June 29, 2009

Chief Justice Ronald M. George
and Associate Justices
California Supreme Court
350 McAllister St.
San Francisco, CA 94102

Supreme Court Case No. S173586
Fourth Appellate District, Division One, Case No. D0521281
Rule 8.500(g)
Amicus Curiae Letter in Support of Petition to Review

Dear Chief Justice George and Associate Justices:

This letter urging the Court to grant the Petition for Review of the Court of Appeal’s decision in State Building and Construction Trades Council of California, AFL-CIO v. City of Vista, et al. (2009) 173 Cal.App.4th 567 is submitted on behalf of the Northern California Basic Crafts Alliance. We write today to communicate the necessity of clarifying the obligations of California charter cities with regard to the statewide network of apprenticeship programs supported, in part, by contributions generated from public works projects. The prevailing wage law addresses statewide concerns both by protecting area labor standards and by supporting the State’s apprenticeship system. This letter provides the Court with more detail about the importance of the prevailing wage law to California’s apprenticeship system.

I. STATEMENT OF INTEREST

The Northern California Basic Crafts Alliance ("Basic Crafts Alliance") is comprised of labor organizations representing more than 57,000 Carpenters, Laborers and Operating Engineers in Northern California, primarily employed in the construction industry. The members of the Alliance are the Northern California Carpenters Regional Council, the Northern California District Council of Laborers, and the International Union of Operating Engineers, Local No. 3. The members represented by the Unions that form the Basic Crafts Alliance work on public works projects throughout the state for which the prevailing wage rates must be paid, apprentices must be employed, and contributions must be made to support apprenticeship programs in the building and construction trades.
II. FACTS ABOUT APPRENTICESHIP PROGRAMS

Each member of the Basic Crafts Alliance sponsors a Joint Apprenticeship and Training Committee (“JATC”) which oversees the training of apprentices in the crafts of carpentry, construction laborer, and heavy equipment operation. The Basic Crafts Alliance also supports projects that bring diversity into the construction trades by reaching out to women, new immigrants, veterans, former prisoners who are attempting to rebuild their lives, and at-risk youth. Employment of apprentices on construction funded with public money provides the bedrock for good social policy, including the payment of decent wages and benefits to the skilled craftspeople who construct our state’s public works, and the support of an extensive, educational network leading to jobs in the construction industry. Classes are equipped with modern equipment and tools, and include a strong emphasis on safety. Instructors have many years of experience in their particular craft and their qualifications are regulated by the state.

Carpenters apprenticeship classes provide specialized instruction in a wide variety of sub-crafts (including general carpentry, drywall and lathing, acoustical installation, insulation, modular installation, pile driving, cabinet making, millwright work, floor laying and scaffold erection). Carpenter apprenticeship programs offer classes to upgrade skills and teach new construction techniques to graduates of their programs. The program involves 4,800 hours of on-the-job training and 612 hours of instructional classes at a training center.

The Northern California District Council of Laborers program teaches apprentices how to pour concrete, pave roads, lay pipe for sewers, carry out demolition, and perform environmental abatement. The program involves classroom instruction, hands-on training, and on-the-job training. Apprentices must complete 3,000 hours of on-the-job training and six week of classroom training to become journeymen. Classroom training includes classes in proper use of tools, concrete and asphalt paving, skills required for various certifications required on construction sites, and hazardous waste removal.

The Operating Engineers Apprenticeship Program involves 200 hours of classroom orientation, 320 hours of supplemental training, and 6,200 hours of on-the-job training (four to five years of work). The program trains heavy equipment operators and repairmen for heavy equipment. New apprentices receive orientation to the industry, safety procedures on equipment and at the jobsite, first aid, construction fundamentals and grade-checking. Advanced courses include sessions of 80 hours in length on each of the following topics: Blade work, backhoe/excavation, loaders, bulldozers, paving, cranes, grade setting and welding. Additional instruction covers health and safety practices, dealing with hazardous waste, driving forklifts, use of global

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1 The information contained in this paragraph was gleaned from the Carpenter’s Apprenticeship web site at: http://www.calapprenticeship.org/Carpenter.htm

2 The information contained in this paragraph was gleaned from the Northern California District Council of Laborers Apprenticeship web site at: http://www.norcalaborers.org/Training/Apprenticeship.htm
positioning systems in construction, and the skills necessary to receive a commercial driver’s license.³

III. PUBLIC WORKS CONTRACTORS NOT PARTICIPATING IN APPROVED APPRENTICESHIP PROGRAMS ARE REQUIRED TO CONTRIBUTE FUNDS

The Basic Crafts Alliance members sponsor joint apprenticeship programs that are approved by the California Apprenticeship Council (“CAC”). Contractors signed to agreements with the Basic Crafts Alliance members make hourly contributions to their approved apprenticeship programs for every hour that journeymen and apprentices work on both private and public works construction projects. This is largely how the approved apprenticeship programs are funded. However, there is another source of funding that comes to approved apprenticeship programs through the CAC and the Division of Apprenticeship Standards (“DAS”). The alternate funding source comes as a result of the requirement in California’s public works law, requiring all contractors to contribute to the CAC in an amount determined by the DIR to be the “prevailing amount of apprenticeship training contributions in the area of the public works site.” (Lab. Code, §1777.5, subd. (m)(1)).

Under this requirement all contractors, including those who are not participating in an approved apprentice program, on California public works make contributions for each hour that is worked by any journeyman or apprentice. (Lab. Code, §1777.5, subd. (m)(1)).

This statute has been interpreted by the DIR in regulations adopted in 2005 as requiring distribution of the contributions to approved apprenticeship programs.

Contributions shall be distributed as follows: (i) payment shall first be made to the Division of Apprenticeship Standards for its budgeted expenses to administer this subdivision in the fiscal year in which the distribution is made; (ii) where there is only one applicable apprenticeship program in the same occupation for which contributions were made whose geographic area of operation as defined in 8 C.C.R. section 205(n) includes the county in which the work was performed, those contributions will be distributed to that program less the pro rata share of expenses paid by DAS . . . .

Cal. Code Regs., tit. 8, §230.2(d).

In 2007 the amount received by DAS for the hours worked by contractors not participating in approved apprenticeship programs on public works was $7,992,880.⁴ If charter cities are found exempt from the public works laws they will also be exempt from this provision that supplies a portion of funding to approved apprenticeship programs.

³ The information contained in this paragraph was gleaned from Operating Engineers Local 3’s Apprenticeship web site at: http://www.oe3.org/training/apprentice.html

IV. OVERALL BENEFITS OF APPRENTICESHIP PROGRAMS

Apprenticeship programs provide many important benefits to the people and economy of California:

- Apprenticeship programs provide on-the-job training with related and supplemental instruction.
- Apprenticeship programs provide non-traditional career opportunities for women and other minorities.
- Training results in certification as a journeyman.
- Graduates of apprenticeship programs gain increased earning power; and wages and benefits that can lead to financial independence.
- Training is provided utilizing state-of-the-art equipment and facilities.
- Training is tied to industry-supported standards.
- Training costs for individual employers are reduced.
- Programs are designed to meet the needs of new and emerging businesses and industries.

(2003 CDE Snapshot of Apprenticeship at p. 2.)

The overarching purpose of California’s regulatory scheme for apprenticeship is to “foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment....” (Lab. Code, §3073.) To fulfill these goals, California offers a variety of incentives to encourage apprenticeship programs to seek State approval, which can be obtained if the programs comply with specified State standards. (Cal. Code Regs., tit. 8, §212.) The statutes and regulations governing apprenticeship in California also offer significant benefits to contractors who hire apprentices from State-approved programs. (See Southern California ABC v. CAC, 4 Cal.4th at pp. 428-29, 432-434 “The 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; see also Electrical Joint Apprenticeship Com. v. MacDonald (9th Cir. 1991) 949 F.2d 270, 274.) [“In order for such an apprenticeship program to work, it is essential that the employer be able to pay lesser wages to the apprentices while they are in training.”].)

The industries and employers who sponsor or participate in apprenticeship programs find the current system of apprenticeship training to be efficient and cost effective because it eliminates the need for expensive recruitment programs; creates a diversified, flexible, and highly-motivated pool of employees with specific desired skills; and reduces costs associated with high
labor turnover. Employees develop high morale and company loyalty while participating in apprenticeship programs that offer upward mobility through career development, and are motivated to achieve and adapt to include training of new skills in demand by industry. (2007 DAS Report, p. 1.)

V. REASONS THE COURT SHOULD GRANT REVIEW

A. Apprenticeship Programs Represent a Comprehensive Statewide Educational Network.

It has been the public policy of the State of California to foster and promote apprenticeship and to require the employment of apprentices on projects constructed in whole or in part with public funds for many decades. (Southern California ABC v. CAC, supra, 4 Cal.4th 422, 428-29., 432-434.)

1. Historical Trends Have Resulted in the Comprehensive System of Statewide Job Training in the Construction Industry Today

Since the founding of the American republic, states have regulated training programs for individuals seeking to enter skilled crafts, in order to prevent their exploitation by employers. (Associated Builders and Contractors of Southern California, Inc. v. Numm (9th Cir. 2004) 356 F.3d 979, 982; ["ABC v. Numm"], citing W.J. Rorabaugh, The Craft Apprentice: From Franklin to the Machine Age in America (1986).) In 1937, Congress enacted the National Apprenticeship Act (or the "Fitzgerald Act"), 29 U.S.C. section 50et seq., to encourage the development of modern apprenticeship programs to be administered by the U.S. Department of Labor.

California has regulated apprenticeships since at least 1858. (Stats. 1858, ch. 182, pp. 134-37, codified as Civ. Code, former §§264-274, subsequently repealed and superseded by Stats. 1937, ch. 90.) Most of the laws that currently govern apprenticeship training and employment in California were enacted in the late 1930s and thereafter. In 1939, California passed the Shelley-Maloney Apprentice Labor Standards Act ("Shelley-Maloney Act"), which created the regulatory framework that governs apprenticeship in this State to this day, and integrated construction trades apprenticeship training with the prevailing wage law. (Stats. 1939, ch. 220; codified as amended at Lab. Code, §3070 et seq.) With the adoption of the Shelley-Maloney Act, public works contractors were permitted to pay less than the otherwise mandatory prevailing journeyman’s wage to apprentices enrolled in State-approved apprenticeship programs. (Southern California ABC v. CAC, 4 Cal.4th 422,at 428-429; Dillingham Construction, 519 U.S. 316, 332-333.)

2. Apprenticeship Programs are Governed by a Comprehensive Scheme of Statutes and Regulations of Statewide Application that Create and Regulate Employment Opportunities for Apprentices
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California law provides necessary standards regarding the employment of apprentices on public works jobs. All contractors and subcontractors on public works projects must meet certain requirements as to the employment of apprentices and must make contributions to approved apprenticeship programs in order to be in compliance with Labor Code section 1777.5.

The public body overseeing the contract is required to insert stipulations into the construction contract requiring compliance with the apprenticeship provisions of the prevailing wage law (Lab. Code, §1777.5, subd. (n)).

Labor Code section 1777.5 subdivision (d), requires that: “When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section...”

Currently, contractors and subcontractors on prevailing wage projects are required, subject to limited exceptions, to employ apprentices in a ratio of no less than one hour of apprentice work for every five hours of work performed by a journeyman. (Lab. Code, §1777.5, subd. (g); Cal. Code Regs., tit. 8, § 230.1(a).)

A contractor to whom a public works contract is awarded must also contribute to either an approved apprenticeship program or to the CAC in an amount determined by the DIR to be the “prevailing amount of apprenticeship training contributions in the area of the public works site.” (Lab. Code, §1777.5, subd. (m)(1).

California’s Code of Regulations also demonstrates evidence of intent to regulate, on a statewide basis, the employment of apprentices on public works jobs. Under California’s prevailing wage law public contractors may pay less than the prevailing journeyman wage to apprentices in training programs that meet the applicable federal or state standards. (See 29 C.F.R. §29.5(b)(5);Lab. Code, §1777.5, subds. (b), (c); Cal. Code Regs., tit. 8, §230.1(b).) The starting apprenticeship prevailing wage rate is currently 60% to 95% of the journeyman’s rate with health and welfare benefits, and regular increases given upon the completion of a certain number of hours of training, generally every 6 months.

California’s statutes and regulations provide for crucial financial support of Apprenticeship Programs. Contractors awarded prevailing wage contracts must contribute to an apprenticeship training fund (Lab. Code, §§1773.1, subds. (a)-(c) & 1777.5, subd. (m)(1); Cal. Code Regs., tit. 8, §230.2.)

3. The California Department of Industrial Relations Provides Statewide Oversight of Apprenticeship Programs, Demonstrating the Statewide Importance and Impact of these Programs

Apprenticeship training is administered by the Department of Apprenticeship Standards (DAS), under the auspices of the California Department of Industrial Relations (DIR). (Lab. Code, §3073.) The Chief of the DAS is empowered to investigate and approve or disapprove written
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standards for apprenticeship programs. (Lab. Code, §§3073, 3075, 3090; Cal. Code Regs., tit. 8, §§212, 212.1.)

Joint Apprenticeship Training Committees (JATC) are labor-management committees that operate apprenticeship programs. They are governed by written standards approved by DIR’s Division of Apprenticeship Standards (“DAS”). (Labor Code § 3070 and the California Code of Regulations, title 8, §212 et seq.) The JATCs are responsible for developing craft-specific curriculum and on-the-job training standards, which ensure that the apprentices participating in their programs receive training in all aspects of the relevant trade so as to justify the journeymen’s certificate issued by the State of California upon completion of the program.

Legislation in the past decade strengthens the regulation of apprenticeship programs in California by providing for DAS audits of State-approved programs to ensure they meet the high standards necessary for preparing apprentices for the workplaces of the future, and to prevent the exploitation of apprentices. (Lab. Code, §3073.1, 3073.2; Cal. Code Regs., tit. 8, §212.3(d)-(h); and see Stats. 1999, ch. 903, §1 [statement of legislative intent in AB 921].) DAS is also required to verify apprentice registration and status, and enforces requirements of Labor Code section 1777.5

This regulatory system governing Apprenticeship Programs in California contains additional requirements for contractors who do public work. Upon being awarded a contract for a public work, contractors are required to submit contract award information to the DAS (Lab. Code, §1773.3). Information about the award must also be provided to appropriate apprenticeship programs within ten days of the execution of the, and in no event later than the first day on which the contractor has workers employed upon the public work. (Cal. Code Regs., tit. 8, §230(a).)

Every contractor and subcontractor on a public works project is required to maintain accurate, certified payroll records showing “the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.” (Lab. Code, §1776, subd. (a).)

Complaints about the failure to pay the proper apprentice prevailing wage rate are referred to the DIR’s Division of Labor Standards Enforcement (“DLSE”). (Cal. Code Regs., tit. 8, §230.1(b).)

B. Apprenticeship Programs and the Public Works Laws Designed to Support Apprenticeships in the Building and Construction Trades Are Matters of Statewide Concern

discussed in *Southern California ABC v. CAC*, the Legislature has built into the prevailing wage laws a variety of incentives in order to foster the development of apprenticeship programs that can provide practical, hands-on crafts training and high quality post-secondary education for Californians who are not otherwise served by the State’s system of higher education; ensure an adequate supply of highly-motivated, well-trained workers for the construction industry and maintain high standards in the construction of publicly funded projects. (*Id.*, 4 Cal.4th 422, 428-429; see also *Dillingham Construction*, 519 U.S. 316, 332-333).

1. **Apprenticeship Programs Are Not Organized According to Municipalities They Generally Cover Regions and, in Some Instances, the Entire State**

There is no such thing as a “strictly municipal” apprenticeship program, confined to a single city. No mechanism exists for approval or quality control of Apprenticeship Programs by local governmental entities. There is, instead, a complex web of private and public entities and individuals—including the JATCs, the Division of Apprenticeship Standards (“DAS”), the California Department of Education (“CDE”), the California Community Colleges, and the construction contractors involved in public works construction. They work together to operate and administer apprenticeship training programs that cover multi-county regions, or in some instances the entire State, to maintain an adequate supply of well-trained and highly-motivated journeymen in all the trades and crafts that make up the construction industry. Training programs are not restricted to a local area of coverage. They may choose to provide for regional or statewide coverage in their standards, as evidenced by the Apprenticeship Council’s State-Wide Minimum Industry Training Criteria. (Cal. Code Regs., tit. 8, § 212.01.)

For example, the Apprenticeship Programs sponsored by the members of the Northern California Basic Crafts Alliance cover multiple counties in Northern California and offer training in the following northern California localities:

- **Carpenters**: Fresno, Pleasanton, Fairfield, Morgan Hill
- **Laborers**: San Ramon
- **Operating Engineers**: Rancho Murieta

2. **All Municipalities Benefit from the Existence of Apprenticeship Programs and the Support Provided to them Pursuant to Laws Regulating Public Works**

The members of society at large—not just the citizens of any particular city or county—rely upon and benefits from these programs. The establishment, support, and regulation of Apprenticeship Programs affect the safety and structural integrity of public works projects and the public.

Construction projects in particular localities affect a broader group that just the residents of particular municipalities. Often a public work project will draw it workforce from well beyond the immediate area as it is common for construction workers to travel a significant distance to
work. Commuters who live in other communities, those who travel to a city to utilize public facilities, travelers passing through, among others, are potentially impacted by the quality and safety of local public construction. The impact of apprenticeship programs, closely interwoven with prevailing wage requirements, is more than a matter of strictly local concern.

The benefits of Apprenticeship Programs, supported in large part through contributions generated by public works contracts, go far beyond strictly municipal concerns, and have an important and recognized statewide impact.

3. Apprenticeship Training Programs are Matters of Statewide Concern

With the integration of the apprenticeship provisions into the State prevailing wage law from 1939 forward, maintaining an adequate supply of well-trained construction workers to build California’s public works was recognized as a matter of statewide concern, and not as a purely municipal affair.

Since 1970, the State has provided direct financial subsidies for the educational component of the approved programs, as administered by CDE. (Ed. Code, §§8150, 8152.)

Education has long been recognized to be an important matter of statewide concern. (Hall v. City of Taft (1956) 47 Cal.2d 177, 179; Los Angeles School Dist. v. Longden (1905) 148 Cal. 380, 383; and see Serrano v. Priest (1971) 5 Cal.3d 584, 614 n.30 [“the ‘general public’ benefited by education is not merely the particular community where the schools are located, but the entire state”].) And thankfully, California’s law and economy have progressed to the point that we can say today what could not have been said in 1932: “[A]pprenticeship programs are a vital part of the educational system in California” (Stats. 1999, ch. 903, §1), and “The 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; and see also Dillingham Construction, 519 U.S. at pp. 332-333; Electrical Joint Apprenticeship Com. v. MacDonald, 949 F.2d at p. 274). It is now time to explicitly acknowledge the legal significance of these developments: California’s prevailing wage law, including the provisions relating to apprenticeship training, is a “matter of statewide concern.”

4. As a Matter of Fundamental Fairness, Charter Cities Must Be Subject to the Laws Governing the Support of Apprenticeship Programs Associated with Public Works Projects

The failure to require Charter Cities to comply with state apprenticeship laws on their public works projects will have a negative impact extending far beyond the individual locality. If all 114 of the charter cities in California—a roster that includes every major city in the State—could “opt out” of the statewide prevailing wage law, it would render that law far less effective in maintaining area labor standards. It would also drastically reduce funding, job opportunities

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5 A complete list of California’s charter cities can be found at http://www.cacities.org/doc.asp?id=571, the website of the League of California Cities.
for apprentices, and deal a devastating blow to the statewide system of apprenticeship training. The loss of support for state-regulated Apprenticeship Programs funded in part through the operation of the laws and regulations governing public works would have a negative impact on public safety and on the state’s economy.

It would be fundamentally unfair for charter cities to be able to reap the advantages of the existence of the construction industry Apprenticeship Programs without being subject to the laws that provide the support to these valuable programs.

VI. CONCLUSION

Considering how the statewide prevailing wage laws codified in Labor Code section 1720 et seq. work in conjunction with the system of financing and administering the training, education, and employment of apprentices in the construction industry, it is clear that the State prevailing wage law, and it’s impact on California’s Apprenticeship Training Programs is, indeed, a matter of statewide concern in 21st Century California. Conflicting local ordinances of chartered cities must yield to concerns that are statewide in nature. It is unfair that some contractors who employed skilled journeymen and apprentices on publicly-funded construction projects will not have to help fund approved apprenticeship training programs or employ indentured apprentices while others will be required to do so. This is not the level playing field envisioned by the California legislature when it enacted the laws governing public works and apprenticeship.

The undersigned respectfully request that the California Supreme Court grant review of this case.

Sincerely,

Sandra Rae Benson
Roberta Perkins
Patricia M. Gates

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PROOF OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On June 29, 2009, I served upon the following parties in this action:

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copies of the document(s) described as:

[ ] BY MAIL  I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing
of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on June 29, 2009.

Joanna Son