women workers suffer from very high rates of sexual harassment; restaurant workers, for example, are often forced to bear with indecent behavior from customers for fear of losing the vital tips without which economic survival is impossible.¹⁴ Studies have also shown that patterns of racial discrimination and the fact that tipping is voluntary means that workers of color are tipped less than white workers in the same roles, further exacerbating the racial wealth gap.¹⁵

B. Subminimum Wage Encourages Wage Theft

In Massachusetts, almost \$1 billion dollars are stolen from workers each year due to wage theft including failure to pay the required minimum wage.¹⁶ Under state law, employers must bring workers to the full minimum wage by providing workers with the difference between what workers receive in tips and what is the current minimum wage rate.¹⁷ However, many employers fail to follow the requirement. The U.S. Department of Labor found that from 2010 to 2012, 7,560 (or 84 percent) of the restaurants it investigated violated laws related to paying workers appropriate wages.¹⁸ Of those 7,560 infractions, about 1,200 of them — costing workers millions of dollars — were for not paying tipped workers the difference in wages in order to ensure they ultimately took home the regular minimum wage.¹⁹

¹² *One Fair Wage: Women Fare Better in States with Equal Treatment for Tipped Workers*, National Women’s Law Center (Feb. 2021), <https://nwlc.org/wp-content/uploads/2021/02/OFW-Factsheet-2021-v2.pdf>.

¹³ *One Fair Wage Myths and Facts*, One Fair Wage, https://onefairwage.site/wp-content/uploads/2021/04/OFW_MythsAndFacts_6.pdf; *One Fair Wage: Women Fare Better in States with Equal Treatment for Tipped Workers*, National Women’s Law Center (Feb. 2021), <https://nwlc.org/wp-content/uploads/2021/02/OFW-Factsheet-2021-v2.pdf>.

¹⁴ Justin Schweitzer, *Ending the Tipped Minimum Wage Will Reduce Poverty and Inequality: One Fair Wage States Are Better for Workers in Tipped Industries*, Center For American Progress, (Mar. 30, 2021), <https://cdn.americanprogress.org/content/uploads/2021/03/29133657/Ending-Tipped-Minimum-Wage1.pdf>.

¹⁵ Andre Manual, *The Tipped Subminimum Wage has Sexist and Racist Origins: It’s Time to End it*, ON LABOR: WORKERS, UNIONS, AND POLITICS (Feb. 17, 2021), <https://onlabor.org/the-tipped-subminimum-wage-has-sexist-and-racist-origins-its-time-to-end-it/>.

¹⁶ Laura Crimaldi, *AG Healey speaks to essential women workers about wage theft*, Boston Globe (Apr. 17, 2021), <https://www.bostonglobe.com/2021/04/17/metro/ag-healey-speaks-essential-women-workers-about-wage-theft>.

¹⁷ See Mass. General Laws c.151 § 7.

¹⁸ Sylvia A. Allegretto & David Cooper, *Twenty-Three Years and Still Waiting for Change: Why It’s Time to Give Tipped Workers the Regular Minimum Wage*, Economic Policy Institute (Jul. 10, 2014), <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>; Justin Schweitzer, *Ending the Tipped Minimum Wage Will Reduce Poverty and Inequality: One Fair Wage States Are Better for Workers in Tipped Industries*, Center For American Progress, (Mar. 30, 2021), <https://cdn.americanprogress.org/content/uploads/2021/03/29133657/Ending-Tipped-Minimum-Wage1.pdf>.

¹⁹ *Id.*

C. Subminimum Wage Causes Poverty and Shrinks Workers' Access to Vital Services

The bitter irony that essential food service workers are the ones who often struggle to afford food, let alone nourishing meals, demands a legislative remedy.²⁰ The poverty rate for tipped workers is 2.5 times that of the remainder of the workforce.²¹ This multiplier is 2.6 for women in the industry, who rely on food stamps at 1.6 times the rate of other workers.²² Subminimum wages also render healthcare, housing, transportation, and other vital services inaccessible to these workers, who sometimes lack the political power, time, or other resources to draw attention to their circumstances without collective action.²³

II. COVID-19 and its Aftermath Have Further Endangered Tipped Workers

Even before the COVID-19 pandemic, tipped workers often struggled to survive on subminimum wages. In the wake of this ongoing global health crisis, many workers feel that the appreciation they receive for risking illness and even death due to their line of work is unsupported by tangible improvements to their circumstances or protections of their most basic rights through legislative action.²⁴

Due to the nature of their work, many subminimum wage workers have endured prolonged exposure to environments that put them at greater risk of COVID-19 infection.²⁵ For example,

²⁰ Chris Benner & Saru Jayaraman, *A Dime a Day: The Impact of the Miller/Harkin Minimum Wage Proposal on the Price of Food* (Oct. 24, 2012), https://chapters.rocunited.org/wp-content/uploads/2012/10/reports_dime-a-day.pdf.

²¹ One Fair Wage analysis of American Community Survey (2015-2019) of the customarily tipped worker population and total workforce population that report that they are at or below the federal poverty threshold. Customarily tipped occupations included Baggage porters, bellhops, and concierges; Barbers; Bartenders; Counter Attendant, Cafeteria, Food Concession, coffee shop; Dining room and cafeteria attendants and bartender helpers; Food servers, non-restaurant; Gambling service workers; Hairdressers, hairstylists, and cosmetologists; Hosts and hostess, restaurant, lounge, and coffee shop; Massage Therapists; Miscellaneous personal appearance workers; Parking attendants; Skincare Specialists; Ushers, lobby attendants, and ticket takers; Waiters and Waitresses. Excludes self-employed workers. Retrieved from IPUMS USA: Version 11.0 [dataset]. Minneapolis, MN: IPUMS, 2021, <https://doi.org/10.18128/D010.V11.0>.

²² Chris Benner & Saru Jayaraman, *A Dime a Day: The Impact of the Miller/Harkin Minimum Wage Proposal on the Price of Food* (Oct. 24, 2012), https://chapters.rocunited.org/wp-content/uploads/2012/10/reports_dime-a-day.pdf.

²³ Clare Hammonds, et al., *Stressed, Unsafe, and Insecure: Essential Workers Need A New, New Deal*, Center for Employment Equity at the University of Massachusetts Amherst (Jun. 5, 2020), <https://www.umass.edu/employmentequity/stressed-unsafe-and-insecure-essential-workers-need-new-new-deal#Insecure>.

²⁴ *Locked Out By Low Wages: Service Workers' Challenges With Accessing Unemployment Insurance During COVID-19*. (2020). One Fair Wage, https://onefairwage.site/wp-content/uploads/2020/11/OFW_LockedOut_UI_COVID-19_FINALUPDATE.pdf.

²⁵ Beth Healy, et al., *Hundreds Of Businesses In Mass. Violated COVID-19 Rules, Putting Workers At Risk*, WBUR (Dec. 14, 2020), <https://www.wbur.org/news/2020/12/14/covid-businesses-violations-massachusetts-employees-covid-19-regulations-safety>.

restaurant workers frequent and serve tables with maskless customers, and salon workers work in very close proximity to their customers to render their services.²⁶ The danger of infection looms over the customer-employee dynamic, which is further complicated because employees are forced to encourage COVID-19 protocol compliance from the customers that tip them.²⁷ The conflicting responsibilities to please the customer and ensure their compliance with health and safety measures takes a toll on tips, which are vital for subminimum wage workers.²⁸

Apart from the clear and dramatic health risks of working in conditions that require frequent and extensive exposure to COVID-19, subminimum wage workers are also in severe economic danger due to the pandemic.²⁹ According to a recent survey, more than 62% of Massachusetts subminimum wage workers reported being unable to access unemployment insurance or a lack of assurance that they could.³⁰ The same report showed that many such workers did not meet the threshold for unemployment benefits because of the disqualifying low sum that these workers take home in wages and tips.³¹

III. The Economic Benefits of Gradually Phasing Out the Subminimum Wage for All Stakeholders in Massachusetts

The economic logic behind the One Fair Wage Act is almost as clear as its moral underpinnings. Massachusetts residents would benefit from the increased consumer spending and resultantly higher GDP that comes from eliminating the subminimum wage and the overall decrease in government spending on healthcare and other public services due to reduction in poverty.³² According to the Institute for Policy Studies, the economy gains about \$1.21 for every added dollar in the pocket of a worker earning low wages.³³ Increased prosperity might also result in less reliance on government benefits for those who currently have no choice because they make unlivable wages.³⁴

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ The True Cost Accounting For Food: Balancing The Scales 244 -250 (Barbara Gemmill-Herrin, Laura E. Baker & Paula A. Daniels eds., 2021),

<https://library.oapen.org/bitstream/handle/20.500.12657/48768/9781000389968.pdf?sequence=1#page=283>.

³⁰ *Id.*

³¹ *Id.*

³² Justin Schweitzer, *Ending the Tipped Minimum Wage Will Reduce Poverty and Inequality: One Fair Wage States Are Better for Workers in Tipped Industries*, Center for American Progress (Mar. 30, 2021), <https://cdn.americanprogress.org/content/uploads/2021/03/29133657/Ending-Tipped-Minimum-Wage1.pdf>.

³³ Sarah Anderson, *Wall Street Bonuses and the Minimum Wage*, Institute for Policy Studies (Mar. 12, 2014), https://ips-dc.org/wall_street_bonuses_and_the_minimum_wage.

³⁴ Justin Schweitzer, *Ending the Tipped Minimum Wage Will Reduce Poverty and Inequality: One Fair Wage States Are Better for Workers in Tipped Industries*, Center for American Progress (Mar. 30, 2021), <https://cdn.americanprogress.org/content/uploads/2021/03/29133657/Ending-Tipped-Minimum-Wage1.pdf>.

IV. The Time for Massachusetts to Act is Now: Justice for Tipped Workers in Other States

Massachusetts should live up to its long and historic prioritization of labor rights by joining the other seven states that discarded the subminimum wage during the pandemic. These states include Alaska, California, Minnesota, Montana, Nevada Oregon, and Washington.³⁵

As for the possible economic consequences of the seven states' sagacious choice, there was no apparent decrease in hospitality business after the implementation of this pro-labor legislation.³⁶ In fact, compared to states who continue to subject their tipped workers to the subminimum wage, these seven states show similar or higher rates of restaurant transactions per capita. What is more, their tipped workers experience similar or better job growth and, in the restaurant sector, about 50% less sexual harassment.³⁷

V. MA Should Pass the One Fair Wage Act

The subminimum wage furthers the legacy of systemic racism in the United States and does egregious harm to essential workers and already marginalized communities in the Commonwealth including women, people of color and low-income families. The One Fair Wage Act will provide social and economic benefits not only to these communities, but the entire Commonwealth and reflects the important lessons that the Massachusetts residents have learned from the COVID-19 pandemic. Massachusetts owes it to its essential workers to pass the One Fair Wage Act.

³⁵ The True Cost Accounting For Food: Balancing The Scales 244 -250 (Barbara Gemmill-Herrin, Laura E. Baker & Paula A. Daniels eds., 2021),

<https://library.oapen.org/bitstream/handle/20.500.12657/48768/9781000389968.pdf?sequence=1#page=283>.

³⁶ Data retrieved from Chetty, R., Friedman, J., Hendren, N., Stepner, M., and the Opportunity Insights Team, Opportunity Insights Economic Tracker, Accessed February 2021. See One Fair Wage. (Feb. 2021). Decline in Open Hospitality Businesses Due to COVID-19: State by State Analysis, https://onefairwage.site/wp-content/uploads/2021/02/OFW_DeclineHospBus_3.

³⁷ The True Cost Accounting For Food: Balancing The Scales 244 -250 (Barbara Gemmill-Herrin, Laura E. Baker & Paula A. Daniels eds., 2021),

<https://library.oapen.org/bitstream/handle/20.500.12657/48768/9781000389968.pdf?sequence=1#page=283>.