

Full Eleventh Circuit Finds that Plaintiffs Lack Standing in Alabama Lawsuit Challenging State Prohibition of Local Minimum Wage Laws

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In a closely-split decision by the full court of appeals, the Eleventh Circuit has held that the plaintiffs lacked standing to pursue their claims against the named defendants in the lawsuit, specifically, the Attorney General for the State of Alabama. As a result, the Court of Appeals had no authority to determine whether the plaintiffs' equal protection claim might survive on its merits. *Lewis v. Governor of Alabama*, 2019 U.S. App. LEXIS 36857 (11th Cir. Dec. 13, 2019) (*en banc*).

At its core, the case involved the validity of a 2015 Alabama law prohibiting cities or other local municipalities from adopting their own laws concerning minimum wages, leave benefits, collective bargaining and other employment-related issues. The law was enacted in response to an ordinance passed by the Birmingham City Council to increase the minimum wage for all employees within the City's boundaries, from the current federal minimum of \$7.25 to \$10.10. While local jurisdictions in a number of states have enacted their own minimum wage ordinances in recent years, about half of the states have passed laws prohibiting such ordinances.

The lawsuit originally was filed in 2016 by the NAACP and two Birmingham residents against the Alabama Attorney General, the Governor of Alabama and the Mayor of Birmingham, alleging a variety of Constitutional violations and a violation of the Voting Rights Act, based on allegations that the state law's passage was rooted in the state legislature's racial bias against Birmingham's black-majority city council and citizens. The case was dismissed by a federal district judge in 2017 but was revived in July 2018 by a three-judge panel of the Eleventh Circuit, concluding that the facts as alleged were sufficient to maintain the plaintiffs' race discrimination claims.

The full Court of Appeals subsequently agreed to hear the appeal and the panel decision was vacated. By a 7-5 vote, the majority held that although the plaintiffs, two African-American workers who were employed in Birmingham, clearly could demonstrate an actual or imminent injury (significant economic harm), they could not demonstrate that these injuries were "fairly traceable" to the attorney general's conduct or that, even if they prevailed, they would receive the remedy they

sought. On the contrary, the majority found such an assertion to be highly speculative, particularly given that in the four years since the municipal ordinance was passed, a new mayor and a majority of the city council were elected, with no subsequent suggestion that the new leadership intended to revive the ordinance even if given the opportunity. Moreover, employers within the city limits, facing a nearly 40% increase in the minimum wage, as well as employers statewide who understandably would be concerned about the creation of a hodgepodge of municipal minimum wage rates, almost certainly would immediately challenge the ordinance as unlawful.

Thus this challenge, to Alabama law prohibiting local wage ordinances and other employment laws, is over and does not appear likely to be rekindled.

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