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Making the Minimum Wage Work: An Examination of the Economic Impact of the Minimum Wage

Steve P. Calandrillo* and Taylor Halperin**

Abstract: With the passage of the Fair Labor Standards Act in 1938, Congress mandated a federal "living wage" in order to "maintain the minimum standard of living necessary for the health, efficiency, and general well-being of workers." Advocates have long insisted that increases in the minimum wage result in a net gain to employees' standard of living. Critics have countered that those gains come at the expense of higher prices and shrinking overall employment numbers, leaving a new class of potential workers out in the cold.

This Article synthesizes the empirical economic impact data from minimum wage increases over the past several decades and compares the results to the recent aggressive efforts being made at the local level in major cities like Seattle, Chicago, Los Angeles and San Francisco. Economic analysis reveals that while employment losses were relatively significant from raises in the minimum wage increases thirty years ago, those job losses were much smaller with subsequent wage hikes in the past two decades – i.e., the net gains to the working class have outweighed the costs. This Article offers theories to explain why that is so: for one, employees are more productive due to technological advancements than they were decades ago, and second, the federal minimum has fallen further and further behind the average national wage (so that increases affect relatively few workers). This Article analyzes whether the same net benefits to the working class are likely to accrue with the very recent push to a $15 minimum wage in cities like Seattle and San Francisco and major states like New York and California. The initial data paint a cautiously optimistic picture, indicating that job losses (and product-price increases) from these aggressive minimum wage laws have not been prohibitive, but that they exist and are certainly worth monitoring. Finally, this Article proposes several normative policy mechanisms to facilitate a smoother transition to a newly revamped minimum wage nationwide.

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I. INTRODUCTION

For over a century now, economists and public policy makers have tirelessly debated the merits of a mandatory minimum wage.[1] Some prefer a pure capitalist approach, rejecting a wage floor altogether on the assumption that the unregulated marketplace will efficiently match job-seekers with job-offerors.[2] At the opposite end of the political spectrum, others look to socialism, hoping to impose the same wage upon all workers regardless of their particular industry or position.[3] The vast majority, however, have argued for something in between the two extremes,[4] though a precise formula for minimum wage determination has proven elusive as economic conditions shifted over time.

In 1938, Congress joined the fray, promulgating the Fair Labor Standards Act ("FLSA" or the "Act")[5] in order to "correct and eliminate conditions detrimental to maintaining a minimum standard of living necessary for the health, efficiency, and general well-being of workers."[6] Congress desired that every working American should be able to earn a "living wage," one that would allow them to escape poverty, reliably put bread on the table, and rent money in the bank.[7] Over the years, various states and localities have also enacted their own minimum wage laws to ensure a higher standard of living for employees subject to unsympathetic industry wage pricing.[8] Or, viewed from the Supreme Court's perspective, to "lessen, so far as seemed then practicable, the distribution in commerce of goods produced under subnormal labor conditions."[9] In short, minimum wage laws exist to "raise the floor" for working-class Americans by safeguarding their financial stability.[10]

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1. *See* Donald Deere et al., *Sense and Nonsense on the Minimum Wage* (1990); *See* Arindrajit Dube, et al., *Minimum Wage Effects Across State Borders: Estimates Using Contiguous Counties*, 92 REV. ECON. & STAT. 945, 961 (2010).
2. Tim Worstall, Instead of $15, or $7.25, There Should Be No Federal Minimum Wage at All, Slate (Aug. 15, 2015), http://www.forbes.com/sites/timworstall/2015/08/07/instead-of-15-or-7-25-there-should-be-no-federal-minimum-wage-at-all/#cfcdac71854d.
3. 1 Karl Marx, *Capital: A Critique of Political Economy* (Penguin Books UK 2004) (1867).
4. Elliot Gerson, *America Needs a Raise: The Case for a Higher Minimum Wage*, THE ATLANTIC (Jan. 9, 2013), http://www.theatlantic.com/business/archive/2013/01/america-needs-a-raise-the-case-for-a-higher-minimum-wage/266977/; Molly Ball, The Poor Man's Plutocrat: Can the Venture Capitalist Nick Hanauer Convince Rich People That It's in Their Interest to Raise the Minimum Wage?, THE ATLANTIC, Jan.-Feb. 2016, at 21.
5. Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (2012).
6. *Id.* at § 202(a).
7. John S. Forsythe, *Legislative History of the Fair Labor Standards Act*, 6 LAW & CONTEMP. PROBS. 464, 466 (1939).
8. Ian Kullgren, *It's Official: Kate Brown Signs Minimum Wage Bill for $14.75 in Portland*, OREGON LIVE (Mar. 2, 2016, 12:29 PM; updated Mar. 12, 2016, 9:27 AM), http://www.oregonlive.com/politics/index.ssf/2016/03/its_official_kate_brown_signs.html; Dennis Lynch, *Minimum Wage Debate 2014: Will State Ballot Victories Lead to A Federal Wage Increase?*, INT'L BUS. TIMES (Nov. 6, 2014, 2:19 PM), http://www.ibtimes.com/minimum-wage-debate-2014-will-state-ballot-victories-lead-federal-wage-increase-1719682.
9. Rutherford Food Corp. v. McComb, 331 U.S. 722, 728 (1947).
10. *See* Liana Fox, *Minimum Wage Trends: Understanding Past and Contemporary Research* (ECON. POL'Y INST. BRIEFING PAPER No. 178, 2006), http://www.epi.org/publication/bp178/. Other nations consider a certain standard of living to be an inalienable right, as commemorated via international treaty. *See* International Covenant on Economic, Social and Cultural Rights, ART. 5, Dec. 16, 1966, 993 U.N.T.S. 3, 6.

Of course, the flip side of that coin is that any mandatory floor on wages imposed above the market level has the perverse potential to put employees out of work[11] – i.e., on the margins, employers would rather invest in technology or cut back on their labor force if workers are more expensive.[12] Hence, Congress also warned in its FLSA policy statement that its goal was to be cautious to avoid "substantially curtailing employment or earning power of employees."[13]

In the past forty years, many scholars and economists have examined the impacts of gradual increases in the federal minimum wage, with conflicting results.[14] In 1977, the federal minimum wage was increased by $1.05 over the course of four years.[15] The immediate and semi-immediate returns were not pretty: each 10% swell in the minimum wage triggered a loss of employment of over 1%.[16] However, by the 1990's, it appeared that moderate minimum wage increases were substantially less detrimental than they had been previously, as economists found less than a 1% loss in employment for every 18% increase in the federal minimum wage.[17] And even recent scholarship suggests that moderate minimum wage increases did not catalyze significant negative employment effects to speak of, on either a local or statewide level.[18]

Scholars dispute the reasons behind these era-stratified results. This paper attempts to explain them and offers theories for why the impacts in recent decades from minimum wage increases have not been nearly as severe as in the past. We suggest that the job losses have not been as great as feared because the minimum wage has fallen much further behind the average national wage (therefore fewer workers are affected by increases), and that employees are more productive today due to technological improvements than they had been in the past (offsetting the "hurt" on employers from having to pay more money for labor).

Today, however, there have been revolutionary efforts to aggressively reform minimum wage policy in America, and we must be cautious that these well-intended movements do not perversely threaten the economic gains that previous, mid-sized hikes brought.[19] Cities like

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11. Paul Kupiec, *How a Higher Minimum Wage Makes Everyone Worse Off*, FORBES (July 4, 2016, 12:26 PM), http://www.forbes.com/sites/realspin/2016/07/04/high-minimum-wage-everyone-worse-off/#659e3b41b20f.

12. *See id.*

13. 29 U.S.C. § 202(b) (2012).

14. *See* DEERE, *supra* note 1; Dube, et al., *supra* note 1 (2010).

15. *Minimum Wage - U.S. Department of Labor – Chart 1*, U.S. DEP'T OF LAB, https://www.dol.gov/featured/minimum-wage/chart1 (last visited July 15, 2016).

16. *See* DEERE, *supra* note 1.

17. *See* Louis Uchitelle, *Minimum Wage and Jobs*, N.Y. TIMES, Jan. 12, 1995, at D1 [hereinafter Uchitelle, *Minimum Wage and Jobs*].

18. *See* Dube, *supra* note 1.

19. *See* Mark J. Perry, *Minimum Wage Effect? January to June Job Losses for Seattle Area Restaurants (-1,300) Largest Since Great Recession*, AM. ENTERPRISE INST. IDEAS (Aug. 9, 2015, 10:47 AM), https://www.aei.org/publication/minimum-wage-effect-january-to-june-job-losses-for-seattle-area-restaurants-1300-largest-since-great-recession/; William Dunkelberg, *Why Raising the Minimum Wage Kills Jobs*, FORBES (Dec. 31, 2012, 9:48 AM), http://www.forbes.com/sites/williamdunkelberg/2012/12/31/why-raising-the-minimum-wage-kills-jobs/#6a38b0254b33.

Seattle,[20] Chicago,[21] Los Angeles[22] and San Francisco[23] have promulgated aggressive local minimum wage hikes, seeking up to a $15/hour minimum (compared to the federal minimum of just $7.25) in order to dramatically improve the lives of the working class. These substantial raises, in some cities more than a doubling of the federal minimum wage, of course significantly raise income for those workers who keep their jobs. While some of the initial economic impact data paint an overall positive picture with respect to corresponding job losses and product-price increases, other early studies indicate that these radical increases might stifle job growth even in cities that are otherwise prospering,[24] and result in consumer price increases that the advocates contended would not occur.[25] Legislatures and public policy makers must therefore tread carefully given these extremely recent empirical results, lest they wind up hurting the very class they are aiming to help.

II. THE ROAD TO THE FAIR LABOR STANDARDS ACT

A. History

To a New Deal-era historian, the Fair Labor Standards Act was one of many Roosevelt-influenced pieces of legislation that shored up the bleak American economic landscape as the nation recovered from the stock market crash and the ensuing Great Depression.[26] In 1933, Congress passed the National Industrial Recovery Act (NIRA), which instituted a twenty-five cent minimum wage.[27] Adjusted for inflation, that wage would be worth about $4.56 today.[28] Two years later, however, the U.S. Supreme Court struck down the NIRA on the grounds that it (1) was unconstitutionally vague in granting the President the power to approve trade codes

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20. *$15 Minimum Wage*, SEATTLE OFF. OF THE MAYOR, http://murray.seattle.gov/minimumwage/#sthash. y1Vno2gU.I1ezy2sZ.dpbs (last visited Feb. 12, 2016).
21. Amendment of Municipal Code Sections 2-25-050, 2-92-320, 2-92-620, 4-4-320 and Adding New Chapter 1-24 Regarding Chicago Minimum Wage, City of Chicago (Dec. 2, 2014), http://www.cityofchicago.org/content/dam/city/depts/bacp/general/mininumwageordinance.pdf.
22. Dakota Smith, *Los Angeles City Council Signs Off on New $15 Minimum Wage*, L.A. DAILY NEWS (June 3, 2015, 7:26 PM), http://www.dailynews.com/government-and-politics/20150603/los-angeles-city-council-signs-off-on-new-15-minimum-wage.
23. *San Francisco's Minimum Wage Jumps to $13 Per Hour*, NBC BAY AREA (July 1, 2016, 3:01 PM), http://www.nbcbayarea.com/news/local/Minimum-Wage-Jumps-to-13-Per-Hour-in-San-Francisco-385257511.html.
24. Lindsay Cohen, *Restaurants Change Pricing to Adapt to New Seattle Minimum Wage*, KOMONews (Apr. 2, 2015), http://komonews.com/news/local/restaurants-change-pricing-to-adapt-to-new-seattle-minimum-wage (last visited Mar. 3, 2016).
25. *See, e.g.*, Tim Worstall, *We Are Seeing the Effects of the Minimum Wage Rise in San Francisco*, FORBES (July 7, 2015, 6:25 AM), http://www.forbes.com/sites/timworstall/2015/07/07/we-are-seeing-the-effects-of-the-minimum-wage-rise-in-san-francisco/#7cde20c564a4.
26. *See* Howard D. Samuel, Troubled Passage: The Labor Movement and the Fair Labor Standards Act, MONTHLY LAB. REV., Dec. 2000, at 32.
27. Andrew Glass, *National Minimum Wage Law Enacted, June 24, 1938*, POLITICO (June 24, 2011, 4:47 PM), http://www.politico.com/story/2011/06/national-minimum-wage-law-enacted-june-24-1938-057629.
28. US INFLATION CALCULATOR, http://www.usinflationcalculator.com/ (last visited Jan. 23, 2016).

to "ensure competition," thereby violating the non-delegation doctrine, and (2) constituted an overbroad reading of Congress's power under the Commerce Clause.[29]

This was not the first time that the nation's highest court struck down a minimum wage law. In fact, the Supreme Court repeatedly invalidated state minimum wage Acts, perhaps most notably in *Adkins v. Children's Hospital* in 1923.[30] Writing for the majority, Justice George Sutherland intoned that a federal law establishing a minimum wage for female and child laborers in the District of Columbia was unconstitutional for interfering "with the freedom of contract included within the guaranties of the due process clause of the Fifth Amendment."[31] The Constitution, Sutherland argued, guarantees employers the "ability to freely negotiate wage contracts with employees."[32]

Despite the Court's skepticism of minimum wage laws, President Roosevelt, Congress, and Roosevelt's Secretary of Labor Frances Perkins were undeterred. For years, Perkins, who played a large role in shaping the National Recovery Act legislation, had "worked. . . ardently to develop legislation to help underpaid workers and exploited child laborers."[33] In 1937, Roosevelt asked her if she would be willing to author another minimum wage bill.[34] Fortunately, Perkins and a team of attorneys had done so years before but filed it away in fear that the overzealous Court would surely strike the bill down if it passed.[35] Roosevelt shipped the bill off to the legislature, making sure to emphasize the child labor-related provisions – a hot-button issue of the time: "A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling worker's wages or stretching workers' hours."[36]

Hugo Black, Alabama Senator and future Supreme Court Justice, used this draft to propose the Fair Labor Standards Act in 1937 before being elected to the nation's highest court.[37] Bicameralism did its part, as the House modified the bill slightly before passing it,[38] and President Roosevelt signed it into law in 1938.[39] The federal minimum wage was born.

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29. Schechter Poultry Corp. v. U.S., 295 U.S. 495 (1935) (invalidating regulations of the poultry industry).

30. Adkins v. Children's Hospital, 261 U.S. 525 (1923).

31. *Id.*

32. *Id.* Even a Critical Legal Studies giant like Roberto Unger has noted that the principle of freedom of contract requires that the parties set their own terms, not the courts or some other outside decision-maker. *See* ROBERTO MANGABEIRA UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT 60-64, 66-68, 74-75 (1983). *See also* FRIEDRICH KESSLER, GRANT GILMORE & ANTHONY T. KRONMAN, CONTRACTS: CASES AND MATERIALS 55-59 (3d ed. 1986).

33. *See* Jonathan Grossman, Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage, MONTHLY LAB. REV., June 1978, at 22.

34. *Id*.

35. Wage and Hour Div., *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, U.S. DEP'T OF LABOR (July 2009), http://www.dol.gov/whd/regs/compliance/whdfs14.htm [hereinafter Wage and Hour Div., Fact Sheet #14].

36. The President Recommends Legislation Establishing Minimum Wages and Maximum Hours, 1937 PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 209 (1941).

37. Zach Brown, *100th Anniversary: Looking Back on the Minimum Wage*, AM. PROFILE (Jan. 6, 2014), http://americanprofile.com/articles/minimum-wage-anniversary-henry-ford/.

38. *See* Grossman, *supra* note 33.

39. *Id.*

B. Policy Goals

The FLSA essentially institutes a regulatory pillow to cushion employees from the free market's sharper edges.[40] In its own words, the Act establishes "minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments."[41] The stated policy underlying the FLSA was to foment a greater standard of living for all Americans while avoiding the pitfalls (notably unemployment) that might accompany an increased minimum wage.[42] Per the "Congressional finding and declaration of policy" section of the Act, Congress sought to "correct" and "eliminate" conditions "detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency, and general well-being of workers" without "substantially curtailing employment or earning power."[43]

C. Coverage

The Act covers employees and enterprises "engaged in interstate commerce."[44] The Act itself construes the interstate commerce requirement particularly broadly, holding that a business need only engage in "trade, commerce, transportation, transmission, or communication" among multiple states (or between one state and a foreign nation) to qualify for coverage.[45] However, the Supreme Court drew the line a bit more narrowly in *McLeod v. Threlkeld*,[46] holding that businesses whose activities merely "affected" interstate commerce were not subject to the act.[47] Petitioner McLeod, who served as a cook and caretaker for railroad repairmen, was employed by the respondent, a partnership which had contracted with the railroad to provide the aforementioned services.[48] The Court explained that "handlers of goods for a wholesaler who moves them interstate on order or to meet the needs of specified customers are in commerce," while, on the other hand, "those employees who handle goods after acquisition by a merchant for general local disposition are not."[49]

On the other hand, other courts have stretched the Act's coverage along different dimensions. A corporation that ran laundries on military bases in the Panama Canal Zone was deemed to be "engaged in commerce and in the production of goods for commerce within the meaning of the Act" because it used soap and other materials acquired from outside of the Zone.[50] Clearly, the interstate commerce requirement is not much of a burden to satisfy.

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40. Seth D. Harris, Conceptions of Fairness and the Fair Labor Standards Act, 18 HOFSTRA LAB. & EMP. L.J. 19 (2000) (discussing relationship between economic fairness, the free market, and the Fair Labor Standards Act).
41. 29 U.S.C. § 206 (2012).
42. 29 U.S.C. § 202(a)-(b) (2012).
43. *Id*.
44. *Id.*
45. 29 U.S.C. § 203 (2012).
46. McLeod v. Threlkeld, 319 U.S. 491, 494 (1943).
47. *Id*.
48. *Id.* at 492.
49. *Id.* at 4924.
50. Wirtz v. Washeterias, S.A., 304 F. Supp. 624, 625 (D.C.Z. 1968).

The FLSA also covers businesses with both (1) two or more employees and (2) "annual sales or business done of at least $500,000."[51] Employees of businesses that do not total $500,000 in sales "may [still] be covered if they are individually engaged in interstate commerce."[52] This standard has not been construed quite as broadly as the one for businesses. In *Thorne v. All Restoration Services, Inc.*, an employee who frequently used his employer's credit cards was deemed not to be individually engaged in interstate commerce under the Act.[53] Yet, in *Kirschbaum v. Walling*, the Supreme Court ruled that the FLSA covered clothing manufacturer maintenance employees due to the existence of "such a close and immediate tie with the process of production for commerce."[54]

In the end, the great majority of American workers are covered by the FLSA, and employers must adhere to its minimum wage provisions subject to the exemptions discussed below.

D. Exemptions

The Act specifically carves out several categories of employees exempted from minimum wage coverage in § 213(a) and implicitly exempts independent contractors.[55] These exclusions have three main effects: (1) they lessen the burden of a high minimum wage on small businesses, (2) they target critical industries that in Congress' view cannot afford to pay workers a higher minimum wage, and (3) they ensure that only true "employees" are covered.[56]

Many exemptions are industry-specific. For example, § 213(a)(15) exempts caregivers taking part in "domestic service employment" (the so-called "Saturday night babysitter"),[57] as well as employees providing "companionship services for individuals who (because of age or infirmity) are unable to care for themselves."[58] Agricultural laborers[59], aquaculture workers [60], information technologists[61], and border patrol agents[62] are all exempted. The minimum wage also does not cover employees of any "amusement or recreational establishment, organized

51. GERALD MAYER ET AL., CONG. RESEARCH SERV., R42713, THE FAIR LABOR STANDARDS ACT (FLSA): AN OVERVIEW 2 (2013) [hereinafter MAYER], https://www.fas.org/sgp/crs/misc/R42713.pdf.

52. *Id*.

53. Thorne v. All Restoration Servs., Inc., 448 F.3d, 1265 (11th Cir. 2006).

54. Kirschbaum v. Walling, 316 U.S. 517, 518-25 (1942).

55. 29 U.S.C. §203(e) (2012); U.S. DEP'T OF LABOR WAGE AND HOUR DIV., *Fact Sheet #13: Am I an Employee?: Employment Relationship Under the Fair Labor Standards Act (FLSA)*, U.S. DEP'T OF LAB.*)* (May 2014), http://www.dol.gov/whd/regs/compliance/whdfs13.pdf.

56. Franczek Radelet, *Not Every Employee Is Covered by the FLSA, But You're Not Off the Hook Just Yet*, WAGE & HOUR INSIGHTS (Dec. 19, 2014), http://www.wagehourinsights.com/minimum-wage/not-every-employee-is-covered-by-the-flsa-but-youre-not-off-the-hook-just-yet/.

57. 29 U.S.C. § 213(a)(15) (2012).

58. *Id.*

59. *Id.* at § 213(a)(6).

60. *Id.* at § 213(a)(5).

61. *Id.* at § 213(a)(17).

62. *Id.* at § 213(a)(18).

camp, or religious or non-profit educational conference center."[63] The same is true of executives, administrators, and other professionals.[64]

Other exemptions arise out of a person's relationship to the business. Independent contractors, for example, are not covered by the Act because they are not considered its "employees."[65] This creates a financial incentive for businesses to hire independent contractors as frequently as is feasible.[66] However, the Supreme Court held in *Rutherford Food Corp. v. McComb* that just because a worker is designated as an independent contractor by the business *does not mean* that she actually is one.[67] In the Court's own words: "Where the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the Act."[68] Thus, this type of employment is not ripe for abuse – as courts often opine, substance prevails over form.[69]

But what policy justifications undergird these exemptions from FLSA coverage? On the one hand, executives and professionals can presumably protect themselves (without government assistance) from stringently low wages. However, the same logic does not hold with respect to agricultural laborers, domestic employees, and other vulnerable classes. These exemptions seem not to match the goals underlying the 1938 Act as it passed; they fail to protect vulnerable employees, in particular unskilled laborers whose lack of technical expertise otherwise doom them to a low wage position. Agricultural workers, for example, are often subjected to "grossly substandard housing," [70] a slight they are unable to mitigate by earning the standard minimum wage. Not to mention, the exemption for disabled workers places employers in the shockingly (and perhaps inappropriately) powerful position of being able to determine a disabled employee's hourly salary by judging their productivity relative to other non-disabled employees.[71] That said, these exemptions were likely imposed out of practical concerns for the health of specific industries.[72] Perhaps, in Congress' view, if all agricultural

63. *Id.* at § 213(a)(3). The lead Author can attest to this reality personally, as he was paid a $475 "stipend" for working an entire summer at a Livingston, New Jersey day camp for kids. Presumably, his reward was spending time with children, as that experience was far more valuable than earning minimum wage.

64. *Id.* at § 213(a)(15) (2011).

65. U.S. DEP'T OF LABOR WAGE AND HOUR DIV., *Fact Sheet #13: Am I an Employee?: Employment Relationship Under the Fair Labor Standards Act (FLSA)*, U.S. DEP'T OF LAB.*)* (May 2014), http://www.dol.gov/whd/regs/compliance/whdfs13.pdf.

66. *See* Michael J. Spooner, *These Aren't the Employees You're Looking for: Stopping Independent Contractors from Becoming Full-Fledged Employees*, THE NAT'L L. REV. (June 10, 2016), http://www.natlawreview.com/article/these-aren-t-employees-you-re-looking-stopping-independent-contractors-becoming-full;

67. *See* Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947).

68. *Id.* at 729.

69. *See, e.g.*, Gregory v. Helvering, 293 U.S. 465 (1935) (The substance of a transaction should govern applicable legal rules rather than its formal structure.).

70. *U.S. Labor Law for Farmworkers*, FARMWORKER JUST., https://www.farmworkerjustice.org/advocacy-and-programs/us-labor-law-farmworkers (last visited July 5, 2016).

71. Jeanne Sahadi, *Many Low-wage Workers Not Protected by Minimum Wage*, CNN MONEY (April 23, 2014, 12:00 PM EDT), http://money.cnn.com/2014/04/23/smallbusiness/minimum-wage-exemptions/.

72. *See* STEPHEN G. BRONARS, A VANISHING BREED: HOW THE DECLINE IN U.S. FARM LABORERS OVER THE LAST DECADE HAS HURT THE U.S. ECONOMY AND SLOWED PRODUCTION ON AMERICAN FARMS (2015), http://www.renewoureconomy.org/wp-content/uploads/2015/08/PNAE_FarmLabor_August-3-3.pdf.

and caregiving enterprises were required to pay their employees a greater wage, the number of available jobs would plummet and the industry itself could collapse.

E. Determining the "Proper" Minimum Wage

The FLSA creates the structural framework for a federal minimum wage and who it applies to without prescribing any sort of algorithm with which to determine that wage. That responsibility is tacitly left to Congress. The legislature is a massive, deliberative body subject to the influence of myriad different interest groups, however, and thus the minimum wage is modified inconsistently and usually only with great political difficulty.[73] When the FLSA was originally enacted, the minimum wage it imposed was half of the national average wage.[74] However, today the minimum wage is barely one-third of the national average wage, which is north of $22 an hour.[75] In this way, the current minimum wage has fallen significantly behind the era-independent wage floors envisioned by the Act, and thus may not live up to Roosevelt's and Perkins' vision of providing a living wage to all.

With the goals and legal mechanisms of the FLSA in mind, how should society go about determining how, and at what dollar value, the minimum wage should be set? What general framework or equation should be used? Generally speaking, three courses of action are available, discussed in turn below.

1. Pure Free Market Capitalism

The first option is pure, unadulterated capitalism: the federal government does not impose a minimum wage at all, letting the free market determine how much employees earn.[76] This approach places the utmost faith in the free market's ability to match job-seekers with job-suppliers, imposing zero constraints on either side. Free market economics, however, are susceptible to informal collusion between employers within an industry to keep wages – particularly the minimum wage – below a livable threshold.[77] Recall the story of Goldilocks and the three bears: pure capitalism is the "too hot" bowl of porridge, as it lacks any enforcement mechanism by which to keep its temperature in check, depending entirely on hospitable market conditions. If labor supply greatly exceeds demand, one can be sure that the

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73. *See* Ramsey Cox, *GOP Blocks Minimum-Wage Hike*, THE HILL (Apr. 14, 2014, 12:35 PM), http://thehill.com/blogs/floor-action/senate/204802-gop-blocks-1010-minimum-wage; Mike Lillis, *$15 Minimum Wage Divides Dems*, THE HILL (July 28, 2015, 6:00 AM), http://thehill.com/homenews/news/249380-15-minimum-wage-divides-democrats.

74. *National Average Wage Index*, SOC. SECURITY ADMIN., https://www.ssa.gov/oact/cola/AWI.html (last visited Feb. 29, 2016); *May 2015 National Occupational Employment and Wage Estimates United States*, BUREAU OF LAB. STATS, http://www.bls.gov/oes/current/oes_nat.htm#00-0000 (last modified Mar. 30, 2016); MAYER, *supra* note 51.

75. *May 2015 National Occupational Employment and Wage Estimates United States*, *supra* note 719; MAYER, *supra* note 51.

76. *See* Murray N. Rothbard, *Free Market*, THE CONCISE ENCYCLOPEDIA OF ECON., (David R. Henderson ed., 2007) http://www.econlib.org/library/Enc/ FreeMarket.html (last visited Mar. 1, 2016).

77. *See, e.g.*, Dean Baker, *Silicon Valley Billionaires Believe in the Free Market, as Long as They Benefit*, THE GUARDIAN (Feb. 3, 2014, 10:36 AM EST), http://www.theguardian.com/commentisfree/2014/feb/03/google-apple-silicon-valley-free-market-joke. (discussing allegations of Silicon Valley companies conspiring to keep wages down).

free market wage will be minimal.[78] The resulting meager incomes that laborers command wind up placing a significant burden on the state to provide other social services that help mitigate the shortfall in earnings.[79]

2. Socialism

On the opposite end of the political spectrum, the federal government might elect to pursue a policy of socialism or equalitarianism. Socialism is an imprecise umbrella term which denotes one of many distinct socioeconomic systems in which the state or individual communities own and control major industries rather than private citizens or companies.[80] This approach safeguards employees from the perils of the free market by fashioning an industry-specific distribution of wealth.[81] For example, all electrical engineers might earn $120,000 for a year's work, whereas all electricians could be given $70,000 for their annual troubles.[82] Like pure capitalism, however, socialism has its own serious drawbacks: unless the government mimics the private sector's bonus system, workers have little incentive to think creatively or work particularly hard when they are guaranteed a comparable salary to that of even their most outstanding colleague.[83] Returning to our Goldilocks motif, socialism is the "too cold" bowl of porridge, as it fails to (financially) motivate workers to outwork their colleagues and craft new inventions, solutions, or discoveries.

3. A Balanced Approach

The third option shirks the extremes for a more moderate course of action: something in between pure capitalism and socialism, formulated around society's notions of fairness and the goal of maximizing overall social welfare.[84] Private individuals and companies drive and control (regulated) industries, but workers are assured a baseline minimum wage floor set above what the market might otherwise dictate. This regime houses the elusive "just right" bowl of

78. *See* ROBERT S. PINDYCK & DANIEL L. RUBINFELD, MICROECONOMICS 530-35 (8th ed. 2013); Gaby Galvin, *When supply exceeds demand, wages for day laborers suffer*, WASH. TIMES (MAY 18, 2017), http://www.washingtontimes.com/news/2017/may/18/when-supply-exceeds-demand-wages-for-day-laborers-/.

79. Yannet Lathrop, *Twice the Burden: Low-Wage Employers Cost Taxpayers Billions in Public Assistance and Lost Tax Revenue*, THE HUFFINGTON POST (Apr. 15, 2015, 5:57 PM EST), http://www.huffingtonpost.com/yannet-lathrop/low-wage-employers-cost-taxpayers-billions_b_7074046.html.

80. Mark E. Andersen, *Socialism, Fascism, and Other Philosophies Conservatives Don't Understand*, DAILY KOS (Feb. 7, 2016, 10:45 AM PST), http://www.dailykos.com/story/2016/2/7/1479490/-Socialism-fascism-and-other-philosophies-conservatives-don-t-understand.

81. Philip Bump, *A High School Teacher Helps Clarify "Socialism" for Donald Trump (and You!)*, WASH. POST (Oct. 24, 2015), https://www.washingtonpost.com/news/the-fix/wp/2015/10/24/a-high-school-teacher-helps-clarify-socialism-for-donald-trump-and-you/.

82. The American political right has often claimed that a socialist regime would functionally obliterate the free market by allocating equal wealth shares to each person in each industry, fusing "minimum wage" and "maximum wage" (were there such a thing) into just "*the* wage." In no way, however, is equal pay a necessary or even typical condition of socialism.

83. David Osterfeld, *Socialism and Incentives*, FOUND. FOR ECON. EDUC. (Nov. 1, 1986), https://fee.org/articles/socialism-and-incentives/..

84. Eliav Danziger & Leif Danziger, The Optimal Graduated Minimum Wage (2014) (unpublished article), https://scholar.princeton.edu/sites/default/files/edanzige/files/gr_minwage.pdf.

porridge, and, as this Article will show, America risks burning its mouth (and its workforce) if it does not get the recipe just right.

F. State Responses to the FLSA

Perhaps in tacit recognition of the profound difficulty involved in determining an appropriate federal minimum wage for fifty diverse bodies, individual states have passed their own unique wage legislation over the decades.[85] Fourteen states have enacted a minimum wage equal to the federal minimum.[86] Georgia's and Wyoming's state minimum wages are lower than the current federal requirement, but in accordance with the Supremacy Clause of the Constitution, the states are required to pay employees the federal minimum wage.[87] Alabama, Louisiana, Mississippi, South Carolina, and Tennessee have not enacted a statewide wage floor, but they, too, must meet the federal minimum threshold.[88]

Twenty-nine states and the District of Columbia have enacted minimum wages higher than the federal minimum.[89] Several have passed fairly significant increases. In particular, Alaska, California, Connecticut, the District of Columbia, Massachusetts, Nebraska, New York, Oregon, Rhode Island, Vermont, and Washington have all passed legislation raising the minimum wage to at least $9.00.[90] Typically, states adopt increases with caution, absorbing the impact by phasing in the minimum wage in small increments over the course of several years rather than effectuating the increase immediately.[91] For example, Washington's minimum wage increased twenty cents from 2015 to 2016, and will subsequently rise from $11.00 to $13.50 from 2017 to 2020.[92]

III. THE ECONOMIC IMPACT OF THE MINIMUM WAGE

A. Economics 101: Higher Wages Increase Supply of Workers but Decrease Demand

Modern minimum wage economic theory generally suggests that as the minimum wage increases, the quantity of labor willing to be supplied by workers increases, but the amount of labor demanded by employers decreases.[93] In a market that has not imposed a minimum wage,

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85. U.S. DEP'T OF LABOR WAGE AND HOUR DIV., *Minimum Wage Laws in the States – January 1, 2016*, U.S. DEP'T OF LAB., *2017*, http://www.dol.gov/whd/minwage/america.htm (last visited Feb. 10, 2016). May 11, 2017).

86. *Id.*

87. *Id.*

88. *Id.*

89. *Facts*, RAISE THE MINIMUM WAGE, http://www.raisetheminimumwage.com/facts/ (last visited June 13, 2016).

90. *Id.*

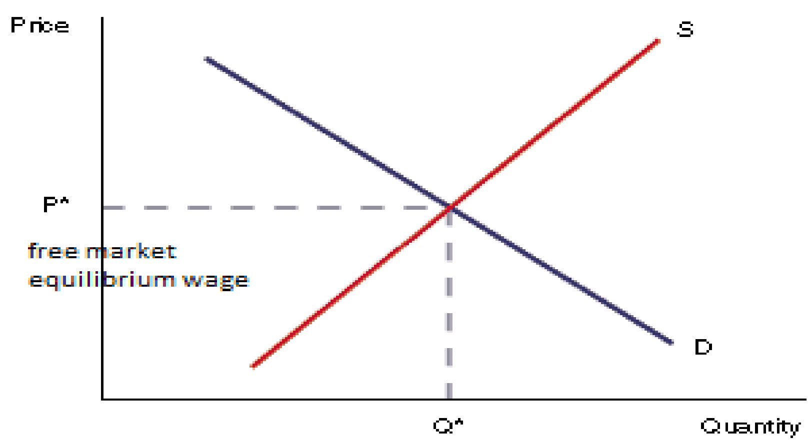
91. *$15 Minimum Wage*, *supra* note 20 (describing a schedule for Seattle to phase in its new minimum wage over several years.); *Governor Cuomo Signs $15 Minimum Wage Plan and 12 Week Paid Family Leave Policy into Law*, N.Y. STATE. GOVERNOR (April 4, 2016), https://www.governor.ny.gov/news/governor-cuomo-signs-15-minimum-wage-plan-and-12-week-paid-family-leave-policy-law (describing a schedule for New York state to phase in its new minimum wage over several years).

92. *What's the Minimum Wage in Your State?*, RAISE THE MINIMUM WAGE, http://www.raisetheminimumwage.com/pages/minimum-wage-state (last visited Feb. 18, 2016).

93. *See* PINDYCK & RUBINFELD, *supra* note 75, at 530-35.

if workers are scarce and employer demand for labor high, wages will rise.[94] Conversely, if workers are plentiful and employer demand is low, wages will fall.[95] In the end, employees will supply labor as long as the cost to them is less than the wage received, and employers will hire workers as long as their marginal benefit (i.e., employee productivity) exceeds their wage.[96] Where marginal benefit equals marginal cost we have the market's equilibrium price – the allegedly ideal balance of wage and labor quantity – at the point where the supply and demand curves for labor intersect (see Table 1 below[97]). At this price, no deadweight loss occurs, which is to say that there are no job-seekers out of work whose marginal benefit exceeds their marginal cost, and no employers unable to find employees. Every hour of labor that a worker is willing to supply is matched up with an hour demanded by an employer. P* in the table below represents the market wage, and Q* represents market equilibrium employment level:

Table 1[98]:

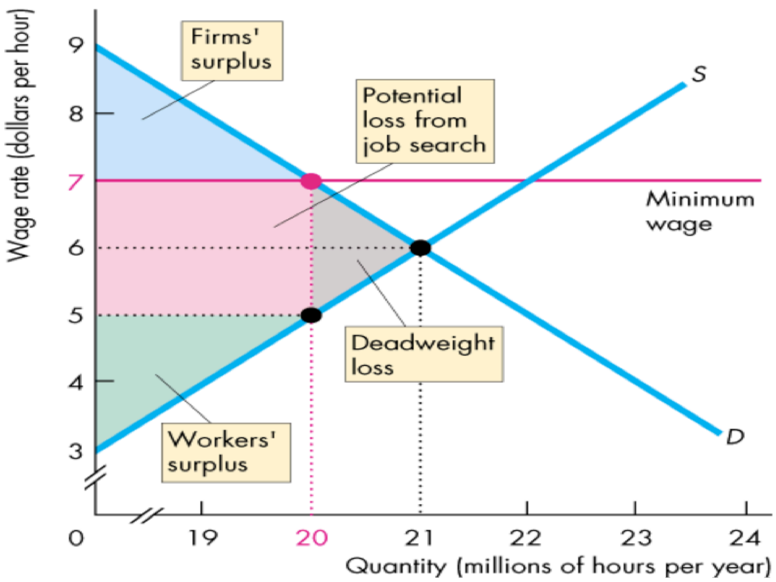


The imposition of a minimum wage floor, however, creates a structural barrier to the market being able to reach its equilibrium labor price, generating deadweight loss.[99] Economic theory posits that some workers will be willing to work for a price below the artificially-imposed wage floor and, naturally, some employers would be willing to employ them at that lower price.[100] Nevertheless, the FLSA prohibits that deal from being struck. A mandatory minimum wage thus in theory causes a loss of every mutually-desired employment connection above the free market equilibrium price and below the minimum wage floor (see Table 2 below). The resultant deadweight loss triangle is shown below: in the grey area, workers are

94. *See id.*
95. *See id.*
96. *See id.* at 542-43.
97. Barry Posner, *Supply and Demand*, PENN STATE, https://www.e-education.psu.edu/ebf200wd/node/117 (last visited Jan. 24, 2016).
98. Barry Posner, *Supply and Demand*, PENN STATE, https://www.e-education.psu.edu/ebf200wd/node/117 (last visited Jan. 24, 2016).
99. *Id.*
100. *See* PINDYCK & RUBINFELD, *supra* note 75.

willing to supply their labor for less than the federal minimum of $7.25/hour and employers are willing to pay more than $5/hour to induce it, but the law prevents that "mutually beneficial" trade from occurring.

Table 2[101]:



Given the quantity of labor hours desired by the American public, such deadweight loss could have catastrophic impacts on both firms and workers if the minimum wage were to be increased significantly. That said, the real-world results of minimum wage augmentations have not followed such a tidy trend, varying considerably by era.

B. Empirical Economic Impact Results of Minimum Wage Increases

Our analysis compartmentalizes minimum wage increases into three discrete eras: (1) the 1980s and early 1990s, (2) the mid-1990s to early 2000s, and (3) a brand-new, burgeoning period spurred on by cities adopting sharp and substantial wage floor increases today. For now, the Authors will limit our discussion to the first two eras, with the economic consequences of today's aggressive minimum wage reforms addressed in Part IV.

1. The 1980s and Early 1990s

Opponents of the minimum wage have traditionally contended that minimum wage increases cause massive job losses, and the 1980s provided just the data they needed. During this period of time, the majority of studies conducted found that each 10% increase in the minimum wage triggered a loss of employment of over 1%.[102] Finis Welch, Donald Deere, and Kevin Murphy, academics at Texas A&M and the University of Chicago, found that "higher

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101. *See* Joseph Kaos, Jr., *Minimum Wage the Right Thing to Do*, ECON. 1.6 (Oct. 28, 2012), http://uweeconomics.blogspot.com/2012/10/disagreeing-to-minimum-wage.html.

102. *See* Louis Uchitelle, *A Pay Raise's Impact: A Higher Minimum Wage Does Not Lead to Big Losses in Jobs, Research Indicates*, N.Y. TIMES, Jan. 12, 1995, at D1 [hereinafter Uchitelle, *A Pay Raise's Impact*].

minimum wages go hand-in-hand with substantial declines in the employment of low-productivity workers," concluding that "[a]rtificial increases in the price of unskilled laborers inevitably lead to their reduced employment."[103] Their aggregated data showed that 2.4% of men and 0.3% of women between the ages of 25 and 64 lost their jobs in the aftermath of the 1990 and 1991 federal minimum wage hikes.[104] Black and Mexican-American men were hit particularly hard; the percentage of employed men in those demographics fell by a staggering 4.8%.[105]

In addition, economists contend that teenagers made up a disproportionate percentage of all minimum wage earners (32% in 1989) and therefore the putative benefits conferred by an increase were soaked up by those who were also being financially provided for by others, namely parents.[106] There was no compelling need or policy rationale for Congress to help this group earn a "living wage."[107]

2. The Mid-1990's to 2000's

However, the "massive job loss" argument lost its bite somewhat during the mid-1990's, as economists began to accrue data suggesting that the negative effects of a wage floor increase were no longer as stark. In 1995, labor economics scholars such as Louis Uchitelle assessed then-existing scholarship and projected that job losses would reach 1 percent only if Congress increased the minimum wage by nearly 18 percent.[108]

In fact, some economists began to gather data that disputed the existence of negative employment effects altogether. By 2011, John Schmitt and David Rosnick, researchers for the Center for Economic and Policy Research, found that the employment effects of a minimum wage increase "generally cluster near zero."[109] Contrary to the conventional classical economic wisdom concerned about potential job losses, such impacts did not actually occur:

> Over the past 15 years, states and cities around the country have rushed ahead of the federal government to impose higher minimum wages. Economists analyzing the impact of the increases on jobs have concluded that moderate increases have *no discernible impact on joblessness*. . . Employers did not rush off to cheaper labor markets in the suburbs or across state lines for a simple reason: that costs money too.[110]

Schmitt and Rosnick suggest that overblown concerns over job losses may have contributed to an unproductive Washington, D.C. wage increase in 1993, which was "too small

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103. *See* DEERE, *supra* note 1.

104. *Id.*

105. *Id* at 48.

106. *Id* at 49.

107. Not all studies from this period agreed. For example, following a 1990 85% minimum wage bump to tipped workers in Washington State, "restaurant industry employment growth outpaced the rest of the economy over the following decade." David Goldstein, *The Real Lesson from $15? America's Trickle-Down Experiment Has Failed*, CIVIC SKUNK WORKS (Apr. 1, 2016, 10:14 AM), http://civicskunkworks.com/the-real-lesson-from-15-americas-trickle-down-experiment-has-failed/. That said, the majority tend to agree with Welsh.

108. *See* Uchitelle, *Minimum Wage and Jobs*, *supra* note 17.

109. JOHN SCHMITT & DAVID ROSNICK, THE WAGE AND EMPLOYMENT IMPACT OF MINIMUM-WAGE LAWS IN THREE CITIES 1 (2011), http://cepr.net/documents/publications/min-wage-2011-03.pdf.

110. Opinion, *A Minimum Wage Increase*, N.Y. TIMES, Mar. 27, 2011, at WK9.

to raise wages in fast food, food services, retail, and other low-wage establishments."[111] Concurrent (larger) hikes in San Francisco and Santa Fe, on the other hand, produced minimal employment effects that were not statistically significant.[112] Moreover, Arindrajit Dube and a team of noted economists from the University of California at Berkeley concluded in 2010 that:

> For cross-state metro counties and cross-state contiguous counties, we find strong earnings effects and no [negative] employment effects of minimum wage increases. The large negative elasticities in fixed-effects panel regressions are generated primarily by regional and local differences in employment trends that are unrelated to minimum wage policies.[113]

In other words, previously discovered negative employment effects are, at least in the new millennium, nothing more than statistical noise.

A small number of studies go as far as to assert *positive* employment effects from minimum wage hikes. Legendary Princeton economists David Card and Alan Krueger found that employment actually *rose* somewhat when the minimum wage was raised.[114] Their aggregated data showed that New Jersey fast food establishments, as compared to similar restaurants in Pennsylvania, experienced a 13% *jump* in employment in response to an increase in the state wage floor.[115]

At this point, minimum wage scholars also began to realize that either: (a) the prior estimates of the percentage of teenagers comprising the minimum wage-earning population were significantly off base, or (b) that population had shrunk significantly. As Louis Uchitelle noted, "only one-third of the roughly four million minimum-wage earners are teenagers. The rest are adults older than 25, a significant number of whom – some say as many as 45 percent – provide nearly half of their families' incomes."[116]

On the other hand, some economists have suggested that the *reason* the population of teenage minimum wage earners has shrunk is precisely due to those increases: employers prefer hiring adults over teens if they have to pay higher wages. In "The Teen Employment Crisis," William Even and David Macpherson reported:

> For the 19 states affected by all three stages of the federal wage hike [from 2007-09], there was a 6.9 percent decline in employment for teens aged 16 to 19. This translates to approximately 98,000 fewer employed teens. Broadening the analysis to include all 32 states impacted by any stage of the federal wage increase, the authors find approximately 114,400 fewer employed teens. . . When Even and Macpherson look specifically at 16 to 19-year olds with less than 12 years of education, the proportional employment loss grows larger. In states impacted by all three wage hikes, there was a 12.4 percent decrease in teen employment.[117]

Minimum wage hike supporters respond to this phenomenon by pointing out that teenage minimum-wage-earners losing their jobs is a fair tradeoff if the low-wage workers who need to

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111. *See* SCHMITT & ROSNICK, *supra* note 105, at 30.

112. *Id.* at 11, 22.

113. Dube, Lester & Reich, *supra* note 1.

114. *See* DAVID E. CARD & ALAN B. KRUEGER, MYTH AND MEASUREMENT: THE NEW ECONOMICS OF THE MINIMUM WAGE (1995).

115. *Id.*

116. *See* Uchitelle, *A Pay Raise's Impact*, *supra* note 98.

117. WILLIAM E. EVEN & DAVID A. MACPHERSON, THE TEEN EMPLOYMENT CRISIS: THE EFFECTS OF THE 2007–2009 FEDERAL MINIMUM WAGE INCREASES ON TEEN EMPLOYMENT (2010), https://www.epionline.org/wp-content/studies/even_07-2010.pdf.

support their own families retain their jobs and are able to achieve a higher standard of living, since the former can usually depend on their parents for financial support.

Finally, and most importantly, 2000's-era economists have concluded through empirical study that increasing the minimum wage "produces a net gain in total income" to the working class.[118] In other words, minimum wage employees who avoided the chopping block were rewarded with income gains so prodigious that they outweighed the income lost by those who were not so lucky. Minimum wage opponents like economist Finis Welch however, responded to this data by suggesting that the benefits to society accrued from each saved job might outweigh the overall income gain, and that any forced increase in wages will necessarily cause a reduction in employment.[119] For example, Welch contended that overall job totals are more indicative of a healthy economy, pointing out the danger in blocking unskilled people from employment altogether if their work is not deemed to be worth the federal minimum.[120] There is little concrete data to support this counterargument, though it is still one that policymakers should consider.

C. Suggested Theories Explaining the Difference in Employment Impacts Between the 1980's Versus the 1990's-2000's

While there is, as of yet, no true scholarly consensus regarding the core reasons for the disparate employment effects of pre- and post-1995 minimum wage increases, this Article offers several theories that help explain the disparity.

1. The Federal Minimum Wage Had Fallen So Far Behind the Average National Wage that Increases to it Affected Few Workers

To begin with, by the 1990s and 2000s, the federal minimum wage had fallen far further below the average national wage than it used to be when first promulgated, so fewer workers were affected by subsequent increases to it.[121] In fact, the first minimum wage imposed by the Fair Labor Standards Act in 1938 was targeted to be approximately half of the national average wage, while today's is only one-third of that mark.[122] If relatively fewer workers are subject to the minimum wage, then obviously increasing it will not create nearly as substantial employment impacts.

2. Employee-Productivity "Shock Effects"

Additionally, scholars like Charles Brown, Curtis Gilroy, and Andrew Kohen have theorized that the "shock effects" resulting from a substantial minimum wage increase might jolt low-wage workers into a higher gear, fueling superior employee performance and overall

118. *See* Uchitelle, *A Pay Raise's Impact*, *supra* note 98.

119. *See, e.g.*, DEERE, *supra* note 1.

120. *See* Uchitelle, *A Pay Raise's Impact*, *supra* note 98.

121. *The National Average Minimum Wage*, TOWN HALL FIN. (Mar. 25, 2013), http://finance.townhall.com/columnists/politicalcalculations/2013/03/25/the-national-average-minimum-wage-n1548020/page/full.

122. *May 2015 National Occupational Employment and Wage Estimates United States*, *supra* note 71; MAYER, *supra* note 51.

firm productivity – and thereby prevent job loss.[123] Workers, the theory suggests, will work harder when they are paid more money, offsetting the "hurt" to employers from having to pay more money for them.[124] Why might this be true? First, employees generally perceive higher wages to be "more fair."[125] They also might receive specialized training from their firms to make them "worth" the added wage, which makes employees feel less replaceable and therefore more valuable.[126] From a technical standpoint, these effects could partially or largely offset the additional financial pressure placed on employers, stimulating greater individual productivity, which in turn increases employer profits and reduces the need for layoffs (even if wages are higher).

Take, for example, a young couple employing a babysitter. Under the "shock effects" theory, if the couple elect to pay their sitter more than usual (or more than she or her peers are typically paid), particularly when monitoring her work effort is difficult, she will be incentivized to work harder and be more attentive.[127] The couple, in turn, benefit from heightened vigilance and oversight of their invaluable (and fragile) children. They do not mind paying more money because they can anticipate greater effort and care in return.

3. Employer Investment in Employees Increases

Another theory suggests that employers are now investing more in their workers to maximize their productivity.[128] Minimum wage hikes reduce staff turnover; employers are effectively forced into treating their now-more valuable employees as long-term investments who cannot simply be replaced by any other low-wage worker.[129] As a result, firms are incentivized to invest in employee training and other technology to maximize employee productivity.[130] Firms are, therefore, pulled "away from a low-road, low-human capital investment model to one where workers stay attached to the workforce and employers make

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123. *See* Charles Brown et al., *The Effect of the Minimum Wage on Employment and Unemployment*, 20 J. ECON. LIT. 487 (1982).

124. *See id*.

125. *See* Bill Chait, *The Better, Fairer Minimum Wage–Add Time and Tips*, L.A. TIMES (Apr. 27, 2015, 5:00 AM), http://www.latimes.com/opinion/op-ed/la-oe-chait-minimum-wage-restaurants-20150427-story.html; Christine Jolls, *Fairness, Minimum Wage Law, and Employee Benefits*, 77 N.Y.U. L. REV. 47 (2002).

126. *See* Dube, Lester & Reich, *supra* note 1.

127. *See* Jolls, *supra* note 121.

128. *See* Vicky Valet, *More Than Two-Thirds of U.S. Employers Currently Offer Wellness Programs, Study Says*, FORBES (July 8, 2015, 10:00 AM) http://www.forbes.com/sites/vickyvalet/2015/07/08/more-than-two-thirds-of-u-s-employers-currently-offer-wellness-programs-study-says/#5e6b1c096c7b.

129. *See* MICHAEL REICH ET AL., LOCAL MINIMUM WAGE LAWS: IMPACTS ON WORKERS, FAMILIES AND BUSINESSES (IRLE Working Paper #104-14, 2014), http://irle.berkeley.edu/workingpapers/104-14.pdf.

130. *See* Emad Rizkalla, *Not Investing in Employee Training Is Risky Business*, THE HUFFINGTON POST: WHAT'S WORKING (June 30, 2014, 4:33 PM, updated Aug. 30, 2014), http://www.huffingtonpost.com/emad-rizkalla/not-investing-in-employee_b_5545222.html; Santiago Tiongco, *IBM and Cisco Partner Up to Develop Watson-Powered Apps: Slack and Microsoft in the Crosshairs?*, TECH TIMES (July 2, 2016, 11:09 AM), http://www.techtimes.com/articles/167987/20160702/ibm-and-cisco-partner-up-to-develop-watson-powered-apps-slack-and-microsoft-in-the-crosshairs.htm.

stronger investments in training."[131] This theory fits rather snugly with the increased positive employment effects observed in the 1990's relative to the prior era. It may be that wage increases in the 1980's paved the way for greater economic prosperity in the following decades, as employers took a while to learn how to adapt their prior employment models to a longer-term system focusing on incorporating technological advances and increasing worker productivity.

4. Taxpayers are Better Off

As an additional theory, we hypothesize that taxpayers are better off when low-wage workers earn more, which in turn boosts their own employment prospects. An increased minimum wage often "lure[s] people out of idleness" by incentivizing them to seek a newly more profitable job rather than passively subsisting off of government welfare programs.[132] Taxpayers thus bear fewer costs – for example, food stamps and Medicaid – as low-wage workers remain employed for longer periods of time by businesses structurally forced into treating them as more than replaceable automatons.[133] This hypothesis explains, in part, the net gain in total income accompanying 1990's-era minimum wage increases.

5. Empowering Workers

Next, minimum wage hikes might empower workers with respect to their employers. Lurching in the rapids of a struggling economy, employers have "less incentive to raise wages, while workers, especially those making near minimum wage, have little ability to demand a raise because there is a ready supply of unemployed labor available to take their job."[134] Increases in the federal minimum wage help correct that imbalance of power problem.

6. Ripple Effects on other Low-Income Workers

Finally, minimum wage hikes have a beneficial ripple effect on those earning just above the lowest possible salary.[135] As recently as the 1990's, 5% of the workforce earned within 50 cents of the minimum,[136] so even a modest hike bolsters the economic well-being of hundreds of thousands of Americans. Increasing the wage floor also has a cascading effect: it necessarily forces employers to beef up their non-minimum-wage-earning workers' salaries as well.[137] In the context of a moderate minimum wage increase, the ripple effect is not so large as to throw a wrench into the financial workings and constraints of businesses employing low-wage workers. To go further, it fosters some competition in the labor marketplace; employers wary

131. T. William Lester, David Madland & Nick Bunker, *An Increased Minimum Wage Is Good Policy Even During Hard Times: Recent Studies Point to Higher Pay But No Job Losses*, CTR. FOR AM. PROGRESS ACTION FUND (June 7, 2011), https://www.americanprogressaction.org/issues/labor/news/2011/06/07/9747/an-increased-minimum-wage-is-good-policy-even-during-hard-times/.

132. *See* Uchitelle, *A Pay Raise's Impact*, *supra* note 98.

133. *See* Lester, Madland & Bunker, *supra* note 127.

134. *Id.*

135. Melissa S. Kearney & Benjamin H. Harris, *The "Ripple Effect" of a Minimum Wage Increase on American Workers*, BROOKINGS (Jan. 10, 2014), http://www.brookings.edu/blogs/up-front/posts/2014/01/10-ripple-effect-of-increasing-the-minimum-wage-kearney-harris.

136. *See* Uchitelle, *Minimum Wage and Jobs*, *supra* note 17.

137. *See* Lester, Madland & Bunker, *supra* note 127.

of seeing their mid-tier employees take off for greener pastures will increase their pay to retain them.[138]

D. Interim Conclusions

Ultimately, for all of the "sky-is-falling" predictions of debilitating job losses and industry destabilization, federal minimum wage increases throughout the late twentieth and early twenty-first centuries appear to have produced net positive effects. First, studies have demonstrated that total income for the working class has increased.[139] Moreover, since the proportion of minimum wage earners who are teenagers is quite small, such an increase notably improves the living standard for families, not just kids.[140] Second, employee work effort increases as they perceive their new and improved wage to be "more fair."[141] Third, employer investment in technology increases in order to help make employees more productive and thereby offsets the "hurt" to the employer of the higher wage it must pay.[142] Fourth, would-be low-wage workers obtain a heightened incentive to find work when the minimum wage rises, which eases the welfare system's burden on taxpayers.[143] Finally, minimum wage increases cause a ripple effect: the raise pushes up the wages of (1) employees working just above the old minimum wage,[144] and (2) of employees whose firms feel the need to raise wages for mid-level workers in order to retain them.[145]

However, it is important to recognize, as the authors do in Part IV below, that these positive employment effects may well be harmed when an increase in the minimum wage is so sudden and substantial as to upset the delicate balance between equilibrium wages and employment levels discussed above. Legislators and policymakers must tread carefully lest they injure the class of workers they are trying to protect.

IV. TODAY'S AGGRESSIVE REFORM: 2015 AND BEYOND

A. Substantial Increases in Major American Cities

Several major cities across the United States, including Seattle,[146] Los Angeles,[147] Chicago[148] and Oakland,[149] have recently adopted sizable minimum wage increases to be

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138. *See id.*

139. *See* CARD & KRUEGER, *supra* note 110.

140. *See* EVEN & MACPHERSON, *supra* note 113.

141. *See* Bill Chait, *supra* note 121.

142. *See* Rizkalla, *supra* note 126.

143. *See* Uchitelle, *A Pay Raise's Impact*, *supra* note 98.

144. *Id*.

145. *See* Lester, Madland & Bunker, *supra* note 127.

146. SEATTLE, WASH., MUN. CODE Ch. 14.19 (2016).

147. Smith, *supra* note 22.

148. *Amendment of Municipal Code Sections 2-25-050, 2-92-320, 2-92-620, 4-4-320 and Adding New Chapter 1-24 Regarding Chicago Minimum Wage*, CITY OF CHICAGO (Dec. 2, 2014), http://www.cityofchicago.org/content/dam/city/depts/bacp/general/mininumwageordinance.pdf.

149. Pankit Doshi, *Two New Minimum Wage Increases Pass in Northern California*, LAB. & EMP. L. BLOG (Nov. 7, 2014), http://www.laboremploymentlawblog.com/2014/11/articles/election-law/two-new-minimum-wage-increases-pass-in-northern-california/.

phased in over the next few years. Two states, New York and California, have also been inspired to join the movement by promulgating laws increasing their state's minimum wage to $15 over several years; these will be discussed in Part IV.B, *infra*.[150] It is crucial that we carefully examine the initial effects on overall employment and consumer prices, as the data provides both reason for optimism as well as some cause for concern.

In 2015, the Seattle City Council passed Mayor Ed Murray's recommendations for a new wage plan: Seattle's then-$9.47 minimum wage would increase (shockingly) to $15 for all employers by 2021.[151] Seattle's plan staggers the wage increase by employer-type so as to safeguard small businesses from the shocks associated with such a significant raise.[152] "Schedule 1 employers," which have more than 500 employees in the country, were required to pay a minimum of $11 by April 2015, $13 by January 2016, and $15 by January 2017.[153] Those Schedule 1 employers who also paid "toward an individual employee's medical benefits plan" are on a slightly relaxed plan, arriving at a $15 minimum wage an entire year later, in 2018.[154] On the other hand, "Schedule 2 employers," who have 500 or fewer domestic employees, are treated more gently; they are subject to mere 50-cent increases each year, and do not reach the $15 minimum wage until 2021.[155] By the time the $15 minimum wage has been uniformly imposed on all Seattle employers, the state minimum wage will likely have risen to approximately $12.[156]

Oakland, CA adopted a less gradational but nonetheless substantial minimum wage boost in 2014, which was approved by over 80% of voters.[157] The city minimum wage swelled from $9 to $12.25.[158] This increase came almost without warning to employers, as it was put into effect a mere four months later, and without any interim stages to lessen the shock.[159] The new law was designed to keep Oakland's minimum wage in line with the regional Consumer Price Index, which not surprisingly is quite high in the Bay Area.[160]

Chicago, IL followed in Oakland's footsteps and passed an ordinance that will raise the city's wage floor 60% from $8.25 in 2014 to $13 in 2019.[161] Chicago's law is stratified by tipped and non-tipped employees; the former's wage will swell each year by $1 until 2020, at which point it will change in accordance with Consumer Price Index-related calculations, while

150. *Governor Cuomo Signs $15 Minimum Wage Plan and 12 Week Paid Family Leave Policy into Law, supra* note 88; *Governor Brown Signs Landmark Legislation to Raise California's Minimum Wage*, OFF. OF GOV. EDMUND G. BROWN (Apr. 4, 2016), https://www.gov.ca.gov/news.php?id=19368.

151. *$15 Minimum Wage*, *supra* note 20.

152. *See id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id*.

157. *Oakland Minimum Wage Rate to See a Little Bump in 2016*, KRON 4 (Dec. 25, 2015, 6:08 PM), http://kron4.com/2015/12/25/oakland-minimum-wage-rate-to-see-a-little-bump-in-2016/.

158. *Id.*

159. *See id*.

160. *January 1, 2016 Minimum Wage Increase*, CITY OF OAKLAND, http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451 (last visited Feb. 12, 2016); *Oakland Minimum Wage Rate to See a Little Bump in 2016*, *supra* note 153.

161. *City of Chicago Minimum Wage*, CITY OF CHICAGO, http://www.cityofchicago.org/city/en/depts/mayor/supp_info/minimum-wage.html (last visited Feb. 13, 2016).

the latter's income will be raised pursuant to CPI indexing in 2017.[162] Some common sense exemptions were included: employees under age 18, adults within their first 90 days of employment, disabled employees, extremely small businesses (with four or fewer employees), employees taking part in government-subsidized transitional employment programs or temporary youth employment programs, and employees of non-Chicago government entities.[163] Chicago's law lags noticeably behind other contemporary minimum wage ordinances in terms of its final result, however. Compared to the myriad $15 wage hikes in other major American cities, $13 seems to be a relatively modest proposal.

In summer 2016, the Washington, D.C. District Council voted to approve a $15 minimum wage.[164] Like its predecessors, the Washington law will steadily increase to $15 by 2020. As D.C.'s minimum is already $11.50, the wage floor will increase in increments of only 70 cents per year.[165] Despite criticism that the law will disadvantage those working in Virginia but living in D.C.,[166] it is predicted to have significant net income effects – in particular, bumping up the wages of "70,000 janitors, parking attendants, dishwashers and others."[167] To that end, the new minimum will likely "put upward pressure on the wages of 44,000 more workers who are paid slightly above the new baseline."[168]

Not to be outdone, Los Angeles, Emeryville, Mountain View, and Los Angeles County, CA all passed legislation ramping up to a $15 minimum wage by 2021.[169] As the $15 minimum wage gains popularity and traction, more and more city governments across the nation are considering similarly sharp increases.[170] The trend is unmistakable and remarkable. But relatively few academics or policy makers are discussing the accompanying potential for these best laid plans to go awry.

B. Massive Statewide Increases in California and New York

2016 stands as the year in which the $15 minimum wage, formerly a "populist pipe dream," turned from reverie to reality in two major American states.[171] On March 28, 2016, California passed a bill amplifying the state minimum wage from $10 to $15 by 2022.[172] The

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162. *Id.*

163. *Id.*

164. Richard Gonzales, *Washington, D.C., Is Latest to Raise Minimum Wage*, NPR (June 7, 2016, 6:26 PM), http://www.npr.org/sections/thetwo-way/2016/06/07/481156553/washington-d-c-is-latest-to-raise-minimum-wage.

165. *Id*.

166. Eric Morath, *The Nation's Capital Is Setting a $15 Minimum Wage, Double the Federal Level*, WALL STREET J. (June 7, 2016, 4:31 PM), http://blogs.wsj.com/economics/2016/06/07/the-nations-capital-is-setting-a-15-minimum-wage-double-the-federal-level/.

167. Aaron C. Davis, *D.C. Lawmakers Approve $15 Minimum Wage, Joining N.Y., Calif.*, WASH. POST (June 7, 2016), https://www.washingtonpost.com/local/dc-politics/deal-reached-for-15-minimum-wage-in-dc-unions-say/2016/06/07/cff3dd66-2c2a-11e6-9de3-6e6e7a14000c_story.html.

168. *Id*.

169. *14 Cities & States Approved $15 Minimum Wage in 2015*, NAT'L EMP. L. PROJECT (Dec. 21, 2015), http://www.nelp.org/content/uploads/PR-Minimum-Wage-Year-End-15.pdf.

170. *See* Steve Padilla, *How Pay for the Lowest Wage Earners Has Turned into a National Fight*, L.A. TIMES (Feb. 28, 2016, 4:02 AM), http://www.latimes.com/nation/la-na-minimum-wage-laws-20160227-htmlstory.html.

171. *See* Russell Berman, *A Major Leap for the Minimum Wage*, THE ATLANTIC (Mar. 30, 2016), http://www.theatlantic.com/politics/archive/2016/03/a-major-leap-for-the-minimum-wage/475920/.

172. S.B. 3, 2016 Leg., [fill in when advance legislative service pamphlet arrives] (Cal. 2016).

hourly minimum will jump by 50 cents in 2017 and then to $11 the following year.[173] In addition, every January for the following four years (2019 to 2022), the minimum will swell by an additional $1, "unless the governor imposes a delay during an economic recession."[174] Businesses with 25 or fewer employees will be subject to the same annual increases, but the jumps will begin one year later, in 2018.[175]

Not to be outdone, the New York state legislature passed its own $15 minimum wage law mere days after California acted.[176] The New York law imposes a $15 minimum by 2018 on "large businesses" (those employing 11 or more workers), by 2019 on "small businesses" (those employing 10 or fewer workers), and by 2021 on all workers in Nassau, Suffolk, and Westchester counties (all high cost-of-living counties, but certainly less so than New York City proper).[177] Workers located elsewhere in the state are not so fortunate; their wage floor will reach $12.50 in 2020, only hitting $15 when the "indexed schedule to be set by the Director of the Division of Budget in consultation with the Department of Labor" so provides.[178] Christine Owens, executive director of the National Employment Law Project, suggested that by the time the law has been fully implemented, approximately three million working New Yorkers would enjoy earnings bumps of over $4,000 per year.[179] The new law should see significant immediate effects as well, given that over 60% of New York employees making below $15 per hour work in New York City and its suburbs.[180] The bulk of the aforementioned three million workers (1.9 of them) would, therefore, experience considerable income gains.[181]

C. Enforcement Difficulties

Many businesses have thus far failed to actually implement the substantial wage jumps imposed on them.[182] There are those who "simply ignore or misunderstand" the new laws.[183] This can be corrected through education. Some employers, on the other hand, consciously and often artfully evade payment of higher wages to their employees, by either "deliberately underestimat[ing] the hours their employees work. . . or requir[ing] them to work unpaid and off-the-clock."[184] Some regions have particularly struggled in this regard:

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173. *Id.*

174. *Id*.

175. *See id.*; *California, New York Enact $15 Minimum Wages*, FOX NEWS POLITICS (Apr. 5, 2016), http://www.foxnews.com/politics/2016/04/05/california-new-york-enact-15-minimum-wages.html.

176. *Governor Cuomo Signs $15 Minimum Wage Plan and 12 Week Paid Family Leave Policy into Law*, *supra* note 88.

177. *Id.*

178. *Id.*

179. *New York State Agrees to $15 Minimum Wage Plan*, NAT'L EMP. L. PROJECT (Mar. 31, 2016), http://www.nelp.org/news-releases/new-york-state-agrees-to-15-minimum-wage-plan/.

180. *Id*.

181. One suspects that given New York City's sky-high rents, only fairly well-off businesses can afford to set up shop there, making the area uniquely prepared for a sharp increase.

182. *See* Donna Gordon Blankinship, *Seattle, Other Jurisdictions Struggle to Enforce $15 Minimum Wage Laws*, KOMO NEWS (Apr. 26, 2016), http://komonews.com/news/local/seattle-other-jurisdictions-struggle-to-enforce-15-minimum-wage-laws.

183. *See id.*

184. *Id.*

> Tiny SeaTac, Washington, has effectively outsourced enforcement to the courts since it became the nation's first city to require wages of $15 an hour or more in 2014.
>
> More than a dozen class actions were filed this year on behalf of workers in and around Seattle-Tacoma International Airport. Attorney Duncan Turner estimates the total owed to them in back wages, overtime, related benefits and potential penalties could add up to $62.5 million.[185]

In other words, workers faced with employer malfeasance who search for enforcement mechanisms have nowhere to look but the already-overstuffed (and incredibly expensive) judicial system. This is not ideal.

D. Employment Impacts of Today's Revolution: Mixed Results

Today's wave of minimum wage increases is historically unprecedented in its boldness. Each escalation has been far more aggressive than the one that came before. As previously discussed in the Introduction to this Article, the Goldilocks Theory of Minimum Wage (which the authors now regret failing to trademark) suggests that an ideal wage floor depends upon context and cannot vigorously depart from its predecessor; Congress must keep the minimum wage on a somewhat strict schedule, under which it retains proportionality to the average national wage. Today's federal minimum wage of $7.25 is only 30% of the average national wage, whereas a $15 hourly wage is almost 75% of the average national wage. Such a change could drastically alter the meaning and feasibility of the minimum wage in many places located far away from major metropolises.

It is thus imperative that we examine the initial employment impact data from today's revolutionary minimum wage reforms. In Seattle, mixed reviews of the nation's first $15 minimum wage law have been matched by mixed results. In December 2015 (eight months after the new wage rules took effect), the Seattle region boasted an unemployment rate of 5%, almost identical to its December 2014 rate of 4.9%.[186] At first blush, that sounds quite promising. However, the United States' unemployment rate as a whole, however, decreased by 0.6% during that same time span, and neighboring Pierce County (containing zero cities or towns that adopted a comparable minimum wage increase) saw a 0.9% reduction in its unemployment.[187] Clearly, there were job losses and reduced job growth in Seattle despite the fact that its economy in general was roaring.[188]

In addition, a study conducted by the American Enterprise Institute (AEI) found that, in 2015, the city of Seattle began "experiencing a decline in restaurant employment around the first of the year (when the state minimum wage increased to $9.47 per hour, the highest state minimum wage in the country), and the 1,300 job loss between January and June is the largest decline over that period since 2009 during the Great Recession."[189] The study goes on to explain that these citywide job losses contrast starkly with nationwide employment trends in the same industry and with relevant state growth rates as well:

> In contrast to the January-June 2015 *loss* of restaurant jobs in the Seattle area:
> a) restaurant employment *nationally increased* by 130,700 jobs (and by

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185. *Id.*

186. *Seattle Area Economic Summary*, BUREAU OF LAB. STAT., http://www.bls.gov/regions/west/summary/blssummary_seattle.pdf (last updated June 29, 2016).

187. *Id.*

188. *See* Perry, *supra* note 19.

189. *Id.*

> 1.2%) during that same period. . . b) overall employment in Seattle increased 1.2% and by 21,800 jobs. . . [and] c) non-Seattle restaurant employment in Washington state increased 3.2% and by 2,800 jobs. . .[190]

In other words, if Seattle had maintained its then-current minimum wage – or at least raised it more gradually or less drastically – it would likely be profiting from the dramatic employment growth being experienced throughout the rest of the state (and nationwide).

Moreover, Ben Gitis' 2015 study for the American Action Forum painted a cautionary picture of the effects of eight cities' new minimum wage laws.[191] The study centers on employment trends in the restaurant industry, and details unfortunate results: between January and September 2015, six of the eight metropolitan areas (Seattle, San Jose, Washington, D.C., Louisville, San Francisco, and the San Francisco Bay area) suffered employment growth rates approximately 2% to 5% lower than those achieved by the rest of their state.[192] One city (Chicago) experienced similarly low rates of job growth as the state of Illinois as a whole,[193] and one (Oakland) featured an employment growth rate almost an entire percentage point higher than California's overall.[194] The data average out to a 1.7% lag behind the statewide employment numbers. That is concerning.

However, as worrisome as some of the early returns were, they may have little predictive value vis-à-vis the long-term effects of a $15 minimum wage. Liberal economists dismissed these early results on the grounds that they are both 1) statistically insignificant, on the grounds that not enough data existed from which to draw meaningful conclusions, and 2) improperly derived.[195] Seattle usually replicates the employment trends noted in the AEI study every spring, presaging a similarly annual recovery.[196] Using seasonally-adjusted numbers, Seattle's seemingly foreboding spring and summer might amount to nothing more than a familiar blip on the employment radar.[197] Furthermore, the AEI data may be of particularly little import given the massive difference in size between the metropolitan area and the city of Seattle. The former encompasses three counties and 3.6 million people, whereas the latter consists only of 660,000 people.[198] Since the AEI study is based on data collected from the Seattle metropolitan area rather than the city limits proper, it is not representative of the city-wide impact.

In addition, other economists have tended not to counter studies such as the one conducted by the AEI, plainly acknowledging that, in their view, drawing firm conclusions from less than a year's worth of data would be a fool's errand. Jacob Vigdor, a labor economist at the University of Washington, suggests that the existing data sample – even if it had been collected diligently and properly – is still too small to breed meaningful conclusions about the effects of

190. *Id* (emphasis added).

191. Ben Gitis, *2015 Local Minimum Wage Increases and Restaurant Employment Trends*, AM. ACTION F. (Nov. 20, 2015), http://americanactionforum.org/research/2015-local-minimum-wage-increases-and-restaurant-employment-trends.

192. *Id.*

193. *Id.*

194. *Id.*

195. Michael Hiltzik, *Why Do Conservatives Keep Saying Seattle's Minimum Wage Hike Has Failed–Without Data?*, L.A. TIMES (Feb. 23, 2016, 12:09 PM), http://www.latimes.com/business/hiltzik/la-fi-mh-seattle-s-minimum-wage-kills-jobs-but-data-20160222-column.html.

196. David Goldstein, *Lies, Damn Lies, and the Idiots Claiming Seattle Is Losing Jobs*, CIVIC SKUNK WORKS (Sept. 29, 2015, 8:53 AM), http://www.civicskunkworks.com/lies-damn-lies-and-the-idiots-claiming-seattle-is-losing-jobs.

197. Hiltzik, *supra* note 191.

198. *Id.*

the wage increase.[199] The University of Washington team only delivered its "very preliminary" report to the city government during summer 2016.[200]

With that said, substantial minimum wage increases that predate the current explosion of minimum wage reforms have received high marks from liberal economists. Economists at the Center for Economic and Policy Research collected and synthesized data that suggests that San Francisco's 2004 minimum wage hike to $8.50, which climbed substantially above the $6.75 statewide wage floor, both 1) effectuated an increase in total low-wage worker income and 2) avoided negative employment effects.[201] The $3.15 total wage floor increase enacted by the Santa Fe, New Mexico city council (also in 2004) produced similar employment results.[202]

E. Consumer-Price Impacts

However, even if the aforementioned studies overstate or even drastically distort the negative employment effects of the recent city-wide wage increases, some have argued that society will nonetheless suffer as a result of steep price swells.[203] After all, there are only three possible ways that the costs imposed by a minimum wage increase can be allocated: 1) cutting employee fringe benefits, hours, or jobs entirely, 2) decreased firm profits, or 3) higher consumer prices.[204] As discussed before, the majority of modern minimum wage economists claim that the resulting job losses are small,[205] and it is unlikely that employers will accept lower profits (and will respond by altering their business model or shifting to different industries).[206] Therefore, Thomas MaCurdy has argued that consumers likely do, and will continue to, bear the brunt of the wage increases by way of augmented product prices.[207]

If consumer prices do increase significantly, that essentially functions as a regressive tax on low income consumers.[208] Such an effect *appears* to have the advantage of providing a measured counterbalance against the wealth inequality that plagues many U.S. cities, awarding low-wage workers higher salaries effectively paid for by the upper class. However, depending on how inflated the new pricing scheme has become, the low-wage workers themselves may no longer be able to afford the affected goods and services.[209] In the end, such a regressive tax could functionally block an entire economic class from purchasing certain products. Thus, companies could be forced to alter their extant business model, and those that fail to do so as quickly as necessary may have no choice but to close up shop entirely.[210]

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199. *Id.*

200. *Id.*

201. Opinion, *A Minimum Wage Increase*, *supra* note 106.

202. *Id.*

203. *See* Thomas MaCurdy, *How Effective Is the Minimum Wage at Supporting the Poor?*, 123 J. POLIT. ECON. 497, 498-99 (2015) [hereinafter MaCurdy, *Supporting the Poor*].

204. *See id.*

205. *See* CARD & KRUEGER, *supra* note 110.

206. Ucilia Wang, *What a $15 Minimum Wage Means for U.S. Small Businesses*, THE GUARDIAN (Apr. 15, 2015, 10:07 AM), https://www.theguardian.com/business/2015/apr/15/what-a-15-minimum-wage-means-for-us-small-businesses.

207. MaCurdy, *Supporting the Poor*, *supra* note 199, at 499.

208. Thomas MaCurdy, Opinion, *The Minimum-Wage Stealth Tax on the Poor*, WALL STREET J. (Feb. 22, 2015, 5:36 PM), http://www.wsj.com/articles/thomas-macurdy-the-minimum-wage-stealth-tax-on-the-poor-1424644567.

209. *Id*.

210. *See* Cohen, *supra* note 24 (noting price surcharges being imposed by Seattle restauranteurs to buffer the minimum wage increase); s*ee also New York State OKs $15 Minimum Wage for Fast*

However, the first wave of data from Seattle's pioneering experiment does not support MaCurdy's intuitive concerns. In April 2016, a team of researchers hailing from the University of Washington published the first and only major statistical analysis of Seattle's $15 minimum wage garnered from a full year's worth of data, concluding that the increase – jarring as it may appear – has fomented little in the way of change to the local economic landscape.[211] The group surveyed 567 Seattle employers, honing in on rent, retail, and grocery prices.[212] The data suggested (among other encouraging inferences) that there has been "little or no evidence of price increases in Seattle relative to the surrounding area."[213] The report revealed that the catastrophic predicted byproducts of the wage hike may have been prematurely proclaimed. Just 30% of respondents indicated that they contemplated implementing a surcharge to cover the wage increase, and the same percentage admitted to be considering employee layoffs.[214] Similarly, only 15% said they would even be willing to consider eliminating employee benefits, and a mere 11% indicated that they were contemplating relocation outside the city.[215] The latter point appears to be more bluster than sincere stratagem.[216] (Or perhaps it is a tactic employed by businesses hoping to earn a rent drop from an alarmed landlord to compensate for increased employee costs.) In any event, several Seattle businesses embraced the new law with open arms, bypassing the law's measured phase-in provisions and voluntarily rocketing their minimum up to $15 before doing so is actually required.[217] Yet fears of skyrocketing price inflation have not been realized.

The second wave of Seattle-specific data, as collected and analyzed by the same University of Washington team, was less overwhelmingly positive than the first. The January 1 wage hike, study co-author Mark Long explains, might have caused (or at least coincided with) a 9 percent reduction in the number of hours allotted minimum wage workers; Long believes that despite the 3 percentage increase, the overall data show a net negative impact upon the local economy.[218] The study further postulates that 5,000 additional jobs would exist in the Seattle

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Food Workers, NEWSMAX (Sept. 10, 2015, 3:43 PM), http://www.newsmax.com/US/US-Fast-Food-Wages/2015/09/10/id/684189/ (discussing a Ben & Jerry's franchisee concerned about going out of business when New York imposes the higher wage).

211. *See* Peter Kelley, *Early Analysis of Seattle's $15 Wage Law: Effect on Prices Minimal One Year after Implementation*, U. OF WASH.: UW TODAY (Apr. 18, 2016), http://www.washington.edu/news/2016/04/18/early-analysis-of-seattles-15-wage-law-effect-on-prices-minimal-one-year-after-implementation/.

212. *Id.*

213. *Id.*

214. Josh Kelety, *What Some Capitol Hill Businesses Are Saying about the Seattle Minimum Wage Study*, CAPITOL HILL SEATTLE BLOG (Apr. 28, 2016, 7:03 AM), http://www.capitolhillseattle.com/2016/04/what-some-of-capitol-hills-businesses-are-saying-about-the-seattle-minimum-wage-study/.

215. *Id.* However, it should be noted that 62% of those surveyed stated that they intend to raise prices in the future.

216. Connor D. Wolf, *$15 Minimum Wage Sends California Businesses Fleeing*, THE DAILY CALLER (Apr. 26, 2016, 4:02 PM), http://dailycaller.com/2016/04/26/15-minimum-wage-sends-california-businesses-fleeing/.

217. *Id.*

218. *UW professor explains criticized minimum wage study*, MY NORTHWEST (Jun. 26, 2017 at 3:41 PM), http://mynorthwest.com/674168/uw-professor-explains-criticized-minimum-wage-study/.

metropolitan area had the new law not gone into effect.[219] The results suggest, though, no pass-through impact to consumers.[220]

However, the 2017 University of Washington study has been sharply criticized by other researchers pouring over the same information. Robert Reich and colleagues at U.C. Berkeley conducted a conflicting sister study of sorts, which like the AEI analysis before it zeroed in on results in the restaurant industry.[221] Looking at city- and county-wide data from 2009 through 2016, Reich's team observed a sizeable 1 percent increase in overall pay corresponding to each 10 percent increase pumped into the city's minimum wage.[222] In limited-service establishments, the boon was even greater: a 2.3 percentage earnings increase for each 10 percent increase. The study revealed nothing more than a negligible impact on employment, neither positive nor negative.[223] As to any claims of negative externalities indirectly imposed upon consumers due to the hike, Reich and his tam believe that their findings confirm their hypothesis that minimum wage bumps "raise take-home pay primarily among workers who have high propensities to spend on consumer goods," which in turn "increases the demand for labor in the entire consumer goods sector."

Moreover, Reich and his colleagues similarly reject the hypothesis that sharp minimum wage increases will impose a catastrophic regressive tax on low-wage consumers.[224] In a March 2016 policy brief, they predicted that, with respect to the then-prenatal New York City $15 minimum wage law:

> Price increases will be much smaller than labor cost increases because labor costs average about one fourth of operating costs . . . [and the] consumers who would pay these increased prices range across the entire income distribution.[225]

The Berkeley researchers reached this uplifting conclusion by accounting for the oft-ignored "income effect" – that is, the "countervailing increase in consumer spending due to higher wages."[226] The income effect rests on the common sense premise that consumer demand amplifies when consumers have, as a group, more money to spend.[227]

Reich and his team, however, preface their price increase analysis by pointing out that businesses "could absorb the remaining payroll cost increases by increasing prices slightly—

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219. *Id.*

220. Notably, the University of Washington School of Public Health published a study indicating that supermarket food prices went unaffected by the wage hike. *See Raising Seattle's Minimum Wage Did Not Increase Supermarket Food Prices*, (Sep. 25, 2017). The study looked at data collected from 6 supermarket chains across Seattle and 6 located outside of the metropolitan area but within King County, and found nothing to support a conclusion that increased wages were being passed on, indirectly, to Seattle consumers. See http://sph.washington.edu/news/article.asp?content_ID=8644.

221. Noam Schieber, *How a Rising Minimum Wage Affects Jobs in Seattle*, NEW YORK TIMES (Jun. 26, 2017), https://www.nytimes.com/2017/06/26/business/economy/seattle-minimum-wage.html.

222. *Id*.

223. *Id*.

224. *See* REICH ET AL., *supra* note 125.

225. *See id.*

226. Goldstein, *supra* note 103.

227. *Id.*

by 0.14 percent per year over the phase-in period."[228] This highlights a key point: to get the most out of a $15 minimum wage, businesses need to react quickly and calculatedly. And such quick thinking is not required only of firms, but of all actors involved – particularly the government. Ultimately, the imposition of a significantly higher minimum wage altogether is not problematic in and of itself; however, the potentially lackadaisical or hands-off way in which government facilitates the transition between the current and future regimes threatens to undermine the good such an increase would otherwise bring. It is not enough to raise the minimum and stand pat.

V. POLICY PROPOSALS FOR FACILITATING A SMOOTH TRANSITION

More and more, it seems, the tide of public opinion is turning in favor of a sharp increase to the federal minimum wage that would address the goals originally enumerated in the Fair Labor Standards Act: that is, guaranteeing a true "living wage" for all Americans.[229] The final two candidates for the 2016 Democratic nomination for President, Hillary Rodham Clinton and Bernard "Bernie" Sanders, both supported a sizable augmentation of the federal minimum wage.[230] Spurred on by the progressive electorate, Sanders advocated more than doubling the current wage floor and Clinton supports a nearly $5 increase on the current minimum.[231] During the months leading up to the Democratic Convention, the two candidates waged (no pun intended) a quiet war over their respective support for a $15 minimum. For example, Clinton initially recommended a $12 national minimum but was later quick to vigorously laud New York's shift to $15.[232] Sanders' campaign criticized the former Secretary of State's statements as "not. . . sincere,"[233] although they do conform to her "more nuanced position, [indicating] that although she supports local efforts to reach $15, she wouldn't commit to that nationally."[234] Regardless of whether or not Clinton's timely commendation of the new New York law was a

228. *See* REICH ET AL., *supra* note 125.

229. *See* Aaron Pacitti, *It's Time to Make the Minimum Wage a Living Wage*, THE HUFFINGTON POST (Jan. 20, 2016, 11:24 AM), http://www.huffingtonpost.com/aaron-pacitti/its-time-to-make-the-mini_b_9021136.html; Gary Molyneux, *Support for a Federal Minimum Wage of $12.50 or Above*, HART RES. ASSOCIATES (Jan. 14, 2015), http://www.nelp.org/content/uploads/2015/03/Minimum-Wage-Poll-Memo-Jan-2015.pdf (63% of Americans support a federal minimum increase to $15 by 2020).

230. Hannah Fraser-Chanpong, *Clinton vs. Sanders on the Minimum Wage: Who's Right?*, CBS NEWS (Apr. 14, 2016, 10:18 pm), http://www.cbsnews.com/news/clinton-vs-sanders-on-the-minimum-wage-whos-right/.

231. *See* Anne Gearan, *Clinton Proposes $12 Federal Minimum Wage*, WASH. POST (Nov. 3, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/11/03/clinton-proposes-12-federal-minimum-wage/; *Sanders Introduces Bill for $15-an-Hour Minimum Wage*, BERNIE SANDERS. U.S. SENATOR FOR VT. (July 22, 2015), http://www.sanders.senate.gov/newsroom/press-releases/sanders-introduces-bill-for-15-an-hour-minimum-wage.

232. Michael A. Memoli, *On a Big Day for Minimum-Wage Laws, Hillary Clinton, Not Bernie Sanders, Grabs the Spotlight*, L.A. TIMES (Apr. 4, 2016, 10:45 AM), http://www.latimes.com/nation/politics/la-na-clinton-minimum-wage-20160404-story.html.

233. David Wright, *Sanders Campaign: Clinton Not "Sincere" on Minimum Wage*, CNN POL. (Apr. 5, 2016, 10:15 AM), http://www.cnn.com/2016/04/05/politics/minimum-wage-hillary-clinton-bernie-sanders-andrew-cuomo/.

234. *See id.*

function of political opportunism,[235] her actions clearly illustrate the snowballing influence of a $15 floor across the U.S.[236] Indeed, the official Party platform endorsed a $15 wage floor for all Americans (which would be annually indexed to inflation.[237] At least within the Democratic Party, a candidate who does not evince support for such a proposal is, more and more, coming to be viewed as a deficient candidate.

In moving towards this lofty goal of a true living wage for all, we offer normative proposals below that states, cities, and the federal government should consider as important tools to help the cause of the working class without inadvertently curtailing overall employment: 1) longer phase-in periods, 2) include tips for tipped workers, 3) exempt teens who are not supporting families, 4) exempt small businesses, 5) implement tax incentives for employers willing to raise their minimum wage, and 6) utilize a two-tiered approach that distinguishes between regional differences in cost of living.

A. Longer Phase-in Periods

Substantial phase-in periods, as previously mentioned, have been implemented along with minimum wage increases in several cities, including Los Angeles, Chicago, and Seattle.[238] Abrupt hikes instituted overnight (like Oakland's nearly $4 increase) have the potential to scare employers into thinking they need to quickly lay off workers to offset wage payment costs. If a city or state ensures that the minimum wage ramps up more gradually – say, by $1 each year for six consecutive years – employers will have more time to adapt and adjust their business model if necessary, thus avoiding brash decisions.[239] On the one hand, six-year phase-in periods do not immediately serve the FLSA goal of ensuring a fair standard of living for all Americans; rather, they ensure that goal will be met in due time. But on the other hand, business owners are no doubt aware of the hyper-critical rhetoric surrounding minimum wage increases (regardless of its basis in reality). A more gradual phase-in period would sacrifice the immediate well-being of low-wage workers in exchange for increased perceived legitimacy of a higher wage floor, as society reaps the long-run benefits of a better compensated populace overall.

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235. *Hillary Clinton, Champion of a $12 Minimum Wage, Will Now Take Credit for New York's New $15 Minimum*, DAILY KOS (Apr. 4, 2016, 4:07 AM), http://www.dailykos.com/story/2016/4/4/1510085/-Hillary-Clinton-Champion-of-a-12-Minimum-Wage-Will-Now-Take-Credit-for-New-York-s-New-15-Minimum; Kelly Riddell, Opinion, *Hillary Clinton Blamed for Stealing Bernie Sanders' Thunder on Minimum Wage*, WASH. TIMES (Apr. 4, 2016), http://www.washingtontimes.com/news/2016/apr/4/hillary-clinton-blamed-stealing-bernie-sanders-min/.

236. *See* Ariel Edwards-Levy, *Raising the Minimum Wage Is a Really, Really Popular Idea*, THE HUFFINGTON POST (Apr. 13, 2016, 6:33 PM), http://www.huffingtonpost.com/entry/minimum-wage-poll_us_570ead92e4b08a2d32b8e671.

237. Alex Seitz-Wald, *Democrats Advance Most Progressive Platform in Party History*, NBC NEWS (July 10, 2016, 1:30 PM), http://www.nbcnews.com/politics/2016-election/democrats-advance-most-progressive-platform-party-history-n606646.

238. *See, e.g.*, Elizabeth Chou, *Higher Minimum Wage Goes Into Effect in Los Angeles*, LOS ANGELES DAILY NEWS (JULY 1, 2016, 3:52 AM) http://www.dailynews.com/2016/07/01/higher-minimum-wage-goes-into-effect-in-los-angeles/; *City of Chicago Minimum Wage*, CITY OF CHICAGO, http://www.cityofchicago.org/city/en/depts/mayor/supp_info/minimum-wage.html (last visited Feb. 13, 2016); Alan Pyke, *Seattle Announces $15 Minimum Wage, Highest in the U.S.*, THINK PROGRESS (May 1, 2014, 1:49 PM), http://thinkprogress.org/economy/2014/05/01/3433227/seattle-15-dollar-minimum-wage/ ((discussing the phase-in periods for Seattle's minimum wage law).

239. *See* Bryan Caplan, *Phase-In: A Demagogic Theory of the Minimum Wage*, LIBR. OF ECON. & LIBERTY (Dec. 5, 2013), http://econlog.econlib.org/archives/2013/12/phase_in_a_psyc.html.

B. Include Tips when Calculating a Worker's Wage

Including tips in a tipped worker's daily salary might also provide employers a modicum of solace as minimum wages increase substantially. Under such a system, employees would be guaranteed that the combination of their employer-paid wage plus their tips earned would be at least equal to the local, state, or federal minimum, with the possibility of earning more if the day's tips surpass it. If a worker's tip revenue plus regular salary fails to reach the relevant minimum, their employer would be called upon to pay the remainder.

This option, admittedly, is not without its problems.[240] Employees might be tempted to lie and divulge fewer tip dollars than they actually earn in order to extract a higher remainder from management, [241] and employers might in turn be paranoid about whether the reported tip amounts are accurate. However, individual businesses should be trusted to develop reliable tip registering systems to avoid dishonesty and mistrust. Some restaurants, for example, require servers to compile all tips they have obtained over the course of their shift, which are then pooled and disbursed either evenly among all servers or among all employees (including the unseen kitchen staff).[242] Such a system provides an "incentive for teamwork and encourages the servers to police their own performance."[243]

C. Exempt Teenagers from Minimum Wage Coverage

Exempting teenagers who do not support families from the minimum wage would ease employers' transition to a substantially higher federal or state minimum. This approach would be entirely consistent with the policy goals underlying the FLSA, which seeks to ensure a fair standard of living for all Americans without curtailing employment or unduly burdening employers.[244] Teenagers not supporting families are presumably being cared for by someone else, and have far less need for money to satisfy life's necessities. On the other hand, businesses might then be incentivized to hire teenagers rather than adults, especially for unskilled labor positions that do not require significant experience. However, this potential problem could be mitigated by capping the percentage of teenage workers deemed not to be supporting a family that an employer may hire.

D. Exempt Small Businesses

Governmental entities overseeing minimum wage hikes might also consider exempting small businesses altogether, although the Fair Labor Standards Act already does this (to an extent) by restricting the enterprises it governs to only those with an annual gross exceeding \$50,000.[245] This suggestion rests on the theory that small businesses have a harder time

240. One worries that tipped employees might end up with a fair portion of their daily wages in coins. This might impose additional strain on those employees, as 1) rather than earning an all-encompassing paycheck workers would need to make frequent trips to the bank to deposit loose coinage and dollar bills, and 2) since due to the unrelenting tide of inflation coins are neither nearly as valuable nor as useful as they once were.

241. *See* John Dimsdale, *IRS Keeping Tabs on Restaurant, Bar Tips*, MARKETPLACE (June 9, 2010, 7:13 PM), http://www.marketplace.org/2010/06/09/life/irs-keeping-tabs-restaurant-bar-tips.

242. Diane Cardwell, *New Rules Impose Systems for Sharing of Tips*, N.Y. TIMES, Jan. 3, 2011, at A16.

243. *Id*.

244. 29 U.S.C. § 202(a)-(b) (2012).

245. 29 U.S.C. § 203 (s)(1)(A)(ii) (2012).

funneling additional revenues to their low-wage employees.[246] However, complicating matters somewhat is the fact that small businesses make up a significant percentage of all businesses in America. As recently as 2011, 5.1 million of 5.7 million firms surveyed by the U.S. Census Bureau (over 88%) reported employing less than 20 people.[247] 20.5 million of 118.2 million American workers work for small businesses.[248] Employees of exempted small businesses might also be incentivized to leave their current position for one at a larger enterprise where they can do a similar job for higher pay. Therefore, "small business" should be defined and construed strictly to encompass only enterprises with ten or fewer employees.[249] Alternatively, small businesses could be placed on an even more gradual phase-in track, as is being implemented in Seattle currently.[250] Studies have shown that there is considerable support among small businesses for such a proposition.[251]

E. Tax Incentives

Next, the federal government should sweeten the pot for employers sweating a substantial minimum wage hike by offering a variety of tax incentives. As the authors previously mentioned, when low-wage earners make more money, they are better able to pay medical bills and less likely to need welfare.[252] This in turn lessens the government's expenditures. Therefore, the state can recapture a portion of that would-be cost and reallocate it to businesses through tax incentives.

One course of action might be to issue tax credits to employers who invest money in workers through specialized employee training.[253] This is not a groundbreaking proposal; similar credit systems already exist in other industries.[254] Alternatively, the government could slightly decrease the marginal tax rate levied on businesses by a certain percentage contingent on how well the company scores on a standardized employee satisfaction survey. Yet another available option would be to deduct a certain percentage from a business' taxable revenue based on the percentage amount they devoted to overall employee compensation compared to prior years. Generally speaking, tax incentives would be best deployed if made contingent on desirable treatment of, and investment in, employees.

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246. *See* Kelly Spors, *Seattle Business Owners Fighting $15 Minimum Wage Proposal*, AM. EXPRESS: OPEN F. (Mar. 25, 2014), https://www.americanexpress.com/us/small-business/openforum/articles/seattle-business-owners-fighting-15-minimum-wage-proposal/.

247. *Statistics of U.S. Businesses*, U.S. CENSUS BUREAU, http://www.census.gov/econ/susb/ (last visited Mar. 29, 2016).

248. *Id.*

249. Others have taken issue with the Small Business Administration's definition of the eponymous term. *See* Steve Cooper, *The Government Definition of Small Business is B.S.*, FORBES (Sept. 20, 2012, 7:01 AM), https://www.forbes.com/sites/stevecooper/2012/09/20/the-government-definition-of-small-business-is-b-s/#62676d81360a.

250. *See $15 Minimum Wage*, *supra* note 20.

251. *Minimum Wage Mythbusters*, U.S. DEP'T OF LAB., http://www.dol.gov/featured/minimum-wage/mythbuster (last visited Mar. 28, 2016).

252. Uchitelle, *A Pay Raise's Impact*, *supra* note 98.

253. *See Employee Training Incentive Program (E-TIP) Tax Credit*, N.Y. ST. DEP'T OF TAX'N AND FIN., https://www.tax.ny.gov/pit/credits/employee_training_incentive_credit.htm (last visited June 8, 2016).

254. Emp't and Training Admin., *Work Opportunity Tax Credit*, U.S. DEP'T OF LAB., https://www.doleta.gov/business/incentives/opptax/ (last visited May 9, 2016).

F. A Tiered Approach Based on Cost of Living

Finally, state legislatures should consider stratifying minimum wage increases to account for differences in the cost of living in different regions of the same state. The best example of this strategic approach is that given by New York state, which made headlines in its effort to reach a $15 minimum wage.[255] On April 4, 2016, New York governor Andrew Cuomo signed a bill that establishes two different minimums, one assigned to the New York City area and one established for the rest of the state:

> In New York, the minimum wage rises to $15 per hour from its current $9 by the end of 2018 for most businesses in New York City. Commuter counties of Nassau, Suffolk and Westchester will reach $15 by the end of 2021, while the rest of the state will reach $12.50 by the end of 2020.
>
> The two-tier approach was a compromise deal reached with the state's Republican lawmakers, who said an increase to $15 in the poorer upstate areas in the north of the state would be unfair to business owners.[256]

While a blanket, statewide increase to $15 intuitively feels just to some advocates, it disregards the often considerable gaps between the everyday costs of urban, suburban and rural living.[257] The goals of the FLSA are, after all, to ensure a fair standard of living for all Americans – and the price required to achieve that standard of living varies greatly depending on location.[258] New York's law will serve as a powerful litmus test of the efficacy of a multi-tiered minimum wage regime.

VI. CONCLUSION

Minimum wage increases have largely benefitted the working class over the past two decades despite critics' concerns about their negative effects on overall employment. We theorize that this is due to shock effects on worker effort,[259] productivity increases,[260] and the fact that the federal minimum wage has fallen further behind the average national wage[261] (meaning that increases affect fewer workers and a relatively small segment of the economy). However, given the dramatically expanded political efforts on the state and local levels to aggressively raise minimum wages over the past two years, it is time to revisit the potential economic impacts of minimum wage laws. The new laws passed in Seattle, Chicago, Oakland,

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255. *California, New York Enact $15 Minimum Wages*, *supra* note 171.

256. Edward Krudky, *New York's Cuomo Signs Two-tier Minimum Wage Law in Push for State-wide $15/Hour*, REUTERS (Apr. 4, 2016, 3:19 PM), http://www.reuters.com/article/us-new-york-minimumwage-idUSKCN0X11Y1.

257. *See* William Hawk, *Expenditures of Urban and Rural Households in 2011*, BEYOND THE NUMBERS (U.S. Bureau of Labor Statistics), Feb. 2013, at 1, http://www.bls.gov/opub/btn/volume-2/pdf/expenditures-of-urban-and-rural-households-in-2011.pdf.

258. 29 U.S.C. § 202(a)-(b) (2012).

259. *See* Brown et al., *supra* note 119.

260. *See id*; REICH ET AL., *supra* note 125.

261. *The National Average Minimum Wage*, *supra* note 119.

Los Angeles and other major American cities are far more aggressive than their federal counterpart has been, and the initial empirical results have been mixed: while the overall economic picture is still predominantly positive, we must carefully monitor employment and consumer price effects to ensure that the overall goal of improving the lives of working class citizens is actually served rather than subverted.

This is not an easy balance to strike, and many states will inevitably strike back with poorly-planned or inappropriately strong countermeasures. In response to the numerous local efforts to move to a $15 minimum wage, seventeen cities have passed laws barring their cities from passing a minimum wage greater than the state floor.[262] Most recently, this February, the Alabama legislature took the first nationally-prominent countermeasure against a citywide minimum wage jump, passing a bill that thwarted Birmingham's attempt to raise its minimum from $7.25 to $10.10.[263] Such polarization exists on the presidential campaign trail as well. While the Democratic primary race abounded with support for a drastically increased wage floor, the Republican nominee and eventual general election victor – business magnate Donald Trump – opposed even a slight hike out of concern for the putative employment consequences.[264] The early returns suggest that rather than working together to select a minimum wage that best suits workers and employers, set either as a percentage of the average national wage or as some sort of negotiated compromise, politicians are fighting a battle for stark victories. This phenomenon does not inspire confidence. In the end, legislatures and public policy makers at the local, state and federal levels must tread carefully, lest they wind up hurting the constituents they are aiming to help.

262. *See* Padilla, *supra* note 166.

263. *See* Steve Benen, *Alabama Blocks Local Control on Minimum Wage*, MSNBC: THE MADDOWBLOG (Feb. 29, 2016, 4:14 PM), http://www.msnbc.com/rachel-maddow-show/alabama-blocks-local-control-minimum-wage.

264. Katie Little, *Time to Ditch $7.25 Minimum Wage? Republicans Weigh in*, CNBC (Oct. 26, 2016, 1:03 PM), http://www.cnbc.com/2015/10/26/time-to-ditch-725-minimum-wage-republicans-weigh-in.html.