No. 15-958

IN THE

Supreme Court of the United States

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*,

Petitioners,

v.

CITY OF SEATTLE, WASHINGTON, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE RETAIL LITIGATION CENTER, INC., AMERICAN HOTEL & LODGING ASSOCIATION, NATIONAL RESTAURANT ASSOCIATION, ASIAN AMERICAN HOTEL OWNERS ASSOCIATION, AND HOME CARE ASSOCIATION OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES

Page

STATUTES AND OTHER AUTHORITIES

Cited Authorities

Page

Page

INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the Nation's business community, including cases addressing state and local discrimination against interstate commerce.

The Retail Litigation Center, Inc. ("RLC") is a public policy organization that identifies and engages in legal proceedings which affect the retail industry. The RLC's members include many of the country's largest and most innovative retailers. The member entities whose interests the RLC represents employ millions of people throughout the United States, provide goods and services to tens of millions more, and account for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail-industry perspectives on important legal issues, and to highlight the potential industry-wide consequences of significant pending cases.

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1. Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae*, their members, or their counsel has made a monetary contribution intended to fund the preparation or submission of this brief. Both parties have consented to the filing of this brief.

The American Hotel & Lodging Association ("AH&LA") is the sole national association representing all segments of the 1.8 million-employee U.S. lodging industry, including hotel owners, REITs, chains, franchisees, management companies, independent properties, state hotel associations, and industry suppliers. The mission of AH&LA is to be the voice of the lodging industry, its primary advocate, and an indispensable resource. AH&LA serves the lodging industry by providing representation at the national level and in government affairs, education, research, and communications. AH&LA also represents the interests of its members in litigation raising issues of widespread concern to the lodging industry.

The National Restaurant Association ("NRA") was founded in 1919 and is the nation's largest trade association that represents and supports the restaurant and foodservice industry ("the Industry") with over 500,000 member business locations. The Industry employs 13.5 million Americans in 990,000 restaurant establishments. The NRA's mission is to represent and advocate for Industry interests, primarily with national policymakers. The NRA also assists its members and the Industry by offering networking, education, and research resources and products.

The Asian American Hotel Owners Association ("AAHOA") was founded in 1989 and is the largest hotel owners association in the world. AAHOA represents more than 12,500 small business owners, who own more than 20,000 properties, amounting to more than 40% of all hotels in the United States. AAHOA members employ nearly 600,000 workers, accounting for over $9.4 billion in payroll annually. The vast majority of AAHOA members are franchisees of national hotel brands. The impact of the law at issue and the instant litigation directly impacts

the businesses and livelihoods of these franchisees. As an organization, AAHOA represents its members in matters relating to government affairs and is participating in this brief on behalf of the community of hoteliers.

The Home Care Association of America ("HCAOA") is the nation's first association for providers of private duty home care. HCAOA was founded on the principle that quality private duty home care has one model of care and that model is to employ, train, monitor, and supervise caregivers, create a plan of care for the client, and work toward a safe and secure environment for the person at home. HCAOA's purpose is to provide leadership, representation, and education for the advancement of private duty home care and provide a strong unified voice to speak to the issues of concern within the private duty home care industry.

Amici have a strong interest in this case. *Amici*'s members—which include restaurants, hotels, retailers, and countless other franchise businesses—are subject to Seattle's unprecedented minimum-wage increase. The Minimum Wage Ordinance ("Ordinance") will prohibit many of their members from hiring any person to perform any job unless they pay a wage of $15.00 per hour. The Ordinance targets many of *Amici's* members for disparate treatment because of their affiliation with out-of-state franchisors and fellow franchisees. As a result, the Ordinance likely will cause *Amici's* members significant and irreversible economic harm by causing them to, among other things, reduce their workforce, abandon plans to expand their businesses, raise prices, and/or reduce employee benefits. *Amici* therefore respectfully request that the Court grant the petition and reverse the Ninth Circuit's decision.

SUMMARY OF THE ARGUMENT

The Ordinance is extraordinary. On January 1, 2017, less than one year from now, businesses that Seattle deems to be "large" employers—those employing more than 500 people anywhere in the United States—must pay a minimum wage of $15.00 per hour. "Small" employers will be subject to that minimum wage increase in 2021. $15.00 per hour is more than double the federal minimum wage of $7.25 per hour and more than 60% higher than the State of Washington's minimum wage of $9.32 per hour, which itself is the highest in the nation. Simply stated, the Ordinance will soon prohibit countless businesses from hiring any person, regardless of that individual's skill level and experience, to perform any job unless they pay a wage of $15.00 per hour.

The Ordinance will especially harm franchisees. Not only does it impose one of the highest minimum-wage increases in the United States, but it does so by targeting franchisees for disparate treatment because of their affiliation with out-of-state franchisors and fellow franchisees. The Ordinance achieves this discriminatory purpose by declaring that "all franchisees associated with a franchisor or network of franchises with franchisees that employ more than 500 employees *in aggregate in the United States*" to be "large" employers even though these independent, locally owned and operated businesses would otherwise qualify as "small" employers under the law. Ordinance § 2(T) (emphasis added.)

In so doing, the Ordinance places franchisees at a significant disadvantage vis-á-vis their non-franchise, small business competitors. Consider the new minimum-

wage scale the Ordinance imposes on Seattle businesses over the next five years:

Year	"Large" Employer Minimum Wage (Franchisees)[2]	"Small" Employer Minimum Wage (Franchisees' Competitors)	Labor-Cost Differential
2015	$11.00	$10.00	10%
2016	$13.00	$10.50	24%
2017	$15.00	$11.00	36%
2018	$15.26	$11.50	33%
2019	$15.52	$12.00	29%

By saddling small-business franchisees with increased labor costs that non-franchised small businesses will not have to bear, the Ordinance will make it difficult—if not impracticable—for franchisees to compete with other small businesses. This is untenable as a matter of law and equity. After all, a franchisee is no different from any other small business owner. Franchisees manage every day-to-day aspect of their business, including decisions related to hiring, benefits, and salary, and must pay from their own pockets the operating costs of their businesses, such as rent, wages, taxes, and debt. Petition

2. These figures assume a 1.71% inflation rate for 2018 and 2019. Cleveland Fed Estimates of Inflation Expectations, The Federal Reserve Bank of Cleveland (April 17, 2014), https://www.clevelandfed. org/inflation-central/201406-inflation-expectations.cfm.

for Writ of Certiorari ("Pet.") 5-6. The only difference between a franchisee and any other small business is that a franchisee pays a continuing licensing fee or royalties for the use of the franchisor's brand, intellectual property, and certain services. *Id.* Those differences do not justify discrimination. A small, independently owned franchisee employing, for example, 40 people should be subject to the same implementation period for the increased minimum wage as all other small, independently owned businesses employing 40 people. Given the size of the Ordinance's minimum wage increase and its differential treatment of similarly situated businesses, based solely on their out-of-state associations, this Court should grant review.

Foremost, the Ninth Circuit misapplied this Court's precedent, particularly regarding the dormant Commerce Clause claim. The Ordinance purposefully imposes higher wage costs on Seattle franchisees because of their affiliation with other out-of-state franchisees as part of a broader franchise network. Such blatant economic protectionism—specifically designed to insulate favored local businesses from the rigors of interstate competition—is squarely barred by the dormant Commerce Clause. As Petitioners thoroughly explain, the Ninth Circuit's conclusion to the contrary is untenable.

Correcting the Ninth Circuit's decision also is vitally important to the business community. Seattle franchisees likely will suffer immeasurable harm through, among other things, the loss of goodwill and the diminution of their businesses. The Ordinance soon will increase franchisees' labor costs by more than 60% (10%-36% more than their competitors). Although such cost increases ordinarily cause economic harm, they are especially problematic here because the City of Seattle is trying to pick winners and losers among different businesses.

The irreversible competitive harm franchisees likely will suffer as a consequence of this overt discrimination warrants the Court's intervention.

Importantly, the petition raises important issues beyond the direct economic harm the Ordinance inflicts on franchisees. The Ordinance, among other things, likely will: (1) cause unemployment to rise, as franchisees lack the capital, demand, and revenue to pay every worker $15.00 per hour; (2) harm the very people it is ostensibly designed to help—low-skilled and inexperienced workers—as the jobs worth $15.00 per hour transfer to those individuals with more skill and experience; and (3) cause many of those employees fortunate enough to keep their jobs to lose their benefits and work fewer hours as businesses take other measures to offset increased labor costs. In sum, Seattle's unprecedented minimum-wage increase undermines the ability of franchisees to compete, erodes the value of their businesses, stifles Seattle's economic growth, increases un- and under-employment, and ultimately harms the very people the Ordinance is supposed to help. This Court should grant the petition.

ARGUMENT

I. The Ordinance Purposefully Discriminates Against Interstate Commerce.

The Court has long held that the Commerce Clause "embodies a negative command forbidding the States to discriminate against interstate trade." *Associated Indus. v. Lohman*, 511 U.S. 641, 646 (1994). This "dormant" Commerce Clause outlaws "economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *New Energy Co. v. Limbach*, 486 U.S.

269, 271, 273 (1988). Such state economic protectionism "violates the principle of the unitary national market by handicapping out-of-state competitors." *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 193 (1994). "Thus, where simple economic protectionism is effected by state legislation, a virtually *per se* rule of invalidity has been erected." *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). Importantly, a finding of discriminatory purpose is sufficient to strike down a state or local law under the dormant Commerce Clause. *See Bacchus Imps., Ltd. v. Dias*, 468 U.S. 263, 270 (1984) ("A finding that state legislation constitutes 'economic protectionism' may be made on the basis of *either discriminatory purpose or discriminatory effect*.") (emphasis added).

Economic protectionism is precisely what the Court confronts. To be sure, as the Ninth Circuit emphasized, the Ordinance purports to neutrally apply one rule to "large" employers and another rule to "small" employers. Petition Appendix ("Pet. App.") 7a-9a. But the Commerce Clause "is not so rigid as to be controlled by the form by which a State erects barriers to commerce." *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 201 (1994); *see Best & Co. v. Maxwell*, 311 U.S. 454, 455 (1940) ("The Commerce Clause forbids discrimination, whether forthright or ingenious."). "The crucial inquiry, therefore, must be directed to determining whether" the law "is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns[.]" *Philadelphia*, 437 U.S. at 624. The Ordinance, in other words, violates the Commerce Clause so long as the "evidence in the record demonstrates that the law has a discriminatory purpose." *S.D. Farm Bureau, Inc. v. Hazeltine*, 340 F.3d 583, 593 (8th Cir. 2003); *Family Winemakers v. Jenkins*, 592 F.3d 1, 13 (1st Cir. 2010) (same).

There is overwhelming evidence here that Seattle's disparate treatment of franchisees was motivated by a desire to insulate local businesses from having to compete against other small businesses that have out-of-state associations. Pet. at 29-33. Proponents of the Ordinance sought, for purely protectionist reasons, to create a "city dominated by independent, locally owned" companies. *Id.* at 8 (citation omitted). Seattle wanted these businesses exempt from competition from "franchises like Subway and McDonalds," which were viewed as "not very good for [the] local economy." *Id.* at 9 (citation omitted). According to Mayor Ed Murray, the Ordinance targets franchisees for disfavored treatment because of a belief they are "part of a larger, national corporate monopoly [and] that is very, very different than individual business owners." Dan Springer, *Businesses Launch Legal Challenge to Seattle's $15 Minimum Wage*, FoxNews.com (June 18, 2014).[3] In short, the Ordinance's proponents wanted there to be "fewer franchises" in Seattle because they affiliate with "extractive national chains." *Id.* at 8. Contrary to the Ninth Circuit's claim, these statements represent the view of those in the community who led the charge to impose Seattle's minimum-wage increase more rapidly on franchisees than other small business owners. Pet. 32-33.

The Ninth Circuit also held that these statements "do not show that City officials wished to discriminate against out-of-state entities, bolster in-state firms, or burden interstate commerce." Pet. App. 13a. But that conclusion is untenable. Even the district court conceded that franchisees were intentionally subject to disfavored

3. http://www.foxnews.com/politics/2014/06/18/15-minimum-wage-facing-legal-challenge-in-seattle/.

treatment vis-à-vis their local competitors because of their connection to "'corporate headquarters,' the 'corporate national entity' and the 'parent corporation.'" Pet. App. 54a. That is just another way of declaring that franchisees are being treated differently because of their association with out-of-state businesses. Pet. 24a-29a. Less than 2% of all franchises in the United States are headquartered in Washington and only .39% of franchises are headquartered in Seattle. ER 138. There can be no question, then, that franchisees are similarly situated to the many Seattle small businesses that were treated far more favorably under the Ordinance *except* for one thing: their out-of-state associations.

This is a paradigmatic example of the kind of local legislation the dormant Commerce Clause forbids. At its core, the dormant Commerce Clause forbids laws whose "object is to improve the competitive position of local economic actors, just because they are local, vis-à-vis their foreign competitors." Donald H. Regan, *The Supreme Court and State Protectionism: Making Sense of the Dormant Commerce Clause*, 84 Mich. L. Rev. 1091, 1126 (1986). This settled understanding vindicates the Framers' "purpose of preventing a State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179-80 (1995). That is what Seattle has done through the Ordinance. Seattle has forced small businesses with interstate connections to bear the brunt of an accelerated minimum-wage increase from which their intrastate competitors have been exempted simply out of protectionist zeal. The Ordinance is blatantly unconstitutional.

II. The Court Should Intervene Given The Serious Economic Harm The Ordinance Will Inflict On Businesses And The People Of Seattle.

Not only is the Ninth Circuit's ruling incorrect, but it resolved an important issue. Seattle's discriminatory minimum-wage hike likely will impose significant economic harm on small businesses just because they have an out-of-state connection. For the small business owners that participate in the franchise model, the results will be devastating. It likely will lead them to cut jobs, reduce benefits, and in some cases go out of business altogether. But these harms will not be borne by these small businesses alone, but likely will be felt more broadly. The Court's intervention is badly needed.

A. The Ordinance Likely Will Cause Economic Harm To Seattle Franchisees.

Amici's members urgently need this Court's review. The Ordinance is imposing irreversible economic damage on franchisees. On April 1, 2015, franchisees' labor costs became 10% higher than their competitors; and the wage gap will quickly rise to a 36% differential by 2017. *See supra* at 5. The irreparable economic harm franchisees are likely to suffer as a result is two-fold.

First, franchisees will be forced to make significant changes to how they run their businesses to account for this sizable increase in labor costs. "All economists agree that businesses will make changes to adapt to the higher labor costs after a minimum wage increase …. The higher costs will be passed on to someone in the long run; the only question is who." Mark Wilson, *The Negative Effects*

of Minimum Wage Laws, Policy Analysis (June 21, 2012).[4] Indeed, the Ordinance will not only increase the minimum wage; it also will require employers to increase the pay for positions of greater responsibility in order to retain a wage structure that aligns with the employees' respective responsibilities within the business. It thus will have a cascading effect across the entire labor force.

There are no good options for responding to these increased costs. Franchisees might contract their workforce, dividing jobs among fewer employees or replacing some through automation. They instead might expand more slowly, hiring fewer workers over time. Alternatively, they might raise prices, cut employee benefits, or both.

None of this is news. In a survey, nearly 70% of Seattle businesses reported that the Ordinance would cause a "big increase" in their labor costs. *See New Survey of Seattle Businesses: $15 Wage Hike Will Raise Prices, Reduce Job Opportunities, and Shut Doors*, Employment Policies Institute (June 24, 2014).[5] In turn, 44% of Seattle businesses were "very likely" to scale back employee hours; 42% were "very likely" to reduce the number of employees per shift or the staffing levels at their business; 43% were "very likely" to limit future expansion in Seattle; and 14% were "very likely" to close one or more locations. *Id*. The Ordinance, in other words, increases labor expenses, limits options for expanding, and impairs the ability of employers to hire new workers. The Ninth

4. http://www.cato.org/sites/cato.org/files/pubs/pdf/PA701.pdf.

5. http://www.epionline.org/release/new-survey-of-seattle-businesses-15-wage-hike-will-raise-prices-reduce-job-opportunities-and-shut-doors/.

Circuit thus was forced to acknowledge that "franchisees will face a higher minimum wage obligation compared to non-franchisees. Franchisees will experience higher labor costs or lose the flexibility to pay workers the wage rate required of non-franchisees. The allegations are neither conclusory nor without support in the record." Pet. App. 32a.

Second, the fact that franchisees must endure these costs for years before their competitors do compounds the economic injury the offending aspects of the Ordinance impose on them. Thus, two small, independent and locally owned Seattle businesses, both with 40 employees, will operate under very different wage scales merely because one has chosen to affiliate with an out-of-state franchisor. This is the economic equivalent of "licens[ing] one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 379, 392 (1992). To put it in blunt terms, franchisees are facing the destruction of their businesses. Even those franchisees that manage to survive are likely to hobble along as the economic advantage afforded to their non-franchise competitors grinds them down.

This is not speculation. Take the example of Lois Ko, a small business owner of a Haagen-Dazs franchise in Seattle. In November 2015, after 35 years in business, she shuttered its doors. As a local media outlet reported, "the shop's sudden closure was directly connected to Seattle's new minimum wage ordinance."[6] As Ms. Ko explained: "'I was watching the news very closely because I know

6. http://www.king5.com/story/news/local/seattle/2016/02/03/ice-cream-shop-make-sweet-return-u-district/79796392/.

how tight my margins are,' …. 'I don't have a lot of wiggle room.'" *Id.* "Ko, who is a mother of two, crunched the numbers and felt owning a franchise with about eight part-time employees was something she would soon no longer be able to afford." *Id.* Three months later, Ms. Ko reopened her ice cream shop, just under a new banner: Sweet Alchemy. Only by abandoning her association with the Haagen-Dazs franchise could Ms. Ko afford to rehire some of her employees.

It is too early to say whether Ms. Ko's new venture will succeed. Yet there is no doubt of the Ordinance's effect. It did not increase the wages of Ms. Ko's employees or bring a higher standard of living for Seattle citizens—instead, it forced Ms. Ko to abandon her preferred business model and drove an out-of-state franchise from the City.

B. The Ordinance Will Cause Lasting Harm To The People of Seattle.

The direct economic harm the Ordinance imposes on franchisees is reason enough to grant review. But the Ordinance's ripple effect is cause for heightened concern. In particular, the Ordinance likely will increase unemployment given the impact the accelerated minimum wage increase will have on Seattle franchisees. "The main finding of economic theory and empirical research over the past 70 years is that minimum wage increases tend to reduce employment. The higher the minimum wage relative to competitive-market wage levels, the greater the employment loss that occurs." Wilson, *supra*, at 6. Franchises are particularly vulnerable to this economic reality. In fact, a recent survey found that "franchise businesses are more likely to employ minimum wage workers than other businesses, and are more likely to

take offsetting steps to manage the increased labor costs." *What's in a Brand Name?*, Employment Policies Institute (Jan. 2016).[7]

With labor costs set to jump by 60% for franchisees, increased unemployment will follow. In 2007, economists David Neumark and William Wascher published a notable review of more than 100 minimum wage studies conducted since 1990. They found that "the preponderance of the evidence points to disemployment effects." David Neumark & William Wascher, *Minimum Wages and Employment*, Foundations and Trends in Microeconomics 164 (2007). Evidence of disemployment was "especially strong" for the "least-skilled groups most likely to be adversely affected by minimum wages." *Id.*

In contrast, they found "few—if any—cases where a study provides convincing evidence of positive employment effects of minimum wages." *Id.* Indeed, studies show that an ever-increasing minimum wage is not a marker of economic progress for workers. Just the opposite. As Johns Hopkins professor Steven Hanke has explained, seven European Union countries (Austria, Cyprus, Denmark, Finland, Germany, Italy, and Sweden) have no minimum wage. *See* Steven H. Hanke, *Let the Data Speak: The Truth Behind Minimum Wage Laws*, Globe Asia (Apr. 2014).[8] In those countries, the average unemployment rate is 7.9%. *Id.* But, in the 21 countries with a minimum wage, the average unemployment rate is 11.8%—almost 50% higher. *Id.*

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7. https://www.epionline.org/studies/whats-in-a-brand-name/.

8. http://mobile.sternstewartinstitute.com/files/ssco_periodical _x_artikel_hanke.pdf.

These findings are common sense. The typical retail business has countless jobs it can hire someone to do—*e.g.*, assist customers, clean and maintain the workplace, or work a register. But once the labor cost exceeds the value of that job to the business's success, the employer will have to make a staffing adjustment. More often than not, that means consolidation of job functions in fewer employees. As Scott Wolla of the Federal Reserve Bank of St. Louis has explained:

> Labor markets, like other markets, have a supply side (workers supply labor) and a demand side (employers demand labor), and their interactions result in an equilibrium price—in this case, the price paid per unit of labor is an equilibrium wage. The minimum wage acts as a price floor for low-skilled labor. When the government (federal or state) increases the legal minimum wage above the equilibrium wage that the market would determine, predictable outcomes occur: The higher wage increases the quantity of workers willing to work at the higher wage, but the higher wage also decreases the quantity of workers that firms wish to employ. The result is a surplus of workers, where more workers seek employment than there are jobs available at the mandated minimum wage—and the workers who fail to find employment are unemployed.

Scott A. Wolla, *Would Increasing the Minimum Wage Reduce Poverty?,* Economic Education Group of the Federal Reserve Bank of St. Louis (Mar. 2014).[9]

9. http://research.stlouisfed.org/pageone-economics/uploads/newsletter/2014/ PageOneCRE_0314_Minimum_Wage.pdf.

By rapidly raising the minimum wage franchisees pay to $15.00, the Ordinance thus creates an artificial price floor on labor far beyond what employers can bear. Seattle has pointed to the work of French economist Thomas Piketty as justifying the minimum-wage increase. *See* Ordinance, Preamble ("WHEREAS, the noted economist Thomas Piketty wrote in his landmark book Capital in the 21st Century, 'the need to act on income inequality is profound[.]'"). Yet it is doubtful that even Mr. Piketty would approve of this wage increase. He too understood that "raising the minimum wage cannot continue indefinitely: as the minimum wage increases, the negative effects on the level of employment eventually win out. If the minimum wage were doubled or tripled, it would be surprising if the negative impact were not dominant." Thomas Piketty, *Capital in the Twenty-First Century* 313 (2013).

The inevitable result (especially given the competitive pressure imposed on franchisees) is higher unemployment. Indeed, there is already evidence that this is occurring. Between January 2015 and September 2015, Seattle lost 700 jobs in the restaurant industry. Mark J. Perry, *Minimum Wage Effect*, AEIdeas (Oct. 21, 2015), www.aei.org/publication/minimum-wage-effect-from-jan-to-sept-seattle-msa-restaurant-jobs-fell-700-vs-5800-food-jobs-in-rest-of-state/. Notably, at the same time that Seattle suffered this decline, the State of Washington significantly *gained* restaurant jobs, adding 5,800 positions during that same time period. *Id.* Similarly, in a survey of 2,000 Seattle businesses taken before the Ordinance took effect, 60% said they would likely make multiple employment changes, such as reducing or eliminating new jobs and raising standards for entry-level jobs. *See Results from Chamber Member Survey on Minimum Wage Further Reveal*

Complexity of Issue, The Seattle Chamber of Commerce (Apr. 11, 2014).[10] Another found that 41% of downtown Seattle businesses anticipate reducing or eliminating new positions because of the Ordinance. Survey Says … DSA Members Weigh in on Minimum Wage (2014).[11] The Ordinance is already having this unfortunate effect. *See* Mark J. Perry, *Seattle's New Minimum Wage Law Takes Effect April 1 but Is Already Leading to Restaurant Closings and Job Losses*, American Enterprise Institute (Mar. 14, 2015).[12] "Instead of delivering the promised 'living wage' of $15 an hour, economic realities created by the new law have dropped the hourly wage for these workers to zero." *Id.*

In addition to increasing unemployment generally, the Ordinance likely will be especially harmful to low-skilled and younger workers—so many of whom obtain their first job from franchisees. In a study of New York State's 2004 minimum wage increase from $5.15 to $6.75 per hour, economists Joseph Sabis, Richard Burkhauser, and Benjamin Hansen concluded that the law led to "a 20.2% to 21.8% reduction in the employment of less-skilled, less-educated workers, with the largest effects on those aged 16 to 24." Joseph J. Sabia, Richard V. Burkhauser, Benjamin Hansen, *Are the Effects of Minimum Wage Increases Always Small? New Evidence from a Case Study of New York State*, Cornell ILR Review (June 2012). Similarly,

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10. http://www.seattlechamber.com/News/Article/14-04-11/Results_from_Chamber_member_survey_on_minimum_wage_further _reveal_complexity_of_issue.asp.

11. http://www.downtownseattle.com/2014/04/results-dsa-member-survey-minimum-wage-2/.

12. http://www.aei.org/publication/seattles-new-minimum-wage-law-takes-effect-april-1-but-is-already-leading-to-restaurant-closings-and-job-losses/.

in 21 European Union countries with minimum wage laws, 27.7% of the youth demographic (more than one in four young adults) was unemployed in 2012, whereas the youth unemployment rate in the seven European Union countries with no minimum wage laws was significantly lower at 19.5%. Hanke, *supra*, at 2.

Again, these findings comport with basic economic logic. A higher minimum wage leads to fewer jobs and hence more demand by workers for those positions that have not been eliminated. The combination of higher wages and fewer jobs leads employers to fill entry-level positions with over-qualified applicants. Few businesses would choose to hire an inexperienced or low-skilled worker when they can hire a highly skilled or more senior worker for the same wage. As Harvard economist Greg Mankiw has explained:

> A minimum wage has its greatest impact on the market for teenage labor. The equilibrium wages of teenagers are low because teenagers are among the least skilled and least experienced members of the labor force. In addition, teenagers are often willing to accept a lower wage in exchange for on-the-job training.... As a result, the minimum wage is more often binding for teenagers than for other members of the labor force.

N. Gregory Mankiw, *Principles of Macroeconomics* 118-19 (6th ed. 2008).

The injuries that inexperienced and low-skilled job applicants frozen out of the labor force suffer likely will proliferate over time as these would-be workers are prevented from obtaining the skills needed to advance.

Entry-level workers tend to earn low wages initially, but often not for long. "Among workers earning the minimum wage in a given year, approximately two-thirds are earning more than the minimum wage one year later. Thus, for the majority of workers, minimum wage employment is a short-lived phenomenon." William Even & David Macpherson, *Rising Above the Minimum Wage* at 13, Employment Policies Institute (Jan. 2000).[13] Entry-level jobs thus are "vitally important for young and low-skill workers because they allow people to establish a track record, to learn skills, and to advance over time to a better-paying job." Wilson, *supra*, at 11. For example, a July 2014 report from the National Bureau of Economic Research shows that while WalMart's lowest-paid workers start near the minimum wage, those who are eventually promoted to store managers do quite well, averaging approximately $92,462 per year. *See* Brianna Cardiff-Hicks, Francine Lafontaine, Kathryn Shaw, *Do Large Modern Retailers Pay Premium Wages?*, NBER Working Paper No. 20131 (July 2014).[14]

Numerous Seattle business owners warned that the Ordinance likely would have these effects on the City's low-skilled and young workers:

- "Over 10 percent of low-wage workers in Seattle do not speak English well. Right now, we hire many recent immigrants who would not likely be able to find other work in such a competitive market. At $15/hour, we would have to reduce our staff and only hire skilled, experienced workers who speak English fluently." Statement of the Ethnic Community Coalition, which is comprised

13. http://www.epionline.org/studies/even_01-2000.pdf.

14. http://www.nber.org/papers/w20313.

of The Greater Seattle Vietnamese Chamber of Commerce, The Greater Seattle Chinese Chamber of Commerce, The King County Hispanic Chamber of Commerce, and The Korean American Chamber of Commerce.[15]

- "As an owner and manager, if you're going to pay $15 an hour, you're going to get your $15-an-hour's worth. You could probably get a 22-year old to do the job of two 16-year-olds." Jack Miller, owner of the Husky Deli in West Seattle.[16]

- "I just think unskilled workers are going to have a harder time finding jobs. You're going to have people from as far away as Bellevue or Tacoma wanting these jobs, and they're going to come with skills and experience. For $15 an hour, they'll go that extra distance." Perry Wall, general manager of Clarion Hotel.[17]

Finally, for many of those employees who depend on their small business franchisee for employment and are able to keep their jobs, the Ordinance likely will result

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15. *The Ethnic Community Coalition, Ethnic Business Community Says "No" to $15 Minimum Wage Hike Proposal*, Northwest Asian Weekly (Apr. 26, 2014), http://www.nwasianweekly.com/2014/04/commentary-ethnic-businesscommunity-says-15-minimum-wage-hike-proposal/.

16. Amy Martinez, *Teen-Employment Rate Sharply Down in Seattle Area, Study Says*, The Seattle Times (Mar. 14, 2014), http://www.seattletimes.com/html/businesstechnology/2023125265_teenunemploymentxml.html.

17. Amy Martinez, *$15 Wage Floor Slowly Takes Hold in SeaTac*, The Seattle Times (July 27, 2014), http://www.seattletimes.com/html/localnews/2022905775_ seatacprop1xml.html.

in lost benefits or a reduction from full-time to part-time status, as the business owners cut costs in an attempt to avoid raising prices. In a survey of Downtown Seattle businesses, 45% responded that a $15 per hour minimum wage would cause them to reduce employee hours, while 39% said they would reduce or eliminate employee benefits.

Of the employees making less than $15 per hour, 76% receive medical benefits, 59% receive transportation reimbursements, 55% receive retirement funds, 31% receive bonuses, 30% receive employee discounts, and 23% receive education reimbursements. DSA Survey, *supra*. A similar poll found that 43% of employers who would make a change following an increase to $15/hour would do so by reducing or eliminating employee benefits. *See* Seattle Chamber of Commerce Survey, *supra*. In the end, this is precisely the kind of important federal issue the Court should review.

CONCLUSION

For these reasons, *Amici Curiae* respectfully request that the Court grant the petition.

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