AMERICAN ECONOMIC LIBERTIES PROJECT

June 26, 2024

California State Senate
1315 10th St
Sacramento, CA 95814

RE: OPPOSE SB 1524 JUNK FEES CARVEOUT FOR RESTAURANTS AND OTHER FOOD SERVICES

Dear Honorable Senators:

On behalf of the American Economic Liberties Project, we write to **OPPOSE SB 1524**, which would roll back California's pioneering ban on unfair and deceptive junk fees by exempting *not just restaurants*, but all fast food chains, food concessions, grocery stores and grocery delivery services, catering and banquet services, bars and more.

Rather than rush this broad and ill-defined carveout through the legislative process, we suggest the legislature instead adopt an extension to the effective date for small, independent restaurants only, so that they have a longer runway to reconfigure their internal accounting and point of sale systems without unnecessary fear of impacts to staff.

We applaud your nation-leading efforts to pass SB 478 in 2023. When Gov. Gavin Newsom signed SB 478 into law last year, it was hailed as a pioneering victory for California consumers. The legislation requires corporations to disclose the total cost of a product upfront, including all mandatory fees, surcharges, and amounts to a ban on junk fees. That groundbreaking consumer protection law is set to go into effect on July 1, 2024. We urge you not to risk undermining the impact of that effort now.

"Junk fees" are hidden charges that consumers only discover after they have committed to a purchase. These charges can increasingly be found across all sectors of the economy. Mandatory hidden fees lead consumers to believe they will be paying one price for an item or service, only to find out right before they complete the transaction that the price is higher – sometimes significantly higher. Research shows junk fees cost the average American family of four $3,200 per year and can increase the price of individual items by more than 20 percent. The public, understandably, despises junk fees; an overwhelming 83 percent of likely voters across the United States say they would vote for a legislator that would end the practice, and 79 percent of voters say they support state legislation to ban the use of junk fees.

We also appreciate our allies in the restaurant industry, with whom we worked closely to advocate for various forms of pandemic relief, including protections against third party food

delivery platforms. But an increasing number of restaurants are incorporating mandatory service charges into their business model. As in other sectors of the economy, these junk fees are wildly unpopular. A survey recently conducted by the San Francisco Chronicle survey found that **81 percent of the more than 1,000 respondents agreed that junk fees at restaurants should be outlawed**. That's hardly a surprise. Another article in the paper described these frequently nebulous fees as a "battleground" between restaurants and their patrons, because they leave some diners feeling "hoodwinked."

Since the pandemic, it has become even more common to see "service charges," "living wage fees," "employee healthcare fees" and other service charges added to a total bill, as restaurants struggled to both appear reasonably priced and remain profitable. As these junk fees became commonplace, more restaurants came to depend on the practice to pad their margins and, in some instances, improve wages and benefits for their staff. But there are other avenues available to restaurant owners that want to improve conditions for their staff that do not involve deceptively advertising the price of their meals to their customers.

The idea behind banning junk fees is simple: Consumers should know the full cost of the items they intend to order when they look at a menu. Even if disclosed somewhere on the menu, junk fees undermine up-front transparency, and they put the burden on consumers to calculate what different percentage charges will mean for their bills. Junk fees also make comparison pricing difficult across restaurants. This practice contradicts the spirit of transparent pricing that SB 478 aims to enforce.

Many restaurants have gone public about not incorporating deceptive junk fees in their business models. Perversely, these restaurants are most likely to be harmed by SB 1524. Junk fees leave restaurants with transparent pricing at a disadvantage, as they will appear more expensive than those restaurants that rely on deceptive service fees applied after the fact. When prices are clear and upfront, businesses must compete on actual costs and quality, rather than engage in a race to the bottom by hiding some of the expense via deceptive fees.

Further, there is substantial evidence that these fees do not always end up distributed as advertised. Restaurant industry workers have filed class-action lawsuits against a number of restaurant ownership groups for withholding automatic gratuity funds from workers' paychecks. Cases of restaurant management misappropriating surcharge funds and withholding those funds from workers is not new. Going back to at least 2013, we see instances of ownership groups misdirecting service charge funds away from workers and into the restaurants' bottom line.

Finally, these fees can also, perversely, result in restaurant staff earning less than they otherwise would. In one instance, it was revealed that these fees can deceive customers into believing that a 15- or 18 percent service fee was in fact the gratuity, leading customers to write "included" in the tip line of their bill.

None of this is to deny that restaurant owners are facing a difficult economic and competitive climate. But allowing them to deceive their customers isn't the way to solve this issue. A level playing field will do more to help the sector than allowing the continuance of deceptive junk fees.

The state should maintain the integrity of SB 478 and ensure that all industries, including restaurants, adhere to the same standards of honesty and transparency in their pricing practices. This approach will foster a fairer marketplace and uphold the trust and confidence of consumers across California. **Respectfully, we urge a NO vote on SB 1524.**

Sincerely,

The American Economic Liberties Project

www.endjunkfees.com

Cc: Office of the CA Attorney General