

# Not Surviving, but Thriving: Indexing to the Cost of Living

Mohammed Hossain\*

## ABSTRACT

*Minimum wage laws are among the most important laws that impact the livelihood of low-wage workers. Indeed, as Gandhi stated, “the true measure of any society can be found in how it treats its most vulnerable members.” New York’s minimum wage has been capped at \$15 for most workers since 2018 because the traditional approach to raising it requires grassroots advocacy to compel legislators to manually raise minimum wage floors. This approach takes a great deal of time, energy, resources, and requires ongoing advocacy.*

*This note proposes that New York should develop a true Cost of Living Index to automatically adjust the minimum wage based on what it realistically costs not just to survive, but to thrive. This note aims to synthesize legal, political, and economic perspectives for the implementation of a true Cost of Living Index. It will hopefully serve as one more voice in the crowd, offering a simple but practical solution to the never-ceasing fight for a minimum wage that respects the basic dignity and humanity of working people.*

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\* Mohammed “Mo” Hossain, J.D. is currently a Law Fellow at Service Employees International Union (“SEIU”) Local 32BJ. This piece was inspired from research conducted for the Office of NYS Senator Jessica Ramos while at the City University of New York (“CUNY”) School of Law Workers’ Rights Clinic under the supervision of Professors Chaumtoli Huq and Stephen Loffredo. Special thanks go to the CUNY Workers’ Rights Clinic members and professors, to the Office of Senator Ramos, to the NYS Minimum Wage Coalition and its institutional affiliates, and to Professor Andrea McArdle and cohorts of her Academic Legal Writing course at CUNY Law. This piece is dedicated to all the workers who often give so much in return for too little. © 2023, Mohammed Hossain.

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#### INTRODUCTION

How much does it cost to live in New York City? Frankly, too much if you’re being paid minimum wage. A single adult living in Brooklyn, working from nine-to-five, Monday through Friday, being paid \$15 an hour—in an average month would earn \$2,400 dollars.<sup>1</sup> Does that even pay the monthly rent? No. The average cost to rent a studio apartment in Brooklyn is currently \$3,100.<sup>2</sup> This means that after a single month, a person earning minimum wage would be \$700 short of being able to afford rent. Note that this is *before* deducting taxes, and does not include any other essentials, including costs for: transportation/car insurance, food and groceries, utility bills, phone bills, clothing and personal upkeep, insurance (life/health insurance), educational expenses, and does not leave any possibility for an emergency fund, savings, or retirement.<sup>3</sup> It also fails to factor in the costs required to raise children.<sup>4</sup> One may be able to cut down costs by living in a

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1. Assuming one works for eight hours a day for twenty working days a month. See Parrott Memorandum, *infra* note 35.

2. *Average Rent in New York, NY*, RENTHOP, <https://www.renthop.com/average-rent-in/new-york-ny> (last visited Mar. 26, 2023).

3. See Erin Michelle Sky, *20 Average Monthly Expenses to Include in Your Budget*, QUICKEN: SIMPLIFI BLOG (Jan. 25, 2023), <https://www.quicken.com/blog/monthly-expenses>.

4. *Explore the 2018 Self-Sufficiency Report’s Key Findings and Learn More About What it Takes to Make Ends Meet New York City*, CITY HARVEST, <https://www.cityharvest.org/2018/10/self-sufficiency-key-findings/> (last visited Mar. 26, 2023) (stating that the Self-Sufficiency Standard, which is the “bare-bones” for covering the costs of basic needs, would require \$5,539 per month to cover the minimal living expenses of one adult and two children).

more remote location in New York City, living with a roommate, purchasing prudently, and a host of other strategies, but there is only so much that can be done with such limited buying power.<sup>5</sup>

The fundamental problem is that there is a “discrepancy between what the minimum wage provides and the wage needed to live . . . .”<sup>6</sup> This has had profound consequences, especially on younger generations of Americans.<sup>7</sup> Millennials, for example,

[H]ave smaller savings accounts than prior generations. They have less money invested. They own fewer houses to refinance or rent out or sell. They make less money, [sic] and are less likely to have benefits like paid sick leave. They have more than half a trillion dollars of student-loan debt to keep paying off, as well as hefty rent and child-care payments that keep coming due.<sup>8</sup>

Younger generations, such as the Zoomers, are not exempt from this problem.<sup>9</sup> These issues have only been exacerbated by the COVID-19 pandemic and have had disproportionate economic effects on communities of color.<sup>10</sup>

Adding fuel to the fire is inflation. It emerged as the “top economic problem of 2022,”<sup>11</sup> while strengthening the economy is Americans’ top priority in 2023,

5. See *How to Save Money While Living In New York City*, METROPOLIS MOVING: BLOG (May 16, 2018), <https://metropolismoving.com/blog/save-money-living-new-york-city/>.

6. Srishti Bungle, Opinion, *\$15 an Hour is Not Enough, Especially in New York*, WASH. SQUARE NEWS (Mar. 15, 2021), <https://nyunews.com/2021/03/15/15-an-hour-is-not-enough-especially-in-new-york/>. See also NUMBEO, *Cost of Living in New York*, NUMBEO, <https://www.numbeo.com/cost-of-living/in/New-York> (last visited Mar. 26, 2023); Amy K. Glassmeier, *Living Wage Calculation for New York County, New York*, LIVING WAGE CALCULATOR, <https://livingwage.mit.edu/counties/36061> (last visited Mar. 26, 2023). See generally CAREY ANNE NADEAU & STEPHANIE MOSER, LIVING WAGE CALCULATOR: USER’S GUIDE / TECHNICAL NOTES (May 10, 2022), <https://livingwage.mit.edu/resources/Living-Wage-Users-Guide-Technical-Documentation-2022-05-10.pdf> (providing a technical guide for Professor Glassmeier’s living wage calculation).

7. See generally Annie Lowrey, *Millennials Don’t Stand a Chance*, THE ATLANTIC (Apr. 13, 2020), <https://www.theatlantic.com/ideas/archive/2020/04/millennials-are-new-lost-generation/609832/>.

8. *Id.*

9. *Id.* (“Zoomers graduating into the recession will die sooner because of it, suffering increased incidence of heart disease, lung cancer, liver disease, and drug overdoses in the coming decades; they will also earn less over the course of their lives.”) “Zoomer is used to refer to members of Generation Z, or people born in the late 1990s and early 2000s.” Merriam-Webster, *Words We’re Watching: ‘Zoomer’*, MERRIAM-WEBSTER (Oct. 2021), <https://www.merriam-webster.com/words-at-play/words-were-watching-zoomer-gen-z#:~:text=Zoomer%20is%20used%20to%20refer,to%20physically%20active%20baby%20boomers>.

10. See generally CHARLOTTE SWASEY ET AL., DATA FOR PROGRESS, THE STAGGERING ECONOMIC IMPACT OF THE CORONAVIRUS PANDEMIC 2 (Apr. 9, 2020), <https://www.filesforprogress.org/memos/the-staggering-economic-impact-coronavirus.pdf>.

11. Rachel Siegel & Laura Reiley, *Inflation Emerging as Top Economic Challenge in 2022*, WASH. POST (Dec. 29, 2021), [https://www.washingtonpost.com/business/2021/12/29/inflation-2022-price-fed/?nid=top\\_pb\\_signin&arcId=7SUG6GXILVAORDQQS5CWXBIMYM&account\\_location=ONSITE\\_HEADER\\_ARTICLE](https://www.washingtonpost.com/business/2021/12/29/inflation-2022-price-fed/?nid=top_pb_signin&arcId=7SUG6GXILVAORDQQS5CWXBIMYM&account_location=ONSITE_HEADER_ARTICLE); Gabriela Schulte, *Poll: Inflation Named as Top Economic Concern for Voters*, THE HILL (Aug. 4, 2021), <https://thehill.com/hilltv/what-americas-thinking/566297-poll-inflation-named-as-top-economic-concern-among-voters>. See also Louis Navellier, *Inflation is Concern #1 for*

and is presently the top issue for many Americans right now.<sup>12</sup> While some inflation can be a sign that an economy is healthy,<sup>13</sup> the issue is that price increases have been impacting common consumer goods that regular working people rely on, such as food, housing, and gasoline; moreover, the rise in price of these goods has not been modest, but rather, has increased 7.5% over the past 12 months—the largest inflation surge in 40 years.<sup>14</sup> All of this means that the average consumer's paycheck has lost much of its purchasing power.<sup>15</sup>

One silver lining from the workers' perspective is that there has been an increase in favorability of unions.<sup>16</sup> Unions have traditionally served as institutions to bolster the wages and bargaining power of workers.<sup>17</sup> Sixty-five percent of all Americans approve of labor unions, and (AFL-CIO).<sup>18</sup>

Despite the profound negative consequences of the COVID-19 pandemic,<sup>19</sup> the essential (and often underpaid) workers, who were too often marginalized in economic discussions prior to the COVID-19 outbreak, were suddenly thrust into the spotlight.<sup>20</sup> While America's most essential and least paid workers risked their

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*Business, Consumers, and the Biden Administration*, SEEKING ALPHA (Jan. 5, 2022), <https://seekingalpha.com/article/4481362-inflation-concern-business-consumers-biden-administration>; Zachary Rogers, *Inflation Surpasses Coronavirus as Nation's Top Concern, Survey Says*, FOX5NEWS (Dec. 10, 2021), <https://foxbaltimore.com/news/nation-world/inflation-surpasses-coronavirus-to-become-1-concern-for-americans-poll-says-united-states-economy-president-joe-biden-midterms-democrats-republicans-priceindex-hikes-money-cost>.

12. *Economy Remains the Public's Top Policy Priority; COVID-19 Concerns Decline Again*, PEW RSCH. CTR. (Feb. 6, 2023), <https://www.pewresearch.org/politics/2023/02/06/economy-remains-the-public-top-policy-priority-covid-19-concerns-decline-again/>.

13. Kimberly Amadeo, *Reasons Why Inflation is Good*, BALANCE (Jan. 20, 2022), <https://www.thebalancemoney.com/why-is-inflation-good-4065995>.

14. Gwynn Guilford, *U.S. Inflation Rate Accelerates to a 40-Year High of 7.5%*, WALL ST. J. (Feb. 10, 2022), <https://www.wsj.com/articles/us-inflation-consumer-price-index-january-2022-11644452274>.

15. Alicia Adamczyk, *Inflation is Continuing to Rise—Here's How It Could Affect Your Money*, CNBC MAKE IT (alterations in original), <https://www.cnbc.com/2021/06/16/what-the-heck-is-going-on-with-inflation-heres-what-you-need-to-know.html> (last updated June 16, 2021, 2:39 PM).

16. See Abigail Johnson Hess, *How the Coronavirus Pandemic May Be Causing Support of Labor Unions to Rise*, CNBC MAKE IT (Jan. 29, 2021, 2:23 PM), <https://www.cnbc.com/2021/01/29/support-of-labor-unions-is-at-65percentheres-whats-behind-the-rise.html>.

17. *Building Power for Working People*, AFL-CIO, <https://aflcio.org/what-unions-do/empower-workers> (last visited Mar. 26, 2023) (listing out benefits of joining a union including better wages and benefits, higher rates of having health insurance, pensions, paid sick leave, median weekly earnings, greater wages for Black and Latino workers, greater pay equity, leave (vacation, parental, sick), better workplace healthy and safety standards, more consistent and flexible schedules without mandatory overtime, time off to take care of family or attend school events, longer maternity leave and paternity leave, student loan repayments and scholarships, job training programs for career mobility, reimbursements for fitness club memberships and other wellness activities, wages and benefits that keep up with the cost of living, and producing family-friendly work environments).

18. Hess, *supra* note 16.

19. *Impact of COVID-19 on People's Livelihoods, Their Health and Our Food Systems*, WORLD HEALTH ORG. (Oct. 13, 2020), <https://www.who.int/news/item/13-10-2020-impact-of-covid-19-on-people-s-livelihoods-their-health-and-our-food-systems>.

20. Kim Kelly, *Covid 'Essential' Workers Were Always Important. Don't Abandon Them Post-Pandemic*, NBC THINK (Apr. 9, 2021, 4:34 AM), <https://www.nbcnews.com/think/opinion/covid-essential-workers-were-always-important-don-t-abandon-them-ncna1263341>.

lives to uphold the world economy in the midst of a global pandemic, the super-rich earned record profits.<sup>21</sup>

This contradiction has led to a renewed class-consciousness and an explosion of organizing and labor activity.<sup>22</sup> For example, Amazon workers have been voting to form their first unions, teachers across the country have been striking, unionized grocery store workers have forced hazard pay, and coal miners, graduate student workers, and nurses<sup>23</sup> have been striking. These union drives have aligned with a growing movement dubbed “The Great Resignation,” where roughly thirty-three million workers quit their jobs since the spring of 2021, and a record-breaking one million leisure and hospitality workers quit their jobs in search of greener pastures.<sup>24</sup> With businesses still seeking to hire, increased competition for workers’ labor has led to an opportunity for employees to renegotiate for better pay and benefits.<sup>25</sup> There have also been robust proposals from powerful political leaders in recent years, espousing progressive economic ideas such as canceling student debt,<sup>26</sup> free college,<sup>27</sup> a universal basic income,<sup>28</sup> Medicare for All,<sup>29</sup>

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21. *Id.*

22. *Id.*

23. Approximately 48,000 academic workers in the University of California public education system struck as of November 2022 demanding better pay and benefits. Grace Toohey et al., *UC Officials Call for Mediator as Strike by 48,000 Academic Workers Causes Systemwide Disruptions*, L.A. TIMES (Nov. 14, 2022, 9:22 PM), <https://www.latimes.com/california/story/2022-11-14/university-of-california-strike-academic-workers-graduate-students>. See also *Nurses Go on Strike at 2 New York City Hospitals*, N.Y. TIMES (Jan. 10, 2023), <https://www.nytimes.com/2023/01/09/nyregion/nurses-strike-nyc-hospitals.html>.

24. Greg Rosalsky, *The Great Resignation? More Like the Great Renegotiation*, NPR (Jan. 25, 2022, 6:30 AM), <https://www.npr.org/sections/money/2022/01/25/1075115539/the-great-resignation-more-like-the-great-renegotiation>.

25. *Id.*

26. See generally Annie Nova, *Pressure Mounts for Biden to Forgive Student Debt*, CNBC, <https://www.cnbc.com/2021/04/13/pressure-mounts-for-biden-to-forgive-student-debt-.html> (last updated Apr. 13, 2021, 3:31 PM). As of August 2022, President Joe Biden has announced an intention to partially forgive some student debt. See *FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most*, WHITE HOUSE (Aug. 24, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/> (“Department of Education will provide up to \$20,000 in debt cancellation to Pell Grant recipients with loans held by the Department of Education, and up to \$10,000 in debt cancellation to non-Pell Grant recipients. Borrowers are eligible for this relief if their individual income is less than \$125,000 . . .”).

27. See generally Carmen Reinicke, *Sen. Bernie Sanders Introduces Bill to Make College Free and Have Wall Street Pay for It*, CNBC, <https://www.cnbc.com/2021/04/21/sen-bernie-sanders-introduces-bill-to-make-college-free-and-have-wall-st-pay-for-it.html> (last updated Apr. 21, 2021, 9:18 AM).

28. See generally Catherine Clifford, *Why Everyone is Talking About Free Cash Handouts—an Explainer on Universal Basic Income*, CNBC MAKE IT, <https://www.cnbc.com/2019/06/27/free-cash-handouts-what-is-universal-basic-income-or-ubi.html> (last updated Dec. 19, 2019, 3:31 PM).

29. See generally Stephanie Booth, *Medicare for All: What is It and How Will It Work?*, HEALTHLINE (Aug. 26, 2020), <https://www.healthline.com/health/what-medicare-for-all-would-look-like-in-america#1>.

and the Green New Deal.<sup>30</sup>

With this renewed consciousness and organizing, even popular conglomerate media outlets understand that “a \$15 hourly wage will not bring a family, or even a single person, to an adequate living standard.”<sup>31</sup> Along with all the grassroots and media mobilization, politicians and legislators have begun to take action.<sup>32</sup> But how much should the minimum wage be exactly? \$16 per hour? \$22? \$100? \$1,000,000? What should this numerical value be based on? How can one prevent this number from faltering as people’s economic needs and the purchasing value of the dollar change over time?

This note offers a simple but innovative solution—New York State should develop a true Cost of Living Index, which adjusts the minimum wage annually based on factors that most greatly impact New Yorker’s cost of living. The factors considered should include, but not necessarily be limited to, costs in inflation, productivity, housing, education, utilities, food, transportation, essential household expenses, geography, childcare, and healthcare. Such an index can, and should, be paired with adequate statutory minimum wage floors to guarantee that the minimum wage will not fall under specific dollar amounts that address people’s basic cost of living. There are other provisions which may assist with the goals of the true Cost of Living Index, such as “homerule” provisions, “catching up” provisions, and considerations of business size and geographic region for minimum wage payment requirements. The impetus for this proposal is simple: “you deserve a wage that allows you to live with dignity.”<sup>33</sup>

Part I of this note consists of a literature review discussing the current state of the New York minimum wage. Specifically, it will address its issues with meeting cost of living requirements. Part I will also discuss inflation, minimum wage floors, political and statutory trends toward indexing wages, and specialized terminology related to wages and indexing. It will provide a critical perspective on current indexing approaches.

Part II proposes an original argument for the creation of a true Cost of Living Index, which will be paired with adequate statutory minimum wage floors. It provides strategies for implementation including suggestions for statutory language and other considerations. Additionally, it discusses the current organizing for a new minimum wage bill and specific provisions.

Part III addresses specific objections and counter arguments to a true Cost of Living Index, including arguments that it will reduce employment, it will not

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30. See generally Lisa Friedman, *What is the Green New Deal? A Climate Proposal, Explained*, N.Y. TIMES (Feb. 21, 2019), <https://www.nytimes.com/2019/02/21/climate/green-new-deal-questions-answers.html>.

31. Ginia Bellafante, *The \$15 Minimum Wage is Here. Why We Need \$33 an Hour.*, N.Y. TIMES (Jan. 4, 2019), <https://www.nytimes.com/2019/01/04/nyregion/the-15-dollar-minimum-wage-is-not-enough.html>.

32. See generally Jessica Ramos, *‘Low-Skill’ Workers Don’t Exist, But Low-Wage Workers Do*, TEEN VOGUE (Feb. 1, 2022), <https://www.teenvogue.com/story/low-skill-worker-myth>.

33. *Id.*

target the working poor, it is bad for inflation, prices, and the overall labor market, and it is bad for businesses.

The note concludes by discussing the overall negative consequences of a refusal to adopt progressive minimum wage legislation, and the positive impacts of moving forward with a system for indexing wages focused on addressing the material economic needs of New Yorkers.

## I. A BRIEF REVIEW OF INDEXING AND THE MINIMUM WAGE

### A. *Why the Minimum Wage Should be Increased—Inflationary Concerns*

Minimum wage laws can be confusing and multifaceted, with different dollar amounts granted for different regions of New York during different periods of time, as well as different amounts for tipped professions.<sup>34</sup> But to generalize, the minimum wage in New York City has been frozen for most workers at \$15 since 2018,<sup>35</sup> and the state minimum wage is projected to reach \$15 in a couple of years.<sup>36</sup> Meanwhile, other high-cost cities and states are raising or have raised their minimum wages above \$15.<sup>37</sup>

There are many reasons why the minimum wage should be increased, but a primary concern as of recent economic developments has been inflation.<sup>38</sup> Inflation measures the tendency of prices to rise over time.<sup>39</sup> It is intricately tied to wealth because it raises the return on land and lowers the return on reproducible capital.<sup>40</sup> This has profound implications for future generations; for example, Millennials own homes at much lower rates than older generations,<sup>41</sup> and private

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34. See *Minimum Wage*, N.Y. STATE DEP'T OF LAB., <https://dol.ny.gov/minimum-wage-0> (last visited Mar. 27, 2023).

35. Memorandum from Dr. James Parrott, Director of Economic and Fiscal Policies at the Center for New York City Affairs at The New School 1 (Jan. 2022) (on file with author) [hereinafter Parrott Memorandum]. See generally *Minimum Wage Act*, N.Y. LABOR LAW § 652 (McKinney 2020).

36. Parrott Memorandum, *supra* note 35.

37. Parrott Memorandum, *supra* note 35, at 1–2 (listing that Seattle's wage will be \$17.27 in 2022, San Francisco's is projected to be more than \$17.40 in 2022, Washington, DC and many California cities will be over \$16.00 in 2022, and also, 33 cities and counties now have wages above \$15 an hour as of January 2022, and 11 more will pass \$15 later in 2022).

38. Navellier, *supra* note 11.

39. Jim Chen, *The Price of Macroeconomic Imprecision: How Should the Law Measure Inflation?*, 54 HASTINGS L.J. 1375, 1379 (2003).

40. *Id.* at 1385 (“[A]n unanticipated jump in the expected rate of inflation causes an immediate jump in the level of the land price. After this initial jump, the price of land increases at the same rate as the general rate of inflation.”).

41. See Nigel Wilson, *U.S. Millennials: Home Ownership and the Growing Chasm Between Aspiration and Reality*, FORBES (Aug. 18, 2021, 2:58 PM), <https://www.forbes.com/sites/nigelwilson/2021/08/18/us-millennials-home-ownership-and-the-growing-chasm-between-aspiration-and-reality/?sh=10fac0545498> (“When it comes to home ownership, the most populous generation [Millennials] is also the one that trails older generations, with some 47.9 percent owning homes in 2020, vs. gen-X home ownership enjoying an ownership rate of 69 percent, baby boomers, 77.8 percent . . .”). The term “millennial” usually refers to a person born in the 1980s or 1990s. *Millennial*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/millennial> (last visited Mar. 26, 2023).

equity groups have been purchasing residential property *en masse*,<sup>42</sup> creating a generation of youth that some are dubbing “forever renters.”<sup>43</sup>

But inflation should not be simplified to a mere consequence of economic activity. Indeed, inflation is affected by all kinds of human activity, most notably increases in production costs (such as raw materials and wages), strong consumer demand for products, and fiscal policy.<sup>44</sup> Some economists cite recent problems in the supply-chain due to the COVID-19 pandemic and increased American consumer demand as the cause of these recent price hikes.<sup>45</sup> However, reports have indicated that some of the most recent inflation numbers may be exacerbated by corporate greed.<sup>46</sup> “Corporations banked a near-record \$2.7 trillion in after-tax profits during the fourth quarter of 2021, almost twice as much as in the same period in 2009.”<sup>47</sup> These figures, even before the recent inflation crisis, prompted President Biden to direct federal agencies to investigate corporations for price gouging and artificial inflation of prices.<sup>48</sup> In light of this, some view antitrust laws as a tool for reducing high concentrations of market power in certain industries central to American life.<sup>49</sup>

Additionally, a recent survey of over 1,000 retail owners and executives indicates that over half of retail owners have been using recent inflation numbers to drive up prices higher in order to maximize profits, with large companies being more likely to make this admission than mid-sized or small companies.<sup>50</sup> These claims have been corroborated by independent investigative journalists, such as Matt Stoller, who released a major report claiming that corporate profits have driven sixty percent of inflation and passed on the excess cost to consumers.<sup>51</sup>

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42. Heather Vogell, *When Private Equity Becomes Your Landlord*, PROPUBLICA (Feb. 7, 2022, 10:25 AM), <https://www.propublica.org/article/when-private-equity-becomes-your-landlord>.

43. Dan Rafter, *Forever Renters? Nearly 20 Percent of Millennials Not Interested in Owning a Home*, REJOURNALS (Feb. 18, 2021), <https://rejourneys.com/forever-renters-nearly-20-percent-of-millennials-not-interested-in-owning-a-home/>.

44. *What Causes Inflation and Who Profits From It?*, INVESTOPEDIA (Dec. 2, 2021), <https://www.investopedia.com/ask/answers/111314/what-causes-inflation-and-does-anyone-gain-it.asp>.

45. Ana Swanson, *Supply Chain Snags Continued to Drive up Prices in December.*, N.Y. TIMES (Jan. 12, 2022), <https://www.nytimes.com/2022/01/12/business/inflation-supply-chain.html>.

46. David J. Lynch, *As Inflation Spreads, Rising Prices Fuel Charges of Corporate Greed*, WASH. POST (Apr. 2, 2022, 6:00 AM), <https://www.washingtonpost.com/business/2022/04/02/inflation-corporate-greed/>.

47. *Id.*

48. See Jim Tankersley & Alan Rappeport, *As Prices Rise, Biden Turns to Antitrust Enforcers*, N.Y. TIMES (Dec. 25, 2021), <https://www.nytimes.com/2021/12/25/business/biden-inflation.html>.

49. Hal Singer, *Antitrust Should Be Used to Fight Inflation*, AM. PROSPECT (Feb. 2, 2022), <https://prospect.org/economy/antitrust-should-be-used-to-fight-inflation/> (“The price of beef and poultry increased by over 20 percent since December 2019. Because beef and poultry are included in the basket of goods that comprise the consumer price index (CPI), increased beef and poultry prices have a direct effect on broader inflation.”).

50. *More Than Half of Retail Businesses are Using Inflation to Price Gouge*, DIGITAL, <https://digital.com/half-of-retail-businesses-using-inflation-to-price-gouge/> (last updated Feb. 20, 2023).

51. Matt Stoller, *Corporate Profits Drive 60% of Inflation Increases*, BIG (Dec. 29, 2021), <https://mattstoller.substack.com/p/corporate-profits-drive-60-of-inflation?s=r> (“In other words, had corporate America kept the same average annual level of profits in 2021 as it did from 2012-2019 and passed



Robert Reich, former Secretary of Labor in the Clinton Administration and professor of public policy at the University of California, Berkeley, found that this recent corporate activity has allowed corporations to “come out ahead—while consumers and workers lose.”<sup>52</sup> These events prompt a larger discussion about how increasing wages may empower workers.

### *B. Traditional Strategies for Increasing Minimum Wages*

Some understand the minimum wage to be a price floor, which sets the bottom-line that a worker can be legally paid for their labor.<sup>53</sup> These wage floors are any minimum pay rate that is agreed or enforced outside market forces and is usually set by statutory law.<sup>54</sup> In other words, it is a minimum pay rate to which workers are entitled regardless of business activity. The traditional strategy to raising minimum wage standards in New York has been to increase these wage floors.<sup>55</sup> For example, in 2013, New York State enacted an increase in its minimum wage to \$9.00 an hour.<sup>56</sup> Following this, in 2015, bills were introduced to authorize the City of New York and other local governments to set their own minimum wages, up to a level twenty-five or thirty percent above the statewide minimum.<sup>57</sup>

Minimum wage campaigns involve long and hard-fought campaigning processes to galvanize political support to raise wages for the most economically disempowered.<sup>58</sup> For example, the fight for a federal \$15 minimum wage began in New York City when two hundred fast-food workers walked off the job to demand a \$15 minimum wage and union rights.<sup>59</sup> Today, it is a global movement involving a broad coalition composed of “fast-food workers, home health aides, child care teachers, airport workers, adjunct professors, retail employees—and underpaid workers everywhere,” yet the federal minimum wage still remains the same.<sup>60</sup> The Fight for \$15 campaign has been ongoing for over a decade now, and has

on today’s excess to consumers, the inflation rate would be 3.8%, not 6.8%. And that’s a big difference . . .”).

52. Robert Reich, *The Non-Inflated Truth About Inflation*, SUBSTACK (Jan. 25, 2022), <https://robertreich.substack.com/p/unvarnished-truth-inflation?s=r>.

53. Daniel Liberto, *Minimum Wage: Federal vs. State, Exceptions and FAQs*, INVESTOPEDIA, [https://www.investopedia.com/terms/m/minimum\\_wage.asp](https://www.investopedia.com/terms/m/minimum_wage.asp) (last updated Nov. 10, 2022) (“A minimum wage is the lowest wage per hour that a worker may be paid, as mandated by federal law. It is a legally mandated price floor on hourly wages, below which nonexempt workers may not be offered a job or agree to work.”).

54. DONALD HIRSCH & LAURA VALADEZ-MARTINEZ, *THE LIVING WAGE* 49–50 (Aspen Publ’g, 2017).

55. See JAMES A. PARROTT, *NONPROFIT GOVERNMENT-FUNDED HUMAN SERVICES AND THE 2015-2016 NEW YORK MINIMUM WAGE CAMPAIGNS 1* (2016) (on file with author).

56. *Id.* (“[T]he first step an increase from the federal \$7.25 minimum wage to \$8.00 an hour on the last day of 2013, and the third step reaching \$9.00 on the last day of 2015.”).

57. *Id.*

58. See generally FIGHT FOR \$15, <https://fightfor15.org/> (last visited Mar. 26, 2023).

59. *About Us*, FIGHT FOR \$15, <https://fightfor15.org/about-us/> (last visited Mar. 26, 2023).

60. *Id.*; *Federal Minimum Wage for 2021, 2022*, MINIMUM-WAGE.ORG, <https://www.minimum-wage.org/federal> (last visited Mar. 26, 2023).

made some progress, but is yet to be successfully implemented.<sup>61</sup> By the time Congress musters enough political will to increase the minimum wage, the value of the increase will have already diminished, and any concurrent increases to the wage floor may be inadequate to meet the needs of working people.<sup>62</sup>

Although raising the New York State minimum wage is different from the federal minimum wage, it still involves an incredible amount of organizing and institutional support in order to be implemented.<sup>63</sup> Most notably, the Minimum Wage Coalition, which has been garnering support for raising the minimum wage, has been composed of dozens of organizations that dedicate time, resources, and energy into the campaign.<sup>64</sup> The question then is, considering all of the resources required to raise the minimum wage every couple of years, whether there is a better statutory approach to adequately increase wages without imposing such a burden on grassroots organizers and the general public.

New York's current minimum wage has been decreasing in purchasing power.<sup>65</sup> When adjusting simply for inflation through June 2021, the purchasing power of \$15 has declined by 8.3%, to a value of only \$13.76, and will continue

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61. Liza Featherstone, *After Almost a Decade, Fight for \$15 Has Made Progress—But It's Not Enough*, JACOBIN, <https://www.jacobinmag.com/2021/05/fight-for-15-minimum-wage-labor-mcdonalds-seiu-union-organizing> (last visited Mar. 26, 2023).

62. OREN M. LEVIN-WALDMAN, *THE CASE OF THE MINIMUM WAGE: COMPETING POLICY MODELS* 179 (2001).

63. See generally *New York State Minimum Wage Coalition Comments on Agreement to Raise New York's Minimum Wage*, THE CTR. FOR POPULAR DEMOCRACY (Apr. 4, 2022), <https://www.populardemocracy.org/news/new-york-state-minimum-wage-coalition-comments-agreement-raise-new-york-s-minimum-wage>.

The New York State Minimum Wage Coalition is a collection of labor, community, policy and religious groups pushing Albany to raise the minimum wage. It includes the National Employment Law Project, ALIGN, Business for a Fair Minimum Wage, Central New York Labor Federation (CNY), Center for Popular Democracy, Citizen Action of New York, Coalition for Economic Justice (WNY), Communications Workers of America, Community Voices Heard, Fight for Fair Economy Table (WNY), Fiscal Policy Institute; Gamaliel of New York (Upstate), Hudson Valley Community Coalition, Hunger Action Network, Latino Pastoral Action Center, Laundry Workers Center United, Long Island Jobs with Justice (Long Island), Make the Road New York(NYC), Metro Justice (Greater Rochester), Micah Institute at the New York Theological Seminary (NYC), Moms Rising, New York City Coalition Against Hunger (NYC), New York Communities for Change, New York State Council of Churches, New York State Episcopal Public Policy Network, New York State Interfaith Impact, New York State Labor-Religion Coalition, New York State NAACP Conference, Occupy Albany (Albany), Occupy Faith (NYC), Retail Action Project (NYC), Retail, Wholesale and Department Store Union Local 338 (Long Island), Restaurant Opportunities Center of New York (NYC), Service Employees International Union Local 32BJ, Service Employees International Union Local 1199, Service Employees International Union Local 200 (Upstate), Strong Economy for All, United Auto Workers, United Federation of Teachers (NYC), United Food and Commercial Workers Local 1500, United NY (NYC), Uri L'Tzedek (Downstate), Worker Center of Central New York (CNY), Worker Justice Center of New York, and the Working Families Party.

There are also many other organizations and firms involved in the current minimum wage campaign who have not been mentioned in press, but nonetheless, have been leading the campaign and have contributed significantly to it.

64. *Id.*

65. Parrott Memorandum, *supra* note 35.

to fall as the cost of necessities continues to rise over time.<sup>66</sup> This occurs as the U.S. is hitting the worst inflation that it has faced in the last forty years.<sup>67</sup> There is a need to increase the wage, but past strategies of raising minimum wage floors through manual, laborious, and time-intensive campaigns may be an ineffective method to achieve this goal.<sup>68</sup> For this reason, indexes become important to our discussions of future minimum wage adjustments.

### C. Indexing as a Useful Tool for Minimum Wage Accommodation

A better method to raising the minimum wage is through indexing the minimum wage to inflation and other metrics that effect consumers' buying power. Indexing is a mechanism for automatically adjusting the minimum wage annually.<sup>69</sup> Indexes can work, for example, by calculating the average change in the price of goods, and then multiplying that value by the current minimum wage.<sup>70</sup> Indexing is a tool to compare sets of data across time and is particularly useful in making simple comparative analyses.<sup>71</sup>

One index relevant to inflation and changes in wages is the Consumer Price Index ("CPI"), which is published by the Department of Labor's Bureau of Labor Statistics.<sup>72</sup> The CPI "is a measure[] of the average change in prices over time in a fixed market basket of goods and services."<sup>73</sup> What are the "goods and services" referenced here? They include: food, clothing, shelter, fuels, transportation fares, charges for doctors' and dentists' services, drugs, and the other goods and services that people buy for day-to-day living.<sup>74</sup> Unfortunately, it does not include metrics such as labor productivity, childcare, healthcare, education costs, adequate savings, housing, or a host of other metrics very relevant to one's costs of living.<sup>75</sup>

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66. *Id.* at 2. New York City rent prices have now hit all-time highs as prices skyrocket after the pandemic. See Peter Champelli, *New York City Rents Hit Record Highs Amid Nationwide Housing-Price Increases*, WALL ST. J. (Aug. 11, 2022, 8:00 AM), <https://www.wsj.com/articles/new-york-city-rents-hit-record-highs-amid-nationwide-housing-price-increases-11660219200>.

67. Dominic Rushe, *US Inflation Hits Highest Level in 40 years in January as Prices Rise 7.5% from 2021*, GUARDIAN (Feb. 10, 2022, 8:37 AM), <https://www.theguardian.com/business/2022/feb/10/us-inflation-reached-highest-level-40-years-january>.

68. See, e.g., STEPHANIE LUCE, *FIGHTING FOR A LIVING WAGE* 40–41 (2004) (describing the kinds of resources that go into wage campaigns).

69. LEVIN-WALDMAN, *supra* note 62, at 179.

70. Ramos, *supra* note 32.

71. Sean Ross, *What is the role of an index number in economics?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/073015/economics-what-index-number.asp> (last updated Nov. 22, 2022).

72. Chen, *supra* note 39, at 1403.

73. *New York–New Jersey Information Office*, U.S. BUREAU OF LAB. STAT. (Dec. 2022), [https://www.bls.gov/regions/new-york-new-jersey/news-release/consumerpriceindex\\_newyorkarea.htm](https://www.bls.gov/regions/new-york-new-jersey/news-release/consumerpriceindex_newyorkarea.htm).

74. Chen, *supra* note 39, at 1403. The remainder of our discussion of CPI will specifically refer to an index called the "CPI-U" (as opposed to the "CPI-W"). *Newsroom – Frequently Asked Questions*, U.S. BUREAU OF LAB. STAT. (Dec. 29, 2016), <https://www.bls.gov/newsroom/faqs.htm> (last visited Mar. 26, 2023) ("The CPI-U is a more general index and seeks to track retail prices as they affect all urban consumers. It encompasses about 87 percent of the United States population. The CPI-W is a more specialized index and seeks to track retail prices as they affect urban hourly wage earners and clerical workers.").

75. *But see id.*

*D. Issues Associated with Current Indexing Approaches*

Another major index used to track inflation is published by the Department of Commerce's Bureau of Economic Affairs ("BEA"), which derives a measure of inflation from Gross Domestic Product ("GDP") by measuring changes in the market value of goods, services, and structures produced by the entire United States economy in a particular period.<sup>76</sup> In fact, economists often consider the Gross National Product ("GNP") deflator to be a better measure of overall inflation in the economy than the CPI.<sup>77</sup> This is because the CPI is based on the "budget of a typical urban family," whereas the GNP is based on "every final good and service produced by the economy."<sup>78</sup>

Despite having more than one index to choose from when it comes to inflationary measures, the Supreme Court and other appellate courts prefer to use the CPI over other "superior" indexes such as the GDP based on the Bureau of Economic Analysis.<sup>79</sup> For example, the "CPI-U reflects price changes within a fixed price market, whereas the BEA chains together GDP data on an annual basis."<sup>80</sup> This makes the CPI-U less responsive to changes in price<sup>81</sup> compared to the GDP. Despite this, courts use the CPI over the annual GDP for inflationary calculations.<sup>82</sup>

Federal agencies fare no better than the courts when it comes to their choice of indexes. Federal agencies prefer using the CPI, and yet, do not demonstrate

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76. Chen, *supra* note 39, at 1403.

77. *Id.* at 1415 (quoting WILLIAM J. BAUMOL & ALAN S. BLINDER, *ECONOMICS: PRINCIPLES & POL'Y* 114 (5th ed. 1991)). Note that the difference between Gross Domestic Product (GDP) and Gross National Product (GNP) is that GDP usually refers to the value of goods and services produced within a country's borders, while GNP refers to value produced regardless of geographic location, which includes residents and multinational corporations which operate outside of the United States. Kimberly Amadeo, *Gross National Product and How It Is Calculated*, BALANCE (July 21, 2022), <https://www.thebalancemoney.com/what-is-the-gross-national-product-3305847#toc-gnp-vs-gdp>. A GNP deflator is simply a metric which accounts for the annual effect of inflation in the GNP. Will Kenton, *Gross National Product (GNP) Deflator*, INVESTOPEDIA (June 24, 2022), [https://www.investopedia.com/terms/g/gnp\\_deflator.asp](https://www.investopedia.com/terms/g/gnp_deflator.asp).

78. Chen, *supra* note 39, at 1415 ("Thus, in addition to prices of consumer goods the GNP deflator includes the prices of airplanes, lathes, and other goods purchased by business. It also includes government services. For this reason, the measures of inflation that these two indexes give are rarely the same." (quoting WILLIAM J. BAUMOL & ALAN S. BLINDER, *ECONOMICS: PRINCIPLES & POL'Y* 114 (5th ed. 1991))).

79. *Id.* at 1417–22 ("[C]onsistent with the Supreme Court's assumption that the CPI should serve as the relevant benchmark of inflation in assessing the adequacy of compensation for lawyers, several lower federal courts have examined the proper use of the CPI in adjusting attorney's fees under EAJA. . . . the Second, Third, Fourth, and Ninth Circuits have all required the use of CPI-U."). See, e.g., *Jones and Laughlin Steel Corp. v. Pfeifer*, 462 U.S. 523, 538 (1983) ("The first stage of the calculation required an estimate of the shape of the lost stream of future income. For many workers, including respondent, a contractual "cost-of-living adjustment" automatically increases wages each year by the percentage change during the previous year in the consumer price index calculated by the Bureau of Labor Statistics."). See also *Kansas v. Colorado*, No. 105, 2000 WL 34508307, at \*18, \*37 (U.S. 2000); *Randall v. Sorrell*, 548 U.S. 230, 237 (2006).

80. Chen, *supra* note 39, at 1422.

81. *Id.*

82. See *id.* at 1442–43.

coherence in choosing between competing inflation indexes because they are ill-informed about the values and shortcomings of the CPI and other indexes.<sup>83</sup> Similarly, policymakers lack understanding of how these compare to other indexes.<sup>84</sup> Notably, although indexes follow basic mathematical formulas and algorithms, they are not necessarily politically neutral.<sup>85</sup> Every price index faces similar limitations, such as accounting for changes in consumers' products, changes in the quality of products, disparities between actual and listed prices of products, limitations in coverage, sampling errors, and seasonal adjustments over time.<sup>86</sup> Selecting an index and the variables that will be considered in it are political choices because these decisions have profound political impact when law and policy is implemented based on the recommendations of an index.

America's public institutions have not thoughtfully chosen indexes based on their effectiveness in representing price changes.<sup>87</sup> This poses a major problem when relying on these indexes to provide accurate accounts of price changes. In fact, the CPI is not considered the best index among leading economists, despite its popularity among legislators.<sup>88</sup> This lack of understanding of indexes makes it all the more important to produce literature to demystify it, and to provide simple but effective suggestions for indexing that will serve people who have the most dire need for social and economic systems to work in their favor.

## II. DEVELOPMENT OF THE TRUE COST OF LIVING INDEX STATUTE

### A. *The Consumer Price Index vs. the True Cost of Living Index*

It is important to distinguish between indexing to inflationary measures and one's cost of living. The CPI is often used as a metric to adjust wages to prices in order to give adequate buying power in accordance with inflation.<sup>89</sup> But although inflationary measures address the ability to purchase basic goods and services, this does not always encompass all the goods and services that are necessary to address one's cost of living.<sup>90</sup> As the Bureau of Labor Statistics acknowledges "[t]he CPI frequently is called a cost of living index, but it differs in

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83. *Id.* at 1408.

84. *Id.* at 1409 ("[P]olicymakers arbitrarily treat the CPI and the IPD as if they were interchangeable gauges of inflation.").

85. *See id.* at 1414–15. There have been increasing discussions in this decade about the use of algorithms and technology more broadly, and how they are not policy neutral black boxes, but rather "are man-made artifacts, written and edited by humans in order to code decision-making processes . . . ." Omer Tene & Jules Polonetsky, *Taming the Golem: Challenges of Ethical Algorithmic Decision-Making*, 19 N.C. J.L. TECH. 125, 125 (2017).

86. Chen, *supra* note 39, at 1414.

87. *See id.* at 1442–43.

88. *See id.* at 1415.

89. *See Consumer Price Index*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/cpi/overview.htm#:~:text=The%20CPI%20is%20often%20used,to%20millions%20of%20American%20workers> (last updated Jan. 23, 2023).

90. *See Consumer Price Index Frequently Asked Questions*, U.S. BUREAU OF LAB. STAT. (Mar. 23, 2022), <https://www.bls.gov/cpi/questions-and-answers.htm>.

important ways from a complete cost-of-living measure.”<sup>91</sup> The focus of a Cost of Living Index is entirely different from a consumer price index, even if both indexes result in higher wages over time.<sup>92</sup>

While a CPI focuses on matching prices to price changes in consumer goods,<sup>93</sup> a Cost of Living Index does not simply peg changes in wages to changes in the prices of goods, but would aim to have wages reach a certain standard of living.<sup>94</sup> This is why the CPI does not account for metrics such as childcare, education costs, savings, housing, etc.—these metrics are not always necessarily a part of a traditional matrix of “consumer goods.”<sup>95</sup> But this is precisely why shifting from a CPI to a Cost of Living Index framework is so important. *The Cost of Living Index is people-centered; the CPI is product-centered.* A shift from indexing based on the prices of consumer products to indexing based on the needs of a population seems like a simple change, but in reality, this is a radical departure from the traditional focus of indexing.<sup>96</sup> Moreover, the Cost of Living Index is often understood as “a conceptual measurement goal,” and not an actual or straightforward alternative to the CPI.<sup>97</sup> In response, I would ask why it has to be “conceptual,” and why it cannot be a “straightforward alternative.” Is there a possibility here for something more than the traditional indexing approach?

### B. Creating a True Cost of Living Index

A central question this note asks is why there has not been enough of an organized effort to move Cost of Living Indexes out of the realm of the theoretical, and into the realm of the practical and operationalized. Cost of Living Indexes certainly have been attempted by individual researchers and private organizations. For example, Dr. Amy K. Glassmeier at MIT developed a comprehensive living wage calculator, which provides a numerical value of one’s cost of living in most places in the United States based on typical expenses.<sup>98</sup> Similar indexes have been developed by the Council for Community and Economic

91. *Id.*

92. *Id.*

93. See *New York–New Jersey Information Office*, *supra* note 73 (“The Consumer Price Index (CPI) is a measure[] of the average change in prices over time in a fixed market basket of goods and services.”).

94. *Id.*; *Consumer Price Index Frequently Asked Questions*, *supra* note 90.

95. See *Newsroom–Frequently Asked Questions*, *supra* note 74.

96. See *Frequently Asked Questions–Question: Is the Consumer Price index (CPI) a Cost of Living Index?*, U.S. DEP’T OF LAB., <https://webapps.dol.gov/dolfaq/go-dol-faq.asp?faqid=93&topicid=6&subtopicid=116#:~:text=Answer%3A%20The%20CPI%20frequently%20is,arise%20in%20constructing%20the%20CPI> (last visited Mar. 26, 2023).

97. *Consumer Price Index Frequently Asked Questions*, *supra* note 90.

98. Amy K. Glassmeier, *Living Wage Calculator*, MIT LIVING WAGE CALCULATOR, <https://livingwage.mit.edu/> (last visited Mar. 26, 2023). See also *id.* (“The federal poverty measure does not take into consideration costs like childcare and health care that not only draw from one’s income, but also are determining factors in one’s ability to work and to endure the potential hardships associated with balancing employment and other aspects of everyday life.”).

Research,<sup>99</sup> Numbeo,<sup>100</sup> Missouri Economic Research and Information Center,<sup>101</sup> and World Population Review.<sup>102</sup>

However, such an index has not been officially created by the New York City or state governments, nor by the federal government.<sup>103</sup> It is certainly possible for governmental bodies to direct the creation of an index centered on meeting a minimum cost of living. In fact, there have been bills introduced in the New York State Senate which direct the Commissioner of Labor to conduct studies on, for example, the effects of increased wages,<sup>104</sup> and on immigrant and refugee participation in adult education and the workforce.<sup>105</sup> If such bills have already been proposed, it is certainly possible to order the Commissioner of Labor to dedicate resources to develop an index not only centered around inflation, but also on holistic measures focused on achieving certain quality-of-life standards for the residents of New York. In fact, such a bill would simply require a little bit of editing to the already existing Section 652 of the New York Labor Law.<sup>106</sup> Here is an example of how legislators could remove and edit language from Section 652 to order the Director of Budget and the Commissioner of Labor to develop a Cost of Living Index in New York State:

[A] wage published by the commissioner on or before October first, ~~based on the then current minimum wage~~ increased by a percentage determined by the director of the budget in consultation with the commissioner, with the result rounded to the nearest five cents, ~~totaling no more than fifteen dollars,~~ where the percentage increase shall be based on indices including, but not limited to, (i) ~~the rate of inflation~~ [cost of living] for the most recent twelve month period ending June of that year based on the ~~consumer price~~ [cost of living] index for all urban consumers ~~on a national and seasonally unadjusted basis (CPI-U),~~ or a successor index as calculated by the United States department of labor, (ii) the rate of state personal income growth for the prior calendar year, or a successor index, published by the bureau of economic analysis of the United States department of commerce, or (iii) wage growth; or, if greater, such other wage as may be established by federal law pursuant

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99. See, e.g., *Cost of Living Index*, COUNCIL FOR CMTY. & ECON. RSCH., <https://www.coli.org/> (last visited Mar. 26, 2023).

100. See, e.g., *Current Cost of Living Index by City*, NUMBEO, [https://www.numbeo.com/cost-of-living/rankings\\_current.jsp](https://www.numbeo.com/cost-of-living/rankings_current.jsp) (last visited Mar. 26, 2023).

101. See, e.g., MO. ECON. RSCH. & INFO. CTR., <https://meric.mo.gov/data/cost-living-data-series> (last visited Mar. 26, 2023).

102. See, e.g., *Cost of Living Index by State 2022*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/cost-of-living-index-by-state> (last visited Mar. 26, 2022).

103. See generally N.Y. LAB. LAW § 652 (McKinney 2020). See also Fair Labor Standards Act, 29 U.S.C.A. § 206 (West 2016).

104. S. 765, 2021-2022 Reg. Sess. (N.Y. 2021).

105. S. 7429, 2021-2022 Reg. Sess. (N.Y. 2021).

106. See generally N.Y. LAB. LAW § 652 (McKinney 2020).

to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.<sup>107</sup>

Here, legislators can also codify the factors that the Commissioner of Labor and Director of Budget should consider. Factors may include some classic metrics considered in the CPI, including food, clothing, shelter, fuel/transportation fares, charges for doctors' and dentists' services, drugs, and the other goods and services that people buy for day-to-day living.<sup>108</sup> But factors could also include metrics such as labor productivity, childcare, healthcare, education costs, adequate savings, and housing. If this sounds like a simple matter of adding in a few provisions, and deleting a few terms, that is because this is exactly what is being suggested. Making bold changes in the law does not have to mean working from scratch; rather, existing foundations can be used to ensure that future generations can improve the living conditions of all living beings and ecosystems. Sometimes, seemingly large changes can be accomplished by chiseling a few terms from a statute and adding new ones. Small changes can shift the entire orientation of the law. Such an approach can be used for the Cost of Living Index.

Including the terms "cost of living" within the New York State minimum wage statute would not be a rare or unprecedented act. There are many states that already use (or have used) these terms in their respective minimum wage statutes, including Nevada,<sup>109</sup> South Dakota,<sup>110</sup> and Arizona.<sup>111</sup> However, these state legislatures are conflating the terms "cost of living" with the "indexing to inflation," when there are clear differences between the two.<sup>112</sup> It is unclear whether the conflation of these terms is contributing to a lack of discussion about adopting a cost of living orientation toward indexing or is simply a reflection of the predominant direction that most legislatures have taken, which is indexing to the CPI.<sup>113</sup> Nonetheless, the conflation of these terms has led to imprecisions in the law and

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107. *Id.* Here, I have removed language which would have set a \$15 maximum cap on the minimum wage by deleting the language: "totaling no more than fifteen dollars." *Id.* Then, I deleted any language related to the "rate of inflation," or the "consumer price index," and replaced it with language related to developing a cost of living index. *Id.*

108. *Newsroom—Frequently Asked Questions*, *supra* note 74.

109. NEV. CONST. art. 15 § 16 (West, Westlaw through 2021) ("These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the *cost of living*. The *cost of living* increase shall be measured by the percentage increase as of December 31 in any year . . .") (emphasis added).

110. *Codified Laws*, S.D. LEGIS. RSCH. COUNCIL, [https://sdlegislature.gov/Statutes/Codified\\_Laws/2077692](https://sdlegislature.gov/Statutes/Codified_Laws/2077692) (last visited Mar. 26, 2023) ("Beginning January 1, 2016, and again on January 1 of each year thereafter, the minimum wage provided by § 60-11-3 shall be adjusted by the increase, if any, in the *cost of living*. The increase in the *cost of living* shall be measured by the percentage increase as of August of the immediately preceding year . . .") (emphasis added).

111. Ariz. Rev. Stat. Ann. § 23-363(B) (2016) ("The minimum wage shall be increased on January 1, 2021 and on January 1 of successive years, by the increase in the *cost of living*. The increase in the *cost of living* shall be measured by the percentage increase as of August of the immediately preceding year . . .") (emphasis added).

112. *See Consumer Price Index Frequently Asked Questions*, *supra* note 90.

113. *See* Chen, *supra* note 39, at 1417.



public policy regarding the implementation of indexing in minimum wage policy.<sup>114</sup>

### C. *Additional Provisions to Supplement the Cost of Living Index*

Since New York's minimum wage has been frozen at \$15 for large employers since 2018,<sup>115</sup> it is imperative to supplement indexing with additional provisions to allow New York City to keep pace with inflation and compete with comparable metropolitan areas across the country.<sup>116</sup> The "RAISEUPNY" campaign<sup>117</sup> supports recently introduced bills in the New York State legislature<sup>118</sup> that would remove the current \$15 cap on the minimum wage, and peg it to the Consumer Price Index and increases in labor productivity.<sup>119</sup> Although these bills support a slightly more traditional approach to indexing (using the CPI) than the approach suggested by this note (developing a true Cost of Living Index), there are some important provisions in these bills which would increase the effectiveness of the Cost of Living Index in providing adequate wage measures.

#### 1. "Catching up" Provision

There is a "catching up" provision where New York City's minimum wage will receive expedited increases, which would raise the city's wage to \$20.45 by 2025 since wages in New York City were frozen in 2018.<sup>120</sup> Although a Cost of Living Index would help match wages in accordance with a standard of living, there is always a risk that proper wage amounts may be delayed or reduced due to the freeze since 2018,<sup>121</sup> or that there may be political efforts to prevent sudden

114. At this point, readers may be interested in the mathematical and algorithmic specificities of developing a true Cost of Living Index and how it may differ from the CPI. While this is certainly an interesting topic that I would like to explore, it is currently beyond the scope of this note, which is oriented toward providing a statutory and legal perspective on establishing a true Cost of Living Index for New York, rather than providing an economic or mathematical comparison of such indexes. I concede, however, that this may be an avenue for future research since algorithmic intricacies may have an impact on legal and policy considerations and the drafting of the statutory language.

115. Mo Hossain & Simon Tangney, *Minimum Wage + Indexing Fact Sheet*, NAT'L EMP. L. PROJECT 1, <https://www.nelp.org/wp-content/uploads/Minimum-Wage-Indexing-Fact-Sheet-CUNY-Law-School.pdf> (last visited Mar. 26, 2022). For additional fact sheets generated by the upcoming New York minimum wage campaign, see *RESOURCES*, #RAISEUPNY, <https://www.raiseupny.com/resources> (last visited Mar. 26, 2023).

116. Hossain & Tangney, *supra* note 115. See also *Working New Yorkers Need Wages that Sustain a Family*, #RAISEUPNY, [https://assets.website-files.com/62581ca0c9fb5c4fb1bd34bc/62714f19499e4c9ce86337e1\\_RaiseTheWage\\_OnePager\\_print.pdf](https://assets.website-files.com/62581ca0c9fb5c4fb1bd34bc/62714f19499e4c9ce86337e1_RaiseTheWage_OnePager_print.pdf) (last visited Mar. 26, 2023) ("Workers deserve wages that can sustain a family and keep pace with rising costs, but our minimum wage is falling behind. *Eighteen states and Washington, D.C. index their minimum wage . . .*").

117. #RAISEUPNY, <https://www.raiseupny.com> (last visited Mar. 26, 2023).

118. See, e.g., S. 3062C, 2021-2022 Reg. Sess. (N.Y. 20222021). See also A. 7503B, 2021-2022 Reg. Sess. (N.Y. 2022).

119. Hossain & Tangney, *supra* note 115.

120. S. 3062C, 2021-2022 Reg. Sess. (N.Y. 2022) ("Catching 2021") ("Catching up' New York City's minimum wage to its 2018 value (and adjusting it for the growth in labor productivity) would raise it to \$20.45 by 2025, based on current projections.") (alteration in original).

121. See *id.*

increases in the minimum wage even if they are well deserved.<sup>122</sup> This “catching up” provision would help mitigate this potential issue.

## 2. Consideration of Labor Productivity

There is an important focus on paying workers for increases in labor productivity in recent years.<sup>123</sup> Despite the fact that there has been a substantial amount of research, data, and reporting of increased worker productivity across many industries for many years,<sup>124</sup> workers have not seen corresponding increases in their wages.<sup>125</sup> This means that workers had been working at a rate where they were increasingly outpacing the costs of their own wages for many years. It is time that workers should be able to taste the fruits of their own labor.

## 3. “Homerule” Provision

A “homerule” provision would have authorized New York City to raise the minimum wage higher than the New York State minimum wage.<sup>126</sup> Unfortunately, this provision was not included in the introduced Senate bill, although, there is a reference in the bill to the power of raising minimum wages bringing economic power back to local communities.<sup>127</sup> There are a number of advantages to including a “homerule” provision to the bill. Firstly, it would ensure that New York City’s minimum wage would be kept at a sufficient level for its

122. See generally Ryan Bourne, *The Case Against a \$15 Federal Minimum Wage: Q&A*, CATO INST. (Feb. 25, 2021), <https://www.cato.org/commentary/case-against-15-federal-minimum-wage-qa> (explaining reasons for why the federal minimum wage should not be increased).

123. S. 3062C, 2021-2022 Reg. Sess. (N.Y. 2022) (“This important approach ensures: . . . that workers also share in the benefits of productivity gains that their labor helps produce.”).

124. Lawrence Mishel, *Growing Inequalities, Reflecting Growing Employer Power, Have Generated a Productivity–Pay Gap Since 1979*, ECON. POL’Y INST. (Sept. 2, 2021, 11:33 AM), <https://www.epi.org/blog/growing-inequalities-reflecting-growing-employer-power-have-generated-a-productivity-pay-gap-since-1979-productivity-has-grown-3-5-times-as-much-as-pay-for-the-typical-worker/> (“Productivity and pay once climbed together. But in recent decades, productivity and pay have diverged: Net productivity grew 59.7% from 1979-2019 while a typical worker’s compensation grew by 15.8%, according to EPI data released ahead of Labor Day.”). See also *Productivity of Labor—Increased Productivity in Various Industries, 1899 to 1925*, 25 MONTHLY LAB. REV. 25, 25–26 (1927).

125. Jared Bernstein, *Productivity and Wages: What’s the Connection?*, WASH. POST (Aug. 14, 2018, 6:00 AM), <https://www.washingtonpost.com/news/posteverything/wp/2018/08/14/productivity-and-wages-whats-the-connection/> (“Finally, while productivity is growing slowly, it’s still growing, while mid-level, real wage growth has been flat. Since 2016, productivity’s annual growth rate is about 1 percent compared with zero for mid-level hourly wages.”).

126. Parrott Memorandum, *supra* note 35. For a more comprehensive explanation of legislative home rule, see Laurie Reynolds, *Home Rule, Extraterritorial Impact, and the Region*, 86 DENV. U. L. REV. 1271, 1275–77 (2009) (“Based on the view that homerule should provide local governments with the full range of government powers that the state is capable of transferring to its political subdivision, legislative homerule contemplates a much-reduced judicial role, with the determination of the scope of homerule power left almost entirely in the hands of the legislature.”).

127. S. 3062—C, 2021-2022 Reg. Sess. (N.Y. 2022) (“New York’s recent experiences raising the minimum wage show that increases have been manageable for employers and that higher paychecks have put money back into local communities, boosting consumer spending at neighborhood businesses. With inflation crushing New York’s working families, we cannot afford to wait.”).

own economy relative to that of the New York State economy.<sup>128</sup> Secondly, it would allow New York City labor agencies to supplement enforcement agencies to increase resources dedicated toward fighting wage theft and other wage related violations.<sup>129</sup> It could also include provisions that would allow the local or state legislature to manually adjust wages to higher values than those suggested by the Cost of Living Index. This could be designed as a “fail safe” in case the wage increases suggested by the Cost of Living Index are not high enough to meet the economic needs of working people.

This is not unprecedented—there has been a sharp acceleration in recent years of cities setting their own minimum wages.<sup>130</sup> In 2010, Washington, D.C., San Francisco, and Santa Fe were among the first cities to set their own local minimum wages above the federal requirements.<sup>131</sup> By 2020, local city-level minimum wages had spread to forty-two major cities, including New York, Chicago, Los Angeles, Seattle, Denver, and Minneapolis, covering almost eight percent of the workforce.<sup>132</sup> These city-level wage adjustments were implemented to address the stagnancy of respective state and federal minimum wages, as well as the high cost of living in these cities.<sup>133</sup>

#### 4. Tailoring to Geographic Region and Business Size

Other provisions that may help the passage of a true Cost of Living Index bill include provisions that would distinguish between major geographic regions in the State of New York, and business size (based on the number of employees working in a given workplace). Such provisions are fortunately already part of the frozen minimum wage statutory schema from 2018.<sup>134</sup> Therefore, these provisions can merely be copied from the current minimum wage statute. These provisions may be important to make sure that any minimum wage bill does not take a “one size fits all” approach where the cost of living in a city may be very different from living elsewhere within a state.<sup>135</sup> They also assist with galvanizing support

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128. Parrott Memorandum, *supra* note 35.

129. *Id.* New York is undergoing many issues related to enforcement of wage laws because employers are able to hide their assets against collection if they renege on paying their employees. *See Your Hard-Earned Wages Can Be Stolen By Your Boss.*, SWEAT NEW YORK, <http://sweatnys.org/> (last visited Mar. 26, 2023) (“Under existing law, if a worker is owed money by an employer, it’s really hard to collect any money because employers can easily hide their assets. SWEAT will allow workers to freeze the employer’s assets (called a ‘lien’). This lien is important because it means when workers are cheated out of their pay, they will actually be able to get it back.”).

130. *See generally* Arindrajit Dube & Attila S. Lindner, *City Limits: What do Local-Area Minimum Wages Do?* 3 (Nat’l Bureau of Econ. Rsch., Working Paper No. 27928, 2020), [https://www.nber.org/system/files/working\\_papers/w27928/w27928.pdf](https://www.nber.org/system/files/working_papers/w27928/w27928.pdf).

131. *Id.*

132. *Id.*

133. *Id.*

134. *See, e.g.*, N.Y. LAB. LAW §§ 652(1)(a)(ii), (1)(c) (McKinney 2020).

135. *See* Rachel Burris, *Cost of Living in New York by City: NYC and Upstate*, ROCKET HOMES (Dec. 27, 2021), <https://www.rockethomes.com/blog/home-buying/cost-of-living-in-new-york>.

among small businesses outside of the city who may not be generating as much revenue as larger corporations located within a city environment.<sup>136</sup>

#### 5. Allowing Wage Floor Adjustments to Supplement the True Cost of Living Index

While the goal of a true Cost of Living Index is to capture the true economic needs of the public to meet a proper standard of living, it is not intended to bypass democratic will. If legislatures so desire, they may always include provisions to allow for wage floors that are higher than the numerical values suggested by the true Cost of Living Index and the aforementioned provisions. Functioning similarly to the “homerule” provision discussed earlier, these wage floor adjustments would operate on a state level rather than a city or municipal level, and could serve as an additional safety net in case a state legislature wanted to further increase the minimum wage.

The purpose of indexing to a cost of living is to change the focus of the index from goods and services to people.<sup>137</sup> There is always a possibility that people may desire and advocate for a wage that is beyond the recommendation set forth by an index, even if the index is already more generous than other metrics.<sup>138</sup> While a true Cost of Living Index and the additional provisions would certainly move minimum wages to a value more commensurate with the needs of working people, it is nonetheless very important for working people to understand that, through collective action, they may be able to self-determine the value of their labor beyond the suggestions of a simple index. Wage floors become a useful tool in this instance.

### III. OBJECTIONS AND COUNTER ARGUMENTS TO THE PROPOSED COST OF LIVING LEGISLATION

There are many objections and counterarguments to the idea of raising the minimum wage, or adopting a true Cost of Living Index as suggested by this note. Although it will not be possible to address every concern, this note will attempt to address some of the most vigorously debated issues.

#### A. “Raising the Minimum Wage Will Reduce Employment”

Some raise concerns that increasing the minimum wage will reduce employment.<sup>139</sup> The Cato Institute, for example, popularly cites various studies from

136. See generally BUSINESS FOR A FAIR MINIMUM WAGE, <https://www.businessforafairminimumwage.org/> (last visited Mar. 26, 2023).

137. See *New York–New Jersey Information Office*, *supra* note 73 (“The Consumer Price Index (CPI) is a measure[] of the average change in prices over time in a fixed market basket of goods and services.”).

138. See generally Bellafante, *supra* note 31 (advocating for a \$33 minimum wage in New York City).

139. *Four Reasons Not to Raise the Minimum Wage*, CATO INST., [https://www.cato.org/sites/cato.org/files/our\\_reasons\\_not\\_to\\_raise\\_the\\_minimum\\_wage.pdf](https://www.cato.org/sites/cato.org/files/our_reasons_not_to_raise_the_minimum_wage.pdf) (last visited Mar. 26, 2023) [hereinafter CATO INST.].

1938, 2006, and 2010, and uses these studies to argue that “[e]vidence of job losses have been found since the earliest imposition of the minimum wage.”<sup>140</sup> However, this conclusion is not well supported.

Though some research foundations have previously released studies that indicated that expanding the minimum wage beyond \$8.50 would result in job losses and hurt the economy, in practice this did not occur.<sup>141</sup> In fact, it was quite the contrary. By mid-2021, after many increases to the minimum wage, there was a net gain in employment in New York by 3,200 jobs, which corresponded to a gain of 0.01% . . . a very small net employment effect in relation to the overall size of the New York State job market, and the 3.16 million low-paid workers who received a 23.4% boost in earnings.<sup>142</sup> This means that impacts on job loss were negligible. There were also vast improvements in living standards for workers.<sup>143</sup> Moreover, these wage increases would help reverse decades of wage declines for low-paid workers who have not seen a pay increase for many years, and whose money has continually depreciated in value over time due to inflation.<sup>144</sup>

#### B. “Raising the Minimum Wage Does Not Target the Working Poor”

Conservative think tanks such as the Cato Institute often argue that raising the minimum wage is ineffective and imprecise—that increases in the minimum wage are not well targeted to the working poor because “[o]f those who will gain, 63.2% are second or third earners living in households with incomes twice the poverty line, and 42.3% live in households with incomes three times the poverty line, well above \$50,233, the income of the median household in 2007.”<sup>145</sup>

One might question the conclusion of such a study by asking whether it is even possible to live in a single household at the minimum wage without the assistance or codependency of other income-earning persons in the same household. On the federal level, there seems to be an abundance of data concluding that those earning the bare minimum cannot afford to live alone.<sup>146</sup> At the very least, some anecdotally describe living even slightly above the federal minimum wage

140. *Id.*

141. Michael J. Chow, *Economic Effects of a New York Minimum Wage Increase: An Econometric Scoring of S6413*, NAT’L FED’N OF INDEP. BUS. 1 (Nov. 1, 2012), <https://www.nfib.com/surveys/ny-minimum-wage/> (“Depending upon the rate of inflation in future years, enacting legislation containing the essence of S6413 could result in nearly 22,000 lost jobs in New York over a ten-year period and a reduction in real output of \$2.5 billion. More than 70 percent of the lost jobs would be jobs from the small business sector of the economy.”).

142. MICHAEL REICH ET AL., CTR. ON WAGE & EMP. DYNAMICS, *THE EFFECTS OF A \$15 MINIMUM WAGE IN NEW YORK STATE* 5 (2016).

143. *Id.*

144. *Id.*

145. Joseph J. Sabia & Richard V. Burkhauser, *Minimum Wages and Poverty: Will a \$9.50 Federal Minimum Wage Really Help the Working Poor?*, 76 S. ECON. J. 592, 593 (2010).

146. ANDREW AURAND, NAT’L LOW INCOME HOUS. COAL., *OUT OF REACH: THE HIGH COST OF HOUSING 2* (2021) (“[T]he average minimum wage worker must work nearly 97 hours per week . . . to afford a two-bedroom rental home or 79 hours per week . . . to afford a one-bedroom rental home at the fair market rent.”).

as “a constant struggle” where one has to “pick and choose what’s important.”<sup>147</sup> These folks report needing to rely on public assistance such as food stamps and other family members—and even with this additional support, it may not be enough where working hours may vary for many low-wage workers week by week.<sup>148</sup>

Recent research indicates that low-wage communities are often the ones that reap the positive benefits of an increased minimum wage.<sup>149</sup> In fact, additional research indicates low-wage workers saw the “biggest wage growth in states that increased their minimum wage between 2018 and 2019.”<sup>150</sup> Similar reporting has indicated that \$15 is not enough as a minimum wage in New York either.<sup>151</sup>

### C. “Raising the Minimum Wage is Bad for Inflation, Prices, and the Labor Market”

There is a concern that increases in wages for the most economically disenfranchised will lead to overall inflation.<sup>152</sup> This is the basic idea behind “wage-push inflation.”<sup>153</sup> This is a perspective that was popularized in the 1970’s partly by the Reagan administration.<sup>154</sup> First, there is strong recent research to the contrary. Minimum wage increases do not have negative effects on state wage hikes, and minimum wage changes have not led to increases in prices in certain tested industries.<sup>155</sup> Moreover, studies have concluded that small wage hikes did not lead to higher prices, but might actually lead to lower prices.<sup>156</sup>

147. Megan Leonhardt, *What It’s Like Trying to Live on Minimum Wage—It’s a ‘Constant Struggle’*, CNBC MAKE IT (July 18, 2019, 9:43 AM), <https://www.cnbc.com/2019/07/18/what-its-like-to-live-on-minimum-wage-in-the-us.html>.

148. *Id.*

149. Anna Godøy & Michael Reich, *Are Minimum Wage Effects Greater in Low-Wage Areas?* 3 (Inst. for Rsch. on Lab. & Emp., Working Paper No. 106-20, 2020), <https://irle.berkeley.edu/files/2020/09/Are-Minimum-Wage-Effects-Greater-in-Low-Wage-Areas.pdf> (“Our results generally suggest the presence of positive wage effects. We show that these wage effects are greater in areas with higher relative minimum wages and bites, validating our approach to studying high impact areas.”).

150. Elise Gould, *Low-Wage Workers Saw the Biggest Wage Growth in States That Increased their Minimum Wage Between 2018 and 2019*, ECON. POL’Y INST., <https://www.epi.org/blog/low-wage-workers-saw-the-biggest-wage-growth-in-states-that-increased-minimum-wage-2018-2019/> (last visited Mar. 26, 2023).

151. Bungle, *supra* note 6; Bellafante, *supra* note 31.

152. CATO INST., *supra* note 139, at 1 (“The costs of minimum wage increases must be paid by someone.”) (emphasis in original).

153. Danielle Zanzalari, *What is Wage-Push Inflation?*, BALANCE, <https://www.thebalance.com/what-is-wage-push-inflation-5214749> (last visited Mar. 26, 2023) (“Wage-push inflation is the general increase in prices caused by wages rising in society. If wages rise, corporations typically raise the price of their final goods and services. As many goods become more expensive, the overall price level rises and there is inflation.”).

154. LEVIN-WALDMAN, *supra* note 62, at 118.

155. Daniel MacDonald & Eric Nilsson, *The Effects of Increasing the Minimum Wage on Prices: Analyzing the Incidence of Policy Design and Context* 28, 34 (W.E. Upjohn Inst., Working Paper No. 16-260, 2016) (“We do not see such negative effects on prices in the case of state minimum wage hikes. . . . minimum wage changes do not lead to significant increases in FAFH prices. . . .”).

156. *Id.* at 35 (“[S]mall minimum wage hikes do not lead to higher prices, and they might actually lead to lower prices.”).

Second, long-prevailing and contemporary research on the impact of minimum wages on labor markets indicates that increasing the minimum wage has “little evidence of employment loss.”<sup>157</sup> There is “no indication that minimum wage has a negative effect on the unemployment rate, on the labor force participation, or on the labor market transitions.”<sup>158</sup>

It is also important to discuss automation when discussing wages. Although there is still much research to be conducted in this area, most have pointed in the direction that the low-wage labor market is not always susceptible to technological substitution.<sup>159</sup> Rather, changes in technology and wages can influence organization, output quality, demands for skilled labor, and changes in product and service quality.<sup>160</sup> Similarly, other more recent studies have concluded that minimum wage hikes may result in employment declines in jobs that involve cognitively routine tasks, but does not result in declines in occupations with intensive routine manual tasks.<sup>161</sup> Such sentiment is echoed by the U.S. Federal Reserve, popular media, and heads of asset management firms, as they have publicly reported that wage increases are not likely to be a tremendous factor pushing inflation.<sup>162</sup>

Lastly, even if prices did increase, they would be much smaller than labor cost increases because labor costs only average about one-fourth of operating costs.<sup>163</sup> The consumers who would shoulder the costs of an increase in minimum wage would range across the entire income distribution, meaning wealthier individuals who earn far more than the minimum wage would be paying in part for the increase in the minimum wage.<sup>164</sup> Any remaining costs could be easily absorbed by businesses by increasing prices so slightly that it would be well below the annual inflation of nearly two percent over the last five years.<sup>165</sup>

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157. Doruk Cengiz, *Seeing the Trees: Using Machine learning to Estimate the Impact of Minimum Wages on Labor Market Outcomes 2* (Nat'l Bureau of Econ. Rsch., Working Paper No. 28399, 2021), [https://www.nber.org/system/files/working\\_papers/w28399/w28399.pdf](https://www.nber.org/system/files/working_papers/w28399/w28399.pdf). See also JOHN SCHMITT, WHY DOES THE MINIMUM WAGE HAVE NO DISCERNIBLE EFFECT ON EMPLOYMENT? 1 (2013) (“The employment effect of the minimum wage is one of the most studied topics in all of economics. . . . The weight of that evidence points to little or no employment response to modest increases in the minimum wage.”).

158. *Id.*

159. Timothy F. Bresnahan et al., *Information Technology, Workplace Organization, and the Demand for Skilled Labor: Firm-Level Evidence* 34–35 (Nat'l Bureau of Econ. Rsch., Working Paper No. 7136, 1999).

160. *Id.*

161. Daniel Aaronson & Brian Phelan, *Wage Shocks and the Technological Substitution of Low-Wage Jobs* 29–30 (W.E. Upjohn Inst. for Emp. Rsch., Working Paper No. 17-266, 2016) (Moreover, it has “no impact on higher paid occupations.”).

162. See Nir Kaissar, *Wages Are Heading Up, But They're Not Pushing Inflation*, BLOOMBERG (Nov. 10, 2021, 6:30 AM), <https://www.bloomberg.com/opinion/articles/2021-11-10/wages-are-heading-up-but-they-re-not-inflationary>.

163. REICH ET AL., *supra* note 142, at 4.

164. *Id.*

165. *Id.*

D. “Raising the Minimum Wage is Bad for Businesses.”

Some argue that raises in the minimum wage would be bad for business.<sup>166</sup> Usually these arguments state that increased wages will hurt workers by prompting business leaders to take actions such as “reducing hiring, cutting employee work hours, reducing benefits, and charging higher prices.”<sup>167</sup> There is a laundry list of reasons why this is not supported both quantitatively and qualitatively, and why the opposite might in fact be true. Firstly, due to New York City’s minimum wage remaining flat since 2018, many employers have already taken proactive steps to raise the respective minimum wages of their own businesses and industries.<sup>168</sup> Additionally, after the conclusion of the COVID-19 pandemic, there has been a record number of job openings and record turnover rates, and businesses have been struggling to find and keep workers.<sup>169</sup> These changes demonstrate the inadequacy of the current minimum wage for employees, and the ability and willingness of employers to be able to pay higher wages.<sup>170</sup>

Secondly, as mentioned earlier, many cities have already taken steps to raise their minimum wages beyond \$15, and there are no unique reasons to believe that a city as large and lucrative as New York City would be unable to do the same.<sup>171</sup> In fact, there is significant polling data and reporting which shows that eighty percent of business executives support raising the minimum wage, while only eight percent oppose it.<sup>172</sup> There is even a coalition known as “Business for a Fair Minimum Wage,” which is composed of businesses and business leaders who wish to see increases.<sup>173</sup>

A recent Data for Progress poll shows additional support for increasing the minimum wage by concluding that a majority of New Yorkers believe that the

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166. See Mark Wilson, *The Negative Effects of Minimum Wage Laws 1* (CATO Inst., Working Paper No. 701, 2012), <https://www.cato.org/sites/cato.org/files/pubs/pdf/PA701.pdf>.

167. *Id.*

168. Parrott Memorandum, *supra* note 35, at 2 (“While New York City’s minimum wage has been flat for three years, employers in low-wage industries have been raising pay in response to attract workers back.”).

169. LINDSAY CATES & RICHARD HARTNETT, U.S. CHAMBER OF COM., *BUSINESSES STRUGGLE TO FIND AND KEEP WORKERS AMID RECORD-HIGH JOB OPENINGS* (2021), <https://www.uschamber.com/workforce/businesses-struggle-find-and-keep-workers-amid-record-high-job-openings>.

170. *Id.*

171. Dube & Lindner, *supra* note 130, at 3.

172. Lydia DePillis, *Leaked Documents Show Strong Business Support for Raising the Minimum Wage*, WASH. POST (Apr. 4, 2016, 7:36 AM), <https://www.washingtonpost.com/news/wonk/wp/2016/04/04/leaked-documents-show-strong-business-support-for-raising-the-minimum-wage/> (“The survey of 1,000 business executives across the country was conducted by LuntzGlobal, the firm run by Republican pollster Frank Luntz, and obtained by a liberal watchdog group called the Center for Media and Democracy. . . . Among the most interesting findings: 80 percent of respondents said they supported raising their state’s minimum wage, while only eight percent opposed it.”).

173. See generally BUS. FOR A FAIR MINIMUM WAGE, <https://www.businessforafairminimumwage.org/#:~:text=Business%20for%20a%20Fair%20Minimum%20Wage%20supports%20raising%20the%20federal,for%20businesses%20of%20all%20sizes> (last visited Mar. 26, 2023).



minimum wage should be at least \$20.<sup>174</sup> The poll elaborates that there is bipartisan support for raising it, that there is support across all regions of New York, that voters would be more likely to support political candidates who support it, that it will allow New Yorkers to afford basic necessities (and not raise prices), and that it will raise economic productivity and not cost jobs or hurt businesses.<sup>175</sup>

Additionally, reports have shown that it is the largest U.S. companies (not necessarily small businesses) which have been paying workers less than \$10.<sup>176</sup> Some companies have even confessed that raising the minimum wage “wouldn’t be a big deal,” and that it has actually been good for business, even as their corporate lobbying groups fight raising the wage.<sup>177</sup>

Some businesses argue that raising wages would close businesses because it would increase business costs. But it is not that simple.<sup>178</sup> Business costs are determined by many changing variables, including the cost of materials, utilities, rent, and property taxes.<sup>179</sup> Labor costs often average less than one-fourth of all operating costs.<sup>180</sup> Meanwhile, the pay of executives, professionals and other high-paid workers often far outpace the labor costs of minimum wage workers.<sup>181</sup>

Also, a higher wage rate does not necessarily mean higher total costs where there may be savings from reduced turnover and from greater productivity.<sup>182</sup> Reducing absenteeism and employee turnover can reduce recruitment and training costs and increases morale and worker productivity—a more productive worker means lower costs to produce something.<sup>183</sup> This is supported by data: a number of studies from 2005 through 2015 show that at least twenty percent of increased costs from an increased minimum wage are offset by reductions in turnover.<sup>184</sup> These higher wage rates can also benefit businesses by leading to

174. Anika Dandekar & Evangel Penumaka, *New York Voters Want a Higher Minimum Wage*, DATA FOR PROGRESS, <https://www.dataforprogress.org/blog/2022/4/28/ny-min-wage> (last visited Mar. 26, 2023).

175. *Id.*

176. Josie Green, *Big US Companies Paying Workers Less than \$10 an Hour*, 24/7 WALL ST (Mar. 16, 2022, 7:00 PM), <https://247wallst.com/special-report/2022/05/16/big-us-companies-paying-workers-less-than-10-an-hour/>.

177. Julia Rock & Andrew Perez, *McDonald’s, Other CEOs Tell Investors \$15 Minimum Wage Won’t Hurt Business*, NEWSWEEK (Apr. 5, 2021, 6:00 AM), <https://www.newsweek.com/mcdonalds-other-ceos-tell-investors-15-minimum-wage-wont-hurt-business-1580978>.

178. See JAMES PARROTT, MONITORING THE MINIMUM WAGE, BRIEF 2: HOW WILL A HIGHER MINIMUM WAGE AFFECT BUSINESSES AND THE ECONOMY? 1 (2017), <https://www.workforceprofessionals.org/wp-content/uploads/2020/01/Monitoring-the-Minimum-Wage-Brief-2-1.pdf> [hereinafter MONITORING THE MINIMUM WAGE].

179. *Id.* at 2.

180. *Id.*

181. *Id.*

182. *Id.* at 4.

183. *Id.* at 3.

184. REICH ET AL., *supra* note 142, at 24 (“Pollin and Wicks-Lim (2015) estimate that 20 percent of the increased costs from a minimum wage increase are offset by reductions in turnover. Similar estimates can be found in Fairris (2005) and Jacobs and Graham-Squire (2010). In a small case study of quick service restaurants in Georgia and Alabama (Hirsch, Kaufman and Zelenska 2011), managers reported they offset 23 percent of the labor cost increases through operational efficiencies.”).

improved customer service and satisfaction.<sup>185</sup> Business leaders also know that there are significant costs involved with replacing employees after they are gone.<sup>186</sup> Firing and replacing employees sometimes seems like an easy option for some employers, until faced with the costs of employee turnover.<sup>187</sup> Lastly, among the many reasons that small businesses tend to close, paying minimum wage workers a little more is not one of them.<sup>188</sup>

#### CONCLUSION

The impetus behind establishing a true Cost of Living Index is to tie the minimum wage—a baseline income that everyone is entitled to—to a minimum standard of living that respects people’s dignity. Minimum wages should not just be about being able to purchase necessities, although, there is evidence that even this standard is not being met.<sup>189</sup> Rather, minimum wages should be about establishing a bottom-line standard of living that demonstrates the compassion, the strength, and the respect of one of the wealthiest states in the world.<sup>190</sup> Indexing to one’s cost of living does not have to be a merely “conceptual” framework, but rather a real alternative to the more popular Consumer Price Index.<sup>191</sup> Indexing for a minimum wage needs to focus more on the living needs of people, rather than their ability to purchase goods and services.<sup>192</sup>

The addition of “homerule” and “catching up” provisions, considerations of labor productivity, business size, and geography, and supplemental use of higher wage floors, if desired by voters, can ensure that any wage values suggested by a true Cost of Living Index are commensurate and acceptable to workers. Hopefully, this note will be one more voice in a larger conversation about the value placed on workers’ labor and about how wage evaluations of the most disenfranchised workers speak volumes about how we value their labor.

185. PARROTT, *supra* note 178, at 4.

186. HEATHER BOUSHEY & SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, *THERE ARE SIGNIFICANT BUSINESS COSTS TO REPLACING EMPLOYEES passim* (2012).

187. *How Wages Impact Your Employee Turnover*, ADECCO (Oct. 12, 2020), <https://www.adeccousa.com/employers/resources/increasing-hourly-wages/> [<https://web.archive.org/web/20221006183248/https://www.adeccousa.com/employers/resources/increasing-hourly-wages/>] (“[S]ome lower-paying companies actually spend more than some higher-paying companies when it comes to workforce management. Why? Because the lower-paying companies have higher turnover costs in the form of job ads, onboarding, training and opportunity costs. Not to mention, poor culture and productivity issues.”).

188. *Cf.* BRIAN HEADD, U.S. SMALL BUS. ADMIN., *SMALL BUSINESS FACTS: WHY DO BUSINESSES CLOSE?* (2018), <https://advocacy.sba.gov/2018/05/01/why-do-businesses-close/>.

189. Bungle, *supra* note 6; Bellafante, *supra* note 31.

190. *The Wealthiest Cities in the World 2021*, NWWALTH (Sept. 15, 2021), [https://newworldwealth.com/reports/f/the-wealthiest-cities-in-the-world-2021#:~:text=New%20York%20City%3A,\(Dow%20Jones%20and%20NASDAQ\)](https://newworldwealth.com/reports/f/the-wealthiest-cities-in-the-world-2021#:~:text=New%20York%20City%3A,(Dow%20Jones%20and%20NASDAQ);); *see also* Kathleen Elkins, *NYC is the Leading City For the Wealthy—Here Are the Top 10 Richest Cities in the World*, CNBC MAKE IT (May 14, 2020, 10:40 AM), <https://www.cnn.com/2020/05/14/top-10-richest-cities-in-the-world-according-to-wealth-x.html>.

191. *Consumer Price Index Frequently Asked Questions*, *supra* note 90.

192. *See New York–New Jersey Information Office*, *supra* note 73 (“The Consumer Price Index (CPI) is a measure[] of the average change in prices over time in a fixed market basket of goods and services.”).