

Full-time Workers Should Not Be Poor: The Living Wage Movement

by William Quigley¹

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Introduction

Los Angeles' prototypical poor person is no longer a scruffy panhandler on the freeway offramp, or a skid row derelict camped beneath a blue tarp. Today's poverty icon is a working mother, toiling eight hours or more a day at a job that does not pay enough to cover the rent, clothe the baby or provide a life of even minimal comfort.²

If a person works full-time, they should not have to raise their family in poverty. Advocacy for enactment of a living wage is summed up in that simple statement.³

The direction of the living wage movement is evidenced by the October 2000 enactment of the nation's highest living wage by the Santa Cruz City Council; the ordinance mandates that city employees and employees of city contractors be paid at least \$11 an hour if they receive health benefits, and \$12 an hour if no benefits.⁴ Living wage advocates in Santa Cruz were seeking \$27.00 an hour to allow families to survive despite the local high cost of living.⁵

The breadth of the movement is evidenced by the fact that as of early 2001, more than 50 jurisdictions had enacted living wage ordinances and another 75 or so had ongoing living wage campaigns.⁶ [See also Carolyn Hirschman, "Paying Up," HR Magazine, July 1, 2000.]

The ongoing goal of the living wage movement is a broad effort of primarily local campaigns to try to fulfill the American goal stated so simply by President Franklin Delano Roosevelt in 1937:

"Our nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work."⁷

This article will describe the foundation of the living wage movement, its current presence, and analyze its challenges.

The Current Living Wage Movement

The current living wage movement is trying, primarily through local legislation, to bring justice to low wage workers by requiring that businesses which have public contracts pay their workers wages sufficient to support their families.⁸ [For a discussion of international efforts to create a living wage see J.M. Spectar, “Pay Me Fairly, Kathie Lee! The WTO, The Right to a Living Wage, and a Proposed Protocol,” 20 N.Y L.S. J. Intl. & Comp. L. 61 (2000).] The main argument of living wage supporters is, as the Wall Street Journal aptly summarized, “Businesses which benefit from public largesse should pay their workers at least enough money to keep them out of poverty.”⁹

The living wage movement is made up of a fabric local coalitions of community groups, labor organizations, and interfaith religious denominations.¹⁰ [For case studies that illustrates the difficulties and promise of the growth of a coalition of labor, religious and community organizations, see: Dorian T. Warren and Cathy J. Cohen, “Organizing at the Intersection of Labor and Civil Rights: A Case Study of New Haven,” 2 U. Pa. Journal of Labor and Employment Law 629 (2000), which details a struggle for union organizing of low wage workers at Yale; and Penda D. Hair “Prayer and Protest: Bringing a Community Vision of Justice to a Labor Dispute,” 2 U. Pa. Journal of Labor and employment Law 657 (2000) and Nelson Johnson, “Reflections on an Attempt to Build “Authentic Community” in the Greensboro Kmart Labor struggle,” 2 U. Penn. J. Labor & Employment Law 675 (2000) which both portray the efforts of a community to secure living wages for workers at a K Mart distribution center in Greensboro, North Carolina.]

The living wage movement is built on a recognition that the current federal minimum wage does not provide enough for an individual to live on, much less an individual with a family. The current minimum wage is several dollars an hour short of a living wage and even several dollars short of matching its own value of thirty years ago.¹¹ Living wage supporters seek to supersede the low federal minimum with a local requirement for a true living wage. Local living wage ordinances seek to implement living wages by one or more of a series of actions: requiring private contractors with local government to pay all their employees a living wage; restricting local public aid to private corporations which pay their employees a living wage; or requiring all employers within the jurisdiction to pay a living wage.¹²

Advocacy for living wages is not a new concept but one that has been discussed for well over one hundred years.¹³ [Seth Harris, Conceptions of Fairness and the Fair Labor Standards Act, 18 Hofstra Labor & Employment L. J. 19, 39 et seq. (2000) where he points to the existence of theorists and advocates for just wages dating back to 1750, pp 39-46, and state and local

efforts to enact living wages that reach back to the early 1900s, pp 46-69.] What is new is the growing energy in the living wage movement because of a series of local victories which resulted in the enactment of a number of living wage ordinances. By early 2001 more than 50 jurisdictions had enacted living wage ordinances and another 75 were engaged in ongoing living wage campaigns.¹⁴ [See also Carolyn Hirschman, "Paying Up," HR Magazine, July 1, 2000.]

The first victory by the current living wage movement came in the mid 1990s in Baltimore and emerged from action taken by a coalition of churches and labor organizations.¹⁵ A coalition of fifty churches approached the American Federation of State, County and Municipal Employees (AFSCME) to join in creating an organization of churches, labor union members, and low-wage service workers. The churches were seeing an increase of the use of soup kitchens and pantries by workers and concluded that minimum wage jobs with no benefits were not helping people escape poverty. AFSCME members were concerned about the privatization of formerly government jobs in areas like janitorial and food services which replaced good public jobs with low wage private jobs. Together they concluded that private companies were paying low wages in order to win low-bid government contracts. Low-wage workers were often turning to food stamps, publicly financed health care and private assistance from churches to make up the difference from their low-wage work. The coalition viewed this as municipal subsidization of poverty. In response, the coalition created a local campaign for a law that would require businesses which had contracts with the city to pay their workers at least a living wage. Both the churches and labor contributed people and funds to create a working coalition to educate the public about the problem of low wages and to lobby for the living wage bill. The city ultimately enacted the local living wage law and it went into effect in July 1996. The law required city contractors to pay a minimum of \$6.10 an hour in 1996, rising in annual increments to \$7.70 an hour in 1999. The goal of the law is to place the wage at a level sufficient to lift a family of four over the poverty level. The law was estimated to apply to between 2,000 and 3,000 workers.¹⁶

[See also, "Baltimore Mayor Signs 'Living Wage' Bill," BNA, Daily Labor Report, December 14, 1994.]

The success of the Baltimore effort inspired the development of other living wage coalitions made up of labor, community, and religious organizations.

Labor has been pushing living wage ordinances in order to show their commitment to low-wage workers.¹⁷ They have also followed the lead of labor leaders in Baltimore by working to prevent privatization efforts from replacing well-paying city jobs with low-paying private jobs.¹⁸ Labor has also re-invigorated its efforts to work in coalitions with religious and community groups.¹⁹

Community groups organize around living wage campaigns because of a combination of energies from national and local groups and a continuing national resource effort by the organizations of the AFL-CIO, ACORN, and the New Party.²⁰ [See also, Amanda Crawford, “Living Wage Campaigns Gain Momentum: Local Debates in Several States,” BNA, Daily Labor Report, September 26, 1977.]

Religious organizations and groups have become active in this movement because their faith compels them to speak up about issues of justice and poverty. Religious advocacy for just wages and living wages have been articulated by religious groups for more than one hundred years.²¹ [For contemporary advocacy see: Katie Hetter, “Labor Has Ally in the Pulpits,” Newsday, December 12, 2000, describing the 60 local groups of the Interfaith Coalition for Worker Justice which works to bring concerned religious people and organizations together with progressive labor leaders. See www.nicwj.org. Also, Michelle Amber, “Civil Rights: Labor, Religious Leaders Announce Plans to Work Together to Promote Worker Rights,” BNA, Daily Labor Report, October 13, 2000.] Many religious groups have gone on record to support the right of workers to living wages, including: the Catholic Church;²² the Episcopal Church;²³ the Jewish Council for Public Affairs;²⁴ the Unitarian Universalist Association;²⁵ and the United Methodist Church.²⁶

The living wage movement is also buoyed by broad public support. An April 2000 survey found that 94% of the 1000 adults questioned agreed with the statement that “as a country, we should make sure that people who work full-time should be able to earn enough to keep their families out of poverty.”²⁷ There has also been consistent public backing for raising the minimum wage.²⁸ Other polls continue to show overwhelming support for modest raises in the minimum wage. [See, e.g., 81% of Maine citizens support modest raise in minimum wage, AP, Bangor Daily News Maine, May 7, 1998.] Conservative Pat Buchanan received wide support for his call for “a standard of living that rises each year, and a ‘family wage’ that enables a single parent to feed, clothe, house, and educate a large family in decency.”²⁹ Students and faculty in universities are now advocating for their institutions to pay all their workers at least living wages.³⁰

Students at Wesleyan University took over an administration building in Spring 2000 to demand the university pay a living wage to all workers on campus, including those employed by subcontractors. [“Apparel: Student Groups Hold National Student-Labor Day of Action,” BNA, Daily Labor Report, April 5, 2000.]

Recent state and local governmental actions indicate the living wage movement picking up substantial public support there as well. Voters in Detroit in November of 1998 passed a

living wage ordinance by a 4 to 1 margin with support from 80% of the voters. The ordinance required contractors doing more than \$50,000 a year in business with the city or that received that amount in tax breaks to pay their workers a minimum of \$7.70 an hour if they provide health insurance and \$9.63 an hour if no health insurance is provided. A spokesperson for the Detroit Chamber of Commerce said after the vote “We knew there was no way we could stop it.”³¹ Also in the fall of 1998, voters in Washington State, by a 2 to 1 margin, raised their state minimum wage to \$5.70 an hour in 1999, to \$6.50 an hour in 2000, and to raise it in future years to keep pace with inflation.³² In June 2000, the Alexandria Virginia City Council unanimously passed a living wage ordinance which requires city contractors to pay \$9.84 per hour, and health insurance, to employees on city contracts.³³ [Frederick Kunkle and Craig Thomas, “Alexandria Officials Aim to Defend Living Wage,” *Washington Post*, February 1, 2001.] Alexandria requires city contractors to pay \$9.84 per hour (including insurance) to employees on city contracts. An effort is underway in the state legislature to pre-empt the law. In August 2000, by more than three to one, voters in St. Louis approved a living wage ordinance setting hourly rates at \$8.67 an hour for workers with health benefits, and \$9.92 for those without.³⁴ And, as noted above, the nation’s highest living wage ordinance was passed by the Santa Cruz City Council in October 2000; the law mandates that city employees and employees of city contractors be paid at least \$11 an hour if they receive health benefits, and \$12 an hour if no benefits.³⁵

Fifty jurisdictions did not just spontaneously enact fifty living wage ordinances. The seventy-five additional living wage campaigns did not just appear out of nowhere. These represent a cumulation of great organizing and decades of advocacy work. This article will now review the historical foundation for the living wage movement.

History of Support for Living Wage

Governments have been regulating wages for quite some time. A brief look at prior wage legislation will place current efforts for living wages in an appropriate historical context.

Over six centuries ago, governmental edict set maximum wages for the working poor. In the very first English statutes where government addressed the situation of poor people, the Statutes of Laborers of 1349-1350, the laws empowered local justices of the peace to set maximum wages. Workers were at a premium because of the devastation of the Black Plague (1348-1349) which killed almost a third of England's population. Those workers who survived were demanding higher wages because of the shortage of help. The Statutes of Laborers rolled back maximum wages for workers to pre-Black Plague levels (e.g. mowers of meadows were paid 5d a day, carpenters 2d a day, etc.) and imposed criminal penalties on workers and employers who violated the law.³⁶ [Because of these "...the precedent of government involvement in labor standards regulation dates at least six centuries." Willis J. Norlund, *A Brief History of the Fair Labor Standards Act*, 39 LABOR LAW JOURNAL 715, 716 (1988)]

The first living wage was set in England after Parliament authorized local justices of the peace to regulate wages.³⁷ [See also Samuel Mencher, *Poor Law to Poverty Program: Economic Security Policy in Britain and the United States* (U. Pittsburgh Press 1967) 34-35.] From 1795 to 1834, the justices of the peace in Speenhamland, Berkshire, set the wages of workers to the price of bread and the number of people in the worker's family; whenever the price of wheat rose, wages rose, and if wages did not, local authorities supplemented the wage.³⁸

Efforts to provide living wages for workers began with a focus on requiring employers to pay at least a minimum wage to workers, usually women workers. In many ways the history of minimum wage legislation was the history of the rights of women workers who were the lowest paid and had the least legal protection of all of the working poor.³⁹ Modern minimum wage regulations were first developed in New Zealand and Australia around the turn of the century; the British Parliament followed in 1909.⁴⁰ The New Zealand Industrial Conciliation and Arbitration Act of 1894 gave the Court of Arbitration power to settle industrial disputes by setting binding minimum wages for all workers in certain industries. In 1896, the Australian state of Victoria established a system of wage boards and most all states followed. The British Parliament followed and adopted minimum wage legislation in 1909 aimed at abolishing "sweating." [GERALD STARR, *MINIMUM WAGE FIXING* (International Labor Organisation, Geneva, 1981) 1.]

The current living wage movement should note that Parliament was severely criticized when they tried to establish fair wages by business interests for interfering in commerce. The government was however unpersuaded by the criticisms that businesses might close if they had to pay a decent wage. A 1908 committee of Parliament studying low wage employment concluded:

It is doubtful whether there is any more important condition of individual and general well-being than the possibility of obtaining an income sufficient to enable those who earn it to secure, at any rate, the necessities of life. If a trade will not yield such an income to average industrious workers engaged in it, it is a parasite industry, and it is contrary to the general well-being that it should continue.⁴¹

While wage legislation did not come to the USA until early in the twentieth century, the demand for more than subsistence wages started in earnest after the Civil War. The use of the term “living wage” in these debates dates from the 1870s.⁴² The first real push for a governmental right to a living wage was in the efforts of individual states to create minimum wage protections.⁴³ [See also Seth Harris, *Conceptions of Fairness and the Fair Labor Standards Act*, 18 Hofstra Labor & Employment L. J. 19, 39 et seq. (2000) where he points to the existence of theorists and advocates for just wages dating back to 1750, pp 39-46, and state and local efforts to enact living wages that reach back to the early 1900s, pp 46-69.] From the very beginning, the push for a living wage and the push for a minimum wage were related. Those advocating for minimum wage laws often used the idea of the provision of a living wage as a goal of work.

Like the efforts in other countries, the U.S. campaign for minimum wage laws to protect workers was the result of growing public concern about the prevalence of sweatshops, primarily victimizing recent immigrants, women and the young.⁴⁴ The employers that paid very low wages were in the garment industry, retail store workers, canning and cigar-making. While unionized manufacturing workers earned just over \$20 for a 50 hour week, and nonunionized manufacturing workers earned just under \$15 for a 50 hour week, women in the garment industry earned \$6.00 per week. [Hart, at 65-66.] Also like in other countries, advocacy groups pushing for minimum wages were primarily women's groups like the Women's Educational and Industrial Union (WEIU), the Women's Trade Union League (WTUL), and the Consumer's League with some labor support.⁴⁵ Details and about the unsafe and unhealthy working conditions that women and children were forced to work in nation-wide were provided by a nineteen volume report by the Federal Bureau of Labor released in 1910 and 1911. [Norlund, *supra*, 716.]

The campaign for a living wage, as opposed to a minimum wage, started with the labor

movement both in the US and in England in the late 1800s.⁴⁶

Outside of the labor movement, religious reformers were the first group to call for a living wage, starting with Pope Leo XIII's 1891 papal letter to the Catholic bishops of the world entitled "On the Condition of Labor" which recognized the right of every worker to receive wages sufficient to provide for a family.⁴⁷ Since then, the Catholic Church has repeatedly spoken out for the rights of workers to living wages to support their families.⁴⁸

Protestant churches have called for the establishment of living wages since 1908.⁴⁹ On the local level, in 1911, the Milwaukee Federation of Churches joined with local community organizations like the Consumer's League to push for the first minimum wages for women and children.⁵⁰ In 1919, the Federal Council of Churches of Christ in America proclaimed that "The living wage should be the first charge upon industry, before dividends are considered."⁵¹

By the early 1900s, living wages and minimum wage protections for women and children were beginning to enjoy political support. In his 1920 January address to Congress, President Wilson proclaimed that workers needed wages sufficient to live in comfort, unhampered by fear of poverty and want in old age.⁵²

The first state minimum wage law in the United States was enacted in 1912 by Massachusetts and patterned on the British Trade Boards Act of 1909.⁵³ [Norlund, *Quest for Living Wage* 11-14.] This law, which covered only minors and women, was not compulsory and the authorities could only recommend minimum wage rates that would provide a living wage.⁵⁴ [See also Norlund, *supra*, at 716.] By 1938, the year the Fair Labor Standards Act (FLSA) was passed, many states had some form of a minimum wage law.⁵⁵ Several of these state minimum wage laws specifically tried to set their state minimum wage to the "necessary cost of living."⁵⁶

On the federal level, Congress enacted a minimum wage law which created a Minimum Wage Board for the District of Columbia with the power to determine and enforce minimum wages for women and minors working in the District in 1918.⁵⁷ [See also Norlund, *Quest for Living wage* 21-25.] The D.C. Minimum Wage Board set a minimum wage for women of 34 and _ cents per hour.⁵⁸

Then the U.S. Supreme Court changed everything. The federal minimum wage law was declared invalid by the Court in 1923 in *Adkins v Children's Hospital*, despite an earlier decision of the Supreme Court which allowed the Oregon minimum wage law to stand.⁵⁹ The 1923 decision found that the law unconstitutionally interfered with freedom to contract and imposed

on employers the burden of supporting a partially indigent person. In the decision Justice Sutherland praised the idea of a living wage while declaring the law unconstitutional.⁶⁰ The effect was devastating. One commentator at the time said the decision "makes forever impossible all other legislation along similar lines involving the regulation of wages."⁶¹ In 1936, the Supreme Court declared the New York state minimum wage law unconstitutional as well.⁶²

Congressman Hamilton Fish called the latest Supreme Court action "a new Dred Scott decision condemning millions of Americans to economic slavery." [80 Congressional Record 9040, June 5, 1936.]

Despite the hostility of the Supreme Court to statutory wage protection for workers, President Roosevelt continued to propose federal legislation for decent wages, saying, in 1937:

"Our nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work."⁶³

On May 24, 1937, Senator Hugo Black of Alabama, with Roosevelt's backing, introduced the Fair Labor Standards Act, but it failed to be enacted that year.⁶⁴ [Legislative history for the original FLSA can be found in several sources: Burns, CONGRESS ON TRIAL, gives the best political analysis of the enactment. pp 67-97; Seth Harris, *supra*, at 18 Hofstra Labor & Employment Law Journal 19 (2000); John S. Forsythe, "Legislative History of the Fair Labor Standards Act," 5 Law and Contemporary Problems 464 (1939) is a detailed contemporary look at how the law was enacted; Willis J. Norlund, A Brief History of the Fair Labor Standards Act, 39 Labor Law Journal 715 (1988); Norlund, Quest for Living Wage 31-58; and Paulsen, Living Wage, pp 68-155.] The attempt to create a federal minimum wage was vigorously opposed by representatives of national business lobbies, and interests from the low-wage South.⁶⁵ Organized labor generally favored the bill but had major reservations fearing that Congress would end up setting maximum wage rates.⁶⁶

Life was given back to the efforts for a minimum wage by, of all parties, the U.S. Supreme Court.⁶⁷ In 1937, only months after finding the New York minimum wage unconstitutional, the U.S. Supreme Court reversed its previous decisions and ruled on behalf of a Washington chambermaid named Elsie Parrish in a matter decided as *West Coast Hotel Co. v Parrish*.⁶⁸ Ms. Parrish, who worked as a chambermaid for the Cascadian Hotel in Wenatchee, Washington, sued her ex-employer for back pay of \$216.19 due under Washington state minimum wage law.⁶⁹ Shocking most observers who figured the Court would follow its previous decisions, the Court decided in favor of Ms. Parrish by reversing its prior minimum wage decisions and announced that minimum wage laws were, indeed, appropriate subjects of

legislation after all.⁷⁰ Why Justice Roberts changed his vote, which apparently was cast though not announced before FDR's court-packing plan was publicly revealed, has been hotly debated since the day Parrish was decided. Some have argued that Roberts did not actually switch but instead merely narrowly ruled on questions before him. See, e.g. Felix Frankfurter, "Mr. Justice Roberts," 104 U Penn L Rev 311 (Dec 1955) wherein Frankfurter attempts, fairly successfully for some time, to justify Roberts' switch on several non-political grounds. Few now agree with this non-political theory. Their opinion noted, in an observation much lauded by living wage advocates:

"The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being, but casts a direct burden for their support upon the community... The community is not bound to provide what is in effect a subsidy for unconscionable employers. The community may direct its law-making power to correct the abuse which springs from their selfish disregard of the public interest."⁷¹

With a green light from the Supreme Court, Roosevelt pushed for passage of the FLSA again in 1938.

FDR was unrelenting in his view that employers who did not pay adequate wages had no business in business:

"No business which depends for its existence on paying less than living wages to its workers has any right to continue in this country. By living wages I mean more than a bare subsistence level- I mean the wages of decent living."⁷²

With significant political modifications made necessary to insure its passage the Fair Labor Standards Act was signed into law by FDR in 1938.⁷³[See Burns 71-82 and discussion at 81 Cong. Rec. 9158 et. seq.] The new law imposed a \$.25 per hour federal minimum wage on some employees working in interstate commerce that would be raised to 40 cents an hour by 1945.⁷⁴ This time the Supreme Court upheld the minimum wage legislation.⁷⁵

The FLSA was a significant milestone in the progress towards the goal of establishing an enforceable minimum wage, but, as a result of the legislative compromises required for its enactment, it had major deficiencies.⁷⁶

A major deficiency of the FLSA was that it did not provide a living wage or even a "fair day's pay for a fair day's work" as it had originally been intended.⁷⁷ 29 USC Section

202(a) notes that a goal of the FLSA is the eradication of “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.” After the compromises made in order for it to be passed, the FLSA mandated a 25 cents an hour wage which was significantly less than the 34 and _ cent wage set by the D.C. Minimum Wage Board twenty years before.⁷⁸ The FLSA wage of 25 cents an hour was still a poverty wage in a time when the average hourly wage in the unionized automobile industry in 1937 was 88 cents an hour.⁷⁹ Of the eleven million workers were actually covered by the FLSA at the time of its passage, only about 300,000 covered workers earned less than the original \$0.25 per hour minimum. Hart, *supra*, at 152-153. [See also Carroll R. Daugherty, "The Economic Coverage of the Fair Labor Standards Act: A Statistical Study," 5 *Law and Contemporary Problems* 406 (1939).] Even when the FLSA made a 40 hour week at 40 cents an hour minimum wage mandatory seven years later, those workers would still have an income of only one-third of that needed for a true living wage. [Paulsen, *Living Wage*, 148.]

Another major deficiency was that the FLSA excluded millions of workers from its protection, many of whom needed the protection the most.⁸⁰ The FLSA was politically crafted in such a way to leave many workers out of its coverage, particularly women and African American southern workers, by excluding from the statute’s definition of covered employee such occupations as agricultural workers, domestic workers, and others.⁸¹

Most ironically, the work of chambermaids like that of Elsie Parrish, whose case made the FLSA possible, was excluded from coverage. In large part because of these exemptions, one critic noted that “the "labor" protected by the FLSA was principally the white, male industrial class that needed protection least.” [Vivien Hart, *BOUND BY OUR CONSTITUTION*, *supra*, at 152.]

Thus, even after the historic enactment of the FLSA, a right to a living wage remained still much more of a hope than reality for large numbers of workers.

But the push for living wages continued, as can be seen in subsequent actions by Roosevelt and his administration. In December of 1941, the National Resources Planning Board (NRPB), an agency in the Executive Office of the President mandated to consider problems of postwar adjustment, issued several reports including one titled *Security, Work and Relief Policies*.⁸² In that report, the NRPB proposed a "New Bill of Rights," which included both a “right to work, usefully and creatively through the productive years” and a “right to fair pay, adequate to command the necessities and amenities of life in exchange for work, ideas, thrift, and other socially valuable service.”⁸³ The federal strategy for full employment was to include “Formal acceptance by the Federal Government of responsibility for insuring jobs at decent pay

to all those able to work regardless of whether or not they can pass a means test.”⁸⁴ The NRPB, like previous New Dealers, regarded public works and public employment as the solutions to the unemployment problem. For those in need of steady work that the private economy could not provide, the federal government should provide a job. [Skocpol, supra, at 174.]

Keeping the ideal of a living wage alive, in 1944, FDR, in 1944, proposed a "second Bill of Rights" under which a new basis of security and prosperity could be established for all—regardless of station, race, or creed. This second Bill of Rights included:

"The right to a useful and remunerative job in the industries or shops or farms or mines of the nation;

The right to earn enough to provide adequate food and clothing and recreation.⁸⁵ [90 Cong. Rec. 57, January 11, 1944.]

Despite these calls for statutory living wages, little progress on the living wage law occurred on the federal level. In fact, the primary challenge for living and minimum wage supporters since 1938 has been to keep trying to raise the minimum wage in the FLSA in order to keep up with the losses inflicted by inflation and to expand the coverage of the law to more low-wage workers.⁸⁶

Despite the ups and downs in the real value of minimum wage, Congress has repeatedly pledged itself to the goal of a living wage for all workers. For example in 1989 Congress pointed out that "The purpose of the [FLSA] was and is to establish a floor below which wages would not fall, a floor which is adequate to support life and a measure of human dignity. It is a laudable legislative effort to ensure a just wage in return for a day's work."⁸⁷

On the national level, as will be noted in a later section, there is a small but budding movement to require federal contractors to pay living wages to their employees.⁸⁸ There has also been a recent push for a constitutional right to a job and a living wage propelled by the fledgling Labor Party, a new organization of progressive union members and their supporters.⁸⁹

While there has been a history of support for living wages, implementation on the federal level has proven very difficult. The major focus of federal activity has been to try to keep raising the minimum wage so it does not continue to lose as much ground to inflation as it has in past decades. But, as the next section will re-emphasize, the minimum wage is no living wage.

Minimum Wage is no Living Wage

The primary reason for the local living wage movement is that the federal minimum wage has failed to provide workers with sufficient wages to support themselves and their families.

The current federal minimum wage of \$5.15 an hour went into effect September 1, 1997.⁹⁰ The value of the minimum wage continues to erode since its high point in the late 1960s and 1970s. According to a 2001 report of the Congressional Research Service, the highest value of the minimum wage was reached in 1968. Had the rate been adjusted to allow it to retain its 1968 value, the present minimum would be about \$7.72 per hour.⁹¹ A White House estimate in early 2001 indicated that the minimum wage: was worth only 65% of the 1968 minimum; would have had to be \$7.92 per hour in 2000 to equal the purchasing power of the minimum wage in 1968; and that inflation was eroding the value of the 1998 minimum wage by \$0.40 per hour per year, or \$800 a year. [White House Fact Sheet: Raising the Minimum Wage, January 8, 2001, U.S. Newswire, 2001 WL 4138694.]

The legislative problem with the federal minimum wage is that it was too low to begin with, it is not indexed for inflation, and it can only be raised by an act of congress. When first passed in 1938, the FLSA only mandated a 25 cents an hour minimum wage, still a poverty wage.⁹² Even as introduced and before it was diluted by legislative compromise, the FLSA only proposed a modest 40 cents an hour minimum wage, barely above the 34 _ cents an hour required by the District of Columbia years in 1918, twenty years before. Of the eleven million workers were actually covered by the FLSA at the time of its passage, only about 300,000 covered workers earned less than the original \$0.25 per hour minimum.[Hart, *supra*, at 152-153. See also Carroll R. Daugherty, "The Economic Coverage of the Fair Labor Standards Act: A Statistical Study," 5 *Law and Contemporary Problems* 406 (1939).] Even when the FLSA made a 40 hour week at 40 cents an hour minimum wage mandatory seven years later, those workers would still have an income of only one-third of that needed for a true living wage. [Paulsen, *Living Wage*, 148.] Also, because it has never been indexed for inflation, the federal minimum wage diminishes in value as soon as it is enacted.⁹³ Recent estimates suggest that the \$5.15 per hour minimum wage in effect in early 2001 was thirty percent lower in real value than the minimum wage was in 1968, even though the economy has become fifty percent more productive since then.⁹⁴

Not even opponents of raising the minimum wage suggest that the minimum wage is a sufficient wage for a worker to live on or enough to raise a family. Those who seek to do away with the minimum wage, or keep the minimum wage low, and who obviously oppose living wage ordinances, never suggest the minimum wage is adequate for living. Opponents of raising

the minimum wage make several arguments including one that not all minimum wage workers are the only wage earner in their household thus no one should expect the minimum wage to be a living wage.⁹⁵ While there is some truth in that argument, there is also some circularity in the argument since people who do not earn enough to live on will usually *have* to live with family or others in order to share expenses because they do not earn enough to survive on their own. Opponents also argue that governmental support for increased minimum wages or enactment of living wages is not necessary because many low-wage workers are eligible for the Earned Income Tax Credit.⁹⁶ There are also implicit problems with that argument since the Earned Income Tax Credit effectively requires all taxpayers, through legislation, to subsidize the wages of workers thus benefitting specific business concerns.⁹⁷ Opponents however are correct that not all people who work at minimum wage jobs are the sole support of their families. Some minimum wage workers are part-time working teenagers who live with their families. But a look at who earns these low wages indicates that many are people who depend on their wages for support and whose families also depend on their wages for support.

Research indicates that if the minimum wage was raised immediately in early 2001 by \$1.50 an hour, the amount proposed to be phased in over 3 years, 11.9 million workers, or 9.9% of the workforce would see an increase in wages. Despite the prevailing wisdom that only teenagers and part-time employees work for minimum wages, 68.2% of the workers affected would be over 20 years old and close to half, 45.3% of the workers, would be full-timers. The majority of the affected workers would be women, 60.6%, and African American and Hispanic workers would disproportionately benefit.⁹⁸ In Louisiana, 13.3% of workers, or over 226,000 people, would get a raise; in Mississippi, 12.3% of workers, or over 137,000 people would get a raise. [State by state breakdowns of how many would have their wages raised are available. Rasell, Bernstein and Boushey, *supra*, Table 2, at 4.]

Recent Democratic proposals for raising the minimum wage have pegged an increase to the \$1.50 an hour range. On February 14, 2001, Congressman Bonior introduced HR 665, the Fair Minimum Wage Act of 2001, seeking to raise minimum wage by \$1.50 over 3 years, to \$6.65 by January 1, 2003.⁹⁹

A recent proposal by President Bush suggests that individual states should be allowed to opt out of any minimum wage increase, but this would likely only exacerbate the condition of low-wage workers as the states most likely to opt out are exactly the same states that have high proportions of low-wage workers.¹⁰⁰ [On the impact see Rasell, Bernstein and Boushey, *supra*, at 1.]

Because there is no real argument that workers can support themselves or their families

on minimum wages and there is no politically realistic proposal on the federal level to provide all workers with a federal living wage, efforts to enact living wages continue to have a local government focus.

Calculating a Living Wage

A living wage is a wage that enables a worker to earn enough to lift herself and her family out of poverty. A living wage allows a worker to become self-sufficient. But how much must a worker earn in order to be able to lift a family out of poverty and become self-sufficient? The calculation of a living wage depends in large part on how one calculates what poverty is and how much it costs to become self supporting.

A common method to calculate a living wage is to see how much a person would need to earn to have income above the Federal Poverty Guidelines.¹⁰¹ While there are serious drawbacks to this approach because the government poverty guidelines are frequently criticized as unrealistically low by many people who work with the poor, they remain the minimum upon which to build any discussion of living wages.¹⁰²

For a single parent with two children, the official poverty guideline for the year 2000 was a yearly income of \$14,150.¹⁰³ For a parent with three kids, the yearly income is \$17,050. For a full-time worker, this means that a parent with two kids would need to make at least \$6.80 per hour, and a parent with three children would need to earn \$8.20 per hour, in order to at least be lifted over the 2000 official poverty threshold. Several cities have pegged their living wage ordinances directly to the poverty guidelines.¹⁰⁴

The problem with this approach is that \$7 to \$8 an hour, while a great improvement over minimum wage, is still not enough for a worker to raise a family. Such workers still need government assistance to be able to survive and government program eligibility guidelines reflect that. People earning poverty level wages cannot realistically purchase health insurance and full-time workers with three kids can earn over \$10 an hour and still be impoverished enough to remain eligible for food stamps.¹⁰⁵ Food stamp eligibility guidelines are available on the web site for the U.S. Department of Agriculture. [www.fns.usda.gov] Workers with two children are eligible for the Earned Income Tax Credit even if they make over \$14.00 an hour.¹⁰⁶

And it is not just government that recognizes that substantial wages are necessary for survival. In fall of 2000, the National Low Income Housing Coalition discovered after a national survey of fair market rentals that the average person who worked 40 hours a week would need to earn \$12.47 an hour to rent a two bedroom apartment.¹⁰⁷ Likewise, religious leaders in early 2000 called for a national living wage of \$25,000 plus health care benefits.¹⁰⁸

Critics say the current official definition of poverty is too low and thus substantially undercounts the real number of poor people, particularly the numbers of working poor people.

In fact, the National Research Council which studied the poverty thresholds has concluded that there are at least ten different ways to calculate the poverty line which would increase the poverty thresholds from 21% to over 50% higher than current levels.¹⁰⁹ It is also true that other critics think the current official definition of poverty overestimates the number of people in poverty. Their criticisms are primarily based on the manner in which the current method evaluates income of people and calculates inflation. Currently, the Census Bureau counts all pretax income including income from cash welfare programs like social security, disability income and welfare but does not count as income other non-cash governmental benefits like food stamps, medical care, social services, education, training and housing benefits. Because the Census Bureau does not calculate assets, people with large savings or significant resources such as houses but low incomes in a year are erroneously counted as poor. These critics also urge that inflation should not be calculated by using the Consumer Price Index, which includes increases or decreases in the cost of buying a house, but on an alternative scale that incorporates adjustments in the cost of renting a house. They conclude that using the alternative index for inflation and another definition of income that includes state and federal tax benefits, employer-provided benefits, food stamps, housing, school lunch, and a fungible value for some government provided health care, the number of people in poverty would decrease substantially from current levels, lifting millions of people over the poverty line.]See Poverty Under Alternative Measures of Income and Price Inflation, 1998 Green Book, 1305-1309. For an example of other criticisms of the current poverty calculations see “The Myth of Widespread American Poverty,” by Robert Rector, Executive Summary 1221 on line at the Heritage Foundation www.heritage.org/library/] An on-line search reveals much dispute over his position but it is provocative.

Because the official poverty threshold is so low, advocates for the working poor often look to the food stamp guidelines for a more realistic income to determine what kind of living wage is necessary to lift a family out of poverty. Since food stamp guidelines are 130% of the official poverty thresholds, a parent with two kids would have to earn well over \$8.00 an hour for a living wage and a family with three kids would need over \$10.00 an hour to lift their families to 130% of the 2000 poverty line. This is what St. Louis voters used in 2000 when they pegged their city’s living wage ordinance at 130% of the federal poverty guideline for a family of three, \$8.67 an hour with benefits and \$9.92 without.¹¹⁰

Any calculation of a true living wage must recognize what common sense and our government has long recognized, that wages far higher than minimum wage still leave families in need. A challenge for the living wage movement is to continue to try to make the legislative enactment of living wage ordinances define living wages sufficiently generous to enable workers to become self supporting.

Local Government and Living Wage Ordinances

More than 50 jurisdictions have enacted living wage ordinances and another 75 or so have ongoing living wage campaigns.¹¹¹ [See also Carolyn Hirschman, "Paying Up," HR Magazine, July 1, 2000.] While most of these ordinances apply to businesses in the jurisdiction which have public contracts with local government, the jurisdictions define a variety of hourly rates as living wages and apply and operate in quite different ways as well. This section will illustrate and analyze some of the variations in existing living wage ordinances in terms of the hourly rates required for wages and the scope and coverage of local ordinances.

Hourly Wage Defined As Living Wage

The first element of a local living wage ordinance is the definition of what is the minimum hourly rate that businesses are required to pay in order to comply. Local living wage ordinances set living wage amounts at quite different levels. Some cities set an hourly rate in the ordinance as the living wage required to be paid by businesses having public contracts. Some index the hourly wage to inflation. Others peg the living wage to a percentage of the poverty level for a family of three or in some cases four members. Some cities require benefits like health insurance to be paid in addition to a fixed hourly rate.¹¹² In other cities, the living wage is characterized both as an hourly wage that has to be paid if the employer is paying benefits or another higher hourly wage when the business does not pay benefits. Below is a selective list of cities and their living wage laws, current as of early 2001:¹¹³

LIVING WAGE HOURLY RATE TABLE

City	Living Wage	Living Wage If No Benefits Paid
Alexandria, VA ¹¹⁴ [Frederick Kunkle and Craig Thomas, "Alexandria Officials Aim to Defend Living Wage," Washington Post, February 1, 2001.]		Alexandria requires city contractors to pay \$9.84 per hour (including insurance) to employees on city contracts. An effort is underway in the state legislature to pre-empt the law. \$9.84 (indexed for inflation)
Baltimore, MD ¹¹⁵ [See also discussion of Baltimore Ordinance No. 442 (Dec 13, 1994) in Spectar, supra, at 83 and 84, fns 116-119.]		\$7.70

Berkeley, CA	\$9.75 with benefits	\$11.37 without benefits
Boston, MA ¹¹⁶	\$8.43	
Buffalo, NY	\$7.15 with benefits	\$8.15 without benefits
Cambridge, MA	\$10.00	
Chicago, IL ¹¹⁷ [See also discussion of Chicago Municipal Code Section 2-92-610A (July 29, 1998) in Spectar, supra, at 86.]	\$7.60	
Cleveland, OH	\$8.20	
Dane County, WI	\$8.03	
Denver, CO	\$8.03 (indexed to federal poverty level for family of 4)	
Des Moines	\$9.00	
Detroit, MI ¹¹⁸ [See discussion of Detroit, MI, Ordinance, No. 45-98, Detroit Code Ch 18, art V, Sections 18-5-71 to 18-5-76 (1998) in Spectar, supra, at 84, fn 121.]	\$8.35 with benefits	\$10.44 without benefits
Duluth, MI	\$6.50 with benefits	\$7.25 without benefits
Durham, NC	\$7.55	
Eau Claire, WI	\$6.67 with benefits	\$7.40 without benefits
Hartford, CT		110% of family of 4 (benefits required)
Hayward, CA	\$8.00 with benefits	\$9.25 without benefits
Jersey City, NJ	\$7.50 benefits required	
Los Angeles, CA ¹¹⁹ [See discussion of Los Angeles Ordinance No 172337, Section 10.37.2(a) in Spectar, supra, at 87-88.]	\$8.97	
Madison, WI	\$7.91 with benefits	\$9.25 without benefits
Miami, FL ¹²⁰	\$8.56 with benefits	\$9.81 without benefits
Milwaukee, WI		\$6.67 (indexed to poverty level of family of three)
Minneapolis, MN		\$8.83 (indexed to poverty level of family of four)
Oakland, CA ¹²¹ [See discussion of Oakland, CA ordinance no 12050 C.M.S. Section 3(a)(April 7, 1998) in Spectar, supra, at 87.]	\$8.35 with benefits	\$9.60 without benefits
Omaha, NB ¹²²	\$7.91	
Pasadena, CA	\$7.25 with benefits	\$8.50 without benefits
Portland, OR ¹²³ [See discussion of Portland Or, Ordinance No. 172161 (amending Ordinance No 170222, April 15, 1998) in Spectar, supra, at 86-87.]	\$8.00 (requires benefits)	
San Antonio, TX	\$9.27 with benefits	\$10.13 without benefits

St. Louis, MO ¹²⁴ [See also David Nicklaus, "Living Wage Law," St. Louis Post Dispatch, September 6, 2000. Law applies to city contracts and to companies receiving city tax breaks.]	\$8.84 with benefits	\$10.23 without benefits
St. Paul, MN ¹²⁵	\$8.03 with benefits	\$8.83 without benefits
San Fernando, CA	\$8.50	
San Francisco, CA ¹²⁶	\$10.00 (benefits required)	
San Jose, CA ¹²⁷	\$9.50 with benefits	\$10.75 without benefits
Santa Clara, CA	\$10.00 (benefits required)	
Santa Cruz, CA ¹²⁸ [Minimum Wage: Santa Cruz Adopts Living Wage" Measure of \$12 Hourly for City and Contract Employees," BNA Daily Labor Report, October 26, 2000. Supporters argued that it costs \$27 an hour to live in Santa Cruz, which has become a commuter base for high tech workers, but asked for \$13 an hour with benefits and \$14 without.	\$11.00 with benefits	\$12.00 without benefits
Somerville, MA	\$8.35	
Toledo, OH	\$8.84 with benefits	\$10.14 without benefits
Tucson, AZ ¹²⁹ [Although the state legislature tried to overturn the law in 2000, the attempt failed. "Tucson Living Wage Ordinance Still In Effect," BNA Daily Labor Report, April 25, 2000.]	\$8.00 with benefits	\$9.00 without benefits
Warren, MI	\$8.35 with benefits	\$10.44 without benefits
West Hollywood, CA	\$7.25 with benefits	\$8.50 without benefits
Ypsilanti, MI	\$8.50 with benefits	\$10.00 without benefits

The variations in living wage rates are substantial, from a low of \$6.50 an hour plus benefits in Duluth (\$13,520 a year) to a high of \$11.00 an hour plus benefits in Santa Cruz (\$22,800). Recall that the living wage advocates in Santa Cruz were seeking \$27.00 an hour based on the local high cost of living.¹³⁰ The coverage and operation of living wage ordinances are likewise varied.

Coverage of Local Living Wage Ordinances

Most living wage ordinances require companies which hold contracts over a certain dollar amount with local government to pay their employees, at least those who are hired to perform the work contracted for with the local government, a living wage. Coverage varies substantially. Some jurisdictions require all jobs created by public contract while others exempt small contractors or non-profit contractors. While there have been a few proposed living wage ordinances which would apply to all businesses in the jurisdiction, operating like a local minimum wage, none of these have yet been enacted.¹³¹ This section will concentrate only on ordinances which have been enacted.

Most living wage ordinances apply to businesses that receive over a specific threshold amount of money in a local contract plus a definition of what types of public contracts or public benefits are covered.

The following cities are examples of the straight forward application of local living wage law to certain categories of public contractors: the Baltimore living wage law applies to businesses with local public contracts over \$5,000;¹³² [See also discussion of Baltimore Ordinance No. 442 (Dec 13, 1994) in Spectar, supra, at 83 and 84, fns 116-119.] Santa Cruz applies its living wage law to public contractors which have received over \$10,000 annually;¹³³ and Miami-Dade requires all employers bidding on contracts over \$100,000 to pay living wages.¹³⁴

However, several cities do not restrict their living wage mandate only to businesses which are parties to local public contracts, but also apply the living wage law requirements to other businesses which receive governmental benefits.

St. Louis, for example, requires living wages be paid by all city contractors and all companies which receive city tax breaks, grant money or other forms of public aid.¹³⁵ [See also David Nicklaus, "Living Wage Law," St. Louis Post Dispatch, September 6, 2000.] Law applies to city contracts and to companies receiving city tax breaks. Oakland applies its living wage law to companies receiving city contracts over \$25,000 and also to any entity which received more than \$100,000 annually in financial assistance from the city including grants, rent subsidies, bond financing, tax credits and loan forgiveness.¹³⁶ Detroit requires living wages be paid by all businesses receiving public service contracts over \$50,000, any other businesses which receive financial assistance worth over \$50,000 from the city including federal grants administered by the city, revenue bond financing, tax credits and includes contractors, subcontractors or leaseholders at subsidized sites.¹³⁷ The Los Angeles Living Wage Ordinance requires a living wage be paid by several types of businesses: firms with service contracts over \$25,000; recipients of bond financing and other subsidies worth at least \$1,000,000 a year; and

city lessees and licensees with \$200,000 or more in annual revenues and eight or more employees.¹³⁸ Gary Indiana requires recipients of tax abatements to pay living wages.¹³⁹ Houston requires living wages to be paid by companies that receive tax abatement.¹⁴⁰

Some living wage ordinances exempt non-profits and do not apply to certain categories of workers. Santa Cruz exempts businesses or nonprofits with fewer than five employees, employees under 18 years of age, and businesses that have collective bargaining agreements or already pay higher wages than those required.¹⁴¹ San Antonio requires companies that receive tax abatement to pay 70% of their new employees at least \$9.27 an hour and, if they are a durable goods manufacturer, pay 70% of their employees \$10.13 an hour.¹⁴² [Also see Living Wage Proposals by City, Employment Policies Institute, www.epinonline.org]

This sampling of a few of the fifty living wage ordinances demonstrates substantial variations in hourly amounts that constitute living wages and the scope and coverage of the local laws. As these communities collect information from the impact of these relatively new laws, the various hourly rates and the varying thresholds of coverage should provide a wealth of legal and economic experience for the living wage movement and its opponents to analyze. The variations are a tribute to the willingness of local jurisdictions to allow the law to develop in a way that has not appeared possible on the federal or state level.

State Wage Laws

Living wage campaigns have not made much recent progress on the state level in raising the minimum wage above the federal level for all workers in a state. As the table below shows, twenty-six states match the federal rate, nine states and the District of Columbia have higher minimums, and the rest have lower rates than the federal. The one area where many states have historically mandated higher than minimum wages is in the area of certain public contracts, usually construction projects.¹⁴³ [See a discussion of these state laws in “Employees’ Private Right of Action to Enforce State Statute Requiring Payment of Prevailing Wages on Public Works Projects.” 10 ALR, 5th, 360 (1993).] Advocates must be knowledgeable about the state minimum wage law because, as a subsequent section will show, opponents of living wage laws have had some success in prohibiting local jurisdictions from setting local living wage laws higher than the state minimum wage law.¹⁴⁴

STATE MINIMUM WAGE TABLE¹⁴⁵

Additionally, each state that has a lower minimum wage than the FLSA minimum or no minimum wage does not apply that law if the employer is covered by FLSA.

State	Minimum Wage
Alabama	No minimum
Alaska	\$0.50 over FLSA minimum
Arizona	No minimum
Arkansas	\$5.15
California	\$6.25, will raise to \$6.75 January 1, 2002
Colorado	\$5.15
Connecticut	\$6.40, will raise to \$6.70 after January 1, 2002
Delaware	\$6.15
D.C.	\$1.00 over FLSA minimum
Florida	No minimum
Georgia	\$3.25
Hawaii	\$5.25
Idaho	\$5.15
Illinois	Adopts FLSA minimum
Indiana	\$5.15
Iowa	Adopts FLSA minimum
Kansas	\$2.65

Kentucky	\$5.15
Louisiana	No minimum
Maine	\$5.15
Maryland	\$5.15
Massachusetts	\$6.75
Michigan	\$5.15
Minnesota	\$5.15-\$4.90 depending on size of employer
Mississippi	No minimum
Montana	\$5.15-\$4.00 depending on size of employer
Nebraska	\$5.15
Nevada	\$5.15
New Hampshire	\$5.15
New Jersey	\$5.15
New Mexico	\$4.25
New York	\$5.15
North Carolina	\$5.15
North Dakota	\$5.15
Ohio	\$4.25-\$2.80 depending on size of employer
Oklahoma	\$5.15-\$2.00 depending on size of employer
Oregon	\$6.50
Pennsylvania	\$5.15
Rhode Island	\$6.15
S. Carolina	No minimum
S. Dakota	\$5.15
Tennessee	No minimum
Texas	\$3.35
Utah	\$5.15
Vermont	\$5.75
Virginia	\$5.15
Washington	\$6.72 and indexed to inflation
West Virginia	\$5.15
Wisconsin	\$5.15
Wyoming	\$1.60

While state hourly rates that are higher than the federal minimum are not nearly at the levels of local living wage ordinances, their sweeping coverage and breadth, which typically apply to nearly all workers state-wide, make these laws applicable to many, many more workers

than any local living wage ordinance.

Federal Government and Living Wage

While most of the effort of the living wage movement has been dedicated to the enactment of living wages on the local level, there is recent effort on the federal level that should be briefly noted. Legislative efforts have been organized on the federal level to extend living wages to large companies and local governments with federal contracts, requiring them to pay their workers at least \$8.20 an hour.¹⁴⁶

In May 2000, Rep. Luis Gutierrez (D-Ill), and 83 House co-sponsors, introduced the “Federal Living Wage Responsibility Act,” legislation to require federal contractors to pay workers on federal contracts at least \$8.20 an hour.¹⁴⁷ Similar legislation had been offered in two prior sessions.¹⁴⁸ The 2000 legislation specifically keyed hourly wages for employees of federal contracts over \$10,000 to an amount sufficient to earn enough to meet the federal poverty threshold for a family of four, which in 2000 was \$8.20 an hour.¹⁴⁹

The Economic Policy Institute released a report in November 2000 which found that more than 162,000 federal contract workers, 1 in every 10 federal contract workers, earn less than a living wage of \$8.20 an hour, the amount necessary to lift a family of four above the poverty line.¹⁵⁰ While many other federal workers are paid living wages as a result of prevailing wage statutes, the workers who are earning below poverty level wages constitute 11% of the total 1.4 million federal contract workers in the country.¹⁵¹ These workers are mostly female, adult, full-time workers, and disproportionately minorities. Most of the contractors paying these low wages are defense contractors and other large businesses, not small businesses nor non-profits.¹⁵²

Despite the lack of substantive action on the federal level so far, this is an area to watch, as it could provide substantial momentum and information if such legislation is enacted.

Opposition to Living Wage Movement: Maximum Minimums¹⁵³

Not everyone supports the living wage movement. As in all efforts to legislate reform, there are countervailing forces. For the living wage movement, most of the opposition comes from the same sources that oppose raising, or sometimes even the existence of, the minimum wage.¹⁵⁴ These folks often seek to put a legislative maximum on the minimum wage that local communities can set.

Opponents of living wages argue that these ordinances could potentially increase the local poverty rate and cost too much. A survey of over 300 economists conducted in 2000 for the Employment Policies Institute, a non-profit research organization generally opposed to raises in both the minimum wage and the enactment of living wage ordinances, found that nearly eight in ten of the labor economists surveyed thought living wage ordinances would result in employers hiring higher skilled workers and over 70% said the laws could potentially reduce the number of entry-level jobs and thus increase the local poverty rate.¹⁵⁵ The opposition also suggests that living wage ordinances increase the cost of governmental contracts. Pasadena, California, estimated their living wage ordinance cost about \$200,000 for the year 2000; Cambridge, Massachusetts estimated its cost at \$300,000; Madison, Wisconsin estimated its cost at \$47,000.¹⁵⁶ While there is certainly some cost associated with living wages, this article will not join in the aforementioned melee of economists. Others disagree.¹⁵⁷

A brief word about the economic impact of living wages. Ever since government was first involved in the setting of minimum wages, there have been controversies about the economic impact of setting wage floors.¹⁵⁸ It is no different for living wages. The economic impact of the living wage ordinances varies significantly depending on the wage rate and scope of coverage of the ordinance. While an economic analysis is beyond the scope of this article, there are substantial resources available for those seeking more on this phase of the living wage discussion. Living wage proponents point to data that suggests the actual financial impact on covered businesses is very small, less than 1% of the overall spending of these concerns.¹⁵⁹

Pollin and Luce conclude that there is a significant economic impact in these ordinances, but that the wage and benefit increases amount to less than 1 percent of the total spending of the covered businesses. See discussion at pp 87-135. Opponents disagree, arguing that living wages put too big a burden on business and actually harm the cause of the working poor by making entry-level employment less available.¹⁶⁰ These economic issues will continue to be debated as long as there are opportunities to do so.

The most successful method used by opponents of living wage ordinances has been to ask

state legislatures to ban local jurisdictions from enacting a living wage that mandates a minimum higher than the state minimum wage.¹⁶¹

The most recent example of the maximum minimum effort occurred in February 2001 when Utah passed a state law prohibiting local governments from setting a minimum wage higher than the state minimum wage of \$5.15 an hour. The main proponent of the legislation argued that the maximum minimum wage bill was "one of the most family-friendly pieces of legislation we have passed this session." He argued that the ban on higher municipal minimum wages will make it easier "for young people and people who have just entered this country" to find entry-level work. "We should not allow municipalities to arbitrarily set a wage that denies entry to those trying to get a foothold" in the job market.¹⁶² In Utah, S.B.138, bars local governments from setting a minimum wage higher than the state minimum wage, sponsored by Sen. Howard Stephenson (R), was approved by the House Feb. 26. Stephenson told the Bureau of National Affairs that the minimum wage bill is "one of the most family-friendly pieces of legislation we have passed this session." He said the ban on higher municipal minimum wages will make it easier "for young people and people who have just entered this country" to find entry-level work. Opponents of the bill have characterized local minimum wages as a way for cities and towns to enact a "living wage." Stephenson has said the state should work for a fair "entry-level wage." "We should not allow municipalities to arbitrarily set a wage that denies entry to those trying to get a foothold" in the job market, he added. [Tripp Baltz, "State Laws: Utah Measures on Pay Deductions, Local Minimum Wage Go to Governor," BNA Daily Labor Report, March 1, 2001.]

Several other legislatures have considered such state-wide maximum minimums. The Louisiana legislature banned local living wages laws higher than the state minimum just as New Orleans was facing a living wage ballot initiative.¹⁶³ Michigan is trying to do the same.¹⁶⁴

Arizona, Kansas, Michigan and Louisiana have considered state laws prohibiting living wages, as of July 1, 2000, only Louisiana's passed. [Carolyn Hirschman, "Paying Up," HR Magazine, July 1, 2000.] The Arizona legislature turned back an attempt in April 2000 to impose a state minimum maximum, which could have imperiled Tucson's living wage ordinance.¹⁶⁵

Criticisms of the business community included the increased cost to public entities like the Tucson convention center. [William Carlile, "Minimum Wage: Tucson, Ariz., Adopts 'Living Wage' Ordinance: Applies to City Contractors," BNA, Daily Labor Report, September 15, 1999.]

Other methods of opposition have also been tried. A traditional expression of opposition to living wage ordinances is litigation. A lawsuit was filed late 2000 in U.S. District Court seeking an injunction to halt the San Francisco living wage ordinance. The plaintiff, a restaurant that is part of a national chain, charges that the ordinance pre-empts state and federal laws and is unfair because it applies only to certain businesses. The city argues that the statute applies to an area subject to city restrictions on development which have resulted in businesses enjoying a monopoly position with hefty profits.¹⁶⁶ No decision was available at the time this article was finalized but the author is dubious of the chances of success of the challenge. Another method, so far unsuccessful, of opposing living wages is for opponents to offer their own non-living wage ballot initiative.¹⁶⁷

State legislative efforts to impose maximum minimums on local jurisdictions appear to be the most effective legal tool of the opponents of living wage ordinances.

Future Issues for the Living Wage Movement

It takes nothing away from the accomplishments of the living wage movement to point out the limitations of current enactments and the areas where improvement are needed. The challenge is to make these laws more generous and more encompassing.

Legislation is difficult and compromise is often necessary in the beginning. But there are indications that the compromises necessary to pass the living wage legislation have in some cases watered them down so much that they are not having significant impact.¹⁶⁸ According to one living wage proponent, the usual impact of a living wage ordinance is on less than 1 percent of a city's total workforce.¹⁶⁹ But see Don Finerock, "Living Wage is Approved for Dade," Miami Herald, May 12, 1999, which estimated the Miami living wage ordinance will raise the salaries of 1760 full and part-time employees. Some ordinances have even less impact.¹⁷⁰ The very generous Berkeley ordinance was estimated to apply to only 56 workers. [Henry K. Lee, "Berkeley Sued by Restaurant: Living Wage law's extension challenged," San Francisco Chronicle, October 21, 2000.]

While the limited coverage is understandable in the initial phase of this new part of the living wage movement, the future of the living wage movement will be evaluated on not only how many jurisdictions it expands to, but how much it increases the coverage of living wage mandates to give relief to more and more workers.

Thus, one of the areas of needed growth in the living wage movement is to expand the scope of workers covered by these laws. Jurisdictions could amend and apply their laws more broadly to contracts with smaller threshold amounts. The Baltimore ordinance which covers all municipal contracts over \$5,000 has broader impact on low-wage workers than the ordinance of Boston which only applies to contracts over \$100,000.¹⁷¹ See Buffalo, citizens complain that their local living wage, enacted in August 1999, was not being enforced a year later because of questions about which employees are covered. The law as proposed had a \$5,000 contract threshold but was amended in passage to apply to a \$50,000 contract threshold. [Fred O. Williams, "City's 'Living Wage' Law Languishes Year After Passage," Buffalo News, July 21, 2000.] Jurisdictions which limit the types of workers covered could expand their coverage. For example, the fair wage policy in effect in Portland, Oregon restricts coverage to city contractors who hire janitors, security guards, and parking lot attendants.¹⁷² This and similar ordinances could be amended to apply to many more workers and expand their coverage.

Jurisdictions could also expand the coverage of living wage ordinances beyond local contractors to other financial instruments of the government like grantees, licensees, lessees, those receiving tax credits or special zoning relief, as a few cities do in their law.¹⁷³ Cleveland applies their living wage law to recipients of contracts and subsidies worth at least \$75,000.¹⁷⁴ Duluth applies their living wage law to companies receiving over \$25,000 in economic assistance.¹⁷⁵ Berkeley extended their living wage law to cover all businesses in the city's public marina area with annual gross sales of \$350,000 and at least six employees arguing that these businesses are made possible by public funds.¹⁷⁶ Santa Monica City Council is considering a proposal which would require hotels, restaurants, and other businesses with 50 or more employees, which are in a designated coastal zone, to pay living wages and benefits.¹⁷⁷

Jurisdictions could require all businesses, even those without public contracts, within the jurisdiction to be subject to a living wage ordinance, like a ballot proposition pending before the voters of the City of New Orleans. In New Orleans, ACORN and the AFL-CIO are pushing a 2002 ballot initiative to establish a city-wide minimum wage one dollar above the federal minimum wage.¹⁷⁸ Though the wage amount proposed for New Orleans is significantly lower than most living wage ordinances, the scope of the proposal is broader and would apply to most all businesses in the city, not just those with city contracts. The ballot initiative came about over the objection of the New Orleans City Council and the Louisiana legislature and only after years of work by ACORN including several trips through the Louisiana legal system.¹⁷⁹ The economic impact of the proposed raise has been estimated at \$71 million dollars in increased wages but it will be broadly diffused through over 12,000 businesses and city government.¹⁸⁰ Efforts to extend living wages to private employees are also being considered in Baltimore and Knoxville.¹⁸¹

The living wage movement will also have to struggle with a defensive effort to keep states from enacting laws prohibiting local living wage ordinances. These maximum minimums have passed in Louisiana,¹⁸² and Utah.¹⁸³ Similar efforts, so far unsuccessful, have been launched in Michigan¹⁸⁴ Arizona, Kansas, Michigan and Louisiana have considered state laws prohibiting living wages, as of July 1, 2000, only Louisiana's passed. [Carolyn Hirschman, "Paying Up," HR Magazine, July 1, 2000.] and Arizona.¹⁸⁵ Criticisms of the business community included the increased cost to public entities like the Tucson convention center. [William Carlile, "Minimum Wage: Tucson, Ariz., Adopts 'Living Wage' Ordinance: Applies to City Contractors," BNA, Daily Labor Report, September 15, 1999.]

A final challenge for the living wage movement is to enact real living wage rates, rates that allow workers to be self supporting. That means hourly living wage rates of over \$6, \$7, or even \$8 an hour. As previous section on calculation of living showed, workers really need

wages in the range of \$10 an hour and up to begin to move off of government assistance like food stamps and become self-sufficient.¹⁸⁶

Obviously as the movement seeks to expand the coverage of living wage ordinances, and to increase the amount of the hourly wages, opposition to the movement will increase as well. Because living wage ordinances have usually limited coverage to workers employed by local governments and public contractors, they have so far avoided more bitter political opposition from business groups.¹⁸⁷

The future of the living wage movement is bound up in part with the economy. How the economy does and what evidence comes in on the effect of these relatively new laws will help determine the future of the living wage movement. As the Wall Street Journal observed “If they prove successful at helping the working poor escape poverty, with relatively little harm to local economies, living wages are probably here to stay.”¹⁸⁸

It is much easier to list challenges than to overcome them, but the living wage movement has had such a series of significant successes in recent years that it clearly appears to be strong enough to address these future issues.

Conclusion

There is a reason that advocacy for living wages has been going on for over one hundred years, it is very tough work. However, recent victories have provided a surge of energy and enthusiasm for those who support the rights of self-sufficiency for all workers. The challenge is to sustain that momentum and to substantially increase the numbers of workers who are entitled by law to earn living wages. For the foreseeable future, the only real opportunity to implement a living wage, a wage sufficient for workers to support their families, lies on the local level in the tireless efforts of the living wage movement.

¹ Professor of Law, Loyola University New Orleans. The author dedicates this article to all my co-workers at Haag's warehouse in 1964 and 1965. The author also notes that he has been lead counsel for citizen and ACORN efforts in New Orleans to put a proposal on the ballot to raise the minimum wage in the City of New Orleans to one dollar over the federal minimum wage.

² Jim Newton, "L.A.'s Growing Pay Gap Looms as Political Issue Poverty: Santa Monica considers minimum wage law and L.A. mayoral hopefuls weigh in on plight of working poor." Los Angeles Times, September 9, 1999.

"Every night, when the movers and shakers head out of the Central Business District's gleaming office towers, Iva White is just showing up. Her job: to clean, vacuum and dust the offices where some of New Orleans' biggest business gets done. Her reward: \$5.20 an hour, a nickel above the minimum wage, for 3 hours of work each night. Her paycheck, after deductions: about \$140 every two weeks. Stephanie Grace, "Groups Wage War Over Pay in New Orleans," New Orleans Times-Picayune, January 17, 2001.

³ Those interested in more about the living wage movement should consult, as I have, the following excellent resources: Chauna Brocht, The Forgotten Workforce, November 2000 briefing paper, Economic Policy Institute; David Card and Alan B. Krueger, Myth and Measurement: The New Economics of the Minimum Wage (Princeton University Press 1995); Lawrence B. Glickman, A Living Wage: American Workers and the Making of Consumer Society (Cornell Press 1997); Seth Harris, Conceptions of Fairness and the Fair Labor Standards Act, 18 Hofstra Labor & Employment L. J. 19 (2000); Vivien Hart, Bound by Our Constitution: Women, Workers and the Minimum Wage (Princeton University Press 1994); Willis J. Norlund, The Quest for a Living Wage: The History of the Federal Minimum Wage Program (Greenwood Press, 1997); Robert Pollin & Stephanie Luce, The Living Wage: Building a Fair Economy (New Press: NY 1998); Edith Rasell, Jared Bernstein, and Heather Boushey, Step Up, Not Out: The Case for Raising the Federal Minimum Wage for Workers in Every State, Economic Policy Institute, Issue Brief # 149, February 7, 2001; John A. Ryan, A Living Wage (Macmillan, NY, 1920); J.M. Spectar, "Pay Me Fairly, Kathie Lee! The WTO, The Right to a Living Wage, and a Proposed Protocol," 20 N.Y L.S. J. Intl. & Comp. L. 61(2000); and Jerald Waltman, THE POLITICS OF THE MINIMUM WAGE (2000).

Organizations providing information about living wage issues include: ACORN, an organization committed to supporting living wage ordinances www.livingwagecampaign.org ; AFSCME, a union supporting living wage ordinances, Www.afscme.org/livingwage ; the

Economic Policies Institute, supportive of living wage ordinances, www.epinet.org; the Employment Policies Institute, a comprehensive source for information opposing raising the minimum wage or enacting living wage ordinances, www.epionline.org ; See also www.makingwageswork.org .

⁴ “Minimum Wage: Santa Cruz Adopts “Living Wage” Measure of \$12 Hourly for City and Contract Employees,” BNA Daily Labor Report, October 26, 2000.

⁵ “Minimum Wage: Santa Cruz Adopts “Living Wage” Measure of \$12 Hourly for City and Contract Employees,” BNA Daily Labor Report, October 26, 2000. Supporters argued that it costs \$27 an hour to live in Santa Cruz, which has become a commuter base for high tech workers, but asked for \$13 an hour with benefits and \$14 without.

⁶ “Minimum Wage: Santa Cruz Adopts “Living Wage” Measure of \$12 Hourly for City and Contract Employees,” BNA Daily Labor Report, October 26, 2000. Sanata Cruz joins 55 other cities and counties requiring contractors that receive contracts of \$10,000 or more to pay a living wage to workers. Campaigns are under way in another 75 cities and counties to enact a living wage.

⁷ 89 Cong. Rec. 4960 (1937)(statement of Pres. Franklin D. Roosevelt).

As others have noted, the concept of a living wage predates FDR. See discussion of 1913 Wisconsin statute directing the Wisconsin Industrial Commission to establish a living wage sufficient to enable employees to “maintain himself or herself under conditions consistent with his or her welfare.” J.M. Spectar, “Pay Me Fairly, Kathie Lee! The WTO, The Right to a Living Wage, and a Proposed Protocol,” 20 N.Y L.S. J. Intl. & Comp. L. 61, 62 (2000).

⁸ There are also efforts to expand and apply living wage contracts on the federal level and to broaden the coverage of living wages in local jurisdictions into businesses which do not receive public contracts, which will be discussed later in the article.

⁹ Peter Waldman, “Prosperity is Good for Living Wage Drive,” WSJ, December 20, 1999.

¹⁰ Carolyn Hirschman, “Paying Up,” HR Magazine, July 1, 2000.

¹¹ At the time of the writing of this article, the federal minimum wage was \$5.15, an hourly wage put into effect September 1, 1997. 29 USC 206, PL 104-188, Section 2104(b). According to a 2001 report of the Congressional Research Service, the highest value of the minimum wage was reached in 1968. Had the rate been adjusted to allow it to retain its 1968 value, the present minimum would be about \$7.72 per hour. William G. Whittaker, “RL30690: Minimum Wage & Related Issues Before the Congress: A Status Report,” Congressional Research Service, January 24, 2001. [Www.cnie.org/nle/econ-86.html#_1_9](http://www.cnie.org/nle/econ-86.html#_1_9)

¹² See later section on How Local Government Living Wage Ordinances Work.

¹³ See later sections on historical, popular and religious support for living wages.

¹⁴ “Minimum Wage: Santa Cruz Adopts “Living Wage” Measure of \$12 Hourly for City and Contract Employees,” BNA Daily Labor Report, October 26, 2000. Sanata Cruz joins 55 other cities and counties requiring contractors that receive contracts of \$10,000 or more to pay a living wage to workers. Campaigns are under way in another 75 cities and counties to enact a living

wage.

¹⁵ Michele Amber, “Low-Wage Workers: AFSCME, Church Group Sponsor Workers’ Organization in Baltimore,” BNA, Daily Labor Report, January 3, 1995.

¹⁶ Michele Amber, “Low-Wage Workers: AFSCME, Church Group Sponsor Workers’ Organization in Baltimore,” BNA, Daily Labor Report, January 3, 1995.

¹⁷ Michelle Amber, “Civil Rights: Labor, Religious Leaders Announce Plans to Work Together to Promote Worker Rights,” BNA, Daily Labor Report, October 13, 2000.

¹⁸ LIVING WAGES POLICY: THE BASICS, Employment Policies Institute 7 (2000).

¹⁹ John Sweeney, “Building A Labor Movement strategy for the New Century,” 7 Georgetown J on Poverty Law & Policy 163, 165-166 (2000).

²⁰ Pollin & Luce, *supra*, at 8.

For example, the Association of Community Organizations for Reform Now (ACORN) has worked on numerous local living wage campaigns with the AFL-CIO and is active in the federal living wage campaign. Fawn M. Johnson, “Minimum Wage: Nonprofit to Launch National Campaign to Push for Federal Living Wage Legislation.” BNA, Daily Labor Report, November 29, 2000.

²¹ See later section on religious support for living wage.

Seth Harris, *supra*, at 39-46, outlines the efforts of religious leaders in the effort to create laws for minimum wages.

A prominent Catholic priest, John Ryan, wrote in the early 1900s that “The wage earner’s right to a decent livelihood in the abstract means in the concrete the right to a living wage.” John Ryan, *Living wage*, p 116.

“A living wage is the minimum of justice, not the full measure of justice,” recently observed one moral theologian. Patricia Ann Lamoureux, “Is a Living Wage a Just Wage?” *America*, February 19, 2001.

²² See longer discussion of Catholic support for living wage in section on history of support for living wage. The Catholic church has a long history of advocating that ethics and justice require working people be given both a right to work and a right to receive a living wage for their work. David L. Gregory, *Catholic Social Teaching On Work*, *Labor Law Journal*, March 1998, 912-919. See also David L. Gregory, *Breaking the Exploitation of Labor?: Tensions Regarding the Welfare Workforce*, 25 *Fordham Urban law Journal* 1, 30-35 (1997).

²³ See 1997 Living Wage Resolution posted on web site of Episcopal Public Policy Network, <http://ecusa.anglican.org> calling for a living wage set at the poverty threshold for a family of 4, or, in 1997 dollars, \$7.50 an hour plus benefits.

²⁴ See Resolution February 28, 2000 on the web site of the Jewish Council of Public Affairs, www.jewishpublicaffairs.org

²⁵ 1997 UUA General Resolution, “Working for a Just Economic Community” called for “A true single minimum wage, applicable to all workers, that provides an adequate standard of living.” The 2000 Statement of Conscience, UUA, “Economic Injustice, Poverty and Racism: We Can Make a Difference,” “Our work for economic justice must include support for fair wages and

benefits.” Available on the website of the Unitarian Universalist Association, www.uua.org

²⁶ See Resolution on home page of 2000 General Conference of United Methodist Church, www.gc2000.org

²⁷ Linda Roeder, “Minimum Wage: Survey Shows Support for Living Wage, Economists Say at Washington Summit,” BNA Daily Labor Report, Thursday May 25, 2000. The survey was prepared in connection with a conference sponsored by Jobs for the Future, “Low Wage Workers in the New Economy: Strategies for Opportunity and Advancement.” The survey was conducted for Jobs for the Future which generally supports living wage ordinances. Copies of the survey results are available with the program conference materials on the web site for Jobs for the Future at www.jff.org

²⁸ See Jerald Waltman, THE POLITICS OF THE MINIMUM WAGE 48-68 (2000). When the minimum wage was first introduced in the 1930s, Americans backed it by a 3 to 2 margin. In the decades since that time there has been “heavy public backing for increasing the minimum wage” according to Gallup polls. George Gallup, “Support for Higher Minimum Wage,” 1987 San Francisco Chronicle, May 28, 1987.

Opinion polls taken over the last ten years have consistently shown overwhelming support for raising the minimum wage, among both Democrats and Republicans. A 1987 Gallup poll showed 77% in favor of raising the minimum wage. In 1988 Gallup reported 76% approval for a raise. In 1989 a Washington Post/ABC poll found 84% backing an increase in the minimum wage. In a 1995 poll by the Los Angeles Times, 72% of Americans, including 62% of Republicans backed an increase in the minimum wage. Other 1995 polls taken by USA Today and the Times-Mirror found 77% to 80% in favor.

George Gallup, “Support for Higher Minimum Wage,” 1987 San Francisco Chronicle, May 28, 1987 found 77% in favor; George Gallup, “76% Favor Raising Minimum Wage,” June 20, 1988, San Francisco Chronicle, 85% of Democrats, 67% of Republicans and 74% of Independents support raise; AP “Senate Wage Bill Ignores Bush Veto,” San Francisco Chronicle, April 7, 1989, Washington Post/ABC poll found 84% back increase in minimum wage; Richard Benedetto, “Clinton Gets Bump, Gingrich Slides in Poll,” February 7, 1995, USA Today, 1995 poll shows 77% back raise; 1995 NBC News Poll found 78% favor 14% oppose raise in minimum raise, James Ledbetter, “Press Clips,” Village Voice, February 14, 1995; February 1995 Times-Mirror poll found 8 out of 10 people support minimum wage raise, Jill Lawrence, “Polls suggest Americans Know Little About Policy Issues,” Fort Worth Star-Telegram, February 26, 1995; 1995 LA Times poll found 72% of Americans, including 62% of Republicans support raise in minimum wage, Robert Shogan, Doyle McManus, “Campaign Gears Up,” LA Times, May 15, 1995.

²⁹ Pat Buchanan, The Great Betrayal 289 (1998).

³⁰ Students and faculty at Johns Hopkins demonstrated to demand that their university pay its workers at least the \$7.90 an hour that the City of Baltimore was paying its workers. Mike Bowler, “Hopkins protestors encamp for living wage,” Baltimore Sun, March 9, 2000.

Students at University of Virginia have lobbied their institution, in part by wearing buttons which illustrated with the symbol “\$8,” pay its workers at least \$8 an hour in connection with living wage campaigns in Richmond and Alexandria Virginia. Jeremy Redmon, “Push for Living Wage Grows,” Richmond Times-Dispatch, January 31, 2000.

In 1997 students and a Jesuit professor at Fairfield University organized the Concerned University Community Members to press for changes in the pay and treatment of contractual custodial workers. In early 2000, all custodial workers were guaranteed a minimum pay of \$8 an hour and the university agreed not to challenge union organizing efforts. Minimum Wage Does Not Equal A Living Wage, In All Things, March 2000, page 20.

Harvard students and faculty continue efforts to press for a \$10.25 an hour living wage for all employees of the institution. Daniela J. Lamas, "Living Wage Protestors give Harvard President a Valentine," Harvard Crimson, February 14, 2001. Students made living wage valentines including one that said "My Valentine Lives Below the Poverty Level." Rick Valliere, Harvard Rejects Proposed Living Wage of \$10 per hour for all university workers, BNA, Daily Labor Report, May 5, 2000.

³¹ Charles Hurt, "Living wage foes make plans," Detroit News, November 5, 1998.

³² Votes were 66% in favor and 33% against. See Seattle Post-Intelligence election results for 1998 fall election at www.seattle-pic.com While many states have set higher minimum wages than the federal level, Washington is the first state to annually raise the minimum wage based on the rate of inflation.

³³ "Minimum Wage: City in Alexandria Virginia Approves New Living Wage Ordinance for City Contractors," BNA Daily Labor Report, June 20, 2000.

³⁴ St. Louis voters, in an initiative pushed by ACORN, approved a living wage ordinance 26, 311 to 7,794 on August 8, 2000. The law sets hourly wages for city contractors and companies that receive city tax breaks, grant money or other forms of aid at \$8.67 an hour with benefits or \$9.92 without. The hourly rate is set at 130% of federal poverty guidelines for family of three. Kip Betz, "Minimum Wage: St. Louis Voters Approve 'Living Wage' Requirement for City Contract Workers," BNA Daily Labor Report, August 11, 2000.

³⁵ "Minimum Wage: Santa Cruz Adopts "Living Wage" Measure of \$12 Hourly for City and Contract Employees," BNA Daily Labor Report, October 26, 2000.

³⁶ Statute of Laborers, 1349, 23 Edward 3; Statute of Laborers, 1350, 25 Edward 3. See discussion in William Quigley, Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor, 30 Akron Law Review 73, 82-92 (1996).

³⁷ 5th Elizabeth, Chapter 4, 1563 expressed concern for the wages of the poor but empowered the justices of the peace "to limit, rate, and appoint" wages and was really a piece of repressive legislation. The subsequent law of 1st James I, Chapter 6, 1604 was a more liberal attempt at minimum wage legislation. See discussion in deSchweinitz, England's Road 79.

³⁸ deSchweinitz, *supra*, at 72-78; Quigley, Five Hundred Years of English Poor Laws, 113-117.

³⁹ Hart, 9-13, 24-38.

⁴⁰ Vivien Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton 1994) has a very good history of the efforts for minimum wages in England and the United States.

⁴¹ Hart, 23.

⁴² Glickman, Living wage, 65-71.

⁴³ Quigley, Fair Wage, *supra*, at 516-519.

⁴⁴ VIVIEN HART, BOUND BY OUR CONSTITUTION: WOMEN, WORKERS AND THE MINIMUM WAGE 64 (1994). These are the exact same groups still subject to sweatshop conditions in the U.S., see Lora Jo Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation*, 103 YALE L. J. 2179 (1994).

⁴⁵ Hart, *supra* at 67-68. The WTUL emerged as the leader in the Massachusetts campaign, first pressing for minimum wage legislation in 1909. They were joined by a coalition of labor groups, including the powerful textile workers.

⁴⁶ Glickman, Living Wage 62-77.

⁴⁷ Glickman, Living Wage, *supra* at 134-135.

Leo insisted that while employers and workers had to be allowed the freedom to enter into wage agreements

“...yet, there is always underlying such agreements an element of natural justice, and one greater and more ancient than the free consent of contracting parties, namely, that the wage shall not be less than enough to support a worker who is thrifty and upright. If compelled by necessity or moved by fear of a worse evil, a worker accepts a harder condition, which although against his will he must accept because the employer or contractor imposes it, he certainly submits to force, against which justice cries out in protest...If a worker receives a wage sufficiently large to enable him to provide comfortably for himself, his wife, and his children, he will, if prudent, gladly strive to practice thrift...” *Rerum Novarum*, para 63, 65.

⁴⁸ In 1931, on the 40th anniversary of Pope Leo’s letter, Pope Pius XI, reaffirmed the principle of the need for a living wage, saying “In the first place, the worker must be paid a wage sufficient to support him and his family.” *Quadregesimo Anno*, para 71 (1931).

In 1940, the US Catholic Bishops spelled out the need for a living wage and exactly how comprehensive a living wage actually is in their 1940 statement:

The first claim of labor, which takes priority over any claim of the owners to profits, respects the right to a living wage. By the term *living wage* we understand a wage sufficient not merely for the decent support of the workingman himself but also of his family. A wage so low that it must be supplemented by the wage of wife and mother or by the children of the family before it can provide adequate food, clothing, and shelter together with essential spiritual and cultural needs cannot be regarded as a living wage. Furthermore, a living wage means sufficient income to meet not merely the present necessities of life but those of unemployment, sickness, death, and old age as well. *Statement on Church and Social Order*, February 7, 1940, paras 41-42, JIM p 435.

In 1961, responding to those who said wages should be left to the dictates of the market, Pope John XXIII proclaimed that a living wage was a justice issue too important:

We therefore consider it our duty to reaffirm that the remuneration of work is not something that can be left to the laws of the marketplace; nor should it be a decision left to the will of the more powerful. It must be determined in accordance with justice and equity;

which means that workers must be paid a wage which allows them to live a truly human life and to fulfill their family obligations in a worthy manner. *Mater et Magister*, para 71, (1961)

In 1963, he challenged governments to implement the right to work for a living wage:

The government should make similarly effective efforts to see that those who are able to work can find employment in keeping with their aptitudes, and that each worker receive a wage in keeping with the laws of justice and equity. *Peace on Earth*, para 64 (1963)

A world-wide assembly of Catholic bishops in 1965 challenged world governments to insure that “payment for labor must be such as to furnish a man with the means to cultivate his own material, social, cultural and spiritual life worthily, and that of his dependents.” *Second Vatican Council, Gaudium et Spes, Pastoral Constitution on the Church in the Modern World*, para 67 (1965).

In 1981, Pope John Paul II indicated that payment of living wages was a critical criteria for determining the legitimacy of the entire economic system:

In every system, regardless of the fundamental relationships within it between capital and labor, wages, that is to say remuneration for work, are still a practical means whereby the vast majority of people can have access to those goods which are intended for common use: both the goods of nature and manufactured goods. Both kinds of goods become accessible to the worker through the wage which he receives as remuneration for his work. Hence in every case a just wage is the concrete means of verifying the whole socioeconomic system and, in any case, of checking that it is functioning justly. It is not the only means of checking, but it is a particularly important one and in a sense the key means.

John Paul II, *On Human Work*, para 89 (1981). See also further explanation of living wage in paras 90 and 91.

In 1986, the Catholic Bishops of the USA in a letter entitled "Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy" (1986) placed economic inequality squarely on the social justice agenda for the American economy. In their letter the bishops pointed to the primacy of employment at just wages:

The first line of attack against poverty must be to build and sustain a healthy economy that provides employment opportunities at just wages for all adults who are able to work. *Economic Justice for All*, para 196 (1986).

Again in 1991, John Paul II pointed out that guaranteeing a living wage to the working poor is part of the responsibility of government:

The richer class has many ways of shielding itself, and stands less in need of help from the state; whereas the mass of the poor have no resources of their own to fall back upon, and must chiefly depend on the assistance of the state. It is for this reason that wage-earners, since they mostly belong to the latter class, should be specially cared for and protected by the government. *Centesimus Annus*, para 10 (1991)

John Paul II also reaffirmed that “A workman’s wages should be sufficient to enable him to support himself, his wife and his children.” *Centesimus Annus*, para 8 (1991).

Refusing to pay just wages even if allowed to do so by law is a violation of the seventh commandment according to the 1992 Catechism of the Catholic Church. The catechism describes payment of “unjust wages,” even if low wages are allowed by law, as a violation of

the seventh commandment. Catechism of the Catholic Church (1992):

Even if it does not contradict the provisions of civil law, any form of unjustly taking or keeping the property of others is against the seventh commandment: thus, deliberate retention of goods lent or objects lost; business fraud; paying unjust wages; forcing up prices by taking advantage of the ignorance or hardship of another. Para 2409. See also para 2434.

⁴⁹ See Don Lescohier, *Working Conditions*, 3 *History of Labor 1896-1932*, p 63 (1935) outlining some of the history of efforts of Protestant churches to help living and just wage efforts.

⁵⁰ Elizabeth Brandeis, 3 *History of Labor in the United States*, “Minimum Wage Legislation,” at 513 (1935).

⁵¹ John A. Ryan, *Economic Justice*, *supra*, at 124.

⁵² Paulsen, *Living Wage* 22. Paulsen also notes, at 42, that in 1912, former President Theodore Roosevelt, as candidate for the Progressive party, endorsed minimum wage laws and President Woodrow Wilson condemned employers who objected to paying minimum wages, saying they denied the bread of life to the needy.

⁵³ Hart, *supra*, 14-62. A brief history of the Massachusetts campaign to enact the minimum wage law can be found in Hart at 66-72.

⁵⁴ Thomas Reed Powell, *The Judiciality of Minimum-Wage Legislation*, 37 *HARVARD L. REV.* 545 (1924): “[Massachusetts] employers are exposed to public knowledge of the wages paid and are thereby subjected to public censure or public praise. Sentiments of decency or vanity may move the niggardly to mend their ways, but the recalcitrant are left free to bargain as they can and will.” at 545.

⁵⁵ Keith B. Leffler, *Minimum Wages, Welfare, and Wealth Transfer to the Poor*, 21 *J. LAW & ECON.* 345, 346 (1978). Twenty-five states had in effect some form of minimum wage regulation at the effective date of the FLSA. These states were: Arizona, Arkansas, California, Colorado, Connecticut, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Washington, and Wisconsin. Comment, *The Federal Wages and Hours Act*, 52 *HARVARD L. REV.* 646, 673, f.n. 203 (1939), citing 2 *WAGE & HOUR REP.* 17-21 (Jan 9, 1939).

⁵⁶ Elizabeth Brandeis, 3 *History of Labor in the United States*, “Minimum Wage Legislation,” at 523 (1935).

⁵⁷ Act September 19, 1918, 40 Stat. 960 c 174.

⁵⁸ *Children’s Hospital of D.C. v Adkins*, 284 F. 613, 615 (CA DC 1922).

⁵⁹ *Adkins v Children’s Hospital*, 261 U.S. 525 (1923). The Court had upheld a decision of the Oregon Supreme Court that the Oregon was constitutional in *Stettler v O’Hara*, 243 US 629 (1917).

⁶⁰ “The feature of this statute, which perhaps more than any other, puts upon it the stamp of invalidity, is that it extracts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work The declared basis, as already pointed out, is not the value of the services rendered, but the extraneous

circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health, and morals. The ethical right of every worker, man or woman, to a living wage may be conceded. One of the declared and important principles of trade organization is to secure it. And with that principle and with every legitimate effort to realize it in fact, no one can quarrel; but the fallacy of the proposed method of attaining it is that it assumes that every employer is bound at all events to furnish it." 261 U.S. 525, 558.

⁶¹ William E. Leuchtenburg, *THE SUPREME COURT REBORN: THE CONSTITUTIONAL REVOLUTION IN THE AGE OF ROOSEVELT* 165 (1995).

⁶² In a five to four decision in *Morehead v New York ex rel. Tipaldo*, 298 U.S. 587 (1936), affirmed *Adkins* and overturned the New York minimum-wage law for women and children as repugnant to the due process clause of the Fourteenth Amendment.

⁶³ 89 Cong. Rec. 4960 (1937)(statement of Pres. Franklin D. Roosevelt).

⁶⁴ Senate Bill S 2475.

⁶⁵ Quigley, *Minimum Wage*, supra, at 523-524. See also Norlund, *Quest for a Living Wage* 39-42.

⁶⁶ See Norlund, *Quest for Living Wage* 37-38; Paulsen, *Living Wage*, pp 83, 89; and Quigley, *Minimum Wage*, supra, at 523-524.

⁶⁷ "State minimum wage legislation was the focal point of the Court's conversion from an opponent into a supporter of social and economic reform." John W. Chambers, "The Big Switch: Justice Roberts and the Minimum Wage Cases," 10 *Labor History* 44, 45 (1969). This article provides an excellent history of the changes in the Supreme Court that resulted in the reversal over minimum wage and heralded the approval of most of the New Deal.

⁶⁸ 300 U.S. 379 (1937).

⁶⁹ The story of the organizational and legal strategy involved in this reversal is itself a fascinating story. See Vivien Hart, *BOUND BY OUR CONSTITUTION: WOMEN, WORKERS AND THE MINIMUM WAGE*, Princeton University Press, 1994, 87-150.

⁷⁰ The key to the stunning change? A still mysterious change of position by Justice Owen J. Roberts. Roberts, who had earlier joined the conservatives on the court in invalidating minimum wage legislation now joined the liberals in supporting it. See Chambers, supra, for a detailed look at the changing of Justice Roberts' vote and the debate ever since by scholars, lawyers, and historians over what he did and why he did it.

⁷¹ 300 U.S. 379, 399-400.

⁷² 89 Cong Rec 4960 (1937).

FDR challenged the business leaders who opposed the law, asking that no one

"...let any calamity-howling executive with an income of \$1000 a day, who has been turning his employees over to the government relief rolls in order to preserve his company's undistributed reserves, tell you (using his stockholders money to pay the postage of his personal opinions) that a wage of \$11 a week is going to have a disastrous effect on all American industry. Fortunately for business as a whole, and therefore for the nation, that type of executive is a rarity with whom most business executives heartily disagree."

Willis J. Norlund, A Brief History of the Fair Labor Standards Act, 39 Labor L. J. 715, 719 (1988) citing FDR, Public Papers and Addresses, "The Continuing Struggle for Liberalism," 1938 volume, The MacMillan Co. , NY, 1941, p 392.

⁷³ Norlund, *supra*, 721.

Until the end, some despaired that any wage and hour bill could be enacted because of the continuing opposition of Southern Democrats, the national business lobbies, and the AFL. In order to salvage a wage and hour bill, changes to the bill were discussed that incorporated North-South wage differentials, initiating the hourly wage at less than 40 cents per hour, and expanded the powers of the Labor Department at the expense of the previously suggested five person board.

Finally, since substantially different versions of the bill ultimately passed the House and Senate, a conference committee crafted a bill that gave labor the 40 hour workweek and 40 cent minimum wage (after a two year phase-in that began at a 44 hour workweek and a minimum wage of 25 cents an hour), exempted a number of powerful industries from coverage, and set up a single Labor Department administrator.

⁷⁴ Fair Labor Standards Act of 1938, Sec. 6(a), 52 Stat. 1060, 1062

See Norlund, *Quest for Living Wage* 51 for summary of bill's provisions.

Leffler, *supra* at 346-347.

⁷⁵ The Fair Labor Standards Act, including a federal minimum wage, was unanimously held constitutional in U.S. v Darby, 312 U.S. 100 (1941). "...it is no longer open to question that the fixing of a minimum wage is within the legislative power and that the bare fact of its exercise is not a denial of due process under the Fifth more than under the Fourteenth Amendment." 312 U.S. 100, 462.

⁷⁶ Quigley, *Minimum Wage*, *supra*, at 529-536.

⁷⁷ The Conference Committee Report on the FLSA pointed out that the legislation was needed because of "labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency and general well-being." Conference Committee Report, No 2738, 75th Cong, p 28.

⁷⁸ *Children's Hospital of D.C. v Adkins*, 284 F. 613, 615 (CA DC 1922).

⁷⁹ Samuel Herman, "The Administration and Enforcement of the Fair Labor Standards Act," 5 *Law and Contemporary Problems* 368, footnote 4. (1939). For more on the dilution of the living wage goal of the FLSA see Paulsen, *Living Wage*, 82-97.

⁸⁰ Quigley, *Minimum Wage*, *supra*, at 531-536.

⁸¹ Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 *Texas L Rev* 1335 (1987) gives an excellent overview of the role of race in the enactment of the FLSA. See also Quigley, *Minimum Wage*, *supra*, at 532-535.

⁸² Stephen Kemp Bailey, *CONGRESS MAKES A LAW, THE STORY BEHIND THE EMPLOYMENT ACT OF 1946*, at 26 (1950): *Security, Work and Relief Policies*, December 5, 1941 National Resources Planning Board, *Committee on Long Range Work and Relief Policies*,

640 pp. See also, Alan Brinkley, *The End of Reform* 245-250.

⁸³ Bailey, 27; citing NY Times March 11, 1943, p 12. The rights outlined in this report include:

1. The right to work, usefully and creatively through the productive years.
2. The right to fair pay, adequate to command the necessities and amenities of life in exchange for work, ideas, thrift, and other socially valuable service.
3. The right to adequate food, clothing, shelter and medical care.
4. The right to security, with freedom from fear of old age, want, dependency, sickness, unemployment and accident.
5. The right to live in a system of free enterprise, free from compulsory labor, irresponsible private power, arbitrary public authority, and unregulated monopolies.
6. The right to come and go, to speak and to be silent, free from the spying of secret police.
7. The right to equality before the law, with equal access to justice in fact.
8. The right to education, for work, for citizenship, and for personal growth and happiness.
9. The right to rest, recreation and adventure, the opportunity to enjoy and take part in an advancing civilization.

The NRPB is also discussed at Margaret Weir, *Politics and Jobs* 42-46.

⁸⁴ To guarantee the right to a job, activities in the provisions of physical facilities and services should be supplemented by:

(1) Formal acceptance by the Federal Government of responsibility for insuring jobs at decent pay to all those able to work regardless of whether or not they can pass a means test.

(2) The preparation of plans and programs, in addition to those recommended...for all kinds of socially useful work other than construction, arranged according to the variety of abilities and locations of persons seeking employment.

(3) Expansion of the functions of the [U.S.] Employment Service, strengthening its personnel to the end that it may operate as the key mechanism in referring unemployed workers to jobs, whether public or private.

(4) Establishment of a permanent "Works Administration" under an appropriate Federal agency to administer the provision of jobs of socially desirable work for the otherwise unemployed.

Philips, *supra*, at 106; citing U.S. National Resources Planning Board, *National Resources Development Report for 1943*, 78th Cong., 1st sess., 1943, Doc. No. 128, Part 1, Post War Plan and Program, pp 17.

⁸⁵ 90 Cong. Rec. 57, January 11, 1944.

The complete "second bill of rights" proposed by FDR includes:

"The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every business man, large and small, to trade in an atmosphere of freedom from

unfair competition and domination by monopolies at home or abroad;
The right of every family to a decent home;
The right to adequate medical care and the opportunity to achieve and enjoy good health;
The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;
The right to a good education."

⁸⁶ Norlund, *Quest for Living Wage*, supra, at 59-199; Quigley, *Minimum Wage*, supra, at 544-555.

⁸⁷ S. Rep No. 6, 101st cong., 1st sess. (1989) at 12.

⁸⁸ See section on Federal Government and Living Wage.

⁸⁹ See Quigley, "The Right to Work and Earn a Living Wage: A proposed Constitutional Amendment," 2 *New York City Law Review* 139 (1998); Adolph Reed, "A New Minimum: \$10 an Hour," *The Progressive*, April 1, 1997, p 16. Dick Meister, "A Right to a Job and a Living Wage: Campaigns for a Constitutional Amendment," *The Sacramento Bee*, August 5, 1997, B7.

⁹⁰ 29 USC 206, PL 104-188, Section 2104(b).

⁹¹ William G. Whittaker, "RL30690: Minimum Wage & Related Issues Before the Congress: A Status Report," Congressional Research Service, January 24, 2001. www.cnie.org/nle/econ-86.html#_1_9

Others suggest the minimum wage should actually be much higher. One article reported that the Bureau of Labor Statistics estimated the hourly wage would need to be between \$12 and \$14 an hour instead of the current \$5.15 to have the same earning power it had 30 years ago. Michael A. Verespej, "The minimum wage is no longer living wage," *Industry Week*, May 1, 2000, 2000 WL 10594871. This author has been unable to independently verify that report.

⁹² The 25 cents an hour FLSA wage was passed at a time when the average hourly wage in the unionized automobile industry in 1937 was 88 cents an hour Samuel Herman, "The Administration and Enforcement of the Fair Labor Standards Act," 5 *Law and Contemporary Problems* 368, footnote 4. (1939). For more on the dilution of the living wage goal of the FLSA see Paulsen, *Living Wage*, 82-97.

⁹³ Quigley, *Minimum Wage*, supra, at 549-555.

⁹⁴ Economist Robert Pollin quoted in column by Alexander Cockburn, "Bill and Al Joust Across a Moral Divide," *Seattle Times*, February 15, 2001. Pollin & Luce, *Living Wage*, supra, at 1. Edith Rasell, Jared Bernstein, and Heather Boushey, *Step Up, Not Out: The Case for Raising the Federal Minimum Wage for Workers in Every State*, Economic Policy Institute, Issue Brief # 149, February 7, 2001. See www.epinet.org

⁹⁵ *LIVING WAGE POLICY: THE BASICS*, Employment Policies Institute 29-37(2000).

⁹⁶ *LIVING WAGE POLICY: THE BASICS*, Employment Policies Institute 30 (2000). The Earned Income Tax Credit provides a refundable tax credit to low-wage working families. See 26 USC Section 43.

⁹⁷ This is the same problem identified by the U. S. Supreme Court in the Parrish case, supra, when they said:

"The exploitation of a class of workers who are in an unequal position with respect to

bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being, but casts a direct burden for their support upon the community... The community is not bound to provide what is in effect a subsidy for unconscionable employers. The community may direct its law-making power to correct the abuse which springs from their selfish disregard of the public interest."

West Coast Hotel v Parrish, 300 U.S. 379, 399-400 (1937).

⁹⁸ Rasell, Bernstein and Boushey, *supra*, at 2.

Other research organizations arrive at similar figures. For more information see: Economic policy institute, Minimum Wage Facts At A Glance, www.epinet.org or Making Wages Work, www.makingwageswork.org These sources indicate:

10.3 million workers (8.7% of workforce) would receive an increase in their hourly wage if it is raised to \$6.15 an hour.

Another 9.7 million people (8.2% of workforce) earning up to \$7.15 an hour would likely also get an increase

Almost one million single mothers (967,000) with children under 18 would benefit from a \$1 minimum wage increase.

More than 2 million married men and women with children would benefit from a \$1 increase in the minimum wage.

Full time workers would benefit. Close to half (48%) of workers who would benefit from raise in minimum wage increase work full time and another third (31%) work between 20 and 34 hours a week.

Adults would benefit. 71% of those workers who would get a raise if minimum was raised by \$1 are age 20 or older.

Women are the largest group of people who would benefit from a \$1 increase in the minimum wage. Almost 60% of the people who would get a raise would be women.

⁹⁹ Fair Minimum Wage Act of 2001, HR 665, 107 Cong. 1st Sess., February 14, 2001. The bill would raise the minimum wage to \$5.75 30 days after enactment, then raise it to \$6.25 an hour beginning January 1, 2002, and to \$6.65 an hour beginning January 1, 2003. Section 2 (a).

¹⁰⁰ President Bush favors a minimum wage proposal giving states the ability to set their own rates as long as those rates don't fall below the present national minimum. "Boston Works," Boston Globe, February 18, 2001.

¹⁰¹ 2000 Guidelines are found in the Federal Register at Volume 65, February 15, 2000, page 7555-7557. They are adjusted annually for inflation.

¹⁰² One of the problems with pegging a living wage calculation is the inadequacy of the poverty guidelines. The current official government poverty line originated in poverty thresholds created by the Social Security Administration (SSA) in 1963.

That measure was soon adopted by other federal agencies as the official poverty threshold and the Census Bureau started publishing annual statistics on poverty in 1967. The original line was calculated by SSA staff economist Mollie Orshansky using two prior government surveys. Federal researchers had surveyed families and estimated that in prior years families generally spent about one-third of their income on food. The U.S. Department of Agriculture conducted surveys in 1955 which calculated the food buying patterns of lower income families. The USDA

came up with four food plans, the lowest cost of which was the “Economy Food Plan” which was designed for “temporary or emergency use when funds are low.” The SSA then multiplied the dollar figure for the lowest cost of the four plans by three and came up with an estimate of what income was required for a family to earn enough to eat. Initially adjustments were made for the size of the families, the gender of the family head, the ages of the people in the family and whether they lived in the city or the country (figuring that country people did not need as much because they could grow some of their own food). The result was the first rough estimate of who was poor and who was not. If a family had income higher than that line, they were officially not poor, if their income was lower than the line, they were officially counted among the poor. With minor modifications (dropping the age, gender, and country/city differences), these figures have been annually recalculated by the Census Bureau in light of the Consumer Price Index and continue to be the way we officially define poverty. Thus the current official calculation of poverty compares the pre-tax cash income of a person or family to see if it is above or below the annually recalculated poverty threshold. Blank, *It Takes A Nation*, 10-12; Thesia I. Garner, Kathleen Short, Stephanie Shipp, Charles Nelson, and Geoffrey Paulin, “Experimental poverty measurement for the 1990s,” *Monthly Labor Review*, March 1998, 39, 40; Constance F. Citro and Robert T. Michael, editors, National Research Council, *Measuring Poverty: A New Approach* 17, 24-31 (1995); Patricia Ruggles, *Drawing the Line: Alternative Poverty Measures and their Implications for Public Policy* 32-35 (Urban Institute Press 1990).

¹⁰³ The 2000 poverty guidelines can be found at the web site of the U. S. Department of Health and Human Services. [Http://aspe.hhs.gov/poverty/00poverty.htm](http://aspe.hhs.gov/poverty/00poverty.htm)

¹⁰⁴ See list in *Local Government and Living Wage*.

¹⁰⁵ Food Stamp eligibility in 2000 for a family of four cut off at \$1,848 per month, 130% of poverty. This translates into \$22,176 per year or \$10.66 an hour for a full-time 40 hour worker.

¹⁰⁶ The 2000 eligibility guidelines for the Earned Income Tax Credit allow workers with two children to earn up to \$31,152, or \$14.97 an hour for a full-time 40 hour a week worker. For more information on EITC eligibility guidelines see the IRS web site: www.irs.gov/ind_info/eitc4.html

¹⁰⁷ It is estimated that workers spend thirty percent of their income on housing. In fall of 2000, the National Low Income Housing Coalition released a survey of fair market rents for two bedroom apartments nationwide which found that a worker would need to work 97 hours a week at the 2000 minimum wage of \$5.15 an hour to afford to pay rent and other basic necessities, or earn a living wage of \$12.47 an hour. Fall 200 Report of National Low Income Housing Coalition, “Out of Reach, The growing Gap Between Housing Costs & Income of Poor People in the United States,” can be found at www.nlihc.org/oor2000

¹⁰⁸ Shelvia Dancy, “Living Wage, Affordable Housing Urged For All,” January 16, 2000, *Arizona Republic*.

¹⁰⁹ Constance F. Citro and Robert T. Michael, editors, National Research Council, *Measuring Poverty: A New Approach* 17, 24-31 (1995).

Critics first point out that the current calculation counts pre-tax income as income and disregards the federal, state, and local taxes that the poor, particularly the working poor, pay. If after-tax income was used as income, many more working poor people would fall below the current line thus expanding the numbers of people in poverty. Second, these critics point out that

family expenditures on food no longer constitute one-third of a family's expenses but rather consume only about a fifth of family spending. They thus conclude that multiplying the costs of food by five rather than three would be more accurate. This would raise the poverty line and expand the numbers of people below it. Third, they point out that when the poverty line was first set in the 1960s, it was half of the median income for a family of four (a standard widely used to define poverty in Europe today) but has drifted downward to only about 40% of median family income, again thus understating the number of people in poverty. They also point out that the current method effectively assumes the same standard of living as the late 1950s, despite widespread changes. If changes were made to correct these deficiencies, these critics suggest that the poverty line would be raised by 50% to make it more realistic and include millions more people, mainly many more of the working poor, within the official definition of poverty.

See: Patricia Ruggles, *Drawing the Line*; S. M. Miller and Else Oyen, "Remeasuring Poverty" in *5 Poverty & Race*, Number 5, page 1 September/October 1996.

¹¹⁰ St. Louis voters, in an initiative pushed by ACORN, approved a living wage ordinance 26,311 to 7,794 on August 8, 2000. The law sets hourly wages for city contractors and companies that receive city tax breaks, grant money or other forms of aid at \$8.67 an hour with benefits or \$9.92 without. The hourly rate is set at 130% of federal poverty guidelines for family of three. Kip Betz, "Minimum Wage: St. Louis Voters Approve 'Living Wage' Requirement for City Contract Workers," *BNA Daily Labor Report*, August 11, 2000.

¹¹¹ "Minimum Wage: Santa Cruz Adopts 'Living Wage' Measure of \$12 Hourly for City and Contract Employees," *BNA Daily Labor Report*, October 26, 2000. Santa Cruz joins 55 other cities and counties requiring contractors that receive contracts of \$10,000 or more to pay a living wage to workers. Campaigns are under way in another 75 cities and counties to enact a living wage.

¹¹² For example: Oakland requires \$8.30 with benefits and \$9.55 without but defines benefits to include 12 paid and 10 unpaid days off each year; San Francisco requires \$11 an hour plus benefits of health coverage, paid vacation and sick leave. *LIVING WAGE POLICY: THE BASICS* at 73.

¹¹³ Source for these cities and their wage laws is www.livingwage.com as of March 1, 2001, unless otherwise noted. The Economic Policy Institute also has a table on their website listing living wage ordinances that cover contractors and subsidy recipients. www.epinet.org A good source for living wage ordinances and proposed ordinances is the Employment Policy Institute, www.epionline.org On their site is a list of living wage ordinances and proposals.

¹¹⁴ Alexandria City Council unanimously passed its living wage ordinance June 17, 2000. "Minimum Wage: City in Alexandria Virginia Approves New Living Wage Ordinance for City Contractors," *BNA Daily Labor Report*, June 20, 2000.

¹¹⁵ Steven Brull, "What's So Bad About a Living Wage?" *Business Week*, September 4, 2000. All contracts over \$5000 with City of Baltimore required to pay wage of \$7.70 per hour. Mike Bowler, "Hopkins protestors encamp for living wage," *Baltimore Sun*, March 9, 2000 says the city living wage is \$7.90 an hour.

¹¹⁶ See discussion of Boston Jobs and Living Wage Ordinance (1998) in Spectar, *supra*, at 86.

¹¹⁷ Steven Brull, “What’s So Bad About a Living Wage?” *Business Week*, September 4, 2000. All clerical and custodial workers with City of Chicago required to be paid wage of \$7.60 per hour.

See also, Matkov, Salzman, Madoff & Gunn, “Cook County and Chicago Mandate Living Wages,” 9 *Illinois Employment Law Letter*, Number 4, page 3, November 1998.

¹¹⁸ Steven Brull, “What’s So Bad About a Living Wage?” *Business Week*, September 4, 2000. All service contracts with City of Detroit over \$50,000 require employees to be paid wage of \$10.70 per hour.

Detroit’s living wage ordinance, which was enacted after a ballot initiative passed with 80% of the vote, requires wages of 125% of the federal poverty level for a family of four. It applies to all service contracts over \$50,000 and any business who “is the recipient of any financial assistance from the City in excess of \$50,000, including any federal grant administered by the city, revenue bond financing, planning assistance, tax increment financing, tax credits or any other form of assistance, if the purpose of the assistance is economic development or job growth, including any contractors, subcontractors or leaseholders at the subsidized site.” citing Section 18-5-73. Emily C. Palacios, “Detroit’s Public Contracting Policies: Is It Time for a Change?” 9 *Journal of Affordable Housing* 242, 246 (2000)

¹¹⁹ Steven Brull, “What’s So Bad About a Living Wage?” *Business Week*, September 4, 2000. All service contracts with City of Los Angeles over \$25,000 require employees to be paid wage of \$8.97 per hour.

¹²⁰ In Miami-Dade County, employers bidding on new government contracts of \$100,000 or more must pay a living wage of \$8.56 plus health benefits. Increases are tied to the consumer price index. William Carlile, “Minimum Wage: Tucson, Ariz., Adopts ‘Living Wage’ Ordinance: Applies to City Contractors,” *BNA, Daily Labor Report*, September 15, 1999.

¹²¹ Littler Mendelson, “Oakland Living Wage Ordinance Imposes Strict Minimum Standards,” 8 *California Employment Law Monitor* 7, April 20, 1998. The ordinance was unanimously passed by the Oakland City Council March 24, 1998. It applies to all employers with city contracts over \$25,000 or city subsidies over \$100,000. In addition to guaranteeing living wages, the ordinance requires at least 12 days of compensated time off per year for sick, vacation, or personal leave and 10 days of uncompensated time off for other reasons.

The Oakland living ordinance covers not only employees of businesses with city contracts of over \$25,000 but any entity receiving financial assistance from the city, including grants, rent subsidies, bond financing, tax credits, or even loan forgiveness, of more than \$100,000 in a 12 month period. Littler Mendelson, “Living Wage Ordinances - A Kinder Gentler Law With Bite,” 8 *California Employment L Monitor* 4, February 1, 1999.

¹²² Rick Ruggles and Paul Goodsell, “Wage Law’s Cost to City Unclear,” *Omaha World Journal*, March 8, 2000.

¹²³ “Minimum Wage: Portland Ordinance Raises Wages, Requires Health Benefits for Contractors’ Employees,” *BNA, Daily Labor Report*, May 6, 1998. Portland’s Fair Wage policy

required living wages to be paid to companies that contract with the city for the following services: janitors, security guards, and parking lot attendants. The city estimated that only about 100 such workers would directly benefit.

¹²⁴ St. Louis voters, in an initiative pushed by ACORN, approved a living wage ordinance 26,311 to 7,794 on August 8, 2000. The law sets hourly wages for city contractors and companies that receive city tax breaks, grant money or other forms of aid at \$8.67 an hour with benefits or \$9.92 without. The hourly rate is set at 130% of federal poverty guidelines for family of three. Kip Betz, "Minimum Wage: St. Louis Voters Approve 'Living Wage' Requirement for City Contract Workers," BNA Daily Labor Report, August 11, 2000.

¹²⁵ Under the St. Paul ordinance, covered businesses are only required to pay a living wage after an employee has been on the job for one year. Saint Paul, Mn., Council File No 96-1512 (Jan 2 1997) as cited in Spectar, *supra*, at 84, fn 120.

¹²⁶ Steven Brull, "What's So Bad About a Living Wage?" Business Week, September 4, 2000. All service contracts with City of San Francisco over \$25,000 and all airport and home health contracts require employees to be paid wage of \$10.00 per hour.

¹²⁷ Steven Brull, "What's So Bad About a Living Wage?" Business Week, September 4, 2000. All service contracts with City of San Jose over \$20,000 require employees to be paid wage of \$10.75 per hour.

¹²⁸ "Santa Cruz Approves \$12 Minimum Wage," Orange County Register, October 14, 2000.

¹²⁹ The Tucson ordinance (Ordinance 9274) applies to contracts awarded or renewed after January 1, 1999 for city contractors in building maintenance, refuse collection and recycling, temporary employee services, janitorial and custodial, pest control, security, and moving services. The wage amount is subject to annual review. William Carlile, "Minimum Wage: Tucson, Ariz., Adopts 'Living Wage' Ordinance: Applies to City Contractors," BNA, Daily Labor Report, September 15, 1999.

¹³⁰ "Minimum Wage: Santa Cruz Adopts 'Living Wage' Measure of \$12 Hourly for City and Contract Employees," BNA Daily Labor Report, October 26, 2000. Supporters argued that it costs \$27 an hour to live in Santa Cruz, which has become a commuter base for high tech workers, but asked for \$13 an hour with benefits and \$14 without.

¹³¹ These comprehensive living wage ordinances are discussed in the section on the future of the living wage movement.

¹³² Steven Brull, "What's So Bad About a Living Wage?" Business Week, September 4, 2000. All contracts over \$5000 with City of Baltimore required to pay wage of \$7.70 per hour. Mike Bowler, "Hopkins protestors encamp for living wage," Baltimore Sun, March 9, 2000 says the city living wage is \$7.90 an hour.

¹³³ "Minimum Wage: Santa Cruz Adopts 'Living Wage' Measure of \$12 Hourly for City and Contract Employees," BNA Daily Labor Report, October 26, 2000. Santa Cruz requires contractors that receive contracts of \$10,000 or more to pay a living wage to workers.

¹³⁴ In Miami-Dade County, employers bidding on new government contracts of \$100,000 or

more must pay a living wage of \$8.56 plus health benefits. Increases are tied to the consumer price index. William Carlile, "Minimum Wage: Tucson, Ariz., Adopts 'Living Wage' Ordinance: Applies to City Contractors," BNA, Daily Labor Report, September 15, 1999.

¹³⁵ St. Louis living wage law sets hourly wages for city contractors and companies that receive city tax breaks, grant money or other forms of aid at \$8.67 an hour with benefits or \$9.92 without. The hourly rate is set at 130% of federal poverty guidelines for family of three. Kip Betz, "Minimum Wage: St. Louis Voters Approve 'Living Wage' Requirement for City Contract Workers," BNA Daily Labor Report, August 11, 2000.

¹³⁶ The Oakland Living Wage ordinance, which became effective July 1, 1998, requires living wages of \$8 per hour if the employer is paying health benefits and \$9.25 an hour if no benefits are provided. The law applies to employees of businesses with city contracts of over \$25,000 but also to any entity receiving financial assistance from the city, including grants, rent subsidies, bond financing, tax credits, or even loan forgiveness, of more than \$100,000 in a 12 month period. The law also requires living wages to be paid by subcontractors and tenants of covered businesses. Covered businesses are required to comply and to report quarterly on the names of employees and their compensation for the duration of the contract. Noncompliance disqualifies the business from bidding on future contracts and there are also provisions for fines and restitution for underpaid employees. Employees are given a private right of action to enforce the law and if successful can recover attorney fees. Littler Mendelson, "Living Wage Ordinances - A Kinder Gentler Law With Bite, 8 California Employment L Monitor 4, February 1, 1999

¹³⁷ Detroit's living wage ordinance, which was enacted after a ballot initiative passed with 80% of the vote, requires wages of 125% of the federal poverty level for a family of four. It applies to all service contracts over \$50,000 and any business who "is the recipient of any financial assistance from the City in excess of \$50,000, including any federal grant administered by the city, revenue bond financing, planning assistance, tax increment financing, tax credits or any other form of assistance, if the purpose of the assistance is economic development or job growth, including any contractors, subcontractors or leaseholders at the subsidized site." citing Section 18-5-73. Emily C. Palacios, "Detroit's Public Contracting Policies: Is It Time for a Change?" 9 Journal of Affordable Housing 242, 246 (2000).

¹³⁸ Carolyn Hirschman, "Paying Up," HR Magazine, July 1, 2000.

¹³⁹ See Living Wage Proposals by City, Employment Policies Institute, www.epinonline.org

¹⁴⁰ See Living Wage Proposals by City, Employment Policies Institute, www.epinonline.org

¹⁴¹ www.ci.santa-cruz.ca.us/cc/agenda.html "Minimum Wage: Santa Cruz Adopts "Living Wage" Measure of \$12 Hourly for City and Contract Employees," BNA Daily Labor Report, October 26, 2000

¹⁴² Michael A. Verespej, "The minimum wage is no longer living wage," Industry Week, May 1, 2000, 2000 WL 10594871.

¹⁴³ State "prevailing wage" laws, which mandate that private businesses pay higher wages as a condition of performing certain state contracts are usually called "little Davis-Bacons" after the federal prevailing wage law by that name. The federal Davis-Bacon Act requires government contracts over \$2,000 to pay prevailing wages on all construction, alteration or repair of public buildings or public works. 40 USC Section 276a. There are about thirty three such state laws,

usually applying to public construction projects. Herbert Northrup and Augustus White, “Subsidizing Contractors to Gain Employment: Construction Union Job Targeting,” 17 Berkeley J. Empl. & Labor L. 62, 80 (1996)

¹⁴⁴ See section Opposition to Living Wages: Maximum Minimums

¹⁴⁵ Unless otherwise noted, the information on state minimum wage laws is taken from the U. S. Department of Labor website on state minimum wage laws.
www.dol.gov/dol/esa/public/minwage/america.htm

¹⁴⁶ Fawn M. Johnson, “Minimum Wage: Nonprofit to Launch National Campaign to Push for Federal Living Wage Legislation.” BNA, Daily Labor Report, November 29, 2000.

¹⁴⁷ Federal Living Wage Responsibility Act, HR 4353, 106 Cong., 2d Sess., May 2, 2000.

¹⁴⁸ Rep. Gutierrez introduced similar legislation, Living Wage Responsibility Acts, in two prior sessions of Congress: HR 182, 105 Cong. January 7, 1997, and HR 3463, 104 Cong., May 5, 1996, both bills would have set the living wage rate at \$7.50 an hour (see Sections 3(a) of each).

¹⁴⁹ Federal Living Wage Responsibility Act, HR 4353, *supra*, Section 3.

¹⁵⁰ Chauna Brocht, The Forgotten Workforce, November 2000 briefing paper, Economic Policy Institute. www.epinet.org

¹⁵¹ The federal government has required contracts to pay “prevailing wages,” which are typically much higher than \$8.20 an hour, as a result of the Davis-Bacon and the Service Contract Act. The Davis-Bacon Act requires government contracts over \$2,000 to pay prevailing wages on all construction, alteration or repair of public buildings or public works. 40 USC Section 276a. The Service Contract Act requires government contracts for the use of service employees over \$2,500 to pay prevailing wages. 41 USC Section 351.

¹⁵² Chauna Brocht, *supra*, at 1.

¹⁵³ The title of this section reflects liberties taken from the movie, Gladiator. More information on the Gladiator can be found at www.gladiator-thefilm.com

¹⁵⁴ The best source for information opposing the living wage is The Employment Policies Institute, a comprehensive source for information opposing raising the minimum wage or enacting living wage ordinances, www.epionline.org ;

¹⁵⁵ “Survey of Economists Finds Living Wage Laws Reduce Jobs, Promote Hiring of Skilled Workers,” BNA, Daily Labor Report, August 18, 2000. The results of the survey, “The Living Wage: Survey of Labor Economists,” can be viewed at the web site for the Employment Policies Institute www.epionline.org

¹⁵⁶ Rick Ruggles, “Pay Law Results Mixed: Three Cities have experienced varying costs from living wage ordinances similar to one proposed in Omaha,” Omaha World Herald, April 17, 2000.

¹⁵⁷ Even the Wall Street Journal observed that “in recent years, researchers have found little evidence to support that view [that raising minimum wages make small businesses unprofitable and reduce job opportunities for low skill workers]” Peter Waldman, “Prosperity is Good for Living Wage Drive,” WSJ, December 20, 1999. See also Pollin & Luce, *supra*, at 87-135.

¹⁵⁸ See discussion above on historical support for living wages.

¹⁵⁹ Robert Pollin and Stephanie Luce have made the most comprehensive study of the economic

impact of living wage ordinances to date and this author directs those interested in an economic analysis of the various types of living wage ordinances to review their excellent book, *The Living Wage: Building a Fair Economy* (New Press 1998).

Pollin and Luce identify and analyze the economic impact of three types of living wage ordinances. The first category includes ordinances like that enacted by Milwaukee, which demands all public contractors with service contracts over \$5,000 to pay a wage sufficient to support a family at the national poverty line which rises as that line is adjusted. The second category includes ordinances like that passed by Los Angeles, which sets a higher wage and demands health benefits and other benefits, but applies only to higher thresholds of contracts. The third category is based on efforts (so far unsuccessful) like those launched in Denver, Houston, and New Orleans to enact a uniform city-wide wage which is not nearly as high as those that many cities have enacted but would apply to all workers in the city, not just those working for public contractors.

¹⁶⁰ “Survey of Economists Finds Living Wage Laws Reduce Jobs, Promote Hiring of Skilled Workers,” BNA, Daily Labor Report, August 18, 2000. The results of the survey, “The Living Wage: Survey of Labor Economists,” can be viewed at the web site for the Employment Policies Institute www.epionline.org

¹⁶¹ Minimum wages in all fifty states are listed in the prior section, State Wage Laws.

¹⁶² Tripp Baltz, “State Laws: Utah Measures on Pay Deductions, Local Minimum Wage Go to Governor,” BNA Daily Labor Report, March 1, 2001. In Utah, S.B.138, bars local governments from setting a minimum wage higher than the state minimum wage, sponsored by Sen. Howard Stephenson (R), was approved by the House Feb. 26, 2001.

¹⁶³ Louisiana legislature enacted La. Revised Statute 23:642, which attempted to pre-empt any local government from enacting a local minimum wage. The validity of the state attempt to prevent local minimum wages will not be determined until after voters have a chance to pass the bill. *Johnson v Carter*, 767 So. 2d 790 (La. App. 4th Cir. 2000) writ denied October 27, 2000.

¹⁶⁴ Michigan was considering similar legislation prohibiting local living wage ordinances as this article was being presented. “Senate to consider living wage requirement,” Associated Press, Detroit News, February 2, 2001.

¹⁶⁵ “Tucson Living Wage Ordinance Still In Effect,” BNA Daily Labor Report, April 25, 2000.

¹⁶⁶ Henry K. Lee, “Berkeley Sued by Restaurant: Living Wage law’s extension challenged,” San Francisco Chronicle, October 21, 2000.

“Restaurant files suit to block living wage ordinance,” Nation’s Restaurant News, November 6, 2000.

¹⁶⁷ In late 2000, Santa Monica citizens defeated what was described by opponents as a “fake living wage proposal” backed by the hotel industry. The measure would have prohibited local government from ever setting wages or benefits for employees within Santa Monica. Tom Gilroy, “health Insurance: Living Wage Bid backed by Hotel Industry Soundly defeated in California Coastal City,” BNA Pension & Benefits Reporter, November 21, 2000.

¹⁶⁸ Rick Ruggles and Paul Goodsell, “Wage Law’s Cost to City Unclear,” Omaha World Journal, March 8, 2000. When asked to evaluate the effect of the Madison Wisconsin living wage ordinance, one opponent, the President of the local Chamber of Commerce, said “It was watered down enough so that there haven’t been any major complaints.”

¹⁶⁹ According to Chauna Brocht, of the Economic Policy Institute, the narrowly drawn living wage ordinances usually apply to less than 1% of a city’s total workforce. The Los Angeles ordinance, for example, covers only about 7,000 workers out of a total workforce of 1.8 million. Carolyn Hirschman, “Paying Up,” HR Magazine, July 1, 2000.

The Alexandria, Virginia living wage ordinance, passed June 17, 2000, was expected to affect about 150 to 200 workers. “Minimum Wage: City in Alexandria Virginia Approves New Living Wage Ordinance for City Contractors,” BNA Daily Labor Report, June 20, 2000.

¹⁷⁰ “Minimum Wage: Portland Ordinance Raises Wages, Requires Health Benefits for Contractors’ Employees,” BNA, Daily Labor Report, May 6, 1998. Portland’s Fair Wage policy required living wages to be paid to companies that contract with the city for the following services: janitors, security guards, and parking lot attendants. The city estimated that only about 100 such workers would directly benefit.

¹⁷¹ See Living Wage Proposals by City, Employment Policies Institute, www.epionline.org

¹⁷² “Minimum Wage: Portland Ordinance Raises Wages, Requires Health Benefits for Contractors’ Employees,” BNA, Daily Labor Report, May 6, 1998. Portland’s Fair Wage policy required living wages to be paid to companies that contract with the city for the following services: janitors, security guards, and parking lot attendants. The city estimated that only about 100 such workers would directly benefit.

¹⁷³ See prior discussion of scope of coverage in living wage ordinances in St. Louis, Oakland, Detroit, and Los Angeles, section Local Government and Living Wage Ordinances.

¹⁷⁴ Living Wage Proposals by City, Employment Policies Institute, www.epionline.org

¹⁷⁵ See Living Wage Proposals by City, Employment Policies Institute, www.epionline.org

¹⁷⁶ Henry K. Lee, “Berkeley Sued by Restaurant: Living Wage law’s extension challenged,” San Francisco Chronicle, October 21, 2000. Berkeley also extended their living wage law to businesses leasing city land which have annual gross receipts over \$250,000. See Living Wage Proposals by City, Employment Policies Institute, www.epionline.org

¹⁷⁷ Santa Monica City Council is considering a proposal which would require hotels, restaurant, and other businesses with 50 or more employees, which are in a designated coastal zone, to pay a minimum wage of \$10.69 an hour plus full health care benefits and 24 paid days off. Carolyn Hirschman, “Paying Up,” HR Magazine, July 1, 2000.

¹⁷⁸ Stephanie Grace, “Groups Wage War Over Pay in New Orleans,” New Orleans Times-Picayune, January 17, 2001.

¹⁷⁹ In New Orleans a voter initiative for an election to change the city charter must be initiated by the submission of the signatures of 10,000 registered voters. ACORN had to do this two separate times as the New Orleans City Council refused to put the matter on the ballot. The first refusal by the Council was a discretionary technical decision that refused to certify the initiative because all of the signatures were not turned in on the same day. That use of their discretion was

upheld by the courts in *Davis v Carter*, 677 So.2d 1147 (La. App. 4th Cir. 1996). ACORN then did another signature drive in 1996 and turned in over 25,000 on the same day. This time the City Council demurred saying that they were not sure that they had the authority to allow the minimum wage to be raised. ACORN went back to court to compel the Council to place the initiative on the ballot. During the litigation, described in *Johnson v Carter*, 707 So. 2d 1366 (La. App. 4th Cir 1998), the Louisiana legislature enacted La. Revised Statute 23:642, which attempted to pre-empt any local government from enacting a local minimum wage. ACORN had to then go back to court and ultimately prevailed in 2000, allowing the matter to go on the ballot in early 2002. *Johnson v Carter*, 767 So. 2d 790 (La. App. 4th Cir. 2000) writ denied October 27, 2000.

¹⁸⁰ Estimated gains to low-wage workers and the local economy will offset anticipated the expected weak negative effects of modest displacement of workers and business relocation. See Robert Pollin, Mark Brenner, Stephanie Luce, "Intended vs. Unintended Consequences: Evaluating the New Orleans Living wage Proposal," January 2001 paper presented to Industrial Relations Research Association Meeting, ASSA Conference, New Orleans, LA. For a copy of the paper contact Stephanie Luce, University of Massachusetts, Labor Relations and Research Center, sluce@econs.umass.edu.

¹⁸¹ Living Wage Proposals by City, Employment Policies Institute, www.epinonline.org

¹⁸² Louisiana legislature enacted La. Revised Statute 23:642, which attempted to pre-empt any local government from enacting a local minimum wage. The validity of the state attempt to prevent local minimum wages will not be determined until after voters have a chance to pass the bill. *Johnson v Carter*, 767 So. 2d 790 (La. App. 4th Cir. 2000) writ denied October 27, 2000.

¹⁸³ In Utah, S.B.138, bars local governments from setting a minimum wage higher than the state minimum wage, sponsored by Sen. Howard Stephenson (R), was approved by the House Feb. 26. Stephenson told the Bureau of National Affairs that the minimum wage bill is "one of the most family-friendly pieces of legislation we have passed this session." He said the ban on higher municipal minimum wages will make it easier "for young people and people who have just entered this country" to find entry-level work. Opponents of the bill have characterized local minimum wages as a way for cities and towns to enact a "living wage." Stephenson has said the state should work for a fair "entry-level wage." "We should not allow municipalities to arbitrarily set a wage that denies entry to those trying to get a foothold" in the job market, he added. Tripp Baltz, "State Laws: Utah Measures on Pay Deductions, Local Minimum Wage Go to Governor," BNA Daily Labor Report, March 1, 2001.

¹⁸⁴ Michigan was considering similar legislation prohibiting local living wage ordinances as this article was being presented. "Senate to consider living wage requirement," Associated Press, Detroit News, February 2, 2001.

¹⁸⁵ "Tucson Living Wage Ordinance Still In Effect," BNA Daily Labor Report, April 25, 2000.

¹⁸⁶ See Calculating a Living Wage, *supra*.

¹⁸⁷ Peter Waldman, "Prosperity is Good for Living Wage Drive," WSJ, December 20, 1999.

¹⁸⁸ Peter Waldman, "Prosperity is Good for Living Wage Drive," WSJ, December 20, 1999.