Case No. 15-35209

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INTERNATIONAL FRANCHISE ASSOCIATION, INC.; CHARLES STEMPLER; KATHERINE LYONS; MARK LYONS; MICHAEL PARK; AND RONALD OH,
Plaintiffs-Appellants,

v.

CITY OF SEATTLE, A Municipal Corporation; FRED PODESTA, Director of the Department of Finance and Administrative Services,
Defendants-Appellees,

From the United States District Court
for the Western District of Washington
(C14-848 RAJ)

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, AMERICAN HOTEL & LODGING ASSOCIATION, ASIAN AMERICAN HOTELS OWNERS ASSOCIATION, HOME CARE ASSOCIATION OF AMERICA, NATIONAL RESTAURANT ASSOCIATION, AND WASHINGTON RETAIL ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 29(c)(1) and 26.1, *amici curiae* the Chamber of Commerce of the United States of America, American Hotel & Lodging Association, National Restaurant Association, the Asian American Hotels Owners Association, the Home Care Association of America, and the Washington Retail Association ("*Amici*") hereby submit the following corporate disclosure statement.

The Chamber of Commerce of the United States of America states that it is not a subsidiary of any corporation, and no publicly held corporation owns 10% or more of its stock.

The American Hotel & Lodging Association ("AH&LA") is a non-profit, tax-exempt organization incorporated in the District of Columbia. AH&LA has no parent corporation, and no publicly held company has 10% or greater ownership in the Association.

The Asian American Hotel Owners Association ("AAHOA") states that it is a nonprofit, tax-exempt organization incorporated in the State of Georgia. AAHOA has no parent corporation and no publicly held company has 10% or greater ownership in AAHOA.

The Home Care Association of America ("HCAOA") states that it is a non-profit, tax-exempt organization incorporated in the State of Indiana. HCAOA has

no parent corporation, and no publicly held company has 10% or greater ownership in the HCAOA.

The National Restaurant Association ("NRA") is a non-profit, tax-exempt organization incorporated in the State of Illinois. NRA has no parent corporation, and no publicly held company has 10% or greater ownership in the Association.

The Washington Retail Association ("WRA") is a non-profit, tax-exempt organization incorporated in the State of Washington. WRA has no parent corporation, and no publicly held company has 10% or greater ownership in the WRA.

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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. The Chamber represents 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 vital concern to the Nation's business community, including cases addressing state and local discrimination against interstate commerce.

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

[1] Pursuant to Fed. R. App. P. 29(c), *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

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 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 non-medical private duty home care and provide a strong unified voice to speak to the issues of concern within the private duty home care 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 Washington Retail Association ("WRA") represents more than 3,000 store fronts in the State of Washington, including both large and small retailers. A significant number of the WRA's members are small businesses using the franchise-business model. The WRA is concerned with the general impact of the Ordinance on its members' business operations, and in particular with a local government's unequal and unfair imposition of regulatory burdens on account of the use of the franchise-business model.

Amici have a strong interest in the proper resolution of this case. On April 1, 2015, *Amici's* members—including restaurants, hotels, franchisees, and countless other large and small businesses—became subject to an unprecedented minimum-

wage increase. The Seattle Minimum Wage Ordinance ("Ordinance") will prohibit many of *Amici's* members from hiring any person, regardless of their skill level and experience, 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 consequence, 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 support Appellants and respectfully request that the Court reverse the decision below and instruct the district court to grant the preliminary injunction.

SUMMARY OF THE ARGUMENT

The Ordinance is extraordinary. On January 1, 2017, less than three years 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 their skill level and experience, to perform any job unless they pay a wage of $15.00 per hour.

The Ordinance will be especially harmful to franchisees. Not only does it impose the largest minimum-wage increase in the history of 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 accomplishes 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 puts franchisees at a significant disadvantage vis-á-vis their 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 franchisees with increased labor costs that non-franchised small businesses are not required to bear, the Ordinance will make it difficult—if not impracticable—for franchisees to compete. This is untenable both as a matter of law and equity: a small, independently owned franchisee employing (for example) 40 people should be subject to the same implementation period for the increased minimum wage as every other small, independently owned business employing 40 people. Given the size of the Ordinance's minimum wage increase and its differential treatment of similarly situated businesses based on out-of-state associations, the Court should grant the motion.

First, Appellants are likely to succeed on the merits of their legal claims, particularly on their dormant Commerce Clause claim. The Ordinance purposefully

[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.

imposes higher wage costs on Seattle franchisees because of their out-of-state connections. This type of blatant economic protectionism—specifically designed to insulate favored local businesses from the rigors of interstate competition—is squarely prohibited by the dormant Commerce Clause.

Second, Appellants likely will suffer irreparable harm through, among other things, the loss of goodwill and destruction 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 in the normal course, they are especially problematic here because Appellants' non-franchise competitors will not face them. The irreversible and unquantifiable competitive harm franchisees likely will suffer as a result of this discrimination warrants preliminary relief.

Third, the balance of hardships and public interest weigh strongly in favor of granting the motion. Unlike franchisees, the City will endure no hardship if the injunction is granted. Indeed, franchisees would merely be subject to the same phase-in schedule for increasing the minimum wage that the City has already deemed appropriate for all other "small" businesses in Seattle.

More fundamentally, granting the motion will serve the public interest by preventing the Ordinance from inflicting economic harms on the people of Seattle. The Ordinance is likely to: (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 the Ordinance is ostensibly designed to help—low-skilled and inexperienced workers—as the jobs worth $15.00 per hour shift to those 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. At base, Seattle's unprecedented minimum wage increase may undermine franchisees' competitiveness and erode the value of their businesses, stifle the City's economic growth, increase un- and under-employment, and ultimately hurt the very people the Ordinance is supposed to help. The Court should reverse the decision below and instruct the district court to enjoin the offending aspects of the Ordinance while this meritorious legal challenge is litigated to resolution.

ARGUMENT

A party seeking a preliminary injunction must show: (1) likelihood of success on the merits; (2) likelihood of irreparable harm; (3) the balance of equities tips in its favor; and (4) relief is in the public interest. *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding scale" approach, the motion for preliminary injunction should be granted if there are "serious questions going to the merits," the "balance of hardships . . . tips sharply" towards plaintiffs, and the other factors are met. *Alliance for the Wild Rockies v.*

Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011); *see also* Brief for Appellants ("Appellants' Br.") at 24, 60-61. Appellants meet either test.

I. The Seattle Minimum Wage Ordinance Purposefully Discriminates Against Interstate Commerce.

The Court need only reach Appellants' argument that the Ordinance purposefully discriminates against interstate commerce to conclude that they are likely to succeed on the merits. *Id*. at 34-40. The Supreme 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). The negative, or "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). "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). Contrary to the district court's suggestion, *see* Dist. Ct. Op. 18 n.14, a finding of discriminatory purpose is sufficient to strike down the Ordinance 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 here. To be sure, the Ordinance purports to neutrally apply one rule to "large" employers and another rule to "small" employers. 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); *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 Ordinance] 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 thus is unconstitutional if "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 that the City's disparate treatment of franchisees was motivated by a desire to insulate local businesses from having to compete with small businesses with out-of-state connections. Appellants' Br. at 7-13, 34-37. The Ordinance's proponents explicitly sought to create a "city dominated by independent, locally owned" companies. ER67-68. The City wanted these businesses exempt from competition from "franchises like Subway and McDonalds," which were viewed as "not very good for [the] local economy." *Id*.

According to Seattle Mayor Ed Murray, the Ordinance targets franchisees for harsher 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." ER67-68. Contrary to the district court's conclusion, these statements represent the considered 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. Appellants' Br. at 37-38.

The district court further held that these statements "do not expressly suggest an intent to discriminate against out-of-state interests." Dist. Ct. Op. at 15. But that is an untenable conclusion. The district court acknowledged that franchisees were intentionally being treated differently than other small businesses because of their connection to "'corporate headquarters,' the 'corporate national entity' and the 'parent corporation.'" *Id*. at 16. That is simply another way of declaring that franchisees are being treated differently because of their decision to associate with out-of-state businesses. The record shows that less than 2% of all franchises in the

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

United States are headquartered in the Washington and only .39% of all franchises are headquartered in Seattle. Appellants' Br. at 34 n.1 (citing ER 138). In other words, franchisees are similarly situated to the many of Seattle small businesses that were treated far more favorably under the Ordinance *except* for their out-of-state connections.

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 precisely what Seattle has done through the Ordinance. The City has forced small businesses with interstate connections to bear the brunt of an accelerated minimum-wage increase from which their wholly intrastate competitors have been exempted simply out of protectionist zeal. The Ordinance thus is blatantly unconstitutional.

II. The Other Equitable Factors All Weigh Strongly In Favor Of Granting The Preliminary Injunction.

A. The Ordinance Will Cause Appellants Irreparable Harm.

There can be no doubt that Appellants will suffer irreparable harm absent judicial intervention. As an initial matter, the demonstration of likely constitutional injury is sufficient to establish irreparable harm. *See* Appellants' Br. at 56; *see also Goldie's Bookstore v. Superior Ct.,* 739 F.2d 466, 472 (9th Cir. 1984) ("An alleged constitutional infringement will often alone constitute irreparable harm."). As this Court has explained, "it is clear that it would not be equitable or in the public's interest to allow the state to continue to violate the requirements of federal law, especially when there are no adequate remedies available to compensate the [plaintiffs] for the irreparable harm that would be caused by the continuing violation. In such circumstances, the interest of preserving the Supremacy Clause is paramount." *California Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 852-53 (9th Cir. 2009), *vacated on other grounds by Douglas v. Indep. Living Ctr. of S. California, Inc.*, 132 S. Ct. 1204 (2012). Thus, Appellants' likelihood of success on their dormant Commerce Clause claim establishes irreparable harm.

Moreover, without a preliminary injunction, the Ordinance will impose irreversible and unquantifiable economic damage on franchisees. Appellants' Br. at 56-58. Beginning on April 1, 2015, franchisees' labor costs will be 10% higher than their competitors; and the wage gap will quickly rise to a 36% differential by

2017. *See supra* at 5-6. 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. Appellants' Br. at 57. "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] There are no good options. Franchisees might contract their workforce, dividing jobs among fewer employers or replacing some through automation.[5] They instead might expand more slowly, hiring fewer workers over time. Alternatively, they might raise prices, slash employee benefits, or both.

None of this will surprise the City. In a recent survey of Seattle businesses, nearly 70% 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,*

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

[5] Notably, 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.

Reduce Job Opportunities, and Shut Doors, Employment Policies Institute (June 24, 2014).[6] In response to the wage increase, 44% of Seattle businesses were "very likely" to scale back employees' hours; 42% were "very likely" to reduce the number of employees per shift or the staffing levels at their business; 43% of respondents were "very likely" to limit future expansion in Seattle; and 14% were "very likely" to close one or more locations. *Id*. At a minimum, then, the Ordinance increases labor expenses, limits options for expanding, and impairs employers' ability to hire new workers. This type of economic harm—which will likely result in the loss of customers—qualifies as irreparable under governing precedent. Appellants' Br. at 27-28.

Second, the fact that franchisees will endure these labor 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). Facing the potential

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

destruction of their businesses, franchisees' harms will be irreparable. *See Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1474 (9th Cir. 1985) ("The threat of being driven out of business is sufficient to establish irreparable harm."); *see also* Appellants' Br. at 58.

But 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. Both the competitive injury and the substantial economic loss the Ordinance thus causes independently qualify as irreparable harm. The resulting loss of goodwill is likewise irreparable harm. *Id*. at 57-58.

The district court barely responded to Appellants' claim of irreparable harm, stating only that the allegations were "conclusory" and "unsupported by the facts in the record." Dist. Ct. Op. 41. But that clearly is not true. Appellants submitted ample evidence supporting their claims of irreparable harm. *See* Appellants' Br. at 56-58. What the district court was really faulting Appellants for, by determining "that *evidence* is lacking here," Dist. Ct. Op. 41 (emphasis in original), was their reliance on predictions of future harm instead of backward-looking "evidence" of it. But of course it would have been impossible for Appellants to submit the kind of evidence the district court was seeking: the Ordinance had not taken effect yet and the entire point of seeking the preliminary injunction was to ensure that it did not while the lawsuit proceeded to fruition. "Whenever a court is asked to provide

some form of preliminary relief or relief pending the outcome of further proceedings, its task is in some sense predictive. An assessment of what will probably happen in the future must be made in order to determine how best to avoid irreparable loss because of an erroneous decision." *United States v. Shoffner*, 791 F.2d 586, 589 (7th Cir. 1986). That is especially true when the claim of injury involves economic loss and the offending law has not yet taken effect.

The correct question here, then, is not whether Appellants had suffered the claimed harm yet; the question was whether they submitted evidence substantiating their claim that this *threatened* harm is likely to occur. Indeed, even the district court acknowledged that preliminary injunctions are frequently granted on such grounds. *See* Dist. Ct. Op. at 41 ("It is true that 'evidence of threatened loss of prospective customers or goodwill' supports a finding of irreparable harm.") (quoting *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001)). As explained above, there is powerful evidence in this record that such threatened injury is likely to occur if the Ordinance took effect. Those predictions are backed by volumes of credible economic analysis. Nothing more was required for Appellants to establish irreparable harm.

B. The Balance Of Hardships And Public Interest Strongly Support Granting A Preliminary Injunction.

The balance of hardships and the public interest also strongly support granting a preliminary injunction. The City faces no hardship comparable to the

irreparable harm franchisees confront. The preliminary injunction merely would ensure that franchisees are classified according to the Ordinance's default definitional provisions. Thus, a small, independently owned franchisee employing 40 people would be subject to the same implementation period as every other small, independently owned Seattle business employing 40 people. The City cannot plausibly contend that it would suffer a hardship by allowing franchisees to increase their minimum wage on the same timeline as all other small businesses in Seattle. Where a preliminary injunction would simply maintain the status quo, it weighs in favor of granting relief. *See Rodde v. Bonta*, 357 F.3d 988, 999 n.14 (9th Cir. 2004). Here, Appellants asks for even less as the relief they seek allows the Ordinance to alter the status quo, just not in a discriminatory fashion. Appellants' Br. at 59-60.

The district court concluded that the harm to Appellants is outweighed by the harm employees will suffer if the minimum-wage increase does not take effect. Dist. Ct. Op. 42. But if employees truly would suffer serious injury absent a minimum-wage increase on this accelerated timetable, surely the City would not have left employees of other small businesses out in the cold. Furthermore, as explained below, the employees are going to suffer economically as a result of the minimum-wage increase. *See infra* at 18-26. Allowing the Ordinance to take effect does nothing to advance their economic welfare and likely will undermine it by,

among other things, possibly costing them their jobs. As is often the case, the interests of franchisees and their employees are aligned.

Finally, and perhaps most importantly, the preliminary injunction will advance the public interest. First, it likely will prevent a spike in 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. Here, with labor costs set to jump by 60% for franchisees, increased unemployment is likely to 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).[7] In those countries, the average unemployment rate is 7.9%. *Id*. In the 21 countries with a minimum wage, the average unemployment rate is 11.8%—almost 50% higher. *Id*.

These findings comport with 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 the job in question 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

[7] http://mobile.sternstewartinstitute.com/files/ssco_periodical_x_artikel_hanke.pdf.

> 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).[8]

By rapidly increasing the minimum wage franchisees pay to $15.00, the Ordinance thus creates an artificial price floor on labor far beyond what employers can bear.[9] The inevitable result (especially given the competitive pressure imposed on franchisees) is higher unemployment. In a recent survey of 2,000 Seattle businesses, 60% said they would likely make multiple employment changes, such as reducing or eliminating new jobs and raising standards for entry-level jobs. *Results from Chamber Member Survey on Minimum Wage Further Reveal*

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[8] http://research.stlouisfed.org/pageone-economics/uploads/newsletter/2014/PageOneCRE_0314_Minimum_Wage.pdf

[9] The City 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 massive 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).

Complexity of Issue, The Seattle Chamber of Commerce (Apr. 11, 2014).[10] Another poll 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*.

Second, in addition to increasing unemployment generally, the Ordinance will be especially harmful to low-skilled and younger workers—so many of whom obtain their first job from franchisees. In a recent 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

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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/

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, in the 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 will 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, the minimum wage therefore "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 injury that inexperienced and low-skilled job applicants frozen out of the labor force suffer proliferates over time as they 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*

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

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 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.

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

[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-business community-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.

For $15 an hour, they'll go that extra distance." Perry Wall, general manager of Clarion Hotel.[17]

Third, for those franchisee employees who keep their jobs, the Ordinance likely will cause many of them to lose their benefits or go to part-time, as businesses cut costs in an attempt to avoid raising prices. In a recent survey of Downtown Seattle businesses, for example, 45% responded that a $15.00 per hour minimum wage would cause them to reduce employee hours, while 39% said they would reduce or eliminate employee benefits. Of the employees currently making less than $15.00 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 reduce or eliminate employee benefits. Seattle Chamber of Commerce Survey, *supra*.

CONCLUSION

The Court should reverse the district court's order and instruct the district court to grant the preliminary injunction.

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[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.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

This brief complies with the page limitations of Fed. R. App. P. 29(d) because it contains no more than one-half the maximum length authorized by this Court's rules for a party's principal brief, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2015, a true and correct copy of the foregoing was filed with the Clerk of the United States Court of Appeals for the Ninth Circuit via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

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