January 26, 2021

Re: Hazard Pay Ordinance

Dear Members of the Santa Ana City Council:

On behalf of the California Retailers Association (CRA), inclusive of our grocery and retail pharmacy members, we respectfully urge the Council to refrain from passing a mandated a wage increase, especially in the absence of a complete economic impact analysis on the effects such a mandate would have on essential businesses, and subsequently, our local communities.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, fast food restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which currently operates over 164,200 stores and employs around 2,776,000 people—nearly one fifth of California's total employment.

A mandated pay increase beyond what retail employers can tolerate without raising prices or cutting workforce hours will hurt both consumers and our hardworking employees. This is the last thing our members want to do in the middle of the COVID-19 pandemic and economic crisis. A number of our members are already offering substantial increases in hourly pay and employee bonuses in recognition of the essential work these employees are providing. An inflexible, one-size-fits-all approach risks increasing the cost of food, grocery, and retail pharmacy drugs and will disproportionately impact those in our communities who are already bearing the brunt of this pandemic. All of this comes on top of the recent minimum wage increase. This is why we would request an economic study before the Council mandates a substantial pay increase.

We request that this motion be amended to include an economic study prior to any consideration of an increase in pay.

Sincerely,

Steve McCarthy

Steve McCarthy
Vice President, Public Policy
California Retailers Association

February 1, 2021

Dear Local Elected Leaders:

Our coalition of local grocers, community advocates, and business lead ers strongly urge our region's local elected leaders to undertake a complete economic impact assessment to fully understand the consequences of any proposed mandatory grocery worker wage-increase ordinances before moving forward.

Local grocery stores are committed to paying competitive wages and benefits to their employees. Since the start of the COVID-19 pandemic, **grocers have invested significantly in infrastructure and enhanced safety protocols to protect frontline essential workers and shoppers, as well as to provide incentive pay, bonuses and additional health benefits for grocery workers.**

The proposed emergency pay mandates ignore this commitment and ongoing efforts, and would have significant, negative impacts at the worst possible time.

The proposed increases in grocery worker pay would substantially increase the cost of food and groceries for our region's residents and families by an estimated $400 per year for a family of four. Higher grocery costs would hurt Californians at a time they are already struggling to put food on the table – and would be especially harmful to low-income, people of color and disadvantaged communities.

According to a recent Public Policy Institute of California survey, 40% of Los Angeles County residents earning less than $40,000 per year have had trouble paying some kind of bill as a result of COVID-19. Thirty-nine percent (39%) of these Los Angeles County low-income residents report cutting back on food. Increasing the cost of groceries and other essentials would only compound these already-concerning statistics.

Extra pay mandates could also harm the very workers they are intended to help. Higher costs could force grocers to reduce the number of workers, available hours, and even store locations.

In addition, extra pay mandates could make it more difficult for many grocers to stay afloat, especially independent grocers, small markets, ethnic grocers and grocery stores in disadvantaged communities already struggling to keep their doors open. Most grocers operate with thin margins, even during the pandemic. **Shutting down grocery stores will result in increased food insecurity and food deserts, especially in low-income and disadvantaged neighborhoods.**

These ordinances are rushed and not adequately researched. We urge our local elected leaders to pause the vote on any local extra pay ordinance until you complete a full analysis of the costs, impacts on local families and our community, and input from local businesses.

Additional, extra pay mandates will not make grocery workers any safer.

Sincerely,

Ron Fong, President & CEO
California Grocers Association

Robert Rivinius, President
Family Business Association of California

Elizabeth Graham, Executive Director
California Fuels & Convenience Alliance

Jay King, President
California Black Chamber of Commerce

Jeremy Harris, President & CEO
Long Beach Area Chamber of Commerce

Maria S. Salinas, President & CEO
Los Angeles Area Chamber of Commerce

Stuart Waldman, President
Valley Industry & Commerce Association

Tracy Hernandez, Founding CEO
Los Angeles County Business Federation (LA BizFed)

Faith Bautista, Chief Executive Officer
National Diversity Coalition

Doug Kessler, Executive Director
Si Se Puede Foundation of Fresno, Kern, Kings and Tulare Counties

Bill Manis, President & CEO
San Gabriel Valley Economic Partnership

Adam Ruiz, Chair
Southwest California Legislative Council

Rachel Michelin, President & CEO
California Retailers Association

Robert C. Lapsley, President
California Business Roundtable

Pat Fong Kushida, President & CEO
CalAsian Chamber of Commerce

Julian Canete, President & CEO
California Hispanic Chambers of Commerce

Ruben Guerra, Chairman & CEO
The Latin Business Association

Lucy Dunn, President & CEO
Orange County Business Council

Cindy Roth, President & CEO
Greater Riverside Chambers of Commerce

Genevieve Morrill, President & CEO
West Hollywood Chamber of Commerce

Donna Duperron, President & CEO
Torrance Area Chamber of Commerce

Faith Bautista, President & CEO
National Asian American Coalition

Theresa Harvey, President & CEO
North Orange County Chamber of Commerce

Lily Rocha, Board Chair
Latino Restaurant Association

ORANGE COUNTY
BUSINESS COUNCIL

2 Park Plaza, Suite 100 | Irvine, CA 92614| P 949.476.2242 | F 949.476.0443 | www.ocbc.org

February 1, 2021

The Honorable Vicente Sarmiento
Mayor
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

RE: Santa Ana Hazard Pay Proposal – OPPOSE

Dear Mayor Sarmiento and Members of the City Council:

Orange County Business Council (OCBC), the leading voice of business in Orange County, is a strong advocate for balancing support for workers with relief for businesses also reeling from the pandemic. A hazard pay ordinance could inflict financial harm on employers at the worst possible time, while also unintentionally damaging workers and consumers. **Therefore, OCBC opposes a locate mandate requiring hazard pay for any workers and asks the City Council to conduct a complete economic impact assessment to fully examine the consequences of a hazard pay ordinance before progressing forward**.

Local grocery stores, pharmacies, retailers and other essential employers are committed to paying competitive wages and benefits to their employees. Since the start of the COVID-19 pandemic, they have invested significantly in infrastructure and enhanced safety protocols to protect frontline essential workers and shoppers. They have also provided incentive pay, bonuses and additional health benefits. According to an economic study released by the California Grocers Association, up to an additional $5/hour increase in pay could raise grocery prices by about $400 annually for the typical family of four at the worst possible time.

A hazard pay ordinance could also harm workers, rather than help them. The economic study concluded that, if grocers must offset savings in operational costs, they would need to reduce work hours by 24 percent across the board. Higher costs could even force employers to shutter store locations. Shutting down grocery stores will result in increased food insecurity and food deserts, especially in low-income and disadvantaged neighborhoods.

A hazard pay ordinance for any industry consider research and cannot be duplicative or rushed. **For these reasons, OCBC opposes a hazard pay ordinance and strongly urges the Council to perform a complete analysis of the costs of such an ordinance.**

Sincerely,

Jennifer Ward

Jennifer Ward
Senior Vice President of Advocacy and Government Affairs

Consumer and Community Impacts of Hazard Pay Mandates

January 2021

Prepared for:
California Grocers Association

Prepared by:
Brad Williams, Chief Economist
Michael C. Genest, Founder and Chairman
Capitol Matrix Consulting

About the Authors

The authors are partners with Capitol Matrix Consulting (CMC), a firm that provides consulting services on a wide range of economic, taxation, and state-and-local government budget issues. Together, they have over 80 years of combined experience in economic and public policy analysis.

Mike Genest founded Capitol Matrix Consulting (originally Genest Consulting) in 2010 after concluding a 32-year career in state government, which culminated as Director of the California Department of Finance (DOF) under Governor Arnold Schwarzenegger. Prior to his four-year stint as the Governor's chief fiscal policy advisor, Mr. Genest held top analytical and leadership positions in both the executive and legislative branches of government. These included Undersecretary of the Health and Human Services Agency, Staff Director of the Senate Republican Fiscal Office, Chief of Administration of the California Department of Corrections and Rehabilitation, and Director of the Social Services section of California's Legislative Analyst's Office.

Brad Williams joined Capitol Matrix Consulting in 2011, after having served in various positions in state government for 33 years. Mr. Williams served for over a decade as the chief economist for the Legislative Analyst's Office, where he was considered one of the state's top experts on the tax system, the California economy, and government revenues. He was recognized by the Wall Street Journal as the most accurate forecaster of the California economy in the 1990s, and has authored numerous studies related to taxation and the economic impacts of policy proposals. Immediately prior to joining CMC, Mr. Williams served as a consultant to the Assembly Appropriations Committee, where he advised leadership of the majority party on proposed legislation relating to taxation, local government, labor, and banking.

Table of Contents

Executive Summary

Hazard-pay mandates passed in the City of Long Beach and under consideration in the City of Los Angeles and in other local jurisdictions would raise pay for grocery workers by as much as $5.00 per hour. Since the average pay for grocery workers in California is currently about $18.00 per hour, a $5.00 increase would raise store labor costs by 28 percent, and have major negative impacts on grocery stores, their employees and their customers. Specifically:

- Average profit margins in the grocery industry were 1.4% in 2019, with a significant number of stores operating with net losses. While profits increased temporarily to 2.2% during early to mid 2020, quarterly data indicates that profit margins were subsiding to historical levels as 2020 drew to a close.

- Wage-related labor expenses account for about 16 percent of total sales in the grocery industry. As a result, a 28 percent increase in wages would boost overall costs 4.5 percent under the City of Los Angeles proposal of $5.00 per hour. *This increase would be twice the size of the 2020 industry profit margin and three times historical grocery profit margins.*

- In order to survive such an increase, grocers would need to raise prices to consumers and/or find substantial offsetting cuts to their controllable operating expenses, which would mean workforce reductions. As an illustration of the potential magnitude of each of these impacts, we considered two extremes:

  1) All of the higher wage costs (assuming the $5.00/hour proposal) are passed through to consumers in the form of higher retail prices:

     - This would result in a $400 per year increase in grocery costs for a typical family of four, an increase of 4.5 percent.

     - If implemented in the City of Los Angeles, its residents would pay $450 million more for groceries over a year.

     - The increase would hit low- and moderate-income families hard, particularly those struggling with job losses and income reductions due to COVID-19.

     - If implemented statewide, additional grocery costs would be $4.5 billion per year in California.

  2) Retail prices to consumers are not raised and all the additional costs are offset through a reduction in store expenses:

     - Given that labor costs are by far the largest controllable expense for stores, it is highly likely that the wage mandates will translate into fewer store hours, fewer employee hours, and fewer jobs.

       - For a store with 50 full-time equivalent employees, it would take a reduction of 11 employees to offset the increased wage costs, or a 22% decrease in staff.

       - If the mandate were imposed statewide at $5.00 per hour, the job loss would be 66,000 workers.

- If imposed in the City of Los Angeles, the job loss would be 7,000 workers.
- And in the City of Long Beach, the job impact of its $4.00 per hour mandate would be 775 jobs.
- Stores could alternatively avoid job reductions by cutting hours worked by 22 percent.

- For the significant share of stores already operating with net losses, a massive government-mandated wage increase would likely result in store closures, thereby expanding the number of "food deserts" (i.e. communities with no fresh-food options).

Introduction

The Long Beach City Council has passed an ordinance that mandates grocers to provide a $4.00 per hour pay increase – "hazard pay" – to grocery workers. The mandate expires in 120 days. Two members of the Los Angeles City have introduced a similar measure for a $5.00 per hour increase for companies that employ more than 300 workers nationwide. Grocery workers in California currently earn about $18.00 per hour.[1] Therefore, the Los Angeles proposal would increase average hourly pay to $23.00 per hour, an increase of 28 percent. Several other cities in California have discussed $5.00/hour proposals similar to Los Angeles.

This report focuses on the impact of hazard pay mandates on grocery store profitability and on the sustainability of an industry with traditionally low profit margins. It also assesses the potential impact of the proposed wage increases on consumers, especially lower-income consumers (a cohort already hit hard by the COVID lockdowns and business closures).

Background — Grocery is a Low-Margin, High-Labor Cost Business

The grocery business is a high-volume, low-margin industry. According to an annual database of public companies maintained by Professor Damodaran of New York University (NYU),[2] net profit margins as a percent of sales in the grocery industry are among the lowest of any major sector of the economy. Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) averaged 4.6 percent of sales in 2019, and the net profit margin (which accounts for other unavoidable expenses such as rent and depreciation) was just 1.4 percent during the year. This compares to the non-financial, economy-wide average of 16.6 percent for EBITDA and 6.4 percent for the net profit margin. The NYU estimate for public companies in the grocery industry is similar to the 1.1 percent margin reported by the Independent Grocers Association for the same year.[3]

COVID-19 temporarily boosted profits

In the beginning of the COVID-19 pandemic, sales and profit margins spiked as people stocked up on household items and shifted spending from eating establishments to food at home. According to data compiled by NYU, net profit margins in the grocery industry increased to 2.2 percent in early to mid 2020.[4] Although representing a substantial year-to-year increase in profits, the 2.2 percent margin remains quite small relative to most other industries. This implies that even with the historically high rates of profits in 2020, there is little financial room to absorb a major wage increase.

[1] $18.00 per hour is consistent with the responses we received to our informal survey. It is also consistent with published contract agreements we reviewed. See, for example, the "Retail Food, Meat, Bakery, Candy and General Merchandise Agreement, March 4, 2019 - March 6, 2022 between UFCW Union Locals 135, 324, 770,1167,1428,1442 & 8 - GS and Ralphs Grocery Company." In this contract, hourly pay rates starting March 2, 2021 for food clerks range from $14.40 per hour (for first 1,000 hours) up to $22.00 per hour (for workers with more than 9,800 hours), The department head is paid $23.00 per hour. Meat cutter pay rates range from $14.20 (for the first six months) to $23.28 per hour (for those with more than 2 years on the job). The department manager is paid $24.78 per hour. https://ufcw770.org/wp-content/uploads/2020/08/Ralphs-Contract-2020.pdf

[2] Source: Professor Aswath Damodaran, Stern School of Business, New York University. http://pages.stern.nyu.edu/~adamodar/

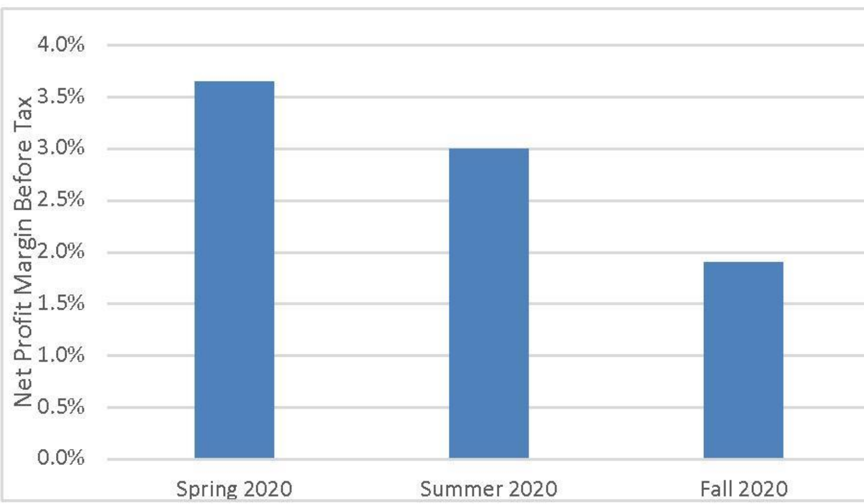
[3] Source: "2020 Independent Grocer Financial Survey." Sponsored by the National Grocer's Association and FMS Solutions Holding, LLC

[4] Supra 2.

But the increases are subsiding

Moreover, quarterly data indicates that the sales and profit increases experienced in early 2020 were transitory and were settling back toward pre-COVID trends as 2020 drew to a close. This quarterly trend is evident in quarterly financial reports filed by California's two largest publicly traded companies in the grocery business: The Kroger Company (which includes Ralphs, Food for Less, and Fred Meyers, among others) and Albertsons (which includes Safeway, Albertsons, and Vons, among others). Figure 1 shows that the average profit margin for these two companies was 3.6 percent of sales in the Spring of 2020, declining to 1.9 percent by the fourth quarter of the year.[5] Monthly sales data contained in the 2020 Independent Grocer's Financial Survey showed a similar pattern, with year-over-year sales peaking at 68 percent in mid-March 2020, but then subsiding to 12 percent as of the first three weeks of June (the latest period covered by the survey).[6]

Figure 1
Combined Net Profit Margins During 2020
Albertsons and The Kroger Companies



While grocers continued to benefit from higher food and related sales during the second half of 2020, they also faced higher wholesale costs for food and housing supplies, as well as considerable new COVID-19 related expenses. These include expenses for paid leave and overtime needed to cover shifts of workers affected by COVID-19, both those that contracted the virus and (primarily) those that were exposed and needed to quarantine. Other COVID-19 costs include those for intense in-store cleaning, masks for employees, new plastic barriers at check-outs and service counters, and additional staffing and capital costs for scaling up of e-commerce, curbside and home delivery.

[5] In their SEC 10-Q quarterly report for the four-month period ending in June 2020, Albertsons reported that consolidated sales were up 21.4 percent from the same period of 2019 and before-tax profits were 3.5 percent of total sales. In the three-month period ending in mid-September, the company reported year-over-year sales growth of 11.2 percent and before-tax profits equal to 2.5 percent of sales. In their 10-Q report filed for the three-month period ending in early December, Albertsons showed year-over-year sales growth of 9.3 percent, and profits as a percent of sales of just 1.0 percent. Data for the Kroger Company indicates that year-over-year sales growth subsided from 11.5 percent for the three-month period ending in May 2020 to 8.2 percent for the three-month period ending in August, and further to 6.3 percent for the three-month period ending in November. Profits as a percent of sales fell from 3.8 percent to 3.5 percent, and further to 2.8 percent during the same three quarterly periods. (Source: EDGAR Company Filings, U.S. Securities and Exchange Commission. https://www.sec.gov/edgar/searchedgar/ companysearch.html.

[6] Supra 3

Many stores incur losses in normal years

The 1- to 2-percent net profit levels cited above reflect industry averages. There is considerable variation around these averages among individual stores, with some doing better and some doing worse. As one indication of this variation, the 2020 Independent Grocer Financial Survey found that, while the nationwide average profit before tax for all stores was 1.1 percent of sales in 2019, about 35 percent of the respondents reported negative net profits during the year.[7] This national result is consistent with feedback we received from California grocers, which reported that even in profitable years, anywhere from one-sixth to one-third of their stores show negative earnings. While chain operations can subsidize some store losses with earnings from other stores, a major mandated wage increase would eliminate earnings for even the most profitable stores, making cross- subsidies within supermarket chains much less feasible. As discussed below, the consequence would likely be a closure of some unprofitable stores.

Mandated wage increases would push most stores into deficits

The grocery business is very labor intensive. Labor is the industry's second largest cost, trailing only the wholesale cost of the food and other items they sell. According to a benchmark study by Baker-Tilly, labor expenses account for 13.2 percent of gross sales of grocers nationally.[8] The Independent Grocer Survey, cited above, found that labor costs account for 15 percent of sales nationally and 18.4 percent for independent grocers in the Western region of the U.S.[9]

Respondents to our survey of California grocers reported that labor costs equate to 14 percent to 18 percent of sales revenues. For purposes of this analysis, we are assuming that the wage base potentially affected by the mandated hourly pay increase is about 16 percent of annual sales.[10]

A mandatory $4-$5 per hour increase, applied to an average $18.00 per hour wage base, would increase labor costs by between 22 percent and 28 percent. This would, in turn, raise the share of sales devoted to labor costs from the current average of 16 percent up to between 19 percent and 20.5 percent of annual sales. The up-to-4.5 percent increase would be double the 2020 profit margin reported by the industry, and three times the historical margins in the grocery industry.

Potential Impacts on Consumers, Workers and Communities

In order to survive such an increase, grocers would need to raise prices to consumers and/or find substantial offsetting cuts to their operating expenses. As an illustration of the potential magnitude of each of these impacts, we considered two extremes: (1) all of the higher wage costs are passed through to consumers in the form of higher retail prices; and (2) prices are not passed forward and all the additional costs are offset through a reduction of jobs or hours worked.

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[7] Supra 3

[8] White Paper, "Grocery Benchmarks Report", November 5, 2019, Baker Tilly Virchow Krause LLP.

[9] Supra 3

[10] This recognizes that not all labor costs would be affected by the hazard pay proposal. Grocers report that both in-store and warehouse staff would receive the increase, as would supervisors and managers, although some executive and administrative staff may not. In addition, costs for health coverage would probably not be affected, at least not immediately, but payroll taxes and some other benefit costs would be.

Higher costs passed along to consumers

Aggregate impacts. If a $5.00 per hour wage increase were imposed statewide and all of the increase were passed along to customers in the form of higher product prices, Californians would face a rise in food costs of $4.5 billion annually. If imposed locally, the City of Los Angeles's $5 per hour proposal would raise costs to its residents by $450 million annually, and the $4.00 per hour increase in Long Beach would raise grocery costs to its residents by about $40 million annually.[11]

Impact on household budgets. The wage increase would add about $400 to the annual cost of food and housing supplies for the typical family of four in California.[12] While such an increase may be absorbable in higher income households, it would hit low- and moderate-income households especially hard. The impact would be particularly harsh for those who have experienced losses of income and jobs due to the pandemic, or for those living on a fixed retirement income including many seniors. For these households, the additional grocery-related expenses will make it much more difficult to cover costs for other necessities such as rent, transportation, utilities, and healthcare.

According to the BLS Consumer Expenditure Survey, California households with annual incomes of up to $45,000 already spend virtually all of their income on necessities, such as food, housing, healthcare, transportation and clothing.[13] For many of these households, a $33 per month increase in food costs would push them into a deficit.

These increases would add to the severe economic losses that many Californians have experienced as a result of government-mandated shutdowns in response to COVID-19. According to a recent survey by the Public Policy Institute of California, 44 percent of households with incomes under $20,000 per year and 40 percent with incomes between $20,000 and $40,000 have reduced meals or cut back on food to save money.[14] Clearly, imposing a $4.5 billion increase in grocery prices would make matters worse, especially for these lower-income Californians.

Higher costs are offset by job and hours-worked reductions

If grocers were not able to pass along the higher costs resulting from the additional $5/hour wage requirement, they would be forced to cut other costs to avoid incurring financial losses.[15] Given

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[11] Our estimates start with national U.S. Census Bureau estimates from the Annual Retail Trade Survey for 2018 (the most current data available), which indicates that nationwide sales by grocers (excluding convenience stores) was $634 billion in 2018. We then apportioned this national data to California as well as the cities of Los Angeles and Long Beach based on relative populations and per-household expenditure data from the Consumer Expenditure Survey. We then updated the 2018 estimate to 2021 based on actual increases in grocery-related spending between 2018 and 2020, as reported by the U.S. Department of Commerce, and a projection of modest growth in 2021. Our estimate is consistent with the industry estimate of $82.9 billion for 2019 that was by IBISWorld, as adjusted for industry growth in 2020 and 2021. (See IBISWORLD Industry Report, Supermarkets & Grocery Stores in California, Tanvi Kumar, February 2019.)

[12] Capitol Matrix Consulting estimate based on U.S. Bureau of Labor Statistics, Consumer Expenditure Report, 2019. https:// www.bls.gov/opub/reports/consumer-expenditures/2019/home.htm

[13] U.S. Bureau of Labor Statistics, Consumer Expenditure Survey, State-Level Expenditure Tables by Income. https://www.bls.gov/cex/csxresearchtables.htm#stateincome.

[14] "Californians and Their Well-Being", a survey by the Public Policy Institute of California. December 2020. https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-economic-well-being-december-2020/

[15] Circumstances where stores would not be able to pass forward high costs include communities where customers are financially squeezed by pandemic-related losses in jobs or wages, or where the increased is imposed locally and customers are able to avoid higher prices by shifting purchases to cross-border stores.

that labor costs are by far the largest controllable expense for stores, it is highly likely that the wage mandates will translate into fewer store hours, fewer employee hours, and fewer jobs. For a store with 50 full-time equivalent employees, it would take a reduction of 11 employees to offset the increased wages, which is about a 22 percent decrease in staff/hours.

Aggregate impacts. As an illustration, if the full California grocery industry were to respond to a statewide $5.00 wage mandate by reducing its workforce, we estimate that up to 66,000 industry jobs would be eliminated. This is about 22 percent of the 306,000 workers in the grocery industry in the second quarter of 2020 (the most recent quarter for which we have detailed job totals).[16] If the mandate were imposed locally in the City of Los Angeles, the impact would be about 7,000 workers, and in the City of Long Beach (at $4.00 per hour), the impact would be about 775 jobs. Stores could alternatively avoid job reductions by cutting hours worked by 22 percent across-the-board.

Under these circumstances, some workers receiving the wage increases would be better off, but many others would be worse off because of reduced hours or layoffs. Customers would also be worse off because of reduced store hours, and fewer food choices and services.

Without any external constraints imposed by the local ordinances, it is likely some combination of higher prices and job and hour reductions would occur. Stores within some jurisdictions imposing the mandatory wage increase might be able to raise retail prices sufficiently to cover a significant portion of the mandated wage increase, thereby shifting the burden onto customers. However, the degree to which this would occur would vary from jurisdiction to jurisdiction, depending on the price-sensitivity of their customers and (if the mandate is imposed locally) the availability of shopping alternatives in neighboring communities that have not imposed the wage mandate.

Of course, if the local ordinances contain provisions prohibiting stores from cutting hours, then stores would be forced to pass costs on to consumers in the form of higher prices, or to close stores in those jurisdictions.

Some communities would become food deserts

Many of the up-to one third of stores already incurring losses may find it impossible to raise prices or achieve savings that are sufficient to offset the higher wage costs. For these stores, the only option would be store closure. Indeed, a consistent theme of feedback we received from California grocer representatives is that it would be extremely difficult, if not impossible, to justify continued operation of a significant portion of their stores following a government-mandated 28-percent increase in wages. This would leave some communities with fewer fresh food options.

According to the Propel LA: "The United States Department of Agriculture (USDA) defines a food desert as 'a low-income census tract where either a substantial number or share of residents has low access to a supermarket or large grocery store.' There are a large number of census tracts in Los Angeles County, including Antelope Valley and San Fernando Valley, that are considered to be food deserts. The population of food deserts is predominantly Hispanic or Latino, followed by Black and White, respectively."[17] The map also shows several food deserts in and around the City of Long Beach. The hazard pay proposal would exacerbate this problem.

[16] Employment Development Department. Labor Market Information Division. Quarterly Census of Employment and Wages. https://www.labormarketinfo.edd.ca.gov/qcew/cew-select.asp

[17] "Food deserts in LA, an Interactive Map." Propel LA, https://www.propel.la/portfolio-item/food-deserts-in-los-angeles-county/

Closing even one supermarket in many neighborhoods would result in residents having to commute significantly farther to find fresh and healthy food at reasonable prices. Tulane University studied the impact of food deserts and concluded that while the majority of items at smaller stores are priced higher than at supermarkets, price is a consideration in deciding where to purchase staple foods, and transportation from a food desert to a supermarket ranges from $5 to $7 per trip.[18]

Thus, mandating hazard pay would likely impose significant hardships on some communities, especially in lower-income areas. The loss of a grocery store means both fewer jobs for members of the community and higher costs for all residents in the community, who must pay higher local prices or incur additional time and expense to shop.

Conclusion

Hazard pay initiatives like those passed in the City of Long Beach, and proposed in the City of Los Angeles and in other local jurisdictions, would have far-reaching and negative consequences for businesses, employees and customers of grocery stores in the jurisdictions where levied. They would impose an up-to-28 percent increase in labor costs on an industry that is labor-intensive and operates on very thin profit margins. The increases would be more than double the average profit margins for the grocery industry in 2020, and triple the margins occurring in normal years, and thus would inevitably result in either retail price increases or major employment cutbacks by grocery stores, or a combination of both. If the increased costs were passed forward to consumers, a typical family of four in California would face increased food costs of $400 per year. This would intensify financial pressures already being felt by millions of low- and moderate-income families, many of whom are already cutting back on basic necessities like food due to COVID-19-related losses in jobs and income. Establishments not able to recoup the costs by raising prices would be forced to reduce store hours and associated jobs and hours worked by employees. For a significant number of stores that are already struggling, the only option may be to shutter the store. This would be a "lose-lose" for the community. It would mean fewer jobs with benefits, less local access to reasonably-priced food, and more time and expense spent by customers that would have to travel greater distance to find grocery shopping alternatives.

[18] "Food Deserts in America (Infographic)," Tulane University, School of Social Work, May 10, 2018. https://socialwork.tulane.edu/blog/food-deserts-in-america

McCRACKEN, STEMERMAN & HOLSBERRY, LLP

Counselors and Attorneys at Law

San Francisco

595 Market Street, Suite 800
San Francisco, CA 94105
415.597.7200
Fax 415.597.7201

Steven L. Stemerman (CA, NV)
Richard G. McCracken (CA, NV)
W. David Holsberry (CA, NV)
John J. Davis (CA)
Kristin L. Martin (CA, NV, HI)
Eric B. Myers (CA, NV)
Paul L. More (CA, NV, MA)
Sarah Varela (CA, AZ, NV)
Sarah Grossman-Swenson (CA, NV)
Kimberly Hancock (CA)
Kimberley C. Weber (CA, NV)
A. Mirella Nieto (CA)
Richard Treadwell (CA)
Kara Maddalena (CA)
Luke Dowling (CA)
Ivy Yan (CA)

Robert P. Cowell (1931-1980)

Philip Paul Bowe (CA) (Ret.)
Barry S. Jellison (CA) (Ret.)

Las Vegas

1630 Commerce Street, Suite A-1
Las Vegas, NV 89102
702.386.5107
Fax 702.386.9848

February 2, 2021

Re: Grocery Worker Hazard Pay Ordinances

To Whom It May Concern,

Our law firm represents UFCW Local 324. Local 324 has asked us to present our legal opinion on hazard pay ordinances that require large grocery stores to pay front-line workers a wage premium to reflect the hazardous conditions in which they work during the COVID-19 pandemic. Local 324 has asked us for our opinion because we have litigated many of the major cases on the constitutionality of municipal wage protections, including *Livadas v. Bradshaw*, 512 U.S. 107 (1994); *American Hotel & Lodging Association v. City of Los Angeles*, 834 F.3d 958 (9th Cir. 2016); *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137 (9th Cir. 2004); *Fortuna Enterprises, L.P. v. City of Los Angeles*, 673 F. Supp. 2d 1000 (C.D. Cal. 2008); and *Garcia v. Four Points Sheraton LAX*, 188 Cal. App. 4th 364 (2010).

Grocery worker hazard pay ordinances are fully consistent with the municipal living-wage and other premium-pay ordinances that federal and California courts have consistently upheld. They pose no constitutional problems whatsoever.

Hazard pay ordinances require that large grocery stores, superstores, and pharmacies pay their frontline workers an additional hourly wage premium—on top of their base wages and benefits—to compensate workers for the hazards that they face during the COVID-19 pandemic. Many grocery store chains and pharmacies introduced hazard, or "hero," pay at the beginning of the pandemic, but phased out this premium pay in the Spring or Summer of 2020. So while major grocery and pharmacy companies like Kroger, Albertsons, and Walgreens have enjoyed substantial increases in revenues and profits during the pandemic, front-like workers who face the most significant risk from COVID-19 have not shared in this bounty.[1] Long Beach, Seattle, and Santa Monica have already passed hazard-pay ordinances, and San Jose, Berkeley, Santa Ana, Los

[1] See Molly Kinder, Laura Stateler and Julia Du, "Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic" BROOKINGS INSTITUTE (November 2020), at https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/.

Angeles, West Hollywood, Santa Clara, and San Mateo are considering them as well.

Shortly after the City of Long Beach passed its ordinance, the California Grocers Association ("CGA") filed a lawsuit in federal court, claiming that the ordinance is unconstitutional. The federal judge assigned to the case has already denied CGA's request to enjoin the ordinance from going into effect. We are certain that the judge will dismiss the lawsuit at the earliest opportunity.

CGA raises three legal theories in its lawsuit, all of which have been decisively rejected by the Supreme Court and by lower federal and state courts.

Equal Protection

First, CGA claims that by targeting large grocery stores, the Long Beach ordinance violates the constitutional Equal Protection Clause. But legislative classifications in economic regulation like Long Beach's ordinance are subject to highly deferential rational-basis review under the Equal Protection Clause. *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488–489 (1955); *Hodel v. Indiana*, 452 U.S. 314, 331–332 (1981); *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 426 (2010). Rational basis review is met if a court determines that there is "any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Commc'ns, Inc.,* 508 U.S. 307, 313 (1993).

The Long Beach ordinance's application to large grocery stores easily passes rational basis scrutiny. It targets businesses that employ workers deemed essential by California who face particular risks of COVID-19 infection, but excludes smaller businesses that may be less able to afford the mandated pay. Classifications targeting particular businesses like those in the Long Beach ordinance are perfectly constitutional. *See, e.g., International Franchise Ass'n, Inc. v. City of Seattle,* 803 F.3d 389, 407 (9th Cir. 2015) (upholding higher municipal minimum-wage ordinance that applied to national franchises: "The district court properly cited the rational-basis standard. . . . It is legitimate and rational for the City to set a minimum wage based on economic factors, such as the ability of employers to pay those wages."); *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir. 2004) (upholding over equal-protection challenge a municipal living-wage ordinance that applied only to a small number of businesses located in the Berkeley Marina); *California Grocers Assn. v. City of Los Angeles*, 52 Cal.4th 177, 211 (2011) (upholding municipal job retention requirement targeting large grocery stores in Los Angeles); *Associated Builders and Contractors of California Cooperation Committee, Inc. v. Becerra*, 231 F.Supp.3d 810, 827 (S.D. Cal. 2017) (applying rational basis review to prevailing wage law modification*); Fortuna Enterprises, L.P. v. City of Los Angeles*, 673 F. Supp. 2d 1000, 1013 (C.D. Cal. 2008) (upholding municipal minimum-wage law that applied only to hotels with more than 50 rooms located near Los Angeles International Airport).

In its lawsuit, CGA has argued that the Long Beach ordinances violates its "fundamental right" to contract with its employees on whatever basis it wants, including the wages that it will pay them. It claims that the ordinance should therefore be reviewed under the "strict scrutiny" test, which applies to the denial of fundamental rights like the right to speak, the right to be free of discrimination, and the right to vote. Of course, if this legal argument were correct, then the government could never mandate minimum wages, overtime, rest breaks, or safety protections that "interfered" with a private employer's contract with its employees to provide something inferior. That has not been the law for nearly 100 years, since the United States Supreme Court upheld New Deal economic legislation and brought an end to the so-called *Lochner* era of jurisprudence. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 392-93 (1937) (upholding Washington State minimum-wage law over equal protection challenged based on alleged "fundamental right" to freedom of contract). CGA's attempt to revive a legal theory that has been dead since the 1930s and contradicts decades of intervening Supreme Court and federal court precedent is bizarre and will not succeed.

Contracts Clause

CGA also argues that laws mandating that it pay an additional premium wage to grocery workers violates the Contracts Clause in the U.S. Constitution. The Contracts Clause provides that "[n]o state shall ... pass any ... Law impairing the Obligation of Contracts," U.S. Const. art. I, § 10, cl. 1, thereby "restrict[ing] the power of States to disrupt contractual arrangements." *Sveen v. Melin*, 138 S.Ct. 1815, 1821 (2018). But while this text is "facially absolute," the Supreme Court has long held that "its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.' " *Energy Reserves Group, Inc. v. Kan. Power & Light Co.,* 459 U.S. 400, 410 (1983) (quoting *Home Bldg. & Loan Ass'n v. Blaisdell,* 290 U.S. 398, 434 (1934)).

Whether a regulation violates the Contract Clause is governed by a three-step inquiry: "The threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.' " *Energy Reserves*, 459 U.S. at 411 (quoting *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 244 (1978)). If this threshold inquiry is met, the court must inquire whether "the State, in justification, [has] a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem." *Energy Reserves*, 459 U.S. at 411–12 (citation omitted). Finally, the court must inquire "whether the adjustment of 'the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption.' " *Id.* at 412–13 (quoting *United States Trust Co. v. New Jersey,* 431 U.S. 1, 22 (1977)).

The premium-pay mandated by the Long Beach ordinance does not "substantially impair" any retailer's employment contracts under the Contracts Clause. Even if the Ordinance impaired grocery stores' contractual ability to deny their workers hazard pay, any impairment would not be "substantial" in light of the extensive regulation of employee wages that already exist. *Energy Reserves*, 459 U.S. at 411 ("In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past."). For this reason, courts regularly reject Contracts Clause challenges to economic regulation of the employment relationship. *See RUI One*, 371 F.3d at 1150 (upholding municipal living-wage ordinance over Contracts Clause challenge); *Olson v. California*, No. CV1910956DMGRAOX, 2020 WL 6439166, at *11 (C.D. Cal. Sept. 18, 2020) (rejecting contracts-clause challenge to AB5's classification of rideshare drivers as employees "[b]ecause '"[s]tates possess broad authority under their police powers to regulate the employment relationship to protect workers within the State[.]"'") (internal citation omitted).

Businesses in California are already heavily regulated in the wages that they may pay, through state and local minimum-wage laws, overtime laws, paid meal period requirements, and sick pay requirements to name a few. No modern court has held that an employer may avoid a statutory minimum- or premium-pay regulation by pointing to its private employment contracts.

Moreover, even if CGA could show that the hazard-pay ordinance "substantially impaired" its employment contracts to pay something less, "[u]nless the State itself is a contracting party, 'as is customary in reviewing economic and social regulation, . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.' " *Energy Reserves*, 459 U.S. at 412–13 (quoting *United States Trust Co.,* 431 U.S. at 22–23); *Keystone Bituminous Coal Ass'n v. DeBenedictis,* 480 U.S. 470, 506 (1987); *RUI One Corp.*, 371 F.3d at 1150 (upholding a municipal living wage ordinance that altered contractual expectations because "[t]he power to regulate wages and employment conditions lies clearly within a state's or a municipality's police power."); *Lyon v. Agusta S.P.A.,* 252 F.3d 1078, 1086 (9th Cir. 2001) ("[T]he Supreme Court has not blanched when settled *economic expectations* were upset, as long as the legislature was pursuing a rational policy.").

As with CGA's equal protection challenge, Long Beach's hazard-pay requirement meets the rational-basis test that applies to economic regulation affecting purely private contracts.

Federal Labor Preemption

Finally, CGA argues in its lawsuit that the Long Beach ordinance is preempted by the National Labor Relations Act because it allegedly conflicts with unionized grocery stores' collective bargaining with unions over pay. This argument misunderstands the relationship between federal labor law and substantive employment rights like those bestowed by hazard-pay ordinances.

Under the *Machinists* doctrine of NLRA preemption, "[s]tates are . . . prohibited from imposing additional restrictions on economic weapons of self-help, such as strikes and lockouts, unless such restrictions presumably were contemplated by Congress." *Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 614-615 (1986) (emphasis added, citations omitted). The Supreme Court has repeatedly rejected the notion that state substantive employment standards—like minimum wages, overtime, severance pay, and other wage premiums—violate this doctrine because they give unionized workers something that they might otherwise have to bargain for. The NLRA regulates the *process* of collective bargaining, not the substantive outcomes of that bargaining. Both employers and unions come to the bargaining table against a backdrop of state employment regulation, both favorable to employers (the at-will employment presumption) and to workers (minimum-wage laws). *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 753-758 (1985) ("Minimum state labor standards affect union and nonunion employees equally, and neither encourage nor discourage the collective-bargaining processes that are the subject of the NLRA. . . . Rather, they are minimum standards 'independent of the collective-bargaining process [that] devolve on [employees] as individual workers, not as members of a collective organization.'"); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 21 (1987) (fact "that a state statute pertains to matters over which the parties are free to bargain cannot support a claim of pre-emption"). State and local substantive employment standards do not interfere with collective bargaining and are not preempted.

Based on this Supreme Court precedent, federal courts have repeatedly rejected claims that the NLRA preempts minimum-wage laws and other employment standards. *American Hotel & Lodging Association v. City of Los Angeles*, 834 F.3d 958, 965 (9th Cir. 2016) ("It is no surprise, then, that 'state minimum benefit protections have repeatedly survived Machinists preemption challenges,' because they do not alter the process of collective bargaining"); *Associated Builders & Contractors of So. Calif. v. Nunn,* 356 F.3d 979, 990 (9th Cir. 2004) (minimum wages and benefits for state-registered apprentices on public and private construction projects not preempted; "'state minimum benefit protections have repeatedly survived *Machinists* preemption challenges'"); *National Broadcasting Co., Inc. v. Bradshaw*, 70 F.3d 69, 71 (9th Cir. 1995) (state overtime protection that applied in broadcast industry not preempted under *Machinists*); *Viceroy Gold Corp. v. Aubry*, 75 F.3d 482, 489 (9th Cir. 1996) (overtime regulation that applied only to miners was not preempted); *Fortuna Enters.*, 673 F.Supp.2d at 1006-12 (living-wage law not preempted under *Machinists*).

CGA's constitutional claims against the Long Beach ordinance are baseless and will soon be dismissed. The fact that this employer association filed a meritless lawsuit should not be a reason to delay providing grocery workers fair compensation for the risks they are taking on our behalf.

Sincerely,

Paul L. More

February 2, 2021

The Honorable Vicente Sarmiento
Mayor, City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

RE: Premium Pay for Grocery Workers

Dear Mayor Sarmiento,

On behalf of Santa Ana grocers, I write with concerns about the motion regarding premium pay to grocery workers. Our industry shares your appreciation for critical infrastructure employees across the grocery spectrum. This is why grocery companies were at the forefront of implementing COVID-19 safety protocols, before being asked to do so, and have been leaders in providing additional compensation to employees.

Unfortunately, the current direction submitted as part of the agenda item is missing important information. Without consultation with the grocery industry to provide additional information, we are concerned the Council will make policy decisions based on flawed reasoning.

The impact of a less than fully informed decision will result in unintended and avoidable negative consequences for the city and grocers that could include increased grocery prices, limit access to grocery stores, and impact to workers. This issue is best served by an immediate and genuine discussion with the grocery industry.

In addition to the concerns above, the recommendation limits its scope to only a small subset of essential critical infrastructure workers and ignores all other workers interacting regularly with the public in the same manner. As we all sadly know, COVID-19 impacts do not discriminate in any way. If a situation has risen to an emergency level in one work setting it would only be reasonable to assume the same concern exists in other similar settings with other critical infrastructure employees.

COVID-19 and its impacts are nothing short of a tragedy and have required a number of emergency responses. For the last ten months, the grocery industry, often in partnership with state and local governments, has implemented unprecedented efforts to ensure the safety of our employees and consumers. These efforts include implementing social distancing protocols, expansive leave for workers impacted by COVID-19, record levels of additional compensation, hiring of new workers numbering in the tens of thousands, and remaining open with a still impacted and limited supply chain.

CGA and the grocery industry have partnered with local jurisdictions successfully on several emergency issues during the pandemic. Unfortunately, on this specific issue the city has chosen not to engage the grocery industry or provide any reasoning or justification to raise this issue to the point of requiring the extraordinary powers granted by the City's declaration of emergency. Again, the best course of action is an immediate and genuine consultation with the grocery industry. Failing this we believe there are significant policy and legal concerns and ask the city not to move forward with the recommendation as proposed.

Thank you for your consideration and we look forward to a continued partnership with Santa Ana to combat COVID-19.

Sincerely,

Tim James
California Grocers Association

CC: Members, Santa Ana City Council
City Clerk, City of Santa Ana

February 1. 2021

The Honorable Vicente Sarmiento
Mayor
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

Dear Mayor Sarmiento:

As the leading national organization representing the interests of Latino-owned grocery and food industry businesses both large and small, the Latino Food Industry Association (LFIA) is seriously concerned over the move to impose an additional $5/hour increase in grocery worker pay because it only targets one industry engaged in public retail interactions, imposes additional costs to smaller Latino owned grocery stores already spending exorbitant dollars to keep employees and customers safe and would significantly increase the cost of food and groceries for local families and communities, especially for low-income, people of color and disadvantaged communities.

We also believe more time is needed to assess the consequences of extra pay-increase motions before causing unintended consequences for our member grocers, their employees, and the community that relies on them to feed their families.

Most of our members impacted by the ordinance are already operating on razor thin margins and have already spent considerable resources to keep their employees and customers safe during the current pandemic. Our members recognize the sacrifice of their employees that work on the frontlines providing customers safe access to food and other products during this incredibly difficult time and gone to extraordinary steps to protect them by spending millions of dollars to purchase of personal protection equipment (PPE), plexiglass barriers, changing the store filtration systems, extensive cleaning and disinfection and other safeguards, enhanced safety protocols, extra pay and bonuses, and additional health benefits for grocery workers. Additionally, a number of our member stores created special hours of operation to allow seniors to shop safely.

Our members have also complied with local safety ordinances and recommendations from the CDC which are necessary to keep employees and customers safe but have driven costs to our members including driving up grocery costs for families, putting more financial strain on struggling stores and their employees at the worst time.

Higher costs could also force our members to reduce the number of workers, available hours, and store locations. Many LFIA members may find it too difficult to remain open, especially independent grocers located in disadvantaged communities because most operate on razor thin margins, even during the pandemic. If grocery stores start to shut down, it will only increase food insecurity, especially in low-income and disadvantaged neighborhoods.

LFIA believes our members can protect and support essential grocery workers without increasing costs during a pandemic-induced economic recession. We also believe more time is needed to assess the negative consequences of extra pay-increase motions before causing unintended consequences for our grocer members, their employees, and the community that relies on them to feed their families.

We urge you to hold listening sessions with the business community and other stakeholders to allow an opportunity to discuss the impacts of the Hero Pay and possible solutions we can support as partners in addressing the impacts of the pandemic. For the reasons state above, LFIA is urging an analysis of the costs, assess unintended consequences and impacts on families and communities, and obtain input from grocers and businesses before voting on the language.

Sincerely,
LFIA Board

CC: Mayor Pro Tem David Penaloza
Councilmember Thai Viet Phan
Councilmember Jessie Lopez
Councilmember Phil Bacerra
Councilmember Johnathan Ryan Hernandez
Councilwoman Nelida Mendoza