No. D066755 No Fee (Gov. Code § 6103)

COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

CITY OF EL CENTRO, ET AL.

Plaintiffs and Appellants

v.

DAVID LANIER, IN HIS OFFICIAL CAPACITY AS THE SECRETARY OF THE STATE OF CALIFORNIA LABOR & WORKPLACE DEVELOPMENT AGENCY, ET AL.

Defendants and Respondents

STATE BUILDING & CONSTRUCTION TRADES COUNCIL OF CALIFORNIA,

Intervenor and Respondent.

From a Judgment of the Superior Court of San Diego County
Hon. Joel R. Wohlfeil, Presiding (Dept. C-73)
Superior Court Case No. 37-2014-00003824-CU-WM-CTL

APPLICATION OF LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF; PROPOSED *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANTS CITY OF EL CENTRO, CITY OF CARLSBAD, CITY OF EL CAJON, CITY OF FRESNO AND CITY OF VISTA

JONATHAN V. HOLTZMAN (SBN 99795)
RANDY RIDDLE (SBN 121788)
STEVE CIKES (SBN 235413)
RENNE SLOAN HOLTZMAN SAKAI LLP
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone: (415) 678-3800
Facsimile: (415) 678-3838
Attorneys for *Amicus Curiae* League of California Cities

TABLE OF CONTENTS

Page(s)

TABLE OF CONTENTS: (continued) **Page(s)**

TABLE OF AUTHORITIES

Page(s)

CONSTITUTIONAL PROVISIONS

FEDERAL CASES

TABLE OF AUTHORITIES: (continued) **Page(s)**

STATE CASES

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

STATUTES

OTHER AUTHORITIES

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

TO THE HONORABLE PRESIDING JUSTICE:

Pursuant to California Rules of Court, rule 8.200(c), *amicus curiae* League of California Cities ("League") respectfully requests permission to file the attached brief in support of Appellants City of El Centro, City of Carlsbad, City of El Cajon, City of Fresno and City of Vista (collectively, "Cities"). This application is timely made within 14 days after the filing of the reply brief on the merits.

THE INTEREST OF *AMICUS CURIAE*

The League is a non-profit association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide – or nationwide – significance.

The Committee has identified this case as being extremely significant for California charter cities because of the potential disruption and significant financial consequences to these local government agencies should the underlying trial court decision stand.

THE NEED FOR FURTHER BRIEFING

The trial court upheld the constitutionality of SB 7, a law that conditions all state construction funding upon a charter city's agreement to pay "prevailing wages" on all public works projects – regardless of whether any state money is involved. To be clear, the League takes no position as to whether the payment of prevailing wages is good public policy. Indeed,

many of the League's members have local requirements for the payment of prevailing wage rates; others strongly oppose such a requirement. However, the conditioning of state funds on a city's agreement to pay prevailing wages on projects that do not involve state funds is a direct challenge to California's constitutionally-based "home rule" doctrine. If allowed to stand, the trial court's decision would eviscerate the continued vitality of charter cities' home rule authority in California.

The continuing importance of the home rule doctrine cannot be overstated. In a state as economically and politically diverse as California, the home rule doctrine allows localities and regions to shape their local democracy in a way that addresses local concerns most effectively – to control labor costs, to develop progressive programs to address local concerns and the community support necessary for revenue collection and enhancement, and to balance budgets. The League seeks to illuminate the legal and practical implications of the issues at stake in this case, should the trial court's erroneous decision stand.

ABSENCE OF PARTY ASSISTANCE

Pursuant to California Rules of Court, rule 8.200(c)(3), the League confirms that no party or their counsel authored this brief in whole or in part. Nor did any party, their counsel, person, or entity make a monetary contribution to the preparation or submission of this brief.[1]

[1] The League is not a party to this litigation. However, in the interest of full disclosure, the League has provided some funding support to the Cities in connection with the underlying matter. No party has made any contributions to this brief, except the under the undersigned counsel.

CONCLUSION

For the foregoing reasons, the League respectfully respects that the Court accept the accompanying brief for filing in this case.

Dated: November 4, 2015

Respectfully submitted,

RENNE SLOAN HOLTZMAN SAKAI LLP

By: _____

Jonathan V. Holtzman
Randy Riddle
Steve Cikes
Attorneys for *Amicus Curiae*
League of California Cities

AMICUS CURIAE BRIEF

INTRODUCTION

Article XI, section 5(a) of the California Constitution confers charter cities with plenary – and virtually unabridged – authority to regulate their municipal affairs. In *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547 (*City of Vista*), the California Supreme Court confirmed the continued vitality of this "home rule" doctrine, holding that charter cities were not required to comply with the State's prevailing wage law on locally-funded public works projects. The Court affirmed that the expenditure of local funds on such projects fell squarely within a charter city's home rule authority.

The Legislature did not allow this constitutional ruling from our State's highest court to stand. The year after *City of Vista* was decided, the Legislature passed SB 7, a law that conditioned all state construction funding on a charter city's agreement to pay prevailing wages on all public works projects – regardless of whether any state money is involved.[2]

There is no factual question that SB 7 was a direct reaction to the Supreme Court's *City of Vista* decision and serves to punish cities through loss of funding if they fail to pay prevailing wages on projects with no state involvement. Nevertheless, the trial court ruled that this transparent "end-run" around *City of Vista* was constitutional because it represented a permissible exercise of the State's discretionary spending powers. The trial court plainly erred.

By euphemistically repackaging legislation as a "financial incentive" rather than an explicit mandate, the State attempts to do indirectly what the

[2] See Labor Code § 1782.

Constitution expressly prohibits it from doing directly. Most cities receive subsidies from the State for various services. Under the trial court's view, there appear to be few – if any – practical limitations on the Legislature's ability to condition the disbursement of state funding on charter cities relinquishing their constitutionally-conferred home rule powers, even as to projects that are funded by purely local dollars. Hence, if the trial court's decision stands, the continued vitality of the home rule doctrine is in serious jeopardy.

Some view this case as addressing whether prevailing wages should be paid on public works projects, a principle that many charter cities support and have long required. But this narrow focus misses the point. While in this case, charter powers are being asserted in the service of what some would view as a conservative principle, multiple local programs rely on this course of constitutional home rule autonomy. Clearly, local governments are better equipped than the State to address issues related to the control of local budgets, employee costs, and the structure of the local government itself. Consequently, charter powers are of critical importance, and the mechanism employed by SB 7 to eviscerate those powers is troubling.

The approach employed by SB 7 to nullify charter cities' constitutional home rule powers is not unprecedented. The State utilized a similar approach in the wake of Proposition 13 – conditioning state relief to local governments on requirements that, among other things, interfered with charter cities' plenary authority to set wages. The Supreme Court did not hesitate to strike that law down. Moreover, legions of situations in analogous areas have established the principle that the state and federal governments cannot utilize their spending powers to eviscerate

constitutional powers – when the exercise of the spending power goes beyond projects in which the state or federal government has a direct interest.

For these and the other reasons discussed more fully below, this Court cannot condone SB7's transparent and constitutionally impermissible end run around *City of Vista*.

ARGUMENT

I. CHARTER CITIES' HOME RULE AUTHORITY

Article XI, section 3(a) of the California Constitution authorizes city voters to adopt a charter, the provisions of which "are the law of the State and have the force and effect of legislative enactments." The primary advantage of a charter is that it transfers the power to regulate municipal affairs from the State to city voters, giving voters significantly more independence and control over the structure of their local government. (See *City of Grass Valley v. Walkinshaw* (1949) 34 Cal.2d 595, 605; Grodin, et al. (1993) *The Cal. State Constitution: A Reference Guide*, p. 187 ["A charter represents a substantial factor of local independence and autonomy and serves to insulate a local government from various actions of the legislature"].)

Article XI, section 5(a) of the California Constitution – known colloquially as the "home rule" provision – grants charter cities plenary authority over their "municipal affairs."[3] Once a city has adopted a charter,

[3] Article XI, section 5(b) of the California Constitution provides some examples of "municipal affairs," including (1) "the constitution, regulation, and government of the city police force," (2) "subgovernment in all or part of a city," (3) "conduct of city elections," and (4) "the manner in which municipal officers and employees whose compensation is paid by the city

the charter becomes the city's constitution, representing the "supreme law" of the city, subject only to conflicting provisions of the federal and state constitutions. (*Smith v. City of Glendale* (1934) 1 Cal.App.2d 595, 605; *Adams v. Wolf* (1948) 84 Cal.App.2d 435, 411.) As one court explained, a charter city's authority over municipal affairs is "all embracing . . . free from interference by the state through general laws." (*Simons v. City of Los Angeles* (1949) 63 Cal.App.2d 595, 605.) Where a city has adopted a charter, it "has full control over its municipal affairs . . . whether or not its charter specifically provides for the particular right sought to be exercised. . . ." (*West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516, 521.)

This is not to say that charter cities are completely immune to state regulation. Over the years, courts have recognized that state law may supersede a charter city's home rule authority provided that the law in question both addresses a matter of statewide concern and is narrowly tailored to address that concern. (See, e.g., *Baggett v. Gates* (1982) 32 Cal.3d 128, 137-139 [Peace Officers Procedural Bill of Rights Act does not violate charter cities' home rule authority to regulate police force and to provide for terms and conditions of employment]; *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 597-601 [Meyers-Milias-Brown Act's procedural meet-and-confer

---

shall be elected or appointed, and for their removal and for their compensation." This list is not exhaustive. Indeed, whether an activity qualifies as a "municipal affair" is a legal determination for courts to resolve on a case-by-case basis. (See, e.g., *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315 ["What constitutes a strictly municipal affair is often a difficult question; ultimately it is an issue for the courts to determine"].)

requirement does not interfere with charter city's constitutional authority to propose charter amendments].)

In *California Federal Savings and Loan Association v. City of Los Angeles* (1991) 54 Cal.3d 1 (*California Federal*), the Supreme Court articulated a four-part test to resolve an asserted conflict between a state statute and a charter city's home rule powers. Under this test, a court must first examine whether the underlying activity that the State seeks to regulate constitutes a "municipal affair." (*Id.* at p. 16.) If not, the inquiry ends and the state law governs. (*Ibid.*)

If the activity does involve a "municipal affair," then the court must satisfy itself that the case presents an actual conflict between state law and a charter city's home rule authority. (*California Federal, supra*, 54 Cal.3d at p. 16.) If there is no actual conflict, there is no need to consider any other element. (*Ibid.*)

But if the case does present an actual conflict, the next question becomes whether the subject of the state law is one of "statewide concern." (*California Federal, supra*, 54 Cal.3d at p. 16.) If the subject matter does not address a statewide concern, the charter city's home rule powers control and the matter is "beyond the reach of legislative enactment." (*Id.* at p. 17.)

Finally, if the subject matter does in fact constitute a statewide concern, the court must determine whether the statute is "reasonably related" and "narrowly tailored" to the resolution of that concern. (*California Federal, supra*, 54 Cal.3d at p. 17.) If neither of these requirements are met, the charter city's home rule powers control. (*Ibid.*)

Applying this test, courts have held that charter cities' home rule authority trumps conflicting state laws that do not address a matter of statewide concern and/or are not narrowly tailored towards that end. (See,

e.g., *Johnson v. Bradley* (1992) 4 Cal.4th 389, 410-411; *Trader Sports, Inc. v. City of San Leandro* (2002) 93 Cal.App.4th 37, 43-49.) The California Supreme Court's decision in *City of Vista* is a full-throated articulation of these constitutional home rule principles.

II. THE SUPREME COURT'S *CITY OF VISTA* DECISION

In *City of Vista*, the city enacted an ordinance prohibiting the payment of prevailing wages on locally-funded public works projects. (54 Cal.App.4th at p. 553.) Pursuant to that ordinance, the city council approved a plan to build two fire stations with terms that did not comply with the State's prevailing wage law.[4] (*Ibid.*)

In response, the State Building and Construction Trades Council of California ("SBCTC") filed a petition for writ of mandate seeking to compel the city to comply with the State's prevailing wage requirements. (*City of Vista, supra*, 54 Cal.4th at pp. 553-554.) The superior court denied the union's petition and the court of appeal affirmed. (*Ibid.*)

The Supreme Court granted review. In resolving the merits, the Court applied *California Federal*'s four-part test to determine whether application of the State's prevailing wage law to the construction projects at issue would impermissibly impinge upon the city's home rule authority. (*City of Vista, supra*, 54 Cal.4th at pp. 558-559.)

Initially, the Court concluded that "[t]he wage levels of contract workers constructing locally-funded public works projects are certainly municipal affairs." (*City of Vista, supra*, 54 Cal.4th at p. 558.) In so holding, the Court – quoting from its decision in *City of Pasadena v.*

[4] The State's prevailing wage law applicable to "public works" is codified at Labor Code § 1720 *et seq.*

Charleville (1932) 215 Cal. 384 – observed that "[t]he hiring of employees generally by the city to perform labor and services in connection with its municipal affairs and the payment of the city's funds for services rendered to the city by its employees in the administration of its municipal affairs is not subject to or controlled by general laws." (*Id.* at p. 559.)

The Court then examined whether an "actual conflict" existed between the State's prevailing wage law and the challenged city ordinance. (*City of Vista*, *supra*, 54 Cal.4th at pp. 559-560.) The Court found that an actual conflict existed, reasoning that "[b]ecause the state's prevailing wage law does not exempt charter cities, and because Vista's ordinance prohibits compliance with that law (except in circumstances not relevant here), we conclude that an actual conflict exists between the law and Vista's ordinance." (*Id.* at p. 560.)

Next, the Court examined whether the wage levels of contract workers constructing locally-funded public works projects constituted a matter of statewide concern. (*City of Vista*, *supra*, 54 Cal.4th at p. 560.) At the outset, the Court explained:

> [F]or state law to control there must be something more than an abstract state interest, as it is always possible to articulate some state interest in even the most local of matters. Rather, there must be a convincing basis for the state's action – a basis that "justif[ies]" the state's interference in what would otherwise be a merely local matter.

(*Ibid.*)

Ultimately, the Court found no reason to distinguish between the wage levels of contract workers from those of charter city employees, which the Court previously held to be purely municipal affairs outside the realm of permissible state regulation. (*City of Vista*, *supra*, 54 Cal.4th at

pp. 562-565, citing, *inter alia*, *Sonoma County Organization of Public Employees v. County of Sonoma*, *supra*, 23 Cal.3d at pp. 315-317) Accordingly, the Court concluded that "no statewide concern has been presented justifying the state's regulation of wages that charter cities require their contractors to pay workers hired to construct locally funded public works" and therefore application of the State's prevailing wage law to charter cities' locally-funded public works projects would violate home rule principles. (*Id.* at p. 566.)

III. SB 7 CONSTITUTES A TRANSPARENT AND IMPERMISSIBLE END-RUN AROUND *CITY OF VISTA* AND UNLAWFULLY IMPINGES UPON CHARTER CITIES' HOME RULE AUTHORITY

The ink on *City of Vista* was barely dry when the Legislature adopted SB 7. SB 7 amended the State's prevailing wage law to provide that: "A charter city shall not receive or use state funding or financial assistance if the city has a charter provision or ordinance that authorizes a contractor to not comply with the provisions of this article on any public works project." (Labor Code § 1782, subd. (a).) SB 7 further states that a charter city may not receive state funding or financial assistance "if the city has awarded, within the prior two years, a public works contract without requiring the contractor to comply with all of the provisions of this article." (*Id.*, at § 1782, subd. (b).)

The trial court found that SB 7 constituted a permissible exercise of the State's discretionary spending powers and, as a result, did not violate constitutional home rule principles. The trial court plainly erred. As demonstrated below, a proper application of *California Federal*'s four-part

test compels the conclusion that SB 7 impermissibly impinges upon charter cities' home rule powers previously recognized and upheld in *City of Vista*.

A. Under *City of Vista*, It Is Beyond Dispute that the Wages of Workers on Locally-Funded Public Works Projects Constitute a Municipal Affair

As noted above, in *City of Vista*, the California Supreme Court expressly held that "the wage levels of contract workers constructing locally-funded public works are certainly a 'municipal affair.'" (54 Cal.4th at p. 558.) The Court based this holding on the recognition that "[t]he construction of a city-operated facility for the benefit of a city's inhabitants is quintessentially a municipal affair, as is the control over the expenditure of a city's own funds." (*Id.* at p. 559, citing *City of Pasadena v. Charleville*, *supra*, 215 Cal. at p. 389.)

This principle – that charter cities have the autonomy to spend their resources as they deem fit when it comes to their own municipal affairs – lies at the heart of the constitutional home rule doctrine. For example, in *Johnson v. Bradley*, *supra*, 4 Cal.4th 389, the Supreme Court upheld a local law that allowed for city financing of election campaigns despite a conflicting state law. In reaching this conclusion, the Court stated: "[We can] think of nothing that is of greater municipal concern than how a city's tax dollars will be spent; nor anything which could be of less interest to taxpayers of other jurisdictions." (*Id.* at p. 407.)

Similarly, in *Smith v. City of Riverside* (1973) 34 Cal.App.3d 529, this Court held that charter cities were not bound by the State's competitive bidding requirements when contracting. The Court highlighted a prior Supreme Court decision that declared the making of contracts for certain public works a purely municipal affair, and noted that "[e]specially is this

true where the expense of the work is to be borne by the municipality itself. . . ." (*Id.* at p. 535, citing *Loop Lumber Co. v. Van Loben Sels* (1916) 173 Cal. 228, 232.)

Other courts have likewise recognized that when a project is being funded exclusively by local dollars, the manner in which those funds are to be spent is unquestionably a municipal affair. (See, e.g., *City of Pasadena v. Charleville*, *supra*, 215 Cal.3d at p. 389 [in upholding a charter city's authority to set, or decline to set, wages on municipal contracts, the Court stated: "The money to be expended for the cost of the improvement belongs to the city and the control of its expenditure is a municipal affair"]; *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346, 348 [reaching the same conclusion and highlighting the local nature of the funds at issue, stating: "the policy specifically excluded state and federally funded projects, which would be bound by state and federal wage law"].)[5]

In light of this unbroken precedent, there can be no legitimate dispute that the subject matter that SB 7 seeks to address – i.e., the wages of workers on locally-funded public works projects – constitutes a municipal affair falling squarely within a charter city's home rule authority to regulate.

[5] See also *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 64 (holding charter cities are not required to comply with the prevailing wage law with respect to their own employees); *In re Work Uniform Cases* (2005) 135 Cal.App.4th 328, 338 (holding charter cities are not required to reimburse employees for the cost of purchasing and maintaining work uniforms under state statute because such reimbursement constituted compensation over which the cities retained ultimate authority).

B. SB 7 Substantially Conflicts With Charter Cities' Home Rule Authority to Set Wages for Workers on Locally-Funded Public Works Projects

Under the second prong of the *California Federal* test, a court "must satisfy itself that the case presents an actual conflict" between the state law at issue and a charter city's home rule powers. (*California Federal, supra*, 54 Cal.3d at p. 16.) An actual conflict between state law and a charter city's home rule authority exists if local legislation "duplicates, contradicts, or enters into an area fully occupied by general law, either expressly or by legislative implication." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897; see also *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1250.)

The trial court here concluded that SB 7 did not present an "actual conflict" with the charter provisions at issue, finding instead that SB 7 "appears to legitimately influence local governance by attaching conditions on receipt of discretionary state funding" and that "[t]his conditional receipt of a small amount of state funding does not appear to be coercive as a matter of law." (CT, Vol. 4, p. 919.) The trial court implies that legislation (like SB 7) labeled as a mere "financial incentive" can never present an "actual conflict" with a charter city's home rule authority because a city can always elect to forego receipt of the funding and thereby preserve its authority to regulate the activity at issue. This reasoning cannot withstand scrutiny.

1. SB 7 Is the Quintessential Example of the State Seeking to Do Indirectly What the Constitution Prohibits It From Doing Directly

As a threshold matter, the trial court's reasoning runs contrary to the established judicial principle that the State may not do indirectly what it is

prohibited it from doing directly. (See *St. John's Well Child and Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 979.) As the Cities point out in their reply brief (at pp. 13-16), courts have applied this principle in a variety of contexts. (See, e.g., *Legislature v. Duekmejian* (1983) 36 Cal.3d 658, 678; *County of Los Angeles v. Riley* (1936) 6 Cal.2d 626, 627 [finding statute that provided a portion of the motor vehicle tax collected by the state to counties for their use violated constitutional provision prohibiting the Legislature from taxing cities or counties or their inhabitants for local purposes]; *People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1446 [state could not base revocation of probation on violation of federal law where state courts had no authority to enforce federal criminal statutes].)

Significantly, this principle was recognized and applied by the California Supreme Court in *Sonoma County Organization of Public Employees v. County of Sonoma, supra*, 23 Cal.3d 296 (*Sonoma County*) –a case discussed extensively in *City of Vista* as well as the parties' various briefs submitted here.

Sonoma County concerned Proposition 13, an initial measure that "placed significant limitations upon the taxing power of local and state governments" so as to reduce sharply the amount of revenue that local agencies could raise through property taxes. (23 Cal.3d at p. 302.) Accordingly, the Legislature passed a law allowing for the distribution of "surplus funds which had been accumulated in the state treasury to local agencies," but did so on the condition that the local agencies agree to withhold from employees cost of living raises provided for in their collective bargaining agreements that were in excess of the raises given to state employees. (*Ibid.*) In response, several unions sued to challenge the law.

The *Sonoma County* Court initially examined "whether the [state law] invaliding agreements calling for wage increases by local public agencies violates the state and federal constitutional prohibitions against impairing the obligations of contracts." (23 Cal.3d at p. 303.) The Court explained that "[t]here can be no doubt that [the statute] impaired the obligations entered into under [the labor] agreements." (*Id.* at p. 305.) The Court then rejected claims that the legislation was necessary to alleviate the "fiscal crisis" created by Proposition 13, finding that "the government has failed to meet its threshold burden of establishing that an emergency existed." (*Id.* at p. 311.)

Next, the Court assessed whether the law violated charter cities and counties' home rule authority to determine the compensation of their employees. (*Sonoma County, supra*, 23 Cal.3d at p. 314.) The Court recognized that "[t]here can be no doubt that there is a conflict between the provisions of [the legislation] invalidating wage increases agreed to by cities and counties and the ordinances or resolutions of the local agencies which ratified the [collective bargaining] agreements." (*Id.* at p 315.) Ultimately, the Court found that "both the language of the Constitution and prior authority support the proposition . . . that the determination of the wages paid to employees of charter cities as well as charter counties is a matter of local rather than statewide concern." (*Id.* at p. 317.)

Finally – and perhaps most critically for purposes of this appeal – the Court examined "whether the conditions [imposed by the law] that state funds are to be granted only to those local agencies which do not pay salary increases may be upheld in spite of our conclusion that the provision invalidating agreements for such increases is unconstitutional." (*Sonoma County, supra*, 23 Cal.3d at pp. 318-319.) In addressing this issue, the

Court stated that "while the state may impose conditions upon the granting of a privilege, including restrictions upon the expenditure of funds distributed by it to other governmental bodies . . . , 'constitutional power cannot be used by way of condition to attain an unconstitutional result.'" (*Id.* at p. 319; quoting *Western Union Telegraph Co. v. Foster* (1918) 247 U.S. 105, 114.) Accordingly, the Court concluded that "while the state may not have been under an obligation to distribute state funds to local agencies to assist them in resolving whatever fiscal problems were contemplated in the wake of Proposition 13, it could not require as a condition of granting those funds that the local agencies impair valid contracts to pay wage increases." (*Ibid.*)

As *Sonoma County* makes clear, the State may not use its legislative power – including its power to place conditions on the receipt of discretionary funding – in an effort to achieve an unconstitutional result. *But that is precisely what SB 7 does*: It requires that charter cities relinquish their constitutionally-conferred home rule authority in order to receive needed state funding.

The Constitution's "home rule" provisions were borne out of the realization that "municipal affairs" required more attention and a better understanding of local issues than the State could exercise. (See 1 McQuillin, *Municipal Corporations* (3d ed. 1999) Home Rule, § 1.40, pp. 50-51; Sato, *"Municipal Affairs" in California* (1972) 60 Cal. Law Review, pp. 1056-1057.) Accordingly, these provisions place matters qualifying as "municipal affairs" exclusively within a charter city's control. (See *West Coast Advertising v. City and County of San Francisco, supra,* 14 Cal.2d at p. 521.) Indeed, as *California Federal* and *City of Vista* make clear, for state law to intrude upon a charter city's home rule authority, it

must be both designed to address a matter of statewide concern and narrowly-tailored toward that end.

SB 7 seeks to disrupt the division of governmental authority established under these constitutional principles. Although packaged as a "financial incentive," the law effectively punishes charter cities for not paying prevailing wages, *and it does so even on public works projects that are funded solely with local dollars.*

If the Legislature may condition the disbursement of funds on charter cities relinquishing their home rule powers even as to purely local matters that the State is not funding, there would be few practical limitations on this authority, placing the continued vitality of the home rule in serious jeopardy.[6] In this respect, SB 7 substantially disrupts the balance of power between the State and local governments that voters establish when they elect to adopt a charter. Indeed, SB 7 is the quintessential example of "constitutional power" being used "by way of a condition to achieve an unconstitutional result," an outcome the *Sonoma County* Court specifically disapproves.

---

[6] For example, the Legislature has long sought to impose "interest arbitration" as a means of resolving labor disputes between public safety unions and local government employers. The California Supreme Court rejected that as an improper invasion of home rule principles in *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, a decision that was later reinforced by the First Appellate District in *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322. If SB 7 were held constitutionally valid, the Legislature would be able to impose interest arbitration as a condition on state funding. (See *Johnson v. Bradley*, *supra*, 4 Cal.4th at pp. 410-411.) As yet another example, voters in charter cities are free to determine whether they elect city council members by district or at large. Under the SB 7 approach, the Legislature could condition disbursement of state funds on a city's acquiescence to district elections.

In their respective briefs, the State Defendants and SBCTC downplay the import of this portion of *Sonoma County* as it applies to the issues presented here. For example, in their brief (at pp. 26-27), the State Defendants – highlighting the fact that the legislation at issue in *Sonoma County* conditioned the distribution of post-Proposition 13 "bail out" money on local agencies unlawfully impairing their own collective bargaining agreements – assert that "[u]nlike the situation in *Sonoma County*, SB 7 does not require charter cities to take any unconstitutional action (or do anything illegal) to receive funding." Similarly, in its brief (at p. 19), SBCTC posits that "[i]n *Sonoma County*, cities would have had to violate the Contract Clause to receive funding . . . . Here, by contrast, it would not be unconstitutional for a charter city to choose to require its contractors to comply with the Labor Code's wage and apprenticeship requirements." Both the State and SBCTC fundamentally misread *Sonoma County*.

Contrary to the State Defendants and SBCTC's claims, *Sonoma County* cannot be credibly distinguished simply because it found that the law at issue – in addition to impermissibly infringing upon charter cities' home rule powers – unlawfully impaired contractual obligations. Rather, as discussed above, the Court's decision remains controlling because it recognizes that the State may not condition the receipt of discretionary funding in order to achieve an unconstitutional result.

The "unconstitutional result" at issue in *Sonoma County* cannot be meaningfully distinguished from the unconstitutional result that the State seeks to achieve through SB 7. Just as the Constitution prohibits the State from impairing contractual obligations, so too does it prohibit the State from invading a charter city's "municipal affairs" (unless, of course, the

law at issue satisfies *California Federal*'s four-part test). And as *Sonoma County* teaches, whether the State is attempting to achieve these unconstitutional results directly through its regulatory powers, or indirectly through its spending powers, is a distinction without a difference.

Thus, the means by which the State is seeking to regulate an otherwise "municipal affair" is irrelevant for purposes of a constitutional home rule analysis; when the State attempts to regulate a municipal affair (either directly or indirectly), the law may survive constitutional scrutiny only if it satisfies the remaining prongs of the *California Federal* test. As demonstrated in the Cities' briefing and discussed further below, SB 7 does not meet these requirements.

2. Contrary to the State and SBCTC's Claims, the Legislature May Not Use Its Spending Authority to Eviscerate Constitutional Home Rule Principles

Notwithstanding *Sonoma County*'s admonition that "constitutional power may not be used by way of a condition to obtain an unconstitutional result," the State Defendants and SBCTC maintain that the Legislature may lawfully condition the receipt of state funding on a charter city's relinquishment of its home rule authority. Initially, they note the obvious – that the "Legislature has plenary lawmaking authority over the state's budget." (State Defs.' Brief, p. 21.) The State Defendants and SBCTC contend that this authority provides the Legislature with essentially unfettered discretion to place any and all conditions on the receipt of state funding because nothing is forcing cities to accept the funds with these "strings" attached. (*Id.* at pp. 23-25.)

Not only is this argument inconsistent with the holding in *Sonoma County*, it also overlooks that an "actual conflict" exists when a charter

provision or ordinance enters into an area either expressly or impliedly occupied by general law.[7] (See *Sherwin-Williams Co. v. City of Los Angeles*, *supra*, 4 Cal.4th at p. 897; see also *American Financial Services Assn. v. City of Oakland*, *supra*, 34 Cal.4th at p. 1250; *City of Watsonville v. State Dept. of Health Services* (2005) 133 Cal.App.4th 875, 883; *Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1808, 1813-1814.) The opposite is also true: an actual conflict exists where a state statute seeks to enter into a field governed exclusively by a charter city's plenary, home rule authority. That is precisely the situation presented here.

Through SB 7, the Legislature seeks to regulate a field that was previously governed exclusively by charter cities' home rule powers. In this case, all of the Cities have enacted charter provisions granting them exclusive, plenary authority over the payment of wages to workers on locally-funded public works projects. Therefore, because the Cities' charter provisions at issue and SB 7 seek to occupy the same field, there can be no question that an "actual conflict" exists for constitutional home rule purposes.

---

[7] As the Supreme Court has explained: "[L]ocal legislation enters an area that is fully occupied by general law when the Legislature has expressly manifested its intent to fully occupy the area, or when it has impliedly done so in light of one of the following indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of statewide concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality." (*Sherwin-Williams Co. v. City of Los Angeles*, *supra*, 4 Cal.4th at p. 898.)

Unable to locate any California authority justifying SB 7's infringement upon charter cities' home rule powers, the State Defendants and SBCTC are forced to turn to federal case law addressing the Congress's ability to impose conditions on the receipt of federal funding under the Spending Clause of the United States Constitution. Those very cases, however, undermine their argument.

The Spending Clause grants Congress the power "[t]o lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." (U.S. Const., art. I, § 8, cl. 1.) The Clause provides Congress with broad discretion to tax and spend for the "general Welfare," including the power to impose limits on the use of discretionary federal funding so as to ensure that the funds are used in the manner Congress intends. (See *Rust v. Sullivan* (1991) 500 U.S. 173, 195 ["Congress' power to allocate funds for public purposes includes an ancillary power to ensure that those funds are properly applied to the prescribed use"].)

Although Congress's authority under the Spending Clause is broad, it is not without limits. (See *Pennhurst State School and Hospital v. Halderman* (1980) 451 U.S. 1, 17 n. 13 (*Pennhurst*); *South Dakota v. Dole* (1987) 483 U.S. 203, 207, 207 (*South Dakota*); *Gorrie v. Brown* (8th Cir. 1987) 809 F.2d 508, 519 n. 19 ["there is some point at which Congress goes too far in imposing conditions on states pursuant to its spending authority"].) The United States Supreme Court has identified at least four limitations on Congress's spending power.

First, the exercise of the spending power must be in pursuit of "the general welfare." (*South Dakota, supra*, 483 U.S. at p. 207.) Second, the congressional restriction on the states' power must be done

"unambiguously . . ., enabl[ing] the States to exercise their choice knowingly cognizant of the consequences of their participation." (*Pennhurst, supra*, 451 U.S. at p. 17.) Third, the conditions on federal grants may be illegitimate "if they are unrelated 'to the federal interest in particular national projects or programs.'" (*South Dakota, supra*, 483 U.S at pp. 207-208, quoting *Massachusetts v. United States* (1978) 435 U.S. 444, 451.) Finally, other constitutional provisions may provide independent bars to the spending power.[8] (*Id.* at p. 208.)

---

[8] In *South Dakota*, the United States Supreme Court suggested another limit on Congress's spending authority: "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.'" (483 U.S. at p. 211.) In that case, the Court found that Congress's condition of the receipt of highway funds on South Dakota's raising its drinking age to 21 did not reach the point of compulsion when the penalty for refusing would be the loss of only five percent of highway grant funds. (*Ibid.*) More recently, in *National Federal of Independent Business v. Sibelius* (2012) 132 S.Ct. 2566, the Court found that the federal government's financial inducement was coercive when Congress threatened to withhold Medicaid funding, in light of the fact that Medicaid funding "accounts for over 20 percent of the average State's total budget." (*Id.* at p. 2604.) The Court contrasted *South Dakota*'s "relatively mild encouragement" to the threatened loss of all of a state's Medicaid funding, which it described as "a gun to the head." (*Ibid.*)

In its brief (at pp. 22-23), SBCTC claims that SB 7 does not amount to "coercion" or a "gun to the head" because only a relatively small portion of a city's budget is at stake. But, as the Cities note in their reply brief (at pp. 9-13), SB 7 fails to identify precisely what "state funding or financial assistance" charter cities would not receive if they failed to require prevailing wages on locally-funded projects. Indeed, the statute could deprive more than 40 programs of needed state funding, including housing, economic development, water quality, environmental conservation, and transportation. Under no circumstances, can the loss of such important funding be considered "relatively mild encouragement," particularly given the lack of any compelling statewide concern (discussed more fully *infra*).

As the Cities point out in their reply brief (at pp. 8-12), SB 7 runs afoul of the second and fourth of these limitations insofar as it (1) fails to identify the "state funding or financial assistance" that charter cities would not be eligible to receive if they failed to require prevailing wages on locally-funded public works projects, and (2) violates the guarantees in Article XI, section 5 of the California Constitution that charter cities "may make and enforce all ordinances and regulations in respect to municipal affairs."

But SB 7 also violates the third limitation in that it imposes conditions on grants that are unrelated to the project or program at issue. The United States Supreme Court recently expanded upon this limitation in *National Federal of Independent Business v. Sibelius* (2012) 132 S.Ct. 2566 (*NIFB*). In that case, the Court – while addressing a Spending Clause challenge to the Medicaid expansion portion of the Affordable Care Act – stated:

> We have upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which Congress ensures that the funds are spent according to its view of the "general Welfare." *Conditions that do not here govern the use of the funds, however, cannot be justified on that basis. When for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes.*

(*Id.* at pp. 2603-2604, emphasis added.)

Here, SB 7 renders charter cities ineligible to receive state funding or financial assistance unless they give in to the State's demands and comply with the State's prevailing wage requirements on all public works projects, *including those that are being paid for exclusively with local*

dollars. Because the conditions imposed by SB 7 extend beyond the specific projects that the State would be funding – and, moreover, render charter cities ineligible to receive state funding or financial assistance if they paid less than prevailing wages on any public works project in the last two years – these conditions cannot be considered reasonably related to the State's interest in a particular project.[9]

Thus, under the standards established by federal courts in evaluating a Spending Clause challenge, SB 7 would not pass constitutional muster.

3. Federal "Preemption" Cases Further Support the Conclusion that SB 7 Is Constitutionally Infirm

The conclusion that the State is not permitted to leverage funding on matters in which it has no legally cognizable interest finds further support in federal preemption doctrines. Federal courts are frequently required to determine the extent to which the National Labor Relations Act ("NLRA") and other statutory schemes displace state and municipal regulations – an inquiry that involves the same type of balancing of governmental interests that is at the heart of the home rule doctrine.[10]

---

[9] In its brief (at p. 25), SBCTC asserts that "federal courts have rejected the argument that spending conditions may restrict the use of only the federal funds or apply solely to projects involving the federal funds at issue," citing *South Dakota* in support. However, in its decision, the *South Dakota* Court expressly noted that "the State itself . . . admits that it 'has never contended that the congressional action was . . . unrelated to a national concern in the absence of the Twenty-first Amendment. . . .' Indeed, the condition imposed by Congress is directly related to one of the main purposes for which highway funds are expended – safe interstate travel." (*Ibid.*) Thus, the issue of whether the funding conditions were reasonably related to the program or project at issue was never addressed in *South Dakota*.

[10] Notably, California courts often use similar preemption jurisprudence in assessing whether an actual conflict exists under home rule principles. (See *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 797-797.)

For example, under federal preemption principles, the NLRA displaces state and municipal regulation concerning areas of the labor-management relationship that Congress intentionally left "to be controlled by the free play of economic forces." (See *Lodge 76, International Assn. of Machinists & Aerospace Workers, ALF-CIO v. Wisconsin Employment Relations Comm.* (1976) 427 U.S. 132; *Golden State Transit Corp. v. City of Los Angeles* (1986) 475 U.S. 608, 614.) Whether such regulations are preempted by the NLRA turns on whether the government agency is acting to set labor policy or simply to protect its own proprietary interest. (See *Building & Construction Trades Council of Metro. Dist. v. Assoc. Contractors of Massachusetts/Rhode Island, Inc.* (1993) 507 U.S. 218, 231-232 (*Boston Harbor).*)

If a state or local government is attempting to regulate labor-management relations that Congress intended to leave to the "free play of economic forces," such regulations are preempted by federal law. (See *Boston Harbor, supra,* 507 U.S. at pp. 231-232.) This is true regardless of whether the state or local government agency is attempting to regulate the matter directly through its regulatory powers, or indirectly through its spending powers. (See, e.g., *Wisconsin Dept. of Industry and Human Relations v. Gould, Inc.* (1986) 475 U.S. 282, 288.)

On the other hand, if the government is merely acting to protect its own proprietary interest, then the regulations are not preempted. (See *Boston Harbor, supra,* 507 U.S. at pp. 231-232.) In evaluating whether a government agency is acting a "market participant," courts will examine (1) whether the challenged action essentially reflect the agency's interest in its efficient procurement of needed goods and services, and (2) whether the narrow scope of the challenged action defeats any inference that its primary

goal was to encourage a general policy, rather than address a specific proprietary problem. (See *Johnson v. Rancho Santiago Community College Dist.* (9th Cir. 2010) 623 F.3d 1011, 1023-1024.)

The federal "preemption" doctrine may serve as a useful tool in determining when and how state regulation may be preempted with respect to matters that the Constitution expressly reserves for local control. In particular, the doctrine ensures that the State has sufficient "skin in the game" in the underlying activity that it would otherwise be prohibited from regulating directly – similar to the requirement recognized in *California Federal* and *City of Vista* that state regulation be intended to address a matter of statewide concern (and be narrowly tailored toward that end), in order to regulate an otherwise purely municipal affair.

Here, there is no question that the State is intending to impermissibly regulate. How do we know that? First, because the factual context compels that conclusion. No one could, with a straight face, assert the Legislature here was doing anything more or less than attempting to impose a state-wide mandate to pay prevailing wage rates.

Indeed, the legislative history is clear. *City of Vista* has already concluded that the State's interest in that policy does not rise to the level of a statewide concern. Under the analysis of the federal preemption cases, this would not prevent the State from imposing prevailing wages on projects on which it has a direct, pecuniary interest. However, to the extent that the State seeks to impose a requirement on a broader class of activities in which it lacks a direct stake, it is acting in an impermissible "regulatory" capacity.

Put in simpler terms, while the Legislature can spend its money any way it wishes, it cannot do so *for the sole purpose of* circumventing home

rule powers. The history, as well of the breadth of the State's action in this case, make clear that is precisely what it is attempting to do.

C. In Regulating Projects that Are Funded Exclusively With Local Money, SB 7 Does Not Address a Matter of Statewide Concern

Under the third prong of the *California Federal* test, a court must determine whether the state law addresses a matter of statewide concern. (*California Federal*, *supra*, 54 Cal.3d at p. 16.) In answering this question, a court must look past the Legislature's findings,[11] and instead conduct an independent inquiry to determine whether a "convincing basis" exists, justifying the State's "interference in what would otherwise be a merely local matter." (*City of Vista*, *supra*, 54 Cal.4th at p. 560; see also *Johnson v. Bradley*, *supra*, 4 Cal.4th at p. 405 ["[T]he inquiry regarding statewide concern focuses not on the legislative body's intent, but on 'the identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying the legislative supersession based on sensible, pragmatic considerations.'"].)

In the proceedings below, the trial court noted that SB 7 contained "detailed findings supporting the statewide concern of creating and maintaining a skilled construction work force." (CT, Vol. 4, 918.) In their brief (at pp. 6-8), the State Defendants similarly concede that, in enacting SB 7, the Legislature found that by requiring charter cities to pay prevailing

[11] As the Supreme Court has previously explained: "[T]he fact, standing alone, that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue as between state and municipal affairs . . .; stated otherwise, the Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern." (*Bishop v. City of San Jose*, *supra*, 1 Cal.3d at p. 63.)

wages on all public works projects (including those funded purely by local dollars), the statute would (1) ensure that California has an adequate pool of skilled construction workers "to efficiently complete both public and private infrastructure projects," and (2) encourage contractors to hire the most skilled workers and provide financial support for formal apprenticeship and on-the-job training programs necessary to "train the next generation of skilled construction workers." But these are the exact same objectives that the Supreme Court in *City of Vista* Court previously held did not constitute a "convincing" statewide concern justifying the State's interference in purely local affairs.

In *City of Vista*, the union – in an attempt to establish that the State's prevailing wage law addressed a matter of statewide concern –noted that, among other things, the law "requires contractors on public works to hire apprentices from state-approved apprenticeship programs, thereby ensuring the proper training of the next generation of skilled construction workers" and that this aspect of the law was "essential to California's long-term economic health." (54 Cal.4th at p. 561.) The Court flatly rejected this argument:

> Certainly regional labor standards and the proper training of construction workers are statewide concerns *when considered in the abstract*. But the question presented here is not whether the state government has an abstract interest in labor conditions and vocational training. Rather, the question presented is whether the state can require a charter to exercise its purchasing power in a way that supports regional wages and subsidizes vocational training, while increasing the charter city's costs. No one would doubt that the state could exercise its *own* resources to support wages and vocational training in the state's construction industry, but can the state achieve these ends by interfering in the fiscal policies of charter cities? Autonomy with regard to the expenditure of

> public funds lies at the heart of what it means to be an independent government entity.

(*Id.* at pp. 561-562, emphasis in original.)

This reasoning holds as true today as it did when *City of Vista* was decided. That the Legislature may wish to develop a more skilled labor pool and increase the vocational training opportunities available to California residents does not, in and of itself, constitute a legitimate statewide concern justifying the State's interference with a charter city's constitutionally-conferred authority to decide when and how to spend its own resources – particularly with respect to those public works projects that are funded exclusively by local dollars. As *City of Vista* and other cases make abundantly clear, such autonomy lies at the heart of the home rule doctrine.

SB 7's lack of a legitimate statewide concern is further highlighted by the statute's legislative history. By all accounts, SB 7 was drafted – and ultimately enacted – to evade the Supreme Court's constitutionally-based ruling in *City of Vista* that the wages paid to workers on locally-funded public works projects constitutes a municipal affair outside the realm of permissible state regulation. As the Cities point out in their opening brief (at p. 24), *City of Vista* was specifically mentioned during the Senate hearing on SB 7. Moreover, according to Senate analyses, SB 7 was intended to "sidestep" the issue of "whether wage levels of contract workers constructing locally funded public works are a municipal affair or a matter of statewide concern." (*Ibid.*)

That the Legislature enacted SB 7 to evade *City of Vista* makes clear that the statute addresses a local, not statewide, concern. Indeed, the circumstances surrounding the Legislature's passage of SB 7 mirror those

confronted by the First Appellate District in *County of Sonoma v. Superior Court*, *supra*, 173 Cal.App.4th 322 (*County of Sonoma*).

Prior to *County of Sonoma*, the Legislature passed a statute (SB 402) that required local government agencies to submit labor disputes involving peace officers and firefighters to binding interest arbitration.[12] The statute spawned litigation, which resulted in the Supreme Court's decision in *County of Riverside v. Superior Court*, *supra*, 30 Cal.4th 278 (*County of Riverside*).

In *County of Riverside*, the Court held that SB 402 impermissibly infringed upon the home rule authority reserved for counties under Article XI of the California Constitution. (30 Cal.4th at pp. 286-289.) The Court rejected the claim that SB 402 was designed to address the statewide concern of preventing labor disputes that could lead to strikes by firefighters or law enforcement officers – finding instead that the statute impermissibly sought to regulate the wages of county employees, a matter the Constitution specifically reserved for a county's board of supervisors. (*Ibid.*)

In the wake of *County of Riverside*, the Legislature passed SB 440, which amended SB 402 to allow a local government employer to reject an interest arbitration decision by a "unanimous vote of all members of the

[12] "Interest arbitration concerns the resolution of labor disputes over the formation of a collective bargaining agreement. . . . It differs from the more commonly understood practice of grievance arbitration because, unlike grievance arbitration, [it] focuses on what the terms of a new agreement should be, rather than the meaning of the terms of the old agreement." (*County of Sonoma*, *supra*, 173 Cal.App.4th at pp. 341-342, internal citations and quotations omitted.)

governing body." The amended statute also spawned litigation, resulting in the First District's *County of Sonoma* decision.

In *County of Sonoma*, the union similarly claimed that SB 440 was designed to avoid "public safety labor strife" that might otherwise lead to strikes by firefighters and law enforcement officers. (173 Cal.App.4th at p. 338.) The court rejected this argument, noting that "[t]he Supreme Court rejected a virtually identical argument in *Riverside*" and that "[s]ubsequent decisions have followed *Riverside* and held that . . . policies affecting county employee compensation are matters of local, not statewide, concern." (*Id.* at p. 339.) Accordingly, the court concluded that "[i]t necessarily follows that the compensation of the County's employees is not a matter of statewide concern." (*Ibid.*)

As *County of Sonoma* illustrates, that fact that SB 7 was enacted to evade a prior Supreme Court decision undermines any claim that the statute was designed to address a statewide concern.

D. Even If SB 7 Did Address a Matter of Statewide Concern, It Is Not Narrowly Tailored to Avoid Unnecessary Interference With Local Governance

As demonstrated above, SB 7 does not address a matter of statewide concern. But even if it did, the statute does not meet the fourth prong of the *California Federal* test in that it is not reasonably related to resolution of that statewide concern, nor is it narrowly tailored to avoid unnecessary interference with local governance. (*California Federal, supra*, 54 Cal.3d at p. 17.)

The narrowly-tailored component of the *California Federal* test ensures "that a state law does not infringe legitimate interests other than that which the state law purports to regulate as a statewide interest." (*City*

of Watsonville v. State Department of Health Services (2005) 133 Cal.App.4th 875, 889.) In other words, the test safeguards that "the sweep of the state's protective measure may be no broader than its interest." (*California Federal, supra*, 54 Cal.3d at p. 21.) This requires an evaluation of the purpose of the state law and the other, alternative methods available to the State to achieve that purpose.

For example, in *Trader Sports v. City of San Leandro, supra*, 93 Cal.App.4th 37, the court was faced with whether a portion of Proposition 62 – a state statute imposing a two-thirds voter requirement for any new local taxes proposed by a local government – applied to a municipal ordinance that taxed the sale of concealable firearms. (*Id.* at p. 41.) The court applied *California Federal*'s narrowly-tailored test to determine whether the state statute was narrowly construed to address its stated purpose. (*Id.* at pp. 47-48.) The court ultimately concluded that the statute was not "narrowly calculated" to address its intended purpose and that it infringed upon "an area that is historically a municipal affair." (*Id.* at p. 48.)

Similarly, in this case, SB 7 is not narrowly tailored to address its stated purpose. While SB 7 purports to create a more skilled labor pool and increase the vocational training opportunities available to California residents, there are certainly other, less intrusive means available to the State to achieve this result. Indeed, as *City of Vista* makes clear, the State "could exercise its *own* resources to support wages and vocational training in the . . . construction industry." (54 Cal.4th at p. 562.) For this reason alone, as applied to locally-funded construction projects, SB 7 cannot be considered narrowly-tailored to achieve its stated purpose.

The narrowly-tailored prong also requires an examination of the extent to which the state law intrudes upon matters reserved for local governance. (*California Federal*, *supra*, 54 Cal.3d at p. 17.) In conducting this inquiry, a court will examine whether the statute more than minimally impinges upon a charter city's authority over its municipal affairs. (See *Baggett v. Gates*, *supra*, 32 Cal.3d at pp. 137-138 [Peace Officers Procedural Bill of Rights Act did not impermissibly infringe upon charter cities' home rule authority because it "impinges only minimally on the specific directives" of Article XI, section 5(b)]; *County of Riverside v. Superior Court*, *supra*, 30 Cal.4th at p. 287 ["[T]he Legislature may regulate as to matters of statewide concern even if the regulation impinges 'to a limited extent' . . . on powers the Constitution specifically reserves to counties[] or charter cities[]"].)

Here, SB 7 cannot be said to minimally impinge upon charter cities' home rule authority to set wages for workers on locally-funded public works projects. SB 7 prohibits a charter city from receiving or using "state funding or financial assistance" for any public works project if the city has a charter provision or ordinance that authorizes a contractor to not comply with the State's prevailing wage requirements or if the city has in the last two years awarded a public works contract without requiring the contractor to pay prevailing wages. By denying charter cities all state construction funding as a result of non-compliance with its terms, SB 7 is not narrowly tailored to achieving its stated goal of creating a more skilled labor pool. Rather, it impermissibly impinges upon a matter that the Constitution has expressly reserved for local control. For this additional reason, SB 7 must be declared unconstitutional.

CONCLUSION

For all the foregoing reasons, *amicus curiae* League of California Cities respectfully requests that this Court find that SB 7 unlawfully infringes upon charter cities' "home rule" authority under Article XI, section 5(a) of the California Constitution. Accordingly, the judgement entered by the trial court below should be reversed.

Dated: November 4, 2015

Respectfully submitted,

RENNE SLOAN HOLTZMAN SAKAI LLP

By: _____

Jonathan V. Holtzman
Randy Riddle
Steve Cikes
Attorneys for *Amicus Curiae*
League of California Cities

CERTIFICATION OF WORD COUNT
(California Rules of Court, Rule 8.204(c)(1))

The foregoing brief contains 9,209 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word word processing program used to generate the brief.

Dated: November 4, 2015

RENNE SLOAN HOLTZMAN SAKAI LLP

By: _____

Jonathan V. Holtzman
Randy Riddle
Steve Cikes
Attorneys for *Amicus Curiae*
League of California Cities

PROOF OF SERVICE

State of California
County of San Francisco
Court of Appeal Case No.: D066755

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On November 4, 2015, I served the following document(s) by the method indicated below:

APPLICATION OF LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF; PROPOSED *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANTS CITY OF EL CENTRO, CITY OF CARLSBAD, CITY OF EL CAJON, CITY OF FRESNO AND CITY OF VISTA

MANNER OF SERVICE:

✓ By United States Mail, enclosed in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of California.

Paul Evan Stein Office of the Attorney General of California 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102-7004 Kim L. Nguyen Office of the Attorney General of California 300 South Spring St., Ste. 1702 Los Angeles	*Attorneys for Respondents and Defendants David Lanier, Christine Baker, Julie A. Su, The State of California*

Scott A. Kronland Zoe Palitz Altshuler Berzon, LLP 177 Post Street, Suite 300 San Francisco, CA 94108	*Attorneys for Intervenor and Respondent State Building and Construction Trades Council of California, AFL-CIO*
James P. Lough Alena Shamos Lounsbery Ferguson Altona & Peak LLP 960 Canterbury Place, Ste. 300 Escondido, CA 92025 jpl@lfap.com aso@lfap.com T. Peter Pierce Youstina N. Aziz Richard, Watson & Gershon 355 South Grand Ave., 4th Floor Los Angeles, CA 90071-3101	*Attorneys for Plaintiffs and Appellants City of El Centro, City of Carlsbad, City of El Cajon, City of Vista, City of Fresno*
Clerk of the Court San Diego Superior Court Central Division (Hon. Joel R. Wohlfeil) 330 W. Broadway, Dept. C-73 San Diego, CA 92101 (619) 450-7072	

I declare, under penalty of perjury that the foregoing is true and correct. Executed on November 4, 2015, in San Francisco, California.

Rochelle Redmayne