

Testimony of James M. Williams, Esq.¹, Co-chair, Board of Directors, Workers' Center of Central New York² 2014 Hospitality Industry Wage Board Hearing, Oct. 3, 2014, Syracuse, NY

Thank you for the opportunity to speak before you today. My name is Jim Williams and I am a lawyer at Legal Services of Central New York, a free civil legal services program serving low-income people in 13 counties in Central New York. I also serve in a volunteer capacity as Co-Chair of the Board of Directors of the Workers' Center of Central New York, a grassroots organization that seeks to empower workers to enforce their rights at work. For many years I have practiced employment law on behalf of workers and I teach employment law as an adjunct professor of law at the Syracuse University College of Law. I also love restaurants and hotels. I live in a small village next to a lake. In my village there are enough restaurants for me to walk to and dine out every night of the week in a different establishment and I am both embarrassed and proud to say that I frequently do. You should also know that half of my family income is derived from the employer side of the hospitality industry.

In his opening statement to this Board, Commissioner of Labor Peter Rivera charged this Board with an important responsibility. He said, "I charge you to provide us with an understanding of what minimum wage means in today's hospitality industry." I want to use my

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² The Workers' Center of Central New York (WCCNY) is a grassroots organization focused upon workplace and economic justice. It operates in and around the city of Syracuse, a city with one of the highest rates of poverty in the country, driven by deindustrialization and de-unionization, the entrenchment of widespread joblessness and the proliferation of low-wage jobs. Through community organizing, leadership development, popular education and policy advocacy, the Workers' Center of Central New York empowers low-wage workers to combat workplace abuses and improve wages and working conditions throughout the community. For more information about WCCNY see www.workerscentereny.org.

time with you today encourage you to recommend the elimination of the sub-minimum wage for tipped workers in the hospitality industry in New York State.

By increasing our State's minimum wage, New York has begun to try to make sure that working people receive wages in exchange for their work sufficient to support themselves and their families. But tipped workers in the hospitality industry are being left behind in this current effort. At these hearings today you will hear from workers who, despite working long hours, often do not receive at least the minimum wage for each hour that they work because NY still has in place a system that allows an employer to pay, for example, a minimum wage of only \$5 per hour for tipped restaurant servers. These workers are forced to rely on tips to bring their wages to at least minimum wage. While employers are required to "top up" workers' wages – ensure that the worker receives at least the minimum wage if they do not receive at least that amount in tips – that process is complicated and employers frequently do not comply with this requirement. Workers fear retaliation for asserting their rights and statutory anti-retaliation protections are of little value when laws go unenforced.

Some workers do undertake efforts to persuade their employers to comply with the law. But to do so means challenging the people responsible for making up shift schedules, and who have the power to hire and fire. As you will hear from workers – which shifts a server is assigned to have a significant effect on income. I wish I could say that there are enough private attorneys and state agencies ready, willing and able to assist workers in asserting complaints for unpaid wages against law violating employers but this is not the case. Despite the efforts of our Chief Judge there are still significant gaps in available civil legal services and State and Federal Departments of Labor lack enforcement resources. The result is that despite their work, tipped service workers and their families often remain in poverty, sometimes having to rely on food

stamps and other forms of public assistance to meet basic needs.³ Moreover, law abiding employers are undermined by those in the industry that ignore the law.

NY prides itself on being an international tourist destination – everyone loves NY. And when people say that they love New York, they don't only mean Brooklyn and Manhattan. We also mean Syracuse, Skaneateles, Cazenovia and Cooperstown and all of the wonderful destinations on NY's Canal System like Seneca Falls, Rochester and Buffalo. We must ensure that the workers who make these destinations hospitable can do so and earn a living sufficient to support their families.

There is a simple way to begin to achieve this goal. Require employers to pay tipped workers the full minimum wage directly with tips being in addition to instead of a substitute for their wages.⁴ Seven states (California, Washington, Oregon, Minnesota, Nevada, Hawaii and Alaska) have taken the lead and now require that employers pay tipped workers the full minimum wage. The experience of these states suggests that this step has been effective in reducing poverty rates for tipped workers, without slowing job growth or eliminating jobs in the restaurant industry.

Ensuring that hospitality industry workers receive at least the same minimum wage as other workers is also the fair thing to do for workers as well as employers outside of the hospitality industry. In addition, enforcement of existing laws would also be enhanced.

³ New York State maintains a web-based public benefits calculator that assists New Yorkers to determine whether or not they might be eligible for various types of public assistance. See <https://mybenefits.ny.gov/>.

⁴ For in depth details on this idea, See “An Order of Fair Pay: How a “Wage Order” Eliminating New York’s Sub-minimum Wage for Tipped Workers Will Deliver Fair Pay for Workers, Women and the State’s Economy,” available at <http://www.nelp.org/page/-/rtmw/New-York-Tipped-Minimum-Wage-Order-Report.pdf?nocdn=1>

For these reasons I encourage you to recommend that New York State join the growing number of other states that have eliminated the sub-minimum wage for tipped workers in the hospitality industry. We need to do this too. It's the right thing to do.

Thank you.

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Respectfully Submitted

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