

RAISING THE CALIFORNIA MINIMUM WAGE IS NOT ENOUGH: CREATING A SUSTAINABLE WAGE BY ACCOUNTING FOR INFLATION THROUGH INDEXING

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I. INTRODUCTION

On January 1, 2007, California's minimum wage experienced its first increase in five years.¹ The \$1.25 increase will take place in two phases culminating in 2008 with a state mandated wage of \$8.00 an hour.² This increase is the result of three years of effort by Democratic state legislators and labor interests to garner support from Governor Schwarzenegger, who previously held reservations about how an increase would affect the State's economy.³ Proponents of the increase herald the higher wage as a long overdue and much needed necessity. Meanwhile, opponents remain concerned that the increase could have negative consequences for employers and far reaching implications for the State's economy and job market.⁴ Even though this increase will give California the highest minimum wage in the country,⁵ the new law does not insure that the wage will retain its buying power as inflation rises.⁶ How will low-wage workers maintain a consistent standard of living when their wages do not keep pace with the already expensive and rising cost of living in California? The

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¹ See Marc Lifsher & Alana Semuels, *Wage Hike Finding Quiet Acceptance: California's Increase to \$7.50 an Hour is Not Expected to Hurt the Economy or, Some Workers Say, Change Employees' Daily Lives*, L.A. TIMES, Jan. 1, 2007, available at 2007 WLNR 20184. Between January 2002, the time the last fifty cent increase took place, and December 2006, the California minimum wage remained at \$6.75 an hour. *Id.*

² See *id.*

³ *Id.*

⁴ See Christina Almeida, *Governor Signs New Minimum Wage into Law*, DAILY BREEZE (TORRANCE, CAL.), Sept. 13, 2006, available at 2006 WLNR 15897576. Groups such as the California Chamber of Commerce have expressed their objections to the increase and claim it will only serve to "hurt the economy and drive up costs." *Id.*

⁵ Lifsher & Semuels, *supra* note 1.

⁶ See Mathew Yi, *New Laws to Change Lives at Basic Level Many Californians Will Notice Changes as Legislators' Efforts Come to Fruition on Monday*, S.F. CHRON., Dec. 29, 2006, at B1, available at 2006 WLNR 22659578. Although the recent increase in the minimum wage is an important victory for low-wage workers within the state, Sally Leiber, Democratic California Assembly member and ardent minimum wage advocate, notes that "[e]ven when the minimum wage becomes \$8 an hour in 2008, it'll still be 2 cents under the federal poverty level. So clearly more needs to be done with working families fighting poverty in California." *Id.*

answer seems simple enough: provide a legitimate legislative mechanism that automatically adjusts the minimum wage with inflation each year. Implementing such a provision, however, will not be easy and has already been met by staunch opposition from both the Governor and business interests within the State. As the effects of failing to couple the minimum wage with some form of inflationary indexing will be felt by many employees beyond California's lowest paid workers, it is an issue that California can no longer afford to ignore.

This Note examines the economic and social impact that the recent increase in the minimum wage could have on the State of California and the pressing need for a system of inflationary indexing. Part II provides a historical background of state, federal and California minimum wage legislation. Part III discusses the governing minimum wage legislation in California and the history behind its enactment. Part IV details what effects an increase in the minimum wage will have on California and addresses the economic implications and consequences of such an increase, including whether or not an increase will result in a corresponding decrease in employment for low-wage workers. Part V explains the concept of inflationary indexing and, specifically, how this technique has been used successfully in the administration of Social Security benefits. Part VI details the argument for raising and indexing California's minimum wage. First, it presents the need for the creation of a sustainable living wage. Second, it details the reasons why annual inflationary indexing of the minimum wage is the best means to achieve this goal. Part VII concludes and reiterates the reasons why instituting a system of inflationary indexing in California will help low-wage workers keep pace with their rising cost of living.

II. HISTORY OF MINIMUM WAGE LEGISLATION

A. STATE LEVEL REGULATION

When it came to enacting a minimum hourly wage for workers, states, not the federal government, first addressed the issue. The first state to enact such legislation was Massachusetts in 1912; the law was designed to specifically protect working women and children.⁷ This hourly wage, however, was not a mandated requisite. Rather, the State appointed a minimum wage commission that was limited to recommending an amount that would suffice as a living wage.⁸ The commission was limited in its means of enforcement, and the only punishment for businesses that committed violations was having their name and violation published in the state's newspapers.⁹ By 1913, eight other states, including California,

⁷ JEROLD WALTMAN, *THE POLITICS OF THE MINIMUM WAGE* 28 (U. of Ill. Press 2000).

⁸ *See id.* at 29.

⁹ *Id.*

passed minimum wage laws¹⁰ and the number grew to a total of thirteen states by 1920.¹¹ Many more states followed suit once the Great Depression hit the American industrial landscape, resulting in twenty-five states enacting some form of minimum wage legislation by 1938.¹²

Although many state legislatures were willing to support required wages for hourly workers, the Supreme Court took longer to be convinced. In 1936, the Supreme Court struck down state minimum wage legislation for the last time in *Morehead v. New York ex rel. Tipaldo*.¹³ In *Tipaldo*, the Court reiterated that it would interpret the Due Process Clause as prohibiting New York, or any state, from impeding the ability of employers to contractually negotiate with their employees in order to determine wages.¹⁴ Since Congress had not yet enacted any type of federal minimum wage, the decision in *Tipaldo* effectively took away the government's ability to regulate employers and protect citizens against oppressive and poverty inducing wages.¹⁵ Consequently, millions of American workers were unable to receive wage protection that would ensure their standard of living was above the poverty line and that the hours they worked were not excessive.

B. FEDERAL LEVEL REGULATION

Early on, Congress, following the example set by various states, also saw the need for a mandated minimum wage on a national level. In 1918 Congress created a minimum wage board with the authority to set wages for women and children working in Washington D.C.¹⁶ However, beginning with *Adkins v. Children's Hospital* in 1923, the Supreme Court established a trend of striking down Congress's attempts at wage regulation as unconstitutional.¹⁷

The first minimum wage legislation actually passed in Congress was the National Industrial Recovery Act of 1933 (NIRA).¹⁸ But even under the NIRA there was no uniform minimum wage and pay scales varied widely across industries.¹⁹ All the same, when the NIRA was contested, the Supreme Court declared it unconstitutional and invalid under the

¹⁰ *Id.* The eight states were as follows: Oregon, Utah, Washington, Nebraska, Minnesota, Colorado, California, and Wisconsin. *Id.*

¹¹ William P. Quigley, "A Fair Day's Pay for a Fair Day's Work": Time to Raise and Index the Minimum Wage, 27 ST. MARY'S L.J. 513, 516 (1996).

¹² WALTMAN, *supra* note 7, at 29–30.

¹³ Quigley, *supra* note 11, at 519.

¹⁴ *Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587, 610 (1936).

¹⁵ See Quigley, *supra* note 11, at 519.

¹⁶ See *id.* at 519–20. The first action taken by the board was to establish a minimum wage of 34.5 cents per hour, which is \$16.50 per week, or \$71.50 per month. *Id.* at 520.

¹⁷ See *Adkins v. Children's Hosp.*, 261 U.S. 525, 559 (1923) (holding that Washington D.C.'s proscribed minimum wage law was unconstitutional).

¹⁸ See WALTMAN, *supra* note 7, at 28.

¹⁹ See Quigley, *supra* note 11, at 521–22. Wages ranged from 12.5 cents an hour for the Puerto Rican needle trades to 70 cents an hour in the construction industry. *Id.*

Commerce Clause in *Schechter Poultry Corp. v. United States*.²⁰ Commentators lauded the Court's decision to rule the NIRA unconstitutional because, had it stood, the structure of the statute may have subjected African-Americans to permanent second-class legal and economic status.²¹ The Court also struck down several other federal minimum wage acts created as part of President Roosevelt's New Deal legislation and it began to appear that it might be impossible for state or federal lawmakers to protect the worker's right to earn a fair minimum wage.²²

Congress took a step closer to settling this issue in mid-1937, when the Fair Labor Standards Act (FLSA) was introduced.²³ While there was a great deal of support for this long awaited legislation, the bill was strongly opposed by business lobbies and agricultural interests from the South who depended heavily on low-wage labor.²⁴ Organized labor also had its reservations about the FLSA and, amidst these controversies, the bill was ultimately held over until 1938.²⁵ In the meantime, ten months after it handed down its decision in *Tipaldo*, the Supreme Court abandoned its opposition to minimum wage reforms when it decided *West Coast Hotel Co. v. Parish*.²⁶ This case, decided on March 29, 1937, reversed the Court's decisions in *Tipaldo* and *Adkins* and recognized a basic support for low-wage workers by finally upholding this type of legislation. The Court wrote in *Parish*:

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.²⁷

No longer fearing that the Supreme Court would thwart their attempts at wage regulation, both the House and the Senate finally passed a modified version of the FLSA and it was officially signed into law on June 25,

²⁰ *Schechter Poultry Corp. v. U.S.*, 295 U.S. 495, 550 (1935) (holding that governmental regulation of employee's wages was an inappropriate and unconstitutional use of the federal commerce power when the employees were employed in "intrastate business").

²¹ See David E. Bernstein, *Roots of the 'Underclass': The Decline of Laissez-Faire Jurisprudence and the Rise of Racist Labor Legislation*, 43 AM. U. L. REV. 85, 120 (1993) (discussing the racist nature of the statute that would have effectively redistributed employment and resources from African-Americans to whites during the Depression).

²² Quigley, *supra* note 11, at 522.

²³ See Rachel Harvey, Note, *Labor Law: Challenges to the Living Wage Movement: Obstacles to Economic Justice*, 14 U. FLA. J. L. & PUB. POL'Y. 229, 237 (2003).

²⁴ Quigley, *supra* note 11, at 523.

²⁵ Quigley, *supra* note 11, at 523-24.

²⁶ *Parish v. West Coast Hotel Co.*, 300 U.S. 379 (1937).

²⁷ *Id.* at 399-400.

1938.²⁸ Congress's intent behind enacting the FLSA was to address the burdens that unfair labor practices were imposing on interstate economic activity.²⁹ The Court's support for this type of legislation was formally implemented in 1941 when it unanimously upheld the FLSA in *United States v. Darby*.³⁰ In addition to setting the minimum wage, the FLSA also established policies concerning hours worked, child labor, and employment conditions, as well as policies aimed at fostering the flow of commerce between the states.³¹ Although the FLSA covered a significant portion of working Americans, it also contained a plethora of exemptions³² and it has been amended numerous times since it was initially enacted.³³

The current federal minimum wage is \$5.15 an hour.³⁴ It has remained unchanged since September 1, 1997, the last time an increase was authorized by Congress.³⁵ In January 2007, the new House of Representatives, controlled by the Democratic Party, overwhelmingly voted to increase the federal minimum wage to \$7.25 an hour by mid-2009.³⁶ The Senate has passed the increase as well and the two chambers are now attempting to come to an agreement regarding the inclusion of tax breaks for small businesses.³⁷ Once a consensus is reached, President Bush has

²⁸ Quigley, *supra* note 11, at 528.

²⁹ See RONALD J. KRUMM, THE IMPACT OF THE MINIMUM WAGE ON REGIONAL LABOR MARKETS 1 (American Enterprise Institute for Public Policy Research 1981). The author quoted the exact language of section 2 of the 1938 version of the Fair Labor Standards Act as follows:

(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several states; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce and (5) interferes with the orderly and fair marketing of goods in commerce.

Id.

³⁰ U.S. v. Darby, 312 U.S. 100, 125 (1941) (holding it was within Congress's power to set wages and that a federal minimum wage was not a violation of Due Process under the Fifth or Fourteenth Amendments).

³¹ See KRUMM, *supra* note 29, at 7.

³² These exemptions are generally focused around whether the "type" of employer and employee fits within the exemption. KRUMM, *supra* note 29, at 7.

³³ The FLSA was amended in 1961, 1966, 1974, 1977, 1989, and 1996. 29 U.S.C. § 206 (2006). The amendments, among other things, have served to broaden what employees and which industries were covered under the act as well as encompassing certain increases in the minimum wage. For instance, the 1961 amendments extended the spectrum of coverage under the FLSA and made the minimum wage applicable to employees who were employed by an enterprise engaged in commerce or the production of goods for commerce. See KRUMM, *supra* note 29, at 8–12.

³⁴ 29 USC § 206(a)(1) (2006).

³⁵ See *id.* This amendment to the FLSA was actually passed in 1996 but provided for the 1997 increase.

³⁶ Jonathan Weisman, *House Approves Minimum Wage Increase*, WASH. POST, Jan. 11, 2007, available at 2007 WLNR 547294. The increase was passed in the House of Representatives by a vote of 315 to 116. *Id.*

³⁷ See Richard Simon, *Boasts, Barbs as Democrats Approach Their First 100 Days in the Majority*, L.A. TIMES, Apr. 7, 2007, available at http://www.latimes.com/news/nationworld/nation/la-na-hundred7apr07_0,1500851.story?page=1&coll=la-home-headlines.

indicated he will not oppose signing the bill into law.³⁸ If passed, and after adjusting for inflation, this additional \$2.10 an hour would represent an increase of approximately four percent over the previous minimum wage.³⁹ The FLSA does not preclude individual states from setting a minimum wage above the federally mandated minimum; however, a state is prohibited from setting any wage below this amount.⁴⁰ Many states, including California, have minimum wage legislation that takes advantage of this independence and set their minimum wage above the federal amount.⁴¹

C. CALIFORNIA

On January 1, 2007 California's minimum wage increased for the first time since 2002.⁴² Currently, the minimum wage is \$7.50 an hour but is set to increase again to \$8.00 an hour on January 1, 2008.⁴³ This represents a total increase of \$1.25 over the last prevailing wage of \$6.75 an hour. Thus, minimum wage workers employed by California businesses earn an hourly rate that is \$2.35 higher than the \$5.15 federal minimum wage.⁴⁴ Another difference between California and federal law is that California does not allow employers to credit tips received by employees toward their minimum wage obligations as is permitted by the FLSA.⁴⁵ In California, all gratuities earned by employees during their employment are the employee's sole property and the employer cannot use this amount as a credit toward California's minimum wage requirement.⁴⁶ This advantage is an important difference because many of California's minimum wage earners are employed in the food and restaurant service industry.

Today, the only way to increase the minimum wage is by amending the California Labor Code. Such modification requires passage of an amendment by both the California State Assembly and Senate. Once this approval is obtained, the governor must also sign the approved version of the bill into law. Prior to 2004, the minimum wage in California could be

³⁸ *Executive Comp Splits Minimum Wage Camps*, CFO MAG., Feb. 6, 2007, available at 2001 WLNR 2855410.

³⁹ *Id.*

⁴⁰ See 29 USC § 218(a) (2006).

⁴¹ As of February 2007, the minimum wage in twenty-nine states and the District of Columbia exceeded the \$5.15 an hour federal minimum wage. Additionally, Arizona, Colorado, Missouri, Montana, Nevada, and Ohio all passed ballot initiatives in November 2006 that increased their minimum wage above the federal level. Robert Pollin, *A Living Wage We Can Live With*, L.A. TIMES, Jan. 14, 2007, available at <http://www.latimes.com/news/opinion/commentary/la-op-pollin14jan14,0,203893.story?coll=la-news-comment-opinions>.

⁴² In 2002, the California minimum wage increased to \$6.75 an hour pursuant to the most recent minimum wage order issued by the Industrial Wage Commission. See California Minimum Wage Order MW-2001, at <http://www.dir.ca.gov/iwc/Minwage2001.pdf>.

⁴³ This increase is due to the passage of A.B. 1835 in September 2006. See A.B. 1835, Chapter 230 (Cal.), available at

http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_1801-1850/ab_1835_bill_20060912_chaptered.pdf.

⁴⁴ See Michael Kinsman, *Minimum Wage Should be Tied to Inflation Index*, SAN DIEGO UNION-TRIBUNE, Jan. 8, 2006, available at 2006 WLNR 474251.

⁴⁵ CAL. LAB. CODE § 351 (Deering 2006).

⁴⁶ *Id.*

set by statute or by the independent action of the California Industrial Wage Commission (IWC)⁴⁷—a five person body appointed by the governor.⁴⁸ State law required the IWC to review the adequacy of the minimum wage every two years and determine whether or not an increase was necessary.⁴⁹ Traditionally, the IWC would issue orders that set the minimum wage, but this commission was de-funded by the California legislature in 2004 and no longer has the authority to increase the minimum wage.⁵⁰

Some cities in California acted independently in this area and enacted their own “living wage ordinances.”⁵¹ The purpose of these ordinances is to require employers to pay employees a sustainable wage that actually reflects the cost of living in that city.⁵² One such ordinance passed in Berkeley was held constitutional by the Ninth Circuit in *RUI One Corp. v. City of Berkeley*.⁵³ The city of San Francisco followed suit and adopted a minimum wage of \$8.50 an hour, which took effect in February 2004.⁵⁴ At the time, this amount was twenty-six percent higher than the state’s mandated wage and made San Francisco’s minimum wage the highest in the country.⁵⁵ The San Francisco law also calls for the minimum wage to be adjusted annually on January 1st to account for inflation and cost of living increases.⁵⁶ Most recently, on January 1, 2007, San Francisco’s city wide minimum wage increased 3.6% to \$9.14 an hour.⁵⁷ According to a study conducted by the University of California at Berkeley Institute of Industrial Relations, San Francisco’s economy adjusted very well to this increase and it has generated many benefits with surprisingly small associated costs.⁵⁸

III. THE CURRENT STATE OF THE MINIMUM WAGE IN CALIFORNIA

On September 12, 2006 Governor Schwarzenegger signed Assembly Bill (A.B.) 1835 into law.⁵⁹ Introduced by Democratic California State

⁴⁷ See CAL. LAB. CODE § 1173 (Deering 2007). The last wage order, MW-2001, effectuated by the IWC went into effect on January 1, 2001 and it set the minimum wage at \$6.25 an hour. MW-2001 also called for the wage to increase to \$6.75 an hour on January 1, 2002. See California Minimum Wage Order MW-2001, *supra* note 42.

⁴⁸ CAL. LAB. CODE § 70 (Deering 2007).

⁴⁹ CAL. LAB. CODE § 70 (Deering 2007).

⁵⁰ See CAL. LAB. CODE § 1182.1 editor’s notes (Deering 2007).

⁵¹ Throughout the country, over 140 municipalities have enacted some form of a living wage law that ensures workers earn a minimum of \$9.00 to \$11.00 an hour. Pollin, *supra* note 41.

⁵² 1 WILCOX CALIFORNIA EMPLOYMENT LAW § 2.07 (M. Kirby Wilcox & Erica B. Grubb eds., Mathew Bender) (2005).

⁵³ *RUI One v. City of Berkeley*, 371 F.3d 1137, 1141–57 (9th Cir. 2004) (holding that the city’s living wage ordinance did not violate the Contract Clause of the US Constitution nor did it violate the Equal Protection Clause or Due Process Clause of the US or California Constitutions).

⁵⁴ MICHAEL REICH, ARINDRAJIT DUBE & GINA VICKERY, UC BERKELEY INST. OF INDUS. REL., *THE ECONOMICS OF CITYWIDE MINIMUM WAGES: THE SAN FRANCISCO MODEL 1* (2006).

⁵⁵ See Kinsman, *supra* note 44.

⁵⁶ REICH ET. AL, *supra* note 54, at 1. On January 1, 2005, the minimum wage was increased to \$8.62 per hour and again to \$8.82 per hour on January 1, 2006. *Id.*

⁵⁷ Charlie Goodyear, *San Francisco: City Minimum Wage Rising to \$9.14 in '07*, S.F. CHRON., available at 2006 WLNR 16442110.

⁵⁸ *Id.* at 3.

⁵⁹ See A.B. 1835, Chapter 230 (Cal. 2006).

Assembly member Sally Leiber, A.B. 1835 provides the framework for increasing California's state minimum wage in two steps to \$8.00 an hour by January 2008.⁶⁰ The first seventy-five cent increase went into effect on January 1, 2007 and the second fifty cent increase will take place on January 1, 2008.⁶¹ This raise marks the first time in California's history that a bill to increase the minimum wage has been signed into law by the governor of the State.⁶² Conspicuously missing from the terms of A.B. 1835 is any provision addressing automatic upward adjustments for inflation. This omission means that, under the current law, California's minimum wage workers will not receive yearly pay increases to account for their increased cost of living expenses.⁶³

A. THE PATH TO ASSEMBLY BILL 1835

While the passage of A.B. 1835 is the result of a bipartisan compromise,⁶⁴ the issue of raising the minimum wage has long been a source of conflict between Democratic state legislators and Governor Schwarzenegger. Early in his first term, Governor Schwarzenegger was hesitant to support any increase in the State's minimum wage. Prior to the introduction of S.B. 1167, discussed *infra*, Schwarzenegger chose to veto two previous attempts by the legislature to raise the minimum wage. First, A.B. 2832 was introduced in February 2004 by Assembly member Leiber.⁶⁵ The bill called for an amendment to the California Labor Code that would increase the minimum wage from \$6.75 an hour to \$7.75 an hour in two fifty cent increments spread over one year and was passed in both the Assembly and the Senate.⁶⁶ However, Governor Schwarzenegger vetoed this bill on September 18, 2004, citing concerns that an increase of this magnitude would be detrimental to California's economy and would impose a substantial burden on business owners.⁶⁷

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Press Release, Sally Lieber, Assembly member, Third Time's a Charm for 1.7 Million Low-Wage Workers (Sept. 12, 2006) (on file with author). Previous increases have been a result of increases to the federal minimum wage, voter initiative, or by order of the California Industrial Wage Commission. *Id.*

⁶³ See A.B. 1835, Chapter 230 (Cal. 2006).

⁶⁴ *California's Minimum Wage Increases to \$7.50 Per Hour Starting Jan. 1*, U.S. ST. NEWS, Dec. 29, 2006, available at 2006 WLNR 22733759. In discussing why this was the right time for a bipartisan agreement on raising the minimum wage, Governor Schwarzenegger stated:

Raising the minimum wage is something I wanted to do for a long time. I am happy that this year, legislators came together to pass bipartisan, common sense legislation that rewards California's working families without hurting our economy.... Since I came into office, we have added more than 680,000 new jobs, unemployment is down to 4.6 percent, and the state's revenues are up by almost \$20 billion. The California economy is booming and now is the time to make sure that everyone is sharing in this prosperity.

Id.

⁶⁵ A.B. 2832, (Lieber) (Introduced February 20, 2004 (Cal.)), available at http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2801-2850/ab_2832_bill_20040220_introduced.pdf.

⁶⁶ A.B. 2832, (Lieber) (History, February 20, 2004 (Cal.)), available at http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2801-2850/ab_2832_bill_20040918_history.html. (last visited Feb. 12, 2007).

⁶⁷ A.B. 2832, (Arnold Schwarzenegger) (Veto Message Sept. 18, 2004 (Cal.)), available at http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2801-2850/ab_2832_vt_20040918.html. Governor Schwarzenegger noted that this increase would have made California's minimum wage the highest in

Assembly member Leiber then introduced another bill, A.B. 48, in the 2005 legislative session.⁶⁸ This bill called for the same wage increase proposed in A.B. 2832; however, it also included a provision that provided for the automatic annual future adjustment of the minimum wage to keep up with inflation.⁶⁹ By the time A.B. 48 passed in the Assembly and Senate, the Governor had slightly altered his stance on an increase. Despite his change of position, Schwarzenegger still vetoed A.B. 48 in September 2005. Although, Schwarzenegger finally agreed that it was time to raise the State's minimum wage, his veto gave voice to his strong opposition to the automatic future indexing of the minimum wage.⁷⁰ His veto message expressed concern that putting future increases in the minimum wage on "autopilot" would not allow lawmakers to examine economic factors or other wage and hour issues that could impact workers and businesses within the State.⁷¹ This message served to establish the Governor's opposition to automatic adjustment, or indexing, of the minimum wage to account for yearly inflation; a position he has made sure to incorporate into the terms of A.B. 1835.⁷²

Most recently, the Governor put his full support behind Senate Bill (S.B.) 1167, which called for a \$1.00 an hour increase.⁷³ Introduced by Republican California State Senator Abel Maldonado, the bill stated that the proposed hike in the minimum wage would take effect in two phases, each resulting in a half-dollar increase.⁷⁴ The first fifty cent increase would have gone into effect in September 2006 and the second in July 2007.⁷⁵

the country and would increase costs to California employers by "at least \$3 billion, and as much as \$4.4 billion." *Id.*

⁶⁸ See A.B. 48, (Dunn) (Introduced Dec, 6, 2006 (Cal.)), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_48_bill_20041206_introduced.pdf.

⁶⁹ *Id.*

The bill would increase the minimum wage to \$7.25 per hour, effective on and after July 1, 2006, and to \$7.75 per hour effective on and after July 1, 2007, and would provide for the automatic adjustment of the minimum wage on January 1 of each year thereafter, calculated by multiplying the minimum wage by the previous year's rate of inflation, as specified.

Id.

⁷⁰ See A.B. 48 (Arnold Schwarzenegger) (Veto Message) Sept 29, 2005 (Cal.), available at http://www.leginfo.ca.gov/pub/bill/asm/ab_00010050/ab_48_vt_20050929.html.

It is essential to those working at or near the minimum wage that the adequacy of the wage is reviewed on a regular basis and raised when appropriate. The minimum wage has not been increased since 2002, and I believe it is now appropriate. This is a position I made very clear to the author. However, I have also made it clear that I do not support automatic increases to the wage that relieve elected officials of their duty to consider all of the impacts each increase to the wage will have on workers and businesses.

Id.

⁷¹ See *id.*

⁷² See A.B. 1835, Chapter 230 (Cal. 2006), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_1801-1850/ab_1835_bill_20060912_chaptered.pdf.

⁷³ See Howard Fine, *Key Factor in Minimum Wage Laws Will be Timing*, L. A. BUS. J., Mar. 27, 2006, available at 2006 WLNR 6448174.

⁷⁴ See *id.*

⁷⁵ S.B. 1167, (Maldonado) (Introduced Jan 10, 2006 (Cal.)) available at http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1151-1200/sb_1167_bill_20060110_introduced.pdf.

Section 1 of S.B. 1167 reads as follows:

This increase would have resulted in a state-wide minimum hourly wage of \$7.75. The bill was dubbed an urgency statute that should take effect immediately and referred to the pressing nature of this legislation by noting:

California's lowest paid workers urgently require an increase in their wages as soon as possible in order to keep up with the rapidly increasing cost of living. It is therefore necessary that this act take effect immediately.⁷⁶

Despite the seemingly concerned language above, it is important to note that the Governor remained unwilling to support a measure that included automatic inflationary indexing. As such, Assembly member Leiber vowed to remain dedicated to this issue and expressed her willingness to work with Schwarzenegger to see if "a deal [could] be struck."⁷⁷ At the time, Leiber was also quick to point to polls of California voters that showed overwhelming support for an increase in the minimum wage accompanied by future indexing.⁷⁸

However, the agreement between Leiber and the Governor on A.B. 1835 seems to have quelled any desire to bring this issue to the people through a ballot initiative. This common ground, and the concern that Schwarzenegger would resurrect the IWC and use this agency to approve his own \$1.00 an hour increase without indexing, caused Democrats to back away from advocating for wage indexing legislation.⁷⁹ On the other side of the debate, business interests continue to oppose indexing, but some came to accept that an increase in the minimum wage may not be entirely detrimental to their interests.⁸⁰ The additional increase articulated in A.B. 1835 seems to represent a mutual concession; low-wage earning Californians will see their income rise by an extra twenty-five cents at the expense of having an indexing system put into place for future increases.

Notwithstanding any other provision of this part, on and after September 1, 2006, the minimum wage for all industries shall not be less than seven dollars and twenty-five cents (\$7.25) per hour, and on and after July 1, 2007, the minimum wage for all industries shall not be less than seven dollars and seventy-five cents (\$7.75) per hour.

Id.

⁷⁶ *Id.*

⁷⁷ See Jake Hensaw, *Battle Over Minimum Wage Looms in State Capitol*, VISALIA TIMES-DELTA, Jan. 16, 2006, at 1A.

⁷⁸ See *id.*

⁷⁹ Steven Harmon, *Governor Signs Minimum Wage Bill: Hourly Pay to Rise to \$7.50 an Hour in January, then to \$8 and hour in 2008*, CONTRA COSTA TIMES, Sept. 13, 2006, at F4, available at 2006 WLNR 15885210.

⁸⁰ See Howard Fine, *Employers Wage War Against Minimum Wage Indexing*, L.A. BUS. J., Aug. 14, 2006, available at 2006 WLNR 15658331. In reference to the recent increase in the state's minimum wage, Gary Toebben, President and Chief Executive Officer of the Los Angeles Area Chamber of Commerce, was quoted as saying, "[w]e think it's a reasonable increase and a compromise that will serve the State, workers and the business community—as long as there are no annual increases." *Id.*

IV. HOW WILL AN INCREASE IN THE MINIMUM WAGE AFFECT CALIFORNIA?

A. WHO ARE CALIFORNIA'S MINIMUM AND LOW-WAGE WORKERS?

As of January 2006, there are approximately 1.4 million Californians who earn at or near the state minimum wage for every hour worked.⁸¹ Of these workers, nearly sixty percent are Hispanic or Latino.⁸² Additionally, low-wage workers in California are more likely to be female and unmarried when compared to all workers in the State.⁸³ Historically, these workers tend to be significantly less educated and many have not even graduated high school.⁸⁴ Contrary to the assumption that most minimum wage workers are teenagers, a majority are adults, many of whom are attempting to support families with their earnings.⁸⁵ In fact, almost six out of every ten, or 59.7%, of minimum wage workers in California are over the age of twenty-five.⁸⁶ When compared to the number of California teens earning the minimum wage,⁸⁷ it becomes apparent that the state minimum is an issue that affects a significant number of adults and families. Another fallacy is that the majority of minimum wage earners are employed on a part-time basis. In fact, fifty-nine percent of all minimum wage workers are employed in full-time positions.⁸⁸ The leisure, hospitality, wholesale, and retail industries in California are disproportionately staffed with workers earning at or below the minimum wage and these industries depend heavily on low labor costs in order to operate profitably.⁸⁹ Many low-wage workers contribute greatly to the State by holding positions important to maintain California's economy and social structure.⁹⁰ Table 1 compares the demographics of California's low and minimum wage workers with the total working population of the State.

⁸¹ CALIFORNIA LABOR FEDERATION, AFL-CIO, FACTS ON THE CALIFORNIA MINIMUM WAGE 1 (2006) [hereinafter *California Facts*], at <http://www.calaborfed.org/pdfs/Legislative/Minimum%20Wage%20Fact%20Sheet%202006.pdf>.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See DAVID MACPHERSON, EMP. POLICIES INST., THE EFFECTS OF THE PROPOSED CALIFORNIA MINIMUM WAGE INCREASE 2 (2002), at http://www.epionline.org/studies/macpherson_ca_06-2002.pdf.

⁸⁵ Kristina Wilfore, *Take the Initiative*, MS. MAG., Oct. 2006, at 14, available at 2006 WLNR 18571419. "The majority of U.S. minimum wage workers aren't teenagers, contrary to popular belief: They're adult women, nearly one-third of whom have children." *Id.* While this quote references the federal minimum wage, it logically follows that many women within California are also struggling to raise families while earning the minimum wage.

⁸⁶ See ALISSA ANDERSON GARCIA, CAL. BUDGET PROJECT, MINIMUM WAGE INCREASES BOOST THE EARNINGS OF LOW-WAGE CALIFORNIA WORKERS 1 (2006), at http://www.cbp.org/2005/0508_bb_minimumwage.pdf.

⁸⁷ California teens account for approximately 16.8% of the state's minimum wage workers. *Id.*

⁸⁸ *California Facts*, *supra* note 81, at 1.

⁸⁹ See GARCIA, *supra* note 86, at 1.

⁹⁰ See *California Facts*, *supra* note 81, at 1 (noting that minimum wage workers often work as "homecare workers, nursing home workers, childcare workers, farm workers, restaurant workers, recycling center workers, salespersons, cooks, janitors, security guards, and many other professions.").

| | Low-Wage Workers | All Workers |
|-------------------------------|------------------|-------------|
| Age | | |
| 16 to 19 | 16.80% | 4.20% |
| 20 to 24 | 23.50% | 11.60% |
| 25 to 64 | 59.70% | 84.20% |
| Gender | | |
| Male | 50.40% | 53.80% |
| Female | 49.60% | 46.20% |
| Race | | |
| Latino | 57.10% | 32.10% |
| White | 26.50% | 47.20% |
| Other | 16.40% | 20.70% |
| Industry | | |
| Educational & Health Services | 10.00% | 20.20% |
| Leisure & Hospitality | 25.50% | 8.70% |
| Manufacturing | 11.20% | 11.90% |
| Wholesale & Retail Trade | 22.20% | 14.80% |
| All others | 31.10% | 44.40% |

In addition to workers who actually earn the minimum wage, other higher paid workers may also be affected by an increase. There are over 700,000 additional workers that will likely benefit, albeit indirectly, from an increase in the minimum wage.⁹² As the minimum wage rises, those workers who currently earn slightly above the minimum wage may also receive pay increases.⁹³ Additionally, employees who are higher in the employment hierarchy (e.g. supervisors, managers) may also benefit because their pay may be incrementally increased.⁹⁴ The potential downside to increasing the minimum wage is that some workers may lose

⁹¹ GARCIA, *supra* note 86, at 1.

⁹² MICHAEL REICH, ARINDRAJIT DUBE & GINA VICKERY, U. OF CAL. BERKELEY INST. OF INDUS. REL., MINIMUM WAGES AND THE CALIFORNIA ECONOMY: THE ECONOMIC IMPACT OF A.B. 48 3 (2005), at www.iir.berkeley.edu/research/ab48.pdf.

⁹³ See Robert Rodriguez and Dennis Pollock, *Paychecks Get Bigger for Low-Paid Workers: New Year Brings 75-Cent-an-Hour Boost to State's Minimum Wage*, FRESNO BEE (CA), Jan. 7, 2007, at F1, available at 2007 WLNR 367190 (noting that some employers feel pressure to raise the wages of those "working slightly above the minimum [wage]").

⁹⁴ But see *California Facts*, *supra* note 81, at 4 (stating that salaried and overtime exempt employees will probably not see an increase in wages as a result of an increase in the minimum wage as the majority of them are already earning well above the price floor set by minimum wage legislation).

their jobs because it will no longer be profitable for firms to employ them. As employers are required to pay employees a higher base wage they may have to cut back on the number of employees in order to maintain the same level of profitability. This and other potential economic consequences of an increase in the minimum wage are discussed later.

B. PUBLIC WELFARE COSTS AND THE MINIMUM WAGE

As a result of the inability of wages to keep up with the rapidly increasing price of living in California, many Californians are unable to survive and provide for their families on their limited incomes alone. Many of these families rely on publicly funded government aid programs to supplement their earnings and meet their subsistence needs. California taxpayers end up shouldering this burden. An unfortunate side-effect of this pattern is that many California employers may become complacent when it comes to compensation for workers who fill low-paying jobs. Employers may come to depend on public assistance programs to subsidize the wages they are paying, rather than paying their workers at a rate above the state mandated minimum.

A study conducted by the University of California Berkeley Institute for Labor Research and Education looked at the hidden and deleterious effects of low-wage jobs on the State's public assistance programs. Using data collected in 2002, the study looked at whether or not "working families" were able to live independently off of their earnings or if they supplemented their incomes by partaking in any of California's public assistance programs.⁹⁵ In 2002, Californians received a total of \$21.2 billion of public assistance through these programs, an amount that was furnished completely by taxpayer revenues.⁹⁶ The study also found that working families comprised over fifty-three percent of the total number of families enrolled in at least one of the ten public assistance programs analyzed.⁹⁷ Consequently, almost half (forty-eight percent) of this amount, or \$10.11 billion, went to families in which one or more members were working full-time.⁹⁸ Not surprisingly, the study reported that Latino families made up a majority (fifty-nine percent) of public assistance recipients, which correlates strongly with the general demographic make-

⁹⁵ CAROL ZABIN ET AL., U. OF CAL. INST. FOR LAB. & EMP., *THE HIDDEN PUBLIC COSTS OF LOW-WAGE JOBS IN CALIFORNIA* 5 (2004). For the purposes of this study a family qualified as a working family if it contained at least one individual who was presently employed and he or she had worked for at least forty-five weeks in the past year. *Id.* at 11. This allowed the researchers to remove part-time workers from this analysis. The public programs analyzed in the study were as follows: the Earned Income Tax Credit (refundable tax credit for individuals and families that work and have earned under a certain set amount each year); CalWORKs (California's version of what is commonly known as "welfare"); the Low Income Home Energy Assistance Program, the Section 8 rental voucher program (program subsidies for low income families that pursue privately-owned rental housing); Child Care Assistance; Medi-Cal (California's Medicaid health insurance program); the Healthy Families Program (state and federally funded health insurance for children in households that are above the Medi-Cal eligibility threshold); the Special Supplemental Nutrition Program for Women, Infants, and Children; the Food Stamp Program, and the National School Lunch Program. *Id.* at 13.

⁹⁶ *Id.* at 13. This amount includes the administrative costs of running these programs. *Id.*

⁹⁷ *Id.* at 11.

⁹⁸ *Id.* at 18.

up of low-wage workers in the state.⁹⁹ Of the working families depending on these programs, the greatest number were employed in the retail industry, which includes food services positions.¹⁰⁰

C. ECONOMIC IMPLICATIONS

1. *Concerns Over Job Loss*

The consensus among economists is that increases in the minimum wage should be avoided whenever the costs exceed the benefits and that an increase in the minimum wage will lower the number of employed low-wage workers.¹⁰¹ This analysis is based on a simple application of supply and demand where the following assumptions are made: the labor market is perfectly competitive, the minimum wage covers all workers, and worker productivity is unaffected by the wage rate.¹⁰² Under these assumptions, the effect of the minimum wage is quite straightforward: the introduction of a minimum wage results in unemployment in those labor markets in which the equilibrium wage rate is below the minimum wage.¹⁰³ As mentioned earlier, there are certain industries where a larger percentage of total costs are allocated to labor. These industries are leisure, hospitality, wholesale trade, retail trade, and manufacturing.¹⁰⁴

Several negative economic consequences could result from the recent wage increase. For example, when the federal minimum wage was set in 1933, an estimated 500,000 African-American laborers lost their jobs to more highly skilled and educated white workers.¹⁰⁵ Because this seems to contradict the very purpose of enacting this type of legislation—to help low-wage workers rise above poverty and gain the ability to better support themselves and their families—it is an important issue that is at the forefront of the minimum wage debate.

Despite these traditional economic predictions of job loss following an increase in the minimum wage, there are studies that show this may not always be the case.¹⁰⁶ David Card and Alan B. Kruger address and attempt to debunk this theory in their book *Myth and Measurement: The New Economics of the Minimum Wage*.¹⁰⁷ Card and Kruger conducted several

⁹⁹ *Id.* at 19.

¹⁰⁰ *Id.* at 23.

¹⁰¹ See e.g. DAVID CARD & ALAN B. KRUEGER, *MYTH AND MEASUREMENT: THE NEW ECONOMICS OF THE MINIMUM WAGE 1* (Princeton U. Press 1995).

¹⁰² See Thompson.com, *Policy Debate: Does an Increase in the Minimum Wage Result in a Higher Unemployment Rate?*, ECON. RESOURCE CENTER, at http://www.swlearning.com/economics/policy_debates/increase_minimum.html (last visited Jan. 29, 2007).

¹⁰³ See *id.*

¹⁰⁴ See GARCIA, *supra* note 86, at 1.

¹⁰⁵ LAWRENCE W. REED, MACKINAC CENTER FOR PUBLIC POLICY, *GREAT MYTHS OF THE GREAT DEPRESSION 10* (2005), at <http://www.mackinac.org/archives/1998/sp1998-01.pdf>.

¹⁰⁶ During the 1970s and 1980s, many in the economic community adhered to studies showing that an increase in the minimum wage resulted in the reduction of employment opportunities for low-wage workers. Darin M. Dalmat, Note, *Bringing Economic Justice Closer to Home: The Legal Viability of Local Minimum Wage Laws Under Home Rule*, 39 COLUM. J.L. & SOC. PROBS. 93, 134–37 (2005).

¹⁰⁷ CARD & KRUEGER, *supra* note 101.

empirical studies that looked at the effects of increases in the minimum wage on the workforce and concluded that the increase does not necessarily result in low-wage employees losing their jobs.¹⁰⁸ Specifically, the authors studied the effects of the 1988 increase in the California minimum wage on the State's workers.¹⁰⁹ At the time this study was conducted, the low-wage workforce consisted of a disproportionate number of women, Hispanics, and students, and the increase in question was approximately \$1.00 an hour; conditions very similar to those of the current increase.¹¹⁰ Card and Kruger found that teenage low-wage employment actually increased slightly in the year following the minimum wage increase, when compared to California and national employment in general.¹¹¹ They also found that employment increased among twenty to twenty-four year old Hispanics, another group that traditionally constitutes a large percentage of the minimum wage workforce.¹¹² While the study did not draw any statistical significance from this, findings regarding the correlation between the wage increase and employment across all the groups in the study were more telling.¹¹³ The overall correlation across groups when looking at relative change in employment and relative change in wages was actually positive.¹¹⁴ As a result, Card and Kruger concluded that the moderate increase in California's minimum wage did not have an adverse effect on the rate at which low-wage workers were employed.¹¹⁵ These findings contradicted the previously held consensus among many economists that increases in the minimum wage had substantially negative effects on employment.

While the findings of Card and Kruger's study are notable, some critics dispute their ultimate conclusions, and a healthy debate continues regarding their findings.¹¹⁶ For instance, economist David Nemark, from the Public Policy Institute of California, found a slightly negative effect on

¹⁰⁸ CARD & KRUEGER, *supra* note 101.

¹⁰⁹ The study focused specifically on teenage workers in the state holding low paying jobs. However, several of the findings are applicable and relevant when evaluating the impact another increase would have on low-wage workers of other ages and demographic make-ups. *Id.*

¹¹⁰ CARD & KRUEGER, *supra* note 101, at 82. In 1988, the minimum wage was increased from \$3.35 to \$4.25 an hour, a ninety cent increase. The current increase will take the minimum wage from \$6.75 to \$8.00 an hour, for a total increase of \$1.25. While the increase may not be exactly comparable, given factors such as inflation, it is similar enough to warrant a comparison for the purposes of determining whether or not such an increase will cause workers to lose jobs in California. CARD & KRUEGER, *supra* note 101.

¹¹¹ CARD & KRUEGER, *supra* note 101, at 85–87. “The actual relative increase in teenage employment from 1987 to 1989 was 4.1 percentage points, however, suggesting a sizable unexplained gain in teenage employment after the rise in the minimum wage.” CARD & KRUEGER, *supra* note 101, at 86.

¹¹² CARD & KRUEGER, *supra* note 101, at 87. The authors also noted that employment had increased among white and Hispanic teenagers at a relative rate. CARD & KRUEGER, *supra* note 101.

¹¹³ The study looked at eighteen different categories that were broken down into white non-Hispanic, black non-Hispanic, Hispanic, and other non-Hispanic, and further subdivided into groups of varying age and education levels within the racial categories. CARD & KRUEGER, *supra* note 101, at 86–89.

¹¹⁴ CARD & KRUEGER, *supra* note 101, at 90.

¹¹⁵ CARD & KRUEGER, *supra* note 101.

¹¹⁶ See e.g., *Book Reviews: Myth and Measurement: The New Economics of the Minimum Wage*, 15 CATO J. (Book Review) (criticizing methods used and results found from the Card & Kruger study), at <http://www.cato.org/pubs/journal/cj15n1-8.html>.

employment after an increase in wages.¹¹⁷ His research shows that a ten percent increase in California's minimum wage will result in an approximate one to two percent decrease in employment.¹¹⁸

2. *Employer Responses: Alternatives to Workforce Reduction*

There is no doubt that an increase in the minimum wage will increase labor costs for California employers, if all other factors are held constant. According to economic theory, businesses will not absorb these extra costs if they hope to stay competitive.¹¹⁹ In order to deal with the increases in operating and labor costs associated with a raise of the minimum wage, there are several alternative cost management mechanisms that employers may consider in order to avoid decreasing the size of their workforce.

Employers may consider raising prices in order to compensate for the newly increased labor costs associated with running their businesses. In the food service industry, which is the most likely sector to feel the effect of an increase, price increases will probably be the most common response.¹²⁰ Fast food establishments, in particular, tend to employ a higher percentage of minimum or low-wage workers than other establishments.¹²¹ Studies show that restaurant prices do rise proportionally following increases in the minimum wage.¹²² However, it has been found that inconsequential or small increases in price are unlikely to affect consumer demand, which is relatively inelastic for the products produced by the food services industry.¹²³ Inelasticity means that if employers make marginal increases in the price of their products, consumers will still purchase goods in similar numbers as they did prior to any increase.¹²⁴

Employers can also look into ways to increase productivity and efficiency in order to maintain profit margins without having to decrease the number of people employed. Employers who are concerned about a higher wage eroding their profits could turn to creating incentive systems or quotas, which can motivate or require employees to increase productivity and output. Although it may seem unlikely that an increase in the minimum wage will provide businesses with the opportunity to look toward increasing productivity to counteract their increased costs,¹²⁵ it is

¹¹⁷ AMY VASSALOTTI, U. OF CAL. BERKELEY INST. OF INDUS. REL., ADVANCED POLICY ANALYSIS: HOW WILL AN INCREASE FROM \$6.75 TO \$7.75 IN THE CALIFORNIA MINIMUM WAGE IMPACT THE CALIFORNIA ECONOMY 24 (2005) (discussing Neumark's findings).

¹¹⁸ *Id.* Neumark's findings also suggest that the distributional effects of such an increase in the minimum wage are most pronounced for low-wage non-teen workers. *Id.*

¹¹⁹ *See id.* at 21.

¹²⁰ *See id.* at 22.

¹²¹ *See id.*

¹²² *See id.* For example, if a restaurant owner sees his operating costs go up by one percent, he will likely respond by raising his prices by one percent. *Id.* (referring to paper published by Aaronson, French & MacDonald).

¹²³ *See id.* at 23 (citing study by Kiefer, Kelly & Burdett). The food services industry includes both the restaurant and the fast food industry.

¹²⁴ *See id.* Research also shows that a small increase in price will not affect consumer demand for goods and services offered by the hotel industry. *Id.*

¹²⁵ *See id.* at 25.

germane to note that productivity has increased at a much higher rate than compensation over the last forty years.¹²⁶ This natural progression of increased productivity, whether due to technological advances in production or to the evolution of business practices, is likely to continue and any nominal increase in the minimum wage will be offset by additional profits.¹²⁷

There is also the possibility that an increase in labor costs will cause California employers to move their business to other states that have lower minimum wage requirements. Again, the concern is greatest for those businesses in the retail, service, and leisure industries; particularly restaurants and other food service businesses because they are primarily staffed with low-wage workers. As mentioned above, those businesses in the food service industry will likely raise prices to deal with any increased costs, so losing these employers to other states is not a grave concern. Relocation costs would likely be much higher than minimally increasing prices. Furthermore, it is extremely unlikely that consumers will cross state lines to purchase goods that have incurred minimal price increases in their home state. For example, if the price of a Big Mac goes up by ten cents, the typical consumer will not cross state borders to get a cheaper meal option.¹²⁸ The manufacturing industry also shares the fear that employers will move out of state because it employs approximately eleven percent of all low-wage workers in California.¹²⁹ However, the concerns here are not grave given that many of these positions are concentrated in the apparel industry, which in recent years has begun to shrink because of factors independent of labor costs, such as outsourcing.¹³⁰ As a result, the number of workers employed in this sector is expected to naturally decline, independent of increased labor costs, and relocation is not a major concern.¹³¹

Finally, it is possible that businesses will close their operations completely as a result of increased costs. This harm seems highly unlikely given that increases in costs will be nominal and those industries most affected will be able to pass their costs onto consumers in the form of higher prices.¹³² This assertion is supported by the findings of an additional study by the University of California at Berkeley's Institute of Industrial Relations that looked at the effect of city-imposed increases in the minimum wage on large retailers' decisions to operate locations in these

¹²⁶ See Pollin, *supra* note 41. Robert Pollin, a professor of economics and co-director of the Political Economy Research Institute at the University of Massachusetts-Amherst, observes that “[t]he federal minimum wage peaked in 1968, when its value was about \$9 an hour in today’s dollars. Although the average worker productivity has more than doubled since then, the wage has not kept pace. Typically, as productivity increases, hourly wages can rise without cutting into business profits.” *Id.*

¹²⁷ See *supra* text accompanying note 126.

¹²⁸ *California Facts*, *supra* note 81, at 4 (citing U. of Cal. Berkeley study that found “that most working poor are not employed in sectors that face competition from low-wage states or countries”).

¹²⁹ GARCIA, *supra* note 86, at 1.

¹³⁰ See VASSALOTTI, *supra* note 117, at 15.

¹³¹ See VASSALOTTI, *supra* note 117, at 25.

¹³² See VASSALOTTI, *supra* note 117, at 15.

cities.¹³³ The study found that cities with minimum wage policies “do not experience an exodus of major retail business”¹³⁴ and, in fact, that the number of different businesses and number of stores in these cities actually increased after minimum wage policies went into effect.¹³⁵

Despite the potentially negative consequences associated with a rise in California’s minimum wage, many economists within the State seem to be supportive of the increase stating that “[t]he evidence indicates that the proposed increase of the minimum wage would alleviate poverty, would not hurt the State’s employment and would benefit the State budget.”¹³⁶ Those economists who support an increase find reinforcement in the previously mentioned studies that show California taxpayers could save billions on the cost of public assistance programs if the workers in the low income households most likely to utilize these programs are able to earn the \$8.00 an hour wage.¹³⁷

V. INFLATIONARY INDEXING

Even though A.B. 1835 does not include a provision for indexing the minimum wage, this omission is undoubtedly an issue that the California legislature should, and probably will, revisit at some point in the future. Traditionally, indexing has been used, in a variety of settings, as a way to combat the rising costs associated with inflation. This concept is already being used to automatically tie increases in the minimum wage to the rising cost of inflation in a few places. As mentioned earlier, the citywide minimum wage in place in San Francisco is adjusted annually for inflation and cost of living increases using a regional inflation index that allows people to earn a “living wage” suitable for life in that city.¹³⁸ Other states have adopted this type of inflationary indexing for their minimum wage as well. After voters expressed overwhelming support for a long-term solution to the lagging system for increasing the minimum wage, successful ballot initiatives in Oregon, Washington, and Florida all resulted in annual indexing systems.¹³⁹ The Vermont Legislature has also looked at this issue and has passed laws that will govern the future indexing of their minimum

¹³³ ARINDRAJIT DUBE ET AL., U. OF CAL. BERKELEY INST. OF INDUS. REL., DO BUSINESSES FLEE CITYWIDE MINIMUM WAGES? EVIDENCE FROM SAN FRANCISCO AND SANTA FE 1 (2006), at http://www.iir.berkeley.edu/research/minwage_sfandsantafe.pdf. (analyzing the behavior of “big box” chain retailers in response to the city-wide living wage ordinances in place in San Francisco, California and Santa Fe, New Mexico). Some of the large retailers observed in the study were Bed Bath & Beyond, Home Depot, K-Mart, Lowe’s, Office Depot, PetSmart, Sears, Target, and Wal-Mart. *Id.* at 4.

¹³⁴ *Id.* at 4.

¹³⁵ *Id.*

¹³⁶ Press Release, California Labor Federation, California’s Top Economists Say Raising the Minimum Wage Will Help California Economy (Sept. 9, 2004) (on file with author).

¹³⁷ *See id.*

¹³⁸ *See* Kinsman, *supra* note 44.

¹³⁹ LIANA FOX, ECON. POL’Y INST., ECONOMIC SNAPSHOTS: INDEXING THE MINIMUM WAGE FOR INFLATION (2005), <http://www.epinet.org/content.cfm?id=2229>. Ballot initiatives requiring the annual indexing of the state minimum wage were passed as follows: Washington (1998), Oregon (2002), and Florida (2004). *Id.* Additionally, during the November 2006 elections, successful ballot initiatives in six states (Arizona, Colorado, Missouri, Montana, Nevada and Ohio) all included annual cost of living increases. George Raine, *Election 2006: “Business Impact” Voters in 6 States Approve Increases in Minimum Wage*, S.F. CHRON., Nov. 9, 2006, at D1, available at 2006 WLNR19449315.

wage beginning in 2007.¹⁴⁰ However, the concept of indexing is not limited in its application to merely the minimum wage; it has historically been utilized to combat inflationary increases in other government programs as well. Federal pensions are indexed for inflation and, since 1910, many union contracts incorporate indexing to make sure organized labor rates do not lag behind cost of living standards.¹⁴¹ Most notably, inflationary indexing is used to regulate increases in Social Security benefits.

A. THE INDEXING OF SOCIAL SECURITY BENEFITS

While the Social Security benefits system varies substantially in both purpose and execution from minimum wage legislation, the concept of indexing is something that is applicable to both. Currently, Social Security benefit increases are based upon wage indexing, which offers some guarantee that recipients' benefits are pegged to their accustomed standard of living. The current system of indexing Social Security benefits was originally set up in the 1972 amendments to the Social Security Act of 1935. The legislature decided that annual cost of living adjustments (COLAs) were the best way to ensure that recipients' benefits kept up with inflation.¹⁴² As issues come up regarding the best way to reform an ailing Social Security system, the COLAs are often the center of debate. In 1983, in an attempt to decrease the cost of administering Social Security, legislation was passed that delayed each year's COLA by six months.¹⁴³

1. *Calculating the COLA: The Consumer Price Index*

While there is no perfect gauge of inflation, Congress was forced to choose from a range of imperfect indexes when deciding what measure to use when calculating the effect of inflation on Social Security benefit increases.¹⁴⁴ Under the 1972 amendments to the Social Security Act, Congress decided that future Social Security benefit increases, beginning on January 1, 1975, would be linked to the Consumer Price Index (CPI).¹⁴⁵ Specifically, in order to calculate the annual COLA, the Social Security Administration relies on the Consumer Price Index for Urban Wage Earners

¹⁴⁰ Katherine Stapp, *Labor-U.S.: Congress Won't Raise Minimum Wage, but States Will*, INTER PRESS SERVICE (New York), January 7, 2006.

¹⁴¹ Quigley, *supra* note 11, at 550–51.

¹⁴² See 42 U.S.C. § 415(i) (2000) (outlining the procedure for determining the annual COLA).

¹⁴³ See C. EUGENE STEUERLE & JON M. BAKIJA, *RETOOLING SOCIAL SECURITY FOR THE 21ST CENTURY: RIGHT AND WRONG APPROACHES TO REFORM 177* (The Urban Institute Press 1994).

¹⁴⁴ See Jim Chen, *The Price of Macroeconomic Imprecision: How Should the Law Measure Inflation?*, 54 HASTINGS L.J. 1375, 1402–03 (2003) (noting that there are billions of prices to consider when studying modern economies and it would be virtually impossible to accurately monitor their constant movements).

¹⁴⁵ See SHERYL R. TYNES, *TURNING POINTS IN SOCIAL SECURITY: FROM "CRUEL HOAX" TO "SACRED ENTITLEMENT"* 140 (Stanford University Press 1996). The indexing of benefit increases to the CPI was one of several provisions included in the 1972 amendments. Others included increasing the amount an Social Security beneficiary under age seventy-two could earn and still receive benefits from \$1680 to \$2100; providing a minimum monthly benefit of \$170 for persons who worked in Social Security-covered employment for at least thirty years; and made sixty-two the age used for computing early retirement for men as it already was for women. *Id.*

and Clerical Workers (CPI-W).¹⁴⁶ The CPI-W, one of two population group indexes published monthly by the United States Department of Labor's Bureau of Labor Statistics, is calculated by compiling and tracking expenditures by urban wage earners and clerical workers.¹⁴⁷ The CPI-W covers approximately thirty-two percent of the total population of the United States and changes in the CPI-W affect the income of over 47.8 million social security beneficiaries.¹⁴⁸ The COLA for each year is equal to the percentage increase in the CPI-W from the third calendar quarter of one year to the third quarter of the next.¹⁴⁹ For instance, the most recent COLA, effectuated in December 2006, was calculated by measuring the increase from the third calendar quarter of 2005 to the third quarter of 2006.¹⁵⁰ The percentage increase in the CPI-W for this time period was 3.3%. The calculation of this percentage increase is as follows (rounded to the nearest one-tenth of one percent):

$$(199.1 - 192.7) / 192.7 \times 100 = 3.3 \%^{151}$$

Congress has noted that linking benefit increases to the CPI and its sub-indexes may not be the most efficient method to calculate annual COLAs, and they have instructed the National Commission of Social Security to look into "the need to develop a special Consumer Price Index for the elderly, including the financial impact that such an index would have on the costs of the programs established under the Social Security Act."¹⁵² This concern is likely due to the CPI's tendency to overstate inflation and because tracking the purchases of urban dwelling clerical workers may not appropriately reflect the lifestyle of the elderly. Despite this acknowledgment, the annual increases in benefits remain tethered to the rate of inflation calculated by analyzing the CPI.¹⁵³

2. *Recent Attempts at Reform: Progressive Indexing*

By indexing increases in Social Security benefits according to the CPI-W, beneficiaries are actually seeing their benefits increase according to

¹⁴⁶ Social Security Administration, *Latest Cost-of-Living Adjustment*, Oct. 18, 2006, at <http://www.ssa.gov/OACT/COLA/latestCOLA.html>.

¹⁴⁷ The Bureau of Labor Statistics publishes indexes for two population groups: a CPI for All Urban Consumers (CPI-U) and a CPI for Urban Wage Earners and Clerical Workers (CPI-W). The CPI-U differs from the CPI-W in that it measures expenditures by urban wage earners and clerical workers, professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, retirees, and others not in the labor force, while the CPI-W only includes expenditures by those in hourly wage earning or clerical jobs. US Department of Labor, Bureau of Labor Statistics website, at <http://www.bls.gov/cpi/cpiovrw.htm#item2> (last visited Mar. 10, 2006).

¹⁴⁸ See *id.* The CPI-U covers approximately eighty-seven percent of the United States population, a much larger segment than is covered by the CPI-W. *Id.*

¹⁴⁹ See Social Security Administration, *supra* note 146. The third calendar quarter includes the months of July, August, and September. *Id.*

¹⁵⁰ See Social Security Administration, *supra* note 146. The actual averages were 192.7 and 199.1 for the third quarters of 2005 and 2006, respectively. See Social Security Administration, *supra* note 146.

¹⁵¹ See Social Security Administration, *supra* note 146.

¹⁵² See Chen, *supra* note 144, at 1405-06 (quoting language from 42 U.S.C. § 907(a)).

¹⁵³ See Social Security Administration, *supra* note 146.

wage inflation, not price inflation. Historically, wages have risen at a much faster rate than prices and the corresponding benefit increases have been cause for concern for those who believe the future of the Social Security system is at risk. This concern has been compounded by the fact that the CPI tends to overstate inflation by approximately 0.80% to 1.60% every year.¹⁵⁴ Arguments have been made that serious consequences could follow if there is no effort to correct the over-indexing of Social Security.¹⁵⁵

Making Social Security reform a focal point during the beginning of his second term in office, President George W. Bush addressed these concerns by advocating a change in the way benefits are indexed and how inflation is calculated.¹⁵⁶ Originally, the President promoted changing the way all Social Security benefits were calculated by tying yearly increases to a price index instead of a wage index, as well as partially privatizing the system through the creation of personal savings accounts.¹⁵⁷ Under this proposal, the first-year benefits for retirees would be calculated using inflation rates rather than the rise in wages over a worker's lifetime.¹⁵⁸ Because wages tend to rise considerably faster than inflation, the new formula would stunt the growth of benefits, slowly at first but more quickly by the middle of the century.¹⁵⁹ President Bush, however, was unable to gain support in Congress for these reforms, so he switched gears and proposed another overhaul of the indexing system, this time dubbing the plan the "progressive indexing" of Social Security benefits. This progressive indexing would also change benefit calculation from wages to prices, but its application would depend on the beneficiary's income; essentially, the higher a worker's income, the greater the proportion of that income that would be tied to price inflation.¹⁶⁰ This system would also offer increased protection to Americans falling in the poorest income bracket by insuring that they would still receive benefits indexed to wages.¹⁶¹ The rationale behind this system is that it will greatly reduce the payout of benefits to higher income earning recipients and would result in a greatly needed savings for the Social Security system. This approach has also failed to garner any support from Congress. Democrats rallied together against this plan because any program that will result in a sharp decrease in benefits is, understandably, an issue that few elected officials would be

¹⁵⁴ Chen, *supra* note 144, at 1413–14 (referencing findings by the Boskin Commission).

¹⁵⁵ See Chen, *supra* note 144, at 1413.

¹⁵⁶ See Joseph E. Stiglitz, *Progressive Dementia: The President May Not Get His Way on Social Security Reform, but One Element of the Plan Will Rise Again. It Shouldn't*, ATLANTIC MONTHLY, Nov. 1, 2005, at 42. It was observed that President Bush spent approximately one-fifth of his State of the Union address promoting he plans to "strengthen and save" the current Social Security system. Kathleen Pender, *Whatever Happened to Reform?*, S.F. CHRON., Jan. 31, 2006, at E1, available at 2006 WLNR 1675927.

¹⁵⁷ See Jonathan Weisman & Mike Allen, *Social Security Formula on Line: Bush Aides See Change in Benefit Calculation*, PITTSBURGH POST GAZETTE (PA), Jan. 4, 2005, at A6, available at 2005 WLNR 318218.

¹⁵⁸ See *id.*

¹⁵⁹ See *id.*

¹⁶⁰ See Stiglitz, *supra* note 156.

¹⁶¹ Workers who have incomes of less than \$25,000 per year would still have their benefits tied to wage increases. Stiglitz, *supra* note 156.

willing to support, especially in an election year.¹⁶² As a result, benefits still remain indexed to increases in wages, although it appears likely that the Bush administration will continue to attempt to advocate changing this system as they grapple with the impending Social Security “crisis” and the need to reform the system.

VI. THE ARGUMENT FOR RAISING AND INDEXING CALIFORNIA’S MINIMUM WAGE

It is hard to fathom that Governor Schwarzenegger would, in one breath, address concerns over California’s minimum wage earners’ ability to keep up with a modest standard of living,¹⁶³ and, in the next, completely deny them the mechanism through which to obtain this necessary end. This paradox is the situation California’s workers find themselves in despite the long awaited and much needed recent increase in the State’s minimum wage. While the Governor has shown his intent to act on the necessity for a higher minimum wage, he has failed to recognize the concurrent need for a system that takes inflation and the quickly rising cost of living in California into account. The decision to increase the State’s wage to \$8.00 an hour is a positive step in the right direction, but it is not the solution that will ensure California’s low-wage workers are able to earn a sustainable living.

A. THE NEED FOR A SUSTAINABLE LIVING WAGE

Looking back to the language of the FLSA, in which Congress addressed the need for legislation devoted to the “maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers,”¹⁶⁴ it is clear that one of the purposes of minimum wage legislation was to provide workers a means to earn a suitable and sustainable living. Unfortunately, with the current system of minimum wage, many working families are struggling to survive on their paychecks. This same thinking undoubtedly applies when looking at state mandated minimum wages.

How is it possible that, despite having full-time jobs, so many Californians are still earning an annual income that places them under the federal poverty level? The main culprit responsible for this alarming trend is the rapid increase of inflation and cost of living standards coupled with the minimum wage’s inability to maintain equivalent buying power over time. Under current federal guidelines, a family of three is considered to be living under the poverty level if the household income falls below \$15,670 a year.¹⁶⁵ Using this guideline, a full-time minimum wage worker earning California’s current wage of \$7.50 an hour and attempting to support a family of three would fall below the poverty level earning only \$15,600

¹⁶² See Pender, *supra* note 156.

¹⁶³ See quotation excerpted from S.B. 1167 in section IIIA.

¹⁶⁴ See *supra* text accompanying note 29.

¹⁶⁵ *California Facts*, *supra* note 81, at 1.

gross a year.¹⁶⁶ In 2005, a full-time worker in this situation would have needed to earn \$7.84 an hour to rise above the federal poverty level.¹⁶⁷ Working families living in poverty is symptomatic of the larger issue, which is the inability of the minimum wage to maintain its value in the face of the ever rising rate of inflation.

Over forty years ago the IWC published an annual budget designed to “permit a working woman, entirely dependant on her own resources and supporting no dependants, to maintain a minimum but adequate mode of living.”¹⁶⁸ Dubbed “Minnie’s Budget,” the amount a self-sufficient woman needed to meet the cost of living in California in 1961 dollars was \$2,855 a year or equivalent to an hourly wage of about \$1.40.¹⁶⁹ When this amount is adjusted for inflation, a worker would need to earn an hourly wage of \$9.78 in 2006 dollars to meet the standards set in 1961.¹⁷⁰ Of course, the current minimum wage is nowhere near this rate despite the recent increase. In fact, California’s minimum wage has been declining in value ever since it hit the height of its purchasing power in 1968, when the wage stood at \$1.65 an hour.¹⁷¹ Adjusted for inflation, that amount would translate to well over \$9.00 an hour in 2006 dollars.¹⁷² Without any system of inflationary indexing in place, the purchasing power behind the California minimum wage declined an astounding thirty-one percent between 1968 and 2002.¹⁷³ This devaluation is even more alarming when the increasing costs of many basic necessities are taken into account. The cost of living in California is among the highest of any state in the nation.¹⁷⁴ For instance, the National Low-Income Housing Coalition published a study in 2004 that found that the California minimum wage only covers thirty-four percent of the cost of renting a two-bedroom apartment.¹⁷⁵ Numerous other consumer necessities have also increased drastically in price in recent years. Table 2, below, highlights some of the increases.

¹⁶⁶ This amount was calculated by assuming an individual was working a forty-hour work week for all fifty-two weeks of the year.

¹⁶⁷ As of 2005, a family of three must earn less than \$15,670 a year or work full-time for less than \$7.84 an hour to be considered above the federal poverty level. *California Facts*, *supra* note 81, at 1.

¹⁶⁸ DAN GALPERN, CAL. BUDGET PROJECT, CALIFORNIA’S RECENT MINIMUM WAGE INCREASES: REAL WAGE GAINS WITH NO JOB LOSS; MINIMUM WAGE REMAINS INADEQUATE TO MEET CALIFORNIA’S COST OF LIVING 4 (June 2000), available at http://www.cbj.org/2000/bb000601_minwage.pdf.

¹⁶⁹ *See id.*

¹⁷⁰ GARCIA, *supra* note 86, at 3.

¹⁷¹ *See California Facts*, *supra* note 81, at 2.

¹⁷² *See California Facts*, *supra* note 81, at 1.

¹⁷³ GALPERN, *supra* note 168.

¹⁷⁴ *See* Brad A. Greenberg, *Soaring Costs Hit Lifestyles: More Californians Find it Harder to Make Ends Meet*, DAILY NEWS (L.A.), May 11, 2006, at N1, available at 2006 WLNR 8137991 (noting that the price of buying a home, purchasing gasoline and paying for utilities in California is increasing at a rate much higher than most other states in the country); *see also* Sandy Miller, *The Cost of Living: Local Cost of Living Edges Up Compared With National Average*, THE TIMES-NEWS (ID), Nov. 20, 2006, available at 2006 WLNR 20687581 (stating that the cost of living in Fresno, California is 122.4% of the national average and the cost of living in San Francisco, California is 169.2% of the national average).

¹⁷⁵ *See California Facts*, *supra* note 81, at 3.

| Basic Consumer Necessities | 2000 | 2005 | % Increase |
|--|---------------|---------------|-------------------|
| Housing wage needed for 2 bedroom apartment at market rate | \$15.22/hour | \$22.09/hour | 45% |
| Gallon of gas | \$1.66/gallon | \$2.39/gallon | 44% |
| Gallon of milk (Sacramento) | \$2.91/gallon | \$3.59/gallon | 23% |
| California State University tuition | \$1,328/year | \$1,572/year | 18% |
| Childcare costs | \$8,494/year | \$9,691/year | 14% |

The California Budget Project annually publishes an estimated “basic family budget” that reflects the amount citizens need to earn in order to cover the cost of basic living expenses. In 2005, they determined that a single adult working full-time for a year would need to earn \$12.44 an hour to cover these costs and a single parent with two children would need to earn \$25.96 an hour to do the same.¹⁷⁷ Although there is no recommendation in place that this amount should represent a starting or minimum wage, it serves to highlight the great disparity that exists between the state mandated wage and what is actually needed to financially support a family or individual living in California. If California wants to give its workers a chance to earn an income that will allow people to cover the cost of living in the State, the current system governing minimum wage increases is due for a major overhaul. The recent two-tiered increase in the minimum wage will slow down the widening wage gap caused by inflation, but it only partially addresses what is ailing California’s low-wage workers.

B. INDEXING CALIFORNIA’S MINIMUM WAGE: A LONG TERM SOLUTION

The best method to address the increased cost of living in California is to tie automatic future increases in the minimum wage to a system of indexing that properly reflects inflationary increases. Similar systems are already successfully in place in other states. As the first state to implement an indexing system in 1998, Washington has been able to adequately maintain the real value of their minimum wage after an initial increase.¹⁷⁸ When compared with the rapidly declining value of the federal minimum wage, Washington’s indexed wage has retained a consistent real value which means that the minimum wage is keeping pace with the rising costs

¹⁷⁶ *California Facts*, *supra* note 81, at 2.

¹⁷⁷ *See California Facts*, *supra* note 81, at 1–2.

¹⁷⁸ *See Fox*, *supra* note 139.

of goods and services associated with living in the State.¹⁷⁹ As previously mentioned, California's minimum wage has not maintained its real value and has been sliding downward since it hit its highest buying power almost 40 years ago. Indexing the minimum wage would alleviate this problem and allow the minimum wage to keep up with increases in inflation and the cost of living in the State.

Similar to the system set by the Social Security Administration, indexing the minimum wage can help people maintain their accustomed style of living, even as inflation increases. Social Security beneficiaries depend on their annual upward COLAs in order to preserve their standard of living. An estimated sixty percent of the program's beneficiaries rely on Social Security for over half of their income.¹⁸⁰ If these benefits were not tethered to an indexing system, retired Americans would not be able to maintain their lifestyle in the face of inflation and would be "forced to suffer though the so-called golden years' that they had worked all of their lives to enjoy."¹⁸¹ In this respect, Social Security beneficiaries are dependent on their benefit checks in the same way low-wage workers are dependent on the paychecks they bring home to support their families. Indexing the minimum wage will allow workers in lower income brackets to uphold their standard of living, or at least to keep pace with inflation, just as the beneficiaries of Social Security have been able to do since 1975.

However, unlike Social Security benefits, it may be unwise to tie the inflationary indexing of California's minimum wage to a national index such as the CPI. The CPI looks at trends and the impact of inflation on national wages. Using this index may not account for the specific effects inflation has on the cost of living in California. Since California is one of the most expensive states in the nation, any index being used to determine wages within the State would have to take this into consideration. Washington currently ties its yearly increases to a system that appears to incorporate a modified version of the CPI used for Social Security, where yearly increases are a result of considering inflation for urban wage earners and clerical workers over the previous twelve month period.¹⁸² Oregon's minimum wage increases are tied to the United States "city average" consumer price index,¹⁸³ and the city of San Francisco uses a regional inflation index that reflects the specific cost of living increases of living in that city.¹⁸⁴ All three of these indexing programs enjoy successful

¹⁷⁹ See *id.* at fig. A. While the Washington minimum wage has maintained its value since the inception of the indexing legislation, it is still not enough to raise a worker, supporting a family of three, above the poverty threshold. *Id.*

¹⁸⁰ See *Social Security Progressive Indexing Plan Would Drastically Reduce Benefits*, STATE NEWS SERVICE, July 8, 2005.

¹⁸¹ See *id.* (quoting Congressman Elijah Cummings (D-Maryland) on his opposition to President George W. Bush's progressive indexing of social security benefits plan, which would drastically reduce benefits paid out to the programs' beneficiaries) (emphasis added).

¹⁸² See Andy Furillo, *Increase in California's Minimum Wage Leaves Some Wanting More*, SCRIPPS HOWARD NEWS SERVICE, Jan. 6, 2006. Social Security's yearly COLAs are determined by consulting the CPI-W, which also looks at wages earned by urban clerical workers, but only analyzes a three month period in the preceding year. See Social Security Administration, *supra* note 146.

¹⁸³ See Furillo, *supra* note 182.

¹⁸⁴ See REICH ET AL., *supra* note 54, at 1.

implementation and California should look to them when deciding which index to use. Ultimately, California's low-wage workers will benefit the most if the government uses an index that reflects the specific financial demands placed on an individual living in the State. California legislators should consider utilizing a regional inflationary index, like the one being consulted for San Francisco's yearly increases, that takes into account all of the unique effects inflation has on the cost of living in California.

1. *Indexing Will not be Harmful to Employment or Business Interests in California*

Contrary to the fears of those opposed to indexing the minimum wage, implementing this type of program does not seem to result in a loss of jobs or in overly burdensome costs for employers. In Oregon, indexing the minimum wage has had no negative impact on employment as the State enjoyed twice the job growth of the rest of the country in the time period following the implementation of indexing.¹⁸⁵ Since voters approved the indexing initiative, 91,500 new jobs were created in Oregon and the State ranks ninth in the nation in overall job growth.¹⁸⁶ Similarly, the annual increases in San Francisco's minimum wage have not caused any measurable increase in unemployment—employment in affected businesses, namely restaurants and limited service restaurants, has actually increased by 2.5% since indexing began.¹⁸⁷ Workers in these affected businesses are also remaining employed for longer periods of time and are more likely to be employed on a full-time basis than before the citywide ordinance was passed.¹⁸⁸ Affected businesses in San Francisco did increase their prices by approximately 2.8% following the inception of the indexing program,¹⁸⁹ but it seems as though demand has not decreased enough to cause a correlated decrease in the workforce.¹⁹⁰ This price increase was concentrated in limited-service restaurants that historically employ greater numbers of minimum wage employees,¹⁹¹ and, as discussed earlier, have a relatively inelastic demand for their products. Given the success of indexing legislation in San Francisco, Oregon, and Washington, California lawmakers should not be afraid that automatic increases will have severe consequences for the State's employment rates. Employers may actually

¹⁸⁵ See John M. Broder, *States Take Lead in Push to Raise Minimum Wages*, N.Y. TIMES, Jan. 2, 2006, at A1 (quoting the former President of the Oregon A.F.L.-C.I.O., Tim Nesbitt); *but see* Furillo, *supra* note 182 (reporting that, as of November 2005, Oregon had an unemployment rate of 5.8% and was tied with Tennessee for the ninth-worst rate of unemployment in the country). Unemployment rates in Oregon can also be attributed to factors other than the increase in the minimum wage, namely the dot-com crash of the late 1990's and the decline of the timber industry. See *California Facts*, *supra* note 81, at 5.

¹⁸⁶ See *California Facts*, *supra* note 81, at 5 (citing statistics published by the Oregon Center for Public Policy).

¹⁸⁷ See REICH ET AL., *supra* note 54, at 4.

¹⁸⁸ Higher pay is usually associated with higher worker retention; this was especially true for limited-service restaurants affected by the ordinance. REICH ET AL., *supra* note 54, at 5.

¹⁸⁹ See REICH ET AL., *supra* note 54, at 4.

¹⁹⁰ *But see* Editorial *Wage Savvy*, PRESS ENTERPRISE (Riverside, CA), Jan. 16, 2006, at B06 (referring to survey of the Golden Gate Restaurant Association which showed that eighty-nine percent of restaurants in San Francisco were forced to raise their prices "significantly" and that fifty-four percent cut their workforces).

¹⁹¹ See REICH ET AL., *supra* note 54, at 6.

benefit from a consistently applied annual increase because they will be able to accurately predict future increases in their labor costs. Businesses will no longer be in the dark about when and by how much the minimum wage will increase. With the knowledge that labor costs will minimally increase each year, employers will be able to adjust their business plans accordingly and operate more smoothly.

2. *Indexing Will Decrease Public Assistance Expenditures and Fuel the Economy*

Annually increasing the minimum wage according to inflation would also help alleviate the pressures placed on an already heavily utilized public assistance system in California. Dependence on this system is not predicated on lack of work or only part-time work, rather, as the UC Berkeley study discussed earlier demonstrates, individuals attempting to support a family while working full-time must often turn to these programs for help. Researchers have found that the government, and taxpayers, could save approximately \$2.7 billion in public assistance payments if current recipients earned a wage of at least \$8.00 an hour.¹⁹² Raising the current minimum wage by \$1.25 over the next two years will allow full-time workers earning this rate to decrease their dependence on government assistance and public welfare programs. However, without corresponding annual increases, inflation will ultimately eat away at the worker's ability to sustain financial independence in the long run.

California can look again to the Social Security system to predict how an automatic increase similar to a COLA can foster self-reliance among the State's lowest wage earners. In the two decades after Social Security benefits became tied to a cost of living index, the number of elderly Americans living below the poverty line decreased dramatically from about thirty-five percent to about fifteen percent.¹⁹³ This example helps illustrate that given an adequate income, which has the flexibility to rise at the same rate of inflation, individuals will be better able to meet their own needs.

Indexing the minimum wage will also positively affect California's economy. Raising the minimum wage on a yearly basis will serve as an economic stimulus as workers increase their disposable income. As a result, they will, invariably, spend this additional income on taxable goods and services.¹⁹⁴ Money spent in this manner will flow directly into the State's economy. The State budget will also benefit from yearly increases in income taxes paid by these workers.

¹⁹² See ZABIN ET AL., *supra* note 95, at 35.

¹⁹³ See Martin Lyon Levine, *Bibliography: Introduction: The Frame of Nature, Gerontology, and Law*, 56 S. CAL. L. REV. 261, 277 (1982) (discussing the trend of increased self-reliance emerging among the elderly).

¹⁹⁴ See *California Facts*, *supra* note 81, at 5.

3. *Automatic Adjustments Will be Free from Political Pressures and Will Save Administrative Resources*

Implementing an annual increase in the minimum wage would also result in tremendous savings of both time and financial resources for administrators and legislators. Automatic indexing would insure that future increases in the minimum wage were tied to the cost of living in California, not the political agendas of the State's lawmakers. When considering whether or not to index Social Security benefits, the Nixon administration supported an automatic increase because it would be less political and less pressure would be placed on Congress.¹⁹⁵ The same thinking certainly applies to indexing California's minimum wage. Now that the California IWC has been de-funded, there is no longer an independent body in place to review and implement increases in the minimum wage in a timely manner. Consequently, this issue must be taken up by the legislative and executive branches of the State government any time a change is proposed. This process has proven to be lengthy and it has, thus far, been to the detriment of the lowest wage earners in the State. The previous three attempts to raise the minimum wage demonstrate how long it can take to break through the bureaucratic red tape and have the issue properly addressed. Governor Schwarzenegger vetoed two separate bills that would have increased the minimum wage because they did not align with his political agenda of the moment. As a result, minimum wage workers have been in limbo for over two years and have been denied the increased wages they desperately need. Inflation does not wait or bend to the whims of politicians and their causes, and increases in the minimum wage should not either. By implementing automatic wage increases every year, lawmakers will no longer have to dedicate time and resources to advocating for, or against, this issue; the minimum wage would be increased according to a neutral, non-partisan indexing procedure.

VII. CONCLUSION

Recently both the California and Federal governments recognized that an increase in the minimum wage was long overdue. By increasing the State's wage to \$8.00 an hour by 2008,¹⁹⁶ the passage of A.B. 1835 began the process of bringing California's lowest wage earners closer to achieving sustained financial independence. Unlikely to have negative consequences for employment rates within the State, California taxpayers will also benefit because an increase in the minimum wage will likely reduce the number of people who depend on public assistance programs in order to meet their daily needs.

This increase was a necessary step toward solving the short term problem of the declining value of the California minimum wage. However, if this solution is to be maintained over time, it is essential that the

¹⁹⁵ TYNES, *supra* note 145, at 137.

¹⁹⁶ A.B. 1835, Chapter 230 (Cal. 2006).

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minimum wage continue to rise at a rate similar to inflation. A system that implements an automatic wage adjustment reflecting the rising cost of living in the State is the most efficient way to achieve this result. California can look to other states that have successfully indexed their minimum wage and to the Social Security Administration's use of indexing recipient benefits when designing a procedure for perennially increasing the State's wage. A uniquely tailored system of indexing will assure that the lowest paid workers in the State will have some semblance of financial stability and will be able to support their families in the face of the forever increasing costs of living associated with inflation.