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1 SENATOR MARTINS: Thank you very much for
2 being here.

3 My name is Senator Jack Martins, and I chair
4 the Senate's Standing Committee on Labor.

5 Before I begin my opening remarks, I'd like
6 to introduce the other members who are here with us
7 this morning.

8 From my left, Senator Jim Seward,
9 Senator Kathy Marchione, and
10 Senator Terrence Murphy.

11 Just to give a little background as to why we
12 are here, in May, the acting commissioner of labor,
13 Mario Musolino, at the direction of the Governor,
14 convened a wage board to inquire into and report and
15 recommend adequate minimum wages and regulations for
16 fast-food workers.

17 This is in spite of the fact that the
18 minimum-wage increase, which the Legislature and the
19 Governor adopted in 2013 is still being phased in.

20 And as we all know, it's at 8.75 now. It
21 will be \$9.00 by the end of this year.

22 On July 31st, the fast-food wage board issued
23 its report and recommendations to the acting
24 commissioner. The acting commissioner must issue a
25 wage order in response to those recommendations by

1 September 15th.

2 Now, I don't know, but I understand that that
3 actually may come sooner than later, because there
4 may be an event in New York City today, sometime
5 early this afternoon.

6 A number of concerns have been raised about
7 the process in which the board arrived at the
8 conclusions, including the process by which the
9 board itself was convened, and the process by which
10 the members were selected, and, the classification
11 of this particular class was arrived at.

12 First, the circumvention of the legislative
13 process.

14 Minimum-wage increases have traditionally
15 been implemented through legislation, approved by
16 the State Legislature, signed into law by the
17 governor.

18 In this case, an unelected three-member board
19 has attempted to create a minimum wage that will not
20 apply to all workers, or even a single occupation;
21 but, rather, to workers, based upon the construct of
22 their employer, which is unheard of anywhere in the
23 history of this state, and certainly in the history
24 of this country, that we determine a minimum wage
25 based not on the skill set of the individual worker,

1 not based on the occupation of the individual
2 worker, but on the construct of their corporate
3 employer.

4 In this case, if there are 30 or more
5 franchises in more than one state, whether they are
6 working the counter, the grill, clearing tables,
7 they're entitled to that same minimum wage.

8 Under their proposal, someone working the
9 counter at McDonald's would make a different minimum
10 wage than a person doing the exact same job at a
11 local pizza place.

12 Again, that's unprecedented.

13 Second point is the selected class.

14 At any time in the past when we've discussed
15 a wage board, or when a wage board has been
16 convened, it has always been with respect to a
17 specific occupation.

18 I think we all have a right to know why
19 fast-food workers was chosen.

20 The wage board statute specifically refers to
21 occupation, and fast-food workers, I would say, is
22 not an occupation, certainly not within that
23 definition.

24 And so I think it's incumbent upon us as a
25 committee to ask of the executive and of the

1 appointees how they arrived at that, because,
2 frankly, we have a right to know, and our
3 constituents across New York State, private business
4 or otherwise, certainly have a right to know.

5 And, lastly, the board's composition.

6 The board included the secretary/treasurer of
7 the SEIU, a labor union who has spent tens of
8 millions of dollars nationally in this campaign,
9 Fight for 15; specifically, to have the minimum wage
10 for fast-food workers raised to \$15 an hour.

11 Now, a member, an officer, from that union
12 that had made -- certainly, spent that kind of
13 money, is on that wage board; yet not a
14 representative from the food industry, or certainly
15 any of the franchisees, who are going to be affected
16 by this.

17 So we should ask why, and how they arrived at
18 that.

19 All of these questions, obviously, are
20 contingent upon our ability to have people who are
21 going to respond.

22 Today's hearings will examine those issues,
23 as well as other aspects of the overall process of
24 this fast-food wage board.

25 It will not deal, and I want to emphasize

1 this, it will not deal with the board's specific
2 recommendations, as the acting commissioner has yet
3 to rule on them and issue a wage order.

4 So I'd ask all the speakers today to remember
5 that.

6 We will, in all likelihood, and I fully
7 expect, that we will hold other hearings that
8 address those questions once the commissioner has
9 issued an order.

10 Trade associations, local business owners,
11 and a prior wage board president who holds a
12 leadership role with the ILR School at Cornell will
13 be testifying here today, and I thank each and every
14 one of you for being here.

15 I would like to note for the record that
16 Acting Commissioner of Labor Mario Musolino and the
17 three members of the fast-food wage board were all
18 invited to testify here this morning.

19 Actually, they were invited more than once.

20 They declined to participate.

21 The wage board chairman, Mayor Brown,
22 actually responded, saying that he had a prior
23 commitment today, but we did not hear from the other
24 two wage board members who were invited, and simply
25 chose not to respond.

1 I find it disturbing that they would decline
2 the Legislature's request to provide insight and
3 clarity, as well as answer questions about this
4 process.

5 It's even more troubling, given that one of
6 the major concerns about this process is that it
7 circumvented the Legislature.

8 It's a level of transparency that New York
9 citizens deserve.

10 We also extended invitation to the
11 New York State AFL/CIO to testify, but they were
12 unable to participate.

13 With that, I want to thank you again for
14 being here.

15 I want to thank the speakers for
16 participating and providing us with your insights
17 and expertise.

18 And I'll ask the members of our Committee if
19 they would like to say a few words.

20 Senator Seward.

21 SENATOR SEWARD: Thank you.

22 First of all, I want to commend you,
23 Senator Martins, as Chair of our Labor Committee in
24 the Senate, for scheduling today's hearing to
25 examine the process of the fast-food wage board of

1 2015.

2 You know, any decision, particularly as
3 important as setting a minimum wage here in
4 New York State, any decision as important as that
5 deserves to have a process that provides an
6 opportunity for full transparency, and proper and
7 appropriate input from all stakeholders.

8 And, personally, I believe that is best
9 achieved through the legislative process.

10 The legislators from all over the state, and
11 from various political parties and philosophies, all
12 coming together on behalf of the people of the state
13 of New York to make a decision based on full input
14 from all stakeholders in our state.

15 Also, I have concerns about the disruption in
16 the labor market when one segment of one part of the
17 labor force is singled out for a possible
18 minimum-wage increase, and what that means in terms
19 of disruption in the labor market in New York State.

20 There are a number of other concerns that
21 I have, and I think that this hearing today, and
22 subsequent hearings, will have an opportunity for us
23 to fully examine all of these concerns and help us
24 to move forward as our state.

25 Bottom line, we all want all workers in

1 New York State to have good-paying jobs.

2 That's not the issue.

3 It's how we get there, in terms of setting a
4 minimum wage through a transparent and -- process
5 that involves everyone. And, also, and most
6 importantly, creating the right business climate and
7 the environment in New York State so that employers
8 want to be here and want to invest here and,
9 particularly, want to invest in their workforce.

10 That's really where we need to be, and,
11 hopefully, these hearings that we commence today
12 will help us get to that point.

13 So thank you, Mr. Chairman.

14 SENATOR MARTINS: Thank you very much.

15 Senator Marchione.

16 SENATOR MARCHIONE: Thank you, Mr. Chairman.

17 I also want to express my thanks to you for
18 holding this hearing, and to everyone here who is
19 here both to listen and to testify this morning.

20 We are a state that says we're open for
21 business. You know, we are a state who constantly
22 talks about being transparent.

23 I'm a senator. I thought my job was to be
24 here, to be part of the process, to represent the
25 people from my district, from the 43rd Senate

1 District.

2 And in this instance, I don't feel that my
3 voice is being heard, or was heard.

4 And when my voice isn't being heard, my
5 businesses and the people in my area are not being
6 heard.

7 It is important that we have a process in
8 New York State that we follow; that people from our
9 districts, people who live here, can be assured is
10 the process for New York State.

11 I have heard from many of my businesses.

12 Many are confused.

13 Some of the questions I can't respond to
14 myself.

15 I have businesses that are -- that -- a
16 gentleman owns more than 30 businesses. It's
17 Stewart's, and, you sell sandwiches.

18 Does that make him fall under the parameters
19 of what we're doing?

20 I have businesses who have a franchise, where
21 there's more than thirty in the state, but they only
22 own one of those franchises.

23 So are they now having to follow these new
24 guidelines, if they're put in place, and we think
25 they are?

1 The process, as far as I'm concerned, has
2 been extremely flawed. And when the process is
3 flawed, and it's our responsibility to make sure
4 it's not, the people in the state of New York lose.

5 And I'm grateful for these hearings and the
6 opportunity to listen.

7 I am sorry that the invitations that were
8 extended to the people who are -- who have been part
9 of the process aren't here to even let us know why
10 they're doing what they're doing, and the process
11 that they used to get there, but I'm grateful that
12 you extended an invitation.

13 I'm grateful that we're trying to open up
14 this process so I feel like I can represent the
15 district that has sent me here to do that.

16 So thank you, Mr. Chairman.

17 SENATOR MARTINS: Thank you, Senator.

18 Senator Murphy.

19 SENATOR MURPHY: (Microphone turned off.)

20 Yes, first of all, I'd just like to --

21 (Microphone turned on.)

22 SENATOR MURPHY: Good. Thank you.

23 -- thank Senator Martins, the Chairman of the
24 Labor Committee, for the invitation here today.

25 And I'd like to thank the speakers for coming

1 out of their way to testify here today.

2 I am an owner of two small businesses, and
3 these -- this effect is -- could be, and will be,
4 extremely devastating to a lot of small-business
5 owners.

6 We are ranked 50th, dead last, in America
7 as a business-friendly state.

8 We have grade F for rules and regulations.
9 We have over 140,000 pages of rules and regulations
10 for small-business owners to get going here in
11 New York State.

12 This effect, this \$15 minimum wage, could
13 have a mass exodus of New York State.

14 We're trying to create business here in
15 New York State; not have it flee.

16 We've lost hundreds of thousands of people
17 over the past few years leaving New York State
18 because it's very difficult to get businesses going
19 here in New York State.

20 And, we're just looking for transparency
21 here.

22 We'd like to know how they came about this.

23 We'd like to know the three members of the
24 board that came about this, and the way they came
25 about this.

1 So I would just like to thank Senator Martins
2 for holding this hearing.

3 I'd like to thank the speakers for going out
4 of their way and coming to this hearing today.

5 I'm looking forward to hearing from you.

6 Thank you so much.

7 SENATOR MARTINS: Thank you, Senator.

8 And with that, I will call our first witness.

9 Our first witness is Linda Donahue. She was
10 the chairperson of the 2009 wage board, and a
11 director of online labor studies at The ILR School
12 at Cornell University.

13 Welcome, and thank you for being here.

14 LINDA DONAHUE: Thank you very much for the
15 invitation.

16 And, Senators, thank you for being here
17 today.

18 In 2009, then-New York State Labor
19 Commissioner M. Patricia Smith convened a
20 minimum-wage board to review the wage orders in the
21 restaurant and hotel industries.

22 That board was composed of two
23 representatives of the hospitality industry, two
24 labor representatives, and two members of the
25 general public, which I was one.

1 I was asked by Commissioner Smith to serve as
2 chair, a position I filled as a New York State
3 citizen, not as a representative of my employer.

4 My familiarity with wage boards and wage
5 orders, then, is based solely on my experience in
6 2009, at which time the members of the board were
7 provided with copies of the laws and regulations
8 pertinent to our charge, including the Minimum Wage
9 Act, the wage orders for the restaurant and hotel
10 industries, and New York State Labor Law governing
11 the payment of wages.

12 New York State Department of Labor staff were
13 freely available to answer questions and provide
14 research and other requested information.

15 Commissioner Smith charged the 2009 wage
16 board with contemplating a number of considerations
17 related to the wage orders then governing the
18 restaurant and hotel industries; most notably,
19 whether the two wage orders should be combined into
20 one.

21 Additionally a number of issues related
22 specifically to food-service workers, including
23 gratuities, meal and lodging allowances, uniforms,
24 and hours of work, were in the commissioner's
25 instructions.

1 While on the wage board, I learned that
2 the term "food-service worker," as used in the
3 Minimum Wage Act, refers specifically to employees
4 who serve food or beverage, and, who regularly
5 receive tips from customers.

6 Much of what we reviewed in 2009 dealt with
7 regulations affecting food-service workers, such as
8 tip-sharing, tip-pooling, and the calculation of
9 overtime rates.

10 The 2009 board also examined provisions that
11 applied to hospitality workers in general, including
12 regulations related to uniforms and meal and lodging
13 allowances.

14 The minimum hourly wage at the time of
15 2009 wage board was \$7.15.

16 The hourly cash wage for food-service
17 workers, those who served food or beverages who
18 regularly received tips, was \$4.60, provided that
19 the tips paid to those workers, when added to the
20 wage, would equal at least \$7.15.

21 Service workers, however, who received tips
22 had a higher wage rate than food-service workers.

23 We were asked to consider if moving toward a
24 single tipped rate was desirable.

25 As the wage board has the power to conduct

1 public hearings, the 2009 board held hearings in
2 Buffalo, Albany, and New York City.

3 Testimony at those hearings, as well as
4 written testimony submitted by interested parties,
5 helped to inform our understanding of the concerns
6 of workers, as well as industry reps.

7 Following the hearings, the board met to
8 review all information that had been gathered, and
9 eventually submitted to Commissioner Smith our
10 recommendations in accordance with her earlier
11 charge.

12 We unanimously agreed that the consolidation
13 of the hotel and restaurant wage orders into one
14 hospitality-industry wage order, and submitted
15 recommendations concerning wages paid to
16 tipped-employees; clarifying the calculation of
17 overtime rates; updating or clarifying certain
18 definitions, such as "tip-pooling," "tip-sharing,"
19 "meals," "lodging," "uniforms"; and requiring that
20 employers pay an hourly rate, rather than weekly or
21 piece-work rates, to all workers covered by the
22 hospitality wage order in order to simplify the
23 computation of overtime rates.

24 The 2009 wage board made a sincere effort to
25 streamline and clarify the provisions of the wage

1 orders under review, in accordance with the
2 Minimum Wage Act stipulation, that a wage board
3 inquire into and report and recommend adequate
4 minimum wages and regulations for any occupation or
5 occupations.

6 We were pleased that the commissioner
7 accepted the vast majority of our recommendations.

8 SENATOR MARTINS: Thank you very much.

9 You know, one of the considerations that
10 I understand of a wage board, is that you also have
11 to take into consideration those who are employed in
12 similar occupations in the area, to determine
13 whether or not there would be any impact to those
14 other occupations as you consider the group that you
15 were charged to review.

16 Was that part of your evaluation as well?

17 LINDA DONAHUE: It really wasn't. We weren't
18 asked to look at the wage rate per se.

19 So I would have to say no.

20 We looked -- I guess, let me just get
21 clarification.

22 Do you mean geographic region?

23 SENATOR MARTINS: Well, I just mean --

24 LINDA DONAHUE: Or are you talking about
25 people who work in other positions, besides

1 tipped-positions?

2 SENATOR MARTINS: Right.

3 Other positions, where, for example, if there
4 were people receiving -- employees, waiters,
5 waitresses, service workers -- working in a
6 restaurant receiving tips as part of their
7 compensation, whether they would be
8 disproportionately affected if you were to change a
9 portion of hotel and restaurant workers' salaries,
10 which is, essentially, what you were asked to do.

11 LINDA DONAHUE: Yeah, actually, in terms of
12 the provisions, some, for example -- and I may not
13 be answering your questions, but I hope I am -- for
14 example, uniforms would affect people other than
15 food-service workers; housekeepers, for example,
16 would be affected by decisions we made on the
17 definition of "a uniform," for example.

18 SENATOR MARTINS: So there were people who
19 were working, in many instances, side by side, that
20 were affected by two different orders.

21 LINDA DONAHUE: They can have been.

22 SENATOR MARTINS: And you were asked to
23 reconcile those two orders so that there would be
24 greater parity between those two groups? Whether it
25 was tipped-workers or whether it was employees of a

1 hotel, they should have a standard way of being
2 paid?

3 I guess that was the question for your wage
4 board?

5 LINDA DONAHUE: I believe all of the
6 occupations, and, again, this was six years ago, but
7 I'm pretty sure that all the occupations we dealt
8 with were tipped-workers. And I don't recall us
9 evaluating the impact on any non-tipped workers.

10 I just don't recall that we did.

11 SENATOR MARTINS: Okay.

12 The members of the board who were appointed,
13 you were a citizen member of the board, there was
14 another citizen member of the board --

15 LINDA DONAHUE: Correct.

16 SENATOR MARTINS: -- but there were two
17 members that were representatives of the affected
18 industry. Right?

19 LINDA DONAHUE: Right.

20 SENATOR MARTINS: What was -- who were they,
21 and how were they representative of the industry?

22 LINDA DONAHUE: One of them was a
23 representative of the restaurant industry, and the
24 other was a representative of the hotel industry.

25 SENATOR MARTINS: So people who were

1 intimately familiar with the industries that were
2 being discussed?

3 LINDA DONAHUE: Indeed they were.

4 SENATOR MARTINS: Okay.

5 I appreciate that.

6 Senator?

7 SENATOR MURPHY: Yeah, first of all, thank
8 you so much for being here today.

9 I understand you -- you know, your board was
10 made up of approximately six people?

11 LINDA DONAHUE: Uh-huh.

12 SENATOR MURPHY: And I commend you on
13 actually getting people that have skin in the game,
14 that actually know what they're talking about.

15 I'm curious to find out where we are with our
16 wage board here, about what kind of skin in the game
17 there is for them, because there's no better person
18 to find out what's going on than the person who's in
19 the trenches.

20 And I thank you for allowing your hospitality
21 and the restaurateurs.

22 My family, actually, has a restaurant, and
23 we're very concerned about this, extremely concerned
24 about this.

25 And it's one of those things that

1 transparency is what I believe in, and I think we
2 all believe in this, to let the people know what's
3 actually going on so they have an idea of what
4 they're getting themselves into.

5 And I commend you on actually having a board
6 member of six, and not three in the background.

7 Thank you.

8 LINDA DONAHUE: Yeah, well, I would like to
9 take personal credit for that, but I really can't.

10 The commissioner selected the members of the
11 board.

12 Thank you.

13 SENATOR MARTINS: Senator Marchione.

14 SENATOR MARCHIONE: I just have a comment.

15 You know, listening to what your board did,
16 it certainly doesn't sound like you looked at
17 tip-wages and -workers who worked for a mom-and-pop
18 organization differently than you looked at
19 tip-wages that worked at Olive Garden.

20 You looked at tip-wage workers with parity
21 across the board, and I think that's a reasonable
22 process to follow.

23 In comparison, we're looking at, you know,
24 minimum-wage workers now that, if they work in
25 McDonald's are treated differently than minimum-wage

1 workers who work in the mom-and-pop.

2 And just as a statement, I just think that's
3 patently unfair.

4 Thank you, Mr. Chair.

5 SENATOR MARTINS: Thank you, Senator.

6 LINDA DONAHUE: Thank you.

7 SENATOR SEWARD: I have no questions.

8 SENATOR MARTINS: Thank you.

9 You know, I appreciate you being here,
10 because it gives us context of a prior wage board
11 that, frankly, stayed within the parameters of the
12 wage law.

13 The law's there, it's rather specific. It
14 calls for certain parameters, you have certain
15 guidelines, you stay within those guidelines, and
16 you come out with a conclusion on the far end.

17 And the process has worked since the 1930s,
18 since this wage act went into effect.

19 This particular wage board that we're
20 discussing today, not yours, seems to have gone off
21 the rails, or outside of those guides, that were
22 there for so many years, for so many boards prior.

23 And, so, your experience with the wage board
24 is very telling, and I appreciate you being here.

25 Thank you very much.

1 LINDA DONAHUE: Thank you again.

2 SENATOR MARTINS: Next up we have,
3 Mr. Angelo Amador, who is senior vice president and
4 regulatory counsel for the National Restaurant
5 Association, as well as Ms. Melissa Fleischut, the
6 president of the New York State Restaurant
7 Association.

8 Welcome, good morning, and thank you both
9 very much for being here.

10 We have received copies of your testimony.

11 Which one of you would like to go first?

12 Ladies first.

13 Thank you.

14 MELISSA FLEISCHUT: Thank you,
15 Senator Martins, and members of the Committee, for
16 giving us the opportunity to be here and speak
17 today.

18 My name is Melissa Fleischut. I am president
19 and CEO of the New York State Restaurant
20 Association, and have been since September of 2013.

21 During my tenure as CEO, I have lived through
22 two wage boards already.

23 And prior to that time, I have been with the
24 New York State Restaurant Association for 15 years,
25 and was able to view and testify at various other

1 wage boards as well.

2 So, hopefully, my experience there as well
3 could be helpful.

4 The New York State Restaurant Association
5 represents the restaurant industry throughout the
6 state. We are the largest state restaurant
7 association in New York.

8 And on behalf of our more than 2,000 members,
9 and thousands more restaurants across the states,
10 and in your districts, we're grateful to be here,
11 and submit the following comments on the fast-food
12 wage board process.

13 Under New York State law there are two types
14 of wage boards, as you have already addressed.

15 One is often called, and is, in fact,
16 required to be called, within six months of a
17 statutory minimum-wage increase by the Legislature.

18 This wage board investigates wages of
19 fast-food workers, and is detailed in Section 2 of
20 the New York Labor Law, Section 653.

21 Recently, this type of wage board was called
22 to investigate the adequacy of the cash wage for
23 tipped-employees, and, ultimately, recommended a
24 50 percent increase to the cash wage, from \$5 an
25 hour, to \$7.50 an hour, if tips equaled at

1 least \$1.50 an hour, bringing them up to the
2 \$9.00 statutory minimum wage as of December 31st
3 of this year.

4 The second is outlined in Section 1 of
5 New York Labor Law, Section 653, and has never been
6 used to create a higher minimum wage for one sector
7 of a single industry.

8 This is the section of law that Acting
9 Commissioner Mario Musolino and Governor Cuomo used
10 to form the most recent fast-food wage board.

11 It states, "The commissioner shall have power
12 on his own motion to cause an investigation to be
13 made of the wages being paid to persons employed in
14 any occupation or occupations, to ascertain whether
15 the minimum wages established in accordance with
16 provisions of this article are sufficient to provide
17 adequate maintenance and to protect the health of
18 the persons employed in such occupation or
19 occupations."

20 The acting commissioner did not on his own
21 motion cause an investigation.

22 He was instructed to do so by Governor Cuomo
23 who holds significant leverage over the acting
24 commissioner because the Governor has the option of
25 appointing him to be the commissioner of labor or to

1 seek someone else for the position.

2 We know Governor Cuomo instructed the acting
3 commissioner to form the fast-food wage board
4 because he stated so in a May 6, 2015, opinion
5 editorial in "The New York Times," in which he said,
6 "I am directing the commissioner to impanel such a
7 board to exam the minimum wage in the fast-food
8 industry."

9 Furthermore, New York State statute allows
10 the acting commissioner to call such a wage board
11 for an occupation or occupations.

12 "Fast-food worker" has never been a defined
13 occupation in New York State law.

14 The wage board itself created this
15 distinction, and in that act, took on the role of
16 the Legislature to set policy.

17 Nowhere in the statute is the acting
18 commissioner or the Governor given the authority to
19 create an occupation to regulate without legislative
20 action.

21 There have long been distinctions in
22 New York State law for food-service workers who
23 receive tips, and wage boards are often improperly
24 assembled to determine what regulation should be for
25 this sector of employees.

1 The reason the regulations for these workers
2 are set outside of the normal process is that they
3 are paid differently; namely, through tips, and
4 regulating them requires distinct knowledge of how
5 the industry operates, so these wage boards include
6 industry and employee representation.

7 This was not the case for the fast-food wage
8 board.

9 The fast-food wage board did not include
10 proper or fair representation from the restaurant
11 industry.

12 Under Section 655 of the Labor Law, the wage
13 board requires that the board have equal
14 representation from business groups, employee
15 groups, and the public, and that representatives
16 must be selected in, quote, so far as practicable,
17 from nominations submitted by employers and
18 employees in such occupation or occupations.

19 As the largest and only statewide restaurant
20 association, it would have been quite practicable,
21 in our opinion, to call, e-mail, write, fax, tweet,
22 or even send us a Facebook message, asking us if we
23 would be willing to serve on the wage board.

24 We would have happily obliged, and provided
25 valuable insight that was sorely missed from the

1 process, or, we would have been pleased to recommend
2 a qualified restaurant owner to serve in this
3 capacity.

4 The business representative was Kevin Ryan,
5 the owner of a web company whose background is in
6 fashion and technology, and he could not have
7 possibly properly represented the restaurant
8 industry and its interests because he has no
9 experience or stake in the business.

10 Not one member of the board had any
11 experience in the restaurant industry, and all three
12 publicly supported a higher minimum-wage increase
13 before the process even began.

14 From the beginning, the association decried
15 these actions as unfair, and correctly predicted
16 they would lead to a biased decision and bad public
17 policy.

18 Furthermore, during the public hearings,
19 restaurant owners were not given a fair shake at
20 testifying.

21 Labor groups bussed in large numbers of
22 people to intimidate and heckle anyone who testified
23 against a \$15 minimum wage.

24 The association had several members attend
25 the hearings, but after seeing how business owners

1 were being treated by the crowd and the board, they
2 decided not to put their business at risk.

3 Throughout the hearings, business owners were
4 booed and jeered during their testimony, and board
5 members did little to control the crowd.

6 Also, a business owner's time was cut short
7 during the first hearing -- the final hearing in
8 Albany, something that did not happen to a single
9 other advocate for a minimum-wage increase.

10 Finally, the New York State Public Officers
11 Law, Article 7, Section 103, states that, "Any
12 proposed resolution, law, rule, regulation, policy,
13 or any amendment thereto that is scheduled to be
14 subject of a discussion by a public body during an
15 open meeting shall be made available, upon request,
16 therefore, to the extent practicable, as determined
17 by the agency or the department, prior to the
18 meeting during which the records will be discussed."

19 During the fast-food wage board's July 27,
20 2015, public meeting, the members of the board met
21 via teleconference, and voted on the final written
22 report the wage board sent to acting commissioner
23 for his approval.

24 However, the final written report that the
25 board members voted on was not available to the

1 public until late in the afternoon on Friday,
2 July 31st.

3 Thank you very much for inviting me to speak
4 today, and I would be happy to take any questions.
5 Or, if you want Mr. Amador to speak first, and then
6 take questions after, we'll be happy to do that too.

7 SENATOR MARTINS: Yes, I appreciate that.

8 We will have some questions, but, I'm going
9 to ask Mr. Amador to give us his statement, and then
10 we'll get into some of those very fine points that
11 you've presented here today.

12 MELISSA FLEISCHUT: Okay.

13 SENATOR MARTINS: Thank you.

14 Mr. Amador.

15 ANGELO AMADOR: Thank you.

16 First, thank you for the invitation to
17 testify here today.

18 I have prepared an oral statement, but by the
19 time I landed in Albany last night, I had gotten
20 plenty of e-mails, letting me know that there was
21 going to be another event in New York City today,
22 that I thought I should use some of my time to
23 address two things, in addition to the legal aspects
24 of this.

25 One is, the political nature of this.

1 You know, having the Vice President, who is
2 looking at a presidential race, bring this issue in
3 the form that they're bringing it shows that this is
4 more political than trying to come up with good
5 policy.

6 I'm going to talk about the legal rules that
7 this Legislature, with the Governor's signature, set
8 in place for a wage board, that we're not following.

9 Last night, also, when I was watching TV,
10 I was watching the local news. They had a political
11 hour, and they had a democratic senator speaking on
12 another issue. But one of the things he said about
13 oversight, and I think, you know, this is a good
14 reason to have this oversight hearing, was: Light
15 is the best disinfectant.

16 And I liked that, because, you know, none of
17 the people that were involved in this decision, they
18 were all invited, but they weren't here.

19 And I wonder, you know, why they're scared
20 off, that they decide that, only if they're
21 surrounded by loving crowds, you know, cheering
22 their names, they're not willing to speak about the
23 issue.

24 So, I wanted to digress a little bit, and
25 also because, in addition to the legal aspects,

1 I wanted to talk about the economics and the impact
2 on members and workers, you know, people that are
3 investing and mortgaging their houses and taking
4 risks, to make a better life, that are being
5 impacted by this.

6 It is important to know what this is not
7 about, and I want to also follow on what
8 Senator Seward said.

9 This is not about the wage itself. You know,
10 we're not saying that the Legislature cannot do
11 this, and we're not saying that we want people not
12 to get better wages and to move up in life.

13 You know, we all want that for our workers.

14 And -- but we think it's important that the
15 process and system that we have of checks and
16 balances is followed.

17 One thing that, you know, I did years ago,
18 I did teach state and local law, so, I had a chance
19 to review the laws in many states.

20 And I think it's interesting, also having
21 worked for a governor for 5 1/2 years, it is
22 frustrating sometimes when the Legislature doesn't
23 go your way, but that doesn't excuse trying to act
24 as they did in this case.

25 It's actually illegal, trying to act as if

1 there wasn't a Legislature.

2 There is a Legislature, let's have that
3 debate.

4 You know, we will be here, you know, the
5 New York State Restaurant Association, and others,
6 to have the debate, and to put forward economic
7 analysis and other information.

8 So, now, the Legislature in New York we know
9 has the authority to set up minimum wage.

10 They can concede that power and give that
11 power to somebody else, you know, if they so wish to
12 do so. And they have created a method, and they
13 have created a process to do that, by doing with
14 wage boards.

15 And hear -- we just heard the witness before
16 ours -- before us talk about how it was done in
17 2009, where they followed all the procedures.

18 They can have up to nine members in that wage
19 board.

20 And the reason for that number, is that they
21 want to make sure that all of the industries, all of
22 the groups impacted, are well-represented.

23 So they picked the minimum number, they start
24 with three.

25 But then when you pick the minimum number of

1 members that you can have there, they didn't follow
2 that, because it says that you have to have, as
3 Melissa just said, as much as practicable,
4 representative from the industries and from the
5 groups.

6 Now, I will even question whether the
7 representative from SEIU represents workers in the
8 fast-food sector.

9 They want to, but, I would question whether
10 they do now.

11 But putting that aside, it is clear that the
12 representative for the employers is not a
13 representative from the restaurant industry.

14 And, usually, you know, we -- I wouldn't even
15 be here today if it wasn't for the fact that they
16 are targeting companies, and they're punishing
17 New York restaurants, based on a relationship that
18 they have in name only with restaurants outside of
19 this state.

20 So, they didn't contact us either.

21 I don't if I would have been able to find out
22 on Tweeter (sic), and I don't know where my fax
23 machine is, but they certainly didn't send a letter,
24 or call, or write an e-mail, saying, Hey, you know,
25 we're doing this. Can you send us someone?

1 Either someone from our association, or we
2 would have gotten them a good member in New York
3 that owns restaurants in New York, a franchisee, to
4 be on that board to be able to give insight.

5 None of that happened.

6 Now, it is not that it's just an oversight,
7 and it's not just that this is unfair.

8 It is illegal.

9 The board, the Legislature set up this
10 process, and it must be followed, because the power
11 that the Legislature is giving away, or giving or
12 lending to somebody else, they do, after having
13 analyzed, under what circumstances, under what
14 process, would we allow for this to happen.

15 So, it is more than a big deal.

16 We think it is illegal, and in addition to
17 unfair.

18 The other very important point to bring up is
19 what -- Senator Martins, what you said earlier, and
20 what keeps coming up with the idea of occupation.

21 "Occupation" is defined as "industry created
22 or a class of work."

23 Now, I have never seen, and in all of the
24 analysis that they did, the supposedly economic
25 analysis that was done, looks at "fast-food" as

1 defined in law. It's never defined as
2 30 restaurants sharing the same name throughout the
3 country. That doesn't exist anywhere.

4 So, they are picking this at random.

5 This is not the authority that was given to
6 them, because, if not, any business would be at risk
7 of being picked like that and chosen for this kind
8 of impact.

9 Now, I'm not going to go into the details of
10 other constitutional issues.

11 I know that Jeff is going to talk about it
12 from the perspective of the franchise association.

13 But, you know, there is constitutional issues
14 when you start treating people differently, and
15 companies differently, of based on where their
16 headquartered, or based on the relationship of
17 interstate commerce.

18 But, again, I'm going to leave that aside.

19 What I do want to use some of my time for as
20 well is, to talk about the economic impact, and
21 I want to give you a story.

22 I was in Mobile, Alabama, a couple of weeks
23 ago, and I got to speak to a franchisee that owns
24 one franchise. And he used the word for a company,
25 you know, "corporate."

1 He was a big official there. You know, he
2 was moving up.

3 And I asked him, Why did you decide to own
4 your own franchise instead of continuing to be a
5 corporate employee?

6 And he said, You know, I wanted to be in
7 charge of my own destiny.

8 And I asked him, you know, How do you view
9 your franchise? How is this different?

10 He used to own three.

11 He sold one to his brother.

12 And he sold the other one -- he now only owns
13 one -- to his long-term manager, because his manager
14 wanted to have that experience.

15 He said, You know, Angelo, when I go and
16 apply for a loan, the corporation is not signing
17 that loan with me.

18 It is my house, it is my kids' savings. It
19 is all of that on the line.

20 If I do not make payroll, and I have to
21 close, the company is not going to come in. It's
22 not going to come and bail you out.

23 As a matter of fact, they're paying for what
24 he calls "a playbook."

25 We get a playbook that has proven

1 successfully in other places, and they said, If you
2 work hard and you follow this playbook, you know,
3 your chances go up.

4 So I'm paying for that playbook, and it's not
5 that they're paying me.

6 They're looking at income from companies that
7 is based, in most cases, not from sales of food in
8 New York City or anywhere else, or New York State,
9 but, real estate, lease agreements, and other things
10 as well.

11 They're making lots of money; therefore, they
12 can pay more.

13 They're not looking at this one guy that
14 mortgaged his house, that borrowed the savings that
15 he has in his 401(k) from the company, to open this
16 business.

17 That's who's getting penalized.

18 And now he's going to have a competitive
19 disadvantage because of the way this definition.

20 And, again, it's not only unfair, but it's
21 illegal.

22 And that's why, you know, we sent all of
23 these objections, but I'm sure they fell on deaf
24 ears.

25 And we're looking, and that's the reason w-

1 we are here today.

2 So, I cannot thank you enough, you know, for
3 holding this hearing, and for inviting me to
4 testify. And I hope I can answer some of your
5 questions.

6 Thank you.

7 SENATOR MARTINS: Thank you.

8 Thank you very much.

9 You know, I have seen, I'm sure we all have
10 seen, comments made.

11 Billion-dollar companies. Taxpayers
12 subsidizing billion-dollar companies. These people
13 are on public assistance. And this is going to be
14 our way of being able to elevate them away from
15 their need to rely on public assistance, by sticking
16 it to these billion-dollar companies.

17 But I, like you, have had conversations with
18 people who own franchises in my district, and they
19 own one franchise.

20 "One," for which they've gone into debt, and
21 they've put their life and risked their livelihoods
22 and their family's livelihoods as a result.

23 That billion-dollar company is not the
24 company that owns the franchise in our communities.

25 It's a community member. It's a

1 small-business owner, every bit as much as the
2 person who owns the local pizzeria in the strip mall
3 or on the corner, or the person who's just trying to
4 make ends meet.

5 So, could you speak to that?

6 Because, there has been, and along this way,
7 and in this discussion, on numerous occasions, times
8 when there have been references to these
9 billion-dollar companies.

10 And, again, for me this is a very personal
11 issue, because we're playing -- or, somebody is
12 playing politics with the ability of people to put
13 food on the table for their families.

14 Whether it's the worker, whether it's the
15 franchise owner, the small-business owner, this
16 comes down to the ability of people to provide for
17 their families, and politics has no place here.

18 So would you talk to me about the nature.

19 I know we have other witnesses who can talk
20 about franchises, but, that particular point, can
21 you speak to that?

22 ANGELO AMADOR: Yes, I think it's naive.

23 And, again, the main problem with these wage
24 boards starts from its inception.

25 There are no representative from the

1 restaurant industry, there are no representative
2 from what they even define as "fast-food," to be
3 able to explain these things to them.

4 And then they didn't want to listen
5 afterwards.

6 When they do their analysis, and the looking
7 of the profits, the looking of the profits of the
8 companies -- of the main company, the franchisor,
9 they may or may not have restaurants in New York.

10 12 percent is the average now for a lot of
11 these companies of corporate-owned restaurants.

12 It would have been smarter, and more
13 accurate, to look at the profits of the actual
14 restaurants that are being affected.

15 The profit margin in some of these
16 restaurants is 1 or 2 percent.

17 So where they're talking about billions of
18 dollars, and they make this assumption as well as,
19 where they state, Well, it's okay, because if they
20 cannot afford it, somehow, somebody's going to write
21 a big check from Oak Brook or from Seattle or from
22 Denver.

23 That's not going to happen. That's not how
24 the system works.

25 There are many different business models.

1 There are some restaurant chains that are
2 100 percent corporate-owned.

3 But it seems that the ones that they are
4 targeting are usually -- are mostly owned, at the
5 rate of 90-something percent for Burger King, for
6 example, by individuals. I mean, only one or two.

7 94 percent of the businesses being impacted
8 by this recommendation are small businesses in
9 New York State. Those are the people that are being
10 put at a competitive disadvantage.

11 SENATOR MARTINS: Thank you.

12 Any questions?

13 SENATOR MURPHY: Yeah.

14 I'd just like to thank you for coming here
15 tonight -- Angelo and Melissa, this afternoon.

16 But, you made a great point.

17 The profit margin is razor-thin. And people
18 might pass by your restaurant and say, Wow, it's
19 doing great.

20 They don't know the gray hair that's going on
21 at home, and putting food on your kids' tables, and
22 things like that, and the risk that has gone into
23 allowing that to happen.

24 Like you said, a lot of it, we want to
25 encourage people to come to New York.

1 Entrepreneurship is great. It gives them
2 freedom it. Allows them to grow.

3 That's what we're trying to encourage here.

4 Having a seat at the table, and allowing all
5 the rules, and knowing what you're getting involved
6 in, is crucial to establishing a successful
7 business.

8 And that's what America is all about, is
9 being able to come here and have the land of
10 opportunity and be able to do this.

11 And when you want to create more rules and
12 regulations, and keep stamping down on
13 small-business owners, because that's what runs
14 America, that's what runs New York State, is the
15 small-business owners. It's not the big
16 conglomerates.

17 And that's what we need to look into and take
18 care of, to be quite honest with you, is the
19 small-business owners.

20 But, to your point, the profit margin is
21 razor-, razor-thin.

22 You know, if you have one or two consecutive,
23 or three bad months, you're done.

24 Trying to make that up is tenfold, not just
25 having another good month the following month.

1 So, you know, people don't understand the
2 stress that, you know, business owners go under, the
3 gray hair that they get. The -- you know, to --
4 there's a lot that goes into it.

5 And I just appreciate you coming here and
6 testifying today.

7 ANGELO AMADOR: Thank you.

8 SENATOR MARTINS: Thank you, Senator.

9 MELISSA FLEISCHUT: Just to make the
10 Committee aware, I did want you to know, that when
11 I testified before the wage board in Albany, one of
12 the recommendations that we asked for from the wage
13 board, was to consider exempting out franchisees, if
14 they were really trying to go after corporate
15 companies and large profit-making companies.

16 First of all, that's debatable.

17 But, you know, if that's who they were really
18 targeting, that they would consider opting out and
19 leaving the franchisees out of the definition.

20 Obviously, they didn't listen, but that's
21 what we tried to do.

22 SENATOR MARTINS: Thank you.

23 Senator Seward.

24 SENATOR SEWARD: Yes, very briefly,
25 I appreciate your testimony here on behalf of the

1 restaurant association, both from the state level
2 and the national perspective you're giving us.

3 You know, I think the -- just of our first
4 two panels here today is very startling, in terms of
5 a contrast. Almost "The Tale of Two Cities."

6 The tale of two wage boards.

7 In terms of the 2009 wage board, was a broad
8 spectrum of representation on the wage board.
9 People who are directly involved in those industries
10 had a say at the table and were part of the
11 decision-making process.

12 The 2015 fast-food wage board that we're
13 discussing today, this process, you know, no
14 industry representation, very little transparency,
15 in terms of having information out, in terms of how
16 they are reaching their decisions and making their
17 recommendations.

18 And it is a stark contrast that we've seen
19 already here today, based on our testimony that
20 we've heard.

21 My question is this, and part of my concern
22 here, and perhaps Mr. Amador could best answer this,
23 you know, from the national perspective, in terms
24 of: If, in fact, this process -- this flawed
25 process is carried out to its expected conclusion,

1 the impact that that will have in terms of the image
2 of New York State, in terms of being a good place to
3 invest, in terms of fast-food restaurants, going
4 forward.

5 If you could speak to that, in terms of the
6 image that that will protect -- or, will project,
7 rather, across the country.

8 Because, it's always a concern, that if we
9 make our state less attractive, that will impact the
10 opportunities that workers have here if there's no
11 investment in new business here.

12 And, secondly, if this expected
13 recommendation is followed through, in terms of what
14 we could expect in terms of changes in the industry,
15 in terms of, rather than going into --

16 And I'm on the road a lot in my nine county
17 districts. I frequent a lot of fast-food
18 restaurants because of my schedule.

19 -- rather than walking in and dealing with a
20 person, I'm told that you can walk in and I'll have
21 to punch, you know, on a pad, making -- placing an
22 order that way, costing someone a job.

23 And that could number into thousands here in
24 New York.

25 So, if you could speak to those points, and

1 potential problems that we're seeing, because of the
2 flawed process that we've seen with this wage board.
3 And, if their recommendations are fully carried out,
4 what that would mean in the industry.

5 ANGELO AMADOR: Thank you.

6 Yes, I'll be happy to.

7 On the first one, on the message, I think
8 it's very clear, you know, when New York says
9 they're open for business, with this decision, you
10 know, it clearly shows that it's not open for all
11 businesses. It's open for some businesses.

12 And it sends the message to companies that
13 follow the model, you know, of creating a playbook
14 that is usual in other places, that they're not
15 welcome. Their business and their business model is
16 not welcome in New York State.

17 Again, because this is creating a competitive
18 disadvantage towards these kind of businesses.

19 And it actually ties in with, what do we
20 expect?

21 The preliminary economic analysis, that
22 I included as part of the record in my testimony,
23 shows that there will be an increase in prices.

24 And one thing that is seldomly discussed is,
25 when fast-food restaurants raise prices, you know,

1 it usually impacts the people lower in the economic
2 ladder than others, you know, so it's going to have
3 an impact on them.

4 Number two: It's going to have an impact on
5 employment.

6 A large majority of them says they're going
7 to have to do more with less -- less of a workforce.

8 Automation is something that is coming. It
9 will probably come faster to New York State than
10 other states because of this.

11 And, again, you know, this is something that,
12 my first job, you know, was as a janitor. But then
13 I worked in the food-service industry, and I'm very
14 thankful for that. It taught me a lot of things
15 that I was able to carry through my career.

16 We should have those first steps in the
17 ladder, to be able to move up.

18 A lot of those are going to go away,
19 overtaken by automation, technology, and others,
20 because the investment; otherwise, you cannot do it.

21 But even more striking from the preliminary
22 report and the surveys that we did is, 27 percent of
23 the restaurants surveyed said, you know, they're
24 going to have to close. They will not be able to
25 manage it.

1 There are restaurants having a profit margin
2 of 7, 8 percent. There are some that have a profit
3 margin of 1 or 2 percent.

4 Those that are on the edge, and they're
5 barely making it, they are going to have to close.

6 So, the impact, it's not just one thing. You
7 know, it's what it triggers down the road, in less
8 jobs, in more automation, and a number of other
9 things.

10 Sure, some people will benefit.

11 One of the things that strikes me from the
12 report, is ignoring the fact that, while some people
13 will benefit, that person that was making \$14 an
14 hour is making 15, people will be hurt by it.

15 The CBO (the Congressional Budget Office),
16 when they looked at 10.10, they didn't look at 15,
17 and they didn't look at 15 on one sector of the
18 industry only, and what impact it would have on that
19 industry.

20 They looked at 10.10 nationwide, and they
21 said about a million jobs could be lost if we go to
22 10.10.

23 For -- then this board of three individuals,
24 none of which with an economic background, to say,
25 Hey, you know, we've looked at all these studies,

1 and we concluded no one will be hurt. This is going
2 to be great for everybody. This is even going to be
3 great for the companies.

4 That's actually in their own report.

5 It's outrageous when all economists --
6 Democrats, Republicans, Liberal -- will say, there
7 is an impact.

8 The question is, whether you want to deal
9 with that impact or not.

10 And I think, for this industry, the message
11 that is sent, which is a negative one, "We do not
12 want you here," is clearly the message they're
13 saying, "We do not welcome you here."

14 And then the next one is: People will lose
15 their jobs because of this.

16 There's no other way to go about it.

17 If something costs more, you buy less of it.
18 That is just basic economics.

19 So even, you know, if they didn't have an
20 economist, they didn't have a member of our
21 industry, but anybody else would have been able to
22 even explain those basics if they were willing to
23 listen, which, in my experience, they're clearly
24 not.

25 SENATOR MARTINS: Thank you.

1 SENATOR MURPHY: Economics 101.

2 ANGELO AMADOR: 101. Pre-econ.

3 SENATOR MARTINS: A question for Melissa.

4 You know, if you have two -- let's say, two
5 ice cream shops, side by side.

6 MELISSA FLEISCHUT: Okay.

7 SENATOR MARTINS: Let's say one of them is a
8 franchise, and the other one is not.

9 If this were to go forward, and if the
10 commissioner issues an order imposing the
11 requirements or recommendations of the wage board,
12 one of those ice cream shops is going to have a
13 significant disadvantage to the other.

14 Now, they're both individually owned, whether
15 it's a franchise or whether it was owned by somebody
16 and founded by them themselves, but one of them's
17 going to pay their workers, literally, twice as
18 much, or almost twice as much, as the other.

19 And if we understand business, your expenses,
20 especially in food, it's labor, food, and then your
21 administrative expenses to oversee, insurance and
22 the like.

23 One of those pieces goes up that much, what
24 does that do in terms of just fairness in the
25 industry?

1 These are two people who own two businesses,
2 side by side, except one of them happens to have the
3 name of, you know, a national franchise or
4 multi-state franchise on it, but it's still owned by
5 that individual.

6 What's the effect?

7 MELISSA FLEISCHUT: Well, I think it's
8 interesting, in our conversations around the state
9 with our members, what they have talked about and
10 what they have said is, both ice cream-parlor owners
11 are scared, and they're scared for different
12 reasons.

13 So, the franchisee is concerned that he is
14 not going to be able to continue to make money off
15 of his business the way he used to, that he's not
16 going to be able to hire people the way he used to
17 and bring jobs into his community and support his
18 community locally the way he used to.

19 The independent ice cream-parlor owner next
20 door is afraid that his people are going to walk
21 across the street and go work for the other
22 ice cream parlor.

23 So that's going to be increased pressure on
24 them to raise prices, and to raise wages as well,
25 and compete for those dollars.

1 Now, the franchisee is going to tell you, I'm
2 not going to be able to hire anybody else, because
3 my wages are going to be so expensive, that I'm not
4 going to be providing jobs like I used to be, so
5 that they're not going to have a great opportunity.

6 So maybe, you know, it's going to impact both
7 ice cream-parlor owners, I think, significantly.

8 And the labor market is going to be very,
9 very difficult for the restaurant industry to find
10 qualified people willing to work throughout the
11 industry in all these positions.

12 If franchisees end up going automation, as
13 we're starting to see already in the airports and
14 some of the chain restaurants, I mean, if they move
15 towards the tablet situation, where you can order
16 through your tablet and you don't need to have a
17 person present, taking your order, there is going to
18 be an elimination of jobs in that sector.

19 And how that plays out for the rest of the
20 industry is going to be fascinating.

21 Not good, but fascinating.

22 SENATOR MARTINS: No, no, and the clarity,
23 and of the point that Senator Marchione made
24 earlier, you know, if you own a business that has
25 multiple franchises, more than thirty, and you're

1 selling -- you're making sandwiches and selling them
2 across the counter.

3 I mean, you can walk into a 7-eleven today
4 and, if you want, get something to eat while you
5 pick up, you know, a pack of gum.

6 You can pick up a sandwich. You can pre-pay
7 for food across a counter.

8 The breadth and scope of what we're talking,
9 we keep talking about McDonald's and, you know,
10 those types of fast-food restaurants, but where does
11 it end?

12 You know, does it include Stewart's?

13 Doesn't include 7-Eleven?

14 Does it include things that we do not
15 traditionally think of as a fast-food franchise, but
16 does meet the definition, as broadly as they have
17 placed it here, which can lead to some very
18 difficult, very difficult, results.

19 Can you speak to that?

20 MELISSA FLEISCHUT: Well, I would bet that
21 there are restaurants owners in all of your
22 districts that would talk to you about how the
23 definition of a "restaurant," and what that means,
24 has expanded greatly.

25 So competition in the marketplace is fierce.

1 Families are busy, and they tend to grab food
2 when they can, on the run, between practices and
3 ballet and everything else going on these days.

4 We certainly understand that, and, we're not
5 against competition. We don't, you know, worry
6 about the expansion of the restaurant industry in
7 terms of more people coming in.

8 We welcome it, if they're able under the
9 owner's regulations that they face.

10 But, I think the problem that we're seeing is
11 that this is going to make it significantly
12 difficult for them to continue to operate in that
13 environment.

14 And, this definition is extremely broad, and
15 does bring in what we would consider to be food
16 prepared -- you know, places that are preparing food
17 for sure.

18 So I don't know that the line even that they
19 gave us, with the, you know, Well, we think these
20 people are in, and we think these people are out,
21 I mean, I don't think that was particularly clear to
22 us either, from the restaurant association's
23 standpoint, as to why some of those people were in
24 and why some of those people were out.

25 And, creating this new definition that has

1 never previously existed has to have unintended
2 consequences.

3 From our perspective, in reading the
4 definition, it brought in a whole group of people
5 that maybe they didn't intend to include, but
6 I would argue they they're in.

7 SENATOR MARTINS: And that's why we have a
8 legislative process, and that's why we have
9 hearings, and that's why we have discussions, and
10 that's why we have the kind of transparency and
11 oversight that prevents that from happening, as I am
12 afraid, you know, this may lead to.

13 So, I thank you both for your testimony.

14 I appreciate it, very helpful.

15 Thank you.

16 ANGELO AMADOR: Thank you very much.

17 SENATOR MARTINS: You know, I'm going to go
18 slightly out of order for our next witness.

19 We have a witness here who is an owner of an
20 ice cream shop. He owns a Ben & Jerry's in
21 Saratoga Springs, Mr. Pat Pipino.

22 Mr. Pipino, if you could join us. I know
23 that you have a perspective on this, and I know you
24 have a place you need to get to, and I wanted to
25 accommodate you as best as possible. And, my

1 colleague here to my left would be remiss if we
2 didn't call you and allow you to get going.

3 So, thank you for being here, sir.

4 PATRICK PIPINO: Thank you.

5 Mr. Chairman, members of the Committee, thank
6 you.

7 Thank you for this opportunity to speak.

8 I am truly honored to be here.

9 I have a prepared statement that I want to
10 read, but I'd like to go off script for just a
11 couple of moments, so that I can put a -- kind of a
12 human face on this, because I think it's very
13 important to see where I've come from, and my
14 relationship with this legislation.

15 I've grown up in New York State my whole
16 life. I was raised in Cohoes and Troy by a single
17 mom who worked two to three jobs at a time in the
18 hospitality industry as a cook, which is not always
19 easy to be a line cook as a female.

20 My mom is a wonderful person and tough as
21 nails.

22 She raised the three of us. We grew up in
23 very humble beginnings, which is a polite way of
24 saying we were dirt-poor.

25 So I empathize, truly, with some of the

1 people that would be positively impacted by this
2 potential legislation.

3 I love the hospitality industry. It's always
4 been in my blood.

5 I started washing dishes at the Purple Pub
6 when I was 12. I followed my mom to work at the
7 Purple Pub. I got a huge promotion to the pot sink
8 after that.

9 And moved on to making pizzas, working in
10 restaurants.

11 And then, ultimately, pursuing my degree,
12 I did my two-year degree in restaurant management at
13 SUNY Morrisville; so, New York State-educated as
14 well.

15 My four-year degree in hotel reserve
16 management at RIT. Was nice enough to get an NRA
17 scholarship to help pay for that.

18 So, thank you, Angelo.

19 I then went and got an MBA at SUNY Albany
20 because I wanted to open my own business.

21 As one of the previous speakers had said,
22 I wanted to be the master of my own destiny.

23 Since then, I have had two terms as chairman
24 of the Saratoga County Convention and Tourism
25 Bureau.

1 I've been on the Ben & Jerry's Global
2 Franchise Advisory Council for two terms as well.

3 So, I have seen the hospitality industry from
4 a variety of viewpoints. It's one that I care about
5 very deeply.

6 And I love this state. I care about
7 New York State.

8 I understand that, you know, this hearing is
9 not about the \$15 an hour.

10 How I would love to discuss how dreadful
11 that's going to be in many different businesses.

12 SENATOR MARTINS: We'll bring you back.

13 PATRICK PIPINO: Yeah, well, all right.

14 [Laughter.]

15 PATRICK PIPINO: Today is about the process.

16 It was interesting hearing the perspective
17 from the previous speakers because they hit on so
18 many great points.

19 And hearing your "ice cream" example, I found
20 particularly illuminating.

21 One of my fellow franchisees once approached
22 Ben from Ben & Jerry's and said, Ben, I didn't get
23 in this business to make a lot of money, and so far
24 I've been successful.

25 Another favorite one that I've heard, because

1 I still to this day work in restaurants, when a
2 friend from my past days says, Hey, can you bartend?
3 Can you cook?

4 And I ran into Ms. Marchione at a function,
5 and she's, like, What you are doing here?

6 I still do so.

7 But one of the running gags is, How do you
8 make a small fortune in the restaurant business?
9 You start with a large fortune.

10 So, it's a very, very, very dear issue to my
11 heart.

12 So, as I said, my name is Patrick Pipino.
13 I'm the owner of Ben & Jerry's in Saratoga.

14 Thank you for allowing me to testify at this
15 hearing.

16 In my opinion, the recent report and
17 recommendations issued by the fast-food wage board
18 are severely flawed.

19 I -- actually, I have called
20 Senator Marchione's office to see if this
21 would impact me, because it doesn't define
22 "ice cream-parlors."

23 Are they fast-food workers?

24 Are they not fast-food workers?

25 Someone before me said that it was a very

1 broad definition.

2 I would say it's a very vague definition.

3 There's a distinct difference in those two
4 words.

5 I couldn't glean whether it was 30 franchises
6 countrywide, or statewide, because that, too, has an
7 impact.

8 Is ice cream even fast-food?

9 And when we do our sales tax, we have a
10 classification code. I don't think that
11 classification code even applies.

12 That said, this is not just about me.

13 This is all of my fellow restaurateurs, that,
14 you know, there's a belief out there that we are
15 fat-cats that live high on the hog.

16 And to anyone that says that, I would be more
17 than happy to share my wage data with them.

18 You know, when I bought the business back in
19 '96, after working my way up as a manager while
20 pursuing my MBA, I paid myself, and this is kind of
21 illuminating, \$15 an hour, because that was all the
22 financial model could support.

23 And the previous speaker talked about, you
24 know, razor-thin margins.

25 Franchisees, we get the benefit of a national

1 name behind us. And I love selling Ben & Jerry's.
2 You know, we are a national company.

3 The downside is, we pay franchise fees, we
4 pay combination ad fees; all kinds of fees that the
5 mom-and-pop that's next to us doesn't have to pay.

6 To then hit us with yet another, by doubling
7 our wage costs.

8 Senator, you had said it first: You've got
9 your labor. You pay your cost-to-goods, or, your
10 food costs or liquor costs. And then you pay your
11 general administrative, which is rent, insurance,
12 and other things.

13 By overnight, by executive fiat, with the
14 stroke of a pen, our financial model can go to pot,
15 and I will be completely disincentivized because our
16 model doesn't support doubling our wages.

17 If our current wage structure, which is about
18 21 percent to 24 percent, doubles to 48 or 50,
19 I will either be out of business, or I will -- the
20 margins will be so thin, I can make more money
21 working elsewhere and I will leave the business.

22 I'm a single-unit franchise owner. I'm not a
23 fat-cat.

24 I'm not Starbucks.

25 I'm not corporate McDonald's.

1 And there's another element that needs to be
2 discussed: Different franchises have different
3 structures.

4 Starbucks are all corporate-owned.

5 I have friends that own McDonald's
6 franchises. They don't own 30 of them, or 50, or
7 80. They're either single or a couple of units.

8 That's very, very important.

9 Senator Murphy, you discussed how we're the
10 50th-ranked for business in the United States.

11 That, too, is illuminating.

12 I love this state, I want to stay here.

13 But I can't tell you how many of my friends
14 speak all the time about how they can't wait to get
15 out of New York State, or they were so glad they got
16 out of New York State, because they've been killed
17 with regulations, killed with taxes, and killed, for
18 lack of a better word, by the perception of the
19 three men in a room. That decisions are made by
20 three men in a room.

21 There's no transparency.

22 And, yet, when I see Governor Cuomo's ad,
23 saying, you know, We're all for business. We want
24 to bring business back; well, when I see things like
25 this, it makes me question how sincere that

1 statement is.

2 Is he paying merely a lip-service to wanting
3 business to come into New York State and to help the
4 small-business owner, or is he not?

5 The fast-food wage board was not comprised of
6 anyone from the fast-food industry.

7 It's difficult for me to understand how the
8 wage board members can impose such requirements on
9 an industry where they have no experience.

10 I would not to go a doctor that had no
11 experience. I would not let him tell me what was
12 wrong with me.

13 The fast-food wage board didn't receive any
14 testimony from business owners or employers or
15 associations that represent our business interests
16 and the interests of the employees.

17 The vast majority of witnesses that testified
18 at the fast-food wage board hearings were employees
19 solely from one sector.

20 I understand workers who cannot afford to
21 make ends meet for their family definitely deserve a
22 seat at the table.

23 My mother was one of those people.

24 I absolutely appreciate the stakeholder
25 element of this.

1 But owners deserve a stake -- a seat at the
2 table as well. We are stakeholders.

3 The State is a stalk holder.

4 And it's wonderful that we are now talking
5 about technology, and wanting to bring these
6 high-paying, good-paying jobs into New York State,
7 but, there is a whole other element of business out
8 there that I'm involved in.

9 I question whether the law allowing for the
10 convening of the wage board does not also require
11 the wage board to have someone from the industry
12 being -- as representing our interests.

13 I question that deeply.

14 Initially, my experience with members of the
15 Legislature leads me to believe that this branch of
16 government is the one that should be making this
17 decision.

18 I try not to talk bad about any governor or
19 any president, regardless of party, but I can't help
20 but think that this is the governor trying to do an
21 end-around, to use the football colloquialism.

22 The Legislature should be making this
23 decision, because it's the Legislature that has the
24 finger on the pulse of the employees and the
25 business owners and the various stakeholders that

1 make up our great state.

2 In summary:

3 I believe the process undertaken by the
4 fast-food wage board has been significantly flawed.

5 I would urge the commissioner of labor to
6 defer to the members of the Legislature when making
7 a decision this important that's going to impact
8 this many people.

9 I would also hope that they look at the
10 long-term economics of this.

11 One of the arguments that I've made on
12 Facebook or Twitter, and I know, it's almost ironic,
13 because Ben & Jerry's is usually all about, you
14 know, social movements and things, but I see both
15 sides of that as well.

16 While I may be a Ben & Jerry's franchisee, at
17 the end of the day, I need to put food on the table,
18 and I need to make the numbers work. And if it
19 doesn't pencil, you know, we can't take on further
20 debt.

21 I always love how states and the government
22 can just take on more debt to solve a cash crunch.

23 We don't get that option.

24 Our option is, go out of business.

25 SENATOR MARTINS: And lay off all your

1 workers.

2 PATRICK PIPINO: And lay off all our workers.

3 Which -- and that's another -- I don't
4 want -- I know this is about the process, and it's a
5 flawed process, but 95 percent of my staff are
6 between the ages of 15 and 19 years old.

7 They're going to -- if this goes through and
8 we are a part of this law, I haven't found out
9 whether we are or not, they're going to make the
10 same amount of money as a 15-year-old, that 19 years
11 ago I made by taking all the risk, working all the
12 hours, and putting this up for them.

13 And, Senator Murphy, when you talk about the
14 gray hairs, and whatnot, I can tell you about nights
15 where I threw up, or where I started crying, as a
16 grown man.

17 My wife's, like, What are you worried about?

18 I'm, like, I'm worried about whether we can
19 feed the girls.

20 You know, thank God my wife is a teacher.

21 And there's another favorite joke of, What is
22 entrepreneurship? Entrepreneurship is being married
23 to someone that has benefits.

24 [Laughter.]

25 PATRICK PIPINO: With that, I'd just like to

1 thank all of you for convening this Committee, and
2 for allowing me to speak.

3 Thank you.

4 SENATOR MARTINS: Thank you very much.

5 I know we have a few questions.

6 I am going to defer, first, to my colleague,
7 Senator Marchione.

8 SENATOR MARCHIONE: Thank you, Chairman.

9 Pat, thank you so much for being here.

10 You know, yes, you have a franchise; but,
11 yes, you own only one Ben & Jerry's.

12 And I am certain that it's very difficult for
13 you to get out of Saratoga Springs during this time
14 to be here with us, taking time from your business
15 and your family.

16 And I just want you to know how much
17 I appreciate that.

18 PATRICK PIPINO: The pleasure really is mine.

19 SENATOR MURPHY: Thank you.

20 You know, I met Pat many, many years ago in a
21 previous position, two or three previous positions
22 for me, ago. And I met Pat as a community member,
23 when I was bringing in some ice cream for clerks of
24 the board, way back in the '90s.

25 SENATOR SEWARD: New York State town clerks.

1 SENATOR MURPHY: A long, long time ago.

2 And I called Pat, and he came for free, and
3 he helped our group.

4 That's the community-minded local business.

5 That's not -- and there's nothing wrong with
6 being a franchisee who owns thirty.

7 There's nothing wrong with success in our
8 country.

9 That we make it look like, if you're very
10 successful, we need to take much more from you.

11 There's nothing wrong with that, so I don't
12 mean -- I'm not saying that in this regard.

13 But Pat is a businessman in Saratoga Springs
14 who is so community-minded, such a part of the
15 community, and, a small-business owner that should
16 not, if he is in this situation, should not be being
17 put into this situation.

18 No one should be being put into this
19 situation of the haves and the have-nots.

20 And I'm grateful for you to be here, Pat, and
21 for you sharing your perspective on what it is to
22 own a franchise, but only own one.

23 Thank you, Pat.

24 SENATOR MARTINS: Thank you, Senator.

25 So I have a question for you.

1 PATRICK PIPINO: Shoot.

2 SENATOR MARTINS: Absolutely.

3 Well, first of all, I'll make a point.

4 If you have a question as to whether or not
5 you're in? You're in.

6 PATRICK PIPINO: Oh, super!

7 SENATOR MARTINS: Yeah.

8 But let's look at this, going back to my
9 example from before.

10 If you are a franchise that is covered under
11 this -- these recommended decisions, you're going to
12 have to pay your employees on this scale that was
13 recommended, depending on whatever the commissioner
14 decides.

15 If you disenfranchise from Ben & Jerry's, and
16 decide to open --

17 PATRICK PIPINO: I can't.

18 SENATOR MARTINS: I understand.

19 -- but let's say --

20 PATRICK PIPINO: There there's a covenant not
21 to compete that's part of our franchise agreement.

22 SENATOR MARTINS: I understand, but,
23 Mr. Pipino, I'm just suggesting that, if you did,
24 you can just simply get around the requirements of
25 this order simply by saying, You know what? I am no

1 longer Ben & Jerry's. I am going to be, you know,
2 Pat's Ice Cream, and, now, you no longer have to
3 follow that order.

4 It's inconceivable to me that an order that
5 deals with issues of this magnitude, that have to do
6 with the viability of businesses, but, also, deal
7 with people's lives on a basic level, can be simply
8 ignored by simply changing the name of your
9 business.

10 It's impossible to think that that is good
11 public policy in this state, and it's impossible to
12 consider that.

13 And, frankly, I appreciate the perspective
14 that you bring here.

15 For me, it's always been about fairness for
16 everybody.

17 And as you said before, if you go out of
18 business, your employees also go home, and so that's
19 not the answer.

20 I really do appreciate your testimony here
21 today.

22 PATRICK PIPINO: Thank you, sir.

23 SENATOR MURPHY: Well, now that you have some
24 more gray hair, after realizing that, listen, being
25 a business owner, I feel your pain.

1 I own and operate two businesses, and, you
2 know, these things are -- like I said in my opening
3 statement, the economic impact on this is
4 devastating, and to New York State with regards to
5 people staying here and being able to, you know,
6 afford to just live here, nonetheless run a
7 business.

8 So, I feel your pain. I -- that's why I'm
9 here, to listen to you.

10 And this was about transparency, about having
11 some skin in the game, and about listening to
12 business owners, and allowing their voices to be
13 heard at the table.

14 And I believe that was not done.

15 PATRICK PIPINO: Great.

16 Thank you, sir.

17 SENATOR MARTINS: Mr. Pipino, thank you very
18 much.

19 PATRICK PIPINO: Thank you.

20 SENATOR MURPHY: Thank you, Pat.

21 SENATOR MARTINS: Next up we have
22 Mr. Jeff Hanscom, who's the director of state
23 government relations and public policy for the
24 International Franchise Association.

25 Good afternoon.

1 JEFF HANSCOM: Afternoon, at this point.

2 Chairman Martins, members of the Committee,
3 thank you very much, not only for calling this
4 hearing, but thank you for inviting us to speak
5 here. We certainly appreciate it, an invitation
6 that we did not actually receive from earlier wage
7 boards, but -- or from the wage board, I should say.

8 Just a little bit of background about the
9 International Franchise Association.

10 We're the largest and oldest organization of
11 our type in the world.

12 We represent approximately 780,000 franchise
13 establishments supporting nearly 9 million jobs and
14 \$890 billion in economic output here in the U.S.

15 That represents approximately 3 percent of
16 the U.S. GDP on any given year.

17 Franchise business in New York State,
18 specifically, is an enormous contributor, both in
19 workforce and economic impact.

20 873 brands have at least one location in
21 New York, representing over 15,000 franchise
22 establishments across the state.

23 Of those 15,000, over 8,000, "8,000," are
24 involved in the restaurant and food sector.

25 According to the data that is provided to the

1 federal trade commission, the organization charged
2 with regulating the franchise industry at the
3 national level, franchise businesses in the food and
4 restaurant sector in New York, prior to this wage
5 board, had projected a 4 1/2 percent growth rate in
6 New York, which is despite the rules and regulations
7 that are already in place.

8 A 4 1/2 percent growth rate, which is
9 actually far above the national-average projected
10 growth rate within the franchise industry of
11 2.3 percent.

12 So here in New York we are already -- we were
13 on the right track, 4 1/2 percent, which, I guess,
14 it is almost double the national growth rate within
15 the franchise-restaurant industry.

16 The vast majority of quick-service
17 restaurants, or, fast-food restaurants, and other
18 businesses operating within the franchise business
19 model, are owned and operated by local business
20 owners and the franchisees.

21 I'll say that again: They are owned and
22 operated by the local business owners.

23 These local business owners pay fees, pay
24 royalties; they pay for the ability to open that
25 franchise establishment. That does not come free.

1 Someone does not enter into the idea of opening a
2 national-brand fast-food restaurant on a whim.

3 It's a significant time and financial
4 decision that goes into deciding whether you want to
5 open a national-recognized quick-service restaurant
6 versus a mom-and-pop restaurant.

7 These local franchisees are legally separated
8 from their franchise, or, "parents."

9 The franchisees are responsible for the
10 hiring, the firing, the paying of wages, the
11 providing of benefits; not the parent -- not the
12 franchisor companies.

13 And I mention this because it stands in stark
14 contrast to the stated rationale, and I should say,
15 this stated rationale, for the calling of this wage
16 board, which I believe was mentioned in prior
17 testimony, was called from the top, from
18 Governor Cuomo, was directed.

19 And in an editorial -- an op-ed piece that he
20 penned for "The New York Times" earlier this summer,
21 Governor Cuomo repeatedly cited the CEO -- high CEO
22 salaries and enormous profits at various franchisor
23 corporate headquarters as the reason for convening
24 this wage board and examining the wages within this
25 industry.

1 That, in and of itself, demonstrates a
2 staggering lack of a knowledge and understanding
3 about how the franchise industry works.

4 The idea that simply because a franchisor, a
5 corporation, is making money, or a CEO is making a
6 certain salary, somehow translates that that money
7 goes down the chain to the local franchisee who owns
8 the Ben & Jerry's, who owns the Subway, is simply
9 not true.

10 It's actually the exact opposite of what
11 happens.

12 And, again, it's just a profound lack of
13 understanding from the top, down.

14 While we would certainly object to an
15 increase in the state minimum wage that targets only
16 a single portion of a single economic sector as
17 ill-advised policy that significantly interferes
18 with market forces, we believe applying the new
19 minimum wage only to businesses that are affiliated
20 with a nationwide brand is taking a step beyond the
21 limits of what state governments may permissibly
22 regulate under the U.S. Constitution and the
23 commerce clause, which I believe Mr. Amador from the
24 National Restaurant Association touched on, and kind
25 of passed the baton to me.

1 So I'll touch a little bit on our
2 commerce-clause concerns with -- as they pertain to
3 the wage board.

4 This differential minimum-wage requirement,
5 or potential differential minimum-wage requirement,
6 based solely on whether a small-business affiliates
7 with an interstate franchise network, is tantamount
8 to a tariff on interstate commerce.

9 The wage board's recommendation to increase
10 the minimum wage to whatever number it may be; in
11 this case, \$15, is the same, in substance, from the
12 view of the franchisee, if, rather than mandating
13 the payment of an additional money; \$4, in this
14 case, per employee-hour worked, it makes the
15 franchisee pay a \$4 tax.

16 Requiring a small business to pay a tax or a
17 fee based on its affiliation with an out-of-state
18 entity and interstate-business network is, to quote
19 the U.S. Supreme Court, "an example of a law
20 discriminating against interstate commerce."

21 "Tariffs and laws having the same effect
22 as -- as a tariff," the Court continued, "to have
23 long been recognized as a violation of the commerce
24 law."

25 So simply putting one business at a

1 competitive disadvantage, because of its affiliation
2 with an out-of-state network, has been held to be a
3 violation of the U.S. Constitution.

4 Such a wage increase is not only
5 discriminate -- discriminatory in its explicit
6 intent, but also in its effect.

7 By allowing, strictly, local companies to pay
8 a lower wage -- lower wage rate than similar small
9 businesses with interstate ties, the State of
10 New York will be engaging in the preservation of
11 local industry by protecting it from the rigors of
12 interstate competition; i.e., benefiting the
13 mom-and-pop establishment at the expense of a
14 business that has chosen to become affiliated with a
15 national brand.

16 And the Court described -- the Supreme Court
17 describes that as "the hallmark of the economic
18 protectionism that the commerce clause prohibits."

19 Constitutional concerns aside, there's ample
20 evidence that a dramatic increase in minimum wage
21 will have a significant and lasting negative impact
22 on the quick-service restaurant industry in
23 New York, as well as the consumers.

24 Various surveys have projected 86 percent of
25 owners were at least somewhat likely to raise their

1 product prices in response to this type of an
2 increase.

3 83 percent of those owners also indicated
4 they could reduce or would reduce employee hours in
5 response to this type of an increase.

6 Perhaps most impactful, upwards of 43 percent
7 of owners surveyed in New York said that they would
8 at least -- are somewhat likely to close their
9 business, based on the potential doubling, or almost
10 doubling, of required minimum wage.

11 If even a fraction of those restaurants were
12 to close due to an increased minimum wage, it would
13 very likely eclipse the number of new locations
14 slated to open in New York, which, again, would
15 completely roll back that "4 1/2 percent" growth
16 figure that I mentioned in the beginning.

17 The International Franchise Association
18 originally recommended to the wage board, which we
19 did submit written comments, to return -- to refrain
20 from increasing the wage for simply one section of
21 workers within one economic section.

22 However, that was clearly, or potentially,
23 not heeded.

24 We believe the arbitrary and discriminatory
25 wage increase is constitutionally dubious and a

1 clear violation of the commerce clause -- clause's
2 regulation of interstate commerce.

3 We also believe that such an action, by
4 confusing franchise small-business owners with their
5 corporate parent franchise owners, threatens to
6 increase the cost on businesses that can simply
7 cannot bear them.

8 When the competitors will continue to pay
9 lower mandatory wages, it will simply shut the
10 doors.

11 It will have a real impact on employment and
12 economic growth in New York by eliminating jobs and
13 eviscerating plans to expand additional units.

14 We strongly urge the board to maintain wages
15 equal for quick-service restaurants; and, instead,
16 allow the minimum-wage increase already passed by
17 this Legislature to continue to take effect.

18 The fast-food wage board did not consist, and
19 it has been repeatedly mentioned, did not consist of
20 a single representative, "a single representative,"
21 from the quick-service restaurant industry.

22 The International Franchise Association, in
23 our discussions with various municipalities and
24 states across the country, has repeatedly stated,
25 and repeatedly asked: We are not seeking special

1 treatment. We're only seeking the same treatment.

2 Thank you very much for having me, and

3 I would be happy to answer any questions.

4 SENATOR MARTINS: Thank you.

5 Thank you very much.

6 You know, I've always found Governor Cuomo to
7 be a bright guy.

8 And, you know, when he penned that op-ed,
9 that you referenced earlier, this summer, and he
10 included the salaries of CEOs for these national
11 corporations, I have to assume that he, as well as
12 all of us, knew full well that that wasn't the gauge
13 by which this was going to be decided; yet, there it
14 was.

15 And so, you know, that's been part of the
16 trouble, at least for me personally, in following
17 this process, is that there's a lot stuff out there
18 that simply isn't part of the discussion, shouldn't
19 be part of the discussion, because it's not true.

20 Yet, you have people in positions of
21 authority that are pushing that angle forward, when,
22 in reality, as we've seen here today, and we will
23 continue to see here from testimony today,
24 franchisees are small businesses who live in our
25 local communities, whose kids go to school with our

1 kids, and who go to mass with us on Sundays.

2 They are the same people who own other small
3 businesses, and they shouldn't be treated
4 differently.

5 And so, the more we can say that, and the
6 more we can question why a very bright individual
7 decided to pen an op-ed, let alone the paper publish
8 it, by the way, when they all knew full well that it
9 simply wasn't true, is remarkable.

10 JEFF HANSCOM: I -- obviously, we couldn't
11 agree more, as an association.

12 And I think it speaks to what Mr. Amador
13 referenced earlier, that this whole process has gone
14 off the rails from an economic examination of wages,
15 and has gone down the road of a
16 politically-motivated and politically-founded
17 examination, or, investigation, if you would want to
18 call it that.

19 I don't think there's any question that
20 "The New York Times" or Governor Cuomo did not
21 understand what they were writing or what they were
22 publishing.

23 I think they knew, and Governor Cuomo knew,
24 full well, that that argument appeals to people's
25 emotional side, but has no basis on the actual

1 business relationship or the paying of wages within
2 this specific industry.

3 SENATOR MARTINS: Any questions?

4 SENATOR MARCHIONE: Just a comment.

5 I think what, you know, I'm hearing today,
6 really, the concern that you hear is that businesses
7 are going to close. They're not going to be able to
8 keep their doors open. Or, they're going to change
9 to computerized, you know, kiosk systems, which
10 people will tell you, millennials today prefer to
11 deal with machines than people anyway.

12 There are really serious concerns.

13 The bottom line, through this process, is
14 we're going to lose jobs. And those people who may
15 have been making \$10 an hour, or \$11 an hour, are
16 not going to be employed. And people who owned
17 franchises and are supporting their families are not
18 going to be there.

19 And, for this decision to be made without
20 listening to the industry is absurd.

21 Absolutely absurd.

22 I appreciate, you know, you reinforcing what
23 the other speakers have been saying, but we're not
24 the only ones listening.

25 I mean --

1 JEFF HANSCOM: We certainly couldn't agree
2 more.

3 And I think it's -- it's important to point
4 out, again, Mr. Amador referenced it in his
5 testimony a couple of years ago, when the CBO
6 (the Congressional Budget Office) looked at
7 10.10 across the country, and estimates a range,
8 anywhere from 500,000 to a million jobs would be
9 lost.

10 And if you extrapolate 10.10 and go to a
11 potential minimum wage that's 50 percent higher than
12 that, I don't have a degree in economics, but
13 I don't think I need one to say that I think numbers
14 will be worse.

15 SENATOR MARCHIONE: And I think those are
16 always concerns that have to be addressed with what
17 we're doing. We just can't, let's guess at this,
18 let's take this decision and make it, and watch
19 people lose their jobs.

20 We deserve better in New York.

21 JEFF HANSCOM: I completely agree.

22 And it doesn't seem that those concerns or
23 those numbers were actually seriously looked at.

24 And, also, obviously, there is already a
25 statutorily-mandated increase of minimum wage that

1 is underway.

2 To not wait to see that through to the end,
3 to see what kind of impact that may have, before
4 arbitrarily jumping so much higher within -- to one
5 industry, seems irresponsible.

6 SENATOR MARCHIONE: And, I mean, we're
7 doing -- we're talking process today, but, of course
8 my thoughts always go, What about the person who's
9 not making minimum wage, where do they go?

10 JEFF HANSCOM: Well, that's a valid question.

11 Someone who may have been in a position for a
12 number of years and they've worked their way up
13 to --

14 SENATOR MARCHIONE: \$16 an hour.

15 JEFF HANSCOM: Sure.

16 And then the 19-year-old, or the 15-year-old,
17 serving ice cream for the summer, all of a sudden,
18 they're at that number. So then you automatically
19 compress, because the person who's been there for a
20 number of years and has worked their way up to 16,
21 Well, if the person -- if the 15-year-old coming in
22 for the summer is at 15, well, then I should
23 certainly be at 22.

24 Or, where does it go?

25 So, certainly, considerations that don't seem

1 to have been taken into consideration.

2 SENATOR MARCHIONE: Thank you.

3 SENATOR MURPHY: First of all, thank you for
4 being here.

5 To piggy-back off of Senator Marchione's
6 little exploit is that, you're going to have --
7 I have a few of my friends that own franchises, and
8 they're debating whether to stay in New York or go.

9 And if they do stay, people don't realize
10 that you have to pay a, I don't want to say a
11 royalty fee, but you have to pay the franchisor, you
12 know, a certain fee.

13 And if they do stay, they're going have to
14 upgrade, so it's going to be another cost just to
15 get the technology up to speed.

16 So there's so many ramifications to this
17 decision here, that I believe that should have just
18 been vetted a lot more with people, again, and I'll
19 say it over and over, that have skin in the game, so
20 to speak.

21 And I know they're extremely worried about
22 what's going to happen here, to the point where
23 they're actually looking to go to Connecticut.

24 JEFF HANSCOM: Absolutely.

25 SENATOR MURPHY: And that's only six miles

1 across.

2 And so this is to what Senator Marchione was
3 say, losing jobs.

4 And, you know, it's about economic
5 development, it's about making, you know, America
6 great again, and now making New York State open for
7 business.

8 And this is what we want to do.

9 We've got to give the people the tools to do
10 it here.

11 JEFF HANSCOM: Absolutely.

12 And it's interesting that you point that out.

13 And nowhere throughout this process, and,
14 obviously, we've followed it very closely, did we
15 see any sort of examination in which --

16 Obviously, would have been nice to have some
17 of the folks here today to answer some of these
18 questions.

19 -- never did we see any examination or
20 recognition to the facts that opening a franchise is
21 not free.

22 It's not simply a choice of, What sign do
23 I want to hang on the door?

24 There are exceedingly high costs, and ongoing
25 costs, that franchisees bear that non-franchised

1 businesses do not.

2 And that never seemed to make its way into
3 the conversation.

4 Simply, it appeared to be that it was thought
5 of: It's just simply a matter of, well, which sign
6 do I want to hang on the door? And because the
7 franchisor parent company in some far away state is,
8 that CEO is making a lot of money because I chose to
9 hang that sign on the door, me, as the local
10 business owner, I, somehow, innately have the
11 ability to pay my folks much more.

12 And that's simply a profound misunderstanding
13 and miscategorization of how the industry works.

14 SENATOR MARTINS: Mr. Hanscom, are you
15 familiar with the Fight for 15?

16 JEFF HANSCOM: Yes, I am.

17 I am, yes.

18 SENATOR MARTINS: And that Fight for 15
19 effort seems to be awfully similar to the ultimate
20 recommendations that were made by this wage board,
21 wouldn't you agree?

22 JEFF HANSCOM: "Awfully similar" would be
23 stating it lightly.

24 I would say, yes. I would say almost
25 parallel.

1 SENATOR MARTINS: Yeah, why don't you tell us
2 what your understanding is, and tell us a little bit
3 about this Fight for 15; who's behind it, and why
4 it's important to us.

5 JEFF HANSCOM: It's funded wholly by the
6 Service Employees International, or, "SEIU."

7 And I think, Senator Martins, you alluded to
8 it earlier: We're talking about an organization
9 that has spent tens of millions of dollars over the
10 course of the last couple of years making this
11 movement, pushing this movement.

12 And you saw protests in New York City earlier
13 this year, folks that were bussed in for these
14 protests.

15 Coincidentally enough, these protests were part
16 of the Fight for 15, orchestrated by the SEIU.

17 We -- we were -- you were able to ascertain
18 that some of these folks who were not, obviously,
19 local to either Manhattan, or even the state of
20 New York, at some of these demonstrations earlier
21 this year that were taking place.

22 And the vast majority of those folks who were
23 out there protesting don't work in the quick-service
24 restaurant industry.

25 They were asked on camera, whether or not

1 they worked in the quick-service restaurant
2 industry. And they don't. They were bussed in.

3 So, to think that this is a locally -- a
4 local organic movement specific to one state, to one
5 town, is simply not true.

6 SENATOR MARTINS: Well, look, I would just
7 like to ask the question, and that's why there were
8 invitations extended to this hearing.

9 I just want to ask the question, and I would
10 like somebody to answer a very simple question:

11 If this group spent that much money to
12 promote a national policy to bring \$15 wages to
13 fast-food workers, and we placed one of their
14 officers, their secretary/treasurer as a member of
15 this wage board, how do we not ask the question as
16 to what the influence was of this person and this
17 group on this effort, since the recommendations,
18 literally, mirror the efforts of this nationwide
19 effort, and the spending of, I've heard, over
20 \$30 million over the last 2 years, to promote this
21 effort?

22 Someone's got to answer that question.

23 And, frankly, the people of New York deserve
24 to know from the Governor, from the commissioner,
25 and from members of that wage board, how much that

1 influenced their decision.

2 JEFF HANSCOM: We couldn't agree more with
3 that statement.

4 SENATOR MARTINS: Thank you.

5 JEFF HANSCOM: Thank you, Senator Martins.

6 SENATOR MURPHY: Thank you.

7 JEFF HANSCOM: Thank you all very much,
8 appreciate it.

9 SENATOR MARCHIONE: Thank you.

10 SENATOR MARTINS: Next up we have
11 Mr. Ken Pokalsky, who's the vice president of the
12 Business Council for the state of New York.

13 Ken, how are you?

14 KENNETH POKALSKY: Good afternoon.

15 I'm well, thank you.

16 Thanks for the invitation.

17 Mr. Chairman, Senator, Senator Marchione,
18 I appreciate the opportunity to be here on behalf of
19 the Business Council today.

20 The Business Council followed closely the
21 proceedings of the fast-food wage board.

22 We did testify at the June 22nd hearing here
23 in Albany; and, yes, I was heckled and booed.

24 But what we're really interested in, we
25 represent a number of businesses who would be

1 affected by this proposal; but, also, as we're
2 seeing today, our concern that this proposal would
3 lead to a far broader proposal that would affect a
4 significant number of additional businesses.

5 So this is an issue of real concern to us.

6 And, again, I'm not -- you didn't invite us
7 to talk about the outcome of the \$15 recommendation,
8 but we are prepared to talk about a few issues of
9 concern to us, about how this process unfolded.

10 And I'm going to summarize most of this,
11 because some of these points have already been hit
12 on by previous witnesses.

13 First and foremost, the composition of the
14 wage board.

15 Section 655 of the Labor Law is pretty clear.

16 It says, "To the extent practicable, the
17 employer reps on a wage board" -- there has to be
18 employer reps -- "are to be drawn from
19 recommendations from the industry."

20 Since this wage board was wholly
21 discretionary, there's no timetable in statute, or
22 there's nothing driving this, other than the desire
23 to have the wage board, we think it was 100 percent
24 practicable to reach out to the industry and get
25 their recommendations, and have an industry rep as

1 one of the three, or one of the six -- there's
2 supposed to be equal number -- from the fast-food
3 industry.

4 And we've seen no evidence of that.

5 Obviously, the gentleman representing
6 business on the wage board is not from the industry.

7 From what I could tell, from what you heard
8 from other witnesses, he certainly was not
9 recommended by the industry affected by this.

10 Now, I can certainly imagine, with the makeup
11 of the board, its recommendations would have ended
12 up 2-to-1 had a fast-food nominee been on the board.

13 But I do think the wage board's deliberations
14 would have been far better informed, and I think
15 they would have looked at issues, I think, more
16 carefully, some of the issues I'm going to raise
17 next, if they had someone with familiarity with the
18 industry on the board.

19 So I do think the absence of an industry rep
20 was material to the outcome of this board.

21 Second, again, the process, and what the law
22 requires of this process, Section 650 of the
23 Labor Law says that these wage boards have to
24 consider whether its recommendations would
25 substantially curtail opportunities for employment

1 or earning power.

2 In other words, it has to look at the
3 economic effect of its recommendations.

4 And to do this in a meaningful way, the wage
5 board would have had to consider the finances of the
6 actual establishments that would be affected.

7 And as you've heard earlier, most of the
8 commentary, and most -- and to the extent that the
9 economics were reflected in the wage board's final
10 report, they talked about the corporate parents.

11 There was very little evidence presented or
12 discussed, that I saw, and the wage board's
13 recommendations or report didn't reflect any
14 consideration of the finances, and the financial
15 capability, of the small-business franchisees who
16 would actually be paying the elevated wages.

17 At one point, the wage board's final report
18 noted that some store owners cited low profit
19 margins.

20 But then the report, you know, really
21 dismissed those concerns, saying, Well, you can make
22 up that by the benefits of being associated with a
23 large corporate parent.

24 And without a more thorough consideration of
25 the operating costs and profits of the vast majority

1 of the fast-food establishments, which are
2 franchisees -- franchisees-owned, we don't see how
3 it would be possible for the wage board to make
4 meaningful conclusions about the impact of this
5 proposal on job opportunities.

6 Third, the wage board was impaneled to
7 recommend -- make recommendations on wages for
8 workers that prepare food and serve customers in the
9 fast-food sector.

10 Its recommendations, though, included wage
11 increases for cleaning, routine maintenance,
12 delivery, and security positions at fast-food
13 restaurants.

14 So, the recommendations go well beyond what
15 the charge to the board was.

16 Moreover, we have a number of concerns about
17 this broadening of scope.

18 It certainly belies the assertion that this
19 recommendation won't have adverse impacts, because
20 they -- at the wage board hearings, the wage board
21 members said, We're concerned that if we increase
22 wages for these types of positions that occur at
23 fast-food establishments, the owners would simply
24 contract out those jobs to lower-paid employees.

25 So I think it's pretty obvious, they

1 recognized that this would have an effect on
2 employment.

3 So that's concern number one.

4 Concern number two: It's unclear to us how
5 this would -- who, exactly, this would apply to.

6 And if these cleaning functions or routine
7 maintenance functions are performed by a third party
8 under contract, does this wage order apply to the
9 employees of the third-party contractor, to the
10 establishment owner?

11 We don't know. We haven't seen the wage
12 board or itself.

13 But, the recommendations of the wage board
14 raises a lot of concerns about how a business is
15 supposed to comply with this once it's in final
16 form.

17 But the biggest concern here is that, what
18 they recommended goes well beyond what they were
19 asked to do.

20 Fourth, again, referring to Labor Law, it
21 says -- Labor Law, Section 654, says, the wage
22 board's supposed to consider wages paid in the state
23 "for work of like or comparable character."

24 And, I don't know the extent to which they
25 did that.

1 I know they received some testimony.

2 And, by the way, as a procedural flaw here,
3 we know, if you paid -- if you watched the hearings,
4 and they were all televised, you could hear what was
5 presented orally.

6 I don't know of any mechanism by which
7 written comments were made public.

8 I've looked on their website. Written
9 comments are not posted.

10 So, to the extent which they would -- to the
11 extent to which the wage board received additional
12 testimony on these economic effects, or what have
13 you, we don't know.

14 I think, in the most regulatory settings in
15 New York State that I've involved with, you do see
16 all of the testimonies submitted, you know, posted
17 online. It's readily accessible.

18 But the wage board referred to a professor
19 from Columbia who offered evidence, that said, "The
20 work and skill required for fast-food jobs warrants
21 a substantial increase in minimum wage."

22 I would love to know what that report
23 actually said.

24 So I'd note that other reports cited by
25 various witnesses were significantly

1 mischaracterized in the wage board setting.

2 But, regardless of what this one professor's
3 study said, this really is a -- sort of a
4 comparative-worth approach, where a third party
5 comes in and says, "This is what we think is the
6 inherent value of a job," dismissing what the labor
7 market, you know, defines the true value of a job to
8 be.

9 That's always been a concern to us.

10 There's been numerous comparative-worth
11 legislative proposals considered in New York State,
12 and the Business Council's a longstanding opponent
13 of that approach.

14 Fifth, the "applicability" threshold that's
15 been raised earlier, the report says, it's going to
16 apply to establishments that are part of a franchise
17 operation with 30 or more locations nationwide, as
18 I read it.

19 The report said the wage board "gave careful
20 consideration to how smaller chains might be
21 affected by our recommendations," but really
22 provided no evidence of what was considered and what
23 those conclusions were.

24 I mean, it just strikes me as an arbitrary
25 threshold, above which you're going to pay more, and

1 below which you would be exempt.

2 So that's a real concern. We don't know how
3 they got there.

4 We do think it's an arbitrary outcome.

5 And, last, an issue that Senator Marchione
6 mentioned earlier, Mr. Pipino mentioned as well,
7 it's a little unclear as to who's going to be in and
8 out.

9 We've reached out to a number of our member
10 companies, and there's -- again, we haven't seen the
11 final wage order, the extent to which it goes into
12 details on who's in or who's out.

13 We've heard many circumstances, where, a
14 larger establishment; a large retail store, for
15 example, will have, what we'll consider, a fast-food
16 operation co-locator.

17 Sometimes that fast-food operation is owned
18 by a franchise separately.

19 A lot of times there -- that's, the franchise
20 holder, is the large retail establishment.

21 The people who work at the fast-food
22 operation are interchangeable with other people at
23 the store. They're an employee of the larger
24 company. When I need an additional cashier there,
25 the person changes from a green shirt to a red

1 shirt, and that's where they work.

2 This is going to raise some significant
3 compliance obligations -- or, compliance challenges
4 to the employer.

5 It is -- it has also been raised, there's
6 many settings now, where, and, as a matter of fact,
7 I think most grocery chains, have a place where you
8 can buy food -- prepared food, limited service. You
9 pay before you get it.

10 That's this wage board's definition of
11 "fast-food operations."

12 Are they in, or are they out?

13 I don't think they meant that, but that's
14 what the wage order seems to imply.

15 And there's any number of permutations.

16 We spoke with, we have private universities
17 in our membership. And universities, increasingly,
18 have, you know, more -- you don't just have the
19 cafeteria anymore. You have more, you know, eating
20 opportunities, eating choices, including franchised
21 operations.

22 We've heard from universities, where the
23 university's the franchise holder. Most of the
24 workers are -- their job is a part of their
25 work-study agreement.

1 Question: Are they in, or are they out?

2 So there's, you know, a hundred of these
3 permutations of how food delivery is structured
4 within an establishment.

5 We don't know how this wage -- the final
6 order is going to affect them.

7 We think there's going to be a lot of gray
8 area, and a lot of companies -- employers, at the
9 end of the day, aren't going to know, are they in or
10 are they out? And they're not going to know what to
11 do in response to this.

12 So those are some of the procedural issues we
13 had regarding the process.

14 Like I said, we were involved. We watched
15 all of them. We commented on the final wage report
16 and the extra 15-day period.

17 These were some of the issues that we raised,
18 and it remains to be seen whether the final wage
19 order reflects any of them.

20 So, appreciate the opportunity, and would be
21 happy to answer any questions that you have.

22 SENATOR MARTINS: Ken, thank you very much.

23 You know, you're spot on.

24 My daughter just started her first year in
25 college, just a few weeks ago, and --

1 KENNETH POKALSKY: Mine too.

2 SENATOR MARTINS: Congratulations.

3 -- and you go to these -- to the university,
4 and, certainly, it wasn't like when I went to
5 school. You do have all of these different
6 franchises, but you also have, intermixed in there,
7 small shops that, almost a food court, with various
8 selections.

9 KENNETH POKALSKY: Yes.

10 SENATOR MARTINS: All of them -- all of these
11 people working there are employees of the
12 university. They don't work for the individual
13 shops. They're interchangeable.

14 So who gets paid what?

15 You go on the thruway, you stop at a rest
16 stop. After -- on the thruway you have various
17 shops inside that particular rest stop.

18 You can have McDonald's, you can have, you
19 know, really, anything. We all know who's there.
20 They're all employees of management company for that
21 rest stop. They don't work for the individual
22 franchise, and so they're interchangeable.

23 Who gets paid the additional wage? Who
24 doesn't get paid for the additional wage? Who keeps
25 track of that?

1 These are all things that are meaningful.

2 And if we had gone -- or, if the Governor had
3 chosen to come through a legislative process, we
4 would have had the opportunity to properly vet those
5 issues, and ask though questions, and ask the
6 questions that came up throughout the day.

7 But he didn't.

8 KENNETH POKALSKY: Right.

9 SENATOR MARTINS: And so -- and so we're back
10 to square one.

11 And I would love to have had the opportunity,
12 obviously, to have had them here to ask them
13 directly, to clarify it, because there should be no
14 question marks.

15 The business owners of this state, the
16 citizens of this state, have an absolute right to
17 wake up tomorrow and know exactly where they stand
18 on this issue.

19 And the fact that they can't, and the fact
20 that they now have to worry about whether or not
21 someone's going to knock on their door and affect
22 them in a very negative way, is disturbing.

23 So, I appreciate the testimony.

24 I certainly appreciate the perspective.

25 Thanks for being here.

1 KENNETH POKALSKY: We spoke with employers
2 who, at a food-service establishment, have both, you
3 know, takeout and sit-down at the same place.

4 Same employees, same counter, do both things.

5 They meet the definition sometimes, including
6 maybe for one customer, of the fast-food server in
7 this wage order. And the next customer, they're
8 serving at the table.

9 I'm not quite sure how an employer like that
10 complies with this order.

11 So there's are any number of circumstances
12 like that.

13 And, so, it will be interesting to see if
14 they -- you know, how much gray area is left, and
15 how people actually would be able to comply with
16 that.

17 SENATOR MARTINS: But that goes to a basic
18 point.

19 We talk about process, and we talk about
20 appointments and who was sitting on the board, but
21 at the crux of this discussion is the definition of
22 this particular occupation, and how it was arrived
23 at, and the validity of that definition, because, if
24 the definition is improper, then any recommendation
25 that derives from that definition is improper as

1 well.

2 And so, you know, this is why this is so
3 important.

4 The opportunity to get into the details, a
5 granular review, and say, Wait a minute, this
6 doesn't work.

7 And we could talk about the sound bites and
8 play the politics and have press conferences, and
9 maybe even invite the Vice President of the
10 United States in to have his press conference.

11 But, at the end of the day, these questions
12 have to be answered, and I hope we have an
13 opportunity to do it.

14 I thank you for your testimony.

15 KENNETH POKALSKY: Thank you.

16 SENATOR MARCHIONE: Thank you.

17 SENATOR MURPHY: Quick question.

18 You had -- first of all, thank you for all
19 you do for the Business Counsel in New York State.

20 I appreciate all of your efforts. I'm there
21 with you on that.

22 Were you ever -- was the Business Council
23 ever asked to sit at the table, with the wage board?

24 SENATOR MARCHIONE: No.

25 SENATOR MURPHY: No?

1 Okay. That's all I need to know.

2 KENNETH POKALSKY: No.

3 SENATOR MURPHY: No.

4 Secondly, you mentioned that the testimony,
5 questions that you had maybe submitted, was never
6 put online for anybody, any of your questions
7 answered. Correct?

8 KENNETH POKALSKY: Yeah, my point is that,
9 people refer to you. They have a -- someone would
10 testify and say, I have a study that shows A, B,
11 and C. They would say that.

12 And I've looked, and the ones that I could
13 find, I've read. And, oftentimes, the way they were
14 characterized is very inaccurate.

15 So I would like to see if there's any actual
16 evidence supporting what they assert.

17 And my only point is that, in other settings,
18 when people submit written testimony, that gets
19 posted online.

20 This -- written testimony submitted here was
21 not.

22 SENATOR MURPHY: It was not.

23 So my point is, is that, if you do business
24 in New York State, and you need to do a "DEIS,"
25 which is a draft environmental impact statement, and

1 you want to try and get your business going, you
2 held the public hearing, and all of those questions
3 in the public hearing have to be answered, in order
4 to come to the outcome of the "FEIS," which is the
5 final environment impact statement.

6 Something as important as this, questions
7 that are being asked, weren't even given an answer.

8 WILLIAM POMPA: Yeah, the procedure's quite
9 different.

10 Thank you.

11 KENNETH POKALSKY: You're welcome.

12 SENATOR MARTINS: Thanks, Ken.

13 Next we have Mr. William Pompa.

14 Mr. Pompa is the owner of Mr. Subb
15 restaurants.

16 Sir, how are you?

17 WILLIAM POMPA: I'm great. And you?

18 SENATOR MARTINS: I'm doing well.

19 We have never met, but I have heard of you,
20 so, looking forward to your testimony.

21 WILLIAM POMPA: I have given you my little
22 written remarks, but, you know, after listening to
23 everybody today, talking, I realize that this is
24 even a bigger mess than I originally thought it was.

25 I've been in the business for 44 years.

1 That's how you get gray hair.

2 [Laughter.]

3 WILLIAM POMPA: You know, this whole thing
4 that's going on with our government, starting with
5 the President, you know, making their own laws, and
6 now the Governor's trying to do the same thing, this
7 is extremely disturbing to me as, you know, both a
8 citizen of this country, as a resident of this
9 state.

10 And I'm so thankful that you're having this
11 hearing because, I just don't like what's happening.

12 You know, we shouldn't even be here today
13 talking about this, because you guys should be
14 deciding the minimum wage the proper way.

15 SENATOR MARTINS: I appreciate that.

16 WILLIAM POMPA: You know, as I mentioned,
17 I've done this. I've been an owner for 39 years,
18 worked in this business for 44. I started working
19 for minimum wage when it was \$1.85 an hour.

20 I have seen the minimum wage raised up time
21 and time and time again, and, where are we?

22 We still have -- we still have the problems
23 with people, you know, struggling with low incomes.

24 We try to do our job as business owners. We
25 try to create opportunities. We encourage people to

1 take on more responsibility, make some more money.

2 And I have some good examples of some
3 employees who, you know, started -- well, myself
4 included, I started at minimum wage, and, you know,
5 now I own the company.

6 I have managers, same thing. They started
7 working, you know, 16-, 17-year-old kid, minimum
8 wage.

9 My manager at Colonie Center has been with me
10 almost 20 years now. Even, I remember when her
11 daughter was born. Now the daughter has a child,
12 and she's a grandmother. And, you know, she's made
13 a good life for herself because she -- you know, she
14 worked at it.

15 Nobody gave her a raise. She worked.

16 We, you know -- we have a nice bonus program.
17 Her store does very well.

18 In the fourth quarter, she always makes --
19 you know, probably makes about a \$2,000 bonus just
20 in that quarter.

21 But she works, and she's done it by working.

22 And what's missing in our society, and all
23 this -- the nonsense, where you have the op-ed page,
24 and -- because McDonald's are making all of this
25 money.

1 You know, most franchisees, most little
2 businesses, they're single franchisees.

3 I had some experience at becoming a
4 franchisor. I actually tried to go in that
5 direction, and it didn't work out for me.

6 Part of the reason is, is that a lot of the
7 franchisees think they can buy a franchise and
8 they're going to get rich, and they forget they have
9 to work.

10 They have the royalty fees to worry about.
11 They have advertising fees to worry about.

12 You know, they -- and most of these little
13 businesses are going to have a tough time.

14 You know, if we do get this increase to 15,
15 and, technically, my business is exempt because
16 I don't -- I have 18 stores, but, how is it going to
17 be exempt? I'm not going to be able to get any
18 employees.

19 You know, we've always tried to be
20 competitive in our wages.

21 One -- one -- a few years back, I actually
22 did this little experiment.

23 I challenged my employees at all my stores,
24 we called it a "big-raise challenge," and I gave
25 them specific goals, to figure out how much more

1 sales we would need to do to -- so everybody could
2 have a dollar-an-hour raise.

3 And, guess what? They all got their
4 dollar-an-hour raise.

5 Unfortunately, as time has progressed, you
6 know, we've always tried to pay more than minimum.
7 And this last jump, we're stuck at -- well, for two
8 reasons:

9 You know, there is a minimum-wage tax credit
10 for students, so if you pay somebody more than
11 minimum wage, you lose that tax credit.

12 And that's just not smart business-sense.

13 And I shouldn't really tell you this, but
14 this does bother me.

15 If we have somebody we hire at, you know,
16 8.75, so we can get the minimum-wage tax credit, the
17 minute we give them a raise, the more than 8.75 an
18 hour, we lose that credit.

19 Okay?

20 And the credit is significant.

21 I believe the credit for this year is \$1.31
22 an hour.

23 Okay?

24 So if I give somebody a quarter-an-hour
25 raise, I lose the benefit of that tax credit.

1 And that's like the dumbest thing I've ever
2 seen.

3 And, you know, it really kills me because our
4 system is based on, we want people to progress, we
5 want people to stick with it.

6 We don't want to have turnover.

7 We don't want to have people -- you know,
8 constantly rehiring people.

9 All we want to do is have stability,
10 everybody make some money, everybody happy, and
11 things run smoothly.

12 And for the most part, I've been pretty
13 fortunate in my life to do that.

14 And I'm very blessed to have a real good
15 management team.

16 One of my district managers has been with me
17 36 years.

18 Okay?

19 And I'll tell you --

20 SENATOR MARTINS: That says a lot about you,
21 and about the structure of your business, that you
22 have people who have stayed with you that long.

23 WILLIAM POMPA: And my corporate staff that
24 I have, of the youngest, 10 years, 20 years. Like,
25 six or seven total people that have been with me,

1 from anywhere from twenty. And then I have some
2 managers around twenty.

3 And one of the nice things about that, it has
4 enabled me, for the past few winters, to spend my
5 winter in Florida. And I can still work out of
6 Florida, with, you know, today's technology and the
7 computers and Internet, and all that stuff.

8 But it also has given me an opportunity to
9 see what life is like in another state.

10 And I'll tell you, if I could pack up all my
11 stores and move, I would, because it's just a
12 totally different thing.

13 And what's shocking is, every other person
14 I meet in Florida, Where are you from?

15 New York.

16 New York.

17 New York.

18 It is just mind-boggling how many people have
19 left the state.

20 And a lot of it is because of -- well, you
21 know, some of the nonsense stuff.

22 Even like the wine in grocery stores.

23 You know, in Florida, you go to the grocery
24 store, you can go to drug store, you know, there's
25 wine. There's no big deal.

1 But here we've got to be so restrictive, and
2 do -- it's --

3 SENATOR MARTINS: I do appreciate that.

4 WILLIAM POMPA: You know, I'm sorry to get
5 off the subject.

6 SENATOR MARTINS: No, no, no, not at all.

7 But you know what? You raised a great point,
8 and that is:

9 Sometimes our own policies, and things that
10 we should be reevaluating our ourselves, like the
11 minimum-wage tax credit.

12 You know, for God's sake.

13 You're given a significant disincentive from
14 giving people a raise.

15 Well, that's because of a policy that we
16 have.

17 If we want to help people on the lower end of
18 the wage structure, why are we providing
19 disincentives to businesses to give people raises?

20 So, that's a positive thing.

21 And, frankly, I can tell you, we're going
22 look into it, because --

23 WILLIAM POMPA: Yeah, you know, I may have
24 hurt myself telling you that, but --

25 SENATOR MARTINS: No, no.

1 WILLIAM POMPA: -- it is wrong.

2 SENATOR MARTINS: No, what you've done is,
3 you've actually helped your employees, and you've
4 helped, probably, countless employees out there,
5 because if we have a program in place that
6 specifically pigeon-holes people to minimum wage,
7 and doesn't allow employers to give them even a
8 minimal increase, it's wrong.

9 And so we have the opportunity to go back and
10 take a look at that.

11 So I appreciate you bringing that up.

12 Thank you.

13 WILLIAM POMPA: I wish you would, because,
14 I've been trying to figure out how I can work around
15 it.

16 We've talked about, Well, maybe we tell
17 people we hire you at 8.75. And then after you work
18 so many hours, then we'll kind of retroactively give
19 you -- you know, maybe we'll split the difference.
20 We'll take half the credit, we'll give you the
21 other.

22 You know, that kind of stuff.

23 SENATOR MARTINS: Yeah, but --

24 WILLIAM POMPA: But you shouldn't have to do
25 that.

1 SENATOR MURPHY: You shouldn't have to be
2 that creative.

3 SENATOR MARTINS: Well, Mr. Pompa, I really
4 appreciate you being here today.

5 Thank you very much for your testimony.

6 Thanks for your interest.

7 I know it doesn't affect your business
8 directly, but you're coming out on behalf of the
9 industry as a whole.

10 I appreciate it.

11 WILLIAM POMPA: But I -- you know, I've been
12 involved with -- unfortunately I've involved, you
13 know, we've had people from the Business Council,
14 The Restaurant Association, and this kind of stuff.

15 And I've gotten so frustrated that I have
16 quit everybody, because I felt that nothing's being
17 done about this kind of stuff.

18 SENATOR MARTINS: Just promise me you don't
19 quit New York.

20 All right?

21 WILLIAM POMPA: Okay.

22 SENATOR MARTINS: Got it.

23 WILLIAM POMPA: I really -- and thank you for
24 inviting me here, because this has been so
25 frustrating. It really has.

1 SENATOR MARTINS: We'll get through it
2 together.

3 But I appreciate you being here.

4 WILLIAM POMPA: And, you know, if you do have
5 another hearing about the impact of minimum wage,
6 and all that, I'd be happy to do that, because we
7 would have to do a big wage -- a price increase,
8 20 percent, to cover this cost, you know.

9 SENATOR MARTINS: Thank you.

10 Thank you very much.

11 With that, I want to thank everyone for being
12 here today.

13 I want to thank everyone who testified.

14 And I want to thank everyone who took the
15 time to come here and address a very important
16 issue, and an issue that we're going to have to deal
17 with, certainly, over the next few months, and
18 I expect that we'll be dealing with as we enter into
19 new legislative session.

20 So, to everyone, thank you very much for
21 being here.

22 I do expect that we will hold other hearings
23 on this particular topic, as things develop.

24 And, stay tuned.

25 Thank you very much.

1 Have a great day.

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(Whereupon, at approximately 1:07 p.m.,
the public hearing held before the New York State
Senate Standing Committee on Codes, and the Senate
Standing Committee on Finance, concluded, and
adjourned.)

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