

Florida Voters Support Local Minimum Wages and Believe the Florida Constitution Gives Cities the Power to Raise Wages

The Florida Supreme Court is considering hearing a case that would determine whether cities in Florida can raise the minimum wage above the state's level of \$8.25. New polling reveals that more than two out of three Florida voters believe that Florida cities should be allowed to raise the minimum wage beyond the state's \$8.25 level. In addition, by a two-to-one margin, Florida voters think that the Florida Constitution gives cities the power to enact higher local minimum wage laws.

The Florida Supreme Court Stands to Determine Whether Cities in Florida Can Raise the Minimum Wage above the State's Level of \$8.25

In 2016, the City of Miami Beach enacted the first local minimum wage law in Florida.¹ Miami Beach has one of the highest costs of living in the state, and the city's commissioners listened when residents demanded a higher minimum wage. The city planned to gradually increase the minimum wage for local employees until it reached \$13.31 in 2021.²

Before Miami Beach's minimum wage law could go into effect, groups like the Florida Retail Federation brought a lawsuit claiming that the ordinance conflicted with a 2003 state law that barred cities from enacting a local minimum wage.³ That law was passed to undercut the growing popularity of local laws seeking to raise wages in Florida.

However, shortly after the legislature passed the law blocking cities from raising the minimum wage, voters gathered signatures and placed on the state's 2004 election ballot a constitutional amendment that raised the minimum wage state-wide.⁴ The constitutional amendment, which was approved by more than 70 percent of Florida voters,⁵ also made clear that it did not limit the authority of cities in Florida to raise the minimum wage higher than the state-wide level.⁶

The City of Miami Beach argues that this voter-approved language effectively overrode the 2003 law blocking cities from raising the minimum wage and, instead, enshrined the right to enact higher local minimum wage laws in the Florida Constitution.

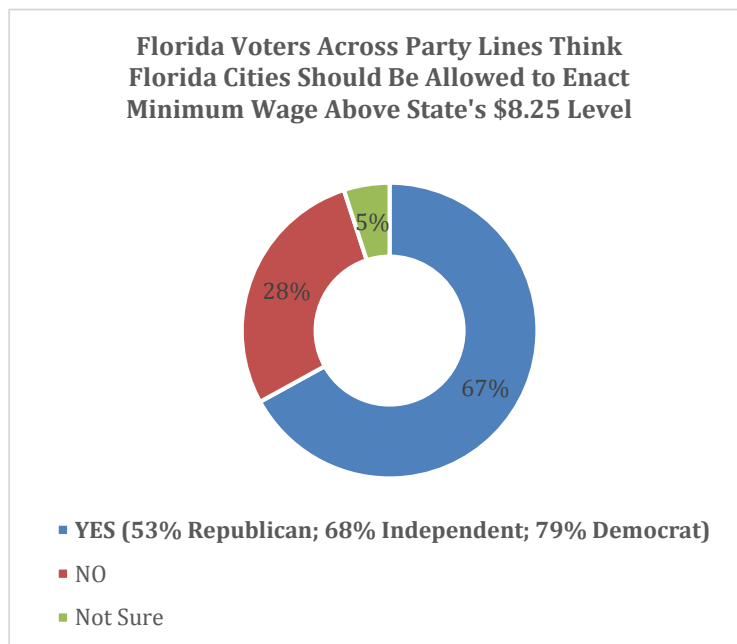
The Florida Supreme Court is now deciding whether to review the Miami Beach case. Two lower courts have found that Miami Beach does not have the right to enact its own minimum wage.⁷ They did not read the 2004 constitutional amendment establishing the Florida minimum wage as protecting cities' local power when it comes to wages. The courts relied on a narrow reading and argued that the 2004 constitutional amendment had to have *expressly* taken away the legislature's power to prohibit local minimum wage laws in Florida in order to repeal the legislature's ban and empower cities to enact local minimum wages higher than the state's minimum wage.⁸

A new poll of Florida voters tests how a typical voter would understand the language in the 2004 amendment that spoke about local bodies, such as cities, adopting higher minimum wages. The new poll shows that the lower courts' reading of the 2004 constitutional amendment does not match what voters likely understood they were voting for when they approved Florida's minimum wage amendment.

More than 2 out of 3 Florida Voters Believe that Florida Cities Should Be Allowed to Raise the Minimum Wage above the State's \$8.25 Level

The new poll fielded by Public Policy Polling this month asked Florida voters whether they think that Florida cities should be allowed to raise the minimum wage higher than the state's \$8.25 level. The vast majority of voters, 67 percent, report that they think Florida cities should be allowed to raise the minimum wage higher than the state's \$8.25 level. Just over a quarter, 28 percent, disagreed, and 5 percent reported they were "Not sure."

The strong support in the poll for allowing cities to enact their own higher local minimum wage laws crossed party lines: Republican voters back higher local minimum wages by a 53-to-37 percent margin, Independent voters back them by an overwhelming 68-to-29 percent margin, and Democratic voters do so by an even larger 79-to-18 percent margin.



The Florida legislature's actions do not align with voters' strong support of local power when it comes to the minimum wage. In 2003, the state legislature expressly prohibited cities and counties in Florida from adopting local minimum wage laws higher than the federal minimum wage.⁹ After Florida's voters adopted the 2004 constitutional amendment establishing the state's first minimum wage, Florida legislators amended the 2003 minimum wage preemption law to also expressly prohibit local minimum wage laws that exceeded the state minimum wage rate.¹⁰

The Florida legislature is not alone in having passed legislation to block cities and counties from adopting local minimum wages higher than federal or state levels. As more cities and counties across the country use their local powers to adopt higher local minimum wage laws, the number of state legislatures taking away local control over the minimum wage has dramatically increased.¹¹

To date, more than 40 cities and counties in a wide range of states like California, New Mexico, and Arizona have adopted local minimum wage laws.¹² Local power to raise the minimum wage allows higher-cost-of-living communities to adopt a minimum wage level that better matches their higher housing and living costs. In addition, local power to raise wages helps cities and counties respond to residents' needs and demands when political gridlock and corporate interests keep state legislatures from taking action to raise the state minimum wage.

Twenty-five states, including Florida, have passed laws that prohibit cities from passing their own local minimum wage laws. Most of these preemption laws have been passed in recent years in response to a marked increase in the number of localities that have adopted local minimum wage laws.¹³ In 2017, for example, Missouri legislators took away the power of cities and counties in Missouri to enact higher local minimum wage laws after the City of St. Louis adopted the state's first local minimum wage law (even after the Missouri Supreme Court upheld the law as a valid exercise of that city's powers).¹⁴

While legislators often claim that they are concerned about creating a "patchwork" of local laws when revoking local control over a particular issue, businesses have long adapted to varying local rules on a wide range of topics, from traffic laws to environmental regulations to civil rights and consumer protections.¹⁵ The rapid increase in the number of minimum wage preemption laws across the country has followed corporate lobbyists' increased focus on taking away local control over wages and other issues that affect the corporate bottom line.¹⁶ In fact, the American Legislative Exchange Council (ALEC), a corporate-backed group with extensive lobbying resources and influence in state legislatures, has made preemption of minimum wage and other policies a primary goal in recent years.¹⁷

For more information on the rise of minimum wage preemption, see NELP's fact sheet ["Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block Local Minimum Wage Laws."](#)

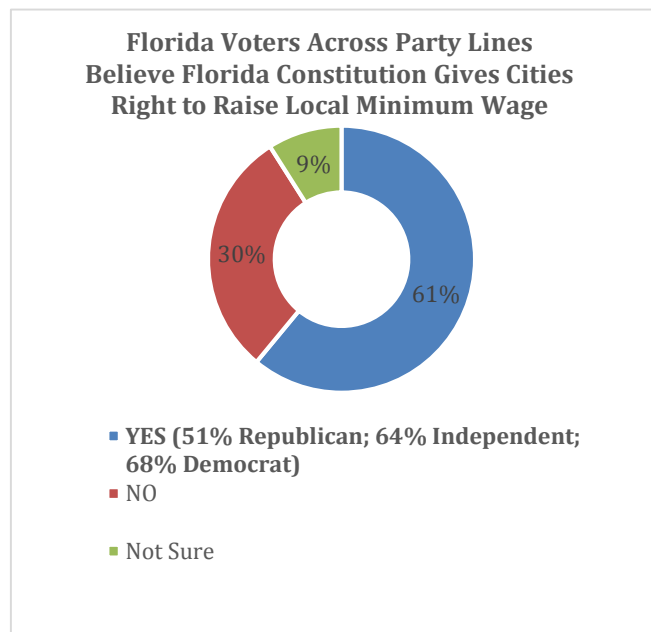
Florida Voters Believe that Florida Cities Have the Right to Adopt a Local Minimum Wage Higher Than the State Minimum Wage by a 2 to 1 Margin

The new poll described above also asked voters about the 2004 ballot initiative that established Florida's state minimum wage in the Florida Constitution. The initiative passed with the approval of more than 70 percent of Florida voters.¹⁸

The poll specifically asked voters what they thought about the language in the 2004 constitutional amendment that addressed the power of cities and other public bodies to adopt a local minimum wage above the state level. The poll asked:

Several years ago Florida voters approved a constitutional amendment that established Florida's minimum wage. The amendment also stated that it should not be construed to limit the authority of any public body to adopt or enforce any law that provides for payment of higher wages. Based on this language in the amendment, do you think a public body like a Florida city would have the right to adopt a local minimum wage higher than the state minimum wage, or not?¹⁹

By a 2 to 1 margin (61 percent to 30 percent), Florida voters responded that they would read the language as giving cities the right to raise the minimum wage. The voters' common sense understanding of the amendment's impact on local power to raise the minimum wage crossed party lines. For example, Republican voters read the amendment as authorizing higher local minimum wages by a 51-to-40 percent margin, Independent voters understood it that way by a decisive 64-to-26 percent margin, and Democratic voters did by an overwhelming 68-to-23 percent margin.



This understanding of typical voters stands in stark contrast to the lower courts' much more narrow, technical reading of the amendment in the Miami Beach case. The lower courts both concluded that Florida cities do not have the power to enact local minimum wages higher than the state minimum wage because the amendment did not *expressly* prohibit the state legislature from adopting laws that would take away local control over the minimum wage.²⁰ The Florida Supreme Court now has the opportunity to weigh in on the correct reading of the 2004 constitutional amendment if it decides to review the case.

Endnotes

¹ Joey Flechas, “Miami Beach sets local minimum wage higher than state rate beginning 2018,” Miami Herald, June 8, 2016, available at <http://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article82494577.html>.

² *Id.*

³ *City of Miami Beach v. Florida Retail Federation, Inc. et al.* (Fl. Sup. Ct., filed Dec. 27, 2017) (No. SC17-2284).

⁴ Ballotpedia.org, Florida Minimum Wage, Amendment 5 (2004), [https://ballotpedia.org/Florida_Minimum_Wage_Amendment_5_\(2004\)](https://ballotpedia.org/Florida_Minimum_Wage_Amendment_5_(2004)) (last viewed Feb. 8, 2018).

⁵ *Id.*

⁶ The 2004 constitutional amendment language regarding local powers stated: “This amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment.” Fla. Const. Art. X, § 24(f).

⁷ See *City of Miami Beach v. Florida Retail Fed’n, Inc.*, 3D17-705, 2017 WL 6346787 (Fla. Dist. Ct. App. Dec. 13, 2017); *Florida Retail Fed’n, Inc. v. City of Miami Beach*, No. 16-031886 CA 10, slip op. (Fla. Cir. Ct. Mar. 27, 2017).

⁸ *Id.*

⁹ Fla. Stat. § 218.077.

¹⁰ *Id.*

¹¹ National Employment Law Project, Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block Local Minimum Wage Laws (July 2017), available at <http://www.nelp.org/content/uploads/Fighting-Preemption-Local-Minimum-Wage-Laws.pdf>; see also Marni von Wilpert, Economic Policy Institute, City governments are raising standards for working people—and state legislators are lowering them back down” (Aug. 26, 2017), available at <http://www.epi.org/files/pdf/133463.pdf>.

¹² See Raisetheminimumwage.com, City Campaigns, <http://raisetheminimumwage.com/city-campaigns/> (last viewed Feb. 8, 2018).

¹³ National Employment Law Project, Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block Local Minimum Wage Laws (July 2017), available at <http://www.nelp.org/content/uploads/Fighting-Preemption-Local-Minimum-Wage-Laws.pdf>.

¹⁴ Mitchell Hirsch, “Missouri Lawmakers to Lowest-Paid Workers in St. Louis: We’re Taking Back Your Raises,” National Employment Law Project Blog, May 19, 2017, available at <http://www.nelp.org/blog/missouri-lawmakers-to-lowest-paid-workers-in-st-louis-were-taking-back-your-raises/>.

¹⁵ National Employment Law Project, Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block Local Minimum Wage Laws (July 2017), available at <http://www.nelp.org/content/uploads/Fighting-Preemption-Local-Minimum-Wage-Laws.pdf>; see also Marni von Wilpert, Economic Policy Institute, City governments are raising standards for working people—and state legislators are lowering them back down” (Aug. 26, 2017), available at <http://www.epi.org/files/pdf/133463.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *supra* note 4.

¹⁹ See *supra* note 6.

²⁰ See *supra* note 7.

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