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**Statement for the Record**  
**Of the**  
**International Franchise Association**  
**Submitted to the**  
**New York State Fast Food Wage Board**  
**June 5, 2015**

The International Franchise Association respectfully submits this testimony to the New York State Fast Food Wage Board to inform its decision on raising the mandatory minimum wage for workers at quick-service restaurants in the state of New York.

**About the International Franchise Association**

The International Franchise Association (IFA) is the world's oldest and largest organization representing franchising worldwide. IFA works through its government relations and public policy, media relations and educational programs to protect, enhance, and promote franchising and the more than 780,000 franchise establishments that support nearly 8.9 million direct jobs, \$890 billion of economic output for the U.S. economy and 3 percent of the Gross Domestic Product (GPD). IFA members include franchise companies in over 300 different business format categories, individual franchisees and companies that support the industry in marketing, law, technology and business development.

## **Franchising in New York State**

Franchise businesses in New York State make enormous contributions to the state's economy and workforce. There are currently 873 franchised brands with at least one location in New York, with a total of 15,313 franchised units in the state across all business sectors. A breakdown of the top ten franchised industries, by number of units in New York, is shown below, demonstrating that many of the most successful state- and nationwide brands are in the quick-service restaurant sector. 224 of those brands and 8,252 units are in the restaurant and food sector. According to data gathered from Federal Trade Commission-required pre-sale franchise disclosure documents, quick-service restaurant franchisor companies project that they will open an additional 373 franchise units in New York in 2015. This equates to a 4.5% growth rate projection in New York State, far above the 2.3% nationwide average.

	# BRANDS	# UNITS
Food	224	8252
Non-Food	649	7061

*Source: FRANdata*

SECTOR	UNITS
DONUTS	1427
SUB SHOPS	1331
HAMBURGERS/TRADITIONAL	1220
FROZEN DESSERTS	1033
LODGING	784
PIZZA	678
TAX SERVICES	652
REAL ESTATE BROKERS/SERVICES	592
BREAD	522
HARDWARE PRODUCTS/TOOL STORES	447

## **The Franchise Business Model**

The vast majority of quick-service restaurants and other businesses operating under the banner of well-known, national brands are owned and operated by local franchise business owners, called franchisees. Franchisees pay up-front fees and ongoing royalties in order to license the use of brands, trademarks,

and general business methods, but dictate the day-to-day operation of their businesses. They are legally separated from their franchisor parents, and are responsible for hiring workers, setting wage and benefit rates, providing training and equipment to workers and complying with all state and local business regulations.

These facts stand in stark contrast to Governor Cuomo's stated rationale for increasing wages for fast food workers - In his May 6 *New York Times* op-ed piece, Gov. Cuomo cites high CEO salaries and enormous corporate profits in the fast food industry as evidence that fast food companies can afford to pay their workers more<sup>1</sup>. However, the Governor's comments demonstrate a staggering lack of knowledge about the franchise industry. Of the food brands with locations in New York State, only 28 percent are "national" brands with locations in more than 35 states, while 25 percent are local brands with locations in 10 states or fewer. According to an extensive survey of quick-service restaurant owners released this month by the Employment Policies Institute (EPI), 74% of quick-service restaurants employ 30 or fewer workers, and 84 percent employ 50 or fewer. Additionally, 81 percent of these restaurants earn profits of 4 percent or less of annual revenues<sup>2</sup>. These figures show that local franchisee-owned restaurants, while portrayed as multi-national behemoths raking in millions of dollars in profits each year, are actually small businesses with razor-thin profit margins and unrelenting competition.

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<sup>1</sup> Andrew M. Cuomo, *Fast-Food Workers Deserve a Raise*, N.Y. TIMES, May 6, 2015.

<sup>2</sup> Employment Policies Institute, *Measuring the Cost of a Higher Minimum Wage for New York's Fast Food Restaurants*, June 2015, Pg. 3-4.

## Discriminatory Minimum Wage Application and the Commerce Clause

While we would certainly object to any increase in the state minimum wage that targets a single portion of a single economic sector as an ill-advised policy that significantly interferes with market forces, we believe applying a new minimum wage only to businesses that are affiliated a nationwide brand is taking a step beyond the limits of what state governments may permissibly regulate under the U.S.

Constitution and the Commerce Clause. This differential minimum wage requirement based solely on whether a small business affiliates with an interstate franchise network is tantamount to a tariff on interstate commerce. A decision by this Board to increase the minimum wage would be the same in substance, from the view of the franchisee and the franchise network if, rather than mandating the payment of an additional \$4 per employee-hour worked in 2016 in employee wages, it made franchisees pay a \$4 tax per employee-hour worked. Requiring a small business to pay a tax based on its affiliations with out-of-state entities and interstate business networks is, to quote the U.S. Supreme Court, a “paradigmatic example of a law discriminating against interstate commerce.”<sup>3</sup> Tariffs and laws having “the same effect as a tariff,” the Court continued, have “long been recognized as violative of the Commerce Clause.”<sup>4</sup>

Such a wage increase would not only be discriminatory in its explicit intent, but also in its effect. By allowing strictly local companies to pay a lower wage rate than similar small businesses with interstate ties, the State of New York would be engaging in the “[p]reservation of local industry by protecting it from the rigors of interstate competition,” an action the Court describes as “the hallmark of the economic protectionism that the Commerce Clause prohibits.”<sup>5</sup>

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<sup>3</sup> West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 193 (1994).

<sup>4</sup> *Id.* at 193-194

<sup>5</sup> *Id.* at 205

## **Impact of Fast-Food Specific Wage Hike on Local Businesses**

Constitutional concerns aside, there is ample evidence that a dramatic increase in the minimum wage would have a significant and lasting negative impact on franchised quick-service restaurants in New York, as well as their workers and consumers. The EPI survey of quick-service restaurant owners projects 86 percent of owners were at least somewhat likely to raise their product prices in response to a minimum wage of \$15 per hour. 83 percent of those owners indicated they would reduce employees' hours or staffing levels in response to such a wage increase. Perhaps the most impactful survey response was 43 percent of surveyed owners responded they were at least somewhat likely to close their restaurant altogether in response of a \$15 per hour minimum wage. If even a fraction of those restaurants were to close due to an increased minimum wage, it would very quickly eclipse the number of new locations slated to open in New York this year. On the opposite extreme, if 43 percent of quick-service locations were to close, the number of closures would eclipse new location growth nearly ten times over.

Last year, the non-partisan Congressional Budget Office released its analysis of proposals to increase the Federal minimum wage, and its findings were equally dire - approximately 500,000 American jobs would be lost if legislation raising the minimum wage to \$10.10 per hour were enacted<sup>6</sup>. It stands to reason this number would be significantly larger if the wage were raised to \$15 per hour, as many activists have requested.

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<sup>6</sup> U.S. Congressional Budget Office, *The Effects of a Minimum-Wage Increase on Employment and Family Income*, February 2014, Pg. 1.

## **Conclusion**

The International Franchise Association recommends this Wage Board return a recommendation to the Labor Commissioner that he refrain from increasing the minimum wage for fast-food workers alone. We believe any such arbitrary and discriminatory wage increase would be constitutionally dubious in that it violates the Commerce Clause's regulation of interstate commerce. We also believe that such action, by confusing franchise small business owners with their corporate parent franchisors, threatens to increase costs on businesses that simply cannot bear them, especially when their competitors will continue with lower mandatory wages. It would have a real impact on employment and economic growth in New York State by eliminating jobs and eviscerating plans to develop additional franchise units. For these reasons, we strongly urge you to recommend that wages remain equal for quick-service restaurants and instead increase to \$9 per hour at the end of 2015 as is required by statute.

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