

University Legal Experts Say Chicago Living Wage Legal

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New York, NY -- Today legal experts from the University of Illinois and New York University released two analyses of the proposed Chicago retail living wage ordinance. In one, Professor Laurie Reynolds of the University of Illinois College of Law, a leading academic expert on local government law in Illinois and around the country, evaluates the legal arguments set forth by opponents of the proposed ordinance. In the second, the Brennan Center for Justice at New York University School of Law analyzes the implications for the proposed ordinance of the recent ruling that a Maryland health law violated ERISA.

"Both analyses conclude that the proposed ordinance is legal and likely to be upheld by the Illinois and federal courts. Their key findings include:

(1) There is a long history of federal, state and local laws that regulate based on industry and business size, and courts have consistently upheld them.

(2) Under the home rule provision of the Illinois constitution, unless the state legislature explicitly bans cities from enacting wage laws, which it has not, Chicago is free to adopt a living wage ordinance to meet the needs of its low-income residents.

(3) Contrary to the Chicago Tribune's claim in its July 22 editorial, the recent ruling that a Maryland health benefits law violated ERISA (the federal Employee Retirement Income Security Act) has no bearing on the proposed ordinance. Every federal court of appeals that has reviewed a combined wage and benefits law like the Chicago ordinance has upheld the law under ERISA.

"The Illinois constitution empowers cities to develop local solutions to problems facing their residents," explains Professor Reynolds. "Unless the legislature decides to ban cities from enacting higher minimum wages for their communities – and it hasn't done that – Chicago is authorized to fashion wages laws to protect its low-income residents."

"Chicago has more low income residents than other communities and people with low incomes are more likely to rely on low paying retail jobs as their primary employment than wealthier citizens. In addition, Chicago's cost of living is substantially higher than in many other parts of the state," continues Reynolds. "Chicago's concern for its many citizens who are likely to find their primary income at big retail operations is a classic local concern justifying a local response."

Professor Reynolds is a leading academic expert on local government law and powers in Illinois and nationally. She has written, taught and lectured on the subject for more than 20 years. She is the co-author of a leading law school case book on the topic, *State and Local Government Law* (West 2004), and of a leading reference work, *Local Government Law in a Nutshell* (West 2003). She received a J.D.

degree summa cum laude from the University of Illinois where she was Editor-in-Chief of the Illinois Law Forum. Before joining the faculty in 1982, she practiced with Jenner & Block in Chicago.

"No one should take seriously the charge that lawmakers cannot constitutionally focus on large employers in specific industries when enacting new protections for the working poor. There's a long history of federal, state and local laws that regulate businesses based on both industry and size – and the courts have always upheld them," continues Reynolds.

Examples outlined in the University of Illinois legal analysis include Illinois state laws that set special minimum wage rates for the fire protection industry, and Cook County's recently enacted Displaced Building Service Workers Protection Ordinance, which regulates the employment of janitors and security guards in buildings of 75,000 square feet or more. In fact, in the 1960's, the federal minimum wage applied in the retail industry only to enterprises with annual sales of \$1 million or more were – a coverage rule quite similar to the proposed Chicago ordinance.

The NYU Brennan Center legal analysis finds that, contrary to the Chicago Tribune's claim in its July 22 editorial, the recent ruling that a Maryland health benefits law violated ERISA (the federal Employee Retirement Income Security Act) has no bearing on Chicago's proposed living wage ordinance.

"Every federal court of appeals that has reviewed a combined wage and benefits law like the Chicago ordinance has upheld the law under ERISA," explains Paul Sonn, deputy director of the Poverty Program at NYU's Brennan Center for Justice. "Unlike Chicago's living wage, the Maryland law was a straight health benefits mandate – that's a

difference that the courts have found to be crucial under ERISA."

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