SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - August 06, 2014

EVENT DATE: 08/28/2014 EVENT TIME: 01:30:00 PM DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2014-00003824-CU-WM-CTL

CASE TITLE: CITY OF EL CENTRO VS DAVID LANIER [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 06/20/2014

Introduction

This dispute is a battle for political autonomy between independent governmental entities.

Petitioners and Plaintiffs City of El Centro, City of Carlsbad, City of E1 Cajon, City of Fresno, City of Oceanside and City of Vista ("Petitioners) desire to spend their limited funds to achieve their local objectives, consistent with their duly elected political convictions.

Respondents and Defendants David Lanier, in his official capacity as the Secretary of the State of California Labor & Workforce Development Agency, Christine Baker, in her official capacity as the State of California Director of Industrial Relations, and Julie A. Su, in her official capacity as the State of California Labor Commissioner and the State of California ("Respondent") desire to allocate its limited resources to promote a state wide policy, consistent with its duly elected political convictions.

The Court empathizes with the dilemma framed by Petitioners; however, given the totality of this record, the Court finds that, if Petitioners desire to benefit from the receipt of state funds, their local concerns must yield to Respondent's policy objectives.

Petitioners' Petition for Writ of Mandate to issue a Writ of Mandate as to Respondent, pursuant to Code of Civil Procedure section 1085, et seq., to halt the Respondent from implementing and enforcing Senate Bills No.7 (2013), Senate Bill No. 829 (2012) and Senate Bill No. 922 (2011) because Petitioners have a clear, present and material right to Respondent's compliance with the rights of Charter Cities, as set forth in the California Constitution and under applicable law, is DENIED. This ruling is premised on the analysis set forth below.

A. The "Home Rule" Doctrine as Applied to Labor Code § 1782 -- SB 7 (2013)

"The Courts will presume a statute is constitutional unless its unconstitutionality clearly, positively, and unmistakably appears; all presumptions and intendments favor its validity." People v. Falsetta (1999) 21 Cal.4th 903, 912-913. Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 691. Thus, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it

by the Constitution. Id. In other words, Courts do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited. Id. If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Id. Restrictions and limitations imposed by the Constitution are to be construed strictly, and are not to be extended to include matters not covered by the language used. Id.

"Home rule" pursuant to Article XI, Section 5 of the California Constitution is a means of adjusting the political relationship between state and local governments in discrete areas of conflict. California Fed. Savings & Loan Assn. v. City of Los Angeles (1991) 54 Cal.3d 1, 18; see also People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach (1984) 36 Cal.3d 591, 601 (no actual conflict existed between city council's authority to propose charter amendments and state law requiring city council to meet and confer with union before proposing charter amendment because the city council "retains the ultimate power... to make its own decision"). In the pivotal case of State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista (2012) 54 Cal.4th 547, the California Supreme Court upheld a decision denying a writ seeking to invalidate an ordinance prohibiting any city contract from requiring payment of prevailing wages, except under specified conditions. The Court found that so far as "municipal affairs" are concerned, charter cities are supreme and beyond the reach of legislative enactment. Id. at 556. Thus, Vista need not comply with the prevailing wage law because the law invades Vista's constitutionally guaranteed autonomy as a charter city. The wage levels of contract workers constructing locally funded public works are a municipal affair, and exempt from state regulation. Id. at 536.

In California Fed. Savings & Loan Assn, the Court set forth an analytical framework for resolving whether or not a matter falls within the home rule authority of charter cities. First, the Court must determine whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair." California Fed. Savings & Loan Assn. v. City of Los Angeles, supra at 16. Second, the Court must determine that the case presents an actual conflict between local and state law. Id. Third, the Court must decide whether the state law addresses a matter of "statewide concern." Id. at 17. Finally, the Court must determine whether the law is "reasonably related to ... resolution" of that concern and "narrowly tailored" to avoid unnecessary interference in local governance. Id. at 17 and 24. If the Court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution, then the conflicting charter city measure ceases to be a "municipal affair" and the Legislature is not prohibited from addressing the statewide dimension by its own tailored enactments. Id. at 17. Local legislation is "contradictory" to general law when it is inimical thereto. Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 898. A contradictory local ordinance "prohibit[s] what the statute commands or command[s] what it prohibits." Id. at 902.

In the aftermath of the City of Vista decision, the Legislature passed (and the Governor signed) SB 7 (2013), which created Labor Code section 1782. The legislation included detailed findings supporting the statewide concern of creating and maintaining a skilled construction work force. These findings stated: "The state has limited financial resources to support local construction projects, and it would further state policy to provide financial assistance only to those charter cities that require compliance with the prevailing wage law on all their municipal construction projects." The expressed intent of the legislation creating section 1782 "is to provide a financial incentive for charter cities to require contractors on their municipal construction projects to comply with the state's prevailing wage law by making these charter cities eligible to receive and use state funding or financial assistance for their construction projects."

Petitioners cite and rely on Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 296. However, this decision is distinguishable. The Sonoma County Court's decision was premised, in large part, on the unconstitutional impairment of contracts. The Court would have reached the same decision even in the absence of Article XI, Section 5. In addition, the decision was premised on a charter city or county's "plenary" ability to determine the compensation of its employees, which is expressly set forth within Article XI, Section 5(b). Thus, the state has very little latitude to legislate in this area. In contrast, there is no express provision within Article XI, Section 5 regarding the

non-payment of prevailing wages.

Pursuing state policy objectives through financial incentives is generally constitutional. The Legislature has plenary lawmaking authority over the state's budget (Cal. Const., Art. IV, § 12), and there is no constitutional prohibition precluding it from creating specific funds for specific governmental purposes. Shaw v. People ex rel. Chiang (2009) 175 Cal.App.4th 577, 602. The state may impose conditions upon the granting of a privilege, including restrictions upon the expenditure of funds. Sonoma County Organization of Public Employees v. County of Sonoma, supra at 319; see also Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727, 753-754 (conditions imposed as a condition for continued participation in specified education funding). Respondent state and intervenor State Building and Construction Trades Council of California, AFL-CIO provide three specific examples of state funding programs that have "strings" attached: eligibility for highway funds (Streets & Highway Code §§ 2111, 2113); eligibility for receipt of peace officer training funds (Penal Code §13522); and Community Development Block Grant Program funds (Health & Safety Code § 50830).

Intervenor Trades Council correctly draws an analogy between the state's use of discretionary funding to influence local governance, and the interaction between federal and state government. It cites National Federation of Independent Business v. Sebelius (2012) 132 S.Ct. 2566, 2601-2603, in which the U.S. Supreme Court noted that Congress may use its Spending Clause authority to grant federal funds to the States, and it may condition such grants upon the states' taking certain actions that Congress could not otherwise require states to take. Such measures encourage a state to regulate in a particular way, and influence a state's policy choices. Id. It is only when legitimate pressure turns into compulsion that the legislation becomes unconstitutional. Id. Spending Clause programs do not pose this danger when a state has a legitimate choice whether to accept the federal conditions in exchange for federal funds. Id. Legitimate influence crosses the line and becomes a "gun to the head" when a state that seeks to opt out of the Affordable Care Act's expansion in health care coverage stands to lose all of its existing Medicaid funding. Id. at 2604. Medicaid spending accounts for over 20 percent of the average state's total budget, with federal funds covering 50 to 83 percent of those costs. Id. The federal government estimated that it would pay out approximately 3.3 trillion dollars between 2010 and 2019 in order to cover the costs of pre-expansion Medicaid. Id. Taking away such a large percentage of a state's budget constituted an impermissible penalty levied against states choosing not to participate in the new program. Id. at 2607.

In contrast, Respondent argues that the amount of funding allegedly received by Petitioners for discretionary construction spending is very low, and attaching conditions to the receipt of these funds could not be considered coercive.

In sum, Labor Code section 1782 appears to legitimately influence local governance by attaching conditions on the receipt of discretionary state funding. This conditional receipt of a small amount of state funding does not appear to be coercive as a matter of law. As a result, there is no actual conflict as between section 1782 and the city ordinances at issue. Section 1782 is constitutional and there is no need to address the other elements within the analytical framework set forth in the California Fed. Savings & Loan Assn. opinion.

B. The "Home Rule" Doctrine as Applied to Public Contracts Code §§ 2500-2503: SB 922 (2011) and SB 829 (2012)

Petitioner City of Oceanside argues that Public Contracts Code, sections 2500-2503 also violate the "home rule" doctrine and are unconstitutional. This argument is also premised on the Sonoma County decision. This statutory scheme does not require cities to use project labor agreements (PLAs) for city projects. Rather, it requires them to consider adoption of such PLAs on a project by project basis. State funding will be withheld if a local ordinance exists preventing a city from considering such agreements. Oceanside's Charter rejects the use of project labor agreements for projects it controls. This statutory scheme is even less coercive then section 1782, which requires the payment of prevailing wage rates as a condition for the receipt of state funds. Thus, the same analysis necessarily applies. In other words,

these state statutes do not result in a conflict with the local ordinance preventing the use of PLAs. The conditional receipt of a small amount of state funding does not appear to be coercive as a matter of law.

C. Labor Code Section 1782 (SB 7 (2013)): Interference With Initiatives/Propositions

Article IV, Section 1 of the California Constitution provides: "The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum." An amendment to a proposition is valid only if, by any reasonable construction, it can be said that the statute furthers the purposes of the proposition. Foundation for Taxpayer and Consumer Rights v. Garamendi (2005) 132 Cal.App.4th 1354, 1371. Petitioners argue that the enactment of section 1782 effectively "amends" multiple state initiatives/propositions/bonds that fund local government construction projects, and is therefore unconstitutional.

The Court finds that this issue is not "sufficiently concrete to allow judicial resolution even in the absence of a precise factual context." Pacific Legal Foundation v. California Coastal Com. (1982) 33 Cal.3d 158, 170. This ripeness requirement prevents Courts from issuing purely advisory opinions. Id. There must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. Id. at 171. Petitioners do not refer to the language of any specific bond measure in detail, or to any related evidence. Petitioners do not demonstrate that the language in section 1782 contravenes, or does not advance, the purposes of one or more specific bond measures. In fact, section 1782 does not affect or encompass "revenues that charter cities are entitled to receive without conditions under the California Constitution." Labor Code § 1782(d)(4). Petitioners fail to show that the state has withheld, or threatened to withhold, specific bond funds, or has even taken such a position. Petitioners do not distinguish as between measures that were adopted by voters, as opposed to those measures that were rejected. Petitioners also do not distinguish as between bond measures passed by initiative, as opposed to Legislative bond measures that were ratified by voters. All of these particulars could be determinative in this analysis. In the absence of these details, a ruling by this Court would be a fruitless and advisory exercise.

D. Whether Labor Code Section 1782 (SB 7 (2013)) "Restricts Local Tax Dollars" in Violation of Art. XIII, Sec. 24(b) (Proposition 22)

Article XIII, Section 24(b) of the California Constitution was enacted via Proposition 22, and provides: "*The Legislature may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purposes.*</ins>" See California Redevelopment Assn. v. Matosantos (2011) 53 Cal.4th 231, 269-270 (requiring payment to avoid dissolution of a redevelopment agency "is not an option but a requirement" in violation Proposition 22).

As discussed above, section 1782 (SB 7) concerns discretionary state funding. It does not appropriate local funds, and it is not a requirement that cities make payments to the state. Also as discussed above, section 1782(d)(4) explicitly "does not include revenues that charter cities are entitled to receive without condition under the California Constitution." Petitioners provide no authority or evidence suggesting that section 1782 will have any effect on tax revenues collected by the state on behalf of charter cities and other local entities. Petitioners cite to the "Findings and Declarations" within Proposition 22, in which it states an intent to prevent state level politicians from "interfering with tax revenues dedicated to funding local government services ...." Section 1782 does not interfere with local revenues, but instead conditions the receipt of state discretionary funds. This is constitutionally permissible, as discussed above. As a result, this contention also fails.

Petitioners' Request for judicial notice filed on 6-20-14 is GRANTED IN PART AND DENIED IN PART. The Court takes judicial notice of Exhibits "1 - 15" and declines to take judicial notice of Exhibits "16 - 19", all of which were lodged in support of the Petition.

Respondents' Request for judicial notice filed on 7-11-14 is GRANTED IN PART AND DENIED IN PART. The Court take judicial notice of Exhibits "1 - 9" and declines to take judicial notice of Exhibits "10 -11", all of which were lodged in opposition to the Petition.

Respondents' evidentiary objections, and the joinder of Intervenor State Building and Construction Trades Council ("SBCTC"), to the declaration of attorney James P. Lough are OVERRULED IN PART AND SUSTAINED IN PART. The Court overrules objection nos. 1 - 7. The Court sustains objection nos. 8 - 9.

Petitioners' evidentiary objections to the declarations of Robbie Hunter and Peter W. Philips are OVERRULED.

Petitioners' Request for judicial notice filed on 7-18-14 in support of its Reply is DENIED.