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A Fair Day's Pay? Why Workers Deserve More from the Federal Minimum Wage, 49 J. Marshall L. Rev. 167 (2015)

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A FAIR DAY'S PAY? WHY WORKERS DESERVE MORE FROM THE FEDERAL MINIMUM WAGE

CLAIRE M. WHITEHEAD*

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I. INTRODUCTION

In 1937, President Franklin D. Roosevelt spoke before Congress and announced that every working American deserved a "fair day's pay for a fair day's work."¹ At the time, working

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¹ 81 Cong. Rec. 4960 (1937) (statement of Pres. Franklin D. Roosevelt, "Our Nation, so richly endowed with natural resources and with a capable and

conditions were abysmal and the need for reform was dire.² These conditions reflected drastic social and economic changes in the early part of the twentieth century.³ The labor environment has changed since that time, but a fair day's work still deserves fair pay.

Any modern discussion of the minimum wage is not complete without a historical analysis of the Fair Labor Standards Act ("FLSA").⁴ Congress enacted the FLSA in 1938 to regulate child labor, wages, and the maximum number of hours laborers could work in a week.⁵ The minimum wage debate in the 1920's and 1930's focused on whether the government had the right to control these types of business practices.⁶ Today, the issue centers around how much pay this country's low-skill workers deserve. Many believe that simply paying workers more money will solve income inequality and improve poverty levels. Yet, there is a significant amount of economic data to suggest that a minimum wage does more harm than good to both the economy as a whole and those who rely on hourly wages.⁷

This Comment will examine the benefits and pitfalls of a federal minimum wage while keeping the original reasons for labor reform in mind. Part II will examine the working conditions during the early twentieth century. Additionally, Part II will trace early minimum wage legislation through Supreme Court cases and explain the negative mindset of the Court that blocked early labor reform. Part III will examine the modern minimum wage debate. Although evidence suggests that raising the wage is harmful to businesses, contrasting evidence may show that raising the minimum wage does not affect the job market at all. Lastly, Part IV will propose a solution that will keep a federal minimum wage,

industrious population should be able to devise ways and means of insuring to all our able-bodied men and women a fair day's pay for a fair day's work").

² PIERS BRENDON, *THE DARK VALLEY: A PANORAMA OF THE 1930S* 86 (2000).

³ William P. Quigley, "A Fair Day's Pay For A Fair Day's Work": *Time to Raise and Index the Minimum Wage*, 27 ST. MARY'S L. J. 513, 515 (1996).

⁴ See *id.* at 515-29 (providing a full history of the FLSA and the historical reasons it was passed).

⁵ Jonathon Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, U.S. DEPT OF LABOR, www.dol.gov/dol/aboutdol/history/flsa1938.htm#* (last visited January 5, 2016).

⁶ See Quigley, *supra* note 3, at 518 (explaining how the United States Supreme Court generally stuck down minimum wage legislation as interfering with an employer's freedom of contract).

⁷ See Debra Burke, *Minimum Wage and Unemployment Rates: A Study of Contiguous Counties*, 46 GONZ. L. REV. 661, 675-80 (2011) [hereinafter "A Study of Contiguous Counties"] (comparing the effects on unemployment in two neighboring counties, one which never raised its minimum wage beyond the federal floor and the other which raised the minimum wage each year). The study found that raising the minimum wage each year had a profoundly negative effect on the unemployment rate in that county. *Id.* at 680.

but with several modifications. The solution will adjust the minimum wage based on local standards of living, not overly broad national statistics. Additionally, the solution will propose that the minimum wage be indexed to reflect yearly changes in local levels of inflation. Lastly, the solution proposed in Part IV will advocate for the expansion of government credits to better aid this country's impoverished workers.

II. THE LABOR ENVIRONMENT IN THE UNITED STATES FROM THE EARLY TWENTIETH CENTURY TO TODAY

A. *History of the Minimum Wage*

1. *Labor Reform Started at the State Level*

During the Industrial Revolution, and into the twentieth century, American businesses thrived on sweatshop labor.⁸ The sweatshop system predominantly affected women, children, and immigrants.⁹ As a result, the original campaign for labor reform started small.¹⁰ For the most part, the states were successful in passing maximum hour laws.¹¹ However, as will be discussed later, Congress struggled to pass any kind of law that would aid the country's workers at a federal level because the Supreme Court so frequently invalidated them.¹² Then in 1932, at the height of the Great Depression, almost twenty-five percent of Americans had absolutely no income.¹³ Faced with this bleak economic backdrop, President Roosevelt and Congress decided to fight again for labor reform.¹⁴

The Civil War Amendments in the late 1860s sparked the genesis of the minimum wage debate.¹⁵ In 1873, the Supreme

⁸ See VIVIEN HART, *BOUND BY OUR CONSTITUTION: WOMEN, WORKERS, AND THE MINIMUM WAGE* 64 (1994) (providing a historical examination of the differences between American and British labor policies and the grassroots campaigns at the state level that led to the eventual success of the Fair Labor Standards Act).

⁹ *Id.* The origins of the minimum wage movement began with women's rights groups because most industries that thrived on sweatshop labor-garment and textile workers, canning factories, and domestic household workers- employed primarily women and children. *Id.*

¹⁰ See *id.* (providing an in-depth examination of which reform groups started the movement in Massachusetts, and beyond).

¹¹ *Id.*

¹² *Id.*

¹³ Brendon, *supra* note 2, at 86.

¹⁴ See Grossman, *supra* note 5 (explaining how President Roosevelt wished to use labor reform as a tool to rebuild businesses in the wake of the Great Depression).

¹⁵ U.S. Const. amend. XIII, XIV, XV; see generally SOTIRIOS A. BARBER, *THE FALLACIES OF STATES' RIGHTS* 1 (2013) (suggesting that the fear of states

Court began to interpret the Due Process Clause of the Fourteenth Amendment with the Slaughter-House Cases.¹⁶ The dispute in the Slaughter-House Cases began when Louisiana created and incorporated its own butcher company and centralized its activities in one location within New Orleans.¹⁷ The city then required all other butchers to abandon their previous practices and rent new space from the state-created monopoly.¹⁸ The butchers believed the state and the newly-created company violated their rights under the 13th and 14th Amendments, so the butchers sued.¹⁹ The Court held that these Amendments applied in only two narrow circumstances: (1) when state action impairs a right that stems from being a citizen of the United States; and (2) when they are needed to remedy incidents of slavery practices.²⁰ The Supreme Court's decision in the Slaughter-House Cases opened the door for state legislatures to police business conduct within their borders.²¹

At the state level, labor reform was successful.²² From 1912 to 1923, fifteen states passed wage and hour laws.²³ Massachusetts was the first state to pass such a law.²⁴ This surge in labor reform legislation was a part of a larger package aimed at remedying working conditions for women and children.²⁵ Within this context,

losing their rights began with the Civil War Amendments, and was a reason why the New Deal was so controversial at the time).

¹⁶ Slaughter-House Cases, 83 U.S. 36 (1872), *consolidating* The Butchers' Benevolent Ass'n of New Orleans v. The Crescent City Livestock Landing and Slaughter-house Co.; Paul Esteben, L. Ruch, J.P. Rouede, W. Maylie, S. Firmberg, B. Beaubay, William Fagan, J. D. Broderick, N. Seibel, M. Lannes, J. Gitzinger, J. P. Aycock, D. Verges, The Livestock Dealers' and Butchers' Ass'n of New Orleans, and Charles Cavaroc v. The State of Louisiana, *ex. rel.* S. Belden; *and* The Butchers' Benevolent Ass'n of New Orleans v. The Crescent City Live-Stock Landing and Slaughterhouse Co.

¹⁷ *Id.* at 59.

¹⁸ *Id.* at 60.

¹⁹ Richard L. Aynes, *Constricting the Law of Freedom: Justice Miller, The Fourteenth Amendment, and the Slaughter-house Cases*, 70 CHI.-KENT L. REV. 627, 633-34 (1994).

²⁰ Slaughterhouse Cases, 83 U.S. at 72-3, 79-80.

²¹ See Alex McBride, *Slaughterhouse Cases*, www.pbs.org/wnet/supremecourt/antebellum/landmark_slaughterhouse.html (last visited January 6, 2016) (explaining that the Slaughterhouse decision permitted the state of Louisiana to make decisions which restricted the business rights of people within that state).

²² Quigley, *supra* note 3, at 516-18.

²³ *Id.* By 1920, Arizona, Arkansas, California, Colorado, Kansas, Massachusetts, Minnesota, Nebraska, North Dakota, Oregon, Utah, Washington, Wisconsin, Puerto Rico, and the District of Columbia had adopted a minimum wage law. *Id.*

²⁴ Hart, *supra* note 8, at 66-67.

²⁵ See *id.* at 84 (describing generally the strategy used by reforms groups at this time of focusing on women's dependent status to propel their legislation forward).

the states were successful in passing labor reform legislation.²⁶ Consequently, the Court generally approved the passage of a state's minimum wage or hour laws relating to women and children.

The Supreme Court's decision in *Lochner v. New York* stopped state legislatures from implementing change outside of the women and children demographic.²⁷ The issue in *Lochner* revolved around a New York state statute that set a maximum number of hours a baker could work in a given day or week.²⁸ The plaintiff, Joseph Lochner owned a bakery and was prosecuted for violating the statute.²⁹ As a result, he sued the state of New York alleging that the statute violated the Due Process Clause of the 14th Amendment.³⁰ The Court held that the New York law was impermissible because it violated a person's "liberty of contract" under the 14th Amendment.³¹

Lochner is an essential component of any labor dialogue because it effectively stood as a roadblock for labor legislation for almost thirty years.³² The effects of *Lochner* are best understood alongside the concept of laissez-faire economics.³³ The proponents of laissez-faire believed that the government should abstain from regulating the marketplace.³⁴ This is illustrated in *Coppage v. Kansas*, where the Supreme Court struck down a Kansas law banning employers from prohibiting union participation in their employment contracts.³⁵ A passage from *Coppage* illuminates this philosophy:

²⁶ See *id.* at 85 (explaining how many American laws of this type were passed because of sympathy for women in their capacities as mothers).

²⁷ *Lochner v. New York*, 198 U.S. 45 (1905).

²⁸ *Id.* at 52.

²⁹ *Id.*

³⁰ *Id.* at 52-53.

³¹ *Id.* at 64.

³² David N. Mayer, *The Myth of "Laissez-Faire Constitutionalism": Liberty of Contract During the Lochner Era*, 36 HASTINGS CONST. L. Q. 217, 217-18 (2009); see Quigley, *supra* note 3, at 518 (explaining the consistent rejection of state minimum wage legislation under the *Lochner* family of cases, particularly in New York); see Cass R. Sunstein, *Lochner's Legacy*, 87 COLUM. L. REV. 873 (1987) (describing *Lochner* as, "the most important of all defining cases" of constitutional law).

³³ See Mayer, *supra* note 32, at 218-19 (explaining the role these economic theories played in the Court's decisions during the early twentieth century).

³⁴ *Id.* at 239-42. The late nineteenth century has been referred to as the "golden age" of contract law. *Id.* at 234. To theorists at the time, the use of contracts to control relationships between people was decisively American; it separated the culture of the United States from that of the European monarchies. *Id.* at 237. Those who believed in laissez-faire felt strongly that if our government were allowed to restrict that liberty, we would lose part of our identity as a "free society". *Id.* at 242.

³⁵ *Coppage v. Kansas*, 236 U.S. 1, 6-7 (1915).

this court has held that the power may properly be exercised for preserving the public health, safety, morals, or general welfare. . . there is no object or purpose, expressed or implied, that is claimed to have reference to [public welfare] beyond the supposed desirability of *leveling inequalities of fortune*. . .³⁶

The Court's reasoning in *Lochner* was bound up in the laissez-faire mindset.³⁷ Essentially, the *Lochner* Court disregarded the views and judgments of the New York legislature and replaced them with its own.³⁸ The *Lochner* decision introduced an era in which the Court transformed traditional common law principles, such as the ability of private parties to contract, into a fundamental right, the putative "liberty of contract".³⁹ Thus, the Supreme Court thwarted nearly any attempt by Congress or the states to ameliorate working conditions in American factories and businesses.⁴⁰

Even statutes relating to women and children did not survive long before the Supreme Court struck them down as unconstitutional in *Adkins v. Children's Hospital*.⁴¹ The contested regulation in *Adkins* mandated a fixed wage for female and child employees in certain jobs.⁴² Children's Hospital employed several adult women who agreed to work for less than the designated wage.⁴³ Children's Hospital sued Adkins for setting the wage, arguing that the wage floor interfered with the hospital's right to contract.⁴⁴ Channeling the holdings from *Lochner* and *Coppage*, the Court determined that the fixed wage was an unconstitutional interference with the parties' liberties.⁴⁵ Although the states

³⁶ *Id.* "In short, an interference with the normal exercise of personal liberty and property rights is the primary object of the statute, and not an incident to the advancement of the general welfare." *Id.*

³⁷ Sunstein, *supra* note 32, at 882, fn. 49. The Justices of the *Lochner* court believed that the traditional common law doctrines relating to property and freedom of contract were a function of life's natural order. *Id.* at 903-4.

³⁸ *See id.* at 877 (describing how the *Lochner* Court admitted a law regulating the health and welfare of New York's citizens would be permissible, but disregarded the views of the state on that topic and found no permissible health and welfare justification for maximum hours for bakers).

³⁹ *See* David E. Bernstein, *Lochner's Legacy's Legacy*, 82 TEX. L. REV. 1, 52-53 (2003) (arguing that these rights were property rights and the right to contract, among others, and that legislating them would run afoul of the Constitution); *see also* Slaughter-House Cases, 83 U.S. 36, 89 (1872) (Field, J., dissenting) (introducing the notion that the newly adopted Fourteenth Amendment protects the basic "common rights" of citizens from the federal and state governments).

⁴⁰ *See* Quigley, *supra* note 3, at 518 (describing how the "United States Supreme Court generally rejected state statutes that interfered with employers' freedom to contract with their employees regarding wages.").

⁴¹ *Adkins v. Children's Hospital*, 261 U.S. 525, 562 (1923).

⁴² *Id.* at 539-40.

⁴³ *Id.* at 542.

⁴⁴ *Id.*

⁴⁵ *Id.* at 545. "The statute now under consideration is attacked upon the

enjoyed limited success with labor reform, at the federal level Congress experienced failure after failure.

B. Congress's Attempts at Reform

On its own stage, Congress tried to tackle labor reform, specifically child labor, during the early twentieth century.⁴⁶ In 1916, Congress passed the Keating-Owen Act, which prohibited goods produced by child labor from entering interstate commerce.⁴⁷ The Supreme Court invalidated this law in *Hammer v. Dagenhart*.⁴⁸ In *Hammer*, a father sued the United States when the Keating-Owen Act prohibited a local cotton mill from employing his two sons.⁴⁹ The Court ruled that Congress could not rely on the Commerce Clause powers to reach into the states and regulate labor.⁵⁰ As in *Lochner*, the Court in *Hammer* again substituted its judgment for that of Congress.⁵¹

Then, in 1919, Congress passed the Child Labor Tax Act, which placed a ten percent tax on business profits derived from child labor.⁵² Again, the Court invalidated this tax in *Bailey v. Drexel Furniture* ("Child Labor Tax Case").⁵³ In the Child Labor Tax Case, Drexel Furniture produced goods using child labor.⁵⁴

ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the Fifth Amendment. That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause, is settled by the decisions of this Court and is no longer open to question." *Id.*

The *Adkins* Court rejected the notion of a minimum wage law, but it did hint at change to come: "[T]he ethical right of every worker, man or woman, to a living wage may be conceded." *Id.* at 558. The Court also conceded, ". . . it may be said that if, in the interest of the public welfare, the police power may be invoked to justify the fixing of a minimum wage, it may, when the public welfare is thought to require it, be invoked to justify a maximum wage." *Id.* at 560.

⁴⁶ Grossman, *supra* note 5.

⁴⁷ Keating-Owen Child Labor Act of 1916, Pub. L. No. 64-249, 39 Stat. 675 (1916).

⁴⁸ *Hammer v. Dagenhart*, 247 U.S. 251, 277 (1918).

⁴⁹ *Id.* at 268.

⁵⁰ *Id.* at 271-72.

⁵¹ *Id.* at 276. The conclusion of this opinion starts with the sentence, "We have neither authority nor disposition to question the motives of Congress in enacting this legislation." *Id.* Then, the Court opines, "In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States, a purely state authority." *Id.*

⁵² 40 Stat. 1057, 1138 (1919).

⁵³ *Bailey v. Drexel Furniture (Child Labor Tax Case)*, 259 U.S. 20, 44 (1922).

⁵⁴ *Id.* at 34. The Court found that a tax on goods produced via child labor was an impermissible use of Congress's taxation powers because the child

Drexel was charged the statutory tax, and the company subsequently paid the tax.⁵⁵ Drexel sued to recover the tax and have the law declared unconstitutional using the Court's holding from *Hammer*.⁵⁶ The Court ruled that this tax was a punishment in disguise and was therefore an impermissible use of Congress's taxation powers.⁵⁷

C. President Roosevelt's Reelection in 1936, and the "Court-Packing Plan"

When the economy took a sharp downturn after the stock market crash of 1929, the Court began to loosen its grip and allow the states to more actively regulate their own economies.⁵⁸ During the Great Depression, President Roosevelt and Congress acted alongside the states to boost the economy and reform labor practices.⁵⁹ In 1933, Congress passed the National Industrial Recovery Act ("NIRA"), which delineated fair practice codes for various industries.⁶⁰ NIRA was considered a success and was popular with working Americans.⁶¹ Unfortunately, like the other laws, the Supreme Court ruled that NIRA was unconstitutional in 1935.⁶²

Despite the Court's rulings, Roosevelt won the presidential election in 1936 by an overwhelming majority.⁶³ Then, the "court

labor tax was not necessary for the promotion of the general welfare. *Id.* at 43-44.

⁵⁵ *Id.* at 34.

⁵⁶ *Id.*

⁵⁷ *Id.* at 38.

⁵⁸ Compare *Nebbia v. New York*, 291 U.S. 502 (1934) (upholding a New York statute attempting to bolster its depressed economy by placing a price floor on milk), with *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934) (upholding a Minnesota state law which placed a moratorium on home mortgages).

⁵⁹ Grossman, *supra* note 5.

⁶⁰ National Industrial Recovery Act, Pub. L. No. 73-67, 48 Stat. 195 (1938); See generally Grossman, *supra* note 5 (explaining provisions of the National Industrial Recovery Act which created a minimum age for workers at 16 years, limited the work week to 35-40 hours, and created a minimum wage of \$12-\$15 dollars per week).

⁶¹ Grossman, *supra* note 5.

⁶² *A.L.A. Schechter Corp. v. United States*, 295 U.S. 495, 551 (1935). The law in *A.L.A. Schechter Corp.* gave the President full discretion to approve the various functions of the LPC. *Id.* at 521-22. The *A.L.A. Schechter Corp.* decision found the NIRA unconstitutional on two separate grounds. *Id.* at 542, 551. First, the Court believed the law gave the Executive Branch of government impermissible legislative powers. *Id.* at 542. Second, the Court believed that Congress had again misused its commerce clause powers by regulating a section of the poultry business that had a tenuous connection with interstate commerce. *Id.* at 551.

⁶³ William Ross, *When Did the "Switch in Time" Actually Occur?: Rediscovering the Supreme Court's "Forgotten" Decisions of 1936-1937*, 37 ARIZ.

packing plan” was announced on February 5, 1937.⁶⁴ President Roosevelt wanted to revitalize and refresh the thinking on the court by adding newer, younger justices.⁶⁵

Then, the Court decided *West Coast Hotel v. Parrish*.⁶⁶ In *West Coast Hotel*, the plaintiff, Elsie Parrish sued her employer for a year of back pay under a Washington State statute.⁶⁷ The Court overruled itself and declared that minimum wage laws for women were directly related to their health and welfare.⁶⁸ Thus, minimum wage laws for women were declared permissible under the Constitution.⁶⁹ The Court’s decision in *West Coast Hotel* has been referred to as a constitutional and judicial “revolution” as it signified the end of the *Lochner* line of cases and brought forward a wave of pro-labor reform legislation.⁷⁰ After three separate introductions and seventy-two amendments, Congress finally passed the Fair Labor Standards Act.⁷¹ By 1941, the Supreme Court finally accepted the notion that these regulations were necessary for the health and welfare of working Americans and stopped striking them down.⁷²

ST. L. J. 1153, 1160 (2005).

⁶⁴ *Id.* at 1154.

⁶⁵ *Id.* at 1214-15.

⁶⁶ *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937). The *West Coast Hotel* decision finally vindicated decades of dissenting justices. Compare *Lochner*, 198 U.S. at 75 (Holmes, J., dissenting) (quoting Justice Holmes, “This case is decided upon an economic theory which a large part of the country does not entertain . . .” Justice Holmes was referring to the philosophy of Herbert Spencer, a proponent of laissez-faire.) with *Adkins*, 261 U.S. at 562, (Taft, J., dissenting) (quoting Justice Taft, “The evils of the sweating system and of the long hours and low wages which are characteristic of it are well known. . . . But it is not the function of this Court to hold congressional acts invalid simply because they are passed to carry out economic views which the Court believes to be unwise or unsound.”), and *Morehead v. New York*, 298 U.S. 587, 633 (Stone, J., dissenting) (arguing that the Court was wrong to place its own judgments about the economic value of a minimum wage over that of the legislature’s).

⁶⁷ *West Coast Hotel*, 300 U.S. at 388 (1937).

⁶⁸ *Id.* at 400.

⁶⁹ See Quigley, *supra* note 3, at 527-28 (explaining that the *West Coast Hotel* decision opened the door for Congress and President Roosevelt to pass the New Deal, and that the New Deal would pass subsequent Constitutional challenges).

⁷⁰ Ross, *supra* note 63, at 1153 n.1.

⁷¹ 29 U.S.C. § 202 (1938). “Labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers” negatively affect commerce. § 202.

⁷² See Quigley, *supra* note 3, at 528-29. The FLSA was tested in 1941 with *United States v. Darby*, but, the Supreme Court unanimously upheld the Act. *United States v. Darby*, 312 U.S. 100, 125-26 (1941). In *Darby*, the plaintiff owned a lumber manufacturing company. *Id.* at 111. The United States sued Darby for producing goods in conditions that fell short of the guidelines in the FLSA. *Id.* The Supreme Court upheld the constitutionality of the FLSA,

D. The Fair Labor Standards Act in Modern Times

The original FLSA mandated a minimum wage and a maximum number of hours laborers could work during the week.⁷³ The legislature originally crafted the wage to reflect the cost of living.⁷⁴ Since its original passage, Congress has updated the FLSA many times.⁷⁵ Throughout the 1940s, 50s, and 60s, Congress expanded the FLSA to cover workers in all sectors of the labor force.⁷⁶ In addition to those expansions, Congress attempted to raise the wage to keep up with inflation.⁷⁷ However, it has not been successful because the real value of the minimum wage has not increased since 1968.⁷⁸

Even during times when the minimum wage was its most valuable, a family surviving on that salary would not have been able to lift itself out of poverty.⁷⁹ Each time that Congress failed to raise the wage to keep up with inflation, the wage decreased in real value.⁸⁰ Thus, an American family's ability to survive on the minimum wage alone is reduced each year.⁸¹

declaring that the regulations in the FLSA were a permissible use of Congress's commerce clause powers, and expressly overruled its decision from *Hammer and Adkins*. *Id.* at 114-15.

⁷³ Fair Labor Standards Act (FLSA) 52 Stat. 1060 ch. 676 §§ 6-7 (1938).

⁷⁴ Grossman, *supra* note 5.

⁷⁵ See Burke, *supra*, note 7, at 667 (explaining the evolution of the prevailing federal minimum wage: \$2.90 in 1979, \$3.10 in 1980, and \$3.35 in 1981-89. The minimum wage rose to \$3.80 on April 1, 1990, to \$4.25 on April 1, 1991, to \$4.75 on October 1, 1996, to \$5.15 on September 1, 1997, to \$5.85 on October 1, 1996, to \$5.15 on September 1, 1997, to \$5.85 on July 24, 2007, and to \$6.55 on July 24, 2008).

⁷⁶ *History of Changes to the Minimum Wage Law*, Wage and Hour Division (WHD), U.S. DEPT. OF L., www.dol.gov/whd/minwage/coverage.htm (last visited January 5, 2016). In the 1950s and 1960s, coverage expanded to workers in retail, caregivers, etc. *Id.* The FLSA was also continuously amended to affect businesses that made less in sales than standard large factories, thereby reaching more laborers. *Id.*

⁷⁷ See Burke, *supra* note 7, at 667-68, 671 (explaining how Congress raised the minimum wage through the years, but did not raise it to keep up with inflation).

⁷⁸ Lawrence Mishel, *Declining value of the federal minimum wage is a major factor driving inequality*, ECON. POLICY INST., Table 4.39 (February 21, 2013), www.epi.org/publication/declining-federal-minimum-wage-inequality/. In 2014 dollars, the value of the minimum wage in 1968 was about \$11.00 per hour. Minimum Wage History, OREGONSTATE.EDU, (June 19, 2015, 12:32 PM), <http://oregonstate.edu/instruct/anth484/minwage.html>.

⁷⁹ See *id.* (referring to the statistic that states that even when the minimum wage was at its most valuable, it would not allow a worker to make more money than the poverty level).

⁸⁰ See *id.* (referring to the first chart on the web page which highlights the rapid pace with which the value of the minimum wage decreases during the periods of time when Congress did not increase it).

⁸¹ *Id.*

The real value of the minimum wage decreased substantially during two periods when Congress did not raise it.⁸² Congress did not touch the minimum wage from 1981-1988.⁸³ Then again, from 1996-2007, Congress did not raise the wage level.⁸⁴

The minimum wage today affects around three million Americans.⁸⁵ Approximately 59% of American wage earners work for hourly pay- almost 76 million people.⁸⁶ Of those 76 million people, 3.3 million work for wages that are at or below the federal minimum wage.⁸⁷ Only 3% of all hourly wage workers over the age of 25 make the minimum wage or less.⁸⁸ Thus, change in minimum wage legislation affects a small percentage of the working population.⁸⁹

Today's working conditions have evolved from a sweatshop environment. However, modern workers making the minimum wage still grapple with the turn-of-the-century problem of not making enough money to survive and support a family.

III. WHY SIMPLY RAISING THE MINIMUM WAGE IS LIKELY TO HAVE A NEGATIVE EFFECT ON THOSE WORKERS WHO NEED HELP THE MOST

Those fighting to raise the minimum wage believe that an increase in hourly pay will help lift the poorest workers out of poverty.⁹⁰ Such is a noble goal considering that the United States has one of the lowest minimum wage rates in the world.⁹¹

⁸² *Id.*

⁸³ See *History of Changes to the Minimum Wage Law*, *supra* note 76 (outlining a history of changes Congress has made to the FLSA since the original law was passed).

⁸⁴ *Id.* The period between 1996 and 2007 was the longest amount of time without change in the history of the minimum wage. See *Minimum Wage History*, *supra* note 78 (referring to the first graph on the web page indicating that the value of the wage declines sharply when it is not adjusted).

⁸⁵ US BUREAU OF LABOR STATISTICS, *CHARACTERISTICS OF MINIMUM WAGE WORKERS*, 2013, Report 1048, 1 (March 2014) available at www.bls.gov/cps/minwage2013.pdf [hereinafter BLS Report].

⁸⁶ See *id.* (indicating the majority of American workers do not work for a yearly salary).

⁸⁷ See *id.* at 2 (indicating that a small percentage of American workers who labor for hourly pay are affected by the current minimum wage legislation).

⁸⁸ See *id.* (suggesting that a very small percentage of American families might be living at or below the poverty because their primary wage earner is working for pay at or below the federal minimum wage).

⁸⁹ *Id.*

⁹⁰ The White House, *RAISE THE WAGE*, www.whitehouse.gov/raise-the-wage.

⁹¹ Mollie Reilly, *Labor Secretary: 'We Suck' On The Minimum Wage*, HUFFINGTON POST (Oct. 23, 2014, 1:42 PM), www.huffingtonpost.com/2014/10/23/tom-perez-minimum-wage_n_6036238.html?utm_hp_ref=tw. Of the 34 countries who are members of the Organization for Economic Cooperation

President Obama voiced his support for the movement in 2013.⁹² The President noted, "Even with the tax relief we've put in place, a family with two kids that earns the minimum wage still lives below the poverty line. That's wrong."⁹³

A. What Is the \$10.10 Movement?

The Fair Minimum Wage Act of 2013 is the pending legislation proposing a minimum wage increase.⁹⁴ The Act seeks to raise the federal minimum wage to \$10.10 per hour via \$0.95 raises each year for three years.⁹⁵ Then, the legislators intend to have the wage indexed for inflation each year thereafter.⁹⁶ Indexing would ensure that the wage's real value does not decrease in the future as dramatically as it did in the 1980s and 1990s.⁹⁷ When introducing the companion bill to the Senate, Senator Tom Harkin stated:

Raising the minimum wage is also about growing our economy. With an increase in the minimum wage, workers will have more money to spend. This is just basic economics: increased demand means increased economic activity . . . they will spend their money in their communities, giving a boost to Main Street and generating new jobs.⁹⁸

and Development, the United States' \$7.25 per hour minimum wage ranks near the bottom. *Id.* This figure looks at each individual country's minimum wage rate as a percentage of that country's median income rate for their full-time workers. *Id.*

⁹² Dave Jamieson, *Obama Gets Behind Democrats' \$10.10 Wage Proposal*, HUFFINGTON POST, (NOV. 7, 2013 6:16 PM), www.huffingtonpost.com/2013/11/07/obama-minimumwage_n_4235965.html?utm_hp_ref=business&ir=Business%20.

⁹³ *Id.*

⁹⁴ H.R. 1010, 113th Cong. (2013-2014). Congressman George Miller introduced the bill to the House on March 6, 2013. All Bill Information (Except Text) for H.R. 1010, CONGRESS.GOV, (last visited November 9, 2015) www.congress.gov/bill/113th-congress/house-bill/1010/all-info.

On February 26, 2014, there was a motion to discharge the bill from committee and put it to a vote on the floor. *Id.* As of March 12, 2014, the petition to discharge had 195 of the 218 signatures needed to bypass committee. *Id.*

⁹⁵ H.R. 1010.

⁹⁶ *Id.* See also Michael Ettlinger, *Securing the wage floor: Indexing would maintain minimum wage value, provide predictability to employers*, ECON. POLICY INST. (October 12, 2006) www.epi.org/publication/bp177/ (suggesting that the minimum wage be linked to a version of the Consumer Price Index, provided by the Bureau of Labor Statistics, so that it can maintain its real value over time).

⁹⁷ See CRAIG K. ELWELL, *Inflation and the Real Minimum Wage: A Fact Sheet*: CONGRESSIONAL RESEARCH SERVICE (2014), <http://fas.org/sgp/crs/misc/R42973.pdf> (examining the real value of the minimum wage over time and emphasizing how the real value has decreased since 1968).

⁹⁸ *Joined By Business Leaders and Workers, Sen. Harkin, Rep. Miller*

The \$10.10 figure is based on at least two economic theories.⁹⁹ First, if Congress had raised the minimum wage to correspond with inflation from the height of its buying power in 1968, it would be worth approximately \$10.10 today.¹⁰⁰ Second, the poverty guideline for a family of two is \$15,930 per year.¹⁰¹ A worker making \$7.25 per hour earns \$15,080 per year.¹⁰² Thus, \$10.10 per hour would equate to roughly \$21,000 per year, placing many Americans safely above the poverty level.¹⁰³ Additionally, President Obama signed an executive order raising the minimum wage for Federal contractors to \$10.10 per hour.¹⁰⁴ By raising the minimum wage for federal workers, the President sent a strong message that his administration stands behind the \$10.10 movement.¹⁰⁵

B. Who Works for Minimum Wage?

The data about what types of people work for minimum wage comes from two main sources, the Congressional Budget Office (CBO) and the Economic Policy Institute (EPI).¹⁰⁶ The results of

Unveil Bill to Raise the Minimum Wage to \$10.10, COMMITTEE ON EDUCATION & THE WORKFORCE (Mar. 5, 2013) <http://democrats.edworkforce.house.gov/press-release/joined-business-leaders-and-workers-sen-harkin-rep-miller-unveil-bill-raise-minimum>.

⁹⁹ *See id.* (explaining that if the minimum wage had kept up with inflation since the peak of its purchasing power in 1968, it would be worth \$10.56 today, and that a family surviving off of a minimum wage salary alone makes an amount less than the poverty level).

¹⁰⁰ *Id.* If the wage had maintained its buying power from its 1968 peak, it would be worth \$10.56 today. *Id.*

¹⁰¹ *2014 Poverty Guidelines*, US DEPARTMENT OF HEALTH AND HUMAN SERVICES, (Dec. 1, 2014) <http://aspe.hhs.gov/poverty/14poverty.cfm>.

¹⁰² This figure is based on a worker working 40 hours per week, for 52 weeks per year.

¹⁰³ This figure is also based on a worker working 40 hours per week, for 52 weeks per year.

¹⁰⁴ *Fact Sheet: Proposed Rulemaking to Implement Executive Order 13658, Establishing a Minimum Wage for Contractors*, U.S. Department of Labor: Wage and Hour Division (June 2014) *available at* www.dol.gov/whd/flsa/nprm-eo13658/fs-EO13658.pdf.

¹⁰⁵ *See id.* (explaining that President Obama took this action specifically in support of increased wages for hourly workers).

¹⁰⁶ *Compare* CONG. BUDGET OFFICE, Pub. No. 4856, THE EFFECTS OF A MINIMUM-WAGE INCREASE ON EMPLOYMENT AND FAMILY INCOME (February 2014), *available at* www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44995-MinimumWage.pdf [hereinafter CBO Report] (presenting evidence that a minimum wage hike would not be an effective tool with which to combat poverty), *with* David Cooper & Doug Hall, ECON. POLICY INST., Briefing Paper No. 357, RAISING THE FEDERAL MINIMUM WAGE TO \$10.10 WOULD GIVE WORKING FAMILIES, AND THE OVERALL ECONOMY, A MUCH-NEEDED BOOST (March 13, 2013) *available at* <http://s2.epi.org/files/2013/IB354-Minimum-wage.pdf> [hereinafter EPI Report] (arguing that a minimum wage hike would help many Americans live more

the two studies generally divide the issue.¹⁰⁷ Those that are “for” the wage hike believe the EPI report is more accurate, whereas those “against” it weigh the CBO report more heavily.

As a whole, the CBO report stands for the proposition that raising the minimum wage would not be as beneficial as people think.¹⁰⁸ The report thoroughly discusses the economic effects of a \$10.10 wage.¹⁰⁹ In that discussion, the CBO states that a small number of workers will lose their jobs if Congress raises the minimum wage.¹¹⁰ The CBO anticipates that the low-skill, low-wage demographic is likely to be affected most severely by this job reduction.¹¹¹ This may be due to employers choosing to pay extra for more highly skilled workers instead of paying more for low-skill workers.¹¹² Thus, laborers who were already making \$10.10 per hour or more will end up keeping their jobs at the expense of those who were working for less.¹¹³

On the other hand, the EPI report indicates that the minimum wage would be highly beneficial to many Americans.¹¹⁴ The EPI focused its findings on the total amount of people who would benefit from a wage increase.¹¹⁵ In its report, the EPI states that most of the beneficiaries will be non-Hispanic white women who are over the age of twenty.¹¹⁶ Additionally, the report finds that seventy percent of today’s hourly wage earners make less than \$60,000 per year and a quarter of those are parents.¹¹⁷

One key difference between the two reports seems to be their focus groups.¹¹⁸ The CBO focuses on which types of people will benefit from an increase in the minimum wage relative to their proximity to the poverty line.¹¹⁹ In contrast, the EPI report looks

comfortably across the board, but does not differentiate between workers based on their relationship to the poverty level).

¹⁰⁷ See Heidi Shierholz and David Cooper, ECON. POLICY INST., *CBO Report Shows Low-Wage Workers Would Be Better Off With a Minimum Wage of \$10.10*, (February 20, 2014) www.epi.org/blog/cbo-report-shows-wage-workers-minimum-wage/ (analyzing the CBO report).

¹⁰⁸ See generally CBO Report, *supra* note 106 (finding generally that if the minimum wage is raised to \$10.10 per hour, more people will lose their jobs, and a large portion of the wage increase will go to families that are already living well above the poverty level).

¹⁰⁹ *Id.* at 5.

¹¹⁰ *Id.* at 9.

¹¹¹ *Id.* at 7-9.

¹¹² *Id.* at 9.

¹¹³ *Id.*

¹¹⁴ EPI Report, *supra* note 106, at 3-7.

¹¹⁵ *Id.* at 2.

¹¹⁶ *Id.* at 2-3.

¹¹⁷ *Id.* at 3.

¹¹⁸ Compare CBO Report, *supra* note 106 (focusing on Americans living near the poverty level) with EPI Report, *supra* note 106 (focusing on the general American population).

¹¹⁹ CBO Report, *supra* note 106.

at the beneficiaries as a whole, without regard to their current standing in relation to the poverty line.¹²⁰ This discrepancy highlights an important issue: if the proponents of the minimum wage aim to alleviate poverty, they should be focused on how minimum wage hikes will affect that particular demographic.

Another key difference between the reports may be their motivations for publishing this type of data. The EPI's website claims that they are a "think tank to focus on the economic condition of low- and middle- income Americans and their families."¹²¹ Yet, an examination of their financial reports calls into question the EPI's self-proclaimed bipartisan perspective.¹²² The report shows that labor unions provide the EPI heavy financial support.¹²³ On the other hand, the CBO maintains strict bipartisan policies.¹²⁴ The CBO is an appointed committee that examines all sorts of data in order to properly advise Congress on budget issues.¹²⁵

The idea that a higher minimum wage will help more American families live above the poverty line may be an illusion.¹²⁶ Most research, even beyond the CBO and EPI reports, supports the opposite conclusion.¹²⁷ According to the Bureau of

¹²⁰ EPI Report, *supra* note 106.

¹²¹ *About*, ECON. POLICY INST., (January 31, 2015) www.epi.org/about/.

¹²² *See Economic Policy Institute*, ACTIVIST FACTS, (January 31, 2015) www.activistfacts.com/organizations/516-economic-policy-institute/ (examining EPI's donors, which include many prominent labor unions, and attacking their claim of being bipartisan by highlighting how the EPI's main causes align with the causes of their donors).

¹²³ *Financial Statements, December 31, 2013 and 2012*, ECON. POLICY INST., p.4 (December 31, 2013) <http://s4.epi.org/files/2014/2013-Audited-Financial%20Statement.pdf>.

¹²⁴ *CBO's Policies for Its Employees Regarding Potential Financial Conflicts of Interest and Political Activities*, CONGRESSIONAL BUDGET OFFICE, www.cbo.gov/about/objectivity/policies. The CBO actively monitors its employees' financial activities to ensure that employees do not mix financial interests. *Id.*

¹²⁵ *Id.* The CBO's website states explicitly that it forbids its employees from actively participating in politics while they work for the CBO. *Id.*

¹²⁶ David Neumark, *The Minimum Wage Ain't What It Used To Be*, N.Y. TIMES (December 9, 2013, 11:00 AM) *available at* http://economix.blogs.nytimes.com/2013/12/09/the-minimum-wage-aint-what-it-used-to-be/?_php=true&_type=blogs&_r=1.

¹²⁷ *See id.* (arguing that a raise in the minimum wage, alone, is an ineffective tool to combat poverty). *See also* BLS Report, *supra* note 85, at 10 (providing research that indicates twenty percent of all workers age 16-19 make at or below the Federal minimum wage whereas just three percent of all hourly workers age 25 and over make at or below the Federal minimum wage). The data also shows that 23% of teenagers who work for hourly pay make the minimum wage whereas only 3% of workers age 25 and above who work for hourly pay make the minimum wage. *Id.* at 10. *See also* Raise the Wage, *supra* note 90 (charting out data that plainly states that out of 28 million workers who would see a pay raise if the minimum wage was at \$10.10 per hour, 74% are young, unmarried, or not supporting families).

Labor Statistics (BLS), almost seventy-six million workers over the age of sixteen work for hourly pay.¹²⁸ Of that seventy-six million, just over three million work at or below the minimum wage of \$7.25 per hour.¹²⁹ Going further, of those three million working at or below the minimum wage, half are between the ages of sixteen and twenty-five.¹³⁰ This data suggests that impoverished families are not the only ones working for the minimum wage.¹³¹ Thus, the BLS data supports the theory that raising the minimum wage will not aid families living in poverty.¹³²

There is extensive supplemental research suggesting that minimum wage hikes do not help those living in poverty.¹³³ Currently, forty-five million Americans live below the poverty line.¹³⁴ According to Congressional research, a \$10.10 minimum wage would enable around nine hundred thousand of those people to lift themselves above the poverty line.¹³⁵ Congress also predicts that a \$10.10 minimum wage would result in thirty-one billion dollars in increased earnings for low-wage workers.¹³⁶ However, that same study declares that of that thirty-one billion, only nineteen percent would go to families in need, or those living at or below the poverty line.¹³⁷

C. A More Concentrated Study of the Effects of Minimum Wage Hikes

A recent Gonzaga Law Review article investigated how changes in the minimum wage affect the unemployment rate.¹³⁸ The author examined the labor data of two counties in Idaho and

¹²⁸ BLS Report, *supra* note 85, at 1.

¹²⁹ *Id.*

¹³⁰ *Id.* at 4.

¹³¹ *See id.* (explaining that workers under the age of 25 make up over half of minimum wage workers; and that young, never-married workers are more likely to work for the federal minimum wage).

¹³² *Id.*

¹³³ CBO Report, *supra* note 106, at 7. The CBO report explains the effects of raising the minimum wage in terms of “scale” and “substitution.” *Id.* The scale effect occurs when employers are forced to raise their prices to compensate for having to pay their employees more. *Id.* The higher cost is then passed on to consumers who purchase fewer items leading to employers having to cut back. *Id.* The substitution effect occurs when employers choose to pay the higher price for more highly-skilled workers than paying the higher price for low-skilled workers. *Id.*

¹³⁴ *Id.* at 3.

¹³⁵ *Id.*

¹³⁶ *See id.* at 2 (referring to low wage workers as those earning \$11.50 per hour or less).

¹³⁷ *Id.*

¹³⁸ Burke, *supra* note 7, at 662-63.

Washington to determine if there was a link between minimum wage and unemployment.¹³⁹ The study found that increasing the minimum wage had a negative effect on employment rates.¹⁴⁰ At the beginning of the study, both states had nearly identical minimum wage rates and unemployment rates.¹⁴¹ In Idaho, the minimum wage remained at the federal level of \$5.15 per hour whereas Washington's rose every year.¹⁴² Throughout the study, Idaho's unemployment rate *decreased* whereas Washington's *increased*.¹⁴³ This study reinforces the argument that raising the minimum wage, by itself, is an ineffective tool to combat unemployment and poverty.

D. The Living Wage Movement

As an alternative to simply raising the minimum wage, the living wage movement seeks to determine how much money a

¹³⁹ *Id.* at 678.

¹⁴⁰ *Id.* The study looked at the years 1997-2007. In 1997, both Washington and Idaho had the same minimum wage, \$5.15 per hour (the federal minimum at the time). *Id.* Over the course of ten years, Washington raised their minimum wage steadily, but Idaho remained the same. *Id.* at 678-79. The data showed that as Washington raised its minimum wage, its unemployment rate grew whereas Idaho's decreased over the time period in which it did not change its minimum wage. *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

Year	Washington Minimum Wage (\$)	Washington Unemployment (%)	Idaho Minimum Wage (\$)	Idaho Unemploy- ment (%)
1997	5.15	4.9	5.15	5.1
1998	5.15	4.8	5.15	5.1
1999	5.70	4.8	5.15	4.9
2000	6.50	5	5.15	4.6
2001	6.72	6.2	5.15	4.9
2002	6.90	7.3	5.15	5.4
2003	7.01	7.4	5.15	5.2
2004	7.16	6.2	5.15	4.6
2005	7.35	5.5	5.15	3.7
2006	7.63	4.9	5.15	3.0
2007	7.93	4.5	5.85	3.0
2008	8.07	5.3	6.55	4.9
2009	8.55	8.2	7.25	8.0

Id. at 685.

person must make in order to live.¹⁴⁴ A living wage is the approximate annual income a family would need to make in order to be supplied with its most basic needs.¹⁴⁵ Basic needs include food, housing, childcare, transportation, and medical care.¹⁴⁶

The living wage movement began in the mid-1990s when religious and social services workers saw an influx of people coming to places such as soup kitchens.¹⁴⁷ These workers soon realized that, contrary to public opinion, many of the people needing these charitable services were fully employed.¹⁴⁸ People consequently began to consider that a person's wage should be based on how much money he or she needs in order to live comfortably.¹⁴⁹

Living wages vary widely from location to location.¹⁵⁰ In order to survive on the coasts and in the largest metropolitan areas, a worker must make a fairly high hourly wage.¹⁵¹ In contrast, in the south and parts of the Midwest, workers need much less income in order to live.¹⁵² The idea of a living wage has its merits. However, the wide variance in living wages is a strong argument against raising the federal minimum to a blanket \$10.10 per hour.¹⁵³

E. The Earned Income Tax Credit Could Be a Better Solution to the Poverty Issue

An alternative option to simply raising the minimum wage is expanding the Internal Revenue Service's Earned Income Tax

¹⁴⁴ See Amy K. Glasmeier, Living Wage Calculator, (2014) <http://livingwage.mit.edu/pages/about> (estimating how much money a family needs to survive by calculating how much basic expenses cost throughout the United States, taking into account factors such as the cost of food, childcare, housing, healthcare, and transportation).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ ROBERT POLLIN, MARK BRENNER, JEANNETTE WICKS-LIM, & STEPHANIE LUCE, A MEASURE OF FAIRNESS: THE ECONOMICS OF LIVING WAGES AND MINIMUM WAGES IN THE UNITED STATES 14-15 (Cornell University Press 2008).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See generally Glasmeier, *supra* note 144, (providing living wage calculations for each county and metropolitan area in the United States).

¹⁵¹ *Id.* The following living wage figures are based on the needs of a family of four with two children: Washington, D.C., \$69,820; New York, \$67,323; the Midwest, \$48,496; South Carolina, \$45,655. *Id.* The living wage for a person living in the City of Chicago would be \$10.48 per hour whereas the living wage for a person in Cairo, Illinois is only \$7.53 per hour. *Id.*

¹⁵² See *id.* (arguing for a living wage standard as opposed to the minimum wage using an economic calculator for almost every geographic location in the United States).

¹⁵³ *Id.*

Credit (“EITC”) program.¹⁵⁴ Republicans started the EITC in the 1970s to discourage the use of welfare by rewarding an individual’s work.¹⁵⁵ Just this past winter, President Obama remarked, “Few federal policies are more effective at reducing inequality and helping families pull themselves up through hard work than the Earned Income Tax Credit.”¹⁵⁶

It appears that the EITC might be the better program to aid more families living in poverty than raising the minimum wage.¹⁵⁷ Most commentators agree that the minimum wage does not differentiate between low-income workers and the rest of the hourly workers.¹⁵⁸ Therefore, when there is an influx in earnings due to a higher federal minimum wage, that money is not automatically directed to low-income families.¹⁵⁹ By raising the wage alone, we create the possibility of merely putting more money into a middle-class teenager’s pocket rather than helping those in need.¹⁶⁰ Additionally, if the wage was raised, approximately one third of the increase would go to families living at three times the poverty level.¹⁶¹ Thus, because the surplus income is not focused on those that truly need it, the goal of alleviating poverty is not served.¹⁶²

On the other hand, if Congress expanded the EITC, the extra income would be funneled almost entirely toward families that live at or near the poverty threshold.¹⁶³ Consequently, the EITC might be the better means to achieving the goal.

IV. A LOCALIZED SOLUTION

With the passage of the FLSA, the American people decided that it would not tolerate unfair payment or treatment of its

¹⁵⁴ See Neumark, *supra* note 126 (arguing that the minimum wage is outdated and the EITC would better serve the goal of aiding the poor).

¹⁵⁵ Jackie Calmes, *Obama Budget Would Expand Low-Income Tax Breaks*, N. Y. TIMES, March 3, 2014, at A12, available at www.nytimes.com/2014/03/04/us/politics/obama-budget-would-expand-low-income-tax-break.html.

¹⁵⁶ See *id.* (explaining that, in addition to raising the minimum wage, the Obama administration seeks to expand the EITC).

¹⁵⁷ See CBO Report, *supra* note 106, at 15 (explaining that the EITC funnels extra money exclusively to impoverished families whereas the surplus money which results from a minimum wage hike does not).

¹⁵⁸ Peter Wehner, *What the EITC Does Better Than A Minimum Wage Increase*, THE WALL ST. J. (May 6, 2014, 12:32 PM) <http://blogs.wsj.com/washwire/2014/05/06/what-the-eitc-does-better-than-a-minimum-wage-increase/>.

¹⁵⁹ CBO Report, *supra* note 106, at 15.

¹⁶⁰ Neumark, *supra* note 126.

¹⁶¹ CBO Report, *supra* note 106, at 15.

¹⁶² Wehner, *supra* note 158.

¹⁶³ CBO Report, *supra* note 106, at 15.

workers.¹⁶⁴ Back then, the goal of a minimum wage was to eradicate both sweatshop labor and child labor.¹⁶⁵ Those extreme conditions may no longer exist, but the problems the United States faces today are fairly similar.¹⁶⁶ The underlying principle remains: no one who is employed full-time should struggle to live.¹⁶⁷ Politicians promote minimum wage increases with claims that they will help more Americans escape poverty, that raises will boost the economy, and that they will lessen the need for taxpayer-funded social programs.¹⁶⁸

The solution proposed here comes in four parts. First, poverty guidelines should be used to reflect local standards of living. Second, the minimum wage should be flexible and adjusted based on a location's poverty level. Third, Congress should expand the Earned Income Tax Credit and other government transfer programs in some cases. Lastly, the wage should be calculated based on the cost of living at a local level and then indexed to inflation.

A. *The Poverty Guidelines Should Reflect the Vast Economic Diversity in the Regions of the United States*

The cost of housing, utilities, and groceries is not the same in every place.¹⁶⁹ Because these things are priced differently, each American city, county, and state has a different standard of living.¹⁷⁰ In some places, there is almost a six dollar difference per

¹⁶⁴ See, e.g., Grossman, *supra* note 5 (explaining that wage reform during Franklin Delano Roosevelt's presidency was pushed forward by a belief that low wages were immoral and wrong).

¹⁶⁵ See, e.g., *id.* (providing a general background of the FLSA and explaining that child labor and sweatshop practices were two of the main reasons President Roosevelt kept supporting the FLSA).

¹⁶⁶ See *Raise the Wage*, *supra* note 90 (charting out the poverty lines for families in relation to the amount of money those families make when surviving on a minimum wage salary alone).

¹⁶⁷ See Jamieson, *supra* note 92 (highlighting President Obama's primary reason for backing a minimum wage hike, which is supporting working class families).

¹⁶⁸ E.g., Chris Zappone, *Congress OKs Minimum Wage Boost*, CNN (May 24, 2007, 10:04 PM) http://money.cnn.com/2007/05/24/news/economy/minimum_wage/ (quoting Sen. Edward Kennedy, D-Mass., "Certainly, the increase we've passed today is only the first of many steps we must take to address the problems of poverty and inequality").

¹⁶⁹ See *generally* Glasmeier, *supra* note 144 (providing links to multiple tables that break down the cost of living by county); see also *generally* Cost of Living Calculator, CNN, <http://money.cnn.com/calculator/pf/cost-of-living/> (providing a cost of living calculator for most US cities). For example, \$40,000 per year in Bozeman, Montana has the buying power of \$86,000 per year in New York City. *Id.*

¹⁷⁰ *Id.*

hour in the cost of living for minimum wage earners.¹⁷¹ Outside of the low-wage market, most salaries vary depending on where an employee works.¹⁷² For these reasons, any federal minimum wage should not be the same across the whole country.¹⁷³

Despite commendable intentions, the current federal wage floor is outdated and not equipped to deal with today's diverse economy. The goal for raising the minimum wage rate should be to keep workers out of poverty. Thus, the minimum wage debate should start with finding an accurate measure of poverty.

Right now, the federal minimum wage is not tied to any particular standard.¹⁷⁴ To be truly effective, the wage should correlate with the poverty level.¹⁷⁵ However, the federal poverty level is itself an inaccurate measure of the cost of living in specific localities.¹⁷⁶ Those guidelines are ineffective because they are not adjusted based on geographic region.¹⁷⁷ Once the poverty guidelines are adjusted based on region, then an accurate and appropriate minimum wage can be determined.¹⁷⁸

¹⁷¹ Glasmeier, *supra* note 144. For example, a living wage for a family of four in New York City is \$26.56. *Id.* In sharp contrast, the living wage for a family of four in Harlan County, Kentucky is \$20.92. *Id.* This wage calculation takes into account that in the family of four, both adults would be working for that wage. *Id.*

¹⁷² See generally Cost of Living Calculator, *supra* note 169 (showing that the same salary does not have the same purchasing power in each American city).

¹⁷³ Chris Brewster, *A Flexible Approach to Raising the Minimum Wage*, VOICE OF SAN DIEGO (April 14, 2014), <http://voiceofsandiego.org/2014/04/14/a-flexible-approach-to-raising-the-minimum-wage/>; see generally Glasmeier, *supra* note 144 (providing a calculator for each county and most cities in the United States highlighting the vast differences between costs of living in different areas of the country).

¹⁷⁴ See Minimum Wage Mythbusters, U.S. DEPARTMENT OF LABOR, www.dol.gov/minwage/mythbuster.htm (referring to "Myth: The federal minimum wage goes up automatically as prices increase" and "Myth: The minimum wage stays the same if Congress doesn't change it"). The current push towards a \$10.10 per hour minimum wage is an attempt to bring the real value up to its high from 1968. Laura D'Andrea Tyson, *Raising the Minimum Wage: Old Shibboleths, New Evidence*, N.Y. TIMES, (December 13, 2013) <http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/NYTIMES-RaisingtheMinimumWage-12.13.13.pdf>.

¹⁷⁵ See Brewster, *supra* note 173 (arguing for a minimum wage in San Diego that is based on San Diego's cost of living and poverty levels).

¹⁷⁶ See *id.* (explaining that the cost of living in San Diego is thirty percent higher than the national average). "The official poverty thresholds do not vary geographically..." How the Census Bureau Measures Poverty, U.S. CENSUS BUREAU, www.census.gov/hhes/www/poverty/about/overview/measure.html (last visited January 5, 2016).

¹⁷⁷ Brewster, *supra* note 173.

¹⁷⁸ See *id.* (arguing that San Diego should not use the federal poverty guidelines as a measure for their minimum wage because the cost of living in San Diego is higher than the national average).

B. Adjusting the Minimum Wage Based on Location

As it stands, a blanket raise in the federal minimum wage does not take into account the local living conditions, but it should. A general raise might reach its target audience in some places, but in others, it will not.¹⁷⁹ For example, with the minimum wage at \$7.25 per hour, a full-time worker earns approximately \$15,080 annually. The national poverty line for a family of two is \$15,730.¹⁸⁰ Thus, nationally, instead of raising the wage to \$10.10 per hour, it needs only to be raised to approximately \$7.60 per hour.¹⁸¹ However, if, for the sake of argument, that person making \$15,730 annually lived in a more rural area, then he or she could live comfortably above the poverty threshold. But, if that person lived in New York City, a much more expensive location, he or she may need more than \$30,000 annually to live.¹⁸²

C. Expand the EITC

The solution to the minimum wage problem should be multi-dimensional. One of the facets of this proposed solution is the Earned Income Tax Credit, or EITC. As stated in the previous section, EITC is a government subsidy that provides greater tax breaks for workers earning low wages.¹⁸³ Right now, the EITC

¹⁷⁹ See Ben Casselman, *Typical Minimum Wage Earners Aren't Poor, But They're Not Quite Middle Class*, FIVETHIRTYEIGHT (March 18, 2014), <http://fivethirtyeight.com/datalab/typical-minimum-wage-earners-arent-poor-but-theyre-not-quite-middle-class/> (indicating that many people who work for minimum wage are not the primary wage earners in their household, therefore a minimum wage raise would not help combat poverty if directed towards them).

¹⁸⁰ 2014 Poverty Guidelines for the 48 Contiguous States and the District of Columbia, *supra*, note 101.

Persons family/household	in	Poverty guideline
1		\$11,670
2		15,730
3		19,790
4		23,850
5		27,910
6		31,970
7		36,030
8		40,090

Id.

¹⁸¹ *Id.* \$7.60 per hour would allow a full-time worker who supports a child to make an income above the poverty line, if taxes were taken out of that income. *Id.*

¹⁸² Cost of Living Calculator, *supra* note 169.

¹⁸³ EITC Home Page, INTERNAL REVENUE SERVICE, www.irs.gov/Credits-

most significantly benefits working parents.¹⁸⁴ Expanding the EITC would extend those benefits and help childless workers.¹⁸⁵

Additionally, expanding the EITC would alleviate the prevalent fear that raising the minimum wage would put small businesses under economic pressure. These revisions would allow small business owners to maintain similar salaries for their workers, while expanding the take-home pay for their employees.¹⁸⁶ Thus, small business owners are not forced to raise their prices, or fire employees due to the higher cost of labor.¹⁸⁷

Another benefit to the EITC would be encouraging people to enter the workforce.¹⁸⁸ In this scenario, greater access to government transfers should be given to those who work for low wages than to those who do not work at all.¹⁸⁹ If a person can live the same lifestyle on a welfare package as they could if they were working for a minimum wage, there is no incentive for that person to join the labor force.¹⁹⁰

There is no guarantee that increased income will actually reach the impoverished if Congress raises the minimum wage without any supplemental programs.¹⁹¹ Yes, certain families in need will benefit from an increase in the wage.¹⁹² However, a number of people who are not supporting their families, or who are not living at the poverty line, will also see an increase in their pay.¹⁹³ Expanding the EITC alongside adjusting the minimum wage enhances the benefits of those truly in need.¹⁹⁴

It follows that the solution to the issue of poverty must not rest with one social program.¹⁹⁵ A combination of wage raises and

&-Deductions/Individuals/Earned-Income-Tax-Credit.

¹⁸⁴ The President's Proposal to Expand the EITC, EXECUTIVE OFFICE OF THE PRESIDENT AND U.S. TREASURY DEPARTMENT 1 (March 2014) www.whitehouse.gov/sites/default/files/docs/eitc_report.pdf.

¹⁸⁵ *Id.* at 5-6.

¹⁸⁶ See CBO Report, *supra* note 106, at 15 (explaining that the EITC would put more cash into the pockets of low wage workers, more so than a minimum wage alone).

¹⁸⁷ See *id.* at 9 (noting that if the minimum wage is raised without enhancing supplemental programs, many low-wage workers will lose their jobs).

¹⁸⁸ The President's Proposal to Expand the EITC, *supra* note 184, at 9-10.

¹⁸⁹ See Reihan Salam, *Lane Kenworthy on Bettering the Lives of the Poor*, NATIONAL REVIEW (August 20, 2014, 9:49 AM), www.nationalreview.com/agenda/385840/lane-kenworthy-bettering-lives-poor-reihan-salam.

¹⁹⁰ *Id.*

¹⁹¹ CBO Report, *supra* note 106, at 2.

¹⁹² *Id.* at 3.

¹⁹³ *Id.* at 11.

¹⁹⁴ See *id.* at 15 (indicating that a minimum wage increase alone could raise the income of some families to the extent that their EITC benefits would terminate).

¹⁹⁵ See Salam, *supra* note 189 (promoting the "Nordic model" for managing poverty, which calls for governmental support coupled with other incentive programs to get the impoverished population out into the workforce).

credits may be the best alternative.¹⁹⁶ That combination would create incentives for people to seek work, keep low-skill and low-income workers employed, and provide tax credits so that a family can live above the poverty threshold while relying on the income of a low-wage salary.¹⁹⁷

D. Indexing the Minimum Wage

Minimum wage laws are a source of controversial debate amongst politicians.¹⁹⁸ Therefore, the wage should be indexed to reflect inflation and its effects on the local poverty level.¹⁹⁹ Indexing is a crucial step for lasting change. Currently, each time workers need their wages raised, Congress must pass an amendment to the existing bill.²⁰⁰ Each time, the bill's proponents and supporters face a significant amount of resistance resulting in long gaps of time between increases.²⁰¹ With each time gap, the wage's value continues to diminish.²⁰² These disputes and gaps account for the significant decrease in the wage's value in the last forty years.²⁰³

The next change to this legislation should include an indexing formula that ties the wage to a region's respective cost of living and poverty level.²⁰⁴ Consequently, Congress would not have to vote and pass a new law each time the country's low-wage workers need a raise.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ See generally Caitlin Johnson, *Increase Likely to Remain Tied to War Bill*, CommonDreams.org (May 18, 2007) www.commondreams.org/news/2007/05/18/minimum-wage-increase-likely-remain-tied-war-bill (explaining that the 2007 minimum wage bill was attached to an Iraq War funding expansion out of fear that the minimum wage bill alone would never be passed).

¹⁹⁹ See Quigley, *supra* note 3, at 549-51 (explaining that "indexing" means tying the wage level to something like the Consumer Price Index).

²⁰⁰ See Minimum Wage Mythbusters, *supra* note 174 (referring to "Myth: The federal minimum wage goes up automatically as prices increase" and "Myth: The minimum wage stays the same if Congress doesn't change it").

²⁰¹ Press Release, Committee on Education and the Workforce, Rep. George Miller's Prepared Remarks for the Introduction of the Fair Minimum Wage Act (March 5, 2013), available at <http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/MinWageIntroGMRRemarksFormatted-3.5.2013.pdf>.

²⁰² Minimum Wage Mythbusters, *supra* note 174. In fact, the Department of Labor's website reads, "Congress sets the minimum wage, but it doesn't keep pace with inflation. Because the cost of living is always rising, the value of a new minimum wage begins to fall from the moment it is set." *Id.*

²⁰³ Minimum Wage History, *supra* note 78.

²⁰⁴ Cost of Living Calculator, *supra* note 169. These factors include housing costs, groceries, utilities, and "transportation." *Id.*

V. USING THE NEW DEAL'S IDEALS TO AFFECT CHANGE TODAY

One hundred years ago, labor conditions in the United States were inhumane. Sweatshop labor was prevalent in many factories and workers toiled away for paltry wages. The Fair Labor Standards Act arose as legislation to combat these injustices. Today, the one-size-fits-all minimum wage is a relic that remains despite its lack of utility. Notwithstanding, today's low-skilled workers still work for unfair wages, though at a less dramatic rate than during the Industrial Revolution.

To completely repeal the minimum wage and leave laborers to the mercy of their employers would be a recipe for disaster. Therefore, the solution is renovating the current system. In order to solve today's wage and labor issues, Congress must take steps to reevaluate the methods by which it determines the poverty threshold, then adjust the minimum wage accordingly. Once done, Congress can expand its transfer programs for low-wage workers. Lastly, indexing the minimum wage to that poverty level will prevent its value from falling in the future when Congress fails to pass a new law in time. The United States government made an ideological choice when it passed the FLSA. It decided that, as a nation, we would not tolerate starvation wages and unfair labor practices. Today's leaders must not abandon these principles.

