

Statement of William E. Spriggs

“The Recurring Struggle of the Minimum Wage”

testimony prepared for the

U.S. House of Representatives Education and Labor Committee

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Hearing on

*Gradually Raising the Minimum Wage to \$15: Good for Workers, Good for Businesses, and Good for the Economy*

February 7, 2019

Thank you for the invitation to testify before your committee regarding the *Raise the Wage Act* (H.R. 582), legislation to raise the federal minimum wage. I am pleased to offer this testimony on behalf of the AFL-CIO, America’s house of labor, representing the working people of the United States; and based on my expertise as a professor in Howard University’s Department of Economics and as a former Assistant Secretary for Policy in the Department of Labor. I want to state clearly that the AFL-CIO endorses this legislation.

It is a little over nine and one-half years since Congress raised the federal minimum wage--the second longest period since the Fair Labor Standards Act of 1938 became law. If by June 15, Congress does not act, the record will be broken. Today, my testimony will recall the history of the passage of the Federal Labor Standards Act. I will draw particular attention to the lengthy debates driven by racial animus from Southern Democrats to understand disparities created by the compromises made to pass that legislation in 1938. In addition, I discuss why the Civil Rights community of that era objected to regional minimum wages. Since then, Congress has expanded coverage and improved standards, and those improvements helped create a healthy expanding economy. The erosion of those standards on wages, overtime protection and the right to collective bargaining have made it harder for the U.S. economy to deliver rising living standards for all Americans.

Those original compromises, however, were not benign. They have had long lasting impacts in creating substantial racial and gender inequalities. Before the FLSA became law, many of those compromises had already become the framework of labor law protections; first in the passage of the National Labor Relations Act and the Social Security Act in 1935. One of

those compromises, fought ardently by the Civil Rights movement of that era, was the exclusion of agricultural and most service workers, especially domestics, from labor law protections. Those exclusions, argued for by Southern Democrats with heightened animus toward African Americans, lowered labor standards in the South by excluding a large share of its workforce; and of course, reinforced the ugly racial norms of the South by locking out African American workers from protections under these federal laws. The reason this exclusion was so specific to the South is that during the 1930 to 1940 period, 57 percent of America's farm population lived in the South, and 51 percent of its agricultural workers were African American. The reason the exclusion was so devastating to African Americans is that from 1930 to 1940, the share of Southern Blacks in agriculture and domestic service was over 40 percent; during a period many Blacks migrated out of the South.<sup>1</sup> Because many Latino workers were agricultural workers at the time, this also hurt Latino workers. This same Southern exceptionalism argument was raised in the fight for the FLSA, but instead in the guise of regional wage variations that had been promoted within a predecessor law--the National Industrial Recovery Act. But, on the issue of regional minimum wages, the Civil Rights community would prevail, and single federal minimum wage became law. It is one of the victories that made the New Deal an equalizing force.

## **I. Understanding the Context of the FLSA**

The Great Depression put downward pressure on wages and prices, and the continued threat of deflation was understood as a problem in creating a sustained recovery. An early attempt to boost wages, the National Industrial Recovery Act, passed in 1933 was ruled unconstitutional in 1935. That Act included a wage setting mechanism to prevent the continued downward spiral in wages, and demand. Originally Southern Democrats argued for racially disparate wage standards but compromised to instead have regional and occupational standards that could have the effect of maintaining racial disparities. The Fair Labor Standards Act of 1938 was successful in addressing the Constitutional issues raised by the National Recovery Administration, establishing a floor for wages, establishing a regular work week by mandating over-time wage rates and prohibited the use of child labor.

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<sup>1</sup> Sean Farhang and Ira Katznelson, "The Southern Imposition: Congress and Labor in the New Deal and Fair Deal," *Studies in Amer. Political Dev.* 19 (Spring 2005), 15.

The Fair Labor Standards Act (FLSA), passed in June 1938 under President Roosevelt, established a minimum wage of \$0.25 an hour, effective October 24, 1938. The Act called for the minimum wage to reach \$0.40 an hour by October 25, 1945. Raises since then have required amendments to the Act. Raising the minimum wage is not something Congress has done lightly. Since June 1938, Congress has voted only nine times to raise the minimum wage. Yet, the early votes on raising the minimum wage showed the national consensus on the importance of the minimum wage and the need to maintain a decent floor for wages.

### **Congressional Votes to Raise the Minimum Wage**

Year	President	House Republicans' Pct. Yeas	Pct. Increase in Minimum Wage
2007	George W. Bush	41.41%	40.78%
1996	Bill Clinton	40.26%	21.18%
1989	George H. W. Bush	79.40%	26.90%
1977	Jimmy Carter	12.10%	45.70%
1974	Richard Nixon	85.60%	43.80%
1966	Lyndon Johnson	60.50%	28.00%
1961	John Kennedy	19.30%	25.00%
1955	Dwight Eisenhower	87.20%	33.30%
1949	Harry Truman	91.40%	87.50%

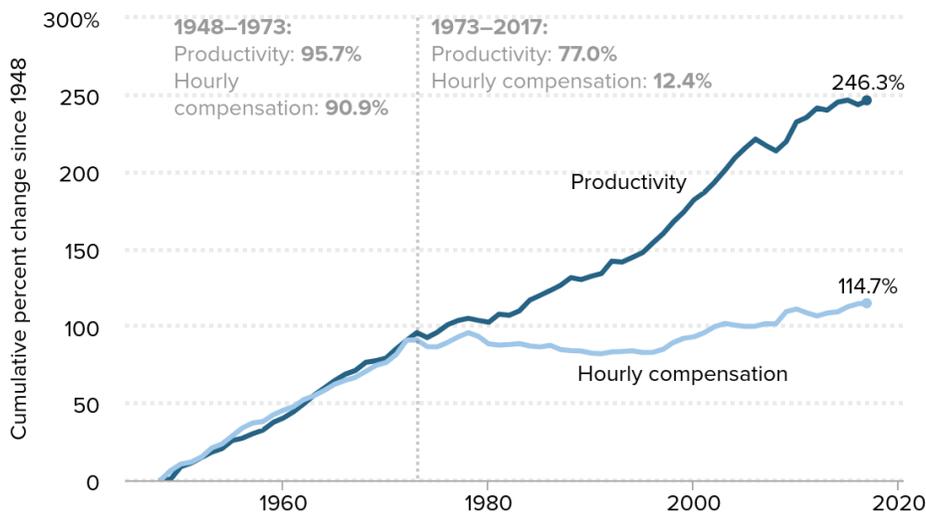
Except for the minimum wage raises under Presidents Kennedy and Jimmy Carter, in its first 51 years raising the minimum wage was viewed as a bi-partisan matter—receiving strong support from House Republicans and Democrats. Most notably, in 1949, the first update to the FLSA, over 90 percent of the House Republicans voted for the largest percent increase in the minimum wage Congress has passed. Republicans and Democrats as President have signed laws increasing the minimum wage.

It would be just as easy to suggest that since 1977, the minimum wage has become a contentious issue, and the old bi-partisan coalition aimed at insuring a decent wage for all workers has faded into a partisan battle. The Post World War II view of protecting the purchasing power of workers on a bipartisan basis, both through meaningful labor standards and protecting unions has been lost. An economy that use to deliver rising wages based on rising productivity has given way to stagnant wages and a growing gap between wages and productivity (Figure 1) and higher levels of unemployment (Figure 2).

Figure 1

### The gap between productivity and a typical worker's compensation has increased dramatically since 1973

Productivity growth and hourly compensation growth, 1948–2017

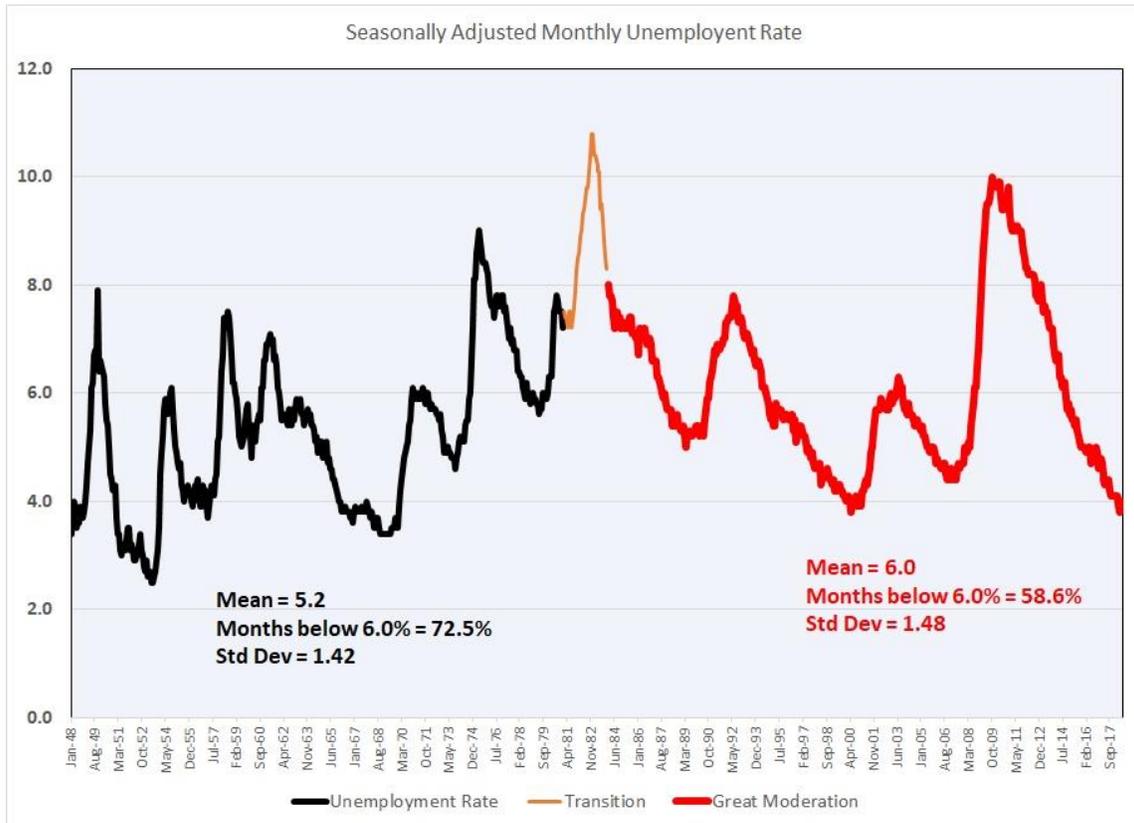


**Notes:** Data are for compensation (wages and benefits) of production/nonsupervisory workers in the private sector and net productivity of the total economy. “Net productivity” is the growth of output of goods and services less depreciation per hour worked.

**Source:** EPI analysis of unpublished Total Economy Productivity data from Bureau of Labor Statistics (BLS) Labor Productivity and Costs program, wage data from the BLS Current Employment Statistics, BLS Employment Cost Trends, BLS Consumer Price Index, and Bureau of Economic Analysis National Income and Product Accounts

Updated from Figure A in *Raising America's Pay: Why It's Our Central Economic Policy Challenge*

Figure 2



In revisiting how the minimum wage in the FLSA took shape, the preamble to the FLSA of 1938 tells us how Congress viewed the economic problem:

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

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable, to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.<sup>2</sup>

<sup>2</sup> Act of June 25, 1938 (Fair Labor Standards Act), Pub. L. 75-718, 52 Stat 1060, June 25, 1938, p. 1060 <https://www.loc.gov/law/help/statutes-at-large/75th-congress/session-3/c75s3ch676.pdf>

Congress' purpose was to prevent competition based on lowering wage costs, based on the understanding that the uneven bargaining power between workers and employers could lead to workers accepting wages too low to maintain a decent standard of living. Testimony heard by Congress, including from business owners, argued that such competition hurt the economy by lowering purchasing power, and let firms profit by increasing demand for government relief. Lengthy testimony was given by Isadore Lubin, Commissioner of the U.S. Bureau of Labor Statistics on an extensive study of lower wage working American families to understand their living conditions. Special focus was given to whether the wages of the workers allowed them to buy the minimal recommended diet, and to access basic needs like indoor plumbing and electricity. Here, is one of Commissioner Lubin's key findings:

“Food is the most indispensable factor in the family budget. The average family spends about one-third of its income on food. This means about \$8 a week for an average family of four persons. Now, what can the worker's family get for its \$8? We find that the market basket is heavily weighted with flour, potatoes, bread, and pork. It is only as family incomes increase that they can enjoy the luxury of green vegetables and fresh fruits, a greater variety of meats and larger quantities of milk and eggs. Despite the importance of milk to the health of our youngsters, let us not forget that 4 out of every 10 families consume less than 2 quarts of milk per person per week. The fact is that when we compare the amount of money spent for food by families of employed workers, with the retail cost of the items that are necessary to maintain a minimum adequate diet, we find that in some cities a third of the employed workers' families do not have enough money to buy the foods that are necessary for minimum adequate diet.”

The study also pointed to understanding how a boost in the wages of those workers would translate into increased demand for clothing, and thus demand for textile workers.<sup>3</sup> The close attention to wages that would boost workers to a standard of living to meet basic needs, explains why during the Post World War II consensus the federal minimum wage could support a family above poverty. It is only when the minimum wage became a partisan issue in the 1980s that the minimum wage lost its relationship to living standards (Figure 3). Since 1980, the once strong relationship between an expanding economy, falling unemployment and lower poverty levels became weak. Improvements in the living standards of lower income working families no longer comes from work, but from transfers, primarily through Medicaid and Medicare. The expansion of the 1980s made little progress on lowering poverty, as did the expansion from 2001 to 2008.

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<sup>3</sup> Statement of Isadore Lubin, Fair Labor Standards Act of 1937: Joint Hearings Committee on Education and Labor, United States Senate, and the Committee on Labor, House of Representatives, Seventy-Fifth Congress First Session, on S. 2475 And H. R.7200, Bills To Provide For the Establishment of Labor Standards in Employments in and Affecting Interstate Commerce and for Other Purposes (Part 1 of 3), June 2 To June 5, 1937. Pages 309-363.

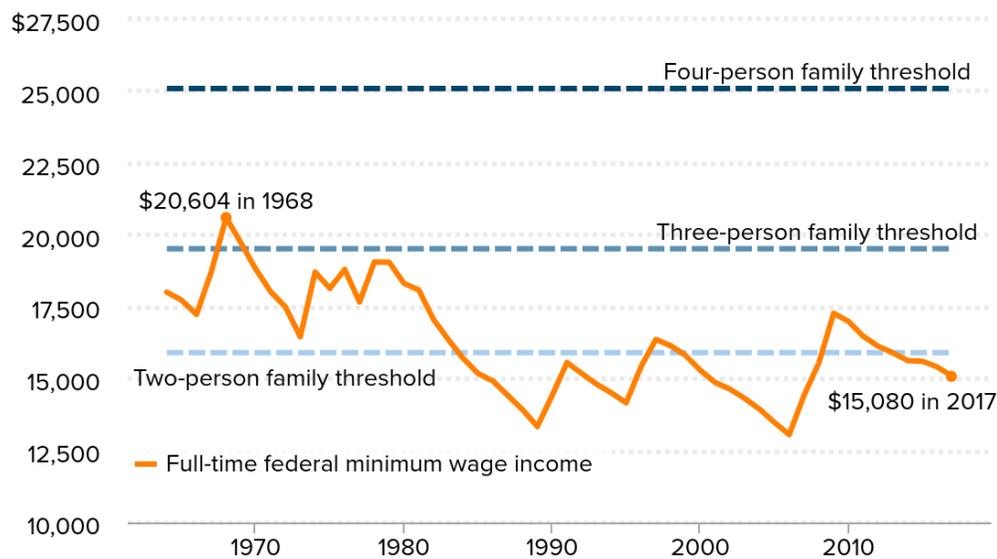
The notable exception was the 1990s. The expansion since the Great Recession has only lowered poverty rates since record months of job growth were first reached in 2015 and five states raised their state minimum wage laws so for the first time ever, over half the states were above the federal \$7.25 an hour minimum wage (Figure 4).

Economic research suggests a significant portion of wage inequality that grew in the 1980s between earners at the bottom ten percent of the wage distribution and median wage earners was because the federal minimum wage was unchanged between 1981 and 1990.<sup>4</sup> Further, declines in the purchasing power of the minimum wage are also significant in explaining the growth in overall income inequality, as measured by the Gini coefficient, a broad measure of income inequality.<sup>5</sup>

Figure 3

### The federal minimum wage is currently a poverty wage

Annual wage income for a full-time federal minimum wage worker compared with various poverty thresholds (2017\$), 1964-2017

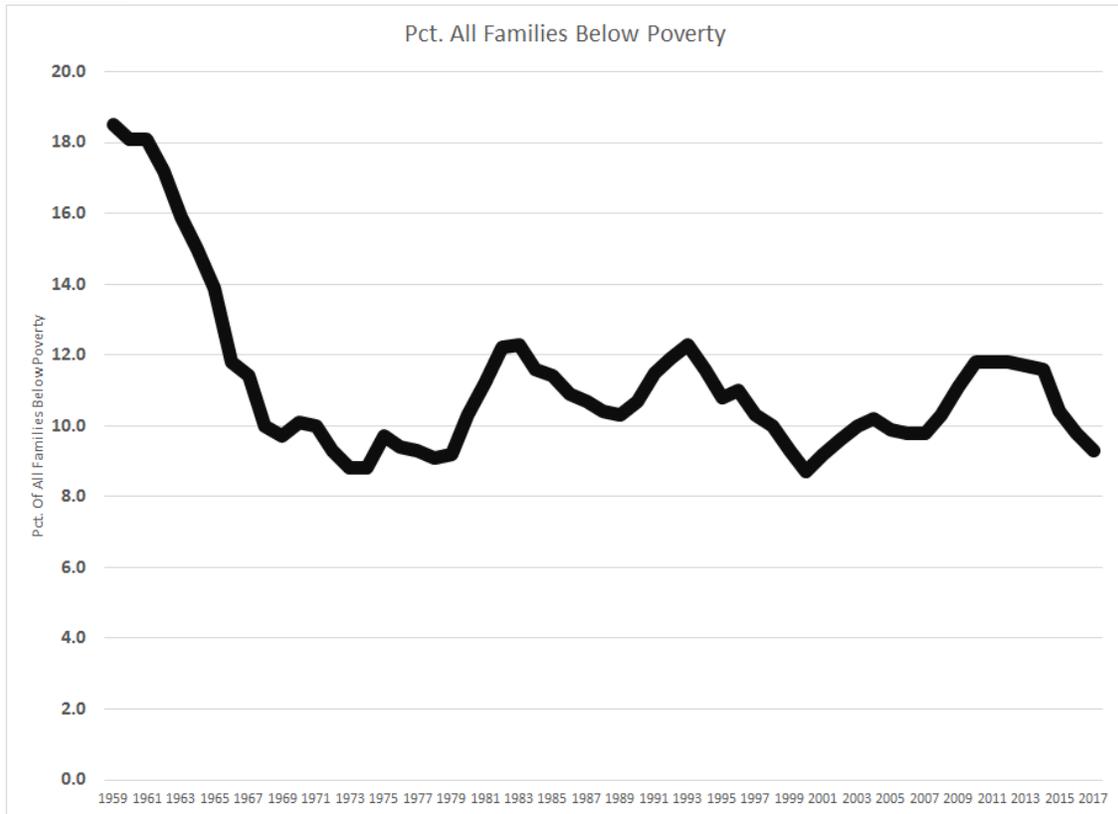


Source: Economic Policy Institute <https://www.epi.org/publication/the-erosion-of-the-federal-minimum-wage-has-increased-poverty-especially-for-black-and-hispanic-families/>

4. David H. Autor, Alan Manning & Christopher L. Smith, The Contribution of the Minimum Wage to US Wage Inequality over Three Decades: A Reassessment, 8 *Am. Econ. J. Applied Econ.* 58 (2016); John DiNardo, Nicole M. Fortin & Thomas Lemieux, Labor Market Institutions and the Distribution of Wages, 1973—1992: A Semiparametric Approach, 64 *Econometrica* 1001 (2016); David S. Lee, Wage Inequality in the United States During the 1980s: Rising Dispersion or Falling Minimum Wage?, 114 *Q.J. of Econ.* 977 (1999).

5. FLORENCE JAUMOTTE & CAROLINA OSORIO BUITRON, INT’L MONETARY FUND, INEQ. AND LAB. MKT. INST. (2015), <https://www.imf.org/external/pubs/ft/sdn/2015/sdn1514.pdf>; Evelyn Lamb, *Ask Gini: How to Measure Inequality*, *SCI. AM.* (Nov. 12, 2012), <https://www.scientificamerican.com/article/ask-gini/>.

Figure 4



## II. Issues in Passing the Federal Labor Standards Act

A key issue argued in the hearings in 1937, was to address the proposal of regional variation in the minimum wage. The careful testimony of Robert Johnson, the president of Johnson & Johnson was very telling. His company, the maker of surgical dressings like bandages and gauze, owned and operated textile mills in the North and the South. This gave Johnson a clear knowledge of the implication of letting the minimum wage be lower in the South. Yet, he was clear that the wage needed to be a federal wage. First, it is important to note that this corporate president understood the fallacy of wages designed to lower costs and the needs of the economy to have a vibrant market place gained through well paid workers could not be aligned.

“The prosperity of all American industry and commerce rests in the final analysis of the buying power of the masses and therefore we have a direct and selfish interest in the welfare of these people. Of course, it is difficult for men who are devoting every hour of their lives to the development of a private business to see clearly the relation between the prosperity of their own business and the prosperity of the Nation as a whole. .... Liberal-

mindful business leaders throughout the country believe in the principle of shorter hours and higher wages and while some years ago the number of such men was unfortunately too few, today their ranks are being augmented each week.”<sup>6</sup>

Johnson, as did others, questioned whether we had areas of low cost living, or areas of low wages. His view was the nation’s economy could only be healthy by raising the wages and the living standards everywhere. His testimony was explicit about differences in his mills in the South and the North and how overall costs varied because of the quality of machines and the efficiency of management.

Yet, a subtext in the discussion arguing for regional cost of living adjustments was open discussion of whether costs of living differed by race, as the concept of sub-minimums confused being low-income with low costs-of-living. Here was an exchange between BLS Commissioner Lubin and Congressman Ramspeck (D-GA):

“Representative Ramspeck: What is the idea of this comparison of the white and colored wages here in your chart?

Mr. Lubin: Those are not wages. They are actual family income. In making a study of the cost of living in those areas where the colored population was an important part of the population we made studies of both the black families and the white families.

Representative Ramspeck: Did you find any difference in the cost of living?

Mr. Lubin: The actual cost of living?

Representative Ramspeck: Yes.

Mr. Lubin. Well, they both pay about the same price for a loaf of bread, they both pay the same price for the same suit of clothes, they both pay the same price for the same pair of shoes. In terms of the prices they paid for the things they bought they had to pay the same prices as the white people.

Representative Ramspeck. What about the rents?

Mr. Lubin. For the same kind of a house that the white families got they had to pay the same rent.”<sup>7</sup>

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<sup>6</sup> Statement of Robert Johnson, President of Johnson & Johnson, FAIR LABOR STANDARDS ACT OF 1937: JOINT HEARINGS COMMITTEE ON EDUCATION AND LABOR UNITED STATES SENATE AND THE COMMITTEE ON LABOR HOUSE OF REPRESENTATIVES SEVENTY-FIFTH CONGRESS FIRST SESSION BEFORE THE ON S. 24.75 and H. R. 7200 BILLS TO PROVIDE FOR THE ESTABLISHMENT LABOR STANDARDS IN EMPLOYMENTS IN AND AFFECTING INTERSTATE COMMERCE AND FOR OTHER PURPOSES (PART 1 to 3) JUNE 2 to June 5, 1937. Pages 91-125

<sup>7</sup> FAIR LABOR STANDARDS ACT JOINT HEARINGS, P. 349

In the floor debate, Southern Democrats were clear on their fear that equal treatment of white and African American workers would threaten the subordinate role of African Americans in the South. Representative Edward Cox (D-GA) stated:

“...organized Negro groups of the country are supporting [the FLSA] because it will . . . render easier the elimination and disappearance of racial and social distinctions, and . . . throw into the political field the determination of the standards and the customs which shall determine the relationship of our various groups of people in the South.”<sup>8</sup>

The initial proposal for the Fair Labor Standards Act followed the framework established by the NIRA. The NIRA allowed for wages to be set by occupation and region. The Civil Rights community feared the FLSA continuing that pattern by including regional and occupation, because the NRA wage codes repeatedly pushed back wages for Black workers.

The frustration with the New Deal and protections for African American workers came from battles over the NLRA and Social Security.<sup>9</sup> Southern firms lobbied to pay different wages by race under the NIRA.<sup>10</sup> While encoding a racial wage difference was rejected in drafting language for NIRA, the Act did adopt occupation and regional categories for wages that netted a disproportionate effect similar to that of the racial categories.<sup>11</sup> The experience of NIRA showed that Southern Democrats would cooperate with the New Deal if it did not threaten racial order in the South.<sup>12</sup> The compromise reached with the Social Security Act to create a new federal income insurance program at the price of excluding a disproportionate share of African American workers was one that had already been reached with the passage of NIRA.<sup>13</sup>

Yet, African American leaders voiced strong opposition to the disparate impacts of the Social Security Act and other provisions of the New Deal.<sup>14</sup> Ira De A. Reid, of the National

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<sup>8</sup> *Congressional Record*, 75th Cong., 2nd sess., 1937, 82:442 (appendix) as quoted by Farhang and Katznelson, *supra* at note 1.

<sup>9</sup> Editorial, *Social Security—For White Folk*, 42 *CRISIS* 80 (1935); Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 *OHIO ST. L.J.* 104-105 (2011).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 104–06.

<sup>12</sup> *Id.* at 99.

<sup>13</sup> *Id.* at 125; see also Ira Katznelson, Kim Geiger & Daniel Kryder, *Limiting Liberalism: The Southern Veto in Congress, 1933–1950*, 108 *POL. SCI. Q.* 283, 284–85 (1993) (mapping the political compromises made by Democrats through legislative veto). Richard Rodems & H. Luke Shaefer, *Left Out: Policy Diffusion and the Exclusion of Black Workers from Unemployment Insurance*, 40 *Soc. Sci. Hist.* 385, 388 (2016); Larry DeWitt, *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, 70 *Soc. Security Bull.* 49, 52 (2010); Gareth Davies & Martha Derthick, *Race and Social Welfare Policy: The Social Security Act of 1935*, 112 *Pol. Sci. Q.* 217, 217 (1997).

<sup>14</sup> Raymond Wolters, *The New Deal and the Negro*, in *THE NEW DEAL* 175 (John Braeman, Robert H. Bremmer

Urban League, doubted the willingness of the National Recovery Administration to break the Southern “code” or racial wage disparities.<sup>15</sup> George Edmund Haynes, who had helped co-found the National Urban League, testified to the United States Senate and House on the Social Security Act, pointing to the disparate impact of giving states responsibility for administering unemployment insurance and Aid to Families with Dependent Children provisions and to the disparate impact of the exclusion of agricultural and domestic workers from Social Security’s benefits.<sup>16</sup> His piece, *Lily-White Social Security*, for the NAACP’s magazine *Crisis*, clearly showed his view about these exclusions.<sup>17</sup> Charles Hamilton Houston, head of the NAACP Legal Defense Fund (LDF), testified before the United States House on behalf of the NAACP LDF and the NAACP, making points about the disparate share of African Americans who would be excluded because they were either sharecroppers, and therefore not employees under the Act, agricultural workers, or domestics.<sup>18</sup> He further argued that the low pay earned by African Americans made tying benefits to wages a double penalty for African American workers who faced wage discrimination on the job.<sup>19</sup> The NAACP’s editorial on the Act, put it simply as *Social Security—for White Folk*.<sup>20</sup>

The Joint Hearings on the Fair Labor Standards Act heard testimony from John P. Davis, of the National Negro Congress, explaining how the NRA occupation titles and geographic divisions were drawn arbitrarily to create racial wage gaps. Here is what Davis testified:

“I have had a deal of experience with the N. R. A. I have carefully studied its several hundred codes. I appeared at more than a hundred of its code hearings. I studied in the field the effects of scores of these codes on Negro workers; and I wish now briefly to give to this committee the benefit of that experience. In the period of N. R. A. code hearings Negro workers were helpless to defend themselves against demands made, especially by representatives of southern industry, for longer hours and lower wages for those occupations, industries, and geographical divisions of industries in which the predominant, labor supply was Negro. Unorganized and without perceptible collective-bargaining power, the Negro worker was soon singled out by pressure groups of employers as the legitimate victim for all manner of various differentials.

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& David Brody eds., 1975) (discussing criticism of the New Deal and several of its programs by the NAACP and other African American leaders).

<sup>15</sup> Ira De A. Reid, “Black Wages for Black Men,” *OPPORTUNITY* 12 (March 1934) 78.

<sup>16</sup> Economic Security Act: Hearings on H.R. 4120 Before the H. Comm. on Ways and Means, 74th Cong. 108 (1935).

<sup>17</sup> George Edmund Haynes, *Lily-White Social Security*, 42 *CRISIS* 85 (1935).

<sup>18</sup> Perea, *supra*, note 9 at 112–13.

<sup>19</sup> *Id.*

<sup>20</sup> Editorial, *Social Security—For White Folk*, 42 *CRISIS* 80 (1935).

In some 670 N. R. A. codes four major types of differentials were created. The first was the occupational differential established in the cotton textile code. Outside crews and cleaners were first denied the benefits of a minimum-wage or maximum-hours provision and later, after much pressure, granted a wage of \$3 a week less than the \$12 a week minimum wage for the South. This differential bore no relationship to previously existing wage scales for the industry between this group of workers and other textile workers. The only reason for it was that most of the workers in this occupation were Negro and were unorganized. The occupational differential was used as a device to discriminate against scores of thousands of Negro workers in some 60 industries.

The next type of differential adopted in N. R. A. codes was that of the geographical differential. The fallacious reasoning was that it cost less to live in the South. But an examination of N. R. A. codes reveals the blunt fact that this differential was used primarily to deny benefits of minimum wages to Negro workers. First of all, the dividing line between the North and South varied from code to code, depending on the geographical location of the industry and the number of Negro workers employed in any particular area. In the fertilizer industry 94 percent of the labor supply is Negro. The State of Delaware was defined in this code to be in the South, where it was said it cost less to live and where, therefore, lower wages could be paid. But in 669 other codes Delaware was said to be in the North and subject to higher wage minima. ...

You referred, Congressman Dunn, to the steel industry, and to the Jones-Laughlin plant. Now, that the workers have collective bargaining, with Negro members in the union, collective bargaining will take care of the wage scales, without the aid of legislation. The organized workers will see to that. But in the N. R. A. code, in the steel industry, you had precisely this situation: Some 81 percent of the workers in the steel industry in Jefferson County, Ala., are Negro, and the percentages are rapidly, decreasing as you go further north. If you study the steel code which was adopted and which was in force during the N. R. A., you will see that a wage differential was directed against Jefferson County, Ala. They had some 12 or 16 of such geographical divisions graded precisely on the basis of the number of Negro workers in the several areas. ...

In these facts there rests a warning. Poverty is a highly contagious disease. Once you permit employer-pressure groups to secure exemptions and differentials affecting half a million Negro workers, you will find that the very exploitative conditions you hope to cure by this bill will not be cured. Instead, the growing impoverishment of Negro workers will be the ugly cancer preventing the improvement of the lot of a much larger number of white workers.”<sup>21</sup>

Davis feared the lobbying power of those who relied on Black labor to extend exemptions. Perhaps the most blatant were the several voices heard by the Joint Committee Hearing on the Fair Labor Standards Act from the turpentine industry. From the 1880s, the turpentine industry was notorious for its use of forced labor and the violation of peonage laws. Several federal investigations led to convictions of turpentine mill camp owners for violation of

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<sup>21</sup> FAIR LABOR STANDARDS ACT JOINT HEARING, p. 571-574.

peonage laws.<sup>22</sup> Of course, all members of the committee were not naïve to the reputation of that industry as we can see from this exchange:

“Representative Wood: Do you know anything about the turpentine business in Florida? Do you represent them too?”

Mr. Langdale: Yes; I represent them through the belt.

Representative Wood: I understood they took the Negroes off the train there and arrested them for vagrancy and forced them to work on the turpentine farm. Do you know anything about that?

Mr. Langdale: No, sir; I do not know that. As I say, my association represents the producers over the entire belt.

Representative Wood: Do you know of any practice like that?

Mr. Langdale: No, sir

Representative Wood: Do you know of it ever having been done?

Mr. Langdale: In Florida?

Representative Wood: Take the Negro and white men sometimes off the train, arrest them for vagrancy, and force them to work on the turpentine farm?

Mr. Langdale: I am sure that is not done, because if they are convicted they would be sent to the penitentiary, or some place, and they would have to work on the roads.

Representative Wood: This is just vagrancy, they are not going to the penitentiary for vagrancy.

Mr. Langdale: No, sir; they could not do that in Florida. I know that is not done in Florida.

Representative Wood: You do not know anything about that?

Mr. Langdale: I am sure that is not done, though.”<sup>23</sup>

Davis echoed sentiments from the Black community overall, that too much of the New Deal efforts excluded protections for Black workers. H.J. Ford, who also testified to the Joint Committee Hearing on the Fair Labor Standards Act, also felt the NRA ended up with racial wage differences. Ford would conclude his remarks to the Hearing:

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<sup>22</sup> Jerrell H. Shofner, Forced Labor in the Florida Forests 1880-1950, *JOURNAL OF FOREST HISTORY* 25 (January 1981): 14-25. Aaron Kyle Reynolds, *A LONG QUAVERING CHANT: PEONAGE LABOR CAMPS IN THE RURAL-INDUSTRIAL SOUTH 1905-1965*, Ph.D. Dissertation, University of Texas-Austin, (May 2013). Robert N. Lauriault, From Can't to Can't: The North Florida Turpentine Camp, 1900-1950, *THE FLORIDA HISTORICAL QUARTERLY* 67 (January 1989): 310-328.

<sup>23</sup> FAIR LABOR STANDARDS JOINT HEARING, p. 1036-1037.

“We suggest that there be no geographical or sectional wage differentials or no employee class differentials based on race or color.”<sup>24</sup>

In the final version of the bill, the AFL pushed for a single federal standard, aligning it with the Civil Rights community on that point. David Dubinsky, head of the International Ladies' Garment Workers' Union, commenting on proposals for lower regional wages for the South famously quipped that Southern congressman should therefore be paid less, too.

In June 1937, when the chair of the House Labor Committee, William Connery (D-MA) died, Representative Mary Norton (D-NJ), the first woman member of the Democratic Caucus in the House became the chair. As the first woman to chair this committee, she led the fight for the passage of the Fair Labor Standards Act of 1938, with no regional minimum wages—a single federal minimum wage. Despite earlier defeats, the Civil Rights community won on that point in the FLSA. But, the Southern Democrats did not give up that easily. The bill was held up twice in the House Rules Committee, which Southern Democrats controlled. The Rules Committee refused to get the bill to the House floor for a vote. Ever persistent, Representative Norton fought her male colleagues and worked to get the needed signatures of a majority of House members through a discharge petition to force the bills release to the House floor for a vote. Her tenacity insured that the FLSA would protect the whole country.

### **III. A Lasting Impact of Disparate Racial Impact from lack of Labor Protection**

Those who argue that the issue of excluding agricultural workers should not be viewed from a racial lens point to the fact that while roughly 65% of African Americans were excluded by the Social Security Act, African Americans actually comprised only about 23% of the agricultural and domestic workforce that was excluded from benefits.<sup>25</sup> The odd issue here is that more Whites had to suffer a loss of Social Security benefits to achieve the elimination of African Americans from the program. In the end, this exclusion affected 27% of Whites.<sup>26</sup> The lack of coverage meant the potential loss of about \$143 billion (in 2016 dollars) in Social Security Benefits to African American families, and close to \$15 billion to Latino families. The elderly who continued to work most likely absorbed these losses as diminished health and quality of life; reduced

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<sup>24</sup> FAIR LABOR STANDARDS ACT JOINT HEARING, p. 865

<sup>25</sup> DeWitt, *supra* note 13, at 53.

<sup>26</sup> *Id.*

consumption for those unable to work; or lost education by children who worked to help support the elderly.<sup>27</sup>

When Congress amended the Fair Labor Standards Act in 1966 to expand coverage to agricultural, restaurant, nursing home and other service sector workers, one of the largest concerns raised in 1938 by Black witnesses to the committee was finally addressed. The vote in Congress was bi-partisan, 60.5 percent of House Republicans voted for its passage. This was a major accomplishment of this Committee and was done while Congressman Adam Clayton Powell served as chair, the first African American to chair the Committee.

The impact of closing that gap was swift and significant. There were close to 9.1 million Americans who gained protection under the FLSA by the 1966 Amendment, about 21 percent of the American workforce.<sup>28</sup> Under the 1966 amendments, nearly one third of Black workers finally gained protection from the FLSA, compared to 18 percent of whites. Because a disproportionate share of African American workers remained in those excluded industries, the impact of the increases in the minimum wage helped to level the playing field for African American workers. The size of the minimum wage increase, and finally protecting a larger share of African Americans alone closed 20 percent of the Black-White earnings and income gap.

Estimates based on the differential impact of the 1966 Amendments by industry and wage levels within industry done by economists Ellora Derenoncourt and Claire Montialoux give a clear indication of how important the minimum wage protection was in setting wage floors.<sup>29</sup> They point to the large disadvantage that especially Black workers had in the industries that were not protected by the FLSA; their wages were significantly below the minimum wage that would protect them. As a result, the workers received an average 34 percent wage hike; and despite that substantial increase, Derencourt and Montialoux found modest to positive job gains in the industries that came under FLSA protection. Further, wage increases in all FLSA protected industries after the inclusion of the newly expanded 1966 covered industries were are similar through the 1970s. The researchers further tested their results, comparing those states that did not have state minimum wage laws with those that did when the 1966 Amendments expanded coverage. Again, they found

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27. David Stoesz, *The Excluded: An Estimate of the Consequences of Denying Social Security to Agricultural and Domestic Workers* 9 (Ctr. for Soc. Dev., Working Paper No. 16-17, 2016).

28 Expansion of Minimum Wage Law Approved, CQ ALMANAC, 1966, <https://library.cqpress.com/cqalmanac/document.php?id=cqal66-1300503>

29 ELLORA DERENONCOURT and CLAIRE MONTIALOUX, *Minimum Wages and Racial Inequality* (November 2018) [http://clairemontialoux.com/files/montialoux\\_jmp\\_2018.pdf](http://clairemontialoux.com/files/montialoux_jmp_2018.pdf)

that thought the wage effect was most binding where states did not have their own state minimum wage law, there were still no significant decreases in employment. Perhaps Derencourt and Montialoux's most interesting finding is that the FLSA coverage greatly reduced pay differences between whites and African Americans in the newly covered industries. In fact, 80 percent of the proportion of the racial wage gap that closed because of the expansion of the FLSA came within the newly protected industries.

In practical terms, the poverty rate for African American children in families fell from a staggering 65.6 percent in 1965 to 39.6 percent in 1969 after the minimum wage expansion in coverage and increase to its highest value in real terms. That caused the most rapid decline in childhood poverty experienced by African Americans. It would set a benchmark for African American child poverty that would not be broken until 1996.

As with the estimate of the gaps in Social Security coverage, examining the expansion of FLSA coverage in 1966 allows for a clear understanding of how costly the racial disparities can be to racial justice. For almost 28 years, the black-white wage gap was 20 percent larger than need be, simply from the compromise of which industries were protected under the FLSA of 1938.

#### **IV. The Work Ahead**

We can consider the initial disparities, perhaps as the price paid to move the policies forward. In the end, Social Security and the FLSA closed their coverage gaps. Still, work was needed to be done. It took Congresswoman Shirley Chisholm, the first African American woman to serve in Congress, to close an important gap in the 1970s, by fighting to expand coverage for domestic workers.<sup>30</sup> So, in the long run, the policies now are much fairer.

But, there is remaining the compromise made in the 1966 Amendments to extend coverage to restaurant workers that enshrined a lower and separate minimum wage for "tipped" workers. While concerns over racial fairness defeated regional wage differences in 1938, it came at the cost of excluding large numbers of African American agricultural and service workers; the compromise to finally protect restaurant workers lost an important protection—particularly for women-- by cementing a lower tipped wage. The origins of paying service workers with tips, rather than wages,

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<sup>30</sup> Premilla Nadasen *Citizenship Rights, Domestic Work, and the Fair Labor Standards Act* J. OF POLICY HIST. 24 (February 2012) 74-94.

is not innocuous. Like so many arguments for substandard working regulations, it too has a history tied to racism and the weak bargaining power of Black workers.<sup>31</sup>

Congress has a chance, after such a long period, to return American labor institutions to those that correlated rising productivity with rising wages and improved family incomes. In doing so, it has a chance to insure it does not repeat past errors, making compromises that exacerbate racial and gender wage gaps. Many economists now seriously consider the phenomena of monopsony wage behavior to be a growing problem.<sup>32</sup> Firms can extend their market power by creating non-compete agreements to limit worker mobility, or by constantly changing working hours to prevent workers from getting another job.<sup>33</sup> The minimum wage continues to be vital for workers who do not benefit from the strength to bargain collectively for wages.

The American people have sensed the unjust nature of firms paying lowing wages. Americans have spoken loudly. Some have done so through ballot initiatives to boost their state or local minimum wage, and others have done so through their state legislators and city councils. Most states have now set their minimum wages above the federal minimum wage, acting ahead of Washington, DC gridlock.

Unfortunately, an ugly reality remains. Because just about half of African American workers live in those states where the minimum wage remains the federal minimum wage of \$7.25 an hour a regional minimum wage would undoubtedly repeat a lower level of protection for African American workers. The gender wage gap would close from an increase in the minimum wage, and because the majority of African American workers are women, this is also a vital component in closing the black-white household income gap. Consequently, a sub-\$15 an hour regional wage based on a false sense of differences in costs of living, would exacerbate racial wage differences by having lower minimum wages for a disproportionately high share of African American workers. These states are also states with so-called “Right-to-Work” provisions that weaken collective

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<sup>31</sup> Saru Jayaraman, *Forked: a New Standard for American Dining* (Oxford University Press: New York, 2016)

<sup>32</sup> Alan Manning, *Monopsony in Motion: Imperfect Competition in Labor Markets* (Princeton University Press: Princeton, NJ, 2005)

<sup>33</sup> José Azar, Ioana Marinescu and Marshall Steinbaum, “Labor Market Concentration” (December 2017) NBER Working Paper No. 24147. Niki Dickerson Von Lockette and William E. Spriggs, “Wage Dynamics and Racial and Ethnic Occupational Segregation among Less-Educated Men in Metropolitan Labor Markets,” *THE REV. OF BLACK POL. ECONOMY*, 43 (Issue 1): 35-56. Alan Krueger and Eric Posner, *A Proposal for Protecting Low-Income Workers from Monopsony and Collusion*, Policy Proposal 2018-05 (The Hamilton Project: Washington, DC, February 2018)

[http://www.hamiltonproject.org/assets/files/protecting\\_low\\_income\\_workers\\_from\\_monopsony\\_collusion\\_krueger\\_posner\\_pp.pdf](http://www.hamiltonproject.org/assets/files/protecting_low_income_workers_from_monopsony_collusion_krueger_posner_pp.pdf)

bargaining and so provide less protection for workers' voice. The same states have lower replacement rates for unemployment insurance and lower shares of unemployed workers who have access to unemployment benefits. Further, these are states with the fewest state inspectors to enforce labor standards. A victory that the Civil Rights community of 1938 thought it won by beating back regional wage differences, could suddenly be taken back by those now promoting a regional sub-minimum wage.

New research has shown that the computer age and Amazon and ushered in a swift movement to national pricing. The effect of online shopping is that Walmart and Amazon compete in cyberspace and move prices quickly to be competitive with each other. But, most notably, Walmart does not have different prices for different regions of the country. And, the prices shown online reflect in-store pricing. There is little justification going forward for the case of regional living conditions justifying low wages.<sup>34</sup>

As in 1966, raising the minimum wage to reach \$15 an hour would have a disparate benefit to African Americans and go a long way to close racial wage and income gaps. Equally important, raising the minimum wage to reach \$15 an hour and finally equalizing the minimum for “tipped” workers would go a long way in closing the gender wage gap.

A large part of what is tearing America apart is a lack of understanding amongst us. When policies make the playing field uneven, unfortunately workers cannot always see why outcomes from hard work are so different. People who make less can be demonized to appear lazy. The inability of some workers to “play by the rules” and work hard to get ahead sets those who do succeed against those who fail. Yet, the disturbing truth is that not everyone plays by the same rules. At this time, it is important for Congress to seriously repair divisions; and, that requires looking to see whether rules exacerbate disparities. The other Black witness before the Joint Committee Hearing on the Fair Labor Standards Act in 1937 was Edgar G. Brown, who championed the legislation, but wanted enshrined several times in the Act language to ensure that the provisions of the act protect workers “regardless of race, creed, color or previous condition.” Brown further argued that, as the original bill proposed a board to review the wages, that the

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<sup>34</sup> ALBERTO CAVALLO, “More Amazon Effect: Online Competition and Pricing Behaviors,” presented at the Kansas City Federal Reserve Economic Symposium, Jackson Hole, WY (August 10, 2018) [https://www.kansascityfed.org/~media/files/publicat/sympos/2018/papersandhandouts/825180810cavallopaper.pdf?la=en](https://www.kansascityfed.org/~/media/files/publicat/sympos/2018/papersandhandouts/825180810cavallopaper.pdf?la=en)

language explicitly call for diversity on the board to insure representation of women and African Americans.<sup>35</sup>

The call for fairness remains valid. The need to return to our broader shared values that work must pay, and workers be rewarded for their efforts must be lifted. The *Raise the Wage Act* (H.R. 582) is legislation that puts America back on its path that playing by the rules and working hard is what we champion. So, this legislation, ending the tipped wage differential and without a sub-\$15 an hour regional minimum is something the AFL-CIO heartedly endorses as supporting American workers.

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<sup>35</sup> Statement of Edgar G. Brown, President, United Government Employees, Inc., FAIR LABOR STANDARDS ACT JOINT HEARING, p. 986-988.