IN THE MISSOURI SUPREME COURT

No. SC 95401

COOPERATIVE HOME CARE, INC. et al.,

Respondents/Cross-Appellants,

v.

CITY OF ST. LOUIS, MISSOURI, et al.,

Appellants/Cross-Respondents

Appeal from the Circuit Court of St. Louis, Missouri
Hon. Steven R. Ohmer, Judge

BRIEF OF AMICUS CURIAE MUNICIPAL AND LABOR LAW SCHOLARS, NATIONAL EMPLOYMENT LAW PROJECT, AND MISSOURI JOBS WITH JUSTICE

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JURISDICTIONAL STATEMENT

Plaintiffs, who filed their cross-appeal with this Court, challenge the circuit court's finding that Section 67.1571, RSMo, was enacted in violation of the Missouri Constitution. This Court has jurisdiction under Article V, Section 3, of the Missouri Constitution because Plaintiffs' cross-appeal involves "the validity… of a statute… of this state."

At the same time, Defendants, including the City of St. Louis, appeal the circuit court's finding that Ordinance 70078 (the "Ordinance") is void and unenforceable because it conflicts with state law, namely Missouri's Minimum Wage Law. This Court has jurisdiction over Defendants' appeal because, once this Court has exclusive jurisdiction over a case, it may decide all the issues presented.

STATEMENT OF FACTS

Amici adopt the Statement of Facts in the Brief of Appellants/Cross-Respondents filed in this Court.

PURPOSE AND INTEREST OF *AMICI CURIAE*

Amici Municipal and Labor Law Scholars are professors at various law schools in Missouri.[1] They have long been engaged in the study and teaching of

[1] Amici Municipal and Labor Law Scholars are Matt Bodie (St. Louis University School of Law) ("SLU"), Miriam A. Cherry (SLU), Marion Crain (Washington University Law), Susan A. FitzGibbon (SLU), Daniel R. Mandelker (Washington

municipal or labor law. All of them have studied issues surrounding the legal viability of local employment and minimum wage laws, and some have published articles on the power of charter cities.[2] Their interest here derives from their responsibilities as law professors. They teach their students to carefully read constitutional provisions and statutes with attention to their text, history, and purpose. They also caution students that it is not the duty of judges to decide policy, but the job of the people. They believe that following these standards leads to only one conclusion in this case—that local governments in Missouri have the power to enact local minimum wage requirements to address problems of health, wage inequality, and poverty in their communities and that such requirements do not conflict with state law.

University Law), Marcia L. McCormick (SLU), Peter W. Salsich Jr. (SLU), Peggie R. Smith (Washington University Law), and Karen L. Tokarz (Washington University Law). Institutional affiliations are listed for identification purposes only.

[2] *See, e.g.*, Peter Salish & Dennis Tuchler, *Missouri Local Government: A Criticism of a Critique*, 14 St. Louis U.L.J. 207 (1969); Daniel Mandelker, et al., *State and Local Government in a Federal System* (8th ed. 2014).

The National Employment Law Project ("NELP") is a national research and policy organization known for its expertise on workforce issues. NELP has assisted efforts by advocacy groups, local elected officials, and workers in cities across the country, including the City of St. Louis, to enact local minimum wage legislation; and, it has extensive background in issues surrounding the power and authority of cities to enact local minimum wage requirements. Their interest here is in advancing and protecting the ability of cities and citizens to pass local minimum wage laws to address issues of local concern and lift pay for low-income workers for whom the value of the minimum wage has declined for years.

Missouri Jobs with Justice ("JwJ") is coalition of community, labor, student, and religious groups. It is committed to fighting for economic justice and improving the lives of working people. It has supported efforts by the Board of Aldermen in the City of St. Louis and other municipalities to enact local minimum wage requirements; it counts as members low wage workers in the City of St. Louis who would receive a raise under the Ordinance at issue. By joining this Brief, JwJ seeks to advance the interests of low wage workers.

POSITION OF ALL PARTIES TO FILING OF THIS BRIEF

Respondents-Cross Appellants consent to *Amici* filing the Brief. Appellants-Cross Respondents have not consented to the filing of this Brief.

POINT RELIED ON

I. THE TRIAL COURT ERRED IN FINDING THAT THE ORDINANCE CONFLICTS WITH SECTION 71.010, RSMO, AND MISSOURI'S MINIMUM WAGE LAW BECAUSE THE ORDINANCE IS AUTHORIZED BY ARTICLE VI, SECTION 19(A) OF THE MISSOURI CONSTITUTION IN THAT THE MINIMUM WAGE LAW DOES NOT INDICATE A CLEAR INTENT TO LIMIT THE POWER OF CITIES TO ESTABLISH LOCAL MINIMUM WAGE REQUIREMENTS AND THE ORDINANCE MERELY SUPPLEMENTS STATE LAW.

Cape Motor Lodge, Inc. v. City of Cape Girardeau, 706 S.W.2d 208 (Mo. banc 1986)

City of Kansas City v. La Rose, 524 S.W.2d 112 (Mo. banc 1975)

Vest v. Kansas City, 194 S.W.2d 38 (Mo. 1946)

City of Kansas City v. Carlson, 292 S.W.3d 368 (Mo. App. W.D. 2009)

ARGUMENT

Introduction

This case involves significant questions surrounding the rights of citizens to advance their interests and to address problems in their communities by ordinance. Defendants and *Amici* maintain that the Ordinance does not conflict with state law, including Missouri's Minimum Wage Law, §§ 290.500, et seq., RSMo. ("Minimum Wage Law"). Charter cities, including the City of St. Louis, have the power to establish local minimum wage and enforcement standards under Article VI, Section 19(a) of the Missouri Constitution and the Minimum Wage Law does not deny them that power.

The trial court found in its October 14, 2015 Judgment that the Ordinance violates Section 71.010, RSMo, because it conflicts with the Minimum Wage Law. (Judgment at pp. 14, 22; L.F. at 172, 180.) A growing number of cities across the country, including cities in Missouri, are using minimum wage ordinances to address problems of poverty, health, and income inequality in their communities. The claim that a state minimum wage law bars cities from taking such action, when the purpose of setting any minimum wage is to help workers, deserves serious scrutiny. Charter cities should not be easily denied the power to respond to their constituents' concerns.

In any case involving a purported conflict between an ordinance and a state law, the Court must begin with the Missouri Constitution. An important change occurred in 1971 when the people adopted Article VI, Section 19(a). Prior to the enactment of the provision, cities needed statutory authorization to exercise basic powers. But now, a charter city like the City of St. Louis has "all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers . . . are not limited or denied . . . by statute." Mo. Const. art. VI, § 19(a). Reflective of this change, the burden of showing that an ordinance conflicts with state law is high. The powers of charter cities may only be limited by a state law enacted with a *clear intent* to do so:

> Since constitutional charter cities would no longer need statutory authorization to exercise a wide range of powers, such cities could elect to establish their own procedures and limitation unless the statute in question was *so comprehensive and detailed as to indicate a clear intent that it should operate as both authorization and limitation*.

Cape Motor Lodge, Inc. v. City of Cape Girardeau, 706 S.W.2d 208, 212 (Mo. banc 1986) (citation omitted) (emphasis added).

Here, the trial court correctly found that Section 67.1571, RSMo (sometimes called the "old preemption law") does not prohibit the City from establishing a local minimum wage. While the statute expresses an intent on the part of the

General Assembly to limit (to some degree) a city's power to enact minimum wage requirements, Section 67.1571 was unconstitutionality enacted in violation of Missouri's single subject, clear title, and original purpose requirements.

Defendants also contend, and *Amici* agree, that HB722, now codified in part as Section 285.055, demonstrates that the Minimum Wage Law was not intended to preempt local minimum wage requirements because the General Assembly included a "grand-father" clause in HB722 acknowledging the authority of cities to adopt local minimum wage requirements by August 28, 2015. The trial court side-stepped this point by finding that HB 722 was not in effect at the time the Ordinance was passed. (Judgment at 15; L.F. at 173.) But, in *Amici*'s view, the City's authority does not depend on HB 722's effective date or for that matter on whether HB722 is valid. The City of St. Louis undisputedly adopted the Ordinance by the August 28, 2015 deadline. And, whenever HB 722 went into effect, and whether or not HB722 was unconstitutionally enacted, charter cities have always had the authority to regulate wages under Article VI, Section 19(a) and were never denied that power by the Minimum Wage Law. *Amici*'s point about HB722 is that the General Assembly simply made the effort to pass it. The City had the authority to establish a minimum wage requirement before HB722 was passed and the City's authority in this case is not wholly controlled by HB722.

Any fair reading of Missouri's Minimum Wage Law shows that it does not limit a city's power to enact a local minimum wage ordinance. The Law sets a floor. It prohibits employers from paying employees below a certain minimum wage rate, but does not expressly authorize employers to pay anymore. Under Article VI, Section 19(a) and long-established Missouri case law, cities may supplement laws of prohibition. In other words, they may go further than state law and set a higher standard by ordinance that prohibits more of the same type of conduct, establishes its own enforcement mechanisms, and covers additional workers. This is confirmed by a reference to local minimum wage ordinances in Missouri's Employment Security Law, incorporation of federal regulations interpreting the Fair Labor Standards Act ("FLSA") into the Minimum Wage Law, and, as noted, multiple efforts by the General Assembly to expressly deny cities the power to enact minimum wage requirements. It is also the view of a majority of courts in other states that have considered this issue. Accordingly, this Court should find that the Ordinance does not conflict with state law.

Standard of Review

In bench trial cases, the judgment of the trial court will be affirmed "unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976). The dispositive issue

here is whether the Ordinance conflicts with state law and therefore violates the Missouri Constitution. This is a legal question subject to *de novo* review. *Kansas City v. Chastain*, 420 S.W.3d 550, 554 (Mo. banc 2014).

Plaintiffs bear the burden of showing that the Ordinance is unconstitutional. *St. Louis University v. Masonic Temple Ass'n*, 220 S.W.3d 721, 725 (Mo. 2007). An ordinance is presumed constitutional and will be not be found otherwise unless it "clearly contravenes a constitutional provision." *Id.* (citing *State ex rel. State Bd. of Registration for Healing Arts v. Southworth,* 704 S.W.2d 219, 223 (Mo. 1988)).

I. THE TRIAL COURT ERRED IN FINDING THAT THE ORDINANCE CONFLICTS WITH SECTION 71.010, RSMO, AND MISSOURI'S MINIMUM WAGE LAW BECAUSE THE ORDINANCE IS AUTHORIZED BY ARTICLE VI, SECTION 19(A) OF THE MISSOURI CONSTITUTION IN THAT THE MINIMUM WAGE LAW DOES NOT INDICATE A CLEAR INTENT TO LIMIT THE POWER OF CITIES TO ESTABLISH LOCAL MINIMUM WAGE REQUIREMENTS AND THE ORDINANCE MERELY SUPPLEMENTS STATE LAW.

A. Courts Should Not Deny A Charter City The Power To Regulate Economic Activity To Safeguard the Health and Welfare of Its Citizens Unless a Statute Indicates A Clear Intent to Limit Such Authority.

Under Article VI, Section 19(a) of the Missouri Constitution, the City of St. Louis has "all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution . . . and are not limited or denied either by the charter . . . or by statute." Mo. Const. art. VI, § 19(a). When a party challenges a constitutional charter city's power to pass an ordinance, under Section 19(a), the dispositive question for the Court "[is] *not* whether the City had authority for its ordinance, but whether its authority to enact the [ordinance] was denied by other law." *City of Kansas City v. Carlson*, 292 S.W.3d 368, 371 (Mo. App. W.D. 2009) (emphasis

added). "[T]he emphasis no longer is whether a home rule city has the authority to exercise the power involved; the emphasis is whether the exercise of that power conflicts with the Missouri Constitution, state statutes or the charter itself." *Cape Motor Lodge*, 706 S.W.2d at 211.

The change in 1971, when the people of this state adopted Article VI, Section 19(a), was significant. In enshrining this provision in the Missouri Constitution, the state adopted the "legislative" model of local governance, giving regulatory powers to cities as broad as those belonging to the General Assembly. Darin M. Dalmat, *Bringing Economic Justice Closer to Home: The Legal Viability of Local Minimum Wage Laws Under Home Rule*, 39 Colum. J.L. & Soc. Probs. 93, 104–06, 139 (2005) (noting that Missouri follows the legislative model of home rule powers proposed by the American Municipal Association ("AMA") and drafted by Jefferson Fordham); *see also* Thomas N. Strechi, *State-Local Conflicts under the New Missouri Home Rule Amendment*, 37 Mo. L. Rev. 677, 681 (1972) (explaining Article VI, Section 19(a)) (available at http://scholarship.law.missouri.edu/mlr/vol37/iss4/6); Kenneth Vanlandingham, *Constitutional Home Rule Since the AMA (NLC) Model*, 17 Wm. & Mary L. Rev. 1, 4 (1975) (noting Missouri's adoption of the AMA model provision) (available at http://scholarship.law.wm.edu/wmlr/vol17/iss1/2).

In the past, in the event of a conflict between a statute and an ordinance, the

statute prevailed if the court labeled the question "of statewide concern" or "of general concern," while the ordinance prevailed if the activity was "purely municipal." Strechi, *supra*, at 679. This test caused great difficulty due to its vagueness and to what, in fact, constitutes a matter of state concern. *Id*. at 679–80. Moreover, results under the test were prone to change over time, since what may once be a municipal issue "may be as readily labeled a state concern at a later juncture." Dalmat, *supra*, at 106 & n.67 (internal quotations omitted) (citing Jefferson Fordham, *AMA's Model Constitutional Provisions for Municipal Home Rule* (1953)).

The change ensuing from the adoption of the "legislative" model was simple. Rather than have courts assess whether an activity is of statewide or local concern and thus proper for local regulation, Article VI, Section 19(a) grants cities the entire range of legislative power except where limited or denied by statute. *See* Strechi, *supra*, at 681 (new home rule provision eliminates the struggle of courts with the determination of whether a given function is of statewide or local concern). This model carries a presumption that cities have the power to regulate all types of activities. Cities only lack the authority to exercise a power where the legislature has specifically taken it away, either by express denial (where state statute expressly denies cities the power to act) or by direct conflict (where it is impossible to comply simultaneously with both state law and a local ordinance).

See Dalmat, *supra*, at 106-107; Strechi, *supra*, at 692 (courts should create a "presumption against preemption" and "make every attempt possible to harmonize a statute and ordinance so they can stand together.").

The Missouri Supreme Court recognized Section 19(a)'s broad grant of authority to cities in *Cape Motor Lodge*. The plaintiffs in that case argued that the City of Cape Girardeau lacked the authority to enter into an agreement with South East Missouri State ("SEMO") to manage a community center because, in part, the enabling statute, Section 70.220, RSMo, did not name educational institutions as a type of entity with which the City could contract and cooperate. 706 S.W.2d at 210. The Missouri Supreme Court flatly disagreed. Citing *Frech v. City of Columbia,* 693 S.W.2d 813 (Mo. banc 1985), the Court noted that, just because the subject matter of an ordinance is not included in a statute, it does not mean that a city has exercised power limited by statute and that an ordinance violates Article VI, Section 19(a). *Cape Motor Lodge*, 706 S.W.2d at 211. Rather, the test for determining whether a conflict exists is "whether the ordinance 'permits what the statute prohibits' or 'prohibits what the statute permits.'" *Id*. (citation omitted). The language of applicable provisions must be "expressly inconsistent" or in "irreconcilable conflict." *Id*. at 212.

The Court in *Cape Motor Lodge* cautioned against interpreting a statute to deny a local power. Since Section 19(a) gives cities all the powers of the General

Assembly, a court should not deny them authority to enact regulations unless the "statute in question was so comprehensive and detailed as to indicate a clear intent that it should operate as both authorization and limitation." *Id.* at 212. While the Court in *Cape Motor Lodge* considered, in that case, a statute granting powers to non-home rule cities, the same principles hold for general statutes. Given the intent of Section 19(a), silence on the part of the General Assembly is not enough to find that a state law curbs local powers. If the legislature intends to preempt an area or affirmatively grant or deny a power, it should state so. *Id*. Otherwise, courts should find that cities are allowed to determine for themselves the most "practical and economic" methods to better their communities. *Id*.

Missouri courts continue to follow *Cape Motor Lodge*. A recent example is *City of Kansas City v. Carlson*, 292 S.W.3d 368 (Mo. App. W.D. 2009), where the City of Kansas City defended its authority to regulate smoking in indoor spaces. The plaintiff, a bar owner, claimed that the city's ordinance conflicted with Missouri's Indoor Clear Air Act ("ICAA"). The Court of Appeals disagreed. The fact that the ICAA excluded bars from its definition of a "public place" and did not seek to regulate them did not mean that the city was prohibited from regulating them. The court noted that "[h]ad the Missouri legislature intended to grant affirmative authority to those places to allow smoking, it could have so stated." *Id*. at 373 (citing *Cape Motor Lodge*, 706 S.W.2d at 212). Consequently, the court

found no conflict between the ordinance and state law. *See also Miller v. City of Town & Country*, 62 S.W.3d 431, 438 (Mo. App. E.D. 2001) ("If a statute does not specifically grant a right, but is silent on the question, then it may be permissible for the local government to establish prohibitions in that area.").[3]

B. The Ordinance's Goals Align with the Authority Granted Charter Cities.

The purpose of Article VI, Section 19(a) is to give charter cities like St. Louis the power to address problems associated with low wages within their boundaries. The City believes that a higher minimum wage will "promote the general welfare, health, and prosperity of the City of St. Louis by ensuring that workers can better support and care for their families and fully participate in the

[3] The Missouri Attorney General also takes an expansive view of the power of local government to address pressing social issues. In a 2009 letter, he opined that a local ordinance making the sale of products containing pseudoephedrine by prescription only did not conflict with state law that limits a person's access to such drugs. The ordinance and law had the same purpose—combating the manufacture of methamphetamine—and the ordinance merely enlarged on state law. Missouri Att'y Gen., Opinion No. 194-2009, at 2 (Oct. 23, 2009) (citing *City of Town & Country*, 62 S.W.3d at 438) (available at http://www.oregondec.org/MO/AG-Opinion.pdf).

community." (Ordinance at page 2 of 17; L.F. 044.) The evidence concerning low-wage workers in the City, as well as the Ordinance's prefatory language, offers ample support for finding that the Ordinance's goals fit easily within the authority granted by the City's Charter and the Missouri Constitution.

The record shows that the cost of living in St. Louis differs markedly from that of other cities and that the state minimum wage of $7.65[4] cannot sustain the City's workers and families. A professor at MIT calculated that a single, adult worker must make a minimum of $9.94 per hour to make a living wage in the City of St. Louis -- that is, to buy food and other necessities, obtain housing, and cover health care expenses and transportation costs. (Defs' Trial Ex. O; App. at A98.) The amount is higher -- $20.55 per hour -- for a worker who must support one child and obtain child care. (*Id.*) By comparison, a single adult worker with no children in Cape Girardeau need only make $9.10 per hour to make a living wage. (*Id.*; App. at A101.)[5]

[4] The statewide minimum wage rate is currently $7.65 per hour. It is indexed to the consumer price index. Department of Labor & Industrial Relations, Minimum Wage, http://labor.mo.gov/DLS/MinimumWage (last viewed Feb. 29, 2016).

[5] Others believe these calculations are too conservative. According to the Economic Policy Institute's Family Budget Calculator, a single worker with no children in the St. Louis Metro Area needs approximately $13.30 per hour working

Similarly, a recent study by the National Low Income Housing Coalition found that an individual must make $15.69 per hour to afford a two bedroom apartment in the St. Louis Metropolitan Area. (Defs' Trial Ex. N; App. at A92, A96.) That number is significantly lower in other parts of the state. An individual must earn $12.58 in the Springfield Metropolitan Area and $11.62 in the Jefferson City Metropolitan Area, for example, to afford a two bedroom apartment in those locations. (*Id.*)

The record also includes testimony from Dr. Jason Purnell before the Board of Alderman on the impact of low wages on the health and welfare of the City's residents. He explains that African-Americans living in poorer parts of the City suffer from worse health problems and lower life expectancy than people in wealthier areas of the region, such as Clayton. Moreover, he notes that "fewer people are in poor health as income increases," and that "wages that support families are crucial to public health." (Defs' Trial Ex. L; App. at A73.) Similarly, the Ferguson Commission observed in its report on racial equity in the St. Louis region that low wages make it difficult to care for a family, secure housing, and cover basic living expenses, and issued a call to action to St. Louis City and

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full time to make ends meet. *See* Economic Policy Institute, Family Budget Calculator, available at http://www.epi.org/resources/budget/ (last viewed Mar. 4, 2016).

County to raise the minimum wage. (Defs.' Trial Ex. I; App. at A56-A57.)

The Ordinance itself acknowledges that "low-wage workers in the St. Louis region struggle to meet their most basic needs and to provide their children a stable foundation, a safe dwelling, and an opportunity to obtain a high-quality education." (Ordinance at page 1 of 17; L.F. 043.) It states, too, that "the population of the City of St. Louis suffers from higher rates of poverty than surrounding areas and a high prevalence of obesity, diabetes, heart disease, and other health problems associated with low-incomes," and observed that "many workers in the City . . . cannot fully participate in [the] region's dynamic civic life or pursue the myriad educational, cultural, and recreational opportunities that constitute a flourishing life because many struggle to meet their households' most basic needs." (*Id.*)

Significantly, Governor Nixon, in vetoing HB 722, wrote that policies like the minimum wage are "matters traditionally within the purview of local government." (Defs' Trial Ex. E; App. at A22.) He likewise recognized that "it is important that local governments have the ability to build on the minimum standards that are set at the state level." (*Id.*)

Some opponents argue that local minimum wage ordinances will turn the state into a checkerboard of different regulations that are burdensome to follow. This claim runs directly counter to the principles of democratic, local control embodied in Section 19(a). When the people adopted the "legislative model" of

local governance in 1971, they rejected the past practice of courts deciding that certain issues should only be regulated on a state-wide basis. Instead, the people determined that cities should have the power to set their own standards responsive to the demands and needs of their citizens. In addition, navigating varying minimum wage rates is not much different than navigating varying sales tax rates, zoning prohibitions, and health code requirements from city to city. It is a common condition of business.

In the end, the Ordinance represents a reasoned policy judgment by elected officials that an effective means to address problems of poverty, health, and quality of life in the City's neighborhoods is to raise the minimum wage. Ultimately, these officials are accountable to voters in the City and must answer to them. A court should not rebuff their efforts under the "legislative" model and Section 19(a), except where the legislature has expressed a "clear intent" to take away this authority either expressly or by an irreconcilable conflict between the Ordinance and state law. A review of the law shows no such intent and no conflict.

C. The Ordinance Does Not Conflict with Missouri's Minimum Wage Law.

Plaintiffs launch a barrage of arguments against the Ordinance, claiming among other things that it conflicts with Section 67.1571 and the Minimum Wage Law, creates liabilities among citizens, and unlawfully delegates legislative power. *Amici* agree with Defendants that none of these claims make the Ordinance void

and unenforceable. Notably, Plaintiffs' Brief does not attempt to defend Section 67.1571. They seemingly accept that it was unconstitutionally enacted.

Amici further emphasize that the Ordinance is authorized by Article VI, Section 19(a) as explained above, and does not conflict with state law. Per *Cape Motor Lodge*, Plaintiffs cannot show the requisite clear intent by the General Assembly to deny cities the power to establish minimum wage standards or an "irreconcilable conflict" between the Ordinance and state law.[6]

First, any reasonable reading of Missouri's Minimum Wage Law shows that it is a law of prohibition and only requires employers to pay certain workers no less than the state minimum wage. It leaves unregulated anything higher.

Second, consistent with Missouri case law, the Ordinance does not conflict with state law or prohibit what state law permits. Rather, the proposed ordinance permissibly supplements state law. Likewise, and by extension, charter cities may devise their own enforcement mechanisms and penalties for violations of an ordinance to be heard by a municipal judge.

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[6] Plaintiffs have not argued that the Ordinance is *expressly* preempted by the Minimum Wage Law. In this regard, no provision of the Minimum Wage Law could be read as expressly prohibiting a city from enacting a local minimum wage ordinance.

Third, the Minimum Wage Law does not occupy the field of wage regulation. It leaves room for local control.

Fourth, state law already recognizes the power of cities to establish minimum wage standards. Missouri's Employment Security Law acknowledges that a local government may set a minimum wage greater than the state's minimum wage. § 288.062.6(3), RSMo. And, the Minimum Wage Law acknowledges this possibility in its incorporation of FLSA regulations. Moreover, the General Assembly has twice sought to expressly deny municipalities the authority to establish local minimum wage requirements -- by Section 67.1571 in 1998, and then by HB 722 in 2015, indicating the legislature's understanding that the Minimum Wage Law does not preempt local minimum wage ordinances.

Fifth, the majority of courts around the country that have considered this issue have held that local minimum wage ordinances do not conflict with statewide minimum wage laws. Research has also shown that local minimum wage requirements are an important tool to address poverty and wage inequality.

1. The Minimum Wage Law Can Only Be Read as Requiring Employers to Pay Workers No Less Than the State Minimum Wage.

Enacted in 1990, the purpose of the state's minimum wage law is to "protect the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others." *Tolentino v. Starwood Hotels &*

Resorts Worldwide Inc., 437 S.W.3d 754, 761 (Mo. banc 2014) (internal quotations and citation omitted). Section 290.502 of the Minimum Wage Law requires employers to pay a minimum wage as follows:

> 1. Except as may be otherwise provided pursuant to sections 290.500 to 290.530, effective January 1, 2007, every employer shall pay to each employee wages at the rate of $6.50 per hour, or wages at the same rate or rates set under the provisions of federal law as the prevailing federal minimum wage applicable to those covered jobs in interstate commerce, whichever rate per hour is higher.
>
> 2. The minimum wage shall be increased or decreased on January 1, 2008, and on January 1 of successive years, by the increase or decrease in the cost of living. On September 30, 2007, and on each September 30 of each successive year, the director shall measure the increase or decrease in the cost of living by the percentage increase or decrease as of the preceding July over the level as of July of the immediately preceding year of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase or decrease rounded to the nearest five cents.

§ 290.502, RSMo.

Read literally, this section requires Missouri employers to pay *all* employees $6.50 per hour (adjusted for inflation) or at the federal rate. But this is absurd. The legislature obviously did not intend every employer to pay every employee the exact same wage rate. Rather, consistent with its policy objectives, the Minimum Wage Law requires employers to pay *no less* than the state minimum wage rate. It sets a floor, not a ceiling, and leaves anything above that amount unregulated.

The purpose of statutory construction is "to determine the intent of the legislature" and "[i]n arriving at that intention, the objectives of the act are to be considered, and the construction must be reasonable and logical and give meaning to the statute []." *Patty Sue, Inc. v. City of Springfield*, 381 S.W.3d 360, 365 (Mo. App. W.D. 2012) (internal quotations and citation omitted). To avoid an absurd literal requirement, one must read the section as a prohibition, requiring employers to pay *no less* than the minimum wage. Any other reading would also run counter to the law's purpose as made clear in the original bill enacting it: "AN ACT to establish minimum wages of employees in this state, with penalty provisions." 1990 Mo. Legis. Serv. H.B. 1881. By definition, "minimum" means just that—"the lowest number or amount that is possible or allowed." Merriam-Webster.com, "Minimum," http://www.merriam-webster.com/dictionary/minimum

(visited March 17, 2016). The term does not speak to anything higher than that amount.

The Missouri Department of Labor and Industrial Relation's regulations expressly read section 290.502(1) as a prohibitive statute. Section 30-4.020 of the regulations states that "[s]ubject to the requirements of Sections 290.500 to 290.530, RSMo, *at least* the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, or any other basis." 8 CSR 30-4.020 (emphasis added). State regulations "have the force and effect of law and are therefore binding on courts." *Pollock v. Wetterau Food Distribution Grp*., 11 S.W.3d 754, 766 (Mo. App. E.D. 1999); *see also Page W., Inc. v. Cmty. Fire Prot. Dist. of St. Louis Cty.*, 636 S.W.2d 65, 67 (Mo. banc 1982) ("Rules duly promulgated pursuant to properly delegated authority have the force and effect of law."). Section 30-4.020 is binding on this Court and requires that section 290.502(1) be read as a prohibitive statute setting a floor for wages in the state.

2. The Ordinance Constitutes a Permissible Supplementation of the Minimum Wage Law.

Missouri courts have long made clear that municipal ordinances may supplement state law. An ordinance that "enlarges upon the provision of a statute by requiring more than the statute requires creates no conflict therewith, unless the

statute limits the requirements for all cases to its own prescriptions." *Page W., Inc.*., 636 S.W.2d at 68 (internal quotations and citations omitted); *see also Vest v. Kansas City*, 194 S.W.2d 38, 39 (Mo. 1946) (same) (internal quotations and citation omitted). In other words, an ordinance may supplement state law as long as it is not in "inconsistent or irreconcilable conflict with the state law." *Patty Sue, Inc.*, 381 S.W.3d at 365.

As noted above, the test for determining whether a statute conflicts with state law is "whether the ordinance permits what the statute prohibits or prohibits what the statute permits." *Page W.*, 636 S.W.2d at 67 (internal quotations and citation omitted); *see also Patty Sue, Inc.*, 381 S.W.3d at 365 ("In determining whether a city ordinance conflicts with statutory authority we turn to statutory construction to determine 'whether the ordinance prohibits what the statute permits or permits what the statute prohibits.'") (citation omitted). "(W)here both an ordinance and a statute are prohibitory, and the only difference between them is that the ordinance goes further in its prohibition but not counter to the prohibition under the statute, and the municipality does not attempt to authorize by the ordinance what the legislature has forbidden or forbid what the legislature has expressly licensed, authorized, or required, there is nothing contradictory between the provisions of the statute and the ordinance because of which they cannot

coexist and be effective." *City of Kansas City v. La Rose*, 524 S.W.2d 112, 117 (Mo. banc 1975).

In *Carlson*, as noted above, the Court of Appeals upheld Kansas City's smoking ban, finding that the ordinance in question did not conflict with the ICAA. In particular, the Court found that the ICAA was a prohibitory statute because it banned certain activity. *Carlson*, 292 S.W.3d at 374. It then noted that an exemption from a statutory prohibition, in that case for bars, is not an "authorization." *Id*. Thus, the city could, by an ordinance, go further than state law and prohibit more of the same type of conduct without creating a conflict between the two. *Id; see also Patty Sue, Inc.*, 381 S.W.3d at 366 (holding ICAA was not enacted "to permit smoking or to protect the rights of smokers" and city could go further by ordinance and expand the state law prohibition).

The same reasoning applies in this case. Like the ICAA, the Minimum Wage Law is a prohibitory statute. It forbids employers from paying their employees less than a certain minimum wage, but it does not affirmatively authorize employers to pay their employees at any rate that is at or above the state minimum wage. The fact that the Minimum Wage Law does not regulate wages above the minimum wage rate, and even exempts some employers, should not be read as "an authorization." *See Carlson*, 292 S.W.3d at 374. The Minimum Wage Law was not enacted to protect the rights of employers against additional

regulation. Such a reading of the law would be absurd and contrary to its purpose of protecting employees and the "rights of those who toil." *Tolentino*, 437 S.W.3d at 761 (internal quotations and citation omitted). At the least, the Minimum Wage Law is not "so comprehensive and detailed as to indicate a clear intent that it should operate" both to affirmatively authorize employers to pay any wage above the minimum wage and to limit the power of cities to regulate wages. *See Cape Motor Lodge*, 706 S.W.2d at 212. Accordingly, the City is free to build upon the floor set by state law and establish higher minimum wage standards. *See also* Dalmat, *supra,* at 108 ("[M]any courts do not find a conflict between an ordinance and a statute when the ordinance pursues the same policies as the statute but demands higher standards, as many statutory standards impose merely a 'floor rather than a ceiling.'") (citation omitted).

Other cases support *Amici*'s position. For example, in *Vest v. Kansas City*, this Court held that an ordinance, which required barbers to be examined "at least once every six months," permissibly supplemented a state law that required the same barber to submit to a physical exam "at least once per year," because it did "not attempt to impose a new or different standard" and "d[id] not permit what the statute prohibits, nor d[id] it prohibit what the statute permits." *Vest*, 194 S.W.2d at 39; *see also Kansas City v. Troutner*, 544 S.W.2d 295, 298 (Mo. App. 1976) (holding that ordinance did not conflict with state law when the ordinance

prohibited the operation and physical control of a motor vehicle by an intoxicated person and the state law prohibited only the "operation" of the vehicle by such a person, explaining that the ordinance "merely extend[ed] the prohibition" in the state law); *Krug v. Mary Ridge*, 271 S.W.2d 867, 871 (Mo. App. 1954) (ordinance requiring iron fire escapes on hotels in excess of two stories does not conflict with state law that applies requirement to hotels more than three stories in height; ordinance "is merely supplementary" to state law).

Likewise, in *City of Kansas City v. La Rose*, this Court held that no conflict existed between an ordinance and state statute that both prohibited resistance to police actions, even though the ordinance did not require the resistance to be knowing and willful while the statute did. *LaRose*, 524 S.W.2d at 117–18. The Court explained that "any violation of the statute would also be a violation of the ordinance" and that that ordinance "ha[d] simply gone further and prohibited interference in cases where willfulness is not shown." *Id.* at 117. Notably, the Court cited *City of Baltimore v. Sitnick*, 255 A.2d 376 (1969), in support of this rule, explaining that in *Sitnick*, "an ordinance was held valid which established a higher minimum wage than the state law." *Id*. at 117–18. At least implicitly, this Court recognized that a local minimum wage does not conflict with a state minimum wage.

Like the ordinances in *Carlson*, *Vest*, *Troutner*, *Krug,* and *LaRose*, the Ordinance supplements the Minimum Wage Law by going beyond the minimum state requirement. It does not prohibit what the state law permits; it only prohibits more. While state law prohibits employers from paying employees less than $7.65 per hour (indexed for inflation), the Ordinance prohibits employers from paying employees less than $8.25 per hour (with subsequent increases). It is also simple for an employer to comply with both. An employer complies with the law by paying the rate required by the proposed ordinance; and any violation of the state law is also a violation of the proposed ordinance. Thus, no irreconcilable conflict exists between the Minimum Wage Law that could invalidate the Ordinance.

For the same reasons, the trial court erred in finding that the Ordinance conflicts with state law because it provides for enforcement by the City and for separate penalties, does not provide for the same exemptions as state law, and includes several activities that are not considered violations of state law. (Judgment at ¶¶28, 31; L.F. at 172.) These are not conflicts. Rather, these are instances where the Ordinance legally supplements state law.

With regard to enforcement and penalties, the Ordinance makes violations punishable by fine or imprisonment. (Ordinance at §5(C); L.F. at 57.) Employers may also be subject to the revocation of certain licenses and be ordered to compensate the victim "to the extent allowed by the City Charter and the law."

(Ordinance at §5(D); L.F. 057–58.)[7] These enforcement mechanisms differ from the Minimum Wage Law; but, they do not make for a conflict. Ordinances

[7] Plaintiffs make the related argument that the Ordinance creates liabilities among citizens contrary to this Court's decision in *Yellow Freight Systems, Inc. v. Mayor's Comm'n on Human Rights*, 791 S.W.2d 382 (Mo. 1990). This misreads both the Ordinance and *Yellow Freight*. First, the Ordinance does not create a private right of action. It does not authorize a citizen to sue an employer in court for damages. Rather, enforcement is through a municipal judge, like violations of ordinances for littering or trespass onto private property; and, the penalties – jail time and fines – are run-of-the mill sanctions. Second, the compensation which a municipal judge may order an employer to pay a victim is expressly conditioned on state law. The language in the Ordinance is consistent with Section 479.190.2, RSMo, which states that a municipal judge may order conditions "which the court believes will serve to compensate the victim of the crime," including "restitution." § 479.190.2. Third, the Missouri Supreme Court held long ago that a city's effort to regulate economic relationships between citizens does not create a liability. In *Marshall v. Kansas City*, 355 S.W.2d 877 (Mo. 1962), this Court upheld a Kansas City ordinance making it unlawful for restaurants, hotels, and motels to refuse to serve or accommodate any person for any reason relating to race or color, punishable by fine. The Ordinance here no more dictates the terms of prospective

naturally include their own enforcement mechanisms and penalties, and Missouri courts do not find a conflict on such grounds. *See, e.g., Frech,* 693 S.W.2d at 816 (holding ordinance giving municipal judge power to issue search warrants does not conflict with state criminal law); *Brotherhood of Stationary Engineers v. City of St. Louis*, 212 S.W.2d 454, 460 (Mo. App. 1948) (holding ordinance that established separate fee and that empowered city agency to adopt rules and regulations did not conflict with state law). In addition, nothing in state law suggests that the Department of Labor and Industrial Relations is the only entity that may enforce a minimum wage requirement. By the Law's own terms, the Department's responsibility is limited to the state minimum wage rate. §§ 290.523 & .525, RSMo. It leaves the enforcement of local rates unregulated. *See City of St. John v. Brockus*, 434 S.W.3d 90 (Mo. App. E.D. 2014) (municipal ordinance on

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economic contracts or liabilities between an employer and an employee than the ordinance in *Marshall* dictated the terms of prospective contracts and liabilities between a business and a customer. *Yellow Freight* is not to the contrary. It simply ruled that the city administrative agency in that case could not order relief against the employer and that a municipal judge must hear and determine a violation of an ordinance, which is the case here. *Yellow Freight* does not alter this Court's precedent and limit the authority of a city to regulate economic activity, punishable by fines and other sanctions through municipal court.

wearing a seatbelt does not conflict with state law where they differ in language relating to enforcement and state law limits its enforcement to its own provisions).[8]

With respect to exemptions and exceptions, the trial court noted that state law allows an employer to take a credit for goods and services against the "minimum wage otherwise required" by the Minimum Wage Law, § 290.512.2, RSMo, and gives the Department of Labor the power to establish training rates for learners and apprentices lower than the Minimum Wage Law, § 290.517, RSMo.

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[8] Plaintiffs' complaints about the Ordinance's enforcement and penalty provisions are also premature and ignore its severability clause. Until the City applies the Ordinance and seeks to enforce a specific penalty which an employer believes is unlawful, Plaintiffs are seeking an improper advisory opinion. *See Harris v. Consolid. Sch. Dist. No. 8 C, Dunklin Cnty*., 328 S.W.2d 646, 654 (Mo. banc 1959) (stating that an advisory decree upon hypothetical facts is improper). In addition, under its severability clause, a court may sever any offending provision. (Ordinance at §8; L.F. at 059.) The core provisions of the Ordinance establishing a minimum wage are not "essentially and inseparably connected with, and so dependent upon" the enforcement and penalty provisions which Plaintiffs complain about – i.e., restitution. *Avanti Petroleum, Inc. v. St. Louis Cty,* 974 S.W.2d 506, 512 (Mo. App. E.D. 1998).

But, the record does not show a clear difference between the Ordinance and state law in these areas. The Ordinance defines the term "Wage" to include "allowances" as may be permitted by rules; and, the City could adopt a rule giving employers a credit for goods and services. (Ordinance at §1(K); L.F. at 050.) Likewise, there is no evidence that the state has established a training rate for any learners or apprentices covered by the Ordinance. *See* 8 CSR 30-4.030 (training wage for learners and apprentices rescinded March 30, 2009). The purported conflicts are mere conjecture. They do not show that the City has acted in conflict with state law.

Moreover, a difference in exemptions or exceptions is not a conflict. The Court of Appeals in *Carlson* ruled that an exemption for bars in a state law banning smoking in indoor spaces did not prohibit a city from regulating the same entity, on the same subject, by ordinance. Silence does not equal authorization; and, a city may prohibit more than what is barred by state law. *Carlson*, *supra,* at 373. Sections 290.512.2 and 290.517 are by their own terms exceptions to the state minimum wage, and not any local rate. Thus, the fact that the Minimum Wage Law gives employers a credit for goods and services toward the state minimum wage (and is silent about any local minimum wage on this point) and the fact that the Department of Labor may establish wage rates for learners and apprentices lower than the state minimum wage (and is silent about any local minimum wage

on this point) does not mean that employers are authorized to pay anything above the state-established rate. The City may go further and prohibit more of the same type conduct.

Lastly, the trial court noted that the Ordinance prohibits several activities that are not considered violations of the Minimum Wage Law as set out in Section 290.525, RSMo. (Judgment at p. 14; L.F. at 246.) But, just as the City may require an employer to pay a higher wage than state law, it may also require an employer to post a more detailed notice on minimum wage rates and to keep more detailed pay records. Section 290.525 is expressly limited to enforcement of "Sections 290.500 to 290.530" and does not speak to local ordinances. In addition, Section 290.525 does not expressly authorize employers to deny certain information to employees, to retaliate against employees, or to destroy certain payroll records. It therefore does not prohibit the Ordinance from going further than state law notice requirements.

3. The Minimum Wage Law Does Not Occupy the Field.

Besides a direct conflict, some Missouri courts have recognized implied preemption, where a state law occupies an area, as another form of preemption. In those cases, courts ask whether the state has "created a comprehensive scheme on a particular area of the law, leaving no room for local control." *Borron v. Farrenkopf*, 5 S.W.3d 618, 624 (Mo. App. W.D. 1999).

Plaintiffs have not argued implied preemption in this case. But, even if this Court considers the question, the Minimum Wage Law does not create a comprehensive scheme that would invalidate the Ordinance. First, as noted, the Law requires employers to pay employees *no less* than the state minimum wage; it does not regulate wages above that rate. Second, the Missouri Department of Labor and Industrial Relations' authority to enforce the Law is limited. Section 290.523 gives the Department the power to adopt rules "necessary to the enforcement and administration of Sections 290.500 to 290.530." By its terms, that authority is limited to the state minimum wage. The Law does not give the Department the power to set a comprehensive scheme for wages or to regulate higher rates. Third, nothing in the Law explicitly directs the actions of local governments or bars cities from setting a higher minimum wage based on the needs of their citizens.

Cases finding implied preemption typically involve utility or environmental regulation. By comparison, the Minimum Wage Law in no way gives the Department of Labor the type of "sweeping" authority over wages given to the Public Service Commission over electrical power and rates. *Cf. Union Electric Co. v. Crestwood*, 499 S.W.2d 480, 482 (Mo. 1973). Rather, the Law grants the Department only specific powers and does not regulate protections beyond those granted in state law. Thus, it leaves room for local control.

4. State Law Recognizes that Cities May Enact Local Minimum Wage Ordinances.

Not only is the Minimum Wage Law silent as to higher minimum wages, state law already recognizes that cities may enact local minimum wage ordinances. This further confirms that the Minimum Wage Law and the Ordinance do not conflict.

First, the Missouri Employment Security Law, enacted in 1972, acknowledges that localities have the power to enact local minimum wage laws. It states that extended unemployment benefits shall not be denied under the following condition (among others):

> If the remuneration for the work offered is less than the minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, without regard to any exemption or any applicable state or *local minimum wage*, whichever is the greater.

§ 288.062.6(3), RSMo (emphasis added)

The legislature has amended section 288.062 numerous times and at least four times since 1990, the year that the Minimum Wage Law was enacted. The most recent amendment occurred in 2011. *See* L.1993, H.B. No. 492, § A; L.2009, H.B. No. 1075, § A; L.2010, H.B. No. 1544, § A; L.2011, H.B. No. 163, § A. Had the legislature intended for the Minimum Wage Law to preempt or otherwise

prohibit local minimum wage laws, it could have easily amended section 288.062.6(3) to reflect that view.

In addition, a state regulation incorporates into the Missouri Minimum Wage Law all of the regulations established by the U.S. Department of Labor pertaining to the FLSA as last amended on December 16, 2004. *See* 8 CSR 30-4.010. Notably, the FLSA expressly envisions localities adopting higher minimum wage rates than the federal rate. 29 U.S.C. § 218 ("No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law *or municipal ordinance* establishing a minimum wage higher than the minimum wage established under this chapter . . .") (emphasis added). The FLSA regulations likewise recognize that cities may enact a higher minimum wage law than that required under federal law. *See* 29 C.F.R. § 525.20 (adopted in 1989 and stating that "[n]o provision of these regulations, or of any special minimum wage certificate issued thereunder, shall excuse noncompliance with any other Federal or State law *or municipal ordinance* establishing higher standards.") (emphasis added). In incorporating this regulation into the Minimum Wage Law, Missouri has expressed an intent to allow cities to do the same. This Court should not construe the Minimum Wage Law to undermine federal policy allowing localities to supplement federal minimum wage requirements.

Furthermore, it is impossible to ignore the fact that the legislature has now twice attempted to enact legislation that expressly preempts a municipality's authority to enact a local minimum wage. These efforts weigh strongly in favor of finding that the legislature did not intend the Minimum Wage Law to preempt or otherwise prohibit local minimum wage laws.

Section 67.1571 was the General Assembly's first attempt. As Defendants have argued, it failed because the law was unconstitutionally enacted in violation of Missouri's clear title, single subject, and original purpose requirements. Plaintiffs make no effort to defend Section 67.1571's constitutionality. Instead, they maintain that it is too late for the City to argue that it was improperly enacted. But, courts regularly allow defendants to raise unconstitutionality as a defense in a responsive pleading, *Lohmeyer v. St. Louis Cordage Co.*, 113 S.W. 1108, 1110 (Mo. 1908) (defendant should put unconstitutionality of a statute in an answer as a defense), even after any statute of limitations, *Lebeau v. Commissioners of Franklin Cnty., Missouri*, 422 S.W.3d 284, 291 (Mo. banc 2014). *See also Boone Nat. Sav. & Loan Ass'n, F.A. v. Crouch*, 47 S.W.3d 371, 375 (Mo. 2001) ("Under Missouri law, even though a claim may be barred by the applicable statute of limitations, the essence of the claim may be raised as a defense."). If a criminal defendant can challenge a $100 fine by arguing that a law was enacted in violation

of the Constitution years ago, a city should be free to protect its home rule authority, and to address critical issues of poverty and health, on the same grounds.

The General Assembly's second, more recent attempt is HB 722, which expressly preempts "local minimum wage ordinance requirements" that were not in effect on August 28, 2015. § 285.055, RSMo. Of course, the simplest explanation for why the General Assembly sought to pass HB722 is that it recognized that Section 67.1571 was unconstitutionally enacted. Moreover, by HB722's plain language, the General Assembly acknowledges that state law, including the Minimum Wage Law, does not prohibit municipalities from enacting a local minimum wage law. To interpret HB 722 otherwise would render meaningless its provision "grandfathering" in local minimum wage ordinances enacted by August 28, 2015. And, when interpreting state law, this Court is guided by the fundamental principle that "the legislature is not presumed to have intended a meaningless act." *Murray v. Missouri Highway and Transp. Com'n*, 37 S.W.3d 228, 233 (Mo. banc 2001); *City of Willow Springs v. Missouri State Librarian*, 596 S.W.2d 441, 445 (Mo. banc 1980) (citation omitted) (courts are to construe statutes on the "theory that the legislature intended to accomplish something by the amendment" and presume that a statute has "some substantive effect such that it will not be found to be a meaningless act of housekeeping").

The fact that the General Assembly continues to attempt to pass "preemption" bills is evidence that the legislature itself understands that the Minimum Wage Law does not conflict with or prohibit local minimum wage ordinances. Cities have always had this power under Article VI, Section 19(a), and will continue to have until the General Assembly successfully denies or limits it.

5. The Majority of Courts Have Found that Local Minimum Wage Ordinances Do Not Conflict with State Law and Recognize the Need of Cities to Address Issues in their Communities.

To date, New Mexico, Maryland, and Wisconsin courts have held that the state minimum wage was a floor, not a ceiling, and found no implied legislative intent barring local minimum wage laws imposing a higher minimum wage. *See New Mexicans for Free Enterprise v. City of Santa Fe*, 126 P.3d 1149 (N. Mex. Ct. App. 2005); *City Council of Baltimore v. Sitnick*, 255 A.2d 376 (Md. Ct. App. 1969); *Main Street Coalition for Economic Growth v. City of Madison*, No. 04-CV-3853, slip op. (Dane County Cir. Ct., Branch 2, Apr. 21, 2005) (available at http://nelp.3cdn.net/05f29b8cfe475d32d2_wkm6bl8hl.pdf). As stated in *Sitnick*, a case cited by this Court in *LaRose*, "unless a general public law contains an express denial of the right to act by local authority, the State's prohibition of certain activity in a field does not impliedly guarantee that all other activity shall

be free from local regulation and in such a situation the same field may thus be opened to supplemental local regulation." *Sitnick*, 255 A.2d at 382.[9]

In addition, Kentucky's Court of Appeals recently affirmed a lower court decision holding that a Louisville, Kentucky, minimum wage ordinance did not conflict with the state's minimum wage law. It explained that "[a] city may pass legislation on a subject that has been addressed by the General Assembly so long as it does not prevent local governments from establishing additional legislation

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[9] The few cases making contrary findings are distinguishable. For example, the New York Court of Appeals interpreted its state minimum wage law as evidencing an intent by the legislature to preempt higher local minimum wages. *Wholesale Laundry Board of Trade v. City of New Yor*k, 12 N.Y.2d 998 (1963), *aff'g*, 17 A.D.2d 327 (1962). However, New York's home rule law expressly prohibits any law that "supersedes any provision of the [New York] Labor Law," which contains the state's minimum wage law. *Id. at 330*. And, in adopting New York's minimum wage law, the legislature expressly outlined how to address the need for higher local minimum wages. *Id.* ("The provisions for amendment of the wage fixed formulate an elaborate machinery for the determination of an adequate wage in any occupation and in any locality, including the City of New York.") Missouri's Minimum Wage Law includes none of the features that led the New York court to strike down the local law at issue.

and there is no conflict between the enactments." *Kentucky Restaurant Association, Inc. v. Louisville/Jefferson County Metro Government*, No. 2015-CA-000996 (Ky. Ct. App. June 30, 2015) at 10. (App. at A131.) It found that the General Assembly had set a "floor for wages" in the state's minimum wage law and that "localities may increase the minimum wage when they conclude that it serves the public interest in doing so." *Id.*[10] Notably, Kentucky statutes include a home rule provision like Missouri's and Kentucky applies that same type of test to determine whether an ordinance and state law conflict. *Dannheiser v. City of Henderson*, 4 S.W.3d 542, 549 (Ky. 1999) ("[T]he fact that the state has enacted legislation does not prevent local governments from establishing additional legislation or acting as long as there is no conflict between them.").[11]

[10] An appeal of the appellate court's decision is now before the Kentucky Supreme Court.

[11] Kentucky law authorizes cities of the first class to "govern themselves to the full extent required by local government and not in conflict with the Constitution or laws of [Kentucky] or by the United States." KRS § 83.410(1). It further instructs that cities of the first class "have the power to exercise all of the rights, privileges, powers, franchises, including the power to levy all taxes, not in conflict with the Constitution and so as to provide for the health, education, safety and welfare of the inhabitants of the city." KRS § 83.520. Like Missouri law, *see* § 71.010,

A decision by this Court upholding the Ordinance would reflect the growing consensus among courts that state minimum wage laws set a floor and allow localities to supplement with higher minimum wages. *See also Filo Foods, LLC v. City of SeaTac*, 357 P.3 1040 (Wash. banc 2015) (finding that city minimum wage ordinance does not conflict with state statute on airports); *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1150 (9th Cir. 2004) (noting that cities have the power to regulate wages and employment conditions). Moreover, it would confirm the autonomy which cities require, consistent with the intent of Section 19(a), to fully respond to the needs of their communities. The problems faced by Kansas City, St. Louis, and Columbia are not the same as those in New Madrid and Maryville. Cities are impacted in different ways by problems like heroin and methamphetamine abuse, the cost of housing, and discrimination on the basis of sexual orientation. They should have the ability to confront these issues, and to seek to remedy their effects, in their own way.

RSMo, Kentucky law also prohibits cities from enacting ordinances that conflict with the Kentucky Constitution, state statute, or federal law. KRS § 83.410; KRS § 82.082. A conflict occurs if the power at issue "is expressly prohibited by a statute or there is a comprehensive scheme of legislation on the same general subject." KRS § 82.082.

Local minimum wage ordinances are an important legal and economic tool. In an effort to respond to higher local living costs and to bring the minimum wage closer to a living wage level, these laws have proven, both legally and economically, that it is feasible to raise wages in accordance with economic indicators.[12] In the past fifteen years, scores of cities and counties have enacted minimum wage ordinances. They include Johnson County, Iowa; Los Angeles, California; and Chicago, Illinois.[13] (See Figure 1 for a complete list of cities and counties that have successfully enacted a minimum wage law.)

[12] *See* National Employment Law Project, City Minimum Wage Laws: Recent Trends and Economic Evidence (Sept. 2015) (available at http://www.nelp.org/content/uploads/City-Minimum-Wage-Laws-Recent-Trends-Economic-Evidence.pdf).

[13] *Id.*; *see also* Raise the Minimum Wage, Local Minimum Wage Laws and Current Campaigns, http://www.raisetheminimumwage.com/pages/local-minimum-wage (last viewed Dec. 7, 2015).

Figure 1: Citywide Minimum Wage Ordinances in the U.S.[14]

City	Year Passed	Minimum Wage
Santa Fe, New Mexico	2003	$9.50 (2006) (Current: $10.84)
San Francisco, California	2003	$8.50 (2004)
Albuquerque, New Mexico	2012	$8.50 (2013) (Current: $8.75)
San Jose, California	2012	$10.00 (2013) (Current: $10.30)
Bernalillo County, New Mexico	2013	$8.50 (2014) (Current: $8.65)
Washington, D.C.	2013	$11.50 (2016)
Montgomery County, Maryland	2013	$11.50 (2017)

[14] *See* Raise the Minimum Wage, Local Minimum Wage Laws and Current Campaigns, http://www.raisetheminimumwage.com/pages/local-minimum-wage (last viewed June 2, 2016).

Prince George's County, Maryland	2013	$11.50 (2017)
SeaTac, Washington	2013	$15.00 (2014) (Current: $15.24)
Las Cruces, New Mexico	2014	$10.10 (2019)
Santa Fe County, New Mexico	2014	$10.66 (2014) (Current: $10.84)
Mountain View, California	2014	$10.30 (2015)
Sunnyvale, California	2014	$10.30 (2015)
Oakland, California	2014	$12.25 (2015) (Current: $12.55)
Berkeley, California	2014	$12.53 (2016)
Richmond, California	2014	$13.00 (2018)
Chicago, Illinois	2014	$13.00 (2019)
San Francisco, California	2014	$15.00 (2018)
Louisville, Kentucky*	2014	$9.00 (2017)
Seattle, Washington	2014	$15.00 (2017–21)

Emeryville, California	2015	$15.00 (2018)
Los Angeles, California	2015	$15.00 (2020–21)
Los Angeles County, California	2015	$15.00 (2020–21)
Bangor, Maine	2015	$9.75 (2019)
Portland, Maine	2015	$10.68 (2017)
El Cerrito, California	2015	$15.00 (2019)
Santa Clara, California	2015	$11.00 (2016)
Palo Alto, California	2015	$11.00 (2016)
Johnson County, Iowa	2015	$10.10 (2017)
Sacramento, California	2015	$12.50 (2020)
Tacoma, Washington	2015	$12.00 (2018)
Lexington, Kentucky*	2015	$10.10 (2018)
Mountain View, California	2015	$15.00 (2018)
Santa Monica, California	2016	$15.00 (2020) $15.37 (2017 for hotels & businesses within)

Long Beach, California	2016	$13.00 (2019)
Sunnyvale, California	2016	$15.00 (2018)

***** Challenge to validity of local law pending.

The most rigorous research to date, examining scores of state and local minimum wage increases across the United States, has found no evidence that higher minimum wages have harmed the competitiveness of states and cities by pushing businesses across state lines or into other counties and little, if any, adverse effect on employment levels and hours.[15] Furthermore, the actual

[15] *See, e.g.*, Arindrajit Dube et al., "Minimum Wage Effects across State Borders: Estimates Using Contiguous Counties" *The Review of Economics and Statistics* (Nov. 2010) 92(4): 945–64 (comparing employment patterns in more than 250 pairs of neighboring counties in the U.S. that had different minimum wage rates between 1990 and 2006 and finding no difference in job growth rates); [15] Michael Reich et al., University of California, Berkeley, "The Economic Effects of a Citywide Minimum Wage" (2007) (finding that San Francisco's higher minimum wage had not led the city's employers to reduce either their employment levels or hours worked) (available at http://www.irle.berkeley.edu/cwed/wp/economicimpacts_07.pdf); Bureau of Business and Economic Research, University of New Mexico, "Measuring the

experiences of cities that have recently raised the minimum wage at the local level have shown that such increases can lead to positive experiences for workers and local economies. For example, in San Jose, California, after voters in 2012 approved raising the city's minimum wage, the *Wall Street Journal* reported, "[f]ast-food hiring in the region accelerated once the higher wage was in place. By early [2014], the pace of employment gains in the San Jose area beat the improvement in the entire state of California."[16] And, in Seattle, which is slowing raising its minimum to $15 per hour, the restaurant business is booming: dozens of new restaurants have opened since the first increase went into effect.[17]

Employment Impacts of the Living Wage Ordinance in Santa Fe, New Mexico" (Jun. 2006) (finding that Santa Fe's minimum wage had no discernible impact on employment per firm when compared to Albuquerque and actually did better than Albuquerque in terms of employment changes) (available at http://bber.unm.edu/pubs/EmploymentLivingWageAnalysis.pdf.)

[16] Eric Morath, "What Happened to Fast-Food Workers When San Jose Raised the Minimum Wage?" *Wall Street Journal* (Apr. 9, 2014) (available at http://blogs.wsj.com/economics/2014/04/09/what-happened-to-fast-food-workers-when-san-jose-raised-the-minimum-wage/).

[17] Jeanine Stewart, "Apocalypse Not: $15 and the cuts that never came," *Puget Sound Business Journal*, (Oct. 23, 2015) (available at

Of course, opponents offer their own view of the effects of local minimum wage ordinances. But, it should be left to the people and their elected officials to debate this matter and make a decision. The Court should not construe the Minimum Wage Law to deny the citizens of the City of St. Louis the power to determine how to better their community.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court to reverse the trial court and uphold the Ordinance as valid under Missouri law.

Respectfully submitted,

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http://www.bizjournals.com/seattle/print-edition/2015/10/23/apocolypse-not-15-and-the-cuts-that-never-came.html).

CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned certifies that:

(1) this brief contains the information required by Rule 55.03;

(2) this brief complies with the limitations contained in Rule 84.06(b);

(3) there are 12,003 words in this brief.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June 2016, a copy of *Amici*'s Brief was served by operation of the Court's electronic filing system to the following:

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