

JONATHAN COHEN (CSB NO. 237965)
ROTHNER, SEGALL & GREENSTONE
510 South Marengo Avenue
Pasadena, California 91101
Telephone: (626) 796-7555
Facsimile: (626) 577-0124
email: jcohen@rsglabor.com

RONALD A. FEIN (pending pro hac vice application)
FREE SPEECH FOR PEOPLE, INC.
634 Commonwealth Avenue, #209
Newton, Massachusetts 02459
Telephone: (617) 244-0234
Facsimile: (206) 260-3031
email: rfein@freespeechforpeople.org

Counsel for Amici Curiae Free Speech For People,
Courage Campaign, Equal Justice Society and Western
Center on Law and Poverty

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

AMERICAN HOTEL & LODGING
ASSOCIATION and ASIAN
AMERICAN HOTEL OWNERS
ASSOCIATION,

Plaintiffs,

v.

CITY OF LOS ANGELES,

Defendant.

CASE NO. 2:14-CV-09603-AB-SS

Assigned to Hon. Andre Birotte, Jr.

BRIEF OF AMICI CURIAE FREE
SPEECH FOR PEOPLE, COURAGE
CAMPAIGN, EQUAL JUSTICE
SOCIETY AND WESTERN CENTER ON
LAW AND POVERTY IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS

DATE: August 24, 2015
TIME: 10:00 a.m.
COURTROOM.: 4

TABLE OF CONTENTS

INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. The legislative history of the Equal Protection Clause demonstrates that “fair, living wages” were a principal concern of the Congress that passed the Fourteenth Amendment	3
II. The equal protection interests of Los Angeles’s low-wage hotel workers in “fair, living wages” vastly exceed any purported equal protection interests of hotel businesses	6
CONCLUSION	8

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Ry. Mail Ass'n v. Corsi</i> , 326 U.S. 88 (1945)	7
<i>Conn. Gen. Life Ins. Co. v. Johnson</i> , 303 U.S. 77 (1938)	8
<i>Levin v. Commerce Energy, Inc.</i> , 560 U.S. 413 (2010)	7

U.S. Constitution

U.S. Const. amend. XIV § 1	<i>passim</i>
----------------------------------	---------------

Other Authorities

Patricia Bellasama, Cal. Nat'l Org. for Women, Letter to Hon. Curren Price (Sept. 22, 2014) <i>available at</i> http://clkrep.lacity.org/online/docs/2014/14-0223_pc_09-22-14b.pdf	7
Susan Buchanan et al., <i>Occupational Injury Disparities in the US Hotel Industry</i> , 53 Am. J. Indus. Med. (2010)	6
Historic Highland Park Neighborhood Council, Community Impact Statement (Sept. 18, 2014), <i>available at</i> http://clkrep.lacity.org/online/docs/2014/14-0223_cis_9-18-14.pdf	7
N.Y. Daily Tribune, Sept. 14, 1865, <i>available at</i> http://1.usa.gov/1mILCpG	3
Freedmen's Bureau Bill, 1865, 3 Stat. 507 (Mar. 3, 1865), §§ 2, 4, <i>available at</i> Bruce Frohnen, <i>The American Nation: Primary Sources</i> , http://bit.ly/1pY1fwh	3
<i>Report of the Joint Comm. on Reconstruction, 39th Cong.</i> , (Feb. 15, 1866), <i>available at</i> Univ. of Cal. Digital Library, Internet Archive, http://bit.ly/1yVscTc	4, 5
S. Exec. Doc. No. 39-6 (1867), <i>available at</i> http://1.usa.gov/ZltPcL	4
Maj. Gen. Carl Schurz, <i>The Condition of the South</i> (1865), <i>available at</i> http://bit.ly/1rCH19i	3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(Continued)

Tarecq Amer & Meryl Haydock,
Nat'l Econ. Dev. & Law Ctr., *Working in the Shadow of Prosperity:
A Wage Analysis of Los Angeles Hospitality Workers*
(Aug. 2004), available at
<http://bit.ly/1DZcVEk> 6

Howard Wial & Jeff Rickert,
Working for America Inst., *U.S. Hotels and their Workers:
Room for Improvement*, (Sept. 2002) available at
<http://bit.ly/1DZcVEk> 6

INTEREST OF AMICI CURIAE

Free Speech For People is a national non-partisan campaign advocating that the Constitution protects the rights of people rather than state-created corporate entities, and that the doctrine of “corporate constitutional rights” improperly moves legislative debates about economic policy from the democratic process to the judiciary, contrary to our Constitution. Free Speech For People has filed an amicus curiae brief in the United States District Court for the Western District of Washington raising similar arguments in opposition to an Equal Protection Clause challenge to Seattle’s “living wage” ordinance.

Courage Campaign fights for a more progressive California and country. It is powered by more than 900,000 online member activists. Courage Campaign’s long-term goal is to restore the California Dream through grassroots organizing, creating widespread and long-term prosperity for all its people without regard for race, creed or sexual orientation. Particularly relevant here, Courage Campaign organized an online petition urging the Los Angeles City Council to raise the minimum wage for hotel workers.

Equal Justice Society (“EJS”) is a national legal organization focusing on restoring constitutional safeguards against discrimination. Specifically, EJS is working to fully restore the constitutional protections of the Fourteenth Amendment and the Equal Protection Clause, which guarantees all citizens receive equal treatment under the law. EJS uses a three-pronged approach to accomplish these goals, combining legal advocacy, outreach and coalition building, and education through effective messaging and communication strategies. EJS’s legal strategy aims to broaden conceptions of present-day discrimination to include unconscious and structural bias by using cognitive science, structural analysis and real-life experience.

Western Center on Law and Poverty (“WCLP”) is the oldest and largest statewide support center for legal services and anti-poverty advocates in California.

WCLP protects and enforces the rights of the lowest income Californians to the basic necessities of life by providing technical assistance to legal services providers throughout the state, working with administrative agencies, litigating questions that impact significant numbers of people, and advocating for legislative solutions. WCLP also engages in and supports advocacy aimed at lifting people out of poverty such as its current co-sponsorship of Senate Bill 3 (Leno) that would raise California's hourly minimum wage. WCLP is interested in ensuring that workers, including those in Los Angeles's hotel industry, earn livable wages to support and sustain themselves and their families. Further, as an organization dedicated to protecting and enforcing the civil rights of low-income Californians, it is important to WCLP that the Constitution is not misinterpreted or misapplied to the detriment of low-income people and people of color.

SUMMARY OF ARGUMENT

The hotels' challenge under the Fourteenth Amendment's Equal Protection Clause¹ fails because living wage laws occupy a privileged position under that Amendment. The Amendment's legislative history reveals that the Reconstruction government was keenly interested in whether freedmen could earn "fair, living wages," and took executive, legislative, and ultimately constitutional measures to ensure that they could. A complete equal protection analysis requires that the Court consider the interests of workers, not just employers.

The City of Los Angeles's hotel worker minimum wage ordinance fulfills the intent and spirit of the Fourteenth Amendment by helping low-income hotel workers, who are disproportionately people of color. Plaintiffs' quibbles about exemptions in the ordinance for which they do not qualify pale in significance to the equal

¹ "[N]or shall any State ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1.

1 protection interests of the thousands of low-paid people of color, workers whom the
2 law will benefit.

3 ARGUMENT

4 I. The legislative history of the Equal Protection Clause
5 demonstrates that “fair, living wages” were a principal
6 concern of the Congress that passed the Fourteenth Amendment.

7 The Reconstruction Congress was intently interested in whether newly-freed
8 slaves would receive “fair, living wages.” Because of the demonstrated importance
9 of this issue to the framers of the Fourteenth Amendment, living wage laws deserve
10 special solicitude under the Equal Protection Clause-especially where, as here, the
11 law benefits large numbers of workers who are low-income people of color.

12 Living wages for freedmen became an immediate concern of the post-Civil
13 War Reconstruction. A Congressionally-commissioned report on conditions in the
14 South noted that employers continued to devise elaborate schemes to underpay
15 freedmen. *See* Maj. Gen. Carl Schurz, *The Condition of the South* 10-11 (1865),
16 available at <http://bit.ly/1rCH19i>. And in a widely-reprinted open letter to “the
17 Colored People of North Carolina” published just five months after the Confederate
18 surrender, Horace Greeley urged freedmen to take immediate steps to demand “fair,
19 living wages.” N.Y. Daily Tribune, Sept. 14, 1865, at 4, available at
20 <http://1.usa.gov/1milCpG>.

21 In hearings of Congress’s Joint Committee on Reconstruction, committee
22 members repeatedly asked whether Southern white employers would pay freedmen
23 what Senators and witnesses variously and interchangeably called “fair wages,”
24 “living wages,” or both. For example, Senator Jacob Howard (the Fourteenth
25 Amendment’s Senate floor manager) asked an Army colonel in the Freedmen’s
26 Bureau² whether freedmen would work for “fair wages” and whether white Virginia

27 ² The Freedmen’s Bureau Bill, passed in 1865, established the Bureau to
28 distribute food, clothing, fuel, and up to forty acres of land to freedmen and war
refugees. *See* 13 Stat. 507 (Mar. 3, 1865), §§ 2, 4, available at Bruce Frohnen, *The*

1 employers would pay freedmen “fair, living wages.” The colonel responded that,
 2 while Virginia freedmen would be willing to work for “what any northern man would
 3 consider fair wages,” they could not presently receive “what would be considered
 4 living wages-wages to support a man and his family.” *Report of the Joint Comm. on*
 5 *Reconstruction, 39th Cong.*, pt. II at 124 (Feb. 15, 1866) (testimony of Col. Orlando
 6 Brown), *available at* Univ. of Cal. Digital Library, Internet Archive,
 7 <http://bit.ly/1yVscTc>; *see also id.* at 130 (question by Sen. Howard to former
 8 Confederate General Robert E. Lee whether former slave-masters would pay
 9 freedmen “fair, living wages for their labor”).

10 The Army and the Freedmen’s Bureau were particularly concerned about
 11 living wages for freedmen. An 1865 Army work plan instructed officers to assist
 12 freedmen in obtaining “fair wages for their labor.” *Id.* at 186 (testimony of Col. E.
 13 Whittlesey). When employers in two recalcitrant Southern counties refused to pay
 14 fair wages, an Army general contemplated relocating the entire freed population of
 15 those counties *en masse* to areas that would pay “fair wages.” *Id.* at 234 (testimony
 16 of Capt. Alexander Ketchum). By 1866, the Bureau had resorted to distributing
 17 standard labor contracts, with fixed labor rates that the Bureau determined to be
 18 conducive to “prosperous relations between capital and labor” and “satisfactory to
 19 the freedmen.” *See* S. Exec. Doc. No. 39-6, at 2, 4 (1867), *available at*
 20 <http://1.usa.gov/ZItPcL>.

21 The Committee asked a wide range of witnesses-black, white, government, and
 22 civilian-whether black workers could earn “fair wages” in the South,³ and heard

23 _____
 24 *American Nation: Primary Sources*, <http://bit.ly/1pY1fwh>.

25 ³ *See, e.g., Report of the Joint Comm. on Reconstruction*, pt. II at 52
 26 (testimony of Dr. Daniel Norton) (in response to Senator Howard’s question whether
 27 freedmen could earn “fair wages,” answering that such work was scarce, and many
 28 freedmen were paid a dollar per month or less); *id.* pt. IV at 2 (testimony of John
 Recks) (in response to Senator Williams’ question whether Florida black workers
 would work for “fair wages,” answering that they were eager to work for “anything

1 mostly negative answers.⁴ And while “fair” can refer to parity, the usage of the
2 Committee and the witnesses indicates that “fair wages” were understood to mean
3 wages that could support a family:

4 Question. Are they [returned rebels] willing to pay the
5 freedmen fair wages for their work?

6 Answer. No, sir; they are not willing to pay the freedmen
7 more than from five to eight dollars a month.

8 Question. Do you think that their labor is worth more than
9 that generally?

10 Answer. I do, sir; because, just at this time, everything is
11 very dear, and I do not see how people can live and support
12 their families on those wages.

13 *Report of the Joint Comm. on Reconstruction*, pt. II at 56 (testimony of Richard
14 Hill).⁵ The Committee ultimately concluded that, without federal protection, “colored
15 people would not be permitted to labor at fair prices,” and the Southern employers
16 that would “accept the situation” and “employ[] the freedmen at fair wages” were a

17

18

19 like a fair or reasonable compensation”).
20

21 ⁴ Some witnesses testified that, in their areas, freedmen *could* find work at
22 “fair wages,” *e.g.*, *id.* pt. I at 109 (testimony of Maj. Gen. George Thomas), or that
23 employers *might* pay fair wages under certain conditions, *e.g.*, *id.* pt. II at 124
24 (testimony of Col. Orlando Brown). The point, however, is that the Senators
considered fair wages so important to Reconstruction that they kept asking the
question.

25 ⁵ See also *id.* pt. II at 12-13 (testimony of Lewis McKenzie) (stating that
26 “Union whites” in Virginia paid “fair wages,” but that other employers’ wages were
27 not adequate for clothing and medical care), 54 (testimony of Madison Newby)
28 (stating that Virginia employers “expect colored people . . . to work for ten or
eighteen cents a day... [H]e may have a family of six to support on these wages, and
of course he cannot do it.”).

1 minority. *Id.* at xvii. The Committee then proposed the Fourteenth Amendment. *See*
2 *id.* at xxii.

3 To be sure, the Equal Protection Clause does not require or enact a living wage
4 law. But it should be interpreted in light of Reconstruction's broad goals, including
5 Congress's concern (and widespread federal action to ensure) that freedmen be able
6 to earn "fair, living wages" and support their families.

7 II. The equal protection interests of Los Angeles's low-wage hotel
8 workers in "fair, living wages" vastly exceed any purported equal
protection interests of hotel businesses.

9 The Los Angeles hotel workers minimum wage ordinance is consistent with,
10 and fulfills, the overall goals of equal protection. Consequently, the Court's equal
11 protection analysis should be especially deferential, and not subordinate an interest
12 that the Reconstruction Congress demonstrably was concerned about ("fair, living
13 wages") to another (protection of a low-wage business model) that played no part in
14 Congress's thinking.

15 Los Angeles's increased hotel worker minimum wage will bring major
16 economic benefits to a group composed mainly of people of color. In Los Angeles
17 County, a 2004 study found that 79% of hospitality industry workers were people of
18 color: 61% Latino (as compared to a 39% Latino overall population), 14% Asian,
19 and 4% African-American. Tarecq Amer & Meryl Haydock, Nat'l Econ. Dev. &
20 Law Ctr., *Working in the Shadow of Prosperity: A Wage Analysis of Los Angeles*
21 *Hospitality Workers* (Aug. 2004), available at <http://bit.ly/1DZcVEk>.⁶ During the
22

23 ⁶ These statistics are consistent with larger statewide and national trends.
24 In California, Latinos have long worked in hotels at disproportionately high rates.
25 *See* Howard Wial & Jeff Rickert, Working for America Inst., *U.S. Hotels and their*
26 *Workers: Room for Improvement*, tbl. 30 (Sept. 2002) (summarizing data indicating
27 that California hotel workers were 45% Latino), available at <http://bit.ly/16PV5co>.
28 Nationally, hotel worker demographics are slightly different, but still
disproportionately people of color. *See, e.g.,* Susan Buchanan et al., *Occupational*
Injury Disparities in the US Hotel Industry, 53 Am. J. Indus. Med. 116, 119 (2010)
(calculating that U.S. hotel workers are approximately 33% Latino, 22% black, and

1 City Council's consideration of the ordinance, several commenters noted the
2 beneficial impact of an increased hotel minimum wage for low-income workers of
3 color. See Patricia Bellasama, Cal. Nat'l Org. for Women, Letter to Hon. Curren
4 Price (Sept. 22, 2014) (supporting proposed ordinance and noting that "the majority
5 of Hotel Industry employees are women of color"), *available at*
6 http://clkrep.lacity.org/online/docs/2014/14-0223_pc_09-22-14b.pdf; Historic
7 Highland Park Neighborhood Council, Community Impact Statement (Sept. 18,
8 2014) (supporting proposed ordinance and noting that "workers of color . . . would
9 see significant benefits of a pay increase"), *available at*
10 http://clkrep.lacity.org/online/docs/2014/14-0223_cis_9-18-14.pdf.

11 This effort to uplift low-income workers and reduce inequality fulfills, rather
12 than offends, the Fourteenth Amendment's equality principle. *Cf. Ry. Mail Ass'n v.*
13 *Corsi*, 326 U.S. 88, 98 (1945) (Frankfurter, J., concurring) ("To use the Fourteenth
14 Amendment as a sword against such State power would stultify that Amendment.").
15 The increased minimum wage will palpably improve the lives of workers of color,
16 while lifting the boats of their white co-workers in equal measure.

17 In contrast, the equal protection interests claimed by hotel corporations are at
18 *best* peripheral, *see Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 426 (2010)
19 ("When economic legislation does not employ classifications subject to heightened
20 scrutiny or impinge on fundamental rights, courts generally view constitutional
21 challenges with the skepticism due respect for legislative choices demands."), and
22 directly oppose the equal protection interests of the workers whom Los Angeles's
23 law would uplift. Indeed, the hotels' argument evokes Justice Black's observation
24 that "of the cases in [the] Court in which the Fourteenth Amendment was applied
25 during the first fifty years after its adoption, less than one-half of 1 per cent invoked
26 it in protection of the negro race, and more than 50 per cent asked that its benefits be
27

28 _____
24% Asian), *available at* <http://bit.ly/1zti9UR>.

1 extended to corporations.” *Conn. Gen. Life Ins. Co. v. Johnson*, 303 U.S. 77, 90
2 (1938) (Black, J., dissenting).

3 It would seem absurd to the Reconstruction Congress that the Equal Protection
4 Clause should entitle employers to relief against a law for the benefit of low-income
5 workers. The Court should not twist the Equal Protection Clause into a barrier
6 against lifting low-income workers of all races from poverty by means of “fair, living
7 wages.”

8 **CONCLUSION**

9 Plaintiffs have not stated a claim for a violation of the Equal Protection
10 Clause. The Court should dismiss Count V of the complaint.

11
12
13 DATED: July 22, 2015

RONALD A. FEIN
FREE SPEECH FOR PEOPLE, INC.

14
15
16 By /s/ Ronald A. Fein
RONALD A. FEIN (pending pro hac vice
17 application)

18 DATED: July 22, 2015

JONATHAN COHEN
ROTHNER, SEGALL & GREENSTONE

19
20
21 By /s/Jonathan Cohen
JONATHAN COHEN
22 Attorneys for Amici Curiae Free Speech For People,
23 Courage Campaign, Equal Justice Society and
24 Western Center on Law and Poverty
25
26
27
28