

STATE OF MICHIGAN  
MICHIGAN SUPREME COURT

In re Request for Advisory Opinion Regarding  
2018 PA 368 and 2018 PA 369,

Supreme Court Case Nos 159160  
and 159201

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**MOTION OF LEGAL MOMENTUM, MICHIGAN COALITION TO END DOMESTIC  
AND SEXUAL VIOLENCE, NATIONAL WOMEN’S LAW CENTER, ET AL., FOR  
LEAVE TO FILE AN AMICUS BRIEF IN RE: REQUEST FOR AN ADVISORY  
OPINION ON THE CONSTITUTIONALITY OF 2018 PA 368 AND 2018 PA 369**

Legal Momentum, the Michigan Coalition to End Domestic and Sexual Violence, the National Women’s Law Center, the National Organization for Women (NOW) Foundation, and Michigan NOW, by their attorneys, move pursuant to MCR 7.312(H) for leave to file a brief *amicus curiae* in the above-captioned matter. In support of its Motion, *Amici* state as follows:

1. Legal Momentum, the Women’s Legal Defense and Education Fund, is a leading national non-profit civil rights organization that for nearly 50 years has used the power of the law to define and defend the rights of women and girls. Legal Momentum has worked for decades to ensure that all employees are treated fairly in the workplace, regardless of their gender, including advocacy on issues of pay equity and economic opportunity. Legal Momentum frequently files *amicus curiae* briefs in state and federal courts around the country when important issues concerning the rights of women and girls are at issue.

2. The Michigan Coalition to End Domestic and Sexual Violence (“MCEDSV”) is a nonprofit membership organization comprising more than 70 nonprofit organizations dedicated to the empowerment of all victims of domestic and sexual violence. MCEDSV seeks to build a lasting legacy in which sexual and domestic violence no longer exists. MCEDSV and its member organizations regularly witness the reality in Michigan—that poverty makes people more vulnerable to victimization and makes it more difficult for survivors to find long-term healing and stability.

3. The National Women’s Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women’s legal rights and the rights of all people to be free from sex discrimination. Since 1972, NWLC has worked to secure equal opportunity in the workplace and has advocated to ensure that anti-discrimination laws are interpreted correctly to include important protections against discrimination and retaliation in the

workplace and in other contexts. NWLC has participated as counsel or *amicus curiae* in a range of cases before the Supreme Court and the federal Courts of Appeals to secure the equal treatment of women under the law. The Center has long sought to ensure that all individuals can work with equality, safety, and dignity and have the opportunity to achieve economic security.

4. The National Organization for Women (NOW) Foundation is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal opportunity, among other objectives. We work to ensure that women are able to obtain workplace equality and economic security, something that is especially important for survivors of domestic and sexual violence.

5. The Michigan Chapter of the National Organization for Women is an entity affiliated with the National Organization for Women (NOW), the largest grassroots feminist activist organization in the United States. Michigan NOW is committed to advancing equal opportunity, among other objectives. We work to ensure that women are able to obtain workplace equality and economic security, something that is especially important for survivors of domestic and sexual violence.

6. In light of their interest and expertise in the issue, proposed *Amici* believe that their brief in this case will be of assistance to this Court to determine whether Article 2, § 9 of the Michigan Constitution of 1963 permits the Legislature to adopt an initiative petition into law and then amend that law during the same legislative session (“adopt and amend”).

7. *Amici* have a direct interest in the issues raised in this litigation as organizations each charged with protecting the rights, opportunities, and safety of women and victims of

domestic and sexual violence and can offer a broader perspective on the effect this decision will have on the interests of women victims of domestic and sexual violence in Michigan.

8. *Amici* respectfully submit that granting its Motion would advance the convenient administration of justice by assisting this Court in analyzing the issues in this appeal completely.


9. In the interests of expediency and conservation of judicial resources, *Amici's* proposed Brief is attached to this Motion.

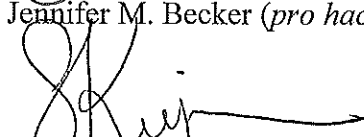
10. For the foregoing reasons, as well as those set forth in the attached brief, Legal Momentum, the Michigan Coalition to End Domestic and Sexual Violence, the National Women's Law Center, the National Organization for Women (NOW) Foundation, and NOW Michigan, respectfully request that this Court grant their motion for leave to file the accompanying Amicus Curiae brief.


Date June 19, 2019

Respectfully submitted,

\_\_\_\_\_  
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**BRIEF OF AMICI CURIAE LEGAL MOMENTUM, MICHIGAN COALITION TO END  
DOMESTIC AND SEXUAL VIOLENCE, NATIONAL WOMEN’S LAW CENTER, ET  
AL., IN SUPPORT OF REQUEST FOR AN ADVISORY OPINION ON THE  
CONSTITUTIONALITY OF 2018 PA 368 AND 2018 PA 369<sup>1</sup>**

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<sup>1</sup> *Amici* are Legal Momentum, the Women’s Legal Defense and Education Fund, the Michigan Coalition to End Domestic and Sexual Violence, the National Women’s Law Center, the National Organization for Women (NOW) Foundation, and Michigan NOW.

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## **STATEMENT OF BASIS OF JURISDICTION**

Pursuant to Michigan Constitution 1963, Article 3, § 8 and MCR 7.303(B)(3), this Court has jurisdiction over the request for an advisory opinion by the Legislature on important questions of law regarding the constitutionality of enacted legislation before it has gone into effect. Both the Michigan House of Representatives and the Michigan Senate have timely submitted a request for an advisory opinion on the constitutionality of 2018 PA 368 and 2018 PA 369. This Court therefore has jurisdiction to issue an advisory opinion on the important question of the constitutionality of these provisions, both of which have been enacted into law but were not yet in effect at the time of the Legislature's request. Legal Momentum, et al., file this *amicus curiae* brief as interested parties, pursuant to MCR 7.308(B)(2) and 7.312(H).

## STATEMENT OF QUESTIONS PRESENTED

- I. Whether the Court should exercise its discretion to grant the Michigan Legislature's request to issue an advisory opinion in this matter?

*Amici Curiae* Legal Momentum, et al. Answer: Yes

- II. Whether Article 2, § 9 of the Michigan Constitution of 1963 permits the Legislature to adopt an initiative petition into law and then amend that law during the same legislative session?

*Amici Curiae* Legal Momentum, et al. Answer: No

- III. Whether 2018 PA 368 and 2018 PA 369 were enacted in accordance with Const. 1963, Art. 2, § 9?

*Amici Curiae* Legal Momentum, et al. Answer: No

## INTRODUCTION

In 2018, Michigan voters obtained the requisite number of signatures (over 550,000) to certify two statutory initiatives—one to meaningfully raise the minimum and tipped minimum wages and another to mandate paid sick time for most employees in Michigan. As a result of these efforts, the people of Michigan should have had an opportunity to vote on both proposals during the November 2018 election. However, instead of allowing the initiatives to go to a popular vote or proposing an alternative bill, as authorized under Michigan’s Constitution, the Legislature enacted both proposals but immediately amended them within the same legislative session, gutting core protections and fundamentally altering the proposals.

In undertaking this “adopt and amend” scheme, which is not one of the three express options available under Michigan’s Constitution, the Legislature strategically undercut a statutory initiative process designed to empower the people of Michigan, effectively eliminating their ability to vote on two initiatives proven to advance economic security and equality for women and survivors of domestic and sexual violence. In doing so, the Legislature disproportionately harmed women—especially women of color and survivors of domestic and sexual violence, groups who stand to benefit from the initiatives proposed and whose voices have historically gone unheard by the Legislature—and deprived the voters of a critical opportunity to enact initiatives that serve the people of Michigan.

*Amici Curiae*<sup>2</sup> are national and Michigan-based organizations committed to protecting and advancing the rights of women and victims of domestic and sexual violence and share a longstanding commitment to securing workplace equality and advancing economic security.

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<sup>2</sup> Pursuant to MCR 7.312(H)(4) counsel for *Amici* attest that they authored the brief in whole and that no counsel or parties made a monetary contribution intended to fund the preparation or submission of the brief.

*Amici* represent women across Michigan and across the nation and have developed expertise identifying and eliminating systemic forms of gender discrimination and enacting comprehensive legal protections for women across the United States.

*Amici* write to highlight the disproportionately negative impact that the Legislature's actions will have on women, particularly the most underrepresented women in Michigan, including low-income women, women of color, women working in tipped industries, and victims of gender-based violence. Because of *Amici's* expertise, they are well-situated to inform the Court about the role that existing statutory minimum wage and tipped minimum wage thresholds have had on pushing high numbers of women into poverty and how the absence of paid sick time further embeds these inequities. *Amici* are also uniquely equipped to inform the Court about the positive impact that the proposed statutory initiative petitions can have in advancing economic and physical security for women and victims of domestic and sexual violence.

Legal Momentum, the Women's Legal Defense and Education Fund, is a leading national non-profit civil rights organization that for nearly 50 years has used the power of the law to define and defend the rights of women and girls. Legal Momentum has worked for decades to ensure that all employees are treated fairly in the workplace, regardless of their gender, including advocacy on issues of pay equity and economic opportunity. Legal Momentum chaired the national task force that was instrumental in the initial passage of the 1994 Violence Against Women Act and has advanced other national and state protections for survivors of gender-based violence. Legal Momentum has litigated cutting-edge gender-based employment cases, including *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and cases seeking advancement of the rights of gender-based violence survivors, including *U.S. v. Morrison*, 529 U.S. 598 (2000).



The Michigan Coalition to End Domestic and Sexual Violence (“MCEDSV”) is a nonprofit membership organization comprising more than 70 nonprofit organizations dedicated to the empowerment of all victims of domestic and sexual violence. MCEDSV seeks to build a lasting legacy in which sexual and domestic violence no longer exists. MCEDSV and its member organizations regularly witness the reality in Michigan—that poverty makes people more vulnerable to victimization and makes it more difficult for survivors to find long-term healing and stability.

The National Women’s Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women’s legal rights and the rights of all people to be free from sex discrimination. Since 1972, NWLC has worked to secure equal opportunity in the workplace and has advocated to ensure that anti-discrimination laws are interpreted correctly to include important protections against discrimination and retaliation in the workplace and in other contexts. NWLC has participated as counsel or *amicus curiae* in a range of cases before the Supreme Court and the federal Courts of Appeals to secure the equal treatment of women under the law. The Center has long sought to ensure that all individuals can work with equality, safety, and dignity and have the opportunity to achieve economic security.

The National Organization for Women (NOW) Foundation is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal opportunity, among other objectives. We work to ensure that women are able to obtain workplace equality and economic security, something that is especially important for survivors of domestic and sexual violence.

The Michigan Chapter of the National Organization for Women is an entity affiliated with the National Organization for Women (NOW), the largest grassroots feminist activist organization in the United States. Michigan NOW is committed to advancing equal opportunity, among other objectives. We work to ensure that women are able to obtain workplace equality and economic security, something that is especially important for survivors of domestic and sexual violence.

Based upon this collective experience, *Amici* therefore urge the Court to uphold the integrity of Michigan's statutory initiative process and to advise that the Legislature violated Article 2, § 9 of the Michigan Constitution.

#### **STATEMENT OF FACTS**

The Michigan Constitution of 1963 delegates legislative authority to both the Legislature and the people. Through Article 2, § 9 the people have power to make laws by statutory initiative, upon receipt of which the Legislature may (1) enact the people's statutory initiative; (2) reject the initiative permitting the people to vote on it in the next general election; or (3) propose an alternative law and present *both* options to the people in the next general election. Laws initiated or adopted by the people cannot be vetoed by the Governor and can be amended or repealed by the Legislature only with a vote to do so by three-fourths of the Legislature.<sup>3</sup>

In 2017, Michigan One Fair Wage (MOFW) circulated a statutory initiative petition—a procedural prerequisite to submitting a statutory initiative—to create the Improved Workforce Opportunity Wage Act, a proposed law that would, among other things, increase Michigan's minimum wage incrementally from \$9.25 to \$12 an hour for all employees by January 1, 2022; adjust the minimum wage for inflation annually as of October 2022; and increase the lower

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<sup>3</sup> Mich. Const. 1963 art 2, § 9.

hourly tipped minimum cash wage, which is currently \$3.60 an hour, until it matched the regular minimum wage by January 1, 2024. The tipped minimum cash wage or “tipped wage” is a lower base wage paid to employees who customarily and regularly receive tips. Eliminating the tipped wage would mean that people working in tipped jobs would be entitled to the same minimum wage from their employers as anyone else, regardless of tips.

That same year, Michigan Time To Care (MTTC) circulated a statutory initiative petition to create the Michigan Earned Sick Time Act to put in place the right to earn paid sick time for most employees in Michigan. The initiative would allow employees, regardless of employer size, to accrue 72 hours of paid leave within a 12-month period, with one hour accrued for every 30 hours worked.

On May 21, 2018, MOFW filed 373,507 signatures with the Bureau of Elections. After its review, the Bureau of Elections determined that at least 283,553 signatures were valid and the proposal, which received the requisite number of signatures,<sup>4</sup> was certified by the Board of Canvassers. On May 29, 2018, MTTC filed 377,560 signatures with the Bureau of Elections, which concluded that at least 271,088 signatures were valid. The proposal, which also received the requisite number of signatures, was certified by the Board of Canvassers.

The Improved Workforce Opportunity Act and the Michigan Earned Sick Time Act were confirmed eligible to appear on the ballot on election day in November 2018. On July 30, 2018 and August 27, 2018, respectively, the Secretary of State filed with the Michigan Legislature the initiative petitions proposing enactment of both proposals. Upon receipt of the proposals, the Legislature voted on September 5, 2018 to enact both the Improved Workforce Opportunity

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<sup>4</sup> To be certified, a petition must be “signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected....” Mich. Const. 1963, art. 2, §9.

Wage Act, assigned 2018 PA 337, and the Earned Sick Time Act, assigned 2018 PA 338, both of which were scheduled to take effect on March 29, 2019. Within the same legislative session<sup>5</sup>—immediately following the election in which the initiatives would have appeared on the ballot had they not been adopted by the Legislature—the Legislature began considering amendments to the new laws. The Legislature then introduced 2018 SB 1171 and 2018 SB 1175 with substantial amendments to the original initiatives, and passed said amended bills on December 4, 2018, just a few weeks before the end of the legislative session. Both bills were signed by the Governor and scheduled to take effect on March 29, 2019.

The amendments to 2018 PA 368 significantly delayed the incremental increase in the minimum wage, pushing back the timeline to reach \$12.00 by six years from 2024 to 2030. The amendments also eliminated the following provisions: the requirement that the minimum wage be adjusted annually for inflation after reaching \$12.00; the gradual increase and eventual elimination of the lower tipped minimum wage; the requirement that employers provide wage statements that include any wage deductions; and the prohibition against wage discrimination based on sex.

The amendments to 2018 PA 369 significantly reduced the accrual rate and the amount of paid sick time an employee can accrue in a 12-month period from 72 hours to 40 hours. They also limited covered employees to those working for employers with 50 or more employees and excluded specific groups of workers, including temporary workers and most part-time workers. The amendments removed various worker protections, including a provision that ensured that employees could use sick time without advance notice and a provision that would have covered absences relating to addressing the impact of domestic and sexual violence on children.

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<sup>5</sup> In Michigan, the 2018 legislative session ran from January 10, 2018 through December 31, 2018.

Because questions were raised about the Legislature’s authority to amend a voter-initiated law enacted by the Legislature during the same legislative session (“adopt and amend”), the Michigan House of Representatives and the Michigan Senate each passed a resolution<sup>6</sup> on February 20, 2019 seeking an advisory opinion from this Court regarding the constitutionality of its actions.

### ARGUMENT

It is imperative that the Court exercise its discretion to issue an advisory opinion in this matter and find that the Michigan Legislature’s “adopt and amend” scheme violated Article 2, § 9 of the Michigan Constitution. The Legislature should not have carte blanche to deprive the people of Michigan of their constitutionally established right to direct democracy, particularly when the Legislature’s actions deprived historically disenfranchised groups in Michigan, including women, of a critical opportunity to make their intentions known and to advance their rights.

#### **I. The Legislature’s “Adopt and Amend” Scheme Unconstitutionally Supplanted the Will of the People, Particularly of Typically Disenfranchised Groups.**

Voter-initiated statutory processes, also referred to as “initiatives,” provide a critical vehicle for the people to express their will and engage in direct democracy. The Michigan Constitution provides for this exercise of democracy. It also provides a role for the Legislature in that process. The Constitution, however, does not permit the Legislature to circumvent the voter-initiated statutory process in a way that overrides or preempts a legitimate expression of the will of the people, as was accomplished here in relation to the two impacted bills through the “adopt and amend” scheme at issue.

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<sup>6</sup> S. Res. 16, 2019 Leg., 100th Sess. (Mich. 2019); H. Res., 2019 Leg. 25, 100th Sess. (Mich. 2019).

In assessing and validating initiatives in core areas of governance, the U.S. Supreme Court has repeatedly reinforced that the people retain “ultimate sovereignty” and are the ultimate decision makers and the source of governmental power and legislative authority. *See Ariz. St. Legislature v. Indep. Redistricting Comm’n et al.*, 576 U.S. \_\_\_\_\_, \_\_\_, 135 S. Ct. 2652, 2675 (2015) (Court upheld an initiative that amended the Arizona Constitution, transferring redistricting authority from the Arizona Legislature to an independent commission, concluding that legislative functions could be fulfilled by referendum under a state’s prescriptions for lawmaking). In fact, the “power to legislate in the enactment of the laws of a State is derived from the people of the State.” *Hawke v. Smith*, 253 U.S. 221, 230 (1920). As such, a referendum or initiative is not a delegation of legislative authority to the people; rather, it is the people who are the source of legislative authority and reserve the ability to exercise such authority or to delegate it to representative instruments of their choosing. *Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 672 (1976) (“A referendum cannot [] be characterized as a delegation of power. Under our constitutional assumptions, all power derives from the people, who can delegate it to representative instruments which they create. See, e.g., *The Federalist*, No. 39 (J. Madison). In establishing legislative bodies, the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to the legislature.”).

Increasingly, initiative processes serve as an important avenue for those who have been historically disenfranchised to bring legal and policy changes forward and to their make intentions known. They provide an additional mechanism that particularly underserved communities can utilize to enact laws that safeguard their interests when the legislature is not adequately representing them. This can be particularly true for women, including low-income women and women of color, who historically have not been elected to federal and state office

and remain underrepresented within federal and state legislatures.<sup>7</sup> Despite important gains, in the U.S., only 28.8 percent of state legislators are currently women—and only 6.2 percent are women of color.<sup>8</sup> At the national level, women still hold only 23.7 percent of Congressional seats.<sup>9</sup>

In Michigan, the people established a legislative process that delegates legislative authority to the Legislature while also retaining such authority for themselves. Article 2, § 9 of the Michigan Constitution of 1963 establishes the people’s power to make laws by statutory initiative, and the language is specific about the manner in which the Legislature can respond. Upon receipt of a statutory initiative, the Michigan Legislature must exercise one of three specific options: (1) enact the proposed initiative without any change or amendment; (2) reject the proposed initiative, sending it to the people for a popular vote in the next general election; or (3) propose an alternative law, sending both proposals to the people for a popular vote in the next general election. Mich. Const. art. 2, § 9.

By establishing these express and circumscribed options, the Michigan Constitution preserves the integrity of the initiative process. To challenge a statutory initiative with which it does not agree, the Legislature has a clear path: it can propose its own alternative and competing bill. *See* Mich. Const. art. 2, § 9 (“The legislature may reject any measure so proposed by initiative and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the

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<sup>7</sup> *See* Farah Ahmad & Sarah Iverson, Ctr. for Am. Progress, *The State of Women of Color in the United States*, (October 2013), <http://www.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/justice.pdf>; *see also* The American Association of University Women, *Barriers and Bias: The Status of Women in Leadership* (March 2016), [https://www.aauw.org/aauw\\_check/pdf\\_download/show\\_pdf.php?file=barriers-and-bias](https://www.aauw.org/aauw_check/pdf_download/show_pdf.php?file=barriers-and-bias).

<sup>8</sup> Ctr. for Am. Women and Politics, Eagleton Inst. of Politics, Rutgers Univ., *Women of Color in Elective Office 2019* (2019), <https://www.cawp.rutgers.edu/women-color-elective-office-2019>.

<sup>9</sup> Ctr. for Am. Women and Politics, Eagleton Inst. of Politics, Rutgers Univ., *Fact Sheet: Women in the U.S. Congress 2019* (2019), <https://cawp.rutgers.edu/women-us-congress-2019>.

electors for approval or rejection at the next general election.”). The Legislature is limited to these three options and so cannot simply act to subvert and dismantle any proposed initiative with which it does not agree by enacting and then eviscerating it, as the Legislature has done here. In drafting the Michigan Constitution, the people carefully attempted to guard against that. By choosing the “adopt and amend” course that it did, the Legislature thwarted the letter and spirit of this provision.

As noted above, the voters in Michigan—over 550,000 of them—made their intentions known, signing petitions and securing sufficient signatures to certify proposals for the 2018 election ballot to obtain long overdue protections for low-wage workers, including prompt wage increases and paid sick time for most employees. Notably, this statutory initiative process created a critical opportunity for Michigan women, a historically underrepresented group in the state legislature, to advance their interests. In Michigan, women are 51 percent of the population, yet despite recent advances, women still comprised only 25 percent of the state legislature when it enacted the amended bills on December 4, 2018.<sup>10</sup> The numbers are even worse for women of color.<sup>11</sup>

Here, the Legislature’s scheme to dismantle the initiative petitions violated the express provisions of the Michigan Constitution, undermining the integrity of the statutory initiative process. These actions have a harmful impact on women and on victims of domestic and sexual violence in Michigan, depriving them of the opportunity to vote to enact meaningful laws to

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<sup>10</sup> Nat’l Conf. of State Legislatures, *Women in State Legislatures for 2018* (June 28, 2018), <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2018.aspx>.

<sup>11</sup> Reflective Democracy Campaign, *A Rising Tide? The Changing Demographics on Our Ballots* (Oct. 2018), <https://wholeads.us/2018-report/>.



enhance workplace equality and physical and economic security for themselves and their families.

## **II. The Legislature’s Scheme to “Adopt and Amend” the Improved Workforce Opportunity Wage Act Disproportionately Harms Women and Victims of Gender-Based Violence.**

As outlined above, the Legislature dramatically weakened the Improved Workforce Opportunity Wage Act that was meant to provide critical change for wages, including for the women of Michigan, and specially made worse the provisions for tipped workers. Today, women in the United States and in Michigan are more likely than men to make the minimum or tipped minimum wage and to suffer wage discrimination based on sex. Women are more likely to live in poverty, work under unsafe and exploitative conditions, and be subjected to sexual harassment and other forms of abuse. Women and families in Michigan who are earning the minimum and tipped minimum wage are disproportionately and negatively impacted by these long-standing acute income disparities and need immediate relief. Moreover, women are disproportionately victims of domestic and sexual violence, and there are inextricable links between poverty and continued victimization. Economic dependence and instability are too often barriers which victims of domestic and sexual violence cannot overcome to escape abuse.

Meaningful reforms to increase the minimum wage, eliminate the tipped minimum wage, and prohibit wage discrimination based on sex, like the introduction of the Improved Workforce Opportunity Wage Act in Michigan, provide a critical opportunity to address these systemic forms of gender discrimination and advance the rights and interests of women.

The Legislature’s amendments to this initiative, however, transformed the law, cutting essential protections that would have a significant positive impact. Taking the choice out of the hands of the people, the Legislature pushed back the incremental increase in the minimum wage

by an additional six years, a delay that women, children and those trying to escape poverty and violence simply cannot afford, especially after taking into account inflation and the cost of living. Adding insult to injury, the amendments eliminated the provision that required the minimum wage to be adjusted annually for inflation after it reached \$12.00 an hour. In another far-reaching step, the Legislature eliminated the gradual increase and eventual elimination of the tipped minimum wage. Against the national tide attempting to remedy gender pay inequities, the Legislature also removed the prohibition against wage discrimination based on sex. Far from being minor changes, these amendments fundamentally altered the underlying legislation, undermining its purpose and effect.

Instead of proposing an alternative bill, as envisioned by Article 2, § 9 of the Michigan Constitution, the Legislature singlehandedly eviscerated critical provisions and deprived the people of Michigan of any choice between its approach and that certified for the ballot, thus short-circuiting the important opportunity to advance the interests of low-income women and families in the state. As the numbers below make clear, taking this approach—which fails to promptly and meaningfully raise wages—keeps women in poverty, perpetuates gender-based inequality and discrimination in the workplace, and prevents victims of domestic and sexual violence from escaping abuse.

**A. The Legislature’s Scheme to Undermine the Protections of the Statutory Initiative Will Negatively Impact Michigan Women.**

Across the United States, living costs have increased substantially, whereas the federal, and many state, minimum wages have failed to keep pace and wage discrimination persists.<sup>12</sup> In Michigan, a meaningful increase in the minimum wage has been long overdue yet difficult to

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<sup>12</sup> See David Cooper, Econ. Policy Inst., *Raising the Federal Minimum Wage to \$15 by 2024 Would Lift Pay for Nearly 40 Million Workers* (Feb. 5, 2019), <https://www.epi.org/files/pdf/160909.pdf>.

achieve, and women are the ones who have suffered the most. In the United States, women are nearly 40 percent more likely than men to live in poverty<sup>13</sup> and more than twice as likely to work in low-wage occupations.<sup>14</sup> In Michigan, the 15 percent poverty rate exceeds the national rate of 12.7 percent<sup>15</sup> with 13.9 percent of women living in poverty, 25.2 percent of black women living in poverty, and 37.7 percent of female-headed families living in poverty.<sup>16</sup> As of 2017, Michigan has the 16<sup>th</sup> highest poverty rate for women in the nation.<sup>17</sup> The rate of working women living in poverty in Michigan exceeds the overall poverty rate, and the numbers are even worse for women of color.<sup>18</sup>

High poverty rates for working women are linked to the high proportion of women working low-wage or minimum wage jobs.<sup>19</sup> Nationally, more than six in ten minimum wage workers are women.<sup>20</sup> In Michigan, 68 percent of workers in low-wage jobs are women<sup>21</sup> and about six in ten minimum wage workers are women.<sup>22</sup> In fact, 22.7 percent of Michigan's

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<sup>13</sup> Meika Berlan & Morgan Harwood, Nat'l Women's Law Ctr., *National Snapshot: Poverty Among Women and Families, 2018*, (Sept. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/National-Snapshot.pdf>.

<sup>14</sup> Nat'l Women's Law Ctr., *Women in the Low-Wage Workforce by State 2* (June 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/06/women-in-low-wage-workforce-by-state-2018-2.pdf> [hereinafter *Women in the Low-Wage Workforce by State*]. Note that in this analysis "low-wage jobs" refer to those with median hourly wages of \$11.50 or less per hour based on U.S. Dep't of Labor, Bureau of Labor Statistics, May 2017 National Occupational Employment and Wage Estimates.

<sup>15</sup> Univ. of Mich., Poverty Solutions, *New Map Offers Snapshot of Poverty, Well-Being in Michigan* (Dec. 2017), <https://news.umich.edu/new-map-offers-snapshot-of-poverty-well-being-in-michigan/>.

<sup>16</sup> Nat'l Women's Law Ctr., *Women and Poverty, State by State, 2017* (Dec. 2018), <https://nwlc.org/resources/women-and-poverty-state-state/> [hereinafter *Women and Poverty, State by State, 2017*]; see also Ctr. for Am. Progress, *The State of Women in Michigan* (2013), [https://cdn.americanprogress.org/wp-content/uploads/2013/09/StateOfWomen\\_Michigan.pdf](https://cdn.americanprogress.org/wp-content/uploads/2013/09/StateOfWomen_Michigan.pdf) [hereinafter *The State of Women in Michigan*].

<sup>17</sup> See *Women and Poverty, State by State, 2017*, *supra* note 16.

<sup>18</sup> Ctr. for Am. Progress, *Talk Poverty Michigan Report* (2018), <https://talkpoverty.org/state-year-report/michigan-2018-report/>; *The State of Women in Michigan*, *supra* note 16.

<sup>19</sup> Nat'l Women's Law Ctr., *Underpaid & Overloaded: Women in Low-Wage Jobs* (2014), [https://nwlc.org/wp-content/uploads/2015/08/final\\_nwlc\\_lowwagereport2014.pdf](https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_lowwagereport2014.pdf).

<sup>20</sup> Nat'l Women's Law Ctr., *Women and Minimum Wage, State by State* (Aug. 2017), <https://nwlc.org/resources/women-and-minimum-wage-state-state/> [hereinafter *Women and Minimum Wage, State by State*]; Jens Manuel Krogstad, Pew Research Ctr., *More Women than Men Earn the Federal Minimum Wage* (May 5, 2014), <http://www.pewresearch.org/fact-tank/2014/05/05/more-women-than-men-earn-the-federal-minimum-wage/>.

<sup>21</sup> *Women in the Low-Wage Workforce by State*, *supra* note 14.

<sup>22</sup> *Women and the Minimum Wage, State by State*, *supra* note 20.

working women have low-wage jobs compared to 9.9 percent of men, which means that in Michigan, women are 2.3 times more likely to hold a low-wage job than a man.<sup>23</sup> Across the U.S., women of color and working mothers are especially likely to work low-wage jobs essential to our economy but typically overlooked.<sup>24</sup>

In Michigan, the minimum wage—which, since passage of the amended proposal, increased from \$9.25 an hour to \$9.45 an hour—is not nearly enough for working families to meet basic needs such as housing, food, and healthcare.<sup>25</sup> A recent study found that in 2017, 1.7 million Michigan households earned less than what they needed to make ends meet, and the state’s population of working poor is only growing larger.<sup>26</sup> Across the U.S., full-time, full year minimum wage workers struggle to afford childcare.<sup>27</sup> The typical cost of child care (which ranges from about \$7,000 to \$10,600 a year for full-time care in Michigan, depending on the type of care and the age of the child<sup>28</sup>) can be virtually impossible for parents working in low-wage jobs to afford—especially for women, who are more likely than men to be supporting children on their own. At the same time, the child care workers who provide this critical care are

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<sup>23</sup> Nat’l Women’s Law Ctr., *Interactive Map: Women and Men in the Low-Wage Workforce* (July 20, 2018), <https://nwlc.org/resources/interactive-map-women-and-men-low-wage-workforce/>.

<sup>24</sup> See The Leadership Conf. Educ. Fund, et al., *Bare Minimum: Why We Need to Raise Wages for America’s Lowest-Paid Families* 10-11 (2018), <http://civilrightsdocs.info/pdf/reports/Bare-Minimum.pdf>, [hereinafter *Bare Minimum*].

<sup>25</sup> See Nat’l Low Income Hous. Coal., *Out of Reach: The High Cost of Housing* 125-30 (2018), [http://nlihc.org/sites/default/files/oor/OOR\\_2018.pdf](http://nlihc.org/sites/default/files/oor/OOR_2018.pdf).

<sup>26</sup> Dustin Walsh, *Michigan’s Working Poor Grows to 43 Percent of All Households*, CRAIN’S DETROIT BUSINESS, March 20, 2019, <https://www.craindetroit.com/news/michigans-working-poor-grows-43-percent-all-households>.

<sup>27</sup> See Elise Gould & Tanyell Cooke, Econ. Policy Inst., *High Quality Child Care is Out of Reach for Working Families*, Issue Brief No. 404 (Oct. 6, 2015), <https://www.epi.org/files/2015/child-care-is-out-of-reach.pdf> [hereinafter *High Quality Child Care is Out of Reach for Working Families*]; see also Leila Schochet, Ctr. for Am. Progress, *The Child Care Crisis is Keeping Women Out of the Workforce* (March 28, 2019), <https://www.americanprogress.org/issues/early-childhood/reports/2019/03/28/467488/child-care-crisis-keeping-women-workforce/> [*The Child Care Crisis is Keeping Women Out of the Workforce*].

<sup>28</sup> ChildCare Aware of Am., *The U.S. and the High Cost of Child Care Appendix I*, available at <http://usa.childcareaware.org/wp-content/uploads/2018/10/appendices18.pdf?hsCtaTracking=189a8ba7-22d8-476b-aa2e-120483a43702%7Ce7f035de-f88f-4732-8204-a30353610929>. See also, *High Quality Child Care is Out of Reach for Working Families*, supra note 27; *The Child Care Crisis is Keeping Women Out of the Workforce*, supra note 27.

themselves largely women in low-wage jobs: the child care workforce in Michigan is overwhelmingly women and they typically earn just \$10.65 per hour, or \$22,150 per year.<sup>29</sup>

Women, especially women of color, also make up a disproportionate share of workers employed in tipped industries where they are legally entitled to an even lower wage, which further embeds racial and gender pay disparities and increases their risk of living in poverty.<sup>30</sup> Women are more than two-thirds of tipped workers nationally and the poverty rate for women in these industries is over two and a half times the rate for workers overall.<sup>31</sup> Tipped work is often characterized by predominantly female workforces, including in the restaurant industry, nail salons, makeup studios, hair salons, and hotels. As such, tipped work has become synonymous with low-wage “women’s work.” And while women make up the vast majority of tipped workers making the lowest wages, they remain underrepresented in the highest paying jobs in tipped industries.<sup>32</sup>

Michigan’s tipped wage is currently only \$3.60 an hour, and the majority of individuals making that abysmally low rate are women, who are 77.7 percent of tipped workers in the state.<sup>33</sup> The poverty rate in tipped occupations is 18.9 percent and increases to 25.3 percent for women of color.<sup>34</sup> This means that, in Michigan, over one in four women of color working in tipped

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<sup>29</sup> Michigan wage data for child care workers extracted from the BLS Occupational Employment Statistics Query System at <https://data.bls.gov/oes/#/home>. See also Nat’l Women’s Law Ctr., *Undervalued, A Brief History of Women’s Care Work and Child Care Policy in the United States* (Dec. 2017), [https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/final\\_nwlc\\_Undervalued2017.pdf](https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/final_nwlc_Undervalued2017.pdf).

<sup>30</sup> Morgan Harwood, Jasmine Tucker & Julie Vogtman, Nat’l Women’s Law Ctr., *One Fair Wage: Women Fare Better in States with Equal Treatment for Tipped Workers* 3 (May 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/05/Tipped-Worker-New-2019-v2.pdf> [hereinafter *One Fair Wage: Women Fare Better in States with Equal Treatment for Tipped Workers*].

<sup>31</sup> *Id.* at 1.

<sup>32</sup> Restaurant Opportunities Centers United, et al., *Tipped Over the Edge: Gender Inequity in the Restaurant Industry* 18 (Feb. 13, 2012), [https://rocunited.org/wp-content/uploads/2012/02/ROC\\_GenderInequity\\_F1-1.pdf](https://rocunited.org/wp-content/uploads/2012/02/ROC_GenderInequity_F1-1.pdf).

<sup>33</sup> Nat’l Women’s Law Ctr., *Women in Tipped Occupations, State by State* (May 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/06/Tipped-workers-state-by-state-2019.pdf> [hereinafter *Women in Tipped Occupations, State by State*].

<sup>34</sup> *Id.*

occupations lives in poverty. The end result is that tipped wage systems, like the one in Michigan, perpetuate some of the most appalling national patterns: women of color and working mothers are more likely to be paid lower wages,<sup>35</sup> and women of color in tipped occupations are especially likely to live in poverty.<sup>36</sup>

Tipped wage schemes like the one in Michigan also create gender-based financial insecurity, which fosters exploitative and hostile workplace cultures and practices that perpetuate a cycle of vulnerability. Women who earn the tipped wage and therefore must rely on tips to make a living are forced to endure systemic abuse, including sexual harassment, wage theft, and abusive work standards and practices.

Tipped industries can cultivate and promote a workplace culture where sexual harassment is the norm.<sup>37</sup> Female wait-staff are not only routinely subjected to sexual harassment at work, but also regularly tolerate it in order to earn the tips they need to support themselves and their families. Moreover, tipped women workers in states adhering to the federal tipped minimum wage report that they are “three times more likely to be told by management to alter their appearance and to wear ‘sexier,’ more revealing clothing” than women in states where tipped workers are entitled to the same minimum wage from their employers as all other employees.<sup>38</sup> While restaurant workers make up less than ten percent of the national workforce, nearly 15

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<sup>35</sup> *Bare Minimum*, *supra* note 24, at 10, 11; *see also* Nat’l Women’s Law Ctr., *The Wage Gap for Mothers by Race, State by State* (May 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/05/Motherhood-Wage-Gap-Overall-Table.pdf>.

<sup>36</sup> *See Bare Minimum*, *supra* note 24, at 5.

<sup>37</sup> *See, e.g.*, Catrin Einhorn & Rachel Abrams, *The Tipping Equation*, N.Y. TIMES, March 12, 2018, <https://www.nytimes.com/interactive/2018/03/11/business/tipping-sexual-harassment.html>; Nat’l Women’s Law Ctr., *Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women*, 16-17 (Aug. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/08/SexualHarassmentReport.pdf>; Restaurant Opportunities Centers United, Forward Together, et al., *The Glass Floor: Sexual Harassment in the Restaurant Industry* (Oct. 7, 2014), [http://rocunited.org/wp-content/uploads/2014/10/REPORT\\_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf](http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf).

<sup>38</sup> Restaurant Opportunities Centers United, *Better Wages, Better Tips: Restaurants Flourish with One Fair Wage* 7 (Feb. 13 2018), [http://rocunited.org/wp-content/uploads/2018/02/OneFairWage\\_W.pdf](http://rocunited.org/wp-content/uploads/2018/02/OneFairWage_W.pdf) [hereinafter *Better Wages, Better Tips*].

percent of all sexual harassment claims made to the Equal Employment Opportunity Commission (EEOC) come from the restaurant industry.<sup>39</sup>

In addition to being more susceptible to sexual harassment, tipped workers are also more susceptible to wage theft.<sup>40</sup> All too often, employers do not comply with the legal requirement that they supplement, or “top up,” an employee’s pay to make up the difference between the tipped cash minimum wage and regular minimum wage if an employee’s tips fall short of reaching the minimum wage. Tipped workers are often unaware of this requirement, which is notoriously cumbersome, confusing, and complicated for employees and employers alike, making the scheme difficult and costly to administer, monitor, and enforce.<sup>41</sup> To ensure compliance, employees have to keep detailed records of schedules, hours worked, and tips received, and report that information to their employer; employers then must verify and carry out individual calculations for each employee on a weekly or bimonthly basis.<sup>42</sup> Consequently, employers often do not “top up” wages.

While women’s wages have stagnated and consistently lagged behind men’s wages, their responsibilities have increased. Women are increasingly breadwinners in families.<sup>43</sup> More than 65 percent of Michigan mothers are primary or co-breadwinners for their families,<sup>44</sup> yet they also continue to carry out the bulk of caregiving responsibilities at home, and make less than men do

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<sup>39</sup> Emily Stewart, *These are the Industries with the Most Reported Sexual Harassment Claims*, VOX, Nov. 21 2017, <https://www.vox.com/identities/2017/11/21/16685942/sexual-harassment-industry-service-retail>; *Better Wages, Better Tips*, *supra* note 38, at 3.

<sup>40</sup> *Bare Minimum*, *supra* note 24, at 17-18.

<sup>41</sup> Sylvia A. Allegretto and David Cooper, Econ. Policy Inst., *Twenty-Three Years and Still Waiting for Change: Why It’s Time to Give Tipped Workers the Regular Minimum Wage* 3, (July 10, 2014), <http://irle.berkeley.edu/files/2014/Twenty-Three-Years-and-Still-Waiting-for-Change.pdf>.

<sup>42</sup> Jordan Laris Cohen, *Democratizing the FLSA Injunction: Toward a Systemic Remedy for Wage Theft*, 127 YALE L.J. 706, 712 (2018).

<sup>43</sup> Sara Jane Glynn, Ctr. for Am. Progress, *Breadwinning Mothers Continue to Be the U.S. Norm*, (May 10, 2019), <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/>.

<sup>44</sup> *Id.* at Table 1.

at work. And while there are a number of contributing factors to the gender wage gap, the Equal Employment Opportunity Commission (EEOC) has concluded that the gap is, at least in part, correlated with workplace discrimination.<sup>45</sup> Notably, in Michigan, women still make only 78 cents for every dollar that their male counterparts make.<sup>46</sup> The numbers are even worse for black women in Michigan, who make only 64 cents for every dollar that a white non-Hispanic man makes,<sup>47</sup> and for Latina women in Michigan, who make only 58 cents for every dollar that a white non-Hispanic man makes.<sup>48</sup> The perpetuation of workplace discrimination and depressed wages in occupations performed primarily by women contributes substantially to gender and racial wage disparities. Legislation, like the proposed Improved Workforce Opportunity Wage Act, plays a critical role in finally addressing both systemic inequities and overt discrimination based on sex.

Increasing the minimum wage in a meaningful way would help pull more women out of poverty and reduce income inequality, helping to close the gender wage gap and reduce economic vulnerabilities. Advancing initiatives like the Workforce Opportunity Wage Act promote pay equity,<sup>49</sup> economic and physical security for women, and better mental health outcomes for both women and children.<sup>50</sup> Those who would benefit from laws that increase the minimum wage and eliminate the tipped wage are predominantly women, particularly low-

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<sup>45</sup> Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1), 81 Fed. Reg. 45479, 45481 (July 14, 2016).

<sup>46</sup> *Women in Tipped Occupations, State by State*, *supra* note 33.

<sup>47</sup> Nat'l Women's Law Ctr., *The Wage Gap for Black Women State Rankings: 2017* (Dec. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/04/Black-Women-State-by-State-Dec-2018.pdf>.

<sup>48</sup> Nat'l Women's Law Ctr., *The Wage Gap for Latina Women State Rankings: 2017* (Dec. 2018), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/04/Latina-Women-State-by-State-Dec-2018.pdf>.

<sup>49</sup> *One Fair Wage: Women Fare Better in States with Equal Treatment for Tipped Workers*, *supra* note 30, at 2.

<sup>50</sup> See Matthew Desmond, *Dollars on the Margins*, N.Y. TIMES, Feb. 21, 2019, <https://www.nytimes.com/interactive/2019/02/21/magazine/minimum-wage-saving-lives.html>.



income women, women of color, women who have children, women who work part-time,<sup>51</sup> and women who are primary and co-breadwinners for their families.

Conditions for women improve when their wages increase and they are not earning the tipped wage. Eliminating the tipped wage correlates to reduced poverty rates, especially for women.<sup>52</sup> In states that do not have a separate and lower wage for tipped workers, the wage gap for women is 31 percent smaller and the poverty rate for women tipped workers is 28 percent smaller relative to states that still have the federal \$2.13 tipped wage standard.<sup>53</sup> And because women of color continue to be overrepresented in low-wage work, they would be one of the largest groups to benefit from this change.<sup>54</sup>

Just as the tipped wage creates systemic vulnerabilities, eliminating it would have a broad-based impact to curtail those vulnerabilities. Eliminating the tipped wage reduces women's reliance on tips to make a living and in turn makes women less susceptible to abuse. In fact, eliminating the tipped wage has been linked to a reduction in sexual harassment of tipped workers.<sup>55</sup>

Women in Michigan deserve an opportunity to advance initiatives to address and eliminate systemic gender discrimination that historically has pushed women into poverty and low-wage work. Article 2, § 9 of Michigan's Constitution prevents the Legislature from circumventing the

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<sup>51</sup> Women are disproportionately represented among the 27.6 million people in the United States that work part time. Nearly two-thirds of part-time workers in the U.S. are women. Overall, part-time workers are three times as likely to hold low-wage jobs than full-time workers. Almost three-quarters of low-wage part-time workers are women. Nearly one in seven female part-time workers lives in poverty. Women disproportionately point to child-care and other family obligations as a reason for being non-voluntarily employed on a part-time basis. *See Nat'l Women's Law Ctr., Fact Sheet: Part-Time Workers Are Paid Less, Have Less Access to Benefits—and Two-Thirds Are Women* (September 2015), <https://www.nwlc.org/wp-content/uploads/2015/08/part-time-workers-fact-sheet-8.21.1513.pdf>.

<sup>52</sup> *Bare Minimum*, *supra* note 24, at 17.

<sup>53</sup> *One Fair Wage: Women Fare Better in States with Equal Treatment for Tipped Workers*, *supra* note 30, at 2.

<sup>54</sup> *Bare Minimum*, *supra* note 24, at 5.

<sup>55</sup> *See supra* note 37.

statutory initiative process and from singlehandedly undercutting a constitutionally mandated vehicle for women in Michigan to advance their interests.

**B. The Legislature’s Amendments Abandon an Opportunity to Lift a Common Obstacle for Victims of Domestic and Sexual Violence.**

Domestic and sexual violence are a scourge across the United States. Nationally, one in three women and one in four men are subjected to physical violence at the hands of an intimate partner and one in five women and one in 71 men are subjected to rape (with nearly one in two women and one in five men having been subjected to other forms of sexual violence).<sup>56</sup> Michigan is no exception. In 2017, law enforcement in Michigan received reports of 8,464 incidents of domestic violence and 4,242 incidents of sexual violence perpetrated by someone with a domestic relationship to the victim.<sup>57</sup> In the same year, the National Domestic Violence Hotline (“The Hotline”) documented 4,316 contacts from Michigan. Michigan ranks 12<sup>th</sup> in the U.S. in terms of contact volume received by The Hotline.<sup>58</sup> In just *one single day* in 2014, Michigan domestic violence programs provided services to 2,492 victims.<sup>59</sup> Given what experts in the field of gender-based violence know about rates of reporting, the stark reality is that these numbers are but a fraction of those suffering and being subjected to domestic and sexual violence.

What is also well-known among experts in addressing sexual and domestic violence is that economic dependence is one of the most common barriers to escaping abuse whereas economic

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<sup>56</sup> Michele C. Black, et al., Nat’l Ctr. for Injury Prevention and Control, Ctrs. for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* (November 2011), [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>57</sup> Criminal Justice Information Ctr., Michigan Incident Crime Reporting, *2017 Domestic Violence Information* (2017), [https://www.michigan.gov/documents/msp/Annual\\_Domestic\\_Violence\\_627327\\_7.pdf](https://www.michigan.gov/documents/msp/Annual_Domestic_Violence_627327_7.pdf).

<sup>58</sup> Nat’l Domestic Violence Hotline, *Michigan State Report* (2017), <https://www.thehotline.org/about-the-hotline/state-reports/>.

<sup>59</sup> Nat’l Coalition Against Domestic Violence, *Domestic Violence in Michigan* (2015), <https://www.speakcdn.com/assets/2497/michigan.pdf>.

self-sufficiency is critical to achieving safety. A survey of more than 700 domestic violence service providers in 2012 revealed that 70 percent of victims seeking services stayed with an abusive partner longer than they wanted to because of economic instability.<sup>60</sup> One assessment revealed that financial abuse was an aspect in 99 percent of domestic violence perpetration.<sup>61</sup> While domestic and sexual violence affects women of all socioeconomic backgrounds (and all races, ethnicities, religions, etc.), women living in poverty are subjected to domestic violence at twice the rates of those who are not, demonstrating a distinct relationship between poverty and domestic violence.<sup>62</sup>

Women are disproportionately impacted by domestic and sexual violence and, as set out above, are disproportionately represented in low-wage and tipped wage industries. It is therefore clear that a livable minimum wage and elimination of the tipped wage would have a meaningful impact on the ability of victims of domestic and sexual violence to achieve financial stability and escape abuse. The minimum wage scheme and elimination of the tipped wage as set out in the Michigan One Fair Wage (MOFW) initiative would move more victims of domestic violence closer to financial security—directly correlating to increased physical safety.

Addressing domestic and sexual violence is a compelling societal interest. The people of Michigan deserve an opportunity to advance initiatives, like life-sustaining wages, that would meaningfully achieve the goal of eliminating, or at a minimum lessening, gender-based violence. Article 2, § 9 of Michigan’s Constitution prevents the Legislature from circumventing the

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<sup>60</sup> Mary Kay Foundation, *Truth About Abuse Survey Report* (2012),

[http://www.ncdsv.org/images/MK\\_TruthAboutAbuseSurveyReport\\_NatFindings\\_2012.pdf](http://www.ncdsv.org/images/MK_TruthAboutAbuseSurveyReport_NatFindings_2012.pdf).

<sup>61</sup> Adrienne E. Adams, Center for Financial Security, Univ. of Wisconsin-Madison, *Measuring the Effects of Domestic Violence on Women’s Financial Well-being*, CFS RESEARCH BRIEF 2011-5.6 (2011)

<https://centerforfinancialsecurity.files.wordpress.com/2015/04/adams2011.pdf>.

<sup>62</sup> Nat’l Network to End Domestic Violence, *Financial Abuse Fact Sheet*, <https://nnedv.org/mdocs-posts/financial-abuse-fact-sheet/> (last visited June 18, 2019).

statutory initiative process and from singlehandedly undercutting a constitutionally mandated vehicle for the people of Michigan to advance their interests, as the Legislature did here.

### **III. The Legislature’s Scheme to “Adopt and Amend” the Earned Sick Time Act Disproportionately Harms Women and Victims of Domestic and Sexual Violence.**

In addition to earning unacceptably low wages, too many women endure impossible terms and conditions of employment, including lack of any paid sick days. Paid sick time laws, like the Earned Sick Time Act introduced by Michigan Time To Care (MTTC), play an important role in improving conditions for women, including victims of gender-based violence. The Legislature’s amendments to this initiative once again gutted critical protections by cutting the amount of time workers can earn; denying coverage altogether to countless employees working for smaller businesses or working seasonally or part-time; and hindering protections for workers who use sick-time when workers need it most, at the last minute. By restricting the scope of eligibility and coverage in this way, the law excludes a tremendous number of employees across the state of Michigan, especially those who are least likely to have those protections from their employers. By adopting the statutory initiative and then replacing it with its own version of the bill, the Legislature violated Article 2, § 9 of the Constitution, depriving the people of Michigan of an important opportunity to advance the interests of voters, and in particular women and victims of gender-based violence in the state.

#### **A. The Legislature’s Scheme to Undermine the Protections of the Statutory Initiative Will Negatively Impact Michigan Women.**

Nationally, almost half of the women working in the private sector (43 percent) are unable to take a single paid sick day when they fall ill, and more than half of working mothers

(54 percent) lack even a few paid sick days to care for themselves or sick children.<sup>63</sup> Low-wage workers and women of color are even less likely to earn paid sick days.<sup>64</sup> In Michigan, more than 1.7 million workers cannot take a day off to care for themselves or a child without losing pay. This applies to over half of workers of color, 67 percent of workers in service industries, and 78 percent of workers doing part-time work.<sup>65</sup>

Because of these gaps, workers—particularly mothers, who shoulder the bulk of caregiving responsibilities in families—are unable to obtain timely medical care or take time off to care for themselves or their families.<sup>66</sup> Women without paid sick time often lose their jobs for taking time off, receive threats of retaliation when they take necessary time off, work while in pain or bad health, delay necessary medical treatment, send sick children to school, and leave sick children alone at home or in the hospital. These conditions and the resulting job instability impede family wellbeing and healthy child development, with children in low-income households suffering the most.<sup>67</sup>

For the large number of women working low-wage jobs, taking unpaid time off from work can have a devastating financial impact. For low-income women, three and a half days of work without pay often means losing the ability to pay for an entire month's worth of groceries, utilities, housing, or healthcare.<sup>68</sup> The persistent undervaluation of work performed by women, combined with disproportionate family obligations, means that women are far more likely to be

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<sup>63</sup> Nat'l Partnership for Working Families, *Working Women Need Paid Sick Days* 1 (April 2013), <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/working-women-need-paid-sick-days.pdf> [hereinafter *Working Women Need Paid Sick Days*].

<sup>64</sup> *Id.*

<sup>65</sup> Mich. League for Pub. Policy, *It is Time for Earned Sick Leave in Michigan* 1 (June 2016), <https://mlpp.org/wp-content/uploads/2017/03/its-time-for-earned-sick-leave-in-michigan.pdf> [hereinafter *It is Time for Earned Sick Leave in Michigan*].

<sup>66</sup> *Id.*

<sup>67</sup> *See id.*

<sup>68</sup> *Working Women Need Paid Sick Days*, *supra* note 63.

financially insecure and unable to absorb the typical financial irregularities that stem from their own illness or the illness of a child or other family member. The lack of financial security, support, or safety net increases the probability that when one thing goes wrong, there will be a domino effect that can very quickly result in everything unraveling.

Ensuring mandated paid sick time helps alleviate these inequities, promotes economic security, and provides a huge benefit to women in low-wage jobs who must otherwise decide between safeguarding their own or their family's health or losing their job. The availability of paid sick days is particularly important for so many women who are still primarily responsible for caregiving for children and older family members.

Michigan voters agree. Based on a 2016 study, 86 percent of Michigan voters affirmed that every worker should be able to earn paid sick days.<sup>69</sup> This finding was reaffirmed by the recent ballot initiative in which MTTC obtained 271,088 valid signatures in favor of its proposal for paid sick time. Moreover, the experiences of a growing number of states and localities that have enacted paid sick time laws demonstrate that the shift is working for businesses.<sup>70</sup>

The statutory initiative to provide paid sick time created an important opportunity to fill a critical gap, a gap that disproportionately disadvantages women. Michigan voters deserve an opportunity to cast their vote on this issue. By circumventing the constitutionally mandated process and substituting its own opinion for that of the populace, the Legislature not only violated Article 2, § 9 of the Constitution, it once again thwarted efforts to advance the rights of women in the workforce.

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<sup>69</sup> *It is Time for Earned Sick Leave in Michigan*, *supra* note 65, at 2.

<sup>70</sup> Nat'l Partnership for Working Families, *Paid Sick Days Are Good for Business 2* (March 2019), <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/paid-sick-days-good-for-business-and-workers.pdf>.

## **B. The Legislature's Amendments Abandon an Opportunity to Protect Victims of Domestic and Sexual Violence.**

It is indisputable that domestic and sexual violence impact a considerable segment of Michigan's population (see discussion *supra*). The Legislature's amendments to the initiated law mandating paid sick time demonstrate that the will and interests of this population were overridden. For victims of domestic and sexual violence, the availability of paid sick time can, without exaggeration, be the difference between life and death.

At the root of all forms of gender-based violence is the abuser's exertion of power and control. Abusers know that financial independence gives victims power and control back. Thus, abusers often employ tactics to prevent victims from achieving financial independence. One national assessment revealed that 64 percent of domestic violence victims' work was affected by the violence.<sup>71</sup> Examples of abuser behaviors that contribute to an inability to work include: causing victims to be late to work or miss work by assaulting the victim shortly before a shift, maintaining control of car keys, refusing to care for children or get them to/from care; frequently showing up to victims' place of employment or making excessive calls to their place of employment; and making contact with victims' supervisors or colleagues.<sup>72</sup> Lack of access to paid sick leave is another tool which abusers can exploit to maintain power and control over victims by creating circumstances under which victims must utilize unpaid time off or lose their jobs, so that victims remain economically dependent.

The consequences of domestic and sexual violence are numerous; many directly impact victims' ability to appear and perform at work. Victims suffer short- and long-term physical

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<sup>71</sup> Corp. Alliance to End Partner Violence, *CAEPV National Benchmark Telephone Survey on Domestic Violence in the Workplace* (2005), <http://www.ncdsv.org/images/CAEPVSurvey.WorkPlace.pdf>.

<sup>72</sup> Ellen Ridley et al., Maine Department of Labor & Family Crisis Services, *Domestic Violence Survivors at Work: How Perpetrators Impact Employment* 14 (October 2005), [http://mainegov-images.informe.org/labor/labor\\_stats/publications/dvreports/survivorstudy.pdf](http://mainegov-images.informe.org/labor/labor_stats/publications/dvreports/survivorstudy.pdf).

injuries, short- and long-term psychological injuries, housing crises, urgent legal needs such as obtaining an order of protection, and other harms that create barriers to working at full capacity. The National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention reports that victims of domestic violence lose an average of 7.2 days of work per year and victims of rape lose an average of 8.1 days of work per year.<sup>73</sup> The estimate of lost productivity for domestic violence victims is 9.5 million days each year (equivalent to 33,163 person-years) and for rape victims that estimate is 1.1 million days each year (equivalent to 3,872 person-years).<sup>74</sup> Many of those days are lost when victims attend to the sorts of needs provided for in Michigan's Earned Sick Time Act: medical care, psychological care, use of services provided by victim services organizations, relocation, obtaining legal services, and participating in civil and criminal proceedings. However, the Legislature's amendments exclude large segments of workers from access to this paid sick leave, segments of the working population in which women and victims of domestic and sexual violence are disproportionately represented.

One longitudinal study looking at the connection between intimate partner violence and job stability was entirely comprised of Michigan women, who at the beginning of the study were receiving cash assistance from Temporary Assistance for Needy Families (TANF). In the last year of the study two-thirds of the sample were employed; yet, only 28 percent had access to paid sick days (and only 37 percent had paid vacation days).<sup>75</sup> The study also found that women recently subjected to intimate partner violence had significantly less stable employment.<sup>76</sup>

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<sup>73</sup> Ctrs. for Disease Control and Prevention, Nat'l Ctr. for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States* 18 (2003), <https://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.

<sup>74</sup> *Id.*

<sup>75</sup> Adrienne E. Adams et al., *The Impact of Intimate Partner Violence on Low-Income Women's Economic Well-Being: The Mediating Role of Job Stability*, 18 VIOLENCE AGAINST WOMEN 1345, 1345-67 (2013).

<sup>76</sup> *Id.*



Domestic and sexual violence are recognized as significant public health issues with considerable societal costs. Many long-term negative health and psychological consequences have been identified, including: acute physical injuries, cardiovascular, gastrointestinal, reproductive, musculoskeletal, nervous system conditions, depression and posttraumatic stress disorder.<sup>77</sup> Without access to paid sick days, victims are forced to lose income and risk permanent job loss in order to obtain medical and psychological treatment. This creates a slippery slope of consequences in which victims may find themselves without insurance, with mounting medical debt, and a negative impact on their credit. For some victims, there simply is no choice—income is necessary to provide basic needs for their families. Failing to obtain care exacerbates victims’ injuries and conditions. Victims forced to leave employment, or who lose their jobs due to absences taken to deal with the consequences of domestic and sexual violence, are often left with fractured job histories and, as a result, face difficulty in obtaining new and future sustainable employment. Therefore, many will fall into or remain in poverty. In cases of domestic violence, this allows the power and control imbalance to thrive.

Government sources pay an estimated \$1.3 trillion of the economic burden of domestic and sexual violence, which includes coverage of approximately 37 percent of the total estimated \$2.1 trillion in medical costs and \$1.3 trillion in lost productivity.<sup>78</sup> Putting aside the compelling human rights interest in eliminating systems that permit gender-based violence to persist, mandating paid sick leave will produce economic benefits to society. By enabling more victims to obtain needed medical and psychological care and reach safety while maintaining life-sustaining employment, that heavy economic burden to society will be alleviated.

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<sup>77</sup> Ctrs. for Disease Control and Prevention, *Preventing Intimate Partner Violence* (Feb. 26, 2019), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

<sup>78</sup> Cora Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults*, 55 AM J PREV MED. 433, 433-44 (2018).

The core groups of workers intentionally excluded from the benefits of paid sick time by the Legislature's suppression of the voters' will leaves large swaths of domestic and sexual violence victims without access to paid days off to attend to the consequences of violence. In turn, more victims will remain in danger and more will suffer longer-term effects of the violence. More Michiganders will be forced to make the impossible choice between showing up to work and being safe and healthy. Michigan at large will pay the price.

Addressing domestic and sexual violence is of societal interest. The people of Michigan deserve an opportunity to advance initiatives that would meaningfully achieve the goal of eliminating, or at a minimum lessening, the effect of gender-based violence, including the societal costs born from it. Article 2, § 9 of Michigan's Constitution prevents the Legislature from circumventing the statutory initiative process and from singlehandedly undercutting a constitutionally mandated vehicle for the people of Michigan to advance their interests. In this instance, the actions of the Legislature fly in the face of that mandate.

**CONCLUSION**

For the foregoing reasons, the Legislature's enactment of the amended statutory initiative petitions should be found in violation of Article 2, § 9 of the Michigan Constitution of 1963.

Dated: June 19, 2019

Respectfully submitted,

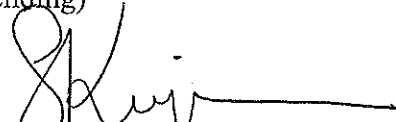
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