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Minimum Wage, Maximum Intervention, Part 1

by Laurence M. Vance

Many workers in my state of Florida received a pay raise this past May. No, Floridians did not suddenly become more productive and demand a salary increase because they are now more valuable to their employers. And no, Florida businesses did not suddenly become more profitable and decide to share their good fortune with their employees.

The reason many workers in Florida received a pay raise is that they voted for it. The new Section 24 in Article X of the Florida constitution annually and permanently raises the minimum wage in the state of Florida. It resulted from a constitutional amendment approved by Florida voters back on November 2, 2004. There are actually seven paragraphs (a–g) in Section 24 regarding the minimum-wage increase. Paragraph (c) contains the substance of the new requirement:

Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida. Six months after enactment, the Minimum Wage shall be established at an hourly rate of \$6.15. On September 30th of that year and on each following September 30th, the state Agency for Workforce Innovation shall calculate an adjusted Minimum Wage rate by increasing the current Minimum Wage rate by the rate of inflation during the twelve months prior to each September 1st using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each adjusted Minimum Wage rate calculated shall be published and take effect on the following January 1st. For tipped Employees meeting eligibility requirements for the tip credit under the FLSA [Fair Labor Standards Act], Employers may credit towards satisfaction of the Minimum Wage tips up to the amount of the allowable FLSA tip credit in 2003.

What Florida voters saw on their ballots is this summary of the amendment:

This amendment creates a Florida minimum wage covering all employees in the state covered by the federal minimum wage. The state minimum wage will start at \$6.15 per hour six months after enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney's fees, and fines by the state. It forbids retaliation against employees for exercising this right. The impact of this amendment on costs and revenues of state and local governments is expected to be minimal.

What is missing from this summary is the amendment's impact on the businesses that pay some of their employees the minimum wage as well as its impact on unskilled workers trying to find employment. One does not have to be an economist to see the detrimental effects of minimum-wage legislation. An increase in the minimum wage will increase a business's labor costs.

It doesn't matter if anyone thinks that businesses exploit their workers and should pay them all a higher wage because they can "afford it." It is an undeniable fact that their labor costs will go up. And if a business's costs increase, that business's profits will go down unless it can offset its increased costs by raising prices, lowering expenses, increasing productivity, or making use of some combination of the three. If a reduction in profit cannot be offset by any of these measures, then a business can go out of business, live with a lower profit margin, or stagnate because of a lack of funds to expand its operations. The minimum wage causes unemployment because it prices unskilled workers out of the market.

Florida voters probably also did not realize that up until the passage of this amendment, Florida had no minimum-wage law. In fact, the states of Alabama, Arizona, Louisiana, Mississippi, South Carolina, and Tennessee currently do not have a minimum-wage law. There are also two states with a minimum wage that is less than the federal minimum: Kansas (\$2.65) and Ohio (\$4.25).

This does not mean that employers in states with no minimum wage can pay their employees Third World wages. The federal minimum wage of \$5.15 an hour applies to any employee in any state who is covered by the FLSA. And according to the U.S. Department of Labor,

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

The FLSA basically applies to everyone in the United States because employees of firms that are not covered enterprises under FLSA still may be subject to its minimum-wage, overtime-pay, and child-labor provisions if they are individually engaged in interstate commerce or in the

production of goods for interstate commerce or in any closely related process or occupation directly essential to such production. Such employees include those who work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross state lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

The reason Florida can raise its minimum wage is that the FLSA also permits states and cities to set their minimum wage higher than the federal minimum. In this case, the state minimum trumps the federal minimum. So, in addition to Florida, the following states have a minimum wage that is higher than the federal minimum: Alaska (\$7.15), California (\$6.75), Connecticut (\$7.10), Delaware (\$6.15), Hawaii (\$6.25), Illinois (\$6.50), Maine (\$6.35), Massachusetts (\$6.75), New York (\$6.00), Oregon (\$7.25), Rhode Island (\$6.75), Vermont (\$7.00), and Washington (\$7.35). The rate in the District of Columbia (\$6.60) is also above the federal minimum. And also like Florida, the District of Columbia and the states of Illinois, New York, Oregon, Vermont, and Washington just raised their minimum wage this year.

Increases in state minimum-wage rates are destined to continue. The new Florida minimum-wage law also contains an indexing provision. This means that Florida joins Oregon and Washington as the only states to index their minimum wage to inflation. The minimum wage is already scheduled to increase in New York to \$6.75 in 2006 and \$7.15 in 2007. New Jersey is increasing its minimum wage to \$7.15 by October of 2006. Movements are also under way in Hawaii, Pennsylvania, New Hampshire, and Minnesota to boost their state's minimum wage.

Because of agitation by "living-wage" advocates such as the Association of Community Organizations for Reform Now (ACORN), some cities and counties have passed living-wage ordinances that raise the minimum wage within their jurisdiction. The city of Sonoma, California, recently mandated that "covered" employers pay a minimum of \$11.70 an hour with health benefits or \$13.20 without health benefits, indexed annually to the consumer price index. There are today about 125 cities and counties with living-wage ordinances.

Origins of the minimum wage

The minimum wage began as part of the Fair Labor Standards Act (FLSA) of 1938. Along with the Davis-Bacon Act and the National Labor Relations (Wagner) Act, the FLSA is one of the three major pieces of New Deal employment legislation that survive today. The original FLSA curtailed child labor, set the maximum work week at 44 hours, and established a minimum wage of 25 cents an hour.

That's right. There was no federal minimum wage in the United States until 1938. Since the turn of the century the states had sought to regulate child labor, the hours in the work day,

and overtime pay, but in *Adkins v. Children's Hospital* (1923), the Supreme Court ruled that a minimum-wage law passed in the District of Columbia was “an unconstitutional interference with the freedom of contract included within the guaranties of the Due Process clause of the Fifth Amendment.” The Court concluded that there was a fundamental difference between regulating hours and regulating the rate of pay. But a few years later, in the case of *West Coast Hotel v. Parrish* (1937), this ruling was overturned when the Court upheld a Washington state law setting a minimum wage for women. This prepared the way for Congress to pass a federal minimum wage law.

The work week was lowered to 40 hours in 1945, where it remains today, and the minimum wage has been raised 18 times, with the last increase being in 1997.

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