

STATE OF MICHIGAN
IN THE COURT OF APPEALS

MOTHERING JUSTICE, MICHIGAN ONE FAIR
WAGE, MICHIGAN TIME TO CARE,
RESTAURANT OPPORTUNITIES CENTER OF
MICHIGAN, JAMES HAWK, and TIA MARIE
SANDERS,

Plaintiffs-Appellees,

v

DANA NESSEL, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN,

Defendant-Appellee,

and

STATE OF MICHIGAN,

Defendant-Appellant.

Docket No. 362271

Court of Claims
LC No. 21-000095-M
Hon. Douglas B. Shapiro

**The appeal involves a ruling that
a provision of the Constitution, a
statute, rule or regulation, or
other state governmental action
is invalid.**

**MICHIGAN RESTAURANT & LODGING ASSOCIATION
AND THE RESTAURANT LAW CENTER'S MOTION FOR
LEAVE TO FILE BRIEF AMICI CURIAE**

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The Michigan Restaurant & Lodging Association (“MRLA”) and the Restaurant Law Center (collectively “Amici”) request leave to file the accompanying brief amici curiae in accordance with MCR 7.212(H). In support of their motion, the Amici state as follows:

1. The MRLA represents the food service and lodging industries throughout Michigan. Its 5,600 members include restaurants, food service distributors, hotels, motels, resorts and other businesses associated with the industry. Its mission is to educate, assist, and represent its members’ interests and to promote and protect the expansive hospitality industry in Michigan. With more than 16,000 locations statewide, approximately 400,000 employees, and approximately \$20.6 billion in sales in 2021, the restaurant industry is fundamentally important to Michigan’s overall economy. See Affidavit of Justin Winslow, ¶ 3 (“Winslow Aff”) (attached as Exhibit A to Amici’s proposed brief).

2. The Restaurant Law Center has a similar interest in protecting the food service industry—both nationally and in Michigan. Indeed, it is the only independent public policy organization created specifically to represent the interests of the food service industry in the courts. This labor-intensive industry employs approximately 10 percent of the U.S. workforce, making restaurants and other foodservice providers the second largest private sector employers in the United States. Through amicus participation, the Restaurant Law Center provides courts with perspectives on legal issues that have the potential to significantly impact its members and their industry. The Restaurant Law Center’s amicus briefs have been cited favorably by state and federal courts across the country.

3. The Michigan restaurant industry is uniquely impacted by the Court of Claims’ decision as it pertains to one of the statutes at issue in this case—2018 PA 368—which is known as the “Improved Workforce Opportunity Wage Act.” The Legislature originally enacted the

Improved Workforce Opportunity Wage Act in the fall of 2018 in response to an initiative petition. That original act, assigned 2018 PA 337, both increased the minimum wage and phased out what is commonly referred to as the “tip credit.” The tip credit is the difference between the statewide minimum wage and the wage allowed to be paid to waiters, waitresses, and others in the service industry, so long as that wage and any tips earned equal or surpass the state minimum wage. This bifurcated wage, while sometimes difficult to explain to those not in the industry, is common practice across the United States, with 43 of 50 states operating with a separate wage for tipped employees.

4. Interested stakeholders immediately shared their concerns about the drastic impact this would have on the service industry, with layoffs, elimination of tipped employees, major increases in prices, and closures being just some of the inevitable consequences. Tipped workers also voiced their concerns, arguing that they had deliberately chosen to work in the service industry and receive a majority of their income from tips, knowing that they would receive more than the minimum wage. In fact, over 300 restaurant servers came to the Michigan Capitol on September 5, 2018, to directly express those concerns with legislators, who were scheduled to address the ballot proposals that day. In response, the Legislature amended 2018 PA 337 in December 2018 to, among other things, reinstate the tip credit. The amended act was assigned 2018 PA 368.

5. This appeal concerns the Court of Claims’ decision that 2018 PA 368 violates Const 1963, art 2, § 9, because it was amended during the same legislative session as 2018 PA 337. According to the Court of Claims, 2018 PA 337 could not be amended until a subsequent session. As discussed in the MRLA and Restaurant Law Center’s proposed amici brief, that decision is both incorrect and will result in serious harm to the restaurant industry.

6. Without the amendments set forth in 2018 PA 368, the new law would unquestionably force many restaurants to lay off workers, increase prices, and in some cases close their doors entirely. Despite the Court of Claims' contrary decision, the Legislature acted well within its constitutional authority in amending 2018 PA 337 to prevent that. Given the significant impact this legislation has on the hospitality industry, Amici strongly support the State's position—joined by the Michigan Legislature as amicus—that 2018 PA 368 is constitutional.

7. The Michigan Supreme Court has long stressed the importance of amicus briefs “[i]n cases involving questions of important public interest.” *Grand Rapids v Consumers Power Co*, 216 Mich 409, 415; 185 NW 852 (1921). This is one of those cases, and the MRLA and the Restaurant Law Center are uniquely situated to address the serious ramifications of the Court of Claims' decision.

WHEREFORE, the MRLA and the Restaurant Law Center request leave to file the accompanying brief amici curiae, which is attached as Exhibit 1.

Respectfully submitted,

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Dated: September 29, 2022

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Exhibit 1

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**BRIEF AMICI CURIAE OF MICHIGAN RESTAURANT & LODGING
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STATEMENT OF JURISDICTION

Amici concur in Defendant-Appellant State of Michigan's statement of the Court's jurisdiction.

STATEMENT OF QUESTION PRESENTED

Does Const 1963, art 2, § 9, permit the Legislature to enact an initiative petition into law and then subsequently amend that law during the same legislative session?

The Court of Claims answered:	No
Plaintiffs-Appellees and the Attorney General answer:	No
Defendant-Appellant, the State of Michigan, answers:	Yes
Amici Curiae Michigan Restaurant & Lodging Association and Restaurant Law Center answer:	Yes

I. INTRODUCTION AND STATEMENT OF INTEREST OF THE AMICI¹

This amicus brief is submitted on behalf of the Michigan Restaurant & Lodging Association (“MRLA”) and the Restaurant Law Center (collectively “Amici”).

The MRLA represents the food service and lodging industries throughout Michigan. Its 5,600 members include restaurants, food service distributors, hotels, motels, resorts and other businesses associated with the industry. Its mission is to educate, assist, and represent its members’ interests and to promote and protect the expansive hospitality industry in Michigan. With more than 16,000 locations statewide, approximately 400,000 employees, and approximately \$20.6 billion in sales in 2021, the restaurant industry is fundamentally important to Michigan’s overall economy. See Affidavit of Justin Winslow (“Winslow Aff”), ¶ 3 (Exhibit A).

The Restaurant Law Center has a similar interest in protecting the food service industry—both nationally and in Michigan. Indeed, it is the only independent public policy organization created specifically to represent the interests of the food service industry in the courts. This labor-intensive industry employs approximately 10 percent of the U.S. workforce, making restaurants and other foodservice providers the second largest private sector employers in the United States. Through amicus participation, the Restaurant Law Center provides courts with perspectives on legal issues that have the potential to significantly impact its members and their industry. The Restaurant Law Center’s amicus briefs have been cited favorably by state and federal courts across the country.

¹ This brief was not authored by counsel for a party to this case in whole or in part, nor did such counsel or a party make a monetary contribution intended to fund the preparation or submission of this brief. MCR 7.212(H)(3).

The Michigan restaurant industry is uniquely impacted by the Court of Claims’ decision as it pertains to one of the statutes at issue in this case—2018 PA 368—which is known as the “Improved Workforce Opportunity Wage Act.” The Legislature originally enacted the Improved Workforce Opportunity Wage Act in the fall of 2018 in response to an initiative petition. That original act, assigned 2018 PA 337, both increased the minimum wage and phased out what is commonly referred to as the “tip credit.” The tip credit is the difference between the statewide minimum wage and the wage allowed to be paid to waiters, waitresses, and others in the service industry, so long as that wage and any tips earned equal or surpass the state minimum wage. This bifurcated wage, while sometimes difficult to explain to those not in the industry, is common practice across the United States, with 43 of 50 states operating with a separate wage for tipped employees.

Interested stakeholders immediately shared their concerns about the drastic impact elimination of the tip credit would have on the service industry, with layoffs, elimination of tipped employees, major increases in prices, and closures being just some of the inevitable consequences. Tipped workers also voiced their concerns, arguing that they had deliberately chosen to work in the service industry and receive a majority of their income from tips, knowing that they would receive more than the minimum wage. In fact, over 300 restaurant servers came to the Michigan Capitol on September 5, 2018, to directly express those concerns with legislators, who were scheduled to address the ballot proposals that day. In response, the Legislature amended 2018 PA 337 in December 2018 to, among other things, reinstate the tip credit. The amended act was assigned 2018 PA 368.

This appeal concerns the Court of Claims’ decision that 2018 PA 368 violates Const 1963, art 2, § 9, because it was amended during the same legislative session as 2018 PA 337.

According to the Court of Claims, 2018 PA 337 could not be amended until a subsequent session. As discussed below, that decision is both incorrect and will result in serious harm to the restaurant industry.

According to a recent professional industry survey commissioned by the MRLA, tipped restaurant workers in Michigan (of which there are more than 125,000) earn, on average, approximately \$25 per hour—far above the current minimum wage of \$9.87 per hour. Yet, the initiated act as originally proposed and enacted by the Legislature, 2018 PA 337, would completely eliminate the tipped minimum wage (which is currently \$3.75) by 2024 and require employers to pay the same minimum wage to both tipped and non-tipped employees. Evidence suggests that eliminating the tip credit would negatively impact the tipping culture in Michigan as it has in the few states that operate without a separate tipped minimum wage.² As a point of reference, a recent point of sale analysis³ revealed that Michigan’s tipped restaurant workers earn more total income (cash wage plus tips) than the tipped restaurant workers in six of the seven states that currently operate without a separate, lower wage for tipped employees. At the same time, 2018 PA 337 would dramatically increase costs on restaurants that already operate with notoriously thin profit margins, averaging 3-5% before taxes. Winslow Aff, ¶ 15.

Without the amendments set forth in 2018 PA 368, the new law would unquestionably force many restaurants to lay off workers, increase prices, and in some cases close their doors entirely. Despite the Court of Claims’ contrary decision, the Legislature acted well within its constitutional authority in amending 2018 PA 337 to prevent that. Given the significant impact

² See Lynn, *The Effects of Minimum Wages on Tipping: A State-Level Analysis* (2020) (Exhibit B).

³ See *The Best and Worst States to Be a Tipped Worker* <<https://quickbooks.intuit.com/time-tracking/resources/tipped-worker-survey/>> (accessed September 23, 2022).

this legislation has on the hospitality industry, Amici strongly support the State’s position—joined by the Michigan Legislature as amicus—that 2018 PA 368 is constitutional.

II. STATEMENT OF FACTS

Amici rely on Defendant-Appellant State of Michigan’s statement of the pertinent background facts and the proceedings in the Court of Claims.

III. STANDARD OF REVIEW

Amici adopt Defendant-Appellant State of Michigan’s statement of the applicable standard of review.

IV. ARGUMENT

A. **Const 1963, art 2, § 9 permits the Legislature to enact an initiative petition into law and then later amend that law within the same legislative session.**

As discussed in the State’s brief on appeal, as well as the Legislature’s amicus brief, there is no textual support for the Court of Claims’ conclusion that Const 1963, art 2, § 9, prohibits the Legislature from amending a voter-initiated law during the same legislative session. Nor is there anything in the Address to the People or the Constitutional Convention record suggesting that the people who ratified art 2, § 9 would have understood it that way. In fact, comments from convention delegates show the exact opposite—that there is no such restriction on the Legislature’s authority.

1. **The Court of Claims’ contrary decision disregards Article 2, § 9’s plain text.**

The objective in interpreting Article 2, § 9 “is to determine the text’s original meaning to the ratifiers, the people, at the time of ratification.” *Citizens Protecting Michigan’s Constitution v Secretary of State*, 503 Mich 42, 61; 921 NW2d 247 (2018) (citations and internal quotations omitted). Justice COOLEY long ago described this rule of “common understanding”:

“A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.* ‘For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people,* and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding,* and ratified the instrument in the belief that that was the sense designed to be conveyed.’”⁴

In discerning the common understanding of constitutional text, the “first rule” is to apply its “plain meaning . . . as understood by the people who adopted it.” *People v Tanner*, 496 Mich 199, 224; 853 NW2d 653 (2014) (citation and internal quotation marks omitted).⁵

Here, that “plain meaning” is easy to discern when it comes to the Legislature’s authority to amend voter-initiated laws. Article 2, § 9 states:

The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

⁴ *Traverse City Sch Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971), quoting 1 Cooley, *Constitutional Limitations* (6th ed), p 81 (emphasis in *Traverse City Sch Dist*).

⁵ See also *Wayne Co v Hathcock*, 471 Mich 445, 468–469; 684 NW2d 765 (2004) (explaining that the Court “typically discerns the common understanding of constitutional text by applying each term’s plain meaning at the time of ratification”); *Silver Creek Drain Dist v Extrusions Div, Inc*, 468 Mich 367, 375; 663 NW2d 436 (2003) (“[I]n analyzing constitutional language, the first inquiry is to determine if the words have a plain meaning or are obvious on their face.”).

Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

The legislature shall implement the provisions of this section.

These provisions are unambiguous in setting out the Legislature's three options when it receives an initiative petition. Paragraphs 3 and 4 expressly state that the Legislature has 40 days either to enact the voter-initiated law "without change or amendment," reject it, or propose an alternative. That much the Court of Claims got right. See COC Op at 8-9 (Appellant's Appx at 16-17). Where the Court of Claims went far astray was in concluding that these options somehow limit the Legislature's authority *after* it decides to enact a voter-initiated law. *Id.* at 9 ("Article 2, § 9 does not provide the Legislature with any other options during (or after) the 40-day period, including the option to significantly amend the proposed law after adopting it.") (Appellant's Appx at 17).

The *only* limitations on the Legislature’s authority at that point are found in the last paragraph of Article 2, § 9, which contains two sets of protections—one for laws enacted *by the Legislature* in response to an initiative petition, and another for laws *adopted by the electorate* in cases where the Legislature has either rejected an initiative measure or proposed an alternative. While overlapping, these protections are not the same. Article 2, § 9 first provides that “[n]o law initiated *or* adopted by the people shall be subject to the veto power of the governor.” Const 1963, art 2, § 9, ¶ 5 (emphasis added). It then provides that no law “adopted” by the electorate through the initiative process “shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature.” *Id.* Whereas the limitation on the governor’s veto power applies *both* to voter-initiated and voter-adopted laws, only voter-*adopted* laws are subject to the requirement of a supermajority of the Legislature to amend or repeal such laws.

That is a critical distinction between voter-initiated (and legislatively enacted) and voter-adopted laws that the Court of Claims *wholly* disregarded:

This [supermajority requirement for amending a voter-adopted law] indicates that the Legislature cannot significantly amend a voter-initiated law in the same legislative session. Otherwise, the adopt-and-amend procedure would render the purpose of the supermajority requirement meaningless. As is demonstrated in this case, all a Legislature that opposes the initiative need do is adopt the initiative and then amend or repeal it by simple majority. The State argues that the fact that the amendment [of a voter-adopted law] must be passed by a $\frac{3}{4}$ vote supports its position because the Constitution has no similar requirement for legislatively-enacted laws. But the fact that the People contemplated that a law enacted through popular vote could only be amended or repealed by a supermajority in both Houses only confirms that the People desired strong safeguards against legislative interference with the People’s constitutional right of initiative. [COC Op at 9-10 (Appellant’s Appx at 17-18).]

The Court of Claims’ reasoning is fatally flawed because it conflates voter-initiated and voter-adopted laws, and consists of nothing more than the Court of Claims’ expression of what *the court* believes to be a necessary “safeguard” for voter-initiated laws enacted by the

Legislature. It certainly cannot be found in the actual language of Const 1963, art 2, § 9. A voter-*initiated* law that the *Legislature* enacts is simply not the same as one “enacted through popular vote.” Article 2, § 9 makes that quite clear.⁶ Thus, whatever “safeguards” the “People” put in place to protect voter-*adopted* laws are irrelevant to the Legislature’s authority with respect to voter-*initiated* laws that the *Legislature* enacts.⁷

The Court of Claims further erred in relying on the protection that Article 2, § 9 affords to laws adopted by the electorate through the referendum process, which provides the people with the power to “approve or reject laws enacted by the legislature” (in contrast with the initiative process, which implicates the power to *propose* laws). In the case of a law “approved by the people under the referendum provision,” it may be “amended by the legislature,” but the Legislature’s power to amend is only effective at a “subsequent session.” Const 1963, art 2, § 9.

The State correctly pointed out in the Court of Claims that this provision is instructive here because no such limitation is placed on the Legislature’s ability to amend a voter-*initiated* law (as opposed to a law originally enacted by the Legislature that the voters subsequently approved by referendum). The Court of Claims, however, once again disregarded this critical

⁶ For that reason, there is no need, despite what the Court of Claims suggested (see COC Op at 16 (Appellant’s Appx at 24), to resort to the rule of constitutional construction providing that “no court should so construe a clause or section of a constitution as to impede or defeat its generally understood ends when another construction thereof, equally concordant with the words and sense of that clause or section, will guard and enforce those ends.” *Michigan Farm Bureau v Hare*, 379 Mich 387, 393; 151 NW2d 797 (1967). That rule does not apply where, as here, there is only one construction that the constitutional text supports.

⁷ The Court of Claims’ analysis is also internally inconsistent, which is what can happen when straying from the words actually used in the Constitution. The Court of Claims held that the Legislature cannot “significantly” amend a law during the same legislative session, which implies that the Legislature *can* make changes that are *not* “significan[t].” The Court of Claims, however, fails to reconcile that purported exception with its later assertion that the “exact” law must remain in place until the end of the legislative session. See COC Op at 9 (Appellant’s Appx at 17).

distinction, reasoning that there was no need to address *when* the Legislature may amend a voter-initiated law because “the People never granted the Legislature the option to amend a voter-initiated law in the first instance.” COC Op at 10 (Appellant’s Appx at 18).

Such an assertion reflects a fundamental misconception of the Legislature’s authority under the Michigan Constitution. The Legislature’s authority to enact, amend, or repeal laws stems not from Article 2, § 9, but from Article 4, § 1: “Except to the extent limited or abrogated by article IV, section 6 or article V, section 2, the legislative power of the State of Michigan is vested in a senate and a house of representatives.” Const 1963, art 4, § 1. As the Michigan Supreme Court has repeatedly confirmed, this *is* plenary authority:

Unlike the federal constitution, our Constitution is not a grant of power to the legislature, but is a limitation upon its powers. Therefore, the legislative authority of the state can do anything which it is not prohibited from doing by the people through the Constitution of the State or the United States. [*Taxpayers of Mich Against Casinos v Michigan*, 471 Mich 306, 327; 685 NW2d 221 (2004) (citations and internal quotations omitted).]

In other words, “[t]he purpose and object of a State Constitution are not to make specific grants of legislative power, but to limit that power where it would otherwise be general or unlimited.” *Young v Ann Arbor*, 267 Mich 241, 244; 255 NW 579 (1934) (citation omitted).

So the Court of Claims essentially had it exactly backwards. The question *is not* whether Article 2, § 9, expressly authorizes what the Legislature did here; it *is* whether that provision precluded the Legislature from exercising its authority under Article 4, § 1. Nothing in the text of Article 2, § 9, prohibits the Legislature from amending 2018 PA 368 before the end of the legislative session.⁸ And again, the *only* constraints imposed on the Legislature’s power relate to

⁸ The Court of Claims sought to ground its contrary conclusion in Article 2, § 9’s statement that “[i]f any law proposed by [initiative] petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.” According to the Court of Claims, “[t]he use of the words ‘such’ and ‘it’ indicates that the People intended that the *exact* law will be subject to

Footnote continued on next page ...

voter-adopted laws, whether by initiative or referendum. That is not the case when it comes to voter-initiated laws that are enacted by the Legislature. Such laws are on “equal footing” with all other legislative acts, and thus may be amended as the Legislature sees fit—including within the same legislative session. See *Frey v Dir of Dep’t of Soc Servs*, 162 Mich App 586, 600; 413 NW2d 54, aff’d sub nom *Frey v Dep’t of Mgmt & Budget*, 429 Mich 315; 414 NW2d 873 (1987) (holding that “[s]ince everything that emerges from the Legislature is legislation, all legislative acts must be on equal footing,” including “laws proposed by the initiative”).⁹

2. The Constitutional Convention record supports the State’s and the Legislature’s reading of Article 2, § 9.

In ascertaining the “common understanding” of a constitutional provision, courts may also consider “the circumstances surrounding [its] adoption.” *Makowski v Governor*, 495 Mich 465, 472; 852 NW2d 61 (2014) (citations and internal quotation marks omitted). When making that assessment, “constitutional convention debates and the address to the people, though not controlling, are relevant.” *Tanner*, 496 Mich at 226.

Footnote continued from previous page ...

the referendum. Thus, the provision makes clear that the initiated law cannot be subject to amendment until *after* the referendum period has run.” COC Op at 9 (Appellant’s Appx at 17). That conclusion, however, simply does not follow. As the State explains in its brief, there is nothing in Article 2, § 9, precluding a voter-initiated law from being subject to referendum, even if it has been amended; in that case, *both* laws would be put up for a vote. See State’s Br at 36-37. If the people prefer the original law over the amended version, they are free to adopt it by referendum, in which case it *would* be subject to Article 2, § 9’s requirement that any amendment await a “subsequent session” of the Legislature.

⁹ At issue in *Frey* was whether the two-thirds vote requirement for giving legislation immediate effect under Const 1963, art 4, § 27, applied to a voter-initiated law enacted by the Legislature pursuant to Article 2, § 9, when the petition itself provided it was to be given immediate effect. This Court held that it did, because all laws enacted by the Legislature are on “equal footing.” *Id.* at 600. The Court of Claims sought to distinguish *Frey* because the Court “was not faced with the issue in this case whether the Legislature could amend an adopted voter-initiated law within the same legislative session.” COC Op at 18 (Appellant’s Appx at 26). That is not a valid basis for disregarding *Frey*’s core principle, which is that voter-initiated laws that are enacted by the Legislature are on “equal footing” with laws that originate from the Legislature.

Here, the Constitutional Convention record fully supports the view that when the Legislature enacts a voter-initiated law, it may amend that law during the same legislative session. During the convention, the delegates discussed the extent to which the Legislature should be empowered to amend or repeal initiated laws. In the course of that discussion, the delegates specifically distinguished between voter-initiated laws enacted by the Legislature and those adopted by the people. That discussion shows the delegates' intent that the Legislature retain "full control" over a voter-initiated law that the Legislature enacts, with authority to "amend it and do anything they see fit":

MR. WANGER: . . . [A] brief question for Mr. Kuhn, Mr. Chairman. Mr. Kuhn, isn't there another difference between initiative and referendum namely: that referendum cannot result in having a statute on the books which it takes a popular vote to repeal? Whereas, the initiative, if the initiated statute is adopted, means that the people, in order to make any change in that statute, have to vote; and the legislature cannot vote to change it.

MR. KUHN: Well, not exactly. I'll try to explain this a little bit, Mr. Wanger. *If the legislature sees fit to adopt the petition of the initiative as being sent out, if the legislature in their wisdom feel it looks like it is going to be good, and they adopt it in toto, then they have full control. They can amend it and do anything they see fit. . . .* [2 Official Record, Constitutional Convention 1961, pp 2394-2395 (emphasis added).]

The Court of Claims addressed this colloquy by noting that "Delegate Kuhn did not explain the time frame for when the Legislature can begin the amendment process," and that Delegate Kuhn had previously "signaled his understanding that the Legislature could not amend within the same legislative session." COC Op at 13 (Appellant's Appx at 21). That is a misreading of the convention record. Delegate Kuhn did comment about the Legislature being required to accept an initiated law "in toto," but he was talking about the Legislature's options

during the 40 days after it receives an initiative petition; it had nothing to do with the Legislature's authority once it has enacted a voter-initiated law.¹⁰

As for Delegate Kuhn not “explain[ing] the time frame for when the Legislature can begin the amendment process,” the reason is simple: the delegates did not contemplate *any* time constraints on the Legislature's ability to amend a voter-initiated law that it decided to enact, which is why no such constraints appear in the text of Article 2, § 9, itself. Indeed, the delegates rejected a timing requirement even for amendment of laws adopted by *the people*, concluding that a three-fourths supermajority vote was sufficient protection:

MR. KUHN: [W]ould [the delegate] include in his proposed amendment something to the effect of this being done in a subsequent legislative session . . . ?

MR. HUTCHINSON: [W]e [the committee] thought that this $\frac{3}{4}$ vote requirement would be a sufficient safeguard and that the time element would become very secondary. In fact . . . [Delegate Downs] didn't know whether the time element would work out very well.

* * *

MR. DOWNS: I think the $\frac{3}{4}$ [vote] is a reasonable requirement. I prefer it a little bit to the time concept. I think it is a little better way to handle the problem. [2 Official Record, Constitutional Convention 1961, p 2396.]

As previously established, the only time the Legislature is required to wait for a “subsequent [legislative] session” is when amending laws adopted by the people through the *referendum* process.

The point of all of this is that nowhere in the Constitutional Convention record is there any suggestion that the delegates envisioned placing any limitations on the Legislature's authority over voter-initiated laws that it enacted, whereas they did decide to do so for voter-

¹⁰ See 2 Official Record, Constitutional Convention 1961, p 2394 (“[B]ut what are the rights of the legislature after the people start this petition and have the 10 per cent [sic] of the people who voted for governor? They must accept it within 40 days, and accept it in toto, or they must place it on the ballot.”).

adopted laws. That distinction is critical here, and is again one that the Court of Claims completely overlooked.

Finding no support in the convention debates for its position, the Court of Claims cited the Address to the People, stating that it “reflects an ongoing attempt by the drafters to prevent the Legislature from ‘thwarting’ the popular will, as expressed in the initiative.” COC Op at 14 (Appellant’s Appx at 22). But that is not what the Address to the People says at all. It says that the language of Article 2, § 9, “makes it clear . . . that . . . the legislature cannot thwart the popular will *by refusing to act.*” See *What the Proposed New State Constitution Means to You: A Report to the People of Michigan by Their Elected Delegates to the Constitutional Convention of 1961-1962 (Address to the People)*, August 1, 1962, p 21 (emphasis added). And that is precisely what Article 2, § 9 ensures, by providing that a voter-initiated law will be submitted to the electors if the Legislature fails to act on it within 40 days. But that has nothing to do with the Legislature’s authority to amend a voter-initiated law that it enacts within the 40-day period.

Finally, whether what the Court of Claims coined an “adopt-and-amend strategy” is specifically referenced in the Address to the People is of no moment. The Address to the People explains the limitations on the Legislature’s power, and, like the text of Article 2, § 9, mentions no limitation when amending a voter-initiated law enacted by the Legislature.

* * *

In sum, it is well settled that an initiated law enacted by the Legislature is on equal footing with legislation enacted in the normal course, and there is nothing either in the text of Article 2, § 9, or the “circumstances surrounding its adoption” providing any limitation on the Legislature’s ability to amend a voter-initiated law during the same session in which it was originally enacted.

That is wholly dispositive here, and requires reversal of the Court of Claims' contrary decision. The Legislature enacted the proposed initiative at issue, without change, within 40 days as permitted by Const 1963, art 2, § 9. The Legislature then passed an amendment to that legislatively-enacted law by majority vote, which amendment was signed by the Governor, which Article 2, § 9, likewise permits. Because there is no temporal limitation restraining the Legislature's unquestioned authority to amend legislatively-enacted initiatives, 2018 PA 368 was enacted in accordance with Const 1963, art 2, § 9.

B. The Court of Claims' decision to resurrect the originally-enacted Improved Workforce Opportunity Wage Act, 2018 PA 337, will have a devastating impact on the restaurant industry in Michigan.

The Legislature had good reason to amend 2018 PA 337. Should the Improved Workforce Opportunity Wage Act be put into effect as originally enacted by 2018 PA 337 (i.e., before its amendment by the Legislature through 2018 PA 368), it will phase out the tipped minimum wage (currently \$3.75) and eventually require employers to pay the same minimum wage to both tipped and non-tipped employees. Such a large increase in the minimum wage and elimination of the tip credit would be crippling for Michigan's restaurant industry.

The MRLA calculates that implementing 2018 PA 337 will immediately inflate the wages of tipped employees by 206%. See Polling Memo: *The Impacts of Tip Credit Elimination* (conducted by the Michigan Restaurant & Lodging Association, September 2022) (Exhibit C). According to a recent survey of 307 restaurant and hotel operators representing nearly 2,000 locations and over 75,000 employees (roughly 24% of Michigan's hospitality industry), this will have a dramatic, and negative, impact on this industry. Ninety-one percent of surveyed restaurant operators said they would need to raise prices (with most estimating price increases of more than 10%), while 57% responded that they would stop providing full-service dining. *Id.* Eighty-one percent anticipate the need to lay off at least 10% of their employees, and 16% said

they will be forced out of business altogether. *Id.* The impact on tipped workers would be even worse, with 61% of operators saying that they would be forced to lay off more than 25% of their tipped employees. *Id.*

And this could not come at a worse time. The restaurant industry, since the onset of the pandemic more than two years ago, has endured an unprecedented level of operational instability. See Winslow Aff, ¶ 6. While employment overall has returned to pre-pandemic levels, the restaurant industry still operates with 700,000 fewer employees nationwide. *Id.*, ¶ 7. In Michigan, “Leisure and Hospitality” employment, which consists primarily of restaurant and hotels, is down 40,000 from pre-pandemic levels, and has actually decreased since peaking in February 2022. *Id.*¹¹ As a result of inadequate staffing, 59% of restaurants are now operating fewer hours or days. *Id.*, ¶ 10. And they have *already* been forced to increase wages in order to address labor shortages: 99% of restaurants have increased wages over the last 12 months, with 40% of operators increasing wages by more than 15% in that time period. *Id.*, ¶ 11.

Then there is inflation, which is wreaking further havoc on the restaurant industry. In June 2022, inflation was at a 40-year record of 9.1% annualized, with food inflation exceeding that figure at 10.4%. *Id.*, ¶ 8. Dramatic restaurant wage inflation in 2021 has outpaced the economy overall at 13.4%, *id.*, and 77% of restaurant operators have experienced commodity inflation in the last 12 months that is greater than 10%. *Id.*, ¶ 12.

As a result, 87% of restaurants have already increased menu prices in the last 12 months, most between 5-10%, and most have increased prices twice over that period. *Id.*, ¶ 13. And while 62% of restaurants report profitability right now, 61% report a decrease in profitability

¹¹ See also U.S. Bureau of Labor Statistics—State and Area Employment, Hours, and Earnings <https://data.bls.gov/timeseries/SMS26000007000000001?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true> (accessed September 23, 2022).

over the last 6 months. *Id.*, ¶ 14. Twenty-one percent report that their business is at risk for permanent closure over the next 6 months. *Id.*

And it is not just restaurant operators who will be adversely impacted. The MRLA recently commissioned a blind survey of tipped employees currently working in full-service restaurants in Michigan. See *Michigan Restaurant Tipped Worker Survey* (Corder et al., September 2022) (Exhibit D). A strong majority (79%) say that the current tipping system works well for them and does not need to be changed. *Id.* In fact, ninety-nine percent of surveyed tipped employees say they are already earning about \$25.03 per hour on average, which is far more than the current hourly minimum wage of \$9.87. *Id.* If tipped wages are eliminated, most agree that tipped workers will earn less (75%), that staff will quit (74%), that customers will tip less since staff is paid more per hour (71%), and that menu prices will increase (70%). *Id.* Four-in-five (79%) tipped workers think their jobs will be at risk if tipped wages are eliminated. *Id.* Ninety-four percent also think that it is likely that customers will start believing that they should tip less since employees are paid more hourly by their restaurant (very likely, 78%; somewhat likely, 16%). *Id.*

These are sobering numbers, demonstrating the importance of preserving the Legislature's amendment of 2018 PA 337 to reflect the economic realities of the restaurant industry. A dramatic increase in the minimum wage and elimination of the tip credit would have a devastating impact on this industry, directly affecting the thousands of restaurants and lodging establishments in Michigan and their hundreds of thousands of employees.

V. CONCLUSION AND RELIEF REQUESTED

For these reasons and those addressed in the State of Michigan's brief and the Legislature's amicus brief, the MRLA and Restaurant Law Center respectfully submit that the

Court should reverse the Court of Claims' decision in this case and uphold the constitutionality of 2018 PA 368.

Respectfully submitted,

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Dated: September 29, 2022

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation of MCR 7.212(B)(1). The brief contains 5,793 words, excluding the parts of the brief exempted by MCR 7.212(B)(2).

/s/ Jeffery V. Stuckey
Jeffery V. Stuckey (P34648)

Dated: September 29, 2022

STATE OF MICHIGAN
IN THE COURT OF APPEALS

MOTHERING JUSTICE, MICHIGAN ONE FAIR
WAGE, MICHIGAN TIME TO CARE,
RESTAURANT OPPORTUNITIES CENTER OF
MICHIGAN, JAMES HAWK, and TIA MARIE
SANDERS,

Plaintiffs-Appellees,

v

DANA NESSEL, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN,

Defendant-Appellee,

and

STATE OF MICHIGAN,

Defendant-Appellant.

Docket No. 362271

Court of Claims
LC No. 21-000095-M
Hon. Douglas B. Shapiro

**The appeal involves a ruling that
a provision of the Constitution, a
statute, rule or regulation, or
other state governmental action
is invalid.**

**EXHIBITS TO BRIEF AMICI CURIAE OF MICHIGAN RESTAURANT AND
LODGING ASSOCIATION AND THE RESTAURANT LAW CENTER**

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INDEX OF EXHIBITS

- Exhibit A Affidavit of Justin Winslow
- Exhibit B Lynn, *The Effects of Minimum Wages on Tipping: A State-Level Analysis* (2020)
- Exhibit C Polling Memo: *The Impacts of Tip Credit Elimination* (conducted by the Michigan Restaurant & Lodging Association, September 2022)
- Exhibit D *Michigan Restaurant Tipped Worker Survey* (Corder et al., September 2022)

Exhibit A

STATE OF MICHIGAN
IN THE COURT OF APPEALS

MOTHERING JUSTICE, MICHIGAN ONE FAIR
WAGE, MICHIGAN TIME TO CARE,
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MICHIGAN, JAMES HAWK, and TIA MARIE
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Court of Claims
LC No. 21-000095-M
Hon. Douglas B. Shapiro

DANA NESSEL, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN,

Defendant-Appellee,

and

STATE OF MICHIGAN,

Defendant-Appellant.

AFFIDAVIT OF JUSTIN WINSLOW

I, Justin Winslow, being first duly sworn, depose and state as follows:

1. I am the President and CEO of the Michigan Restaurant and Lodging Association.

In that capacity, I have personal knowledge of the facts set forth herein, and if called upon can testify thereto.

2. The Michigan Restaurant & Lodging Association (“MRLA”) represents the food service and lodging industries throughout Michigan. Its 5,600 members include restaurants, food service distributors, hotels, motels, resorts and other businesses associated with the industry.

3. With more than 16,000 locations statewide and approximately \$20.6 billion in sales in 2021, the restaurant industry is fundamentally important to Michigan’s overall

economy. Restaurants also employ approximately 400,000 Michiganders, of which there are over 125,000 restaurant servers that rely on voluntary tips as the primary source of their income.

4. Employers have been operating under 2018 PA 368 and 2018 PA 369 since March 29, 2019.

5. The restaurant industry, since the onset of the pandemic over two years ago, has endured an unprecedented level of operational instability.

6. Restaurant dining rooms were closed for 159 days, which was the longest statewide closure in the country. Restaurants operated with reduced occupancy and additional pandemic regulations for over 400 days. Over 3,000 Michigan restaurants permanently closed as a direct result of the pandemic.

7. While employment overall has returned to pre-pandemic levels, the restaurant industry still operates with 700,000 fewer employees nationwide. In Michigan, “Leisure and Hospitality” employment, which consists primarily of restaurant and hotels, is down 40,000 from pre-pandemic levels, and has actually decreased since peaking in February 2022.

8. Inflation is wreaking further havoc on the restaurant industry. In June 2022, inflation was at a 40-year record of 9.1% annualized, with food inflation exceeding that figure at 10.4%. Dramatic restaurant wage inflation in 2021 has outpaced the economy overall at 13.4%.

9. According to an Industry Operations Survey conducted in conjunction with the National Restaurant Association, 80.5 percent of restaurants in Michigan are currently operating with inadequate labor supply to meet demand, with one in five establishments more than 30 percent below needs.¹

¹ The survey was conducted from July 14 to August 15, 2022, by the National Restaurant Association (NRA), and included responses from 4,200 restaurant operators nationally. The data

10. 59 percent of restaurants are operating fewer hours or days due to inadequate staffing.

11. In order to address labor shortages, 99 percent of restaurants have increased wages over the last 12 months, with 40 percent of operators increasing wages by more than 15 percent in that time period.

12. 77 percent of restaurant operators have experienced commodity inflation in the last 12 months that is greater than 10 percent.

13. 87 percent of restaurants have increased menu prices in the last 12 months, most between 5-10 percent and most took 2 increases over that period.

14. 62 percent report profitability right now, but 61 percent report a decrease in profitability over the last 6 months. Only 21 percent now report that their business is at risk for permanent closure over the next 6 months.

15. If 2018 PA 337 is implemented, it will immediately result in a 206% wage inflation of tipped employees. Many in the restaurant industry, which historically exists on only a 3-5% profit margin, would immediately need to raise menu prices, lay off staff, close slower shifts, and some would outright shutter their doors.



Justin Winslow, President and CEO
Michigan Restaurant and Lodging Association

Subscribed and sworn to before me in
this 27 day of September 2022

Notary Public: Mary Jo Parisian
My Commission Expires: 8/12/2025
Acting in the County of Ingham



referenced in paragraphs 9-14 of this affidavit reflects Michigan-specific responses extracted from the NRA survey.

Exhibit B

The Effects of Minimum Wages on Tipping: A State-Level Analysis

Compensation & Benefits Review
1–11
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Michael Lynn , Cornell University

Abstract

Analyses of state differences in minimum wages and tip percentages found that (1) states with higher regular minimum wages have lower average tip percentages in coffee shops and higher average tip percentages in restaurants (after controlling for tipped minimum wages and cost-of-living) and (2) states with higher tipped minimum wages have lower average tip percentages in restaurants and higher average tip percentages in coffee shops (after controlling for regular minimum wages and cost of living). Although the data are only correlational and do not prove causality, these findings support the idea that paying tipped workers higher wages decreases the tip percentages those workers receive. Discussion centers on the potential processes underlying such an effect, its implications for minimum wage policy and directions for future research.

Keywords

tipping, minimum wage, tip-credit, state differences, cost of living

Introduction

Lately, there has been a lot of interest in raising both the tipped and nontipped minimum wages in the United States. Minimum wage laws specify the minimum legal wage in some specified jurisdiction. In the United States, minimum wage laws exist at the federal, state and municipal government levels—with more local statutes typically imposing higher required minimums than those required by the more global statutes. Many (but not all) of these minimum wage laws allow employers to pay a lower wage to tipped employees than to nontipped ones—with the difference between the tipped and nontipped minimum wages (known as the “tip-credit”) varying across jurisdictions and statutes. At the state and municipal levels, many increases in one or both of these minimum wages have been passed in the past few years with some of those increases having

already occurred and others slated to occur in the near future.¹ Little legislative action has occurred at the federal level in recent years, but advocates are pressing for an increase in the federal minimum wage to \$15 an hour along with an end to the tip-credit and many Democratic politicians are onboard with these policy changes.²

Restaurant owners and managers generally oppose efforts to increase minimum wages or reduce tip-credits.³ They argue that low profit margins in the industry mean that increasing wages would have to be paid for by increasing prices or by reducing number of employees or hours worked.⁴ The former threatens demand levels while the latter

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threatens service levels—neither of which is good for the industry they claim. These claims have been extensively tested in academic research. Though there is still some disagreement among scholars about these effects, the best evidence indicates that increasing minimum wages increases restaurant prices,^{5,6} has weak to no effects on short-term restaurant employment^{7,8} and increases both firm exit and entry.⁹ Overall, it appears that increasing labor costs are passed on to consumers in the form of higher prices rather than lower employment in the short term and that they cause labor-intensive restaurants to be replaced by more capital-intensive ones in the long-run.¹⁰

Interestingly, while labor advocates support minimum wage increases, many restaurant servers oppose them. Some servers fear loss of work hours or even employment following minimum wage increases. However, most fear that any wage increases will be offset by larger decreases in tip income.^{11,12} The dynamics underlying the latter potential effects are complex and differ with the specific minimum wage changes being contemplated. Increasing the tipped minimum wage could encourage restaurants to replace tipping with wages,¹³ which servers fear will be lower than their current tip income. Eliminating the tip-credit altogether, as some states have done and others are considering, would allow restaurants to broaden tip pools under recent federal law¹⁴ and servers fear the resulting loss of tip income to coworkers should their employers take advantage of this opportunity. Finally, increasing the regular or tipped minimum wages might decrease consumer tipping, either as a response to higher prices, lower service levels or lowered perceptions of server need.¹⁵

Unlike managers' claims about minimum wage effects on prices and employment, servers' fears about minimum wage effects on tipping have received very little research attention. In fact, no published academic article and only a few industry white papers examine these issues. First, a U.S. Census Bureau working paper reported that a higher tipped minimum wage (controlling for the regular minimum wage) increased employer paid

wages to servers but decreased tip income by a comparable amount.¹⁶ Second, a study of U.S. Bureau of Labor Statistics data put out by Restaurant Opportunities Center United found that New York border counties saw larger increases in total restaurant wages and annual salaries following New York minimum wage hikes than did comparable border counties in neighboring states.¹⁷ Since total server income is the sum of wages and tips, this latter finding suggests that the New York minimum wage increases did not decrease tipping enough to offset the wage hikes. Third, an analysis of compensation survey data by Glassdoor found that servers reported lower inflation-adjusted tips per hour in states using the federal tip-credit than in states with a smaller tip-credit.¹⁸ Finally, a survey conducted by Upserve of restaurant waiters found that roughly 70% reported no change in either their tips or total pay in states with recent minimum wage increases.¹⁹

The contradictory results of these existing white papers prohibit strong conclusions about minimum wage effects on tipping. Furthermore, all these existing studies suffer from a direct or indirect dependence on potentially biased self-reports of servers' incomes. Servers' desires to hide taxable tip income probably lead them to report only as much tip income as necessary. Furthermore, while all charge tips have to be reported, many employers require their servers to report only enough cash tips to ensure that the tip-credit is covered. Thus, servers probably report less tip income in states with lower the tip-credits. The two studies using U.S. Census Bureau data involved employers' reports of their servers' tip incomes, but those employers depended on servers to report their cash tips, so these data are also likely to be biased.

Given the weaknesses of existing studies, there is need for more academic research that examines minimum wage effects on measures of tipping obtained independently of servers. In addition, more research is needed to examine minimum wage effects on tipping of service workers other than restaurant waiters and waitresses. The study reported below answers

that need by using point-of-sale and customer survey data on tipping in coffee shops as well as restaurants. State average tip percentages in coffee shops and in restaurants are correlated with the regular and tipped minimum wages in those states in cross-sectional, regression analyses. In addition, panel data analyses examine the state-level relationships between changes over time in tipping averages and changes in regular and tipped minimum wages.

Method

Measures of State-Level Tipping

Measures of state differences in tipping were obtained from both private and public sources as detailed below. All the data except for the 2018 TSheets data are from point-of-sale systems and include only credit card transactions. The sample of states included the District of Columbia (D.C.) except in cases noted below where that data were not available.

Coffee-Shop Tip Size: 2015 Square Data. The average tip sizes by state left in coffee shops by customers using Square's payment system in 2015 came from Risen.²⁰ The specific dates of data collection were not reported by the source, but a related company report associated with National Coffee Day 2018 involved data from June 2017 to June 2018, so it is likely that the data reported in the 2015 came from June 2014 to June 2015. The state averages ranged from 15% to 21%, so they are unlikely to include tips of zero, though this is not explicitly reported by the source. Data for every state except D.C. were obtained from a graph providing the average tip amount as a percentage of the bill with the tip percentage rounded to the nearest whole amount.

Coffee-Shop Tip Size: 2016 Square Data. The average tip sizes by state left in coffee shops by customers using Square's payment system in January 2016 came from Risen.²¹ The state averages ranged from 14.2% to 18.6%, so they are unlikely to include tips of zero (though this is not explicitly reported by the source). Data on tipping in coffee shops for

every state except D.C. were obtained from a graph classifying the states on a 5-point ordinal scale.

Coffee-Shop Tip Size: 2018 Square Data. The average tip sizes by state left in coffee shops by customers using Square's payment system from June 2017 to June 2018 was provided directly by Square. The state averages ranged from 7.5% to 17.5% and include tips of zero.

Coffee Tip Size Index. The 2015, 2016 and 2018 coffee-shop tipping measures from Square were conceptually similar and positively correlated ($.33 \leq \text{all } r_s \leq .76$), so they were standardized and averaged into a Coffee Tip Size Index. This measure was an average of those values available, which effectively replaced missing values for one component with the mean of the available components as advocated by Roth et al.²² It covered every state (including D.C.), had a Cronbach's alpha of .79 and was used in the cross-sectional analyses reported below. The standardized components of this index were used in the panel analyses.

Restaurant Tip Size: 2013 NCR Data. NCR provided the author private anonymized data on every April 2013 credit card transaction of seven different unidentified restaurant chains. Data from the five largest of these chains, which operated in 32, 33, 37, 40 and 46 states, respectively, were used to calculate a state-level measure of restaurant tip size. The customers of the chains providing data are not representative of the various states' populations, but they are well matched across states, so should provide good measures of state differences in tipping. The median tip as a percentage of the bill by state was obtained for each of the five chains, and those medians were then correlated. Although all the state median tips were reliably positively correlated (all $.54 < r_s < .92$, all $p_s < .01$), the correlations involving one chain were substantially smaller than the others (mean $r = .59$ vs. $.84$), so the state medians from this chain were dropped. The remaining state medians were averaged into a single measure.

This measure was an average of those values available, which effectively replaced missing values for one component with the mean of the available components as advocated by Roth et al.²³ The resulting measure covered every state except Alaska and D.C. and had a Cronbach's alpha of .92.

Restaurant Tip Size: 2015 Lavu Data. The average tip as percentage of the bill left in restaurants using Lavu's iPad point of sale system in 2015 was obtained by state from Wells.²⁴

Restaurant Tip Size: 2018 TSheets Data. The average tip size as a percentage of the bill reported in 2018 by 208 survey respondents from each state (except D.C.) was obtained from <https://www.tsheets.com/resources/tipped-worker-survey>. Respondents were asked, "How much do you typically leave as a tip on average?" with response options of 0%, 5%, 10%, 15%, 20%, 25% or 30%. Although the survey did not specify a service context for the question, the fact that the vast majority of tips in the United States are left in restaurants,^{25,26} that the response options were percentages consistent with the restaurant tipping norm, and that the average responses within each state correlated highly with 2013 NCR Restaurant Tip Size ($r = .69$) suggests that most if not all respondents interpreted the question and replied in terms of their tipping of restaurant waiters/waitresses.

Restaurant Tip Size Index. The 2013, 2015 and 2018 Restaurant Tip Size measures, from NCR, Lavu and TSheets, respectively, were conceptually similar and positively correlated ($.50 < \text{all } r_s < .70$), so they were standardized and averaged into a Restaurant Tip Size Index. This measure was an average of those values available, which effectively replaced missing values for one component with the mean of the available components as advocated by Roth et al.²⁷ It covered every state (including D.C.), had a Cronbach's alpha of .80 and was used in the cross-sectional analyses reported below. The standardized components of this index were used in the panel analyses.

Measures of Minimum Wages

The U.S. Department of Labor website reports the regular and tipped minimum wages by state (including D.C.) from 2003 to the present. Data reported by this source for the years 2013 to 2018 were used in the current study as described below. If a state changed its minimum wage in the middle of the year, the value for that state/year was computed as an average of the monthly values in the state that year.

Minimum Wage Indices. Indices of the regular and tipped minimum wages operative in each state were created by averaging these minimum wages across the years from 2013 to 2018 (see Figure 1). The regular minimum wage index had Cronbach's alpha of .95 and the Tipped Minimum Wage Index has a Cronbach's alpha of .99. These indices were used in the cross-sectional analyses reported below.

Yearly Regular Minimum Wages and Tip-Credits. Yearly regular and tipped minimum wage data from 2014/2015 (averaged), 2016 and 2017/2018 (averaged) were used in panel analyses of Coffee Tips, and data from 2013, 2015 and 2018 were used in the panel analyses of Restaurant Tips.

Measures of State-Level Control Variables

Six potential state-level control variables were obtained from the sources listed below. The sample of states included D.C. for all these variables.

Median Age. The average median age of the population in each state from 2013 to 2017 was obtained from the U.S. Census Bureau's American Community Survey available at www.census.gov.

Median Household Income. The average median household income in each state from 2013 to 2017 was obtained from the U.S. Census Bureau's American Community Survey available at www.census.gov.

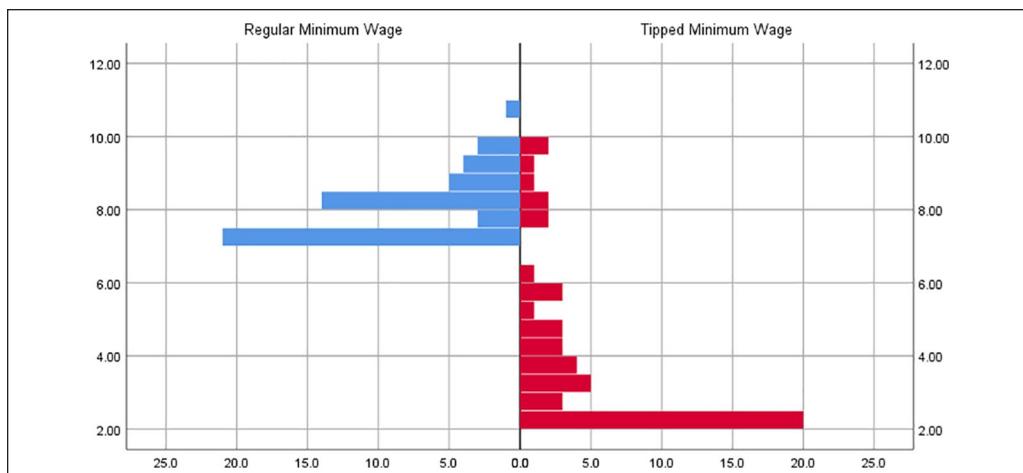


Figure I. Frequency distributions of state-level averages of the regular and tipped minimum wages from 2013 to 2018.

Percent White. The average percentage of the population that is non-Hispanic White in each state from 2013 to 2017 was obtained from the U.S. Census Bureau's American Community Survey available at www.census.gov.

Economic Inequality (Gini Index). The average Gini index in each state from 2013 to 2017 was obtained from the U.S. Census Bureau's American Community Survey available at www.census.gov.

Cost of Living. The price parities for all goods in each state from 2013 to 2017 were obtained from the Bureau of Economic Analysis website, <https://apps.bea.gov/iTable>. The data were averaged across years into a State COL (cost of living) Index, which had a Cronbach's alpha of .99.

Unemployment. The unemployment rates in each state from 2014 to 2018 were obtained from the Bureau of Labor Statistics website, <https://www.bls.gov>. The data were averaged across years into a State Unemployment Index, which had a Cronbach's alpha of .96.

Results and Discussion

Descriptive statistics for the cross-sectional variables in this study are presented in Table 1

and their correlations with one another are presented in Table 2. Results of cross-sectional tests of static minimum wage effects on state-level tipping measures are presented in Table 3. Finally, results of distributed lag analyses testing the dynamic effects of minimum wages on state-level tipping measures are presented in Table 4. Key findings are briefly described and discussed below.

Identification of Confounds

The 50 United States are too few in number to include many variables in models of state differences without sizeable loss of statistical power, so care was taken in identifying potential confounds. Although states differ on countless variables, only those differences affecting both minimum wage laws and tip averages are confounds in this study. Six potential confounds were examined in this study, but only median household income and cost of living proved to be reliably correlated with both minimum wages and tipping (see Table 2). Moreover, these two confounds were themselves highly correlated and analyses not reported in the tables indicated that median income did not predict unique variance in either of the two tipping indices after for controlling for cost of living. For these reasons, only cost of living was included as a covariate in the cross-sectional,

Table 1. Descriptive Statistics for the State-Level Indices Used in Cross-Sectional Analyses.

Measure	N	Minimum	Maximum	M	SD
Coffee Tip Index	51	-1.60	1.79	-0.02	0.85
Restaurant Tip Index	51	-1.73	1.99	0.01	0.86
Minimum Wage Index	51	7.25	10.54	8.04	0.87
Tipped Minimum Wage Index	51	2.13	9.99	4.07	2.36
Median Age	51	30.50	44.30	38.12	2.44
Median Household Income	51	42009.00	78916.00	58236.47	9849.81
Percent Non-Hispanic White	51	22.20	93.60	68.83	16.19
Income Inequality	51	0.42	0.53	0.47	0.02
Cost of Living	51	86.36	118.58	97.48	8.56
Unemployment Rate	51	2.78	6.78	4.70	0.97

Table 2. Correlations Among, Cross-Sectional, State-Level Measures (N =51).

Measure	RT	MW	TMW	Age	Income	White	Gini	COL	Unemp
Coffee Tip Index	-.57**	-.39**	.05	-.36**	-.47**	.20	-.31*	-.57**	.08
Restaurant Tip Index (RT)		.26	-.27	.44**	.32*	-.07	.32*	.38**	.17
Minimum Wage Index (MW)			.63**	.09	.53**	-.22	.25	.65**	.25
Tipped Minimum Wage Index (TMW)				.04	.33*	-.14	-.13	.45**	.10
Median age (Age)					-.12	.33*	.03	.06	-.04
Median household income (Income)						-.28*	-.07	.85**	-.10
Percent non-Hispanic White(White)							-.46**	-.49**	-.46**
Income inequality (Gini)								.21	.52**
Cost of Living (COL)									.09
Unemployment Rate (Unemp)									

Note. Sample includes the District of Columbia. Bold values are statistically significant correlations.
* $p < .05$. ** $p < .01$.

regression analyses of minimum wage effects on tipping (see Table 3).

Cross-Sectional Regression Analyses

The results of cross-sectional regression analyses indicate that states with higher regular minimum wages have lower average tip percentages in coffee shops and higher average tip percentages in restaurants (see Table 3). These effects became smaller but remained significant, after controlling for cost of living, which suggests that regular

minimum wage effects are not just spurious products of cost of living's effects on both regular minimum wages and average tip sizes. These findings raise a question about why regular minimum wages might decrease coffee-shop tips while increasing restaurant tips. No definitive answer to this question is available, but it may lie in the fact that tipped coffee shop employees (hereafter called baristas) typically receive the regular minimum wage²⁸ while tipped restaurant workers (hereafter called waiters) typically receive a lower tipped minimum wage. Given these

Table 3. Coefficients (and Standard Errors) From Regressions of State-Level Tipping Measures on Regular Minimum Wages and Tip-Credits ($N = 51$).

Measure	Coffee Tip Index	Coffee Tip Index	Restaurant Tip Index	Restaurant Tip Index
Constant	Included	Included	Included	Included
Minimum Wage Index	-.69*** (.15)	-.34* (.15)	.70*** (.15)	.44** (.16)
Tipped Minimum Wage Index	.18** (.06)	.19*** (.05)	-.26*** (.05)	-.27*** (.05)
Cost of Living		-.06*** (.01)		.04** (.01)
R^2	.30***	.50***	.37***	.47***

Note. Sample includes the District of Columbia.

* $p < .05$. ** $p < .01$. *** $p < .001$.

Table 4. Regression Coefficients (and Standard Errors Clustered Within State) From Distributed-Lag Analyses of Minimum Wage Effects on State Tipping Averages.

Measure	Coffee Tip ^a	Coffee Tip ^a	Restaurant Tip ^a	Restaurant Tip ^a
Constant	Included	Included	Included	Included
Minimum Wage (MW)	-.14 (.14)	-.30* (.12)		.30 (.18)
Tipped Minimum Wage (TMW)		.13 (.12)	.14 (.08)	-.09 (.13)
Tip_lag	.68*** (.10)	.61*** (.09)	.50*** (.12)	.40** (.12)
MW_lag	.18 (.16)	.10 (.19)		.12 (.34)
TMW_lag		-.02 (.13)	-.18 (.10)	-.05 (.14)
R^2	.47***	.51***	.29***	.35***
Observations/clusters	100/50	100/50	99/50	99/50

^aStandardized within source/year.

* $p < .05$. ** $p < .01$. *** $p < .001$.

different base wages, increasing the regular minimum wage may decrease perceptions of baristas' need for tips and (because it increases the gap between tipped and nontipped wages) increase perceptions of waiters' need for tips.

The cross-sectional regression analyses also indicated that states with higher tipped minimum wages have lower average tip percentages in restaurants and higher average tip percentages in coffee shops. Moreover, these effects remained significant after controlling for cost of living, which suggest that tipped minimum wages may directly affect tipping (see Table 3). Here too, the opposite effects of the tipped minimum wage on coffee and restaurant tipping may be attributable to the different base wages of baristas and waiters. Higher tipped minimum wages may decrease perceptions of waiters' need for tips and (because it decreases the gap between tipped

and nontipped wages) increase perceptions of baristas' need for tips.

Panel Analyses

The three standardized measures each of state differences in coffee-shop and restaurant tip sizes were combined into two panel data sets, and each was analyzed using ordinary least squares (OLS) regression models that tested the dynamic effects of changes in the minimum wage and tip-credit on changes in states' relative tip sizes. Analyses of distributed-lag models produced some evidence that states' relative coffee tip sizes decreased with regular minimum wages and increased with tipped minimum wages while state's relative restaurant tip sizes showed the opposite pattern (see Table 4). However, only the regular minimum wage effect on coffee shop tipping was reliable, and even

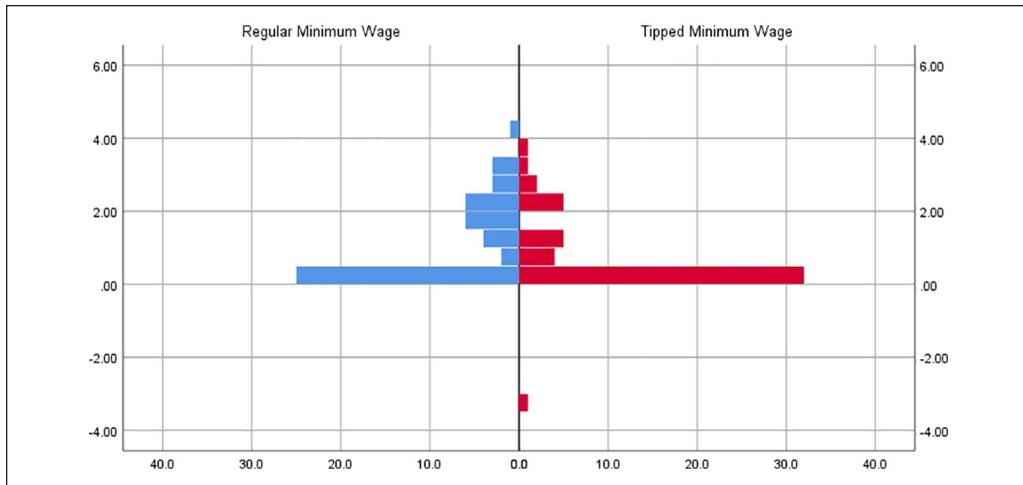


Figure 2. Frequency distribution of state-level changes in the regular and tipped minimum wages from 2013 to 2018.

that effect was significant only at the .05 level. Furthermore, that effect was not reliable in additional analyses of first-differences models and of fixed effects models not reported here for brevity's sake. Although the direction of the dynamic effects were generally consistent with the static minimum wage effects from the cross-sectional analyses, their unreliability raises questions about the existence of a direct causal effect of minimum wages on state differences in coffee-shop and restaurant tipping. It is possible that there is no direct causal effect and the cross-sectional findings are the result of unidentified confounds, but it is also possible that the current panel data were simply inadequate to find effects that really do exist. In particular, the current use of state tip size measures that came from different sources, crossed years and were sometimes crudely measured combined with the relatively infrequent and modest changes in regular and tipped minimum wages over the time period studied (see Figure 2) may explain the largely null results of the panel analyses. Additional tests of these dynamic effects using more consistently and sensitively measured state-level, yearly tipping averages as well as different study periods are certainly warranted if and when such data become available.

General Discussion and Conclusion

Key Findings, Their Implications and Directions for Future Research

The main findings in this study are as follows: (1) states with higher regular minimum wages have lower average tip percentages in coffee shops and higher average tip percentages in restaurants (after controlling for tipped minimum wages and cost-of-living) and (2) states with higher tipped minimum wages have lower average tip percentages in restaurants and higher average tip percentages in coffee shops (after controlling for regular minimum wages and cost of living). Although the data are only correlational and do not prove causality, these findings support the idea that paying tipped workers higher wages decreases the tip percentages those workers receive.

Possible Underlying Processes. Assuming that increasing servers' wages does decrease their tip percentages, what processes underlie this effect? One possibility is that higher minimum wages decrease employment levels enough to lower service levels and that this decreases tip percentages. However, research suggests that minimum wages have little to no effect on employment levels.²⁹ Furthermore, there is no

evidence that minimum wages affect service levels, and previous research has found that tip percentages are only weakly related to service levels in any case.³⁰ Thus, this explanation seems unlikely.

Another possibility is that raising wages forces restaurants to raise prices, which causes price-sensitive customers to tip less. Research has found that raising minimum wages does increase restaurant pricing,^{31,32} but little research has examined whether raising tipped minimum wages has similar effects. If increasing the regular and tipped minimum wages do have similar effects on prices, then this explanation suggests that they should also have similar effects on tip percentages, but the current findings indicate their effects are opposite to one another. Furthermore, this explanation assumes that higher costs decrease restaurant tip percentages, but the positive correlation between cost of living and restaurant tips in this study and the absence of a negative quadratic trend in the relationship between bill size and dollar bill amounts in other published studies³³ suggest otherwise. Thus, this explanation also seems unlikely.

The most likely possibility is that increases in service workers' wages decrease consumers' perceptions of those workers' need for tips. The higher the servers' wage income, the less reliant they are on tips to make a living, and this may lead altruistic consumers to tip less. Given the different base wages of baristas and waiters, this explanation would explain why baristas' tips are negatively related to the regular minimum wage while waiters' tips are negatively related to the tipped minimum wage. A related process may also explain why higher tipped minimum wages (holding regular minimum wages constant) were associated with increased coffee-shop tips while higher regular minimum wages (holding tipped minimum wages constant) were associated with increased restaurant tips. Increasing minimum wages holding tipped minimum wages constant may increase perceptions of waiters' need for tips because it increases the actual and perceived deficiency of their tipped wages. Similarly, increasing the tipped minimum wage holding the regular minimum wage constant may increase perceptions of baristas'

need for tips because it decreases the actual and perceived gap between their wages and those of other tipped workers. Nevertheless, these explanations go well beyond the current data and need to be tested in future research.

Practical Implications. The current demonstration of a negative relationship between workers' wages and tip percentages gives some support to restaurant servers' fears that wage increases will result in lower tips and total income and it buttresses Jones's³⁴ finding that restaurant wage increases from lower tip-credits are offset by comparable tip income reductions. The current results are not definitive about the effects of the tipped minimum wage on servers' total income, because a decrease in average tip percentages does not reduce tip income if sales increase enough to offset the decline in percentage tips and we do not know how tipped minimum wages affect total sales. Ultimately, more research needs to be done to test the effects of tipped minimum wages on restaurant sales and servers' incomes. Nevertheless, the current findings should lead policy advocates and policymakers to pause efforts to raise tipped minimum wages pending more research on this issue.

Ancillary Findings and Their Implications for Future Research

Although not central to the current focus on minimum wage effects on tipping, the analyses produced several interesting findings about state differences in tipping that raise other questions for future research. Specifically, the cross-sectional correlation analyses indicated that state average coffee-shop tip percentages were reliably, negatively related to state average restaurant tip percentages (see Table 1). This unexpected finding suggests that some cause or causes that enhance coffee-shop tipping decrease restaurant tipping or vice versa. Supporting this suggestion, state differences in median age, median income, income inequality and cost of living were negatively related to coffee tipping and positively related to restaurant tipping (see Table 1). Unfortunately, it is unclear why the determinants of state differences in tipping have opposite effects in these two contexts.

Many differences between coffee-shop and restaurant tipping could be responsible for their opposite relationships with state-level predictors. For example, restaurant servers typically receive the tipped minimum wage while coffee-shop baristas typically receive the regular minimum wage.³⁵ In addition, bill sizes tend to be larger in restaurants than in coffee shops. Furthermore, restaurant tipping norms are strong and specify a specific range of acceptable tips as a percentage of the bill while coffee-shop tipping norms are weaker, less precise and independent of bill size.³⁶ Testing the potential moderating role of these characteristics on the determinants of state differences in tipping is certainly one worthwhile direction for future research. Testing additional determinants of state differences in tipping across more service contexts would also be prudent. Such research has the potential to shed light on the psychological and sociological processes underlying this academically interesting and practically important form of employee compensation.

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Notes

1. Tedeschi, E. (2019, April 24). Americans are seeing highest minimum wage in history (without federal help). *The New York Times*. <https://www.nytimes.com/2019/04/24/upshot/why-america-may-already-have-its-highest-minimum-wage.html>.
2. Campbell, A. F. (2019, April 30). *Presidential hopefuls are promising workers a \$15 minimum wage*. <https://www.vox.com/2019/4/30/18522>

- 505/candidates-position-15-dollar-minimum-wage
3. Kelso, A. (2019, March 7). *National Restaurant Association comes out strongly against "Raise the Wage Act."* <https://www.restaurantdive.com/news/national-restaurant-association-comes-out-strongly-against-raise-the-wage/549934/>.
4. Lucas, A. (2019). *Higher minimum wage means restaurants raise prices and fewer employee hours, survey finds*. Restaurant Opportunities Centers United and the Institute for Policy Studies. <https://www.cnbc.com/2019/04/10/higher-minimum-wage-means-restaurants-raise-prices-and-fewer-employee-hours-survey-finds.html>
5. Aaronson, D., French, E., & MacDonald, J. (2008). The minimum wage, restaurant prices, and labor market structure. *Journal of Human Resources*, 43(3), 688-720. <https://doi.org/10.1353/jhr.2008.0007>
6. Allegretto, S., & Reich, M. (2018). Are local minimum wages absorbed by price increases? Estimates from internet-based restaurant menus. *ILR Review*, 71(1), 35-63. <https://doi.org/10.1177/0019793917713735>
7. Lynn, M., & Boone, C. (2015). Have minimum wage increases hurt the restaurant industry? The evidence says no! *Cornell Hospitality Report*, 15(22), 3-13.
8. Schmitt, J. (2015). Explaining the small employment effects of the minimum wage in the United States. *Industrial Relations*, 54(4), 547-581. <https://doi.org/10.1111/irel.12106>
9. Aaronson, D., French, E., Sorkin, I., & To, T. (2018). Industry dynamics and the minimum wage: A putty-clay approach. *International Economic Review*, 59(1), 51-84. <https://doi.org/10.1111/iere.12262>
10. See Note 9.
11. Dewey, C. (2017, June 28). *Maine tried to raise its minimum wage. Restaurant workers didn't want it*. <http://www.chicagotribune.com/business/ct-maine-minimum-wage-20170628-story.html>
12. Lifson, T. (2017, December 13). DC waiters opposing union in fight against \$15 minimum wage for them. *American Thinker*. https://www.americanthinker.com/blog/2018/12/dc_waiters_opposing_union_in_fight_against_15_minimum_wage_for_them.html
13. Cohen, P. (2015, August 24). As minimum wages rise, restaurants say no to tips, yes to higher prices. *The New York Times*. <https://www.nytimes.com/2015/08/24/business/>

- economy/as-minimum-wage-rises-restaurants-say-no-to-tips-yes-to-higher-prices.html
14. Richardson, N. (2018, December 6). *Why tips won. They're outdated. They're discriminatory. And they aren't going anywhere.* <http://www.grubstreet.com/2018/12/restaurant-tipping-returns.html>
 15. Gray, M. (2018, September 5). I'm a server. I back a tip-credit if St. Paul raises the minimum wage. *Star Tribune.* <http://www.startribune.com/i-m-a-server-i-back-a-tip-credit-if-st-paul-raises-the-minimum-wage/492546071/>.
 16. Jones, M. R. (2016, May 25). *Measuring the effects of the tipped minimum wage using W-2 data* (CARRA Working Paper Series, Working Paper 2016-03). <https://www.census.gov/content/dam/Census/library/working-papers/2016/adrm/carra-wp-2016-03.pdf>
 17. Paarlberg, M. A., & Reyes, T. L. (2018, October). *New York's experience after the tipped minimum wage increase.* <https://inequality.org/wp-content/uploads/2018/11/New-York-tipped-minimum-policy-brief-Oct-2018.pdf>
 18. Sockin, J. (2018, August 30). *Does a lower minimum wage for tip-earning workers affect total pay?* Glassdoor. <https://www.glassdoor.com/research/tip-earning-workers-pay/>
 19. Reimer, J. (2019, March 28). *The impact of minimum wage increases on restaurants and tipping.* <https://upserve.com/restaurant-insider/impact-minimum-wage-increase/>
 20. Risen, T. (2015, September 29). *Americans pay an average \$2.70 for coffee, while tipping 20 percent.* U.S. News. <https://www.usnews.com/news/blogs/data-mine/2015/09/29/americans-pay-an-average-270-for-coffee-while-tipping-20-percent>
 21. Risen, T. (2016, June 22). *Where Americans tip the most.* <https://www.usnews.com/news/articles/2016-06-22/where-americans-tip-the-most>
 22. Roth, P. L., Switzer, F. S., III, & Switzer, D. M. (1999). Missing data in multiple item scales: A Monte Carlo analysis of missing data techniques. *Organizational Research Methods*, 2(3), 211-232. <https://doi.org/10.1177/109442819923001>
 23. See Note 22.
 24. Wells, J. (2016, October 13). *America's Best (and Worst) Tippers.* Lavu. https://lavu.com/blog/americas-best-and-worst-tippers/#.XZT19_IKiUk
 25. Fors Marsh Group. (2018). *Interim report on the survey of consumer tipping behavior. Version 2.* https://www.governmentattic.org/33docs/IRStipBehaviorStudy_2014-2018.pdf
 26. Pearl, R. B. (1985). *Tipping practices of American households: 1984* (Final report to the Internal Revenue Service under Contract TIR 82-21). Survey Research Laboratory, University of Illinois.
 27. See Note 22.
 28. Barista Training Academy. (2019, February 11). *How much do baristas make?* <https://www.baristatrainingacademy.net/how-much-do-baristas-make/>
 29. See Note 7.
 30. Lynn, M., & McCall, M. (2000). Gratitude and gratuity: a meta-analysis of research on the service-tipping relationship. *Journal of Socio-Economics*, 29(2), 203-214. [https://doi.org/10.1016/S1053-5357\(00\)00062-7](https://doi.org/10.1016/S1053-5357(00)00062-7)
 31. See Note 5.
 32. See Note 6.
 33. See Note 30.
 34. See Note 16.
 35. See Note 28.
 36. Flanagan, K. (2017, September 5). *How much should you tip your barista?* <https://www.tastingtable.com/drinks/national/how-much-tip-barista>

Author Biography

Michael Lynn is a Social Psychologist employed as a Professor of Consumer Behavior and marketing at the Cornell University School of Hotel Administration. He has over 70 publications on service gratuities and tipping.

Exhibit C

POLLING MEMO: The Impacts of Tip Credit Elimination

MEASURING THE EFFECTS OF TIP CREDIT ELIMINATION AND OTHER MANDATES

Purpose

A recent Michigan Court of Claims ruling is set to raise the minimum wage over 31 percent to approximately \$13 per hour, along with a 206 percent increase in the required wage for tipped restaurant employees up to \$11.75 per hour, and require employers to provide 72 hours of paid sick leave for all employees.¹ This survey measures the likely impact of these changes on Michigan's hotel and restaurant operators, and the steps they will take to adjust to these cost increases.

Background

In 2018, Michigan's state legislature amended already-enacted ballot measure language that would have raised the state's minimum wage to \$12 per hour by 2022.² In July 2022, the Michigan Court of Claims voided the legislature's amendments, reverting the state back to the original 2018 ballot measure language. If the Court's ruling is upheld and the state's minimum wage and paid sick leave laws change accordingly on February 19, 2023, the regular minimum wage will automatically spike to approximately \$13 per hour, the tipped minimum wage will rise to \$11.75 per hour, and employers will be required to provide the 72 hours of paid sick leave to all employees.

Methodology

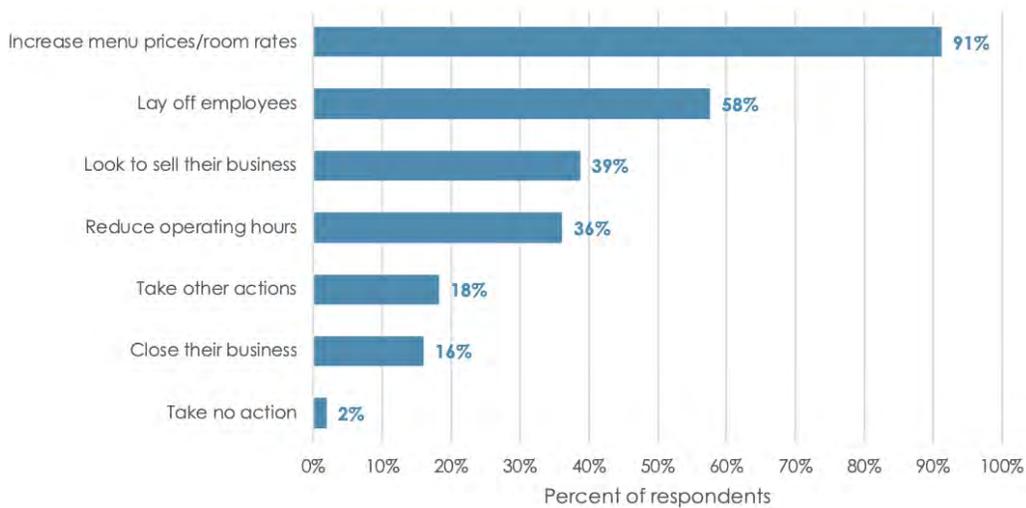
This survey was conducted by the Michigan Restaurant & Lodging Association from September 6-9, 2022. The data represent 307 responses from restaurant and hotel operators representing nearly 2,000 locations and over 75,000 employees—or roughly 24 percent of Michigan's hospitality industry.

1 https://www.thecentersquare.com/michigan/crippling-effect-michigan-business-restaurant-groups-react-to-minimum-wage-ruling/article_6b55f16e-083d-11ed-9eb2-8bf69629502.html

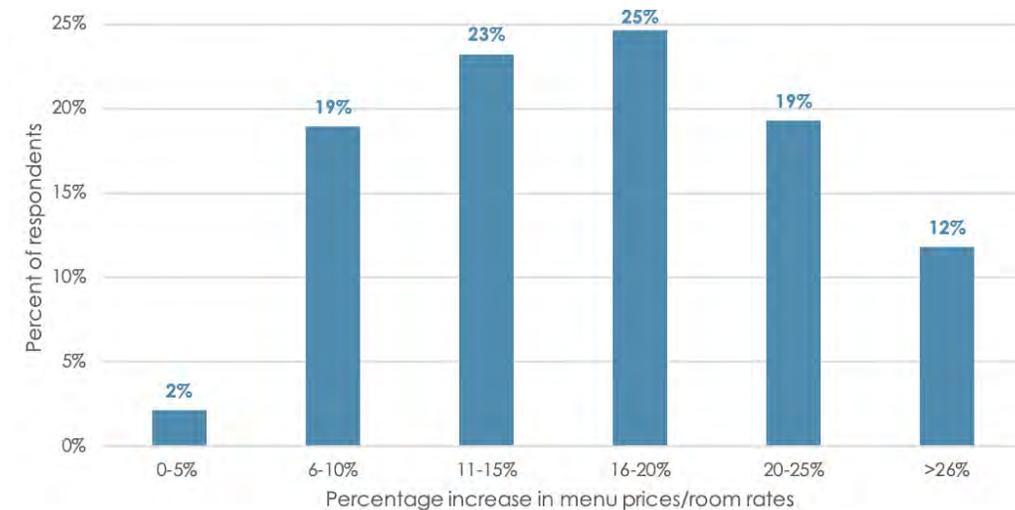
2 [https://ballotpedia.org/Michigan_Minimum_Wage_Increase_Initiative_\(2018\)](https://ballotpedia.org/Michigan_Minimum_Wage_Increase_Initiative_(2018))

Results

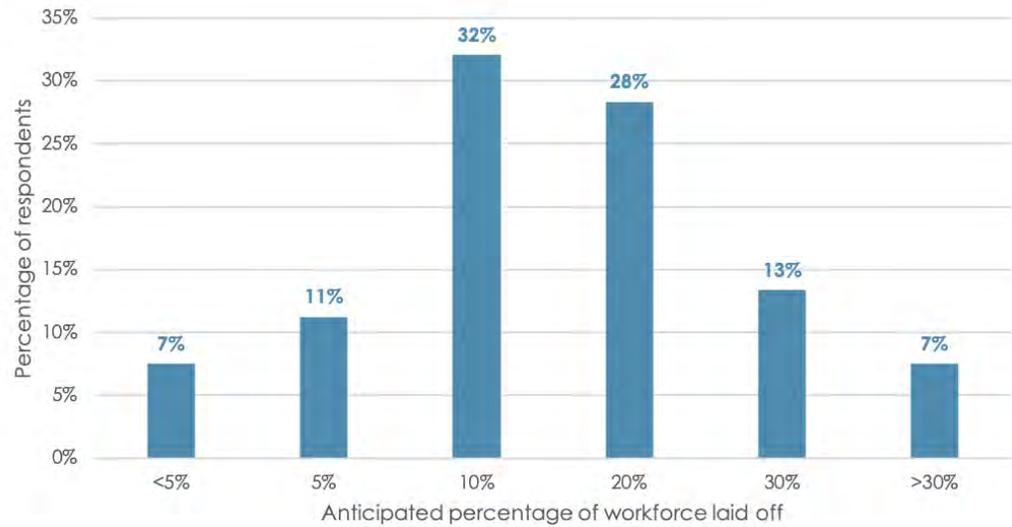
To offset increased costs if the Court's ruling is upheld, restaurant operators said they will be forced to do the following:



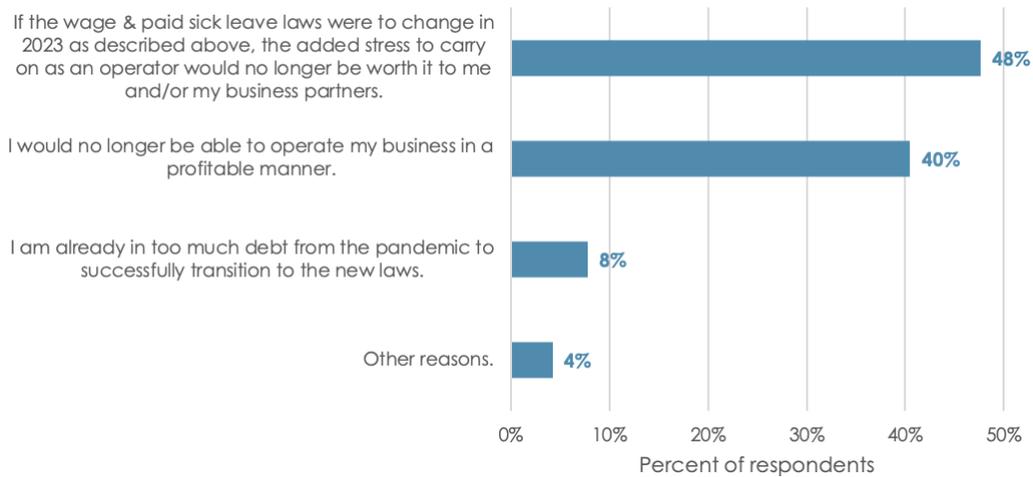
Seventy-nine percent of operators estimated the mandates would cause menu price or room rate increases by more than 10 percent. Nearly one-third estimated prices would have to increase more than 20 percent.



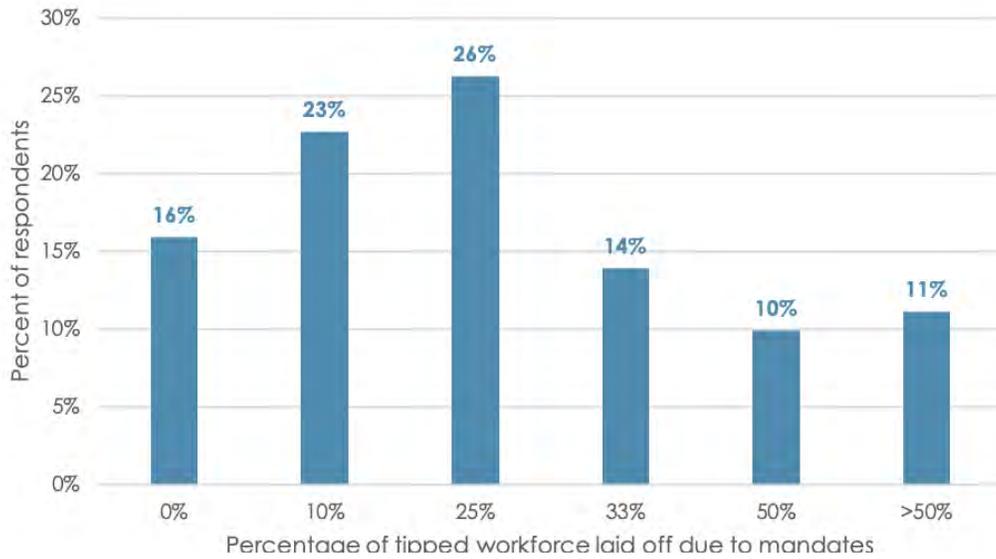
Eighty-one percent of operators estimated they would be forced to lay off at least 10 percent of their workforce.



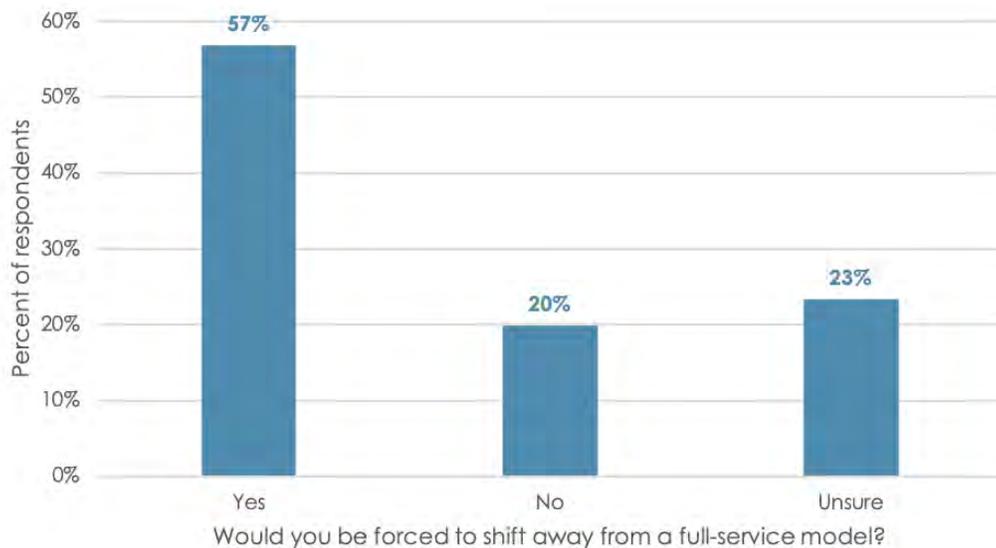
Operators responded that the mandates would force them to sell or close their business for the following reasons:



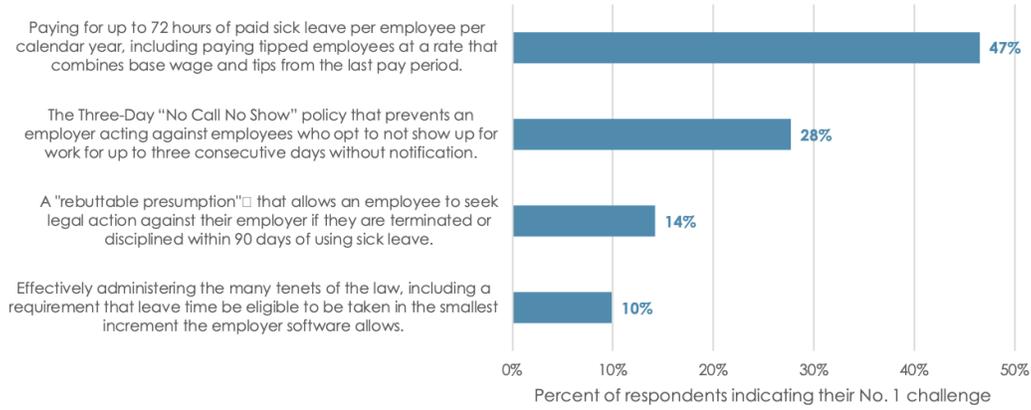
Eighty-four percent of full-service restaurant operators indicated they would be forced to lay off at least 10 percent of their tipped workforce. Sixty-one percent estimated they would have to lay off more than 25 percent of their tipped employees.



More than half of Michigan's full-service restaurants responded they would shift away from a full-service model.



Restaurant operators ranked the following as greatest obstacles to adapting to the new paid sick leave requirements:



Testimonials

The survey asked restaurant operators to relay any additional thoughts on the Court's ruling and upcoming changes to the minimum wage and paid sick leave laws. The following represent quotes from respondents on the devastating impacts these mandates would bring.



...We are struggling as it is with increased costs across every line.



Putting these laws into practice will just hinder the foundations that this industry is there for.



...making these changes would just drive prices up and cripple an industry that is already crippled.



I have to raise prices due to [the] cost of products. If I raise them again to cover increased employee costs, no one will come and eat at my restaurant.



My business is in a rural area and my employees would have a hard time finding other work because they cannot drive 30 miles one way to do it...



Our company is likely to stop development in Michigan if these statutes are overturned.



[We] cater to an elderly crowd who have been dining with us since day one. Price increases will definitely affect their fixed incomes and my bottom line.



My tipped employees make over \$40 per hour, and I would have to add a surcharge to my patrons' bills to support this.



The servers are worried that people will stop tipping... if our prices increase.



I pay medical benefits as well as employer match retirement benefits open to all full time or other qualifying staff. Increasing the operating costs so drastically would make it difficult if not impossible to continue with these benefits.



We would move away from full service to a QR code table service.



We are a small independent family restaurant. We pay good wages, free health care and bonuses. If this goes through this could be the tipping point for us.



It simply is not possible to increase the tipped wage that much and keep everyone employed. We would be forced to reduce our staff.



The American dream of owning your own business will be going away permanently with these changes. They will only hurt the people they claim they are helping.



This will be the nail in the coffin for many.



Our servers/bartenders make at least \$20 per hour in tips alone and this is on a very slow day. They average between \$27-35 per hour... The servers are worried that people will stop tipping as well if our prices increase.



This would crush the industry.



This will probably put me out of business.



Please help us save our industry.



I don't understand this effort as my servers are against it at its core. It's a solution looking for a problem...



We would lose employees. Dinners out would be less due to huge price increases. Unaffordable.

Exhibit D



Lloyd Corder, Ph.D.
CorCom, Inc.
Carnegie Mellon University

September 2022

MICHIGAN RESTAURANT TIPPED WORKER SURVEY

IMPACT OF ELIMINATING THE TIP CREDIT ON INCOME AND JOB SECURITY

Supported by the Michigan Restaurant & Lodging Association

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Executive Summary

A Michigan court case could soon change the way many Michigan restaurants compensate servers and bartenders. The court ruling could eliminate the separate minimum wage for tipped workers, which may require many restaurants to convert to a mandatory service charge or no-tipping model. Employees would receive a higher base wage, but some could see total income fall with the potential elimination of tips.

To better understand the potential impact of eliminating the tip credit for Michigan's full-service restaurants on tipped employees, a survey of servers, bartenders and other tipped staff was conducted in September 2022.

Key Findings

- A strong majority of tipped workers (79%) say that the current tipping system works well for them and does not need to be changed (strongly agree, 52%; somewhat agree, 26%).
- Many agree that customers tip better when service is better (73%) and that they already earn more than minimum wage (71%).
- Ninety-nine percent of tipped employees say they are already earning more than the current hourly minimum wage of \$9.87.
- Overall, tipped employees say they earn an average hourly wage of \$25.03.
- If tipped wages are eliminated, most agree that tipped workers will earn less (75%), staff will quit (74%), customers will tip less since staff is paid more per hour (71%) and menu prices will increase (70%).
- Four-in-five (79%) tipped workers think their jobs will be at risk if tipped wages are eliminated.
- Ninety-four percent also think that it is likely that customers will start believing that they should tip less since employees are paid more hourly by their restaurant (very likely, 78%; somewhat likely, 16%).
- Eighty-three percent say they want the current system with a lower base wage and tips that provide the ability to earn more than the minimum wage, while 17 percent want a different system with a higher base wage, but a less certain outcome on tipped income for the server.

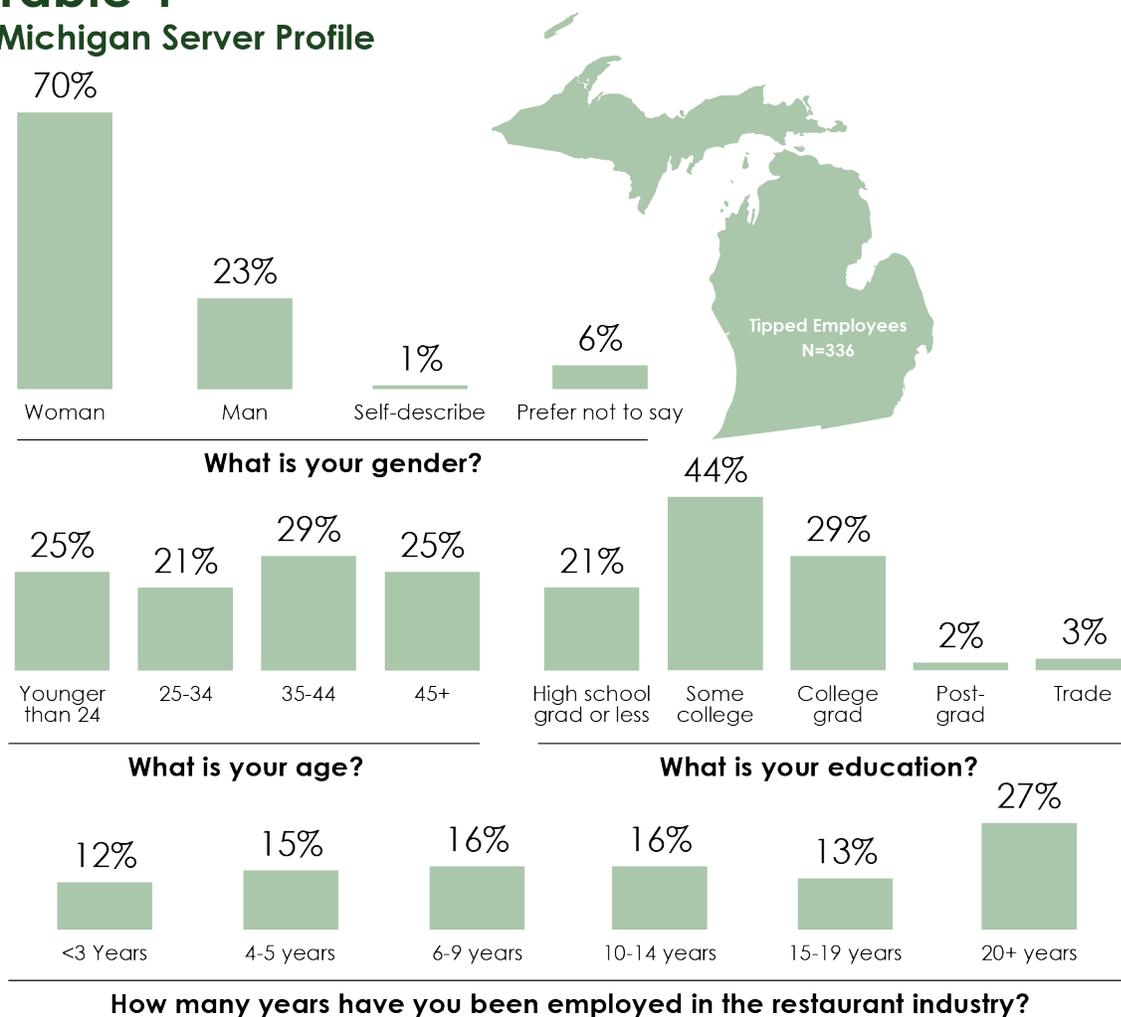
A Survey of Michigan Tipped Employees

An online survey of 336 tipped employees currently working at full-service restaurants in Michigan was conducted on September 9, 2022.¹

Participating restaurants distributed the survey to their tipped employees. Respondents were offered a \$5 Amazon gift card for participating. This survey has a margin of error of five percent.

Table 1 provides a summary of the participants. Over half (56%) have been employed in the restaurant industry for 10 years or longer. Most (70%) are women. Respondents represent a range of age groups, with 25 percent being 24 years old or younger, while others are 25-34 (21%), 35-44 (29%) or 45 and older (25%). Most do not have a college degree (65%).

Table 1
Michigan Server Profile



¹Nicole Bruno, Hannah McCollum and Sabrina Amann-Ross also assisted with this study

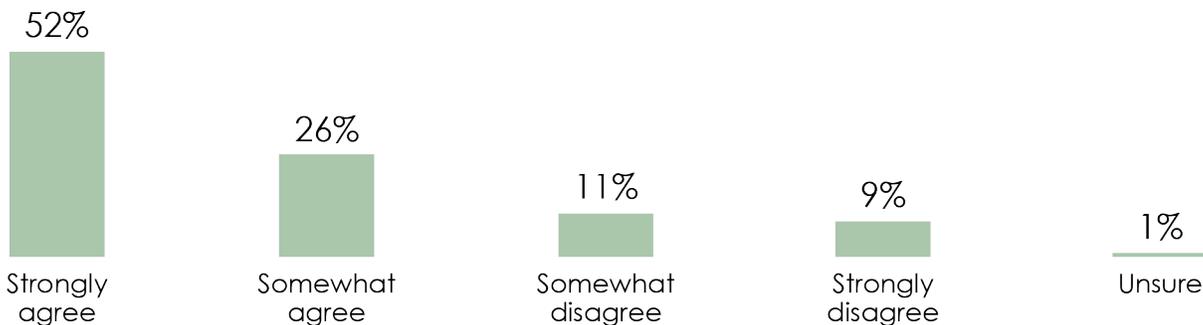
Support for the Current Tipping System

A strong majority of tipped workers (79%) say that the current tipping system works well for them and does not need to be changed (strongly agree, 52%; somewhat agree, 26%) (Table 2). Fewer disagree (20%), with 11 percent “somewhat” disagreeing and nine percent “strongly” disagreeing. One percent say they are not sure.

Those most likely to agree that the current tipping system already works well includes those who have worked in the industry for three years or less (84%) and those who have worked for 20 years or longer (83%). Workers who are 55 and older are even more likely to agree (90%).

Table 2
Support for Maintaining Tipped Credits

Do you agree or disagree with the following statement? “The current tipping system works well for me and doesn't need to be changed.”



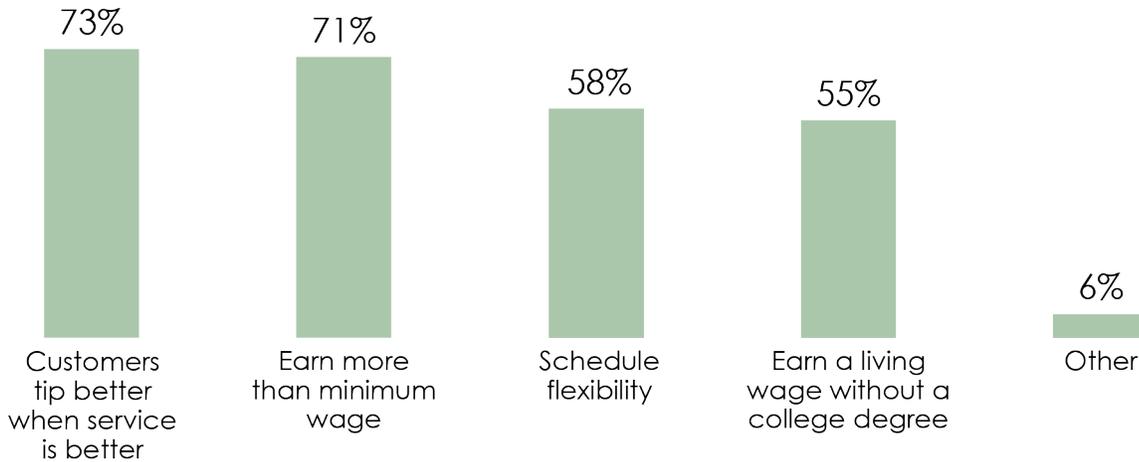
Benefits of the Current Tipping System

Tipped employees describe a number of benefits of the current tipping system (Table 3). Many agree that customers tip better when service is better (73%) and that they already earn more than minimum wage (71%). Other benefits include schedule flexibility (58%) and being able to earn a living wage without a college degree (55%).

Those who have worked in the industry the longest are more likely to agree that the current tipping system is beneficial, especially in that they can earn more than minimum wage (20+ years, 82%). Similarly, older workers (55+) also agree that they can earn more than minimum wage (80%).

Table 3 Benefits of Current Restaurant Tipping System

What are the benefits of current restaurant tipping system?



Current Hourly Tipped Income

Most tipped employees say they are already earning more than the current hourly minimum wage of \$9.87 (99%) (Table 4). Overall, tipped employees say they earn an average hourly wage of \$25.03. While 14 percent earn less than \$15 per hour, 85 percent earn over that. In fact, 26 percent say they are already earning \$30 an hour or higher.

Table 4 Current Average Hourly Wage with Tipping

With tips and your base wage combined, what is your average hourly wage?



Eliminating Tipped Income Impact

Tipped employees see a number of negative impacts from eliminating tipped income, both on them personally and for their restaurant employers (Table 5). Topping the list, most agree that tipped workers will earn less (75%). As a group, women overwhelmingly agree (84%) that tipped workers will earn less as a result of eliminating tipped income.

A majority also agree that staff will quit (74%), customers will tip less since staff is paid more per hour (71%) and menu prices will increase (70%).

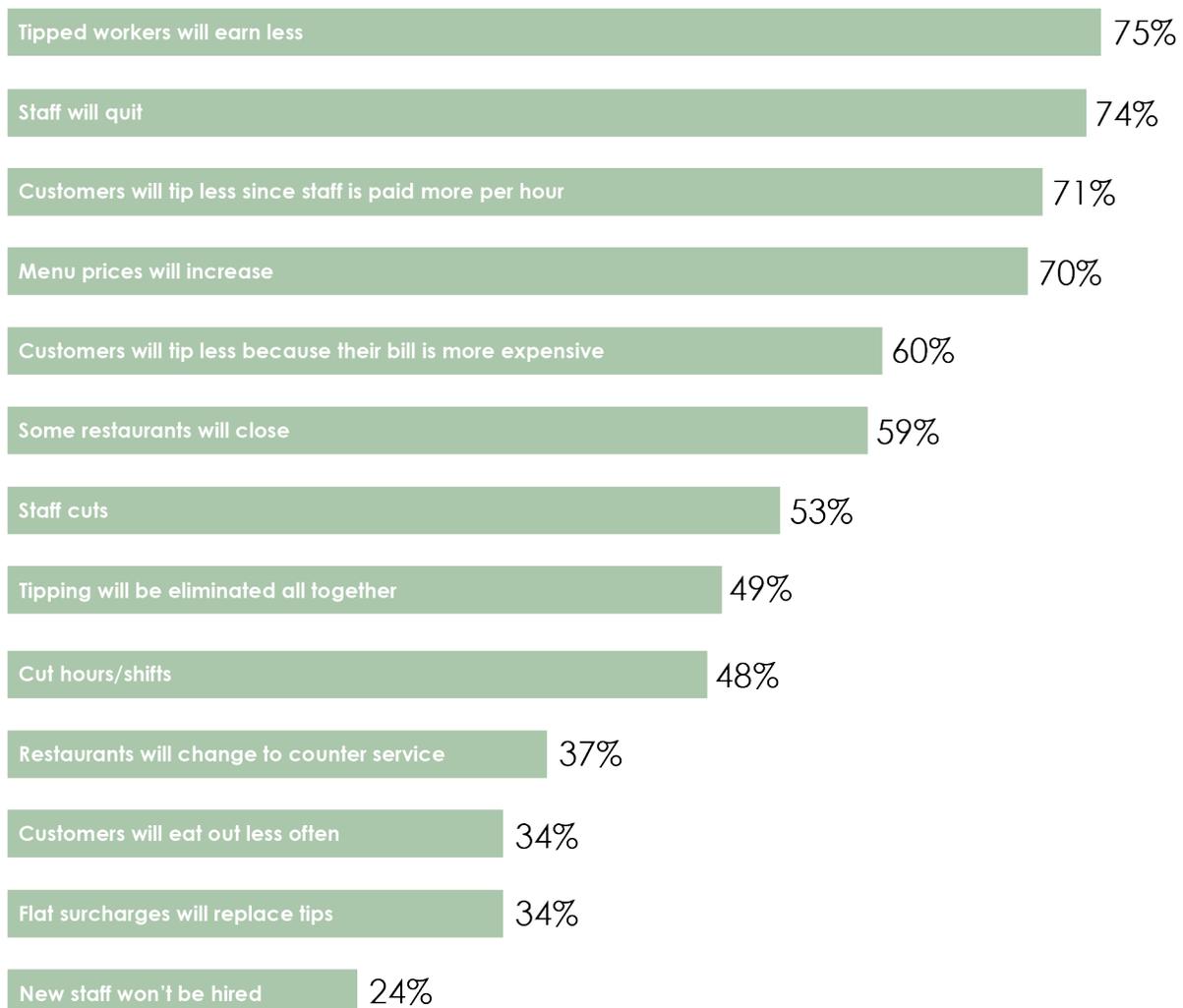
A majority also agree that customers will tip less because their bills are more expensive (60%), some restaurants will close (59%) and there will be staff cuts (53%).

Roughly half think tips will be eliminated completely (49%), hours/shifts will be cut (48%), some restaurants will change to counter service (37%), customers will eat out less often (34%), flat surcharges will replace tips (34%) and new/less experienced staff will not be hired (24%).

Table 5

Impacts of Eliminating Tipped Wages

A court case could soon change the way many Michigan restaurants compensate servers and bartenders. The court ruling could eliminate the separate minimum wage for tipped workers, which would force many restaurants to convert to a mandatory service charge or no-tipping model. Employees would receive a higher base wage, but some could see total income fall with the potential elimination of tips. What do you think are the likely impacts of the elimination of the tipped wage?

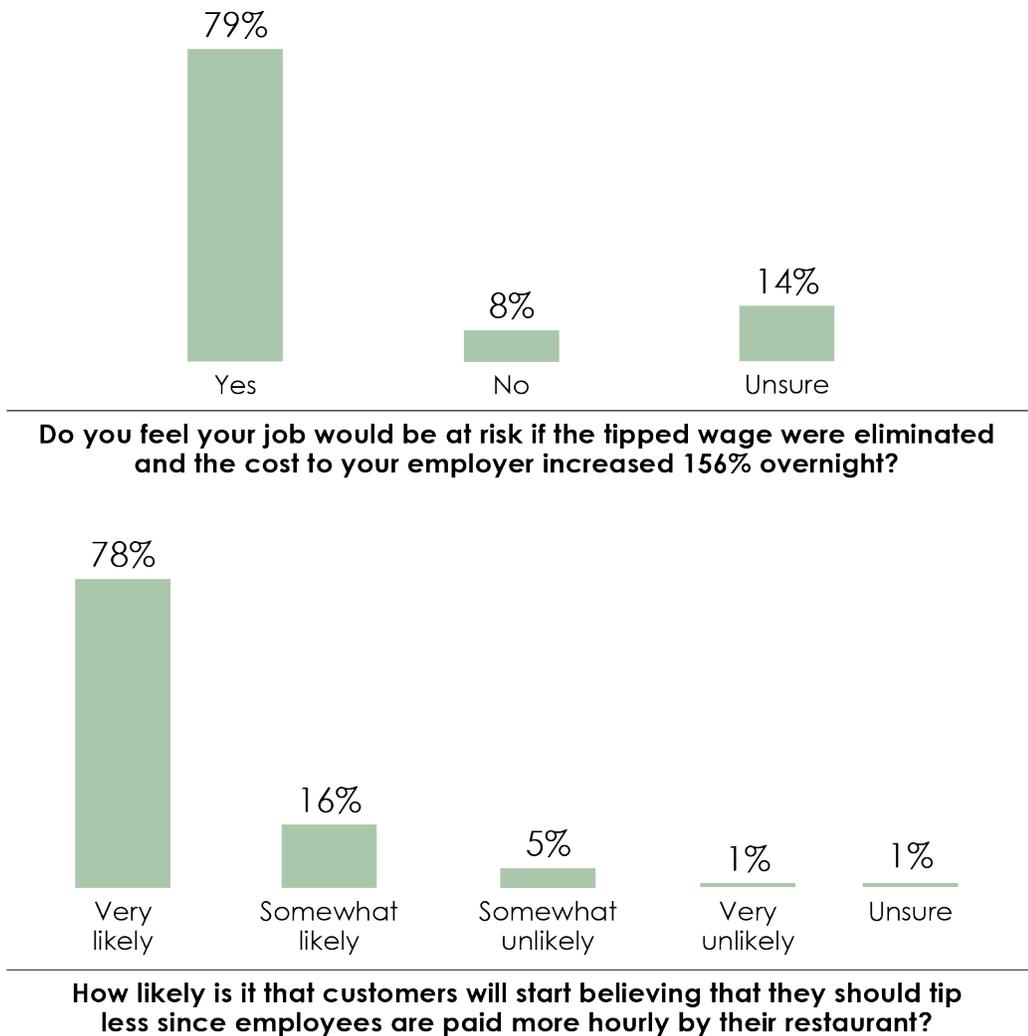


Employment and Income Loss

Four-in-five (79%) of tipped workers think their jobs will be at risk if tipped wages are eliminated and employers' costs are increased an average of 156% overnight because of the required minimum wage (Table 6). Those who are 55 years and older are even more likely to agree (90%).

Ninety-four percent also think that it is likely that customers will start believing that they should tip less since employees are paid more hourly by their restaurant (very likely, 78%; somewhat likely, 16%).

Table 6
Risks of Employment and Income Loss



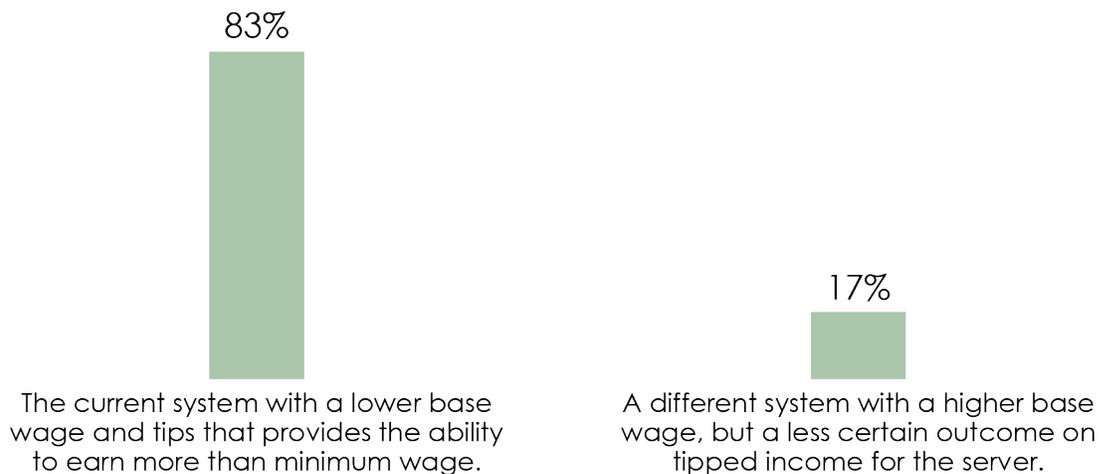
Compensation Preference

Table 7 provides the results of a question that asked tipped workers which compensation system they prefer. Eighty-three percent say they want the current system with a lower base wage and tips that provide the ability to earn more than the minimum wage, while 17 percent want a different system with a higher base wage, but a less certain outcome on tipped income for the server.

Women (87%), those 55 and older (90%) and those currently earning \$30 or more per hour (94%) are the most likely to say they prefer the current tipping system.

Table 7 Compensation System Preference

Which compensation system would you prefer?



Michigan Restaurant Workers Survey 2022

1. Which category best describes your restaurant employment during the past 12 months?

- Server, bartender or another tipped employee
- Non-tipped restaurant employee (dishwasher, etc.) (*terminate*)
- Not currently working at a restaurant, but did within the past 12 months (*terminate*)
- Seasonal restaurant worker (summers, winter breaks, etc.) (*terminate*)
- Restaurant management (*terminate*)
- I have not worked in the restaurant industry in the past 12 months (*terminate*)
- Other: _____ (*terminate*)

2. Do you agree or disagree with the following statement? “The current tipping system works well for me and doesn’t need to be changed.”

- Strongly agree
- Somewhat agree
- Somewhat disagree
- Strongly disagree
- Unsure

3. What are the benefits of current restaurant tipping system? Select all that apply.

- Earn more than minimum wage
- Customers tip better when service is better
- Earn a living wage without a college degree
- Schedule flexibility
- Other: _____

4. With tips and your base wage combined, what is your average hourly wage?

- \$10-\$14.99/hour
- \$15-19.99/hour
- \$20-24.99/hour
- \$25-29.99/hour
- \$30-34.99/hour
- \$35-39.99/hour
- \$40/hour or more
- Other: _____

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- 5. A court case could soon change the way many Michigan restaurants compensate servers and bartenders. The court ruling could eliminate the separate minimum wage for tipped workers, which would force many restaurants to convert to a mandatory service charge or no-tipping model. Employees would receive a higher base wage, but some could see total income fall with the potential elimination of tips. What do you think are the likely impacts of the elimination of the tipped wage? Select all that apply.**
- Menu prices will increase
 - Customers will eat out less often
 - Customers will tip less because their bill is more expensive
 - Customers will tip less since staff is paid more per hour
 - Flat surcharges will replace tips
 - Tipping will be eliminated all together
 - Staff will quit
 - Cut hours/shifts
 - Staff cuts
 - Restaurants will change to counter service
 - New/less experienced staff won't be hired
 - Tipped workers will earn less
 - Some restaurants will close
 - Other: _____
- 6. Do you feel your job would be at risk if the tipped wage were eliminated and the cost to your employer increased 156% overnight?**
- Yes
 - No
 - Unsure
- 7. How likely is it that customers will start believing that they should tip less since employees are paid more hourly by their restaurant?since employees are paid more hourly by their restaurant?**
- Very likely
 - Somewhat likely
 - Somewhat unlikely
 - Very unlikely
 - Unsure
- 8. Which compensation system would you prefer?**
- The current system with a lower base wage and tips that provides the ability to earn more than minimum wage.
 - A different system with a higher base wage, but a less certain outcome on tipped income for the server.

9. How many years have you been employed in the restaurant industry?

- Less than 2
- 2-3
- 4-5
- 6-9
- 10-14
- 15-19
- 20+

10. Approximately, how many tipped employees does your restaurant have?

- Less than 5
- 5-9
- 10-14
- 15-19
- 20 or more

11. What is your gender?

- Woman
- Man
- Prefer to self-describe
- Prefer not to answer

12. What is your age?

- Younger than 18
- 18-24
- 25-34
- 35-44
- 45-54
- 55-64
- 65 or older

12. What is your age?

- Some high school
- High school grad
- Some college
- College grad
- Post-grad
- Business/vocational/trade
- Prefer not to answer

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