FLORIDA RETAIL FEDERATION, INC. A Florida not for profit corporation, THE FLORIDA RESTAURANT AND LODGING ASSOCIATION, a Florida not for profit corporation, FLORIDA CHAMBER OF COMMERCE, INC. a Florida not for profit corporation, CEFRA, INC., a Florida for profit Corporation, START AGAIN, INC., a Florida for profit corporation and GAVIN SHAMROCK, INC., a Florida for profit corporation. Plaintiffs, vs. THE CITY OF MIAMI BEACH, a Florida Municipality, Defendant _____/	IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA GENERAL JURISDICTION DIVISION CASE NO.: 16-031886 CA 10

FINAL ORDER GRANTING PLAINITFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on March 21, 2017 on the cross-motions for summary judgment filed by the parties. Additionally, the State of Florida having been granted intervention has filed a response in opposition to the Defendant's motion for summary judgment. Also, Amicus Curiae briefs have been filed by Talbot "Sandy" D'Alemberte (along with listed Law Professors) and Main Street Alliance. This court upon reviewing the file, the arguments of counsel, reviewing the well briefed and thorough arguments of the parties, intervenor and amicus in their respective memoranda/briefs, and otherwise being fully advised in the premises, makes the following findings of fact and conclusions of law.

1. Background.

This lawsuit deals with interplay between Constitutional Amendment Art. X, § 24, statutory preemption under F.S. § 218.077 and the Home Rule Amendment in connection with a June 2016 Ordinance passed by the City of Miami Beach establishing a **citywide** minimum hourly wage. This lawsuit followed whereby Plaintiffs seek declaratory relief invalidating the City's "Living Wage Ordinance". The City has answered alleging that the Ordinance is within its Home Rule Authority and that the Preemption Statute conflicts with Florida's Minimum Wage Constitutional Amendment Art. X, § 24 passed in 2004. The State of Florida has intervened defending the Constitutionality of the Preemption statute. Plaintiffs and Defendant have filed cross motions for summary judgment. Additionally, two Amicus Curiae briefs have been filed supporting the Defendant City's position. All parties concede that there is no genuine issue of material fact and that determination of whether the City's Minimum Wage Ordinance is valid is a question of law to be decided by this Court.

2. Home Rule Amendment.

In 1968 the Florida constitution was amended to afford Municipalities broad discretion in the managing and conducting of municipal governmental functions. Prior to the amendment Municipalities were required to obtain special legislative acts to conduct their affairs. Pursuant to the Amendment, "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law." Fl. Const., Art. VIII, § 2(b). This constitutional provision was codified in the Municipal Home Rule Powers Act ("MHRPA"), F.S. § 166.021 affirming the broad exercise of home rule powers as granted by the Constitution in connection with policy making regarding local matters. However, that is not say that this broad exercise is unlimited and Florida courts have made clear that "municipal ordinances must yield to state statutes." Masone v. City of Aventura, 147 So. 3d 492, 494-95 (Fla. 2014). The critical phrase of article VIII, § 2(b) – **'except as otherwise provided by law'** – established the constitutional superiority of the Legislature's power

over municipal powers." City of Palm Bay v. Wells Fargo Bank, N.A., 114 So. 3d 924, 928. (Fla. 2013).

3. The Preemption Statute.

In 2003 the Florida Legislature passed Fla. Stat. § 218.077, a preemption statute that prohibits any political subdivision of the state – such as a Municipality like the Defendant, City of Miami Beach – from establishing a minimum wage other than the Federal Minimum Wage which at the time was $5.15 an hour. At the time that this statute was passed, Florida did not have a minimum wage. In fact many political subdivisions had passed their own versions of Living Wage Ordinances concerning the wages that the subdivision body itself must pay, as well as any service contractors dealing with the County or municipality and any employers receiving direct tax abatements. These practices existing before the passage of F.S. § 218.077, (the Wage Preemption statute), were exempted under subsection 3. In 2013, F.S. 218.077(2) was amended to add the State minimum wage language as a wage that political subdivisions could require. The legislature made no changes to the language of prohibition contained in the 2003 version.

4. The Constitutional Amendment.

In 2004, Florida voters amended the Florida Constitution to include Article X, § 24, which declared a statewide minimum wage floor higher than that provided for by Federal Law. (Florida Minimum Wage Amendment). The voters approved said amendment upon being presented with the following ballot summary:

> This Amendment creates a Florida minimum wage covering all Employees in the state covered by the federal minimum wage. The **State minimum wage will start as $6.15 per hour** six months after Enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney's fees, and fines by the state. It forbids retaliation against employees for exercising this right.

In re Advisory Op. to Att'y Gen. re Florida Minimum Wage Amendment, 880 So. 2d 636, 637 (Fla. 2004) (emphasis added). Subsection 24(f) of the Amendment language goes on to provide that the amendment "shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages." Art. X, § 24(f), Fla. Const.

4. Issue.

Whether the City's minimum wage ordinance is valid in light of Fla. Stat. § 218.077, which prohibits municipalities from establishing a minimum wage or whether the Constitutional Amendment preempts the statute.

5. Analysis.

Summary judgment is appropriate when the pleadings and evidence on file establish that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. F.R.C.P. 1.510(c). The constitutionality of a state statute is a question of law to be decided by the Court. Florida Dep't of Revenue v. American Bus. USA Corp., 191 So. 3d 906, 911 (Fla. 2016).

Florida courts do not have the authority to invalidate a statute unless it is clearly contrary to a prohibition found in the Constitution. Abdool v. Bondi, 141 So. 3d 529, 541 (Fla. 2014). The state, meanwhile, in its' Legislative capacity has particularly broad authority to limit the municipal power of local governments under Article VIII, § 2(b) of the Florida Constitution and its pertinent language **except as otherwise provided for by law.** It is under this Constitutional authority that the Legislature has the power to enact preemption statutes, such as F.S. §218.077, prohibiting municipalities from establishing a minimum wage. Preemption whether Constitutional or Statutory may take different forms. Preemption may be accomplished by Express preemption – that is, by statutory provision stating that a particular subject is preempted by law or that local ordinances on a particular

subject are precluded. Preemption by state law, however, "need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject." Barragan v. City of Miami, 545 So. 2d 252, 254 (Fla. 1989). "Implied preemption is found where the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme." Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886 (Fla. 2010). Conflict preemption is found in situations where concurrent state and municipal regulation is permitted because the state has not preemptively occupied a regulatory field, however, a municipality's concurrent legislation must not conflict with state law." City of Palm Bay v. Wells Fargo Bank, N.A., supra. Thus, while Florida municipalities are "given broad authority to enact ordinances under [their] municipal home rule powers, Florida courts have made clear that "municipal ordinances must yield to state statutes." Masone v. City of Aventura, supra.

If municipal ordinances must "yield" to state statutes, such as §218.077, then the only way for the City's minimum wage ordinance to be viable is if the City identifies a constitutional provision prohibiting the State from preempting said ordinance. The City points to Article X, § 24(f) of the Florida Constitution for that support. Article X, § 24 (f) provides:

> This amendment shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for the payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment.

The city reads this language as explicit authorization for municipalities to pass and enforce minimum wage provisions higher than that set by the state or federal government. The City further argues that the language of § 24 (b) would be rendered meaningless if the state is permitted to use § 218.077 to nullify minimum wage ordinances enacted at the local level. This Court finds that the City reads the plain language of the Amendment erroneously.

As our Supreme Court stated in Graham v. Haridopolos, 108 So.3d 597, 603, (Fla. 2013), "When reviewing a constitutional provisions, this Court follows principles parallel to those of statutory interpretation. First and foremost, this Court must examine the actual language used in the Constitution. If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written. The City asserts that Article X, § 24(f) authorizes and empowers municipalities to establish a local minimum wage. But that is not exactly what the Amendment says. Rather, the Amendment provides that **the Amendment itself** shall not be construed as preempting a municipality from establishing a higher minimum wage – "**this amendment** shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body [municipality] to adopt or enforce [a higher minimum wage]." Art. X, § 24(f), Fla. Const.

It is not so much what the Amendment says but what the Amendment does not say. This Amendment does not prohibit other laws, such as § 218.077, from preempting a local minimum wage ordinance. The clear and unambiguous language of § 24(f) does not invalidate or even reference the Legislature's preemption powers recognized in Article VIII, § 2(b) and the case law interpreting same, nor does the amendment reference in anyway, much less repeal, the wage preemption statute that was codified and existing at the time. The ballot language confirms that the voters determined that the minimum wage in the State of Florida should be $6.15. Consequently, Article X, § 24(f) and § 218.077 can be logically read together without conflict as they pertain to preemption in different contexts – the former indicating that the Amendment itself does not preempt a local minimum wage, and the latter indicating that the state does preempt local minimum wage ordinances.

Interpreting the Amendment in this fashion does not render its language "nugatory," as suggested by the City. A more accurate description is to say that the Amendment's language is extraneous to the issue presented in this declaratory action. If the question in this case were "whether the Amendment prohibits a municipality from enacting a local

minimum wage," the answer would clearly be "no." But that is not the question before the court. The question here is whether the Constitutional Amendment preempted the State statute, that answer is also "no." Therefore, the City's minimum wage ordinance conflicts with and violates F.S. § 218.077, a valid wage preemption statute.

6. Conclusion.

The City's wage ordinance is not valid under § 218.077, Fla. Stat., which preempts local minimum wages. Article X, § 24(f) of the Florida Constitution set the state's minimum wage floor. Its language did not nullify the state's wage preemption statute, which does prohibit local minimum wage ordinances. Based on preemption principles discussed above, because both Article X, § 24(f), and F.S. § 218.077 can be read together without conflict, § 218.077 remains in effect, and the City's wage ordinance is declared to be invalid.

WHEREFORE, for all the foregoing reasons, it is:

OREDERED AND ADJUDGED:

1. Defendant City of Miami Beach's Motion for Summary Judgment be and in the same is hereby DENIED.
2. Plaintiff's Motion for Summary Judgment be and in the same is hereby GRANTED and the City of Miami Beach Living Wage Ordinance is declared invalid.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 03/27/17.

PETER R. LOPEZ
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
Judge's Initials PRL

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Cc: Charles S. Caulkins, Esq.
James C. Polkinghorn, Esq.
Donald M. Papy, Esq.
Robert F. Rosenwald, Esq.
Jonathan L. Williams, Esq.
Lauri Waldman Ross, Esq.
Richard F. Della Fera, Esq.