Negative: Unicor Takeover

By “Coach Vance” Trefethen

***The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

The AFF plan has the BOP contract out prisoners to work for corporations at market rates rather than continuing to have them work for Unicor at prison wages.

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Negative: Unicor reform

COUNTER GOAL / NEG PHILOSOPHY

 Correctional Officer (CO) safety should be the paramount goal of prison policy

Frank V. Ferdik & Hayden P. Smith 2017 (Ferdik - Department of Criminology and Criminal Justice, University of West Florida, Pensacola. Smith - Department of Criminology and Criminal Justice, University of South Carolina, Columbia) Correctional Officer Safety and Wellness Literature Synthesis, July 2017 <https://www.ojp.gov/pdffiles1/nij/250484.pdf> (accessed 20 Sept 2021)

Officers are tasked with demanding and often conflicting work responsibilities that increase their risk for physical and mental health problems such as injuries, stress, and even death. Officers must interact with and supervise potentially dangerous individuals such as gang members, inmates with mental illness, and those with communicable diseases, which further complicates officers’ health issues. According to the research cited above, officers, regardless of security assignment, recognize the danger to which they are subject as a result of their profession. Many scholars conclude that employment as a CO is among the most dangerous and life threatening of all professions, including law enforcement. Given how COs are heavily relied upon to supervise inmate behavior, establish order in their facilities, and maintain wider institutional security, it is paramount that correctional practitioners, researchers, administrative officials, and other interested stakeholders begin developing more effective and widely used strategies for enhancing the general well-being of this critically important workforce.

INHERENCY

1. Business competition reforms already done

Congress has passed several laws already to change sourcing rules and reduce Unicor/FPI impact on small businesses

Congressional Research Service 2016 (non-partisan research agency of Congress) last updated 11 May 2016 Federal Prison Industries: Background, Debate, Legislative History, and Policy Options <https://crsreports.congress.gov/product/pdf/RL/RL32380> (accessed 6 Dec 2021)

Congress has taken legislative action to lessen any adverse impact the FPI has had on small businesses. For example, in 2002, 2003, and 2004, Congress passed legislation that modified how the Department of Defense (DOD) and the Central Intelligence Agency (CIA) procured products offered by the FPI in its schedule of products. In 2004, Congress passed legislation prohibiting federal agencies from using appropriated funding for FY2004 to purchase products or services offered by the FPI unless the agency determined that the products or services are provided at the best value. This provision was extended permanently in FY2005. In the 110th Congress, the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) modified the way in which DOD procures products from the FPI. In addition, the Administration of President George W. Bush made several efforts to reduce the consequences the FPI’s mandatory source clause might have on the ability of private businesses to compete for federal contracts.

Reforms “dramatically reduced” mandatory sourcing for FPI

Congressional Research Service 2016 (non-partisan research agency of Congress) last updated 11 May 2016 Federal Prison Industries: Background, Debate, Legislative History, and Policy Options <https://crsreports.congress.gov/product/pdf/RL/RL32380> (accessed 6 Dec 2021) (the “-“ was added to distinguish that it is CRS quoting former Bureau of Prisons Director Harley Lappin)

Former Director Lappin states that the FPI’s mandatory source clause
-does not mean that the FPI program prohibits Federal customers from purchasing from private vendors. Many of the FPI program’s products are only offered as “non-mandatory” items, meaning that competitive procurement procedures apply. Finally, for those FPI program products to which mandatory source applies, it does so only in a limited way. Recent legislation and FPI Board of Directors resolutions have dramatically reduced the effect of mandatory source.-

Big reduction in mandatory sourcing for FPI happened in 2002

Maj. Philip Mitchell 2004 (Judge Advocate in the United States Army presently assigned to the US Army Trial Defense Service; Mannheim, Germany. JD from University of Detroit Mercy School of Law. He has served as a prosecutor and a defense attorney and also served as a Contract Law Attorney with U.S. Army Tank—Automotive and Armaments Command) FEDERAL PRISON INDUSTRIES ENDING THEIR MANDATORY SOURCE STATUS, MICHIGAN BAR JOURNAL Sept 2004 <https://www.michbar.org/file/barjournal/article/documents/pdf4article739.pdf> (accessed 6 Dec 2021)

Through the efforts of Congressman Hoekstra and Senator Carl Levin, UNICOR’s mandatory source status ended in 2002. As amended, 10 USCS 2410n states: If the product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the Department’s needs, competitive procedures shall be used for the procurement. Senator Levin said that the change ends FPI’s ‘‘mandatory preference, and Federal Prison Industries would have to compete for future Department of Defense contracts.’’ Even though UNICOR still retains mandatory source status if it produces a product equal, or comparable, to those available in the private sector, the change requires UNICOR to compete for federal contracts when the private sector produces a similar item.

HARMS / SIGNIFICANCE

1. A/T “Small businesses harmed”

3 responses: 1) Other factors causing those job losses besides FPI. 2) Insignificant number of jobs impacted 3) Prison benefits outweigh

Marc H. Morial 2008 (Director, National Urban League) 6 May 2008 “FEDERAL PRISON INDUSTRIES--EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008” HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES <https://www.govinfo.gov/content/pkg/CHRG-110hhrg42213/html/CHRG-110hhrg42213.htm> (accessed 6 Dec 2021)

I think it is important to look at the loss of jobs as not scapegoating FPI. There are larger global trade and foreign competition issues at play in a lot of the businesses where they provide services. But then secondly, the effect because of the market share of FPI is so small. Has it cost a job-loss here or there? I don't think anyone can argue that it hasn't, but the benefits, the up-side is significant. I would suggest to you that there are not a lot of initiatives out there that habilitate and give prisoners skills that don't require direct appropriations. We are spending on average on the low side probably $20,000 or $25,000 a year to incarcerate and house people. So this kind of investment is offset.

2. Declining in Status Quo

Unicor is declining in Status Quo. Only 7% of inmates now have work assignments

Congressional Research Service 2016 (non-partisan research agency of Congress) last updated 11 May 2016 Federal Prison Industries: Background, Debate, Legislative History, and Policy Options <https://crsreports.congress.gov/product/pdf/RL/RL32380> (accessed 6 Dec 2021) (note: “steadily deceased” should read “steadily decreased” but we left the typo as it was written in the original) (brackets added)

Data show that the number of FPI [Federal Prison Industries] work assignments available to inmates has not kept pace with the growing federal inmate population. Starting in FY1988 the proportion of the federal inmate population employed by the FPI steadily deceased. In FY2015, approximately 7% of all federal inmates had an FPI work assignment.

SOLVENCY

1. Uncompetitive work force. Private companies couldn’t afford to pay prisoners market wages

Prison wages are low because of additional constraints in the prison environment that create extra expenses for prison industry

Congressional Research Service 2016 (non-partisan research agency of Congress) last updated 11 May 2016 Federal Prison Industries: Background, Debate, Legislative History, and Policy Options <https://crsreports.congress.gov/product/pdf/RL/RL32380> (accessed 6 Dec 2021) (brackets added)

Proponents note that the FPI [Federal Prison Industries] faces several competitive disadvantages which might negate the fact that the FPI can pay inmate workers lower wages. While inmates receive far lower pay than workers in private industry, the FPI asserts this advantage is offset by the lower average productivity of inmates and the inefficiencies associated with operating a business in a correctional setting. In addition, the FPI contends that any advantage it might gain from lower wages is offset by statutory constraints that drive up costs. These include
• employing as many inmates as reasonably possible;
• concentrating on manufacturing products that are labor-intensive;
• providing opportunities for inmates to acquire marketable skills;
• diversifying production as much as possible to minimize competition with private industry and labor, and reduce the burden on any one industry;
• not taking more than a reasonable share of the federal market for any one product; and
• selling products only to the federal government.

Prison workers have lots of additional costs that private businesses don’t have

Congressional Research Service 2016 (non-partisan research agency of Congress) last updated 11 May 2016 Federal Prison Industries: Background, Debate, Legislative History, and Policy Options <https://crsreports.congress.gov/product/pdf/RL/RL32380> (accessed 6 Dec 2021)

According to the FPI, additional costs also lower its competitiveness. The FPI reports that the average inmate worker, due in part to lower levels of education and a lack of regular employment, is approximately one-quarter as productive as a non-incarcerated worker. The FPI has to train (a further cost) most inmate workers how to perform their jobs while private businesses have the ability to hire workers who have the requisite job skills. The FPI notes that expenses such as supervision of inmate workers and measures necessary to maintain the security of the prison add to the cost of production.

2. Discounts needed (but not in plan)

Richard Lippke agrees with the Affirmative position, but he admits prison labor would still have to be discounted from prevailing wages to be competitive with ordinary labor and make the plan work

Richard Lippke 1998. (Senior Scholar in the Department of Criminal Justice at Indiana University. In addition to his current position, he has held teaching positions at James Madison University and DePauw University, and has been a visiting fellow at the Centre for Applied Philosophy and Public Ethics at Australian National University and the Centre for Criminology at Oxford University ) Prison Labor: Its Control, Facilitation, and Terms, LAW & PHILOSOPHY Nov 1998 <https://ur.booksc.eu/book/27633159/4add8b> (accessed 19 Jan 2022)

I suggest that, with one important qualification, prisoners ought to be paid the prevailing industry wage for their work. Alternatively, in the absence of a determinate industry wage, inmates should be paid the prevailing minimum wage as this is set by the state. The important qualification is that there should be some, hopefully small, discount in the wages paid inmates by private employers to cover any costs these employers must bear in using prison labor. Such costs are the result of high turnover rates among prison workers (due to releases, transfers, and disciplinary problems) and frequent work interruptions for security purposes. It seems reasonable for private employers to receive some discount so that they will not have to bear these costs themselves, and will therefore remain motivated to use prison labor.

3. More study needed

Changes made to FPI in the 2018 First Step Act need to be studied -- there’s a lot of uncertainty about economic impacts

Government Accountability Office 2020. (federal agency that audits activities of other federal agencies) July 2020 FEDERAL PRISON INDUSTRIES Actions Needed to Evaluate Program Effectiveness <https://www.gao.gov/assets/gao-20-505.pdf> (accessed 6 Dec 2021)

The First Step Act of 2018 made new, nonfederal markets and potential buyers available to Federal Prison Industries (FPI), a government corporation organized within the Bureau of Prisons (BOP); however, various challenges could limit FPI’s ability to sell to customers in these markets. FPI makes apparel, personal protective equipment, and furniture, among other products. FPI may now sell to the District of Columbia government, including, for example, to its firefighters; nonfederal, governmental entities for use in correctional settings or in response to a disaster or emergency, such as local jails and first responders; and nonprofit organizations, such as universities. However, a lack of information makes it difficult to estimate the dollar value of these new markets.
**END QUOTE. THEY GO ON LATER IN THE ARTICLE TO WRITE QUOTE:**
Data on the size of most of the new markets are very limited. For example, GAO found no existing national information to help estimate the size and scope of relevant spending by nonfederal entities on disaster relief and emergencies. Also, challenges related to state and local government operations, for example, could limit FPI’s ability to sell products in the new markets made available under the First Step Act. Specifically, state-level prison industries and in-state vendors often have preferential access to many of the procurement markets now available to FPI

DISADVANTAGES

1. Promotes mass incarceration

Link: Commercialized prison labor creates incentives to increase the size of prison populations

Prof. Robert Murphy 2015 ( senior economist at the Independent Energy Institute, a research assistant professor with the [Free Market Institute](https://www.depts.ttu.edu/freemarketinstitute/index.php) at Texas Tech University, and a Research Fellow at the Independent Institute) 24 Sept 2015 “Are Prisoners Who Make Low Wages Being Exploited?” Are Prisoners Who Make Low Wages Being Exploited? <https://fee.org/articles/are-prisoners-who-make-low-wages-being-exploited/?gclid=CjwKCAiA55mPBhBOEiwANmzoQuGf_vcyoz-WZY_29AAyZac39BkMnFHi7-WWUh4pqFzIxFkjfQnv3BoCvKkQAvD_BwE> (accessed 18 Jan 2022)

Finally, the most perverse consequence of allowing commercialized prison labor in the present system is that it gives the private prisons an even greater incentive to lobby for continued drug prohibition. If they are able to reap a huge portion of the “markup” from the fruits of their inmates’ labor, then the prison owners will likely do what they can to increase the size of their populations.

Impact 1: Taxpayer cost. Mass incarceration is expensive

Catherine Reese Neely 2021 (J.D. Candidate 2022, University of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

Sixth, mandatory minimums contribute significantly to mass incarceration in the federal prison system. Ending the war on drugs will not solve mass incarceration; however, it is an important step toward that goal. Abolishing only ten-year mandatory minimums “would affect 7,300 defendants every year.” Mass incarceration is expensive for the American people. American taxpayers spend approximately thirty-six thousand, two hundred and ninety-nine dollars and twenty-five cents ($36,299.25) per year per individual incarcerated in federal prison. Nearly one in three federal prisoners is there for a drug offense—any effort to drastically affect mass incarceration should begin with addressing drug offenses and mandatory minimum sentencing.

Impact 2: Violence and deaths. Federal prisons are dangerous because staffing is insufficient for the prison population

The Associated Press, 2021 (Independent American non-profit news agency)“Federal prisons forced to use cooks, nurses to guard inmates due to staff shortages” May 21, 2021 <https://www.nbcnews.com/news/us-news/federal-prisons-forced-use-cooks-nurses-guard-inmates-due-staff-n1268138> (accessed October 26th, 2021)

Nearly one-third of federal correctional officer jobs in the United States are vacant, forcing prisons to use cooks, teachers, nurses and other workers to guard inmates. At a federal penitentiary in Texas, prisoners are locked in their cells on weekends because there are not enough guards to watch them. Elsewhere in the system, fights are breaking out, several inmates have escaped in recent months and, in Illinois, at one of the most understaffed prisons in the country, five inmates have died in homicides or suicides since March 2020. Overworked employees are burning out quickly and violent encounters are being reported on a near-daily basis. At a prison in Illinois, there are so few staff that officers are sometimes forced to work 60 hours of overtime in a week. At a facility in California, a fight broke out among inmates soon after a teacher was sent to fill in as an officer.

2. Worse inmate behavior

Link: Inmates simply wouldn’t be working if paid minimum wage, because it’s not profitable. 1993 GAO Study:

Lynn Gibson 1993. (Assoc. General Counsel, GAO) 28 Oct 1993 “Perspectives on Paying the Federal Minimum Wage” <https://www.gao.gov/assets/t-ggd-94-8.pdf> (accessed 18 Jan 2022)



Backup Link: Fewer prisoners would be working if work were privatized.

**Plan advocate Richard Lippke likes the idea of outside companies paying higher wages, but he admits in 1998 that it wouldn’t work for all prisons in all cases, and that some would be left without work unless the prison itself employed them. Even fewer would be employed if you don’t allow prisoners to leave the prison to go to work.**

Richard Lippke 1998. (Senior Scholar in the Department of Criminal Justice at Indiana University. In addition to his current position, he has held teaching positions at James Madison University and DePauw University, and has been a visiting fellow at the Centre for Applied Philosophy and Public Ethics at Australian National University and the Centre for Criminology at Oxford University ) Prison Labor: Its Control, Facilitation, and Terms, LAW & PHILOSOPHY Nov 1998 <https://ur.booksc.eu/book/27633159/4add8b> (accessed 19 Jan 2022)

There are several forms state facilitation of paid prison labor might take. First, some inmates might be trustworthy enough to be released on a daily basis, transported to locales where work is available, and allowed to compete in the free labor market. These inmates would presumably be transported back to prison after their shifts (or might even be responsible for getting themselves back). Second, prisons could enter into agreements with private companies to employ prison inmates, who would then be transported to and from employment sites and watched over while on the job. Libertarians would probably prefer these first two forms of state facilitation, but others can be imagined and might be necessary given that some inmates will not be trustworthy enough to be allowed outside of prison. A third type of state facilitation involves prisons (or supervisory agencies charged with their oversight) soliciting bids from private companies to set up enterprises within prisons. Such on-site employment could be provided to inmates who are too much of a security risk to be allowed off-site. Whether the preceding three forms of state facilitation will suffice to provide inmates with genuine opportunities for paid labor depends on factors such as the size of prison populations, the incentives available to private companies to use prison labor, and the proximity of private companies to prisons. We have to take seriously the possibility that these forms of state facilitation will sometimes not suffice. Thus, a fourth kind of state facilitation may be needed, one where the state itself employs prisoners in so-called prison industries

Impact: More violence in prisons. Prison jobs are key to reducing inmate violence and assaults on guards

Harley Lappin 2008 (director of the Bureau of Prisons) 6 May 2008 “FEDERAL PRISON INDUSTRIES--EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008” HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES <https://www.govinfo.gov/content/pkg/CHRG-110hhrg42213/html/CHRG-110hhrg42213.htm> (accessed 6 Dec 2021)



Impact: Worse inmate behavior because prison jobs incentivize them to behave

Rep. Robert Scott 2008. (member of the House of Reps. from Virginia) 6 May 2008 “FEDERAL PRISON INDUSTRIES--EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008” HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES <https://www.govinfo.gov/content/pkg/CHRG-110hhrg42213/html/CHRG-110hhrg42213.htm> (accessed 6 Dec 2021)

All able-bodied prisoners are required by law to work. Over 80 percent of them work for menial, mostly make-work jobs which are paid 12 cents to 40 cents per hour. In comparison, Federal Prison Industry jobs are held by about 18 percent of the prisoners and they earn from 24 cents to $1.15 per hour. This additional pay is a significant financial incentive, making FPI jobs most desirable. Also, prisoners in FPI--those on the waiting list and those seeking to be eligible for the waiting list--must have their high school diploma or a GED or show that they are making progress to obtain a GED. That is why prisoners in the FPI program are less likely to engage in institutional misconduct, thereby enhancing the safety of staff and other prisoners and lessening the management burden and expense.

Federal prison guards unanimously support Unicor as highly effective and essential to obtaining better prisoner behavior

Rep. Daniel Lungren and John Gage 2008. (Lungren – R-California, House of Rep. Gage – President of American Federation of Government Employees, the union that represents federal prison guards) 6 May 2008 “FEDERAL PRISON INDUSTRIES--EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008” HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES <https://www.govinfo.gov/content/pkg/CHRG-110hhrg42213/html/CHRG-110hhrg42213.htm> (accessed 6 Dec 2021)

Mr. Lungren. Mr. Gage, since you represent the employees who work in the prisons, can you tell us, representing them, that this program does in any real way assist in reducing tension in the institutions, assist in any way making it a safer environment for prisoners and for your employees?
 Mr. Gage. Oh, yes. There is no question about it. Talking to any of our officers, they think this program is a real carrot for the inmate. It produces better behavior. You can't just get one of these jobs. You really have to have a good record. To qualify for the program, and then to get the job and to stay out of trouble to keep the job. Our officers are, to a man and woman, committed to this program.

American Federation of Government Employees (union representing prison guards) says: Safety of guards requires NOT repealing mandatory sourcing UNLESS you replace it with job training (which AFF’s bill doesn’t do)

John Gage 2008 (National President, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES) 6 May 2008 “FEDERAL PRISON INDUSTRIES--EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008” HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES <https://www.govinfo.gov/content/pkg/CHRG-110hhrg42213/html/CHRG-110hhrg42213.htm> (accessed 6 Dec 2021)



3. Recidivism

Link: Fewer prisoners working if privatized

Cross apply the links to DA-2

We should be INCREASING Unicor, not cutting it: It reduces recidivism by nearly 25%

Brennan Center for Justice 2020 (part of New York University School of Law. Individual authors were: Ram Subramanian, Lauren-Brooke Eisen, Taryn Merkl, Leily Arzy, Hernandez Stroud, Taylor King, Jackie Fielding, and Alia Nahra) 9 Dec 2020 A Federal Agenda for Criminal Justice Reform <https://www.brennancenter.org/sites/default/files/2020-12/FederalAgendaCriminalJustice.pdf> (accessed 6 Dec 2021)

However, after more than a year of implementation, the BOP has not delivered on the promise to bring more programs to incarcerated people. Although the BOP has not disclosed much information on programming availability or capacity, as many as 25,000 people are wait-listed for the UNICOR work program (which has been proven to reduce recidivism by nearly 25 percent), at least 15,000 are wait-listed for education and vocational training, and at least 5,000 are wait-listed for drug treatment programs.

Substantial reductions in recidivism for inmates who participate in FPI

Congressional Research Service 2016 (non-partisan research agency of Congress) last updated 11 May 2016 Federal Prison Industries: Background, Debate, Legislative History, and Policy Options <https://crsreports.congress.gov/product/pdf/RL/RL32380> (accessed 6 Dec 2021)

Research conducted by the BOP shows that, 12 months after being released from prison, inmates who participated in the FPI were 35% less likely than inmates from a comparable control group to have recidivated (6.6% compared to 10.1%). Inmates who participated in the FPI were also 14% more likely to be employed after 12 months (71.7% compared to 63.1%). The researchers found that over the long term (between 8 and 12 years after release), inmates who participated in the FPI were 24% less likely to have recidivated than inmates in the comparison group.