



# Possible Indexation of the Federal Minimum Wage: Evolution of Legislative Activity

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## Summary

Indexation of the minimum wage (linking the minimum wage to an outside economic variable) in a variety of forms has been a subject of discussion at least since the early years of the 20<sup>th</sup> century. When early proponents of a wage floor began to consider the matter as public policy within the United States, they established a series of *state wage boards*. These boards were given the authority to fix a reasonable rate below which most workers were not permitted to be paid. The powers of the boards varied from one state to the next and, where they were reasonably effective, there was the constant fear that the courts would intervene and overturn whatever authority the boards may have had.

The boards wrestled with a variety of methods for setting the minimum wage. Some made surveys of the cost-of-living for low-wage employees and tried to render a measure of equality between such costs (however defined) and income derived from work. But surveys proved difficult and, gradually, a reliance developed upon governmental agencies. It was not necessarily a neat fit, and questions remained.

In 1938, largely moving beyond the state boards, Congress passed the Fair Labor Standards Act (the FLSA). The act established the federal minimum at 25 cents an hour for those relatively few workers actually covered. Since 1938, Congress has revisited the act in a sporadic fashion. The result, through the years, has been a series of gradual expansions of the act and some variation in wage rates—but, generally, since the 1960s, a downward spiral in the real value of the minimum wage has set in. During the Reagan era, no new increases were made, and only two (the 1989 and 1996 amendments) have been made in subsequent years.

At present, at least five states (Missouri, Montana, Oregon, Vermont, and Washington) index their state minimum wage standards. In several other states, the issue has recently been considered. In the 110<sup>th</sup> Congress, two bills dealing with indexation have been introduced: H.R. 4637 (Al Green) and S. 2514 (Clinton). The issue was not dealt with in the general minimum wage legislation (H.R. 2206, P.L. 110-28), enacted in early 2007.

Following a preliminary introduction of the topic, this report reviews the several relatively distinct periods during which indexation, in one form or another, was before the Congress. This report will be updated if conditions warrant.

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## PART I. INTRODUCTION

Indexation of the minimum wage was considered some years prior to enactment of the Fair Labor Standards Act (FLSA) in 1938. It continues to be an issue of discussion and, in some cases at the state level, has been introduced as a part of the general minimum wage structure. This report provides an evolutionary history of minimum wage indexation and of the federal legislative interest in the concept.

In 1937, Congress decided that certain low-wage workers should be protected by a federal minimum wage law, and set in motion initiatives that would evolve into the Fair Labor Standards Act of 1938. As amended through the years, the FLSA has become the primary federal statute dealing with wage rates for low-wage workers.

As the law now stands, the general minimum wage is \$5.85 per hour—to increase, in steps, to \$7.25 per hour by July 2009. The federal minimum is fixed by statute and altered whenever there is sufficient support to do so in Congress. The result has been a fluctuation in the real (or inflation-adjusted) value of the minimum wage. It reached its highest level in 1968, and has since, intermittently, been allowed to decline in value. To reach the 1968 level in real terms, *the current minimum* would need to be slightly in excess of \$9.50 per hour.<sup>1</sup>

In order to eliminate fluctuations in its real value, some have suggested that the federal minimum should be pegged to an outside economic variable: for example, to a component of the cost-of-living index or to some other relatively neutral series.<sup>2</sup>

## A Matter of Philosophy

The concept of a minimum wage, initially, was to provide workers with a minimum income. But how minimal? What might be included within a minimal standard? To whom should not less than the minimum be paid? And by whom?

Men, it was assumed, would need at least the minimum wage to support themselves and their families. But what about women, especially those with an employed spouse? And young persons: youth workers? Are certain types of work, by definition, *minimum wage work*—deserving payment at the minimum wage or below?

Early in the past century, some proposed a *living, family, saving wage*: that is, to allow for safe and healthful living, for procreation, and for setting aside a little for one's old age. Still, there were problems with definitions. How safe and how healthful? How much procreation: one child, two, or perhaps five or six? Setting aside a little for one's old age may be appropriate, but how much?

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<sup>1</sup> See CRS Report RS20040, *Inflation and the Real Minimum Wage: Fact Sheet*, by (name redacted). Under the minimum wage structure, there are various sub-minimum rates, for example, payable to certain youth and student workers, to tipped employees, and to persons with disabilities.

<sup>2</sup> For a general discussion of this issue, see CRS Report RL30927, *The Federal Minimum Wage: The Issue of Indexation*, by (name redacted).

## A “Living Wage” and Basic Sustenance

John A. Ryan, an early proponent of a minimum wage, argued in a 1906 study that a “laborer’s right to a Living Wage is the specific form of his generic right to ... sufficient of the earth’s products to afford him a decent livelihood.” This right, Father Ryan suggested “... is as valid as his right to life: the difference is merely in degree of importance.”<sup>3</sup> Later, Ryan asked rhetorically: “Well, what is a decent livelihood?”<sup>4</sup>

With other scholars of the period, Ryan was willing to suggest at least a modest framework by way of answer—if the concept remained vague and, perhaps, arguable. It involved “... something more than the necessities which will enable a worker to function effectively as an instrument of production....” And, further:

... that amount of goods which will enable a human being to live as a human being rather than as an animal, even a well fed animal. It supposes that he shall have food, clothing and shelter sufficient to maintain him and his family in health, and that they shall have the means of some recreation.... It means the requisites of a religious and moral life; ... It means also some opportunities for intellectual development, some reading matter, and at least an elementary education for the children. In general, therefore, it comprises an elementary degree of physical, mental, moral, religious, social and recreational welfare.

But then, Ryan added, when the concept is presented in terms of money, men “...naturally differ considerably one from the other, and yet whenever the thing has been systematically undertaken men have been able to come to an agreement.”<sup>5</sup>

Other scholars seemed equally sure. “[D]ifferences of opinion” may develop “over the concrete question of how much in any given case this wage must be,” observed economist Henry R. Seager in 1918, but “the principle that a wage sufficient to maintain the wage earner and his family in full economic efficiency will be denied by no one.” Seager declared: “The living wage is thus an indeterminate but highly important basic standard which all wage adjustment boards should have in mind....”<sup>6</sup>

## Wage Boards vs. a Fixed Rate

In 1890, the Consumers’ League of the City of New York was established and quickly blossomed into the National Consumers’ League.<sup>7</sup> Its general purpose was social uplift. Through the next several years, League representatives began a systematic exploration of the plight of low-wage workers, attempting to connect an inadequate wage with malnutrition and vice.

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<sup>3</sup> John A. Ryan, *A Living Wage: Its Ethical and Economic Aspects* (New York: The Macmillan Company, 1906), p. 324.

<sup>4</sup> John A. Ryan, *Social Reconstruction* (New York: The Macmillan Company, 1920), p. 65. (Cited, hereafter, as Ryan, *Social Reconstruction*.)

<sup>5</sup> John A. Ryan, *Social Reconstruction*, pp. 65-66.

<sup>6</sup> Henry R. Seager, *Labor and Other Economic Essays*, edited by Charles A. Gulick, Jr. (New York: Harper & Brothers Publishers, 1931), pp. 311-312. Seager was speaking in New York in December 1918, at the annual meeting of the Academy of Political Science.

<sup>7</sup> In general, see Landon R. Y. Storrs, *Civilizing Capitalism: The National Consumers’ League, Women’s Activism, and Labor Standards in the New Deal Era* (Chapel Hill: University of North Carolina Press, 2000).

Gradually, attention came to focus upon the minimum wage. In 1911, Massachusetts became the first state to move for adoption of a minimum rate; the campaign then spread to Oregon, Wisconsin, Minnesota, California, and other states. The experiment was new to the United States, though it had been tried elsewhere. After considerable discussion, a *wage board* approach was taken. Speaking generally (because there were differences among the states and, in some states, other processes were utilized), the board would examine an industry and if it found that a significant body of workers was being paid less than what was considered minimal, a new standard might be adopted. In one case (Massachusetts), the penalty was moral suasion: publicity concerning the failure to pay a minimum wage.

The purpose of the boards was to increase the general standard and, then, to maintain the value of the minimum wage at a constant level or, at least, at a level in keeping with the cost-of-living. As one advocate stated: “None of the American boards ever arrived at the intelligent arrangements achieved by some of the British trade boards of ‘pegging the rate’ at a given period by providing for its automatic increase and decrease with variation in the cost-of-living index number.”<sup>8</sup> Nonetheless, the cost-of-living connection was a very real presence throughout.

During the early years of the minimum wage movement, there was always the threat that a statute would be declared unconstitutional. In the spring of 1937, the Supreme Court ruled in favor of a Washington state labor standards statute, triggering a new round of minimum wage initiatives.<sup>9</sup> Given the new spirit of the Court, wage/hour legislation was promptly adopted by the Senate. In the House, various versions of the measure moved slowly and, only in the summer of 1938, notwithstanding the continuing Depression, was the Fair Labor Standards Act adopted and sent on to the White House (P.L. 75-718).

In the beginning, the FLSA adopted both a *fixed rate* basis of calculation and the *wage board* approach. For covered workers (relatively few in number, mostly industrial workers), the basic rate was 25 cents an hour, to rise in steps to 40 cents an hour seven years from the date of enactment. At the same time, in order to reach a “universal minimum wage of 40 cents an hour” as rapidly “as is economically feasible without substantially curtailing employment,” the Administrator of the new wage/hour board “shall from time to time convene” an industry committee for each industry where an increase would seem to be justified.<sup>10</sup>

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<sup>8</sup> Barbara Nachtrieb Armstrong, *Insuring the Essentials: Minimum Wage Plus Social Insurance, A Living Wage Program*. New York: The Macmillan Company, 1932 pp. 58-73. See also: James Boyle, *The Minimum Wage and Syndicalism: An Independent Survey of the Two Latest Movements Affecting American Labor* (Cincinnati: Stewart & Kidd Company, 1913), pp. 59-70; and Victor P. Morris, *Oregon's Experience with Minimum Wage Legislation* (New York: Columbia University Press, 1930), pp. 102-106.

<sup>9</sup> *West Coast Hotel v. Parrish* (300 U.S. 379). See John W. Chambers, “The Big Switch: Justice Roberts and the Minimum-Wage Cases,” *Labor History*, Winter 1969, pp. 44-72.

<sup>10</sup> See Section 8 of Public Law 75-718. The wage board concept has been variously used in Puerto Rico and the Virgin Islands and remains part of the process in American Samoa. See CRS Report RL30235, *Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*, by (name redacted).

## PART II. FOCUSING ON INDEXATION

### Initial Concerns

During 1937 and 1938 when the future FLSA was under consideration by the Congress, tensions arose that kept the bill from being enacted in its initial form. Speaking generally, a compromise was developed that allowed the several parties to claim victory in the negotiations. The northern states would have preferred a higher wage (40 cents an hour); the south agreed to settle for 25 cents an hour—leading up to 40 cents some years later. Representative Mary Norton (D-NJ), then chair of the Committee on Labor, argued that “a bill of this kind is very necessary if we are going to help the underpaid workers of our country, reduce the relief rolls, and spread employment.”<sup>11</sup>

### House Hearings in 1947

In the wake of World War II, given escalating costs of living, it seemed to some an appropriate time for expansion of coverage under the act. But in precisely what manner (and under what mechanism) remained unclear.

Mary Norton, who had moved on to another assignment, returned to testify at the FLSA hearings. Like other witnesses, Norton cited the difficulties of surviving with a wage, in 1947, of 40 cents an hour. Ovie C. Fisher (D-TX) asked if she were opposed to inflation. “Definitely,” she replied, but then: “... I do not think 65 cents an hour will ever bring about inflation, with the present cost of living in this country.”<sup>12</sup>

Samuel McConnell, Jr. (R-PA), chair of the Subcommittee, then turned to Ms. Norton with a series of questions concerning motivation. “Frankly,” Mrs. Norton stated, “... the 65-cent minimum that I have selected does not meet with what I think is necessary. I simply set that figure because I felt that the Congress might consider that rather than a 75-cent minimum ....”<sup>13</sup> Chairman McConnell queried: “What would be the factors, in your mind, that would determine a minimum-wage rate.” Norton replied: “... first of all, the high cost of living.” The dialogue continued:

Mr. McCONNELL. What kind of a cost of living? Would you consider the cost of living for the entire country, or the cost of living in a certain section?

Mrs. NORTON. It is the cost of living for those people who are unorganized and have no other method of having their wages raised.

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<sup>11</sup> *Congressional Record*, May 23, 1938, p. 7279. During floor debate in the House, Representative Fred Lewis Crawford (R-MI) proposed an amendment that would have indexed the putative minimum wage to “the Department of Labor Price Index.” Ms. Norton rose in opposition and the amendment was rejected. No other comment was made. See *Congressional Record*, May 24, 1938, pp. 7417-7418.

<sup>12</sup> U.S. Cong., House, *Minimum Wage Standards*, Hearings before the Committee on Education and Labor, Subcommittee No. 4, Wages and Hours of Labor, 80<sup>th</sup> Cong., 1<sup>st</sup> Sess., June 27, 1947, ff. U.S. Government Printing Office, 1947, pp. 46-47 (Cited hereafter as House Hearings, 1947.)

<sup>13</sup> House Hearings, 1947, p. 47.

McConnell continued to press for specifics. “You are definite, then, in your opinion, that the minimum wage is to be based on the cost of living, and you will stand by that?” Mrs. Norton opined: “Yes, sir; I believe that should definitely be considered.” McConnell continued:

Mr. McCONNELL. What I am getting at is, I would like to get a cost-of-living index, and fluctuate the minimum wages to that cost-of-living index, rather than relying on some political drive every so often to change it.

Mrs. NORTON. How could you do that? It would mean you would have to come to Congress every couple of months to decide.

Mr. McCONNELL. No, no; not come to Congress at all. I would set up a formula in the nature of a ratio that would fluctuate minimum-wage rates according to the cost of living.

If we assume that is the way we are going to fix our minimum-wage rates, then we would have automatic fluctuations according to the change in the cost of living at different periods.

Mrs. Norton agreed: “... I would be willing to go along with that.” McConnell concurred. “I am assuming we would set it correctly in the beginning, and then there would be an automatic fluctuation according to the cost of living. If we are working on the assumption that the minimum wage rate is to be determined by the cost-of-living index, or by the cost of living,” McConnell stated, “any way you want to say it, that is the way it would be handled.” Then, he added: “... I have not stated my own opinion on this matter—I am trying to get from the witnesses just what they consider is the main factor in setting a minimum wage rate.”<sup>14</sup>

## **Senator Taft Makes a Suggestion (1949)**

On April 11, 1949, Labor Secretary Maurice Tobin was questioned by Senator Robert A. Taft (R-OH) about “another kind of escalator clause”—“...one which was based on wages, on general average wages, as determined by the Bureau of Labor Statistics, say something like 60 percent.”<sup>15</sup>

Taft had calculated the impact of a 75 cent minimum. “You might have to vary it in different types of industries,” he said. “What would you think of a minimum wage based on that theory? Sixty percent of the average wages in the field—I would think you would have to have broad fields.” Tobin queried: “Take, for example, shoes, and establish the minimum?” Taft continued:

Manufacturing and perhaps service industries and perhaps mining. That might be separate, but roughly speaking, I think you probably would not need mining. What would you think of such a plan? It seems to me that is what we want to do. We want to say that anybody in an industry ought to be able to make a certain percentage of the average, even though he is inefficient, or the industry is inefficient, or anything else, and 60 percent, roughly speaking, seems to be the present thing in the manufacturing field.

What would you think of such an escalator clause?

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<sup>14</sup> House Hearings, 1947, pp. 47-50.

<sup>15</sup> U.S. Cong., Senate, *Fair Labor Standards Act Amendments of 1949*, Hearings before a Subcommittee of the Committee on Labor and Public Welfare, 81<sup>st</sup> Cong., 1<sup>st</sup> Sess., April 11, 1949, ff. U.S. Government Printing Office, 1949, pp. 43-46. (Cited hereafter as Senate Hearings, 1949.) Because of Taft’s standing in the Republican Party, this discussion (and Taft’s suggestion) has frequently been cited by subsequent proponents of indexation.

Taft may have caught Tobin off-guard.

Secretary TOBIN... I would like to illustrate by taking, for example, the break-down of any given classification of skill. Take shoes. There is a great, wide range of minimum wages for shoe cutters over the country. You get a break-down of men's work shoes, high-grade finished shoes, et cetera.

Senator TAFT. We have this legislative problem. We have a 75-cent figure. Here is a 40-cent figure. When it once gets into the law, it is pretty much frozen. You have these variations in your industries. That is all right.

However, as a basic figure in the law, instead of having to change the amount every other year to fit into changing conditions, could we not find a formula based on the average wages paid to all American workers, or something of that kind?

Secretary TOBIN. I would want to consider that. I couldn't give you an answer immediately.

Senator TAFT. I wish you would, because I think it is a possible legislative 'out' here.

Secretary TOBIN. Under such an arrangement, you would take the factory wage, which is roughly around \$55 a week at the present time. Rather, the average factory wage is \$1.38 an hour; 60 percent of that would come out to 82.4 cents an hour.

Senator TAFT. That is factory. Service would be somewhat lower.

Secretary TOBIN. Service employees would be substantially lower.

Senator Taft urged the Secretary to "think it over" and to "give us your views on it later." Tobin agreed that he would do so. Taft concluded that the average wage cost was more appropriate than the "cost of living."<sup>16</sup>

## **Reports and Amendments (1949)**

There has been, advised Representative Brooks Hays (D-AR) in 1949, "considerable interest in the so-called flexibility feature of the minimum-wage legislation." He noted the dispute as to whether the appropriate minima was "75 cents or 65 cents or some other amount" but, he added, "... in any event it seems to me that it should be governed by the cost of living." Hays continued:

If we had had such a provision [i.e., a cost of living formulation] when the 1938 act was adopted, we would now have a minimum of around 54 cents on one formula or 65 cents on another formula, and we would be spared this unfortunate controversy as to whether or not it is to go to 75 cents....

He then turned to a study by Gustav Peck of the Legislative Reference Service (now, CRS), *The Question of a Flexible Statutory Minimum Wage*. Peck, Hays stated, "has assembled all of the arguments, pro and con, for tying the minimum wage to the cost of living index." He suggested

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<sup>16</sup> Senate Hearings, 1949, pp. 46-47.

that Peck's study would be "of particular interest to Members who favor the principle of flexibility in minimum-wage legislation."<sup>17</sup>

## The Peck Report

"A characteristic of all wages in a progressive society is their flexibility," Peck commenced. "Wages go up and down at different times in response to changes in the labor market situation, to changes in productivity and job content, to relative bargaining power, to cyclical influences, and to changes in the cost of living." Peck continued:

A rise or fall in the cost of living changes the substance of a statutory minimum wage more than such a rise or fall affects other wages, because contract or competitive wages generally reflect changes in the cost of living while a legal minimum wage can not be changed at all except by action of the legislature or, in the case of wage-board determinations, only after time-consuming procedures.<sup>18</sup>

Congress had "resisted attempts to raise the minimum wage" and even during the 79<sup>th</sup> and 80<sup>th</sup> Congresses (post-war Congresses), "efforts to raise the 40-cent minimum died of inaction."<sup>19</sup> Labor spokesmen had sought "flexibility" but always "upward." First, they called for general revision of the minimum to make the act "more realistic." Second, they proposed insertion of "an escalator in any new law."<sup>20</sup>

Arguments in support of a revision of the minimum wage, he stated, include "increases in the cost of living, increases in actual minimum wages in industry, increases in profits and ability to pay, and general increases in productivity." Generally, the cost-of-living was regarded as "the most important determinant of a proper statutory minimum." Further, some argued, "[i]f prices should decline," then "there should be some provision in any new act to reduce the minimum wage with reductions in prices and the cost of living or ... reductions in average wages."<sup>21</sup>

Under the 1938 statute, a limited wage board had been created.<sup>22</sup> Some argued, however, that a board might not be able to move any more quickly than Congress to increase the minimum wage. For a board, there would likely be "delay of recognition of a changed situation," "delay of fact-finding and hearings," and "delay of issuing revised orders." Thus, throughout the late 1930s and during the war years, the problem of statutory minimum wages remained "one of catching up with the realities of increasing prices and the cost of living." Peck continued:

The Wage Board technique, at least as employed in the States, is not a complete answer to the flexibility problem because these laws were written with the express intent of raising minimum wages above the levels then being paid.... Even though it might be possible under

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<sup>17</sup> *Congressional Record*, August 3, 1949, p. 10691.

<sup>18</sup> Gustav Peck, *The Question of a Flexible Statutory Minimum Wage*, Library of Congress, Legislative Reference Service, Bulletin No. 73, July 1949, p. 3. (Cited hereafter as Peck, *The Question*.)

<sup>19</sup> Congressional Quarterly News Features, *Congressional Quarterly Almanac*, 81<sup>st</sup> Congress, 1<sup>st</sup> Session, 1949. p. 435.

<sup>20</sup> Peck, *The Question*, p. 7.

<sup>21</sup> Peck, *The Question*, p. 8.

<sup>22</sup> A wage board would be phased out for all but Puerto Rico, the Virgin Islands and most other off-shore dependencies—but that was not clear when Peck wrote.

the terms of some of the laws to make findings which would require downward adjustments of the minimum wage, no such adjustments have ever been made.<sup>23</sup>

Inflexible costs, he stated, could produce a “contraction of industry and employment” and end “in the midst of a real depression.”<sup>24</sup> He seemed to suggest that if wage rates could move either up *or down* (real flexibility), then indexation might be worth trying—so long as the timing was right and changes in the rate were not precipitous.<sup>25</sup>

## **The Lucas Amendment**

On April 14, 1949, Representative Wingate Lucas (D-TX) introduced a new minimum wage bill which contained “the Hays-McConnell flexible minimum” which he stated was “a splendid” concept.<sup>26</sup>

As the summer wore on, Lucas presented a series of brief statements on the floor, promoting the flexible minimum wage bill. He explained:

It ties minimum wages in our law to the cost of living index so that wages will go up in time of inflation and go down in time of deflation. There will be stabilized employment. It is the best answer I have ever heard for a legal, equitable, and fair minimum wage.

Lucas drew attention to the Peck study and urged Members “to get a copy and read it.”<sup>27</sup> He hoped others would be “as enthusiastic about this plan as I am.”<sup>28</sup>

Debate began on August 8. Lucas stated: “If the employee can receive sufficient funds for his labor to provide him with rudimentary standards of decency, ... we will have reached our objective.”<sup>29</sup> Representative Adolph Sabath (D-IL) challenged the “great stress” that Lucas has placed on “the sliding-scale provision of his proposed substitute” which “would mean nothing but uncertainty and confusion.”<sup>30</sup> At this point, Lucas introduced his substitute which, among other things, provided for a minimum wage of 65 cents an hour with indexation to follow.<sup>31</sup>

There seemed a dispute among constituencies. “All employee groups, so far as I know, favor the fixed rather than the flexible minimum,” stated Representative Kenneth Keating (R-NY). “So far as I remember, not a single employer has voiced a preference for the sliding minimum.”<sup>32</sup>

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<sup>23</sup> Peck, *The Question*, pp. 10-11.

<sup>24</sup> Peck, *The Question*, pp. 15-16.

<sup>25</sup> Peck notes, *The Question*, p. 18, that “a frequently changing minimum wage is very difficult to administer,” that “it takes time to get across to all employers what their obligations are,” could make “compliance and enforcement more difficult....”

<sup>26</sup> *Congressional Record*, April 14, 1949, p. 4627.

<sup>27</sup> *Congressional Record*, July 27, 1949, p. 10289.

<sup>28</sup> *Congressional Record*, August 5, 1949, p. 10844.

<sup>29</sup> *Congressional Record*, August 8, 1949, pp. 11004-11005.

<sup>30</sup> *Congressional Record*, August 9, 1949, p. 11126.

<sup>31</sup> *Congressional Record*, August 9, 1949, p. 11128. The device for indexation, here, was the Consumer Price Index for Moderate-Income Families in Large Cities. Lucas added to his amendment: “That in no event shall the minimum hourly wage prescribed by the Administrator be less than 50 cents an hour.”

<sup>32</sup> *Congressional Record*, August 10, 1949, p. 11197. See industry comments in the section on The Ellender Amendment.

Representative Jacob Javits (R-NY) was similarly disposed: “When we are fixing a minimum wage and a concrete floor, it must be a fixed figure and it should not vary with the cost-of-living index.”<sup>33</sup>

Representative Charles Bennett (D-FL) was, in some measure, prescient. He stated that he had “no quarrel with the amount of 75 cents an hour” but urged certain safeguards. *First*. Some arrangement would be needed for “an exemption for small and marginal businesses.” *Second*. There should be a “regional basis of arriving at minimum wages, for it is clear that the cost of living varies greatly between various sections of our country.” *Third*. The minimum wage would need to be tied “to a cost-of-living formula....” Bennett continued: “I strongly favor the principle of tying the minimum wage to the cost-of-living formula, which principle is found in the Lucas bill now before us.”<sup>34</sup>

Through a complex parliamentary maneuver, a bill by Representative John Lesinski (D-MI) was substituted for the text of the Lucas bill and was adopted by the House. In the process, the flexible minimum wage provision was defeated.<sup>35</sup>

### The Ellender Amendment (1949)

Senator Allen Ellender (D-LA) proposed his own addition to Lucas/Lesinski debate.<sup>36</sup> Elected to the Senate in 1936, he recalled the turbulence that had marked the Depression Era and the war years, and observed: “The fact is ... that 10 years of experience” under the FLSA “are virtually worthless as a measuring stick of the probable effects of increasing the present wage minimum.”<sup>37</sup> Ellender stated that we “... proceed with the utmost caution and circumspection” lest our actions produce a “decline in employment, prices and production, and plunge the Nation into a recession or a major depression.”<sup>38</sup>

On August 31, 1949, with some caution, Ellender proposed indexation of the federal minimum wage. Using a variation on the Consumer Price Index, he urged an increase of the minimum wage (then still 40 cents an hour) to 65 cents an hour—but with a ban of flexibility built into its future calculation. He added that “...in no event shall the minimum hourly wage prescribed by the Administrator be less than 55 cents an hour, nor in excess of 75 cents an hour.”<sup>39</sup>

Ellender’s introductory speech seemed at odds with the thrust of his proposal. He explained the *ripple effect* (the impact of the minimum wage on other wage differentials) and reviewed the southern case against the minimum wage. He had reached the 65 cent level, he stated, because, had the original 40 cent figure been indexed, “that 40-cent minimum would be about equivalent to a 66-cent minimum today.”<sup>40</sup> Ellender stated that proposed changes have been considered by

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<sup>33</sup> *Congressional Record*, August 10, 1949, p. 11204.

<sup>34</sup> *Congressional Record*, August 10, 1949, p. 11205.

<sup>35</sup> See Congressional Quarterly News Features, *Congressional Quarterly Almanac*, 81<sup>st</sup> Congress, 1<sup>st</sup> Session, 1949, pp. 434-441.

<sup>36</sup> *Congressional Record*, August 31, 1949, p. 12537.

<sup>37</sup> *Congressional Record*, August 31, 1949, p. 12536.

<sup>38</sup> *Congressional Record*, August 31, 1949, pp. 12537-12538.

<sup>39</sup> *Congressional Record*, August 31, 1949, p. 12535. Senator Ellender used the Consumer Price Index for Moderate-Income Families in Large Cities.

<sup>40</sup> *Congressional Record*, August 31, 1949, p. 12539. Ellender stated: “But instead of making it 66 cents, the (continued...) ”

“... at least three Congresses; and as yet no change has been effected. The legislative process,” he stated, “is too slow and too cumbersome.” For many of the same reasons, he objected to wage board procedures “for effecting changes in statutory wage minima.” Ellender critiqued various indexes and then concluded that the Consumers’ Price Index for Moderate-Income Families “is appropriate, feasible and practicable.”<sup>41</sup>

Ellender read into the record testimony that seemed to endorse an up-or-down principle of escalation. For example, Jack Garrett Scott, general counsel of the National Associations of Motor Bus Operators:

We urge that serious consideration be given to a statutory plan whereby the minimum wage is geared to living costs, both upward *and downward*, based upon indices of the Bureau of Labor Statistics, and subject to change each year by the Administrator according to the cost-of-living figures compiled and presented by that Bureau.” (Italics added.)

Howard B. Carlisle, Jr., the American Cotton Manufacturers’ Association, was cited.

During other distressed periods we reduced wages, but many mills managed to keep going.... The workers accepted these reductions because they preferred wage cuts to unemployment. But with a high minimum wage the mills cannot meet conditions realistically. If hard times come, they will have to shut down and throw their men out of work.

Finally, the views of Donald Kirkpatrick, general counsel for the American Farm Bureau Federation, were added to the record. The AFBF, he stated:

... has directed its executive officers to oppose without compromise any increase in the maximum basic wage *that is not tied to a cost-of-living index*. Using the existing minimum-wage base ... would under a flexible formula, substantially increase the basic minimum wage. Under our proposal if the cost-of-living index goes up *or down*, then the basic minimum wage would be adjusted accordingly by the Administrator under a formula provided in the law. The American Farm Bureau Federation believes this to be sensible and sound in approach; one that will not strait-jacket our economy; ...” (Italics added.)

In summing up, Senator Ellender argued that his plan was the only sensible one to be adopted. “There must be flexibility in respect to any wage law enacted.”<sup>42</sup> (See **Table 1** for the rates of change over the years.)

Others disagreed—notably, Senator Taft. Taft thought “75 cents an hour is a reasonable minimum wage” but suggested that some form of indexation might “be studied as a basis for minimum wages in the future.... We have had no expert advice on the subject.” He continued: “Personally, I feel that the cost of living is not the proper basis for determining wages. The cost of living has always seemed to me to be an uncertain factor. It affects people in different ways. The cost of living for a man without a family is about half of the cost of living for a family of four.” Taft

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(...continued)

proponents of the pending bill want to increase it to 75 cents.”

<sup>41</sup> *Congressional Record*, August 31, 1949, pp. 12540-12541. Ellender placed in the Record extensive evaluation of the Consumer Price Index. Under the Ellender proposal, indexation would permit a rise (or a fall) in tandem with the CPI.

<sup>42</sup> *Congressional Record*, August 31, 1949, p. 12553.

added: “If there is a sliding scale, I should prefer to see it related to the general wage level in the United States, rather than to the cost of living.”<sup>43</sup>

On the Ellender amendment, the vote was 26 yeas to 51 nays (nineteen Members not voting).<sup>44</sup> As soon as the vote was announced, the Senator reintroduced a new amendment which was “identical with the one just voted upon except that instead of fixing the minimum at 65 cents, it is fixed at 70 cents.” Once more, the amendment lost: 25 yeas to 51 nays (twenty Members not voting).<sup>45</sup> But, in 1949, the minimum wage was raised to 75 cents an hour. [See **Table 1**, below, for the various minimum wage (FLSA) enactments from 1938 through 1997.]

**Table 1. Federal Minimum Wage Rates, 1938-2009**

Public law	Effective date	Rate
P.L. 75-718 (Enacted June 25, 1938)	October 1938	\$0.25
	October 1939	0.30
	October 1945	0.40
P.L. 81-393 (Enacted October 26, 1949)	January 1950	0.75
P.L. 84-381 (Enacted August 12, 1955)	March 1956	1.00
P.L. 87-30 (Enacted May 5, 1961)	September 1961	1.15
	September 1963	1.25
P.L. 89-601 (Enacted September 23, 1966)	February 1967	1.40
	February 1968	1.60
P.L. 93-259 (Enacted April 8, 1974)	May 1974	2.00
	January 1975	2.10
	January 1976	2.30
P.L. 95-151 (Enacted November 1, 1977)	January 1978	2.65
	January 1979	2.90
	January 1980	3.10
	January 1981	3.35
P.L. 101-157 (Enacted November 17, 1989)	April 1990	3.80
	April 1991	4.25
P.L. 104-188 (Enacted August 20, 1996)	October 1996	4.75
	September 1997	5.15
P.L. 110-28 (Enacted May 25, 2007)	July 2007	5.85
	July 2008	6.55
	July 2009	7.25

## Interim Adjustments

The initial minimum wage (1938) was enacted as the United States was coming out of the Great Depression and just as it was about to enter World War II. Though it appears to have had little disruptive impact, the circumstances may not have been ideal for a test. The 1949 amendments may have been, similarly, obscured by the War in Korea. Thus, as Congress

<sup>43</sup> *Congressional Record*, August 31, 1949, p. 12563.

<sup>44</sup> *Congressional Record*, August 31, 1949, p. 12567.

<sup>45</sup> *Congressional Record*, August 31, 1949, p. 12568.

considered new legislation that would adjust the minimum wage, it seems to have done so with some measure of circumspection.

## The 1955 FLSA Amendments

In the 84<sup>th</sup> Congress, Members were confronted with a range of exemptions, exceptions, and a potential for a significant FLSA expansion. But, according to Representative Graham Barden (D-NC), then chairman, “the committee unanimously decided to consider two items at this time”: the rate of the hourly wage and the date that an increase should become effective.<sup>46</sup>

Senator Paul Douglas (D-IL) reported the measure (S. 2168). In proposing a \$1.00 an hour minimum wage (the Eisenhower Administration had asked for 90 cents), two factors were of influence, he stated: “the increase in the cost of living” and “the increase in productivity.” Taking these increases into account, he stated, the minimum wage should be raised to just over \$1.00 an hour. Douglas explained:

In times past the Fair Labor Standards Act has suffered, and perhaps it suffers at this moment, from the fact that revisions are made sporadically. The [last] increase was postponed from 1944 to 1949; therefore, instead of a gradual increase, a jump was then made from 40 cents to 75 cents.

Douglas sought a rate not “too severe for many industries and many firms to absorb” and urged a new “method of easier transition to higher schedules in the future.” Rather than index the wage rate, per se, he proposed writing into DOL’s reporting requirements a mandate that the Secretary make “recommendations” as to “any changes which may have occurred in the cost of living, changes in productivity, changes in the levels of wages and manufacturing....” The recommendations, he stated, “will make it possible for Congress to act more quickly in the future....”<sup>47</sup> The measure was promptly adopted, with action now moving to the other chamber.

In the House, minimum wage legislation was called up on July 19 and 20, 1955. Representative Samuel McConnell (R-PA), see the 1947 debates, stated: “For over 16 years [a] diligent search has been carried on to discover some scientific way to set a proper minimum rate, but no exact method has been developed. The most frequent factor mentioned,” he stated, “is the cost of living [the Consumer Price Index].”<sup>48</sup> But, with only that oblique reference to indexing, debate moved on to now familiar discussions of inflation, unemployment and regional concerns.

Following two days of debate, the House passed a stripped down stand-alone \$1.00 minimum wage increase (362 ayes to 54 nays)—sending the bill back to the Senate.<sup>49</sup> Ultimately, the bill was adopted (P.L. 84-381).

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<sup>46</sup> U.S. Cong., House, *Amending the Fair Labor Standards Act to Make the Minimum Wage \$1 an Hour Effective March 1, 1956, Report To Accompany H.R. 7214*, Report No. 1095, 84<sup>th</sup> Cong., 1<sup>st</sup> Sess., July 11, 1955, p. 2. See also U.S. Cong., Senate, *Amending the Fair Labor Standards Act of 1938 in Order to Increase the National Minimum Wage*, Report No. 498, 84<sup>th</sup> Cong., 1<sup>st</sup> Sess., June 7, 1955, p. 2. See also *Congressional Record*, June 7, 1955, p. 7758.

<sup>47</sup> *Congressional Record*, June 8, 1955, p. 7868. Senator H. Alexander Smith (R-NJ) proposed a three step increase in the rate leading to \$1.00 an hour but the Smith proposal was voted down. See *ibid*, pp. 7870 and 7873.

<sup>48</sup> *Congressional Record*, July 20, 1955, p. 11063.

<sup>49</sup> *Congressional Record*, July 20, 1955, pp. 11087-11088.

## The 1960s and Early 1970s

The 1949 and 1955 amendments to the FLSA had been contentious but relatively uncomplicated. The 1961 amendments “extended the minimum-wage and (with some exceptions) the overtime provisions of the Act to an estimated 3,624,000 additional workers.”<sup>50</sup> In 1966, the FLSA extended coverage “to 9.1 million workers not previously covered” by the minimum wage.<sup>51</sup> In 1974, new legislation brought “approximately 7 million employees, including domestics,” under coverage.<sup>52</sup> As a result of the three enactments, the minimum wage moved from \$1.00 per hour to \$2.30 per hour, the latter taking effect in January 1976.

Through the years following enactment of the FLSA, as noted above, indexation had been a more-or-less reoccurring theme. But the issue does not appear to have come up in a sustained fashion during consideration in 1961, 1966, and 1974.

## PART III. DEVELOPING LEGISLATION: THE 1970s AND EARLY 1980s

### The 1975 Indexation Proposal

In 1975, Representative John Dent (D-PA), chair of the Subcommittee on Labor Standards, introduced H.R. 10130, a bill that would have increased the minimum wage, in steps, to \$3.00 per hour. Thereafter, an indexation formula, based upon the Consumer Price Index (or CPI) would take effect.<sup>53</sup> Noting the increase in the cost-of-living, the AFL-CIO’s Andrew Biemiller, agreed. “Some such escalator provision is essential if we are to maintain the purchasing power of the minimum wage....”<sup>54</sup>

John Erlenborn (R-IL), the Ranking Member, opposed indexation. You talk about inflation “and the loss of purchasing power of the dollar and a need to index the minimum wage so we can have automatic increases in it,” he chided Biemiller, when “it is the wage demands of the people you

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<sup>50</sup> *CQ Almanac: 1961*, “Kennedy Wins Minimum Wage Victory,” Congressional Quarterly Inc., Washington, 1961, pp. 471-482. See also Milton C. Denbo, “The Fair Labor Standards Amendments of 1961: An Analysis,” *Labor Law Journal*, 1961, pp. 731-738.

<sup>51</sup> *CQ Almanac: 1966*, “Expansion of Minimum Wage Law Approved,” Congressional Quarterly Inc., Washington, 1967, pp. 821-830. See also: Edward C. Martin, “Extent of Coverage under FLSA as Amended in 1966,” *Monthly Labor Review*, April 1967, pp. 21-24; Susan Kocin, “Basic Provisions of the 1966 FLSA Amendments,” *Monthly Labor Review*, March 1967, p. 1-4; and Jack Karlin, “Economic Effects of the 1996 Changes in the FLSA,” *Monthly Labor Review*, June 1967, pp. 21-25.

<sup>52</sup> *CQ Almanac: 1974*, “Nixon Signs Minimum Wage Increase,” Congressional Quarterly Inc., Washington, 1975, pp. 239-244.

<sup>53</sup> U.S. Cong., House. *Fair Labor Standards Amendments of 1975*, Hearings before the Subcommittee on Labor Standards, Committee on Education and Labor, 94<sup>th</sup> Cong., 1<sup>st</sup> Sess., October 22, 1975, ff. U.S. Government Printing Office, 1975, pp. 3-4. (Cited hereafter as House Hearings, 1975.)

<sup>54</sup> House Hearings, 1975, p. 8. See Bureau of National Affairs, *Daily Labor Report*, October 3, 1975, pp. A14-A15, October 16, 1975, pp. A19-A22, and October 22, 1975, pp. A15-A17, D1-D2.

represent that caused a good deal of the inflation that we are experiencing. So,” he continued, “having caused the problem, you now come here and seek relief from it.”<sup>55</sup>

## **The Hearing Proceeds**

In some respects, organized labor, appearing as the lead witness, set the stage for events that would follow. Much of the subsequent testimony represented a business perspective.

Robert Thompson, speaking for the Chamber of Commerce, decried indexation as “the most harmful and fiscally unsound provision” of the bill. He asserted that “general application of an automatic cost-of-living escalator to minimum wage rates would greatly exacerbate the inflationary process.” Thompson noted the *upward flexibility* of the bill and protested its impact for training and other costs of doing business. If indexation were agreed to, he suggested, a mechanism more suitable than the CPI should be used.<sup>56</sup> “We think that tying the minimum wage to the Consumer Price Index will not only increase unemployment, but will feed the fires of inflation like nothing this Congress has ever done.”<sup>57</sup>

Others were equally firm. Carl Madden, chief economist for the Chamber, termed indexing “genuinely terrifying to me.”<sup>58</sup> Indexing would be “a dangerous precedent,” stated Donald White, American Retail Federation, adding “momentum to the vicious cycle of inflation.”<sup>59</sup> Carl Beck, of the National Small Business Association, argued that the CPI was an inexact instrument through which to measure relative wage rates and cited Julius Shiskin of BLS as his source. “I would suggest you contact Mr. Shiskin because he feels very strongly about it....”<sup>60</sup>

Using “the CPI as a determinant in wage adjustments” under the minimum wage, stated James McLamore, National Restaurant Association (NRA), “... would represent a fundamental change in national policy....”<sup>61</sup> NRA opposed the concept:

... removing any necessity for Congress to periodically examine minimum wage rates would deny the existing opportunity for periodic examination of the relationship between wages and inflation and remove an important warning signal on the road to even higher inflation.

McLamore pointed to merit systems. “Such recognition is important to any increase in productivity. We believe that making increases in the minimum wage automatic with increases in the CPI,” he stated, “would soon destroy any merit increase system or place it beyond the means of most employers.” Like others from industry, McLamore urged that Congress “should not abdicate the important responsibility of weighing the many factors not reflected in the CPI.”<sup>62</sup>

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<sup>55</sup> House Hearings, 1975, pp. 12 and 14. .

<sup>56</sup> House Hearings, 1975, pp. 43-45.

<sup>57</sup> House Hearings, 1975, pp. 48-49. See also Bureau of National Affairs, *Daily Labor Report*, October 23, 1975, p. A6.

<sup>58</sup> House Hearings, 1975, p. 55.

<sup>59</sup> House Hearings, 1975, p. 75.

<sup>60</sup> House Hearings, 1975, p. 80.

<sup>61</sup> House Hearings, 1975, p. 91.

<sup>62</sup> House Hearings, 1975, p. 92. See also Bureau of National Affairs, *Daily Labor Report*, October 23, 1975, pp. A7-A8.

Abraham Weiss, then an Assistant Secretary of Labor, presented perhaps the most extensive comment on indexation during the 1975 hearings—and much of it negative.<sup>63</sup> Dent recognized the nature of DOL's comment and observed that he was “not tied to this particular bill....”<sup>64</sup> But, the Congressman added: “I sincerely believe there has to be some mechanism other than periodic legislative enactments if it is intended to put a floor under wages ... so that a worker in that particular category would not be forced to rely on food stamps and welfare payments.”<sup>65</sup>

## **Subsequent Comment**

With the close of the formal hearings, various submissions were made for the record. Here, there seems to have been considerable interest in indexation.

The Amalgamated Clothing Workers of America, AFL-CIO, suggested: “One of the problems” with the FLSA, “has been that the rates could not be adjusted for some time after they had become obsolete.” The union urged “greater flexibility” and suggested that “an escalator provision will provide this” but indicated that indexation would “not obviate the necessity of revising the basic rate.” It seemed to suggest a shift from the minimum wage, per se, to the rate/mechanism for its increase.<sup>66</sup>

The Associated General Contractors of America (the AGC), an industry group, took an opposite approach describing indexation as “neither new” or “good” and, as businessmen, we find the proposal “unbelievable.” Indexing, the AGC argued, “legislates inflation and makes it permanent.”<sup>67</sup> The Farm Bureau scorned indexation as the “most radical and far-reaching” provision of the bill and “totally unacceptable.”<sup>68</sup> While Robert W. Hite, associated with Mr. Steak, Inc. (Denver), termed the bill “ill-advised, poorly conceived, and fiscally irresponsible.”<sup>69</sup>

## **No Further Action**

Yet one additional year had to run on the 1974 amendments. A new increase in the minimum wage may not have seemed timely and, in September 1976, Congressman Dent announced plans to hold back his bill until the 95<sup>th</sup> Congress (1977) when there would be more time to consider all aspects of the legislation.<sup>70</sup>

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<sup>63</sup> House Hearings, 1975, pp. 153-154, 185-186, and 188-189. For a discussion of Weiss' testimony, see Bureau of National Affairs, *Daily Labor Report*, November 6, 1975, pp. A16-A-18.

<sup>64</sup> House Hearings, 1975, p. 191.

<sup>65</sup> House Hearings, 1975, p. 192. But Dent, according to the *Daily Labor Report*, October 29, 1975, p. A5, “indicated ... that there is no great rush to do anything on the bill since minimum wage increases already are scheduled” for next year.

<sup>66</sup> House Hearings, 1975, p. 205.

<sup>67</sup> House Hearings, 1975, pp. 209-210. See Sol Chaikin's comments, House Hearings, 1975, p. 213, and those of Robert W. Crawford, President of the Association of General Merchandise Chains, House Hearings, 1975, p. 217.

<sup>68</sup> House Hearings, 1975, pp. 219-221. See also House Hearings, 1975, pp. 225, 238, 240-241; 259-260, 266-267, 268, and 277.

<sup>69</sup> House Hearings, 1975, pp. 226-227.

<sup>70</sup> Bureau of National Affairs, *Daily Labor Report*, September 8, 1976, p. A10.

## The 1977 Indexation Proposals

In February 1977, Representative Dent introduced H.R. 3744, a bill to increase the minimum wage, to repeal the tip credit, and to provide “an automatic adjustment in such wage rate.” Diverse other provisions would be added.

### Hearings in the House (1977)

With the opening of the hearings in the House (March 9, 1977), the first witness was Andrew J. Biemiller of the AFL-CIO. Biemiller was followed by a series of industry witnesses and, ultimately, by the new Labor Secretary Ray Marshall.

### The Opening Witnesses

Biemiller had come directly from a meeting of the AFL-CIO’s Executive Council. In reporting the views of the Council, he stated:

The Congress should act immediately to increase the Federal minimum wage to \$3 an hour *and include an automatic mechanism in the law* to thereafter maintain the wage floor at 60 percent of average hourly earnings in manufacturing.”<sup>71</sup> (Italics added.)

The Executive Council’s projection to \$3.00 per hour, immediately, followed by indexation at 60%, may have been unduly optimistic.

Biemiller affirmed that indexation (because such wages would be quickly spent, of necessity) would boost the economy. There should be no youth sub-minimum wage. As to the alleged disemployment impact of the minimum wage, he stated: “We point to the record.” The several Secretaries of Labor had not suggested such a result. Indeed, their reports “have shown substantial benefits and only rare, isolated instances of adverse effects, involving a few small firms and very few employees.”<sup>72</sup>

As at prior hearings, a battery of industry witnesses followed Biemiller and proceeded to offer refutation. “Use of manufacturing wages for indexing would add especially to inflation because manufacturing wages have increased faster than average wages during the last 10 years,” stated Jack Carlson, chief economist for the Chamber of Commerce.<sup>73</sup> John Hutchens, president, United States Industrial Council, argued that indexing the minimum wage to “60 percent of average

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<sup>71</sup> U.S. Congress. House. Committee on Education and Labor, Subcommittee on Labor Standards. Hearing. *Fair Labor Standards Amendments of 1977*. 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 9, 16, and 24, 1977. p. 6. (Hereafter cited as House Hearings, 1977.) Under the Dent bill, the indexation formula would begin at 55% of the average hourly earnings on manufacturing payrolls and expand, a year later, to 60% of average hourly earnings on such payrolls.

Biemiller, a former Member of Congress from Wisconsin, in support of indexation (p. 9), recalled that “... an automatic escalator device was proposed by then-Senator Taft in the course of the debate on the fair labor standards amendments as long ago as 1949. In fact, he asked Secretary of Labor Tobin his reaction to setting minimum wages at 60 percent of average wages in manufacturing. Senator Taft may have been ahead of his time—but the AFL-CIO agrees with you that this is an idea whose time has certainly come.”

<sup>72</sup> House Hearings, 1977, pp. 6-9.

<sup>73</sup> House Hearings, 1977, p. 309.

hourly earnings in manufacturing” would result in a “never-ending inflationary spiral.”<sup>74</sup> Similarly, Patrick O’Malley of the National Restaurant Association viewed adoption of indexation as “a major step toward adopting indexing as our national policy.”<sup>75</sup>

Dent had taken into account the economic impact of indexation and, for the purposes of the hearings, had secured a panel of research economists generally knowledgeable about the field. Their views, if somewhat negative, were diverse.<sup>76</sup>

Dent’s views were more pragmatic. “The minimum wage has always been a catchup. By the time an increase is passed, it brings people back to even,” he said. “It is just a question of doing nothing, doing something, or doing too much. In between is where I would like to be.”<sup>77</sup>

### **Secretary Marshall Speaks for the Administration**

The new Secretary of Labor in the Carter cabinet, Ray Marshall, was an economist. Marshall began with an analysis of the pending (Dent) bill.

We have carefully reviewed this proposal and believe that in light of current economic conditions, a somewhat different approach is warranted at this time. Accordingly, the administration proposes an increase in the minimum wage to \$2.50 per hour for all covered workers on July 1, 1977. We propose an annual indexing of the minimum wage, beginning on July 1, 1978, at a rate equal to 50 percent of straight time hourly earnings of production and nonsupervisory workers in manufacturing.

The Administration’s proposal would provide “for regular minimum wage increases on a yearly basis.” He stated: “It would eliminate the irregular pattern which has characterized the history of minimum wage adjustments” and would “enable the business community to more accurately anticipate and adjust its wage costs” by providing increases at “regularly established intervals.” Indexation would “reduce erosion of the real income of recipients.” Noting that indexation “represents a major departure from previous methods of adjusting the minimum wage,” Marshall urged that the issue be studied with a report made to the Congress.<sup>78</sup>

Dent’s reply was immediate. “Your proposals are quite different than what this Congress had hoped for in a new minimum wage law. However,” he added, “the committee will, as it always does, give it very serious consideration.” Finally: “I have no questions to ask.”<sup>79</sup>

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<sup>74</sup> House Hearings, 1977, p. 393.

<sup>75</sup> House Hearings, 1977, p. 373.

<sup>76</sup> Finis Welch of UCLA and William Dunkelberg of Purdue University seemed more generally opposed to indexation. Edward Gramlich, the University of Michigan, was more favorably inclined but ambivalent. “The main question,” Gramlich stated, “is whether the nation’s interests are best served by having Congress reconsider minimum wage legislation every two or three years ... or by indexing the minimum so as to eliminate the need for periodic action.” For his part, he seemed to favor having Congress “reconsider the policy every few years, armed with whatever new evidence or political views have accumulated in the meantime.” House Hearings, 1977, p. 236. See also, *ibid*, pp. 97 and 199. Dunkelberg was also spokesperson for the National Federation of Independent Business.

<sup>77</sup> House Hearings, 1977, p. 414.

<sup>78</sup> House Hearings, 1977, pp. 475-478

<sup>79</sup> House Hearings, 1977, p. 478.

Representative Erlenborn queried: You endorse “the concept of indexing” on behalf of the Administration. “Would I be wrong in interpreting that statement to indicate that you are reflecting an inflationary psychology in this administration that it would tie this to an index?” And, might this become “a way of life that we must anticipate.” The Secretary responded: “No, sir. It would not.”<sup>80</sup>

Others were equally critical. Representative Joseph Gaydos (D-PA), taking note of the Secretary’s widely ranging interests in humane concerns, asked if he had “any problems” in “drastically reducing and suspending an increase in minimum wage?” Marshall responded: “It seems to me we are recommending no diminution in the minimum wage—it is a lower increase than others would recommend here—but the basic idea of having a minimum standard is there.” Gaydos replied that “... I am disappointed ... I am grossly disappointed with the position that the Department takes in this matter.”<sup>81</sup> Representative Phillip Burton (D-CA) added: “I do hope that you do not personally believe that this is an adequate treatment of the problem.”<sup>82</sup>

Congressman Dent stated: “Senator Taft advised that we ought to put minimum wage on a permanent increment base and we ought to do it with 60 percent based on the average hourly increase in manufacture.” At that rate, the minimum today would be “about \$3.36 per hour.” Dent added: “It is very difficult to conceive how the economists of this administration could sit down and come up with this recommendation which is so far out of line.”<sup>83</sup>

## Hearings in the Senate (1977)

The Senate hearings began on July 28, 1977, on S. 1871, co-authored by Senator Harrison Williams (D-NJ) and Jacob Javits (R-NY). The bill would have raised the minimum wage to \$2.65 an hour in January 1978—and would, thereafter, have indexed it, reaching 53 percent of the average hourly earnings formula (AHE).<sup>84</sup>

“Inflation takes its toll on everyone, but poor workers and their families, who must spend everything they earn merely to get by,” Senator Williams stated, “feel its effects much more sharply than other workers in our society.”<sup>85</sup> Senator Javits reluctantly concurred. Normally, he stated, he had been “opposed to indexing” as a means for fighting inflation; but, we find that “... many collective bargaining agreements are indexed, social security is indexed, and many veterans’ benefits are indexed, I do not see how we can avoid it in this situation.” Senator Javits added: it “offers the advantage to employers of regular, predictable wage rate adjustments.”<sup>86</sup>

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<sup>80</sup> House Hearings, 1977, pp. 480-481.

<sup>81</sup> House Hearings, 1977, pp. 485-486.

<sup>82</sup> House Hearings, 1977, p. 494.

<sup>83</sup> House Hearings, 1977, p. 486.

<sup>84</sup> U.S. Congress. Senate. Committee on Human Services, Subcommittee on Labor, Hearing, *Fair Labor Standards Amendments of 1977*, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., July 28; August 1, 2, 3, 4, and 5, 1977, pp. 3-7. (Hereafter cited as Senate Hearings, 1977.)

<sup>85</sup> Senate Hearings, 1977, p. 1.

<sup>86</sup> Senate Hearings, 1977, pp. 10-11.

## **Secretary Marshall Speaks for the Administration**

Marshall was the lead witness. “There was considerable disagreement over our initial approach,” Marshall stated. Since then, the Administration had discussed the issue with Members of Congress, labor and industry groups, and the President has “... agreed with the minimum wage proposal which is now included in your bill, and in the bill moving through the House of Representatives.”<sup>87</sup> Indexation, Marshall suggested, was an important aspect of this bill. It would “protect minimum-wage workers” and “enable employers to plan and to anticipate adjustments” to their pay systems.<sup>88</sup>

Later, Javits questioned why the particular pattern for indexation had been chosen: was this “an eclectic choice.” Marshall replied: “... the reason that we use the straight time hourly earnings in manufacturing is that it is a better statistical measure ... it is uninfluenced by a lot of extraneous factors, and it gets less feedback from the minimum wage process itself....”<sup>89</sup>

## **The Hearings Continue, Pro and Con**

Hearings in the Senate were extensive. Following the initial statement from the Administration, there appeared a series of witnesses representing labor and industry and simply individuals.

## ***General Views of Labor and Industry***

“In early 1977,” AFL-CIO president George Meany recalled, “the AFL-CIO Executive Council urged the Congress to increase the minimum wage to \$3 an hour and to include an automatic mechanism in the act which would maintain the minimum wage at 60 percent of average hourly earnings in manufacturing. That recommendation,” he stated, “was—and is—fair and reasonable.”

Meany continued that, under the current system, “minimum wage workers sink further into poverty and the ‘real’ value of their wage is eroded.” The putative value of \$2.65 an hour “... is less than we would like, but the prospect of bringing the minimum wage above the poverty level in the early 1980’s” and indexing thereafter will “... be guaranteeing the low-wage worker a realistic wage floor that will keep pace with general wage trends in the economy.”<sup>90</sup>

Robert Thompson again spoke for the Chamber of Commerce. He argued that the “most dangerous and damaging part” of the proposed legislation was the indexation formula. Thompson stated that the bill was “bad economic policy” with a “robot-like mechanism” that fails to take into consideration “the underlying cost-push problems in our economy and, furthermore, treats inflation as if it were a permanent part of our economy.” He chided: “It is the responsibility of Congress to review periodically the minimum wage law and relate it to the state of the economy. An indexed minimum wage would represent a congressional abdication ....”<sup>91</sup>

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<sup>87</sup> Senate Hearings, 1977, p. 12.

<sup>88</sup> Senate Hearings, 1977, p. 14.

<sup>89</sup> Senate Hearings, 1977, pp. 28-29. On pages 57-64 of the hearings transcript, there appear statistical comparisons of various methodologies for indexing the minimum wage.

<sup>90</sup> Senate Hearings, 1977, pp. 94-95.

<sup>91</sup> Senate Hearings, 1977, pp. 141-143.

Harwell Proffitt, associated with Proffitt's Department Store, Alcoa, Tennessee, proposed a study. "To my knowledge, there has never been a detailed study undertaken to determine the likely economic, social, and political impact of indexing the minimum wage. Indexing," he stated, "has simply been offered as a supposedly painless alternative to the recurring headache of deciding whether an increase in the minimum wage is warranted."<sup>92</sup> Richard Wood, the National Association of Convenience Stores, agreed: "Retailing strongly believes that the bill should provide for the establishment of a Presidential Blue Ribbon Study Commission..."<sup>93</sup>

### *Views from the Economic Community*

The Senate hearings, at mid-session, were given over to select economists. Two panels testified: one of generally liberal economists and a second, generally, more conservative.

Robert R. Nathan, a consulting economist, was chairman, the National Consumers League. Nathan explained the economics and purchasing power of the minimum wage and observed that he would "... strongly favor the indexing provision because it does seem to me appropriate for the minimum wage level to take into consideration improvement factors in our economy."<sup>94</sup> In his prepared statement, Nathan observed that indexation has "been adopted in government and business to cover a large proportion of wage and salary workers. Certainly," he stated, "the most poorly paid American workers are entitled to at least as much protection from wage erosion as the more highly paid workers."<sup>95</sup>

Walter Galenson, professor of economics, Cornell University, began by noting that the hearing marked the 40<sup>th</sup> anniversary of the FLSA. Citing other economists, he suggested that there was still "“virtually no reliable quantitative work”" on the minimum wage. "One of the difficulties," he stated, with respect to most of the studies "... is that they are based upon macroeconomic data, and that heroic assumptions are necessary in order to distill out the effects of economic developments that are occurring simultaneously." In the interim, he stated:

About all we can do is to make some tentative observations based upon a reading of our past experience, and to put in a reminder that for 40 years, the Fair Labor Standards Act has been of considerable benefit to many of the lowest paid in our society without having had any apparently harmful effects on the economy....

Galenson was "not a partisan of the general concept of wage indexing. It has led to many difficulties in countries that have practiced it for long periods. But," he observed, "it is a fact that a great many American workers now enjoy indexing, by collective agreement, and if any group in society needs this kind of protection, it is the low paid. Many, if not most of them are not unionized, and do not have collective bargaining machinery to prevent the erosion of their real incomes."<sup>96</sup>

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<sup>92</sup> Senate Hearings, 1977, p. 189. Proffitt suggested (p. 191) that "... we can be sure if indexing is adopted there will be continued political pressure to raise the percentage of average manufacturing earnings from 53 percent to some higher figure, to include overtime earnings and fringe benefits in the measure of average manufacturing earnings, et cetera."

<sup>93</sup> Senate Hearings, 1977, p. 204. See also, the statement of Donald F. White, American Retail Federation, pp. 202-203.

<sup>94</sup> Senate Hearings, 1977, pp. 414-416.

<sup>95</sup> Senate Hearings, 1977, p. 422.

<sup>96</sup> Senate Hearings, 1977, pp. 429-431.

Sar Levitan, George Washington University, followed. Levitan stated that he supported “the concept which will help prevent the erosion of minimum-wage protection in the face of future inflation and other wage increases. However,” he stated, “... I believe the index should be set at 50 percent of the average manufacturing wage. More than 50 percent should not be attempted until we realize tight labor markets.” The bill in question “is a workable compromise, and whatever reservations I have about indexing above 50 percent, I support the bill,” he said.<sup>97</sup>

A second panel of economists followed.

“Automation escalation [sic] compounds the problems of the minimum wage law,” argued Thomas Sowell of the Hoover Institution, “by making it possible to close our eyes to its effects hereafter. This seems,” he advised, “unconscionable when those affected are poor, vulnerable, powerless, and inarticulate.” He added:

If the Congress does not monitor what happens to them, there is no other powerful institution to do so. The set of incentives confronting the U.S. Department of Labor makes it unrealistic to expect it to critically evaluate minimum wage effects, and nearly 40 years of history makes it painfully apparent that it has no intention of doing so.

Sowell stated the need for a critical evaluation of the minimum wage and noted: “... my hope would be that some way might be considered to have the statistical analysis of minimum wage effects performed by some organization other than the agency whose own fate is intertwined with that of the Fair Labor Standards Act.”<sup>98</sup>

Marvin Kusters, associated with the American Enterprise Institute, tended to focus upon the youth sub-minimum wage and upon the more generalized impact of wage rates on unemployment. He suggested that indexation might cause Congress simply to set aside any further oversight of minimum wage issues. “... I believe that the opportunity for the Congress to periodically reassess minimum wage policy should be retained so that new research results and experience can be taken into account.” He suggested that “establishing fixed increments is preferable to indexation because it more readily permits reassessment and revision of minimum wage policies in light of new information and experience.”<sup>99</sup>

Like Kusters, Walter Williams of Temple University tended to focus upon the youth sub-minimum wage.<sup>100</sup> “Indexing the minimum wage will reinforce the unemployment effect of the rise in the minimum wage,” he stated. “One hope against the predicted large increase in youth unemployment, should the proposed amendment pass, is the inclusion of a significant youth differential.”<sup>101</sup> Otherwise, Williams was silent on indexation in his testimony before the Committee.

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<sup>97</sup> Senate Hearings, 1977, pp. 431-432.

<sup>98</sup> Senate Hearings, 1977, pp. 453-457.

<sup>99</sup> Senate Hearings, 1977, p. 460.

<sup>100</sup> Senate Hearings, 1977, pp. 492-494.

<sup>101</sup> Senate Hearings, 1977, p. 495.

## Legislation Is Considered

On September 14-15, 1977, minimum wage legislation was considered by the House. Senate consideration of the measure would take place on October 6-7, 1977.

## Debated in the House

Representative Phillip Burton called up the minimum wage measure (H.R. 3744), sharing time with Representative Erlenborn—each of whom would play a critical role in subsequent debate.<sup>102</sup> Representative Carl Perkins (D-KY), chair, Committee on Education and Labor, introduced the bill as reported. It would have raised the federal minimum wage to \$2.65 per hour after January 1, 1978, followed by indexation. The indexation formula, Perkins explained, had been conservatively drawn: no overtime or incentive pay, no fringe benefits, and a six-month lag between calculation and implementation.<sup>103</sup>

Erlenborn stated that he would offer an amendment on indexation. The bill “substitutes a mindless, thoughtless rule” for the “good judgement” our constituents have a right to expect from us. He continued:

Instead of having the Congress look ... at the economic conditions, the rate of unemployment, the rate of inflation and other factors in the economy and then deciding whether and how much the minimum wage should be increased, the concept of this bill is to substitute ... an indexing formula that will ever drive the minimum wage up.

Enactment of the bill will “signal a surrender by the Congress ... to inflation as a way of life....” Erlenborn proposed a series of step increases.<sup>104</sup>

Representative Quie, in support of the bill, explained the various technical aspects of indexation. He argued that the bill was not “a mindless” exercise because “... what we are doing is tying the minimum wage to forces in the economy, management, labor, and manufacturing.” He concluded: “...I believe that that would be a far wiser route for us than to operate in the way we have operated in the past.”<sup>105</sup>

On September 15, 1977, the first item was indexation. Erlenborn proposed as a substitute for the reported language:

(1) not less than \$2.65 an hour during the year beginning January 1, 1978, not less than \$2.85 an hour during the year beginning January 1, 1979, and not less than \$3.05 an hour after December 31, 1979, except as otherwise provided in this section; ...

Indexation would, thus, be removed. Erlenborn affirmed: “... I do not think that this Congress can afford, economically or politically, to say that we are ready to guarantee rates of inflation as high as we now experience and rates of inflation that will probably rise ever higher.”<sup>106</sup> A recorded

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<sup>102</sup> Representative Dent was ill. *Congressional Record*, September 14, 1977, pp. 29172-29173.

<sup>103</sup> *Congressional Record*, September 14, 1977, p. 29179.

<sup>104</sup> *Congressional Record*, September 14, 1977, p. 29181.

<sup>105</sup> *Congressional Record*, September 14, 1977, pp. 29183-29184.

<sup>106</sup> *Congressional Record*, September 15, 1977, pp. 29431-29432.

vote on the Erlenborn amendment resulted in 223 ayes to 193 nays—stripping indexation from the bill.<sup>107</sup>

Once the vote had been tallied, Representative Perkins proposed an amendment creating a *Minimum Wage Study Commission*. One portion read:

(C) the economic consequences (if any) of authorizing an automatic increase in the rate prescribed in that Act [the FLSA] on the basis of an increase in an index of the earnings of a category of employees; ...

Perkins had been a Member since 1949 “when we increased the minimum wage from 40 to 75 cents. We have increased it at various times up to \$2.30 where it presently is.” Perkins continued: “... in my opinion there would have been more stability in an indexing procedure such as has been proposed and defeated here today.”<sup>108</sup> Thereafter, Perkins yielded to Jim Guy Tucker (D-AR), who had originally suggested the concept of a Commission. “The question of indexing, regardless of the vote we just took, is not dead. We will have to look at this issue over and over as long as inflation exists.” The Commission proposal was adopted: 301 ayes to 118 nays.<sup>109</sup>

While the Commission proposal was debated, Phillip Burton had prepared a new initiative, one that largely paralleled the reported bill. Erlenborn objected that the Burton proposal was not germane, but was overruled. On a vote of the House, the Burton proposal was defeated (189 ayes, 227 nays)—and, so was indexation.<sup>110</sup>

## **Debated in the Senate**

On October 6, 1977, Senator Williams called up the Senate version of the minimum wage amendments (S. 1871). Floor debate continued through October 7, 1977.

The Committee on Human Resources had produced a bill with an indexation formula; but, it was promptly jettisoned by the sponsors (Williams and Javits) once it came to the floor.<sup>111</sup> The indexation formula was said to have been a “reasonable and important step.” However, Williams stated, “in light of the concerns which have been expressed, I am proposing ... to forego the establishment of indexing for the minimum wage, at least for the next few years.”<sup>112</sup>

Senator Orrin Hatch (R-UT) commended the sponsors “for withdrawing the indexing provision of the original bill. I think,” he stated, “it is a very wise and judicious decision ....”<sup>113</sup> John Tower (R-TX) was more critical. What has been done through the Javits-Williams concession,

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<sup>107</sup> *Congressional Record*, September 15, 1977, p. 29436.

<sup>108</sup> *Congressional Record*, September 15, 1977, p. 29437.

<sup>109</sup> *Congressional Record*, September 15, 1977, pp. 29437 and 29439.

<sup>110</sup> *Congressional Record*, September 15, 1977, pp. 29440-29441. It may have been possible, since indexation had the approval of the White House and the Committee on Education and Labor, that its rejection on the House floor had caught proponents by surprise.

<sup>111</sup> *Congressional Record*, October 6, 1977, pp. 32696-32697.

<sup>112</sup> *Congressional Record*, October 6, 1977, p. 32698.

<sup>113</sup> *Congressional Record*, October 6, 1977, p. 32705.

he suggested, “is to achieve the result without the formula.... It is *back-door indexing*.”<sup>114</sup> (Italics added.)

## The Minimum Wage Study Commission (1978-1981)

The Fair Labor Standards Act amendments of 1977 provided for establishment of a Minimum Wage Study Commission (MWSC). Among the mandates given to the Commission was to explore “the economic consequences (if any)” of indexation. The MWSC would have 36 months in which to prepare and to transmit a report to the President and to the Congress with legislative recommendations.<sup>115</sup>

The Commission reviewed the various aspects of the minimum wage, produced a seven volume report, and ceased to exist in 1981. The cost of the Commission was reported to have been \$17 million.<sup>116</sup> Former Congressman James O’Hara (D-MI) was named as Chairman, presiding over a blue ribbon panel of representatives from industry, labor, and the public, with an in-house staff of seven economists.<sup>117</sup>

### Observations of the Commission

“The key issue to be resolved in indexation,” the Report of the Commission stated, “is the purpose of the minimum wage.”<sup>118</sup> Exploration focused upon the post-World War II years and, primarily, upon the 1950s through the 1970s.

During the 1950s and 1960s, the Report explained, “legislated minimum wage increases caused marked improvements in purchasing power.” That was not the case during the 1970s. Many “... minimum wage earners began working in the 1970s and experienced only the decline in the minimum’s purchasing power.” More critically, “... low-income workers in general and minimum wage workers in particular save very little, and cannot provide for the future erosion of the purchasing power of their earnings.” Finally, those earlier minimum wage increases “... were not designed as a buffer for the unexpectedly high inflation of the 1970s and 1980s since Congress did not foresee the oil crisis and other economic phenomena that boosted the underlying inflation rate into double-digit figures....”<sup>119</sup>

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<sup>114</sup> *Congressional Record*, October 6, 1977, p. 32721. See also comments of Senator Charles Percy (R-IL) on indexing, *Congressional Record*, October 6, 1977, pp. 32722-32723.

<sup>115</sup> P.L. 95-151, Section 2(e).

<sup>116</sup> See Mary Eccles and Richard B. Freeman, *What! Another Minimum Wage Study?* Working Paper No. 878, National Bureau of Economic Research, Inc., 12 pp.

<sup>117</sup> In addition to O’Hara, other members of the Commission included William Byrum (representing Agriculture), Jay Foreman (Labor), S. Warne Robinson (Commerce), Clara Schloss (Labor), Michael Wachter (Commerce), Phyllis Ann Wallace (HEW), and Sandra Willett (Agriculture). Aside from the seven staff economists (with other assistants), the Commission arranged for the services of some 53 outside specialists on aspects of the minimum wage (mostly, economists) and some 38 outside discussants.

<sup>118</sup> Report of the Minimum Wage Study Commission, Vol. 1, May 1981, published by the Commission, p. 71. (Cited hereafter as MWSC by volume and page number.)

<sup>119</sup> MWSC, vol. 1, p. 71.

The Report explained the pros and cons of indexation and noted the possible methods for its implementation.<sup>120</sup> It seemed to conclude that there may be no really ideal base/formula for indexation. The effect of the various methods explored upon employment was assessed to be small “although it varies slightly with the method used.” It was found that corporate profits would increase slightly under each of the plans studied, lending support to the theory “that firms find it easier to adjust to gradual and expected advances in labor costs than to the more abrupt legislated increases that have at times exacerbated inflation.”<sup>121</sup> But, had indexation attached to hourly earnings growth been attempted, the Report noted, “... the long-run impact on consumer price inflation, corporate profits, and real gross national product would have been small, though beneficial.”<sup>122</sup> In summary, the Commission concluded:

First, the present system has not maintained the purchasing power of the minimum wage. Second, indexation is not necessarily inflationary if it is based on cost-of-living or other increases that have already taken place, as measured for example by average hourly earnings, the consumer price index without the mortgage interest payments or the implicit deflator. Third, indexation would have a small beneficial effect on the economy in the long run.

In the short run, the Commission concluded, “... indexation could have either a small beneficial or small harmful effect depending on underlying economic conditions.”<sup>123</sup>

Nonetheless, the Commission recommended that “...the minimum wage be indexed on the basis of average hourly earnings in the private economy and adjusted each year on the basis of the previous year’s overall rate of change in this index.” Further, it concluded “... that regular and predictable increases in the minimum wage would be non-inflationary and would be easier for business to adjust to than the irregular increases of the present system.”<sup>124</sup>

## **Voices of Dissent: The *Minority Report***

Following congressional practice, the report was divided into a majority finding with, in some cases, an expression of minority views. For the most part (with one exception), such minority/dissenting views were short and narrowly focused.

### **The Robinson Dissent**

S. Warne Robinson, chairman of the board, G. C. Murphy Company, had been appointed to the Commission to represent industry.

“The minimum wage,” he began, “has always represented a trade-off among higher wages for some workers, fewer job opportunities for others, and higher prices for everyone.”<sup>125</sup> Robinson cited findings produced by “objective economists.” These findings, he stated, “have shaken the

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<sup>120</sup> MWSC, vol. 1, p. 73.

<sup>121</sup> MWSC, vol. 1, p. 79.

<sup>122</sup> MWSC, vol. 1, p. 79.

<sup>123</sup> MWSC, vol. 1, pp. 83-84. Concerning the technical aspects of these issues, see CRS Report RL30927, *The Federal Minimum Wage: The Issue of Indexation*, by (name redacted).

<sup>124</sup> MWSC, vol. 1, p. 84.

<sup>125</sup> MWSC, vol. 1, p. 182.

very foundations” of the FLSA. Robinson stated that the majority “has refused to base its conclusions on the inescapable economic facts uncovered in our studies” but has, instead, provided “bold and unsupportable assertions” in support of the minimum wage.<sup>126</sup>

Robinson’s comments, dealing with a variety of minimum wage-related issues, focused as well upon the issue of indexation. One of the “most far-reaching and least supportable recommendations” of the Commission, Robinson charged, “calls for automatic annual increases in the minimum wage....” Indexing is “by its nature inflationary.” It “starts with the premise that inflation is a fixed and permanent part of the economy” and implies “a refusal to deal with the underlying causes of inflation.” He continued: “Now is absolutely the worst conceivable time to be building inflationary forces deeper into the heart of our economy. Yet that’s essentially what the majority recommendation for indexing the minimum wage would unavoidably do.”<sup>127</sup>

Robinson reasoned that “there is no index that adequately distinguishes inflation-caused price increases from those caused by supply shocks.” He stated that there were “other major problems with indexing”—i.e., that it “never applies equally to everyone.” Thus, the result “is that anything short of a universal index will always end up redistributing income in some unintended way.” He continued:

This will mean those with the lowest job skills will face even worse employment prospects than at present; small business will be hurt harder, and labor-intensive industries like the retail and service trades will be forced to pass on their increased costs to consumers.

Robinson contended: “Everyone eventually winds up worse off due to stepped up inflation including those who thought they were being protected by an index.”<sup>128</sup>

Finally, Robinson suggested that “...Federal attempts to set wages in defiance of marketplace realities inevitably create inefficiency in the labor market and, in particular, deny employment to specific segments of the labor market suffering above-average rates of unemployment historically.”<sup>129</sup>

## **Other Voices of Dissent**

Michael Wachter, then professor of economics, University of Pennsylvania, was also a dissenter. The Commission, he stated, “was firmly in favor of indexing and the only real question it debated was what index should be used.”

Wachter stated that the Commission “decided to index on a general wage rate rather than a price index,” but that the “appropriate wage rate to be used as an index ... was not specified.” He explained: “The lack of a decision on the appropriate index may seem unimportant, but it is the heart of the problem. There is no perfect index,” he stated, “as all available indexes have serious weaknesses.” He added:

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<sup>126</sup> MWSC, vol. 1, p. 182.

<sup>127</sup> MWSC, vol. 1, pp. 202-203.

<sup>128</sup> MWSC, vol. 1, p. 204.

<sup>129</sup> MWSC, vol. 1, pp. 205-206.

Indexing minimum wages means surrendering control not only of the minimum wage level or floor but also of the cost of the minimum wage policy to employers and the number of workers who may be displaced. This is not a decision to be surrendered casually to an index number with unknown properties.

Wachter was quick to note that “once the choice of an index is made, no matter how poor the choice turns out to be, it is very difficult to change that index.”<sup>130</sup>

Phyllis Ann Wallace, professor of economics, Sloane School of Business at MIT, pleaded for more time in which “to examine the practical issues of indexing the minimum wage.” Like other dissenters from the Commission’s report, Wallace observed: “Most of the suggested indexes as presently constructed have major flaws.” In agreement with Wachter, Wallace concluded: “I, therefore ... would not support, at this time indexation of the minimum wage.”<sup>131</sup>

## **PART IV. THE REAGAN PRESIDENCY**

### **Ronald Reagan (1981-1989) and Minimum Wage**

In 1977, when the Minimum Wage Study Commission was created, there was every reason to suspect that its report would be read avidly and that at least some of its recommendations might be adopted. That would not be the case.

#### **The Reagan Policy**

“The minimum wage has caused more misery and unemployment than anything since the Great Depression,” Ronald Reagan was quoted as having said early in the campaign of 1980. How serious he may have been may not be entirely clear, but the *Wall Street Journal* reported that Reagan, if elected, would “try to repeal the minimum wage.”<sup>132</sup> In November 1980, Ronald Reagan was elected President.

“Ronald Reagan wants to give teen-agers a better chance in the job market by lowering their minimum wage,” stated a *New York Times* editorial.<sup>133</sup> A headline in the *Christian Science Monitor* suggested: “Minimum Wage Cut for Youth Seen as Early Reagan-Labor Confrontation.”<sup>134</sup>

As the 1981 Congress opened, Representative Erlenborn reportedly summed up the situation. The *Daily Labor Report* noted:

The scheduling of additional annual increases in the nation’s minimum wage may be ‘too high a price to pay’ for congressional passage of a lower, ‘youth opportunity’ wage,

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<sup>130</sup> MWSC, vol. 1, p. 235.

<sup>131</sup> MWSC, vol. 1, p. 240.

<sup>132</sup> *Wall Street Journal*, January 30, 1980, p. 4.

<sup>133</sup> Editorial, “Tinkering With the Minimum Wage,” *New York Times*, December 2, 1980, p. A18.

<sup>134</sup> Ed Townsend, labor correspondent reporting in the *Christian Science Monitor*, December 9, 1980, p. 5.

Representative John Erlenborn (R-III) tells the Industrial Relations Association of Chicago....<sup>135</sup>

Some in Congress favored a youth sub-minimum wage proposal; others, a higher general minimum wage—but without the youth sub-minimum. Almost immediately, there commenced a series of hearings on youth employment and the sub-minimum wage which would tend to occupy Congress throughout the Reagan years.<sup>136</sup>

Few serious initiatives dealing with the minimum wage were considered during the Reagan years. For minimum wage workers, there was no increase in wages during the period. Nor was a youth sub-minimum enacted. The trade-off suggested by Representative Erlenborn seemed to be holding.<sup>137</sup>

## **The Minimum Wage Study Commission and Its Impact**

Even as the MWSC was being organized, the American Enterprise Institute (AEI) announced a three-year research program “to evaluate the effects of the minimum wage.” Simon Rottenberg, University of Massachusetts, was chosen as director. “The Congress enacts minimum wage laws,” he reportedly said, “because a majority of its members apparently believe that this is an effective strategy for improving the condition of low income workers. Many economists have concluded, however, that such laws are not efficient instruments for ameliorating poverty.”<sup>138</sup>

In late 1979, AEI hosted a conference in Washington, D.C., dealing with the minimum wage and published the papers in a single volume in 1981—almost at the same time as the report of the MWSC was released.<sup>139</sup> There followed from AEI a series of monographs dealing with aspects of the minimum wage. Although none of this work concerned indexation, specifically, the generally conservative AEI publications tended to counter the more liberal MWSC report.

When the MWSC Report was published in the spring of 1981, it seems generally to have been ignored. Minimum wage was not then before the Congress. By the end of the decade when Congress was again ready to act on minimum wages, the MWSC report seemed somewhat out-of-date and appears to have been utilized by each side to support their particular perspectives.

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<sup>135</sup> Bureau of National Affairs, *Daily Labor Report*, January 14, 1981, p. A2.

<sup>136</sup> With the 1980 election, Republicans gained control in the Senate. Senator Hatch chaired the Committee on Labor and Human Resources; Senator Don Nickles (R-OK), the Subcommittee on Labor. See, for example: U.S. Congress, Senate, *Youth Opportunity Wage Act of 1981*, Hearings before the Subcommittee on Labor of the Committee on Labor and Human Resources, 97<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 24 and 25, 1981, 515 pp.

<sup>137</sup> The Reagan Administration also called for reduction of child labor constraints and an increase of options for industrial homework. Hearings during the period were numerous.

<sup>138</sup> Bureau of National Affairs, *Daily Labor Report*, November 8, 1978, p. A2.

<sup>139</sup> Simon Rottenberg, ed., *The Economics of Legal Minimum Wages* (Washington: American Enterprise Institute for Public Policy Research, 1981), 534 pp.

## PART V. LEGISLATIVE INITIATIVES: THE LATE 1980s

### Minimum Wage and Indexation: 1987-1988

In early 1987, several bills were introduced that dealt with the minimum wage. Two bills (H.R. 1834 and S. 837) proposed step increases, followed by indexation. In this case, the mechanism was to create a rate “equal to 50 percent of the average private, nonsupervisory, nonagricultural hourly wage” rounded upward to 5 cents.<sup>140</sup>

#### Hearings in the House

On March 26, 1987, Representative Augustus Hawkins (D-CA), with others, introduced H.R. 1834, a bill to raise the minimum wage to \$4.65 and to index it. On April 9, 1987, Representative Austin J. Murphy (D-PA), chair of the Subcommittee on Labor Standards, convoked a hearing on the measure.

The first speaker was Mario Biaggi (D-NY) who lamented the long interval without an increase in the minimum wage, endorsed indexation, and urged Congress to move the bill forward.<sup>141</sup> Gerald Kleczka (D-WI) took a somewhat different stand (referring to H.R. 659, his own minimum wage bill). “No indexing, no other frills....” The Kleczka bill had two 50-cent increases—the latter to take effect on January 1989. Kleczka stated: “...we have an administration which is not very friendly to the proposal to begin with, and the more complicated we get, the more things we add onto the legislation, I think increases the chance of a veto....” Murphy questioned:

Mr. MURPHY. I take it you are not, then, opposed to the Biaggi approach of a 3- to 4-year mandatory increase plus indexing, but you think—

Mr. KLECZKA. The chances of getting that signed into law, I think are very remote.

Mr. MURPHY. Your objections are practical, then, rather than philosophical?

Mr. KLECZKA. Right. Let’s get the bill signed.<sup>142</sup>

Representative Tommy Robinson (D-AR) concurred. “If we put indexing in the minimum wage, I think it will be veto bait and it will be vetoed.”<sup>143</sup>

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<sup>140</sup> Congressional Record, March 25, 1987, p. 6877; and U.S. Congress, House, Hearings on H.R. 1834, *The Minimum Wage Restoration Act of 1987*, Volume 1, Hearings before the Subcommittee on Labor Standards of the Committee on Education and Labor, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess., April 9 and 30, and May 21, 1987, p. 3. (Cited hereafter as House Hearings, vol. 1 or 2, 1987.)

<sup>141</sup> House Hearings, vol. 1, 1987, p. 8-13.

<sup>142</sup> House Hearings, 1987, vol. 1, p. 20.

<sup>143</sup> House Hearings, 1987, vol. 1, p. 20.

As the hearings progressed, there were the usual witnesses for and against an increase in the minimum wage—and, from industry, very strong opinions with respect to indexation.<sup>144</sup> More supportive of the concept was the testimony of Mary Dublin Keyserling, speaking on behalf of the National Consumers League. She thought it “encouraging ... to hear that the bill is to index the minimum wage.”<sup>145</sup>

In October 1987, Lane Kirkland, AFL-CIO president, appeared before the Subcommittee. Like Mrs. Keyserling, Kirkland supported indexation.

The indexing proposed in the House bill, Mr. Chairman, is clearly necessary to prevent the deterioration of the minimum wage experienced over the last decade. If indexing had been in place, a gradual adjustment in the minimum wage would have taken place year by year. As other wage levels in general rose, minimum wages would have risen with them. Indexing brings certainty and stability to the process of adjusting the minimum wage.

Workers who experience poverty, Kirkland continued, “must depend on other forms of income such as public assistance, and to the extent that they do, the U.S. taxpayers are subsidizing low-wage employers.”<sup>146</sup>

## Hearings in the Senate

On March 25, Senator Edward Kennedy (D-MA) introduced S. 837, the Minimum Wage Restoration Act of 1987. It was roughly the equivalent of the Hawkins bill, calling for indexing at the rate of 50 percent of average hourly earnings in manufacturing (AHE).<sup>147</sup>

As chairman of the Committee on Labor and Human Resources, Senator Kennedy commenced a series of hearings on the bill beginning on June 10, 1987. “Since the first minimum wage was signed into law 49 years ago, Congress has adjusted it six times. Each time,” Kennedy stated, “we have heard dire prophecies of unemployment, inflation, and business failures. And six times these prophecies have been false, and America has prospered.”<sup>148</sup>

The Senate hearings paralleled those of the House and had many of the same witnesses. But testimony dealing with indexation may have been more subdued. Senator Dan Quayle (R-IN) remarked in passing: “My own viewpoint as concerns the bill before us is that indexing should be discarded.”<sup>149</sup> Claiborne Pell (D-RI) expressed similar thoughts. “I must say I share the reservation expressed here about the indexing. That must be examined very carefully, indeed, and I am concerned about it.”<sup>150</sup> Secretary of Labor William Brock, unlike Secretary Marshall in

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<sup>144</sup> The testimony, House Hearings, 1987, extends through two volumes of testimony. See especially, from volume 1: pp. 45, 87-88, 133, and 138. From volume 11, see pp. 103-104, 112-113, and pp. 329-330.

<sup>145</sup> House Hearings, 1987, vol. 11, p. 45.

<sup>146</sup> House Hearings, 1987, vol. 11, pp. 160-161. Kirkland, p. 166, noted that the AFL-CIO “was disappointed when Congress failed to index the minimum wage in 1977.” See also volume 11, pp. 209 and 360.

<sup>147</sup> *Congressional Record*, March 25, 1987, pp. 6876-6877.

<sup>148</sup> U.S. Congress, Senate, Hearings on S. 837, The Minimum Wage Restoration Act of 1987, Vol. 1, Hearings before the Committee on Labor and Human Resources, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess., June 10, July 17 and 23, 1987, p. 1. (Hereafter referred to as Senate Hearings, 1987.)

<sup>149</sup> Senate Hearings, 1987, p. 10.

<sup>150</sup> Senate Hearings, 1987, p. 462.

1977, largely ignored the issue.<sup>151</sup> Even James O'Hara, a former Member of Congress and former chair of the MWSC, presented only a brief statement of support—though he was more expansive during questioning.<sup>152</sup>

Industry, as with prior hearings, seemed to have taken a hard-line in opposition to indexation. Labor, for the most part, was more supportive.<sup>153</sup>

Following the pattern of 1977, a quartet of economists appeared to lay out the pros and cons of an increase in the minimum wage—with a certain amount of disagreement. Gerald Adams, University of Pennsylvania, and David Swinton, associated with the Southern Center for Studies in Public Policy (Clark College), took basically a pro-minimum wage position. John Glennie, with Robert Nathan Associates, and Finis Welch, of UCLA, seemed more critical of the concept.<sup>154</sup>

## **Action by the Congress (1988)**

By 1988, it had been nearly eleven years since Congress had acted to increase the minimum wage: seven years since the last step increase had taken effect.<sup>155</sup> During that time, workers employed at the minimum wage had fallen behind as inflationary pressures escalated.

### **House Action on H.R. 1834**

In late February 1988, as the House Subcommittee on Labor Standards moved toward a mark-up on H.R. 1834, issues remained.<sup>156</sup>

Within the Subcommittee (and, later, within the full Committee), there were apparent disagreements. "It seems clear that indexation has to come out of the bill at some point," Representative Timothy Penny (D-MN) was quoted as saying. "The question is when." Hawkins took a different approach. "My position is to protect indexing...." The dispute rested between indexation and congressional oversight.<sup>157</sup>

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<sup>151</sup> Senate Hearings, 1987, pp. 12-57.

<sup>152</sup> Senate Hearings, 1987, pp. 77-78. See *ibid*, p. 93, where O'Hara affirms "... by making minimum wage increases more predictable and in smaller increments, it would probably have an advantageous effect in terms of the reaction of employers, who would know ahead of time the fact that the increases would most often be quite small on an annual basis."

<sup>153</sup> See, for example, Senate Hearings, pp. 140-141, 169-170, 179-180. Conversely, see testimony of Lane Kirkland, pp. 302-304.

<sup>154</sup> Senate Hearings, 1987, pp. 183-259.

<sup>155</sup> Speaking generally, there are at least two categories of minimum wage workers. Some work only temporarily, moving on to other occupations; others remain at the minimum wage through most of their working lives: for example, hotel maids, waitresses, short-order cooks.

<sup>156</sup> In late February 1988, the House Small Business Committee, chaired by Representative John LaFalce (D-N.Y.), issued a report, among other things, critical of indexation. See Bureau of National Affairs, *Daily Labor Report*, March 1, 1988, pp. A3-A4.

<sup>157</sup> Patrick L. Knudsen, "Bill to Boost Minimum Wage Encounters Resistance, Delays," *Congressional Quarterly, Weekly Report*, February 27, 1988, p. 506. It was alleged that indexation would, by doing away with debate over the minimum wage, would discourage general oversight of the FLSA.

On March 3, the Subcommittee on Labor Standards met. Several Members, it was reported, “expressing reservations about the size of the increase and the indexing provided in the bill....”<sup>158</sup> For three hours, the Subcommittee discussed the wage measure and, on a vote of 6 ayes to 3 nays (along party lines), the bill was ordered to be reported to the full committee. In the process, the indexation provision was dropped. Reportedly, Penny had “offered the amendment to strike the indexing provision.” Hawkins suggested that it was still possible to restore the indexation formula in full committee; but that the chances were no better than “50-50.”<sup>159</sup> On March 10, the Committee on Education and Labor conducted a full-Committee mark-up and adopted a bill with a fourth sequential increase in the minimum wage to \$5.05.<sup>160</sup> Jay Power, lobbyist for the AFL-CIO, was asked if the final step increase made losing the vote on indexation somewhat easier to swallow. “It does,” he was quoted as having said. “But it would be our hope to restore indexing on the floor.”<sup>161</sup>

Delays of one sort or another followed and, ultimately, the House bill (H.R. 1834) did not come to the floor.<sup>162</sup>

### **Senate Action on S. 837**

The Senate, as in 1977, was aware of the action by the House Subcommittee on Labor Standards on the indexation provision and of divisions within the House on the general question of raising the minimum wage.

In Committee in the Senate, with Kennedy as chair, mark-up began on S. 837 on June 22, 1988. Under the new bill (a substitute), the final rate was lowered to \$4.55 per hour. As the Senators met, the bill “still includes indexing.”<sup>163</sup> However, as the bill moved through mark-up, the indexation provision was dropped.<sup>164</sup>

In early September, presidential candidate George H. W. Bush indicated that he would support “a slight increase” in the minimum wage. There was some indication that President Reagan might “consider a reasonable increase” if a training wage were included. This new compromise seemed

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<sup>158</sup> Bureau of National Affairs, *Daily Labor Report*, March 3, 1988, pp. A6-A7.

<sup>159</sup> Bureau of National Affairs, *Daily Labor Report*, March 4, 1988, pp. 14-15; and Patrick L. Knudsen, “House Panel Agrees to Minimum-Wage Hike,” *Congressional Quarterly, Weekly Report*, March 5, 1988, p. 578.

<sup>160</sup> Bureau of National Affairs, *Daily Labor Report*, March 17, 1988, pp. A10-A12. See also Bureau of National Affairs, *Daily Labor Report*, March 11, 1988, pp. A11-A12.

<sup>161</sup> Patrick L. Knudsen, “House Labor Adds 4<sup>th</sup> Year To Minimum-Wage Increase,” *Congressional Quarterly, Weekly Report*, March 12, 1988, p. 679. When the report was released, it barely mentioned the clash over indexation. However, two additional views—those of Representatives Penny and Hawkins—did discuss the issue. See U.S. Cong., House, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess., March 31, 1988, *Fair Labor Standards Amendments of 1988*, Report 100-560 to accompany H.R. 1834, pp. 11, 40-41, and 43.

<sup>162</sup> See Bureau of National Affairs, *Daily Labor Report*, May 6, 1988, pp. A11-A12. It was reported that “many Democrats were undecided” and Members “have been bombarded with statistics and claims by business groups that an increase would hurt small business and reduce employment....” Conversely, “unions and groups representing low-income workers” held that an increase “would raise the standard of living ... and help move individuals off the welfare rolls.”

<sup>163</sup> Macon Morehouse, “Senate Labor Begins Minimum-Wage Markup,” *Congressional Quarterly Weekly Report*, June 25, 1988, p. 1722.

<sup>164</sup> It appears that dropping the indexation provision was part of the compromise. See U.S. Cong., Senate, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess., July 26, 1988, *Fair Labor Standards Amendments of 1988*, Report 100-430 to accompany S. 837.

to please no one. Critics of the minimum wage were angered. “‘Seven years of effort to educate the public’ about the dangers of raising the minimum wage ‘have been undermined by the Bush proposal,’” Senator Hatch was reported to have said. Labor would not support the bill with a training wage included. In late September, two attempts at cloture failed and, on September 26, the minimum wage bill was pulled from the floor.<sup>165</sup>

## George Bush and the FLSA Amendments of 1989

Early in the 101<sup>st</sup> Congress, new minimum wage legislation was quickly introduced. With the change of Administrations in 1989, there was also a change of focus on the minimum wage—though the new President was very specific as to what he would (and would not) accept. Again, indexation became an issue.

### House Action on H.R. 2

On January 3, 1989, Hawkins introduced H.R. 2, a bill “to restore the minimum wage to a fair and equitable rate.” The bill, referred to the Committee on Education and Labor with Hawkins as chair, called for an increase in the minimum wage, in steps, to \$4.65 an hour after December 31, 1991, together with other wage/hour changes and, finally, a “Minimum Wage Review Board.”<sup>166</sup>

### The Review Board Proposal

On the strength of the several hearings conducted during the 100<sup>th</sup> Congress, H.R. 2 was reported from the Subcommittee to the full Committee, but without, it appears, reference to the Review Board.<sup>167</sup> On March 14, 1989, a full Committee hearing was held with the new Secretary of Labor, Elizabeth Dole, who explained what it was that the President wanted in a new minimum wage bill. There was considerable discussion about the potential impact of a minimum wage increase—the potential for job loss, the proposal for a sub-minimum wage for youth—but no reference was made to the Board.<sup>168</sup>

As reported from the Committee on Education and Labor, March 20, 1989, the Board became somewhat more critical—though still, apparently, not of major importance. It would have five members and would be “... required to conduct continuous analyses of economic and other relevant data, and to submit periodic recommendations to the Congress on the adjustments necessary to preserve the purchasing power of the minimum wage.” The Board would provide a “permanent group of experts” to advise Congress “on the advisability of making periodic adjustments in the minimum wage.”<sup>169</sup>

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<sup>165</sup> *CQ ALMANAC 1988* (Washington: Congressional Quarterly Inc., 1989), pp. 260-261.

<sup>166</sup> *Congressional Record*, January 3, 1989, p. 103.

<sup>167</sup> U.S. Congress, House, *Hearings on H.R. 2*, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess., March 9, 1989, 16 pp.

<sup>168</sup> U.S. Congress, House, *Hearing on the Minimum Wage*, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess., March 14, 1989, 49 pp.

<sup>169</sup> U.S. Cong., House, *Fair Labor Standards Amendments of 1989, Report together with Minority, Additional, and Individual Views, to accompany H.R. 2*. H.Rept. 101-11, March 20, 1989, p. 12. (Cited hereafter as House Report, 1989, H.Rept. 101-11.)

The authors stated two purposes for the Board. *First*, its “foremost” and most compelling need was “to prevent the minimum wage issue from being neglected for an inordinate length of time.” *Second*, there was perceived to be a need for an interpretive body that could deal, expertly, with the “controversy [that] has erupted over the economic impact” of minimum wage proposals.<sup>170</sup>

## **Floor Action in the House**

Though indexation had proven controversial, the Board proposal seems to have sparked only a very limited response in the House.<sup>171</sup> During the initial debates, views were mixed and relatively low-key. Charles Hayes (D-IL) made passing reference to the “... Board which will advise Congress on the economic effects of wage adjustments.”<sup>172</sup> Bruce Vento (D-MN) was “pleased that this legislation provides for the establishment of an advisory board to review relevant data and make periodic recommendations to Congress on adjustment of the minimum wage....”<sup>173</sup> Donald Payne (D-NJ) pointed to the decline in value of the minimum wage during the Reagan era and affirmed that the new Board would attempt to redress that. With these recommendations, “Congress would be armed with objective economic data to ensure bipartisan support for future minimum wage increases.”<sup>174</sup>

There was also dissent. Ron Marlenee (R-MT) stated that the Board would provide a “back door to pay increases each year.” This sounds, he said, “... like another measure to delegate our authority to an unelected commission to propose solutions to politically sensitive problems.” Marlenee affirmed: “... the American people do not want us to abrogate our authority to yet another commission?”<sup>175</sup>

As debate moved into a second day, Representative William Goodling (R-PA) was more outspoken. “A minimum wage review board is a backdoor indexing mechanism. That is all it is,” he charged.<sup>176</sup> Later, Goodling reiterated (at various times during the debate) that the issue was backdoor indexing. “Why do I say that,” Goodling protested. “Very simply because now if they want to recommend, they must recommend each year to the Congress. That means each year there is a good possibility that the same thing comes up over and over again.”<sup>177</sup>

Hawkins advised his colleague, Mr. Goodling: “This review board is purely advisory. If they recommend an increase, that increase would be submitted to this body and to the other body as well, as a recommendation. It would not be automatic.”<sup>178</sup> Goodling was, seemingly, not convinced.

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<sup>170</sup> House Report, 1989, H.Rept. 101-11, pp. 12-13.

<sup>171</sup> Indexation was not a part of the Senate Bill (S. 4).

<sup>172</sup> *Congressional Record*, March 22, 1989, p. 5145.

<sup>173</sup> *Congressional Record*, March 22, 1989, p. 5151.

<sup>174</sup> *Congressional Record*, March 22, 1989, p. 5161.

<sup>175</sup> *Congressional Record*, March 22, 1989, p. 5159.

<sup>176</sup> *Congressional Record*, March 23, 1989, p. 5219.

<sup>177</sup> *Congressional Record*, March 23, 1989, pp. 5239 and 5245. See, also, *Congressional Record*, pp. 5234, 5236, and 5238.

<sup>178</sup> *Congressional Record*, March 23, 1989, p. 5240.

On March 23, 1989, the House adopted a Murphy substitute (now endorsed by Hawkins and others), containing the Minimum Wage Review Board. The vote was 248 yeas to 171 nays.<sup>179</sup> The measure was promptly dispatched to the Senate.

## **A Compromise Within Congress**

In the Senate, a new bill was substituted for H.R. 2 and was also titled H.R. 2.<sup>180</sup> The Senate-passed bill omitted any reference to the Review Board; but a conference committee, following much of the House-passed version, sustained the Board, and it became a part of the final bill.

As reported from Conference, the Board would have been a congressional entity. The five members of the Board would have been congressional appointees. “The managers view the Minimum Wage Review Board,” the conference report stated, “as a vital new tool in helping the Congress to discharge its legislative and oversight responsibilities over” the FLSA.<sup>181</sup> Further, the conference report opined that the Board must have “appropriate information” upon which to base its recommendations and called upon the Secretary of Labor to “increase and improve” the Department’s survey capabilities.<sup>182</sup>

## **The Conference Report in the House**

As the debate moved forward, there was, in the background, a threatened veto from President Bush. On May 11, 1989, Representative Hawkins called up the conference report on H.R. 2. Hawkins termed the bill “a reasonable, yet meaningful adjustment” of the minimum wage. “While this measure is less than what we had originally hoped for, it is an essential step toward ensuring a fair and livable wage for the lowest paid workers.”<sup>183</sup> Conversely, Representative Goodling argued: “They know [proponents of an increase in the minimum wage] it will be vetoed, I know it will be vetoed; they know it will be sustained, I know it will be sustained.” He urged his colleagues “to vote against the conference report.”<sup>184</sup>

Debate on the conference report proceeded in a routine manner. The matter of indexation—albeit, *backdoor indexation*, in the words of Representative Goodling—was largely ignored as the House moved forward with the conference report. Ultimately, it was adopted: 247 ayes to 172 nays.<sup>185</sup>

## **The Conference Report in the Senate**

On May 17, 1989, the conference report was called up in the Senate. Senator Kennedy reviewed the reasons for supporting a minimum wage increase, but did not appear to raise the principle of indexation. However, Senator Hatch followed and he did refer to the issue of “backdoor

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<sup>179</sup> *Congressional Record*, March 23, 1989, pp. 5256-5257.

<sup>180</sup> *Congressional Record*, April 12, 1989, pp. 6169-6170. See, also, Bureau of National Affairs, *Daily Labor Report*, May 3, 1989, p. A11.

<sup>181</sup> Conference Report, H.Rept. 101-47, reprinted in *Congressional Record*, May 8, 1989, pp. 8435-8441.

<sup>182</sup> *Congressional Record*, May 8, 1989, p. 8440.

<sup>183</sup> *Congressional Record*, May 11, 1989, p. 8890.

<sup>184</sup> *Congressional Record*, May 11, 1989, p. 8891.

<sup>185</sup> *Congressional Record*, May 11, 1989, p. 8900.

indexing.” The Board’s task “is predetermined,” he stated. “Each year, they are to transmit to the Congress an official recommendation for a minimum wage increase.” In an aside to Members, Hatch observed: “I wonder how many of my colleagues are anxious to vote every year in perpetuity on a minimum wage bill.”<sup>186</sup>

The conference report was agreed to by a vote of 63 ayes to 37 nays.<sup>187</sup>

## The President Vetoes H.R. 2

On June 13, 1989, the issue was resolved. Supporters of a minimum wage increase were assembling for a news conference to urge the President to sign H.R. 2. Meanwhile, during a flight to Lincoln, Nebraska, President Bush authorized the White House to transmit his veto message to the Congress. While the assemblage waited, the veto message was read to the House.<sup>188</sup>

The increase in the minimum wage, the President said, was of “an excessive amount,” would “stifle the creation of new job opportunities,” and “would damage the employment prospects of our young people and least advantaged citizens.” It would “accelerate inflation” and would “not help those in poverty.” He affirmed: “Economists universally agree that such an increase in the minimum wage will result in the loss of job opportunities.” Most grievous, the training wage it included was “ineffective.” It was too short: a “60-day limitation” for learning the nuances of entry-level employment. “This can be accomplished only through a permanent trainee differential.” He opined that the training wage “would do little to save jobs” and affirmed that he “cannot support it.”<sup>189</sup>

The Board, the President stated, “threatens to compound the bill’s inflationary effect,” adding that “it would be required to make annual recommendations to the Congress for increasing the minimum wage in light of increases in wages and prices since any previous minimum wage adjustment.” Finally: “This has been termed, accurately, a ‘back-door’ indexing provision. It is unacceptable.”<sup>190</sup>

## Reaction in the House and an Attempt to Override

Action to override the veto fell to the House. The parties were split. Representative Charles Hayes (D-IL) termed the President’s action “outrageous.”<sup>191</sup> Conversely, Representative Cass Ballenger (R-NC) affirmed: “I support this veto.” And, he added: “Those who really

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<sup>186</sup> *Congressional Record*, May 17, 1989, p. 9498.

<sup>187</sup> *Congressional Record*, May 17, 1989, p. 9515.

<sup>188</sup> Bureau of National Affairs, *Daily Labor Report*, June 14, 1989, p. A13. See also: Bureau of National Affairs, *Daily Labor Report*, May 3, 1989, p. A11; and May 18, 1989, p. A11. The *Daily Labor Report* notes, May 18, 1989, p. 12, comments by chief of staff John Sununu: “The veto message has been written generically so it can be Xeroxed and sent back ... \$4.25 is fine, \$4.26 is veto-land, now and forever.”

<sup>189</sup> See 101<sup>st</sup> Congress, 1<sup>st</sup> Sess., House Document 101-71, *Veto of H.R. 2, Message from the President of the United States Transmitting His Veto of H.R. 2, The Fair Labor Standards Amendments of 1989*, June 13, 1989, pp. 1-4. (Hereafter, cited as *Veto Message*, 1989.)

<sup>190</sup> *Veto Message*, 1989, pp. 1-4. President Bush, on page 2 of his veto message, stated: “Most minimum wage earners are young, they are single, they live in households with other workers, and most importantly, they are not poor.”

<sup>191</sup> *Congressional Record*, June 14, 1989, pp. 11748-11749.

care about the working poor know that the issue is not raising the minimum wage, but minimizing poverty.”<sup>192</sup>

On June 14, 1989, Representative Hawkins led off an appeal for an override of the President’s veto. There follow a series of speeches, in some measure redundant. Ultimately, the vote was cast: ayes, 247; nays, 178. To override a presidential veto, a two-thirds majority was necessary. Since that was not achieved, the override attempt failed.<sup>193</sup> During debate on the override, the issue of indexation does not appear to have been raised.

## **A New Minimum Wage Bill (H.R. 2710)**

Following the veto of H.R. 2, there seemed to be some confusion in Congress. Kennedy and Hawkins had initially scheduled a joint House-Senate hearing on the minimum wage but, Labor Secretary Dole indicated that she would not be able to testify because of “serious scheduling problems.”<sup>194</sup> Meanwhile, new legislation was introduced in the Senate (S. 1182)—and, on June 21, in the House. This later bill (H.R. 2710) was to become the basis for accommodation with the White House.<sup>195</sup>

In the Senate, S. 1182, as introduced and reported, contained the Review Board language—as did the House bill as introduced. On September 14, 1989, the House Subcommittee on Labor Standards met and marked up a bill with a vote of 7 ayes to 4 nays. The Subcommittee met the President’s demand for a \$4.25 limit on the minimum wage.<sup>196</sup> Despite this accommodation to the President, the Review Board likely remained in the act.<sup>197</sup>

In late September, Representative Goodling indicated that further accommodation had been reached with the White House—but negotiations continued.<sup>198</sup> Finally, a substitute bill was introduced and reported, giving the President the lower minimum wage rate which he had sought, a training wage for youth (with a termination date), an expanded small business exemption, and an increase in the tip credit provisions. The Minimum Wage Review Board language had been eliminated.<sup>199</sup>

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<sup>192</sup> *Congressional Record*, June 14, 1989, p. 11750.

<sup>193</sup> *Congressional Record*, June 14, 1989, pp. 11775-11777. See also Bureau of National Affairs, *Daily Labor Report*, June 15, 1989, p. A11.

<sup>194</sup> Bureau of National Affairs, *Daily Labor Report*, June 19, 1989, p. A9.

<sup>195</sup> *Congressional Record*, June 21, 1989, p. 12809.

<sup>196</sup> Bureau of National Affairs, *Daily Labor Report*, September 15, 1989, pp. A9-A10.

<sup>197</sup> News, Education and Labor Committee, Augustus F. Hawkins (D-CA), Chairman, September 19, 1989, p. 1. See also U.S. Cong., House, *Fair Labor Standards Amendments of 1989, Report together with Minority and Additional Views, to accompany H.R. 2710*, H.Rept. 101-260, Part 1, September 26, 1989, pp. 16-17.

<sup>198</sup> Bureau of National Affairs, *Daily Labor Report*, September 20, 1989, pp. A11-A12.

<sup>199</sup> Bureau of National Affairs, *Daily Labor Report*, November 1, 1989, p. 11, states: “Murphy told the Rules Committee that House negotiators had agreed to eliminate the wage commission, which had in turn replaced a provision in the original minimum wage proposal (H.R. 2) that had called for indexing future raises in the minimum wage. ‘We agreed to withdraw the commission so there’s no inference of indexing,’ Murphy said.”

On November 1, the measure was called up in the House and passed: 382 ayes to 37 nays.<sup>200</sup> On November 8, the Senate approved the measure: 89 yeas to 8 nays.<sup>201</sup> The measure was signed into law by the President on November 17, 1989 (P.L. 101-157).<sup>202</sup>

## **PART VI. CONTEMPORARY POLICY: 1991-2008**

### **The 1990s and Beyond**

John Dent, who had evinced an early interest in minimum wage indexation, retired from Congress in 1979. Augustus Hawkins, who had fought for indexation in the 1980s, retired in 1990. In the Senate, Jacob Javits and Harrison Williams left office in the early 1980s. One might have anticipated a shift away from the issue of indexation of the minimum wage. The reverse, however, may have been true.

#### **A Change of Policy**

In 1938, the structure and administration for federal minimum wage legislation were established. Thereafter, the practice had been to enact one or more step increases in the rate of the minimum and to implement them at regularly scheduled times. The Congress would evaluate the state of the economy and would raise the minimum wage rate to a higher level.

This approach was at times effective in maintaining the value of the minimum wage (e.g., in the middle 1960s); but on other occasions, it was not. For example, from 1981 through 1989 (the Reagan years), the minimum declined in real terms. Again, from 1997 through the present, no change has been enacted in the federal minimum wage rate. The general rate has remained at \$5.15 since 1997. The highest rate currently under consideration would raise it to \$7.25 per hour—to be phased-in two years and 60 days from the date of enactment. If the minimum wage had been indexed to its late 1960s value, it would now be in excess of \$9.05 per hour.<sup>203</sup>

Meanwhile, about 27 states have entered the minimum wage arena with wages in excess of the federal, but with very different state standards. Several have indexed their minimum wage rates: Washington, Oregon, Vermont, Florida, with six other states now in the process of implementing indexation. It is possible that the issue of indexation may arise during debates in the 110<sup>th</sup> Congress.

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<sup>200</sup> *Congressional Record*, November 1, 1989, pp. 26804-26825. The Bureau of National Affairs, *Daily Labor Report*, November 2, 1989, p. A13, states: "The compromise is a significant victory for the Bush administration. Relatively minor changes were made to his original proposal...."

<sup>201</sup> *Congressional Record*, November 8, 1989, pp. 27851-27878.

<sup>202</sup> *CQ Almanac: 1989*, "Minimum-Wage Impasse Finally Ended," Congressional Quarterly Inc., Washington, 1990, pp. 333-340.

<sup>203</sup> Representative Phil English (R-PA), during the 109<sup>th</sup> Congress, had proposed legislation (H.R. 5368) that would have raised the minimum to \$7.50 to become effective on October 1, 2009.

## Recent Proposals for Minimum Wage Indexation

Since 1992, there have been a series of proposals calling for indexation of the minimum wage. The proposals vary, as does their intent. None of the proposals has yet, it appears, been a subject of hearings. None of these measures has been enacted. But, then, no new minimum wage legislation has been enacted as stand-alone legislation since 1989.<sup>204</sup> This segment of the report inventories various indexation proposals of the past 15 years.<sup>205</sup>

### The 102<sup>nd</sup> Congress

On September 30, 1992, Representative George Miller (D-CA) introduced H.R. 6067, referred to the Committee on Education and Labor, Subcommittee on Labor Standards. The bill would have indexed the minimum wage “to the cost of living in the same manner as Social Security benefits are indexed.”<sup>206</sup>

Miller described the extensive use of indexation in a variety of federal programs. “The concept that the Federal minimum wage should be a living wage, enabling workers to support their families, has become a myth,” he said. “At \$4.25 per hour, the minimum wage is inadequate to keep workers out of poverty.”<sup>207</sup>

### The 103<sup>rd</sup> Congress

On January 5, 1993, Representative Miller, with some modification, reintroduced his proposal from the 102<sup>nd</sup> Congress (H.R. 281) which was, again, referred to the Subcommittee on Labor Standards.<sup>208</sup>

On January 27, 1993, Representative Bernard Sanders (I-VT) introduced (H.R. 692), a roughly comparable proposal to the Miller bill, using the Social Security formula for indexing the minimum wage.<sup>209</sup> It was referred to the Subcommittee on Labor Standards. The pre-indexation rate would have been \$5.50.

“[M]illions of Americans,” he stated, “find themselves working fulltime, but still unable to maintain a decent standard of living.” Sanders took note of the tendency toward a contingent workforce (“no health insurance, no vacation days, no pensions—and of course, no job security”) and stated: “A record 26.6 million Americans, 10.4 percent of our people, are now on food stamps—the highest percentage since the program started in 1964.” Sanders added: “In effect, the taxpayers are subsidizing the low wages being paid by corporations through food stamps,

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<sup>204</sup> From 1938 through 1989, FLSA amendments were of a single stand-alone purpose. In 1996, the minimum wage came to the floor as an amendment to a tax program favored by industry. Thus, though it represents only once such occasion, some observers view it as a linkage of the minimum wage for workers with tax legislation for employers.

<sup>205</sup> Since these measures were not the subject of hearings (and were not considered on the floor), there is an absence of negative assessment in this section. However, negative comments can be inferred from the earlier portions of the paper.

<sup>206</sup> *Congressional Record*, September 30, 1992, p. 29242.

<sup>207</sup> *Congressional Record*, September 30, 1992, p. 29242.

<sup>208</sup> *Congressional Record*, January 6, 1993, p. 329.

<sup>209</sup> *Congressional Record*, January 27, 1993, p. 1364.

Medicaid, and other programs for the working poor.” His bill would have increased the minimum wage to \$5.00 and indexed it to inflation.<sup>210</sup>

On March 11, 1993, Senator Paul Wellstone (D-MN), introduced S. 562, which was referred to the Committee on Labor and Human Resources.

The Wellstone bill would have raised the minimum wage, in steps, to \$6.75 beginning on September 1, 1996, and then would have indexed the rate to “50 percent of the monthly average hourly earnings for nonfarm, nonsupervisory private workers” rounded to the nearest multiple of \$0.05. The measure provided “that any amount determined under this subparagraph *shall not be less than the amount applicable under this paragraph for the preceding year.*” (Italics added.)

Wellstone explained that the bill “would gradually restore the value of the Federal minimum wage” and, further: “It would also ensure that the minimum wage no longer erodes as a result of inflation, congressional inaction, or some combination of both, by permanently tying the minimum wage to a traditional index: one-half of average hourly U.S. private sector wages.” The bill would “...break the cycle of minimum wage hikes enacted at irregular intervals by the Congress....”<sup>211</sup>

## **The 104<sup>th</sup> Congress**

On January 4, 1995, Representative Sanders introduced H.R. 363 calling for an increase in the minimum wage to \$5.50 an hour by December 30, 1995. Thereafter, the minimum wage would be indexed under the Social Security formula.

On January 11, 1995, Senator Kennedy (with Paul Wellstone) introduced S. 203. The bill would have raised the minimum wage, in steps, to \$5.75 an hour beginning from September 1, 1997. The bill, which also proposed a Commission to study the minimum wage, was referred to the Committee on Labor and Human Resources.

The “Commission on the Minimum Wage” would have been composed of 9 members: three each appointed by the Secretaries of Labor, of Commerce, and of Health and Human Services. The duties of the “Commission” would have been to study and make recommendations to Congress on:

A) means to restore the minimum wage to the level relative to the average hourly wage that existed when the Congress adjusted the minimum wage during the period 1950 through 1980; and,

(B) means to maintain such level with minimum disruption to the general economy through periodic adjustments to the minimum wage rate.

The report was to be issued not later than September 1, 1997, after which (in 30 days) the Commission would expire. Members were to serve “without compensation.”

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<sup>210</sup> *Congressional Record*, April 29, 1993, p. 8613.

<sup>211</sup> *Congressional Record*, March 11, 1993, pp. 4877-4878.

On May 2, 1996, Senator Wellstone introduced S. 1722, an omnibus social policy bill the first segment of which dealt with the minimum wage. The bill was referred to the Committee on Labor and Human Resources.

The Wellstone bill would have increased the minimum wage, in steps, to \$5.15 an hour after September 1, 1997, and would, thereafter, index it “to not less than ... 45 percent of the monthly average hourly earnings for nonfarm, nonsupervisory private workers for the preceding 12 months....” The bill also stated that the amount “*shall not be less than the amount applicable under this paragraph for the preceding year....*” (Italics added.)

### **The 105<sup>th</sup> Congress**

On July 28, 1997, Representative Sanders introduced H.R. 2278, the “Liveable Wage Act of 1997.” The bill was referred to the Committee on Education and the Workforce. Following in the wake of the 1996 FLSA amendments, the bill would have increased the minimum wage to \$6.50 after December 30, 1997. At the beginning of each calendar year after December 30, 1998, the Secretary would have adjusted the minimum wage in proportion to benefits payable under the Social Security Act.<sup>212</sup>

On January 1, 1998, Senator Kennedy introduced S. 1573. The bill, which would have raised the minimum wage, in steps, to \$6.65 per hour, would also have indexed the minimum wage, beginning from the \$6.65 figure. It instructed the Secretary to adjust the minimum wage on September 1, 2001 (and each year thereafter), “to reflect increases in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which data are available.”<sup>213</sup> The bill was referred to the Committee on Labor and Human Resources.<sup>214</sup>

In the House, Representative David Bonior introduced H.R. 3100, the “American Family Fair Minimum Wage Act of 1998”—with 107 co-sponsors. The bill, paralleling Senator Kennedy’s bill in the Senate (S. 1573) was referred to the Subcommittee on Workforce Protections.<sup>215</sup>

### **The 106<sup>th</sup> Congress**

On February 8, 1999, Representative Sanders introduced H.R. 627 to raise the minimum wage to \$6.50 by December 30, 1999. Afterwards, indexation, under the Social Security formula, was included. The measure was assigned to the Subcommittee on Workforce Protections.<sup>216</sup>

On March 3, 1999, Representative Jack Quinn (R-NY) introduced H.R. 964. The measure called for an increase of the minimum wage, in steps, to \$6.15 per hour by September 1, 2001. It also called for indexation of the minimum wage “in proportion to increases in the Consumer Price Index for all urban consumers” to begin on September 1, 2002. The bill contained two collateral provisions: “an increase shall not exceed 4 percent in any one calendar year” and “the minimum

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<sup>212</sup> *Congressional Record*, July 28, 1997, p. 16032.

<sup>213</sup> No reference was made in the bill with respect to negative indexation: that the minimum wage would decline were the Consumer Price Index to fall.

<sup>214</sup> *Congressional Record*, January 27, 1998, p. S52.

<sup>215</sup> *Congressional Record*, January 27, 1998, p. H21.

<sup>216</sup> *Congressional Record*, February 8, 1999, p. 1995.

wage will never fall below the previous year's level.”<sup>217</sup> The bill was assigned to the Subcommittee on Workforce Protections.

### **The 107<sup>th</sup> Congress**

On August 2, 2001, Representative Sanders introduced H.R. 2812.<sup>218</sup> The bill would have raised the minimum wage, in steps, to \$8.15 per hour as of January 1, 2003. In addition, it called for indexation of the minimum wage along a modified Social Security principle. The term “cost of living adjustment” means the applicable increase percentage under the Social Security Act “effective for benefits payable in January of the next calendar year.” The bill was assigned to the Subcommittee on Workforce Protections.

### **The 108<sup>th</sup> Congress**

On September 9, 2004, Representative Chris Bell (D-TX), introduced H.R. 5043.<sup>219</sup> The measure would have increased the minimum wage, in steps, to \$7.00 per hour and, then, would have indexed it in accordance with the Consumer Price Index for all urban consumers to be altered annually. The bill was assigned to the Committee on Education and the Workforce.<sup>220</sup>

### **The 109<sup>th</sup> Congress**

On May 4, 2006, Senator Hillary Clinton (D-NY) offered S. 2725 (“Standing with Minimum Wage Earners Act of 2006”), to increase the minimum wage, in steps, to \$7.25 per hour beginning 24 months and 60 days after enactment. It provided automatic adjustment “... for the year involved by a percentage equal to the percentage by which the annual rate of pay for Members of Congress increases for such year ....” The measure was referred to the Committee on Health, Education, Labor, and Pensions.

When introducing S. 2725, Ms. Clinton pointed out that the “... Federal minimum wage is currently \$5.15 an hour, an amount that has not been increased since 1997. Sadly,” she stated, “during that time, Congress has given itself eight annual pay raises. We can no longer stand by and regularly give ourselves a pay increase while denying a minimum wage increase to help the more than 7 million men and women working hard across this nation.”<sup>221</sup>

On June 29, 2006, Representative Al Green (D-TX) introduced H.R. 5731, a bill that proposed indexation of the minimum wage. It was referred to the Committee on Education and the Workforce.

Under the proposal, the Secretary of Labor shall determine the minimum wage rate applicable under subsection (a)(1) of the FLSA and “shall publish such wage rate in the Federal Register not later than October 1 of each year.” The bill states:

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<sup>217</sup> *Congressional Record*, March 3, 1999, p. 3497.

<sup>218</sup> *Congressional Record*, August 2, 2001, p. 15780.

<sup>219</sup> *Congressional Record*, September 9, 2004, p. H6996.

<sup>220</sup> No negative indexation (or decline in times of adversity) appears in the bill.

<sup>221</sup> *Congressional Record*, May 4, 2006, p. S4056.

The minimum wage rate determined by the Secretary ... shall be the minimum hourly wage sufficient for a person working for such wage 40 hours per week, 52 weeks per year, to earn an annual income in an amount that is 12 percent higher than the Federal poverty threshold for a two person household, with one person a child under age 18, and living in the 48 contiguous States, as published for each such year by the Census Bureau.

The bill states that if such determination "... results in a lower minimum wage than that then in effect, the Secretary shall not adjust the minimum wage then in effect pursuant to this subsection."<sup>222</sup> Neither bill was enacted.

## The 110<sup>th</sup> Congress

In the 110<sup>th</sup> Congress, Representative Al Green introduced a new version of his bill of the 109<sup>th</sup> Congress: now, H.R. 4637.<sup>223</sup> On December 18, 2007, Senator Clinton introduced S. 2514, a bill that largely followed her bill of the prior Congress.

In a statement, Senator Clinton observed: "If we in Congress can give ourselves a raise, surely we can raise the pay of working families struggling to make ends meet." Recalling the long period since the most recent minimum wage increase (since 1997), she stated: "My bill would ensure that working families faced with a rising cost of living each year are not forced to wait another ten years for an increase in the minimum wage." The Clinton proposal would raise the minimum wage, in steps, to \$9.50 an hour on July 1, 2011, and then index it beginning on July 1, 2012, to increases in the salary of Members of Congress.<sup>224</sup>

In the 110<sup>th</sup> Congress, the general federal minimum wage was again a subject of legislation, adoption of which occurred during the spring of 2007. The bill was signed on May 25, 2007. However, the focus was narrow, and the issue of indexation was not addressed in legislative format.

**Table 2. Proposals To Index the Federal Minimum Wage, 1992-2008**

Congress	Bill Number	Author	Wage Rate Prior to Indexing	Indexing Principle	Other Factors
102 <sup>nd</sup> Congress	H.R. 6067	Miller (George)	—	Social Security Act	—
103 <sup>rd</sup> Congress	H.R. 281	Miller (George)	—	Social Security Act	—
—	H.R. 692	Sanders	\$5.50	Social Security Act	—
—	S. 562	Wellstone	\$6.75	50% of Average Hourly Earnings	—

<sup>222</sup> *Congressional Record*, June 29, 2006, p. H4915. In Sec. 2, under a sense of Congress provision, it is provided: "... the Federal minimum wage should, as a minimum, be adjusted every 4 years so that a person working for such a wage may earn an annual income that is not less than 112 percent of the Federal poverty threshold, as determined by the Census Bureau; and..." See also Sec. 3(2)(b)(1).

<sup>223</sup> H.R. 4637 was introduced on December 13, 2007, and referred to the House Committee on Education and Labor. There does not appear to have been an introductory statement.

<sup>224</sup> S. 2514 (the "Standing with Minimum Wage Earners Act of 2007") was referred to the Committee on Health, Education, Labor and Pensions. Senator Clinton is quoted from her press release of December 19, 2007. See: [//clinton.senate.gov/news/statements/details.cfm?id=289742&&](http://clinton.senate.gov/news/statements/details.cfm?id=289742&&).

Congress	Bill Number	Author	Wage Rate Prior to Indexing	Indexing Principle	Other Factors
104 <sup>th</sup> Congress	H.R. 363	Sanders	\$5.50	Social Security Act	—
—	S. 203	Kennedy	\$5.75	—	Commission on the Minimum Wage
—	S. 1722	Wellstone	\$5.15	45% of Average Hourly Earnings	—
105 <sup>th</sup> Congress	H.R. 2278	Sanders	\$6.50	Social Security Act	—
—	S. 1573	Kennedy	\$6.65	Consumer Price Index, All Urban Consumers	—
—	H.R. 3100	Bonior	\$6.65	Consumer Price Index, All Urban Consumers	—
106 <sup>th</sup> Congress	H.R. 627	Sanders	\$6.50	Social Security Act	—
—	H.R. 964	Quinn	\$6.15	Consumer Price Index, All Urban Consumers	—
107 <sup>th</sup> Congress	H.R. 2812	Sanders	\$8.15	Social Security Act	—
108 <sup>th</sup> Congress	H.R. 5043	Bell	\$7.00	Consumer Price Index, All Urban Consumers	—
109 <sup>th</sup> Congress	S. 2725	Clinton	\$7.25	Ratio to Salary of Members of Congress	—
—	H.R. 5731	Green (AI)	—	Percentage, Federal Poverty Threshold	—
110 <sup>th</sup> Congress	H.R. 4637	Green (AI)	\$7.25	Percentage, Federal Poverty Threshold	—
—	S. 2514	Clinton	\$9.50	Ratio to Salary of Members of Congress	—

## PART VII. FOR THE FUTURE?

### Some Observations

Minimum wage workers, for the most part, accept low-wage work because no other work is available. Whether they are very young, lack training, suffer infirmities, or have other responsibilities (for example, care for family members or academic scheduling), work at the minimum wage would likely not have been their first choice if higher-paying jobs were available. Absent alternative and more remunerative employment opportunities, some do use entry-level work as an interim measure. Some also remain at such work through the better part of a lifetime—presumably not by choice.<sup>225</sup>

<sup>225</sup> In 2005, of hourly-paid workers, according to unpublished data from the Bureau of Labor Statistics, women made up about 65.6% of minimum wage earners (with only about 34.4% males). In 2005, about 59.8% of workers at and (continued...)

For persons who have entered the workforce at a minimum wage level, wages may be of some importance. Some employers already pay a rate above the minimum; others pay only the wage that is required by law: that is, the minimum wage under the Fair Labor Standards Act. Few minimum wage workers, it would appear, are union members and work under a collectively negotiated agreement. In the case of non-union employees, their wage may be determined by congressional action. Congress over the years has acted sporadically in this area.

It is possible that the resultant gaps in mandating an increase have occurred by design: a conviction that the minimum wage, per se, is bad public policy and that its inflationary erosion would, over time, render its use as a wage floor less important. It may also have been the result of indifference or the urgency of competing national priorities. For proponents of a higher minimum wage for the working poor, such gaps may have produced a renewed interest in indexation.

With indexation, regardless of the mechanism used, there would be “regular, predictable, wage rate increases” for minimum wage workers. For the workers themselves, at least that minimal amount would be automatically added to their paycheck. For employers, such a rate increase (generally in response to inflationary pressures) could reasonably be anticipated and prepared for.

Were indexation to be adopted, however, some things may be lost and some parties may be adversely affected. By not indexing the minimum wage (and by allowing its continuing decline in real terms), certain employers are freed from having to pay higher wages.<sup>226</sup> Further, with indexation, low-wage workers could expect progressively higher wages—and may feel less need of trade unions. Although indexation might alleviate the need for oversight of the rate of worker remuneration, it might also eliminate discussion of overtime pay, child labor, and related subjects.<sup>227</sup> Finally, for Members of Congress, a periodic review of the minimum wage may have a certain resonance with voters: permitting some to claim credit for an increased wage while others may want to show how firmly they opposed such an increase.

Would indexation (whatever its merits) resolve the matter of minimum wage increases? With a formula established (whether based on Social Security, a percentage of average hourly earnings, or the CPI), might a new campaign arise to take its place? For example, if indexation were based on a percentage of average hourly earnings (40% or 50% or 53%), would proponents of a “living, family, saving wage” now protest that the rate continues to provide a poverty level income and that some adjustment may be necessary: to 60% or 70%?

A more practical side may emerge to the indexation question. *First*. There is no perfect methodology for indexation, though that issue might be addressed through hearings. *Second*. If an increase in the minimum wage could be made automatic during good times, might a decrease also be made automatic during periods of high unemployment or other economic upheavals? If the

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(...continued)

below the minimum wage were employed on a part-time basis. Of these, about 71% who work only part-time were women. It may be difficult to analyze just why workers choose to engage in low-wage and/or part-time work. Clearly, their perspectives are diverse. Motivational factors may deserve further study.

<sup>226</sup> Jim Snyder, a regular columnist for *Hotel Management Review & Innkeeping*, August 1966, p. 10, at a time when that industry was brought under the FLSA, reported: “‘We’ve lost all right,’ philosophized one AH&MA [American Hotel and Motel Association] spokesman. ‘But when you consider that the industry has saved a million dollars or so every day it’s been exempt, I guess you could say that the effort was worthwhile.’”

<sup>227</sup> As has been suggested through the years, indexation could remove one element of contention (the level of the minimum wage) and replace it with another issue: the rate at which indexation should be pegged.

minimum wage goes up when times are good, some might argue, then might it not come down when conditions are more problematic? *Third*. How might indexation (whether an increase or a decrease) be factored into other areas of policy, such as trade policy or immigration? *Fourth*. Is there a nexus between productivity and a wage increase? If there is a merit system in place, how might that be affected by an automatic increase in wage rates? *Fifth*. Inflation may be yet another matter. Some view indexation as a method through which lower wage workers can cope with pressures of the cost of living. But, others view indexation, in its own right, as an engine of inflation that, once in place, would be basically unstoppable.

Through the years, at least since the 1940s, indexation has been frequently discussed but, perhaps, not actually explored in its varied aspects. Several of the states now have indexation in place: several more will soon have such a system installed. Such experimentation by the states may hold promise—or a threat—for policy makers.

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