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## GOVERNMENT RELATIONS UPDATE

### California Supreme Court Rules Charter Cities Not Required to Pay Prevailing Wage

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The requirement to pay state-mandated prevailing wages on public works construction projects in California became a little less prevalent this week due to a ruling of the California Supreme Court.

**The Supreme Court held that a California *charter city* is free to opt out of requiring contractors to pay prevailing wages on locally funded construction projects.**

The Supreme Court's decision in [\*State Building and Construction Trades Council of California v. City of Vista\*](#) involved two contracts to design and build fire stations with funds derived solely from city coffers. After a special election on the issue, Vista designated itself as a "charter city." A charter city is a type of local government with rights under the California Constitution to make certain local ordinances governing its own affairs—even where those ordinances conflict with state laws passed by the California legislature. In contrast to charter cities, so-called "general law cities" are subject to all applicable requirements of state law. Many local cities such as San Francisco, Oakland and even San Ramon have designated themselves as charter cities or counties. Others, such as Pleasanton, remain "general law cities" that are bound by state law.

Charter cities are not entitled to opt out of all state laws, but only those involving a "municipal affair" not outweighed by a conflicting, narrowly tailored, "statewide concern."

The majority opinion in the *City of Vista* case determined the wages of contractors working on locally funded projects were clearly a "municipal affair." Moreover, given that state law specifically requires contractors on even locally funded projects to pay prevailing wage, the court noted there was a clear conflict between the city's ordinances and California's prevailing wage legislation.

What is most surprising is that the Court ruled there was absolutely "no statewide concern" in requiring contractors working on city-funded projects to pay prevailing wage.

The majority opinion in *City of Vista* was severely criticized in scathing dissenting opinions by two Supreme Court justices. The dissenting opinions pointed out the California constitution does not make specific reference to employees of contractors, as opposed to the direct employees of charter cities.

**Perhaps more significantly, the dissenting justices criticized the majority decision for overlooking the statewide interest prevailing wage laws serve in attracting the most qualified employees to the state of California. The dissenters also argued that a state-mandated apprentice system (which was also addressed in the decision) serves the statewide interest of raising the skill level of California construction workers. The opinions noted that charter cities will essentially reap the benefits of prevailing wage and apprenticeship programs without participating in the cost. Even the dissenting opinions failed to mention the statewide interest of fair treatment to union contractors, who pay prevailing wage on all**

**public works contracts-regardless of whether the city is designated as a charter city.**

Although based on questionable reasoning, the majority decision in City of Vista will be difficult to overturn. As the decision applies the California Constitution, the decision can only be modified through an amendment to the state Constitution.

On the other hand, the effect of the rule on our industry may be more limited than some would fear. First, the exception to prevailing wage rules will only apply where the owner is a charter city or county. Second, project funding must be purely local. Where there is state or federal money involved, state prevailing wage and or federal Davis Bacon rules still apply. Third, *the charter city must choose to adopt ordinances opting out of prevailing wage rules.* Many cities, particularly in the Bay Area, will most likely understand the benefits of having their contractors pay prevailing wage and, therefore, choose to require payment of prevailing wage. The role of organizations such as United Contractors through its Government Relations department is to educate local politicians on these issues.

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