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## The Ballot Box vs. Campaign Cash

D.C. Restaurants Flood Campaign Coffers to Overturn Ballot Initiative That Raised Minimum Wage for Tipped Workers

## **Acknowledgments**

This report was written by Michael Tanglis, Senior Researcher for Public Citizen's Congress Watch division. The report was edited by Congress Watch Research Director Taylor Lincoln.

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## Introduction

On June 19, D.C. voters approved Initiative 77 by a margin of 55 to 45 percent.<sup>1</sup> The initiative called for workers who receive tips to receive a minimum wage equal to the minimum wage for other workers by 2026. At the time of the vote, the minimum wage for tipped workers was just \$3.33 per hour, which was just one-third of the minimum wage for other employees.<sup>2</sup> While many of these workers are able to earn more than the minimum wage through tips, many are not.

Almost immediately, restaurant-industry lobbying groups went to work to persuade D.C. Mayor Muriel Bowser and members of the D.C. Council to annul the results of the ballot initiative by legislation.

And on July 9, 2018, seven D.C. councilmembers – a majority of the Council – introduced legislation to repeal Initiative 77.<sup>3</sup> A hearing on the bill is scheduled for September 17, 2018.<sup>4</sup>

This report explores the role that campaign contributions play in giving those in the restaurant industry opposed to Initiative 77 an outsized voice that threatens to drown out the voices of the voters who approved the measure on election day.

This report also exposes the hypocrisy of leaders of the anti-Initiative 77 movement who have violated current wage and hour laws while arguing that the remedy that voters approved is unnecessary.

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<sup>1</sup> *D.C. Primary Election Results*, THE NEW YORK TIMES (June 20, 2018), <https://nyti.ms/2MyQjIY>.

<sup>2</sup> The tipped minimum wage has since increased to \$3.89, See D.C. Office of Wage Hour Compliance, *DC Minimum Wage to Increase to \$13.25 Per Hour Beginning July 1, 2018*, D.C. DEPARTMENT OF EMPLOYMENT SERVICES (viewed on Aug. 28, 2018), <http://bit.ly/2BWAS9L>.

<sup>3</sup> Bill 22-913, *Tipped Workers Fairness Amendment Act of 2018*, THE COUNCIL OF THE DISTRICT OF COLUMBIA (July 9, 2018), <http://bit.ly/2wnWMxs>.

<sup>4</sup> Lindsey Walton, *D.C. Council to Hold Public Hearing on Initiative 77*, CHAIRMAN PHIL MENDELSON (July 30, 2018), <http://bit.ly/2BRAbhT>.

## Brief Summary of Methods

Public Citizen created a catalogue of individuals and entities that have either signed a public letter declaring their opposition to Initiative 77<sup>5</sup> or contributed to one of the two committees that are singularly focused on stopping Initiative 77: The “Save Our Tip System Initiative 77” committee, which is controlled by the Restaurant Association Metropolitan Washington (RAMW),<sup>6</sup> and the “NO2DC77” initiative committee, which was launched by D.C. restaurateur John Guggenmos.<sup>7</sup> Additional associated corporations and LLCs were added from the District of Columbia’s Alcoholic Beverage Regulation Administration’s licensee lists.<sup>8</sup>

This catalogue of more than one thousand individuals, corporations, LLCs, and associated addresses was cross-referenced with the roughly 37,000 contributions to the two most recent campaigns of the 14 elected officials who will decide the fate of Initiative 77 (the 13 members of the Council and Mayor Muriel Bowser). The vast majority of these contributions came during the 2014, 2016 or 2018 election cycles. The contributions in the 2014 and 2016 cycles were given prior to the fight over Initiative 77, and likely reflected a desire by the restaurant industry to influence officials over other issues or cultivate their goodwill, in general. A detailed methodology appears in Appendix I.

Prior to the passage of the ballot measure, 11 of D.C.’s 14 elected officials said that they were against Initiative 77.<sup>9</sup> Mary Cheh supported the measure while Elissa Silverman and Trayon White Sr. took no position (White later signed on to the repeal bill, though).

## Key Findings

- Anti-Initiative 77 entities contributed \$236,013 to D.C.’s current 14 elected officials during their two most recent campaigns. Nearly all of the money went to officials who came out against Initiative 77.
- The average contribution to D.C.’s elected officials over their two most recent campaigns by anti-Initiative 77 entities has been \$733, about double the \$388 average contribution by other donors.
- Anti-Initiative 77 entities have contributed \$130,270 to the seven D.C. councilmembers who have signed on to legislation to repeal the initiative. That is three times more than the \$40,693 that they have given to the six councilmembers who have not signed on to the repeal legislation.
- Mayor Bowser has received the most from anti-Initiative 77 individuals and entities, more than \$65,000.

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<sup>5</sup> See <https://www.voteno77.com/>.

<sup>6</sup> *Ballot Initiative 77 / Save Our Tips Campaign*, RESTAURANT ASSOCIATION METROPOLITAN WASHINGTON, <http://bit.ly/2NTW6GA>.

<sup>7</sup> *NO2DC77 Statement of Organization*, THE DISTRICT OF COLUMBIA OFFICE OF CAMPAIGN FINANCE, <http://bit.ly/2Cv1fnn>.

<sup>8</sup> *Current License Holders*, ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION, <http://bit.ly/2LyGYwo>.

<sup>9</sup> Fenit Nirappil, *No, Initiative 77 didn't end tipping in D.C.: A guide to the newly passed measure*, THE WASHINGTON POST (June 20, 2018), <https://wapo.st/2PezUat>.

- During the 2018 election cycle, Bowser and Council Chairman Phil Mendelson, the two most important elected officials in deciding the fate of Initiative 77, have received 80 percent of the money from anti-Initiative 77 forces.
- Anti-Initiative 77 forces contributed \$25,900 to D.C. elected officials in March 2018. Of this, \$20,250 went to Mendelson.
- Mendelson has received \$31,500 from anti-Initiative 77 forces during the 2018 election cycle. During his last campaign, in 2014, he received only \$2,500 from these contributors.
- More anti-Initiative 77 contributions came from corporations, LLCs, and corporate PACs than people. In total, 56 percent of the money (\$131,743) came from corporations, LLCs or corporate PACs.
- Opponents of Initiative 77 claim that it is not necessary because restaurants are required to ensure that tipped employees' wages at least equal the minimum wage. But several restaurants in Washington, D.C. have faced allegations of violating wage and hour laws. A few cases resulted in class-action settlements:
  - Farmers Restaurant Group, which opposed Initiative 77 and contributed \$6,000 to the anti-Initiative 77 committee, recently settled – without admitting wrongdoing – a class-action lawsuit for \$1.49 million for allegedly failing to pay overtime and failing to pay the minimum wage. Rather than pass a minimum wage increase, Farmers' co-owner Dan Simons proposed allowing an employee to work “60 hours or 55 hours” a week with no overtime pay in order to raise wages.
  - Clyde's Restaurant Group, which opposed Initiative 77, settled two lawsuits. In 2010 and 2011, Clyde's was sued in D.C. and Virginia for, among other things, allegedly failing to pay its tipped employees the minimum wage and for altering time clock entries in order to avoid paying overtime. Both lawsuits settled without Clyde's admitting liability, one for \$345,000 and the other for an undisclosed amount. Clyde's corporations and executives have contributed \$57,600 to the campaigns of the elected officials covered in this analysis and contributed another \$16,000 to the anti-Initiative 77 committee.

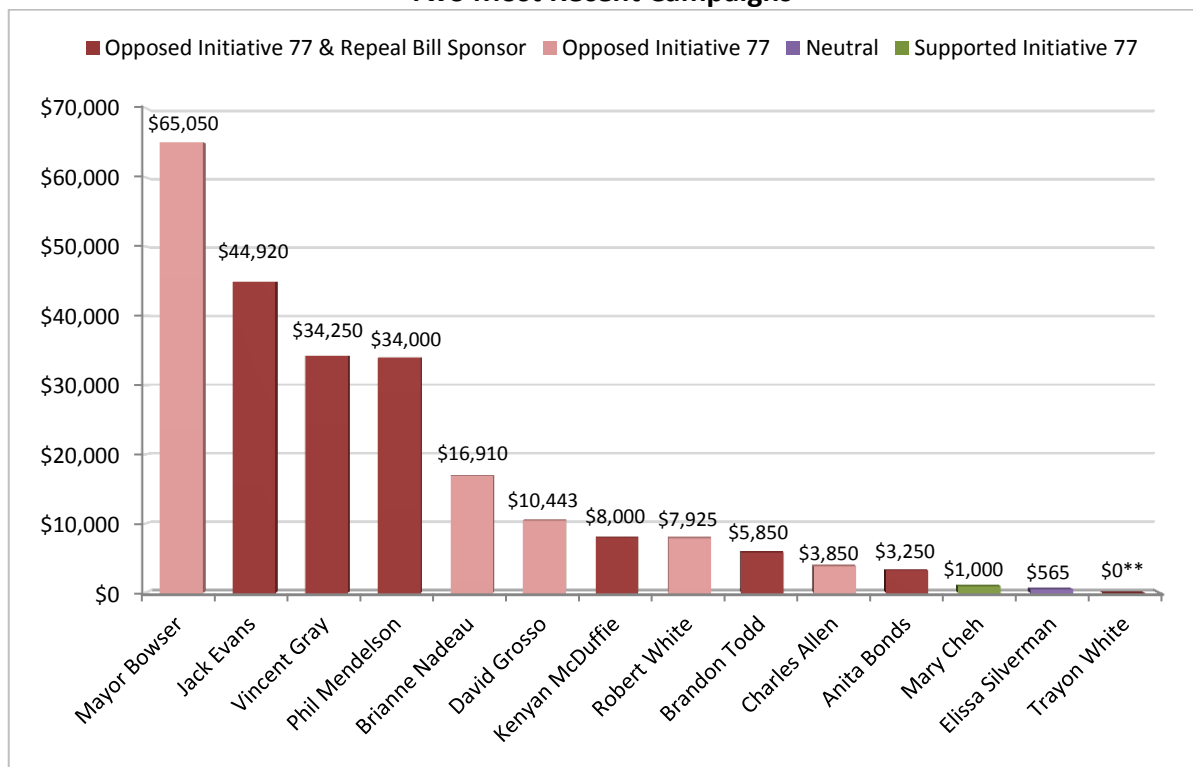
## I. Anti-Initiative 77 Entities Contributed \$236,000 to D.C. Politicians, Nearly All to Those Opposed to Initiative 77

Many of the individuals, restaurants, and other corporate entities opposed to Initiative 77 have long been contributors to D.C.'s elected officials, particularly those who opposed the ballot measure.

The 14 D.C. elected officials included in this analysis (13 councilmembers and Mayor Muriel Bowser) have received \$236,013 from anti-Initiative 77 individuals and entities during their two most recent campaigns. All but two elected officials in D.C. either expressed opposition to the initiative or support its repeal, or both. Councilmember Mary Cheh supported Initiative 77 while Councilmember Elissa Silverman took no position.<sup>10</sup> Cheh and Silverman received just \$1,565 from anti-Initiative 77 individuals and entities.

Mayor Bowser has received the most from anti-Initiative 77 individuals and entities, more than \$65,000. Bowser is followed by Jack Evans (\$44,920), Vincent Gray (\$34,250) and Phil Mendelson (\$34,000). [Figure 1]

**Figure 1 – Total Contributions From Anti-Initiative 77 Entities To The 14 D.C. Elected Officials' Two Most Recent Campaigns\***



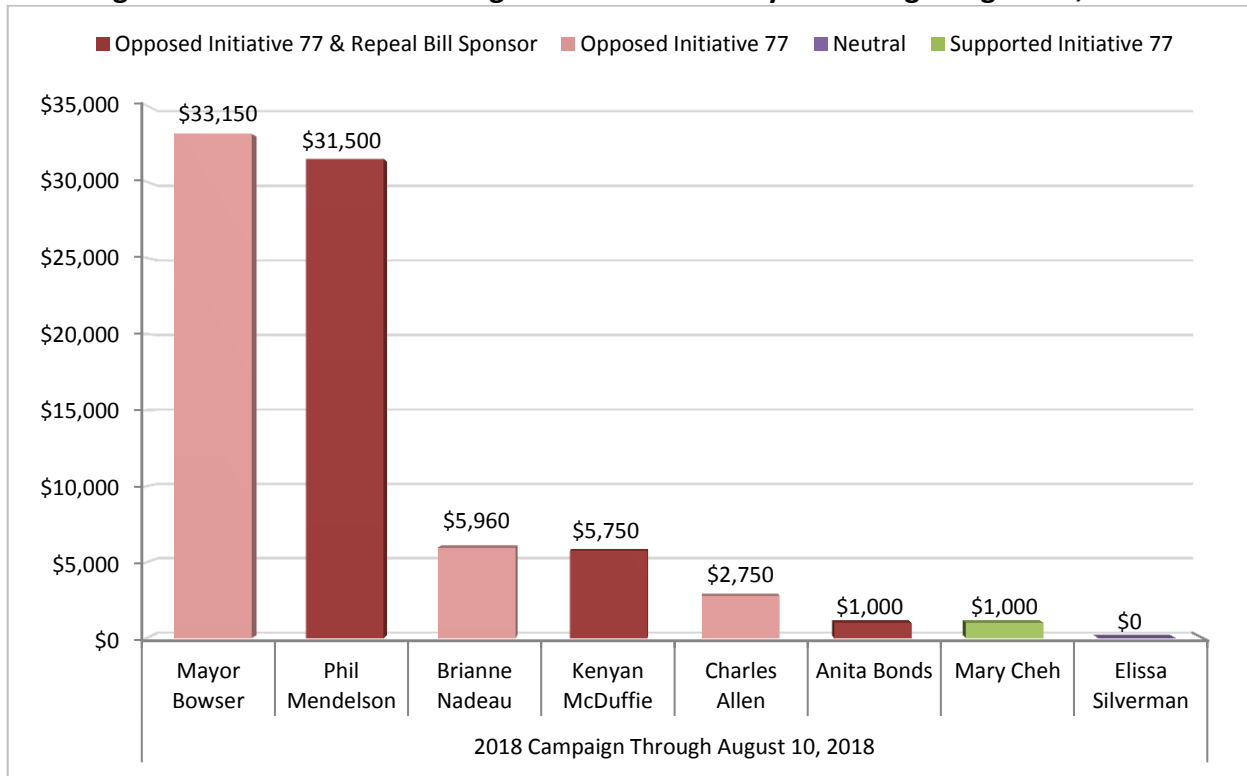
\* Bowser, Mendelson, Nadeau, McDuffie, Allen, Bonds, Cheh and Silverman are running in 2018. Contribution data is current through August 10, 2018.

\*\* Trayon White took no position on the initiative prior to its passage, but has signed on to the repeal bill.

<sup>10</sup> Fenit Nirappil and Reis Thebault, *Initiative 77 Tipping Wars in D.C. Moves From Campaign to Council*, THE WASHINGTON POST (June 20, 2018), <https://wapo.st/2MZMTPT>.

Six of the 14 elected officials analyzed in this report are running during the 2018 cycle. Thus far in the 2018 cycle, the six candidates have received \$81,111 from anti-Initiative 77 entities. Bowser has received the most of any candidate – \$33,150. Mayor Bowser is barely edging out Chairman Phil Mendelson, who has received \$31,500. [Figure 2]

**Figure 2 – Contributions During the 2018 Election Cycle Through August 10, 2018\***



\*The dataset analyzed in this report includes four types of campaigns with four different maximum contribution limits: Mayoral (\$2,000), Council Chair (\$1,500), At-Large Council bids (\$1,000) and Council bids to represent one of the eight wards (\$500).<sup>11</sup> The data includes four mayoral campaigns: Mayor Bowser's 2014 and 2018 campaigns and Jack Evans' and Vincent Gray's 2014 campaigns. It also includes Phil Mendelson's 2014 and 2018 campaigns for Chairman.

<sup>11</sup> Code of the District of Columbia, § 1-1163.33 *Contribution Limitations*, COUNCIL OF THE DISTRICT OF COLUMBIA (viewed on Aug. 28, 2018), <http://bit.ly/2NvIq4G>.



## II. Anti-Initiative 77 Entities Contributed \$733 to D.C.'s Elected Officials on Average, 89 Percent More Than All Other Contributors

The average contribution by anti-Initiative 77 entities to elected officials who will decide the initiative's fate was \$733 over the past two elections. That compared to an average contribution by all other entities of \$388, which is hardly small in itself. [Figure 3]

**Figure 3 – Average Contributions From Anti-Initiative 77 Entities to the 14 D.C. Elected Officials' Two Most Recent Campaigns**



Table 1 below separates all contributions to the 14 D.C. elected officials analyzed in this report into two categories: contributions by anti-Initiative entities and all other contributions. It is important to note that contribution limits differ based on the type of office a candidate seeks.

Councilmember Vincent Gray, who has run for both mayor and council, received the highest average contribution from the anti-Initiative 77 entities of any D.C. elected official, \$1,269 – more than twice as much as he received from all other contributors. Gray is followed by Mayor Bowser, whose average contribution from anti-Initiative 77 opponents was \$1,033, compared to \$594 from all of her other contributors. [Table 1]

**Table 1 - Average Contribution Anti-Initiative 77 Entities vs. All Others**

D.C. Elected Official	Campaign Types*	Supports Repeal Bill	Number of Contributions from Anti-Initiative 77 Entities	Average Contribution from Anti-Initiative 77 Entities	Average Contribution - All Others
Vincent Gray	Mayoral, Council	Yes	27	\$1,269	\$530
Mayor Bowser	Mayoral		63	\$1,033	\$594
Anita Bonds	Council at-large	Yes	4	\$813	\$346
Jack Evans	Mayoral, Council	Yes	56	\$802	\$563
Phil Mendelson	Council Chair	Yes	43	\$791	\$575
Elissa Silverman	Council at-large		1	\$565	\$142
David Grosso	Council at-large		20	\$522	\$231
Mary Cheh	Council		2	\$500	\$257
Kenyan McDuffie	Council	Yes	17	\$471	\$247
Robert White	Council at-large		18	\$440	\$213
Brandon Todd	Council	Yes	15	\$390	\$257
Charles Allen	Council		10	\$385	\$162
Brianne Nadeau	Council		46	\$368	\$180
Trayon White	Council	Yes			\$190
<b>Total</b>			<b>322</b>	<b>\$733</b>	<b>\$388</b>

\*Contribution Limits: Mayoral - \$2,000, Council Chair - \$1,500, Council at-large - \$1,000, Council - \$500.<sup>12</sup>

The current minimum wage in D.C. is \$13.35.<sup>13</sup> If a person making the minimum wage were to work a standard 40 hour week, before taxes, every two weeks that worker would make \$1,068. This means that the worker's entire pre-tax bi-weekly paycheck is less than the average contribution to Vincent Gray from anti-Initiative 77 entities. It is almost equal to one average contribution from anti-Initiative 77 entity to Bowser.

After accounting for taxes and basic necessities, even the smallest average contribution from anti-Initiative 77 entities and individuals – the \$368 to Brianne Nadeau – is likely far more than any minimum wage worker could ever contribute to a candidate.

<sup>12</sup> Code of the District of Columbia, § 1-1163.33 *Contribution Limitations*, COUNCIL OF THE DISTRICT OF COLUMBIA (viewed on Aug. 28, 2018), <http://bit.ly/2NvIq4G>.

<sup>13</sup> The tipped minimum wage has since increased to \$3.89, See D.C. Office of Wage Hour Compliance, *DC Minimum Wage to Increase to \$13.25 Per Hour Beginning July 1, 2018*, D.C. DEPARTMENT OF EMPLOYMENT SERVICES (viewed on Aug. 28, 2018), <http://bit.ly/2BWAS9L>.

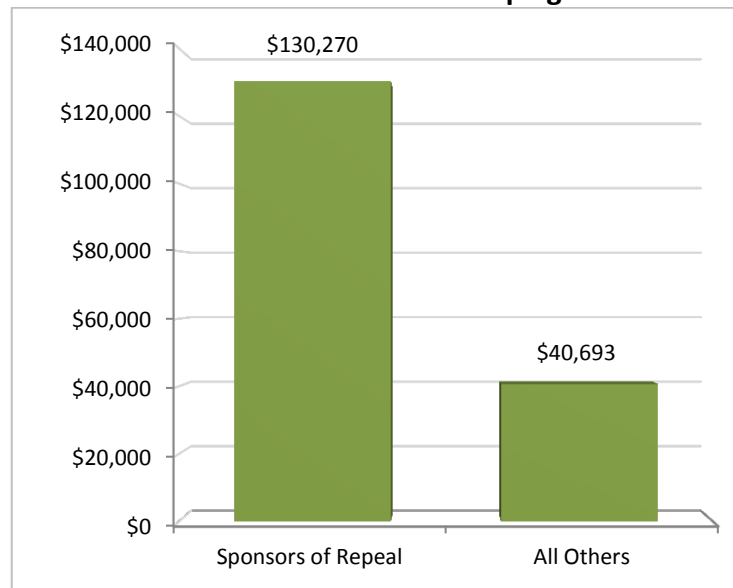
### III. Councilmembers Sponsoring the Repeal Bill Have Received Three Times as Much in Contributions From Anti-Initiative 77 Entities as Their Neutral or Opposed Colleagues

The fact that 99 percent of contributions from Initiative 77 opponents went to officials who have opposed Initiative 77 in one way or another is not particularly surprising because all but two elected officials in D.C. either opposed the initiative or support its repeal, or both.

While the vast majority of D.C.'s elected officials opposed Initiative 77 before it passed, not all of these elected officials opposed to the initiative have signed on to the repeal bill. At the time of this writing, seven councilmembers have signed on as sponsors to the bill to repeal Initiative 77, while six have not, including four who opposed the initiative.<sup>14</sup> Bowser has not taken a position on the repeal bill.<sup>15</sup>

This section breaks down the discrepancy in campaign contributions by Initiative 77 opponents to those members of the D.C. Council who have expressly sponsored the bill to overturn the initiative versus contributions to those who have not. The seven repeal bill sponsors have received three times as much as six non-sponsors.<sup>16</sup> [Figure 4]

**Figure 4 – Total Contributions – Two Most Recent Campaigns of 13 D.C. Councilmembers<sup>17</sup>**



<sup>14</sup> Bill 22-913, *Tipped Workers Fairness Amendment Act of 2018*, THE COUNCIL OF THE DISTRICT OF COLUMBIA (July 9, 2018), <http://bit.ly/2wnWMxs>.

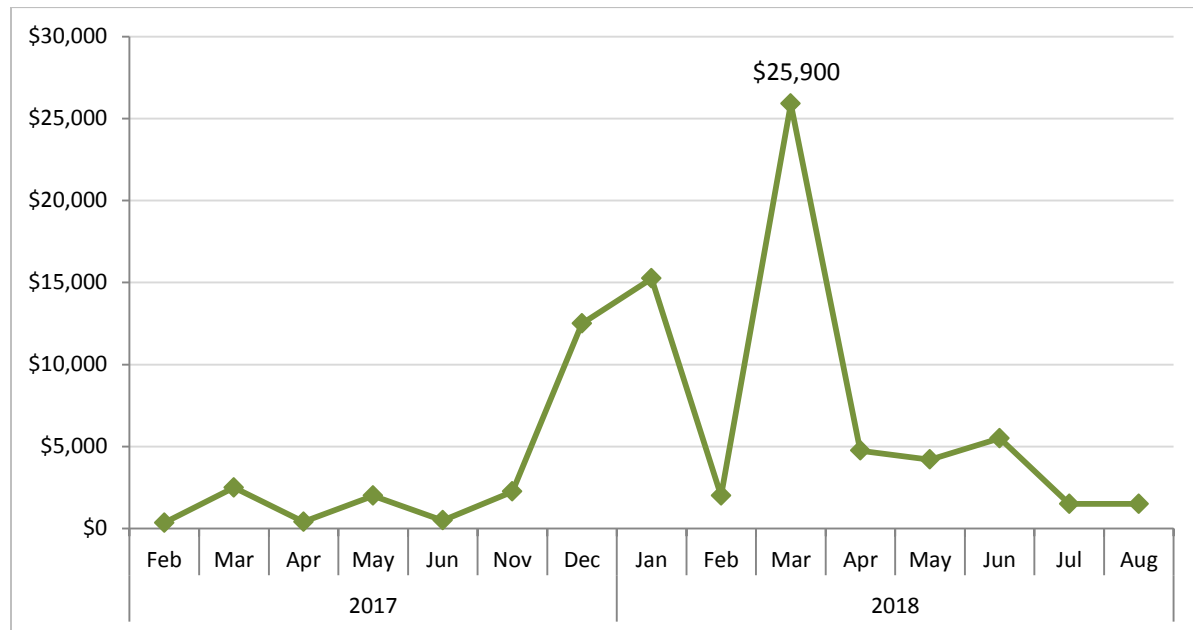
<sup>15</sup> Fenit Nirappil, *D.C. Residents Seethe as Council Moves to Overturn Voter-Approved Wage Hike*, THE WASHINGTON POST (July 14, 2018), <https://wapo.st/2wuF6zo>.

<sup>16</sup> Bill 22-913, *Tipped Workers Fairness Amendment Act of 2018*, THE COUNCIL OF THE DISTRICT OF COLUMBIA (July 9, 2018), <http://bit.ly/2wnWMxs>.

<sup>17</sup> The 2014 mayoral campaigns of both Jack Evans and Vincent Gray are included in Figure 3. To see the same analysis done with only campaigns for city council, see Figure 9 in Appendix II.

Unsurprisingly, contributions to D.C. elected officials from anti-Initiative 77 entities ticked up towards the end of 2017 and the first half of 2018 prior to the vote. March 2018 was the month in which anti-Initiative 77 entities contributed the most – \$25,900. [Figure 5]

**Figure 5 – Total Contributions From Anti-Initiative 77 Entities by Month and Year  
(Months In Which an Anti-Initiative Contribution was Received Only)**



The \$25,900 total was the result of 34 different contributions. Twenty-nine of the 34 contributions, and \$20,250 of the \$25,900, went to one candidate – Council Chairman Phil Mendelson.

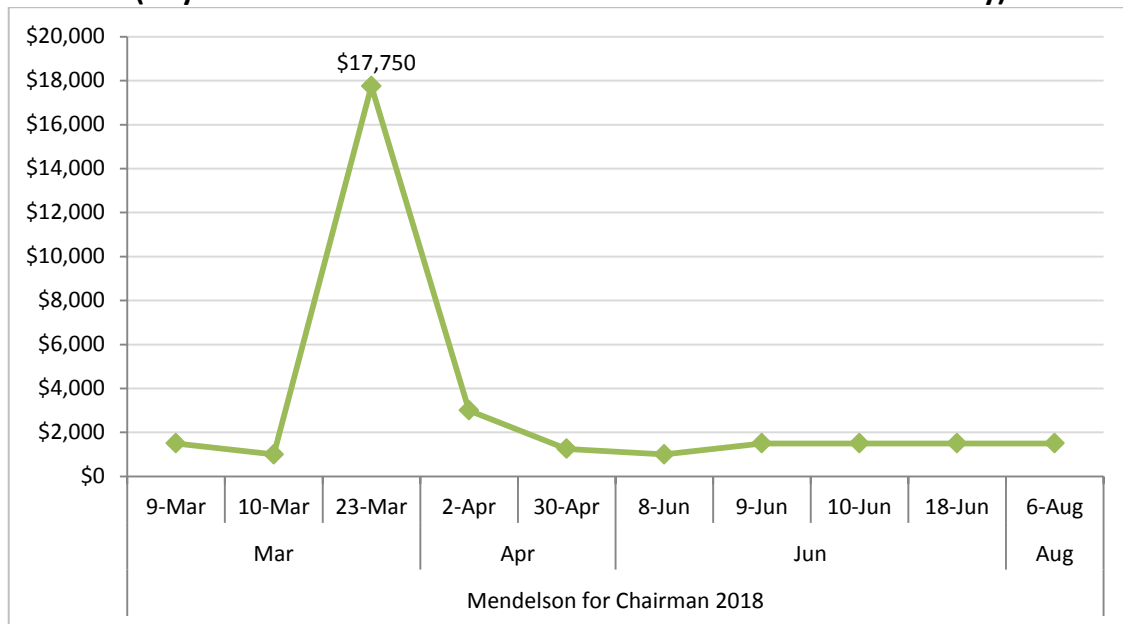
Almost all of the contributions received by Mendelson from anti-Initiative 77 entities in March 2018 were reported as received on the same day.

## IV. Chairman Mendelson Received \$17,750 From Anti-Initiative 77 Entities on a Single Day

In the 2018 Democratic primary, D.C. Council Chairman Phil Mendelson faced an unexpected challenge to his left from Ed Lazere, the executive director of the D.C. Fiscal Policy Institute.<sup>18</sup> Lazere supported Initiative 77.<sup>19</sup>

*The Washington Post* reported that Lazere out-raised Mendelson through January 2018, \$64,000 to \$58,000.<sup>20</sup> Mendelson, who opposed Initiative 77, was unfazed. “It’s very early with regards to fundraising, so I don’t think one can make too much of it, he said.”<sup>21</sup> Mendelson’s confidence proved to be warranted. In part with the help of a torrent of contributions from anti-Initiative 77 individuals and businesses the following month, he was able to quickly wipe out the fundraising deficit. [Figure 6]

**Figure 6 – Total Contributions From Anti-Initiative 77 Entities to Phil Mendelson in 2018 (Days In Which an Anti-Initiative Contribution was Received Only)**



Foodservice PAC, the political action committee used by Restaurant Association Metropolitan Washington,<sup>22</sup> reported that it spent \$1,500 on a fundraiser for “Mendelson for Chairman” on March

<sup>18</sup> Fenit Nirappil, *Bowser’s War Chest Keeps Growing; Mendelson Outraided by Surprise Challenger*, THE WASHINGTON POST (Feb. 1, 2018), <https://wapo.st/2PLzwRQ>.

<sup>19</sup> Jackson Knapp, *3 Issues to Watch in DC’s Council Chair Race*, THE WASHINGTONIAN (June 18, 2018), <http://bit.ly/2Nrg6A9>.

<sup>20</sup> Fenit Nirappil, *Bowser’s War Chest Keeps Growing; Mendelson Outraided by Surprise Challenger*, THE WASHINGTON POST (Feb. 1, 2018), <https://wapo.st/2PLzwRQ>.

<sup>21</sup> *Id.*

<sup>22</sup> Foodservice PAC, *Report of Receipts and Expenditures*, D.C. OFFICE OF CAMPAIGN FINANCE (June 10th Report), <http://bit.ly/2wwYE6h>.

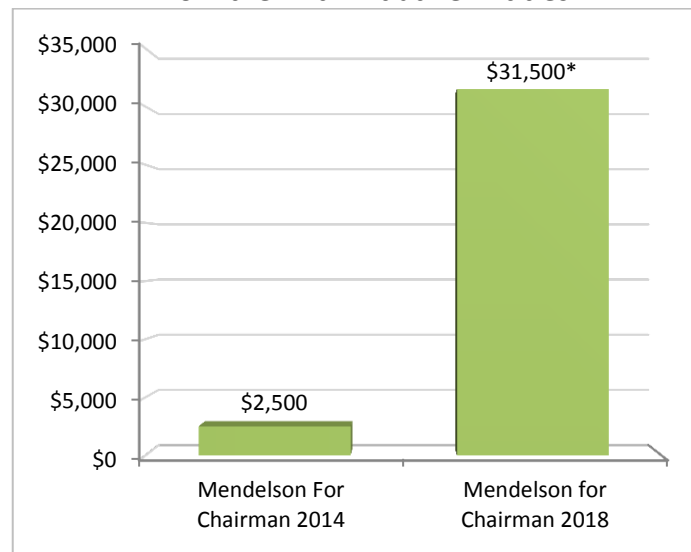
19, 2018.<sup>23</sup> Four days later Mendelson reported receiving \$17,150 from anti-Initiative 77 entities in the form of 27 separate contributions, including the \$1,500 contribution from the Foodservice PAC.<sup>24</sup> Because Mendelson cashed 27 checks from anti-Initiative 77 entities on the same day, March 23, 2018, it seems likely the checks came from the same Mendelson fundraiser noted in the Foodservice PAC filing.

So far in 2018, Mendelson's campaign has received 39 percent of all the contributions from anti-Initiative 77 individuals and entities. In this respect, he trails only Bowser, who has received 41 percent of the total contributions from these individuals and entities.

It is significant that Mendelson has been able raise almost as much as Mayor Bowser from anti-Initiative 77 forces during the 2018 cycle because he is limited to receiving no more than \$1,500 from any donor while Bowser, as a candidate for mayor, may receive up to \$2,000.

These anti-Initiative 77 entities have only recently become big Mendelson supporters. They gave him only \$2,500 in 2014. [Figure 7]

**Figure 7 – Contributions to Phil's Mendelson's Two Most Recent Campaigns From the Anti-Initiative Entities**



\* Through August 10, 2018

It's not that anti-Initiative 77 entities are new to making campaign contributions, either. The anti-Initiative entities contributed more than \$120,000 to other D.C. campaigns in 2014, but very little to Mendelson.

The same day Initiative 77 was approved by voters, the Restaurant Association Metropolitan Washington's (RAMW) President Kathy Hollinger vowed to fight on: "We cannot accept as final a

<sup>23</sup> Foodservice PAC, *Report of Receipts and Expenditures*, D.C. OFFICE OF CAMPAIGN FINANCE (June 10th Report), <http://bit.ly/2wwYE6h>.

<sup>24</sup> Mendelson for Chairman 2018, *Report of Receipts and Expenditures*, D.C. OFFICE OF CAMPAIGN FINANCE (June 10th Report), <http://bit.ly/2wmQqhl>.

vote in a primary election, in the middle of the summer, on a ballot measure the language of which was, at best, misleading.”<sup>25</sup> Hollinger claimed “most voters weren’t even sure what they were voting for.”<sup>26</sup> According to *The Washington Post*, Hollinger began speaking with Mayor Bowser, Chairman Mendelson and Councilmembers Charles Allen, Kenyan McDuffie and Brandon Todd on election night.<sup>27</sup>

On election night, when asked if he would try to void the measure with legislation, Mendelson told *The Washington Post*: “I’m not going to speak to that ... I’m going to let the dust settle.”<sup>28</sup> Mendelson said that he felt “a lot of hesitation” in overturning the will of the voters.<sup>29</sup> Just days after Initiative 77 was approved by voters, RAMW’s initiative committee, “Save Our Tip System Initiative 77,” contributed \$1,500 to Mendelson’s campaign.<sup>30</sup> Within three weeks of the election, Mendelson signed on as a co-sponsor to the bill to repeal of the ballot initiative.

Mendelson tried to rationalize his decision by pointing out that D.C. residents had voted for an opponent of the measure, himself, the same night they approved Initiative 77.

“Voters voted for somebody who was opposed while at the same time voting for the initiative,” he told *The Washington Post*.<sup>31</sup> “I think that’s an important dynamic here.”

Some D.C. councilmembers opposed to Initiative 77, including Charles Allen and Brianne Nadeau, voiced reservations about moving so fast to undo what the voters of D.C. had just approved: Nadeau said she was not comfortable with full repeal and that “while I didn’t support this initiative at the ballot box, Ward 1 voters did,” she told *The Post*.<sup>32</sup> Allen said “I want to respect the fact that there was a ballot initiative. There was an outcome.”<sup>33</sup>

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<sup>25</sup> Fenit Nirappil, *D.C. Voters Approve Wage Increase for Restaurant Workers, Defying Elected Officials*, THE WASHINGTON POST (June 19, 2018), <https://wapo.st/2MWImh5>.

<sup>26</sup> Fenit Nirappil and Reis Thebault, *Initiative 77 Tipping Wars in D.C. Moves From Campaign to Council*, THE WASHINGTON POST (June 20, 2018), <https://wapo.st/2MZMTPT>.

<sup>27</sup> *Id.*

<sup>28</sup> Fenit Nirappil, *D.C. Voters Approve Wage Increase for Restaurant Workers, Defying Elected Officials*, THE WASHINGTON POST (June 19, 2018), <https://wapo.st/2MWImh5>.

<sup>29</sup> Peter Jamison, *Majority of D.C. Council Moves to Overturn Tipped-Wage Ballot Measure*, THE WASHINGTON POST (July 10, 2018), <https://wapo.st/2PgFARu>.

<sup>30</sup> Save Our Tip System Initiative 77, *Report of Receipts and Expenditures*, D.C. OFFICE OF CAMPAIGN FINANCE (July 31st Report), <http://bit.ly/2MRMaBg>.

<sup>31</sup> Peter Jamison, *Majority of D.C. Council Moves to Overturn Tipped-Wage Ballot Measure*, THE WASHINGTON POST (July 10, 2018), <https://wapo.st/2PgFARu>.

<sup>32</sup> *Id.*

<sup>33</sup> Reis Thebault, *The Voters Approved it. Should Lawmakers Erase the Result? In D.C., a Debate About Democracy*, THE WASHINGTON POST (July 31, 2018), <https://wapo.st/2BWfW2r>.

## V. More Anti-Initiative 77 Contributions Came From Corporations, LLCs, and Corporate PACs Than People

Public Citizen found 322 contributions from anti-Initiative 77 individuals, corporations, LLCs or PACs to D.C.'s current elected officials over their most recent two campaigns. The vast majority of these occurred during the 2014, 2016 and 2018 election cycles.

While there were 322 separate contributions from anti-Initiative 77 individuals and entities, the contributions came from roughly 163 unique contributors (the discrepancy is because many individuals and entities have contributed multiple times).

Corporations, LLCs and corporate-sponsored PACs account for \$131,743 in total contributions, which is 56 percent of the total money contributed from anti-Initiative 77 entities, while 44 percent of the money was contributed in the name of individuals. [Table 2]

**Table 2 – Breakdown of Contributor Type of Anti-Initiative 77 Entities**

Anti-Initiative 77 Contributor Type	Number of Contributions	Total Contribution Amount	Average Contribution
Corporations, LLCs, Corporate Sponsored PACs	172	\$131,743	\$766
Individuals	150	\$104,270	\$695
<b>Total</b>	<b>322</b>	<b>\$236,013</b>	<b>\$733</b>

Individuals gave an average of \$695 each time – which is only \$71 less on average than the contributions from corporations, LLCs and corporate sponsored PACs.

It is important to note that contributions from anti-Initiative individuals in Table 2 were not typically coming from servers or bartenders of the various restaurants. The overwhelming majority of contributions that were from individuals came from the restaurant owners.

Recent improvements to D.C. campaign finance law have reduced the ability of corporations to flood D.C. campaigns with money. In 2013, legislation authored by Councilmember Kenyan McDuffie ended what was known as the “LLC loophole.”<sup>34</sup> Prior to its passage, business owners could contribute through multiple corporations and LLCs to legally blow past contribution limits and contribute vast sums of money directly the campaigns of D.C.'s elected officials. The law went into effect on January 31, 2015.<sup>35</sup>

<sup>34</sup> Patrick Madden, *D.C. Campaign Finance Reforms Get Initial Approval*, WAMU (Nov. 6, 2013), <http://bit.ly/2Qfyk9T>.

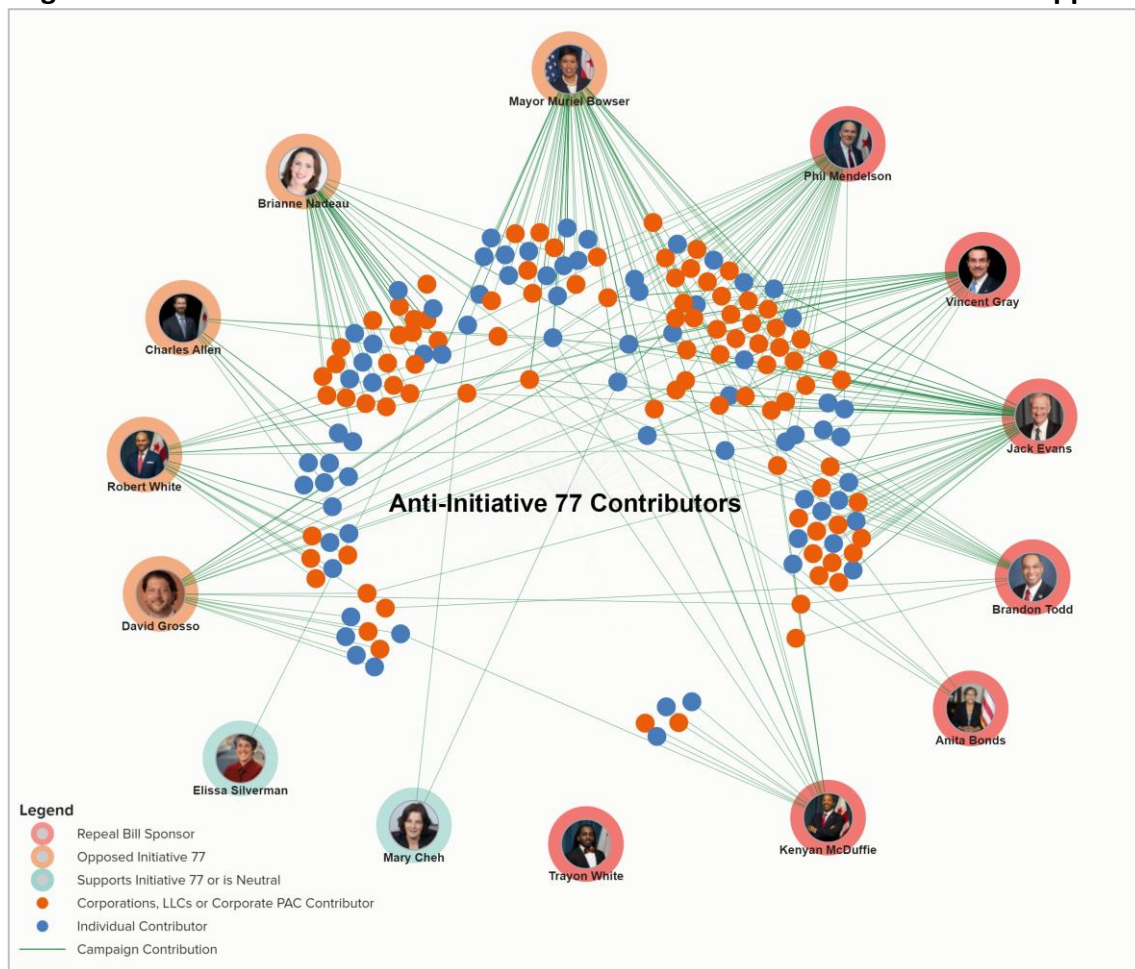
<sup>35</sup> Martin Austermuhle, *As Campaign Cash Loophole Closes, D.C. Businesses Rush to Give Big*, WAMU (Feb. 10, 2015), <http://bit.ly/2wWxab6>.



In the dataset analyzed in this report for example, 16 contributors associated with Clyde's restaurant group<sup>36</sup> contributed to D.C.'s current elected officials. Only three of these contributors were individuals while the rest were corporations or LLCs. Before the LLC loophole was closed, Clyde's used its many corporations and LLCs to contribute vast sums of money to D.C.'s elected officials. During the 2014 mayoral race, for example, when individual contribution limits were \$2,000, Clyde's contributed an eye-opening \$18,000 to the Jack Evans' campaign, using nine different corporations and LLCs to do so. Mayor Bowser's campaign received \$6,000 from three Clyde's corporations and Vincent Gray's mayoral campaign received \$10,000 from five Clyde's corporations.

Clyde's is far from alone. Other anti-Initiative 77 entities and individuals have utilized numerous corporations and LLCs to contribute large sums of money to D.C. elected officials. To go along with this analysis, Public Citizen has created a data map which shows all of the contributions from anti-Initiative 77 entities. [Figure 8]

**Figure 8 – All Contributions From Anti-Initiative 77 Individuals and Entities Mapped\***



\*An interactive searchable data map can be found [here](#).

<sup>36</sup> See <https://www.clydes.com/>.

## VI. Anti-Initiative 77 Entities Have Been Caught Violating Labor Laws, Including Failing to Pay the Minimum Wage

Under current law, if tipped workers do not make the regular minimum wage even after their tipped minimum wage and tips received are combined, the employer is required to make up the difference. Opponents of Initiative 77 – including well-known chef and restaurateur, José Andrés – have focused on this protection to claim that the initiative is not needed.<sup>37</sup> Restaurants, corporations and LLC's under Andrés' umbrella organization, "Think Food Group,"<sup>38</sup> contributed \$8,600 to the campaigns of elected officials in this analysis.

Andrés told *The Washington Post* that it was a "big lie" that restaurant workers were not making the minimum wage.<sup>39</sup>

"If anybody is not doing it [paying the minimum wage] they are breaking the law," Andrés says, so the workers are "covered on that end."<sup>40</sup> But while it may be the law, workers are far from covered, as the law is routinely broken. According to the Department of Labor's Wage and Hour division, the agency responsible for enforcing the nation's wage and hour laws, "failure to ensure that employees are earning the minimum wage is the most prevalent wage and hour violation."<sup>41</sup>

Several Washington, D.C. restaurants opposed to Initiative 77 have themselves have been sued for violating labor law, including but not limited to, failing to pay the minimum wage. Some of the lawsuits have resulted in sizable settlements.

**Farmers Restaurant Group** – Farmers Restaurant Group (hereinafter "Farmers") controls eight restaurants located in Washington, D.C. Virginia and Pennsylvania.<sup>42</sup> Farmers co-owner Daniel Simons has been outspoken against Initiative 77.<sup>43</sup> Simons has other ideas on how tipped workers can make more money. For instance, he has proposed allowing an employee to work "60 hours or 55 hours" a week with no overtime pay.<sup>44</sup>

Simons contributed \$1,500 to Council Chairman Mendelson's 2018 campaign and another \$1,000 to the anti-Initiative 77 committee Save Our Tip System Initiative 77. Founding Farmers restaurant contributed another \$5,000 to the Save Our Tip System Initiative 77 committee.

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<sup>37</sup> Chef José Andrés Speaks Out Against Washington, D.C.'s One-Wage Initiative, THE WASHINGTON POST (viewed on Aug. 28, 2018), <https://wapo.st/2BXkHld>.

<sup>38</sup> See <http://www.thinkfoodgroup.com/>

<sup>39</sup> Chef José Andrés Speaks Out Against Washington, D.C.'s One-Wage Initiative, THE WASHINGTON POST (viewed on Aug. 28, 2018), <https://wapo.st/2BXkHld>.

<sup>40</sup> *Id.*

<sup>41</sup> National Economic Council et al., *The Impact of Raising the Minimum Wage on Women*, THE WHITE HOUSE (March 2014), <http://bit.ly/2ojDjzT>.

<sup>42</sup> See <https://www.farmersrestaurantgroup.com/>

<sup>43</sup> *Joining Gala Goers to Celebrate, Share Our Last Straw & Say No to Initiative #77*, FARMERS RESTAURANT GROUP (viewed on Aug. 28, 2018), <http://bit.ly/2PIPhIz>.

<sup>44</sup> Kriston Capps, *D.C.'s War Over Restaurant Tips Will Soon Go National*, CITYLAB (June 14, 2018), <http://bit.ly/2NyPGfO>.

- **STEPHENS et al v. FARMERS RESTAURANT GROUP et al**<sup>45</sup> – In June 2017, eight current and former employees of various Farmers-controlled restaurants filed a class-action lawsuit alleging that Farmers had violated multiple labor laws.<sup>46</sup> According to the complaint, employees alleged that Farmers required that they perform duties for which they were not paid, including showing up 15 to 20 minutes early for each shift for a meeting. The workers also said they were paid only the tipped minimum during hours in which they performed tasks that could not result in tips (e.g., cleaning the restaurant).<sup>47</sup> The employees were also required to purchase and wash their own uniforms, as well as purchase equipment for work such as bottle openers, corkscrews, lighters and pens, the complaint alleged. All of this, the complaint alleged, led to the employees making “less than minimum wage.”<sup>48</sup>

But perhaps the most damning allegation in the complaint relates directly to Simons’ aforementioned prescription to help raise wages in lieu of enacting Initiative 77. According to the complaint, employees worked at multiple Farmers’ locations, but their hours were counted separately. Therefore, when employees worked more than 40 hours a week combined at different Farmers’ restaurants as opposed to a single restaurant, they were not paid the overtime rate (one and one-half times their regular wage) for the hours beyond 40.<sup>49</sup> The complaint also alleges that the workers were required to share their tips with their managers and were denied paid sick leave.<sup>50</sup>

In August 2018, Farmers Restaurant Group agreed to pay \$1.49 million to resolve the lawsuit. Farmers did not admit liability, and denied the allegations presented by the plaintiffs, according to the joint statement included in the proposed settlement. The class is said to include 962 workers.<sup>51</sup>

**Clyde’s Restaurant Group** – Clyde’s Restaurant Group (hereinafter “Clyde’s”) is a parent company overseeing 12 restaurants.<sup>52</sup> A Clyde’s operations director, David Moran, serves as chairman of the board for RAMW, the restaurant industry group behind the Save Our Tip System committee.<sup>53</sup>

Clyde’s corporations, LLCs and executives contributed \$57,600 to the campaigns of the elected officials covered in this analysis and contributed another \$16,000 to the anti-Initiative 77 committee Save Our Tip System Initiative 77.

- **HOWARD v. CLYDE’S RESTAURANT GROUP, INC. et al** – In August 2011, a former server at Clyde’s Reston filed a class-action lawsuit in Virginia against his former employer, alleging minimum wage and overtime law violations. The complaint alleges that some of the

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<sup>45</sup> Stephens et al v. Farmers Restaurant Group et al, 1:17-cv-01087 (U.S. DISTRICT COURT DISTRICT OF COLUMBIA).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Adam Lidgett, *Restaurant Group Inks \$1.49M Deal To End Wage Suit*, LAW 360 (Aug. 22, 2018), <http://bit.ly/2PcXq80>.

<sup>52</sup> See <https://www.clydes.com/>.

<sup>53</sup> About Us, *Board of Directors Executive Committee*, RESTAURANT ASSOCIATION METROPOLITAN WASHINGTON (viewed on Sept. 4, 2018), <http://bit.ly/2CkilEw>.

hours that employees worked went uncompensated, that employees were forced to attend trainings and meetings without being paid the minimum wage, were not paid overtime and or the minimum wage, and that time clock entries were manipulated.<sup>54</sup>

In October 2012, Clyde's agreed to settle the case and agreed to pay 37 tipped employees of the group's Reston and Broadland locations. The settlement includes \$147,366 in legal fees and \$197,634 in payments to the 37 employees. Eight employees received \$10,000 or more, with the largest payment to a single employee totaling \$26,000. Clyde's denied that it violated any laws.<sup>55</sup>

Along with the financial settlement, Clyde's agreed not to alter time clock entries without employee approval, not to require tipped employees to work off the clock, and not to require its employees to professionally dry clean their clothes.<sup>56</sup>

- **BELL et al v. CLYDE'S RESTAURANT GROUP INC. et al** – In December 2010, former and current tipped workers filed a class-action lawsuit against Clyde's in Washington, D.C. The complaint alleges that Clyde's failed to pay workers the minimum wage and failed to pay overtime. According to the complaint, the plaintiffs allege that Clyde's also failed to pay workers for every hour they worked, manipulated time clock entries, instructed employees to not clock in for every hour worked and made employees take quizzes and/or attend trainings and meeting without paying them for their time.<sup>57</sup>

In October 2012, Clyde's agreed to hire a consultant to determine which current or former employees were paid less than the minimum wage during the roughly two years covered by the settlement.<sup>58</sup> The total settlement amount was not disclosed in filings.

These are not the only lawsuits filed on behalf of tipped workers against restaurants that opposed Initiative 77.<sup>59</sup> Data contradicts the assertion by Kathy Hollinger, the president of the RAMW, that “servers make far more than minimum wage.”<sup>60</sup> As of May 2017, the median hourly wage of waiters and waitresses in the District was \$11.86 – just 36 cents above D.C.'s minimum wage at the time, according to the Bureau of Labor and Statistics (BLS).<sup>61</sup>

The cases highlighted above reveal that no matter how much the restaurant industry claims the law is unnecessary and employees are “covered,” government wage and hour data as well as recent million-dollar lawsuit settlements show that not all tipped workers are paid the minimum wage.

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<sup>54</sup> Howard v. Clyde's Restaurant Group Inc. et al, 1:11-cv-00687-AJT-IDD (U.S. DISTRICT COURT EASTERN DISTRICT OF VIRGINIA).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Bell v. Clyde's Restaurant Group Inc. et al, 1:10-cv-01720-BJR (U.S. DISTRICT COURT DISTRICT OF COLUMBIA).

<sup>58</sup> *Id.*

<sup>59</sup> Tim Carman, *Ex-server sues Bombay Club Owner, Claiming he was Stiffed Overtime*, THE WASHINGTON POST (June 4, 2015), <https://wapo.st/2wso19Y>.

<sup>60</sup> Martin Austermuhle, *There's An Under-The-Radar Fight Going On In D.C. Over How Much Restaurant Workers Should Be Paid*, WAMU (Sept. 18, 2017), <http://bit.ly/2w16UkP>.

<sup>61</sup> Occupational Employment Statistics, *May 2017 State Occupational Employment and Wage Estimates District of Columbia*, BUREAU OF LABOR STATISTICS, <http://bit.ly/2M0jmku>.

## VII. Conclusion

Workers of color are disproportionately impacted by the low tipped wage, and within the tipped worker community, women are twice as likely to live in poverty as their male colleagues.<sup>62</sup>

Undoubtedly, some servers in D.C. make more than the minimum wage. For example, servers working at places like Ghibellina, the restaurant owned by outspoken anti-Initiative 77 restaurateur Ari Gejdenson<sup>63</sup> where patrons can dine on \$110 porterhouse steaks,<sup>64</sup> are likely making well above the minimum wage (Gejdenson and his associated corporations contributed \$6,000 to the anti-Initiative 77 committee). But for restaurants where menu items are far less than \$110, one can envision a scenario where a slow night could leave tipped workers with less than minimum wage. Further, it is not just servers and bartenders affected by the lower tipped minimum wage. The law would increase the wages of nail salon workers, bellhops, parking lot attendants, hair stylists and pizza delivery drivers.<sup>65</sup>

Anti-Initiative 77 individuals and entities contributed \$236,000 to D.C.'s elected officials during their two most recent elections, in contributions averaging \$733 apiece. One has to wonder if D.C. elected officials – who are no strangers to advocating for greater representation for their constituents (i.e., “taxation without representation”) – would have moved so quickly to nullify the will of the voters had they not received campaign support from anti-Initiative 77 individuals and entities.

The optics alone are enough to call into question whose interests are being represented by the Council: the 44,353 voters who approved Initiative 77, or the 163 anti-Initiative 77 individuals and entities that contributed large sums of money to their campaigns.

The good news is it doesn't have to be like this in the future. In 2018, the D.C. Council unanimously passed the Fair Elections Act of 2017,<sup>66</sup> which created a small donor-public campaign financing program under which individuals running for office would no longer have to rely on corporate money to finance their campaigns. Candidates can participate in the program beginning in 2020 and many members of the Council including the Chairman Mendelson said they would make use of the program.

The people had their say at the ballot box. Corporations had their say with campaign cash. The will of wealthy contributors should not trump the will of the people.

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<sup>62</sup> THE CASE FOR ELIMINATING THE TIPPED MINIMUM WAGE IN WASHINGTON, D.C., NATIONAL EMPLOYMENT LAW PROJECT AND RESTAURANT OPPORTUNITIES CENTER (May 2016), <http://bit.ly/2LWvmnj>.

<sup>63</sup> Lenore Adkins, *Restaurateur Ari Gejdenson Says Minimum Wage Hikes May Force Him Out of D.C.*, EATER WASHINGTON D.C. (Jan. 20, 2018), <http://bit.ly/2LZSZLP>.

<sup>64</sup> *Ghibellina Summer 2018 Summer Menu*, Ghibellina (viewed on Sept. 4, 2018), <http://bit.ly/2NN05bb>.

<sup>65</sup> Fenit Nirappil and Reis Thebault, *Initiative 77 Tipping Wars in D.C. Moves From Campaign to Council*, THE WASHINGTON POST (June 20, 2018), <https://wapo.st/2MZMTPT>.

<sup>66</sup> Bill 22-0192, *Fair Elections Act of 2017*, THE COUNCIL OF THE DISTRICT OF COLUMBIA (March 21, 2017), <http://bit.ly/2PcWfFC>.



## Appendix I – Detailed Methodology

**Campaign Finance Data:** Public Citizen downloaded all contribution data for the 14 D.C. elected officials who will decide the fate of Initiative 77: the 13 members of the D.C. Council<sup>67</sup> and Mayor Muriel Bowser.<sup>68</sup> For each elected official, Public Citizen downloaded all contribution data for each official's two most recent campaigns.<sup>69</sup> The vast majority of these contributions came during the 2014, 2016 or 2018 election cycles. In total, the dataset includes 37,000 contributions. Table 3 at the end of this section details which campaigns were analyzed for each elected official.

**Determining Anti-Initiative 77 Individuals and Entities:** In order to determine which individuals and entities to include in a list of expressly anti-Initiative 77 actors, Public Citizen used four sources.

First: the contributions of all restaurants and restaurant owners listed on the “Vote No 77” webpage, as well as contributions by those who listed these restaurants as their employer (nearly all of whom were restaurant owners).<sup>70</sup>

Second and third: Public Citizen downloaded a list of all contributors to the “Save Our Tip System Initiative 77” and “NO2DC77” initiative committees.<sup>71</sup> The Save Our Tip System Initiative 77 is controlled by the Restaurant Association Metropolitan Washington (RAMW),<sup>72</sup> a trade group that represents D.C. bars and restaurants. Save Our Tip System Initiative 77 has raised more than \$340,000 to fight the initiative. NO2DC77 was launched by D.C. restaurateur John Guggenmos and has raised just over \$40,000 thus far.

Fourth: Public Citizen then used the list of individuals, entities and addresses created from the three sources noted above and searched the D.C. Alcoholic Beverage Regulation Administration licensee lists to determine additional corporations and LLCs associated with each restaurant (i.e., the entity that controls the liquor license for each restaurant).<sup>73</sup> For restaurants in Virginia or Maryland, Public Citizen searched the Virginia Alcoholic Beverage Control Authority<sup>74</sup> and the Maryland Alcoholic Beverages Retail Licenses database.<sup>75</sup>

Whenever an owner or an entity was found using one of the four aforementioned sources, other entities controlled by the same owner or entity were also included. For example, D.C. restaurateur and business owner Greg Casten signed on to the “Vote No 77” letter listing his business ProFish.<sup>76</sup>

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<sup>67</sup> See <http://dccouncil.us/council>.

<sup>68</sup> See <https://mayor.dc.gov/biography/muriel-bowser>.

<sup>69</sup> *Contribution and Expenditure Search*, THE DISTRICT OF COLUMBIA OFFICE OF CAMPAIGN FINANCE, <http://bit.ly/2eFS6XV>.

<sup>70</sup> See <https://www.voteno77.com/>.

<sup>71</sup> See <https://saveourtips.com/> and <http://no2dc77.com/>.

<sup>72</sup> See <http://www.ramw.org/>.

<sup>73</sup> *Current License Holders*, ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION, <http://bit.ly/2LyGYwo>.

<sup>74</sup> *Licensee Search*, VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY, <http://bit.ly/2CmoBLX>.

<sup>75</sup> *Alcoholic Beverages Retail Licenses Database Query*, MARYLAND COMPTROLLER'S OFFICE, <http://bit.ly/2oMfCdc>.

<sup>76</sup> See <https://www.voteno77.com/>.

But he operates many other businesses,<sup>77</sup> and the contributions of those businesses were included as well.

The final list included more than one thousand individuals, corporations, LLCs, and addresses associated with anti-Initiative 77 efforts. Public Citizen searched the dataset of 37,000 contributions for each anti-Initiative individual, corporation, LLC and address.<sup>78</sup>

In the end, this analysis amounts to a conservative estimate. Undoubtedly, other restaurant owners or restaurant corporations that were opposed to the Initiative (e.g., were quoted in the press, or placed a “Vote No on 77” sign in their restaurant window), contributed to the D.C. elected officials covered in this analysis, but were not captured by our methodology.

**Table 3 – Campaigns Covered in This Analysis**

D.C. Elected Official	Two Campaign Types*
Vincent Gray	Mayoral, Council
Mayor Bowser	Mayoral (2)
Anita Bonds	Council at-large (2)
Jack Evans	Mayoral, Council
Phil Mendelson	Council Chair (2)
Elissa Silverman	Council at-large (2)
David Grosso	Council at-large (2)
Mary Cheh	Council (2)
Kenyan McDuffie	Council (2)
Robert White	Council at-large (2)
Brandon Todd	Council (2)
Charles Allen	Council (2)
Brianne Nadeau	Council (2)
Trayon White	Council (2)

\*Contribution Limits: Mayoral - \$2,000, Council Chair - \$1,500, Council at-large - \$1,000, Council - \$500.<sup>79</sup>

<sup>77</sup> See <https://www.linkedin.com/in/greg-casten-b8a29666>.

<sup>78</sup> An address match alone was not enough to warrant inclusion in the dataset of anti-Initiative 77 contributions. Another connection had to be made for the contribution to be included.

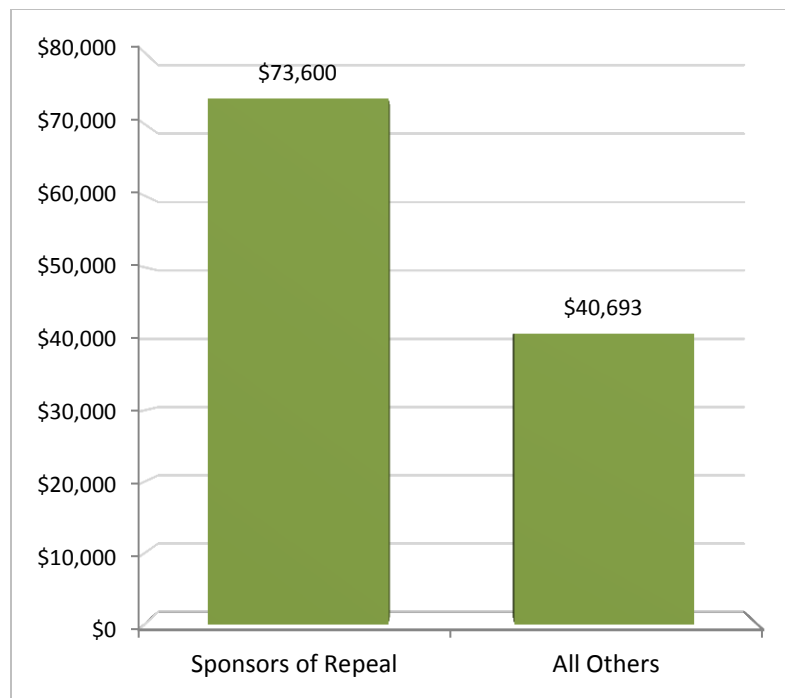
<sup>79</sup> Code of the District of Columbia, § 1-1163.33 *Contribution Limitations*, COUNCIL OF THE DISTRICT OF COLUMBIA (viewed on Aug. 28, 2018), <http://bit.ly/2NvIq4G>.

## Appendix II

Individual contribution limits are higher for mayoral campaigns (\$2,000) and typically result in far more contributions than council races. Contributions relating to the 2014 mayoral campaigns of both Jack Evans and Vincent Gray are included Figure 4 in Section III.

But even if one were to exclude Evans' and Gray's mayoral races and only include campaigns for city council, the contributions to sponsors of Initiative 77 repeal compared to those not sponsoring the bill are still lopsided. [Figure 9]

**Figure 9 – Total Contributions – Two Most Recent Campaigns of 13 D.C. Councilmembers**  
**D.C. Council Campaigns Only\***



\* Includes Jack Evans' 2012 campaign for D.C. Council instead of his 2014 mayoral campaign, as that would be his second most recent election if his mayoral campaign is excluded. Only one D.C. Council campaign for Vincent Gray is included.

Figure 9 is about as conservative as an estimate one could make. But no matter how one analyzes the data, the fact remains the same: D.C. elected officials that support the repeal bill received significantly more money from anti-Initiative 77 individuals and entities during their two most recent campaigns than their Council colleagues.