

IN THE SUPREME COURT OF MISSOURI

SC 95401

COOPERATIVE HOME CARE, INC, et al.,

Respondents, Cross Appellants

Vs.

CITY OF ST. LOUIS, et al,

Appellants, Cross Respondents

FILED

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CLERK, SUPREME COURT

On Appeal from the 22nd Judicial Circuit

City of St. Louis, The Honorable Steven Ohmer, Judge

BRIEF OF AMICUS CURIAE

Arthur J. Clemens Jr.
PO Box 78302
St. Louis, MO 63178
Lawscan2001@yahoo.com
314-262-5438

Pro Se

SCANNED

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STATEMENT REGARDING CONSENT

In accordance with Supreme Court Rule 84.05(f)(2), Amicus Curiae obtained the consent of both parties to this cause for the filing of this Amicus Curiae brief. In response to emails from Amicus Curiae Brief, Attorney for Appellee Jane Dueker gave consent by email on June 3, 2016, while Attorney for Appellant Mark Lawson gave consent by email on June 7, 2016.

TABLE OF AUTHORITIES

STATUTES

pages

United States Constitution, Article 1, Section 10, Clause 1, 7,10,13

known as the **ex post facto** clause.

St. Louis City Ordinance 70078 8,10,12,13

Missouri Statutes 228.055 8,10,11,12,13,17,18

Missouri Statutes 67.1571 8.10.11,13

OTHER AUTHORITIES

The High Cost of Low Wages by Ken Jacobs, Chairman 14

of the University of California Center for Labor Research,

with co-authors Jennifer MacGillvay and Ian Perry

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POINT RELIED ON

THE TRIAL COURT ERRED IN RULING IN FAVOR OF APPELLEES, BECAUSE COUNSEL FOR APPELLANTS DID NOT ARGUE THAT ARTICLE 1, SECTION 10, CLAUSE 1, OF THE UNITED STATES CONSTITUTION, KNOWN AS THE EX POST FACTO CLAUSE, BARRED THE APPLICATION OF MISSOURI STATUTES 285.055 TO THE CITY ORDINANCE, SO THE TRIAL COURT DID NOT CONSIDER SAID ARGUMENT.

ISSUES

The primary issue before the Supreme Court is whether Missouri Statutes 288.055 in this case can be used to bar the City of St. Louis from enforcing St. Louis City Ordinance 70078, as passed by the St. Louis Board of Aldermen on August 25, 2015, and signed into law by the Mayor of St. Louis on August 28, 2015.

Closely tied to this issue is whether Missouri Statutes 67.1571 is too vague to apply to the St. Louis minimum wage law in question, and whether this was known to Missouri State Legislators.

A secondary issue before the Supreme Court raised by Amicus Curiae is whether the Missouri State Legislature was acting in the best interests of their constituents, when passing Missouri Statutes 288.055, or whether one or some legislators are failing to disqualify themselves on this and other employment issues because they are employers, or because they might receive large campaign contributions or future benefits after leaving office from employers.

Another issue is the public interest.

THE INTEREST OF AMICUS CURIAE

Amicus Curiae has a job working in the City of St. Louis for \$9.24 per hour.

Therefore, the ruling of the Supreme Court in this case will affect his pay, particularly when the minimum wage reaches \$11.00 per hour.

Amicus Curiae has participated in peaceful public demonstrations for higher wages in the City of St. Louis which may have had an effect of the actions of the St. Louis Board of Aldermen.

Amicus Curiae also is a citizen of St. Louis and resents the high handed tactics of the Missouri State Legislature in attempting to dictate to the City of St. Louis how to conduct its affairs in this case, and also the alarming bias shown by the Missouri State Legislature against employees and workers in the State of Missouri on a host of issues, to include reducing unemployment benefits from 20 to 13 weeks, passing so-called "right to work" legislation, payday loansharking laws, and on and on.

Amicus Curiae is also a taxpayer, and feels that taxes would be lower if wages were higher, since there would be fewer people applying for food stamps and welfare, and does not feel that the taxpayers should subsidize employers by paying the wages of workers, as in the case of McDonald's and other large corporations.

SUMMARY OF THE POSITION ADVANCED BY AMICUS CURIAE

This case presents an important Constitutional question for the Missouri Supreme Court that has not been brought up in the Trial Court, namely whether the Missouri State Legislature in passing Missouri Statutes 288.055 can retroactively apply said statute to City Ordinance 70078 enacted by the City of Saint Louis. Amicus Curiae contends that the **ex post facto** clause of the United States Constitution applies, and therefore, Missouri Statutes 288.055 cannot be applied in this case. Amicus curiae further contends that said statute is ex post facto in spirit as well as fact, since it was introduced and advanced through the legislature for the specific purpose of stopping efforts of citizens carrying out peaceful public demonstrations for higher wages, which Amicus Curiae took part in to seek to influence the St. Louis Board of Aldermen to pass a minimum wage law, and create a binding legal contract between the citizens of St. Louis, by and through their Aldermen and Mayor, employees who work in the City of St. Louis, and employers who employ within the City of St. Louis.

Amicus Curiae further contends that Missouri Statutes 67.1571 as it stood on August 28, 2015 is extremely vague and no person of reasonable intelligence can determine whether it applies to the City of St. Louis or not, and the

Missouri Legislature was aware of this vagueness, and sought to remedy it by passing 288.055 that superseded and voided it. So Amicus contends that 67.1571 also cannot be applied to the St. Louis minimum wage law in question.

STATEMENT OF FACTS

After peaceful public demonstrations in St. Louis by employees for higher wages, and after at least one Alderman investigated and found that there were some workers in St. Louis making minimum wage and working full time, who remained homeless because of high rents in the City of St. Louis, the St. Louis Board of Aldermen passed on August 25, 2015, a minimum wage law higher than the current State and Federal minimum wage. Also many employers will not allow their employees to work a full work week because then the employees qualify for company paid health care and/or other benefits.

The Mayor signed City Ordinance 70078 on August 28, 2015, thus a contractual relationship between the citizens of St. Louis, by and through their Aldermen and Mayor, employees working in St. Louis, and employers who employ workers in the City of St. Louis, was finalized. The Missouri State Legislature sought to break this contract by passing Missouri Statutes 288.055, which became law on Sep 17, 2015, and having it apply retroactively to said contract.

The Appellees in this case filed suit to break the contract, and the Trial Court agreed, and the contract was broken, until such time as the Missouri Supreme Court rules in this case.

ARGUMENTS

- I. THE TRIAL COURT ERRED IN RULING IN FAVOR OF APPELLEES, BECAUSE COUNSEL FOR APPELLANTS DID NOT ARGUE AT THE TRIAL COURT LEVEL THAT ARTICLE 1, SECTION 10, CLAUSE 1, OF THE UNITED STATES CONSTITUTION, KNOWN AS THE EX POST FACTO CLAUSE, BARRED THE APPLICATION OF MISSOURI STATUTES 285.055 TO CITY ORDINANCE 70078, SO THE TRIAL COURT DID NOT CONSIDER SAID ARGUMENT. IT IS THE POSITION OF AMICUS CURIAE THAT MISSOURI STATUTES 288.055 CONSTITUTES AN ATTEMPT TO LIMIT AN EXISTING CONTRACT.**
- II. THE TRIAL COURT ERRED BY NOT DECLARING MISSOURI STATUTES 67.1571 TO BE TOO VAGUE TO ENFORCE, PARTICULARLY AS TO WHETHER THE STATUTE AS IT STOOD ON AUGUST 28, 2015, ACTUALLY APPLIED TO THE CITY OF ST. LOUIS.**
- III. IT IS IN THE INTEREST OF ST. LOUIS, MISSOURI AND UNITED STATES TAXPAYERS, FOR THE COURT TO RULE IN FAVOR OF THE CITY OF ST. LOUIS IN THIS CASE.**

The present minimum wage is so low in St. Louis, the State of Missouri, and the United States, that many people who work for said wage must apply for food stamps, or other forms of government assistance, in order to survive, and therefore the government is subsidizing businesses that pay low wages by paying part of the wages of their employees.

According to the book “The High Cost of Low Wages” by Ken Jacobs, Chairman of the University of California Center for Labor Research, with co-authors Jennifer MacGillvay and Ian Perry:

The low wages paid by businesses, including some of the largest and most profitable companies in the U.S. – like McDonald’s and Wal-Mart – are costing taxpayers nearly \$153 billion a year. After decades of wage cuts and health benefit rollbacks, more than half of all state and federal spending on public assistance programs goes to working families who need food stamps, Medicaid, or other support to meet basic needs. Let that sink in — American taxpayers are subsidizing people who work — most of them full-time (in some case more than full-time) because businesses do not pay a living wage.

Workers like Terrence Wise, a 35-year-old father who works part-time at McDonald’s and Burger King in Kansas City, Mo., and his fiancée Myosha Johnson, a home care worker, are among millions of families in the U.S. who work

an average of 38 hours per week but still rely on public assistance. Wise is paid \$8.50 an hour at his McDonald's job and \$9 an hour at Burger King. Johnson is paid just above \$10 an hour, even after a decade in her field. Wise and Johnson together rely on \$240 a month in food stamps to feed their three kids, a cost borne by taxpayers. The problem of low wages and the accompanying public cost extends far beyond the fast-food industry. Forty-eight percent of home care workers rely on public assistance. In child care, it's 46 percent. Among part-time college faculty—some of the most highly educated workers in the country—it's 25 percent.

Therefore, when Missouri State Legislators pass legislation to keep wages low, they are voting to raise the taxes of their own Constituents.

IV. IT IS IN THE PUBLIC INTEREST TO RULE IN FAVOR OF THE CITY OF ST. LOUIS IN THIS CASE.

A. The Oxfam Institute is a British organization that keeps track of the inequitable distribution of wealth in the world. The Oxfam Institute Report for January, 2015, states as follows:

The combined wealth of the richest 1 percent will overtake that of the other 99 percent of people in 2016 unless the current trend of rising inequality is checked,

Oxfam warned today ahead of the annual World Economic Forum meeting in Davos.

The top 65 richest people in the world own more wealth than the bottom 60% of the people of the world.

The international agency is calling on governments to adopt a seven-point plan to tackle inequality:

1. ***Clamp down on tax dodging by corporations and rich individuals***
2. ***Invest in universal, free public services such as health and education***
3. ***Share the tax burden fairly, shifting taxation from labor and consumption towards capital and wealth***
4. ***Introduce minimum wages and move towards a living wage for all workers.***
5. ***Introduce equal pay legislation and promote economic policies to give women a fair deal***
6. ***Ensure adequate safety-nets for the poorest, including a minimum income guarantee***
7. ***Agree on a global goal to tackle inequality.***

B. So it can be seen that a respected institute recommends in paragraph four above, that part of the solution for global inequality of wealth is higher wages for workers.

**V. ONE OR SOME MISSOURI STATE LEGISLATORS MAY HAVE
ACTED UNETHICALLY IN PASSING MISSOURI STATUTES 288.055,
AND/OR OTHER LEGISLATION.**

1. The Missouri State Legislature regularly passes legislation that is hostile to workers and employees, to include legislation described here, so called “right to work” legislation, cutting unemployment benefits from 20 weeks down to 13 weeks, payday loansharking laws, and on and on.

2. One or some of the legislators who sponsor and/or vote for said legislation are themselves employers, or otherwise have a conflict of interest problem with the legislation they are voting for.

3. To the best of the knowledge of amicus curiae no legislator in recent memory has ever disqualified himself from voting on legislation because he has a conflict of interest problem.

4. Argument III is incorporated herein.

5. The citizens of Osceola, MO, and other towns and cities around the great State of Missouri deserve to be represented by legislators who vote in their interest, instead of the private interest of their elected representatives.

6. There has never been a case of a citizen toiling for minimum wage contributing to the campaign of a candidate for the Missouri State Legislature, but a large percentage of campaign contributions given to said candidates does come from employers.

CONCLUSION

For the above reasons, Amicus Curiae respectfully urges the Missouri Supreme Court to reverse the ruling of the trial court and rule in favor of Appellant City of St. Louis.

Amicus Curiae further prays that the Missouri Supreme Court conduct an investigation or refer the matter to the Missouri Attorney General for investigation, to determine if Missouri Statutes 288.055 and/or other laws described herein were passed by legislators who had a conflict of interest problem in voting for the legislation.


Arthur J. Clemens Jr., Pro Se

PO Box 78302

St. Louis, MO 63178

Lawscan2001@yahoo.com 314-262-5438

CERTIFICATE PURSUANT TO RULES 84.06(c), and 84.06(g)

The undersigned Amicus Curiae states:

The foregoing brief contains 2,493 words, and complies with Rule 84.06.

SIGNED:


Arthur J. Clemens Jr., Pro Se

PO Box 78302

St. Louis, MO 63178

Lawscan2001@yahoo.com

314-262-5438

CERTIFICATE OF SERVICE

I certify that a copy of Amicus Curiae Brief was sent to the following parties on this 9th day of June, 2016



MISSOURI SUPREME COURT

Regular Mail

Attn: Clerk of the Court

207 West High Street

Jefferson City, MO. 65101

SPENCER, FANE, LLP

Email

Attn, Jane E. Ducker

1 N. Brentwood Blvd, Suite 1000

St. Louis, MO 63105

jdueker@spencerfane.com

DOWD, BENNETT, LLP

Attn: John James Rehmann II

Email

7733 Forsyth Blvd., Suite 1900

Clayton, MO 63105

jrehmann@dowdbennett.com

Mark Edward Lawson

Email

Assistant City Counselor

1200 Market Street, Room 314

St. Louis, MO 63103

lawsonm@stlouis-mo.gov