

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MOTHERING JUSTICE, MICHIGAN
ONE FAIR WAGE, MICHIGAN TIME
TO CARE, RESTAURANT OPPORTUNITIES
CENTER OF MICHIGAN, JAMES HAWK,
and TIA MARIE SANDERS,

Case No. -MM
Hon.

Plaintiffs,

v

DANA NESSEL, in her official capacity
as Attorney General and head of the
Department of Attorney General,

Defendant.

_____/

GOODMAN ACKER, P.C.
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_____/

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Advisory Opinion Requests by other parties arising out of the transaction or occurrence alleged the complaint were previously filed in the Michigan Supreme Court where they were given Case Nos. 159160 and 159201. The Court declined to issue an opinion and that action is no longer pending.

/s/ Mark Brewer
Mark Brewer (P35661)

Plaintiffs Michigan One Fair Wage, Michigan Time to Care, Mothering Justice, Restaurant Opportunities Center of Michigan, James Hawk, and Tia Marie Sanders (hereinafter collectively “Plaintiffs”) for their Verified Complaint against Attorney General Dana Nessel (“Nessel”) state as follows:

INTRODUCTION

1. This is an action to raise the minimum wage for hundreds of thousands of Michigan workers and to provide earned paid sick time for all Michigan workers, raises and paid sick time which have been illegally and unconstitutionally blocked by Nessel.

JURISDICTION

2. This Court has jurisdiction over Plaintiffs’ claims in this declaratory judgment action under MCR 2.605 seeking injunctive relief pursuant to MCL 600.6419(1)(a) giving the Court of Claims jurisdiction “(t)o hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers. . . .”

PARTIES

3. Plaintiff Mothering Justice is a Michigan nonprofit corporation whose objectives are to empower a well-organized group of mothers that can engage fellow mothers and law makers around a variety of issues that affect working families. Mothering Justice supported the 2017-18 MTTC petition drive and continues to support the full implementation of 2018 PA’s 337 and 338.

4. Plaintiff Michigan One Fair Wage (MOFW) is the organization which circulated the statutory initiative petition in 2017-18 to increase the minimum wage. The Legislature enacted that initiative as 2018 PA 337 but subsequently gutted it in 2018 PA 368 with the permission of

the then-Attorney General.

5. Plaintiff Michigan Time to Care (MTTC) is the organization which circulated the statutory initiative petition in 2017-18 to provide earned paid sick time for all Michigan workers. The Legislature enacted that initiative as 2018 PA 338 but subsequently gutted it in 2018 PA 369 with the permission of the then-Attorney General.

6. Plaintiff Restaurant Opportunities Center of Michigan is a Michigan nonprofit corporation and an affiliate of Restaurant Opportunities Center United whose mission is to improve working conditions and opportunities for advancement of Michigan restaurant workers. ROC-MI supported the 2017-18 MOFW petition drive and continues to support the full implementation of 2018 PA's 337 and 338.

7. Plaintiff James Hawk of Detroit was a tipped employee of Applebee's from 2018 until March 15, 2020. Because 2018 PA's 337 and 338 were not in effect from April, 2019 until March 15, 2020 he was denied the wages and earned paid sick time he would have been entitled to under those laws had they been in effect.

8. Plaintiff Tia Marie Sanders is from Novi and is currently employed. Because PA 338 has not been in effect, since April, 2019 she has been denied the earned paid sick time she would have been entitled to from her employer had that law been in effect.

9. Defendant Nessel is the elected Attorney General and the head of the Department of Attorney General which has allowed unconstitutional 2018 PA's 368 and 369 to be enacted and enforced by issuing and refusing to supersede or rescind Opinion of the Attorney General No. 7306 (2018). The long-established remedy for challenging an Attorney General opinion is a declaratory judgment action against the Attorney General. *See, e.g., Consumers Power v Attorney General*, 426 Mich 1; 392 NW2d 513 (1986) (*per curiam*); *Traverse City School District v Attorney*

General, 384 Mich 390; 185 NW2d 9 (1971).

FACTUAL ALLEGATIONS

10. In OAG No. 4303 (1964), Attorney General Kelley opined that “the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session “without violation of the spirit and letter of Article 2, Sec. 9 of the Michigan Constitution of 1963.” At 311.

11. In the fall of 2017, Michigan One Fair Wage (MOFW) began circulating statutory initiative petitions to create a new Michigan minimum wage law which would, among other things, increase the minimum wage in steps to \$12 per hour for all employees by January 1, 2022; increase the subminimum wage for tipped employees in steps to \$12 per hour by January 1, 2024; and annually adjust the minimum wage thereafter for inflation.

12. In late 2017, Michigan Time to Care (MTTC) began circulating statutory initiative petitions to create a new Michigan Earned Sick Time Act (MESTA) which would, among other things, allow all employees to earn 1 hour of paid sick time for every 30 hours worked to use for personal or family health needs; set annual caps on employee usage at 72 hours at large employers and 40 hours at small employers; and provide for a variety of enforcement mechanisms.

13. On May 21, 2018, MOFW timely filed 373,507 signatures with the Bureau of Elections (BOE). After review, the BOE concluded that there were at least 283,553 valid signatures, sufficient to certify the proposal for the 2018 general election ballot. However, the Board of Canvassers (BOC) deadlocked 2-2 on certify the proposal. MOFW appealed and the Court of Appeals ordered the BOC to certify the proposal. *Michigan Opportunity v Board of State Canvassers*, Ct App No 344619 (Order of August 22, 2018), *lv denied*, S Ct No 158303 (Order of December 5, 2018). The BOC certified the proposal for the ballot as ordered.

14. On May 29, 2018 MTTC timely filed 377,560 signatures with the BOE. After review, the BOE concluded that there were at least 271,088 valid signatures, sufficient to certify the proposal for the 2018 general election ballot. The BOC certified the proposal.

15. Upon receipt of both proposals by the Legislature, its leadership publicly announced that the Legislature would adopt the proposals in order to keep them off the 2018 ballot and amend them during the lame duck session. *See, e g, Michigan's OK of minimum wage hike, paid sick leave has a big catch*, Detroit Free Press (September 7, 2018).

16. In September, 2018 the MOWF proposal was adopted as 2018 PA 337 and the MTTC proposal was adopted as 2018 PA 338, both scheduled to take effect 90 days after the Legislature adjourned *sine die*.

17. In November, 2018 the Senate Majority Leader asked the then-Attorney General “whether an initiative proposed by the people but enacted by the Legislature under article 2, § 9 of the Michigan Constitution may be amended during the same legislative session at which it was enacted?” OAG No. 7306 at 1 (2018). The Attorney General answered yes, declaring that “OAG No. 4303 is superseded” in that regard. *Id* at 5.

18. With the permission of the Attorney General secured, during the lame duck session in December, 2018 the Legislature passed and the Governor signed 2018 PA 368 significantly amending PA 337 in these among other ways: delaying the minimum wage increase to \$12 per hour from 2022 until 2030, essentially no increase at all after inflation; continuing the subminimum wage for tipped employees; and deleting the inflationary adjustment.

19. Similarly during the 2018 lame duck session, the Legislature enacted and the Governor signed 2018 PA 369 significantly amending PA 338 in these among other ways: restricting eligibility so that hundreds of thousands, if not millions, of employees would be

excluded from coverage under the MESTA proposal (renamed the Paid Medical Leave Act); substantially reducing the permitted uses of sick time; and drastically cutting the amount of sick time which can be earned and used by employees.

20. PA's 368 and 369 took effect on March 29, 2019.

21. In early 2019 the Legislature sought advisory opinions from the Supreme Court that 2018 PA's 368 and 369 were constitutional. The Court declined to issue an opinion. *In re Requests for Advisory Opinion Regarding 2018 PA 368 and 2018 PA 369*, S Ct Nos 159610 and 159201 (2019).

22. Nessel has been asked to issue an opinion superseding Opinion No. 7306 by State Senator Stephanie Chang. She has refused.

23. Nessel has been asked by Plaintiff organizations to rescind Opinion No. 7306. She has refused.

24. Opinion No. 7306 remains in effect and the State of Michigan is enforcing 2018 PA's 368 and 369 pursuant to that Opinion.

25. As a result of Nessel's refusal to supersede or withdraw Opinion No. 7306, hundreds of thousands of Michigan workers have been denied millions, if not tens of millions, of dollars in wages they would have otherwise received under 2018 PA 337. Plaintiff MOFW has been injured because the proposal it worked to enact here has not been implemented. Plaintiff Hawk has been injured because he was denied the wages he was entitled to between April, 2019 and March 15, 2020.

26. As a result of Nessel's refusal to supersede or withdraw Opinion No. 7306, every Michigan worker has been denied the right to earned paid sick time they would have otherwise received under 2018 PA 338. Plaintiff MTTC has been injured because the proposal it worked to

enact has not been implemented. Plaintiff Hawk was injured because he was denied earned paid sick time he was entitled to between April, 2019 and March 15, 2020. Plaintiff Sanders has been injured because she has been denied the earned paid sick time she was entitled to.

COUNT I
ATTORNEY GENERAL OPINION NO. 7306 IS INCORRECT,
NULL, AND VOID.

27. Plaintiffs adopt by reference the foregoing paragraphs as if fully set forth herein.

28. Article 2, § 9 of the Michigan Constitution of 1963 forbids the Legislature from amending an initiative petition proposal which it enacted into law at the same legislative session.

29. In opining that the Legislature could amend an initiative petition proposal which it enacted into law at the same legislative session, OAG No. 7306 incorrectly interpreted Article 2, § 9 and is null and void.

COUNT II
2018 PA’S 368 AND 369 ARE UNCONSTITUTIONAL
IN VIOLATION OF MICHIGAN CONSTITUTION
ARTICLE 2, § 9.

30. Plaintiffs adopt by reference the foregoing paragraphs as if fully set forth herein.

31. 2018 PA’s 368 and 369 were adopted in violation of Article 2, § 9 because they amended proposals that Legislature had adopted during the same legislative session as 2018 PA’s 337 and 338.

32. 2018 PA’s 368 and 369 are null and void because they are unconstitutional.

COUNT III
2018 PA’S 338 AND 338 ARE IN EFFECT.

33. Plaintiffs adopt by reference the foregoing paragraphs as if fully set forth herein.

34. Because 2018 PA’s 368 and 369 are unconstitutional the laws they amended, 2018 PA’s 337 and 338, are in full force and effect.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that OAG No. 7306 is incorrect, null, and void;
- B. Declare that 2018 PA's 368 and 369 are unconstitutional;
- C. Enjoin the enforcement of 2018 PA's 368 and 369;
- D. Declare that 2018 PA's 337 and 338 are in effect;
- E. Award Plaintiffs their costs and attorneys' fees; and
- F. Grant such other non-monetary relief as the Court deems just and proper.

Respectfully submitted,

/s/ Mark Brewer
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Dated: May 11, 2021

VERIFICATION

STATE OF MICHIGAN)
)ss
 COUNTY OF OAKLAND)

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my knowledge, information, and belief.



Subscribed and sworn before me this 5 day of May, 2021.

Elizabeth M. Ruello
 Notary Public
 County of Wayne, State of Michigan
 My Commission Expires: 11/9/21
Acting in the County of Oakland

