

STATE OF WISCONSIN**CIRCUIT COURT
BRANCH 2****COUNTY OF DANE**

**MAIN STREET COALITION
FOR ECONOMIC GROWTH, INC.,
A domestic corporation****Plaintiff,****Vs.****Case No. 04CV3853****CITY OF MADISON,
A municipal corporation,****Defendant.**

DECISION AND ORDER

On March 30, 2004 the City of Madison established by ordinance a minimum wage for all employees working in Madison. Effective January 1, 2005 employers must pay \$5.70 per hour (\$2.33 for tipped employees), with graduated annual increases to \$7.75 per hour on January 1, 2008. The current statewide minimum wage, established in 1997, remains \$5.15 per hour. Plaintiff asks the court to invalidate the ordinance on grounds that the City lacks power to establish its own minimum wage.

People may disagree about when and whether the minimum wage should increase, but that political and policy choice is not the court's prerogative. This lawsuit requires the court to decide whether Wisconsin law authorizes a municipality to independently establish a "living wage" for its inhabitants.

PROCEDURAL HISTORY

As noted, the Madison City Council adopted the Ordinance on March 30, 2004.¹ Plaintiff Main Street Coalition for Economic Growth, Inc. consists of businesses and associations whose members are subject to the Ordinance because they employ individuals working within the City of Madison (Complaint, ¶ 16-18). The Coalition filed this declaratory judgment action on December 10, 2004 and requested a temporary injunction to halt the January 1, 2005 implementation of the Ordinance. Following a hearing on January 5, 2005 this court denied the motion for temporary injunction, thus allowing the Ordinance to go into effect.

The parties then filed cross-motions for summary judgment, agreeing that there are no material issues of fact in dispute and each seeking judgment as a matter of law in its favor. Cross-motions for summary judgment enable the court to decide the case on the legal issues presented. *Millen v. Thomas*, 201 Wis. 2d 675,682-3, 550 N.W. 2d 134 (Ct. App. 1996). Fully briefed and argued March 30, 2005, this case is now ready for decision.

This Decision begins with a brief history of wage regulation and the development of municipal home rule authority in Wisconsin.

¹ A copy of Madison General Ordinance sec. 3.45 appears in the record as Exhibit 3, Affidavit of Paul N. Bauman.

MINIMUM WAGE LAW

Wisconsin Statutes Chapters 103 to 106 regulate conditions of employment in Wisconsin. Chapter 104, entitled "Minimum Wage Law," specifies how the minimum wage is determined, who is covered by it, and how it is to be enforced. Section 104.02, Wis. Stats., the centerpiece of this case, reads as follows:

Living-wage prescribed. Every wage paid or agreed to be paid by any employer to any employee, except as otherwise provided in s. 104.07, shall be not less than a living-wage.

Section 104.01(5) defines "living- wage" as follows:

The term "living-wage" shall mean compensation for labor paid, whether by time, piecework or otherwise, sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare.

Subsection (9) provides that "welfare shall mean and include reasonable comfort, reasonable physical well-being, decency and moral well-being."

Section 104.04, Wis. Stats., directs the Department of Workforce Development ("DWD") to determine the living-wage, allowing consideration of "the effect that an increase in the living-wage might have on the economy of the state, including the effect of a living-wage increase on job creation, retention and expansion, on the availability of entry-level jobs and on regional economic conditions within the state." If upon investigation of any person's complaint DWD finds reasonable cause to believe that wages paid to any employee are not a living-wage, § 104.06 requires DWD to appoint a wage council to assist it in re-determining the living-wage.

On December 16, 2003 Governor James Doyle convened a Minimum Wage Advisory Council to assist DWD in determining whether there should be an increase in the state's minimum wage. The Council's May 2004 Report recommended increasing the minimum wage to \$5.70 per hour in 2004 and \$6.50 per hour in 2005.²

The Report includes a history of minimum wage regulation that provides useful context for this lawsuit. The first Wisconsin minimum wage legislation in 1913 directed the Industrial Commission to determine a "living wage" for women and minors roughly based on cost of living. Then, as now, the determination of living wage was to be guided by an advisory board equally representing employees, employers and the public. The Commission promulgated its first minimum wage order in 1919 requiring employers to pay women and minors 22 cents per hour.

In 1921 the Commission introduced a wage differential based on population, raising the minimum wage to 25 cents per hour but only for experienced employees working in cities with more than 5000 inhabitants. The wage differential based on population continued in various forms until 1967. Throughout the rest of the twentieth century the minimum wage was frequently studied, subdivided into special categories (agricultural, domestic workers, students, golf caddies, for example) and increased. In 1975 the legislature first extended the protection of the minimum wage to male workers.

² The May 2004 "Minimum Wage Advisory Council of Wisconsin Report and Recommendations" appears in the record as Exhibit 1 to Affidavit of Cynthia Buchko in Support of Motion for Temporary Injunction, hereinafter "First Buchko Affidavit."

Effective October 1, 1996 the Department of Industry, Labor and Human Relations (DWD's predecessor) adopted by rule a basic minimum wage classification consisting of three categories: non-agricultural, agricultural and tipped employment.³ The current minimum wage, last amended in 1997, establishes a minimum wage of \$5.15 per hour for non-agricultural employees, \$4.05 per hour for adult agricultural employees, and \$2.13 per hour for tipped employees (Report, pp. 28-29).

The Minimum Wage Advisory Council collected and analyzed statewide wage data by occupation and metropolitan area, estimating that 200,000 Wisconsin workers would be affected by the Council's proposed minimum wage increases. The Report notes:

It is estimated that nearly 80% of these low wage workers are over 18 years of age, 65% are female, and over one-third are heads of their household. These workers are African-American, Hispanic, and Asian in numbers larger than their proportion in the population. Over two-thirds of these low wage workers work more than half-time.

(Report, p. 32).

The Report also observes that the proposed minimum wage increase will cost businesses a \$175 million increase in payroll, but that these costs will likely be offset by increased expenditures by these low-wage workers on basic necessities like food, clothing, shelter and transportation or ultimately passed on to consumers (Report at pp. 32-33).

³ The 1996 minimum wage regulations also establish an "opportunity wage" structure applicable to persons under age 20 for the first 90 days of employment.

The Council recommended increasing the minimum wage, as noted, and the Department of Workforce Development proposed its amended administrative rule, Wis. Admin. Code Chapter DWD, to effectuate the Council's recommendations (First Buchko Affidavit, Exhibit 3). The process for administrative rule promulgation in Wisconsin, however, includes the opportunity for legislative review prior to promulgation. Pursuant to Wis. Stats. § 227.19, the Legislature's Joint Committee for Review of Administrative Rules has invoked its power to delay the promulgation of proposed DWD Chapter 272.⁴ The Minimum Wage Advisory Council's recommendations, now formalized as proposed Wis. Admin. Code Chapter 272, thus cannot be implemented until the legislature affirmatively acts or the current legislative session ends. Wis. Stats. §227.19(4) and (5).

⁴ DWD's April 18, 2005 update on the "Initiative to Raise the Minimum Wage" reports as follows:

The Legislature's Joint Committee for Review of Administrative Rules has introduced bills (Assembly Bill 12 and Senate Bill 12) to support their objection to DWD's proposed rule to increase the minimum wage to \$5.70 as soon as the rule becomes effective and to \$6.50 on October 1, 2005.

If these bills are enacted, they would not only prevent the implementation of these proposed minimum wage increases; they would also remove the authority of the Department of Workforce Development to increase the minimum wage rate by administrative rule. . .

If these bills are defeated or fail to be enacted, DWD can continue with promulgation of the proposed rule to increase the minimum wage. If opponents of the proposed minimum wage increase believe that they do not have sufficient votes to pass the bills or override a veto by the Governor, the bills may stay in committee until the end of the legislative session and not be scheduled for a vote. The bills have been assigned to the Senate Committee on Labor and Electoral Process Reform and the Assembly Committee on Labor.

In a break from legislative tradition, the end of the session for bills introduced to object to proposed administrative rules is scheduled for 7 months later than the end of the session for most other bills. The end of the session for bills introduced to object to administrative rules is December 28, 2006. The end of the session for most other bills is May 4, 2006. If the Legislature has not passed AB 12 and SB 12 by December 28, 2006, DWD may continue with promulgation of the proposed rule to increase the minimum wage to \$6.50 per hour. The increase would likely be effective May 2007.

(Source: http://www.dwd.state.wi.us/cr/equal_rights_division/initiative_to_raise_the_minimum_wage).

MUNICIPAL AUTHORITY TO LEGISLATE ON MATTERS OF STATEWIDE CONCERN

Municipalities have no inherent powers. Wisconsin, however, is a “home rule” state, meaning that cities and villages have wide latitude to govern themselves without state interference. Municipal home rule powers arise from two separate sources: Article XI, § 3 of the Wisconsin Constitution and Wis. Stats. § 62.11. The constitutional provision, adopted in 1924, empowers cities and villages “to determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of state-wide concern as with uniformity shall affect every city or every village.” Constitutional home rule authorizes municipal regulation in areas of paramount local concern. *City of Madison v. Schultz*, 98 Wis. 2d 188, 196, 295 N.W. 2d 798 (Ct. App. 1980). Municipalities exercise constitutional home rule power by adopting a “charter ordinance.” See: *Solheim, Conflicts Between State Statute and Local Ordinance in Wisconsin*, 1975 Wis. L. Rev. 840, 842-3.

It is important to note that this case does not concern constitutional home rule power. The City of Madison did not adopt a charter ordinance and the City acknowledges that wage regulation is not a matter of paramount local concern. Instead, the City relies on the statutory grant of home rule power contained in Wis. Stats. § 62.11(5), which reads:

POWERS. Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health,

safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. *The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.*
(emphasis supplied).

Section 62.11, adopted in 1921, reversed what was known as "Dillon's Rule": the principle that municipalities have only those powers that are expressly granted, fairly implied or indispensable to municipal function.⁵ Instead, as the Wisconsin Supreme Court stated in *Hack v. City of Mineral Point*, 203 Wis. 215, 219, 233 N.W. 82 (1931), that "sec. 62.11 confers power far beyond that conferred . . . prior to 1921 is plain, and a city operating under the general charter, finding no limitations in express language, has under the provisions of this chapter all the powers that the legislature could by any possibility confer upon it." And, the court emphasized, one of the fundamental concepts of cities is that they may enact such ordinances as are necessary to the peace and order of the city due to any unique conditions within the city's boundaries. In so doing, cities supplement the state's police powers. 203 Wis. at 220-221.

Statutory home rule power is not limited to matters of local concern; otherwise, § 62.11(5) would needlessly duplicate power already granted by the constitutional home rule provision. Municipalities may indeed pass ordinances which touch on matters of both local and statewide concern. *DeRosso Landfill Co. v. City of Oak Creek*, 200 Wis. 2d 642, 650, 547 N.W. 2d 770 (1996). Here,

⁵ McQuillan Municipal Corporations, § 10.09, citing 1 Dillon, *Law of Municipal Corporations*, 448-449 (5th Ed. 1911).

Madison agrees that its living-wage ordinance regulates a matter of statewide concern but contends that the ordinance is nonetheless a valid exercise of municipal authority under Wis. Stats. § 62.11(5). Plaintiff counters that the State of Wisconsin, through its own comprehensive wage regulatory program, has preempted all municipal authority to establish a minimum wage

The last sentence of § 62.11(5) requires limitation of municipal authority by express language: "The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language." Wisconsin cases, led by *Wis. Environmental Decade, Inc. v. DNR*, 85 Wis. 2d 518, 271 N.W. 2d 69 (1978) and *Anchor Savings & Loan Ass'n v. Madison Equal Opportunitites Commission*, 120 Wis. 2d 391, 355 N.W. 2d 234 (1984), set up a four-part test courts apply to determine whether the legislature has withdrawn local authority to regulate a matter of concurrent local and statewide concern. The test asks:

- (1) whether the legislature has expressly withdrawn the power of municipalities to act;
- (2) whether the ordinance logically conflicts with the state legislation;
- (3) whether the ordinance defeats the purpose of the state legislation; or
- (4) whether the ordinance goes against the spirit of the state legislation.

Anchor, 120 Wis. 2d at 397. An affirmative answer to any one of these questions voids the local ordinance. *DeRosso Landfill Co. v. City of Oak Creek*, 200 Wis. 2d at 652.

The court next analyzes Madison's ordinance in the light of these four questions.

EXPRESS LEGISLATIVE WITHDRAWAL OF POWER

The Coalition points to no single statutory phrase constituting an express withdrawal of municipal power. Instead, on the strength of the court of appeals decision in *U.S. Oil, Inc. v. City of Fond du Lac*, 199 Wis. 2d 333, 544 N.W. 2d 589 (1996), the Coalition maintains that the Legislature has nonetheless withdrawn municipal power to act through its statutory wage regulation scheme.

In *U.S. Oil*, the City of Fond du Lac banned by local ordinance the vending machine sale of single packs of cigarettes to minors. U.S. Oil challenged the ordinance as beyond the City's authority because of the detailed statewide regulation of tobacco sales and distribution. The statutes in effect at the time, §§ 48.983 and 134.66, restricted the sale of tobacco products to minors and prohibited the purchase or possession of cigarettes by minors. Each of these statutes contained the following provision:

A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

Sections 48.983(5) and 134.66(5).

In addition, § 139.43 provided that the statutory provisions on cigarette taxation "shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of the sale of cigarettes."

After concluding that tobacco distribution is a matter of statewide concern, the court of appeals applied the *Anchor* four-part analysis to determine

whether the legislature had preempted local rule-making power. Under the first test, the court concluded that the legislature had expressly withdrawn municipal power to adopt its own regulation of underage tobacco sales by its "strict conformity" language:

After searching the relevant statutes, we conclude that the "strictly conforms" language within the tobacco regulations must be read as withdrawing municipalities' ability to act outside of state mandates.

199 Wis. 2d at 349.

There is no similar "strict conformity" requirement in Wisconsin statutes dealing with wage regulation. And, although express withdrawal can undoubtedly be accomplished through "an endless variety of statutory language," 199 Wis. 2d at 348, no express withdrawal language of *any* variety presents itself here. *U.S. Oil* does not bolster the Coalition's argument.

By contrast, in *DeRosso Landfill v. Oak Creek* and *Wisconsin's Environmental Decade (WED) v. DNR*, the Wisconsin Supreme Court considered claims that state statutes expressly withdrew municipal authority to regulate in environmental matters of statewide concern. In *WED v. DNR*, the City of Madison had adopted an ordinance prohibiting chemical aquatic nuisance treatment in Lakes Mendota and Monona. The Supreme Court agreed that, absent the Legislature's express withdrawal of municipal power to regulate chemical lake weed treatment, § 62.11(5) grants that authority to municipalities.

The court concluded that Wisconsin Statutes revealed no such express withdrawal of power. 85 Wis. 2d at 534, 535.⁶

In *DeRosso*, the Court addressed the City of Oak Creek's attempt to prohibit by ordinance solid waste facilities within city limits. Section NR 500.08(2), Wis. Admin. Code, exempts "clean fill" facilities from solid waste facility regulation including local approvals. Noting that administrative rules have the force and effect of law, the Court held that the exemption from local facility approval constituted an express withdrawal of municipal power to regulate. 200 Wis. 2d at 652-653, 657.

What emerges from these three cases is the principle that "express withdrawal" means express, not implied, withdrawal. In *WED v. DNR*, the Court's search revealed no express withdrawal language. In *DeRosso* and *U.S. Oil*, each Court found express withdrawal in an explicit administrative code provision and a "strict conformity" clause. The search for a comparable express withdrawal of municipal authority to adopt a minimum wage comes up empty-handed.

In fact, Wisconsin employment statutes actually contemplate that municipalities may enact ordinances concerning matters within the DWD's jurisdiction. Section 103.001(10), Wis. Stats., defines "local orders" for purposes of employment statutes, including the minimum wage provisions, as any municipal order or determination "upon any matter over which the department

⁶ As will be discussed *infra*, the Court went on to determine that the Madison ordinance and the DNR's statutory authority to supervise chemical treatment of water were logically inconsistent under the second part of the *Anchor* test.

has jurisdiction.” Section 103.005(7) grants any person affected by a local order in conflict with a DWD order or rule the right to seek review of the conflicting ordinance. The Department may declare the local order void. These provisions show that the Legislature has left room for local authority in the sphere of employment regulation.

Nonetheless, plaintiff Coalition suggests that express withdrawal must be found if “a court cannot find an expression of intention by the legislature to allow municipalities to enact ordinances regulating an area of statewide concern covered by a State statute” (brief at 19). Plaintiff thus views the “express withdrawal” test as a search for withdrawal by implication. Nothing in any of the cases on express withdrawal adopts this definition of express withdrawal.

Indeed, plaintiff’s interpretation of the first *Anchor* test reverses the meaning of express withdrawal by requiring that power to act be expressly *granted*. This jettisons the broad grant of home rule power the Legislature gave to cities and villages in § 62.11(5), Wis. Stats. The Madison Ordinance satisfies the first *Anchor* test.

LOGICAL CONFLICT WITH STATE LAW

The second part of the *Anchor* test asks whether the challenged ordinance logically conflicts with state law. Municipal ordinances which concomitantly regulate matters of statewide concern must “complement rather than conflict with the state legislation.” *State ex rel. Ziervogel v. Board of Adjustment*, 2004 WI 23, ¶ 37, 269 Wis. 2d 549, 572.

In *Anchor Savings & Loan Ass'n v. Madison EOC*, the Wisconsin Supreme Court rejected Madison's attempt by administrative order to require Anchor to re-write its credit underwriting standards. The Court held that the state's savings and loan regulatory program preempted local authority by prescribing uniform statewide credit standards. Drawing upon the now-familiar locomotive metaphor, the Court observed that the Madison EOC's order and the state regulatory program traveled not on parallel tracks but on a "collision course." 120 Wis. 2d at 401.

In *WED v. DNR*, the court phrased the logical conflict test as whether municipal action and the state statute were "diametrically opposed." Notably, the Court determined that the municipal prohibition of chemical lake treatment conflicted with and was *not* moving in the same direction as the DNR's program of supervised lake weed treatment.

In our case, Wis. Stats. § 104.02 provides that "[e]very wage paid . . . shall be not less than a living-wage." The phrase "not less than" establishes a floor, not a ceiling.⁷ Madison's ordinance and the statute are not diametrically opposed because an employer can simultaneously comply with both the ordinance and the minimum wage as established by state law. Unlike the potential permittee in *WED v. DNR*, who could not simultaneously treat lake weeds and comply with Madison's ban, or the solid waste facility applicant in

⁷ Although the case is not directly on point, the Court in *Milwaukee Police Association v. Hegerty*, 2005 WI 28, ¶ 22 stated that Wis. Stats. § 109.03(1), establishing wage frequency, "sets forth the minimum or 'floor' for the frequency of payment. Although the City can give its employees something better, it cannot give them less."

DeRosso who was exempt under state law but not exempt under municipal ordinance, employers can comply with state law and the municipal wage ordinance at the same time. The fact that Madison's ordinance enlarges upon or supplements the statute by requiring more than the statute requires does not create a "logical conflict." The statute and the ordinance do not contradict one another and can co-exist.⁸ Accordingly, there is no logical conflict that invalidates the ordinance.

VIOLATION OF THE SPIRIT AND PURPOSE OF THE LAW

Because the third and fourth *Anchor* tests consider the purpose of the state law at issue—in this case, the minimum wage—this Decision addresses them together. The Coalition's briefs explore the state statutory and administrative structure governing the payment of wages in Wisconsin, concluding that the statewide wage scheme is so pervasive as to block local regulation except where specifically authorized.

Much of the Coalition's argument rests on the DWD's statutory duty, in concert with the wage advisory council appointed under § 104.06, to establish the minimum wage: "In summary, Wisconsin's minimum wage scheme has been for the State, through the Department and its wage council, to consider all factors affecting a statewide living-wage" (initial summary judgment brief at 11). Despite its comprehensive regulatory scheme, however, the Department of Workforce Development and the wage council lack authority to implement the

⁸ This does not mean, as plaintiff hypothesizes, that any municipal ordinance more stringent than state law automatically passes the "logical conflict" test. The ordinance and state law cannot be working at cross purposes, or in *WED v. DNR*'s phrase, cannot be "diametrically opposed."

very task they are charged to perform. While this court acknowledges and respects the Legislature's right to act as a check on agency action through its rule promulgation approval process in § 227.19, it is abundantly clear that the "orderly scheme" for establishment of the minimum wage has, at this point, failed. It is also apparent that legislative efforts to expressly withdraw municipal authority to enact local minimum wages have likewise failed.

The Coalition again relies on *U.S. Oil v. City of Fond du Lac* for the proposition that, like tobacco regulation, the purpose of the minimum wage regulatory scheme is to achieve statewide uniformity and prevent a hodgepodge of local restrictions.⁹ One of the three Wisconsin statutes at issue in *U.S. Oil*, however, § 139.43, provided: "**Statewide concern.** Sections 139.30 to 139.44 shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of the sale of cigarettes." This constitutes an explicit statement that the legislative purpose is statewide uniformity.

There is no such explicit statement of purpose for Wis. Stats. Chapter 104, "Minimum Wage Law." Examination of the chapter as a whole, however, reveals that its primary focus is protection of employees, not statewide uniformity. The Legislature in 1913 chose the words "living-wage", not "standard" or "uniform" wage, and that term continues to this day. The definition section of Chapter 104, § 104.01, likewise focuses on employee standard of living. Section 104.01(5) defines living-wage as compensation "sufficient to enable the

⁹ The court in *U.S. Oil* rejected the City's contention that the purpose of statewide tobacco regulatory scheme was to curtail teenage smoking, stating: "Alas, however, we see a contradictory and more overwhelming goal in the state law." 199 Wis. 2d at 351.

employee receiving it to maintain himself or herself under conditions consistent with his or her welfare.”

The inescapable conclusion follows that the purpose and spirit of Wisconsin’s minimum wage law is employee protection from substandard wages. While statewide wage uniformity is surely a compatible goal and desired outcome of the process set forth in Wis. Stats. Chapter 104, it is not the paramount goal. Now, just as in 1913 when the Wisconsin Legislature first required the payment of a minimum wage, the driving force is the need for Wisconsin workers to earn a living wage.

In its 1920 First Biennial Report accompanying the recommendation for the 22-cent minimum wage, the Industrial Commission requested its immediate adoption and cautioned:

The minimum wage, however, is intended to cover only a bare minimum of reasonable comfort, and is in no sense a desirable wage.

The Report continued:

Employers who claimed that they would suffer great financial losses on account of the early enforcement of the minimum wage law were advised that relief might be given them by special order, but also that such action could be taken only after they presented their books and records to prove their losses. Not an employer in the state accepted this challenge, and the great majority of the employers accepted the determination of the living wage as fair and reasonable.

Industrial Commission of Wisconsin, Biennial Report 1918-1920, p. 60.¹⁰

¹⁰ The Biennial Report, published in 1920, is on file at the Wisconsin Historical Society.

The third and fourth *Anchor* tests require a reviewing court to invalidate a local ordinance if it defeats the purpose or goes against the spirit of state law. The Madison living-wage ordinance violates neither of these tests. The Ordinance is in step with the purpose of the minimum wage law and it carries forward the unanimous recommendations of the Minimum Wage Advisory Council.

EXTRATERRITORIAL APPLICATION OF THE ORDINANCE

In its Complaint, the Coalition alleges that the Ordinance impermissibly extends beyond Madison's borders because any employer, regardless of location, who pays workers for more than two hours of work performed in Madison must comply with the Ordinance. The City points out that § 3.45(6) of the Ordinance states:

The rates prescribed in this ordinance shall apply to all employees, including indentured apprentices, employed at private employments including nonprofit organizations, whether paid on a time, piece rate, commission, or other basis *for each hour of work performed within the City of Madison.* (Emphasis added).

Thus, by its terms, the Ordinance only regulates conduct within Madison, i.e., work performed within Madison. Nevertheless, the Coalition contends that the Ordinance is an invalid extraterritorial regulation.

Although the court readily agrees that cities only have governmental authority within their boundaries, *Cigelski v. Green Bay*, 231 Wis. 89, 91 (1939), Madison's living-wage ordinance regulates conduct within its borders: the payment of wages for hours actually worked in Madison. The Ordinance does

not require employers based outside of Madison to pay Madison's minimum wage for hours worked outside of Madison. It does not regulate conduct outside the Madison city limits. As the United States Supreme Court pointed out in *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 69 (1971), all municipal actions affect citizens outside city borders: "The imaginary line defining a City's corporate limits cannot corral the influence of municipal actions" In our case, labeling the minimum wage ordinance "extraterritorial" does not make it so, nor does the fact that an employer may have its headquarters outside Madison invalidate the Ordinance. Based on the plain words of the Ordinance, there is no extraterritorial regulation at issue.

CONCLUSION

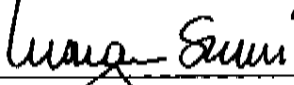
No one wants Wisconsin's economic landscape dotted with wage islands. But a municipality's power to enact ordinances for the welfare of its citizens is broad, even in matters of statewide concern. Madison's living-wage ordinance is valid for these reasons: first, the Legislature has not revoked municipal authority to enact a minimum wage ordinance. Second, the Ordinance complements and does not conflict with state law because state law requires workers to be paid "not less than" a living-wage. Finally, the Ordinance promotes and does not defeat the legislative purpose of protecting workers from substandard wages.

ORDER

For the reasons states in this Decision, defendant City of Madison's motion for summary judgment is hereby GRANTED and the complaint is DISMISSED.

Dated this 21st day of April 2005.

BY THE COURT:



Maryann Sumi, Judge
Circuit Court Branch 2

Cc: Atty. Thomas Pyper
Atty. Michael May