

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

DUKE BRADFORD, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF LABOR, et al.,

Defendants.

Civil Case No. 1:21-cv-03283

BRIEF OF NATIONAL EMPLOYMENT LAW PROJECT, COMMUNICATIONS WORKERS OF AMERICA, SERVICE EMPLOYEES INTERNATIONAL UNION, NATIONAL WOMEN’S LAW CENTER, ECONOMIC POLICY INSTITUTE, LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW, CWA LOCAL 7781, NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, NEBRASKA APPLESEED, AND INDIANA COMMUNITY ACTION POVERTY INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS’ CROSS-MOTION FOR SUMMARY JUDGMENT & RESPONSE TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

CORPORATE DISCLOSURE STATEMENTS

The National Employment Law Project, Communications Workers of America, Service Employees International Union, National Women’s Law Center, Economic Policy Institute, Lawyer’s Committee for Civil Rights Under Law, CWA Local 7781, National Partnership for Women & Families, Nebraska Appleseed, and Indiana Community Action Poverty Institute (collectively, *Amici*¹) each are a non-profit entity that has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of any entity.

¹ Counsel for all parties have consented to the filing of this brief. *Amici* certifies that no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money intended to fund this brief, and no person other than *amici*, their members, and their counsel contributed money intended to fund this brief.

INTEREST OF *AMICI CURIAE*

As provided in more detail in the accompanying motion for leave, *Amici* are non-profit organizations and unions that advocate for workers’ rights, including increased wages and benefits and closing racial and gender wage gaps. These wage gaps harm all low-paid workers, and particularly hurt people of color and women—and in compounding ways harm women of color, who are at the intersection of these identities. *Amici* accordingly have a strong interest in improved employment standards for workers employed by businesses that benefit from contracts with the federal government.

SUMMARY OF THE ARGUMENT

For decades, courts have recognized that the Federal Property and Administrative Services Act of 1949 (widely known as the “Procurement Act”) provides the President “particularly direct and broad-ranging authority” to set standards “the President considers necessary” to promote economy and efficiency for companies that choose to contract with the federal government.²

Acting pursuant to this authority in 1978, President Carter issued Executive Order 12,092, conditioning federal contracts on contractors’ compliance with the Administration’s otherwise voluntary wage-and-price controls.³ Those controls limited workers’ wage increases to “no more than a seven percent annual rise.”⁴ The D.C. Circuit upheld the order as a valid exercise of the President’s Procurement Act authority, even while acknowledging that “there may be occasional instances where a low bidder will not be awarded a contract.”⁵

² *Am. Fed’n of Lab. & Cong. of Indus. Orgs. v. Kahn*, 618 F.2d 784, 789 (D.C. Cir. 1979); 40 U.S.C. § 121(a).

³ *Kahn*, 618 F.2d at 785-86; Exec. Order No. 12,092, 43 Fed. Reg. 51,375 (Nov. 3, 1978).

⁴ *Kahn*, 618 F.2d at 786.

⁵ *Id.* at 792-93.

Using the same authority in 2014, President Obama issued Executive Order 13,658, establishing a federal minimum wage for federal contractors; that minimum wage applied to outdoor recreational outfitters and guides operating on federal lands.⁶ In 2018, acting pursuant to the same authority, President Trump issued Executive Order 13,838, which decided as a matter of policy to exempt from these requirements certain outdoor recreational service employers operating on federal lands, but kept in place the minimum wage rules for other contract workers.⁷

Just like his predecessors, President Biden exercised his Procurement Act authority in issuing Executive Order 14,026 (“E.O. 14,026”), addressing wage rules for companies that choose to contract with the federal government.⁸ In order to “promote[] economy and efficiency,” he determined it was necessary to increase the federal contractor minimum wage to \$15/hour and to revoke Executive Order 13,838’s exemption of outdoor recreational service employers operating on federal lands from this requirement.⁹

In implementing E.O. 14,026,¹⁰ the Department of Labor (“Department”) reasonably concluded in its Rule that increasing the federal contractor minimum wage will increase employee productivity and decrease employee turnover and absenteeism. In doing so, it relied on studies across various industries and academic literature demonstrating that higher wages incentivize workers to stay in their jobs, thereby reducing employee turnover and absenteeism and the costs

⁶ Exec. Order No. 13,658, 79 Fed. Reg. 9,851 (Feb. 12, 2014); *see id.* § 7(D) (applying to certain contracts or contract-like instruments “entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.”).

⁷ Exec. Order No. 13,838, 83 Fed. Reg. 25,341 (May 25, 2018).

⁸ Exec. Order No. 14,026, 86 Fed. Reg. 22,835 (Apr. 27, 2021).

⁹ *Id.*

¹⁰ Increasing the Minimum Wage for Federal Contractors, 86 Fed. Reg. 67,126 (Nov. 24, 2021) (codified at 29 C.F.R. pts. 10, 23).

associated with such activities, and also increases employee morale and productivity.¹¹ Thus, ample evidence supports the Department’s conclusion that increasing the minimum wage will increase the value of the government’s investments, and even more to the point, “there is no evidence to suggest that these benefits would not apply to the outfitters and guide industry as well.”¹² Critically, the Department estimates that increasing wages will impact more than 327,000 contract workers—including in industries largely comprised of women and disproportionately Black and Latinx workers—helping to rectify the racial and gender wage gaps in federal contractor workforces.¹³

Because the E.O. 14,026 promotes economy and efficiency and because the Department’s Rule is reasonable and well supported by the evidence before the agency, the Court should grant summary judgment in favor of Defendants.

ARGUMENT

I. E.O. 14,026 IS WITHIN THE PRESIDENT’S PROCUREMENT ACT AUTHORITY.

The Rule implementing E.O. 14,026 falls squarely within the President’s authority under the Procurement Act. That conclusion flows directly from the Act’s plain text and prior precedent. Further, the Rule was amply supported by the record developed before the Department.

A. THE PRESIDENT’S PROCUREMENT ACT AUTHORITY EXTENDS TO SETTING MINIMUM WAGE REQUIREMENTS FOR THOSE WHO CHOOSE TO CONTRACT WITH THE FEDERAL GOVERNMENT.

Plaintiffs contend that E.O. 14,026 does not support economy and efficiency because, they

¹¹ *Id.* at 67,206-15.

¹² *Id.* at 67,212.

¹³ *Id.* at 67,194, 67,214-5.

claim, the President’s Procurement Act authority is limited to actions that result in cost savings to the federal government.¹⁴ Pls.’ Mot. Summ. J. at 9-10, ECF No. 56. They are incorrect.

The Procurement Act vests in the President “broad-ranging authority” with “necessary flexibility.”¹⁵ The Act’s stated purpose is to provide the government “with an economical and efficient system” for activities including “[p]rocuring and supplying property and nonpersonal services.”¹⁶ The Act grants the President wide discretion to “prescribe policies and directives that *the President* considers necessary to carry out” the Act’s goals.¹⁷ Courts will sustain a President’s action made under the Act so long as it has a “sufficiently close nexus” to “the values of ‘economy’ and ‘efficiency.’”¹⁸ The terms “efficiency” and “economy” encompass “factors like price, quality, suitability, and availability of goods or services that are involved in all acquisition decisions.”¹⁹ Courts have further recognized these concepts as “reaching beyond any narrow” construction, and includes “secondary policy views that deal with government contractors’ employment practices— policy views that are directed beyond the immediate quality and price of goods and services purchased.”²⁰

¹⁴ Plaintiffs also contend that the language of the Procurement Act vesting the President with authority over the “supply[]” of “nonpersonal services” does not extend to permittees on federal lands. 40 U.S.C. § 101(1); Pls.’ Mot. Summ. J. at 8-9. Amici agree with the United States’ position on the proper reading of this language and will not repeat its arguments.

¹⁵ *UAW-Lab. Emp. & Training Corp. v. Chao*, 325 F.3d 360, 366 (D.C. Cir. 2003); *see also City of Albuquerque v. DOI*, 379 F.3d 901, 914 (10th Cir. 2004).

¹⁶ 40 U.S.C. § 101.

¹⁷ *Id.* § 121(a) (emphasis added).

¹⁸ *See, e.g., Kahn*, 618 F.2d at 792.

¹⁹ *Id.* at 789.

²⁰ *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1333 (D.C. Cir. 1996). Courts have upheld the use of Procurement Act authority for a number of these secondary purposes; perhaps the “most prominent” involve “a series of anti-discrimination requirements for Government contractors.” *Kahn*, 618 F.2d at 790.

Applying these established principles, the Department’s Rule does not exceed the President’s authority. President Biden concluded that “[r]aising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers’ health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs.”²¹ He reasoned that “ensuring that Federal contractors pay their workers an hourly wage of at least \$15.00 will bolster economy and efficiency in Federal procurement.”²² Thus, E.O. 14,026 addresses wage standards for federal contractors, something that multiple circuits have expressly recognized is within the President’s Procurement Act authority.²³

The Department determined that in the event that “Government expenditures may rise,” the benefits “expected to accompany any such increase in expenditures” will result in “greater value to the Government.”²⁴ Further, the Department concluded, “[e]ven without accounting for increased productivity and cost-savings”—which it also concluded were likely to result from the Rule—“direct costs to employers and transfers are relatively small compared to Federal covered contract expenditures (about 0.4 percent of contracting revenue . . .),” and thus “any potential increase in contract prices or decrease in profits will be negligible.”²⁵ For companies unable to pass costs on to the government, the Department noted that increased payroll costs are likely to be small and may be mitigated through the Rule’s stated benefits, passing along costs to the public, and “negotiating a lower percentage of sales paid as rent or royalty to the Federal government in

²¹ 86 Fed. Reg. at 22,835.

²² *Id.*

²³ *Kahn*, 618 F.2d at 792-93; *Kentucky v. Biden*, 23 F.4th 585, 607 (6th Cir. 2022) (noting that use of the Procurement Act authority to require federal contractors “to abide by wage and price controls” “has a ‘close nexus’ to the ordinary hiring, firing, and management of labor.”)

²⁴ 86 Fed. Reg. at 67,206.

²⁵ *Id.*

new contracts.”²⁶

The Department reasonably determined the Rule’s benefits apply to all “contracts” and “contract-like instruments,” defined as “an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”²⁷ The government has a direct interest in the efficiency of the contracts in connection with federal lands, as, depending on the permit type and issuing federal agency, permittees must meet certain requirements to operate on federal lands, including potentially being subject to competitive bidding processes²⁸ and paying fees up to 3% of their adjusted-gross revenue from permitted activities.²⁹

B. THE DEPARTMENT PROPERLY RELIED ON EVIDENCE THAT INCREASING THE FEDERAL CONTRACTOR MINIMUM WAGE INCREASES EMPLOYEE MORALE AND PRODUCTIVITY AND REDUCES TURNOVER, ABSENTEEISM, AND INCOME INEQUALITY.

The record before the Department amply supports its conclusion that an increased minimum wage supports “efficiency and economy ... in government procurement.”³⁰ Studies and literature cited in the Rule show the link between increased wages and efficiencies, including morale and productivity increases and decreases in employee turnover and absenteeism, and the larger social benefits of reducing poverty and income inequality by increasing wages for workers.³¹ Thus, evidence supports the Department’s position that, “by increasing the quality and efficiency of services” provided to the government, E.O. 14,026 will improve the value of the government’s

²⁶ *Id.* at 67,206-07.

²⁷ *Id.* at 67,225.

²⁸ Mark K. DeSantis, Cong. Rsch. Serv., R46380, *Guides and Outfitters on Federal Lands: Background and Permitting Process* 20 (2020), <https://bit.ly/3gNglWA>.

²⁹ *Id.* at 11.

³⁰ 86 Fed. Reg. at 67,212.

³¹ *Id.*

investments.³² And with respect to outfitters and guides operating on federal lands, the Department noted that its findings related to increased morale and productivity and decreased turnover “tend to be general rather than industry-specific, and *there is no evidence to suggest that these benefits would not apply to the outfitters and guide industry as well.*”³³

To support its conclusion regarding increased worker morale and productivity, the Department reviewed studies on the efficiency wage theory, an established economic principle³⁴ that provides that employers paying a premium in wages give “the worker[s] an incentive to try to keep their job, to lower recruiting and turnover costs, or to increase morale and effort.”³⁵ This is because employees “with better pay, training, and job security satisfy both the internal and external needs of employees and, therefore, enhance employee satisfaction.”³⁶

One study cited in the Rule looked at the effects of “higher pay on productivity for warehouse workers and customer service representatives, using objective productivity metrics” and estimated that “the increase in productivity caused by raising wages fully pays for itself.”³⁷ For warehouse workers, the study found that a \$1 increase in pay resulted in increased productivity

³² *Id.* at 67,131.

³³ *Id.* at 67,212 (emphasis added).

³⁴ George A. Akerlof, *Labor Contracts as Partial Gift Exchange*, 97 Q. J. Econ, 543, 543 (1982) (cited at 86 Fed. Reg. at 67,213); Jeff Chapman & Jeff Thompson, Econ. Pol’y Inst., Briefing Paper No. 170, *The Economic Impact of Local Living Wages* (2006), <https://bit.ly/3GOwLZA> (cited at 86 Fed. Reg. at 67,213).

³⁵ Natalia Emanuel & Emma Harrington, *The Payoffs of Higher Pay: Elasticities of Productivity and Labor Supply with Respect to Wages*, 3, note 3 (2020), <https://bit.ly/34YuRI> (cited at 86 Fed. Reg. at 67,213).

³⁶ Hong Soon Kim & SooCheong Jang, *Minimum Wage Increase and Firm Productivity: Evidence from the Restaurant Industry*, 71 Tourism Mgmt. 378, 380 (2019) (cited at 86 Fed. Reg. 67,213).

³⁷ Emanuel, *supra* note 35, at 3.

that “represents an hourly savings of \$1.10 for the retailer.”³⁸ Similar productivity gains were found for customer service representatives.³⁹ Another cited study concluded that “increasing the federal minimum wage immediately enhances restaurant productivity for up to two years.”⁴⁰

The Department also considered indirect productivity increases that could result from the Rule. In particular, in a study of cashiers in a grocery store, which the study recognized as an industry “particularly prone to” reduced employee productivity, found “strong peer effects associated with the introduction of high-productivity workers into work groups,” meaning that in addition to a “high-productivity worker” raising “total output directly because the worker has higher productivity,” the worker also boosts productivity in others.⁴¹

Evidence also supports the Department’s conclusion that increased wages reduce employee turnover and absenteeism. Reduced turnover represents “both potential productivity gains and cost savings for the employer.”⁴² When employees remain in their jobs, it means “more experienced employees, who need less supervision and are more skilled at their jobs” and “decreased spending on recruitment, hiring, and supervisor time spent training new employees.”⁴³

In considering employee turnover, the Department cited to studies assessing local living

³⁸ *Id.* at 13.

³⁹ *Id.* at 14 (“We find that each \$1/hr increase in relative pay is associated with a 7.5% increase in call volume, 1.9 additional calls per day off of a based of 26.”).

⁴⁰ Kim, *supra* note 36, at 1.

⁴¹ Alexandre Mas & Enrico Moretti, *Peers at Work*, 99 Am. Econ. Rev. 112, 143, (2009), <https://bit.ly/3GR7pdm> (cited at 86 Fed. Reg. 67,213).

⁴² David Fairris et al., *Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses* 107 (2015), <https://bit.ly/3LCPqey> (cited at 86 Fed. Reg. 67,213).

⁴³ *Id.*

wage ordinances.⁴⁴ These laws “set wage and benefit standards for companies that do business with the government” in order “to improve the quality of contracted jobs and increase the standard of living for low-income workers.”⁴⁵ More than 140 cities and the State of Maryland have adopted such laws.⁴⁶ Such ordinances often cover not only employers that contract directly to supply services to the governments, but also concession businesses that, similar to Plaintiffs, “contract with the city to operate a business on city property, and typically agree to pay the city a percentage of the revenue generated by that business.”⁴⁷

For example, the San Francisco Airport (“SFO”) adopted two ordinances in 1999, one “establishing compensation, recruitment and training standards” for airport safety and security employees and another setting living wage requirements for airport leases and service contracts.⁴⁸ A study of implementation of these requirements found that after wages increased, employee turnover fell by an average of 34% for all contractors surveyed and 60% for contractors that “experienced average wage increases of 10 percent or more.”⁴⁹ For airport screeners, the turnover fell from 94.7% to 18.7% in fifteen months—a nearly 80% decrease.⁵⁰

⁴⁴ See *id.*; Michael Reich et al., U.C. Berkley Inst. of Indus. Rels., *Living Wages and Economic Performance, the San Francisco Airport Model* (2003) (cited at 86 Fed. Reg. 67,212); Chapman & Thompson, *supra* note 33; Paul Sonn & Tsedeye Gebreselassie, Nat’l Emp. L. Project, *The Road to Responsible Contracting: Lessons from States and Cities for Ensuring the Federal Contracting Delivers Good Jobs and Quality Services* (2009), <https://bit.ly/3GOxvhk> (cited at 86 Fed. Reg. 67,213); Candace Howes, *Living Wages and Retention of Homecare Workers in San Francisco*, 44 Indus. Rel. 139 (2005), <https://bit.ly/34Ty63R> (cited at 86 Fed. Reg. 67,213).

⁴⁵ Fairris, *supra* note 42, at 1.

⁴⁶ Sonn, *supra* note 44, at 13.

⁴⁷ Fairris, *supra* note 42, at 15; *Bradford v. DOL*, No. 21-CV-3288, 2022 WL 204600, at *3 (D. Colo. Jan. 24, 2022) (Noting one Appellant is required to pay “the greater of either \$100 per year or 3% of AVA’s gross revenue from the activities listed on the permit.”).

⁴⁸ Reich, *supra* note 44, at 7.

⁴⁹ *Id.* at 10.

⁵⁰ *Id.*

Other cited studies reach similar conclusions. One study assessing the impacts of an ordinance nearly doubling wages for in-home health care workers found a 31% reduction in turnover for all workers and 57% reduction for new workers.⁵¹ Similarly, a study concluded that employers subject to Los Angeles’s living wage ordinance had less turnover than those that were not.⁵²

The Department also considered the cost savings associated with reduced employee turnover. According to the SFO study, the cost to replace an employee was on average \$4,275, and the new wage requirements saved \$6.6 million per year from reduced turnover.⁵³ The findings at SFO are not an outlier—a review of thirty studies estimated that employee turnover costs employers “about one-fifth of a worker’s salary to replace that worker.”⁵⁴

As to absenteeism, one study found a statistically significant decrease in employee absenteeism for contractor employers required to pay higher wages per Los Angeles’s living wage ordinance, when compared to those that were not.⁵⁵ And the SFO study found that one-third of employers reported higher job performance among covered employees, including measures like higher morale (reported by 47% of these employers), fewer employee grievances (45%), decreases in disciplinary issues (44%), and a decrease in absenteeism (29%).⁵⁶ And while the Department noted that one study “attributes a decrease in absenteeism to mechanisms of the firm other than an

⁵¹ Howes, *supra* note 44, at 161.

⁵² Fairris, *supra* note 42, at 105-06.

⁵³ Reich, *supra* note 44, at 10.

⁵⁴ Heather Boushey & Sarah Jane Glynn, Ctr. for Am. Progress, *There Are Significant Business Costs to Replacing Employees* 1 (2012), <https://ampr.gs/3gMouL6> (cited at 86 Fed. Reg. 67,213).

⁵⁵ Fairris, *supra* note 42, at 109, 116.

⁵⁶ Reich, *supra* note 44, at 10.

increase in worker pay,”⁵⁷ it reasonably concluded that the “other evidence is strong enough to suggest a relationship between increased wages and reduced absenteeism.”⁵⁸

The Department further explained that increasing the minimum wage could lead to decreased poverty and inequality based on race and gender among workers on federal contracts. The Department noted that for a full-time worker making \$10.95/hour—the minimum wage rate immediately preceding the Rule—the worker’s “annual salary would be \$22,776, which is below the 2020 Census Poverty Threshold for a family of four,” of \$27,949.⁵⁹ Increasing the minimum wage to \$15/hour increases full-time annual earnings for a family of four above the poverty threshold.

Relying on public comments, studies, and statistics, the Department recognized that increasing the minimum wage will aid in reducing income inequality and racial and gender wage gaps, given the disproportionate number of people of color and women who are paid low wages and are represented in federal contractor workforces.⁶⁰ Data from the Current Population Survey Annual Social and Economic Supplement from the U.S. Census Bureau provided in literature relied on by the Department shows that as of 2019, while the Black population “represented 13.2%

⁵⁷ 86 Fed. Reg. at 67,214 (citing to Georges Dionne & Benoit Dostie, *New Evidence on the Determinants of Absenteeism Using Linked Employer-Employee Data*, 61 *Indus. Lab. Rel. Rev.* 108 (2007), <https://bit.ly/3oNkC0S>).

⁵⁸ 86 Fed. Reg. at 67,214.

⁵⁹ *Id.* See *Poverty Thresholds*, U.S. Census Bureau, <https://bit.ly/3BtACKw> (last visited Aug. 1, 2022).

⁶⁰ 86 Fed. Reg. at 67,215. See also Jesse Wursten & Michael Reich, Inst. for Rsch. On Lab. & Emp., *Racial Inequality and Minimum Wages in Frictional Labor Markets* (2021), <https://bit.ly/3w5bF5V> (finding minimum wage increases between 1990 and 2019 reduced the Black–white “wage gap by 12 percent overall and by 60 percent among workers with a high school degree or less” and while “minimum wages increase earnings for all race/age/gender groups,” they “increase more for black workers and women in general.”).

of the total population in the United States,” it accounted for “23.8% of the poverty population.”⁶¹ Similarly, for the Latinx population, while it comprises “18.7% of the total population,” it accounted for “28.1% of the population in poverty.”⁶² The Department also cited to analysis and data provided by commenters, including from *Amici* EPI and NELP, as well as U.S. Bureau of Labor Statistics data, showing that many of the industries affected by the Rule are disproportionately comprised of people of color and/or women.⁶³ As courts have long recognized, workplace racial inequities undermine efficiency in government contracting.⁶⁴

The Department also considered the potential disemployment effect from the increased minimum wage, i.e. when employers employ fewer higher-wage workers for work previously performed by more low-wage workers, and concluded the Rule “would result in negligible or no disemployment.”⁶⁵ It recognized that, even under conservative estimates, with which the Department did not agree, for permittees on federal lands required to increase wages from \$7.50 to \$15/hour, disemployment would still be small, “a reduction of 0.9 percent employment.”⁶⁶

⁶¹ John Creamer, *Poverty Rates for Blacks and Hispanics Reached Historic Lows in 2019: Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups*, U.S. Census Bureau (Sept. 15, 2020), <https://bit.ly/3xZzpL4> (cited at 86 Fed. Reg. at 67,215).

⁶² *Id.* Further, data demonstrate that women experience a wage gap at all education levels and in nearly every occupation and are overrepresented in low-paid jobs. Nat’l Women’s Law Ctr., *The Wage Gap: The Who, How, Why, and What to Do* 1 (2021), <https://bit.ly/3cR6P69> (Also noting that “[w]omen in the U.S. who work full-time, year-round are typically paid only 83 cents for every dollar paid to their male counterparts.”).

⁶³ 86 Fed. Reg. at 67,215 (“Federal agencies contract billions of dollars each year to businesses in industries like building services (13% Black, 41% Latinx, 56% female), administrative services (12% Black, 45% female), warehousing (22% Black, 20% Latinx), food service (14% Black, 27% Latinx, 52% female), security services (26% Black, 18% Latinx, 23% female), waste management and remediation (15% Black, 22% Latinx), and construction (30% Latinx).”).

⁶⁴ *See, e.g., Contractors Ass’n of E. Pa. v. Sec’y of Lab.*, 442 F.2d 159, 170 (3d Cir. 1971).

⁶⁵ 86 Fed. Reg. at 67,211.

⁶⁶ *Id.* at 67,212.

Plaintiffs attempt to point to contrary evidence with respect to disemployment and impacts to workers, Pls.’ Mot. Summ. J. at 18, but in doing so, Plaintiffs ignore the significant evidence that the Department relied on to support its conclusion—including evidence in the same articles that Plaintiffs cite—that disemployment will be negligible or non-existent as a result of the Rule.⁶⁷

Plaintiffs cite to one study of impacts on teenage workers that found “small employment effects” resulting from an increase in minimum wages, but that certain subgroups of teenagers—those with more educated parents—may be more likely to see “positive employment effects as a result of their increased probability of [job] search” over teens with less educated parents.⁶⁸ The ultimate conclusion of that study in fact supports the Department’s conclusion that the Rule would result in negligible or no disemployment, but noted potential welfare-based considerations that have not otherwise been unanimous in the literature on this subject.⁶⁹ Plaintiffs cite to another article evaluating local-area minimum wages.⁷⁰ While the cited article noted that, “[t]here is a clear drop in employment at the bottom of the wage distribution (jobs under \$10) in cities with minimum wage,”⁷¹ it also found that “excess number of jobs emerge at jobs between \$11 and \$19 per hour”

⁶⁷ *Id.* at 67,211.

⁶⁸ Tom Ahn et al., *The Distributional Impacts of Minimum Wage Increases When Both Labor Supply and Labor Demand Are Endogenous*, 29 J. Bus. & Econ. Stat. 12 (2011), <https://bit.ly/3JppBxQ> (cited at 86 Fed. Reg. 67,211).

⁶⁹ *See id.* at 13 (noting one study that found “that it is possible for a minimum wage increase to be welfare improving.”). Other record evidence cited by Plaintiffs attributed, in part, “minimum wage hav[ing] lesser effects on employment” over time on that fact that “the labor market has become much less important to the lives of teenagers and teenagers have become much less important to the functioning of the labor market over the last 15 years.” Paul Wolfson & Dale Belman, *15 Years of Research on U.S. Employment and the Minimum Wage*, 33 Lab. Rev. Lab. Econ. & Indus. Rels. 488 (2019), <https://doi.org/10.1111/labr.12162> (cited at 86 Fed. Reg. 67,211).

⁷⁰ Arindrajit Dube & Attila Lindner, *City Limits: What Do Local-Area Minimum Wages Do?*, 35 J. Econ. Perspectives 27 (2021), doi:10.1257/jep.35.1.27 (cited at 86 Fed. Reg. 67,211).

⁷¹ *Id.* at 42.

once appropriate controls were applied.⁷² The study also went on to conclude that “the weight of the evidence is consistent with these policies having moderately raised wages at the bottom without a large change in employment probabilities.”⁷³ Thus, the studies cited by Plaintiffs do not support their suggestion that increased minimum wages will significantly decrease employment opportunities for lower-wage workers, nor does it call into question the Department’s conclusion that disemployment effects of the Rule will be small.⁷⁴

CONCLUSION

For the reasons above and in Defendants’ filings, *Amici* respectfully urge this Court to deny Plaintiffs’ motion for summary judgment and grant Defendants’ cross-motion for summary judgment.

Respectfully submitted,

/s/ JoAnn Kintz

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⁷² *Id.* at 44.

⁷³ *Id.* at 48.

⁷⁴ Plaintiffs also referred to literature cited by the Department relating to potential effects on firm profits resulting from increased minimum wages, Pls.’ Mot. Summ. J. at 19, but fail to explain how these points are inconsistent with the Department’s conclusions. The Department recognized that impacts to profits “may be larger for firms that pay lower wages, for firms with more affected workers, and for firms that cannot as readily pass increased costs onto the government or the consumer,” but as explained above, the Department also noted that the stated benefits of the Rule as well as certain employer actions may mitigate these impacts. 86 Fed. Reg. at 67,206-07.

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2022, a true and accurate copy of the foregoing filing was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ JoAnn Kintz

Date: August 2, 2022