SUPREME COURT OF KENTUCKY
CASE NO. 2015-SC-000371-TG

KENTUCKY RESTAURANT ASSOCIATION, INC., KENTUCKY RETAIL FEDERATION, INC., and PACKAGING UNLIMITED, LLC — APPELLANTS

v.

ON APPEAL FROM JEFFERSON CIRCUIT COURT
JUDITH MCDONALD-BURKMAN, JUDGE
CASE NO. 15-CI-000754

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT — APPELLEE

** ** ** **

AMICUS CURIAE BRIEF OF NATIONAL EMPLOYMENT LAW PROJECT

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2015, ten (10) original copies of this brief was served in person upon Susan Stokely Clary, Clerk of Supreme Court of Kentucky State Capitol, Room 235, 700 Capitol Avenue, Frankfort, KY 40601-3415, and one (1) copy served via regular U.S. mail to: Brent R. Baughman and Alexsandr "Sasha" Litvinow, Counsel for Appellants, Bingham Greenbaum Doll, LLP, 3500 National City Tower, 101 S. 5th Street, Louisville, KY 40202; Michael J. O'Connell, E. Patrick Mulvihill, David A. Sexton, and Sarah J. Martin, Counsel for Appellee, Jefferson County Attorney's Office, 531 Court Place, Suite 900, Louisville, KY 40202.

L. JOE DUNMAN

STATEMENT OF POINTS AND AUTHORITIES

PURPOSE AND INTEREST OF *AMICUS CURIAE*

The National Employment Law Project ("NELP") is a national research and policy organization known for its expertise on workforce issues. NELP works with federal, state, and local policymakers on matters ranging from unemployment insurance and workforce development, to wage and hour and benefits policy. NELP has worked with most of the cities in the United States that have adopted higher city minimum wages in recent years and is familiar with their economic experiences. NELP has an interest in ensuring that the Ordinance at issue in this case is fully enforced according to its terms and that the challenges to its implementation be rejected as without legal basis.

STATEMENT OF THE CASE

Appellants ask this Court to determine whether the Louisville/Jefferson County Metro Government ("Metro Government") 1) lacked the authority to raise the minimum wage in Jefferson County through Ordinance No. 216 ("Ordinance"); and 2) exceeded its authority in providing for a private right of action to enforce the local minimum wage. As Appellees argued before the trial court, Appellants' claims are not supported by the Kentucky Constitution, state laws, or case law, and this Court should uphold the Ordinance. Part I demonstrates that Metro Government's enactment of the Ordinance to raise the local minimum wage was a proper use of its Home Rule powers and that the Ordinance does not conflict with state law. Part II explains that Appellants' arguments concerning the Ordinance's private right of action merely restate their arguments concerning the Ordinance's alleged conflict with state law. It also shows that state statutes and case law enable Metro Government to create the private right of action at issue.

ARGUMENT

I. THE ORDINANCE FITS WITHIN METRO GOVERNMENT'S HOME RULE POWERS AND IS NOT PRECLUDED BY STATE LAW

A. Metro Government's Home Rule Powers Encompass the Power to Enact the Ordinance

The Ordinance fits comfortably within Metro Government's Home Rule powers. State 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). State law 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. "It has long been recognized that a municipal corporation, pursuant to its police power, has wide latitude to adopt ordinances which promote the health, safety, morals or general welfare of the people." *Lexington Fayette Cnty. Food & Beverage Ass'n v. Lexington-Fayette Urban Cnty. Gov't*, 131 S.W.3d 745, 749 (Ky. 2004) (citation omitted). As the ruling body of a county containing a city of the first class, Metro Government possesses all of the powers and privileges of the first class and their counties outlined here. KRS § 67C.101. Such powers should be construed broadly because they are "based upon a legislative finding that the urban crisis cannot be solved by actions of the General Assembly alone." KRS § 83.410(4).

The challenges of poverty, inequality, and economic growth undoubtedly impact, if not seriously threaten, the health, safety, and welfare of Metro Government's inhabitants. Because Louisville is "recognized as a Compassionate City," it was

"incumbent upon [Metro Government] to take legislative steps to help lift working families out of poverty, decrease income inequality, and boost [its] economy." Ordinance. The Ordinance was needed because "a minimum wage increase would reduce labor turnover, improve organizational efficiency, increase worker purchasing power in [its] local economy, and reduce reliance on social services." *Id.* It was designed to promote the health and welfare of Metro Government residents.

B. The Limits on Metro Government's Home Rule Powers Do Not Bar the Ordinance

The limits on Metro Government's Home Rule powers do not bar the Ordinance. State law prohibits Metro Government from enacting ordinances that conflict with the Kentucky Constitution, state statute, or federal law. KRS § 83.410; KRS § 82.082. Conflict with a statute occurs only 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. In this case, nothing in state law expressly prohibits the Ordinance, and the state wage and hour law does not constitute a comprehensive scheme on the subject of wages or labor protections to bar a minimum wage ordinance at the local level. In fact, this Court has upheld local minimum wage laws setting a higher minimum wage than the state law. Moreover, contrary to Appellants' assertions, the Ordinance does not unlawfully prohibit what a state law permits, and it is not inconsistent with state law. Thus, this Court should uphold the Ordinance as a valid exercise of Metro Government's Home Rule powers.

a. State Law Does Not Expressly Prohibit the Ordinance

Nothing in Kentucky's wage and hour law, KRS § 337.010 *et seq.*, expressly prohibits a local government from enacting a minimum wage that exceeds the state's

minimum wage. "When the legislature seeks to expressly preempt entire fields of local regulation and ordinance, it does so by clear and unmistakable language." *Lexington Fayette Cnty. Food & Beverage Ass'n*, 131 S.W.3d at 752. Appellants cannot identify any clear and unmistakable language barring the Ordinance, and the Jefferson Circuit Court in this case rightly concluded that no such language exists. Circuit Court Order at 2. Consequently, this Court should affirm.

b. The State Labor Law Is Not a Comprehensive Scheme

Kentucky's wage and hour law does not constitute a comprehensive scheme. First, this Court has previously upheld local ordinances that set a higher minimum wage than that of the state law for firefighters without questioning whether such local laws conflicted with state law. *Snyder v. City of Owensboro*, 555 S.W.2d 246 (Ky. 1977). Second, this Court has consistently made clear that there are many situations where a local government may supplement state law with additional requirements. Outside of alcoholic beverage regulation, this Court has overwhelmingly upheld local laws. Appellants cannot point to any case holding (or providing a basis for holding) that the state wage and hour law creates a comprehensive scheme. Thus, the state's wage and hour law merely establishes a minimum wage floor below which localities cannot go.

i. The Kentucky Supreme Court Has Upheld Local Ordinances Setting a Higher Minimum Wage Than That Required by State Law

In *Snyder*, this Court upheld two City of Owensboro ordinances that established hourly wages for firefighters and set a minimum hourly wage for this group that exceeded the state minimum wage specified by KRS § 337.275(1). Firefighters challenged the ordinances, alleging that the city should have followed a different formula for calculating hourly wages to comply with KRS § 337.285. This Court rejected the firefighters'

arguments and upheld the ordinances. The opinion stated that "[t]he lowest hourly wage set by the ordinances for any fireman [was] much higher than the minimum hourly rate specified by KRS 337.275(1)." *Snyder*, 555 S.W.2d at 248. It also noted that "[t]he firemen concede[d] that the Board of Commissioners of the city [were] vested with authority to establish hourly wage rates for firemen." *Id.* At no point did the plaintiff firefighters allege that the ordinances conflicted with the state labor laws, and this Court did not raise the issue. Thus, *Snyder*, in effect, recognized that cities may enact ordinances setting a higher local minimum wage. This Court should find, in accordance with *Snyder*, that the state wage and hour law is not a comprehensive scheme and that the Ordinance was a valid use of Metro Government's Home Rule powers.

ii. The Kentucky Supreme Court Routinely Affirms Local Governments' Power to Supplement the General Law

This Court routinely affirms local governments' power to supplement the general law and has rarely found that a state law is comprehensive. The Court's opinions make clear that "[t]he mere presence of the state in a particular area of the law or regulation will not automatically eliminate local authority to enact appropriate regulations." *Lexington Fayette Cnty. Food & Beverage Ass'n*, 131 S.W.3d at 750.[1] The Court has even acknowledged "that there are many individual situations where local police power may operate on the same subject matter *to supplement* the general law by providing for additional reasonable requirements." *Sheffield v. City of Fort Thomas, Ky.*, 620 F.3d 596, 605 (6th Cir. 2010) (citation and internal quotations omitted) (emphasis added).

[1] *See also Dannheiser v. City of Henderson*, 4 S.W.3d 542, 549 (Ky. 1999) ("*Commonwealth v. Do. Inc.*, Ky., 674 S.W.2d 519 (1984), holds that the 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.").

The General Assembly knows that it can grant exclusive jurisdiction over a subject to the state, and this Court's decisions indicate that when the legislature enacts a comprehensive law, it expects the legislature to expressly state that intent. *See Dannheiser*, 4 S.W.3d at 549 ("The legislature certainly knows the scope of its power to provide mandatory, as distinguished from permissive. legislation.") (citation omitted).[2] In a recent case where the state legislature did not make clear whether the state law was comprehensive, this Court set a high bar for such a construction. "In order to rise to the level of a comprehensive system or scheme, the General Assembly must establish a definite system that explicitly directs the actions of a city." *Dannheiser*, 4 S.W.3d at 548 (citation omitted). Not surprisingly, outside of the alcoholic beverage regulation context, this Court's decisions have overwhelmingly found that state laws are not comprehensive.[3]

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[2] *See also Louisville Kennel Club, Inc. v. Louisville/Jefferson Cty. Metro Gov't*, No. CIV.A. 3:07-CV-230-S, 2009 WL 3210690, at *12–13 (W.D. Ky. Oct. 2, 2009) (stating that "[i]n order to rise to the level of a comprehensive system or scheme, the General Assembly must establish a definite system that explicitly directs the actions of a city" and finding that the local law at issue did not conflict with state law because the state regimes at issue did not establish a definite system that explicitly directed the actions of a city) (citation omitted); *Commonwealth. v. Bishop*, 245 S.W.3d 733, 736 (Ky. 2008) ("Nothing in KRS 95.019 expressly prohibits a city from creating an internal policy that requires its police officers to remain within the city limits, absent an emergency, while they are on duty. Similarly, there is no 'comprehensive scheme of legislation' in Kentucky's statutes regarding a fourth-class city's choice to limit the patrol area of its police officers.").

[3] *See, e.g.*, *Bishop*, 245 S.W.3d at 736 (finding that state law concerning police powers was not comprehensive); *Lexington Fayette Cnty. Food & Beverage Ass'n*, 131 S.W.3d at 751 (finding that state smoking laws were not comprehensive); *Dannheiser*, 4 S.W.3d at 549 (finding that state law concerning economic development was not comprehensive); *City of Louisville v. Michael A. Woods, Inc.*, 883 S.W.2d 881, 883 (Ky. App. 1993) (finding that broad state law concerning entertainment in places selling alcoholic beverages was not comprehensive).

iii. Appellants Have Failed to Demonstrate That the State Wage and Hour Law Is Comprehensive

Appellants cannot cite to any authority establishing (or even outlining) a standard under which Kentucky's wage and hour law explicitly directs or prohibits city governments to enact their own minimum wage ordinances. Appellants cite to *Kentucky Municipal League v. Commonwealth*, 530 S.W.2d 198 (Ky. 1975), for the proposition that the "[l]egislature intended the uniform application of wage and hour standards throughout the Commonwealth." Appellants' Br. at 10. However, that decision held only that the state wage and hour law did not violate constitutional limits unrelated to conflict with local laws. *Id.* Pointedly, *Snyder* upheld city ordinances setting a higher minimum wage for firefighters who were covered under the state's minimum wage law almost three years after *Kentucky Municipal League*.

Parts Depot, Inc. v. Beiswenger, 170 S.W.3d 354 (Ky. 2005), relied upon by Appellants, actually supports Metro Government's position. *Parts Depot* did note that the Women and Minors' Employment Act of 1938 was "a comprehensive statutory scheme," but it also discussed the basis for that finding—it explained that the law "created an elaborate system of wage boards, directory orders, and mandatory orders fixing the minimum fair wage for women and minors in various job classifications." *Id.* at 359. Crucially, *Parts Depot* states that the 1974 Wages and Hours Act repealed the provisions establishing wage boards, directory orders. mandatory orders pertaining to minimum fair wages for women and minors, and other protections. *Id.* at 360. In their place, the General Assembly enacted the statutes adopting the minimum wage. *Id.* Thus, the repeal of the very provisions that made the Women and Minors' Employment Act comprehensive, in addition to the court's holding that nothing can be construed as

"conferring upon the Department of Labor exclusive jurisdiction to resolve all disputes pertaining to nonpayment of salary or wages," weigh strongly in favor of finding that the current wage and hour law is *not* comprehensive. *Id.* at 362.

Other cases cited by Appellants to show "numerous instances in which our appellate courts have stricken ordinances deemed to run afoul of similarly comprehensive statewide legislation" are similarly unpersuasive.[4] *See* Appellants' Br. at 13–15.

c. The Ordinance Is Not Inconsistent with State Law and Does Not Unlawfully Prohibit What State Law Permits

Appellants at various points argue that the Ordinance is inconsistent with state law because of the need for uniformity and because it unlawfully prohibits that which is permitted by state law. First, Appellants cite no authority for the proposition that all laws

[4] For example, *Kentucky Licensed Beverage Association v. Louisville-Jefferson*, 127 S.W.3d 647 (Ky. 2004), based its decision on the fact that courts had found the state's regulation of alcoholic beverages comprehensive. Kentucky courts appear to base that assessment on *Ziffrin, Inc. v. Reeves*, 308 U.S. 132 (1939), a Supreme Court decision. *See, e.g.*, *Commonwealth v. Day*, 152 S.W.2d 597, 599 (1941) ("By the Alcoholic Beverage Control Law the Legislature attempted to regulate the liquor traffic in Kentucky in every minute detail . . . . "To this end it undertook to channelize the traffic and all its various phases, *Ziffrin, Inc. v. Reeves*, 308 U.S. 132 . . . ."). *Ziffrin* stated that KRS Chapters 241–244 constituted "a long, comprehensive measure (123 sections) designed rigidly to regulate the production and distribution of alcoholic beverages through means of licenses and otherwise." *Ziffrin*, 308 U.S. at 134. It found that the "manufacture, sale, transportation, and possession [of alcoholic beverages were] permitted only under carefully prescribed conditions and subject to constant control by the state" such that "[e]very phase of the traffic [was] declared illegal unless definitely allowed." *Id.* The state wage and hour law, with less than forty-five sections, cannot be said to mirror such an extensive and detailed regulatory structure. *See* KRS § 337.010 *et seq.* *Sheffield v. City of Fort Thomas,* 620 F.3d 596 (6th Cir. 2010), contrary to Appellants' assertion, did *not* find that the state hunting law at issue was comprehensive. *Pierce v. Commonwealth*, 777 S.W.2d 926 (Ky. 1989), did find that a state law concerning solicitation of sodomy was comprehensive so as to preclude a local solicitation law targeting sodomy. However, courts had previously understood the state solicitation statute at issue to apply to *any* criminal offense, making it clear that there was no room for another law barring solicitation. No case has similarly made clear that the state's minimum wage law constitutes the exclusive means of setting a minimum wage in Kentucky.

concerning working terms and conditions must be uniform throughout the state. Second, as stated above, the Kentucky Supreme Court has recognized that local laws may "supplement" state laws "by providing for additional reasonable requirements." *Sheffield*, 620 F.3d at 605 (citation and internal quotations omitted).[5] Third, there is no inconsistency between the requirements of the state and local minimum wages. The state law provides that "every employer shall pay to each of his employees wages at a rate of *not less than* . . . seven dollars and twenty-five cents ($7.25) an hour beginning on July 1, 2009." KRS § 337.275(1) (emphasis added). The Ordinance similarly provides that "[e]very Employer . . . shall pay to each of its Employees wages at a rate of *not less than $7.75* per hour beginning on July 1, 2015 . . . ." Ordinance § 112.10(B) (emphasis added). An employer may comply with both by paying no less than the higher rate. The two laws simply do not conflict or impose on employers incompatible requirements.

C. When State Law Does Not Expressly Preempt a Local Minimum Wage, Other States Have Generally Allowed the Legislature to Decide the Issue

Kentucky is not the only state where localities enact minimum wage ordinances. In many other states, however, the question of whether state law allows cities to enact a higher minimum wage is being decided in the legislature, not the courts. States like Montana, Virginia, Maine, and Washington have recently considered and rejected state

[5] In *Sheffield*, the Sixth Circuit held that a local ordinance limiting feeding of deer outside of the curtilage of the home was allowed despite state law authorizing such conduct. *See also Bishop*, 245 S.W.3d (upholding a local ordinance prohibiting officers from going outside of the city absent an emergency even though state law expressly granted police the authority to use their powers, including the power to arrest, anywhere in the county); *Lexington Fayette Cnty. Food & Beverage Ass'n*, 131 S.W.3d (upholding a local ordinance banning smoking in public buildings even though state law would permit it).

legislative proposals that would prohibit local minimum wage laws.[6] To the extent that courts have addressed whether state law conflicts with or preempts local minimum wage laws, they have overwhelmingly held that localities are authorized to enact a higher local wage because state wage laws set minimums, not maximums.

For example, 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). As Maryland's Court of Appeals put it, "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. Kentucky's wage and hour law largely resembles that of Maryland, New Mexico, and, prior to recent legislative changes, Wisconsin.[7] Thus, a decision upholding the

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[6] Alison Noon, "Gov. Bullock vetoes bills ranging from guns to taxes," *Great Falls Tribune*, Apr. 2, 2015, *available at* http://www.greatfallstribune.com/story/news/local/2015/04/02/gov-bullock-vetoes-bills-ranging-guns-taxes/70863200/; Virginia.gov, "Governor McAuliffe Announces Actions on 2015 Legislation," Mar. 30, 2015, https://governor.virginia.gov/newsroom/newsarticle?articleId=8058; L.D. 1361, 127th Leg., 1st Sess. (Me. 2015) (unenacted), *available at* http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280056347; S.B. 6307, 63rd Leg., 2014 Reg. Sess. (Wash.) (unenacted).

[7] At the time of *Main Street Coalition*, Wisconsin law was similar to Kentucky's in showing no legislative intent to preempt local power to establish higher minimum wage

Ordinance would reflect the growing case law finding that state minimum wage laws set a floor and allow localities to supplement with higher minimum wages.

In sum, this Court should find that the Ordinance was a valid exercise of Metro Government's Home Rule powers and does not impermissibly conflict with state law based on: the stated purpose of the Ordinance; this Court's decision in *Snyder*; past Kentucky Supreme Court decisions setting a high bar for finding a state law comprehensive; the fact that this Court's decisions have rarely found a state law comprehensive; and Appellants' inability to identify persuasive authority to the contrary.

II. METRO GOVERNMENT HAS THE AUTHORITY TO CREATE A PRIVATE RIGHT OF ACTION TO ENFORCE ITS MINIMUM WAGE ORDINANCE

This Court should find that Metro Government possesses the authority to create a private right of action to enforce the Ordinance. Appellants' private right of action argument merely restates their claim that state law impermissibly conflicts with the Ordinance. As discussed below, state law does not preclude localities from enacting a private right of action to enforce local ordinances, and Appellants have not identified any authority to the contrary. Thus, if this Court upholds the increased local minimum wage as not in conflict with state law, it should similarly uphold the private right of action—it would make little sense to allow localities to supplement the state minimum wage with a higher local rate but preclude them from enabling residents to enforce those rights.

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laws, but following the decision, the state legislature adopted a statue that expressly prohibited local minimum wage laws. Wis. Stat. § 104.001(1)–(2). This progression validates the underlying logic of the court's decision; only the express will of a legislature can preempt local authority to take action.

A. Kentucky's Home Rule and Labor Laws Do Not Preclude Metro Government from Creating a Private Right of Action to Enforce a Local Minimum Wage

State law does not expressly preclude a city from enacting a private right of action to enforce an ordinance. The Ordinance's private right of action was intended to provide workers with an avenue for relief upon a violation of their minimum wage rights under the Ordinance. Because the Ordinance fits comfortably within Metro Government's Home Rule authority to enact legislation to provide for the health, safety, morals, or general welfare of residents, as explained in Part I, and the private right of action is key to achieving those goals, the private right of action likewise fits within that Metro Government's Home Rule powers. None of the Home Rule statutes discussed in Part I limit a local government's authority to create a private right of action to enforce a local minimum wage ordinance beyond the general conflict limitations addressed in Part I. In addition, nothing in the state's wage and hour law expressly prohibits cities from creating a private right of action to enforce a local minimum wage law.

B. Court of Appeals Precedent Recognizes a City's Authority to Create a Private Right of Action

No published Kentucky Court of Appeals or Kentucky Supreme Court decision addresses whether a city has the power to create a private right of action to enforce a local ordinance. However, at least one unpublished decision demonstrates that cities do have that power. In *Felty v. Petty*, No. 2010-CA-000402-MR, 2011 WL 832488, at *1 (Ky. App. Feb. 25, 2011) (unpublished),[8] the court addressed a motion for summary

[8] Counsel for *amicus curiae* recognizes that Ky. R. Civ. P. § 76.28(4)(c) requires that a citation to an unpublished be accompanied by a copy of the decision for the court and all parties in the action. Counsel for *amicus curiae* has not provided such a copy, however, because Ky. R. Civ. P. § 76.12(7) does not permit a brief for *amicus curiae* to contain appendices.

judgment where plaintiffs had filed a civil suit against their next door neighbors for violating a city ordinance concerning the required setback for a building. The court noted that it was unclear whether the ordinance at issue granted individuals a private right of action, but it acknowledged and did not question the fact that "local ordinances will often expressly confer standing on certain private parties to enforce zoning restrictions." *Id.* at *1, n.2. It further explained that "it has also been held that the mere fact that statutes *or ordinances* are silent as to the existence of a private cause of action does not by its silence preclude such an action." *Id.* (emphasis added). The court decided the case on the merits, holding, in part, that the defendants had violated the ordinance. *Id.*, at *4. *Felty* therefore supports finding that Metro Government has the authority to create the private right of action at issue.

C. Appellants Fail to Establish that Metro Government Lacked the Authority to Create a Private Right of Action to Enforce its Minimum Wage Ordinance

Appellants contend that Metro Government cannot create a private right of action to enforce its minimum wage law because 1) neither the state's Home Rule laws nor its wage and hour law granted Metro Government the power to create a private right of action to enforce the Ordinance; and 2) the Ordinance unlawfully "co-opts" the legislature's enforcement mechanism for wage and hour law. Appellants' Br. at 19–20. However, appellants have not identified any authority limiting a city's power to create a private right of action to enforce a local ordinance.

Hardwick v. Boyd County Fiscal Court, cited by Appellants,[9] considered only the validity of an ordinance adopted by a fiscal court that imposed different fees on business licensees. *Hardwick v. Boyd Cnty. Fiscal Court*, 219 S.W.3d 198 (Ky. App. 2007). The

[9] Appellants' Br. at 20.

Kentucky Court of Appeals found the ordinance was invalid because a state statute clearly stated that fiscal courts were to treat licensees similarly. *Id.* at 202–3. In this case, the state labor law does not impose a similar express limit on a city's power to enact a private right of action to enforce a local minimum wage law. *Kentucky Licensed Beverage Association v. Louisville-Jefferson County Metro Government*, 127 S.W.3d 647 (Ky. 2004), also cited by Appellants,[10] addressed whether a local government exceeded its authority by imposing civil penalties for violations of an alcohol-related ordinance. Because the court had previously found that the legislature had "provided a comprehensive scheme of legislation regulating the manufacturing, sale, and distribution of alcoholic beverages," the alcohol-related ordinance itself was "in conflict with state statutes on the subject and . . . not authorized pursuant to any home rule statute cited." *Id.* at 649. In other words, the court avoided the question about the validity of imposing local remedies for violations because the ordinance itself was invalid. *Kentucky Licensed Beverage Association* is inapposite because the underlying Ordinance in this case is valid. Whether the labor law forms a comprehensive scheme is discussed in Part I and constitutes an entirely separate question from the question of whether Metro Government may enact a private right of action for local ordinances.

Finally, appellants incorrectly cite to *Roberson v. Brightpoint Services, LLC* for the proposition that a Metro Government ordinance cannot create a private cause of action "in the absence of explicit legislative authorization." Appellants' Br. at 21. *Roberson* held that a city cannot create a private right of action for a violation of a local discrimination law because the Kentucky Civil Rights Act *expressly* permitted cities to

[10] *Id.*

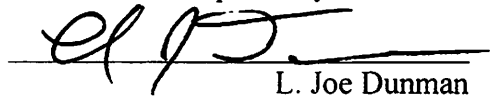
impose *only* "penalties" for violating such local discrimination ordinances. *Roberson v. Brightpoint Servs., LLC*, No. CIV.A. 3:07CV501-S, 2008 WL 793636, at *2–3 (W.D. Ky. Mar. 24, 2008). The decision does not limit, or even call into question, Metro Government's authority to create a private right of action for local ordinances where state law does not expressly preclude such a right; and, if anything, the decision appears to assume that a city generally has the authority to create a private right of action to enforce a local ordinance.[11]

Ultimately, at least one appellate decision demonstrates that localities may create a private right of action to enforce a local ordinance, and Appellants cite to no contrary authority. This Court should uphold the private right of action at issue.

CONCLUSION

For the foregoing reasons, and those presented in the briefs of Appellee and Appellants, *amicus curiae* respectfully requests that this Court uphold the Jefferson Circuit Court's ruling that Metro Government had the authority to enact and enforce the minimum wage increase in the interest of public policy.

Respectfully submitted,



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[11] The relevant statute, KRS § 344.300(1), authorizes only "penalties" (such as fines) for violations of local anti-discrimination ordinances, not separate causes of action beyond that which is already allowed under the Kentucky Civil Rights Act.