STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs-Appellants,

v

DANA NESSEL, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Defendant-Appellant,

and

STATE OF MICHIGAN,

Defendant-Appellee.
_____/

Supreme Court No. 165325

Court of Appeals No. 362271

Court of Claims No. 21-000095-MM

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

AMICI CURIAE SUPPLEMENTAL BRIEF OF MICHIGAN RESTAURANT AND LODGING ASSOCIATION AND THE RESTAURANT LAW CENTER

HONIGMAN LLP
Andrea L. Hansen (P47358)
222 N. Washington Sq. Suite #400
Lansing, MI 48933
(517) 377-0709

Attorneys for Amici Curiae Michigan Restaurant and Lodging Association and the Restaurant Law Center

Angelo I. Amador
Restaurant Law Center
2055 L Street, NW, Suite 700
Washington, DC 20036
(202) 331-5913

Co-Counsel for the Restaurant Law Center

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STATEMENT OF JURISDICTION

Amici concur in the Parties' statements of this Court's jurisdiction.

STATEMENT OF QUESTIONS PRESENTED

I. Whether the Legislature violated art 2, § 9 of the Michigan Constitution of 1963 when it enacted 2018 PA 337 and 2018 PA 338 into law and then amended those laws in the same legislative session by enacting 2018 PA 368 and 2018 PA 369?

The Court of Appeals answers:	No
The Court of Claims answers:	Yes
Plaintiffs-Appellants and Cross-Appellant the Attorney General answer:	Yes
Defendant-Appellee the State of Michigan answers:	No
Amici Curiae Michigan Restaurant and Lodging Association and Restaurant Law Center answer:	No

II. If this Court Determines that the answer to Question #1 is yes, should its ruling result in the reenactment of 2018 PA 337 and 2018 PA 338 in their original form?

The Court of Appeals answers:	Did Not Answer
The Court of Claims answers:	Yes
Plaintiffs-Appellants and Cross-Appellant the Attorney General answer:	Yes
Defendant-Appellee the State of Michigan answers:	Maybe, but deferred
Amici Curiae Michigan Restaurant and Lodging Association and Restaurant Law Center answer:	No

STATEMENT OF INTEREST OF AMICI[1]

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 17,000 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.

The Michigan restaurant industry is uniquely impacted by this case as it pertains to the Improved Workforce Opportunity Wage Act, MCL 408.931 et seq., one of the statutes at issue in

[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 7.312(H)(5).

this case. The Legislature originally enacted the Improved Workforce Opportunity Wage Act in the fall of 2018 in response to an initiative petition. That 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 employers are required to pay waitstaff and others in the service industry, as long as that wage and any tips earned equal or surpass the state minimum wage. This bifurcated wage 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.

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 $10.10 per hour. Yet, the initiated act as originally proposed and enacted by the Legislature, 2018 PA 337, would have completely eliminated the tipped minimum wage (which is currently $3.84) by 2024 and required 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 analysis[3] 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 have dramatically increased costs on restaurants that already operate with notoriously thin profit margins, averaging 3-5% before taxes. Winslow Aff, ¶ 14.

Without the amendments set forth in 2018 PA 368, this law would have forced many restaurants to lay off workers, increase prices, and in some cases close their doors entirely. The Court of Appeals in a unanimous 3-0 decision held that the Legislature acted within its constitutional authority in amending 2018 PA 337 to prevent that from occurring. Court of Appeals January 26, 2023 Opinion ("COA Op"). This opinion is well reasoned, detailed (with two concurring opinions), and consistent with the plain text of the Constitution and decades of legal precedent. There is no error or ambiguity; there simply is no reason for this Court to reverse that opinion. Given the significant impact this case has on the hospitality industry, Amici submit this brief in support of the State's position that 2018 PA 368 is constitutional and that this Honorable Court should affirm the decision issued by the Court of Appeals.[4]

[2] See Lynn, *The Effects of Minimum Wages on Tipping: A State-Level Analysis*, Compensation & Benefits Review 52(3), 98-108 (2020) (Exhibit B).

[3] See Intuit Quickbooks, *The Best and Worst States to Be a Tipped Worker* <https://quickbooks.intuit.com/time-tracking/resources/tipped-worker-survey/> (accessed October 10, 2023).

[4] Because Amici was granted amici curiae status during the application stage, per the June 21, 2023 Order, Amici file this supplemental brief.

I. INTRODUCTION

This case involves one of the most basic principles of Michigan constitutional law. Article 4, § 1 of Michigan's Constitution vests the Legislature with plenary power to enact and amend legislation. Meaning, unless there is a specific constitutional provision that provides otherwise, *the Legislature is free to act within the legislative sphere.* When the people desire to impose restrictions on the Legislature's plenary power, they know how to do so. For example, Article 2, § 9 requires a three-fourths vote to amend or repeal a law initiated by the people and "adopted by the people at the polls." It also prohibits the Legislature from amending a law approved by referendum until a "subsequent session." There is, however, nothing in the Constitution that limits the Legislature's ability to adopt and then amend a law initially proposed by initiative after the initial 40-day period has expired. If the people wanted to impose such a restriction, they would have done so. Simply put, the Constitution does not prohibit the Legislature from amending a law proposed by initiative within the same session in which it was enacted. To impose such a restriction is to rewrite Article 2, § 9 as though the people had taken the same-session limitation regarding referenda and extended it to initiatives as well, something the people chose not to do.

II. STATEMENT OF FACTS

Amici rely on Defendant-Appellee State of Michigan's Counter-Statement of Facts as set forth in its Brief on Appeal for the pertinent background facts and proceedings.

III. STANDARD OF REVIEW

Questions of constitutional interpretation are reviewed de novo. *UAW v Green*, 498 Mich 282, 286; 870 NW2d 867 (2015); *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009). The chief "objective of constitutional interpretation . . . is to faithfully give meaning to the intent of those who enacted the law." *Nat'l Pride at Work, Inc v Governor*, 481 Mich 56, 67; 748 NW2d 524 (2008). Thus, a court's "primary goal in construing a constitutional provision is to give effect

to the intent of the people of the state of Michigan who ratified the constitution, by applying the rule of 'common understanding.'" *UAW*, 498 Mich at 286–87. As Justice Cooley explained:

> 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.' [1 Cooley, Constitutional limitations (6th ed), p 81.]

To determine a "text's original meaning to the ratifiers," a court must "'apply[] each term's plain meaning at the time of ratification.'" *Co Rd Ass'n of Mich v Governor*, 474 Mich 11, 15; 705 NW2d 680 (2005) (quoting *Wayne Co v Hathcock*, 471 Mich 445, 468–69; 684 NW2d 765 (2004)). To that end, courts examine the precise language used and apply a term's plain meaning unless the constitution uses "technical legal terms." *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 11; 743 NW2d 902 (2008); see also *UAW*, 498 Mich at 287 (citing *Mich United Conservation Clubs v Secretary of State*, 464 Mich 359, 376; 630 NW2d 297 (2001) (YOUNG, J., concurring) (holding that unless a provision had "some other particularized or specialized meaning in the collective mind of the 1963 electorate, we must give effect to the natural meaning of the language used in the constitution").

IV. ARGUMENT

A. Article 2, § 9 of the Michigan Constitution Permits the Legislature to Enact an Initiative Petition Into Law and Then Later Amend That Law During the Same Legislative Session.

1. The Legislature's Power Under Article 4, § 1 is Plenary, Limited Only by That Which the Constitution Expressly Prohibits.

"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. "Unlike the federal Constitution, which contains specific and limited delegations of power to Congress, under our state Constitution the Legislature has all legislative power unless specifically limited by the state or federal Constitution." COA Op at 6; see *Mich Coalition of State Employee Unions v Michigan*, 498 Mich 312, 331–32; 870 NW2d 275 (2015); *Taxpayers of Mich Against Casinos v Michigan*, 471 Mich 306, 327; 685 NW2d 221 (2004). "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*, 471 Mich at 327, citing *Attorney General ex rel O'Hara v Montgomery*, 275 Mich 504, 538; 267 NW2d 550 (1936). Indeed, "'[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).

Appellants' and Cross-Appellant's arguments to the contrary are not legally sound. The Attorney General argues that the Court of Appeals' decision is based on the "wrong premise" that "the Legislature has plenary authority." Cross-Appellant's Brief on Appeal at 12. But the Legislature's power *is* plenary, except to the extent expressly limited by our Constitution. While there is no dispute that Const 1963, art 2, § 9 reserved some powers for the people; it did not remove the Legislature altogether from that process. Indeed, Article 2, § 9 requires that an initiative

first go to the Legislature for consideration. Should the Legislature adopt that initiative, which Article 2, § 9 expressly permits it to do, it then becomes a law. 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 (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").

Indeed, both Appellants and the Attorney General concede that the Legislature may amend a legislatively enacted initiative pursuant to its plenary powers under Article 4, § 1, but argue that despite the absence of any limiting language in Article 2, § 9, the Legislature is restrained from doing so during the same session in which it is enacted because such amendments are not specifically authorized by the Constitution. "[N]othing in the constitutional text authorizes the Legislature to adopt an initiative proposal and then amend it in the same legislative session[.]" Plaintiffs-Appellants' Brief on Appeal at 8; Cross-Appellant's Brief on Appeal at 12. Appellants and Cross-Appellant cannot have it both ways. If, as they say, the Legislature can only do that which the Constitution expressly permits in Article 2, § 9, then the Legislature would never be able to amend a legislatively enacted initiative. If, as they concede, the Legislature can so amend pursuant to its plenary powers under Article 4, § 1, then there is no time limitation imposed. The only reasonable conclusion therefore, one based on the text of the Constitution and the basic tenets set forth above, is that the Legislature was free to act.

2. The Plain Language of Article 2, § 9 of the Michigan Constitution is Controlling.

Michigan has two kinds of initiatives: initiatives to amend the Constitution, governed by Const 1963, art 12, § 2, and initiatives to propose a law, governed by Const 1963, art 2, § 9. At issue here is an initiative to propose a law as provided for in Article 2, § 9, which states in part:

> *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. [Emphasis added.]

To propose a law by initiative, proponents must prepare a petition in compliance with the Michigan Constitution and Michigan Election Law, MCL 168.1 *et seq.*, and obtain the requisite number of valid signatures within the time periods specified by law. Once a petition is certified by the Board of State Canvassers, it is transmitted by the Secretary of State to the Legislature for review and consideration as follows:

> 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.[5]
>
> 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.

Const 1963, art 2, § 9, ¶¶ 3-4.

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[5] The right of referendum allows the voters with signatures totaling 5% of the votes cast at the last gubernatorial election to suspend a law enacted by the Legislature until it can be voted on at the next general election. Const 1963, art 2, § 9.

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 or reject the voter-initiated law "without change or amendment," or propose an alternative. The Legislature exercised option one: it timely enacted the proposed laws without change. Once that option is chosen, however, Article 2, § 9 has nothing more to say about what the Legislature may do *after* enactment.

Because Article 2, § 9 is silent regarding whether or when the Legislature can amend a proposed initiative that it enacts,[6] it is axiomatic that the Legislature can amend at any time. "And, once enacted, these public acts were on the same footing as any other legislation passed by the Legislature, *Frey*, 162 Mich App at 600, meaning they are subject to amendment at any time, and not only after the start of the next legislative session or expiration of the 90-day referendum period." COA Op at 9. This is the only conclusion that makes sense of the relevant constitutional provisions, because the Constitution provides no affirmative grant to the Legislature to amend a statute that exists by virtue of the Legislature's adoption of an initiative, *at any time*. Taken to its logical (or, perhaps, illogical) conclusion, therefore, if Appellants and the Attorney General were correct, the Legislature would have no authority to amend *any* initiative it enacts, whether within the same session, the next session, or several decades later. They concede, however, that such a conclusion could not possibly be right. Indeed, acknowledging an initiated law adopted by the Legislature cannot be perpetually insulated from amendment, they say instead that such laws are exempt from amendment *only* during the same legislative session. But this assertion is wholly unsupported by the Constitution's text, which simply provides three options for the Legislature to

[6] In contrast, as explained below, Const 1963, art 2, § 9 does expressly limit the Legislature's authority to amend an initiative after it is adopted by the electorate.

consider during a 40-day period after receiving a proposed initiated law. After the Legislature exercises the option to enact the proposed initiative, the Constitution is silent with respect to the Legislature's powers thereafter. That means the Legislature possesses its full Article 4, § 1 power in this context.

Despite their protestations to the contrary, Appellants and the Attorney General implicitly concede that in order to prevail, the Constitution must in fact prohibit the Legislature from amending a legislatively adopted initiative. Because the Constitution does not do so by its plain text, Appellants and the Attorney General instead argue that this prohibition is implied, because such an amendment would supposedly interfere with the people's right of referendum of those laws as originally enacted. See Plaintiffs-Appellants' Brief on Appeal at 14; Cross-Appellant's Brief on Appeal at 14. The absurdity of suggesting that the drafters of the Constitution would be so oblique in their prohibition with respect to legislatively enacted initiatives yet so clear with respect to setting forth limitations regarding referendums and voter-enacted laws, as discussed below, is plain. Regardless, this argument is simply not persuasive.

To begin, Article 2, § 9 does not set forth any such limitation, nor does this argument make much sense. Virtually every law enacted by the Legislature is subject to referendum under Article 2, § 9.[7] This new, significant limitation on the Legislature's Article 4, § 1 power that Appellants now propose is directly at odds with decades of precedent and practice. If a group is unhappy with a law enacted by the Legislature and successfully lobbies to have that law changed shortly after it is enacted, that is a far better outcome for them than having to go through the lengthy and expensive referendum process. And should the law not be changed to the satisfaction of the people, they have

[7] The only exception would be for acts making appropriations for state institutions or to meet deficiencies in state funds, which are not subject to referendum. Const 1963, art 2, § 9.

the right to seek a referendum of the amended law. Article 2, § 9 simply provides the people a right of referendum concerning legislatively enacted initiative proposals in the same manner, and under the same terms, as the people's right to a referendum of a law the Legislature proposes and enacts. This conclusion reinforces that the people intended legislatively enacted initiatives to be on equal footing with all other legislative enactments.

Moreover, there is nothing to prevent someone from exercising the right of referendum as to the law as originally enacted, even if that law has been amended. "There is likewise nothing within the State Constitution that precludes a referendum on a law that is subsequently amended. The original laws, or the laws as amended, or all four, are separately identifiable public acts that are subject to referendum until the time authorized by art 2, § 9 expires." COA Op at 12 (citing *Reynolds v Bureau of State Lottery*, 240 Mich App 84, 97; 610 NW2d 597 (2000); see also *Keep Mich Wolves Protected v Michigan,* unpublished per curiam opinion of the Court of Appeals, issued November 22, 2016 (Docket No. 328604)). In this instance, Appellants chose not to exercise their rights to referendum with respect to 2018 PA 337, 2018 PA 338, 2018 PA 368 or 2018 PA 369.

In sum, Article 2, § 9 is silent regarding whether or when the Legislature can amend a proposed initiative that it enacts. In the absence of any limitation, the Legislature can amend at any time, because the Legislature's authority to enact, amend, or repeal laws stems not from Article 2, § 9, but from Article 4, § 1. This is the only conclusion that makes sense of the relevant constitutional provisions. The Constitution provides no affirmative grant to the Legislature to amend a statute that exists by virtue of the Legislature's adoption of an initiative, *at any time*. The question is therefore not whether Article 2, § 9 expressly authorizes what the Legislature did here; but whether that provision precluded the Legislature from exercising its authority under Article 4,

§ 1. Nothing in the text of Article 2, § 9 prohibited the Legislature from amending 2018 PA 337 or 2018 PA 338 before the end of the legislative session.

3. The Drafters of the Constitution Imposed Limitations on the Legislature in Article 2, § 9 When They Intended to Do So.

Turning again to the text of Article 2, § 9, the paragraph titled "Initiative or referendum law; effective date, veto, amendment and repeal," specifically addresses the amendment of initiated laws. Notably, this paragraph includes the *only* constitutional limitations on the Legislature's ability to amend a law enacted or approved under Article 2, § 9:

> [1]…[N]o 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. [2] 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. [Emphasis added.]

Article 2, § 9 therefore makes two explicit distinctions that are relevant to the present question: (1) it differentiates between *initiative* and *referendum* petitions—initiatives being new laws proposed by the people, and referendums being legislative enactments either approved or rejected by the people; and (2) it differentiates between laws enacted by the *Legislature* and those adopted or approved by the *people*. From these distinctions stem the only two limitations on the Legislature's ability to amend an initiated law—neither of which applies here.

First, in the case of a *referendum*, a law approved *by the people* may be amended only at a "subsequent session." Second, generally, an *initiated law* submitted to and adopted *by the people* may be amended only by a three-fourths vote. The first restraint is exclusive to referendums, and both are unambiguously limited to laws that are approved or adopted *by the people*. Thus, neither restraint applies to an *initiated law* enacted *by the Legislature*.

In fact, the only language in Article 2, § 9 addressing a law both proposed by initiative and enacted by the Legislature merely states that it "shall be subject to referendum" and "shall [not] be subject to the veto power of the governor." The ratifiers' choice to apply the veto exception to initiated laws both enacted by the Legislature and adopted by the people, but to only apply the supermajority vote requirement for amending laws "adopted by the *people*," was deliberate and must be construed as such. This section's plain language shows the ratifiers intended to allow the Legislature to subsequently amend a legislatively enacted initiative by a simple majority vote,[8] just as it would a regular bill. This conclusion has never been in dispute.[9]

Again, the appropriate inquiry is whether the Legislature's ability to amend or repeal an initiated law is temporally limited. And again, a plain reading of Article 2, § 9 provides a clear answer—one that centers on the express distinction between a referendum and an initiated law. Under Article 4, the Legislature's amendatory and repeal powers are not time limited or delayed. Thus, there would have to be an exception somewhere else in the Constitution. No such exception exists, and the Constitution's text shows that absence was intentional.

Const 1963, art 2, § 9, ¶ 5 provides: "Laws *approved by the people under the referendum provision* of this section may be amended by the legislature *at any subsequent session* thereof." [Emphasis added]. Thus, if the people approve through a referendum a legislatively enacted law,

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[8] Const 1963, art 4, § 26.

[9] See, e.g., OAG, 1976, No. 4,932, p 240 (January 15, 1976) ("It is my opinion that, had the drafters of the Constitution intended that initial enactment of legislation proposed by initiative petition under paragraph 3 would require extraordinary majorities in each house, explicit language to that effect would have been utilized. I interpret the absence of such language as signifying an intent that such laws be adopted by those majorities of the members elected to and serving in each house of the legislature specified elsewhere in Mich Const 1963 . . . . *If a measure proposed by initiative petition is enacted by the legislature within 40 session days without change or amendment, the legislature can amend or repeal such a measure by majority votes in each house as specified elsewhere in Mich Const 1963.*" (emphasis added)).

the Legislature may amend that law only at a *subsequent* session. In stark contrast, Article 2, § 9 does not temporally limit amending laws initiated by the people—let alone initiated laws enacted by the Legislature. Under basic principles of constitutional construction and textual analysis, the omission of any such delay on an initiated law must be viewed as an intentional decision. This is the only logical conclusion given that once the Legislature enacts an initiative, it is on the same plane as any other legislative enactment. Every provision of the Constitution "must be interpreted in the light of the document as a whole." *Lapeer Co Clerk v Lapeer Circuit Court*, 469 Mich 146, 156; 665 NW2d 452 (2003). And if a constitutional provision does not include language that is present in other provisions, the exclusion is deemed intentional. See, e.g., *House Speaker v Governor*, 443 Mich 560, 590, n 36; 506 NW2d 190 (1993); *Hammel v Speaker of House of Representatives*, 297 Mich App 641, 649–50; 825 NW2d 616 (2012). As aptly stated by the Michigan Court of Appeals:

> Any reasoned person reading this proposed constitutional provision in 1963 would have concluded that the limitation on amendments during the same legislative session only applied to referendums, for that is what it plainly states. And, because that specific limitation was not placed on initiated laws, that same reasoned person would understand that the Legislature could amend during the same legislative session any law adopted during the 40-day session period.
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> ***
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> The importance and precision of the restrictions placed on both the initiative and referendum within art 2, § 9, cannot be overstated, as they reveal a careful consideration of what protections are necessary to safeguard each provision.
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> These provisions reveal that the people were presented with, and adopted, carefully crafted provisions intending to limit the Legislature's and governor's ability to modify laws approved by the people through a referendum or the initiative process….To say that there is no significance to the people limiting legislative

> amendments during the same legislative sessions to referendums is to simply ignore the deliberate restrictions the people placed on art 2, § 9. COA Op at 10-11.

Indeed, Appellants undermine and disprove their own arguments by conceding that the Legislature has the power to amend legislatively enacted laws proposed by initiative, albeit only at subsequent sessions. Surely if an affirmative grant of authority is needed to authorize amendments by the Legislature in the same session, then that must also be true for future sessions. Of course, no such explicit authorization exists. Appellants and the Attorney General cannot have it both ways: either the Legislature can amend or it cannot. The Constitution is clear both in what it does and does not say.

Because it is incontrovertible that Article 2, § 9 imposes only two constraints on the Legislature regarding the treatment of laws adopted by the people—neither of which apply to legislatively enacted laws proposed by initiative—the Legislature's ability to amend an initiated law that it enacts is governed by its general powers under Article 4, § 1.

4. The Legislature's Right to Amend Legislatively Enacted Initiatives is Expressly Supported by History and the 1961 Constitutional Convention Record.

Because the constitutional text is clear, there is no need for this Court to consider enacting history. Nonetheless, the Constitutional Convention debates and the Address to the People are useful in determining the "common understanding" of the ratifiers. *People v Nutt*, 469 Mich 565, 573-574; 677 NW2d 1 (2004). The history of Const 1963, art 2, § 9 as memorialized in the Constitutional Convention of 1961, unequivocally supports the conclusion that the Legislature may amend an initiated law at any time. The right of constitutional initiative was included in the 1908 Constitution as originally adopted. It was not until 1913 that the Legislature proposed an amendment to the Constitution to provide for the right of statutory initiative, which the electorate

approved later that same year. The statutory initiative process was incorporated into the legislative section of the Constitution, Const 1908, art 5, § 1 (emphasis added), in pertinent part as follows:

> Legislative power; initiative; referendum.
>
> Sec. 1. The legislative power of the state of Michigan is vested in a senate and house of representatives; *but the people reserve to themselves the power to propose legislative measures, resolutions and laws*; to enact or reject the same at the polls independently of the legislature; and to approve or reject at the polls any act passed by the legislature, except acts making appropriations for state institutions and to meet deficiencies in state funds. The first power reserved by the people is the initiative…. Provided, that no law shall be enacted by the initiative that could not under this constitution be enacted by the legislature…. The law proposed by such petition shall be either enacted or rejected by the legislature without change or amendment within 40 days from the time such petition is received by the legislature.
>
> ****
>
> No act initiated or adopted by the people, shall be subject to the veto power of the governor, and no act 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 said initiative measure, but the legislature may propose such amendments, alterations or repeals to the people. Acts adopted by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof.

Under that language, while a proposed initiative enacted by the Legislature could be amended like any other legislation, a proposed initiative adopted by the people could only be amended or repealed by the people unless the initiative provided otherwise. The Legislature therefore had no amendment rights whatsoever for a proposal adopted by the people. There was a lengthy discussion at the 1961 Constitutional Convention on this issue:

> Mr. Kuhn: I think it is also interesting to note this. I know we do not have a lot of time to explain this very complicated thing, but what are the rights of the legislature after the people start this petition and have the 10 [sic] percent 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. Now, what happens if they place it on the ballot and the people adopt it? They lose control of it. They can't amend it, they can't repeal it, and they can't change it in anyway unless the people give them consent in their initiative petition, or unless they go back to the people and ask them to do this. This makes it rather strong.
>
> The only time we have had an initiative matter that went through was the oleomargarine back in 1950. The legislature saw what the people wanted, and had the pulse and the feeling, *and adopted it to get away from this control factor so that they could keep control of the matter.*
>
> This is a very good thing. It's tough. We want to make it tough. It should not be easy. The people should not be writing the laws. That's what we have a senate and house of representatives for….
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> Mr. Wanger: …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 changes 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.*** But if they do not, and you start an initiative petition and it goes through and is adopted by the people without the legislature doing it, then they are precluded from disturbing it. [2 Official Record, Constitutional Convention 1961, pp 2394-2395.]

The delegates had no concerns with the Legislature assuming control of a proposed law it enacted, which it could then amend, repeal, or otherwise do whatever it liked consistent with its general legislative authority. Such is the nature of any legislative enactment. If the Legislature enacted a law proposed by initiative, it would retain "full control," which was the preferred result

since the delegates believed the Legislature should be enacting the laws of this state as a matter of course.

Even so, the delegates had reservations about the Legislature's inability to ever amend or repeal an initiative *approved by the people*. They discussed how to best rectify this situation while still protecting the law approved by the people at the polls. They considered whether a supermajority requirement should be imposed or whether there ought to be a period of delay during which a proposal could not be amended or repealed. Ultimately, the delegates rejected limiting *when* the Legislature could amend such a law in favor of a three-fourths vote requirement:

> 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 ¾ 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 ¾ [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. [*Id.* at 2396].

The Constitutional Convention debates cannot rationally be read to support any interpretation other than the Legislature retaining "full control" over legislatively enacted initiatives.[10]

---

[10] Appellants' assertions that these amendments are nothing more than a legislative veto, which option was removed by a 1913 constitutional amendment, is not only incorrect, it is misleading. The legislative veto power referenced by Appellants (Appellants' Brief at 14-15) related solely to initiative petitions to amend the Constitution pursuant to what is now Const 1963, art 12, § 2. Such amendments are examples of direct democracy, meaning the petitions go straight to the people for a vote. Initiatives pursuant to Const 1963, art 2, § 9 are indirect, because they go first to the Legislature for action. Appellants' arguments in this regard are simply irrelevant to the issues before this Court. Moreover, and as discussed at length herein, the Legislature acted well within its constitutional authority with respect to 2018 PA 368 and 2018 PA 369.

In short, Article 2, § 9's history shows that the Legislature retains full control of a legislatively enacted initiative, which it can amend or repeal at any time with a majority vote and the Governor's signature—including during the same session. The drafters deliberately treated initiated laws passed by the people differently by imposing a supermajority vote requirement for any such amendments, and expressly rejected the notion of a time delay for initiatives, whether adopted by the people or enacted by the Legislature. The historical and constitutional context unequivocally disproves any contrary conclusion.[11]

5. Case Law Overwhelmingly Supports the Conclusion That a Law Proposed by Initiative is on Equal Footing With Any Other Legislative Enactment.

Appellants and the Attorney General argue that there is a special rule of constitutional interpretation when Article 2, § 9 is involved, and the power the people reserved for themselves must "be saved [if possible] as against conceivable if not likely evasion or parry by the legislature." (Cross-Appellant's Brief on Appeal at 20; Plaintiffs-Appellants' Brief on Appeal at 33, quoting *Mich Farm Bureau v Hare*, 379 Mich 387, 393; 151 NW2d 797 (1967)). But this Court in *Mich Farm Bureau* immediately followed that statement with an explanation: "That rule is, in substance, that no court should so construe a clause or section of a constitution as to impede or defeat its

[11] The Attorney General argues that Attorney General Kelley's conclusion in OAG, 1964, No. 4,303, p 311 (March 6, 1964) that the "legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation *of the spirit* and letter of Article II, Sec. 9 of the Michigan Constitution of 1963" is persuasive because this decision was closer in time to ratification of the 1963 Constitution than the later opinion of Attorney General Schuette. Cross-Appellant's Brief on Appeal at 31. But the question before then-Attorney General Kelley was not whether the Legislature could adopt and amend within the same session, so that statement was conclusory dicta at best. In contrast, Attorney General Schuette was asked to address this specific question and did so with thorough analysis. Moreover, what Attorney General Kelley believed to be the "spirit" of the Constitution cannot possibly trump the actual language, particularly language directly supported by the Constitutional Convention records. Finally, it well-settled that neither Attorney General Opinion is binding on the courts. See, e.g., *Danse Corp v Madison Heights*, 466 Mich 175, 182 n 6; 644 NW2d 721 (2002).

generally understood ends when another construction thereof, equally concordant with the words and sense of the clause or section, will guard and enforce those ends." *Id*. at 393. Assuming, therefore, that this special "rule" exists, despite recent precedent suggesting otherwise, it would only apply when construing two equally plausible interpretations of the Constitution, which is not the case here.

Indeed, this Court has consistently held that laws enacted through the initiative or referendum process do not "lessen the power of the legislature; the initiative and referendum merely take from the legislature the exclusive right to enact laws, at the same time leaving it a co-ordinate legislative body with them [the people]." *Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich 49, 66; 340 NW2d 817 (1983) (internal quotation marks and citation omitted). In that case, this Court noted the Washington state constitution expressly prohibited the legislature from amending or repealing a law adopted by the people. Yet, "[t]he Michigan Constitution contains no such limitation on the power of the Legislature." *Id*. at 69.

Advisory Opinion on Constitutionality of 1982 PA 47 involved an interpretation of Const 1963, art 9, § 15, which states that before the State may enter into long-term borrowing, the voters must approve "the amount to be borrowed, the specific purpose to which the funds shall be devoted, and the method of repayment." After receiving voter approval, the Legislature wanted to amend the act to raise the interest rate. The question was therefore whether the Legislature could do so without having to obtain additional voter approval. This Court said yes—there was "no reason to infer a constitutional limitation to guard against legislative action in an area in which the Legislature has the authority to legislate without an approving vote of the people." 418 Mich at 64-65. "Absent a clear constitutional prohibition," the Court refused to limit the Legislature's power. *Id*. at 60. See also *Reynolds*, 240 Mich App at 94 (stating that our Constitution nowhere

suggests "that a referendum petition has any effect except the nullification of the particular measure referred until its approval by the voters, *which inferentially would leave the legislature in full possession of all other ordinary constitutional powers*"), quoting *McBride v Secretary of State*, 32 Ariz 515, 522–23; 260 P 435 (1927), overruled in part on other grounds by *Adams v Bolin*, 74 Ariz 269 (1952) (emphasis added).

Decades later, in *Frey*, the Court of Appeals addressed whether the two-thirds vote requirement for giving legislation immediate effect under Const 1963, art 4, § 27 applied to an initiated law enacted by the Legislature pursuant to Const 1963, art 2, § 9, even when the petition itself provided it was to be given immediate effect. The Court rejected the notion that the petition language preempted the application of Const 1963, art 4, § 27, because laws proposed by initiative are on "equal footing" with laws proposed by the Legislature:

> Acceptance of defendants' position would place laws proposed by the initiative on a superior, not equal, footing with legislative acts not proposed by the people. Since everything that emerges from the Legislature is legislation, all legislative acts must be on an equal footing. Stated in other language, once it is conceded that it is necessary to refer to article 4 in order to determine the effective date of initiated legislation that does not refer to an effective date, it becomes immediately apparent that the wall that is said to exist between article 2 and article 4 does not exist. [*Frey*, 162 Mich App at 600.]

On appeal, this Court likewise disposed of the argument that Article 4 did not apply to Article 2, or that it only applied to the procedural requirements: "[W]e have never adopted the distinction proposed by defendants and intervening defendants. We expressly reject that distinction." *Frey v Dep't of Mgmt & Budget*, 429 Mich 315, 324; 414 NW2d 873 (1987). After thoroughly examining judicial precedent and constitutional convention dialogue, the Court concluded that absent a specific exception, Article 4 applied to Article 2 and, specifically, Article 4, § 27 applied to initiated laws enacted by the Legislature. *Id.* at 335 (saying Article 4, § 27

"applies to initiated laws enacted by the Legislature because it does not provide an exception for initiated laws enacted by the Legislature.").

Frey stood for the position that the Legislature may employ certain procedures from Article 4 of the Michigan Constitution to implement laws adopted through the initiative process outlined in Article 2, § 9. Article 2, § 9 does not provide that the provisions set forth in Article 4, § 27 (immediate effect) apply to initiated proposals adopted by the Legislature, but the *Frey* Court nonetheless held that they did: Article 4, § 27 "applies to initiated laws enacted by the Legislature because it does not provide an exception for initiated laws enacted by the Legislature." *Frey*, 429 Mich at 335. The same is true here. Article 2, § 9 does not provide that the Legislature's Article 4, § 1 power to amend statutes applies to initiated proposals adopted by the Legislature. But Article 4, § 1 nonetheless applies because Article 2, § 9 "does not provide an exception for initiated laws enacted by the Legislature." Accordingly, Article 4, § 1's general powers, including the Legislature's power to amend a law at any time, including within the same session in which it is enacted, must necessarily apply.

In sum, it is well settled that an initiated law enacted by the Legislature is on equal footing with legislation enacted in the ordinary course. Because Article 4 does not prohibit the Legislature from amending non-initiated legislation enacted during that same session,[12] and because there is no contrary authority in Article 2, § 9, a legislatively enacted initiated law may be similarly amended during the same session in which it was originally enacted. That means the Legislature can amend it, just as it can any other law, with the majority vote of each chamber and the Governor's signature.

[12] See, e.g., 2018 SB 1162 and 2018 SB 1094 (both amending MCL 437.1517a and enacted in December 2018).

Appellants and the Attorney General again focus on *Mich Farm Bureau*, 379 Mich 387, to argue that the Legislature's amendment of a legislatively-enacted law proposed by initiative was an "'outright legislative defeat, not just hindrance of the people's reserved right[s]' under Article 2, § 9." The Court in *Mich Farm Bureau* interpreted Const 1963, art 2, § 9 with respect to when a *referendum* petition could be filed. Under Article 2, § 9, a referendum petition may be filed "within 90 days following the final adjournment of the legislative session at which the law was enacted." The question was therefore whether a referendum petition could *only* be filed within 90 days following the final adjournment or "not later than" such date. The Court concluded that it meant the latter. Holding otherwise would mean every law the Legislature passed and gave immediate effect outside of the 90-day window could be rendered referendum proof, permitting "outright legislative defeat, not just hindrance, of the people's reserved right to test, by referendary process[.]" *Id.* at 394.

In contrast, the Legislature's actions here were precisely in accord with the initiative process contemplated by the framers of Article 2, § 9. The Legislature was presented with proposed laws initiated by eight percent of the electorate, which it then enacted—without change or amendment—within the 40 days permitted by the Constitution. After the deliberative process, the Legislature decided to amend those laws. This Court in *Mich Farm Bureau* carefully limited its holding to situations in which the right of referendum was completely taken away—which is not the situation here. The Court recognized the Legislature remained free to enact legislation, even legislation on the same subject as the law subject to a referendum. *Id*. at 396.

Likewise, in *Reynolds*, 240 Mich App 84, the question was whether the Legislature could enact essentially the same law that was suspended by the referendum process. Relying on the

decision in *Mich Farm Bureau* and the Arizona case cited favorably therein,[13] the Court concluded the referendum petition had no effect on the proposed legislation, except with respect to the particular measure referred. In other words, the Legislature was "in full possession of all other ordinary constitutional powers." *Id*. at 96. The Court noted Article 2, § 9 allowed the Legislature to amend a law approved by referendum at "any subsequent session thereof." "[I]t would be illogical to conclude that, while the Legislature could reenact the provisions of 1994 PA 118 after the voters had registered their rejection of that legislation at the polls, it was not authorized to do so before the election took place." *Id*. at 99. Finally, the Court noted its decision "properly balances the people's right to a referendum with the political process that necessarily surrounds any public policy debate." *Id*. at 101.

Mich Farm Bureau does not support Appellants' and the Attorney General's arguments in this case. Put simply, the Legislature's amendments are not unconstitutional just because the Appellants or the Attorney General do not like them. Here, Appellants exercised their rights to propose laws pursuant to Article 2, § 9, and the Legislature exercised its rights under that same section to adopt those laws *in toto*. The Legislature then chose to amend those same laws, as was its right under Article 4. The Legislature's authority was not unchecked: these amendments required, and received, the approval of the Governor.

B. If this Court Concludes that Article 2, § 9 Prohibits the Legislature from Adopting an Initiated Law and Later Amending that Law in the Same Session, that Holding Should be Prospective Only as a New Rule of Law.

While the "general rule is that judicial decisions are to be given complete retroactive effect…where injustice might result from full retroactivity, this Court has adopted a more flexible approach, giving holdings limited retroactive or prospective effect." *League of Women Voters of*

[13] *McBride*, 32 Ariz 515.

Michigan v *Secretary of State*, 508 Mich 520, 564-65; 975 NW2d 840 (2022)(citations omitted). In *League of Women Voters*, this Court laid out the test set forth previously by this Court in *Pohutski v Allen Park*, 465 Mich 675; 641 NW2d 219 (2002), as follows:

> In that case, we noted that there is a 'threshold question whether the decision clearly establishe[s] a new principle of law.' If a decision establishes a 'new principle of law,' we then consider three factors: (1) the purpose to be served by the new rule, (2) the extent of the reliance on the old rule, and (3) the effect of retroactivity on the administration of justice.'
>
> The threshold question, then, is whether a decision amounts to a new rule of law. 'A rule of law is new for purposes of resolving the question of its retroactive application…either when an established precedent is overruled or when an issue of first impression is decided which was not adumbrated by an earlier appellate decision.'

League of Women Voters, 508 Mich at 565-66, citing *Pohutski*, 465 Mich at 696 and *People v Phillips*, 416 Mich 63, 68; 330 NW2d 366 (1982).

1. If this Court holds that 2018 PA 368 and 2018 PA 369 were Enacted in Violation of Article 2, § 9, it Will Be a New Rule of Law.

In *League of Women Voters*, the issue before the Court was the constitutionality of certain amendments to the Michigan Election Law that applied to initiative petitions. Specifically, these amendments limited the amount of initiative petition signatures that could be obtained from each congressional district, required paid petition circulators to disclose non-volunteer status via pre-circulation affidavit, and required petition forms to include a checkbox indicating whether the circulator was paid or unpaid. After finding two of the three amendments at issue unconstitutional, the question raised was whether the checkbox requirement, which was upheld, would apply retroactively or prospectively only. "Here, while no precedent is being overruled, this is an issue of first impression that has been subject to vigorous debate essentially since 2018 PA 608 was

enacted. We therefore conclude that the threshold question has been satisfied." *League of Women Voters*, 508 Mich at 566.

Likewise, here, whether Article 2, § 9 prohibits the Legislature from adopting and then later amending an initiative within the same session has never been decided by this Court, has been subject to "vigorous debate" since enactment of 2018 PA 368 and 2018 PA 369, and the only court rulings on this issue have been in the context of this case. The threshold requirement for prospective application is thus easily satisfied.

2. The Purpose to Be Served by the New Rule Would Weigh in Favor of Prospective Only Application.

The issue before the Court is whether enactment of 2018 PA 368 and 2018 PA 369 violated any procedural requirements set forth in Const 1963, art 2, § 9; not whether these acts themselves are substantively valid. Indeed, the text of 2018 PA 368 and 2018 PA 369 is irrelevant to the legal question before this Court. If this Court determines that Article 2, § 9 prohibits the Legislature from amending a law within the same session in which it was enacted, that decision rests solely upon this Court's interpretation of the text of the Constitution. The only possible purpose of such a ruling would be to provide this Court's interpretation of the Constitution in order to resolve the "vigorous debate" on this issue so that the Legislature is apprised of this "new rule" and constraints on its legislative power.

The Court can achieve that purpose without invalidating 2018 PA 368 and 2018 PA 369. Indeed, should this Court void 2018 PA 368 and 2018 PA 369 and reenact the provisions of 2018 PA 337 and 2018 PA 338 that were amended, it would in effect be legislating from the bench. After enactment and before the effective date, the Legislature determined that it was in the best interests of the State to amend those statutes. Everyone agrees that the Legislature could also have amended 2018 PA 368 or 2018 PA 369 at any time during the almost 5 years since these laws went

into effect and it has chosen not to do so. This is so despite changes in political parties for both the Legislature and the Governor.

In this case, the issue before the Court is whether the statutes were enacted in a manner that procedurally violated the Constitution, not whether the acts themselves are unconstitutional. Moreover, even a Court's determination that a statute itself is unconstitutional does not, as Appellants suggest, automatically result in a revival of the prior act. Indeed, there is a general policy in this state against the revival of prior laws in the context of repeals. See MCL 8.4 ("Whenever a statute, or any part thereof shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the repeal of such subsequent repealing statute."); *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 667-668; 760 NW2d 565 (2008).

Another factor weighing against a revival of 2018 PA 337 is the complication of applying an earlier version of a law that would have implemented phased increases of the minimum wage and incremental phase-outs of the tip credit, as even the drafters of the initiated law understood the necessity for doing so. The five-year period for those phased changes has now passed, meaning such provisions are obsolete, and any application of this law would cause the very type of significant economic disruption that the phased approach was designed to guard against. See also *People v Betts*, 507 Mich 527, 573; 968 NW2d 497 (2021)("In this case, given the extensive legislative history of SORA, it is unclear whether revival of earlier SORA formulations is consistent with the Legislature's intent….[T]he touchstone for any decision about remedy is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature." (Citations omitted). Another factor considered by this Court weighing against revival of an original law is the administrative difficulty in enforcement and implementation of the prior

law. *Id*. Here those same factors weighs heavily against "revival" of 2018 PA 337 and 2018 PA 338.

Should this Court determine that Article 2, § 9 is violated by the Legislature adopting and amending an initiative within the same session, the purpose for such ruling can be satisfied by prospective application. The Court's decision would be establishing the new procedure by which all future Legislatures would be bound when presented with the option of adopting an initiative petition.

3. Reliance Factors Weigh Heavily in Favor of Prospective Only Application.

The MRLA calculates that implementing 2018 PA 337 would immediately inflate the wages of tipped employees by 240%. 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 would 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 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 three years ago, has endured an unprecedented level of operational instability. See Winslow Aff, ¶ 5. According to the Bureau of Labor Statistics, Michigan is home to one of the

slowest restaurant employment recoveries in the country. While nearly half of all states have exceeded their pre-pandemic restaurant employment figures, Michigan is one of only seven (7) states still operating with more than 5 percent fewer restaurant employees than it did prior to the pandemic. *Id.*, ¶ 7. As a result of inadequate staffing, 59% of restaurants have been operating fewer hours or days. *Id.*, ¶ 9. And they have *already* been forced to increase wages in order to address labor shortages: 99% of restaurants have increased wages, with 40% of operators increasing wages by more than 15%. *Id.*, ¶ 10.

Then there is inflation, which is wreaking further havoc on the restaurant industry. Dramatic restaurant wage inflation in 2021 outpaced the economy overall at 13.4%, *id.*, and 77% of restaurant operators have experienced commodity inflation that is greater than 10%. *Id.*, ¶ 11. As a result, 87% of restaurants have had to increase menu prices, most between 5-10% and most took two increases during this time period. *Id.*, ¶ 12. While 62% of restaurants reported current profitability, 61% reported a decrease in profitability over the prior 6 months. *Id.*, ¶ 13. Twenty-one percent reported that their business was at risk for permanent closure over the next 6 months. *Id*.

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. *Id*. 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%). *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 they should tip less if 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, particularly when Appellants sat on their hands and waited years before bringing this action. In fact, Appellants waited until May 2021 (about 29 months after OAG, 2018, No. 7,306 (December 3, 2018) was issued and 2018 PA 368 and 2018 PA 369 were enacted and 26 months after each law became effective), to challenge the constitutionality of these laws in the Court of Claims. At this point, the phased implementations set forth in the original act would be all but eliminated. 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.

4. Retroactive Application of this Court's Decision Would Profoundly Disrupt the Administration of Justice.

Before the Legislature enacted 2018 PA 368 and 2018 PA 369, it sought and received an Attorney General opinion confirming in a detailed and comprehensive opinion that such amendments would be constitutional. Following enactment of 2018 PA 368 and 2018 PA 369, but before their effective date, the Legislature sought even further confirmation by requesting an advisory opinion from this Court regarding the constitutionality of these amendments, which request was denied. The Legislature passed and the Governor signed 2018 PA 368 and 2018 PA 369 with the guidance of the Attorney General that doing so was well within its legislative authority.

Appellants waited 29 months to file suit in the Court of Claims and never requested any form of expedited review. It has been almost 5 years since 2018 PA 368 and 2018 PA 369 were enacted. Employers throughout the state have been operating pursuant to these laws and in reliance on these laws. Because as of January 1, 2024, the phased in process contemplated by 2018 PA 337 will have passed, if 2018 PA 337 were to suddenly go into effect, the minimum wage would suddenly increase by several dollars and the tip credit would be completely eliminated, which would be catastrophic for the restaurant industry. The sudden increase in the minimum wage and requirements concerning sick leave would cripple the State's economy.

It is also worth noting that even Appellants and the Attorney General would agree that the Legislature could have amended 2018 PA 368 and 2018 PA 369 at any time in the almost 5 years since they have been in effect and have chosen not to do so. As such, these acts should not be voided as some type of punishment for the Legislature not following a rule of law that at the time of enactment did not exist. The Legislature acted in good faith and in reliance on the advice of the Attorney General (and sought further guidance from this Court). Regardless, the thousands of employers in Michigan who have relied on these laws for 5 years should not become victims of what is at its core a political issue.

As stated by this Court in *League of Women Voters*, 508 Mich at 570, "in light of the chaos and injustice that would ensue were we to give this opinion retroactive effect, we hold that today's decision must be given prospective effect only." That same reasoning applies here. Should this Court determine that it is unconstitutional for the Legislature to amend an initiated law within the same session in which it was enacted, Amici strongly urge this Court to order that its decision be prospective only.

V. CONCLUSION AND RELIEF REQUESTED

For these reasons and those addressed in the State of Michigan's Brief, the MRLA and Restaurant Law Center respectfully submit that this Honorable Court should affirm the unanimous decision of the Court of Appeals.

Respectfully submitted,

HONIGMAN LLP

By: /s/ Andrea L. Hansen
Andrea L. Hansen (P47358)
222 N. Washington Sq. Suite #400
Lansing, MI 48933
(517) 377-0709

Attorneys for Amici Curiae Michigan Restaurant and Lodging Association and the Restaurant Law Center

Angelo I. Amador
Restaurant Law Center
2055 L Street, NW, Suite 700
Washington, DC 20036
(202) 331-5913

Co-Counsel for the Restaurant Law Center

Dated: November 1, 2023

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation of MCR 7.305(A)(1) and MCR 7.212(B) because excluding the parts of this brief that are exempted, this brief contains 10,678 words.

/s/ Andrea L. Hansen
Andrea L. Hansen (P47358)

Dated: November 1, 2023

STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs-Appellants,

v

DANA NESSEL, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Defendant-Appellant,

and

STATE OF MICHIGAN,

Defendant-Appellee.
_____/

Supreme Court No. 165325

Court of Appeals No. 362271

Court of Claims No. 21-000095-MM

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 THE AMICI CURIAE SUPPLEMENTAL BRIEF OF MICHIGAN RESTAURANT AND LODGING ASSOCIATION AND THE RESTAURANT LAW CENTER

HONIGMAN LLP
Andrea L. Hansen (P47358)
222 N. Washington Sq. Suite #400
Lansing, MI 48933
(517) 377-0709

Attorneys for Amici Curiae Michigan Restaurant and Lodging Association and the Restaurant Law Center

Angelo I. Amador
Restaurant Law Center
2055 L Street, NW, Suite 700
Washington, DC 20036
(202) 331-5913

Co-Counsel for the Restaurant Law Center

EXHIBIT A

STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs-Appellants,

v

DANA NESSEL, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Defendant-Appellant,

and

STATE OF MICHIGAN,

Defendant-Appellee.
_____/

Supreme Court No. 165325

Court of Appeals No. 362271

Court of Claims No. 21-000095-MM

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 17,000 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 more than three 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. According to the US Bureau of Labor Statistics, Michigan is home to one of the slowest restaurant employment recoveries in the country. While nearly half of all states have exceeded their pre-pandemic restaurant employment figures, Michigan is one of only seven (7) states still operating with more than 5 percent fewer restaurant employees than it did prior to the pandemic.

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

9. 59 percent of restaurants have been operating fewer hours or days due to inadequate staffing.

---

[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 referenced in paragraphs 8-13 of this affidavit reflects Michigan-specific responses extracted from the NRA survey.

10. In order to address labor shortages, 99 percent of restaurants had to increase wages over the prior 12 months, with 40 percent of operators increasing wages by more than 15 percent in that time period.

11. 77 percent of restaurant operators had experienced commodity inflation in the prior 12 months that was greater than 10 percent.

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

13. 62 percent reported current profitability, but 61 percent reported a decrease in profitability over the prior 6 months. Only 21 percent reported that their business was at risk for permanent closure over the next 6 months.

14. If 2018 PA 337 is implemented, it will immediately result in a 240% 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
this 18 day of April, 2023

Amanda S. Witgen
Notary Public: Amanda S Witgen
My Commission Expires: 2-13-2027
Acting in the County of Ingham

AMANDA S. WITGEN
Notary Public, State of Michigan
County of Ingham
My Commission Expires Feb. 13, 2027
Acting in the County of Ingham

EXHIBIT B

Article

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

Compensation & Benefits Review
1–11

DOI: 10.1177/0886368720908959
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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

Corresponding Author:
Michael Lynn, School of Hotel Administration, Cornell University, 552 Statler Hall, Ithaca, NY 14853-6902, USA.
Email: WML3@cornell.edu

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 law[14] 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 ($.33 \leq$ all $rs \leq .76$), 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 $.54 < rs < .92$, all $ps < .01$), 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 ($.50 <$ all $rs < .70$), 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.

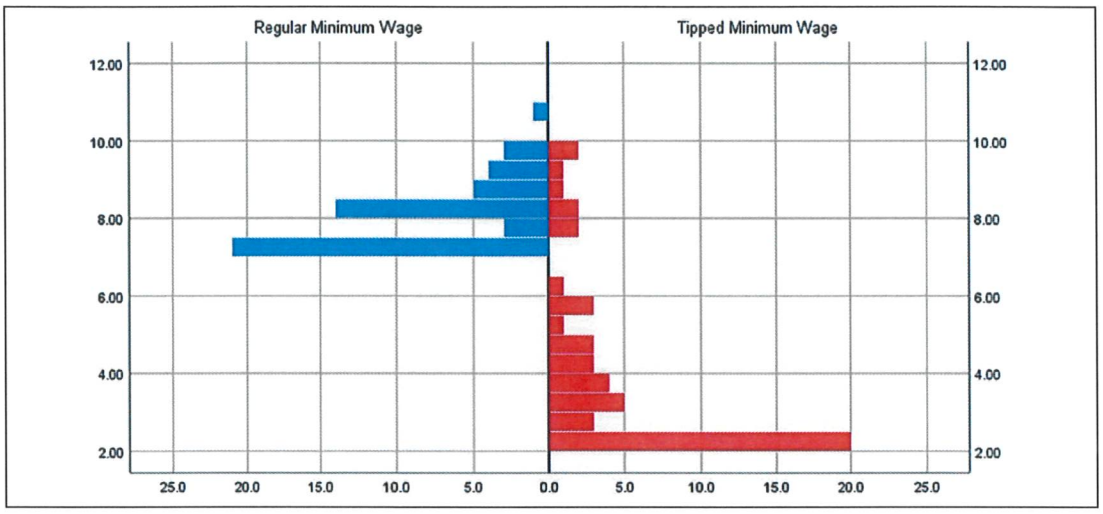

Figure 1. Frequency distributions of state-level averages of the regular and tipped minimum wages from 2013 to 2018.

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 wage[28] 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

[a]Standardized 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

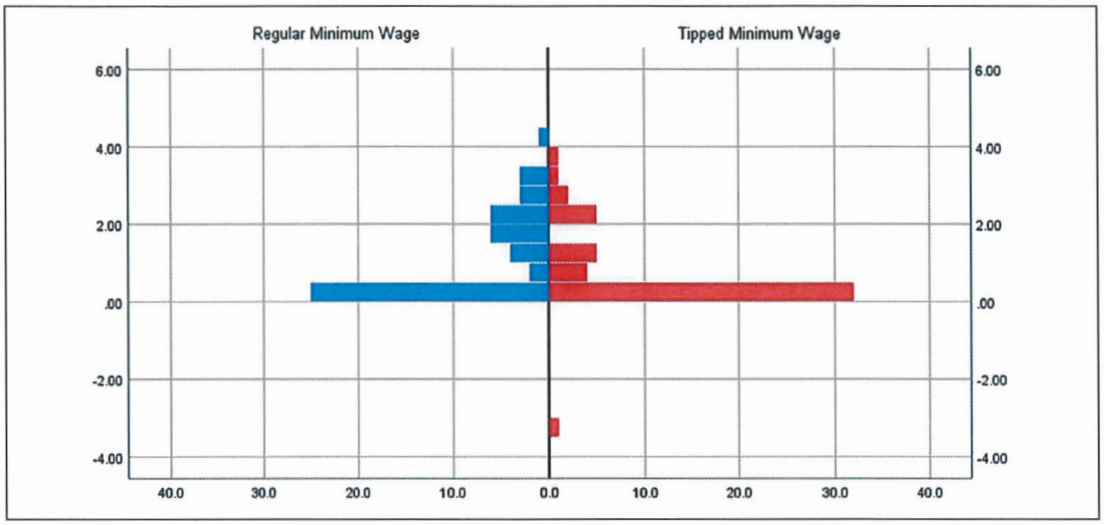

Figure 2. Frequency distribution of state-level changes in the regular and tipped minimum wages from 2013 to 2018.

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 studies[33] 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's[34] 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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ORCID iD

Michael Lynn https://orcid.org/0000-0001-9234-1248

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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

Conducted by the Michigan Restaurant & Lodging Association | September 2022

MICHIGAN RESTAURANT & LODGING ASSOCIATION

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

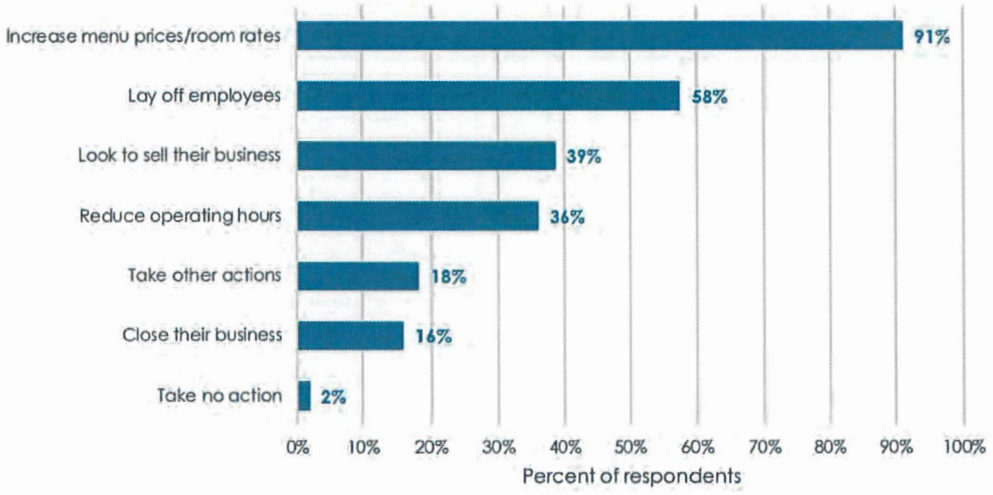
This survey was conducted by the Michigan Restaurant & Lodging Association from September 6-9, 2022. The data represent 307 responses from restaurant and hotel operators representing nearly 2,000 locations and over 75,000 employees–or roughly 24 percent of Michigan's hospitality industry.

1 https://www.thecentersquare.com/michigan/crippling-effect-michigan-business-restaurant-groups-react-to-minimum-wage-ruling/article_6b55f16e-083d-11ed-9eb2-8bfb69629502.html

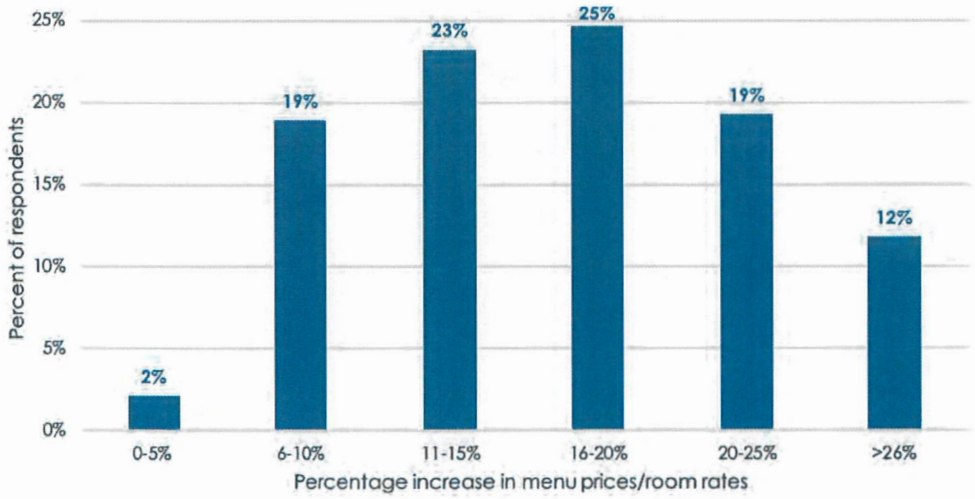
2 https://ballotpedia.org/Michigan_Minimum_Wage_Increase_Initiative_(2018)

Results

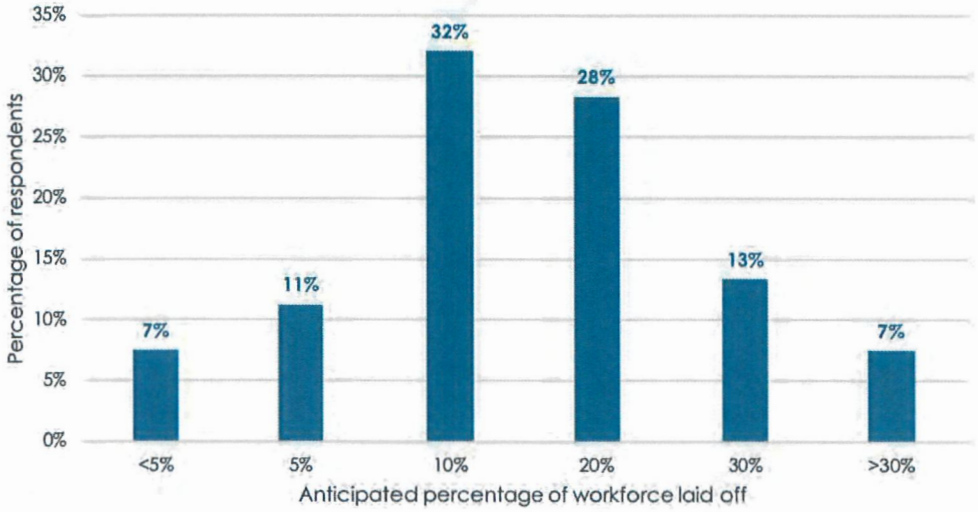
To offset increased costs if the Court's ruling is upheld, restaurant operators said they will be forced to do the following:



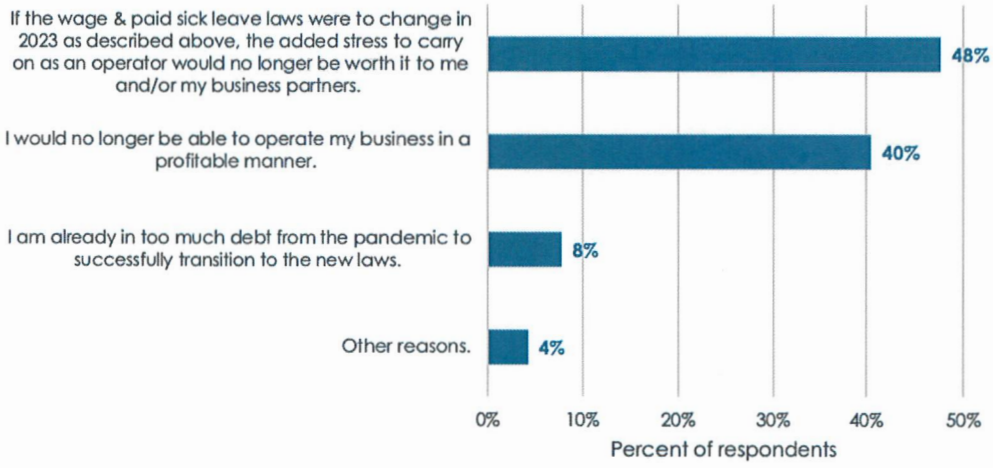
Seventy-nine percent of operators estimated the mandates would cause menu price or room rate increases by more than 10 percent. Nearly one-third estimated prices would have to increase more than 20 percent.



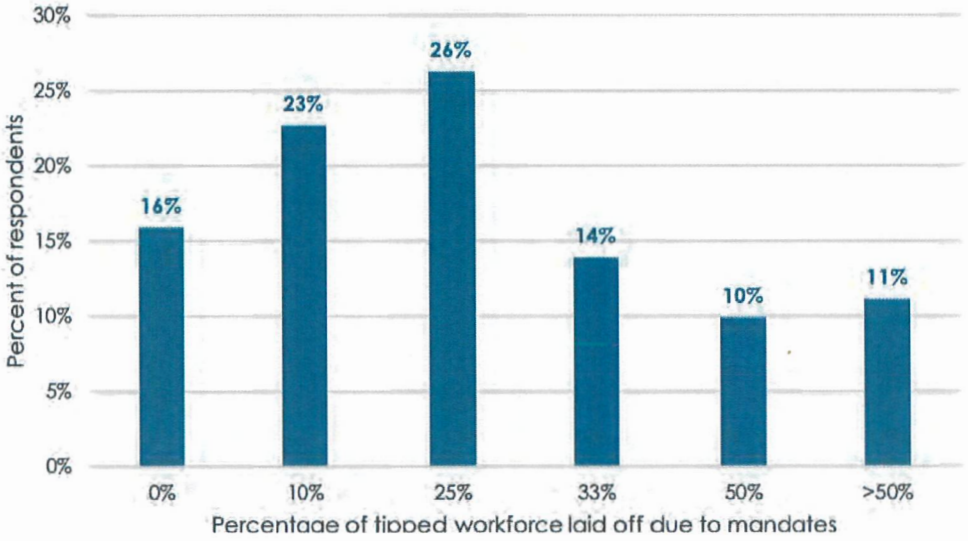
Eighty-one percent of operators estimated they would be forced to lay off at least 10 percent of their workforce.



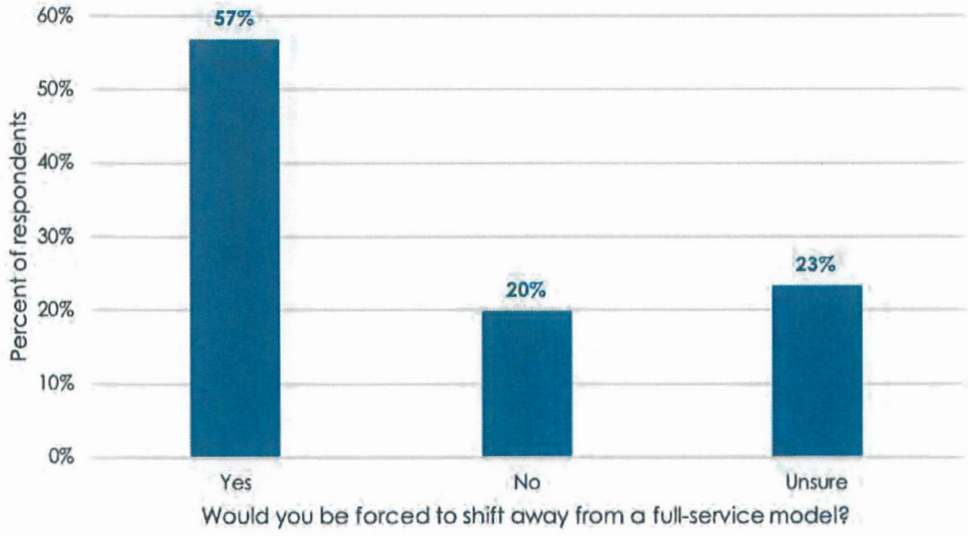
Operators responded that the mandates would force them to sell or close their business for the following reasons:



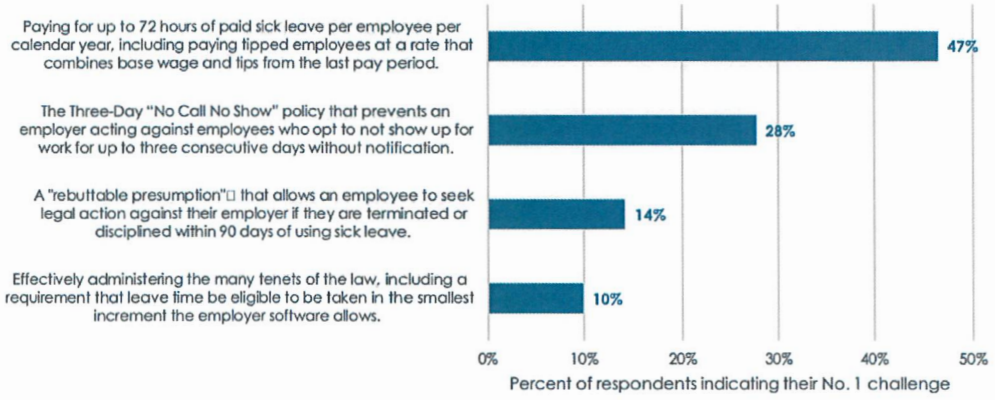
Eighty-four percent of full-service restaurant operators indicated they would be forced to lay off at least 10 percent of their tipped workforce. Sixty-one percent estimated they would have to lay off more than 25 percent of their tipped employees.



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.

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

> [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.

> 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

Table of Contents

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

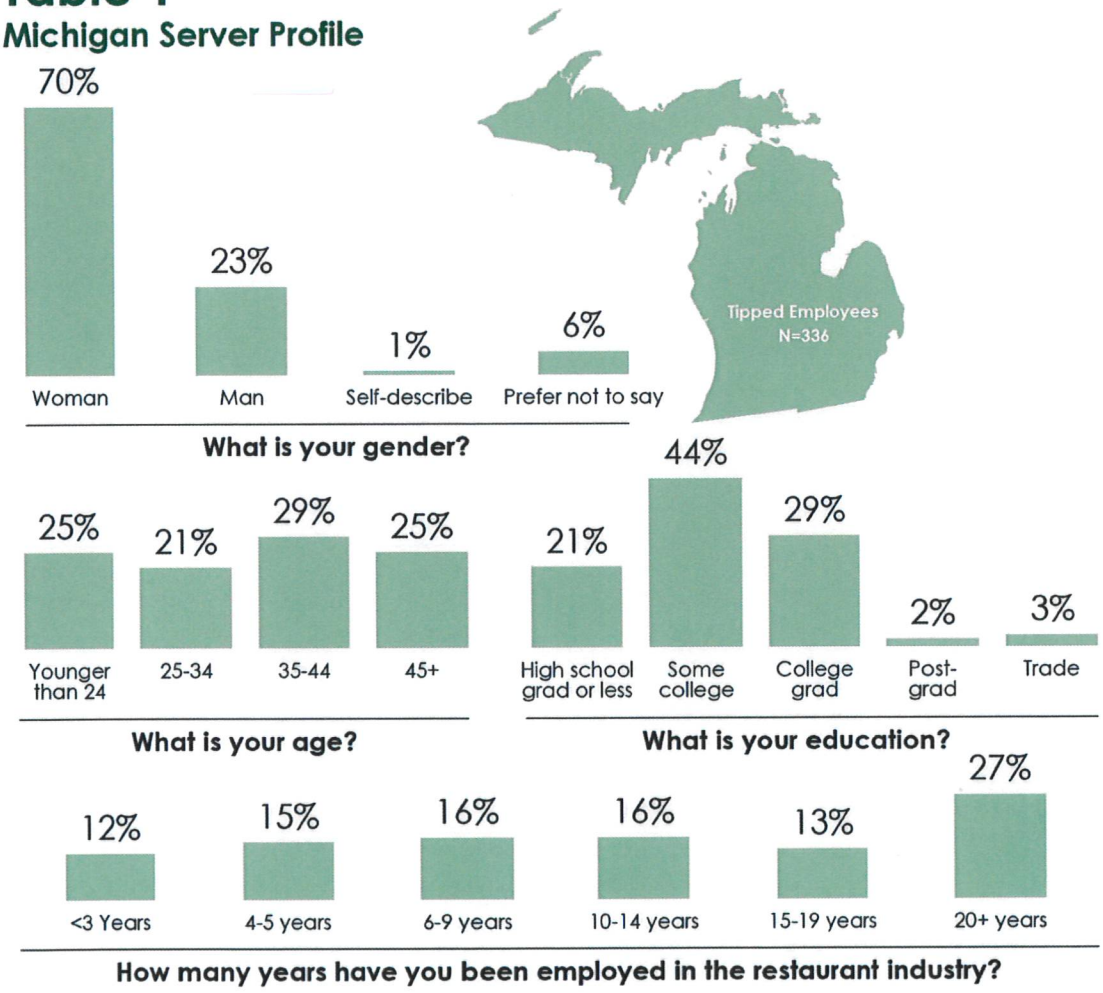
An online survey of 336 tipped employees currently working at full-service restaurants in Michigan was conducted on September 9, 2022.[1]

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



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

Support for the Current Tipping System

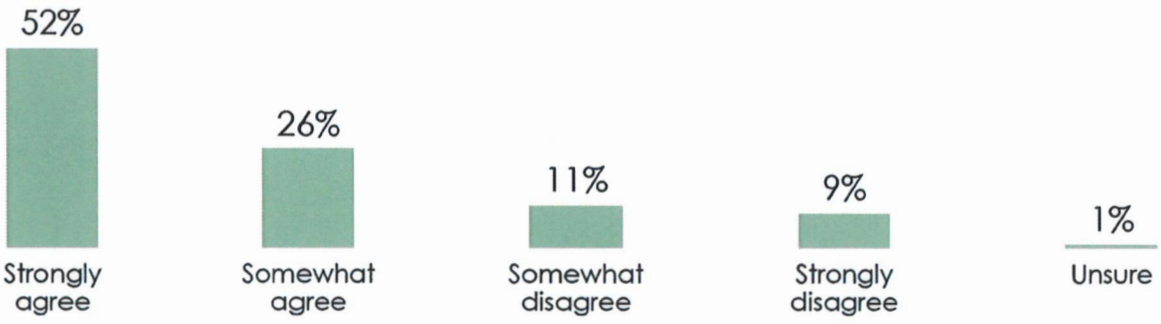
A strong majority of tipped workers (79%) say that the current tipping system works well for them and does not need to be changed (strongly agree, 52%; somewhat agree, 26%) (Table 2). Fewer disagree (20%), with 11 percent "somewhat" disagreeing and nine percent "strongly" disagreeing. One percent say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

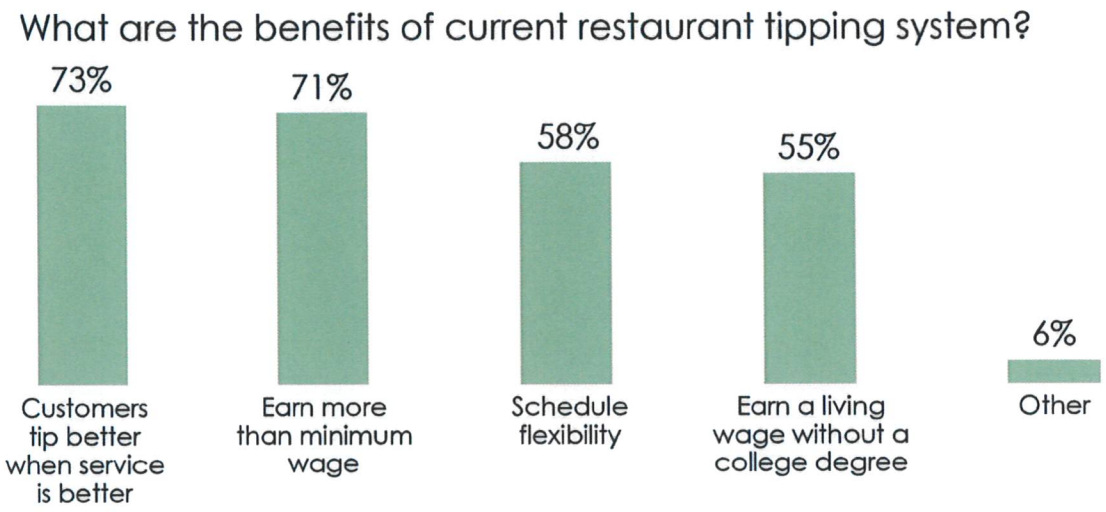


Benefits of the Current Tipping System

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



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

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.

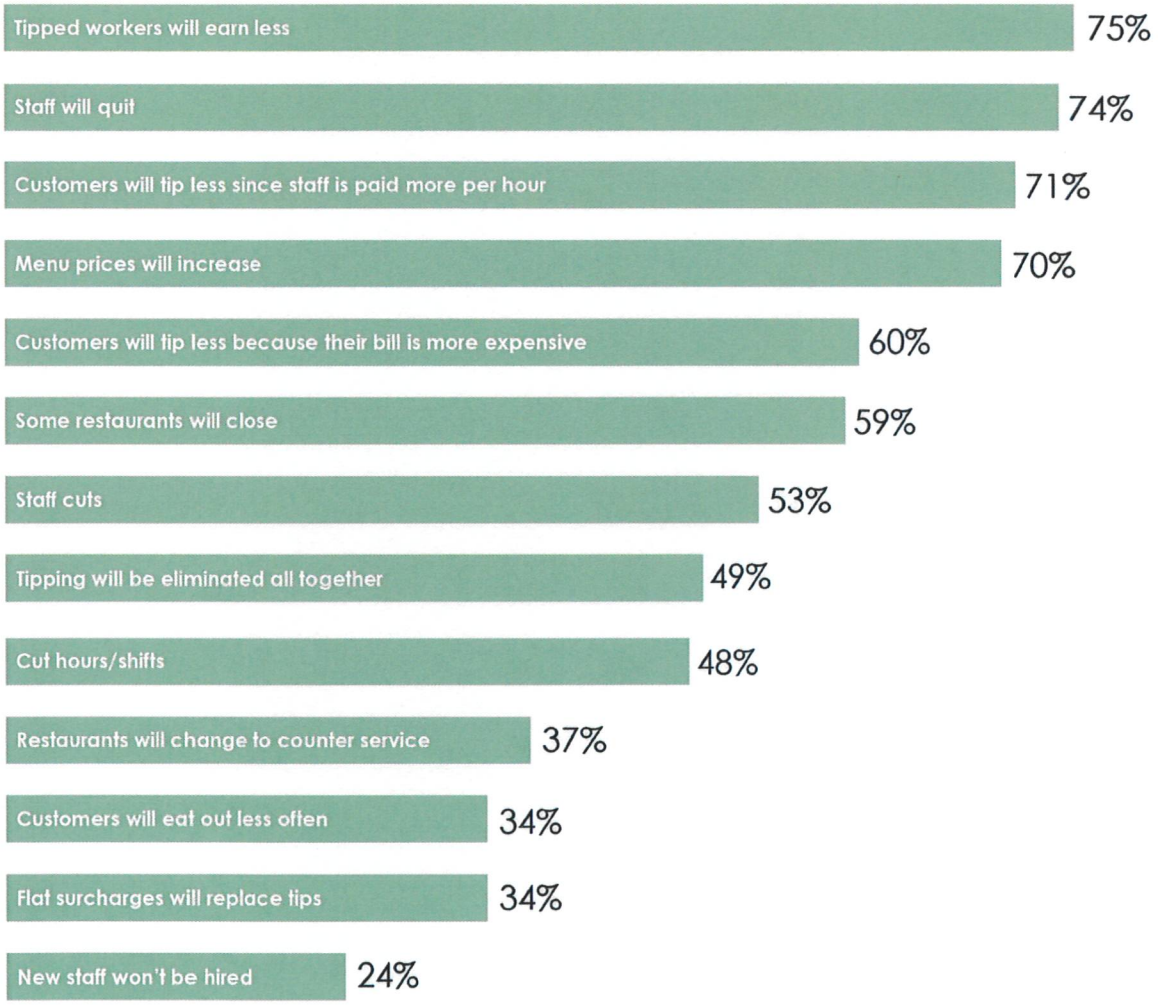
A majority also agree that staff will quit (74%), customers will tip less since staff is paid more per hour (71%) and menu prices will increase (70%).

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?



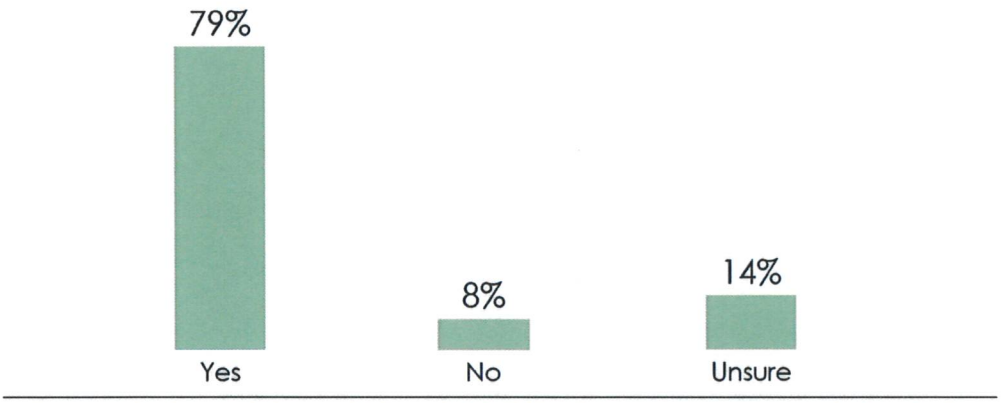
Employment and Income Loss

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%).

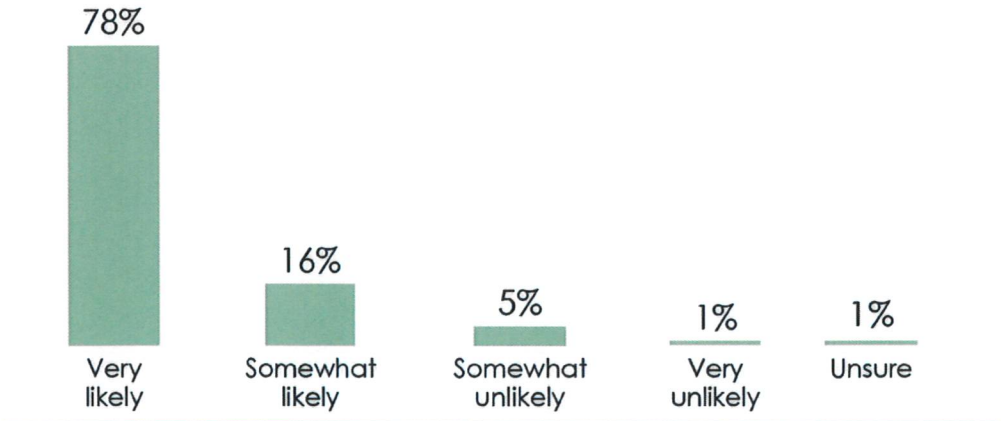
Ninety-four percent also think that it is likely that customers will start believing that they should tip less since employees are paid more hourly by their restaurant (very likely, 78%: somewhat likely, 16%).

Table 6

Risks of Employment and Income Loss



Do you feel your job would be at risk if the tipped wage were eliminated and the cost to your employer increased 156% overnight?



How likely is it that customers will start believing that they should tip less since employees are paid more hourly by their restaurant?

Compensation Preference

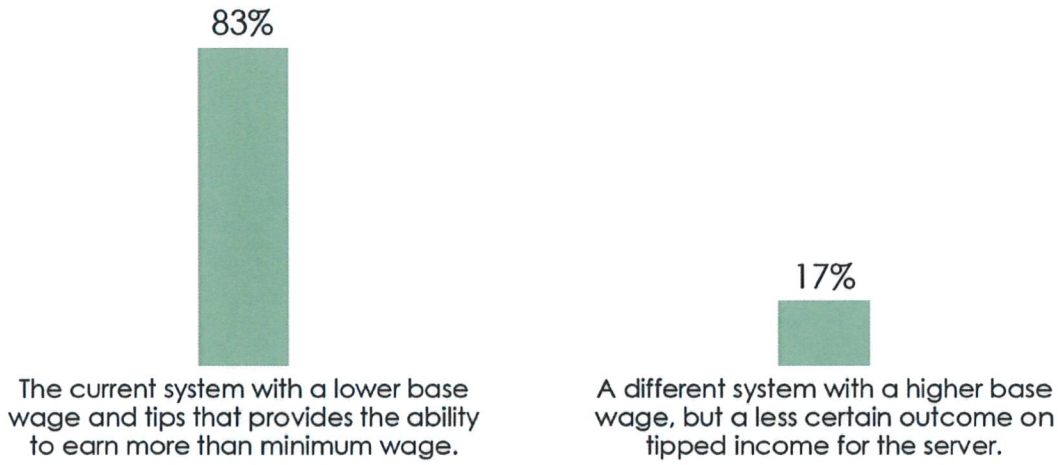
Table 7 provides the results of a question that asked tipped workers which compensation system they prefer. Eighty-three percent say they want the current system with a lower base wage and tips that provide the ability to earn more than the minimum wage, while 17 percent want a different system with 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: _____

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

Notes