

ESSAY

LOCALIZING MINIMUM WAGE LAWS: A RURAL PERSPECTIVE

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INTRODUCTION

Since launching in 2012, the Fight for 15 movement has successfully lobbied for a \$15 per hour minimum wage in many urban localities.¹ Today, more than 50 localities have their own minimum wage laws that set a rate higher than state or national pay floors.² Two of the primary justifications for raising the minimum wage are based on a nationwide surge in income inequality and the inability of a full-time minimum-wage employee to earn enough money to keep a family above the poverty line.³

A significant amount of legal scholarship has examined whether localities have or should have the ability to pass minimum wage ordinances.⁴ The common theme in most

† J.D., University of Virginia, 2016. The views expressed in this Essay are mine alone, and should not be attributed to my employer or my clients. I would like to thank Russell Balikian, Claire Chapla, Andrew Gann, Ashwin Shandilya, and the editors of the *Cornell Law Review* for their comments on previous drafts. All remaining errors are my own.

¹ Sarah Jones, *For Low-Wage Workers, the Fight for 15 Movement Has Been a Boon*, N.Y. MAG. (Dec. 1, 2018), <https://nymag.com/intelligencer/2018/12/fight-for-15-movement-boon-for-low-wage-workers.html> [<https://perma.cc/PJ7Q-CYVP>].

² U.C. BERKELEY LAB. CTR., *Inventory of U.S. City and County Minimum Wage Ordinances* (last updated Nov. 13, 2020), <http://laborcenter.berkeley.edu/minimum-wage-living-wage-resources/inventory-of-us-city-and-county-minimum-wage-ordinances/> [<https://perma.cc/MSP9-3AV4>].

³ See Jones, *supra* note 1; see also H.R. REP. NO. 116-150, at 5, 21 (2019).

⁴ *E.g.*, Richard Briffault, *The Challenge of the New Preemption*, 79 STAN. L. REV. 1995, 1999–2000 (2018); Richard Schragger, *The Attack on American Cities*, 96 TEXAS L. REV. 1163, 1175–76 (2018); Richard Schragger, *The Political Economy of City Power*, 44 FORDHAM URB. L.J. 91, 129–30 (2017). See also, *e.g.*, Darin M. Dalmat, *Bringing Economic Justice Closer to Home: The Legal Viability of Local Minimum Wage Laws Under Home Rule*, 39 COLUM. J.L. & SOC. PROBS. 93 (2005); Kerry A. Burchill, Comment, *Madison's Minimum-Wage Ordinance, Section 104.001, and the Future of Home Rule in Wisconsin*, 2007 WIS. L. REV. 151 (2007); Paul J. Lysobey, Note, *Municipal Minimum Wage Ordinances in Ohio: A Home Rule Analysis*, 67 CLEV. ST. L. REV. 93 (2018).

scholarship is the focus on cities—which makes sense, given that the movement for a higher minimum wage has been mostly confined to urban areas. But remarkably little attention has been paid to the reverse issue: whether across-the-board minimum wage hikes, based on urban areas' high cost of living and income inequality, are necessary or desirable in nonurban areas. Recent proposals by congressional Democrats and the Biden administration to increase the federal minimum wage ignore the impact of uniformly raising the minimum wage on rural small businesses and employment—a problem that Democratic U.S. Senator Joe Manchin of West Virginia has hinted at in his opposition to a \$15 per hour minimum wage.⁵ Of course, it is not only Democrats who support increasing the minimum wage. In fact, nearly one-third of Republican voters support a higher minimum wage,⁶ and voters in Republican-leaning Florida approved a ballot initiative in 2020 to raise the state's minimum wage to \$15 per hour by 2026.⁷

This Essay addresses some of the issues that universal minimum wage rates pose for rural areas. A modest hike in the minimum wage for all workers is debatable; what seems less justifiable are the calls for a \$15 per hour minimum wage in nonurban areas, which generally have less income inequality and a much lower cost of living than the nation's largest metropolitan areas. Herein lies the problem with minimum wage laws as we have come to know them: they are one-size-fits-all prescriptions, whether at the national or state

⁵ See, e.g., Andrew Solender, *Biden Predicts \$15 Minimum Wage Won't Be In Relief Bill But Vows To Make Separate Push*, FORBES (Feb. 5, 2021), <https://www.forbes.com/sites/andrewsolender/2021/02/05/biden-predicts-15-minimum-wage-wont-be-in-relief-bill-but-vows-to-make-separate-push/?sh=64cbad56730f> [<https://perma.cc/8WL7-V2YH>]; Tara Golshan & Dave Jamieson, *Sen. Joe Manchin Says No to \$15 Minimum Wage, Possibly Killing Push in Congress*, HUFFINGTON POST (Feb. 2, 2021), https://www.huffpost.com/entry/manchin-minimum-wage-15-no_n_6019a0bdc5b6aa4bad37ffca [<https://perma.cc/5VU6-SXP6>] (writing that Manchin told reporters, "I'm supportive of an increase that's responsible and reasonable, and in my state that's \$11").

⁶ Amina Dunn, *Most Americans Support a \$15 Federal Minimum Wage*, PEW RSCH. CTR. (Apr. 22, 2021), <https://www.pewresearch.org/fact-tank/2021/04/22/most-americans-support-a-15-federal-minimum-wage/> [<https://perma.cc/34BF-9XPS>].

⁷ See, e.g., Molly Kinder, *Even a Divided America Agrees on Raising the Minimum Wage*, BROOKINGS INST. (Nov. 13, 2020), <https://www.brookings.edu/blog/the-avenue/2020/11/13/even-a-divided-america-agrees-on-raising-the-minimum-wage/> [<https://perma.cc/P99S-JSPT>] (reporting that Florida voters, a majority of whom voted for former President Trump in the 2020 general election, overwhelmingly supported a ballot initiative to raise the state's minimum wage to \$15 by 2026).

level. This model ignores the vast differences in the economies of nonurban and urban areas. Put simply, a blanket minimum wage, whether federal or statewide, risks disproportionately harming growth and employment in nonurban areas—particularly as these communities try to recover from the COVID-19 pandemic.

This Essay contains three sections. Part I argues why the common justifications for a significant minimum wage increase are weaker in nonurban areas. Part II explains why nonurban areas are likely to be disproportionately and negatively affected by a large increase in the national or state minimum wage. Part III concludes with a few brief proposals for creating more precise minimum wage laws.

I

THE JUSTIFICATIONS FOR A SIGNIFICANT MINIMUM WAGE HIKE ARE WEAKER IN NONURBAN AREAS

Advocates of increasing the minimum wage often argue that the low federal minimum wage has led to an alarming rise in income inequality and has not kept up with inflation or the cost of living. Though there may be some truth to each of these arguments, neither income inequality nor the cost of living has the same magnitude in rural areas as they do in urban centers.

As to rising income inequality, many economists blame the disparity in income growth between low-skill workers and highly skilled workers for pushing up the Gini coefficient (a measure of income inequality)—despite recent gains in income growth for low-wage workers, at least before the pandemic.⁸ But those attributing income inequality solely or mostly to the frozen federal minimum wage overlook the unequal geographic distribution of wage inequality.⁹

⁸ Alex Fox, *America's Income Inequality Gap is Growing*, THE HILL (Nov. 5, 2019), <https://thehill.com/changing-america/466911-americas-income-inequality-gap-is-growing-heres-why-thats-a-bad-situation> [https://perma.cc/ZG9Z-XYD2]; Eric Morath & Jeffrey Sparshott, *Rank-and-File Workers Get Bigger Raises*, WALL ST. J. (Dec. 27, 2019), <https://www.wsj.com/articles/rank-and-file-workers-get-bigger-raises-11577442600> [https://perma.cc/CM9C-HNQM]. But see Dion Rabouin, *The Winter COVID Surge Has Reversed Progress on Economic Inequality*, AXIOS (Feb. 10, 2021), <https://www.axios.com/economic-inequality-winter-coronavirus-surge-b12f8ae1-9e20-4637-be6d-8617b66c293e.html> [https://perma.cc/JGV7-RY4E].

⁹ Another overlooked fact is that the high demand and low supply of highly skilled workers has pushed up the salaries for such workers. Jaison R. Abel & Richard Deitz, *Why Are Some Places So Much More Unequal Than Others?*, 25 ECON. POL'Y REV. 58, 58, 60–61 (2019) (the “predominant reason” for the unequal pattern of wage growth “is the rising return to skill”—exacerbated in part by

Indeed, the Federal Reserve Bank of New York has found that “wage inequality is not uniform across the nation.”¹⁰ Large metropolitan areas in California, Texas, and along the Boston-Washington corridor “are among the most unequal places.”¹¹ Meanwhile, smaller metropolitan areas—particularly those in parts of the country that have struggled with weak economic conditions—have witnessed only modest increases in wage inequality since the 1980s.¹² Thus, to the extent that stagnant minimum wage laws have led to increased wage disparities—and to the extent that that serves as a justification for raising a jurisdiction’s minimum wage—regional differences in income inequality counsel in favor of a more nuanced approach.

Another common justification for increasing the minimum wage is that inflation and increases in the cost of living have eroded the ability of a minimum-wage worker to eke out a living. This argument, espoused by proponents of a “living wage,” posits that the statutorily defined minimum wage should be that which is “sufficient . . . to cover basic expenditures, including rent, food, taxes, health care, transportation, childcare, and utilities.”¹³ Some advocates of a living wage take my position, which is that minimum wage laws must take into account the cost of living in any given area.¹⁴ But prominent, perhaps most, supporters of a “living wage”—including the Fight for 15 movement, President Biden, and the national Democratic Party—argue for raising the federal minimum wage to \$15 an hour, full stop.¹⁵

That is misguided. Common sense suggests that a “living wage” in New York City or San Francisco is dramatically different than a “living wage” in rural Mississippi. Data from the Bureau of Economic Analysis bear this out: The regional price parity (RPP) for most of the country’s twelve largest metropolitan statistical areas (MSAs) is extraordinarily high—especially when compared to smallest MSAs nonmetropolitan

globalization and technological change).

¹⁰ *Id.* at 58.

¹¹ *Id.* at 62; *see id.* at 68–69 (“[M]any of the largest metropolitan areas in the country—such as San Francisco and New York City—[are] some of the most unequal.”).

¹² *Id.* at 65.

¹³ *See* NAT’L EDUC. ASS’N. *The Lowdown on Living Wage Campaigns*, <http://www.nea.org/home/16273.htm>.

¹⁴ *See id.*

¹⁵ DEMOCRATIC PLATFORM COMM., *2020 Democratic Party Platform*, at 3, <https://democrats.org/where-we-stand/party-platform/> [<https://perma.cc/CAW6-KT3K>] (“Democrats will fight to raise wages for working people and improve job quality and security, including by raising the federal minimum wage so it reaches \$15 an hour by 2026.”).

areas.¹⁶

Largest Metropolitan Areas (MSA)	RPP Index: All Items (2019)¹⁷
Atlanta-Sandy Springs-Alpharetta, GA	97.9
Boston-Cambridge-Newton, MA-NH	115.5
Chicago-Naperville-Elgin, IL-IN-WI	102.8
Dallas-Fort Worth-Arlington, TX	101.2
Houston-The Woodlands-Sugar Land, TX	101.7
Los Angeles-Long Beach-Anaheim, CA	118.8
Miami-Fort Lauderdale-Pompano Beach, FL	111.7
New York-Newark-Jersey City, NY-NJ-PA	125.7
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	105.3
Phoenix-Mesa-Chandler, AZ	98.7
San Francisco-Oakland-Berkeley, CA	134.5
Washington-Arlington-Alexandria, DC-VA-MD-WV	117.4
Smallest Metropolitan Areas (MSAs)	
<i>United States (nonmetropolitan)</i>	86.8
Bloomsburg-Berwick, PA	92.5
Carson City, NV	96.8
Casper, WY	93.0
Danville, IL	79.1
Enid, OK	88.3
Grand Island, NE	85.5
Great Falls, MT	91.9

¹⁶ BUREAU OF ECON. ANALYSIS, *Real Personal Income and Regional Price Parities* (July 2016), https://www.bea.gov/sites/default/files/methodologies/RPP2016_methodology.pdf (“An RPP is a weighted average of the price level of goods and services for the average consumer in one geographic region compared to all other regions in the U.S.”).

¹⁷ *Regional Price Parities by State and Metro Area*, BUREAU OF ECON. ANALYSIS (Dec. 14, 2021), <https://www.bea.gov/data/prices-inflation/regional-price-parities-state-and-metro-area> [<https://perma.cc/PS2L-AGJK>] (using data obtained from the BEA to generate this table. The most recent data available is from 2019).

Smallest Metropolitan Areas (MSAs) (continued)	RPP Index: All Items (2019)
Hinesville, GA	91.6
Kokomo, IN	85.4
Lewiston, ID-WA	90.8
Midland, MI	89.1
Walla Walla, WA	97.2

A full-time worker (averaging 2,080 hours per year) earning a “living” wage of \$15 per hour makes approximately \$31,200 per year before taxes. When adjusted by an area’s RPP, that worker’s salary noticeably increases (in real dollars) in nonmetropolitan areas and falls (in real dollars) in expensive, urban areas:

Largest MSAs	Adjusted Annual Wage (\$)¹⁸
Atlanta-Sandy Springs-Alpharetta, GA	31,869
Boston-Cambridge-Newton, MA-NH	27,013
Chicago-Naperville-Elgin, IL-IN-WI	30,350
Dallas-Fort Worth-Arlington, TX	30,830
Houston-The Woodlands-Sugar Land, TX	30,678
Los Angeles-Long Beach-Anaheim, CA	26,253
Miami-Fort Lauderdale-Pompano Beach, FL	27,932
New York-Newark-Jersey City, NY-NJ-PA	24,821
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	29,630
Phoenix-Mesa-Chandler, AZ	31,611
San Francisco-Oakland-Berkeley, CA	23,197
Washington-Arlington-Alexandria, DC-VA-MD-WV	26,576
Average	28,397

¹⁸ *Id.*; see also Elif Sen & Adam Scavette, FED. RSRV. BANK OF PHILADELPHIA, *Regional Spotlight: Purchasing Power Across the U.S.*, at 4–5, <https://www.philadelphiafed.org/the-economy/regional-economics/regional-spotlight-purchasing-power-across-the-us> [https://perma.cc/64J8-TRL2] (conducting a similar analysis for the mid-Atlantic region).

Smallest MSAs	Adjusted Annual Wage (\$)
<i>United States (nonmetropolitan)</i>	35,945
Bloomsburg-Berwick, PA	33,730
Carson City, NV	32,231
Casper, WY	33,548
Danville, IL	39,444
Enid, OK	35,334
Grand Island, NE	36,491
Great Falls, MT	33,950
Hinesville, GA	34,061
Kokomo, IN	36,534
Lewiston, ID-WA	34,361
Midland, MI	35,017
Walla Walla, WA	32,099
Average	34,827

Clearly, low-wage workers in smaller metropolitan or nonmetropolitan areas would receive a larger—and likely unnecessary—benefit from a hike in the federal minimum wage. Indeed, when cost of living is taken into account, a full-time minimum-wage worker in the country’s smallest MSAs would earn an average of \$6,500 *more* than the same worker in the largest MSAs. The difference is even more pronounced when one compares, for example, a full-time minimum-wage worker in Danville, Illinois, earning close to an adjusted \$40,000 per year, to a full-time minimum-wage worker in San Francisco, earning about \$23,000 per year when adjusted for cost of living.

This disparity leads to my next point: Businesses in nonurban areas are more likely to feel the squeeze of a higher minimum wage than their counterparts in more affluent urban areas.

II

A HIGHER MINIMUM WAGE THAT REFLECTS URBAN ECONOMIC REALITIES MAY HARM NONURBAN ECONOMIC INTERESTS

The impact of statutorily defined wage floors on employment and economic growth remains unclear and controversial.¹⁹ Conventional wisdom suggests that wage

¹⁹ I am skeptical that minimum-wage laws are more beneficial than detrimental, and many advanced Western economies (e.g., Sweden, Denmark, Iceland, and Norway) have demonstrated that national pay floors are not always necessary to raising workers’ standards of living. Nevertheless, I do not doubt

floors boost income while decreasing employment. The Congressional Budget Office (CBO) studied the issue in response to the Democrats' proposed Raise the Wage Act of 2021. The study concluded that raising the federal minimum wage to \$15 per hour within the next few years would result in a loss of 1.4 million jobs, while lifting 0.9 million workers out of poverty.²⁰ This study followed the CBO's 2019 analysis of the effects on employment of increasing the federal minimum wage from the current \$7.25 per hour rate to \$10, \$12, and \$15 per hour. As anticipated, the CBO concluded that a higher federal minimum wage would lift more people out of poverty.²¹ But the CBO also concluded that a higher minimum wage would result in a net loss of low-wage jobs for millions of Americans.²² Though the CBO qualified its conclusions by emphasizing the inconsistent findings in the research literature,²³ the CBO was clear that small businesses would more likely be harmed by an increase in the federal minimum wage: "A higher minimum wage reduce[d] the family income of business owners to the extent that firms' profits are reduced."²⁴ A recent study by the National Bureau of Economic Research (NBER) agreed, concluding that "increases in the federal minimum wage worsen the financial health of small businesses."²⁵ Critically, this NBER study found that small businesses "located in competitive and low-income areas experience higher financial stress," due in part to "frictions in

that some minimum wage threshold may be desirable, particularly in industries where workers have less ability to negotiate pay.

²⁰ CONG. BUDGET OFF., *The Budgetary Effects of the Raise the Wage Act of 2021*, at 2 (Feb. 2021), <https://www.cbo.gov/system/files/2021-02/56975-Minimum-Wage.pdf> [<https://perma.cc/S3PM-G639>].

²¹ CONG. BUDGET OFF., *The Effects on Employment and Family Income of Increasing the Federal Minimum Wage*, at 1 (July 2019), <https://www.cbo.gov/system/files/2019-07/CBO-55410-MinimumWage2019.pdf> [<https://perma.cc/S3PM-G639>].

²² *See id.* at 3.

²³ *Id.* at 5 ("Findings in the research literature about how changes in the federal minimum wage affect employment vary widely. Many studies have found little or no effect of minimum wages on employment, but many others have found substantial reductions in employment.").

²⁴ *Id.* at 12 (noting that the "losses in business income are biggest in the first years after a higher minimum wage is introduced"); *see also* Panos Mourdoukoutas, *Federal Minimum Wage Hikes Could Crush Small Businesses Across America*, FORBES (July 17, 2019), <https://www.forbes.com/sites/panosmourdoukoutas/2019/07/17/federal-minimum-wage-hikes-could-crush-small-businesses-across-america/#60acbcf26eb1> [<https://perma.cc/MA7L-64T6>].

²⁵ Sudheer Chava, Alexander Oettl & Manpreet Singh, *Does a One-Size-Fits-All Minimum Wage Cause Financial Stress for Small Businesses?*, NAT'L BUREAU OF ECON. RSCH., at 35 (Dec. 2019).

absorbing the increased cost of labor due to an increase in the federal minimum wage.”²⁶

This is a problem, particularly for small business owners in nonurban areas. In these areas, which continue to struggle economically (especially in the aftermath of the pandemic), small businesses are unlikely to pass on the cost of a higher minimum wage without risking the loss of consumers. To make matters worse, small businesses in nonurban areas have trouble securing credit.²⁷ These factors could lead small business owners to postpone any plans to hire new employees, or even to cut employment.²⁸ Because “new, small firms are the major source of employment growth in . . . rural economies,” a significant, across-the-board minimum wage hike could devastate nonurban economies.²⁹ This is especially true since nonurban areas tend to have relatively higher percentages of workers employed by small businesses than urban areas, where large firms more easily compete for workers.³⁰ Pegging the federal (or state) minimum wage to a “living wage” in the country’s largest metropolitan areas would only serve to hamper rural revitalization efforts.

These are not hypothetical concerns. Paul Flick, chief executive of Premium Service Brands (a home service franchise), told *The Wall Street Journal* in February 2021 that a significant increase in the minimum wage “can’t be absorbed, [and] so has to be passed on to the customer . . . and if they can’t afford to buy the service then that means layoffs.”³¹ That same *Wall Street Journal* article reported that rural states have a disproportionate number of workers earning \$15 per hour or less, with states such as Mississippi, Arkansas, West Virginia, and Louisiana counting upwards of 50% of their labor force in

²⁶ *Id.*

²⁷ U.S. DEPT OF AGRIC., *Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity*, at 38 (Oct. 21, 2017), <https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf>.

²⁸ See Chava, Oettl & Singh, *supra* note 25, at 5.

²⁹ See U.S. DEPT OF AGRIC., *supra* note 27, at 38.

³⁰ See U.S. SMALL BUS. ADMIN., *2018 Small Business Profile: United States*, at 3 Figure 4, <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf> [<https://perma.cc/2RW9-SNL2>] (showing that many counties across northern New England, Deep South, Great Plains, and Mountain West have up to 74 to 100% of their workforce employed by small businesses).

³¹ Eric Morath, *Biden Wants a \$15 Minimum Wage. Here’s What People Say It Would Do to the Economy*, *THE WALL ST. J.* (Feb. 3, 2021), <https://www.wsj.com/articles/biden-wants-a-15-minimum-wage-heres-what-people-say-it-would-do-to-the-economy-11612348201?page=2> [<https://perma.cc/3APX-TMBR>].

that category.³²

One could argue, of course, that it is time for the minimum wage to be increased for all workers, regardless of geography. But any proposal to increase the minimum wage—whether at the federal or state level—should take into account the disparate impacts a wage hike would have on nonurban areas. Below, I outline a handful of policies that would do just that.

III

A FEW PROPOSALS

Amending the Fair Labor Standards Act (FLSA) to account for regional price variation is the most straightforward solution to protecting nonurban businesses and employers from increases in the federal minimum wage—and one option that many business leaders seem to prefer if the federal minimum wage is to be increased.³³ At least one center-left think tank, Third Way, has outlined a federal “regional minimum wage law.” Under Third Way’s proposal, the federal government would set a benchmark “national average” for the minimum wage—which Third Way defines as “50% of the average hourly wage of nonsupervisory employees on private nonfarm payrolls, as determined by the Bureau of Labor Statistics.”³⁴ Then, each area of the country would be assigned to one of five “tiers,” based on the area’s RPP. Tier 1, for areas with the lowest RPP, would have a regional minimum wage of 85% of the national average, while Tier 5 areas—those with the highest RPP—would have a regional minimum wage of 115% of the national average. The three tiers in between would have regional minimum wages of 92.5%, 100%, and 107.5% of the national average, respectively.³⁵

A federally mandated regional minimum wage would be a step in the right direction by taking into account the geographic differences in cost of living and by protecting nonurban areas from the deleterious impacts of a minimum wage that was designed with urban low-wage workers in mind.

³² *Id.*

³³ See Morath, *supra* note 31 (Joshua Bolten, president of Business Roundtable stated, “While we continue to support an increase in the federal minimum wage, we believe that the increase should be thoughtfully designed to reflect regional differences in wage rates and to ensure that the increase does not undermine small business recovery.”).

³⁴ Jim Kessler & Ryan Zamarripa, *A Regional Minimum Wage*, THIRD WAY (Mar. 18, 2019), <https://www.thirdway.org/memo/a-regional-minimum-wage> [<https://perma.cc/PJM8-HUXF?type=image>].

³⁵ *Id.*

But even Third Way's regional approach does not offer the precision that more localized decision-making would theoretically provide, as state and local officials should have a greater understanding of local economic conditions than policymakers in Washington, DC. Local businesses and workers could more easily lobby for a certain minimum wage at the state or local level. And changes in a region's economic fortunes that might prompt an adjustment to the minimum wage could be more quickly addressed by state or local governments than by Congress. Moreover, workers' earnings reflect local, not national, labor markets.³⁶ As the gulf in wealth and opportunity continues to grow between urban, suburban, and rural areas, one standard federal minimum wage increasingly makes little sense. If the federal government is to set a floor on earnings, it should at most be limited to ensuring that a person working 40 hours per week at the minimum wage would earn enough to stay modestly above the federal poverty line (e.g., 125% of the federal poverty line).³⁷

Transferring the responsibility to set a minimum wage from the federal government to the states (or even localities) would not be unprecedented: the states were pioneers in setting minimum wages before Congress enacted the FLSA.³⁸ And internationally, Switzerland, which has no national minimum wage law, has seen four of its twenty-six cantons recently adopt such measures.³⁹ But even if the states were to

³⁶ UPJOHN INST. FOR EMP. RSCH., *Local Labor Markets*, <https://www.upjohn.org/research/economic-development/local-labor-markets> [<https://perma.cc/ARC2-C83W>] (last accessed Feb. 15, 2021) ("Workers' earnings depend on the health of the local labor market. Local economic policies can influence demand for workers by offering employers incentives—such as tax relief or customized job training—to hire locally, while education and job training programs can affect a local labor market's supply of workers, both in quantity and quality.").

³⁷ In 2020, the Department of Health and Human Services set the poverty line for the 48 contiguous states and the District of Columbia at \$12,760 for a one-person household.

³⁸ Darin M. Dalmat, *Bringing Economic Justice Closer to Home: The Legal Viability of Local Minimum Wage Laws Under Home Rule*, 39 COLUM. J.L. & SOC. PROBS. 93, 96 (2005) (noting that 14 states, the District of Columbia, and Puerto Rico had enacted minimum wage laws by the early 1920s—over 10 years before Congress enacted the FLSA).

³⁹ Francesca Giuliani-Hoffman, *Geneva Adopts What's Believed to be the Highest Minimum Wage in the World, at \$25 an Hour*, CNN (Oct. 4, 2020), <https://www.cnn.com/2020/10/03/world/geneva-switzerland-minimum-wage-trnd/index.html#:~:text=While%20Switzerland%20has%20no%20national%20minimum%20wage%20law%2C,Counselor%20Mauro%20Poggia%20told%20CN> N%20in%20a%20statement [<https://perma.cc/9ZXZ-VN7Y>]. In 2014, Swiss voters overwhelmingly rejected a national minimum wage. See BBC, *Switzerland Rejects World's Highest Minimum Wage* (May 18, 2014),

become the primary vehicle for establishing minimum wage rates, they should prioritize setting different minimum wage rates for regional or local economic conditions within their borders.⁴⁰

There exists a risk, however, that state legislatures could still set too high a minimum wage or fail to account for local economic conditions, particularly in states where urban areas are so populous as to dominate the state government (or, conversely, in largely rural states whose legislatures dismiss the higher cost of living in urban centers). Perhaps the best approach, therefore, would be to set a statewide minimum wage that, like the baseline federal minimum wage, would ensure that a person working an average of 2,080 hours per year would stay at or above the poverty line, as adjusted by the cost-of-living for that state. States could then empower local governments with the authority to legislate minimum wage laws, as Colorado did in 2020.⁴¹ And if states are concerned about individual municipalities passing excessively high minimum wage rates, they could always set a rate ceiling.

A common objection to localizing minimum wage laws is that it would create a patchwork of regulatory regimes that creates serious compliance headaches for businesses operating in more than one jurisdiction.⁴² This concern is not entirely unfounded; businesses could be faced with literally thousands of different minimum wage laws if every locality in the United States adopted its own minimum wage.⁴³ This is an

<https://www.bbc.com/news/business-27459178> [https://perma.cc/XWY7-KFJP] (reporting that 76% of voters rejected the minimum wage proposal).

⁴⁰ See, e.g., Dave Ress, *Virginia's Minimum Wage is Going Up—But How Much Could Depend on Where You Live*, THE VIRGINIAN-PILOT (Feb. 11, 2020), <https://www.pilotonline.com/government/virginia/dp-nw-minimum-wage-20200211-hyycqn75fcp3a5qxdh35hgd64-story.html> [https://perma.cc/F8LU-4B4Q?type=image]. Virginia ultimately adopted a uniform minimum wage increase to \$12 per hour by 2023 (and up to \$15 per hour by 2026, contingent on the General Assembly's enactment by July 1, 2024). VA. CODE § 40.1-28.10.

⁴¹ COLO. REV. STAT. ANN. § 8-6-101 (providing that “a local government may enact through its governing body or, when available, through its initiative or referendum powers, a law establishing minimum wages for individuals”). For an overview of how different home rule regimes impact the legal ability of local governments to local minimum wage laws, see generally Dalmat, *supra* note 4.

⁴² See generally Note, Paul J. Lysobey, *Municipal Minimum Wage Ordinances in Ohio: A Home Rule Analysis*, 67 CLEV. ST. L. REV. 93 (2019); Note, Emily S.P. Baxter, *Protecting Local Authority in State Constitutions and Challenging Intrastate Preemption*, 52 U. MICH. J.L. REFORM 947, 955 n.14 (2019).

⁴³ Per the Census Bureau, there are roughly 89,000 local governments in the United States: approximately 3,000 counties, 19,500 municipalities, and 13,360 townships. U.S. CENSUS BUREAU, *Census Bureau Reports There Are 89,004 Local Governments in the United States* (Aug. 30, 2012), <https://www.census.gov/newsroom/releases/archives/governments/cb12->

undeniably critical consideration, given that many local governments have overlapping borders or responsibilities.⁴⁴ Nevertheless, businesses that operate in more than one locality already cope with a mosaic of local government laws in such areas as: (i) minimum wage rates (which can vary based on the on size of business in some states),⁴⁵ (ii) local property taxes,⁴⁶ (iii) local sales taxes,⁴⁷ and (iv) local family and sick leave policies.⁴⁸ At bottom, businesses likely have more to lose from a cost-prohibitive minimum wage than they do from having to comply with one more local law, especially small businesses that operate in only one locality.⁴⁹

CONCLUSION

The first minimum wage laws were designed to protect workers from oppressive and opportunistic work environments in the early 20th-century. Proponents of “living” minimum wage laws today proclaim similar goals. But the massive migration from rural areas to urban ones over the past century has created the potential for policymakers to ignore the harm they may inadvertently cause to workers living outside of

161.html [https://perma.cc/5KVU-JBV2].

⁴⁴ RICHARD BRIFFAULT & LAURIE REYNOLDS, *CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW* 12 (8th ed. 2016) (“[M]ost city residents . . . are subject to the jurisdiction of two local governments, their city and their county.”).

⁴⁵ See U.S. DEP’T OF LABOR, *State Minimum Wage Laws* (Jan. 1, 2021), <https://www.dol.gov/agencies/whd/minimum-wage/state> [https://perma.cc/Y8PY-47FG].

⁴⁶ See Jean Murray, *THE BALANCE SMALL BUS., Paying and Deducting Your Business Property Taxes* (July 29, 2019), <https://www.thebalancesmb.com/paying-and-deducting-your-business-property-taxes-399034> [https://perma.cc/4ZEM-FR42] (“Property taxes are assessed by local entities—towns, cities, counties, villages, for local purposes, such as schools, roads, [and] improvements in infrastructure.”).

⁴⁷ See TAX POL’Y CTR., *Local Sales Tax Rates* (May 16, 2018), <https://www.taxpolicycenter.org/statistics/local-sales-tax-rates> [https://perma.cc/XHV4-5W87].

⁴⁸ KAISER FAM. FOUND., *Paid Family and Sick Leave in the U.S.* (Dec. 14, 2020), <https://www.kff.org/womens-health-policy/fact-sheet/paid-family-leave-and-sick-days-in-the-u-s/> [https://perma.cc/XCR4-JZ4K].

⁴⁹ There has been scant research studying the regulatory costs of local laws, however, and at least one study by the Urban Institute has called for “a research agenda [that] focus[es] on the marginal costs and benefits—to businesses, consumers, residents, and local and state governments—of having different local laws in different jurisdictions.” Mark Treskan, John Marotta, Prasanna Rajasekaran, Kriti Ramakrishnan, Aaron Shroyer, & Solomon Greene, *Do the Effects of a Regulatory Patchwork Justify State Preemption of Local Laws?*, URB. INST. (Jan. 2021), at 17, <https://www.urban.org/sites/default/files/publication/103422/do-the-effects-of-a-regulatory-patchwork-justify-state-preemption-of-local-law.pdf> [https://perma.cc/DNF5-WJYJ]

expensive metropolitan areas. A one-size-fits-all minimum wage law no longer makes sense given the vast cost-of-living disparity between urban and rural areas. Legislators should give serious thought to crafting minimum wage laws that are reflective of local economic realities. Granting local governments the ability to set minimum wage rates may be the best way to achieve that goal.