

Testimony of

**Michael D. Brown
United States Senator
District of Columbia**

**On Bill 22-913
Tipped Wage Workers Fairness Amendment Act of 2018
Before the Committee of the Whole
Council of the District of Columbia**

September 17, 2018

Thank you for letting me testify today about what I feel is an egregious action on the part of the Council. Since there are so many who have come forth to testify, I will not belabor my testimony but will simply read an op-ed I wrote which succinctly sums up my opinion.

Op-Ed

On Monday the DC Council will hold a hearing on a proposed bill to repeal Initiative 77, the controversial tipped-wage proposal which was overwhelmingly passed by voters in the June primary. This effort to overturn the will of the voters is outrageous. Ignoring the decision of those who cast a ballot is the ultimate form of voter suppression and is contrary to everything we fight for on Capitol Hill every day. How can we argue that Congress ignores the will of DC citizens and interferes with our right to self-government and then turn around and have our elected officials act exactly the same way? The hypocrisy here is so thick you could cut it with a knife. We have seven DC Councilmembers who are willing to treat the voters of the District with the same indifference that Congress does. The arguments they use to justify their attempted scurrilous subversion of democracy are exactly the same. In fact, two ultraconservative Republican Congressmen have proffered an amendment to block the implementation of Initiative 77, once again interfering with our right to self-govern. They use the

same old worn out excuses to justify this interference and now we have members of the Council talking to us in the same way, declaring: *“Voter turnout was too low; It’s bad legislation; The voters were confused; and We have an obligation.”* True, less than 19% of those registered voted. But these are the same people who reelected many of us and I don’t hear any councilmembers calling into doubt their own nominations on the basis of low turnout. They call it “bad legislation” and say people were “confused” ignoring the irrelevance of their opinion when weighed against the right of the voters to decide. Abraham Lincoln said it best: *“Elections belong to the people. If they decide to turn their back to the fire and burn their behinds, then they will just have to sit on their blisters.”* I voted against Initiative 77. In fact, I stood in front of polling places campaigning for reelection with a **“Vote NO #77”** button on and encouraged those who asked my opinion to vote against it. Like many others, I am disappointed in the outcome, but there is a sacred principle at stake here and it must be honored. The ultimate power in our democracy is vested in the voter. Our great nation was founded on this principle that the legitimate right to govern flows from the consent of the governed. If you ignore that consent, or lack thereof, you lose your legitimate right to rule. The issue is not whether this is the right choice or the wrong choice; it is the voters’ choice and that’s all that should matter. For many of us the outcome was disappointing, but for now we must, just as Lincoln said, “sit on our blisters.” Much of Initiative 77 doesn’t take effect until after the next election in 2020. There is plenty of time to put forth a new initiative. I will even help collect the required signatures to get it on the ballot. For now, however, we must stand up for the principles that we so often espouse and acquiesce to the will of the voters. When in doubt, we must do the right thing and in a democracy, accepting the decision of the voters is always the right thing to do.

Thank you. I am available to answer any questions.

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**TESTIMONY OF ANC 4D02 COMMISSIONER RENEE BOWSER
IN OPPOSITION TO BILL NO. B22-0913**

September 17, 2018

Good day. I am Advisory Neighborhood Commissioner Single Member District 4D02 Commissioner Renee Bowser, testifying today in my individual capacity, and a labor lawyer for more than 3 decades. I am urging DC Council to respect the will of DC voters expressed in the June 19 passage of Initiative 77. I urge the Council to reject the threats, fears, and unsubstantiated allegations of business decline and closure and job loss perpetrated by the DC restaurant industry.

DC voters engaged in fundamental democracy on June 19 when they voted to pass Initiative 77 and their vote should be respected! More DC citizens voted on Initiative 77 than voted in the Council Chair race. If we are to accept the will of the voters as to Council Chair results, there is no legitimate reason to reject the will of these same voters expressed in the passage of Initiative 77.

The restaurant industry now claims that Initiative 77 was misleading or confusing. DC law, at DC Code §1-1006.16, authorized the restaurant industry to challenge Initiative 77 at the Board of Elections and in Superior Court on the ground that it is misleading or confusing. But the Restaurant Industry filed no such challenge.

The restaurant industry claims low voter turnout justifies overturning the vote for Initiative 77. If low turnout marred the Initiative 77 vote so as to justify its repeal, that same low turnout similarly marred the vote for every candidate on the June 19 ballot.

No one knows what percentage of DC's electorate votes. Hattie Holmes is still on the voting rolls for my block and she died 16 years ago in 2002 and Hattie Holmes Senior Wellness Center is named in her honor! That means she's still counted in the percentage of DC residents who don't vote.

Tipped workers are the poorest minimum wage workers in the District of Columbia. In 2017, the District of Columbia Department of Employment Services found that "tipped occupations are lower-paid in general, and they are more susceptible to wage theft than other occupations if only for the reason that there are more possible ways for employers to withhold proper pay." Minimum Wage Impact Study, District of Columbia Department of Employment Services, Nov. 1, 2017 at 23. DOES also found that 56.6% of DC's tipped workforce made less than the minimum wage on an average in at least one week of the reference year and the agency expects the problem to increase over time because the tipped subminimum wage increases are smaller than the statutory minimum. Minimum Wage Impact Study at 25. National studies show similar levels of poverty among tipped workers as DOES found for DC workers. See, e.g., Sylvia A. Allegretto and David Cooper, Twenty-Three Years and Still Waiting for Change, Economic Policy Institute, July 10, 2014 at 3 (tipped workers have a poverty rate (12.8%) twice that of nontipped workers (6.5%)). You may want to believe the restaurant industry claims that

the tipped credit system is working and tipped workers are doing well; but the facts confirm the poverty of tipped workers based on this exploitative system borne of racism.

Enforcement will not fix the high levels of wage theft against tipped workers. DOES's findings show that the restaurant industry has the highest wage theft population in DC where the wage theft population is 25% of restaurant industry employment. Minimum Wage Impact Study, District of Columbia Department of Employment Services, Nov. 1, 2017 at 42. U.S. Department of Labor similarly found that “[t]rules for tipped workers are complicated and can be confusing for employers and employees alike. One of the most prevalent violations is the failure to keep track of employee tips and therefore the failure to ‘top up’ employees if their tips fall short of the full minimum wage.” The Impact of Raising the Minimum Wage on Women and the Importance of Ensuring a Robust Tipped Minimum Wage, White House National Economic Council, Council of Economic Advisors and Domestic Policy Council and US Department of Labor, March, 2014 at 7.

Restaurants can also exploit through required tip pooling arrangements. Neither federal or DC law limits the percentage of workers' tips that an employer can assign to a tip pool. The amendment to the federal Fair Labor Standards Act passed earlier this year allows employers who take a tip credit to impose tip pooling arrangements on tipped workers. Amendment to FLSA Section 3(m) Included in Consolidated Appropriations Act, 2018, U.S. Department of Labor Wage and Hour Division, Field Assistance Bulletin No. 2018-3, April 6, 2018. At base, the tipped credit system is an exploitative wage system. The burden is on the individual worker to report and enforce the law and that is why the levels of wage theft is so high because employers have the tools of retaliation, discrimination, and discharge. The restaurant industry has already crossed the line in telling their tipped workers that the passage of Initiative 77 will result in job loss because their statements contain a “threat of reprisal” and they are not “phrased on the basis of objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control.” Compare NLRB v. Gissel Packing Co., 395 U.S. 575, 618 (1969).

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