

Proposition 32: Raises Minimum Wage

Initiative Statute

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I. EXECUTIVE SUMMARY

Proposition 32 is an initiative statute brought forward by Joe Sanberg, an anti-poverty advocate, and placed on the 2024 ballot after initial efforts to place it on the 2022 ballot failed.¹ This proposition would set varying statewide minimum wage requirements based on the size of a business.² Employers with 26 or more employees would be required to provide a minimum wage of \$17 per hour through the remainder of 2024, with an increase to \$18 per hour beginning January 1, 2025.³ Employers with 25 or fewer employees would be required to provide a minimum wage of \$17 per hour beginning January 1, 2025, with the increase to \$18 per hour mandated the following year.⁴

Further, this proposition incorporates the existing law to adjust the minimum wage for inflation, stating that the law would continue to govern minimum wage standards following the statewide increase to \$18 per hour, regardless of employer size, in 2026.⁵ However, the measure does state that inflation adjustments would be paused until 2027.⁶ The pause of current law seems to allow the standards imposed by this initiative, if enacted, to take effect before adjusting for inflation.

As this measure is on the 2024 ballot rather than the initially intended 2022 ballot, raising the statewide minimum wage to \$18 per hour is behind the trends of pre-existing local ordinances for minimum wage,⁷ and by standards imposed for specific industries.⁸ However, this proposition clarifies that this measure will not affect any of these pre-existing standards.⁹ In other words, where current laws impose a higher minimum wage, those would remain, and this measure would boost the minimum wage in areas of the state and in industries that are operating with lower minimum wages.

A “YES” vote on this measure means: The state minimum wage would be \$18 per hour in 2026. Starting in 2027, it would increase annually, based on how fast prices increase.

A “NO” vote on this measure means: The state minimum wage will remain at \$16.50 per hour at the start of 2025 and will likely be about \$17 per hour in 2026. After that, it would go up each year based on how fast prices increase.

¹ Jeanne Kuang, *Want to vote on raising California’s minimum wage? Judge says not until 2024*, CALMATTERS (July 22, 2022), <https://calmatters.org/economy/2022/07/california-minimum-wage-november-ballot/>.

² Cal. Proposition 32, <https://vig.cdn.sos.ca.gov/2024/general/pdf/text-proposed-laws.pdf> (last visited October 15, 2024).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ UC Berkeley Labor Center, *California City and County Current Minimum Wages* (July 1, 2024), <https://laborcenter.berkeley.edu/inventory-of-us-city-and-county-minimum-wage-ordinances/#s-2>.

⁸ CalMatters, *2024 California ballot measures: What you need to know*, CALMATTERS (July 3, 2024; Updated July 4, 2024), <https://calmatters.org/explainers/california-ballot-measures-2024/>.

⁹ California General Election November 5, 2024, *Official Voter Information Guide*, Prop. 32, <https://vig.cdn.sos.ca.gov/2024/general/pdf/prop32.pdf> (last visited October 15, 2024).

II. THE LAW

The federal minimum wage is regulated under the Fair Labor Standards Act (FLSA) and has been at \$7.25 per hour since 2009.¹⁰ However, the states can set individual minimum wage standards, and many do.¹¹ In California, the State Legislature has made efforts to increase the statewide minimum wage, and legislators have passed laws to increase the wages in specific industries.¹² Further, many local governments have passed ordinances within their cities to set the minimum wage at a higher rate than the state requires.¹³

A. Legislative Efforts and Pre-Existing Minimum Wage Standards

1. *Senate Bill (SB) 3 (Leno, Chapter 4, Statutes of 2016).*

In 2016, State Senator Mark Leno (D – San Francisco) successfully passed SB 3, which effectively set the tiering of minimum wage requirements currently chaptered in California Labor Code § 1182.12.¹⁴ The provisions created under SB 3 break down the minimum wage requirements for employers based on the number of employees, with standards for employers with 26 or more employees (larger employers) and standards for employers with 25 or fewer employees (smaller employers).¹⁵

For both sizes of employers, the minimum wage was raised by one dollar per hour annually from 2017 through 2022 under SB 3.¹⁶ In 2022, the statewide minimum wage reached \$15 per hour for larger employers and \$14 per hour for smaller employers.¹⁷ Following this specific scheduling, on or before August 1st of each year, the Director of Finance is tasked with adjusting the minimum wage based on inflation, with the result rounded to the nearest ten cents.¹⁸ Today, the statewide minimum wage is \$16.50 in California due to this legislation.¹⁹

¹⁰ U.S. Department of Labor Wage and Hour Division, *Minimum Wage*, <https://www.dol.gov/agencies/whd/minimum-wage>.

¹¹ *Id.*

¹² *2024 California ballot measures: What you need to know*, *supra* note 8.

¹³ UC Berkeley Labor Center, *supra* note 7.

¹⁴ SB 3, 2016 Leg., 2015-2016 Reg. Sess. (Cal. 2016).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

2. *Senate Bill (SB) 525 (Durazo, Chapter 890, Statutes of 2023).*

In 2023, State Senator María Elena Durazo (D – Los Angeles) introduced and successfully passed SB 525, which established minimum wage scheduling for covered healthcare workers.²⁰ These increases were supposed to go into effect on June 1, 2024.²¹

Under this legislation, healthcare facilities with at least 10,000 full-time employees pay \$23 per hour.²² Hospitals with a high or elevated governmental payor mix, as well as Rural Independent Health Care facilities, pay a wage of \$18 per hour.²³ At a hospital with a high governmental payor mix, more than 90% of the patients are covered by Medicare or Medi-Cal.²⁴ At a hospital with an elevated governmental payor mix, over 75% of patients are covered by Medicare or Medi-Cal.²⁵ Healthcare clinics and other healthcare facilities pay a wage of \$21 per hour.²⁶ These facilities in the ‘other’ category include hospitals, skilled nursing facilities (as specified), integrated delivery systems, ambulatory surgical centers, urgent care clinics, medical groups, medical foundations, county mental health facilities, and county correctional health facilities.²⁷ Further, SB 525 has specific schedules for each tier to ultimately reach \$25 per hour, with the final tier reaching that rate on June 1, 2033.²⁸

3. *Senate Bill (SB) 828 (Durazo, Chapter 12, Statutes of 2024).*

Following the passage of SB 525, California’s budget outlook presented the state with a multi-billion-dollar deficit for 2024.²⁹ The budget deficit resulted in the Governor and Legislative Leadership having to re-evaluate some of the legislation passed in 2023 with significant fiscal impacts. Specifically, the Legislature did not fully anticipate the budgetary implications of SB 525, so Governor Newsom worked with Senator Durazo to align the healthcare worker minimum wage provisions with the timeline of the state budget.³⁰

As enacted, SB 525 would have required the higher wages for covered healthcare workers to take effect on June 1, 2024.³¹ However, due to state budget projections, SB 828 was introduced to delay the implementation of the wage increases by one month, to July 1, 2024.³² Governor Newsom and Senator Durazo took early action to address the budget discrepancies, and they

²⁰ SB 525, 2023 Leg., 2023-2024 Reg. Sess. (Cal. 2023).

²¹ *Id.*

²² SB 525, *supra* note 20.

²³ *Id.*

²⁴ Labor Commissioner’s Office, *Health Care Worker Minimum Wage Frequently Asked Questions*, STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, <https://www.dir.ca.gov/dlse/Health-Care-Worker-Minimum-Wage-FAQ.htm#:~:text=A%20high%2Dgovernmental%20payor%20mix,information%20about%20rural%20health%20cli> nics (last visited October 15, 2024).

²⁵ *Id.*

²⁶ SB 525, *supra* note 20.

²⁷ *Id.*

²⁸ *Id.*

²⁹ SENATE FLOOR, COMMITTEE ANALYSIS OF SB 828, at 7 (May 29, 2024).

³⁰ *Id.*

³¹ SB 525, *supra* note 20.

³² SB 828, 2024 Leg., 2023-2024 Reg. Sess. (Cal. 2024).

strategically included an urgency clause in SB 828.³³ Including an urgency clause is essential here as it allows for legislation to take effect immediately upon signature by the governor rather than on January 1 of the coming year.³⁴ Therefore, Governor Newsom approved this legislation on May 31, 2024, effectively amending the law before the new implementation date of July 1, 2024.³⁵ Had the urgency clause not been included, this legislation would have been useless in terms of delaying implementation, as the law would not reflect the change until January 1, 2025. However, the urgency clause allowed for the Labor Code to be amended in time to reflect the delayed implementation date, and these increased wages are now in place.³⁶

4. *Assembly Bill (AB) 1228 (Holden, Chapter 262, Statutes of 2023).*

In 2023, Assemblymember Chris Holden (D – Pasadena) introduced and successfully passed AB 1228, which increased the minimum wage for fast food workers to \$20 per hour as of April 1, 2024.³⁷ Unfortunately, the state has seen some unexpected consequences as a result of this legislation.³⁸

Although this legislation was intended to assist fast food workers with the rising cost of living in the state, some restaurants have responded by reducing hours, cutting jobs, shifting to automated technology, and, at times, even closing permanently.³⁹ Pizza Hut, for example, laid off more than 1,200 employees following this wage increase.⁴⁰ Further, the increased wages have resulted in increased food prices for consumers.⁴¹ For instance, Chipotle increased prices between 6% and 7% across its 500 or so locations in the state.⁴² Opponents to Proposition 32 argue that its passage could bring similar consequences to small businesses, small restaurants, and grocers, among others.⁴³

B. Local Minimum Wage Ordinances

Many local governments have passed ordinances mandating a minimum wage that already outpaces the statewide standard, some of which would also be above the standards imposed by Proposition 32, should it be enacted.⁴⁴ The local minimum wage standards are increased annually,

³³ SB 828, *supra* note 32.

³⁴ Cal. Const., Art. IV § 8.

³⁵ Complete Bill History of SB 828, https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240SB828 (last visited October 15, 2024).

³⁶ *Id.*

³⁷ AB 1128, 2023 Leg., 2023-2024 Reg. Sess. (Cal. 2023).

³⁸ Jack Kelly, *The Unintended Consequences Of California's \$20 Minimum Wage For Fast-Food Workers*, FORBES (July 26, 2024 at 6:00AM), <https://www.forbes.com/sites/jackkelly/2024/07/26/california-20-minimum-wage-fast-food-impact/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ California General Election November 5, 2024, *supra* note 9.

⁴⁴ UC Berkeley Labor Center, *supra* note 7.

measuring inflation by the local Consumer Price Index (CPI).⁴⁵ The University of California, Berkeley, Labor Center tracks these local standards and recently updated its data on July 1, 2024, as reflected in the chart below.⁴⁶ (Cities and Counties highlighted in green reflect a minimum wage standard that already outpaces \$18 per hour; cities and Counties highlighted in yellow reflect a minimum wage standard that equals or outpaces the initial raise to \$17 per hour imposed by Proposition 32.)

City	Date Enacted	Rate
Alameda	7.1.2024	\$17.00
Belmont	1.1.2024	\$17.35
Berkeley	7.1.2024	\$18.67
Burlingame	1.1.2024	\$17.03
Cupertino	1.1.2024	\$17.75
Daly	1.1.2024	\$16.62
East Palo Alto	1.1.2024	\$17.00
El Cerrito	1.1.2024	\$17.92
Emeryville	7.1.2024	\$19.36
Foster City	1.1.2024	\$17.00
Fremont	7.1.2024	\$17.30
Half Moon Bay	1.1.2024	\$17.01
Hayward	1.1.2024	\$16.90 (<i>\$16 for small employers</i>)
Los Altos	1.1.2024	\$17.75
Los Angeles	7.1.2024	\$17.28
LA County (unincorporated)	7.1.2024	\$17.27
Malibu	7.1.2024	\$17.27
Menlo Park	1.1.2024	\$16.70
Milpitas	1.1.2024	\$17.70
Mountain View	1.1.2024	\$18.75
Novato	1.1.2024	\$16.60 (<i>\$16.04 small; \$16.86 100+</i>)
Oakland	1.1.2024	\$16.50

⁴⁵ Workforce Management, *California Minimum Wage by City in 2024*, PAYCOR (Dec. 5, 2023), <https://www.paycor.com/resource-center/articles/california-minimum-wage/>.

⁴⁶ UC Berkeley Labor Center, *supra* note 7.

Palo Alto	1.1.2024	\$17.80
Pasadena	7.1.2024	\$17.50
Petaluma	1.1.2024	\$17.45
Redwood City	1.1.2024	\$17.70
Richmond	1.1.2024	\$17.20
San Carlos	1.1.2024	\$16.87
San Diego	1.1.2024	\$16.85
San Francisco	7.1.2024	\$18.67
San Jose	1.1.2024	\$17.55
San Mateo	1.1.2024	\$17.35
San Mateo County (unincorporated)	1.1.2024	\$17.06
Santa Clara	1.1.2024	\$17.75
Santa Monica	7.1.2024	\$17.27
Santa Rosa	1.1.2024	\$17.45
Sonoma	1.1.2024	\$17.60 (<i>\$16.56 small</i>)
South San Francisco	1.1.2024	\$17.25
Sunnyvale	1.1.2024	\$18.55
West Hollywood	7.1.2023	\$19.08 (<i>hotel employees \$19.61 as of 7.1.2024</i>)

C. Path to the Ballot

The sole proponent of this proposition, Joe Sanberg, initially sought to place this initiative on the November 2022 ballot and began counting signatures in February 2022 to meet the required threshold of 623,212 valid signatures.⁴⁷ Unfortunately, after Secretary of State Weber alerted county officials that the threshold was met, issues arose surrounding the deadline for county officials to certify the signatures, ultimately leading to litigation.⁴⁸

1. *Qualification Deadlines Stalling Initiative Eligibility*

Under state law, county officials have 30 days to determine the number of qualified signatures on an initiative petition, not including weekends or holidays.⁴⁹ Secretary of State Weber alerted county officials that the threshold was met on May 31, 2022, and provided a deadline of

⁴⁷ Kuang, *supra* note 1.

⁴⁸ *Id.*

⁴⁹ CAL. ELEC. CODE. § 9030(b).

July 13, 2022, to verify the signatures.⁵⁰ However, per our state constitution, the deadline for the Secretary of State to submit a measure to the statewide election is at least 131 days before the election.⁵¹ So, the Secretary of State had to submit all qualified measures no later than June 30, 2022.⁵²

This deadline prevented the initiative from qualifying for the 2022 ballot as this initiative did not have enough certified signatures until July 7, 2022, a week too late.⁵³ Although the initiative qualified after the deadline for the 2022 election, Secretary of State Weber did note that it was eligible for the 2024 ballot.⁵⁴ Upon this determination, Mr. Sanberg petitioned the Sacramento County Superior Court, arguing that the Secretary of State failed to perform her ministerial duty and that COVID-19 delayed the signature-gathering process.⁵⁵

2. Court Finds ‘Ministerial Duty’ Argument Meritless

The essential argument brought forward was that Secretary of State Weber had a ministerial duty to advise county officials to complete the verification of signatures by the qualification deadline.⁵⁶ However, the court found Weber’s only duty was to notify county officials that the initiative petition had the threshold number of signatures.⁵⁷ Further, the court stated that “[a]lthough the Elections Code did not require Weber to advise county officials of the date on which the 30-day deadline fell, she correctly calculated the deadline and notified the officials of the same.”⁵⁸ So, while the court found Weber to have performed beyond her statutorily required duties, she went beyond that to calculate the date that county officials were to complete verification.⁵⁹ If Mr. Sanberg wanted to ensure the initiative’s eligibility for the November 2022 ballot, the court stated it was his duty, not the Secretary of State’s, to meet the qualification deadline.⁶⁰

3. COVID-19 Did Not Delay the Process

On the argument that COVID-19 delayed the process of gathering signatures before the deadline, the court also found this argument to be meritless.⁶¹ Secretary of State Weber easily rebutted this claim by pointing to five other initiatives that met the deadlines and were eligible for the November 2022 ballot.⁶² She also pointed out that Mr. Sanberg began the process of qualifying for this initiative later than recommended.⁶³ Therefore, the court found COVID-19 was not an

⁵⁰ *Sanberg v. Weber*, No. 34-2022-80003916-CU-WM-GDS, 2022 Cal. Super. LEXIS 46842, at 3 (July 25, 2022).

⁵¹ Cal. Const., Art. II § 8(c).

⁵² *Sanberg v. Weber*, *supra* note 50, at 4.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 4–5.

⁵⁶ *Id.* at 6–7.

⁵⁷ *Id.* at 7.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 8.

⁶¹ *Id.*

⁶² *Id.* at 9.

⁶³ *Id.*

obstacle to qualification, denying relief and leaving this initiative on the upcoming November 2024 ballot.⁶⁴

III. PROPOSED LAW

Proposition 32 would amend and add sections to the labor code, if enacted, as the statewide minimum wage would be increased, varying on employer size.⁶⁵ The initiative provides an initial increase in 2025 with an additional increase in 2026.⁶⁶ More specifically, California Labor Code § 1182.12 would be amended as this is the pre-existing code section providing for specific wage requirements in the State of California.⁶⁷

A. Minimum Wage Increases in 2025

Proposition 32 breaks up the mandated wage increases based on employer size, with standards for employers with 26 or more employees (larger employers) and standards for employers with 25 or fewer employees (smaller employers).⁶⁸ In 2025, larger employers would be required to provide a minimum wage of \$18 per hour.⁶⁹ For smaller employers, they would be required to provide a minimum wage of \$17 per hour in 2025.⁷⁰

B. Minimum Wage Increases in 2026

As larger employers are mandated to provide a minimum wage of \$18 per hour in 2025 under this initiative, they would not have to provide a further increased wage in 2026.⁷¹ However, for smaller employers who would provide a \$17 per hour minimum wage in 2025, they would then be required to provide an \$18 per hour minimum wage in 2026.⁷² Therefore, in 2026, all employers would be required to provide an \$18 per hour minimum wage, regardless of the number of people they employ. Considering some workers already receive a minimum wage above \$18 per hour, the initiative clarifies that those pre-existing wages would not be altered if Proposition 32 passes.⁷³

C. Current Inflation Adjustments Paused Through 2027

Under current law, on or before August 1st of each year, the Director of Finance is tasked with adjusting the minimum wage based for inflation, with the result rounded to the nearest ten cents.⁷⁴ If enacted, Proposition 32 would pause these inflation adjustments through 2027 to allow

⁶⁴ *Sanberg v. Weber*, *supra* note 50, at 9.

⁶⁵ California General Election November 5, 2024, *supra* note 9.

⁶⁶ *Id.*

⁶⁷ CAL. LAB. CODE. § 1182.12.

⁶⁸ Cal. Legis. Analyst's Office, *Proposition 32 Raises Minimum Wage*, (November 5, 2024), <https://www.lao.ca.gov/BallotAnalysis/Proposition?number=32&year=2024> (last visited October 15, 2024).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ CAL. LAB. CODE. § 1182.12(c).

for the scheduled wage increases under this initiative.⁷⁵ After 2027, inflation adjustments will resume as currently in law.⁷⁶

III. DRAFTING ISSUES

Article II § 10(d) of the California State Constitution provides that the Attorney General (AG) is to prepare the title and summary of the proposed initiative.⁷⁷ In executing this duty, the AG is supposed to provide a neutral title, that does not mislead the public about the initiative's intended purpose.⁷⁸ In the past, litigation has arisen from courts finding titles of initiatives or referendums to be misleading.⁷⁹ Here, it is not likely that litigation will arise from the title of Proposition 32 which simply reads, "Raises Minimum Wage."⁸⁰ However, it is worth noting that this title is a bit misleading, when considering the pre-existing minimum wage standards within local governments⁸¹ and within specified industries that already outpace the minimum wage. Employees subject to higher pre-existing standards would not see an increase in their wages if Proposition 32 is enacted.⁸²

V. CONSTITUTIONAL ISSUES

Proposition 32 does not appear to raise any state nor federal constitutional concerns. However, a brief history on minimum wage law in our country helps to demonstrate why this initiative is likely to survive any constitutional challenges.

Following the enactment of the Nineteenth Amendment providing voting rights to women, the constitutionality of minimum wage laws for women were challenged in the nation's highest court.⁸³ In *Adkins v. Children's Hospital*,⁸⁴ two women challenged the Washington D.C. minimum wage laws for women.⁸⁵ The Supreme Court of the United States held the law setting minimum wages for women unconstitutional as it infringed upon freedom of contract and bargaining power.⁸⁶ This precedent influenced seven lower courts across the nation to hold minimum wage laws unconstitutional throughout the 1920s.⁸⁷

⁷⁵ Cal. Legis. Analyst's Office, *supra* note 68.

⁷⁶ *Id.*

⁷⁷ Cal. Const., Art. II § 10(d).

⁷⁸ CAL. ELEC. CODE. § 9051(d).

⁷⁹ *Zarembeg v. Superior Court*, 115 Cal.App.4th 111 (5th Dist. 2004).

⁸⁰ California General Election November 5, 2024, *supra* note 9.

⁸¹ UC Berkeley Labor Center, *supra* note 7.

⁸² *2024 California ballot measures: What you need to know*, *supra* note 8.

⁸³ Margaret Murphy, *The Constitutionality of Minimum Wage: The Legal Battles of Elise Parrish and Frances Perkins for a Fair Day's Pay*, PRINCETON UNIVERSITY, HISTORICAL REVIEW ISSUE, 2021-2022 Issue, <https://history.princeton.edu/undergraduate/princeton-historical-review/2021-22-issue/constitutionality-minimum-wage>.

⁸⁴ *Adkins v. Children's Hosp.*, 261 U.S. 525 (1923).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

In 1937, in the case of *West Coast Hotel Co. v. Parrish*,⁸⁸ as the Supreme Court of the United States overruled the precedent set by *Adkins*.⁸⁹ In *Parrish*, the Court held that the minimum wage law at issue was reasonable and that the State had a valid interest intended to help the community.⁹⁰ Further, the Court explained that the constitution does not provide for a freedom to contract, and that minimum wage law has now “...undergone the due process of the law and...deemed to be [a] constitutionally valid infringement upon liberty.”⁹¹ This ruling was key in paving the way for President Franklin D. Roosevelt’s administration to implement The Fair Labor Standards Act (FLSA) that is still operative today, although it has been amended from the initial \$0.25 per hour minimum wage.⁹²

This history of minimum wage laws is key to demonstrate why this initiative is likely to survive constitutional challenges. What was once seen as an infringement on bargaining power was now seen as “...a supportive and social endeavor.”⁹³ The Court ultimately held that the right to contract is not absolute, further finding that the state laws providing for a minimum wage were within the state’s interest of protecting its citizens.⁹⁴ As Proposition 32 is framed as an effort to aid Californians in keeping up with rising costs of living and inflation, this initiative is unlikely to spark any constitutional challenges.⁹⁵

IV. STATUTORY ISSUES

A. Effective Date

Per the California State Constitution, an initiative passed by the voters takes effect on the fifth day following the Secretary of State filing the statement of the vote.⁹⁶ However, provisions of an initiative can become operative at a different time if the measure provides for such.⁹⁷ Here, Proposition 32 contains provisions that would be enacted more than a year after its passage. Specifically, if enacted, provisions of Proposition 32 would take effect in 2026 due to the tiered scheduling of minimum wage increases.⁹⁸ Further, a provision of the initiative would also pause inflation adjustments until 2027, when the current statutory scheme on inflation adjustments would resume.⁹⁹

B. Future Amendments

The California State Constitution provides that “[t]he Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors

⁸⁸ *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

⁸⁹ *Adkins v. Children’s Hosp.*, 261 U.S. 525 (1923).

⁹⁰ *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

⁹¹ Murphy, *supra* note 83.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *W. Coast Hotel Co. v. Parrish*, 300 U.S. at 398-399.

⁹⁵ California General Election November 5, 2024, *supra* note 9.

⁹⁶ Cal. Const., Art. II § 10(a).

⁹⁷ *Id.*

⁹⁸ Cal. Proposition 32 (2024).

⁹⁹ *Id.*

unless the initiative statute permits amendment or repeal without the electors' approval."¹⁰⁰ However, Proposition 32 contains an added amendment provision allowing for future amendments "...to adopt an increase to the state minimum wage at rates that are higher than those specified herein on its effective date by a majority vote of each house of the Legislature."¹⁰¹ As the State Legislature has proven its willingness to legislate on minimum wage standards, specifically in the healthcare and fast food industries, this added amendment provision is essential in allowing the Legislature to make necessary future amendments.¹⁰² Without this provision, any future amendments to the law, if enacted, would have to go back to the voters.¹⁰³

V. PUBLIC POLICY ISSUES

A. Proponent Arguments

The proponent of this initiative, Joe Sanberg, is an anti-poverty advocate who initially sought to place Proposition 32 on the November 2022 ballot.¹⁰⁴ However, his efforts were stalled until this election cycle, so he has not been as active in arguing in support of this initiative, and actually closed the campaign account earlier this year.¹⁰⁵ However, the Sacramento Bee quoted his intention for the initiative: "Many working Californians, including essential workers, parents, and seniors, have full-time jobs yet struggle to make ends meet. The minimum wage has not kept pace with the cost of living and is worth less today than it was 50 years ago... [Prop. 32] will bring a much-needed raise to 2 million California workers and create a more prosperous system."¹⁰⁶

1. *Further Arguments in Support*

Supporters of Proposition 32, including Ada F. Briceño, Co-President of UNITE HERE Local 11, Congressmember Nanette Barragán, and One Fair Wage President Saru Jayaraman have taken the lead in responding to arguments in opposition to this measure.¹⁰⁷ They argue that corporate profit margins are what has increased the cost of living, not increased wages.¹⁰⁸ As we have seen the response to the \$20 per hour minimum wage in the fast-food industry,¹⁰⁹ there is clearly debate over the cause of increased cost of living in California. However, the MIT Living Wage Calculator found that "...even in the cheapest California county (Modoc), a single adult with no children would need to make at least \$20.32 an hour to comfortably afford the basics."¹¹⁰ That being said, the proponent's arguments of wanting to provide a living wage to all Californians seem well-founded, as the current statewide minimum wage (\$16.50 per hour) falls short of the

¹⁰⁰ Cal. Const., Art. II § 10(c).

¹⁰¹ Cal. Proposition 32 (2024).

¹⁰² *2024 California ballot measures: What you need to know*, *supra* note 8.

¹⁰³ Cal. Const., Art. II § 10(c).

¹⁰⁴ Kuang, *supra* note 1.

¹⁰⁵ *Id.*

¹⁰⁶ Nicole Nixon, *Proposition 32 explained: What California's minimum wage ballot measure is asking you*, THE SACRAMENTO BEE (Updated September 18, 2024 at 9:03AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article291034750.html>.

¹⁰⁷ California General Election November 5, 2024, *supra* note 9.

¹⁰⁸ *Id.*

¹⁰⁹ Kelly, *supra* note 38.

¹¹⁰ CalMatters, *2024 Voter Guide: Raise state minimum wage to \$18 an hour*, CALMATTERS, <https://calmatters.org/california-voter-guide-2024/propositions/prop-32-minimum-wage/>.

MIT calculation. Supporters also argue that the money garnered by increased wages would “...help families afford basic needs, would be spent at local businesses and would help reduce low-income Californians’ use of taxpayer-provided benefits.”¹¹¹

2. Registered Supporters

According to CalMatters, Proposition 32 has some notable organizations in support of the measure.¹¹² These include the California Labor Federation, Unite Here, One Fair Wage, Working Families Party California, the California Democratic Party, and the League of Women Voters of California.¹¹³ Labor Federation president Lorena Gonzalez has voiced her support of Proposition 32, finding the proposed \$18 per hour wage to be a “way to move things forward,” but still not a living wage.”¹¹⁴

B. Opponent Arguments

Proposition 32 has received quite a bit of opposition from various stakeholders. Their arguments point to the recent impacts of the increased minimum wage in the fast-food industry¹¹⁵, the necessary delay of minimum wage increases in the healthcare industry¹¹⁶, and the further impacts on payroll expenses¹¹⁷, among other arguments. Registered opponents to this measure include the California Chamber of Commerce (CalChamber), the California Restaurant Association, the California Grocers Association, the National Federation of Independent Business (NFIB), and the Howard Jarvis Taxpayers Association.¹¹⁸

1. *Wary of Similar Impacts to the Fast-Food Industry’s \$20 minimum wage*

Among the main arguments against Proposition 32 is the fear of similar consequences to those of the \$20 per hour minimum wage in the fast-food industry. Specifically, CalChamber has argued “If Proposition 32 is passed, Californians will see higher costs, fewer jobs and a reduction of available work hours for employees in the state.”¹¹⁹ President and CEO of CalChamber, Jennifer Barrera further urged voters to reject this proposal, arguing that it “...will contribute to inflation [and] add to the cost of living in California...”¹²⁰ Business groups in opposition have also cited

¹¹¹ 2024 Voter Guide: Raise state minimum wage to \$18 an hour, *supra* note 110.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Kuang, *supra* note 1.

¹¹⁵ Kelly, *supra* note 38.

¹¹⁶ Ana B. Ibarra, *California delayed a minimum wage bump for health workers. Some are getting raises anyway*, CALMATTERS (July 29, 2024; Updated August 1, 2024), <https://calmatters.org/health/2024/07/health-care-minimum-wage-raises/>.

¹¹⁷ CalChamber, *Overview of November Ballot Measures*, CALCHAMBER ALERT (September 20, 2024), <https://calchamberalert.com/2024/09/20/overview-of-november-ballot-measures-6/>.

¹¹⁸ 2024 Voter Guide: Raise state minimum wage to \$18 an hour, *supra*, note 110.

¹¹⁹ CalChamber, *CalChamber Opposes Ballot Measure Raising Minimum Wage to \$18 an Hour*, CALCHAMBER ADVOCACY NEWS (July 24, 2024), <https://advocacy.calchamber.com/2024/07/24/calchamber-opposes-ballot-measure-raising-minimum-wage-to-18-an-hour/>.

¹²⁰ *Id.*

surveys conducted by the city of West Hollywood that found “...42% of businesses...laid off staff or cut workers’ hours in response to the city’s \$19.08 minimum wage.”¹²¹

The NFIB has voiced similar concerns, stating, “the minimum-wage madness California has created with its crazy-quilt of rates has led to massive closures of fast-food franchises and with them, the loss of jobs for teens and young adults whom the minimum wage was meant for.”¹²² The NFIB further argued that the minimum wage was intended to be an entry-level wage, not to sustain families.¹²³ A cited study found “...63 percent of workers who earn less than \$9.50 per hour (well over the [federal] minimum wage...) are the second or third earner in their family...thus, minimum wage earners are not a uniformly poor and struggling group...many more are sharing the burden of providing for their families, not carrying the load all by themselves.”¹²⁴ Further, the NFIB found that minimum-wage earners account for only 1.4% of all hourly employees nationwide.¹²⁵ While it is unclear how this coincides with the proponents claim that Proposition 32 would immediately help 2 million Californians, it is still data worth pointing to.¹²⁶

2. State Budget Impacts

Another main argument brought forward by various opponents points to the potential impacts that Proposition 32 would have on our State Budget. Following the needed delay of the minimum wage increases for healthcare workers due to budget projections, opponents are citing that delay as a reason to oppose the measure.¹²⁷ CalChamber President and CEO Jennifer Barrera stated, “... [Proposition 32 will] hurt state revenues...[and] put even more pressure on our state budget.”¹²⁸

3. Effects on Exempt Employees

CalChamber has raised an additional argument in opposition, pointing to the impacts on payroll expenses as Proposition 32, if enacted, would alter the minimum salary requirements for exempt employees under current law.¹²⁹ They explained that under current law, “...to qualify as ‘exempt,’ an employee must make at least twice the minimum wage.”¹³⁰ Therefore, the minimum annual salary for exempt employees would rise from \$66,560 to \$74,880.¹³¹ This impact could be unanticipated, but would be significant for employers who would have to increase annual salaries. Further, employees could lose their exempt status and be paid hourly if their employer is unwilling to provide a raise to maintain their exempt status.

¹²¹ 2024 Voter Guide: Raise state minimum wage to \$18 an hour, *supra* note 110.

¹²² NFIB California, *Talking Points Memorandum, The Minimum Wage in California*, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, <https://strgnfibcom.blob.core.windows.net/nfibcom/Talking-Points-Minimum-Wage-in-California-Second-Version-4.pdf>.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ California General Election November 5, 2024, *supra* note 9.

¹²⁷ Ibarra, *supra*, note 117.

¹²⁸ CalChamber, *supra* note 119.

¹²⁹ CAL. LAB. CODE. § 515.7(a)(2)

¹³⁰ CalChamber, *supra* note 117.

¹³¹ *Id.*

VI. FISCAL CONSIDERATIONS

The Legislative Analyst’s Office (LAO), a nonpartisan advisor, has analyzed the fiscal effects of this measure, finding that they will depend on economic effects and they could vary.¹³² Specifically, it found a potential price increase for businesses, likely smaller than one-half of a percent.¹³³ It also found that the change in number of jobs across California as a result of Proposition 32 would likely be less than a quarter of a percent.¹³⁴ Therefore, the economic effects of Proposition 32 do not seem that dire, but these are solely predictions.

In terms of the fiscal impact for state and local governments, some costs would increase, and some would decrease.¹³⁵ As this measure would change the number of people enrolled in Medi-Cal due to income changes, government costs in this area would decrease.¹³⁶ However, this measure would also affect tax revenues, likely lowering state and local government revenues as business owners are likely to bring in less income.¹³⁷ The LAO estimates these losses to not surpass a few hundred million dollars per year.¹³⁸

VII. CAMPAIGN FINANCE

A. Reported Contributions in Support

According to the Secretary of State, there has been a total of \$11,472,683 reported contributions in support of Proposition 32.¹³⁹ Los Angeles City Council member Kevin de León recently contributed \$582,266 to his committee in support of this measure and others.¹⁴⁰ Proponent Joe Sanberg initially contributed over \$10 million into signature gathering in an attempt to place this measure on the 2022 ballot.¹⁴¹ However, proponents have since contributed little, as Sanberg closed the campaign account earlier this year.¹⁴² Those who have taken the lead support on this initiative, however, find Proposition 32 popular without added expenditures.¹⁴³ The contribution by Sanberg is listed on the Secretary of State’s website under the ‘Working Hero Action for the Living Wage Act’ committee, with a total of \$10,890,417 contributed in support of this measure.¹⁴⁴

¹³² Cal. Legis. Analyst’s Office, *supra* note 68.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Cal. Legis. Analyst’s Office, *supra* note 68.

¹³⁸ *Id.*

¹³⁹ CAL. SEC’Y OF STATE, 2024 BALLOT MEASURE CONTRIBUTION TOTALS: PROP. 32, *available at* <https://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/2024-ballot-measure-contribution-totals/proposition-32-raises-minimum-wage-initiative-statute>.

¹⁴⁰ *Id.*

¹⁴¹ Kuang, *supra* note 1.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ CAL. SEC’Y OF STATE, *supra* note 139.

B. Reported Contributions in Opposition

The slowing of contributions and spending on the proponent side¹⁴⁵ may explain why the opponents have not felt a need to raise and spend money on their side.¹⁴⁶ In total, there is only \$65,000 in reported contributions in opposition to Proposition 32.¹⁴⁷ The committee that contributed this funding is listed as ‘Californians Against Job Losses and Higher Prices, No on Proposition 32, a Coalition of Small Businesses, Local Restaurants, and Independent Grocers.’¹⁴⁸

VIII. CONCLUSION

Proposition 32 is an initiative statute that would set varying statewide minimum wage requirements, depending on business size.¹⁴⁹ Larger employers, with 26 or more employees, would be required to provide a minimum wage of \$17 per hour through the remainder of 2024, with the jump to \$18 per hour beginning on January 1, 2025.¹⁵⁰ Smaller employers, with 25 or fewer employees, would be required to provide a minimum wage of \$17 per hour beginning January 1, 2025.¹⁵¹ Beginning in 2026, all employers would be required to provide \$18 per hour, regardless of the number of people employed.¹⁵² The measure would also pause inflation adjustments under current law through 2027, at which time the adjustments would resume in alignment with the law as in statute today.¹⁵³

This measure was initially sought to be on the 2022 ballot, but the proponent missed key deadlines and it was thus placed on this year’s ballot.¹⁵⁴ In the two-year period from 2022-2024, there has been both state and local action on minimum wage, and some of these standards outpace the minimum wage standards imposed by this measure.¹⁵⁵ However, Proposition 32 makes clear that these pre-existing standards would not be impacted by it.¹⁵⁶

A **YES** vote on this measure means: The state minimum wage would be \$18 per hour in 2026. After that, it would go up each year based on how fast prices increase.

A **NO** vote on this measure means: The state minimum wage will remain at \$16.50 per hour at the start of 2025 and will likely be about \$17 per hour in 2026. After that, it would go up each year based on how fast prices increase.

¹⁴⁵ Kuang, *supra* note 1.

¹⁴⁶ CAL. SEC’Y OF STATE, *supra* note 139.

¹⁴⁷ *Id.*

¹⁴⁸ CAL. SEC’Y OF STATE, 2024 BALLOT MEASURE CONTRIBUTION TOTALS: PROP. 32, *supra* note 139.

¹⁴⁹ California General Election November 5, 2024, *supra* note 9.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Kuang, *supra* note 1.

¹⁵⁵ 2024 California ballot measures: *What you need to know*, *supra* note 8.

¹⁵⁶ California General Election November 5, 2024, *supra* note 9.