No. SC95401

IN THE MISSOURI SUPREME COURT

COOPERATIVE HOME CARE, INC., ET AL.,

Respondents/Cross-Appellants,

v.

CITY OF ST. LOUIS, ET AL.,

Appellants/Cross-Respondents.

Appeal from the Circuit Court of St. Louis City, Missouri

The Honorable Steven R. Ohmer

Circuit Court No. 1522-CC10607

APPELLANTS/CROSS-RESPONDENTS' CROSS-REPLY BRIEF

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ARGUMENT IN REPLY TO RESPONDENTS/CROSS-APPELLANTS' ARGUMENT IN RESPONSE TO APPELLANTS/CROSS RESPONDENTS' POINTS RELIED ON

I. RESPONDENTS HAVE NOT OVERCOME THE PRESUMPTION THAT THE ORDINANCE IS VALID IN THAT IT DOES NOT PROHIBIT WHAT MISSOURI'S MINIMUM WAGE LAW PERMITS AND MISSOURI REVISED STATUTE SECTION 285.055 RSMO RECOGNIZES THAT MISSOURI'S MINIMUM WAGE LAW DOES NOT PREEMPT THE ORDINANCE.

"Ordinances are presumed to be valid and lawful." *McCollum v. Dir. of Revenue*, 906 S.W.2d 368, 369 (Mo. banc. 1995). The only way Respondents can overcome the strong presumption in favor of the Ordinance's validity is by attempting to rewrite the Missouri's Mandatory Minimum Wage Law (MMWL) as a statute affirmatively authorizing conduct that the Ordinance prohibits. In reality, a *de novo* review of Missouri's minimum wage statutory scheme demonstrates that the MMWL, like the Ordinance, is a statute of prohibition. The Ordinance merely prohibits more than the MMWL. Both the plain language and legislative intent of both laws permit no other conclusion. This conclusion serves to render the Ordinance in conformity, not conflict, with the laws of the state. The General Assembly's passage of not one but two subsequent so-called preemption statutes further reinforces that it did not intend to occupy the field with the MMWL. Because the Ordinance was passed under the

authority the General Assembly expressly recognized in House Bill 722, it is not preempted.

A. The Ordinance Is In Conformity With The Missouri Minimum Wage Law Because Both Serve The Same Purpose—To Protect Workers—By Prohibiting The Same Conduct—Paying A Wage Lower Than The Minimum.

The Ordinance does not conflict with the MMWL. The MMWL is silent as to a city's ability to adopt a minimum wage that exceeds that established by state law. *See City of St. Louis v. Ameln*, 139 S.W. 429, 434 (Mo. 1911) (where the statute is silent, the ordinance may speak).

The MMWL is a law of prohibition limiting employers from paying employees in the State of Missouri less than a certain minimum wage established by state law. Like the MMWL, the Ordinance is also a law of prohibition and, like the MMWL, it prohibits employers from paying employees less than the MMWL, though it presently provides for an hourly minimum wage that is greater than the MMWL. Ex. A, § 2.B. However, if state or federal law later provides for a minimum wage in excess of that provided under the Ordinance, the relevant state or federal law controls. *Id.* at § 2.B.4. Because the Ordinance does not permit what the MMWL, a law of prohibition, prohibits, it does not conflict with the MMWL. *City of Kansas City v. Carlson*, 292 S.W.3d 368, 371 (Mo. Ct. App. 2009); *see Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 211 (Mo. banc 1986) ("The test for determining if a conflict exists is whether the ordinance

'permits what the statute prohibits' or 'prohibits what the statute permits.'" (quoting *Page W., Inc. v. Cmty. Fire Prot. Dist.*, 636 S.W.2d 65, 67 (Mo. banc 1982)).

Ignoring the MMWL's status as a law of prohibition, Respondents argue that the MMWL's prescription of a "minimum" wage affirmatively prohibits a parallel, higher local minimum wage. Resp. Br. 3. Respondents' MMWL argument relies on their re-imagination of the MMWL from a law that prohibits employers paying less than a prescribed amount into an affirmative authorization for employers to pay no more than the floor imposed by the law. Respondents' argument is incorrect. Indeed, in discussing the new preemption law, House Bill 722, Respondents concede that a "prohibition is not an authorization." *Id.* at 24. Yet, this is precisely how the Respondents are asking the Court to reimagine the MMWL.

Respondents' attempt to interpret the MMWL as a law of authorization ignores this Court's guidance plainly speaking on the purpose and intent of the MMWL. It is "a remedial statute with the purpose of ameliorating the 'unequal bargaining power as between employer and employee' and to 'protect the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others.'" *Tolentino v. Starwood Hotels & Resorts Worldwide Inc.*, 437 S.W.3d 754, 761 (Mo. banc 2014) (quoting *Specht v. City of Sioux Falls*, 639 F.3d 814, 819 (8th Cir. 2011)). Respondents' interpretation of minimum wage laws as "authorizing" an employer to pay a set minimal amount would undermine the very purpose of the law—to protect workers. And it would ignore the fundamental reality that the MMWL is not a law of permission. It is a law of prohibition.

Missouri courts have repeatedly acknowledged that state laws setting a minimum do not preempt local laws regulating above the state law floor. In *State ex inf. Barrett ex rel. Callaghan v. Maitland*, 246 S.W. 267 (Mo. 1922), the Court flatly rejected the arguments made by Respondents. There the Court addressed whether certain election requirements provided for by Missouri's Constitution prohibited cities from adding to those requirements. *Id*. Finding no such prohibition, the Court reasoned:

> Let us see if there is conflict. Under new section 16 of the Constitution the notice must be published "at least three weeks in at least one paper . . . the last publication to be within two weeks of the date of such election." As to length of time and the number of papers this provision only fixes a minimum. . . . **The fixing of these minimums, however, did not prevent the city from giving longer and fuller notice of such an election. The language used in fixing these minimums impliedly permits longer publication and more voluminous publication.**
>
> . . . .
>
> In this case the Constitution deals with minimums in the matters above discussed, and a conflict does not follow merely because the charter exceeds these minimums . . . . **The charter covers all the minimums mentioned in the Constitution, and simply going beyond these minimums does not make such conflict as to destroy the charter as to notice.**

Id. at 270-71 (citations omitted) (emphasis added); *see also Glasnapp v. State Banking Bd.*, 545 S.W.2d 382, 389 (Mo. Ct. App. 1976) (state statute requiring "not less than" a minimum bank capitalization "creates a floor, not a ceiling, for capitalization" such that local authority can require greater capitalization without a conflict).

Respondents do not direct the Court to any authority that supports their attempt to reimagine the MMWL, aside from an out-of-context and generic dictionary quote.[1] Instead, Respondents attempt to avoid this Court's clear guidance on the purpose of minimum wage legislation by parsing the distinctions between conflict and field preemption. Resp. Br. 4. While Respondents claim Appellants "improperly restrict the standard for state law preemption," Resp. Br. 3, in the end they are left with the same preemption test Appellants cite: "To determine if a conflict exists between an ordinance and a state statute, the test is whether the ordinance permits that which the statute

[1] Respondents also cite, without any discussion, *State ex rel. Sunshine Enterprises of Missouri, Inc. v. Bd. of Adjustment of City of St. Ann*, 65 S.W.3d 310 (Mo. Ct. App. 2002). That case is easily distinguishable. In *Sunshine Enterprises*, the court looked at whether a local ordinance that prohibited "short-term lending" conflicted with a state law that expressly allowed such businesses. *Id.* at 314. However, the state law at issue there expressly allowed for a type of business that the local ordinance tried to prohibit. Thus, in *Sunshine Enterprises*, the state law at issue did not set a "minimum" or a "floor" that the local ordinance supplemented; rather, the ordinance prohibited a type of business specifically permitted by state law.

prohibits or prohibits that which the statute permits." *Compare* Resp. Br. 6 *with* App. Br. 36 (citations omitted).

In this regard, Respondents claim this case is "identical" to *Missouri Hotel and Motel Association, etc. et al., v. City of St. Louis*, No. 004-02638, DAILY LABOR REPORT, 17-20 (Mo. Cir. July 31, 2001)—a fifteen year-old trial court judgment—and imply this Court should be bound by that decision. Respondents made the same argument in the trial of this case, which the court below correctly rejected. This Court should do the same. Not because the Court is bound by any trial court decision—whether from *Missouri Hotel* or the court below—but because reason and precedent support limiting *Missouri Hotel* to the unique facts and legislative landscape present in that case.

Respondents spend much time discussing *Missouri Hotel* as the leading source of authority to support their position. No amount of ink, however, can obscure the reality that the 2001 trial court decision is neither binding, nor even persuasive. The trial court's analysis in *Missouri Hotel* interpreted the City's authority to enforce a different kind of ordinance (applicable only to City contractors and grantees) to promote different interests (efficiency in government contracts) enacted under different Charter provisions (Art. 1, §1(4) regarding the City's authority to contract). Ex. D, at 5, 34; *see also* Resp. Br. 7.

Even more fundamentally, *Missouri Hotel*'s conflict analysis arose from a very different legal backdrop. That case addressed the Missouri minimum wage statutory scheme as it existed a decade and a half ago. Following that decision the General Assembly passed House Bill 722 with plain and unambiguous terms that expressly

recognize that the MMWL does not preempt local minimum wage ordinances enacted by August 28, 2015. To the extent the trial court's judgment in *Missouri Hotel* as to what is in "conformity with the statement minimum wage law" ever had any application outside the specific ordinance and Charter authority analyzed in that case—which is different from this case—that precedent necessarily expired when the "state minimum wage law" changed with the adoption of House Bill 722.

Respondents are likewise unpersuasive in their attempt to distinguish a New Mexico court's recent acknowledgment that municipal minimum wage ordinances do not conflict with state laws that set an hourly wage floor. *See* Resp. Br. 11-12. First, *New Mexicans for Free Enterprise v. City of Santa Fe*, 126 P.3d 1149 (N.M. Ct. App. 2005) is just one of many appellate court decisions from a growing number of states that have each reached this same conclusion. Appellants cite two such decisions in New Mexico and Maryland in their principle brief. *See* App. Br. 39. Amicus Curiae Municipal Labor Law Scholars, et al. discuss many more. *See* Amicus Br. 40-48. Respondents' singular attack on *New Mexicans* does not change the reality that the position Respondents advocate is contrary to the swell of authority across the country.

Second, Respondents' criticism of *New Mexicans* because it involved a "home rule" municipality that under the New Mexico Constitution "may exercise all legislative powers and perform all functions not expressly denied by general law or charter" is misguided. Article VI, Section 19(a) of the Missouri Constitution also contains a "home rule provision" and similarly grants the City "'all powers which are not limited or denied by the constitution, by statute, or by the charter itself." *Cape Motor Lodge, Inc.*, 706

S.W.2d at 210. The existence of § 71.010, RSMo, which simply provides that "if the city ordinance conflicts with a general law of the state, it is void," merely embodies the principles this Court has found inherent in the constitutional home rule provision; it does not add to it. Thus, the mere codification of § 71.010 in Missouri does not distinguish the *New Mexicans* analysis, and neither does the patently unconstitutional § 67.1571.

B. Prohibiting More Than The Missouri Minimum Wage Law Does Not Render The Ordinance In Conflict with the Missouri Minimum Wage Law.

Perhaps recognizing the futility of supporting a conflict analysis by relying on an out-out-context dictionary cite supported only by the distinguishable and outdated *Missouri Hotel* trial court judgment—to the exclusion of this Court's precedents—Respondents next pivot to a misconstruction of *City of Kansas City v. Carlson*, 292 S.W.3d 368 (Mo. Ct. App. 2009). *Carlson* provides Respondents no quarter, however.

In *Carlson*, the court drew a sharp distinction between statutes of authorization and statutes of prohibition. While an ordinance that prohibits what the state statute authorizes would be in conflict, "if [an] ordinance merely prohibits *more* than the state statute, the two measures are not in conflict." *Id.* at 371 (citing *Kansas City v. LaRose*, 524 S.W.2d 112, 117 (Mo. banc 1975)). In making this determination, the court held that statutes that prohibit conduct do not function as authorization for conduct that falls outside the statutory prohibition. *Carlson*, 292 S.W.3d at 374 (rejecting the argument that "a state exemption from a statutory prohibition is an authorization."). Rather, there must be evidence of state legislative intent to authorize the conduct which the local

ordinance prohibits for a conflict to exist. *Id.* at 373. The court found the intent to authorize conduct prohibited by an ordinance could be "an express grant of power" in the state statute or an express revocation of the power to act locally. *Id.*

The MMWL contains no evidence of legislative intent to "authorize" employers to pay any certain wage. As stated above, the intent of the MMWL is to protect workers, not employers. *Tolentino*, 437 S.W.3d at 761. Moreover, House Bill 722 contains the clearest and most recent expression of legislative intent on the subject of state wide minimum wage and expressly recognizes local authority to enact legislation to prohibit wages above the state minimum so long as it is done by August 28, 2015. That is precisely the opposite of what the court in *Carlson* found would suffice for a conflict between state and local law.

Indeed, if the MMWL were read as an authorization for employers to pay no more than the state minimum, as Respondents suggest, then it would render the preemption clause of House Bill 722 superfluous and would flatly conflict with the grandfathering of local ordinances in effect by August 28, 2015. Rather, as was the case in *Carlson*, the Ordinance at issue in this case does not conflict with the MMWL as it "merely enlarges the state law." *Id.* at 372.

Respondents put great weight on two older Missouri cases— *City of St. Louis v. Klausmeier*, 112 S.W. 516 (1908) and *City of St. Louis v. Stenson*, 333 S.W. 2d 529 (Mo. Ct. App. 1960)—which *Carlson* distinguished as "standard-setting prescriptions" that conflicted with a local ordinance. *Carlson*, 292 S.W.3d at 373-74. As the court in *Carlson* was quick to observe (and Respondents just as quick to ignore) both *Klausmeier*

and *Stenson* were decided prior to Missouri's constitutional enactment of §19(a) in Article VI. *Carlson*, 292 S.W.3d at 374. "Prior to the amendment's [§19(a)] adoption, Missouri courts sought specific authority for exercises of municipal power. The intent behind amending section 19(a) was to insure the supremacy of the legislature while at the same time putting only minimal and necessary limitations on the power of municipalities." *Id.* at 371. (internal quotation marks and citations omitted). Since the enactment of §19(a), the test for whether a conflict between a local ordinance and state law exists is whether the ordinance "prohibits what the statute permits" or "permits what the statute prohibits." *Cape Motor Lodge, Inc.*, 706 S.W.2d at 211. More importantly, the more recent court decisions have held, "[i]n order to interpret the expressions 'prohibit what the statute permits' and 'permits what the statute prohibits' we look to *specific substantive prohibitions and liberties* in the statute or constitutional provision. . . . If a statute does not specifically grant a right, but is silent on the question, then it may be permissible for the local government to establish prohibitions in that area." *Miller v. City of Town & Country*, 62 S.W.3d 431, 438 (Mo. Ct. App. 2001). This same analysis was reiterated more recently in *Babb v. Missouri Public Service Comm'n*, 414 S.W. 3d 64, 70 (Mo. Ct. App. 2013), where the court went even further and stated, "When an ordinance simply adds to the statute, absent express language in the statute prohibiting such additional requirements, the ordinance is valid."

In neither *Klausmeier* nor *Stenson* did there exist a statue expressing the legislative intent as there is here in House Bill 722. As discussed elsewhere, the grandfather clause

of House Bill 722 definitively demonstrates that the General Assembly had not, in fact, preempted local ordinances passed by August 28, 2015.

C. The Only Plausible Reading of House Bill 722 Is To Express Recognition of Authority to Enact Local Minimum Wage Ordinances.

Unable to escape the plain meaning and intent of House Bill 722 as the General Assembly's most recent and clearest recognition of municipal authority to pass local minimum wage ordinances by August 28, 2015, Respondents ask the Court to simply ignore it. Respondents instead invite the Court to consider each minimum wage statute in isolation and read them inconsistently with each other.

In their principle appeal, Respondents argue the Court should rely on the preemption clause in the old-preemption statute of § 67.1571 (despite its having been found unconstitutional by two separate courts) but claim for the Court to rely on the preemption clause in House Bill 722 would be "improper" because it would "substitute the preemption analysis of the General Assembly . . . for this Court's own." Resp. Br. 23-24. Aside from being internally and tellingly inconsistent, such an argument flatly misstates the Court's role to interpret and apply the laws of the state based on the plain language of the statute and intent of the General Assembly. *See Akins v. Dir. of Revenue*, 303 S.W.3d 563, 565 (Mo. banc 2010) ("[T]he primary rule of statutory interpretation is to give effect to the legislative intent as reflected in the plain language of the statute."). There can be no plainer expression of whether and, equally important, *when* the Generally Assembly intended to occupy the field of minimum wage restrictions than

House Bill 722's pronouncement that "any state or local minimum wage ordinance requirements in effect on August 28, 2015" "shall not [be] preempt[ed]."

1. The General Assembly's intent in enacting House Bill 722's exemption for local minimum wage ordinances effective by August 28, 2015, is unambiguously expressed in its plain language.

Respondents ask the Court to ignore House Bill 722 because they believe it to be a "prohibitory statute" that cannot grant the City authority. Appellants agree. House Bill 722 is a minimum wage law, just like the MMWL. Both are prohibitory statutes and, as explained above, cannot serve as a grant of authority. But Respondents' argument misses the point.

Appellants do not rely on House Bill 722 for the creation of any rights that did not already exist before House Bill 722 became effective. The import of House Bill 722 to this case is the General Assembly's unambiguous acknowledgement of the City's pre-existing authority to pass the Ordinance. House Bill 722 provides amendments to two separate chapters of the Missouri Code, one of which is § 285.055, RSMo. That amendment sets forth definitional terms and provides, in its entirety:

> No political subdivision shall establish, mandate, or otherwise require an employer to provide to an employee: (1) A minimum or living wage rate; or (2) Employment benefits; that exceed the requirements of federal or state laws, rules, or regulations. <u>The provisions of this subsection shall not preempt any state or local minimum wage ordinance requirements in effect on August 28, 2015.</u>

Id. (emphasis added).

The General Assembly's two-sentence pronouncement is unambiguous. Recognition of the City's authority to pass the Ordinance is the only plausible interpretation. That House Bill 722 sets an effective date (after August 28, 2015) to preempt the City's authority in no way creates a conflict between the legislation's prohibitory purpose and the recognition of the City's pre-existing authority.

Respondents' argument that House Bill 722 only "exempts then-existing minimum wage ordinance requirements" suffers from a number of fatal flaws. *See* Resp. Br. 26. First, if the MMWL and § 67.157 effectively prohibited the passing of local ordinances, as Respondents suggest, then there would be nothing to grandfather.[2] If the City did not have authority to pass a local minimum wage ordinance, the provision of House Bill 722 prohibiting local minimum wage ordinances after August 28, 2015 would serve no purpose and have no meaning. Similarly, it would make no sense for the General

[2] Respondents are not saved by the identification of a single St. Louis City Ordinance—Ordinance 65597—that they contend House Bill 722 was intended to grandfather. Resp. Br. 26. Respondents do not explain why even Ordinance 65597 would not be preempted by the MMWL or § 67.157, as they claim the Ordinance at issue in this case is preempted. To the extent Respondents believe Ordinance 65597 does not set a conflicting minimum wage or occupy the same field as the MMWL, then it would not be subject to House Bill 722's preemption. Under either of Respondents' scenarios, there is nothing to grandfather.

Assembly to provide for a several month window under which state municipalities could continue to exercise authority they never had.

Second, Respondents' own argument supports the Ordinance's validity. Respondents concede House Bill 722 did not go into effect until October 16, 2015. Resp. Br. 23. The Ordinance challenged in this case was enacted on August 28, 2015, and was therefore "then-existing." Alternatively, if Respondents' reference is to "then-existing ordinances" on the date House Bill 722 first passed the General Assembly on May 5, 2015, the last sentence of House Bill 722 providing for an August 28, 2015 deadline — almost four months down the road — would be utterly meaningless. Respondents' argument would have the Court read out the entire second sentence of a two-sentence amendment.

2. Subsequent preemption statutes demonstrate the absence of conflict between local minimum wage ordinances and the MMWL.

The old preemption law at § 67.1571 and the new preemption law included in House Bill 722 demonstrate that the General Assembly's 1990 MMWL cannot be read to preempt the Ordinance. The purpose of both preemption laws was to prohibit and preempt municipalities from passing their own minimum wage ordinances. Moreover, House Bill 722 — the most recent of the three statutes passed by the General Assembly — expressly acknowledges municipalities' pre-existing authority to enact minimum wage ordinances by providing that any such ordinances effective on August 28, 2015, will not be preempted.

If Respondents were correct that the MMWL preempted any such ordinance, the General Assembly would have had no need to enact § 67.1571 or House Bill 722. A contrary interpretation of the MMWL and these two preemption laws would require the Court to conclude that both preemption statutes were unnecessary and duplicative of the MMWL and, in the case of House Bill 722's August 28, 2015 grandfather clause, amounted to an amendment of the MMWL.

The only way to harmonize the General Assembly's MMWL, the old preemption statute (§ 67.1571) and the new preemption statute (House Bill 722), is to find: (1) the 1990 MMWL does not preempt local minimum wage ordinances, thereby necessitating the need for the old preemption statute in 1998 to facilitate such preemption; (2) as the court below properly concluded and Respondents do not contest (as discussed in Appellants' principle brief), the old preemption statute was unconstitutional and abandoned, requiring the enactment of the new preemption provision in House Bill 722 in 2015; and (3) the Ordinance adopted on August 28, 2015, and before the preemption deadline announced in House Bill 722, is not preempted. This interpretation allows the three statutes all passed by the General Assembly to work in harmony and has the further benefit of reflecting precisely what happened. The only interpretation of Missouri law that harmonizes all of the statutes at issue is that the MMWL does not preempt the Ordinance.

> In determining the intent and meaning of statutory language, the words must be considered in context and sections of the statutes in *pari materia*, as well as cognate sections, must be considered in order to arrive at the true

> meaning and scope of the words. Where two statutory provisions covering the same subject matter are unambiguous standing separately but are in conflict when examined together, a reviewing court must attempt to harmonize them and give them both effect. If harmonization is impossible, a chronologically later statute, which functions in a particular way will prevail over an earlier statute of a more general nature, and the latter statute will be regarded as an exception to or qualification of the earlier general statute.

S. Metro. Fire Prot. Dist. v. City of Lee's Summit, 278 S.W.3d 659, 666 (Mo. banc 2009) (internal quotation marks and citations omitted); *Bachtel v. Miller Cty. Nursing Home Dist.*, 110 S.W.3d 799, 801 (Mo. 2003) ("The provisions of a legislative act are not read in isolation but construed together, and if reasonably possible, the provisions will be harmonized with each other.").

3. Whether House Bill 722 went into effect before or after the Ordinance is inconsequential because House Bill 722 does not authorize the Ordinance but instead recognizes the City's pre-existing authority.

Finally, Respondents' argument that House Bill 722 has no bearing on this case because it did not go into effect until shortly after the Ordinance was passed is a red-herring. As stated above, contrary to Respondents' suggestion, the City does not rely on House Bill 722 for the "creation of rights." Whether House Bill 722 became effective

before or after the Ordinance is of no consequence to this case.[3] *Cf. State ex rel. Clark v. Gray*, 931 S.W.2d 484, 488 (Mo. Ct. App. 1996) (once a bill is "transmitted to the appropriate depository agent, the bill's status as a properly enacted law 'becomes immutable.'"). Rather, the significance of House Bill 722 is its unmistakable recognition of the City's authority to pass the Ordinance by August 28, 2015. Otherwise the entirety of House Bill 722's amendment to § 285.055 is meaningless. *Murray v. Missouri Highway and Transp. Comm'n*, 37 S.W.3d 228, 233 (Mo. banc 2001) ("[T]he legislature is not presumed to have intended a meaningless act."); *City of Willow Springs v. Missouri State Librarian*, 596 S.W.2d 441, 444-45 (Mo. banc 1980) (Courts are to construe statutes on the "theory that the legislature intended to accomplish something" and presume that a statute has some substantive effect and was not enacted as a "meaningless act of housekeeping.").

[3] Similarly, the Court need not decide the constitutionality of House Bill 722. Appellants raised that issue as an affirmative defense to Count VII of the Petition, which Respondents subsequently dismissed. "[U]nder the present-day practice of pleading, regardless of sufficiency or consistency a party may set forth claims to relief [or defenses] alternatively." *Boyd v. Margolin*, 421 S.W.2d 761, 768 (Mo. 1967) (citing Mo. R. Civ. P. 55.06, 55.12). The constitutionality of House Bill 722 was not litigated before the trial court and is not an issue now before this Court on appeal.

There is no dispute that House Bill 722 is now in full force and effect. Appellants' initial brief sets out in great detail why it is now incumbent upon this Court to therefore consider House Bill 722 when determining the "general state law" of Missouri, the legislative intent and state policy that regulates the subject matter of minimum wage, and whether the Ordinance is in conformity with that law, legislative intent and state policy. Appellant Br. 42-45. Respondents set forth no argument or authority that calls this into question.

Based on the foregoing, Respondents have not carried their burden of overcoming the presumption that the Ordinance is valid because it does not conflict with the MMWL and House Bill 722 expressly recognizes that the Ordinance is not preempted.

II. RESPONDENTS HAVE NOT OVERCOME THE PRESUMPTION THAT THE ORDINANCE IS VALID BECAUSE THE CITY WAS AUTHORIZED TO PASS THE ORDINANCE IN THAT IT DOES NOT CONFLICT WITH THE LAWS OF MISSOURI AND THE TRIAL COURT PROPERLY HELD THAT IT IS INCIDENTAL TO THE CITY'S AFFAIRS.

"Ordinances are presumed to be valid and lawful." *McCollum*, 906 S.W.2d at 369. Aside from the flawed preemption argument discussed above, Respondents failed before the trial court to overcome the presumption in favor of the Ordinance's validity on every issue. The trial court correctly concluded that the City did not exceed its charter authority by passing the Ordinance and the Ordinance does not involve the public policy of the state as a whole. L.F. 176. The trial court nonetheless found in Respondents favor on

Count III on the basis of its previous finding that the Ordinance conflicts with the MMWL and thus it held that the City's authority is denied by §71.010, RSMo. L.F. 175, 177. As set forth above, the trial court erred in that conclusion. Its judgment that the City is without authority to pass the Ordinance must therefore be reversed.

A. The Ordinance Is Not In Conflict With State Laws.

The sole reason the trial court found the Ordinance exceeds the City's authority is because the trial court had concluded that the Ordinance conflicts with the MMWL and thus the City's authority is denied by §71.010, RSMo. L.F. 175, 177. For the reasons stated in detail above, the trial court erred in that judgment and should be reversed. In sum, the Ordinance is in conformity with the MMWL because both serve the same purpose and prohibit the same conduct. That the Ordinance permissibly supplements the MMWL by prohibiting a wage that is currently higher than the floor set by the MMWL does not create a conflict. Finally, the only plausible interpretation of Missouri's minimum wage statutory scheme, including the General Assembly's most recent pronouncement on the issue—House Bill 722—is a recognition that the City had the authority to pass the Ordinance by August 28, 2015, which is exactly what happened in this case.

B. The City Is Not Without Authority To Craft Local Solutions To Common Problems.

Respondents next argue the Ordinance is invalid because it invades the public policy of the state as a whole. Resp. Br. 30. Respondents would have the Court believe that anytime a problem extends beyond the borders of a municipality, local government is

without authority to craft legislation to address the localized impact of the problem based on the factors and concerns of its residents. The trial court soundly rejected this argument. *See* L.F. 176 ("The Court finds no merit in this argument. Ordinance 70078 by its own express terms is limited to local concerns."). This Court should do the same.

The Missouri Constitution grants the City "all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution . . . and are not limited or denied either by the charter . . . or by statute." Mo. Const. Art. VI, § 19(a). Therefore, when a constitutional charter city's power to pass an ordinance under Article VI, § 19(a) of the Missouri Constitution is challenged, as it is in this case, the dispositive question for the Court "to ask [is] not whether the City had authority for its ordinance, but whether its authority to enact the [ordinance] was denied by other law." *Carlson*, 292 S.W.3d at 371 (citing *Cape Motor Lodge*, 706 S.W.2d at 210).

The only "other law[s]" that Respondents cite as denying the City authority to pass the Ordinance are "[t]he enactments of the General Assembly to set a statewide public policy on the issue." Resp. Br. 31. This is a circular argument that simply recasts Respondents' preemption challenge. It does not serve as an independent basis to invalidate the Ordinance.

Respondents' argument is also without merit. As discussed above, Missouri's minimum wage statutory scheme does not express a public policy of the state as a whole to deny local minimum wage ordinances. To the contrary, House Bill 722, the most recent expression of state public policy—adopted by the General Assembly on May 6,

2015—expressly allows for "local minimum wage requirements in effect on August 28, 2015," precisely like the Ordinance in this case. House Bill 722 leaves no doubt Respondents have not only failed to show that the Ordinance invades the public policy of the state as a whole but, indeed, the plain language of the General Assembly as expressed in House Bill 722 confirms that the Ordinance conforms with state public policy.

Likewise, Respondents' argument that the Ordinance exceeds the City's authority because of its "extra-local scope" is entitled to no weight. Respondents cite, in a conclusory fashion, the Ordinance's "own prefatory language . . . and even more blatantly . . . the original language" in an earlier draft of the Ordinance. Resp. Br. 30-31. Respondents' reliance on an earlier version of the Ordinance that references stagnant wages on a national level, which was dropped from the final version of the Ordinance, actually disproves their hypothesis. By removing language regarding national issues from the final version of the Ordinance, the St. Louis City Board of Alderman demonstrated their intent to focus on the local scope of the Ordinance to the exclusion of issues outside the City.

Other "prefatory language" in the Ordinance further supports this point. For example, the Ordinance states, "the population of the City of St. Louis suffers from higher rates of poverty than surrounding areas and a high prevalence of obesity, diabetes, heart disease, and other health problems associated with low-incomes." Ex. A, p. 2 (emphasis added). The Ordinance also repeatedly cites the struggle of "low-wage workers in the St. Louis region . . . to meet their most basic needs." *Id.* at 1-2 (emphasis added). In short, the plain language of the Ordinance demonstrates that while the crisis

of low-wage workers might be a problem shared in some form or fashion by other areas of the state and country, the purpose of the Ordinance was to craft a localized solution to meet the localized and unique needs of the City of St. Louis.

Courts in Missouri have long recognized that ordinances addressing issues similar to that addressed by the Ordinance are incidental to the affairs of a municipality and therefore within the proper exercise of city authority. *See, e.g., Howe v. City of St. Louis*, 512 S.W.2d 127 (Mo. banc 1974) (upholding City "anti-blockbusting" ordinance, even though it was challenged, *inter alia*, on grounds it violated the First Amendment); *Marshall v. Kansas City*, 355 S.W.2d 877 (Mo. banc 1962) (upholding Kansas City's anti-discrimination ordinance covering private hotels and restaurants). Similar to the circumstances in these cases, the "crisis" concerning a minimum living wage for the City's residents unquestionably raises a distinctly local concern and the City was authorized to address it through the passage of the Ordinance. Respondents cannot overcome the presumption in favor of the validity of the Ordinance and, just as in the court below, have not carried their burden to prove otherwise.

CONCLUSION FOR REPLY TO RESPONDENTS/CROSS-APPELLANTS' RESPONSE TO APPELLANTS/CROSS-RESPONDENTS' CROSS-APPEAL

Based upon the foregoing, Appellants/Cross-Respondents respectfully submit that the judgment of the trial court on Counts I and III must be reversed and judgment entered in Appellants/Cross-Respondents' favor.

Date: September 13, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH MISSOURI SUPREME COURT RULES 55.03 AND 84.06

This brief complies with the requirements of Rule 55.03. This brief complies with the type-volume limitations of Missouri Supreme Court Rule 84.06 because this brief contains 7,017 words, excluding the parts of the brief exempted by Rule 84.06(b). This brief complies with the typeface and the type style requirements of Rule 84.06 because this brief has been prepared in a proportionally styled typeface using Microsoft Word in 13-point font size and Times New Roman type style.

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2016, a true and correct copy of the foregoing brief was filed electronically with the Clerk of the Court using the Missouri efiling system, which will automatically send email notification to counsel of record.

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