

# INCREASING THE MINIMUM WAGE THROUGH DIRECT DEMOCRACY

## I. INTRODUCTION

On January 1, 2017, nineteen states saw their minimum wages increase.<sup>1</sup> Colorado, like four other states, increased its minimum wage through direct democracy; in this case, through a voter-initiated constitutional amendment.<sup>2</sup> Colorado is one of twenty-nine states to have a minimum wage higher than the federal minimum wage.<sup>3</sup> All increases in Colorado's minimum wage since the turn of the century have been through voter-initiated methods.<sup>4</sup>

While numerous bills in state houses across the country last year were voted down or postponed indefinitely,<sup>5</sup> every voter-initiated ballot measure to increase the minimum wage passed.<sup>6</sup> Not only did all initiatives that raised the minimum wage pass, the one initiative that would have lowered the minimum wage for minors failed.<sup>7</sup> Of the twenty-one states with a minimum wage less than or equal to the federal minimum wage, fifteen have no method of direct democracy.<sup>8</sup> With an eight-year gap since Congress increased the federal minimum wage, it is the states, more specifically the citizens of the states, who have stepped in to protect the rights of the lowest-paid.<sup>9</sup>

## II. STATES ARE LEADING THE CHARGE OF MINIMUM WAGE INCREASES

State minimum wages have seen a significant increase since the turn of the century. In 2000, the federal minimum wage was \$5.15.<sup>10</sup> At that time, even though forty-three states had instituted their own minimum wage laws, only eleven states instituted a wage higher than the

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<sup>1</sup> Nat'l Conf. of State Legislatures, *State Minimum Wages | 2017 Minimum Wage by State* (Jan. 5, 2017), <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>.

<sup>2</sup> Nat'l Conf. of State Legislatures, *supra* note 1.

<sup>3</sup> See Dep't of Labor, Wage & Hour Div., *Minimum Wage Laws in the States - January 1, 2017*, <https://www.dol.gov/whd/minwage/america.htm>.

<sup>4</sup> See COLO. CONST. art. XVIII, § 15.

<sup>5</sup> Jonathan Schleifer, *5 Ways Direct Democracy Can Reduce Economic Inequality and Create Progressive Change*, MEDIUM (Jan. 26, 2017), <https://medium.com/@Jonathanchad/5-ways-direct-democracy-can-reduce-economic-inequality-and-create-progressive-change-15adffaa5b6c#.k4x49pvba>

<sup>6</sup> Nat'l Conf. of State Legislatures, *supra* note 1.

<sup>7</sup> Notably, the only people who would be affected by the minimum wage reduction were those who could not vote; people under the age of eighteen. See, J.B. Wogan, *4 States Vote to Raise the Minimum Wage, 1 Votes to Keep It As Is*, GOVERNING (Nov. 9, 2016), <http://www.governing.com/topics/elections/gov-minimum-wage-2016-state-ballot-measures.html>.

<sup>8</sup> See Dep't of Labor, *supra* note 3; Ballotpedia, *Ballot Measures*, BALLOTPEDIA, [https://ballotpedia.org/Ballot\\_Measures\\_overview](https://ballotpedia.org/Ballot_Measures_overview).

<sup>9</sup> See U.S. Dep't of Labor, Wage & Hour Division, *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938 – 2009*, <https://www.dol.gov/whd/minwage/chart.htm>.

<sup>10</sup> See U.S. Dep't of Labor, Wage & Hour Division, *Changes in Basic Minimum Wages in Non-Farm Employment Under State Law: Selected Years 1968 to 2016*, <https://www.dol.gov/whd/state/stateMinWageHis.htm>.

federal minimum wage.<sup>11</sup> Over the next fifteen years, that number has more than doubled; twenty-nine states now have minimum wages higher than the federal minimum wage.<sup>12</sup> Colorado is an excellent example of the trend of recent ramp-ups in state minimum wage.

Colorado's first minimum wage law was instituted in the mid-1900s, but it was not until the late 1970s that Colorado's minimum wage coverage was extended beyond women and minors.<sup>13</sup> Colorado's minimum wage remained below the federal minimum until 1997, when it increased its minimum wage to \$4.75, matching the federal minimum wage.<sup>14</sup> In 2006, Colorado approved for the first time a minimum wage that was higher than the federal minimum; this was accomplished through the ballot initiative process.<sup>15</sup> Initiative 42 amended the Colorado Constitution, adding a new section that provided for a \$6.85 wage, to be annually adjusted for inflation.<sup>16</sup> The initiative passed with an approximately 7% margin.<sup>17</sup> After ten years of legislative inaction, and a slight deflation in 2009 that caused the minimum wage to decrease, another initiative was placed on the ballot: Amendment 70.<sup>18</sup> This amendment affords for incremental increases in the current minimum wage.<sup>19</sup> Once the current \$8.31 minimum wage reaches \$12 in 2020, it is automatically increased every year thereafter.<sup>20</sup> Because of the 2009 decrease, annual "adjustments" are now termed "increases" and are measured by cost of living.<sup>21</sup> Amendment 70 was passed with an approximately 11% margin.<sup>22</sup> In only twenty years, Colorado's minimum wage has gone from consisting of 70% of the federal minimum wage to consisting of 130% of the federal minimum wage.<sup>23</sup> In 2017, the average minimum wage of an American is \$1.24 higher than the federal minimum wage. While the first across-the-board minimum wage was instituted at the federal level, it is now the states that have shouldered the burden of that particular piece of worker protection.

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<sup>11</sup> *See id.*

<sup>12</sup> *See id.*

<sup>13</sup> *See id.*

<sup>14</sup> *See id.*

<sup>15</sup> COLO. CONST. art. XVIII, § 15.

<sup>16</sup> *Id.*

<sup>17</sup> Colorado Election Results, *Official Certified Results, Nov. 8, 2016 General Election*, <http://results.enr.clarityelections.com/CO/63746/184388/Web01/en/summary.html>.

<sup>18</sup> *See* U.S. Dep't of Labor, *supra* note 10; Ballotpedia, *Colorado \$12 Minimum Wage, Amendment 70 (2016)*, [https://ballotpedia.org/Colorado\\_\\$12\\_Minimum\\_Wage,\\_Amendment\\_70\\_\(2016\)](https://ballotpedia.org/Colorado_$12_Minimum_Wage,_Amendment_70_(2016)).

<sup>19</sup> COLO. CONST. art. XVIII, § 15.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *See* Ballotpedia, *supra* note 18.

<sup>23</sup> *See* U.S. Dep't of Labor, *supra* note 10.

### III. DIRECT DEMOCRACY MECHANISMS AND THEIR USE

A direct democracy is one “in which the people directly make policy and law decisions.”<sup>24</sup> While America is a representative democracy, not a direct democracy, twenty-four states have allowed for some sort of direct democracy mechanism in the form of initiative and referendum.<sup>25</sup>

Initiative is a “process by which a percentage of voters can propose legislation and compel a vote on it by the legislature or by the full electorate.”<sup>26</sup> Most states that have given their citizens initiative power allow them to initiate both constitutional amendments and statutes, however nine states restrict initiatives to one or the other.<sup>27</sup> Referenda generally fall into one of two categories: veto referenda and legislative referral.<sup>28</sup> Veto, or citizen, referenda allow citizens to place a measure on the ballot to veto a bill passed by the legislature. Legislative referral allows the legislature to place a measure on the ballot for popular vote.<sup>29</sup>

The last twenty years have seen a “dramatic growth in the use of citizen initiatives . . . in the American states.”<sup>30</sup> “[F]or the first time in recent history, more initiatives [were] certified for the [2016] ballot than legislatively referred amendments.”<sup>31</sup> Not only do direct democracy mechanisms give a stronger voice to the people, but they also increase civic engagement; one study showed that for every initiative or referendum on the ballot, the likelihood that a citizen would vote increased by 1%.<sup>32</sup> Citizens have turned to direct democracy mechanisms when an issue has popular support, but lacks political support to enact, e.g. marijuana legalization.<sup>33</sup> While the success of medical marijuana legislation has been evenly split between state houses and citizen initiatives, all seven states that have legalized recreational marijuana have done so through citizen initiatives.<sup>34</sup> Direct democracy initiatives continue to be an effective method of enacting popularly supported issues.

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<sup>24</sup> *Direct Democracy*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>25</sup> Ballotpedia, *supra* note 8.

<sup>26</sup> *Initiative*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>27</sup> Ballotpedia, *supra* note 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Caroline J. Tolbert, Ramona S. McNeal & Daniel A. Smith, *Enhancing Civic Engagement: The Effect of Direct Democracy on Political Participation and Knowledge*, ST. POL. & POL’Y Q., Spring 2003, at 23, 35.

<sup>31</sup> Josh Altic & Geoff Pallay, *Ballot Measures: American Direct Democracy at Work*, N.Y. TIMES: OPINION PAGES (Aug. 31, 2016), <https://www.nytimes.com/2016/08/31/opinion/campaign-stops/ballot-measures-american-direct-democracy-at-work.html>.

<sup>32</sup> Tolbert, McNeal & Smith, *supra* note 29, at 34.

<sup>33</sup> Altic & Pallay, *supra* note 30.

<sup>34</sup> See Ballotpedia, *History of marijuana on the ballot*, BALLOTPEDIA, [https://ballotpedia.org/History\\_of\\_marijuana\\_on\\_the\\_ballot](https://ballotpedia.org/History_of_marijuana_on_the_ballot).

#### IV. MINIMUM WAGE INCREASES ARE SUPPORTED BY THE MAJORITY OF AMERICANS

There is a significant amount of debate over the propriety of minimum wage laws.<sup>35</sup> The majority of this debate surrounds the economics of the minimum wage.<sup>36</sup> It is often businesses and business coalitions that oppose minimum wage increases, while unions and labor groups are frequent supporters of increases.<sup>37</sup> The most common argument against minimum wage is that increasing the cost of labor will cause an increase in unemployment, as businesses will be unable to hire as many workers at the higher rate.<sup>38</sup> The most common argument for minimum wage is its effect on raising the quality of life for those in the lowest income bracket.<sup>39</sup> While the heated, and often deadlocked, debates in the media and legislatures would seem to indicate a similar divide in public opinion, the opposite is actually true.

The majority of Americans, going as far back as the 1940s, have supported minimum wage increases.<sup>40</sup> Gallup polls from the 1940s and 1950s saw 60% to 70% of the population supporting minimum wage increases.<sup>41</sup> In a more recent Gallup poll, 71% of Americans supported raising the minimum wage to \$9.<sup>42</sup> One year later, a Pew Research Center study revealed that 73% of Americans supported raising the minimum wage to \$10.10, including 53% of Republicans.<sup>43</sup>

Ordinary citizens are not the only ones who support minimum wage increases; a 2016 survey of 1,000 business executives across the country revealed that 80% support increases in their state's minimum wage.<sup>44</sup> In 2014, more than six hundred economists, including seven Nobel laureates, signed onto a letter in support of a \$10.10 minimum wage.<sup>45</sup>

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<sup>35</sup> See, e.g., Donald Boudreaux, *Why Does the Minimum Wage Debate Never End?*, FOUND. FOR ECON. EDUC. (Dec. 22, 2016), <https://fee.org/articles/why-does-the-minimum-wage-debate-never-end>.

<sup>36</sup> See *id.*

<sup>37</sup> See e.g., Ballotpedia, *supra* note 18.

<sup>38</sup> Rex Huppke, *The argument against raising minimum wage*, CHI. TRIB. (Mar. 10, 2014), [http://articles.chicagotribune.com/2014-03-10/business/ct-biz-0310-work-advice-huppke-20140310\\_1\\_minimum-wage-william-wascher-david-neumark](http://articles.chicagotribune.com/2014-03-10/business/ct-biz-0310-work-advice-huppke-20140310_1_minimum-wage-william-wascher-david-neumark).

<sup>39</sup> Rex Huppke, *The argument for increasing minimum wage*, CHI. TRIB. (Mar. 3, 2014), [http://articles.chicagotribune.com/2014-03-03/business/ct-biz-0303-work-advice-huppke-20140303\\_1\\_minimum-wage-arindrajit-dube-future-increases](http://articles.chicagotribune.com/2014-03-03/business/ct-biz-0303-work-advice-huppke-20140303_1_minimum-wage-arindrajit-dube-future-increases).

<sup>40</sup> See Lydia Saad, *In U.S., 71% Back Raising Minimum Wage*, GALLUP (March 6, 2013), <http://www.gallup.com/poll/160913/back-raising-minimum-wage.aspx>.

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> Pew Research Center, *Most See Inequality Growing, but Partisans Differ over Solutions*, PEW RESEARCH CENTER (Jan. 23, 2014), <http://www.people-press.org/2014/01/23/most-see-inequality-growing-but-partisans-differ-over-solutions>.

<sup>44</sup> Lydia Pillis, *Leaked documents show strong business support for raising the minimum wage*, WASH. POST: WONKBLOG (April 4, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/04/04/leaked-documents-show-strong-business-support-for-raising-the-minimum-wage>.

<sup>45</sup> Economic Policy Institute, *Over 600 Economists Sign Letter In Support of \$10.10 Minimum Wage*, EPI (Jan. 14, 2014), <http://www.epi.org/minimum-wage-statement>.

Raising the minimum wage is widely supported by the majority of the population.

#### V. CONCLUSION

In the past year, minimum wage legislation was introduced in state houses, and subsequently rejected, in Arizona and Maine.<sup>46</sup> In November of 2016, both of these states passed minimum wage legislation through the initiative process; not only did the initiatives pass, they passed with significant margins, 17% and 11% respectively.<sup>47</sup> As worker protection increasingly falls to the states, proponents of minimum wage laws would do well to focus on direct democracy mechanisms. The majority of Americans support minimum wage increases; by sidestepping legislatures, methods like voter initiatives and voter initiated amendments are faster and more effective methods of addressing the wishes of the majority.

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<sup>46</sup> Schleifer, *supra* note 5.

<sup>47</sup> See Ballotpedia, *Arizona Minimum Wage and Paid Time Off, Proposition 206 (2016)*, BALLOTPEDIA, [https://ballotpedia.org/Arizona\\_Minimum\\_Wage\\_and\\_Paid\\_Time\\_Off,\\_Proposition\\_206\\_\(2016\)](https://ballotpedia.org/Arizona_Minimum_Wage_and_Paid_Time_Off,_Proposition_206_(2016)); Ballotpedia, *Maine Minimum Wage Increase, Question 4 (2016)*, BALLOTPEDIA, [https://ballotpedia.org/Maine\\_Minimum\\_Wage\\_Increase,\\_Question\\_4\\_\(2016\)](https://ballotpedia.org/Maine_Minimum_Wage_Increase,_Question_4_(2016)).

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