In Response to “The Tipping Point”

There are few issues in policymaking that polarize like the minimum wage. Proposing the question as to whether current rates are at an appropriate level sends stakeholders scampering to predictable positions, with employers and their representatives believing increases in mandated wages aren’t necessary and employees and their advocates (including me!) arguing that the minimum wages needs to be increased substantially. Rarely do we see employers, employees, and the public line up behind the position that current minimum wage policy, whatever it may be, is adequate.

The major exception to this occurs when we talk about the wages we pay people who receive tips – known in the industry as the tipped wage.

In its February issue, the National Conference of State Legislatures took a closer look at the tipped wage in Jackson Brainerd’s article, “The Tipping Point,” but there are a few things policymakers should take care to fully understand before making changes to a policy that is vital to the both the livelihood of servers and the financial health of restaurants around the nation.

In Maine, we recently learned this the hard way.

Foremost: making a policy change that requires restaurants to pay servers minimum wage is unnecessary because state and federal law *already require* that servers are paid minimum wage. Moreover, in more than 25 states, including Maine, policymakers require a cash wage higher than the fairly low federal cash wage requirement.

But the critical point is this: Any establishment that doesn’t ensure a server or bartender is not being paid minimum-wage for his or her time is in violation of federal and state laws.

During the legislative debate in Maine to restore the tipped credit after it was repealed in a November 2016 referendum, various stakeholders and even well-informed members of the media consistently failed to understand this central point: Servers and other tipped wage employees by law must receive the minimum wage via cash wages and tips. State policymakers can also supplement this protection further. For example, in addition to a higher cash wage, Maine ensured the minimum wage is calculated on a seven-day workweek—protecting workers from extended seasonal lows and highs.

In his article, Mr. Brainerd points to two reasons that these protections are somehow insufficient, neither of which makes a compelling case to change policy that, in the eyes of both workers and management, is working: 1) the federal tipped wage has not been raised in conjunction with the minimum wage at-large; and 2) it is a law that is difficult to enforce.

To the first: That the cash component of the federal tipped wage has not been raised since its adoption in 1966 ignores that the law ties total compensation to the larger federal minimum-wage of $7.25/hour. Servers are, by law, guaranteed to make at least the minimum wage.

Furthermore, Mr. Brainerd's contention that the law is difficult for the IRS to enforce would certainly be a problem for the IRS. But if true, why should the inability of a government agency to carry out its duties result in a new burden on businesses, especially small businesses that rely on the tipped-wage model to continue to operate, and on servers, who support it precisely because it allows them to legally take home more money and improve their quality of life?

The Maine example cited in "The Tipping Point," is an important lesson in how "fixing" a system that isn't broken can go awry and a case-study worth examination by every policymaker considering a change to the current system. Mr. Brainerd does a fair job laying out what happened in Maine, and the reasons the Legislature ultimately overturned a ballot measure that had eliminated the tipped wage—a grassroots movement of servers from across the state demanded that they do so.

However, there is one important difference between "The Tipping Point's" characterization and what happened: Servers didn't demand a change in the law because they "said a higher wage would cause customers to tip less and would actually reduce their take-home pay." They demanded a change in the law because many experienced customers tipping less and thus reducing their take home pay.

Take for example, Maine-resident and bartender Sue Vallenza, who, as reported in the Washington Post, saw her tips decrease dramatically and who went so far as to chastise my legislative colleagues for "cut[ting] someone off at the knees like that." Other servers I talked with did not have that same experience but expressed concern about their employers' financial health with the elimination of the tipped credit and the possibility of reduced job security.

In politics we sometimes push for changes before we fully understand the consequences. When it comes to the tipped wage, policymakers should do everything they can to avoid that mistake. The current system works. It works for servers, who are already guaranteed minimum wage and often take home far more than that. It works for business owners, who can continue to operate under the same system that enticed them to enter the restaurant industry in the first place. And it works for the public, who have adapted to—and enjoy—a system where the quality of service they receive is reflected in what they decide to pay for it. As the cliché goes, if it's not broke, don't fix it.

State Representative Louie Luchini serves as House chair of the Joint Standing Committee on Veterans & Legal Affairs in the Maine Legislature. The four-term Democrat represents Ellsworth and Trenton area, the gateway to Acadia National Park, in the Maine House.