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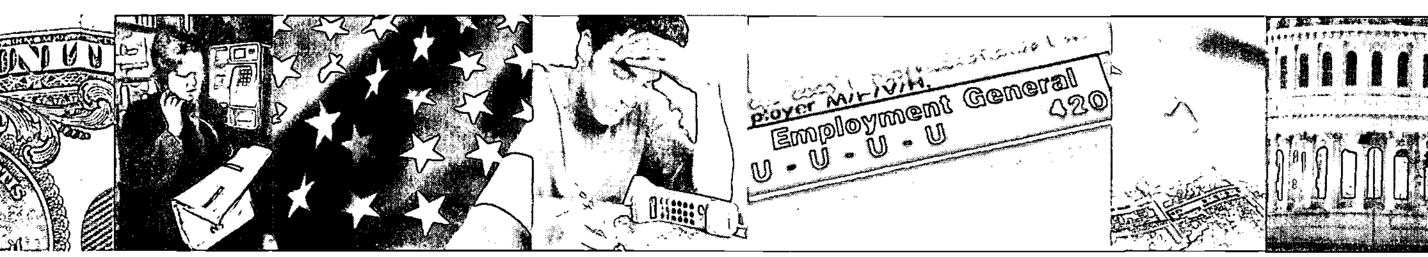
ABSTRACT

In 1999, Congress for the first time, is debating a federal minimum wage hike that will affect low-skilled people who have dramatically fewer options if they cannot find work. This public policy debate has been occasioned by the new state focus on welfare reform that, to some, suggests that a state flexibility approach be applied to the minimum wage, with the federal government insuring against a rollback of the current wage floor. In this view, Congress should grant governors authority over their own labor markets to match their new responsibility for creating employment opportunities for those who have great difficulty getting hired. The state flexibility proposal is composed of two elements: a wage hike to $6.15 per hour, phased in over 3 years; and state flexibility: any state without a minimum wage law would be subject to the federal minimum wage, whereas any state that has its own minimum wage law would retain the current rate of $5.15 and would be exempt from future federal rate increases. If this legislation were enacted, each state with a minimum wage law in place would have four options: (1) raise the state wage at the pace of the federal rate; (2) keep the state rate constant at its current rate; (3) raise the state rate but more slowly than the federal rate hike; or (4) raise the state rate higher or more quickly than the federal rate hike. Research shows that the public strongly favors state, rather than federal, control of the minimum wage rate, and application of the state flexibility approach would encourage evolution of smaller government and encourage job growth for the least skilled workers, according to the proponents of the proposed policy. Nowhere has the shift of federal control to the state level been more aggressive than in the field of education and job training. The Education Flexibility Partnership Act (1999) provides states with flexibility in spending federal education dollars and increases state accountability for educational achievement. (KC)

EMPLOYMENT POLICIES INSTITUTE

State Flexibility:

The Minimum Wage and Welfare Reform



July 1999

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State Flexibility: The Minimum Wage and Welfare Reform

Executive Summary

For the first time, Congress is debating a minimum wage hike in a post-Welfare Reform world. The 1996 law designed to "end welfare as we know it" imposed enormous burdens on state governors to increase the workforce participation rate for families receiving public assistance. Today each state confronts new and unique demographic and geographic challenges in moving welfare recipients into the workforce. But they do not have all of the tools they need to get the job done. In fact, they may have their efforts sabotaged by a simple extension of old thinking — a "one size fits all" federal minimum wage rate.

In the mid-1960s, Congress expanded the minimum wage law (first passed in 1938) to cover industries which employ predominantly semi-skilled, low-skilled, and entry-level workers, e.g., agriculture, retailing. During the same period when the federal government was extending the minimum wage into new industries, Congress created and expanded social welfare programs such as food stamps and other basic welfare benefits. These programs insulated low-skilled workers who were being priced out of job opportunities because they did not qualify for positions that were newly covered by the minimum wage.

In 1996, Congress substantially reduced the size of these federal welfare programs. **Thus, in 1999, for the first time, Congress is debating a federal minimum wage hike that will affect low-skilled people who have dramatically fewer options if they cannot find work.**

Welfare reform has altered the minimum wage debate in ways that were unanticipated. Research proves that higher mandated wages reduce employment opportunities for the least skilled. This effect is magnified for the welfare population, with studies showing higher minimum wages (1) lead to longer spells on welfare and (2) cause shifts in the profile of "who gets hired," leading employers to favor higher-skilled applicants at the expense of low-skilled adults.

When Members of Congress next vote on a minimum wage hike, they will be voting on a policy that is different from *any* wage mandate for entry-level jobs considered in the past. This distinct shift in the environment demands that Congress adopt an entirely new perspective on the minimum wage.

Having been given the responsibility to bring welfare "clients" into the work force, governors need the flexibility to adapt their minimum wage policies to the local, economic, demographic and development needs of their states. Most federal labor laws have recognized some state involvement and flexibility in setting area standards. Without a shift in federal policy, states will find their local welfare reform efforts stymied by federal law.

The new state focus on welfare reform suggests that the state flexibility approach be applied to the minimum wage, with the federal government insuring against a rollback of the current wage floor. Congress should grant governors *authority* over their own labor markets to match their new *responsibility* for creating employment opportunities for those who have great difficulty getting hired.

The State Flexibility Proposal

Under a state flexibility approach to the minimum wage, Congress would pass a law with the following elements:

- **Wage Hike:** Congress would pass an increase in the federal minimum wage to $6.15 per hour, phased in over three years.
- **State Flexibility: Any state without a minimum wage law** would be subject to the federal minimum wage. Alternatively, any state which has its own minimum wage law would retain the current rate of $5.15 and would be exempt from future federal rate increases.

Practical Implications

- Each state would have the opportunity to decide whether the federal wage standard is appropriate for local labor market conditions, particularly in light of the state's responsibilities to move low-skilled welfare recipients into the workforce.
- Each state with a minimum wage law in place would have four options going forward:
  - ► **Raise the state wage** at the same pace as the federal minimum wage rises above $5.15 per hour.
  - ► **Keep the state rate constant** at its current level, to reflect state and local labor market conditions.
  - ► Raise the state rate, but more **slowly than the federal rate hike**, or to a rate lower than the federal minimum wage (but above $5.15 per hour).
  - ► Raise the state rate **higher and/or more quickly** than the federal rate hike.
- States that do not have a minimum wage law today could pass a minimum wage law, so long as the wage floor was at least $5.15 per hour. States could pass a law next year and return to the $5.15 standard, even if the federal wage rate rises in the interim.

States today already have the authority to implement a minimum wage rate that is higher than the federal rate. This proposal simply gives states the flexibility to set their own schedule and rate structure at or above $5.15 per hour.

Public Perspective

Research also shows that the public strongly favors state, rather than federal control, of the minimum wage rate. In four recent national surveys of public opinion, respondents were asked who is better suited to setting the minimum wage in their states. The federal government received an average of only 35% support from the public. The states, through the governors and the legislatures, were consistently deemed most qualified to make this important decision. Support for the states ranged from a low of 57% to a high of 64%.

State Flexibility: The Minimum Wage and Welfare Reform

I. The Realities of Welfare Reform

"The era of big government is over."

President Bill Clinton
February 15, 1996[1]

For the first time, Congress is debating a minimum wage hike in a post-Welfare Reform world. This is no mere historical footnote, but a fact with significant economic and social implications. It represents a radical departure from the "old" minimum wage debate and demands new thinking for a new policy environment. How Congress responds will determine the success of both the wage law and the nation's commitment to moving people from welfare dependency to self-reliance through work opportunities.

Consider the dramatic differences between the current policy environment and any past debate over the minimum wage. In the mid-1960s, Congress expanded the minimum wage law (first passed in 1938) to cover industries which employ predominantly semi-skilled, low-skilled, and entry-level workers, e.g., agriculture, retailing. Coincident with the extension of the minimum wage into these new industries, Congress created and expanded social welfare programs, such as food stamps and other basic welfare benefits. For three decades, these programs insulated those priced out of jobs and job opportunities by laws making it illegal to pay employees based on low skill or experience levels.

In 1996, Congress set in motion a new welfare approach that will rapidly shrink the scope of these programs. **Thus, in 1999, for the first time, Congress is considering a federal minimum wage hike that will hinder the efforts of low-skilled workers to find work at a time when traditional welfare programs for those unable to find work are being reduced.**

A. Mandatory State Accountability

In the same week that President Clinton signed into law the latest minimum wage hike, he endorsed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.[2] In signing the welfare-to-work law, the President stated:

> This Act gives States the responsibility that they have sought to reform the welfare system. This is a profound responsibility, and States must face it squarely. *We will hold them accountable, insisting that they fulfill their duty*

"We've been blessed with a tremendous caseload reduction, but our most serious work lies ahead."

Candace Shively
Kansas Commissioner of Economic and Employment Support
February 8, 1999[6]

to move people from welfare to work and to do right by our most vulnerable citizens (emphasis added).[3]

Not only have federal welfare programs been dramatically reduced in scope, but the federal government is demanding accountability on the part of the states to employ those moved off the welfare rolls. Given this approach, it is only logical that state governments be given the tools to satisfy the requirements to which they are being held accountable. This is the key difference between the past and the present when it comes to the minimum wage debate: any decision Congress makes today will affect states' ability to fulfill their obligations under welfare reform.

The accountability of which the President spoke is the set of quotas imposed on the governors to increase the work participation rate for families receiving public assistance. The law imposed mandatory work participation rates, setting targets as specific percentages of each state's caseload of Temporary Assistance for Needy Families (TANF) recipients. For all families the rates are:

FY 1997	25%
FY 1998	30%
FY 1999	35%
FY 2000	40%
FY 2001	45%
FY 2002+	50%

The rates for two-parent families are even more strenuous:

FY 1997	75%
FY 1998	75%
FY 1999+	90%

"The adults left on the rolls are the hardest to place."

Tommy Olmstead
Georgia Department of Human Resources Commissioner
January 26, 1998[7]

The New York Times reported late last year that 28% of adults on welfare are engaged in some sort of work activity, but that it is uncertain whether states will be able to achieve the goal for the year 2002 and beyond of ensuring that half of adults on welfare are supposed to be working.[4] Many of these individuals have very low skills and poor job histories. The National Governors' Association has recognized that as caseloads decrease, the welfare population that remains faces "significant challenges to workplace success."[5] Among these challenges, the NGA lists poor communication, academic and employability skills, and little, if any, work experience.

B. Employability

Employability, in particular, is an ever-increasing standard that many of today's welfare recipients simply do not meet. According to the National Adult Literacy Survey, up to 44 percent of welfare recipients struggle to perform the most basic reading, writing and quantitative tasks, such as reading text or making change for a dollar.[8]

The Educational Testing Service gives a dimmer picture, concluding that fully two-thirds of welfare recipients have skills that qualify, *at best*, for entry-level employment, and many fall far below. It found that 31% of welfare recipients possess "minimal skills," meaning their marketable skills are similar to those of a high school dropout. This skills picture looks even worse for Hispanic welfare recipients — 55% are in the "minimal skills" category.[9] And 37% of black welfare recipients fall into this category. Even in industries that provide the bulk of entry-level jobs, such as retail trade, the average skill level of workers employed today is comparable to those of high school graduates or people with some post-secondary training.[10]

The impact of this deficiency of skills is most dramatically displayed in the nation's cities. The U.S. Department of Housing and Urban Development reports that central city poverty rates are still 30 percent or higher in 30 cities across the country. HUD acknowledges that "the persistently high poverty rates tend to reflect structural barriers to participation in the changing economy." A principal cause: "barriers such as a large skills gap in the workforce" in the inner city.[11]

The employability standards are constantly rising in the modern economy. Individuals with minimal skills will qualify for only 10% of all new jobs generated between now and 2006.[12] A study of employers in Atlanta, Boston, Detroit, and Los Angeles found that 70% said a high school diploma was a general requirement for their most recently-filled job, and only 10% of the most recently-hired workers lacked a diploma.[13]

Earlier this year, *The New York Times* reported the following: "Presumably, the people who found work first were better equipped for the job market. But, state officials said, the people still getting welfare have fewer skills and less work experience." One state welfare commissioner said, "We've been blessed with a tremendous caseload reduction, but our most serious work lies ahead."[14]

"We all know that there are inner cities and poor rural areas and smaller- and medium-sized towns in between that still have not felt the warm sunlight of our prosperity."

President Bill Clinton
May 26, 1999[16]

C. Local Unemployment Crisis in a Booming Economy

A key factor in moving people from welfare to work is the health of the economy. The President's Council of Economic Advisers has concluded that about 20 percent of the decline in welfare rolls has been attributable to the expanding economy.[15] But despite a low national unemployment rate, many segments of the popula-

"The best anti-poverty program is still a job."

President Bill Clinton
August 22, 1996[24]

tion and parts of the country are lagging behind. The Urban Institute reports that even in the current robust economy, high school dropouts face an unemployment rate that is about four times that of college graduates.[17] And while the unemployment rate for the nation in June 1999 was 4.3 percent, 7.3 percent of African-Americans and 13.5 percent of teens remain unemployed.[18] Although these statistics represent improvements over recent years, it must be noted that if the figures for blacks or teens were representative of the workforce as a whole, all economists would recognize that the economy was suffering a recession.

A future downturn in the country's economic health will have a severe impact on welfare recipients and the governors seeking to move them into jobs. Prior to becoming chief economist for the U.S. Department of Labor, Michigan State University researcher Harry Holzer estimated that employer demand for welfare recipients could fall 25%-40% during the next recession.[19] Further, research indicates that an increase of 2% in the unemployment rate would lead to an increase in welfare recipiency of 11%.[20] Thus, any upward pressure on today's historically low unemployment rate will put significant upward pressure on welfare caseloads.

For many communities throughout the country, a future recession is of less concern than the current sluggish economy and high unemployment that they face today. The U.S. Department of Housing and Urban Development, in its report, "The State of the Cities 1999," found that unemployment remains unacceptably high in about one in six central cities." Looking outside the cities, HUD reports that nearly 400 suburban jurisdictions in 24 states are suffering from distress, in that their populations have declined and their estimated poverty rate exceeded 20 percent.[21] The Department concludes that "the new urban challenge is not limited to a handful of large cities in a few parts of the Northeast and Midwest – rather, it confronts all regions of the country and a significant number of small and mid-sized communities.[22]

A review of local labor markets — as defined by county boundaries — reveals an enormous number of areas with very soft economies. Several counties in California and Texas have unemployment rates approaching 30 percent. Nationwide, there are more than 270 counties and cities with unemployment rates of 9% and above (more than double the national unemployment rate).[23] See Appendix A. Again, if these unemployment rates applied to the economy as a whole, there would be little support for a minimum wage hike.

It has long been known that there is a direct, statistically significant link between unemployment rates and length of time on welfare.[25] High unemployment rates lead to longer spells on welfare.[26] Likewise, local employment growth in the retail and services industries is associated with shorter spells on welfare. The vast majority of economic research proves that minimum wage

A Sample of 20 Local Areas With Persistently High Unemployment Rates

County/City	State	Unemployment Rate (%)
Luna	NM	36.1
Starr	TX	29.4
Colusa	CA	26.1
Lincoln	MT	17.6
Taylor	KY	17.2
Morgan	OH	16.2
Navajo	AZ	15.1
Taney	MO	13.9
Jefferson	GA	13.7
Wilcox	AL	13.4
Buchanan	VA	13.4
Concordia	LA	13.0
Lincoln	WV	13.0
Camden City	NJ	12.7
Rolette	ND	11.6
Douglas	OR	11.0
Marlboro	SC	10.1
Bradley	AR	10.0
Hardeman	TN	10.0
Choctaw	OK	9.6
National	**N/A**	**4.2**

Note: Each locality has a population of at least 10,000 people; unemployment rates are from March 1999.

Source: *The Local Area Unemployment Crisis*, Washington, D.C.: Employment Policies Institute, July 1999

hikes hinder entry-level employment growth in these industries. But a federal minimum wage hike today could seriously affect employment growth in selected labor markets, negatively affecting the success of welfare reform.

Due to favorable local economics, areas with record low unemployment are absorbing higher entry-level wage rates without regard to mandated wage levels. Thus, those areas would feel much less harm from a higher minimum wage. Yet a federal minimum wage hike would apply disproportionate harm to the economically-ravaged counties and pockets of slow growth. In light of the realities of welfare reform, now more than ever, the one-size-fits-all approach of a federal minimum wage does not make sense.

Quite simply, the governors each face unique demographic and geographic challenges to moving welfare recipients to work, but they

"[A]ll the evidence that I've seen suggests that the people who are most needy of getting on the lower rungs of the ladder of our income scales, develop skills, getting the training, are unable to earn the minimum wage. As a consequence, [they] cannot get started."

Alan Greenspan
Federal Reserve Chairman
January 20, 1999[27]

"The search for enlightened public policy is often furthered when individual States and local governments are free to experiment with a variety of approaches to public issues. Uniform, national approaches to public policy problems can inhibit the creation of effective solutions to those problems."

President Bill Clinton
May 14, 1998[34]

do not have all of the tools they need to get the job done. Given their new responsibilities, they should be given the opportunity to act as they see fit with regard to local labor markets, without the burden of a federal mandate that ignores all local labor market conditions.

II. The Impact of Minimum Wage Hikes on State Welfare Reform Efforts

Just as welfare reform is demanding millions of new entry-level jobs, higher employment costs caused by minimum wage increases are inhibiting their creation. Economist Peter Brandon of the University of Wisconsin has demonstrated, for instance, that minimum wage hikes actually increase duration on welfare by more than 40 percent.[28]

Due to the skills deficiencies discussed above, welfare recipients simply cannot compete with more "attractive" job applicants drawn into the work force by the higher mandated wages. Research from Boston University suggests that low-skilled adults are displaced after a minimum wage hike by teens and students who are perceived as having better skills.[29] This displacement would be most severe among adults with the lowest skills — welfare recipients — despite the fact that adults are more likely to need the income from paid employment.

Welfare recipients see the negative impact of a minimum wage hike in job searches that are stymied by mandated wage rates that do not match their skills. But they do not see the positive impact because the benefits of a higher minimum wage are not targeted to the poor. The average family income of those who would benefit from the proposed $6.15 federal minimum wage rate is $37,782.[30] Former Clinton Administration Labor Secretary Robert Reich made this point most succinctly in 1993, when he said, "After all, most minimum wage workers are not poor."[31] Even for those who are poor, the evidence suggests minimum wage hikes do not help. Research from Michigan State University shows that minimum wage hikes push as many families into poverty (due to job loss, etc.) as they pull out of poverty.[32]

In addition, a minimum wage hike would serve to drive some working poor out of the work force as the increased earnings cause a phase out of public assistance and impose an effective tax rate on the additional earnings as high as 90 percent in some states.[33]

Thus, at a time when governors are charged with reducing the welfare rolls and creating jobs, federal wage policy may work to frustrate their most aggressive and innovative efforts in the very communities reform was intended to serve. By contrast, if decisions over appropriate minimum wage levels are left to the states, governors and state legislatures will be able to weigh the risks of various policies, balance their plans against local labor market conditions, and implement the strategies they feel are most effective given their own unique circumstances.

III. The State Flexibility Solution

The most apparent solution is to give the states the tools and flexibility necessary to influence their economies, secure targeted job growth and complete the task of welfare reform. This can be accomplished by encouraging all states to adopt their own minimum wage system which ensures a consistent standard for all of their citizens, while maintaining sensitivity to state and local economic factors.

A. How It Would Work

A state flexibility approach to minimum wage laws would entail limiting federal mandated wage control in states which adopt their own minimum wage laws. Specifically, in such states the federal minimum wage rate of $5.15 per hour would remain in effect as a guaranteed floor, but future wage hikes would not apply. Federal preemption and enforcement of the basic rate would remain in effect to ensure consistent protections throughout the country. States which enact no minimum wage statute of their own would continue to be governed by the federal wage rate and any future increases above the current rate.[35]

So long as a federal floor of at least $5.15 remains steady for workers in the state, the local authorities would be empowered to develop innovative solutions to address the specific needs of their communities. The proposal would grant states the authority to manage their entry-level job markets and promote opportunity and development.

"Our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. States and local governments are often uniquely situated to discern the sentiments of the people and to govern accordingly."

President Bill Clinton
May 14, 1998[36]

B. Historical and Policy Perspective

This is no new concept, but one based in the history and evolution both of welfare reform and of workplace law and policy. **Indeed, the primary population of concern in both the welfare and minimum wage laws is the same, i.e., lower skilled adults who struggle to get jobs and make ends meet.** States have the closest knowledge of the local issues and the greatest sense of urgency in resolving their problems.

1. Welfare Flexibility

Welfare policy and coping with the needs of the indigent have always been subjects of intense state concern. Even under the old "welfare law," Aid to Families with Dependent Children (AFDC), benefit levels were not uniform across the country, but were set by each state, based on federal guidelines. States were specifically permitted to vary benefits within their borders to reflect local costs rather than average costs within the state.

The 1996 welfare reform law ended the entitlement to cash assistance to families, and provided states with considerable flexibility in designing their welfare programs. More than ever before, federal policy recognizes the wide economic variations across the country, and leaves it up to the states to tailor their programs accordingly. Maximum benefits range from a low of $120 per month in Mississippi to a high of $923 per month in Alaska. Regionally, maximum benefits run from a **high** of all the Southeastern states of $303 per month in Florida, to the Mid-Atlantic **average** of $354 per month paid in Virginia, to a **low** among the New England states of $418 per month in Maine.[37]

Many states apply different benefits levels to separate classes of beneficiaries. For instance, Massachusetts and Hawaii reduce maximum benefits for recipients who are subject to their state's work requirements. Other states provide added monthly payments to promote certain kinds of desirable behavior, such as West Virginia's "marriage bonus."[38] The governors, in conjunction with their legislatures, are embracing reform and are setting *appropriate benefits levels* to encourage recipients to join the workforce.

2. Minimum Wage Flexibility

The idea of allowing states to set *appropriate wage levels* is also consistent with law and policy. In fact, states already have the authority to set rates that are higher than the federal standard, and ten states and the District of Columbia[39] have done so. But states today need the authority to avoid the damaging consequences of a federal minimum wage rate set too high and which is insensitive to their local communities.

The federal minimum wage is not, and never was, a unifying minimum standard which applied universally to all Americans. From the outset the law was riddled with exceptions, exemptions and conditions which sought to address economic and political realities across the country.

Originally set at $.25 per hour, the minimum wage was to rise to $.40 "as rapidly as is economically feasible without substantially curtailing employment ...."[40] The statute constructed an elaborate procedure involving specially convened industry committees (§5) which assisted the Wage & Hour Administrator in setting the wage rate by industry and even by job classification within industries (§8(b) and (c)). In addition, a wide variety of jobs and more than half of the workforce was expressly exempted from original coverage. As well as such current exemptions of executive, administrative and professional personnel, the 1938 law exempted most retailing jobs, seamen and airline workers, and all agricultural workers.

All of these exceptions and exemptions, past and present, represent an acknowledgment by the federal government of the difficulty in micromanaging a diverse economy which presents myriad market conditions in the various states. Even without full coverage, the federal government in 1939 noted the law's potential for mischief.[41] By slowly increasing control at the national level, however, Congress has stifled innovation, frustrated development and recovery in disadvantaged areas of the country, and imposed at times insurmountable hurdles on governors struggling to prosper despite federal mandates.

C. The State Flexibility Trend in Workplace Laws

Since the Second World War, every major federal workplace law has incorporated a state flexibility or area standards provision. The policy has been that where the federal government chooses to be involved in workplace problems, governors, legislatures and state and local courts must have a hand in providing the solution. As this trend has evolved in practice, the states are given latitude in providing different levels of enforcement, protections and coverage.

1. Labor Law

The trend started in 1947 when federal labor law was amended through the Taft-Hartley Act to give states a say in permitting or prohibiting contracts which compel union membership as a condition of employment.[42] In the ensuing 52 years, 21 states have enacted right-to-work laws and the remaining states actively debate whether this level of intrusion in the marketplace is appropriate for workers within their borders.

The subsequent amendment to the National Labor Relations Act in 1959 once again defined the level of federal involvement in workplace policy in the states by limiting the jurisdictional threshold which must be surpassed before the National Labor Relations Board (NLRB) would be empowered to act. The statute specifically provided that any state or territory was free to assume and assert jurisdiction over labor disputes outside the NLRB's jurisdiction.[43]

Because the dollar value of the 1959 thresholds has eroded over time, Congress is currently considering legislation to adjust the figures for inflation. The bill, H.R. 1620, would remove from mandatory federal jurisdiction cases involving non-retail firms with gross receipts below $275,000 (up from $50,000), and cases involving retail establishments having gross receipts of $2,750,000 (up from $500,000). If enacted, labor disputes below the NLRB threshold would remain the province of the state administrative and judicial system, except in extraordinary circumstances.

2. *Employment Discrimination*

The Civil Rights Act of 1964 paved the way for ensuring a federal cause of action and federal remedies for victims of employment discrimination. While many states had enacted their own laws in the area, there was no clear standard for protecting all Americans. Further, a federal remedy was deemed appropriate because it was felt that state courts and juries could not be trusted in some parts of the country.

However, Congress did not intend to exclude the states from the solution. The federal Equal Employment Opportunity Commission is instructed in the statute to cooperate with parallel state agencies, and in fact has a longstanding policy of deferring action on cases in such states.[44] **Most significantly, the EEOC does not second-guess the enforcement decisions made by state officials.** The concept is to empower the states to be active participants in solving workplace problems, but not to mandate identical results.

3. *Safety & Health*

The Occupational Safety & Health Act of 1970 placed the federal government in the business of ensuring the day-to-day welfare of millions of workers throughout the country. But the law recognized from the start that the states would play a key role in enforcing the new regulatory scheme and in improving the workplace safety and health of their citizens.

Like the amendments to the National Labor Relations Act, the OSH Act specifically provided that the states retained jurisdiction over areas where federal OSHA had adopted no standard.[45] More importantly, the statute expressly authorized the states to develop their own agencies "to assume responsibility for development and enforcement therein of occupational safety and health standards ...."[46] Today, there are 23 so-called "state-plan states" enforcing state standards which need not be identical to federal OSHA standards, but which are "at least as effective in providing safe and healthful employment and places of employment ...."[47] Based on this flexibility, various states have experimented with safety and health programs and standards which are more closely tailored to the industries and employees within their jurisdiction.

4. *Education and Job Training*

Nowhere has the shift of federal control to the states been more aggressive than in the field of education and job training. The Employment, Training and Literacy Enhancement Act,[48] which became law in 1998, consolidated 60 federal programs into three block grants for states and localities. This year, the President signed into law the Education Flexibility Partnership Act,[49] which provides states with flexibility in spending federal education dollars and increases state accountability for educational achievement. Likewise, there is growing movement in Congress to remove federal strings and provide governors with more flexibility in combating homelessness, juvenile crime and delinquency.

The position Congress has taken on education/job training is directly relevant to the proposal that minimum wage authority be returned to the states. With welfare reform now in full force, state governments are dealing with large numbers of low-skilled and unskilled job seekers. Congress has already decided that the task of improving work-related skills is best handled at the state and local levels. Encouraging full state authority over local labor market conditions for low-skilled workers who will receive on-the-job training complements existing law on education and training for those same workers.

In each of these principal statutes in the field of workplace law, Congress has not merely instructed the states to follow the national model, nor rigidly imposed its will. Rather, the states have both filled the gaps in federal coverage and exercised a degree of autonomy. Under federal workplace policy as it has evolved over the past 50 years, state executives, agencies and courts have refused to accept a federal standard as preordained, but have reached decisions on coverage, levels of protection and enforcement based on the perceived needs and practicalities of their states.

D. Public Perspective

The state flexibility approach stands up not only to historical and policy analyses. Research also shows that the public strongly favors state, rather than federal, control of the minimum wage rate.

In four recent national surveys of public opinion, respondents consistently said that state legislatures and governors should set state minimum wages. Support for the states ranged from a low of 57% to a high of 64%. On the other hand, just 35% of the public on average said the federal government should set the minimum wage. See Appendix B.

Taken in light of the historical evolution of welfare and workplace policy favoring active state involvement, this public opinion research demonstrates considerable confidence in states' ability to look out for the best interests of their citizens.

Conclusion

Application of the state flexibility approach is a positive evolution of smaller government and a complement to encouraging job growth for the least skilled in society. It is the necessary second half of the movement of welfare recipients to work begun in the 1996 welfare reform law.

This approach utilizes today's wage standard as a base and offers opportunity where it is currently lacking. It follows the important trend of allowing the states to participate and even localize these matters in the future in order to fit the overall goals of welfare-to-work and economic growth.

Endnotes

[1] Bill Clinton, *1996 State of the Union*, Washington, D.C., 15 February 1996.

[2] Public Law 104-193 (August 22, 1996).

[3] Bill Clinton, "Statement on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," (Washington, D.C.: Public Papers of the Presidents, August 22, 1996).

[4] *The New York Times*, December 30, 1998.

[5] "Current Trends and Emerging Issues in Welfare-to-Work" (Washington, D.C.: The National Governors' Association, December 4, 1997).

[6] Robert Pear, "States Declining to Draw Billions in Welfare Money," *The New York Times, 8 February 1999, sec. A, p.1.*

[7] Lawrence Viele, "Not all off dole find jobs; Some on welfare tough to employ," *The Florida Times-Union*, 26 January 1998, p. A1.

[8] "From Welfare to Work: The Transition of an Illiterate Population" (Washington, D.C.: The Employment Policies Institute, February 1997).

[9] *Anthony P. Carnevale and Donna M. Desrochers, "Getting Down to Business: Matching Welfare Recipients' Skills to Jobs that Train," (Princeton, N.J.: Educational Testing Service, 1999).*

[10] *Carnevale and Desrochers (Appendix).*

[11] *The State of the Cities 1999 (Washington, D.C.: U.S. Department of Housing and Urban Development, June 30, 1999) Part 1,p.8.*

[12] *Carnevale and Desrochers (Appendix).*

[13] *Sharon Ryan and Melinda Theilbar, "A Comparison of the Skill Level of Successful Welfare Exiters, Unsuccessful Exiters and Workers in Entry-Level Jobs," (Washington, D.C.: The Employment Policies Institute, Forthcoming) citing Harry J. Holzer, "What Employers Want: Job Prospects for Less-Educated Workers," (Washington, D.C.: Russell Sage Foundation, 1996).*

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[17] *LaDonna Pavetti, "How Much More Can They Work? Setting Realistic Expectations for Welfare Mothers," (Washington, D.C.: The Urban Institute, July 1997)*

[18] National Survey (Washington, D.C.: U.S. Bureau of Labor Statistics, USDL 99-125, June 1999).

[19] *Harry J. Holzer, "Employer Demand for Welfare Recipients and the Business Cycle: Evidence from Recent Employer Surveys," paper prepared for the 'Welfare Reform and the Macroeconomy,' November 1998.*

[20] *David N. Figlio and James P. Ziliak, "Welfare Reform, the Business Cycle, and the Decline in AFDC Caseloads," paper prepared for the 'Welfare Reform and the Macroeconomy,' November 1998.*

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[23] Bureau of Labor Statistics, March 1999.

[24] Bill Clinton, "Statement on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," (Washington, D.C.: Public Papers of the Presidents, August 22, 1996).

[25] *Hilary Williamson Hoynes, "Local Labor Markets and Welfare Spells: Do Demand Conditions Matter?" (Cambridge, MA: National Bureau of Economic Research, June 1996).*

[26] *ibid.*

[27] Alan Greenspan, "Hearing of the House Ways and Means Committee," (Washington, D.C.: Federal News Service, January 20, 1999).

[28] Peter D. Brandon, "Jobs Taken by Mothers Moving From Welfare to Work and the Effects of Minimum Wages on this Transition" (Washington, D.C.: The Employment Policies Institute, February 1995).

[29] Kevin Lang, "Minimum Wage Laws and the Distribution of Employment." (Washington, D.C.: The Employment Policies Institute, January 1995).

[30] Data compiled from the January-December 1998 Outgoing Rotation Groups of the *Current Population Survey*. Calculations based on proposed increase in the federal minimum wage from $5.15 to $6.15 per hour.

[31] Robert B. Reich, *Memorandum to the President of the United States*, 20 July 1993.

[32] David Neumark and William Wascher, "Do Minimum Wages Fight Poverty?" Working Paper 6127, (Cambridge, MA: The National Bureau of Economic Research, Inc., August 1997).

[33] Daniel Shaviro, "Effective Marginal Tax Rates on Low Income Households" (Washington, D.C.: The Employment Policies Institute, March 1999).

[34] Bill Clinton, Executive Order. "Federalism." Executive Order 13083. *Federal Register*, 19 May 1998.

[35] Seven states currently have no minimum wage law: Alabama, Arizona, Florida, Louisiana, Mississippi, South Carolina, Tennessee. Under the state flexibility approach, these states would be free to enact their own minimum wage laws and apply a wage rate consistent with their area standards and needs.

[36] Bill Clinton, Executive Order. "Federalism." Executive Order 13083. *Federal Register*, 19 May 1998.

[37] *"Welfare Reform: Financial Eligibility Rules and Benefit Amounts under TANF (Temporary Assistance for Needy Families),"* (Washington, D.C.: Congressional Research Service, CRS 98-480 EPW, June 28, 1998).

[38] *ibid.*

[39] *Alaska, Delaware, California, Connecticut, Hawaii, Massachusetts, Oregon, Rhode Island, Vermont, Washington and the District of Columbia.*

[40] Public Law 52-718, §8 (1938).

[41] *"In a number of instances there have been reports that workers who had been receiving less than [the new minimum wage] had been laid off, and replaced by more efficient workers." Department of Labor, Interim Report of the Administrator of the Wage and Hour Division, for the Period August 15 to December 31, 1938, Washington, D.C., January 1939.*

[42] 29 U.S.C. §164(b).

[43] 29 U.S.C. §164(c)(2).

[44] 42 U.S.C. §2000e-8.

[45] 29 U.S.C. §667(a).

[46] 29 U.S.C. §667(b).

[47] *29 U.S.C. §667(c)(2).*

[48] Public Law 105-220 (August 7, 1998).

[49] Public Law 106-25 (April 29, 1999).

Appendix A

Counties and cities with populations greater than 10,000 and unemployment rates 9% or more

In the midst of the national economic boom, regional pockets of the economy are surprisingly weak. The following list comprises counties and cities (each with a population of at least 10,000 people) struggling with unemployment rates that are more than twice the national average. These localities are encountering great difficulty keeping their citizens productively employed. They face even greater challenges moving low-skilled people from welfare to work. Federal mandates on wages ignore these local labor market conditions and undermine governors' chances for success under welfare reform. A federally determined minimum wage cannot be sensitive to the varied economic conditions in these areas. On the contrary, these numbers support a powerful argument favoring state flexibility on the minimum wage.

County/City	State	Unemployment Rate
Luna	NM	36.1
Starr	TX	29.4
Colusa	CA	26.1
Maverick	TX	25.5
Mackinac	MI	22.1
Tulare	CA	20.9
Cheboygan	MI	19.7
Zavala	TX	19.4
Imperial	CA	19.1
Presque Isle	MI	19.0
Salinas City	CA	18.7
Willacy	TX	18.3
Sutter	CA	18.2
Kemper	MS	17.9
Swain	NC	17.9
Montmorency	MI	17.8
Lincoln	MT	17.6
Taylor	KY	17.2
West Carroll	LA	17.2
Fresno	CA	17.1
Merced	CA	17.1
Trinity	CA	16.7
Lancaster	VA	16.7
Lewis	KY	16.6
Glacier	MT	16.5
Kings	CA	16.2
Morgan	OH	16.2
Gulf	FL	16.1
Green	KY	16.0
Roane	WV	15.8
Madera	CA	15.5
Fresno City	CA	15.4
Russel	KY	15.3
Duval	TX	15.2
Navajo	AZ	15.1
Hidalgo	TX	15.1
Noxubee	MS	15.0
Shoshone	ID	14.9
Cape May	NJ	14.8
Kern	CA	14.7
Magoffin	KY	14.7
Monterey	CA	14.5
Apache	AZ	14.4
Plumas	CA	14.3
Idaho	ID	14.3
Martin	KY	14.2
Worcester	MD	14.2
Braxton	WV	14.2
Dimmit	TX	14.1
Lamb	TX	14.1

County/City	State	Unemployment Rate
Glenn	CA	14.0
Siskiyou	CA	14.0
Barbour	WV	14.0
Yuma	AZ	13.9
Taney	MO	13.9
Sanders	MT	13.9
Mason	WV	13.9
Stone	MO	13.8
Pend Oreille	WA	13.8
Jefferson	GA	13.7
Sevier	TN	13.7
Clay	WV	13.6
Wilcox	AL	13.4
Kenai Peninsula	AK	13.4
Buchanan	VA	13.4
Meigs	OH	13.3
Monroe	AL	13.2
Mingo	WV	13.2
Carter	KY	13.1
Marion	SC	13.1
Fentress	TN	13.1
Dickenson	VA	13.1
Stanislaus	CA	13.0
Concordia	LA	13.0
Vinton	OH	13.0
Zapata	TX	13.0
Lincoln	WV	13.0
McDowell	WV	13.0
Lewis	NY	12.8
Tallahatchie	MS	12.7
Camden City	NJ	12.7
Newton	TX	12.7
Holmes	MS	12.6
Adams	OH	12.4
Morris	TX	12.4
Compton City	CA	12.3
Bonner	ID	12.3
Lewis	TN	12.3
Reeves	TX	12.3
Ward	TX	12.3
Adams	WA	12.3
Summers	WV	12.3

County/City	State	Unemployment Rate
Wetzel	WV	12.3
Garrett	MD	12.2
Big Horn	MT	12.2
Andrews	TX	12.2
Terrell	GA	12.1
Northumberland	VA	12.1
Malheur	OR	12.0
Yancey	NC	11.9
Crook	OR	11.9
Jefferson	NY	11.8
Niagara Falls	NY	11.8
Greenbrier	WV	11.8
Modesto City	CA	11.7
Alcona	MI	11.7
Latimer	OK	11.7
Baker	OR	11.7
Rolette	ND	11.6
Jasper	TX	11.6
Grant	WA	11.6
Okanogan	WA	11.6
St. Mary	LA	11.5
Klamath	OR	11.5
Klickitat	WA	11.5
Adair	KY	11.4
Clare	MI	11.4
Roscommon	MI	11.4
Marshall	MN	11.4
Monroe	KY	11.3
Catahoula	LA	11.3
Monroe	OH	11.3
Lawrence	KY	11.2
Humphreys	MS	11.2
Sunflower	MS	11.2
Taos	NM	11.2
Lea	NM	11.2
Fayette	WV	11.2
Mississippi	AR	11.1
Iosco	MI	11.1
Essex	NY	11.1
San Benito	CA	11.0
Oceana	MI	11.0
Douglas	OR	11.0

County/City	State	Unemployment Rate
Wayne	TN	11.0
Bakersfield City	CA	10.9
Lake	MI	10.9
Stewart	TN	10.9
Ector	TX	10.9
Franklin	WA	10.9
Crenshaw	AL	10.8
Franklin	NY	10.8
Washington	AL	10.7
Lassen	CA	10.7
San Joaquin	CA	10.7
Arenac	MI	10.7
Emmet	MI	10.7
Cocke	TN	10.7
Grant	WV	10.7
Randolph	WV	10.7
Ritchie	WV	10.7
Taylor	WV	10.7
Coahoma	MS	10.6
Jim Wells	TX	10.6
Nicholas	WV	10.6
Logan	WV	10.6
Morehouse	LA	10.5
Ogemaw	MI	10.5
Huntingdon	PA	10.5
Hockley	TX	10.5
Lewis	WV	10.5
Burke	GA	10.4
Washington	ME	10.4
Claiborne	MS	10.4
Carroll	TN	10.4
Duchesne	UT	10.4
Albany City	GA	10.3
Kootenai	ID	10.3
Chaves	NM	10.3
Mitchell	NC	10.3
Noble	OH	10.3
Williamsburg	SC	10.3
Chippewa	MI	10.2
Clarke	MS	10.2
Youngstown City	OH	10.2
Panola	TX	10.2

County/City	State	Unemployment Rate
Chelan	WA	10.2
Ashland	WI	10.2
Ketchikan Gateway	AK	10.1
Del Norte	CA	10.1
St. James	LA	10.1
Marlboro	SC	10.1
Boone	WV	10.1
Valdez-Cordova	AK	10.0
Bradley	AR	10.0
St. Francis	AR	10.0
Jefferson Davis	MS	10.0
St. Lawrence	NY	10.0
Josephine	OR	10.0
Hardeman	TN	10.0
Wyoming	WV	10.0
Santa Cruz	AZ	9.9
Desha	AR	9.9
Hardee	FL	9.9
Caldwell	LA	9.9
Patterson	NJ	9.9
Pike	OH	9.9
Hood River	OR	9.9
Morgan	KY	9.8
Gladwin	MI	9.8
Roosevelt	MT	9.8
Flathead	MT	9.8
Passaic City	NJ	9.8
Matagorda	TX	9.8
Sumter	AL	9.7
Shasta	CA	9.7
Geary	KS	9.7
Kalkaska	MI	9.7
Marion	MS	9.7
Wyoming	NY	9.7
Allegany	NY	9.7
Webster	WV	9.7
Price	WI	9.7
Butler	AL	9.6
Mariposa	CA	9.6
Dorchester	MD	9.6
Newark City	NJ	9.6
Gallia	OH	9.6

County/City	State	Unemployment Rate
Choctaw	OK	9.6
Coos	OR	9.6
Haywood	TN	9.6
Matanuska-Susitna Census Area	AK	9.5
Lake	CA	9.5
Mendocino	CA	9.5
Dougherty	GA	9.5
Flint City	MI	9.5
Buffalo City	NY	9.5
Lee	VA	9.5
Saginaw	MI	9.4
Prentiss	MS	9.4
Yalobusha	MS	9.4
Washington	MS	9.4
Guernsey	OH	9.4
Scioto	OH	9.4
Wasco	OR	9.4
San Juan	UT	9.4
Juneau	WI	9.4
Washburn	WI	9.4
Alpena	MI	9.3
Iron	MI	9.3
Tishomingo	MS	9.3
Curry	OR	9.3
Clearfield	PA	9.3
Graham	AZ	9.2
Chicot	AR	9.2

County/City	State	Unemployment Rate
Santa Cruz	CA	9.2
South Gate City	CA	9.2
Madison	LA	9.2
Antrim	MI	9.2
Manistee	MI	9.2
Adams	MS	9.2
Leflore	MS	9.2
Pittsburg	OK	9.2
Benton	TN	9.2
Mecklenberg	VA	9.2
Breathitt	KY	9.1
Aitkin	MN	9.1
Wayne	MS	9.1
Jefferson	OR	9.1
Lincoln	OR	9.1
Linn	OR	9.1
Jefferson	PA	9.1
Gordon	GA	9.0
Mitchell	GA	9.0
Muhlenberg	KY	9.0
Ohio	KY	9.0
Franklin	LA	9.0
Benzie	MI	9.0
Cumberland	NJ	9.0
Val Verde	TX	9.0
Hancock	WV	9.0
Upshur	WV	9.0

Source: The Local Area Unemployment Crisis, (Washington, D.C.: Employment Policies Institute, July 1999). All unemployment statistics are from March 1999 — Bureau of Labor Statistics

Appendix B
Public Support for State Flexibility

Six out of ten Americans think their state lawmakers — not the U.S. Congress — should set the appropriate minimum wage for their states, according to four national polls commissioned by the Employment Policies Institute. Listed below are the specific poll questions that were asked of more than 4,000 American adults, along with the results of each poll. Note the consistent, strong support for state authority over minimum wage rates.

Opinion Research Corporation Caravan Poll

Conducted May 20 through May 23, 1999 (Nationwide sample of 1010 adults 18+; the margin of error is +/- 3%)

Do you believe the minimum wage for your own state should be set by your Governor and state legislators or by the federal government?

Governor and State Legislators 57%
Federal Government 39%
Don't Know 4%

Opinion Research Corporation Caravan Poll

Conducted May 27 through May 30, 1999 (Nationwide sample of 1010 adults 18+; the margin of error is +/- 3%)

Should the appropriate minimum wage for your own state be set by your Governor and state legislators or by the federal government?

Governor and State Legislators 62%
Federal Government 33%
Don't Know 5%

Yankelovich Partners Omnibus Survey

Conducted June 3 through June 6, 1999 (Nationally representative sample of 1000 adults 18+; the margin of error is +/- 3%)

Should the appropriate minimum wage for your state be set by state legislators or by the U.S. Congress?

State Legislators 64%
U.S. Congress 31%
Don't Know 5%

Opinion Research Corporation Caravan Poll

Conducted June 24 through June 27, 1999 (Nationwide sample of 1010 adults 18+; the margin of error is +/- 3%)

Do you believe the appropriate minimum wage for your state should be set by state legislators or by the U.S. Congress?

State Legislators 59%
U.S. Congress 36%
Don't Know 5%

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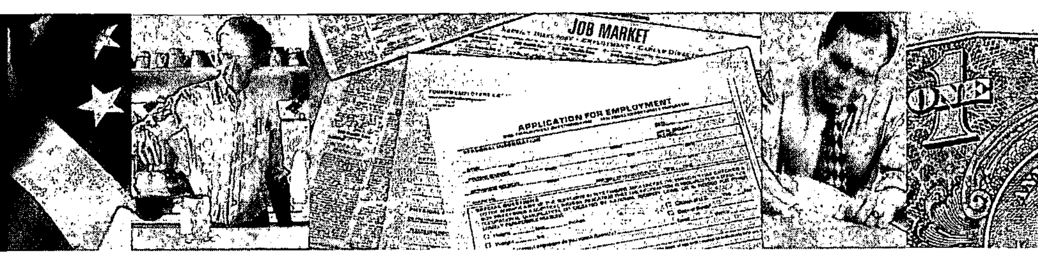

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