No. S173586 **SUPREME COURT COPY**

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF CALIFORNIA, AFL-CIO,

Petitioner and Appellant,

v.

CITY OF VISTA, *et al.*,

Respondents.

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After Decision by the Court of Appeal
Fourth Appellate District, Division One
Case No. D052181

On Appeal from the Superior Court
for the County of San Diego
Case No. 37-2007-00054316-CU-WM-NC
Hon. Robert P. Dahlquist, Presiding

OPENING BRIEF

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ISSUE PRESENTED

Does California's Prevailing Wage Law, Labor Code §§1720-84, apply to construction projects awarded by charter cities?

INTRODUCTION

The State's Prevailing Wage Law sets minimum labor standards for construction workers on public projects. The law requires contractors to pay their employees at least the wages and benefits determined by the Director of Industrial Relations to be prevailing for the craft and geographic area. The law also requires contractors to hire apprentices indentured in state-approved programs and to contribute to their training, thereby developing California's next generation of skilled workers.

The California Legislature made the protections of the Prevailing Wage Law applicable "to *all* workers employed on public works." Labor Code §1771 (emphasis added). The Legislature made explicit that public works include projects awarded by the State and *every* political subdivision, "includ[ing] any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts." §1721.[1] The Legislature also made statutory findings about the statewide importance of the Prevailing Wage Law (Stats. 2003, ch. 851, §1 (A.B. 1506); Stats. 2002, ch. 892, §1 (S.B. 278); Stats. 2002, ch. 868, §1 (A.B. 1506)), and adopted a Concurrent Resolution to "reaffirm[] its intent for the state prevailing wage law to apply" to all public projects "as the law addresses important statewide concerns." Stats. 2003, ch. 135 (S.C.R. 49).

The question presented by this case is the same question the Court left "open for consideration at another time" in *City of Long Beach v.*

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[1] Unless otherwise stated, all code references are to the California Labor Code.

Department of Industrial Relations (2004) 34 Cal.4th 942, 947: Can a charter city defy the Legislature by exempting private contractors on its municipal projects from having to pay prevailing wages and hire apprentices? We demonstrate that the answer should be "no."

Under the California Constitution, a statute adopted by the Legislature trumps the conflicting ordinance of a charter city – even as to a matter that otherwise would be just a "municipal affair" – "if . . . the subject of the state statute is one of statewide concern and . . . the statute is reasonably related to its resolution." *California Fed. Sav. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17. "[T]here are innumerable authorities holding that general law prevails over local enactments of a chartered city, even in regard to matters which would otherwise be deemed to be strictly municipal affairs, where the subject matter of the general law is of statewide concern." *Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 292. It is also well established that "statewide" in this context "refers to all matters of more than local concern and thus includes matters the impact of which is primarily regional rather than truly statewide." *Comm. of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 505. Any doubt about whether a statute addresses statewide concerns "must be resolved in favor of the legislative authority of the state." *California Fed.*, 54 Cal.3d at 24 (internal quotation marks removed).

The Prevailing Wage Law addresses statewide concerns by ensuring that construction workers receive adequate wages and benefits and that apprentices are trained to meet the future needs of the State. Absent the Prevailing Wage Law, responsible contractors that pay prevailing wages and spend money training apprentices would have difficulty competing for public work. Public projects would depress area labor standards rather than

supporting them. Good jobs that enable construction workers to support families and contribute to their communities would be jeopardized.

These concerns with maintaining area labor standards and apprenticeship training in the construction industry are not just the concerns of a particular municipality. The construction workers covered by the Prevailing Wage Law are not municipal employees, and they move from project to project in regional labor markets much larger than any individual city. The effects of the Prevailing Wage Law are also felt throughout the construction labor market. Because the concerns addressed by the Prevailing Wage Law have a significant extramunicipal dimension, individual cities should not be able to second-guess the California Legislature's policy judgment by exempting contractors from the law.

We appreciate that this Court held in *City of Pasadena v. Charleville* (1932) 215 Cal. 384 that the California Legislature did *not* have the constitutional authority to apply an *earlier* version of the prevailing wage statutes to a charter city project. But *Charleville* is an outdated decision that relied on *Adkins v. Children's Hospital* (1923) 261 U.S. 525 for the long-since discredited premise that the Legislature's police power is too limited to permit it to set statewide labor standards. From that premise, the Court reasoned in 1932 that a prevailing wage law cannot be deemed a matter of general public or state concern. *Charleville*, 215 Cal. at 389-90.

Subsequent cases have entirely repudiated the *Lochner*-era constitutional premise for *Charleville's* holding.[2] *Every* other state supreme

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[2/] Three justices called for *Charleville* to be explicitly overruled in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, stating: "*Adkins* . . . has long been repudiated, and it is now recognized that minimum wages are a proper subject of state concern. *West Coast Hotel Co. v. Parrish* (1937) 300 U.S. 379. *City of Pasadena v. Charleville* should also be overruled." *Bishop*, 1
(continued...)

court to consider this issue post-*Charleville* has recognized that prevailing wage laws for public construction projects address significant extra-municipal concerns and, therefore, fully apply to home-rule cities, no less than all other political subdivisions. *See* pp. 22-23, *infra.* The time has come for this Court to overrule *Charleville*'s anachronistic holding.

STATEMENT OF THE CASE

1. The State's Prevailing Wage Law

"The Legislature has declared that it is the public policy of California 'to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.' (§90.5, subd. (a).) The conditions of employment on construction projects financed in whole or in part by public funds are governed by the prevailing wage law. (§§1720-1861.)" *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 985.

The Prevailing Wage Law applies throughout the State to "construction, alteration, demolition, installation, or repair work" that is funded by the State or any of its "political subdivision[s]." §1720(a)(1), (b)(2). This includes "*any* county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts." §1721 (emphasis added). The law applies, however, only to private contractors, not "to work carried out by a public agency with its own forces." §1771.

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[2](...continued)
Cal.3d at 70 (Peters, J., dissenting). The majority in *Bishop* did not reach the issue because the case was decided on a different ground.

All contractors on public work must pay their employees "not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed." §1771. A contractor that fails to do so is liable for the deficiency and is subject to a statutory penalty. §1775.

The Director of Industrial Relations is responsible for determining prevailing wage rates for each craft and geographic area. §1770. The Legislature defined the "prevailing" wage as the "modal" wage (*i.e* single wage rate paid to the greatest number of workers in the relevant craft and labor market), so prevailing wage rates generally track the wage rates agreed upon in regional collective bargaining between construction unions and contractors' associations. §1773.9(b)(1); Joint Appendix ("JA") 114. These regional, multi-employer collective bargaining agreements enable skilled construction workers to move from project to project, and employer to employer, while continuing to receive the same hourly wages and coverage through the same health care and pension plans. JA 113.

The Prevailing Wage Law requires the public entity "awarding any contract for public work, or otherwise undertaking any public work," to obtain from the Director the general prevailing rate for each craft, classification or type of worker needed to execute the contract. §1773. The public entity must specify those rates in its call for bids, in bid specifications, and in the contract or, alternatively, must specify in those documents that the prevailing wage rates are on file in its principal office. §1773.2. Nevertheless, even if an awarding body fails to include prevailing wage specifications, private contractors still have a statutory obligation to pay at least prevailing wages on public work, because the statutory requirement that workers be paid the prevailing wage "is not limited to those workers whose employers have contractually agreed to pay the

prevailing wage; it applies to '*all* workers employed on public works.'" *Lusardi*, 1 Cal.4th at 987 (emphasis in original).

In addition to requiring that contractors on public projects must pay construction workers at least the prevailing wage, the Prevailing Wage Law promotes apprenticeship training in the construction trades. The law requires that contractors on public projects that employ workers "in any apprenticeable craft" must use apprentices indentured in state-approved apprenticeship programs to perform at least 20 percent of that work. §1777.5(d), (g). Contractors may pay these apprentices a lower "apprentice" prevailing wage rate. §1777.5(b). For every hour of work in an apprenticeable craft, the contractor also must make training contributions to the California Apprenticeship Council or to an approved apprenticeship program. §1777.5(m).

More than 50,000 workers in California are presently indentured in state-approved apprenticeship programs in the construction trades. JA 115. The Division of Apprenticeship Standards grants approval to programs that meet the criteria established by the California Apprenticeship Council, and graduates of approved programs receive a journeyman's certificate upon completion of their training. *See generally Assoc. Builders and Contractors of Southern California, Inc. v. Nunn* (9th Cir. 2004) 356 F.3d 979, 982-83; *Southern Cal. Chapter of Assoc. Builders and Contractors v. Cal. Apprenticeship Council* (1992) 4 Cal.4th 422, 428-29. The Legislature has declared that "apprenticeship programs are a vital part of the educational system in California" (Stats. 1999, ch. 903, §1 (S.B. 921)), and that "[t]he state's system for promoting quality apprenticeship training in the construction trades depends upon the incentives provided by the prevailing wage law" (Stats. 2003, ch. 135 (S.C.R. 49)).

2. The City of Vista's Ordinance

The City of Vista ("City" or "Vista") was a general law city from the date of its incorporation in 1963 until 2007. At the beginning of 2007, Vista was about to embark on a $100 million public works capital improvement program. JA 129-141. Vista's City Attorney advised the City Council that the City could save money on its capital projects if it became a charter city because, under this Court's 1932 *Charleville* decision, private contractors are not required to comply with the State's Prevailing Wage Law on projects awarded and funded by charter cities. JA 130. The projected savings would result from the City receiving lower bids from private contractors that pay workers less than the prevailing wages and that do not expend funds training apprentices.[3]

The Vista City Council approved a special election to adopt a charter. JA 129-141. The measure appeared on the ballot for the June 5, 2007 special election as Proposition C. JA 143-47. The ballot pamphlet included the City Council's "Argument in Favor of Proposition C," which stated that, by adopting a charter, the City could save money on capital projects by hiring outside contractors that do not pay prevailing wages. JA 146. There was no opposing ballot argument. *Id.* On June 5, 2007, City

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[3] Whether prevailing wage laws significantly increase total project costs has been the subject of academic debate. Most studies have found the increase in project costs to be small and the savings from using cheap labor offset by the loss of income tax and sales tax revenues and the public expense of providing health care and other services to underpaid workers and their families. *See generally The Economics of Prevailing Wages* (2005) Azari-Rad, Philips, and Prus, eds.; N. Mahalia, Prevailing Wages and Government Contracting Costs: A Review of the Research (Economic Policy Institute 2008), available at www.epi.org/publications/entry/bp215. The City of Vista focused only on short-term labor cost savings.

voters approved Proposition C. Turnout was about 21 percent of eligible voters, and fewer than 7,000 Vista residents cast ballots. JA 314, ¶ 32.

On June 26, 2007, the Vista City Council followed through with its plan to exempt contractors on City projects from the State's Prevailing Wage Law by adopting Ordinance No. 2007-9. JA 153-167. The ordinance amended the Vista Municipal Code to provide: "A. Payment of Prevailing Wages. *No City contract shall require payment of the prevailing wage schedule* unless: 1. The prevailing wage is legally required, and constitutionally permitted to be imposed, by federal or state grants pursuant to federal or state law; or 2. The project is considered by the City Council not to be a municipal affair of the city; or 3. Payment of the prevailing wage schedule is authorized by resolution of the City Council." JA 166 (emphasis added).

Following adoption of Ordinance No. 2007-9, the City began to enter into contracts for the City's upcoming capital projects without including prevailing wage requirements in the contracts. *See, e.g.*, JA 385-530 (October 30, 2007 City Council Agenda Report, approving a contract for two fire stations that did not include a prevailing wage requirement). The City's $100 million in capital projects include two new fire stations, a permanent stage house for the City's amphitheater, a new civic center, and a new sports park. JA 244.

3. Trial Court Proceedings

After the Vista City Council adopted its anti-prevailing-wage ordinance, the State Building and Construction Trades Council of California, AFL-CIO ("SBCTC"), filed suit in the San Diego Superior Court. The SBCTC sought a writ of mandate to compel the City and its officials to comply with the State's Prevailing Wage Law. JA 245-306. The SBCTC is a labor federation comprised of local labor unions and local

labor councils that collectively represent more than 300,000 men and women who work in the building and construction trades in California, including journey-level workers and apprentices. JA 247, ¶ 8.

The SBCTC argued that charter cities cannot supercede state laws if the subject of the state law is of statewide concern. JA 95-109. The SBCTC pointed to findings by the California Legislature that the Prevailing Wage Law addresses statewide concerns by protecting area labor standards and promoting apprenticeship training. JA 101. The SBCTC also presented undisputed evidence that labor markets for journey-level and apprentice construction workers in California are much larger than individual cities; that collective bargaining and apprenticeship training takes place on a regional basis; and that the labor standards supported by the Prevailing Wage Law have significant extra-municipal dimensions. JA 110-117.

The trial court concluded that precedent required it to deny the SBCTC's petition. JA 699-700. The trial court cited *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346, in which the Fourth Appellate District had relied on *Charleville* to hold that whether the Prevailing Wage Law applies to a charter city construction project depends on whether the *project* is a matter of statewide concern, and that the Legislature lacks the constitutional authority to apply the Prevailing Wage Law to municipal projects. But the trial court stated that "[i]f this Court were not bound to follow the *Vial* decision, the Court would have been inclined to grant [the SBCTC's] petition." *Id.* The trial court explained:

> It appears to this Court that the focus of the *Vial* decision was on the issue of whether any particular construction project would be a matter of "municipal" vs. "statewide" concern. . . . In contrast, it appears that the more appropriate focus should be on whether *the statute* that is sought to be

> applied addresses a matter of "municipal" or "statewide" concern. . . . The Court believes that the payment of prevailing wages for modern public works, and the public policies underlying the prevailing wage statute, are properly considered matters of statewide concern.
>
> Therefore, if this Court were free to decide the matter without having to follow *Vial*, the Court would be inclined to find that (1) the prevailing wage law properly reflects a matter of statewide concern, and (2) the City of Vista is required to follow the prevailing wage law in connection with its pending public projects.

JA 699-700 (emphasis in original).

The trial court entered a final judgment denying the SBCTC's petition. JA 696-700.

4. Court of Appeal Decision

The SBCTC appealed to the Fourth Appellate District, and a panel from Division One issued a divided decision.

All three justices agreed that the case was ripe and that there was a direct conflict between the State's Prevailing Wage Law and the City of Vista's refusal to include prevailing wage specifications in its contracts. Maj. Op. at 7-10, 31-32; Dis. Op. at 2 n.2.

The majority held that, under *Charleville*, charter cities need not comply with the Prevailing Wage Law, and it therefore affirmed the denial of the petition. The majority reasoned that it lacked a sufficient basis for departing from this Court's holding in *Charleville*. Maj. Op. at 33 ("The biggest hurdle to any departure from the holdings in *Charleville* and the cases which have consistently followed it, is the fact that, in its essential dimensions, the [prevailing wage law] has not changed since its enactment."). The majority also reasoned that, because the Prevailing Wage Law does not apply to construction projects funded by private entities, the

Legislature could not have been addressing statewide concerns. *Id.* at 40 (stating that the "lack of general application and . . . exceptions" to the prevailing wage law "*prevent us* from" concluding the law addresses statewide concerns) (emphasis added).

Justice Irion dissented on the ground that *Charleville* is no longer good law because it rests on an outmoded and unduly limited conception of the police power and also because the current Prevailing Wage Law is significantly different, and more focused on extra-municipal concerns, than the 1931 law at issue in *Charleville*. Dis. Op. at 5-7. The dissent concluded that charter cities cannot opt out of the Prevailing Wage Law because "the record establishes that the legislative purposes of (1) maintaining the wage base in the construction industry and (2) promoting quality apprenticeship training in construction trades are both matters of statewide concern and, further, that the prevailing wage law is reasonably related to advancing those purposes." *Id.* at 13.

This Court granted review on August 19, 2009.

ARGUMENT

I. The Prevailing Wage Law Adopted by the California Legislature Trumps the Conflicting Ordinance Adopted by the City of Vista.

The California Legislature unquestionably *intends* the Prevailing Wage Law to set minimum labor standards for construction workers on all public projects, including projects awarded by charter cities. The Prevailing Wage Law applies by its terms to projects funded by the State and every "political subdivision" (§1720(a),(b)), including "*any* . . . city." §1721 (emphasis added). The Legislature has made statutory declarations that it considers the application of the Prevailing Wage Law to all public projects to be a matter of statewide concern. Stats. 2003, ch. 851, §1 (A.B. 1506);

Stats. 2002, ch. 892, §1 (S.B. 278); Stats. 2002, ch. 868, §1 (A.B. 1506). The Legislature also adopted a joint resolution "reaffirm[ing] its intent for the state Prevailing Wage Law to apply broadly to all projects subsidized with public funds, *including the projects of chartered cities*, as the law addresses important statewide concerns." JA 126-27 (Stats. 2003, ch. 135 (S.C.R. 49)) (emphasis added).

There also unquestionably is a *conflict* between the Prevailing Wage Law and the City of Vista's ordinance. The Legislature has not made any exceptions to the Prevailing Wage Law for the State itself or any local political subdivision; the statute applies equally throughout the State. But the City ordinance permits Vista officials to award municipal projects without including the prevailing wage specifications explicitly required by the Legislature. *Compare* Labor Code §§1773.2, 1777.5(n) (requiring prevailing wage and apprenticeship specifications) *with* JA 166 (Vista Ordinance). The City also interprets its ordinance as exempting contractors on those projects from the statutory obligation, imposed by Labor Code §1771, to pay prevailing wages to their workers and to hire apprentices. *Cf. Lusardi*, 1 Cal.4th at 986 (the Prevailing Wage Law imposes a statutory obligation on contractors to pay prevailing wages notwithstanding the absence of contract specifications).

Thus, the single issue to be decided is whether the California Legislature has the *power,* over the objection of a charter city, to apply the protections of the Prevailing Wage Law to construction workers employed by private contractors on municipal projects, in the same manner as the law applies to all other public work. To address that issue, we begin by setting out the constitutional test for whether a state statute trumps the conflicting ordinance of a charter city. We then demonstrate that the Prevailing Wage Law easily meets that constitutional test.

A. Charter cities cannot supercede state laws that are reasonably related to addressing statewide concerns.

The California Constitution provides that the "[t]he legislative power of this State is vested in the California Legislature." Cal. Const., Art. IV, §1. The California Constitution also provides more specifically, in Article XIV, §1, that "[t]he Legislature may provide for minimum wages and for the general welfare of employees."

It is well-settled that the California Legislature "may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution," that "[i]f there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action," and that any "restrictions and limitations imposed by the Constitution are to be construed strictly." *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 (citations, internal quotation marks omitted).

One "restriction[] and limitation[]" on the Legislature's power is implied by the Constitution's grant of authority to charter cities, which allows them to adopt regulations "in respect to municipal affairs." Art. XI, §5(a).[4] This grant of authority creates the potential for conflicts between regulations adopted by a charter city to address its "municipal affairs" and laws adopted by the California Legislature.

[4/] Section 5(a) provides: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith."

When, as in this case, there is a "genuine conflict" between a state law and a city ordinance, "the question of statewide concern is the bedrock inquiry through which the conflict between state and local interests is adjusted." *California Fed.,* 54 Cal.3d at 17. In other words, a statute adopted by the California Legislature will trump the conflicting ordinance of a charter city – even if the city ordinance deals with a "municipal affair" – "[i]f . . . the subject of the state statute is one of statewide concern and . . . the statute is reasonably related to its resolution." *California Fed.,* 54 Cal.3d at 17; *see also Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 292 ("[T]here are innumerable authorities holding that general law prevails over local enactments of a chartered city, even in regard to matters which would otherwise be deemed to be strictly municipal affairs, where the subject matter of the general law is of statewide concern.").

A state statute must be found to address statewide concerns if there is "a convincing basis for legislative action originating in *extramunicipal* concerns, one justifying legislative supersession based on sensible, pragmatic considerations." *California Fed.,* 54 Cal.3d at 18 (emphasis added). Moreover, for purposes of the home-rule doctrine, the word "'statewide' refers to all matters of more than local concern and thus includes matters the impact of which is primarily regional rather than truly statewide." *Comm. of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 505. The Legislature thus has the authority to supercede a contrary city ordinance where the subject of the state law has significance that extends beyond an individual city's borders.

In addition to the strong general presumption in favor of legislative power, *Methodist Hosp.*, 5 Cal.3d at 691, the determination of whether "the subject of the state statute is one of statewide concern" must also proceed

with due respect for the California Legislature's policy judgments. *See, e.g.*, *California Fed.*, 54 Cal.3d at 24 (the court must "defer to legislative estimates regarding the significance of a given problem and the responsive measures that should be taken toward its resolution."); *Baggett v. Gates* (1982) 32 Cal.3d 128, 136 ("Although what constitutes a matter of statewide concern is ultimately an issue for the courts to decide, it is well settled that this court will accord 'great weight' to the Legislature's evaluation of this question.").

This deference to the Legislature's policy judgments is particularly strong in cases involving matters of economic regulation, like labor standards legislation. As the Court of Appeal explained in rejecting a contractor's constitutional challenge to the Prevailing Wage Law:

> It is strictly within the province of the Legislature to adopt measures to reduce the evils of the exploiting of wages. The widespread adoption of similar statutes by so many states evidences a general conviction that minimum wage requirements are definitely in the interest of the general public welfare. Even if the wisdom of the policy is regarded as debatable and its effects uncertain, still the Legislature is entitled to its own judgment. The courts are unauthorized to deal with the question of policy. This is the sole province of the Legislature. It is for the Legislature to determine the necessity of such enactment, and once having so determined it is elementary to add that every presumption is in favor of its validity.

Shalz v. Union Sch. Dist. (1943) 58 Cal.App.2d 599, 607.

B. The Prevailing Wage Law is reasonably related to addressing statewide concerns.

The California Legislature explicitly identified at least two significant policy concerns of extra-municipal dimension addressed by its Prevailing Wage Law.

First, the Prevailing Wage Law ensures that construction workers on public projects will receive at least the area standard wages and benefits for the type of work and geographic area, so public projects will support rather than undermine area labor standards. *See* Stats. 2003, ch. 851, §1 (A.B. 1506) ("Public works projects should never undermine the wage base in a community, and requiring that workers on public works projects are paid the prevailing rate of per diem wages ensures that wage base is not lowered."); Stats. 2002, ch. 892, §1 (S.B. 278) (same); Stats. 2002, ch. 868, §1 (A.B. 1506) (same); Stats. 2003, ch. 135 (S.C.R. 49) (similar statement).

Second, the Prevailing Wage Law promotes the training of California's next generation of skilled construction workers by requiring contractors on public projects to hire apprentices from state-approved programs and to contribute toward their training. *See* Stats. 2003, ch. 135 (S.C.R. 49) ("The state's system for promoting quality apprenticeship training in the construction trades depends upon the incentives provided by the prevailing wage law.").

We examine each of these concerns in turn and demonstrate that they are concerns with significant extra-municipal dimension, and thus qualify as "statewide concerns." *California Fed.,* 54 Cal.3d at 17. We then demonstrate that the prevailing wage law is "reasonably related to [their] resolution." *Id.*

1. Supporting high labor standards for construction workers is a statewide concern.

The unusual structure of construction industry labor markets creates the impetus for a prevailing wage law to prevent public projects from undermining area labor standards that enable construction workers to receive adequate wages and benefits. In the absence of a prevailing wage law, contractors would recruit cheap labor to underbid their competitors,

and public work would place downward pressure on wages and benefits throughout regional labor markets much larger than individual cities.

Construction contractors, unlike most employers, typically have fluctuating workforces; they hire employees to meet the demands of a particular project and discharge those employees when they no longer are needed. JA 112, ¶ 9. "Because of the typically short-term and occasional nature of employment with any given employer in the construction industry," Congress included a special proviso in the National Labor Relations Act that permits construction contractors and labor unions to negotiate "pre-hire agreements" that set the terms and conditions of employment for the workers a contractor will hire in the future. *Associated Builders and Contractors, Inc. v. San Francisco Airports Comm'n* (1999) 21 Cal.4th 352, 359; *see also* 29 U.S.C. §158(f); JA 113, ¶¶ 12-13.

Regional, multi-employer collective bargaining agreements in the construction industry typically provide for uniform hourly wages, regardless of the particular contractor employing the worker, and they require all contractors to contribute to the same multi-employer benefits plans, so workers have health care and pension benefits notwithstanding the lack of continuous employment with a single contractor. JA 113, ¶¶ 12-13; *see also Franchise Tax Bd. v. Laborers Vacation Trust* (1983) 463 U.S. 1, 4 n.2; *Walsh v. Schlecht* (1977) 429 U.S. 401, 404. Union construction workers typically are dispatched from a centralized hiring hall, and the workers return to the hiring hall for dispatch when their job for a contractor has concluded. JA 113, ¶ 14; *see also Local 357, Int'l Bhd. of Teamsters v. NLRB* (1961) 365 U.S. 667, 672-73.

Absent a prevailing wage law, union-signatory contractors would have difficulty bidding successfully for public projects because union contractors are bound in advance by collective bargaining agreements to

provide the area standard wages and benefits to any future employees they hire. JA 114, ¶ 17; *see also Lusardi Constr.*, 1 Cal.4th at 987 (specific goal of prevailing wage law is "to permit union contractors to compete with nonunion contractors."); *cf. J.A. Croson Co. v. J.A. Guy, Inc.* (Ohio 1998) 691 N.E.2d 655, 659 ("[T]he primary purpose of the prevailing wage law is to support the integrity of the collective bargaining process by preventing the undercutting of employee wages in the private construction sector.") (internal quotation marks omitted).

Pursuant to the Prevailing Wage Law, the Director of Industrial Relations publishes prevailing wage rates that generally track the rates required by the applicable multi-employer collective bargaining agreements for the types of work and geographic areas. §1773.9; JA 114, ¶ 18. This enables all contractors – union-signatory and non-signatory – to bid for public work on a level playing field insofar as labor costs are involved.[5]

Additionally, in the absence of a prevailing wage law, the drop in wages would not be limited by what unorganized, local workers are willing to accept; contractors could recruit workers from out of state or from parts of the State where wages are lower to underbid their competitors who pay the prevailing wage for the geographic area. *See Lusardi Constr.,* 1 Cal.4th at 987 (prevailing wage law is intended "to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas"); *see also Independent Roofing Contractors v. Dept. of Industrial Relations* (1994) 23 Cal.App.4th 345, 356 (prevailing wage law is "based on the . . . premise that government contractors should

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[5/] Prevailing wage determinations are published online by the Director of Industrial Relations at www.dir.ca.gov/dlsr/PWD/index.htm.

not be allowed to circumvent locally prevailing labor market conditions by importing cheap labor from other areas").

If construction contractors that pay prevailing wages cannot compete successfully for public work, the skilled construction workers who form the bedrock of the middle class would be displaced in favor of workers who may not receive adequate wages and benefits to support their families and contribute to their communities. Moreover, local contractors would seek to reduce their labor costs to regain their competitiveness in bidding for public work. Public projects would thereby encourage a "race to the bottom" that would depress labor standards throughout the entire construction industry. *See* JA 114-15, ¶ 19; Rodger Dillon, *Potential Economic Impact: Proposals of the Department of Industrial Relations to Alter Methodology Relating to Prevailing Wages* 21 (California Senate Office of Research 1996) (if prevailing wage law was weakened, "wage reductions would filter down to all construction workers"); Michael Reich, *Prevailing Wage Laws and the California Economy* 4-6 (Inst. of Indus. Relations, Univ. of California, 1996) (when prevailing wage laws were repealed in other states, "the wage reduction spilled over to *all* construction workers in the state, not just those on publicly financed projects"); Hamid Azari-Rad, *et al.*, "Introduction: Prevailing Wage Regulations and Public Policy in the Construction Industry," in *The Economics of Prevailing Wages* (2005) Azari-Rad, Phillips, and Prus, eds., at 23 ("Prevailing wage laws emerged from a concern that cutthroat competition over wages in construction would lead the industry down a low-wage, low-skill development path.").

The erosion of labor standards would affect not just wages but also health benefits, the cost of which is included when determining the prevailing wage. *See* §§1773.1(a), 1773.9(b)(2). A reduction in the percentage of workers with employer-based health insurance would result in

higher government health care spending. *See, e.g.*, C. Jeffrey Waddoups, "Health Subsidies in Construction: Does the Public Sector Subsidize Low Wage Contractors?" in *The Economics of Prevailing Wages* (2005) at 220.

The California Legislature sought to address through the Prevailing Wage Law this serious concern about the erosion of area labor standards. *See* Stats. 2003, ch. 851, §1 (A.B. 1506) ("Public works projects should never undermine the wage base in a community, and requiring that workers on public works projects are paid the prevailing rate of per diem wages ensures that wage base is not lowered."); Stats. 2002, ch. 868, §1 (A.B. 1506) (same); Stats. 2003, ch. 135 (S.C.R. 49) (same).

The size of labor markets in California today makes supporting area labor standards for construction workers of obvious concern to more than just the particular city in which a project is located. It is not uncommon for today's construction workers to commute 100 miles to work at a job site, and it would be very unusual for the construction workers on a particular project to all live in the city in which that project is located. JA 113, ¶¶ 10-11. Collective bargaining agreements in the construction industry set uniform terms and conditions of employment on a regional basis. JA 113, ¶ 13. Hiring halls dispatch workers throughout geographic areas much larger than a single city. JA 113-14, ¶ 14. Thus, it is not surprising that the California Legislature made the Prevailing Wage Law applicable to all public work throughout the State.

It also is significant, in assessing whether the California Legislature had "a convincing basis for legislative action originating in extramunicipal concerns" (*California Fed.,* 54 Cal.3d at 18), that our Legislature's judgment about the importance of a prevailing wage law for public construction projects is supported by the similar judgments of other legislatures.

Congress has its own prevailing wage law for federal construction projects, the Davis-Bacon Act, which was enacted during the Great Depression to support labor standards for construction workers. *See* 40 U.S.C. §3141 *et seq.*; *see also Universities Research Ass'n v. Coutu* (1981) 450 U.S. 754, 773-74 (federal prevailing wage law is "designed to protect local wage standards by preventing contractors from basing their bids on wages lower than those prevailing in the area") (citations and internal quotation marks omitted); *Frank Bros., Inc. v. Wisconsin Dept. of Transp.* (7th Cir. 2005) 409 F.3d 880, 887 ("the Davis-Bacon Act . . . was part of comprehensive legislation aimed at mitigating the financial damage done to the working class in the United States during the Great Depression."); *Building and Constr. Trades Dept. AFL-CIO v. U.S. Dept. of Labor Wage Appeals Bd.* (D.C. Cir. 1991) 932 F.2d 985, 986 ("Congress enacted the [Davis-Bacon Act] to protect local contractors from being underbid on federally-funded construction projects by government contractors who based their bids on imported labor who would work for cheaper wages than those prevailing in the area."). A majority of the other state legislatures also have adopted prevailing wage laws for public construction projects.[6]

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[6] *See* Alaska Stat. § 36.05.010, *et seq.*, Arkansas Code § 22-9-301, *et seq.*, Conn. Gen. Stats. § 31-53, 29 Del. Code § 6960, Haw. Rev. Stat. § 104-1, *et seq.*, 820 ILCS 130/1, *et seq.*, Ind. Code § 5-16-7-1, *et seq.*, Ky. Rev. Stat. § 337.505, *et seq.*, Md. Fin. & Proc. Code § 17-201, *et seq.*, Mass. Gen. Laws ch. 149, § 26, Mich. Comp. Laws § 408.551, *et seq.*, Minn. Stat. § 177.41, *et seq.*, Mo. Stat. § 290.210, *et seq.*, Mont. Code § 18-2-401, *et seq.*, Neb. Rev. Stat. § 48-818, Nev. Rev. Stat. § 73-101, *et seq.*, N.J. Stat. § 34:11-56.25, *et seq.*, N.M. Stat. § 13-4-11, N.Y. Labor Law § 220, *et seq.*, Ohio Rev. Code § 4115.03, *et seq.*, 43 Penn. Stat. §165-1, *et seq.*, R.I. Gen. Laws § 37-13-1, *et seq.*, Tenn. Code Ann. § 12-4-401, *et seq.*, Wash. Rev. Code § 39.12.010, *et seq.*, W. Va. Code § 21-5A-2, *et seq.*, Wis. Stat. § 66.0903, and Wyo. Stat. § 27-4-401, *et seq.*

The other state supreme courts that have considered the same issue presented here – whether prevailing wage laws apply to "home-rule" cities – have all *uniformly* held that prevailing wage laws for private-sector construction workers *are* matters of statewide concern, and therefore *do* apply to home-rule cities. The leading out-of-state decision is *Arizona v. Jaastad* (Ariz. 1934) 32 P.2d 799, 801:

> Our Legislature . . . undoubtedly had under consideration the general public policy of a minimum wage for all mechanical and manual labor employed by the state or its political subdivisions, and not the particular kind of work to be done, or the physical result to be reached thereby. We are therefore of the opinion that since the principle of the minimum wage law is obviously one of general and public concern and not of merely local interest, chapter 12 [Arizona's prevailing wage law] applies to the self-governing cities of the state.

The supreme courts of other states are in accord. *See City of Joplin v. Industrial Comm'n of Missouri* (Mo. 1959) 329 S.W.2d 687, 693-94 (Missouri prevailing wage law applies to charter cities because "more than letting city contracts or building local sewers is involved. It is the matter of wages paid to workmen employed by contractors throughout the state on public works of any public body (not cities only). . . . [T]his indicates more than mere local interest."); *R.D. Anderson Constr. Co. v. City of Topeka* (Kan. 1980) 612 P.2d 595, 602 (Kansas prevailing wage law applies to home-rule cities; prevailing wage laws are "expressions of public policy that payment of low wages shall not give a contractor an advantage in bidding or securing a public contract"); *State ex rel. Evans v. Moore* (Ohio 1982) 431 N.E.2d 311, 313-14 (Ohio prevailing wage law applies to self-governing cities because it addresses a "genuine statewide concern"; the law "support[s] the integrity of the collective bargaining process by

preventing the undercutting of employee wages in the private construction sector"); *People ex rel. Bernardi v. City of Highland Park* (Ill. 1988) 520 N.E.2d 316, 317 (Illinois prevailing wage law applies to home-rule cities because the law "addresses issues pertaining to statewide rather than local affairs").

2. Promoting apprenticeship training in the construction industry is a statewide concern.

California's Prevailing Wage Law also addresses a second significant concern with training California's next generation of skilled construction workers. Because employment relationships are often short-term in the construction industry, a single employer has little incentive to train a particular construction worker. JA 116, ¶ 24. Training is therefore typically provided by multi-year apprenticeship programs, most of which are sponsored jointly by labor organizations and contractors' associations. JA 115, ¶ 23; *see also* Labor Code §§3075(a), 3076; *California Division of Labor Standards Enforcement v. Dillingham Construction* (1997) 519 U.S. 316, 327 n.5; *Nunn*, 356 F.3d at 982-83.

These formal apprenticeship programs provide classroom instruction to the apprentices and typically dispatch apprentices to participating contractors throughout an entire county or multi-county area. JA 116-17, ¶ 26. This system of multi-employer apprenticeship training allows the industry to share the costs, burdens and rewards of training new workers. JA 116, ¶¶ 24-25.

The State's Division of Apprenticeship Standards grants approval to apprenticeship programs that meet certain minimum standards. §1777.5. More than 50,000 men and women are presently enrolled in these State-approved apprenticeship programs in the construction trades. JA 115-16, ¶ 23. The State offers "direct financial subsidies for training provided by

approved programs," and "an apprentice who completes an approved training program obtains a certificate of completion naming him or her a skilled journeyman in the chosen trade." *So. Cal. Chapter of Assoc. Builders and Contractors v. California Apprenticeship Council* (1992) 4 Cal.4th 422, 429; *see also* Labor Code §§1777.5(m); Cal. Ed. Code §8152.

By requiring contractors on public projects to hire apprentices to perform a portion of the work while permitting contractors to pay apprentices indentured in approved programs at a lower "apprentice" prevailing wage, the Prevailing Wage Law provides the incentives that make the whole apprenticeship system work. *See* §1777.5(b), (d).

Absent the Prevailing Wage Law, contractors that invested in apprenticeship training would find themselves at a competitive disadvantage to contractors that do not invest in apprenticeship training. JA 116, ¶ 25. Non-participating contractors could seek to hire apprenticeship-program graduates without having contributed to the cost of their training. *Id.* And apprentices indentured in state-approved programs might not obtain enough work to support themselves and their families while completing the multi-year program or might not obtain sufficient work to have the on-the-job training necessary to become journey-level workers in the craft.

Training the next generation of skilled construction workers is a matter of statewide concern – not just the concern of the particular municipality where a particular project may be located. Skilled workers will be necessary for future projects throughout the State. As the Court observed in *Serrano v. Priest* (1971) 5 Cal.3d 584, 614 n.30, "the 'general public' benefitted by education is not merely the particular community where the schools are located, but the entire state." *See also* Stats. 1999, ch. 903, §1 (S.B. 921) ("The Legislature finds and declares that apprenticeship

programs are a vital part of the educational system in California."); *Hall v. City of Taft* (1956) 47 Cal.2d 177, 179 (education is a statewide concern); *Los Angeles Sch. Dist. v. Longden* (1905) 148 Cal. 380, 383 (same).

3. The Prevailing Wage Law is reasonably related to addressing these statewide concerns.

The Legislature tailored the Prevailing Wage Law to address the statewide concerns that the Legislature identified. The Prevailing Wage Law applies only when a public agency funds construction work performed by private contractors; it does not apply to "work carried out by a public agency with its own forces." §1771. Applying the law to city employees would intrude on municipal autonomy and would appear to violate a specific provision of the California Constitution. *See* Cal. Const., Art. XI, §5(b) (granting charter cities plenary authority over the terms and conditions of public employment); *cf. DLSE v. Ericsson Information Systems* (1990) 221 Cal.App.3d 114, 123-24 ("In contrast to the essentially internal nature of the wages paid [public agency] employees, we are persuaded the nature of the Labor Code's prevailing wage requirement for public works does not involve the [public agency's] internal affairs and is a matter of statewide concern. . . . [T]he focus of the public works prevailing wage law is on the protection of private sector workers, the latter who are divorced from the internal affairs of the public agency.").

The Prevailing Wage Law also applies only to construction workers. As explained above, "special conditions prevailing in the construction industry" relating to the short-term nature of employment (*Assoc. Builders*, 21 Cal.4th at 359) raise unique labor issues, which are recognized by the special proviso to the National Labor Relations Act that permits pre-hire collective bargaining agreements.

Because the Prevailing Wage Law is narrowly tailored, it presents only the most minimal intrusion on the internal affairs of charter cities. The law does not preclude cities from awarding contracts in whatever manner they choose. There also is no reasonable argument that charter cities are harmed because paying better wages and benefits leads to lower-quality construction. Quite the opposite: one subsidiary purpose of the Prevailing Wage Law is to "benefit the public through the superior efficiency of well-paid employees." *Lusardi*, 1 Cal.4th at 987; *see also* Stats. 2003, ch. 851, §1 (legislative finding that "[p]ayment of the prevailing rate of per diem wages to workers employed on public works projects is necessary to attract the most skilled workers for those projects and to ensure that work of the highest quality is performed on those projects.").

The *entirety* of the local interest in bypassing the Prevailing Wage Law is that contractors that can pay sub-standard wages may submit lower bids. (The cost savings may be offset in the long run, moreover, by the lower quality of the end product and the cost of providing health care and other social services to workers and their families.) This interest in short-term savings is no different for the City of Vista than for every other political subdivision in the State.

Countless laws that address statewide concerns have some fiscal impact on local governments, but they still apply to charter cities. For example, laws requiring local governments to recognize firefighters' unions, or provide employment protections to police officers, have an impact on the local fisc, yet they apply to charter cities. *See Professional Fire Fighters*, 60 Cal.2d at 295; *Baggett*, 32 Cal.3d at 139-140. "Though it is true that the payment of funds of a municipal corporation is a municipal affair because it affects its fiscal policy and management, this does not mean that a state statue concerning a matter of general state concern is not

applicable to a charter city." *Dept. of Water and Power v. Inyo Chemical Co.* (1941) 16 Cal.2d 744, 753-54.

4. The Legislature may address statewide concerns without making a statute universally applicable.

The Prevailing Wage Law does not single out the projects of the City of Vista, or charter cities, or cities, or local governments, for special treatment. The law protects all workers employed on projects awarded by the State itself or by any other public entity and, as a general matter, workers employed on private projects built with public money. Nonetheless, the City argued below that Legislature cannot address "statewide concerns" for purposes of the home-rule doctrine unless it extends the prevailing wage law further to cover construction projects funded solely with private money.

Numerous cases decided by this Court over many decades foreclose this argument. In *Charleville*, the Court held that a law prohibiting the employment of non-citizens on public projects addressed statewide concerns and therefore applied to charter cities even though that law applied to public projects only. 215 Cal. at 398-400.[7] In *Professional Fire Fighters*, the Court held that a law regulating labor relations only for firefighters employed by public agencies addressed statewide concerns and therefore applied to charter cities. 60 Cal.2d at 295. In *Baggett*, the Court held the same with respect to the Public Safety Officers' Procedural Bill of Rights Act. 32 Cal.3d at 139-50. And, in *Committee of Seven Thousand*, the Court held that a law directed only to Orange County addressed

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[7] The Public Works Alien Employment Act was struck down on different grounds in *Purdy and Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 582.

concerns of extramunicipal dimension and therefore trumped the contrary enactments of a charter city. 45 Cal.3d at 505-06, 512.[8]

The City's assertion that a law cannot be deemed to address statewide concerns unless it applies throughout the State without exception is also at odds with the firmly established principle that, in adopting economic legislation, a legislature

> *is not bound to extend its regulation to all cases which it might possibly reach.* The Legislature is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.

West Coast Hotel Co. v. Parrish (1937) 300 U.S. 379, 400 (citations, internal quotation marks omitted) (emphasis added); *see also Williamson v. Lee Optical Co.* (1955) 348 U.S. 483, 489 ("reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others."); *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279, 300 (the Legislature is free to craft "a legislative measure that is aimed at achieving multiple objectives, even when such objectives in some respects may be in tension or conflict").

[8/] *See also Bowers v. City of San Buenaventura* (1977) 75 Cal.App.3d 65, 71 (state law requiring only public employers to provide paid military leave is applicable to charter cities); *Domar Elec., Inc. v. City of Los Angeles* (1995) 41 Cal.App.4th 810, 821-22 (state law concerning outreach to minority- and women-owned businesses in public contracting is applicable to charter cities); *Bruce v. City of Alameda* (1985) 166 Cal.App.3d 18, 22 (state law that prohibits local governments from discriminating against affordable housing projects applies to charter cities).

Here, the California Legislature could reasonably conclude that public construction projects – which form a large portion of the market and generally must be awarded to the lowest bidder – pose a particular danger to area labor standards and should not be allowed to depress wages and benefits. The Legislature also could reasonably determine that a prevailing wage law for public construction projects would be unlikely to stifle private economic development in California and that any pass-through costs to the public would be outweighed by the public benefits.

The Legislature also could rationally determine that, whereas a prevailing wage law for public work would reinforce the collective bargaining process (by ensuring that "workers on public works projects [are] accorded the same working conditions and wages that prevail in private industry" (*Independent Roofing Contractors*, 23 Cal.App.4th at 348)), extending the law to cover *all* projects would require the Legislature to entirely supplant the collective bargaining process. The Legislature has declared that public policy favors collective bargaining. §923.

That the federal government and the majority of the states have similar prevailing wage laws applicable solely to public construction is evidence that the California Legislature's policy judgment is a reasonable one – and a permissible exercise of its police power to regulate matters of statewide concern. "[P]ublic agencies, generally speaking, afford a proper subject for legislative classification" and "[i]f good ground for the classification exists, such classification is not void because it does not embrace within it every other class which might be included." *Power Farms v. Consolidated Irr. Dist.* (1941) 19 Cal.2d 123, 131 (citation, internal quotation marks omitted).

The City also argued below that the Legislature's decision not to extend the Prevailing Wage Law uniformly to all projects demonstrates that

no significant policy interest would be threatened if cities could opt-out of the law. But that argument confuses the analysis of whether, in the event of an express conflict, a state law trumps the ordinance of a charter city, with the analysis for whether a state law impliedly preempts the field for local legislation. The Court explained the difference in *Professional Firefighters*:

> The doctrine of state preemption becomes a determining factor only when a political subdivision (not necessarily a chartered city) attempts to legislate under its admitted police power (art. XI, §11) on a subject that the state also has legislated upon. The question then arises as to whether the subject matter of the legislation has not been preempted by the state. *The doctrine is not applicable to the claim that the state Legislature is prohibited (by the home rule provisions of the other sections of art. XI) from enacting legislation which will affect a chartered city. In the latter case, the sole question is whether or not the subject matter of the attempted legislation is exclusively a municipal affair.*

Professional Fire Fighters, 60 Cal.2d at 292 n.11 (emphasis added).

This case involves an *express* conflict so there is no need to speculate about whether the City of Vista's decision to opt out of the prevailing wage law would contravene the Legislature's policy – it obviously would, since the Legislature intends the Prevailing Wage Law to protect "'*all* workers employed on public works.'" *Lusardi*, 1 Cal.4th at 987 (quoting §1771) (emphasis added). As such, in determining whether the Prevailing Wage Law trumps a contrary municipal ordinance, "the sole question is whether or not the subject matter of the [Prevailing Wage Law] is exclusively a municipal affair." *Professional Fire Fighters*, 60 Cal.2d at 292 n.11.

Equally to the point, Vista seeks a rule that would allow every charter city to exempt private contractors from the state's Prevailing Wage

Law. Vista, a relatively small city, is alone currently awarding $100 million in public work. JA 42. If every city followed Vista's lead, it is indisputable that the purposes of the Prevailing Wage Law would be undermined.[9] Among other things: contractors that provide good wages and benefits would have difficulty competing for a significant portion of the market; the unionized sector of the construction industry would shrink; area labor standards would be lowered; workers who do not receive decent wages and benefits would be unable to support themselves and their families and would be a drain on social services; and training opportunities for the next generation of skilled construction workers would diminish. These serious consequences would be felt throughout the State so the California Legislature must have authority to address them.

D. The Court's holding in *City of Pasadena v. Charleville* is no longer good law.

With all the above having been established, we turn to this Court's decision in *City of Pasadena v. Charleville* (1932) 215 Cal. 384. *Charleville* held that the Public Wage Rate Act of 1931, the predecessor to the current Prevailing Wage Law, did not apply to a charter city's project to construct a fence around a municipal reservoir. In *City of Long Beach*, this Court implicitly recognized – by referring to the question whether contractors on charter city projects are covered by the prevailing wage law as "open" (34 Cal.4th at 947) – that *Charleville's* holding has been

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[9/] Of the 480 cities in California, 114 are charter cities. Those 114 cities collectively have a population in excess of 17 million, encompassing nearly half the population of the State. (The California League of Cities maintains on its website (www.cacities.org) updated lists showing the number of cities in California, the number of charter cities, and city populations.) At present, most charter cities, including large cities like Los Angeles and San Francisco, include prevailing wage specifications in their contracts.

undermined by subsequent events. The Court was correct. *Charleville's* discussion of the Legislature's authority is no longer good law, and its holding about prevailing wages should be explicitly overruled.

1. The Legislature's constitutional authority has changed.

The holding in *Charleville* followed from the decision's starting premise that the Public Wage Rate Act of 1931 could not be constitutionally justified as an exercise of the State's police power to set minimum standards to protect workers. *Charleville*, 215 Cal. at 393-94. The *Charleville* Court reasoned that the California Constitution did not grant the Legislature any power to set minimum standards for employees in California (except for women and minors). *Id.* The Court also reasoned that, under the then-controlling but now-discredited authority of *Adkins v. Children's Hospital* (1923) 261 U.S. 525, government regulation of the terms of private employment would violate the federal Constitution, as an impermissible interference with the freedom of contract. *Id.* at 390.[10]

That being so, the *Charleville* Court viewed the Public Wage Rate Act of 1931 as merely an exercise of the Legislature's proprietary authority "to prescribe conditions upon which the statute will permit work of a public character to be performed for [the state] or for public agencies of the state over which the legislature may constitutionally exercise control." 215 Cal. at 390 (citing *Atkin v. Kansas* (1903) 191 U.S. 207; *Heim v. McCall* (1915) 239 U.S. 175); *see also Metropolitan Water Dist. of Southern California v.*

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[10] *Adkins* declared unconstitutional a minimum wage statute, reasoning that "freedom of contract is . . . the general rule and restraint the exception, and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances." 261 U.S. at 546.

Whitsett (1932) 215 Cal. 400, 417-18 (upholding Public Wage Rate Act on the basis of the State's proprietary authority); *Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 582 (explaining "proprietary interest" theory).

Having determined that the Public Wage Rate Act could be justified only as an exercise of the State's limited proprietary authority – and having determined that the city construction project at issue was a municipal affair (215 Cal. at 389) – the *Charleville* Court necessarily concluded that the Act did not apply to that project. 215 Cal. at 392 ("[W]here rests the power to enact it so as to make it binding on the City of Pasadena?").

The entire constitutional premise of *Charleville* is no longer correct because the *Lochner*-era constitutional doctrines that animated *Charleville* were repudiated long ago. The *Adkins* decision, on which *Charleville* relied for the premise that the Legislature had no police power to regulate labor standards, was overruled in *West Coast Hotel Co. v. Parrish* (1937) 300 U.S. 379. As this Court explained in *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, at the time *Charleville* was decided:

> a majority of the Supreme Court was of the view that the liberty protected by the due process clause included a freedom of contract which normally precluded . . . state legislatures . . . from regulating the amounts of . . . wages in business "not affected with a public interest." Legislation invalidated pursuant to this view included attempted uses of the police power to fix minimum wages for women (*Adkins v. Children's Hospital* (1923) 261 U.S. 525) . . . .
>
> But during the thirties this restrictive view of the police power was completely repudiated. . . . Upholding a women's minimum wage statute and overruling *Adkins v. Children's Hospital*, *supra*, 261 U.S. 525, the court pointed out that the Constitution does not speak of freedom of contract but only of liberty subject to due process of law, "and regulation which is reasonable in

> relation to its subject and is adopted in the interests of the community is due process." (*West Coast Hotel Co. v. Parrish* (1937) 300 U.S. 379, 391).

Id. at 154-55.[11]

Moreover, not only has the "restrictive view of the police power" that animated *Charleville* been "completely repudiated," but the California Constitution was amended in 1976 to provide explicitly, in Article XIV, §1, that the Legislature has precisely the authority that the *Charleville* Court believed the Legislature lacked: "The Legislature may provide for minimum wages and for the general welfare of employees . . . ." That broad grant of explicit constitutional authority extends to all employees, including construction workers employed on public projects.[12]

Because the Legislature lacked constitutional police power authority to set minimum wages in 1932, the *Charleville* Court necessarily considered the Public Wage Rate Act as only an exercise of the Legislature's proprietary authority to set contract terms. In *Lusardi Construction Co. v.*

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[11] It is noteworthy that the *Charleville* Court, after holding that the Public Wage Rate Act did not address a legitimate statewide concern, proceeded to reach the opposite conclusion about the Public Works Alien Employment Act of 1931, which prohibited employment of non-citizens on public projects. The Court opined that "the right of any legislative body in this state to prohibit the employment of alien Chinese on public work may not be questioned." *Charleville*, 215 Cal. at 398. This portion of *Charleville* underscores that *Charleville* was the product of a different constitutional era.

[12] The home-rule provisions of the Constitution still grant charter cities "plenary authority," "subject only to the restrictions of this article," to provide for the compensation of *their own* employees. Cal. Const., Art. XI, §5(b). But no special constitutional authority is granted to charter cities regarding labor standards for employees of private contractors. *See* pp. 38-40, *infra*.

Aubry (1992) 1 Cal.4th 976, however, the Court recognized that the *current* Prevailing Wage Law is a minimum labor standards regulation. *Lusardi* held that the statutory requirement that a contractor pay prevailing wages to all employees on public works applies even when the requirement is not in the contract. *See id.* at 982. That holding recognizes that the *current* Prevailing Wage Law is an exercise of the police power to protect workers from substandard labor conditions and, therefore, that the reasoning of *Charleville* no longer applies.

2. The prevailing wage statutes have changed.

In addition to the post-1932 expansion of the California Legislature's constitutional authority, there also have been major changes to the prevailing wage statutes since the Public Wage Rate Act of 1931 at issue in *Charleville.* The current Prevailing Wage Law is focused on protecting labor standards and promoting apprenticeship training in *regional* labor markets, not local ones, so the extramunicipal concerns addressed by the law are much stronger.

The Public Wage Rate Act of 1931 directed local public agencies to set their own prevailing wage rates and it provided no guidelines for making that determination. *See* 1931 Cal. Stats., ch. 397, §§2, 4, at 910; *see also Metropolitan Water*, 215 Cal. at 404; *Charleville*, 215 Cal. at 389-90. Every local agency was free to establish its own local prevailing wage rates that would be applicable only within that local jurisdiction.

By contrast, the current Prevailing Wage Law at issue in this case does not leave matters to individual localities but makes the Director of the State Department of Industrial Relations responsible for determining and publishing prevailing wage rates for each craft and labor market area by using a detailed "modal" rate methodology set out by the Legislature.

§§1770, 1773, 1773.1, 1773.9.[13] Because of the size of today's labor markets, these prevailing wage determinations by the Director are county-wide or, in many instances, cover a multi-county region. JA 114, ¶ 18. The current Prevailing Wage Law reflects a considered legislative effort to support area labor standards for areas that extend well beyond the boundaries of an individual city and to support regional collective bargaining.[14]

Further, there was no apprenticeship or other educational component to the Public Wage Rate Act of 1931. *See* 1931 Cal. Stats., ch. 397, at 910-912; *see also Metropolitan Water*, 215 Cal. at 404-06. By contrast, the current Prevailing Wage Law is integrated with the State's scheme for promoting apprenticeship in the construction trades. *See* §1777.5; *see also Dillingham Construction*, 519 U.S. at 330-32; JA 115-16, ¶¶ 21-26. As previously stated, there are presently more than 50,000 men and women indentured in state-approved apprenticeship programs in the construction trades, and "[t]he state's system for promoting quality apprenticeship training in the construction trades depends upon the incentives provided by the prevailing wage law." Stats. 2003, ch. 135 (S.C.R. 49). *See* pp. 23-25, *supra*.

13/ The Director was made responsible for determining prevailing wage rates in 1976 (Stats. 1976, ch. 281, §3), and the "modal" rate methodology was codified in 1999 (Stats. 1999, ch. 30, §4).

14/ In 1932, enforcement of the obligation to pay prevailing wages was also left to local awarding bodies. In 2000, the Legislature adopted a scheme for state administrative hearings to enforce the current Prevailing Wage Law, thereby underscoring the statewide interest in vigorous and consistent enforcement of the Prevailing Wage Law throughout the state. *See* Stats. 2000, ch. 954, §§9-14 (adopting Labor Code §§1741-1742.1).

Because the current Prevailing Wage Law is significantly different from the statute at issue in *Charleville*, the holding in that case cannot be regarded as controlling.

3. Labor markets for construction work have changed.

Finally, in addition to the dispositive changes since 1932 in the constitutional authority of the Legislature and in the prevailing wage statutes, there have been significant changes since 1932 in the size of construction labor markets, making the need for statewide regulation more apparent. *Cf. Baggett*, 32 Cal.3d at 140 ("Our society is no longer a collection of insular local communities. Communities today are highly interdependent.").

In 1932, the first California freeway had yet to open. *See* www.dot.ca.gov/hq/paffairs/about/cthist.htm. In California today, construction workers routinely commute to projects outside the cities in which they live; collective bargaining agreements set terms of employment for construction workers that cover an entire region; hiring halls dispatch workers throughout a region; apprenticeship programs educate and dispatch workers on a regional basis. JA 111-16, ¶¶ 9-15, 18, 23, 26.

"[The] constitutional concept of municipal affairs is not a fixed or static quantity. It changes with the changing conditions upon which it is to operate. What may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state." *Pac. Tel. & Tel. Co. v. City & County of San Francisco* (1959) 51 Cal.2d 766, 771 (relying on the increase in telephone use to hold that a decision from 1911, which found that the placement of telephone lines on city streets was not a matter of statewide concern, no longer controlled the issue in 1959). Whether or not labor standards for

construction workers in 1932 were only a municipal concern, they are not just a municipal concern today because of the changes in the size of our State's labor markets.

II. The Additional Issues Raised by the City Do Not Affect the Outcome of this Case.

A. Article XI, §5(b) is addressed to public employees, not employees of private contractors.

The City's Answer to the Petition for Review asked the Court to consider the following question: "Does Article XI, §5(b) [of the California Constitution], allowing charter cities to choose their employees and level of public employment compensation, apply to labor costs and decisions over whether to hire apprentices when a charter city hires labor on public works projects?" The answer to that question is that Article XI, §5(b) merely authorizes city charters to provide for the compensation of "the several municipal officers and employees whose compensation is paid by the city" and of the "deputies, clerks and other employees that each shall have."[15] The Prevailing Wage Law does *not* apply to municipal employees, so there is no conflict with Article XI, §5(b).

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[15] Article XI, §5(b) provides in pertinent part that "plenary authority is hereby granted, subject only to the restrictions of this article, to provide [in a city charter] or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees."

The Court already held in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56 that the Prevailing Wage Law does not apply to public employees. Labor Code §1771 also states expressly that the Prevailing Wage Law "is not applicable to work carried out by a public agency with its own forces." Public employees typically enjoy job protections, regular schedules, health and pension benefits, and paid sick leave and vacations, that would be the envy of construction workers who move from job to job for private contractors. *See Lusardi*, 1 Cal.4th at 987 (explaining that one purpose of the Prevailing Wage Law is "to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees").

Construing Article XI, §5(b) to cover employees of outside, private contractors who are subject to the Prevailing Wage Law would not make sense linguistically. These workers are not "municipal officers and employees." Nor is their "compensation . . . paid by the city." Nor are cities responsible for "appoint[ing]" and "remov[ing]" them.

Construing Article XI, §5(b) to cover employees of outside, private contractors would not make logical sense either. It would have far-reaching consequences that could not have been intended because Article XI, §5(b) exempts municipal employees from state labor standards laws on the assumption municipal employees enjoy the protections of public employment. Construing §5(b) to cover private sector employees would leave private employees entirely unprotected by state labor standards laws from unscrupulous actions by their private employers whenever their employers happen to be performing work on a city contract. Additionally, a similarly worded constitutional provision (Article XI, §4(f)) grants counties plenary authority over the tenure and compensation of *their* employees, so giving the word "employees" in the Constitution a construction at odds with

its plain-language, common-sense meaning would open a huge gap in labor standards protections for private sector workers. *See, e.g., Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 644-645 (state meal period and rest break protections not applicable to county employees); *In re Work Uniform Cases* (2005) 133 Cal.App.4th 328, 332 (Labor Code requirement that employers indemnify employees for expenses not applicable to city or county employees).

B. Article XIIIB, §6 creates a mandate reimbursement process, not a ban on mandates.

The City's Answer also asks the Court to address the following question: "Does Article XIII[B] §6 require the state to reimburse a charter city for mandates imposed by requiring payment of prevailing wages and requiring the hiring of apprentices for locally funded public works projects using local funds, and does it evidence an intent of the voters to make local control of the expenditure of local tax revenues a matter of statewide concern?" This question has two parts, and we focus on each in turn.

First, Section 6 of Article XIIIB states that, subject to certain exceptions, when "the Legislature or any state agency mandates a new program or higher level of service on any local government" (not just charter cities), "the State shall provide a subvention of funds" to cover the costs. This provision is implemented by the Commission on State Mandates, which receives claims from local governments, determines the amount (if any) of subvention funds owed to the local government, and provides a report to the Legislature, so the Legislature can appropriate the funds. *See* Gov. Code §§17500-17700. The Legislature then has a choice between appropriating funds or suspending the mandate. Gov. Code §17581.

The City asks the Court to decide whether the Prevailing Wage Law imposes a "mandate" on local governments within the meaning of Article XIIIB. The answer to that question must be "no," because, among other things, the prevailing wage law requires private contractors, not government entities, to pay prevailing wages and hire apprentices; this statutory obligation applies to private contractors even if local governments do not include prevailing wage specifications in their contracts. *See Lusardi*, 1 Cal.4th 987. The indirect effect of the Prevailing Wage Law on awarding bodies is also speculative; contractors using more highly skilled workers may achieve increased quality and efficiency on the project.

In any event, the mandate issue is not properly before the Court because claims for compensation must be presented first to the Commission on State Mandates. Gov. Code §17552 ("This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for cost mandated by the state as required by Section 6 of Article XIII B of the California Constitution."). Judicial review is then available from a final decision of the Commission. Gov. Code §17559.[16]

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[16] The Commission on State Mandates has previously rejected a claim that the prevailing wage law imposes a "mandate" on local agencies within the meaning of Article XIIIB, §6, reasoning that whether to undertake a public works project, and whether to use a private contractor to perform that work, are discretionary decisions. *See* SBCTC's Request for Judicial Notice Filed in the Court of Appeal, filed July 25, 2008, Exh. E; *see also City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783 (statute that increased the costs of exercising the eminent domain power, but did not require local governments to use their eminent domain power, was not a mandate within meaning of Art. XIIIB, §6); *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735 (statute that increased school district's costs of implementing a program but did not require district to implement the program was not a mandate).

Second, the City asks whether the existence of a mandate-reimbursement process in Article XIIIB shows that the Constitution precludes the California Legislature from passing laws that may result in added costs for local governments. To the contrary, the existence of a mandate-reimbursement process is an acknowledgment of the Legislature's authority to adopt such laws. Article XIIIB also makes no distinction between charter cities and general law cities, so it cannot provide any support for the City's position here.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision below and direct the trial court to issue a writ of mandate commanding respondents to comply with the State's Prevailing Wage Law.

Dated: September 30, 2009

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify pursuant to CRC 8.204(c)(1) that this Opening Brief is proportionally spaced, has a typeface of 13 points or more, and contains 12,302 words, excluding the cover, the tables, the signature block and this certificate, which is less than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the word-processing program used to prepare this brief.

Dated: September 30, 2009

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PROOF OF SERVICE

Code of Civil Procedure §1013

CASE: *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista, et al.*

CASE NO: California Supreme Court, Case No. S173586
(California Court of Appeal, 4th App. Dist., Div. One,
Case No. D052181;
San Diego County Superior Court (North County),
Case No. 37-2007-00054316-CU-WM-NC)

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On September 30, 2009, I served the following document(s):

Opening Brief

on the parties, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

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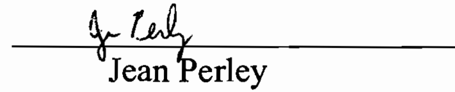
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this September 30, 2009, at San Francisco, California.



Jean Perley