

STATE OF MICHIGAN  
IN THE SUPREME COURT

**IN RE REQUEST FOR ADVISORY  
OPINION REGARDING 2018 PA 368  
AND 2018 PA 369**

Supreme Court Case No. 159160

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**MOTION OF THE NATIONAL EMPLOYMENT LAW PROJECT FOR LEAVE TO  
FILE AN AMICUS CURIAE BRIEF REGARDING THE MICHIGAN LEGISLATURE'S  
REQUEST FOR AN ADVISORY OPINION ON THE CONSTITUTIONALITY OF 2018  
PA 368 AND 2018 PA 369**

Sarah Prescott (P70510)  
SALVATORE, PRESCOTT &  
PORTER, PLLC  
Attorney for National Employment  
Law Project  
105 E. Main Street  
Northville, MI 48167  
Tel. (248) 679-8711  
Fax (248) 773-7280  
[prescott@spplawyers.com](mailto:prescott@spplawyers.com)

Date: June 19, 2019

The National Employment Law Project (“NELP”) moves, pursuant to MCR 7.308, 7.311 and MCR 7.312(H), for leave to file an amicus curiae brief regarding the request by the Michigan House of Representatives and the Michigan Senate (the “Michigan Legislature”), pursuant to Const. 1963, Art. 3, § 8 to issue an Advisory Opinion, and states as follows:

1. NELP is a non-profit legal organization with 50 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP’s areas of expertise include the workplace rights of low-wage workers under state and federal employment and labor laws, with a special emphasis on the minimum wage. NELP has litigated and participated as amicus curiae in numerous cases addressing the rights of cities, towns, and voters to shape employment policy, including the minimum wage and paid sick days. NELP has also provided policy and legal assistance to community-based organizations in Michigan regarding wage and hour rights, and these collaborations inform our position in this case. Preempting the ability of voters to create substantive minimum employment standards undermines Michigan’s constitutional scheme and weakens its democracy.
2. In May 2018, two ballot question committees, Michigan One Fair Wage (“MOFW”) and Michigan Time to Care (“MTTC”), timely filed petition signatures with the Bureau of Elections (“BOE”), pursuant to the Michigan Constitution, Art. 2, § 9. To qualify for the ballot, MOFW submitted 373,507 signatures for its minimum wage law proposal and MTTC submitted 377,560 for its paid sick leave proposal. The BOE certified both proposals.
3. Soon thereafter, the Michigan Legislature’s leadership announced its intention to adopt and amend both proposals, thwarting voters’ ability to support or oppose the proposals on

the 2018 ballot. *See Gray, Michigan's OK of minimum wage hike, paid sick leave has a big catch*, Detroit Free Press (September 7, 2018). The Michigan Legislature adopted a minimum wage proposal as 2018 PA 337 and a paid sick leave proposal as 2018 PA 338, rendering both statutory initiatives almost unrecognizable and subsequently passing them under a lame duck session.

4. The legality of the Legislature's actions in adopting and amending the two statutory initiatives is in question.
5. NELP has an interest in supporting the constitutional rights of the people of Michigan to propose laws using the statutory initiative process in Art. 2, § 9, including the 750,000 registered voters who signed the MOFW and MTTC petitions.
6. Further, NELP has an interest in protecting and advancing higher minimum employment standards for Michigan workers, especially where the minimum wage is concerned.
7. In accordance with MCR 7.308, MCR 7.311, and MCR 7.312(H), NELP respectfully requests leave to file an amicus brief setting forth its view on these issues.

For the foregoing reasons, as well as those set forth in the attached brief, NELP respectfully requests that this Court grant its motion for leave to file Amicus Curiae brief, which is being filed along with this motion.

Dated: June 19, 2019

Respectfully submitted,

/s/ Sarah Prescott  
Sarah Prescott (P70510)  
SALVATORE, PRESCOTT & PORTER, PLLC  
Attorney for National Employment Law Project  
105 E. Main Street  
Northville, MI 48167  
Tel. (248) 679-8711  
Fax (248) 773-7280  
[prescott@spplawyers.com](mailto:prescott@spplawyers.com)

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**NATIONAL EMPLOYMENT LAW PROJECT AMICUS CURIAE BRIEF REGARDING  
THE MICHIGAN LEGISLATURE'S REQUEST FOR AN ADVISORY OPINION ON  
THE CONSTITUTIONALITY OF 2018 PA 368 AND 2018 PA 369**

Sarah Prescott (P70510)  
SALVATORE, PRESCOTT &  
PORTER, PLLC  
Attorney for National Employment Law  
Project  
105 E. Main Street  
Northville, MI 48167  
Tel. (248) 679-8711  
Fax (248) 773-7280  
[prescott@spplawyers.com](mailto:prescott@spplawyers.com)

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**STATEMENT OF BASIS OF JURISDICTION**

This Court has jurisdiction over the request for an advisory opinion by the Michigan House of Representatives and the Michigan Senate, pursuant to Const. 1963, Article 3, § 8, MCR 7.303(B)(3) and MCR 7.308(B).<sup>1</sup>

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<sup>1</sup> Parties' counsel did not author this brief, nor did a party or any party's counsel contribute money intended to fund the preparation or submission of the brief. No person other than the amicus curiae, their members, or their counsel contributed money that was intended to fund the preparation or submission of the brief.

**STATEMENT OF QUESTIONS PRESENTED**

- I. Whether the Court should exercise its discretion to grant the requests to issue an advisory opinion on this matter?

Amicus Curiae Answer: Yes

- II. Whether Const. 1963, Art. 2, § 9 permits the Legislature to enact an initiative petition into law and then amend that law during the same legislative session?

Amicus Curiae Answer: No

- III. Whether 2018 PA 368 and 2018 PA 369 were enacted in accordance with Const. 1963, Art. 2, § 9?

Amicus Curiae Answer: No

## INTRODUCTION

Michigan's initiative process is central to the state's democratic governance system. The Michigan Constitution of 1963 vests ordinary people with the power to make laws, and Michigan courts have repeatedly recognized this fundamental right, in particular as embodied in the initiative process. Unfortunately, in September 2018, the Michigan Legislature thwarted this basic tool of democratic governance by adopting and subsequently amending during its lame duck session two ballot initiative proposals that had garnered over 750,000 signatures from registered voters and which had been certified for the ballot. The Michigan Legislature replaced the statutory initiatives with proposals that bore little resemblance to the original initiatives.

In this case, the statutory initiatives concerned the minimum wage and paid sick leave, two issues that are a subject of citizen lawmaking and that have appeared on ballots across the country. These economic issues deeply affect Michigan residents; therefore, the Legislature's "adopt and amend scheme" deprived the state and its people the opportunity to exercise their democratic right to address the state's needs. The Michigan Legislature has therefore undermined the Michigan Constitution by effectively denying the people the opportunity to debate and vote on laws within their unimpeachable right to propose. The Court, however, holds the power to intercede on the people's behalf and protect their constitutional rights.

The Court should advise that the Legislature violated Article 2, § 9 of the Michigan Constitution, based on the text of Article 2, § 9, the Court's jurisprudence, and other authorities.

## STATEMENT OF FACTS

Michigan One Fair Wage (“MOFW”) and Michigan Time to Care (“MTTC”) both began circulating statutory initiative petitions in fall 2017. MOFW sought to pass a new Michigan minimum wage law that would gradually increase the minimum wage to \$12 per hour by January 1, 2022; gradually eliminate the tip credit for tipped employees, bringing them under the full minimum wage by January 1, 2024; and index the minimum wage thereafter for inflation. MTTC sought to create a new Michigan Earned Sick Time Act (“MESTA”) to provide all employees with 1 hour of paid sick time for every 30 hours worked to use for personal or family health needs, among other things.

MOFW timely filed 373,507 signatures with the Bureau of Elections (“BOE”) on May 21, 2018. The BOE found there were at least 283,553 valid signatures, enough to certify the proposal for the 2018 general election ballot. The Board of Canvassers (“BOC”) voted 2-2 on certifying the proposal; therefore, MOFW appealed and the Court of Appeals ordered the BOC to certify the proposal. *Michigan Opportunity v Board of State Canvassers*, Ct. App. No. 344619 (Order of August 22, 2018), *lv denied*, S. Ct. No. 158303 (Order of December 5, 2018). The BOC certified the proposal for the ballot as ordered. Similarly, on May 29, 2018, MTTC timely filed 377,560 signatures with the BOE, and the BOE concluded that there were at least 271,088 valid signatures. The BOC certified the proposal for the 2018 general election ballot.

The Michigan Legislature indicated its intent to adopt the statutory initiatives to prevent them from being on the 2018 ballot.<sup>2</sup> The Legislature adopted the minimum wage proposal as 2018 PA 337 and the MTTC proposal was adopted as 2018 PA 338, both of which were

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<sup>2</sup> See Kathleen Gray, *Michigan’s OK of minimum wage hike, paid sick leave has a big catch*, Detroit Free Press, (September 7, 2018).

scheduled to take effect 90 days after the Legislature adjourned sine die. Subsequently, during the lame duck session, the Legislature amended 2018 PA 337 and 2018 PA 338, passing them as 2018 PA 368 and 2018 PA 369, respectively. The Governor signed both. 2018 PA 368 gutted 2018 PA 337 by delaying phasing in the \$12 minimum wage by 2030 instead of 2022; preserving the subminimum wage for tipped employees; and nixing the indexing mechanism. 2018 PA 338 was similarly gutted through 2018 PA 369, excluding a substantial number of employees who would have been covered and radically cutting the amount of sick time earned and eligible for use, among other changes that eviscerated the people's proposal.

## ARGUMENT

### **I. THE MICHIGAN CONSTITUTION OF 1963 RESERVES LAWMAKING POWERS TO THE PEOPLE, THEREFORE PROHIBITING THE MICHIGAN LEGISLATURE FROM ADOPTING AND AMENDING VOTER-INITIATED LAWS DURING THE SAME LEGISLATIVE SESSION**

The Michigan Constitution, Article 2, § 9 grants to the people “the power to propose laws and to enact and reject laws[.]” MOFW properly exercised that right by collecting 373,507 signatures to propose a new statewide minimum wage law that increased the minimum wage and made related changes. The Legislature’s usurpation of the people’s constitutional rights violates the Constitution and decades of this Court’s decisions vigilantly protecting those rights. The evidence clearly points to 2018 PA 368, as well as 2018 PA 369, being unconstitutional acts.

#### **A. The Michigan Supreme Court Has Repeatedly Upheld the Primacy of the People’s Power, and by Extension the Initiative Process, as Fundamental to Michigan’s Governing Structure**

The Michigan Constitution establishes the governing structure of the state by first establishing the source of its political power in Article 1, § 1: “All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.” From that fundamental power, the branches of state government come into being. Article 4, § 1 creates the legislative branch and vests part of the state’s lawmaking powers in “a senate and a house of representatives.” However, the Legislature does not exercise a monopoly on legislative power under the Constitution, because Article 2, § 9 plainly states that:

[t]he people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum.

It is this power that the Court has repeatedly recognized, protecting the right of the people of Michigan to rule themselves through the tools of democracy provided in the Michigan Constitution; as MOFW and MTTC sought to do with their two proposals. *See, e.g., Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42, 59; 921 NW2d 247 (2018) (finding a voter-initiated constitutional amendment proposal to be valid), *quoting Scott v Secretary of State*, 202 Mich 629, 643; 168 NW 709 (1918) (“it may be said, generally, that [the right to initiate proposals] can be interfered with neither by the legislature, the courts, nor the officers charged with any duty in the premises.”). *See also Taxpayers of Michigan Against Casinos v Michigan*, 471 Mich 306, 327; 685 NW2d 221 (2004) (Michigan Legislature’s power to legislate can be “prohibited...by the people through the Constitution of the State”).

Moreover, the Court has given liberal meaning to the people’s lawmaking power preserved in the State Constitution:

[U]nder a system of government based on grants of power from the people, constitutional provisions by which the people reserve to themselves a direct legislative voice ought to be liberally construed.

*Kuhn v Dep’t of Treasury*, 384 Mich 378, 385; 183 NW2d 796, 799 (1971) (finding that a statute was subject to referendum); *see also Newsome v Riley*, 69 Mich App 725, 729; 245 NW2d 374, 376 (1976) (liberal construction should be given to initiative provisions “to facilitate rather than hamper the exercise by the people of these reserved rights”). In other words, the Court has construed the Michigan Constitution to enshrine the voice of the people and place its lawmaking power “on an equal footing with acts of the Legislature not proposed by the people.” *See Frey v Dir. of Dep’t of Soc. Servs.*, 162 Mich App 586, 600; 413 NW2d 54, 61, *aff’d sub nom Frey v Dep’t of Mgmt. & Budget*, 429 Mich 315; 414 NW2d 873 (1987). The Michigan Legislature’s scheme to adopt and amend the initiative proposals is, therefore, an unconstitutional usurpation of that power.



**B. The Michigan Constitution of 1963 Bars the Legislature from Enacting an Initiative into Law and Then Amending That Law during the Same Legislative Session**

The Michigan Constitution vests the power in the people of the state, while the text of Article 2, § 9 channels a portion of that power into the initiative process. As the Court has repeatedly stated, constitutional “analysis, of course, must begin with an examination of the precise language used in ... [the] 1963 Constitution.” *Michigan United Conservation Clubs v Secretary State (After Remand)*, 464 Mich 359, 375; 630 NW2d 297 (2001) (Corrigan, J, concurring). *See also Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191, 880 NW2d 765, 772 (2016) (overruling lower court, replacing pre-1963 precedent with “decision on the text of the 1963 Constitution itself”). Furthermore, every constitutional provision “must be interpreted in the light of the document as a whole,” *Lapeer County Clerk v Lapeer Circuit Court*, 469 Mich 146, 156; 665 NW2d 452 (2003), and one must discern “the text’s original meaning to the ratifiers, the people, at the time of ratification.” *People v Tanner*, 496 Mich 199, 233; 853 NW2d 653 (2014).

As Article 2, § 9 reads, the people have the right to initiate a petition for a law. Once the Legislature receives a petition during a legislative session, it has a 40-day window to follow one of three paths: 1.) enact the proposed law “without changes or amendments”; 2.) reject the law and submit it to the people at the next general election; 3.) propose a different law on the subject and submit both proposals to the people for a vote at the next general election. Under one of the standard canon of interpretations, *expression unius est exclusion alterius* (the express mention of one thing excludes all others), the clear articulation of these three options binds the Legislature to follow them. *See Pittsfield Charter Twp. v Washtenaw Cty.*, 468 Mich 702, 712; 664 NW2d 193, 198 (2003) (applying canon of interpretation to find Legislature only intended one limitation in a

law); *Feld v Robert & Charles Beauty Salon*, 435 Mich 352, 362: 459 NW2d 279, 283 (1990) (stating that “the principle of *expression est unius exclusion alterius* is well recognized throughout Michigan jurisprudence”), quoting 2A Sands, Sutherland Statutory Construction § 47.24 (4th ed.). Therefore, the Legislature cannot adopt an initiative proposal within the 40-day window only to then amend it once the window is past, thereby stymieing the people’s ability to speak on the proposal. See also *Michigan Farm Bureau v Secretary of State*, 379 Mich 387, 394-95; 151 NW2d 797 (1967) (Court rejected “adopt and repeal” scheme as violating the Constitution).

Article 2, § 9 is thus a limitation upon the power of the Legislature. This Court, in *Woodland v Michigan Citizens Lobby*, explained exceedingly clearly that Article 2, § 9 serves to limit the state and must be protected from infringement if the petition process is followed properly:

Art. 2, § 9, is a reservation of legislative authority which serves as a limitation on the powers of the Legislature. This reservation of power is constitutionally protected from government infringement once invoked; once the petition requirements have been complied with, the state may not refuse to act.

423 Mich 188, 215; 378 NW2d 337, 349 (1985). It is this faithfulness to the Michigan Constitution of 1963 and its investment in the lawmaking authority of the people that the Court has consistently upheld. As the court wrote in *Citizens Protecting Michigan’s Constitution v Sec’y of State*, “we are stewards of the people and must faithfully abide by the decisions they make through the laws they adopt.” 503 Mich 42, 106, 921 NW2d 247, 278 (2018). The Legislature’s actions in the instant case infringe on the people’s collective lawmaking powers.

## II. A GROWING NUMBER OF STATES ACROSS THE U.S. ARE USING BALLOT INITIATIVES TO ADOPT HIGHER MINIMUM WAGES IN RESPONSE TO STATE NEEDS AND ECONOMIC RESEARCH THAT SUPPORT INCREASES

Michigan voters were not alone in their desire to adopt a higher minimum wage in their original proposal, as adopted in 2018 PA 337. Over the past two decades, a growing number of U.S. states have pursued higher minimum wages, many of them via ballot initiatives.<sup>3</sup> Voters have increasingly looked to state government for solutions to the stagnation of the federal minimum wage due the increasingly divisive nature of national politics. As Congress finds itself frequently gridlocked and unable to respond to significant public needs, state citizens have acted. If both ballot initiatives and legislative acts are counted, there were thirty enacted increases just between 2013 and 2016.<sup>4</sup> Voter-initiated statewide ballot questions have increasingly been used to enact higher statewide minimum wage rates, with at least sixteen states over the past twenty years and eleven states just in the last six years where initiatives have made it to the ballot and been approved by voters. Most recently, Arkansas and Missouri voters approved increases to \$11.00 and \$12.00, respectively, by comfortable margins.<sup>5</sup> Far from an exotic and unheralded maneuver, Michigan voters sought to do the same through the MOFW proposal that the Michigan Legislature unconstitutionally thwarted.

These as of yet undefeated ballot initiatives have spanned every region of the country and ushered in significant changes to state minimum wage law relative to the stagnant federal

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<sup>3</sup> Nancy Cook, “Americans Prefer Their Solutions Locally Sourced,” *The Atlantic*, Mar. 14, 2015, <https://tinyurl.com/h4vaq4r>.

<sup>4</sup> Jackson Brainerd, “State Minimum Wage Developments,” *National Conference of State Legislatures* (Aug. 23, 2018), <http://www.ncsl.org/blog/2018/08/23/state-minimum-wage-developments.aspx>.

<sup>5</sup> See Figure 1.

minimum wage.<sup>6</sup> If not for these voter-initiated ballot questions, millions of workers across the country would have had no voice in their own economic lives due to their lack of influence and access at state legislatures. Since 2012 alone, 22 million workers have received \$68 billion in raises across over 40 cities and 25 states.<sup>7</sup> These laws have proven, legally and economically, that it is feasible to raise wages in accordance with economic indicators and consistent with state constitutions.

**Figure 1: State Ballot Initiatives to Increase the Minimum Wage (1998 – Present)<sup>8</sup>**

State	Year	Ballot Initiative Result
Washington	1998	Passed (Yes: 66.1%, No: 33.9%)
Oregon	2002	Passed (Yes: 51.3%, No: 48.7%)
Florida	2004	Passed (Yes: 71.25%, No: 28.75%)
Nevada	2004	Passed (Yes: 68.4%, No: 31.6%)
Missouri	2006	Passed (Yes: 75.94%, No: 24.06%)
Nevada	2006	Passed (Yes: 68.71%, No: 31.29%)
Colorado	2006	Passed (Yes: 53.30%, No: 46.70%)
Montana	2006	Passed (Yes: 72.69%, No: 27.31%)
Ohio	2006	Passed (Yes: 56.65%, No: 43.35%)

<sup>6</sup> See Figure 1. See also Paul Waldman, “Why low-wage workers and members of Congress both deserve a raise,” *Washington Post*, June 11, 2019, [https://www.washingtonpost.com/opinions/2019/06/11/why-low-wage-workers-members-congress-both-deserve-raise/?utm\\_term=.334fc310e15a](https://www.washingtonpost.com/opinions/2019/06/11/why-low-wage-workers-members-congress-both-deserve-raise/?utm_term=.334fc310e15a).

<sup>7</sup> See Yannet Lathrop, National Employment Law Project, *Impact of the Fight for \$15: \$68 Billion in Raises, 22 Million Workers* (Nov. 2018), <https://www.nelp.org/publication/impact-fight-for-15-2018/>.

<sup>8</sup> Complete list on file with author and current as of June 11, 2019.

Arizona	2006	Passed (Yes: 65.36%, No: 34.63%)
New Jersey	2013	Passed (Yes: 61.26%, No: 38.74%)
Alaska	2014	Passed (Yes: 69.35%, No: 30.65%)
Arkansas	2014	Passed (Yes: 65.94%, No: 34.06%)
Illinois	2014	Passed (Yes: 63.74%, No: 31.76%)
Nebraska	2014	Passed (Yes: 59.47%, No: 40.53%)
South Dakota	2014	Passed (Yes: 55.05%, No: 44.95%)
Arizona	2016	Passed (Yes: 58.33%, No: 41.67%)
Colorado	2016	Passed (Yes: 55.36%, No: 44.64%)
Maine	2016	Passed (Yes: 55.50%, No: 44.50%)
Washington	2016	Passed (Yes: 57.42%, No: 42.58%)
Missouri	2018	Passed (Yes: 62.34%, No: 37.66%)
Arkansas	2018	Passed (Yes: 68.46%, No: 31.54%)

**A. An Overwhelming Majority of the Public Across the Country Supports Robust Increases to the Minimum Wage, with Consistent Small Business Support, Making the Michigan Legislature’s Unconstitutional Amendments to 2018 PA 337 Radically Out of Step with the Mainstream**

The minimum wage is among the most popular public policies in the country, finding broad support both among voters and small businesses who stand to benefit. The Michigan Legislature’s opposition to reasonable, gradual minimum wage increases goes against one of the strongest nationwide economic trends in the past decade. According to a 2019 poll conducted by Hill-Harris, 55 percent of registered voters support increasing the federal minimum wage to

\$15.<sup>9</sup> Another recent poll, by Hart Research Associates, found that 65 percent of registered voters in swing districts supported the \$15 wage.<sup>10</sup> Small business owners around the country also support a higher minimum wage in significant numbers, and they have been crucial partners in local and statewide campaigns to raise the minimum wage, citing the effects a higher minimum wage can have on reducing turnover costs, improving customer service, increasing consumer spending, and leveling the playing field for businesses competing with large corporations who often have greater influence in state legislatures.

A nationwide 2015 poll of small business owners found that 60 percent supported raising the federal minimum wage to \$12 per hour by 2020 (MOFW's proposal would have the state reach \$12 in 2022) and then adjusting it annually to keep pace with the cost of living.<sup>11</sup> This poll of small business owners with one to 100 employees also found that as of 2015, only 11 percent of respondents paid their lowest-wage employee the minimum wage; 39 percent paid their lowest-wage employee between minimum wage and \$12 an hour; and half paid above \$12.<sup>12</sup> Small Business Majority, which commissioned the poll, observed: "As we have learned in prior polling, small businesses support increasing the minimum wage because it would immediately put more money in the pocket of low-wage workers who will then spend the money on things like housing, food, and gas. This boost in demand for goods and services will help stimulate the

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<sup>9</sup> Matthew Sheffield, "Poll: Majority of voters support \$15 minimum wage," *The Hill*, Jan. 24, 2019, <https://thehill.com/hilltv/what-americas-thinking/426780-poll-a-majority-of-voters-want-a-15-minimum-wage>.

<sup>10</sup> Christopher Ingraham, "Voters in battleground districts support \$15 minimum wage proposal, survey finds," *Washington Post*, Mar. 28, 2019, [https://www.washingtonpost.com/us-policy/2019/03/28/voters-battleground-districts-support-minimum-wage-proposal-survey-finds/?noredirect=on&utm\\_term=.b8603fbc1242](https://www.washingtonpost.com/us-policy/2019/03/28/voters-battleground-districts-support-minimum-wage-proposal-survey-finds/?noredirect=on&utm_term=.b8603fbc1242).

<sup>11</sup> Small Business Majority, *Small Businesses Support Raising the Minimum Wage to \$12* (July 29, 2015), <http://www.smallbusinessmajority.org/sites/default/files/research-reports/072915-National-Minimum-Wage-Poll.pdf>.

<sup>12</sup> *Id.* at 2–3.

economy and help create opportunities.”<sup>13</sup> Another revealing 2016 survey of 1,000 business executives across the country, conducted by the firm run by Republican pollster Frank Luntz, found that 80 percent of respondents supported raising their state's minimum wage. Only 8 percent opposed it. Twelve percent were neutral. The Council of State Chambers commissioned the survey.<sup>14</sup>

**B. Phasing out the Tipped Minimum Wage is a Commonsense Economic Measure with Proven Economic and Social Benefits that Would Have Helped Over Approximately 111,000 Michiganders**

MOFW’s proposal, among other changes, phased out the tipped minimum wage. 2018 PA 337. According to an estimate by the Economic Policy Institute, under the policy, 111,000 tipped workers across all 83 Michigan counties would have received raises in the amount of \$1.1 billion.<sup>15</sup> Far from a fringe policy, seven states already have no separate tipped minimum wage. These seven states (Minnesota, Montana, Nevada, Alaska, Washington State, Oregon and California) have phased their minimum wages for tipped workers up to the full minimum wage. In these seven states, workers are on average better off than in states with a separate subminimum wage for service workers. Women especially fare far better in states with no separate subminimum wage, experiencing 14 percent less poverty overall and 28 percent less

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<sup>13</sup> *Id.* at 1.

<sup>14</sup> The Council of State Chambers is a “small, non-political umbrella organization that coordinates messaging across the dozens of groups that make up its membership.” Lydia DePillis, “Leaked documents show strong business support for raising the minimum wage,” *The Washington Post*, Apr. 4, 2016, [https://www.washingtonpost.com/news/wonk/wp/2016/04/04/leaked-documents-show-strong-business-support-for-raising-the-minimum-wage/?utm\\_term=.acd9a7cc573c](https://www.washingtonpost.com/news/wonk/wp/2016/04/04/leaked-documents-show-strong-business-support-for-raising-the-minimum-wage/?utm_term=.acd9a7cc573c).

<sup>15</sup> Calculations and data on file with author.

poverty for women in tipped occupations.<sup>16</sup> For women of color, the gap is even more stark: in states without a tipped minimum wage, the poverty rate for Black women in tipped occupations is 35 percent lower. Meanwhile, the number of restaurants in the equal treatment states grew faster in one period that was tracked, 2011 to 2014.<sup>17</sup> Workers' experiences show that it is economically realistic for the restaurant industry and other employers to pay workers the full minimum wage, with any tips received as a supplement to, rather than a substitute for, payment of the basic minimum wage.

**C. Economic Research Demonstrates that Higher Minimum Wages Have Raised Wages for Workers Without Adverse Effects on Business**

The most rigorous research over the past twenty years—examining scores of state and local minimum wage increases across the U.S.—demonstrates that these increases have had the effect of raising workers' incomes *without* reducing employment. The substantial weight of evidence reflects a significant shift in the views of economists away from a former view that higher minimum wages cost significant numbers of jobs.

In 2010, the prestigious *Review of Economics and Statistics* published the most sophisticated of the new wave of minimum wage studies, “Minimum Wage Effects across State Borders,” by economists at the Universities of California, Massachusetts, and North Carolina.<sup>18</sup>

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<sup>16</sup> Morgan Harwood, Jasmine Tucker, Julie Vogtman, National Women's Law Center, *One Fair Wage: Women Fare Better in States with Equal Treatment for Tipped Workers* (May 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/05/Tipped-Worker-New-2019-v2.pdf>.

<sup>17</sup> Elise Gould & David Cooper, Economic Policy Institute: Working Economics Blog, *Seven facts about tipped workers and the tipped minimum wage* (May 31, 2018), <https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/>.

<sup>18</sup> 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.



That study carefully analyzed minimum wage impacts across state borders by 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 as the result of being located in states with different minimum wages.<sup>19</sup> Consistent with a long line of similar research, the study found no difference in job growth rates in the data from the 250 pairs of neighboring counties, and it found no evidence that higher minimum wages harmed states' competitiveness by pushing businesses across the state line.<sup>20</sup> This study's innovative approach of comparing neighboring counties on either side of a state line is generally recognized as especially effective at isolating the true impact of minimum wage differences, and the results can be analogized to counties within a state that have differing minimum wages due to a citywide ordinance in an urban area.

However, now it is not simply individual state-of-the-art studies, but the whole body of modern research on the minimum wage that indicates higher minimum wages have had little impact on employment levels. This is clearly demonstrated by several recent "meta-studies" surveying research. For example, a 2009 meta-study of sixty-four studies of the impact of minimum wage increases shows that the bulk of the studies find close to no impact on employment.<sup>21</sup> Another recent meta-study demonstrates similar results.<sup>22</sup> A study by University of California economists analyzed over three decades (1979 to 2014) of teen and restaurant

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* Similar, new research has also focused on teen workers. The research has found no evidence that minimum wage increases in the U.S. in recent years have had any adverse effect on teen employment. See Sylvia Allegretto et al., "Do Minimum Wages Reduce Teen Employment?," *Industrial Relations* at vol. 50, no. 2. (Apr. 2011).

<sup>21</sup> Hristos Doucouliagos & T.D. Stanley, "Publication Selection Bias in Minimum-Wage Research? A Meta-Regression Analysis," *British J. of Indus. Relations*, Vol. 47, Iss. 2, (May 2009).

<sup>22</sup> Paul Wolfson & Dale Belman, "What Does the Minimum Wage Do?," *Upjohn Inst. for Employ. Res.* (2014), [http://research.upjohn.org/up\\_press/227/](http://research.upjohn.org/up_press/227/).

employment data, comparing states with high average minimum wages and those with low average minimum wages (typically, equal to the federal minimum wage). The analysis did not find disemployment effects among restaurant workers—who comprise a large share of the low-wage workforce affected by a minimum wage policy—while the effect on teen employment was only a fraction of the already negligible impact claimed by minimum wage opponents.<sup>23</sup> Another 2017 study, which also examined nearly four decades of data (1979 to 2016), and used a different methodology comparing the number of jobs in various wage categories (rather than total employment) prior to and following a minimum wage increase (“bunching method”), also found that jobs were not adversely impacted. The researchers concluded that any observed “job losses” were, in fact, the disappearance of jobs paying at or below the old minimum wage, with an equivalent increase in jobs at or slightly above the new higher minimum wage.<sup>24</sup>

Research focusing on the impact of higher minimum wages on small businesses has similarly shown that higher minimum wages do not negatively impact job growth, but on the contrary, research shows faster job growth in higher-minimum-wage states. A 2006 report published by the Fiscal Policy Institute that examined state-by-state trends for small businesses employing fewer than fifty workers found that “employment and payrolls in small businesses grew faster in the states with minimum wages above the federal level.”<sup>25</sup> Studies of the New York and California \$15 minimum wages by University of California economists have examined

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<sup>23</sup> *Id.*

<sup>24</sup> Doruk Cengiz et al., “The Effect of Minimum Wages on the Total Number of Jobs: Evidence from the United States Using a Bunching Estimator,” *Society of Labor Economists* (Apr. 2017), <http://www.sole-jole.org/17722.pdf>. (Updated Dec. 2017 version can be accessed from the American Economic Association, <https://www.aeaweb.org/conference/2018/preliminary/1530>).

<sup>25</sup> Fiscal Policy Institute, *States with Minimum Wages above the Federal Level Have Had Faster Small Business and Retail Job Growth* (Mar. 2006) at 3, <http://www.fiscalpolicy.org/FPISmallBusinessMinWage.pdf>.

the net impact of all the positive and negative effects on businesses of a \$15 wage.<sup>26</sup> These studies found that unlike small wage increases, a \$15 minimum wage generates billions in new consumer spending that offsets much of the impact of the higher wage costs on businesses.<sup>27</sup>

In addition to extensive research outlined above, the actual experiences of cities and states that have raised the minimum wage show that such increases have been manageable. Predictions of job losses have not been borne out. For example, in September 2018, economists at the University of California, Berkeley released a study examining the impact of raising wages in Chicago; Washington, D.C.; Oakland; San Francisco; San Jose; and Seattle.<sup>28</sup> All six cities are implementing a \$15 minimum wage with the exception of Chicago, which adopted a \$13 minimum wage by 2019. The study focused on the food services industry as an indicator of the effect of wage increases on minimum wage workers. Instead of finding that increased wages hurt workers at the lower end of the economic ladder, the study found no significant negative effect on jobs and that a ten percent increase in the minimum wage boosted earnings in the food services industry from 1.3 percent to 2.5 percent.

An earlier study by University of California economists explored the impact of Seattle's higher minimum wage between 2015 and 2016, when the city's \$15 minimum wage ordinance began phasing-up. The study focused on the restaurant industry—the largest low-paying sector where any negative effects on jobs would first appear—and found that Seattle's minimum wage,

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<sup>26</sup> Michael Reich et al., UC Berkeley Labor Center, *The Effects of a \$15 Minimum Wage in New York State* (Mar. 2016), <http://laborcenter.berkeley.edu/the-effects-of-a-15-minimum-wage-in-new-york-state/>; Michael Reich et al., Institute for Research on Labor and Employment, *The Effects of a \$15 Minimum Wage in California and Fresno* (Jan. 2017), <https://tinyurl.com/j6f5ume>.

<sup>27</sup> *See id.*

<sup>28</sup> Sylvia A. Allegretto et al., Institute for Research on Labor and Employment, *The New Wave of Local Minimum Wage Policies: Evidence from Six Cities* (Sep. 6, 2018), <http://irle.berkeley.edu/the-new-wave-of-local-minimum-wage-policies-evidence-from-six-cities/>.

which ranged from \$10.50 to \$13.00 during the period analyzed, had raised pay for workers without evidence of a negative impact on jobs.<sup>29</sup> Another much-publicized Seattle study reached a conflicting conclusion, suggesting that the increase had cost jobs.<sup>30</sup> But the conflicting study has come under fire for its serious methodological errors. These problems include the fact that the study excluded 40 percent of the workforce from its analysis and failed to control for Seattle's booming economy, which was naturally reducing the number of low-paying jobs as employers raised pay independent of the minimum wage to compete for scarce workers.<sup>31</sup>

The economic benefits have also been clear, especially for small businesses. Economic evidence supports small business owners' concern with high employee turnover costs and the role that a higher minimum wage can play in reducing such costs and improving productivity. The turnover rate in the accommodation and food services industry was 72.5 percent in 2017 while the turnover rate in the leisure and hospitality industry was 73.8 percent, according to the U.S. Bureau of Labor Statistics.<sup>32</sup> The turnover rate for retail trade was 53 percent in 2017.<sup>33</sup> For home health aide workers, turnover rates are around 40 to 65 percent per year.<sup>34</sup> Experts report that it costs an employer "about one-fifth of a worker's annual salary to replace that worker

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<sup>29</sup> Michael Reich et al., University of California, Berkeley, Center on Wage and Employment Dynamics, *Seattle's Minimum Wage Experience 2015-16* (June 2017), <http://irle.berkeley.edu/files/2017/Seattles-Minimum-Wage-Experiences-2015-16.pdf>.

<sup>30</sup> Jardim et al., National Bureau of Economic Research, NBER Working Paper Series, *Minimum Wage Increases, Wages, and Low-wage Employment: Evidence from Seattle* (June 2017), <https://evans.uw.edu/sites/default/files/NBER%20Working%20Paper.pdf>.

<sup>31</sup> See Paul K. Sonn, National Employment Law Project, *Minimum Wage Hike Alarmists Are Wrong* (July 2017), <http://www.nelp.org/commentary/minimum-wage-hike-alarmists-are-wrong/>.

<sup>32</sup> U.S. Bureau of Labor Statistics, *Job Openings and Labor Turnover*, Table 16. Annual total separations rates by industry and region, not seasonally adjusted (Mar. 16, 2018), <https://www.bls.gov/news.release/jolts.t16.htm>.

<sup>33</sup> *Id.*

<sup>34</sup> Sarah Portlock, "Help Wanted (a Lot): Home-Health Aides: Fast-Growing Industry Experiences High Turnover Amid Low Pay and Demanding Duties," *Wall Street Journal*, Aug. 22, 2014, <http://www.wsj.com/articles/help-wanted-a-lot-home-health-aides-1408721457>.

regardless of the salary paid on the income spectrum.”<sup>35</sup> A report by the Center on Wage and Employment Dynamics explains that turnover costs include “both direct costs for administrative activities associated with departure, recruitment, selection, orientation, and training of workers, and the indirect costs associated with lost sales and lower productivity as new workers learn on the job.”<sup>36</sup> The authors noted research estimating “the average turnover cost for hotel front desk employees at \$5,864” and estimating “the replacement cost for an \$8 an hour non-union worker at \$4,199” in the supermarket industry.<sup>37</sup>

As summarized by *The Wall Street Journal*, “[a] large body of research . . . suggests that raising wages leads to lower employee turnover and better customer service, which generally correlate with higher sales and lower expenses,” and “[s]temming turnover, in particular, can save companies a lot of money.”<sup>38</sup> Looking at the homecare sector, a study examining the impact on workforce retention of nearly doubling the wages for homecare workers in San Francisco County over a 52-month period found that “the annual retention rate of new providers rose from

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<sup>35</sup> Washington Center for Equitable Growth, *Working by the hour: The economic consequences of unpredictable scheduling practices* (Sept. 2016) at 8, <http://equitablegrowth.org/research-analysis/working-by-the-hour-the-economic-consequences-of-unpredictable-scheduling-practices/>; Heather Boushey & Sarah Jane Glynn, Center for American Progress, *There Are Significant Business Costs in Replacing Employees* (Nov. 16, 2012), <https://www.americanprogress.org/issues/economy/reports/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/>.

<sup>36</sup> Michael Reich et al., Center on Wage and Employment Dynamics, *The Effects of a \$15 Minimum Wage in New York State* (Mar. 2016) at 24, <http://irle.berkeley.edu/files/2016/The-Effects-of-a-15-Minimum-Wage-in-New-York-State.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> Lauren Weber, “One Reason Wal-Mart Is Raising Pay: Turnover,” *The Wall Street Journal*, Feb. 19, 2015, <http://blogs.wsj.com/atwork/2015/02/19/one-reason-wal-mart-is-raising-pay-turnover/>; see also Michael Reich et al., Institute of Industrial Relations, University of California, Berkeley, *Living Wage Policies at San Francisco Airport: Impacts on Worker and Businesses* (Nov. 2003), <http://irle.berkeley.edu/files/2003/Living-Wage-Policies-at-San-Francisco-Airport.pdf>; Amanda Gallear, UC Berkeley Labor Center, *The Impact of Wages and Turnover on Security and Safety in Airports: A Review of the Literature* (Oct. 18, 2017), <http://laborcenter.berkeley.edu/the-impact-of-wages-and-turnover-on-security-and-safety-in-airports/>.

39 percent to 74 percent following significant wage and benefit increases and that a \$1 increase in the wage rate from \$8 an hour . . . would increase retention by 17 percentage points.”<sup>39</sup>

Research also shows that higher wages are associated with greater employee productivity and performance. As a 2015 Peterson Institute for International Economics report explained, “[e]conomists have long argued that increases in worker pay can lead to improvements in productivity—indeed, that it can actually be profitable to pay workers higher wages.”<sup>40</sup> The authors highlighted voluminous evidence in the economic literature finding that, among other things: higher wages “motivate employees to work harder;” higher wages “attract more capable and productive workers;” higher wages “enhance quality and customer service;” and higher wages “reduce disciplinary problems and absenteeism.”<sup>41</sup> The authors further observed that “[a]ll of these positive effects may interact to yield even larger aggregate effects, as the productivity of one worker often raises the productivity of their coworkers.”<sup>42</sup>

## CONCLUSION

For the foregoing reasons, Amicus Curiae respectfully request that this Court advise that 2018 PA 368 and 2018 PA 369 violate the Michigan Constitution Article 2, § 9.

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<sup>39</sup> Candace Howes, “Living Wages and Retention of Homecare Workers in San Francisco,” *Industrial Relations: A Journal of Economy and Society* (2005), 44: 139–163.

<sup>40</sup> Justin Wolfers & Jan Zilinsky, PIIE Briefing 15-2, Higher Wages for Low-Income Workers Lead to Higher Productivity (2015) at 6, <https://piie.com/publications/briefings/piieb15-2.pdf>.

<sup>41</sup> *Id.* at 6–7.

<sup>42</sup> *Id.* at 7.

Respectfully submitted,

Dated: June 19, 2019

/s/ Sarah Prescott  
Sarah Prescott (P70510)  
SALVATORE, PRESCOTT &  
PORTER, PLLC  
Attorney for National Employment Law  
Project  
105 E. Main Street  
Northville, MI 48167  
Tel. (248) 679-8711  
Fax (248) 773-7280  
prescott@spplawyers.com

**CERTIFICATE OF SERVICE**

I hereby certify that on June 19, 2019, I electronically filed the foregoing document with the Clerk of the Court using this Court's electronic filing system, which will send notification of such filing to all counsel of record.

Dated: June 19, 2019

/s/ Tara L. Lank  
Tara L. Lank, Legal Secretary