

# In last-minute legal maneuver, Michigan Appeals Court overturns imminent increase in minimum wage

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On January 26, less than a month before a February 19 increase in the minimum wage was set to take effect for tens of thousands of Michigan workers, the Michigan Appeals Court blocked the increase by upholding a 2018 “adopt and amend” maneuver of the state legislature, then under Republican control.

This was an effort by the Republicans to prevent two ballot propositions from being voted on in a statewide referendum. The first was to raise the minimum wage to \$12 an hour by January 1, 2022, as well as eliminate the lower minimum wage for tipped workers. The second was to require employers with at least 10 employees to offer at least seven paid sick days per year to these workers (with nine days for larger employers).

Supporters of these two ballot propositions, backed by unions and anti-poverty groups, had succeeded in collecting hundreds of thousands of signatures to place the two measures on the November 6, 2018 ballot. They were expected to pass by overwhelming margins, and the Democratic Party supported the ballot drive as well, expecting to benefit from the increased voter turnout.

To forestall this outcome, the Republican-controlled legislature passed the language of the two petitions as laws (“adopt”). After Election Day passed, they then gutted both measures, pushing back the minimum wage increase from 2022 to 2030, blocking any change in the status of tipped workers, and exempting all employers with fewer than 50 workers from the sick-leave requirement (“amend”).

Prior to this action, “adopt and amend” had been limited to cases where the legislature adopted the text of a ballot initiative as law and made minor technical changes. The Republican legislature used it to rewrite the law entirely and defeat its purpose.

The groups set up to spearhead the petition drive,

including Mothering Justice, Michigan One Fair Wage, and Michigan Time to Care, filed suit, thus diverting any struggle by the working class against poverty wages into the capitalist court system, where the matter languished for several years.

It is notable that the language of the original petition in 2017 included Cost-of-Living Adjustments (COLA), something which was once a standard feature of union contracts but, with the transformation of the unions into outright company police forces, has become unfamiliar to an entire generation:

A petition to initiate legislation to increase the minimum wage to \$10 per hour on January 1, 2019; to \$10.65 per hour on January 1, 2020; to \$11.35 per hour on January 1, 2021 and \$12 per hour on January 1, 2022; **to annually adjust the minimum wage based on the change in the cost of living**; to require that gratuities are to be retained by the employee who receives them except as voluntarily shared; and to gradually increase the minimum wage in steps for employees who receive tips or gratuities until it is the same as the minimum wage for other employees. The proposal if adopted would supersede 2014 Public Act 138. If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposal is to be voted on at the November 6, 2018 general election. [emphasis added]

The original initiative target of \$12.00 by 2022 was a paltry increase from the previous minimum wage of

\$10.10 an hour and would have done nothing to raise workers out of poverty. At \$10.10 an hour a worker would make \$20,200 if they worked 40 hours a week for 50 weeks before taxes. At \$12 an hour they would make only \$24,000. This is far below the \$27,750 US federal poverty level for a family of four in 2022.

On July 22, 2022 Michigan Court of Claims Judge Douglas Shapiro sided with the plaintiffs against the State of Michigan. Shapiro agreed that the 2018 legislative “sleight-of-hand” was undemocratic. In his ruling he stated:

The Court heard the motions on June 27, 2022. For the reasons discussed herein, the Court concludes that the adopt-and-amend strategy the Legislature used to enact 2018 PA 368 and 2018 PA 369 was unconstitutional. Article 2, § 9 grants the Legislature three options to address a law proposed through the initiative process—enact the law, reject the law, or propose an alternative. Article 2, § 9 does not permit the Legislature to adopt a proposed law and, in the same legislative session, substantially amend or repeal it. Were the Court to adopt the state’s argument, it would mean that anytime a simple majority of the Legislature opposed the content of an initiative, it could, by legislative sleight-of-hand, prevent the initiative from ever becoming law without ever allowing the People to vote on it. This would plainly violate Article 2, § 9 of our Constitution, which reserves such power to the People.

Judge Shapiro’s ruling appeared to overturn this undemocratic bait and switch maneuver carried out behind the backs and against the will of the population. However, the state legislature, still under Republican control, appealed the ruling to the Michigan Court of Appeals.

The three-judge Michigan Court of Appeals included Michael Kelly, Michael Riordan, and Christopher Murray, a contributor to the Federalist Society. They ruled that the 2018 Republican-controlled Michigan Legislature had the constitutional authority to adopt the pair of petition initiatives and amend their respective policies, preventing the initiatives from going to the ballot that November.

Judge Kelly joined in the ruling, yet was forced to acknowledge that it was entirely undemocratic. He wrote

in a separate two-page concurring opinion:

As noted by Judge MURRAY, the only issue before us is to determine whether the procedure known as “adopt and amend” passes muster under our state constitution. I concur with the majority that it does. Although this procedure is permissible under the language of our constitution, this ploy—adopting an initiative into law so as to prevent it from going onto the ballot and then promptly and substantially amending that law in a manner that has left it essentially defanged—is anti-democratic. I cannot believe that this drastic action is what the drafters of our constitution even contemplated, let alone intended.

If the individuals responsible for this maneuver ever wonder why public opinion polls consistently cast politicians low when it comes to the virtue of trust, they need look no further than what they did here. It is a direct assault on one of the rights our founding fathers and the drafters of our state constitution held dear: the right of the citizens to petition their government.

When the history of this legislature is written, it is difficult to imagine anybody saying that this was their finest hour.

To the relief of Michigan employers, there will be no pay raises on February 19. The case is now expected to go to the Michigan Supreme Court.

Under conditions of unprecedented and staggering inequality, the ruling class and the courts cannot abide even the most minimal reforms, in this case the raising of the minimum wage to a level that workers still cannot afford to live on. And because such reforms, and much more substantial ones, have broad popular support, they resort to the most undemocratic and unscrupulous methods.



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