

## MEMO

To: Interested Parties  
From: National Employment Law Project  
Date: June 24, 2016  
Re: Legal Authority of Minneapolis Voters to Adopt a Local Minimum Wage Law  
Through a Charter Amendment

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### **Introduction and Summary**

Across the United States, growing numbers of U.S. cities are adopting local minimum wages higher than the statewide minimum wage. This memo examines whether the City of Minneapolis has the legal authority to enact through a charter amendment submitted to voters a local minimum wage higher than the Minnesota state minimum wage for work performed for private employers within the city. Our research concludes that there is a strong case that municipalities like Minneapolis in Minnesota have that power and that the Minnesota Supreme Court would have a good basis for upholding a Minneapolis minimum wage if one were adopted and subsequently challenged in court. Moreover, the trend nationally has been to recognize that cities have the authority to adopt a local minimum wage unless the state legislature has stepped in to expressly prohibit such a law—something the Minnesota legislature has not done.

The key points supporting this conclusion—detailed below—are as follows:

- The Minnesota Constitution grants residents in charter cities like Minneapolis the right to amend their city charter by a petition submitted to voters, and state law requires the charter commission in Minneapolis to allow voters to propose an amendment to the city's charter through a voter petition.
- Neither state law nor the Minneapolis charter or code limit the type of charter amendments that voters may enact by petition in a way that would preclude a charter amendment establishing a local minimum wage.
- The City of Minneapolis's general welfare powers have been interpreted broadly to give the city the authority to regulate businesses and protect workers within the municipality.
- Minneapolis's general welfare power encompasses the power to enact private sector employment standards regulation, such as adoption of a local minimum wage, because such general welfare powers include the ability to regulate businesses to protect the public health, morals, safety, or comfort of the city's citizens.
- Minnesota state law has neither explicitly nor impliedly "preempted" localities from adopting higher city minimum wages. Unlike legislatures in some states, the Minnesota legislature has not expressly banned local wages. And under the standards set out by the

Minnesota Supreme Court for when state laws will be interpreted as implicitly preempting local authority, the Minnesota minimum wage law does not indicate an implicit intent to preempt. A higher local minimum wage merely supplements the state floor, something that courts have indicated does not conflict with state law so as to present a preemption concern. Moreover, the fact that the costs of living and housing in Minneapolis are higher than elsewhere in the state provides a serious local concern justifying a different and higher local minimum wage.

- Other states have followed this same approach in determining the permissibility of higher local minimum wages: they have, in most cases, rejected claims that an implied intent to preempt should be read into the state minimum wage law, and instead have permitted higher local minimum wages unless the legislature has acted to expressly forbid them.

## **Discussion and Analysis**

### **I. Minneapolis Voters Have a Right to Amend the Minneapolis Charter Through a Petition Submitted to Voters**

The Minnesota Constitution grants voters in charter cities like Minneapolis the right to amend their city charter by a petition submitted to voters. Minn. Const. art. XII, § 5 (“Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law.”). Pursuant to state law, the charter commission in Minneapolis must allow voters to propose an amendment to the city’s charter through a petition of voters equal to five percent of the total votes cast at the last previous state general election in the city. Minn. Stat. § 410.12.

Neither the Minneapolis charter nor the city’s Code of Ordinances addresses charter amendments, including whether or how Minneapolis voters may amend the city’s charter through a petition submitted to voters. However, the charter makes clear that the city’s powers are not limited to those expressed in the charter. Minn. Charter § 1.4(d) (“This charter’s mention of certain powers does not limit the City’s powers to those mentioned.”). Thus, Minneapolis voters retain the right to amend the city’s charter by petition as expressly granted to them in the state’s constitution and state laws.<sup>1</sup>

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<sup>1</sup> To the extent that *Haumant v. Griffin*, 699 N.W.2d 774, 781 (Minn. Ct. App. 2005), held that Minneapolis residents were not permitted to “directly implement legislation by petition” because the City of Minneapolis did not include initiative powers in its home rule charter, that holding is arguably inapplicable today. The City of Minneapolis amended its charter in 2013 to simplify, clarify, remove inconsistencies, and organize the charter in a logical way. Minneapolis Charter Commission, Proposed Minneapolis Charter Amendments November 2013 Frequently Asked Questions, *available at* <http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcms1p-115129.pdf>. The new charter, which became effective January 1, 2015, included new language clarifying that the charter’s mention of certain powers “does not limit the City’s powers to those mentioned.” Minn. Charter § 1.4(d); *see also* Minneapolis Charter Commission Charter Revision Committee, Side-by-Side Comparison: Successor Provisions to Source Provisions (May 2013), *available at* <http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcms1p-111175.pdf> (showing that the language now included in Section 1.4(d) of the charter was new language not previously included in the Minneapolis charter).

Reflecting the clear right to propose charter amendments in Minneapolis by citizen petition, the city's Charter Commission website includes step-by-step instructions on how to place a charter amendment on the 2016 ballot.<sup>2</sup> Indeed, in the most recent 2014 election in the city, citizens proposed a charter amendment to the charter's regulation of liquor sales that voters overwhelmingly approved.<sup>3</sup>

## **II. Voters May Enact a Local Minimum Wage in Minneapolis through a Charter Amendment by Petition**

### **a. The Enactment of a Local Minimum Wage is a Proper Subject for a Charter Amendment by Petition**

Neither state law nor the Minneapolis charter or code limit the type of charter amendments that voters may enact by petition in a way that would preclude a charter amendment establishing a local minimum wage. Section 410.07 of the state law provides that, subject to the limitations in Chapter 410 of the Minnesota statutes, a city charter may, in relevant part, provide for the regulation of "*all local municipal functions* as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896."<sup>4</sup> Minn. Stat. § 410.07 (emphasis added).

When referring to Section 410.07, courts have further clarified that when it comes to "matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld." *Dean v. City of Winona*, 843 N.W.2d 249, 256 (Minn. Ct. App. 2014), *review granted* (May 20, 2014), *appeal dismissed*, 868 N.W.2d 1 (Minn. 2015) (citation omitted). For the reasons articulated below, enactment of a local minimum wage clearly constitutes a matter of municipal concern within Minneapolis's home rule powers and is not prohibited by state law. No case interpreting Section 410.07 appears to have limited or narrowed the permissible scope of a charter amendment. Thus,

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<sup>2</sup> Minneapolismn.gov, Charter Commission, Recommended steps & timeline for placing a Charter amendment question on the ballot by citizen petition in 2016, <http://www.minneapolismn.gov/charter/WCMS1P-151108> (last viewed June 10, 2016).

<sup>3</sup> Hannah Sayle, "Minneapolis Voters Overwhelmingly Pass Repeal of 70/30 Rule," Nov. 5, 2014, *CityPages*, available at <http://www.citypages.com/restaurants/minneapolis-voters-overwhelmingly-pass-repeal-of-70-30-rule-6604245>.

<sup>4</sup> Section 410.07 states, in relevant part:

As soon as practicable after such appointment, the charter commission shall deliver to the clerk of the city either (1) its report determining that a home rule charter for the city is not necessary or desirable, or (2) the draft of a proposed charter, in either case signed by at least a majority of its members. Such draft shall fix the corporate name and the boundaries of the proposed city, and provide for a mayor, and for a council to be elected by the people. Subject to the limitations in this chapter provided, it may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions, as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896.

Minn. Stat. § 410.07.

Section 410.07 should be construed to grant Minneapolis residents a right to propose a charter amendment via voter petition to adopt a local minimum wage.

Section 410.12 of the state law discusses specific requirements for charter amendments, including those proposed by a petition of voters. Minn. Stat. § 410.12. Nothing in this section, nor in the case law interpreting this section, appears to limit or narrow what topics are appropriate for a charter amendment.

The only state statute that discusses a particular subject that a charter amendment may address, Section 410.121, implies that charter amendments may address any specific local issues. Section 410.121 states that “[i]f the charter which is to be amended or replaced contains provisions which prohibit the sale of intoxicating liquor or wine in certain areas, such provisions shall not be amended or removed unless 55 percent of the votes cast on the proposition shall be in favor thereof.” Minn. Stat. § 410.121. If a charter amendment can regulate a highly specific activity like liquor and wine sales through the regulation of local businesses, a charter amendment can surely address an issue like the minimum wage. The Minneapolis charter currently includes a number of provisions regulating the sale of liquor, requiring, for example, that only businesses operating in an area zoned for commercial or industrial use may sell liquor and requiring the city council to establish standards for restaurants holding a liquor license in areas smaller than seven acres. Minn. Charter § 4.1(f). In addition, the fact that the legislature enacted special restrictions only for charter amendments addressing the sale of liquor or wine signals that the legislature did not intend to impose limits on other types of charter amendments. Minnesota courts apply the “canon of statutory construction ‘expressio unius est exclusio alterius’—the expression of one thing is the exclusion of another.” *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 718 (Minn. 2014).

Among cases concerning Article XII, Section 5 of the Minnesota Constitution, only one appears to have limited the proper subject or scope of a charter amendment outside the context of constitutional or state law limitations that would apply to any local law.<sup>5</sup> In *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531 (Minn. 1972), the Minnesota Supreme Court interpreted Section 410.20 of the state law to prohibit a charter amendment that sought to give Minneapolis residents broad referendum powers over city government actions beyond ordinances (e.g. the settlement of lawsuits; appointment of city officials; granting of licenses and permits). Section 410.20 outlines local recall and referendum powers, and the court held that the legislature intended to limit referendums to ordinances. *Hous. & Redevelopment Auth. of Minneapolis*, 198 N.W.2d at 537. A charter amendment enacting a local minimum wage that does not affect voters’ referendum powers would not trigger any limitations resulting from the *Housing and Redevelopment Authority of Minneapolis* decision.

Nor does the decision in the “Park Board case” that some have cited, *Fraser, et al. v. City of Minneapolis, et al.* (Fourth Judicial District, No. 27-CV-09-21704) (Sept. 10, 2009) (unpublished), suggest a different conclusion. *Fraser* held that Minneapolis was not required to place a charter amendment before voters that would make the city’s Park Board a separate and independent governmental unit. The court found that the city did not have the “authority to create a State governmental unit or authority to grant powers of the State to the Board of Park and Recreation.”

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<sup>5</sup> See, e.g., *Minneapolis Term Limits Coal. v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995) (finding that an amendment to the Minneapolis city charter limiting the terms of elected officials would violate Article VII, Section 6 of the Minnesota Constitution).

*Id.* at 18. It also held that the charter amendment was “manifestly unconstitutional” because it was contrary to state law and the state had preempted the field when it came to the authority to create state units of government. *Id.*

A minimum wage charter amendment would not involve the type of conflict with state law found in *Fraser*—an attempt to create a separate independent governmental unit. The proposed amendment would be enforced by the city and contains no reference to any independent governmental unit. *Fraser* does not limit the type of subject that a Minneapolis charter amendment may address beyond the requirement that the subject of a charter amendment fall within a city’s powers and not otherwise violate state law. As detailed below, a charter amendment seeking to enact a local minimum wage in Minneapolis fits within the city’s home rule powers, does not conflict with state law, and is not preempted by state law.

Finally, it is worth noting that the Minneapolis Charter Commission’s website provides detailed instructions on how to place a charter amendment question on the ballot, but it at no point specifies any limits on the type of subjects that a charter amendment can address.<sup>6</sup>

b. The City of Minneapolis’s Home Rule Authority Properly Encompasses the Adoption of Local Minimum Wage Laws

In Minnesota, a municipality has no inherent power to enact an ordinance—all such power comes from being either a statutory city under state law, Minn. Stat. Chap. 412, or having been established under a home rule charter enacted under the Minnesota State Constitution Art. XII, Sec. 4. The City of Minneapolis is a home rule charter city, and as such, generally has all of the powers possessed by the state legislature, excluding powers that are expressly or impliedly withheld. Minn. Const. art. 4. The powers of home rule cities are liberally construed. *Tousley v. Leach*, 230 N.W. 788 (Minn. 1930).

The city’s charter includes a broad grant of powers. It states under a “powers plenary” provision that “the City . . . may exercise any power that a municipal corporation can lawfully exercise at common law.” Minn. Charter § 1.4(a). It states, too, as discussed above, that the “charter’s mention of certain powers does not limit the City’s powers to those mentioned.” Minn. Charter § 1.4(d). Courts have interpreted such broad grants of power as “tantamount to that granted under a general welfare clause.” *See N. Pac. Ry. Co. v. Weinberg*, 53 F. Supp. 133, 136 (D. Minn. 1943); *State v. City of Duluth*, 134 Minn. 355, 360, 159 N.W. 792, 794 (1916). Cities that have a “general welfare” clause have broad discretion to regulate various areas, and “[w]hether an ordinance is for the general welfare generally cannot be negated by a court unless it is clearly wrong; that is, [a city’s] estimate of the general welfare should be followed unless it is plainly erroneous.” *Northern Pacific Ry. Co. v. Weinberg*, 53 F. Supp. 133, 136 (D. Minn. 1943). This general welfare power is not static. It changes to meet changing conditions. *City of Duluth v. Cerveney*, 16 N.W.2d 779, 783 (Minn. 1944).

Under this general welfare power, municipalities have traditionally regulated businesses operating within their boundaries and protected workers working within their boundaries. The regulation of businesses falls squarely within a city’s general welfare powers. Generally speaking, a city, under its authorized police power, may regulate any business, “the unrestrained pursuit of

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<sup>6</sup> *See* [Minneapolisismn.gov](http://www.minneapolisismn.gov), Minneapolis Charter Commission, <http://www.minneapolisismn.gov/charter/index.htm> (last viewed June 11, 2016).

which might affect injuriously the public health, morals, safety, or comfort.” *City of Saint Paul v. Kessler*, 178 N.W. 171, 173 (Minn. 1920) (citation and internal quotations omitted). Here, the intent of a local minimum wage law—to protect against the adverse social, public health and economic consequences of businesses paying low wages—would clearly fall within this power.

Additionally, courts have held that the general welfare clause also extends to local laws passed for the benefit of workers. In *City of St. Paul v. Fielding & Shepley*, the court upheld a City of St. Paul ordinance providing for an eight-hour workday for city-contracted workers, reasoning that the enactment of the ordinance was within the city’s power “to promote the general welfare, education, comfort and well-being of the city and its inhabitants.” 194 N.W. at 19 (Minn. 1923) (internal quotations omitted). And in *Power v. Nordstrom*, the court upheld a Sunday closing ordinance, explaining that “Sunday laws are generally sustained on the theory that there should be one day of rest in each week to promote the moral and physical well-being of society, and hence the enactment of such laws falls within the scope of the police power of the state.” 184 N.W. 967, 968–69 (Minn. 1921).

c. A Minneapolis Minimum Wage Law Would Not be Prohibited by State Law

Notwithstanding a city’s broad power to legislate in regard to municipal affairs, state law may limit the power of a city to act. First, state law may expressly state that it is limiting a municipality’s ability to regulate in a certain area—in the case of local minimum wages, by expressly prohibiting localities from adopting higher local minimum wages. Second, a city cannot enact a local regulation that conflicts with state law. And third, state law may “fully occupy a particular field of legislation so that there is no room for local regulation.” *Mangold Midwest Co. v. Village of Richfield*, 143 N.W. 2d 813 (Minn. 1966) (citation and internal quotations omitted).

i. *There is No Express Preemption of Localities’ Ability to Adopt a Higher Minimum Wage*

There is no dispute that Minnesota law does not expressly prohibit localities from adopting higher local minimum wages. As discussed below, the Minnesota Supreme Court has been reluctant to find preemption absent such clear intent. And other states considering the permissibility of city minimum wages have generally deferred to clear statements of legislative intent and allowed such measures except where legislatures have expressly prohibited them.

ii. *A Local Minimum Wage Would Not Conflict with State Law*

As Minnesota courts have explained, “[i]t is elementary that an ordinance must not be repugnant to, but in harmony with, the laws enacted by the Legislature . . . . It cannot authorize what a statute forbids or forbid what a statute expressly permits, *but it may supplement a statute* or cover an authorized field of local legislation unoccupied by general legislation.” *Mangold*, 143 N.W. 2d at 816–17 (citation and internal quotations omitted) (emphasis added). Here, a local minimum wage would be in complete harmony with the state minimum wage law. It would not authorize what the state law currently forbids (payment of wages of less than \$9 an hour). It would not forbid what the state law expressly permits (since the state minimum wage law does not expressly state that employers have the right to pay the current state minimum wage and no more than that wage—it simply forbids them from paying less). It would merely supplement existing state law by providing greater protections for workers in Minneapolis. Minnesota’s minimum wage is simply what it says it is—a minimum. It in no way suggests that local governments cannot require more.

Specifically, in determining whether a city ordinance conflicts with state law, Minnesota courts have explained that a local ordinance that is “merely additional or complementary to or in aid and furtherance” of a state law, does not conflict with that state law. *Mangold*, 143 N.W.2d at 817. Here, a local minimum wage law would merely complement existing state minimum wage protections by adding a higher wage floor for workers in Minneapolis. Courts have specifically held that an ordinance does not conflict with a state statute if its requirements exceed those of the state law, so long as it does not contradict the public policy of that state law. For example, a state statute regulating the sale of cigarettes and forbidding the sale of cigarettes to minors did not conflict with a local ordinance imposing additional licensing requirements on persons, companies, and corporations who sell cigarettes. *State v. The Crabtree Co.*, 15 N.W.2d 98 (Minn. 1944). A state statute regulating the licensing of liquor stores did not conflict with a local ordinance that banned the sale of liquor completely. *State v. City of Duluth*, 159 N.W. 792 (Minn. 1916). And in a case involving labor protections, a city fund for injured firemen was not preempted by a state law establishing a workers’ compensation system. *Markley v. City of St. Paul*, 172 N.W. 215 (Minn. 1919). In this case, the court reasoned that the public policy behind the workers’ compensation system—that the community should bear some of the cost of workplace injured—was not contradicted by additional payments to firefighters. *Id.*

The stated purpose of Minnesota’s minimum wage law is “(1) to establish minimum wage and overtime compensation standards that maintain workers’ health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards that maintain workers’ health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not; and (3) to sustain purchasing power and increase employment opportunities.” Minn. Stat. § 177.22. A local minimum wage law is fully harmonious with—and indeed furthers—the stated purpose of the state minimum wage law.

*iii. Minnesota’s Minimum Wage Law Does No Preempt Local Minimum Wage Regulation by “Occupying the Field”*

In determining whether state law has occupied the field, Minnesota courts consider four factors: (1) the subject matter regulated; (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern; (3) whether the legislature in partially regulating the subject matter has indicated that it is a matter solely of state concern; and (4) whether the nature of the subject matter is such that local regulation will have an adverse effect on the general population. *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1 (Minn. 2008) (citing *Mangold*, 143 N.W.2d at 820).

Courts’ discussion of these factors is often overlapping, but the analysis generally turns on whether—even where the locality is regulating the same subject matter as the state—the state legislature has made it sufficiently clear, either through its words or through such comprehensive regulation, that it intends to occupy the field, and whether such local regulation negatively impacts the general populace.

In *Mangold*, the court considered whether a local Sunday closing law was preempted by a state law on the same subject. After reviewing prior court decisions, the court found the local law valid, reasoning:

“[I]t would appear that this area of Sunday closing is not one which has been impliedly declared by the legislature to be solely of state concern. This is not

the type of legislative enactment which purports to completely dictate the specific regulation of an area as [the traffic provisions in *State v. Hoben*] do. Instead, this is a rather complete policy statement by the legislature which the local municipality should be able to shape to its own needs by supplementary ordinances.” *Mangold*, 143 N.W.2d at 821.

Similarly, in *State ex rel. Sheahan v. Mulally*, 99 N.W.2d 892 (Minn. 1959), the court found that a municipality was not foreclosed from regulating disorderly conduct where there was a state statute on the subject, because “[t]he legislature had not acted comprehensively on the subject; nor had it expressly indicated that it was a matter of state concern; nor were there adverse effects of local regulation which outweighed the historical regulation of this area by local governments.” *Mangold*, 143 N.W.2d at 820.

Here, there is nothing in Minnesota’s minimum wage law to suggest that low wages are solely of state concern, nor has the legislature suggested that it completely dictates the regulation of minimum wages. Nor would a local minimum wage have unreasonably adverse effects on the general populace (in fact, the increased consumer spending that would be generated by a higher city minimum wage may, in fact, benefit the economy statewide). Similar to the Sunday closing law considered in *Mangold*, it can be argued that the state’s minimum wage law is a “complete policy statement by the legislature which the local municipality should be able to shape to its own needs by supplementary ordinances.” *Id.* at 821.

Additionally, courts look favorably upon local regulation where it addresses an issue that is of particular concern for that community. In a case concerning a local anti-prostitution ordinance where the state had an extensive statute on prostitution, the court explained that “[p]rostitution is one of the vices which historically has been of peculiar concern to our large cities,” upholding the city’s ability to regulate in that area along with the state. *State v. Dailey*, 169 N.W.2d 746, 747 (Minn. 1969). In Minneapolis, one can argue that while poverty and low wages are certainly issues of statewide concern, they are of particular concern for workers living and working in an urban area like Minneapolis, which has higher costs of living and housing than in other areas of the state.

*iv. Where the State Legislature Intends to Preempt Local Regulation, It Clearly Articulates This Intent*

Courts have put a strong burden on the legislature to demonstrate its preemptive intent, highlighting judicial reluctance to find implied preemption and a preference for explicit preemption. As the court explained in *Dailey* in considering whether a state law regulating prostitution preempted a municipal ordinance on the same subject:

“It is imperative, if we are to give faithful effect to legislative intent, that the legislature should manifest its preemptive intent in the clearest terms. We can be spared the sometimes elusive search for such intent if it is declared by express terms in the statute. And where that is not done in the enactments of future legislatures, we shall be increasingly constrained to hold that statutes and ordinances on the same subject are intended to be coexistent.” *Id.* at 748.

Indeed, the Legislature clearly knows how to articulate its preemptive intent when it wishes to preempt. For example, in *City of Morris v. Sax Investments*, the City of Morris enacted a local



ordinance providing for habitability standards for rental housing in the city. 749 N.W.2d 1 (Minn. 2008). The State Building Code expressly addressed municipal regulation of residential structures, providing that “the State Building Code applies statewide and supersedes the building code of any municipality,” and that “[a] municipality must not by ordinance or through development agreement require building code provisions regulating components or systems of any residential structure that are different from any provision of the State Building Code.” *Id.* at 7 (citing Minn. Stat. § 16B.62 subd. 1). The court found that this express prohibition preempted the local law, because “the relevant language of the State Building Code expresses the legislature’s specific intent to supersede municipal building codes.” *Id.*

In *State v. Hoben*, 98 N.W.2d 813 (Minn. 1959), which involved the violation of a local traffic ordinance, the court recognized that although the legislature had allowed municipalities to regulate traffic, it had specifically provided for statewide uniformity in enforcement and regulation of traffic laws—clearly showing legislative intent to preempt this field but for the limited local regulation the state statute expressly permitted. Similarly, a more recent appeals court decision invalidated a local traffic ordinance providing for automated photo-enforcement of traffic signals on the grounds that it violated the state traffic law’s uniformity requirement. *State v. Kuhlman*, 722 N.W.2d 1 (Minn. App. 2006).

No such preemptive intent has been articulated by the legislature in its state minimum wage laws, indicating that the legislature has not impliedly preempted cities like Minneapolis from enacting a higher local minimum wage.

*v. Nationally, where State Legislatures Have Not Expressly Preempted Higher Local Minimum Wages, Courts Have Been Reluctant to Construe State Minimum Wage Laws as Impliedly Preempting Local Minimum Wages*

In the majority of states, the question of city power to raise the minimum wage is determined by the state legislature expressly. Some state minimum wage laws, like those in California, Washington and Arizona, expressly state that localities can adopt higher local wages. Other states—particularly “red” states—have passed laws expressly prohibiting such local action. But in many states—like Minnesota—the legislature has not expressly spoken on the city’s power to adopt higher local wages.

Of these states, only a few have considered whether state minimum wage laws indicate an implied intent by the legislature to preempt higher local minimum wages. In three of those states—Wisconsin, New Mexico, and Maryland—after cities enacted citywide minimum wages, the courts rejected arguments of implied preemption under the state minimum wage law. See *New Mexicans for Free Enterprise v. City of Santa Fe*, 126 P.3d 1149, 1159–60 (N. Mex. Ct. App. 2005); *City Council of Baltimore v. Sitnick*, 255 A. 2d 376 (Md. 1969); *Main Street Coalition for Economic Growth v. City of Madison* (trial court opinion from 2005). While the Wisconsin ruling was later rendered moot when the legislature passed an express preemption law, it still indicates that courts have been reluctant to construe state minimum wage laws as impliedly preempting city power to enact higher minimum wages.

In one state, New York, a court did the reverse and found implied preemption under a state minimum wage law. In *Wholesale Laundry Board of Trade v. City of New York*, 12 N.Y.2d 998 (1963), *aff’g*, 17 A.D.2d 327 (1962), the New York Court of Appeals interpreted state law, including the state’s minimum wage law, as evidencing an intent by the legislature to preempt higher local

minimum wages. However, that 50-year-old ruling rested in large part on features of New York law that do not exist in Minnesota—namely, a provision in New York’s home rule law forbidding localities from adopting local laws that “appl[y] to or affect[] any provision of the [state] labor law,” *Wholesale Laundry Bd. of Trade, Inc. v. City of New York*, 234 N.Y.S.2d 862 (1962), *aff’d*, 12 N.Y.2d 998 (1963), and the fact that the state minimum wage law itself incorporated a procedure whereby higher local minimum wages could be adopted by the state Labor Commissioner.

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