No. 23-40671

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATE OF TEXAS, et al.,

Plaintiffs-Appellees,

v.

PRESIDENT JOSEPH R. BIDEN, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Texas

No. 6:22-cv-4
The Honorable Drew B. Tipton

BRIEF OF AMICI CURIAE ILLINOIS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, HAWAII, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, WASHINGTON, AND WISCONSIN IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

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CERTIFICATE OF INTERESTED PERSONS

A certificate of interested persons is not required, as amici curiae are all governmental entities. 5th Cir. R. 28.2.1.

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IDENTITY AND INTEREST OF AMICI STATES

Illinois, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin ("amici States") submit this brief in support of Defendants-Appellants pursuant to Federal Rule of Appellate Procedure 29(a)(2).[1]

Amici States have an interest in the public welfare, which includes promoting fair wages and enhancing the well-being and financial security of their residents. That interest is implicated by this case, where plaintiffs challenge defendants' authority to direct the inclusion in certain federal contracts of a clause requiring the payment of a set minimum hourly wage to employees working on or in connection with the covered contract.

More broadly, amici States are supportive of policies that improve the wages and well-being of their workers while also benefiting employers and consumers. Although amici States have taken different

[1] No party's counsel authored this brief in whole or in part, and no fee has been or will be paid for its preparation.

approaches to achieve this goal within their borders, they agree with defendants that increasing wages for workers generates important benefits, including improved services, increased morale and productivity, and reduced poverty and income inequality. Accordingly, many amici States have recently enacted measures increasing the minimum wage for workers within their borders. Indeed, workers in at least 22 States saw an increase in the minimum wage on January 1, 2024, due either to legislative enactments or inflation adjustments.[2]

The district court's decision—which enjoined defendants from enforcing the minimum wage increase as to the plaintiffs and their agencies—runs counter to these important interests. Amici States thus urge this court to reverse the district court's decision granting plaintiffs' motion for summary judgment and vacate the permanent injunction.

[2] Sebastian Martinez Hickey, *Twenty-two States Will Increase Their Minimum Wages on January 1, Raising Pay for Nearly 10 Million Workers*, Economic Policy Institute (Dec. 21, 2023), https://bit.ly/41O2y92 (Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Ohio, Rhode Island, South Dakota, Vermont, and Washington).

SUMMARY OF ARGUMENT

In April 2021, the President exercised his authority under the Federal Property and Administrative Services Act, 40 U.S.C. § 101 *et seq*. ("Procurement Act") to issue an executive order increasing the minimum wage for federal contractors from $10.10 per hour—a rate that had been established in 2014 via executive order and follow-on rulemaking—to $15.00 per hour. *See* 86 Fed. Reg. 22,835 (Apr. 27, 2021) ("2021 Order").[3] In November 2021, the U.S. Department of Labor ("DOL") promulgated a final rule implementing the 2021 Order. *See* 86 Fed. Reg. 67,126 (Nov. 24, 2021) ("Federal Contractor Rule" or "Rule").

Plaintiffs brought suit challenging defendants' actions as *ultra vires* under the Procurement Act, in violation of the Administrative Procedure Act, and unconstitutional under the nondelegation doctrine and the Spending Clause. ROA.34-42. Shortly thereafter, defendants filed a motion to dismiss or, in the alternative, for summary judgment. ROA.195-233. Plaintiffs responded to that motion and cross-moved for

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[3] The current inflation-indexed hourly minimum wage is $17.20. *See* Gov't Br. 7 (citing 88 Fed. Reg. 66,906 (Sept. 28, 2023)).

summary judgment. ROA.402-44. The district court granted plaintiffs' motion in part, concluding that they were entitled to judgment as a matter of law on their claim that the President exceeded the scope of his authority under the Procurement Act by issuing the 2021 Order. ROA.751-52.

Amici States agree with defendants that the district court erred in reaching this decision because the 2021 Order, and thus the follow-on Federal Contractor Rule, were lawful exercises of authority. Gov't Br. 12-19. Amici States write separately, however, to address two specific issues that are relevant to their interests and experience.

First, amici States explain that the major questions doctrine is inapplicable to this case, the crux of which is a challenge to a limited minimum wage requirement only applicable to certain federal contractors. Although raising the minimum wage for this group of workers will yield important benefits, defendants' actions do not implicate questions of sufficient economic and political significance to warrant application of the major questions doctrine. But even if the major questions doctrine were implicated, there is no basis to conclude that the President acted outside of his statutory authority or in tension

with past practice; rather, his actions are in line with those taken by his predecessors under the Procurement Act.

Second, raising the minimum wage for federal contractors provides important benefits to the amici States, as evidenced by empirical data showing that wage increases provide substantial benefits that greatly outweigh any costs to the employers. Indeed, a number of studies and reports—including those that focus on state and local increases in contractor wages—confirm that raising the minimum wage improves the productivity and performance of employees, reduces turnover, and increases recruitment and retention of high-quality workers. These benefits, which provide advantages to employees and employers, also lead to improved services and better consumer experiences.

ARGUMENT

I. The District Court Incorrectly Relied On The Major Questions Doctrine As A Basis To Invalidate The Minimum Wage Increase For Federal Contractors.

Application of the major questions doctrine is reserved for limited circumstances that are not implicated by the increase in the minimum wage for federal contractors. The Supreme Court has applied the

doctrine only in "extraordinary cases," *King v. Burwell*, 576 U.S. 473, 485 (2015) (internal quotations omitted), where an agency has acted on "a question of deep economic and political significance" without identifying a clear statutory statement indicating Congress has delegated decision-making authority, *Biden v. Nebraska*, 600 U.S. 477, 506 (2023) (internal quotations omitted); *see also, e.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000) (limiting the doctrine to "extraordinary" cases). As part of this analysis, the Court has considered whether the agency has undertaken an unprecedented regulatory effort that is wholly outside of its expertise. *E.g.*, *Biden*, 600 U.S. at 504 (discussing "sweeping and unprecedented impact" of a program that was outside of the agency's "wheelhouse") (internal quotations omitted); *West Virginia v. EPA*, 597 U.S. 697, 724 (2022) (applying major questions doctrine where "EPA claimed to discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority") (cleaned up).

The district court applied the major questions doctrine to this case—and thus adopted a narrow view of executive authority under the Procurement Act—because, in its view, the 2021 Order "has vast

economic and political significance." ROA.772. And under that doctrine, the court concluded that "by failing to speak clearly, Congress has not authorized the President to raise the minimum wage paid by federal contractors and subcontractors to its employees." *Id.* The district court's reasoning was incorrect on both fronts.

For starters, applying the major questions doctrine is unwarranted because increasing the minimum wage for federal contractors does not raise "a question of deep economic and political significance." *King*, 576 U.S. at 486 (internal quotations omitted). In recent decisions involving this doctrine, the Supreme Court has considered actions to be sufficiently economically and politically significant when they affect millions of Americans and involve the expenditure of billions of dollars annually—which is not the case with the 2021 Order and the Federal Contractor Rule.

As one example, the Court determined that the evictions moratorium implemented during the Covid-19 pandemic was a matter of "vast economic and political significance" because the moratorium imposed an economic burden of approximately $50 billion and applied to "[a]t least 80% of the country, including between 6 and 17 million

tenants at risk of eviction." *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2489 (2021) (internal quotations omitted). Likewise, the Court invoked the major questions doctrine in a case challenging an emergency rule that would have affected 84 million workers by requiring "all employers with at least 100 employees to ensure their workforces are fully vaccinated or show a negative test at least once a week." *Nat'l Fed'n of Indep. Bus. v. Dep't of Labor, Occupational Safety & Health Admin.*, 595 U.S. 109, 115 (2022) (internal quotations omitted); *see also Biden*, 600 U.S. at 501 (applying doctrine to loan forgiveness program that would "release 43 million borrowers from their obligations to repay $430 billion in student loans"); *West Virginia*, 597 U.S. at 715 (applying doctrine to agency action that "would reduce GDP by a least a trillion 2009 dollars by 2040"); *King*, 576 U.S. at 485 (implementation of tax credits under the Patient Protection and Affordable Care Act constitutes a major question, since those tax credits "involv[e] billions of dollars in spending each year and affect[ ] the price of health insurance for millions of people").

The reach of the action challenged in this case is much more modest than any context in which the Supreme Court has applied the major questions doctrine. According to DOL's findings, the Rule's minimum wage increase will affect just 327,300 employees, 86 Fed. Reg. at 67,194, which, at less than .1% of the American population, is a fraction of the individuals affected by the ACA tax credits, the student loan forgiveness program, the Covid-19 policies, or any other agency action in which the Court has invoked the doctrine. The district court did not explain how an action affecting such a limited class could constitute a major question under Supreme Court precedent. Nor could it: determining the price and associated costs in contracts for federal services is a standard exercise of executive authority under the Procurement Act, *see* Gov't Br. 12-16, and not a question of deep economic and political significance. Again, the Supreme Court has never invoked the major questions doctrine on an issue affecting so few Americans.

Instead, the district court wrongly likened the 2021 Order to the executive order challenged in *Louisiana v. Biden*, 55 F.4th 1017 (5th Cir. 2022), which included a "mandate that would, with limited

exceptions, require the government to include in its contracts a clause that would require federal contractors to ensure that their entire workforce is fully vaccinated against COVID-19." *Id.* at 1019. According to the court, that order implicated the major questions doctrine because of its breadth—according to one estimate, it would likely affect one-fifth of the American workforce. *Id.* at 1028-30. The 2021 Order, however, is not nearly so broad in scope. As noted, DOL found that the wage increase would affect roughly 327,300 employees—roughly 0.2% of the U.S. civilian labor force, which was most recently estimated at over 167 million.[4] And even using DOL's estimate of "potentially affected" employees—*i.e.*, including those workers who are not directly affected because they make over $15 per hour—the wage increase could conceivably affect only 1.8 million employees, or roughly 1% of the labor force. *See* 86 Fed. Reg. 67,195.

In terms of economic impact, DOL reported that the Federal Contractor Rule would increase wages by $1.7 billion per year for 10 years. 86 Fed. Reg. at 67,194. And contrary to the district court's

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[4] *See* U.S. Bureau of Labor Stats., Employment Status of the Civilian Population By Sex And Age (Dec. 2023), https://bit.ly/3YJp9lG.

conclusions, *see* ROA.774-75, even the cumulative effect of the Rule ($17 billion) is meaningfully less than the economic impact recognized by the Supreme Court as sufficient to invoke the major questions doctrine. Specifically, the cumulative economic estimate provided by DOL is "far less than the $1 trillion reduction in GDP projected to result from the Clean Power Plan by 2040 or the $50 billion the Supreme Court found to be a 'reasonable proxy' of the economic impact of the nationwide eviction moratorium." *Arizona v. Walsh*, No. 22-cv-213, 2023 WL 120966, at *8 (D. Ariz. Jan. 6, 2023) (citations omitted). In fact, it would take nearly 588 years and 30 years, respectively, for the economic effect of the minimum wage increase to reach the $1 trillion and $50 billion estimates recently relied upon by the Supreme Court.

In reaching the contrary conclusion, the district court emphasized that the $17 billion cumulative economic effect did not account for the fact that contractors may decide to increase the wages of employees who are already being paid more than $15 an hour or who are working on non-covered contracts. ROA.774-75. But these "spillover effects" would not support application of the major questions doctrine because, as DOL explained in the Rule, any such costs are not required to comply with

the 2021 Order or the Rule; instead, they would reflect discretionary choices that contractors would make "voluntarily" to "avoid wage compression or maintain fairness." 86 Fed. Reg. at 67,211. Furthermore, as DOL noted, "inclusion of potential spillover effects is unlikely to drastically change [its] findings." *Id.* In fact, one commentator conducted an analysis of the cumulative economic effect, inclusive of spillover costs, and estimated that a total of "390,000 workers would receive pay raises." *Id.*

But even if defendants' actions constituted a matter of vast economic and political significance (and thus implicated the major questions doctrine), the district court's decision should still be reversed because the executive branch has acted within its clearly delegated statutory authority and in a manner consistent with prior practice. This case is thus unlike those where the Supreme Court has called an agency action into question upon finding that the agency regulates in an area where it "has no expertise," *King*, 576 U.S. at 486, or where it cannot identify any statutory basis or historical precedent for the regulation, *West Virginia*, 597 U.S. at 728; *NFIB*, 595 U.S. at 119; *Utility Air Regulatory Grp v. EPA*, 573 U.S. 302, 324 (2014). Indeed, in

one of the first cases applying the major questions doctrine, the Court rejected the Food and Drug Administration's claim that it could regulate the tobacco industry, where it had never before asserted such statutory authority and, in fact, had previously disclaimed its ability to do so. *Brown & Williamson*, 529 U.S. at 159-60.

The challenged actions here are distinguishable from those cases. To start, as defendants explain in greater detail, *see* Gov't Br. 20-25, the actions taken by the executive branch to increase the minimum wage for federal contractors are clearly authorized by the text of the Procurement Act. Indeed, the Act assigns to the President the authority to implement "policies and directives" that he or she "considers necessary to carry out" the objectives of economy and efficiency in federal procurement. 40 U.S.C. §§ 101(1), 121(a). And as the D.C. Circuit has recognized, this language reflects congressional intent to bestow "broad-ranging authority" and "'flexibility'" on the President so that he or she may achieve the goal of providing the government "an economical and efficient system for procurement and supply." *UAW-Labor Emp. & Training Corp. v. Chao*, 325 F.3d 360, 366 (D.C. Cir. 2003) (internal quotations omitted); *see also, e.g.*, *City of*

Albuquerque v. U.S. Dep't of Interior, 379 F.3d 901, 914 (10th Cir. 2004) ("Congress chose to utilize a relatively broad delegation of authority in the [Procurement Act]"); *Louisiana*, 55 F.4th at 1026 n.24 (rejecting argument that Supreme Court has issued a "narrowing instruction for interpretation of the Procurement Act").

Courts have thus upheld a wide range of executive orders issued under the Procurement Act, including those that set price and wage guidelines, *AFL-CIO v. Kahn*, 618 F.2d 784, 792-93 (D.C. Cir. 1979); require federal contractors to inform workers of their rights under federal labor laws, *Chao*, 325 F.3d at 366-67; and implement antidiscrimination requirements, *e.g.*, *Contractors Ass'n of Eastern Pa. v. Secretary of Labor*, 442 F.2d 159, 171 (3d Cir. 1971); *Farkas v. Texas Instrument, Inc.*, 375 F.2d 629, 632 n.1 (5th Cir. 1967).

Beyond this broad statutory authority, there is historical precedent for presidents issuing executive orders setting a minimum wage for federal contractors and determining the scope of its application. In addition to the 2021 Order issued by President Biden, *see* 86 Fed. Reg. 22,835 (Apr. 27, 2021), President Obama issued an executive order establishing a $10.10 minimum wage for federal

contractors in 2014, 79 Fed. Reg. 9,851 (Feb. 20, 2014), and President Trump issued an executive order in 2018 that exempted certain seasonal recreational providers from that minimum-wage requirement, 83 Fed. Reg. 25,341 (June 1, 2018). Notably, the 2018 executive order did not cast doubt on the President's authority to set minimum wages for federal contractors; on the contrary, it retained the $10.10 minimum wage and carved out a narrow exemption to its terms. *Id.* Executive orders setting a minimum wage for federal contractors have thus been in place for nearly ten years and over the course of three presidential administrations. Given this precedent and the recognized breadth of the Procurement Act's delegation of authority to the President, this case is unlike a scenario where an agency has issued a regulation based on a claim to have discovered "an unheralded power" in a "long-extant statute." *Utility Air*, 573 U.S. at 324.

All told, the district court's conclusion that, under the major questions doctrine, "the President acted *ultra vires* and exceeded his authority by issuing [the 2021 Order]," ROA.776, rested on several fundamental errors. Amici States thus agree with defendants that its decision should be reversed.

II. Raising The Minimum Wage For Federal Contractors Provides Important Benefits To The Amici States.

Additionally, defendants' decision to increase the minimum wage for a range of federal contractors—including, among others, those engaged in procurement contracts for services or construction, contracts related to federal property, and contracts providing services to federal employees, their families, and the general public, *see* Gov't Br. 5-6—provides critical benefits to employees, consumers, and employers in the amici States. These benefits are well supported by empirical evidence, including the studies and reports cited by DOL in the Federal Contractor Rule, as well as state and local experience in raising the minimum wage for their contractors. Additionally, as DOL explained, these substantial benefits outweigh any modest costs incurred by employers resulting from the minimum wage increase.

A. The minimum wage increase provides important benefits to employers, consumers, and employees.

To begin, numerous studies and reports, including those relied on by DOL in the Federal Contractor Rule, have shown that by paying employees higher wages, employers improve the morale, productivity, and performance of employees; reduce turnover; and are able to attract

higher quality workers. 86 Fed. Reg. at 67,212-14. And these benefits, in turn, lead to improved services and better consumer experiences. *Id.* Such findings, moreover, are well-documented: improvements in worker efficiency, recruitment, and retention have been found across many different sectors, including air travel, policing, retail, manufacturing, and construction.[5] As DOL noted, given the consistency of these findings, there is "no reason to believe that the trends found in the literature do not also apply to the Federal contract worker community." 86 Fed. Reg. at 67,213.

As one example, a recent study of minimum wage increases in nursing homes provided "direct evidence" linking those increases to improved worker performance and efficiency.[6] The study found that "higher minimum wages induc[ed] better performance among current

[5] *E.g.*, Paul K. Sonn & Tsedeye Gebreselassie, The Road To Responsible Contracting, National Employment Law Project at 3-4 (2009), https://bit.ly/3s54ZpN (collecting studies); Justin Wolfers & Jan Zilinsky, *Higher Wages for Low-Income Workers Lead to Higher Productivity* (Jan. 13, 2015), https://bit.ly/45pXpo0 (same).

[6] Krista Ruffini, *Worker Earnings, Service Quality, and Firm Profitability: Evidence from Nursing Homes and Minimum Wage Reforms*, at 1 (Apr. 25, 2022), https://bit.ly/3KEc1YX.

workers" and improved the service quality through increased retention.[7] Among other indicators of better performance, the study noted improvements in the health and safety of the nursing home residents, including fewer health inspection violations and deaths each year.[8] In fact, the study estimates that in 2013 (one of the years it examined), there would have been approximately 15,000 fewer nursing home deaths had comparable wage increases been implemented in nursing homes across the country.[9]

There is also evidence that these benefits endure well beyond the initial wage increase: according to a 2019 report, "wage raises increase productivity for up to two years after the wage increase." 86 Fed. Reg. at 67,213. The nursing home study similarly reported that health and safety improvements—in particular, the lower rate of deaths—persisted after the initial increase.[10]

Increased wages, like those in the Federal Contractor Rule, can also facilitate retention and recruitment. 86 Fed. Reg. at 67,213.

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[7] *Id.* at 3, 9, 15.

[8] *Id.* at 2.

[9] *Id.* at 20.

[10] *Id.* at 2.

According to a recent study cited by DOL, improved wages "at a Fortune 500 company found that a 1 percent wage increase" resulted in reduced turnover, increased recruitment, and increased productivity. *Id.*

Another substantial benefit of the Federal Contractor Rule, as explained by DOL, is the corresponding reduction in poverty for workers, especially those in historically underpaid or otherwise disadvantaged groups. *Id.* at 67,214-15. A recent study indicates that increasing the minimum wage provides net benefits to workers living in poverty, even when accounting for potential negative effects of a minimum wage increase on employment opportunities, such as reduced hours or fewer available positions.[11] It further determined that these improvements are meaningful; in fact, the authors suggest that increasing the minimum wage during the Great Recession would have "blunt[ed] the worst of the income losses."[12]

Increased wages are particularly important for groups that face disproportionate income inequality, such as women, people of color,

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[11] Kevin Rinz & John Voorheis, *The Distributional Effects of Minimum Wages: Evidence from Linked Survey and Administrative Data*, at 20-22 (2018), https://bit.ly/3YFpWUM.

[12] *Id.* at 21.

younger workers, and less educated workers. 86 Fed. Reg. at 67,214-15 (collecting studies). For example, according to a 2019 study assessing the role that gender plays in wages, "less-educated, less-experienced, and female workers are more directly affected by a rise in the minimum wage than more-educated, more-experienced, and male workers."[13] A case study of firms covered by Boston's living wage law likewise concluded that the "living wage beneficiaries are . . . primarily women and people of color."[14] As DOL explained, increasing the wage of federal contractors would directly benefit these groups, since "many of the contracts that would be covered by this rule can be found in industries characterized by low pay and workforces largely comprised of" people of color, women, and LGBTQ+ workers. 86 Fed. Reg. at 67,215 (internal quotations omitted).

These justifications are amply supported not only by the case studies and other literature discussed by DOL, *id.* at 67,212-15, but also

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[13] Tatsushi Oka & Ken Yamada, *Heterogeneous Impact of the Minimum Wage*, Journal of Human Resources at 18 (July 2019), https://bit.ly/3sdPTyn.

[14] Mark D. Brenner & Stephanie Luce, *Living Wage Laws in Practice: The Boston*, New Haven and Hartford Experiences, Political Economy Research Institute, at 45 (2005), https://bit.ly/3DZ7aOo.

by the experience of state and local governments with implementing similar policies for their contractors, which are often described as "living wage laws."[15] Indeed, the States and localities that have raised minimum wages for their own contractors have found that such policies "create better quality jobs for communities" and "improve[ ] the contracting process both by reducing the hidden public costs of the procurement system, and by shifting purchasing towards more reliable, high road contractors."[16] As one example, "[r]esearch by independent, academic economists indicates that New York's prevailing wage law is a uniquely valuable component of state policy that simultaneously uplifts residents and communities while imposing minimal, if any, cost on taxpayers."[17] The research also found that high-wage contractors attract more skilled and productive workers and use the industry's most advanced technology, allowing them to place competitive bids on contracts.[18] In a similar vein, a study of the "Los Angeles living wage

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[15] Sonn, *supra* note 4, at 13 (describing state and local "living wage laws").

[16] *Id.*

[17] Russell Ormiston, *et al.*, *New York's Prevailing Wage Law*, Economic Policy Institute (Nov. 1, 2017), https://bit.ly/3OELewP.

[18] *Id.*

law found that staff turnover rates at firms affected by the law averaged 17 percent lower than those at firms that were not, and that the decrease in turnover offset 16 percent of the cost of the higher wages."[19]

B. The benefits of the minimum wage increase outweigh any minimal costs to employers.

Additionally, there is substantial evidence that any additional costs to employers are outweighed by the benefits associated with the wage increase. Indeed, DOL reviewed literature examining the impact of minimum wage increases on prices to the public and concluded that while the "size of price increases will vary based on the company and industry," the extent of the price increases at issue here was "overstated" by commentators opposed to the Federal Contractor Rule. 86 Fed. Reg. at 67,207. In reaching that conclusion, DOL also accounted for the "various benefits [employers] will observe, such as increased productivity and reduced turnover," which could, in turn, improve the quality of services and "attract more customers and result

[19] Sonn, *supra* note 4, at 14 (citing David Fairris *et al.*, *Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses*, Los Angeles Alliance for a New Economy).

in increased sales." *Id.* And as DOL noted, contractors would likely be able to renegotiate their contracts with the federal government to account for any increased costs associated with the minimum wage increase. *Id.*

Additionally, local experience bears out DOL's conclusion that any costs associated with an increase in the minimum wage would be minimal. Indeed, a "review of the effects of living wages in a dozen local jurisdictions found that contract costs increased by less than 1.0 percent of each jurisdiction's total budget."[20] A Johns Hopkins University study likewise found that contract costs increased by only 1.2% in Baltimore, the first locality to implement a living wage requirement for city contractors, upon review of 26 contracts "compared before and after the living wage law was implemented."[21]

In short, raising the minimum wage for federal contractors provides substantial benefits to employers, employees, and consumers in the amici States, while imposing only modest costs.

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[20] *Impact of the Maryland Living Wage*, Maryland Dep't of Legislative Services, at 5 (2008), https://bit.ly/3qxXFTo.

[21] *Id.*

CONCLUSION

For these reasons, this court should reverse the district court's partial grant of summary judgment and vacate the permanent injunction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 4,360 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirement of Rule 32(a)(5) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word 365.

/s/ Sarah A. Hunger
SARAH A. HUNGER

January 29, 2024

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2024, I electronically filed the foregoing Brief of Amici Curiae Illinois et al. with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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