

No. 19-0025

In the Supreme Court of Texas

CITY OF AUSTIN, TEXAS AND
SPENCER CRONK, CITY MANAGER OF THE CITY OF AUSTIN,

Petitioners,

v.

TEXAS ASSOCIATION OF BUSINESS; NATIONAL FEDERATION OF INDEPENDENT
BUSINESS, AMERICAN STAFFING ASSOCIATION; LEADINGEDGE PERSONNEL, LTD.;
STAFF FORCE, INC.; HT STAFFING LTD. D/B/A THE HT GROUP; THE BURNETT
COMPANIES CONSOLIDATED, INC. D/B/A BURNETT SPECIALISTS; SOCIETY FOR
HUMAN RESOURCE MANAGEMENT; TEXAS STATE COUNCIL OF THE SOCIETY FOR
HUMAN RESOURCE MANAGEMENT; AUSTIN HUMAN RESOURCE MANAGEMENT
ASSOCIATION; STRICKLAND SCHOOL, LLC; AND THE STATE OF TEXAS,

Respondents.

AMICUS CURIAE BRIEF OF TEXAS CONSERVATIVE COALITION IN SUPPORT OF RESPONDENTS

On Petition for Review from the
Third Court of Appeals in Austin, Texas
Cause No. 03-18-00445-CV

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TO THE HONORABLE SUPREME COURT OF TEXAS:

The Texas Conservative Coalition respectfully submits this *amicus curiae* brief in support of the Respondents, Texas Association of Business, et al., pursuant to Texas Rule of Appellate Procedure 11.

DISCLOSURE OF INTEREST

Pursuant to Rule II(c) of the Texas Rules of Appellate Procedure, amicus confirms that no person or entity other than amicus made a monetary contribution to the preparation or filing of this brief.

IDENTITY AND INTEREST OF AMICUS CURIAE

The Texas Conservative Coalition (TCC) is a legislative caucus, formed in 1985 in order to shape public policy by promoting the organization's principles of limited government, individual liberty, free enterprise, and traditional values. With more than 65 members across the Texas House of Representatives and the Texas Senate, TCC is recognized as one of the largest and most influential caucuses in the Texas Legislature.

TCC's membership works hard to ensure a fair and reasonable work environment through the legislation it helps to enact. Members of the Texas Legislature must often times monitor the implementation and application of legislation, but the facts of this case raise another issue: compliance. Legislators rightfully have the expectation that local political subdivisions will comply with the

laws that affect them. Indeed, not only does the outcome of this case affect the economy and business environment that TCC members work every legislative session to foster, but it also touches on important questions of state preemption and the supremacy of state law over local laws. Thus, TCC maintains an ongoing interest in the outcome of this case.

TEXAS CONSERVATIVE COALITION SIGNATORIES

The following members of the Texas Conservative Coalition have added their names to this amicus brief as signatories:



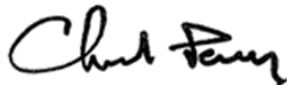
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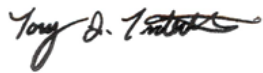
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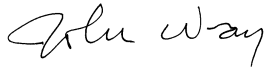
Representative Ed Thompson



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BACKGROUND

Passed by the Texas Legislature in 1993, the Texas Minimum Wage Act (TMWA) governs, inter alia, the minimum wage that an employer shall pay to each employee. Tex. Labor Code §§ 62.001-.205. The TMWA is quite detailed. It provides, for instance, that the minimum wage in Texas shall at least be as high as the federal minimum wage under Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 206). *Id.* This makes Texas compliant with federal law. But the TMWA goes further, making clear that employees are free to collectively bargain with their employers for wages that exceed the minimum wage. *Id.* § 62.005. Indeed, all employers are free to pay employees in excess of the minimum wage, and most of them do so. *See Minimum Wage Workers in Texas – 2017*, UNITED STATES DEPARTMENT OF LABOR – BUREAU OF LABOR STATISTICS (July 26, 2018) (identifying that only 3.1 percent of all hourly workers in Texas earn the minimum wage or less).¹ What is not permitted by the TMWA is a local government mandate *requiring* that they do so. *See* Tex. Const. arts. XI, § 5 (prohibiting city ordinances from containing “any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State”); Tex. Labor Code § 62.0515 (“Except as otherwise provided by this section, the minimum wage

¹ *Minimum Wage Workers in Texas – 2017*, United States Department of Labor – Bureau of Labor Statistics (July 26, 2018), https://www.bls.gov/regions/southwest/news-release/minimumwageworkers_texas.htm.

provided by this chapter supersedes a wage established in an ordinance, order, or charter provision governing wages in private employment, other than wages under a public contract.”).

Passed by the City of Austin in February 2018, the ordinance at issue generally mandates that private employers provide paid sick leave to their employees. *See* Austin, Tex. Ordinance No. 20180215-049 (Ordinance). The Ordinance requires that employers “grant an employee one hour of earned sick time for every 30 hours worked.” *Id.* § 4-19-2(A). Leave begins accruing immediately and the employer must pay the “earned sick leave in an amount equal to what the employee would have earned if the employee had worked.” *Id.* § 4-19-2(J). Medium and large employers (defined in the Ordinance as having more than 15 employees) are required to provide up to 64 hours of paid sick leave every year. *Id.* § 4-19-2(G). Small employers (fewer than 15 employees) are required to provide up to 48 hours of paid sick leave per year. *Id.* The Ordinance requires that paid sick leave carry over from one year to the next, though it may not exceed the annual caps of 64 and 48 hours. *Id.* § 4-19-2(H). Importantly, the Ordinance applies to businesses located outside of the City’s jurisdiction as employers must provide paid sick leave to any employee

who works “at least 80 hours of work for pay *within the City of Austin* in a calendar year.”² *Id.* § 4-19-1(C) (emphasis added).

The Texas Association of Business, et al. (collectively, the “Private Parties”) and the State of Texas sued the City of Austin and Spencer Gronk, the city manager (collectively, the “City” or the “City of Austin”), requesting a temporary and permanent injunction and arguing that the Ordinance is unconstitutional on several grounds, including the ground that the Ordinance is preempted by the TMWA.

The district court denied the Private Parties’ application for a temporary injunction. Both parties appealed. The court of appeals reversed the district court’s order denying the Private Parties’ and the State of Texas’s application for a temporary injunction. *Tex. Ass’n of Bus. V. City of Austin*, 565 S.W.3d 425, 441-42 (Tex. App.—Austin 2018, pet. filed). In doing so, the court held that the Ordinance amounts to a wage, that the TMWA preempts local ordinances that establish a wage, and that, thus, the TMWA preempts the City of Austin’s Ordinance as a matter of law. *Id.* at 440. The City has now appealed, petitioning this Court for review on several points.

TCC respectfully disagrees with the City’s arguments, but nevertheless agrees that this Court should grant review so that it can resolve important questions

² This provision of the Ordinance exempts independent contractors and unpaid interns. Austin, Tex. Ordinance No. 20180215-049 § 4-19-1(C).

touching on statewide preemption of local ordinances. As this brief will discuss, there is an ongoing friction between local and state laws. The TMWA is but one point of this friction, but a ruling from this Court affirming the court of appeals' holding on the question of preemption will provide important guidance to the legislature and local lawmakers moving forward.

SUMMARY OF ARGUMENT

TCC makes two points to argue in favor of the Court granting review of this case. First, as the Court is well aware, litigation over policy disagreements between the state and local governments is increasingly common. It is appropriate for courts to resolve these matters when there is a genuine legal question to resolve, particularly when that question turns on a very specific matter of public policy in which the Texas Legislature has already spoken by passing a law. The issue of state preemption with respect to local ordinances mandating paid sick leave is one of those matters because the City of Austin's Ordinance and others like it are preempted by the Texas Minimum Wage Act. Given the increasing friction between state laws and local efforts to circumvent those laws, a decisive and timely ruling from this Court is appropriate and necessary.

In addition to the general argument that it is appropriate and necessary for courts to resolve legitimate disputes of this nature, TCC points out that on the specific question of the Texas Minimum Wage Act, the Texas Legislature has had every opportunity to raise the state's minimum wage and as a matter of policy has chosen not to do so. As this brief will discuss in detail, more than fifty such proposals have been filed over the course of the last five regular legislative sessions, a 10-year period, and very few of those bills were even considered in public committee hearings. Only one proposal to raise the state's minimum wage was ever voted out

of committee during that period and sent to the floor of the Texas House of Representatives for a vote. That bill, House Joint Resolution 26 (84R), was defeated on the floor of the Texas House of Representatives with 92 Nays to 50 Yeas, which is a clear statement of the Legislature's position on the policy of raising the state's minimum wage. Local governments should not be permitted to circumvent the state's clear and unequivocal policy choice on this issue. The court of appeals was correct to hold that the City of Austin's Ordinance does exactly that.

The Texas Legislature and the members of TCC working within it have made every effort to govern with legislation that promotes economic growth, upward mobility, and prosperity for all Texans. The City of Austin's Ordinance is incompatible with that vision of the state because it supplants the informed decisions of private businesses with the preferred policies local governments. When that is the case, it is appropriate for the State of Texas, the Texas Legislature, and in this case, litigants, to push back. TCC urges the Court to grant review of this case and affirm the court of appeals' holding that the Ordinance and those like it are unconstitutional because they are preempted by the Texas Minimum Wage Act.

ARGUMENT

I. The Court Should Grant Review to Resolve the Issue of Preemption Under the Texas Minimum Wage Act Because Preemptive Legislation and Related Litigation Require Timely and Decisive Resolutions

The Supreme Court of Texas has specifically acknowledged in recent years the ongoing disagreements between the state government and local governments on issues of “local control.” Indeed: “The roving, roiling debate over local control of public affairs has not, with increased age, lost any of its vigor. From public education to immigration policy to fracking to shopping bags, the sides are always deeply divided.” *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 588 (Tex. 2018). Policy experts have proclaimed that there is “an epidemic of local economic regulations sweeping our state, stifling economic freedom.” Tom Aldred & John D. Colyandro, *Municipalities Gone Wild*, CORPUS CHRISTI CALLER-TIMES (Mar. 9, 2017).³ The result of this intensity is more prominent litigation, which requires timely and predictable resolution.

A. Courts are often asked to resolves matters of state preemption

As the fights over local and state policies continue to intensify, it is clear that it is appropriate and necessary for courts to resolve litigation in a timely manner. Only one year ago, the Supreme Court of Texas held that a local ordinance

³ Tom Aldred & John D. Colyandro, *Municipalities Gone Wild*, CORPUS CHRISTI CALLER-TIMES (Mar. 9, 2017), <https://www.caller.com/story/opinion/forums/2017/03/09/municipalities-gone-wild/98925672/>.

prohibiting merchants from providing single use plastic bags to customers for point-of-sale purchases was unconstitutional because it was preempted by the Texas Solid Waste Disposal Act. *City of Laredo*, 550 S.W.3d at 598. But that is not the only occasion that the Court has had to address issues of state preemption under article XI, section 5 of the Texas Constitution. Tex. Const. art. XI § 5. The Court held in 2013 that a City of Houston ordinance containing location restrictions on concrete-crushing facilities was unconstitutional because it was preempted by the Texas Clean Air Act. *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678-79 (Tex. 2013). Similarly, the Court held that provisions of a City of Houston ordinance excluding firefighters' premium pay from the definition of "salary" for purposes of termination pay calculation was preempted by Chapter 143 of the Local Government Code. *City of Houston v. Bates*, 406 S.W.3d 539, 548 (Tex. 2013). Federal courts are also being asked to resolve issues related to state preemption. *See, e.g., City of El Cenizo v. Texas*, 890 F.3d 164, 191 (5th Cir. 2018) (holding, inter alia, that the prohibition on sanctuary cities via state preemption in Senate Bill 4, Act of May 3, 2017, 85th Leg., R.S. (codified at Tex. Gov't Code § 752.051) is not prohibited by the Texas Constitution).

B. There is an increased focus in the Texas Legislature on preempting burdensome local ordinances and regulations

As fights over local control intensify, there is a greater emphasis in the Texas Legislature on using the state's rightful authority over local governments to remedy

local acts deemed harmful to the economy and to Texas residents. Members of TCC have played prominent roles in the passage of these bills.

An appropriate starting point in identifying the current trend in remedying overreaching local governments at the state level is the Denton, Tx, local ordinance on hydraulic fracturing. The Denton ordinance, enacted in 2014, placed a ban on hydraulic fracturing and a moratorium on new gas drilling within the city. *See* Jim Malewitz, *Dissecting Denton: How a Texas City Banned Fracking*, TEX. TRIB. (Dec. 15, 2014, 7:25 PM). The 84th Texas Legislature responded by passing House Bill 40, which preempted all local ordinances that regulate “below ground oil and gas activities.” Act of May 4, 2015, 84th Leg., R.S., H.B. 40 (codified at Tex. Nat. Res. Code § 81.0523).

Two years later, the 85th Texas Legislature preempted local governments on two prominent issues. The first was a state-level framework for transportation network companies (i.e. “ridesharing” companies like Uber and Lyft) enacted with the passage of House Bill 100. Act of May 17, 2017, 85th Leg., R.S., H.B. 100 (codified at Tex. Transp. Code § 2402.001-34002.201). House Bill 100 addressed a variety of local ridesharing regulations with varying degrees of burden by replacing them with a sensible state-level framework. *See id.*

The 85th Texas Legislature also passed House Bill 62, which preempted local ordinances on texting or using a cellular phone while driving. Act of May 23, 2017, 85th Leg., R.S., H.B. 62 (codified at Tex. Transp. Code § 545.4251).

In 2019, the 86th Legislature passed several high profile preemption bills, such as a ban on red light cameras, Act of May 17, 2019, 86th Leg., R.S., H.B. 1631 (codified at Tex. Transp. Code §§ 707.020-707.021), a ban on local government contracts using taxpayer money to subsidize abortion providers and affiliates, Act of May 24, 2019, 86th Leg., R.S., S.B. 22 (codified at Tex. Gov't. Code §§ 2272.001-2272.005), protection of religious freedom and association from government retaliation, Act of May 23, 2019, 86th Leg., R.S., S.B. 1978 (codified at Tex. Gov't. Code §§ 2400.001-2400.005),⁴ and protection against local ordinances for enterprising children looking to earn an honest wage operating the most time honored of businesses: lemonade stands. Act of May 26, 2019, 86th Leg., R.S., H.B. 234 (codified at Tex. Loc. Gov't. Code § 250.009; Tex. Prop. Code § 202.020). Other preemption bills passed by the 86th Legislature include protection for property owners against abusive historical landmark designations, Act of May 14, 2019, 86th Leg., R.S., H.B. 2496 (codified at Tex. Loc. Gov't. Code § 211.0165), the freedom

⁴ While this bill was informally referred to publicly as the “Save Chick-fil-A” bill, *see, e.g.*, Talia Kaplan, *Texas Governor Signs Controversial ‘Save Chick-Fil-A’ Bill Into Law*, FOX NEWS (June 12, 2019), <https://www.foxnews.com/food-drink/texas-governor-save-chick-fil-a-bill-law>, the bill broadly prohibits governmental entities from discriminating against people and businesses based on their membership, affiliation, donation, or support of religious organizations.

to use building materials approved by national model codes, Act of May 25, 2019, 86th Leg., R.S., H.B. 2439 (codified at Tex. Gov't. Code §§ 3000.002-3000.005), and protection from certain ordinances regulating firearm storage, Act of May 25, 2019, 86th Leg., R.S., H.B. 3231 (codified at Tex. Loc. Gov't. Code §§ 229.001, 236.001-236.002).

These examples are merely a sample of the bills that have recently passed to become law. They do not include bills that were merely filed. And even though the 86th Legislative Session only recently ended on May 27, 2019, Governor Abbott has already made public statements on the need for the state to preempt a new ordinance from the City of Austin that effectively allows the homeless to camp on city streets.⁵

Given the history of litigation and legislation over issues of “local control,” it is appropriate and desirable for this Court to grant review and affirm the court of appeals’ holding that as a matter of law the TMWA preempts the Ordinance.

II. Local Governments Should Not be Permitted to Circumvent What the Legislature Has Already Expressed More Than Fifty Times in the Last Decade: An Affirmative Public Policy Choice to Not Raise the Minimum Wage

⁵ Gov. Greg Abbott (@GregAbbott_TX), TWITTER (June 23, 2019, 6:40 PM), https://twitter.com/GregAbbott_TX/status/1142970636974927872 (“If Austin—or any other Texas city—permits camping on city streets it will be yet another local ordinance the State of Texas will override. At some point cities must start putting public safety & common sense first. There are far better solutions for the homeless & citizens.”).

The Texas Legislature acted to pass the Texas Minimum Wage Act (TMWA), Tex. Labor Code §§ 62.001-.205, but has actively chosen as a matter of state policy to *not* raise the minimum wage in Texas. It has had more than 50 opportunities over the course of the last 10 years to do so. Indeed, the Texas Legislature has engaged on the question of raising the state’s minimum wage in every legislative session for at least the last decade (5 regular legislative sessions).

A. The 81st Legislative Session (2009)

In 2009, members of the 81st Texas Legislature filed five bills relating to the minimum wage. House Bill 183 would have required that employers pay each employee at least the greater of \$6.15 an hour or the federal minimum wage. Tex. H.B. 183, 81st Leg., R.S. (2009). House Bill 2326 would have done the same, but with a built-in annual adjustment for inflation. Tex. H.B. 2326, 81st Leg., R.S. (2009). House Bill 3042 would have authorized a study on the effect of changing the state minimum wage to a “living wage.” Tex. H.B. 3042, 81st Leg., R.S. (2009). House Bill 3486 and Senate Bill 159 both proposed to authorize counties and municipalities to establish a minimum wage that is greater than the federal minimum wage. Tex. H.B. 3042, 81st Leg., R.S. (2009); Tex. S.B. 159, 81st Leg., R.S. (2009). Of these five bills, only House Bill 183 was even scheduled to receive a public hearing in a legislative committee, though it was not actually heard. *See* Minutes from Public Hearing Before the Tex. H. Comm. on Bus. & Indus., 81st Leg., R.S.

(Mar. 25, 2009). None of the bills received a committee vote. None were considered in floor votes in the Texas House of Representatives or the Texas Senate.

B. The 82nd Legislative Session (2011)

One bill was filed in the 82nd Legislative Session to increase the minimum wage. That bill, House Bill 276, would have required that employers pay each employee at least the greater of \$6.15 an hour or the federal minimum wage. Tex. H.B. 276, 82nd Leg., R.S. (2011). The bill was considered in a public hearing, but never received a committee vote. *Id.*

C. The 83rd Legislative Session (2013)

Two bills to raise the Texas minimum wage were filed in the 83rd Legislative Session. House Bill 3082 would have required that employers pay each employee at least the greater of \$7.75 an hour or the federal minimum wage. Tex. H.B. 3082, 83rd Leg., R.S. (2013). House Bill 3740 proposed an “adjusted minimum wage,” which would have tied the minimum wage to increases in the consumer price index. Tex. H.B. 3740, 83rd Leg., R.S. (2013). Neither bill received public hearing or a vote of any kind.

D. The 84th Legislative Session (2015)

In 2015 there was a dramatic increase in the number of bills filed relating to the minimum wage. Elected officials of the 84th Legislature filed no fewer than ten bills and one constitutional amendment affecting the minimum wage in Texas.

House Bill 41 would have required that employers pay each employee at least the greater of \$10.10 an hour or the federal minimum wage. Tex. H.B. 41, 84th Leg., R.S. (2015). House Bill 41 was tied to a proposed constitutional amendment, House Joint Resolution 26 (HJR 26), which would have amended the Texas Constitution with the same minimum wage increase proposed in HB 41. Tex. H.J. Res. 26, 84th Leg. R.S. (2015).

Interestingly enough, HJR 26 was considered in a public hearing, voted out of committee by a narrow margin of 4 Ayes and 3 Nays, and set for a floor vote in the Texas House of Representatives. *Id.* As the only legislative proposal to raise the state's minimum wage that has been put to a full vote of the Texas House of Representatives in at least the last decade, HJR 26 failed of adoption with 50 Yeas, 92 Nays, and 2 Present, not voting. H.J. of Tex. 84th Leg., R.S. 3468-69 (2015).

Of the other ten bills filed in the 84th Legislative Session, six were considered in a public hearing, but received no vote from the committee in which they were heard. *See* Tex. H.B. 41, 84th Leg., R.S. (2015); Tex. H.B. 42, 84th Leg., R.S. (2015); Tex. H.B. 396, 84th Leg., R.S. (2015); Tex. H.B. 1590, 84th Leg., R.S. (2015); Tex. H.B. 2413, 84th Leg., R.S. (2015); Tex. H.B. 3370, 84th Leg., R.S. (2015). The other four were never considered in public hearings and received no vote of any kind. *See* Tex. S.B. 67, 84th Leg., R.S. (2015); Tex. S.B. 68, 84th Leg.,

R.S. (2015); Tex. S.B. 123, 84th Leg., R.S. (2015); Tex. S.B. 1274, 84th Leg., R.S. (2015).

E. The 85th Legislative Session (2017)

The 85th Texas Legislature once again increased the number of minimum wage filings with ten bills and three constitutional amendments. Of the nine bills filed in the Texas House of Representatives, all of them were heard and considered in a public hearing on March 20, 2017. Public Hearing Before the Tex. H. Comm. on Bus. & Indus., 85th Leg., R.S. (Mar. 20, 2017). House Bill 285 and House Bill 475 both would have required the minimum wage to be paid at the greater of the federal minimum wage or \$15 per hour. Tex. H.B. 285, 85th Leg., R.S. (2017); Tex. H.B. 475, 85th Leg., R.S. (2017). House Bill 840 and House Bill 954 both would have allowed municipalities and counties to set minimum wages higher than the state's adopted minimum wage in the TMWA. Tex. H.B. 480, 85th Leg., R.S. (2017); Tex. H.B. 954, 85th Leg., R.S. (2017). House Bill 924 would have required that employers pay each employee at least the greater of \$10.10 an hour or the federal minimum wage. Tex. H.B. 924, 85th Leg., R.S. (2017). House Bill 937 proposed to gradually raise the minimum wage to the greater of the federal rate or eventually \$10.10 per hour in 2022. Tex. H.B. 937, 85th Leg., R.S. (2017). The two resolutions proposing to amend the Texas Constitution were enabling legislation tied to House Bill 924, Tex. H.J. Res. 56, 85th Leg. R.S. (2017), and House Bill 992. Tex. H.J.

Res. 57, 85th Leg. R.S. (2017). The three bills filed in the Senate were duplicates of bills filed in the Texas House of Representatives. None of the Senate bills were heard and considered in public hearings.

Of all thirteen bills filed proposing to modify the Texas minimum wage in 2017, not a single bill received a vote of any kind.

F. The 86th Legislative Session (2019)

There were 21 bills filed relating to the minimum wage in 2019. House Bill 194, House Bill 2138, House Bill 3273, House Bill 3922, and Senate Bill 113 each would have required the minimum wage to be set at the greater of the federal minimum wage or \$15 per hour. Tex. H.B. 194, 86th Leg., R.S. (2019); Tex. H.B. 2138, 86th Leg., R.S. (2019); Tex. H.B. 3273, 86th Leg., R.S. (2019); Tex. H.B. 3922, 86th Leg., R.S. (2019); Tex. S.B. 113, 86th Leg., R.S. (2019). Of that group, only House Bill 194 received a hearing. *See* Minutes from Public Hearing Before the Tex. H. Comm. on Int'l Rel. & Econ. Dev., 86th Leg., R.S. (Feb. 25, 2019). None received a vote of any kind.

House Bill 290 proposed to gradually raise the minimum wage to the greater of the federal rate or eventually \$10.10 per hour in 2024. Tex. H.B. 290, 86th Leg., R.S. (2019). House Bill 328 and Senate Bill 161 proposed to allow municipalities and counties to establish their own minimum wages. Tex. H.B. 328, 86th Leg., R.S. (2019); Tex. S.B. 161, 86th Leg., R.S. (2019). Of these bills, only House Bill 328

received a hearing. *See* Minutes from Public Hearing Before the Tex. H. Comm. on St. Aff., 86th Leg., R.S. (Apr. 17, 2019). None received a vote of any kind.

House Bill 820 and Senate Bill 113 would have required that employers pay each employee at least the greater of \$10.10 an hour or the federal minimum wage. Tex. H.B. 820, 86th Leg., R.S. (2019); Tex. S.B. 113, 86th Leg., R.S. (2019). House Bill 1336 would have required that employers pay each employee at least the greater of \$10.00 an hour or the federal minimum wage. Tex. H.B. 1336, 86th Leg., R.S. (2019). None of these bills received a hearing or a vote of any kind.

House Bill 3242 would have created a specific minimum wage for school bus drivers. Tex. H.B. 3242, 86th Leg., R.S. (2019). The bill did not receive a hearing or a vote of any kind.

House Bill 4555 proposed to exclude certain factors from the calculation of the minimum wage and would have guaranteed time-and-a-half in overtime pay. Tex. H.B. 4555, 86th Leg., R.S. (2019). House Bill 4616 proposed similar changes. Tex. H.B. 4616, 86th Leg., R.S. (2019). Neither bill received a hearing or a vote of any kind.

Senate Bill 2294 proposed to establish a minimum wage for local law enforcement officers. Under the bill, wages would be required to be the greater of the federal minimum wage or \$15 per hour. Tex. S.B. 2294, 86th Leg., R.S. (2019). The bill did not receive a hearing or a vote of any kind.

Four proposals to amend the Texas Constitution to establish a minimum wage were filed. *See* Tex. H.J. Res. 45, 86th Leg. R.S. (2019); Tex. H.J. Res. 80, 86th Leg. R.S. (2019); Tex. H.J. Res. 22, 86th Leg. R.S. (2019); None of them received a hearing or a vote of any kind.

Interestingly enough, one minimum wage bill on a narrow issue did pass to become law. Senate Bill 753 addressed a small subset of disabled workers in community rehabilitation programs that earned less than the federal minimum wage. Act of May 1, 2019, 86th Leg., R.S., S.B. 753 (codified at Hum. Res. Code § 122.0075-.0076). The bill requires the Texas Workforce Commission to assist in developing a plan for community rehabilitation programs to increase wages to the federal minimum wage before September 1, 2022. *Id.* House Bill 885 was identical to Senate Bill 735. Tex. H.B. 885, 86th Leg., R.S. (2019). Another bill, House Bill 1339, would have addressed the same issue in a different way. Tex. H.B. 1339, 86th Leg., R.S. (2019). That bill was not considered in a hearing and received no vote.

G. Conclusions from the Texas Legislature’s Approach to the Texas Minimum Wage Act

In five regular legislative sessions spread out between 2009 and 2019, 53 bills related to increasing the state’s minimum wage have been filed in the Texas Legislature. Only 22 of those bills were ever considered in a public committee hearing. Of those 22, only three were ever voted out of committee, two of which were identical bills that addressed an issue in which a small subset of workers was

earning below the current federal and state minimum wage. One of those two bills, Senate Bill 735 passed to become law. The only other bill in at least ten years to be voted out of committee and sent to the floor of the Texas House of Representatives allowed members of the Texas House of Representatives could go on record voting against it with 50 Yeas, 92 Nays, and 2 Present, not voting.

PRAYER

Paid sick leave may be a good policy for businesses, but that is a choice that employers must make based on their own circumstances. A mandate that all employers provide these benefits is bad public policy and contrary to the pro-growth policies promoted in the Texas Legislature for nearly two decades. Over the last ten years, the Legislature has had more than fifty opportunities to modify the state's minimum wage law, yet it has declined to do so. The Texas Minimum Wage Act is a state-level policy that preempts local laws like the City of Austin's Ordinance. The Ordinance is now another example of local public policy that is incompatible with state efforts. The court of appeals correctly decided the issue of preemption, and it is appropriate for this Court to grant review and affirm the court of appeals to make clear that local governments may not circumvent state law.

CERTIFICATE OF COMPLIANCE

This brief contains 4,916 words, excluding the portions of the brief exempted by Rule 9.4(i)(1) of the Texas Rules of Appellate Procedure. The document was created using Microsoft Word. It uses 14-point typeface for all text, except for footnotes, which use 12-point typeface.

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CERTIFICATE OF SERVICE

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