

TESTIMONY

OF

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FRANK SNYDER, SECRETARY-TREASURER

THE PENNSYLVANIA AFL-CIO

ON

HOUSE BILL 861

FOR THE

HOUSE LABOR & INDUSTRY COMMITTEE

JUNE 13, 2018

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Chairmen Kauffman and Galloway and members of the House Labor & Industry Committee, We thank you for this opportunity to present testimony in opposition to House Bill 861. The Pennsylvania AFL-CIO supports the governmental authority that cities and municipalities have to improve labor and employment standards for their residents. We not only think that local governments have this right; we also believe they have this *affirmative responsibility*.

The legislation before us concerns the matter of “preemption.” In law, the term “preemption” is defined as the rule of law that if the state government has enacted legislation on a subject matter, it shall be controlling over local ordinances and/or preclude the local government from enacting local ordinances on the same subject. So a law passed by a state legislature supersedes an ordinance passed by a local government, such as a city council. In effect, “preemption” laws allow state

governments to supersede any city or county laws with which the state does not agree. Some good research on this matter is available, especially by the Economic Policy Institute (EPI), that we would do well to consider.<sup>1</sup>

Historically, state preemption of labor standards has been used to ensure that *minimum* labor standards are applied statewide. But the political climate the last decade or two has been such that, rather than waiting for federal and state governments to require improved conditions for workers, local governments (such as cities and counties) have increasingly taken the initiative themselves to enhance standards for working people. The five key areas of labor and employment policy affected by preemption are minimum wage, paid leave, fair work scheduling, prevailing wage, and project labor agreements.

In 2006, Pennsylvania passed a law preempting all local ordinances or rules pertaining to the minimum wage that were adopted prior to January 1, 2006 and remained in effect as of that date. In the meantime, the state has let the minimum wage remain at a paltry \$7.25 per hour. HB 861 seeks to broaden such gridlock to these other areas.

On a national level, prior to 2012, only five localities had enacted their own local minimum wage laws, but as of 2017, forty counties and cities have done so.<sup>2</sup> At least thirty cities and two counties have enacted their own paid leave ordinances

in various forms.<sup>3</sup> At least nine states have passed work scheduling preemption laws since 2015.

Since the 2010 midterm elections, conservative state legislators control thirty-three governorships and have majority representation in both chambers of most state legislatures. They have increasingly used preemption laws to strike down local government efforts that are intended to increase the quality of life for working people in their municipalities.

In some cases, state legislatures have actually taken back minimum wage raises from workers who had already received them. EPI reports:

On August 28, 2017, Missouri's retroactive minimum wage preemption law took effect, repealing any local ordinance that has raised the locality's own minimum wage above the state's. When the preemption law goes into effect, St. Louis's minimum wage will drop from \$10 down to \$7.70. With this preemption law, state lawmakers have potentially undone raises for roughly 31,000 workers in St. Louis who received a raise when the city's ordinance first took effect in May 2017, and likely stopped additional scheduled raises for those same 31,000 workers plus another 7,000 workers, for a total of 38,000 workers who would have gotten a pay increase when the city's minimum wage was scheduled to rise to \$11 an hour in January.

The majority of St. Louis's affected workers are women (56 percent), and the overwhelming majority (over 90 percent) are adults, age 20 or older. The majority of these workers work full time, but roughly half are either in poverty or living with family incomes at less than 200 percent of the poverty line. More than one in four have children—which means that state lawmakers have taken away dollars that would have benefited nearly 23,000 children in the St. Louis area.

Regardless of where one stands on the spectrum of opinion regarding state versus local government control, a fair question to raise is why *labor* matters, among all others, are being singled out for such state preemption. All too frequently, the likes of the American Legislative Exchange Council (ALEC) argue

in favor of preemption on the ground that they want to maintain “uniformity” of labor regulations, thereby avoiding a plethora of different laws throughout the state. And yet ALEC has been remarkably adaptable in cases where local labor standards can be pushed *down*. That is, ALEC has never met a local labor ordinance *weakening* labor rights that it didn’t like.<sup>4</sup> The facts of the matter are that businesses have long operated under rules that vary from city to city and county to county whether they be zoning regulations, business licenses, construction permits, or what have you. For some reason, local provisions for workers that are more *generous* than those of state and federal law are presented as being uniquely problematic.

In conclusion, it is certainly noteworthy that the sponsors of the legislation before us are self-proclaimed conservatives. And yet a genuinely conservative principle is that local government knows best. As the National Employment Law Project says, “Policymakers who support local democracy and oppose corporate special interests should oppose the preemption of local minimum wage laws and other local worker protections.”<sup>5</sup>

We thank you for this opportunity to present testimony in opposition to House Bill 861, and urge the House Labor and Industry Committee to consider the needs of the working class citizen across this Commonwealth.

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<sup>1</sup> See especially “City Governments Are Raising Standards for Working People—and State Legislators Are Lowering Them Back Down” at <https://www.epi.org/publication/city-governments-are-raising-standards-for-working-people-and-state-legislators-are-lowering-them-back-down/>

<sup>2</sup> U.C. Berkeley Labor Center, *Inventory of US City and County Minimum Wage Ordinances*

<sup>3</sup> National Partnership for Working Families, *Current Paid Sick Days Laws*, November 9, 2016

<sup>4</sup> See Shaila Dewan, “Foes of Unions Try Their Luck in County Laws,” *New York Times*, December 18, 2014

<sup>5</sup> Cited Gordon Lafer in “The Legislative Attack on American Wages and Labor Standards, 2011–2012” October 31, 2013 available at <https://www.epi.org/publication/attack-on-american-labor-standards/>