Case No. S173586

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

Petitioner and Appellant,

v.

CITY OF VISTA, et al.

Respondent.

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENT CITY OF VISTA; *AMICUS CURIAE* BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENT CITY OF VISTA

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

On Appeal from the San Diego Superior Court (North County)
Case No. 37-2007-00054316-CU-WM-NC
Honorable Robert P. Dahlquist

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENT CITY OF VISTA

To Honorable Chief Justice Ronald George:

Pursuant to California Rule of Court 8.520, the League of California Cities ("League") seeks this court's permission to file the attached amicus curiae brief in support of Respondent City of Vista.

The League of California Cities is an association of 474 California cities united in promoting the general welfare of cities and their citizens. The League is advised by its Legal Advocacy Committee ("LAC"), which is comprised of 24 city attorneys representing all 16 divisions of the League from all parts of the state. The committee monitors appellate litigation affecting municipalities and identifies those that are of statewide, or nationwide, significance.

This case was identified by the LAC as very significant to charter cities because of the potential disruption and significant financial consequences to these governments should the Court of Appeal's holding be reversed. The League submits this brief to provide the Court with a broad perspective of charter city authority in the context of the legal issue before the Court.

Specifically, the League submits this brief for two reasons. First, the League writes to underscore the constitutional underpinnings of charter city

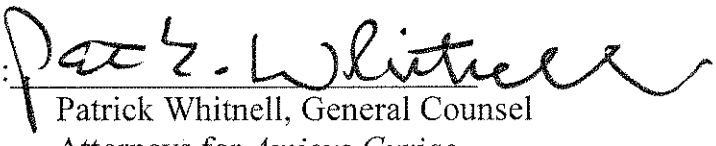
authority. When settling a dispute between a state law and a charter city's local law, this constitutional foundation and the evolution of home rule authority should be taken into account.

Second, the League writes to illustrate the breadth of charter city authority when contracting for a local project that is solely funded by local taxpayer funds. This breadth is demonstrated by two principles. First, charter cities have broad authority to spend local taxpayer funds in a manner they deem appropriate, subject to any locally-imposed constraints. Second, charter cities, like other municipalities, have broad power to negotiate favorable contract terms as well as the mode of contracting. When taken together, these principles support a charter city's wide latitude when contracting and the League asks the Court take this authority into account when deciding this case.

The League therefore respectfully requests leave to file the attached amicus curiae brief.

Dated: January 20, 2010

Respectfully submitted,

By: 

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INTRODUCTION

The League of California Cities submits this amicus brief to provide the Court with a broader perspective on charter city authority in the context of the legal issue before the Court.[1] Specifically, the League submits this brief for two reasons. First, the League writes to explain and underscore the evolution and constitutional underpinnings of charter city authority.[2] This history makes clear that when considering a conflict between a state law and a charter city's local law, the charter city's constitutional authority over its municipal affairs should not be discounted. The home rule provision of the constitution was enacted to preserve local autonomy, and this provision is based on the belief that local officials are in the best position to assess and satisfy local needs. While the Legislature may prefer (and may even explicitly state) that a charter city comply with a state

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[1] At the outset, the League notes that charter cities throughout the state have come to different conclusions as to the advisability of requiring the payment of prevailing wages. All cities, however—general and chartered—are united in seeking to preserve local autonomy over local matters. Accordingly, this brief focuses on charter city authority, generally, in lieu of a focused discussion on the payment of prevailing wages.

[2] The Court should note that the legal issue before the Court, and the discussion in this brief, pertain only to charter cities. The Constitution does provide for charter counties (Cal. Const. art. XI, sec. 3), but a charter county is not provided with the same broad home rule authority as is provided to charter cities. (*See* Cal. Const. art. XI, sec. 4.)

statute, that preference does not convert an internal, municipal affair into one of statewide concern.

Second, the League writes to illustrate the breadth of a charter city's authority when contracting for a local project that is solely funded by local taxpayer funds.[3] It is against this backdrop that the Court must decide the dispute currently before it. Relevant to this dispute are two principles that have emerged from the case law. First, when it comes to local matters, charter cities have the power to spend their local taxpayer funds in a manner they deem fit, subject to any locally-imposed constraints. Second, charter cities, like other municipalities, have the power to set not only the terms and conditions of their contracts, but the mode of contracting as well. Any conclusion the Court reaches in this case should be consistent with these principles.

The League offers these points with full appreciation of the fact that what constitutes a municipal affair today, may not constitute one tomorrow. This fluidity, however, does not negate the need for harmony and predictability in the law. This is especially true in the area of public works contracting where the parties must know, with certainty, their rights and

[3] The League acknowledges that local projects funded by state or federal funds, in whole or in part, may need to comply with additional conditions imposed by the funding source regardless of the city's constitutional status.

obligations given the significant potential for adverse financial impacts from unanticipated changes in the law.

INTEREST OF AMICUS

The League of California Cities is an 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 of such significance, and that judgment has been ratified by the League's Board of Directors, which has approved the League's participation in this case.

Of the 480 incorporated cities in California, 116 of those are charter cities.[4] Within the past five years, 7 new cities have adopted charters.[5] The League has noted over the past several years a substantial increase in

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[4] A list of California charter cities may be found at: http://www.cacities.org/resource_files/28410.Charter_Cities09.doc (accessed January 19, 2010).

[5] The cities are Solvang (2006), Vista (2007), Buena Park (2008), Santee (2008), Victorville (2008), El Centro (2009), and Palmdale (2009).

general law cities that are looking at potentially seeking voter approval of a charter. With the continuing tug of war between the state and local agencies over fiscal and other local affairs, the League expects this heightened interest to continue.

The League's Mission Statement further demonstrates our interest: "*To restore and protect local control for cities through education and advocacy in order to enhance the quality of life for all Californians.*"

Protecting local control that the constitution has granted to charter cities over their municipal affairs substantially advances the League's mission. We submit this brief to provide the Court with the benefit and assistance of the League's knowledge of charter cities and their authority.

ARGUMENT

I. THE EVOLUTION AND CONSTITUTIONAL UNDERPINNINGS OF CHARTER CITIES' HOME RULE AUTHORITY UNDERSCORES THE NEED FOR DEFERENCE WHEN CONSIDERING A CONFLICT BETWEEN A STATE LAW AND A CHARTER CITY'S LOCAL LAW.

Eugene McQuillin chronicles the history surrounding the movement towards home rule throughout the country as follows:

> During the colonial period, and after the establishment of states, charters were granted by the provincial and state legislatures as distinct acts of legislation. The legislatures merely assumed the authority, but the authority afterwards developed into what is now called an

inherent right. Each city or town was given a separate charter. In course of time, *to allow local freedom and avoid legislative interference*, charters were promulgated by general legislative acts, and cities and towns were classified by population … In construing these grants, a majority of the courts finally made the city or town completely subject to the state legislature as to what it could do and the method of doing it, unless a special provision of the particular state constitution interposed. *Legislatures therefore became enabled to interfere unduly in municipal affairs…*

To free cities and towns from legislative rule, the idea of the freeholders' or constitutional charter began to appear in the 1890's. In brief, constitutional provisions conferred upon inhabitants and local communities the power to frame and adopt their own municipal charters, subject, of course, to the laws and policy of the state. Many states have such constitutional provisions. *The purpose was to give local communities full power in matters of local concern, which were to be regarded as exclusive matters of local self-government or home rule.*

With the growing size of municipalities and the increased scope of state legislation, there were at least two other reasons for providing for the creation of local governmental units to handle local problems: (1) to relieve the legislature from the burden of dealing with local affairs and so leave it freer to concentrate on matters of statewide concern; and (2) the realization that local problems required more attention and

comprehensive knowledge than the state could exercise.[6]

It may be said that the idea of home rule in its comprehensive sense includes (1) the choice of the character of the municipal organization, that is, the selection of the charter; (2) the nature and scope of the municipal service; and (3) all local activity, whether in carrying out or enforcing state law or municipal regulations, in the hands of city or town officers, selected by the community.

Municipal home rule in its broadest sense means the power of local self-government. Any power of local self-government, therefore, in whatever manner arising, whether inherent as sometimes claimed, or conferred or recognized by constitutional or statutory grant, or powers emanating from the people of the local community themselves and set forth in a charter authorized by the state organic law, would be included. The phrase is usually associated with powers vested in cities and towns by constitutional or statutory provisions, particularly in the former, and more especially organic authorization to the local inhabitants to frame and adopt their own municipal charters. *Rights thus emanating by constitutional grant are viewed as constitutional rights protected from invasion or interference by the people of the state in their representative legislative capacity.* Cities and towns having constitutional, freeholders or home-rule charters, in theory at least, derive their power of

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[6] 1 McQuillin, *Municipal Corporations*, (3d ed. 1999) Home Rule, § 1.40, pp. 50-51. (Italics added; footnotes omitted.)

> local self-government from the state constitution.[7]

It is against this backdrop that California adopted its home rule provision in 1896. Prior to 1896, the constitution authorized a city to adopt a charter for its own government. (Cal. Const. art. XI, § 6 (1879).)[8] That charter, however, was "subject to and controlled by general laws." (*Ibid.*) Accordingly, these charters had little force in enhancing and substantiating local control. (Sato, *"Municipal Affairs" in California* (1972) 60 Cal. L.Rev. 1055-1056.)

The 1896 amendment reflects the intent of the voters of California (and reflects sentiments around the country) to assert local control over local matters. The amendment was enacted to prevent local laws from "being frittered away by general laws" and acknowledges that local decisions are best made locally. (*Fragley v. Phelan* (1899) 126 Cal. 383, 387.) Local governments, as opposed to state government, are in the best position to assess local needs and determine the best way to meet those needs. (*Ibid.*)

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[7] 1 McQuillin, *Municipal Corporations*, (3d ed. 1999) Definition, § 1.41, pp. 51-52. (Italics added; footnotes omitted.)

[8] All future citations to articles and sections of articles are to the California Constitution unless otherwise specified.

In 1914, California took another step forward by making clear that a charter city had ultimate authority over all of its municipal affairs, regardless of whether the local charter touched on a particular topic. (Art. XI, § 6 (1914).) This amendment "transform[ed] a charter from an instrument conferring specific powers to one granting broad, residual powers except as expressly limited by the charter." (Sato, *supra*, 60 Cal. L.Rev. at 1056-1057.)[9]

This legislative history and purpose cannot be disregarded when considering an issue of state control versus local control. Charter cities have "the *sole* right to regulate, control, and govern their internal conduct independent of general laws ..." (*Fragley*, *supra*, 126 Cal. at 387, italics added.) Where a city has accepted the constitutional "privilege" of "complete autonomous rule" over its municipal affairs, it is limited only by its charter. (*City of Grass Valley v. Walkinshaw* (1949) 34 Cal.2d 595, 605.) A charter city's authority over municipal affairs is "all-embracing ... free from any interference by the state through general laws." (*Simons v.*

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[9] The current version of the home-rule provision, Art. XI, § 5(a), states:

> "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs . . . City charters adopted pursuant to the Constitution shall supersede any existing charters, and with respect to municipal affairs shall supersede all laws inconsistent therewith."

City of Los Angeles (1976) 63 Cal.App.3d 455, 468.) A city that has availed itself of home-rule authority "has full control over its municipal affairs … whether or not its charter specifically provides for the particular power sought to be exercised …" (*West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516.)

Further, the Legislature's intent to preempt an area of regulation, alone, is irrelevant to the municipal affairs analysis. "[T]he 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* (1969) 1 Cal.3d 56, 63.) Accordingly, the courts have routinely rejected the Legislature's attempts to do so. (*See e.g., Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296 (rejecting the Legislature's attempt to set wages for city and county employees); *Johnson v. Bradley* (1992) 4 Cal.4th 389 (upholding a charter city's right to enact local campaign financing laws irrespective of the State's conflicting scheme); *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346 (concluding a charter city is not bound by the State's prevailing wage law).)

A charter is a local governing document that has significant legislative force. Charters are adopted by a vote of the people, they are submitted to the secretary of state, and they are published in the statutes at

large. (Art. XI, § 3(a).) Charters "are the laws of the state and have the force and effect of legislative enactments." (*Ibid.*) They are comparable to the state constitution and are governed by the same principles. (*Adams v. Wolff* (1948) 84 Cal.App.2d 435, 441.) "A charter represents a substantial factor of local independence and autonomy and serves to insulate a local government from various actions of the legislature." (Grodin et al., *The Cal. State Constitution: A Reference Guide* (1993) at 184.)

This constitutional foundation and the subsequent judicial interpretations are the guideposts for the Court's consideration of conflicts between a state law and a charter city's law.

II. CHARTER CITIES HAVE BROAD AUTHORITY WHEN CONTRACTING FOR LOCALLY FUNDED, LOCAL PROJECTS.

When analyzing a charter city's procurement practices for local taxpayer-funded, local projects, two principles should be kept in mind. First, when it comes to local matters, charter cities have the power to spend their taxpayer funds in a manner they see fit, subject to any locally-adopted limitations. Second, like other municipalities, charter cities have the power to set not only the terms and conditions of their contracts, but the mode of contracting as well. These principles illustrate the depth of a charter city's authority when contracting and the League asks the Court's decision in this case be consistent with these principles.

A. Charter Cities Have Autonomy to Expend Their Resources In A Manner They Deem Appropriate.

This principle was exemplified in *Johnson v. Bradley*, wherein this Court upheld a local law that allowed for city financing of election campaigns despite a conflicting state law. (*Johnson*, *supra*, 4 Cal.4th 389.) The Court, when considering the use of the local taxpayer funds at issue, stated,

> These are the city taxpayers' own dollars and those taxpayers, together with their city council, have voted to utilize those dollars [in a particular way]. That [state law] expressly dealt with this subject ... does not convert the decision of the City of Los Angeles to follow a different path with its own money, into a matter of statewide concern.

(*Johnson*, *supra*, 4 Cal.4th at 407.)

Prior to *Johnson v. Bradley*, this principle had been embraced in numerous contexts. For example, in *Smith v. City of Riverside*, the Fourth District Court of Appeal concluded charter cities were not bound by the state's competitive bidding law when contracting. (*Smith v. City of Riverside* (1973) 34 Cal.App.3d 529, 535.) The court's analysis highlighted a prior Supreme Court decision that declared the making of contracts for certain public works is a municipal affair—"[e]specially is this true where the expense of the work is to be borne by the municipality itself ..." (*Ibid.*) Likewise, in *City Council of City of San Jose v. South*, the First

District declared that under home rule, cities have the "power to control and finance all 'municipal affairs,' without interference from general state laws and subject only to limitations contained in the state Constitution and the Charter itself." (*City Council of City of San Jose v. South* (1983) 146 Cal.App.3d 320, 326-327.) *In re Work Uniform Cases* picks up on this same theme and holds charter cities are not required to reimburse employees for the cost of purchasing and maintaining work uniforms under a state statute. (*In re Work Uniform Cases* (2005) 133 Cal.App.4th 328.) The court concluded such reimbursement constitutes compensation over which the city retained ultimate authority. (*Id.* at 338.)

This principle has also been cited when upholding a charter city's authority to set, or decline to set, wages on municipal contracts. By way of example only, in *City of Pasadena v. Charleville*, the Court concluded a charter city was not required to pay prevailing wages to the construction of a city-funded fence, based in part on the fact that "[t]he money to be expended for the cost of the improvement belongs to the city and the control of its expenditure is a municipal affair." (*City of Pasadena v. Charleville* (1932) 215 Cal.3d 384, 389.) *See also*, *Vial v. City of San Diego*, *supra*, 122 Cal.App.3d 346 (reaching the same conclusion and highlighting the local nature of the funds at issue: 'the policy specifically excluded state and federally funded projects, which would be bound by

state and federal wage law. (*Id.* at 348.)); *Bishop v. City of San Jose*, *supra*, 1 Cal.3d 56 (holding charter cities were not required to comply with the prevailing wage law with respect to their own employees.)

Similarly, when deciding the issue before the Court today, this broader principle—that a charter city may spend local taxpayer funds in a manner it sees fit, subject to any locally-imposed limitations—must be kept in mind. As this Court stated in *Johnson v. Bradley*, "[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." (*Johnson*, *supra*, 4 Cal.4th at 407.)

B. Charter Cities, Like Other Municipalities, Have The Power To Set The Terms And Conditions Of Their Contracts As Well As The Mode Of Contracting.

A city's power to set the terms and conditions of contracts as well as the mode of contracting demonstrates that charter cities have broad authority when contracting for local taxpayer-financed projects. The League asks the Court take this authority into account when deciding the issue in this case.

Like other municipalities (and private parties), a charter city is free to negotiate the terms and conditions of its contracts. This principle was recently reaffirmed in *Amaral v. Cintas Corp. No. 2*, which upheld a charter city's power to require city contractors, including those based outside the

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