

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI**

COOPERATIVE HOME CARE, INC., )  
)  
and )  
)  
MISSOURI CHAMBER OF COMMERCE AND )  
INDUSTRY, )  
)  
and )  
)  
MISSOURI RESTAURANT )  
ASSOCIATION, INC., )  
)  
and )  
)  
THE MISSOURI RETAILERS ASSOCIATION, )  
)  
and )  
)  
NATIONAL FEDERATION OF INDEPENDENT )  
BUSINESS, )  
)  
and )  
)  
NAUFEL, INC. d/b/a CARRIE ELLIGSON )  
GIETNER HOME, )  
)  
and )  
)  
ASSOCIATED INDUSTRIES OF MISSOURI, )  
)  
Plaintiffs, )  
)  
v. )  
)  
CITY OF ST. LOUIS, MISSOURI, )  
**Serve: *Hold for Service*** )  
)  
and )  
)  
MAYOR FRANCIS G. SLAY, in his Official )  
Capacity as Mayor of the )  
City of St. Louis, Missouri, )  
**Serve: *Hold for Service*** )

Case No.:

Div. No.:

and

WINSTON CALVERT, in his Official Capacity  
as City Counselor of the City of St. Louis, Missouri,  
**Serve: Hold for Service**

and

EDDIE ROTH, in his Official Capacity as  
the Director of the Department of Human Services  
of the City of St. Louis, Missouri and as  
Member of the Board of Public Service of  
the City of St. Louis, Missouri,  
**Serve: Hold for Service**

and

MAVIS THOMPSON, in her Official Capacity as  
License Collector of the City of St. Louis, Missouri,  
**Serve: Hold for Service**

and

BOARD OF PUBLIC SERVICE  
OF THE CITY OF ST. LOUIS, MISSOURI,  
**Serve: Hold for Service**

and

RICHARD T. BRADLEY, in his Official Capacity  
as President of the Board of Public Service of  
the City of St. Louis, Missouri,  
**Serve: Hold for Service**

and

MELBA MOORE, in her Official Capacity  
as Member of the Board of Public Service of  
the City of St. Louis, Missouri,  
**Serve: Hold for Service**

and

GREG HAYES, in his Official Capacity )  
as Member of the Board of Public Service of )  
the City of St. Louis, Missouri, )  
**Serve: *Hold for Service*** )  
) )  
and )  
) )  
RICHARD GRAY, in his Official Capacity )  
as Member of the Board of Public Service of )  
the City of St. Louis, Missouri, )  
**Serve: *Hold for Service*** )  
) )  
and )  
) )  
CURTIS SKOUBY, in his Official Capacity )  
as Member of the Board of Public Service of )  
the City of St. Louis, Missouri, )  
**Serve: *Hold for Service*** )  
) )  
and )  
) )  
STEPHEN RUNDLE, in his Official Capacity )  
as Member of the Board of Public Service of )  
the City of St. Louis, Missouri, )  
**Serve: *Hold for Service*** )  
) )  
Defendants. )

**VERIFIED PETITION FOR DECLARATORY JUDGMENT**  
**AND INJUNCTIVE RELIEF**

Plaintiffs Cooperative Home Care, Inc. (“Cooperative”); Missouri Chamber of Commerce and Industry (“Missouri Chamber”), for itself and its members; Missouri Restaurant Association, Inc. (the “Restaurant Association”), for itself and its members; the Missouri Retailers Association (the “Retailers Association”), for itself and its members; National Federation of Independent Business (the “Federation”), for itself and its members; Naufel, Inc. d/b/a Carrie Elligson Gietner Home (“Gietner”); and Associated Industries of Missouri (“Associated Industries,” and collectively with Cooperative, Missouri Chamber, the Restaurant Association, the Retailers Association, the Federation and Gietner, “Plaintiffs”), for itself and its

members, bring this action seeking the Court's declaration that Defendant City of St. Louis, Missouri's recently enacted minimum wage ordinance, Ordinance 70078 of the Revised City Code of the City of St. Louis, directly conflicts with the Missouri Constitution, Missouri Statutes, the United States Code and the Charter of the City of St. Louis, adopted June 30, 1914, as amended. Ordinance 70078, which includes an emergency clause, was passed by the City's Board of Aldermen and signed by Defendant Mayor Francis G. Slay into law on August 28, 2015. Because Ordinance 70078 will cause immediate and irreparable harm to Plaintiffs' legally protected interests that cannot be redressed by any other legal remedy, or undone by any court order, Plaintiffs also seek temporary, preliminary and permanent injunctive relief to prevent enforcement of the Ordinance. Plaintiffs state their cause of action as follows:

#### **PARTIES, JURISDICTION AND VENUE**

1. Cooperative is a corporation organized and existing under the laws of the State of Missouri with its principal place of business located in the City of St. Louis, Missouri.

2. Missouri Chamber is a non-profit corporation organized and existing under the laws of the State of Missouri. Missouri Chamber is comprised of more than 4,000 individual business owners, partnerships and corporations who, collectively, provide more than 425,000 jobs in Missouri. Missouri Chamber is the principal advocate for business policy decisions in the state of Missouri. Missouri Chamber brings this suit on behalf of its members who will be adversely affected by implementation of this Ordinance. The issues at stake in this lawsuit are germane to Missouri Chamber's purposes and relevant to the day-to-day operations of its members. Missouri Chamber's members include entities which hire and employ individuals within the geographical boundaries of the City of St. Louis, at wages at or above the minimum wage rate for the state of Missouri but lower than the minimum wage set by the Ordinance.

3. The Restaurant Association is a non-profit corporation organized and existing under the laws of the State of Missouri. The Restaurant Association is comprised of foodservice educators, companies and organizations engaged in commercial and institutional foodservice in Missouri and firms engaged in sales to the Missouri foodservice industry. The Restaurant Association serves as the principal advocate for the restaurant and foodservice industry within the state of Missouri. The Restaurant Association brings this suit on behalf of its members who will be adversely affected by implementation of the Ordinance. The issues at stake in this lawsuit are germane to the Restaurant Association's purposes and relevant to the day-to-day operations of its members. The Restaurant Association's members include entities which hire and employ individuals within the geographical boundaries of the City of St. Louis, at wages at or above the minimum wage rate for the state of Missouri but lower than the minimum wage set by the Ordinance.

4. The Retailers Association is a benevolent corporation organized and existing under the laws of the State of Missouri. The Retailers Association is comprised of individuals, companies and organization engaged in the retail sales industry in Missouri. The Retailers Association serves as the principal advocate for the retail sales industry in the state of Missouri and is the only association that advocates exclusively for the needs of individuals, companies and organization engaged in the retails sales industry in Missouri. The Retailers Association brings this suit on behalf of its members who will be adversely affected by implementation of this Ordinance. The issues at stake in this lawsuit are germane to the Retailers Association's purpose and relevant to the day-to-day operations of its members. The Retailers Association's members include individuals and entities that hire and employ individuals within the geographical



boundaries of the City of St. Louis, at wages at or above the minimum wage rate for the state of Missouri but lower than the minimum wage set by the Ordinance.

5. The Federation is a non-profit corporation organized and existing under the laws of the State of California. The Federation is comprised of approximately 325,000 small and independent business owners, including small and independent business owners located in the State of Missouri. The Federation serves as the principal advocate for small and independent business owners in Missouri regarding the issues that uniquely affect its members. The Federation brings this suit on behalf of its members who will be adversely affected by implementation of this Ordinance. The issues at stake in this lawsuit are germane to the Federation's purpose and relevant to the day-to-day operations of its members. The Federation's members individuals and entities that hire and employ individuals within the geographical boundaries of the City of St. Louis, at wages at or above the minimum wage rate for the state of Missouri but lower than the minimum wage set by the Ordinance.

6. Gietner is a corporation organized and existing under the laws of the State of Missouri with its principal place of business in the City of St. Louis, Missouri.

7. Associated Industries is a non-profit corporation organized and existing under the laws of the State of Missouri. Associated Industries is comprised of individuals and entities engaged in manufacturing, business and/or industry in the state of Missouri. Associated Industries serves as the principal advocate for business, manufacturing and industry interests within the state of Missouri. Associated Industries brings this suit on behalf of its members who will be adversely affected by implementation of the Ordinance. The issues at stake in this lawsuit are germane to Associated Industries' purposes and relevant to the day-to-day operations of its members. Associated Industries' members include entities which hire and employ

individuals within the geographical boundaries of the City of St. Louis, at wages at or above the minimum wage rate for the state of Missouri but lower than the minimum wage set by the Ordinance.

8. Defendant City of St. Louis, Missouri (the “City”) is a charter city and county established by and organized pursuant to the Missouri Constitution. Mo. Const. Art. VI, §§19, 31-33. The City operates under the Charter of the City of St. Louis, adopted June 30, 1914, as amended (the “Charter”).

9. Defendant Mayor Francis G. Slay, in his Official Capacity as Mayor of the City of St. Louis, Missouri (the “Mayor”), is the duly elected Mayor of the City, charged with administering and enforcing the ordinances and laws of the City.

10. Defendant Winston Calvert, in his Official Capacity as the City Counselor of the City of St. Louis, Missouri (the “City Counselor”) directs the City Counselor’s Office, which is authorized to oversee, administer and enforce certain ordinances and laws of the City.

11. Defendant Eddie Roth, in his Official Capacity as the Director of the Department of Human Services of the City of St. Louis, Missouri and as Member of the Board of Public Service of the City of St. Louis, Missouri, (the “Director”) is the Director for the Department of Human Services of the City of St. Louis (“DHS”), charged with overseeing programs provided by, and funded by, the City focused on poverty and income disparity and regulating conduct that protects the welfare and well-being of those who live and work in the City. The Director is also a member of Defendant Board of Public Service of the City of St. Louis, Missouri (the “Board”).

12. Defendant Mavis Thompson, in her Official Capacity as License Collector of the City of St. Louis, Missouri (the “License Collector”) oversees the License Collector’s Office and

is charged and authorized with overseeing, administering and enforcing certain ordinances and laws of the City.

13. The Board is established by, and exists pursuant to, the Charter. *See* Charter Art. XIII, § 1. The Board is responsible for and oversees public works and improvements undertaken by the City. Specifically, the Board is charged and authorized with overseeing, administering and enforcing certain ordinances and laws of the City.

14. Defendant Richard T. Bradley, in his Official Capacity as President of the Board of Public Service for the City of St. Louis, Missouri (“Bradley”) is the president of the Board.

15. Defendant Melba Moore, in her Official Capacity as Member of the Board of Public Service for the City of St. Louis, Missouri (“Moore”) is a member of the Board.

16. Defendant Greg Hayes, in his Official Capacity as Member of the Board of Public Service for the City of St. Louis, Missouri (“Hayes”) is a member of the Board.

17. Defendant Richard Gray, in his Official Capacity as Member of the Board of Public Service for the City of St. Louis, Missouri (“Gray”) is a member of the Board.

18. Defendant Curtis Skouby, in his Official Capacity as Member of the Board of Public Service for the City of St. Louis, Missouri (“Skouby”) is a member of the Board.

19. Defendant Stephen Rundle, in his Official Capacity as Member of the Board of Public Service for the City of St. Louis, Missouri (“Rundle,” and collectively with the Director, Bradley, Moore, Hayes, Gray and Skouby, “Board Members”) is a member of the Board.

20. This Court has jurisdiction over this action and the authority and power to enter a declaratory judgment by virtue of Mo. Rev. Stat. § 527.010.

21. Venue is proper in the City of St. Louis, Missouri pursuant to Mo. Rev. Stat. § 508.060.



## **FACTS**

22. On or about August 28, 2015, the City of St. Louis Board of Aldermen (the “Board of Aldermen”) passed Board Bill 83FSAA which purports to amend the Revised City Code of the City of St. Louis (the “City Code”).

23. Board Bill 83FSAA was signed by the Mayor on August 28, 2015 and purportedly became effective immediately as Ordinance 70078 of the Revised City Code of the City of St. Louis (the “Ordinance”). A true and accurate copy of the Ordinance is attached hereto as Exhibit A and incorporated herein by reference.

24. The Mayor, the City Counselor, the Director, the License Collector, the Board and Board Members are charged with implementing and enforcing the Ordinance. *See* Ex. A, at § 5(B) (authorizing DHS and the City Counselor’s Office to, among other things, “take appropriate steps to enforce this Ordinance including, regardless of whether there is a complaint, investigating any possible or suspected violation of this Ordinance”); *see also id.* at § 5(D) (authorizing the License Collector’s Office to revoke business licenses and the Board of Public Service to revoke occupancy permits and any other permits, variances or licenses issued by the City for repeated violations of the Ordinance).

25. Upon information and belief, the Mayor, the Director, the City Counselor, the Board and Board Members, directly and through the City’s agents, servants, employees and attorneys, intend to take steps to implement and enforce the Ordinance. *See, e.g., id.* at § 5(A) (“The [Director] may . . . promulgate rules and regulations regarding the interpretation, application, and enforcement of [the] Ordinance.”).

26. The Ordinance purports to respond to certain “defining issues of our time[,] includ[ing] the increase in income inequality, the growing gap between rich and poor, and the

obstacles preventing people from rising into the middle class.” *Id.* at 1. The Ordinance’s preamble further notes that “real wages for most workers have increased little if at all since the early 1970s.” *Id.* This language curtails the original finding, set forth in Board Bill 83FSAA when presented to the Board of Aldermen, that “real wages for most workers *in the United States* have increased little if at all since the early 1970s.” A true and accurate copy of Board Bill 83FSAA, as presented to the Board of Aldermen on August 28, 2015, is attached hereto as Exhibit B and incorporated herein by reference.

27. The Ordinance requires employers to pay each of their employees an established minimum wage rate for hours worked within the geographical boundaries of the City. *See* Ex. A, at § 2(A).

28. The Ordinance proposes a series of graduated increases to reach a threshold minimum wage rate by January 1, 2018. On the date which the Ordinance purports to become effective, the minimum wage rate under the Ordinance is the minimum wage rate established by the State of Missouri. *Id.* at § 2(B)(1). Beginning on October 15, 2015, the minimum wage rate under the Ordinance increases to \$8.25 per hour. *Id.* Beginning on January 1, 2016, the minimum wage rate under the Ordinance increases to \$9.00 per hour. *Id.* Beginning on January 1, 2017, the minimum wage rate under the Ordinance increases to \$10.00 per hour. *Id.* Beginning on January 1, 2018, the minimum wage rate under the Ordinance increases to \$11.00 per hour. *Id.* Thereafter, beginning January 1, 2021, the minimum wage rate under the Ordinance shall be increased annually on a percentage to reflect the rate of inflation. *Id.* at § 2(B)(2).

29. However, if the state or federal minimum wage rate is at any time greater than the minimum wage rate established by the Ordinance, then that greater rate shall become the minimum wage rate for purposes of the Ordinance. *Id.* at § 2(B)(4).

30. In anticipation of the first change of the minimum wage rate under the Ordinance, employers are required to post in a conspicuous place at each of their facilities, where any employee works, a notice advising the employee of the current minimum wage and the employee's rights under the Ordinance. *Id.* at § 4(A).

31. The Director is also authorized, with direction and approval from the Ways and Means Committee of the Board of Aldermen (the "Ways and Means Committee"), to promulgate rules and regulations regarding the interpretation, application, and enforcement of the Ordinance. *Id.* at § 5(A). The Director is also required to make available to employers the notices required to be posted at employer's facilities, subject to approval from the Ways and Means Committee. *Id.* at § 4(C).

32. The Ordinance provides that it shall be a violation of the Ordinance for any employer to, among other things, (1) pay any employee a wage below the minimum wage rate set forth in the Ordinance,<sup>1</sup> (2) enter into an agreement whereby the employer will pay an employee to work for less than the minimum wage set forth in the Ordinance and (3) violate the rules and regulations promulgated to set the annual minimum wage rate, or that are otherwise promulgated to interpret, apply, or enforce the Ordinance. *See id.* at §§ 2(E) and 3(C)-(D).

33. As penalty for violation of the Ordinance, an employer "shall be punishable by a sentence of not more than 90 days in jail, or by a fine of not more than \$500.00 per violation or

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<sup>1</sup>The Ordinance advises that *each day* that an employer pays an employee a wage below the minimum wage rate shall constitute a separate violation under the Ordinance. *Id.* at § 2(E) (emphasis added).

both or by any combination of sentence and fine up to and including the maximum sentence and maximum fine.” *Id.* at § 5(C). Additionally, an employer “may be subject to conditions which will serve to compensate the victim, including that the [e]mployer pay restitution to any [e]mployee in the form of unpaid back wages plus interest from the date of non-payment or underpayment.” *Id.* Finally, repeated or intentional violations of the Ordinance may subject an employer’s business license to revocation by the License Collector’s Office. *Id.* at § 5(D). Such violations may also may subject any occupancy permits, other permits, variances or licenses held by the employer to revocation by the Board as well. *Id.*

34. Finally, the Ordinance styles itself as emergency legislation by alleging the following:

This being an Ordinance for *the preservation of public peace, health, and safety*, it is hereby declared to be an emergency measure within the meanings of Sections 19 and 20 of article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the Mayor.

*Id.* at § 9 (emphasis added).

35. Under the Ordinance, Cooperative, Gietner and the members of the Restaurant Association, the Retailers Association, Missouri Chamber, the Federation and Associated Industries (hereinafter “Association Members”) will be required to pay higher wages to certain employees within the City. As a result, Cooperative, Gietner and Association Members will also be required to pay more payroll taxes.

36. The additional wage and payroll expenses incurred by Cooperative, Gietner and Association Members under the Ordinance will negatively affect their net income and in many circumstances force them to operate at a loss in the absence of other measures to offset such negative impacts.



37. For Cooperative, Gietner and Association Members, navigating the hardships posed by the Ordinance is an immediate concern. Cooperative, Gietner and Association Members must immediately change the way they conduct business *in anticipation* of the mandate posed by the Ordinance in order to determine if they can achieve a profitable net income *and* be in compliance with the Ordinance and also to gradually move towards a business model that will comply with the Ordinance, in order to weather the drastic changes forced upon their operating models, which begin on October 15, 2015 under the Ordinance.

38. With regard to Association Members, these sudden changes, mandated by the Ordinance, include but are not limited to, increasing their prices, cutting labor hours, reducing their work force, moving from the City or closing their business and ceasing operations altogether. The situation is all the more dire for Cooperative and Gietner, whose revenue is generated almost entirely from Missouri Medicaid payments; they have no ability to raise their prices to offset the increases labor and payroll expenses mandated by the Ordinance. Effectively, Cooperative and Gietner have *no sufficient recourse* to offset the increased labor and payroll expenses required by the minimum wage rates set forth in the Ordinance.

39. These sudden changes, which are forced to occur in an expedited and haphazard manner in light of the impending initial increase under the Ordinance, have caused, and continue to cause Cooperative, Gietner and Association Members immediate and irreparable harm: such damages cannot be sufficiently ascertained and cannot be remedied by a damages award after the Ordinance is determined void. A court order declaring that the Ordinance is void will not retrieve Association Members' current workforce, recapture unnecessary price increases from customers, remedy the reputational and goodwill losses from such an increase, relocate a business back in the City nor put a shuttered business back into operation.



40. Moreover, Cooperative, Gietner and Association Members that purchase inventory from vendors are able to secure more favorable rates on such items if they can anticipate their needs, i.e., if they can commit to purchasing consistent amounts for an extended period of time. The uncertainty created by the Ordinance will cause Cooperative, Gietner and numerous Association Members to abstain from any long-term agreements or commitments with suppliers because they are unsure whether they will be able to remain profitable and in compliance with the Ordinance. These foregone long-term agreements include, but are not limited to, employment contracts and lease agreements for properties located within the City. Accordingly, Cooperative, Gietner and Association Members have lost their bargaining rights in vendor contracts, interests in real property and interests in sought-after employees for their workforce, none of which can be compensated by a dollar amount or remedied by a Court order at a later date, should this Court find that the Ordinance is illegal.

41. The immediate and irreparable harm at issue in this lawsuit is compounded by the fact that Cooperative, Gietner and Association Members who employ individuals within the City have to navigate the uncertainty and hardship posed by compliance with the Ordinance when their competitors, located in St. Louis County, Missouri (the "County") do not.

42. Cooperative, Gietner and Association Members have immediate and irreparable harm from the Ordinance. Such harm includes, but is not limited to (1) refraining from long-term contracts, including lease agreement and employment contracts; (2) delaying necessary projects; losing rights in contracts; (3) renegotiating current contracts; reducing the hours worked by employees within the City; (4) terminating portions of the workforce who work hours within the City; (5) fundamentally altering operation models without knowing the consequences' (6) migrating businesses from the City to the County and (7) ceasing operations and closing their

business. This harm is immediate and irreparable: the losses of profit, reputation, good will, valued employees and bargaining rights cannot be adequately remedied once the Ordinance is determined to be illegal. A court order cannot restore a businesses' good name, instill confidence in its workforce and patrons nor invigorate a business that has been forced to cease operations and shutter its doors. *See also* Affidavit of Mitch Waks in Support of Motion for Temporary Restraining Order, attached to Plaintiffs' Motion for Temporary Restraining Order ("Plaintiffs' Motion"), filed herewith, as Exhibit A; Affidavit of Daniel P. Mehan in Support of Motion for Temporary Restraining Order, attached to Plaintiff's Motion as Exhibit B; Affidavit of Robert N. Bonney, II in Support of Motion for Temporary Restraining Order, attached to Plaintiffs' Motion as Exhibit C; Affidavit of David Overfelt in Support of Motion for Temporary Restraining Order, attached to Plaintiffs' Motion as Exhibit D; Affidavit of Brad Jones in Support of Motion for Temporary Restraining Order, attached to Plaintiffs' Motion as Exhibit E; Affidavit of Kathy Naufel in Support of Motion for Temporary Restraining Order, attached to Plaintiffs' Motion as Exhibit F; Affidavit of Ray McCarty in Support of Motion for Temporary Restraining Order, attached to Plaintiffs' Petition as Exhibit G.

43. There is now a real and existing controversy between the parties hereto concerning the validity of the Ordinance and the effect the Ordinance will have on the manner in which Plaintiff's members, among others, conduct business with regard to hiring and employing individuals whose wages would otherwise be set at the minimum wage for the state of Missouri.

44. Plaintiffs and their members have a legally protectable interest in the minimum wage they are required to pay to their employees, which interest will be adversely impacted by the implementation and enforcement of the Ordinance.

**COUNT I**  
**THE ORDINANCE CONFLICTS WITH**

**MO. REV. STAT. §§ 71.010 AND 290.500 et seq.**

45. Plaintiffs incorporates by reference and restate the allegations contained in paragraphs 1 through 44 above as if fully set forth herein.

46. Mo. Const. Art. VI, §19(a) applies to and limits the powers of the City.

47. Pursuant to Mo. Const. Art. VI, §19(a), charter city's ordinances must be "consistent with the constitution and not limited or denied by state statutes." *City of Springfield v. Goff*, 918 S.W. 2d 786, 789 (Mo. banc 1996) (internal quotations omitted). "Ordinances may supplement state laws, but when the expressed or implied provisions of each are inconsistent or in irreconcilable conflict, *then the statutes annul the ordinances.*" *State ex rel. Teefey v. Bd. of Zoning Adjustment of Kansas City*, 24 S.W.3d 681, 685 (Mo. banc 2000) (emphasis added). "To determine if a conflict exists between an ordinance and a state statute, the test is whether the ordinance permits that which the statute prohibits or prohibits that which the statute permits." *Id.*

48. Mo. Rev. Stat. § 71.010 provides that any municipality "having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state . . . shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with state law upon the same subject."

49. The State of Missouri has enacted a Minimum Wage Law, Mo. Rev. Stat. §§ 290.500 *et seq.*, which requires employers to pay all workers in the state a minimum wage rate set by the state law. *See* Mo. Rev. Stat. § 290.502; *see also Tolentino v. Starwood Hotels & Resorts Worldwide Inc.*, 437 S.W.3d 754, 757 (Mo. banc 2014).

50. The Ordinance is not in conformity with Mo. Rev. Stat. § 290.500 *et seq.* because the Ordinance prohibits that which Mo. Rev. Stat. § 290.500 *et seq.* permits: paying employees a wage at a rate less than the amount set forth in the Ordinance. *See* Exhibit A, at § 2(B)(1)-(2).

Because Mo. Rev. Stat. § 290.500 *et seq.* is a general law of the state, the Ordinance violates Mo. Rev. Stat. § 71.010, which requires ordinances to conform with general laws of the state upon the same subject.

WHEREFORE Plaintiffs respectfully request this Honorable Court enter its Order and Judgment in their favor and against Defendants:

- a. Declaring that Ordinance 70078 is in conflict with Mo. Rev. Stat. §§ 290.500 *et seq.* and 71.010 and, therefore, is void and of no force and effect;
- b. Enjoining Defendants, temporarily, preliminarily and permanently, from administering and enforcing, or taking steps to administer and enforce, the provisions of the Ordinance, including, but not limited to, the minimum-wage program set forth in the Ordinance;
- c. Awarding Plaintiffs their costs in bringing this action; and
- d. Granting such other and further relief as the Court deems just and proper.

**COUNT II**  
**THE ORDINANCE CONFLICTS WITH**  
**MO. REV. STAT. § 67.1571**

51. Plaintiffs incorporate by reference and restate the allegations contained in paragraphs 1 through 50 above as if fully set forth herein.

52. Mo. Rev. Stat. § 67.1571 provides that “[n]o municipality...shall establish, mandate or otherwise require a minimum wage that exceeds the state minimum wage.” As defined, municipality includes the City. Mo. Rev. Stat. §67.1401.2(9) (defining “municipality” as “any city, village, incorporated town, or county of this state, or in any unincorporated area that is located in any county with a charter form of government and with more than one million inhabitants”).



53. Here the Ordinance permits what the Mo. Rev. Stat. § 67.1571 prohibits, the establishment of a minimum wage, by the City, that exceeds the state minimum wage.<sup>2</sup> Thus, the Ordinance is in conflict with Mo. Rev. Stat. § 67.1571 and therefore void and of no effect.

WHEREFORE Plaintiffs respectfully request this Honorable Court enter its Order and Judgment in their favor and against Defendants:

- a. Declaring that Ordinance 70078 is in conflict with Mo. Rev. Stat. § 67.1571 and, therefore, is void and of no force and effect;
- b. Enjoining Defendants, temporarily, preliminarily and permanently, from administering and enforcing, or taking steps to administer and enforce, the provisions of the Ordinance, including, but not limited to, the minimum-wage program set forth in the Ordinance;
- c. Awarding Plaintiffs their costs in bringing this action; and
- d. Granting such other and further relief as the Court deems just and proper.

**COUNT III**  
**THE ORDINANCE EXCEEDS THE CHARTER AUTHORITY**  
**UNDER MO. CONST. ART. VI, § 19(a)**

54. Plaintiffs incorporate by reference and restate the allegations contained in paragraphs 1 through 53 above as if fully set forth herein.

55. As noted above, Mo. Const. Art. VI, §19(a) applies to and limits the powers of the City. Section 19(a) provides that:

Any city which adopts or has adopted a charter for its own government, shall have 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 of this state and are not limited or denied either by the charter so adopted or by

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<sup>2</sup> Contrary to the preamble in the Ordinance, Mo. Rev. Stat. § 67.1571 cannot be alleged to be unconstitutional in light of Judge Dierker's ruling in *Missouri Hotel and Motel Association, et al. v. City of St. Louis, et al.*, Case No. 004-02638 (22nd Jud. Cir. July 31, 2001). In Judge Dierker's ruling, the at-issue ordinance was invalidated without reliance on Mo. Rev. Stat. § 67.1571. The ruling's finding that Mo. Rev. Stat. § 67.1571 was procedurally unconstitutional was inessential to the relief afforded plaintiff by Judge Dierker's ruling and therefore was *obiter dictum* and cannot be afforded any precedential effect. *Autumn Ridge Homeowners Association, Inc. v. Occhipinto*, 311 S.W.3d 415 (Mo. Ct. App. W.D. 2010). The Missouri Supreme Court's dismissal of the pending appeal in that matter, in light of plaintiffs' securing the relief sought and, thus, no longer constituting an aggrieved party confirms that Judge Dierker's finding on the procedural constitutionality of Mo. Rev. Stat. § 67.1571 has no preclusive effect.



statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law.

Mo. Const. art. VI, § 19(a).

56. The authority of a municipality is not without meaningful limits: notably, municipal legislation may “not invade the province of general legislation involving the public policy of the state as a whole.” *Missouri Bankers Ass’n, Inc. v. St. Louis County*, 448 S.W.3d 267, 271 (Mo. banc 2014) (quoting *Flower Valley Shopping Ctr., Inc. v. St. Louis Cnty.*, 528 S.W.2d 749, 754 (Mo. banc 1975)); *Yellow Freight Systems, Inc. v. Mayor’s Comm. On Human Rts.*, 791 S.W.2d 386 (Mo. banc 1990). “[T]he constitution and general laws of the state shall continue in force within the municipalities which have framed their own charters, and that the power of the municipality to legislate *shall be confined to municipal affairs.*” *Kansas City v. J. I. Case Threshing Mach. Co.*, 87 S.W.2d 195, 200 (Mo. 1935) (emphasis added).

57. The problem of a minimum “living wage” for laborers is a national crisis—one that affects every state in the country—and, is not of such a distinctly local concern that the City is authorized to enact municipal legislation to address it, pursuant to its delegated powers or any others. The question of whether employers should be required to pay their employees a minimum wage, and the amount of that minimum wage, is one of state and national interest. The national scope of this question is demonstrated by the language of the Ordinance’s own prefatory language, and even more blatantly so by the original language in Board Bill 83FSAA, which became the Ordinance. *See* Ex. A (finding that “real wages for most workers have increased little if at all since the early 1970s”); *see also* Ex. B (finding that “real wages for most workers *in the United States* have increased little if at all since the early 1970s”)(emphasis added).

58. That the scope of this issue extends beyond purely local considerations, to state and federal concerns, is further underscored by the existence of a minimum wage scheme

enacted by the Missouri General Assembly that explicitly pre-empts local laws to the contrary. Mo. Rev. Stat. §§ 290.500 *et seq.*, sets forth the Minimum Wage Law applicable to the State of Missouri, and Mo. Rev. Stat. § 67.1571 provides that no municipality may set a different minimum wage law.<sup>3</sup>

59. Accordingly, the issue of a minimum wage is not a purely local concern such that the City is authorized to legislate the same by local ordinance under the charter authority granted to it by Mo. Const. Art. VI, §19(a).

WHEREFORE Plaintiffs respectfully request this Honorable Court enter its Order and Judgment in their favor and against Defendants:

- a. Declaring that Ordinance 70078 is in violation of the Missouri Constitution and, therefore, is void and of no force and effect;
- b. Enjoining Defendants, temporarily, preliminarily and permanently, from administering and enforcing, or taking steps to administer and enforce, the provisions of the Ordinance, including, but not limited to, the minimum-wage program set forth in the Ordinance;
- c. Awarding Plaintiffs their costs in bringing this action; and
- d. Granting such other and further relief as the Court deems just and proper.

**COUNT IV**  
**THE ORDINANCE ENLARGES DUTIES OR LIABILITIES**  
**OF CITIZENS AMONG THEMSELVES**

60. Plaintiffs incorporate by reference and restate the allegations contained in paragraphs 1 through 59 above as if fully set forth herein.

61. “It has been repeatedly ruled in this state that a city has no power, by municipal ordinance, to create a civil liability from one citizen to another, nor to relieve one citizen from

---

<sup>3</sup> As set forth in Count I above, state law explicitly precludes a municipality’s authority to govern in the area of minimum wage rates.

that liability by imposing it on another.” *Yellow Freight*, 791 S.W.2d at 384 (quoting *City of Joplin v. Wheeler*, 158 S.W. 924, 928-29 (Mo. 1913)).

62. This doctrine operates independently, and separate from, any authority granted pursuant to Mo. Const. art. VI, § 19(a). *Id.* (“[T]he denial of the power to create the cause of action . . . need not rest upon a specific definition of the scope of the powers the legislature is authorized to delegate to a city charter city under art. IV, § 19(a)”).

63. Under the terms of the Ordinance, any kind of recovery is predicated upon the determination of a violation of the Ordinance. Specifically, the Ordinance provides that paying an employee a wage below the minimum wage rate as set forth in the Ordinance constitutes a violation of the Ordinance. *See* Ex. A, at § 2(E). Therefore the cause of action purportedly created by the Ordinance is for the benefit of an individual, i.e. the employee. *Yellow Freight*, 791 S.W.2d at 385. Moreover, the cause of action established by a violation of the Ordinance creates liability from one citizen to another, i.e. from the employer to the employee. *See* Ex. A., at § 5(C) (providing that an employer “may be subject to conditions which will serve to compensate the victim, including that the [e]mployer pay restitution to any [e]mployee in the form of unpaid back wages plus interest from the date of non-payment or underpayment”). For this reason alone, the Ordinance is in violation of the Missouri Constitution and of no force and effect.

64. This doctrine, which bars the creation of civil liability between citizens, “as applied to contractual and similar obligations and liabilities[,] . . . has never been questioned.” *Yellow Freight*, 791 S.W.2d at 384 (quoting *Wheeler*, 158 S.W. at 928-29). Therefore the Ordinance conflicts with the Missouri Constitution by mandating a provision of a contract between employers and employees, i.e. an established minimum wage rate. *See* Ex. A, § 3(C)

(“It shall be a violation for an Employer to enter into any agreement whereby the Employer will pay an individual to work for less than the minimum wage prescribed in this Ordinance as that minimum wage may be amended from time to time.”). Liability and recoupment under said contract, with regard to that provision, is compelled and established solely by violation of the Ordinance. Thus, by its own terms, the Ordinance creates a contractual liability from one citizen to another.

WHEREFORE Plaintiffs respectfully request this Honorable Court enter its Order and Judgment in their favor and against Defendants:

- a. Declaring that Ordinance 70078 is in violation of the Missouri Constitution and, therefore, is void and of no force and effect;
- b. Enjoining Defendants, temporarily, preliminarily and permanently, from administering and enforcing, or taking steps to administer and enforce, the provisions of the Ordinance, including, but not limited to, the minimum-wage program set forth in the Ordinance;
- c. Awarding Plaintiffs their costs in bringing this action; and
- d. Granting such other and further relief as the Court deems just and proper.

**COUNT V**  
**THE ORDINANCE CONSTITUTES AN UNDUE, UNAUTHORIZED AND ILLEGAL**  
**DELEGATION OF LEGISLATIVE POWERS**

65. Plaintiffs incorporate by reference and restate the allegations contained in paragraphs 1 through 64 above as if fully set forth herein.

66. The legislative power of the City is vested in the Board of Aldermen. *See* Charter, Art. IV, § 1. “A legislative body cannot delegate its authority, but alone must exercise its legislative functions.” *Ex parte Williams*, 139 S.W.2d 485, 491 (Mo. 1940) (*quoting Cavanaugh v. Gerk*, 280 S.W. 51, 52 (Mo. 1926)).

67. “The validity of a grant of discretion depends largely upon the nature of the business or thing with respect to which it is to be exercised.” *Williams*, 139 S.W.2d at 490



(internal quotation omitted). “For example, it is well established that in order for a statute or ordinance to be valid, which places restrictions upon lawful conduct or lawful business, in themselves harmless, it must specify the rules and conditions to be observed in such conduct or business . . . ” *Id.*

68. In the present case, the Ordinance vests the Director with the authority “to promulgate rules and regulations regarding the interpretation, application, and enforcement of [the] Ordinance.” *See* Ex. A, at § 5(B). This is especially problematic where, as here, the Ordinance purports to regulate and place restrictions upon otherwise lawful business which, in itself harmless, without specifying the rules and conditions to be observed in such conduct or business.

69. Even if this delegation of power were proper, the provisions of the Ordinance are impermissible insofar as they allow for a legislative veto, i.e. the power vested in the Director is subject to approval by the Ways and Means Committee.

70. Therefore, the Ordinance is void because it constitutes an undue, unauthorized and illegal delegation of legislative powers to the Director when the legislative power of the City is vested in the Board of Aldermen, per the City Charter, Art. IV, § 1. Moreover, even were this a valid delegation of powers, it would further be impermissible as an authorization of a legislative veto.

WHEREFORE Plaintiffs respectfully request this Honorable Court enter its Order and Judgment in their favor and against Defendants:

- 
- a. Declaring that Ordinance 70078 is a violation of the Charter of the City of St. Louis, adopted June 30, 1914, as amended, and, therefore, is void and of no force and effect;
  - b. Enjoining Defendants, temporarily, preliminarily and permanently, from administering and enforcing, or taking steps to administer and enforce, the



provisions of the Ordinance, including, but not limited to, the minimum-wage program set forth in the Ordinance;

- c. Awarding Plaintiffs their costs in bringing this action; and
- d. Granting such other and further relief as the Court deems just and proper.

**COUNT VI**  
**THE ORDINANCE CONFLICTS WITH**  
**29 U.S.C. § 214(c) and MO. REV. STAT. § 290.515**

71. Plaintiffs incorporates by reference and restate the allegations contained in paragraphs 1 through 70 above as if fully set forth herein.

72. 29 U.S.C.A. § 214(c) seeks to encourage employment opportunities for handicapped and developmentally disabled workers by permitting “sheltered workshops” to pay wages lower than the prevailing minimum wage. *See generally Cincinnati Ass’n for Blind v. N.L.R.B.*, 672 F.2d 567, 570 (6th Cir. 1982). The substance of this exception is codified within Missouri Statute as well: Mo. Rev. Stat. § 290.515 provides that “the director shall provide by regulation for the employment in any occupation of individuals whose earning capacity is impaired by physical or mental deficiency at wages lower than the wage rate applicable under sections 290.500 to 290.530.”

73. The Ordinance lacks an exception for “sheltered workshops” to pay handicapped and developmentally disabled workers lower wages.

74. By failing to include such an exception the Ordinance is in conflict with federal law and state law. The Ordinance prohibits what 29 U.S.C.A. § 214(c) and Mo. Rev. Stat. § 290.515 permit: allowing sheltered workshops to pay wages lower than the prevailing minimum wage. *See* Exhibit A, at § 2(E) (“It shall be a violation of this Ordinance for any Employer to pay *any* Employee a Wage below the minimum wage rate set forth herein.”) (emphasis added); *see also id.* at § 1(F) (outlining exceptions to “Employee” under the Ordinance).

---

WHEREFORE Plaintiffs respectfully request this Honorable Court enter its Order and Judgment in their favor and against Defendants:

- a. Declaring that Ordinance 70078 is in conflict with 29 U.S.C.A. § 214(c) and Mo. Rev. Stat. § 290.515 and, therefore, is void and of no force and effect;
- b. Enjoining Defendants, temporarily, preliminarily and permanently, from administering and enforcing, or taking steps to administer and enforce, the provisions of the Ordinance, including, but not limited to, the minimum-wage program set forth in the Ordinance;
- c. Awarding Plaintiffs their costs in bringing this action; and
- d. Granting such other and further relief as the Court deems just and proper.

**COUNT VII**  
**THE ORDINANCE IS NOT AN EMERGENCY MEASURE**  
**UNDER CITY CHARTER, ART IV, § 20**

75. Plaintiffs incorporate by reference and restate the allegations contained in paragraphs 1 through 74 above as if fully set forth herein.

76. “No ordinance, *unless it be an emergency measure*, shall take effect until thirty days *after* its approval by the mayor or thirty days after adoption over his veto.” *See* Charter, Art. IV, § 19 (emphasis added).

77. Moreover, “[e]ach bill shall be presented to the mayor immediately after its adoption, but shall not be acted upon by him (except it be an emergency measure) within ten days after its adoption.” *Id.* at Art. IV, § 17.

78. Therefore, if the Ordinance is an emergency measure, it became effective as soon as the Mayor signed it, on August 28, 2015. However, if the Ordinance is not an emergency measure, the earliest date on which it could become effective is October 4, 2015 (including the ten days which the Mayor is required to wait before action on a bill and the thirty days before an ordinance can take effect after being approved by the Mayor). *See id.* at Art. IV, §§ 19-20.

79. As noted above, the Ordinance was approved on August 28, 2015, and purports itself to be an emergency measure. *See* Ex. A, at § 9.

80. The Charter defines an emergency ordinance as follows:

An emergency measure is any ordinance *necessary* for the *immediate* preservation of the *public peace, health or safety*, or providing for public work or improvements of any kind or repairs thereof, or establishing a benefit or taxing district or a sewer district, or a joint sewer district, and declared to be an emergency measure; any ordinance calling or providing for any election or vote by or submission to the people, any ordinance making an appropriation for the payment of principal or interest of the public debt, or for current expenses of the city government; any general appropriation ordinance; or any ordinance fixing any tax rate; but no ordinance granting, enlarging or affecting any franchise or amending or repealing any ordinance adopted by the people under the initiative shall be an emergency measure.

Charter, Art. IV, § 20 (emphases added).

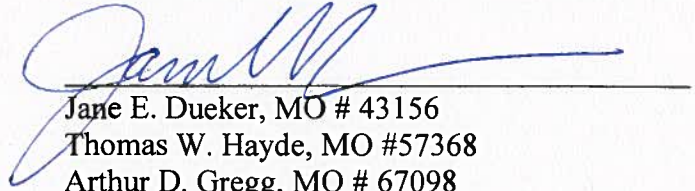
81. “It has been held that the affixing of an emergency clause to a statute or ordinance does not, of itself, make it an emergency measure within the meaning of the law.” *Hatfield v. Meers*, 402 S.W.2d 35, 39 (Mo. App 1966). “The courts possess the final authority to determine whether an emergency in fact exists.” *State v. Baxter*, 284 S.W.3d 648, 653 (Mo. App. E.D. 2009).

82. “The test of whether an emergency exists which justifies enactment of emergency legislation is not one of foreseeability. . . . Rather, the test is whether the factual situation is such that there is actually a crisis or emergency which requires *immediate or quick legislative action* for the preservation of the public peace, property, health, safety or morals.” *State ex rel. Tyler v. Davis*, 443 S.W.2d 625, 631 (Mo. banc. 1969) (emphasis added).

83. Here, the Ordinance cannot be regarded as responding to a situation that requires immediate or quick legislative action because the Ordinance, by its own terms, proposes no ~~immediate or quick legislative action.~~ The earliest action, which can be attributable to the Ordinance, does not occur until October 15, 2015.

Respectfully submitted,

SPENCER FANE BRITT & BROWNE LLP



Jane E. Dueker, MO # 43156  
Thomas W. Hayde, MO #57368  
Arthur D. Gregg, MO # 67098  
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St. Louis, MO 63105  
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McMAHON BERGER

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[hey@mcmahonberger.com](mailto:hey@mcmahonberger.com)

*Attorneys for Plaintiffs*




**AFFIDAVIT IN SUPPORT OF**  
**PETITION FOR DECLARATORY JUDGMENT**

I, Mitch Waks, being duly sworn and under oath, state as follows:

1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.
2. I am the Chief Executive Officer for COOPERATIVE HOME CARE, INC., plaintiff in the above-captioned action, and am duly authorized to make this Affidavit on its behalf.
3. I have read and reviewed the Verified Petition for Declaratory Judgment and Injunctive Relief and attached Exhibits A and B filed herein. The averments in the Verified Petition for Declaratory Judgment and Injunctive Relief, with the exception of those paragraphs that refer solely to co-plaintiffs, are true and accurate to the best of my knowledge and belief. Exhibits A and B are true and correct copies of the originals. I incorporate the Verified Petition for Declaratory Judgment and Injunctive Relief and Exhibits A and B herein by reference.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Print Name: Mitch Waks  
Title: CEO - Owner

STATE OF MISSOURI     )  
                                  ) ss.  
SAINT LOUIS COUNTY    )

Subscribed and sworn before me, a notary public, this 14 day of September, 2015.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



PAMELA LYNN MURRELL  
My Commission Expires  
March 16, 2018  
Warren County  
Commission #14883508

**AFFIDAVIT IN SUPPORT OF**  
**PETITION FOR DECLARATORY JUDGMENT**

I, Daniel P. Mehan, being duly sworn and under oath, state as follows:

1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.

2. I am the President and Chief Executive Officer of MISSOURI CHAMBER OF COMMERCE AND INDUSTRY, plaintiff in the above-described action, and am duly authorized to make this Affidavit on its behalf.

3. I have read and reviewed the Verified Petition for Declaratory Judgment and Injunctive Relief and attached Exhibits A and B filed herein. The averments in the Verified Petition for Declaratory Judgment and Injunctive Relief, with the exception of those paragraphs that refer solely to co-plaintiffs, are true and accurate to the best of my knowledge and belief. Exhibits A and B are true and correct copies of the originals. I incorporate the Verified Petition for Declaratory Judgment and Injunctive Relief and Exhibits A and B herein by reference.

FURTHER AFFIANT SAYETH NOT.

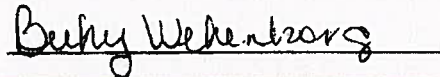


Print Name: Daniel P. Mehan

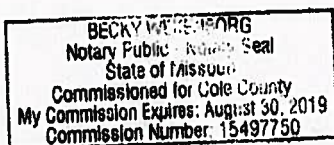
Title: President & CEO

STATE OF MISSOURI     )  
  ) ss.  
SAINT LOUIS COUNTY    )

Subscribed and sworn before me, a notary public, this 14 day of September, 2015.



Notary Public  
My Commission Expires: 8/30/19



SL 1615773.1

**AFFIDAVIT IN SUPPORT OF**  
**PETITION FOR DECLARATORY JUDGMENT**

I, Robert Bonney, II, being duly sworn and under oath, state as follows:

1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.

2. I am the Chief Executive Officer for MISSOURI RESTAURANT ASSOCIATION, INC., plaintiff in the above-captioned action, and am duly authorized to make this Affidavit on its behalf.

3. I have read and reviewed the Verified Petition for Declaratory Judgment and Injunctive Relief and attached Exhibits A and B filed herein. The averments in the Verified Petition for Declaratory Judgment and Injunctive Relief, with the exception of those paragraphs that refer solely to co-plaintiffs, are true and accurate to the best of my knowledge and belief. Exhibits A and B are true and correct copies of the originals. I incorporate the Verified Petition for Declaratory Judgment and Injunctive Relief and Exhibits A and B herein by reference.

FURTHER AFFIANT SAYETH NOT.

Robert Bonney II  
Print Name: Robert Bonney II  
Title: CEO

STATE OF MISSOURI     )  
                                  ) ss.  
LINCOLN COUNTY     )

Subscribed and sworn before me, a notary public, this 12 day of September, 2015.

Diane M. Vestal  
Notary Public

My Commission Expires: April 19, 2019



DANE M. VESTAL  
My Commission Expires  
April 19, 2019  
Lincoln County  
Commission #16634870

SL 1615773.1

**AFFIDAVIT IN SUPPORT OF**  
**PETITION FOR DECLARATORY JUDGMENT**

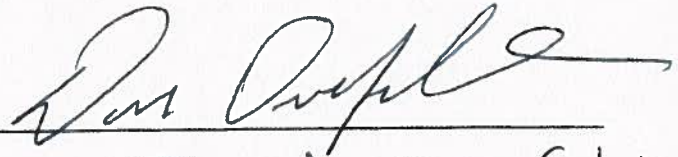
I, David Overfelt, being duly sworn and under oath, state as follows:

1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.

2. I am the President of THE MISSOURI RETAILERS ASSOCIATION, plaintiff in the above-described action, and am duly authorized to make this Affidavit on its behalf.

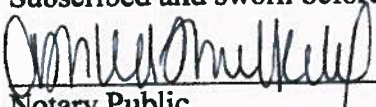
3. I have read and reviewed the Verified Petition for Declaratory Judgment and Injunctive Relief and attached Exhibits A and B filed herein. The averments in the Verified Petition for Declaratory Judgment and Injunctive Relief, with the exception of those paragraphs that refer solely to co-plaintiffs, are true and accurate to the best of my knowledge and belief. Exhibits A and B are true and correct copies of the originals. I incorporate the Verified Petition for Declaratory Judgment and Injunctive Relief and Exhibits A and B herein by reference.

FURTHER AFFIANT SAYETH NOT.

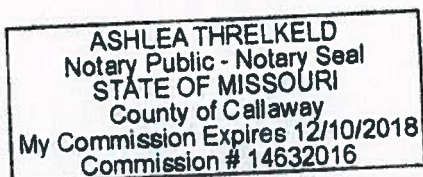
  
\_\_\_\_\_  
Print Name: David Overfelt  
Title: President

STATE OF MISSOURI     )  
                                  ) ss.  
SAINT LOUIS COUNTY    )

Subscribed and sworn before me, a notary public, this 14 day of September, 2015.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 12/10/18



SL 1615773.1



**AFFIDAVIT IN SUPPORT OF**  
**PETITION FOR DECLARATORY JUDGMENT**

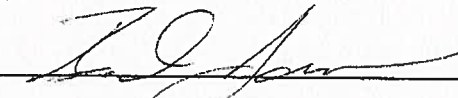
I, Brad Jones, being duly sworn and under oath, state as follows:

1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.

2. I am the Missouri State Director for the NATIONAL FEDERATION OF INDEPENDENT BUSINESS, plaintiff in the above-captioned action, and am duly authorized to make this Affidavit on its behalf.

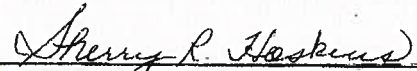
3. I have read and reviewed the Verified Petition for Declaratory Judgment and Injunctive Relief and attached Exhibits A and B filed herein. The averments in the Verified Petition for Declaratory Judgment and Injunctive Relief, with the exception of those paragraphs that refer solely to co-plaintiffs, are true and accurate to the best of my knowledge and belief. Exhibits A and B are true and correct copies of the originals. I incorporate the Verified Petition for Declaratory Judgment and Injunctive Relief and Exhibits A and B herein by reference.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Print Name: Brad Jones  
Title: MO NEIB State Director

STATE OF MISSOURI     )  
          COLE            ) ss.  
SAINT LOUIS COUNTY    )

Subscribed and sworn before me, a notary public, this 14<sup>th</sup> day of September, 2015

  
\_\_\_\_\_  
Notary Public

My Commission Expires: Sept. 21, 2017



**AFFIDAVIT IN SUPPORT OF**  
**PETITION FOR DECLARATORY JUDGMENT**

I, Kathy Naufel, being duly sworn and under oath, state as follows:

1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.

2. I am the Executive Director of NAUFEL, INC. D/B/A CARRIE ELLIGSON GIETNER HOME, plaintiff in the above-captioned action, and am duly authorized to make this Affidavit on its behalf.

3. I have read and reviewed the Verified Petition for Declaratory Judgment and Injunctive Relief and attached Exhibits A and B filed herein. The averments in the Verified Petition for Declaratory Judgment and Injunctive Relief, with the exception of those paragraphs that refer solely to co-plaintiffs, are true and accurate to the best of my knowledge and belief. Exhibits A and B are true and correct copies of the originals. I incorporate the Verified Petition for Declaratory Judgment and Injunctive Relief and Exhibits A and B herein by reference.

FURTHER AFFIANT SAYETH NOT.

Ghadar Naufel  
Print Name: Ghadar Naufel  
Title: Administration

STATE OF MISSOURI     )  
                                  ) ss.  
SAINT LOUIS COUNTY    )

Subscribed and sworn before me, a notary public, this 11<sup>th</sup> day of September, 2015.

Michelle A. Rhodes  
Notary Public

My Commission Expires: 6/21/2016



MICHELLE A. RHODES  
My Commission Expires  
June 21, 2016  
St. Louis County  
Commission #12366497

SL 1615773 1

**AFFIDAVIT IN SUPPORT OF**  
**PETITION FOR DECLARATORY JUDGMENT**


I, Ray McCarty, being duly sworn and under oath, state as follows:

1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.

2. I am the President and Chief Executive Officer of ASSOCIATED INDUSTRIES OF MISSOURI, plaintiff in the above-described action, and am duly authorized to make this Affidavit on its behalf.

3. I have read and reviewed the Verified Petition for Declaratory Judgment and Injunctive Relief and attached Exhibits A and B filed herein. The averments in the Verified Petition for Declaratory Judgment and Injunctive Relief, with the exception of those paragraphs that refer solely to co-plaintiffs, are true and accurate to the best of my knowledge and belief. Exhibits A and B are true and correct copies of the originals. I incorporate the Verified Petition for Declaratory Judgment and Injunctive Relief and Exhibits A and B herein by reference.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Print Name: Ray McCarty  
Title: President & CEO

STATE OF MISSOURI     )  
                                  ) ss.  
~~SAINT LOUIS COUNTY~~    )

Moniteau

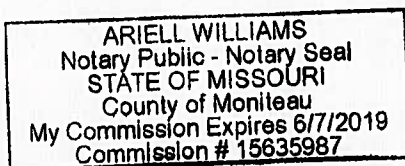
Subscribed and sworn before me, a notary public, this 14 day of September, 2015.

  
\_\_\_\_\_

Notary Public

My Commission Expires:

6/07/2019



SL 1615773.1