NO. 100258-1

SUPREME COURT OF THE STATE OF WASHINGTON

JAY INSLEE, et al.,

Petitioners,

v.

ASSOCIATED GENERAL CONTRACTORS OF WASHINGTON, et al.,

Respondents.

BRIEF OF AMICUS CURIAE WASHINGTON AND NORTHERN IDAHO DISTRICT COUNCIL OF LABORERS

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I. INTRODUCTION AND IDENTITY OF AMICUS CURIAE

Potential amicus curiae Washington and Northern Idaho District Council of Laborers (District Council) is a democratic labor organization that represents more than 10,000 members in Washington and Northern Idaho. It is an affiliate and intermediate body of the Laborers International Union of North America (LIUNA), which represents over 500,000 members primarily employed in the construction industry, and is the eighth largest labor organization in the United States. The District Council is also an affiliate of the Washington Building Trades Council (Building Trades). Its membership is composed of delegates elected from local Laborer unions located in the District Council's geographic jurisdiction.

One of the District Council's purposes is to execute LIUNA's constitutionally-mandated mission. That includes, among other goals, establishing appropriate wages, benefits, training and working conditions for all of its members; striving toward effective programs which would improve, advance and

increase opportunities for employment; and engaging in legislative and other activities to promote, protect and advance the physical, economic and social welfare of its members and society at large.

Along with the Building Trades and other of that organization's constituent members, the District Council lobbied for the legislature to adopt Substitute Senate Bill 5493 (SSB 5493 or Act).[1] The District Council accordingly holds an interest in preserving the Act against legal challenge.

II. STATEMENT OF THE ISSUES

Did the Court of Appeals err in holding that SSB 5493 violates the non-delegation doctrine by tying statutory prevailing wage rates to collectively bargained wage rates negotiated by private parties?

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[1] *See* "A win for Washington workers! (SSB-5493 Press Release)", *available at* http://www.nwliuna.org/news/story/a-win-for-washington-workers--ssb-5493-press-release (last accessed Apr. 12, 2022).

III. STATEMENT OF FACTS

Employers on Washington public works projects are required to pay employees a "prevailing wage," RCW 39.12.020, which is "the rate of hourly wage, usual benefits, and overtime paid in the locality ... to the majority of workers ... in the same trade or occupation." RCW 39.12.010(1). The rate for each trade in a given locality is determined by the Department of Labor and Industries' (Department) industrial statistician. RCW 39.12.015(1). Until 2018, the industrial statistician's determinations were guided by Department regulations, which authorized the industrial statistician to ascertain prevailing wages either by issuing wage surveys to employers and labor unions; adopting "the wage and benefit adjustments" set forth in collective bargaining agreements (CBAs) for occupations in which the prevailing rate was already established with reference to such agreements; or, where surveys or CBAs are unavailable, using other

"appropriate" means, such as consulting wage data collected by other state or federal agencies. WAC 296-127-019(1), (8).

In March 2018, the Washington Legislature enacted SSB 5493, which modified the process for the industrial statistician to determine an occupation's prevailing wage on public works projects. Where a CBA covers a given occupation, the Act instructs the industrial statistician to set that occupation's prevailing wage rate as "the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction established in [the CBA]." Laws of 2018, ch. 248, § 1(2) (codified at RCW 39.12.015(3)(a)). If multiple CBAs cover the occupation in a county, the "higher rate prevails." *Id*. Only if no CBA exists may the industrial statistician then consult wage surveys for an occupation, or failing that, other appropriates means. *Id*. at § 1(3).

On January 22, 2019, Respondents filed suit against the State Appellants in Thurston County Superior Court, challenging the Act's constitutionality and seeking to enjoin its

enforcement. CP 1-20. Following cross-motions, the trial court granted summary judgment to the State and dismissed Respondents' action. CP 2536-2539. Respondents appealed this decision to the Court of Appeals, Division II. On August 31, 2021, the appellate court issued a decision reversing the trial court, holding the Act unconstitutional as a violation of the non-delegation doctrine, and remanding the case to the trial court for further proceedings consistent with its opinion. *See Assoc. Gen. Contractors of Wash. v. State (AGC)*, 19 Wn. App. 2d 99, 494 P.3d 443 (2021).

The State petitioned for discretionary review before this Court on September 29, 2021. On January 5, 2022, the Court accepted review. *See Assoc. Gen. Contractors of Wash. v. Inslee*, 198 Wn.2d 1032, 501 P.3d 145 (2022) (Table). Since review was granted, the District Council has sought and obtained consent from the parties to submit an amicus brief in this matter.

IV. ARGUMENT

A. Summary

The Court should reverse the Court of Appeals and uphold the Act's constitutionality. As explained below, the intermediate court's finding that SSB 5493 violates the non-delegation doctrine runs counter to the weight of authorities, dating back 100 years, which have considered and rejected the same objection to materially identical laws in other jurisdictions. Additionally, Respondents' contention that a CBA-based prevailing wage system encourages collusion ignores the realities of labor relations, the oversight functions conferred on the industrial statistician, and external legal regimes which deter and provide remedies for actual collusion. Finally, inasmuch as Respondents' true dispute is with the Legislature's policy choice, that choice in not subject to judicial review and is, in any event, reasonable.

B. The Majority of State and Federal Courts Have Upheld Substantially Identical Laws against Constitutional Challenges Rooted in the Non-Delegation Doctrine.

In its opinion below, the Court of Appeals ignored or sought to distinguish decisional law from other jurisdictions sustaining prevailing wage laws that direct state or local agencies to adopt collectively bargained contract terms as prevailed wages, while placing great weight on a selection of contrary or inapposite decisions. *AGC*, 19 Wn. App. 2d at 109-110. A fair assessment of the case law's trajectory shows that the Court of Appeals' preferred authorities reflect an outdated and isolated minority position, which has been refuted by the very cases the court failed to consider. At the very least, the competing decisions suggest a legal landscape far less settled than the Court of Appeals let on. The court's failure to fully investigate comparative case law before siding with the minority position was error.

1. The Non-Delegation Doctrine Liberalized as Prevailing Wage Laws Proliferated and Collective Bargaining Agreements Acquired Legitimacy as Barometers of Wage Standards.

Individual states began enacting prevailing wage laws in the late nineteenth century. Kansas was the first state to introduce a prevailing wage in 1891, followed by New York in 1894. See Michael P. Kelsay, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in West Virginia*, at 19, Affiliated Construction Trades Foundation (Jan. 2015).[2] Many states and municipalities followed in the early decades of the twentieth century. *Id*. In the wake of the Great Depression, Congress adopted a federal prevailing wage regime with the 1931 passage of the Davis Bacon Act, Pub.L. 71–798, 46 Stat. 1494 (1931) (codified at 40 U.S.C. § 3141, *et. seq.*), cementing prevailing wage laws as a legitimate exercise of legislative police power. *See generally* Lisa Morowitz, *Government*

[2] *Available at* http://www.faircontracting.org/wp-content/uploads/2015/01/The-Adverse-Economic-Impact-from-Repeal-of-the-PW-Law-in-WV-Dr.-Michael-Kelsay-Full-Report.pdf.

Contracts, Social Legislation and Prevailing Woes: Enforcing the Davis Bacon Act, 9 Buff. Envtl. L.J. 29 (1989).

In the early years of prevailing wage legislation, statutes and ordinances did not necessarily predetermine the appropriate prevailing wage. *Id*. at 32. In 1935, Congress amended the Davis-Bacon Act to require the Department of Labor to predetermine a given occupation's appropriate wage rate to avoid the then-common practice of "unscrupulous contractors" paying substandard wages and daring the Department of Labor to contest the applied rate through a "formal adjudication." *Id*. at 32 & n. 56 (citing S. Rep. No. 1155,74th Cong, 1st Sess., 2-3 (1935); H.R. Rep. No. 1756,74th Cong., 1st Sess., 2-3 (1935)). Predetermination of wages by administrative agencies has since become a nearly universal feature of prevailing wage schemes. Yet it depends, necessarily, on an agency's assessment of facts unknown to the legislature at the time of a law's passage.

Prior to the Depression, it was also uncommon for labor standards to reference CBAs. That was because until the

passage of the National Labor Relations Act (NLRA) in 1935, Pub.L. 74-198, 49 Stat. 449 (1935) (codified at 29 U.S.C. § 151, *et. seq*.), CBAs were largely deemed unenforceable as "lack[ing] mutuality of obligation because a union's implicit promise to provide laborers in exchange for employer concessions [violated] the personal service rule." Katherine Van Wezel Stone, *The Post-War Paradigm in American Labor Law*, 90 Yale L.J. 1509, 1518 (1981). And courts often found unions lacked standing to enforce CBAs by virtue of being unincorporated associations. *Id*. It made little sense, then, for lawmakers crafting prevailing wage legislation to correlate prevailing wages with collectively bargained rates, when the latter had little to no enforceability even among the private parties who negotiated them.

It was only when unions gained legal recognition in 1935, and even more so when World War II necessitated union-employer cooperation, that collective bargaining obtained a degree of "respectability." *Id*. at 1523. During this time, the

ideology of "industrial pluralism" arose, which "tied collective bargaining to the entire system of private determination of wages and working conditions." *Id*. at 1524.

Yet it was in the context of the early, pre-Depression forays into state and municipal regulation that the Wisconsin Supreme Court decided *Wagner v. City of Milwaukee*, 177 Wis. 410, 188 N.W. 487 (1922), the lead (and only relevant) authority relied upon by the court below. *AGC*, 19 Wn. App. 2d at 110.[3] That case indeed held that the Milwaukee city council overstepped its authority by tying prevailed rates to those paid

[3] The two other decisions the court cited do not even stand for the asserted proposition that a "legislature may not use CBAs to set prevailing wages." *AGC*, 119 Wn. App. 2d at 110. *Cleveland* merely considered whether a transit system had the authority to contract with and recognize a union as the exclusive bargaining representative for all of its employees. *See Cleveland v. Division 268 of Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emp. of Am.*, 15 Ohio Supp. 76, 83-92 (1945). *Hunter* actually upheld the constitutionality of a Montana law permitting the labor commissioner to consider CBAs, on an "advisory" basis, in setting prevailing wage rates, and expressly declined to reach whether a portion of the same statute pegging prevailed rates to union wage scales on a "compulsory" basis was lawful. *Hunter v. Bozeman*, 216 Mont. 251, 255, 700 P.2d 184 (1985).

to members of labor unions, as doing so supposedly invested a non-legislative third party with the power to set wages. *Wagner*, 188 N.W. at 189-90. But *Wagner*'s logic would also have precluded other forms of pre-determination that rely on external sources of fact—including wage surveys.

Already, by the 1930s, courts understood the inadequacy of a construction of the non-delegation doctrine that rigidly constrained lawmakers to identify prevailing wage rates themselves at the time legislation was enacted. As the California Supreme Court observed, in a decision upholding a law authorizing a board of directors to determine prevailed rates:

> The difficulty urged is one of administration, that is, in fixing the minimum. While it would be within the power of the Legislature to fix in the statute a minimum in dollars and cents for the various classes of employees on public work, it would be manifestly impracticable thus to establish a scale of wages which would be fair to the state and its agencies and also to the employees affected and to remain inflexible over a period of years. If the power of the Legislature to delegate the determination of this and the many other problems

> of administration to subordinate bodies be denied, public work might be unreasonably curtailed or brought to a standstill.

Metro. Water Dist. of S. Cal. v. Whitsett, 215 Cal. 400, 419, 10 P.2d 751 (1932); *accord State v. Anklam*, 43 Ariz. 362, 368-69, 31 P.2d 888 (1934) (upholding Arizona law delegating to state highway commission to determine prevailed rate); *Hilton v. Bd. of Educ. of Eden Twp. Rural Sch. Dist., Seneca Cty.*, 51 Ohio App. 336, 345, 1 N.E.2d 166 (1935) (similar).

In the next decade, courts extended the permissible sources of predetermined prevailed wages to CBAs. Thus, a California Court of Appeals upheld a San Francisco prevailing wage ordinance replacing an earlier iteration, which required the Board of Supervisors to conduct a "comprehensive investigation and survey of wages," with one pegging rates to those set in CBAs between unions and local employers. *See Adams v. Wolff*, 84 Cal. App. 2d 435, 190 P.2d 665 (1948). The Kentucky Court of Appeals sustained a similar state law a year later. *See Baun v. Gorrell & Riley*, 311 Ky. 537, 224 S.W.2d

436 (1949). Importantly, *Baun* declined to follow *Wagner* in part because of the dramatic legal and social reappraisal of CBAs that had occurred in the intervening 27 years. *Id*. at 541 ("at the time of the decision (1922), the wage scale paid labor union members did not constitute a generally accepted reasonable standard," but it did now). *Baun* also cited *Whitsett*, *Anklam*, and *Hilton* for the proposition that "the Legislature may properly grant to political subdivisions or public bodies the discretionary power of fixing fair or prevailing wages," of which the law in question was merely an instance. *Id*. at 540. This statement demonstrates that prevailing wage laws based on CBAs were not viewed as departures from predetermination regimes devolving factual investigation of prevailing rates on public agencies, but extensions of them.

Between the 1950s and 1990s, a number of courts sustained prevailing wage laws tied to CBA rates. *See Union Sch. Dist. of Keene v. Comm'r of Labor*, 103 N.H. 512, 176 A.2d 332, (1961); *Male v. Ernest Renda Contracting Co., Inc.*,

122 N.J. Super. 526, 301 A.2d 153 (N.J. Super. Ct. App. Div. 1973), *aff'd*, 64 N.J. 199, 314 A.2d 361 (1974); *W. Ottawa Pub. Sch. v. Babcock*, 107 Mich. App. 237, 309 N.W.2d 220 (1981); *Donahue v. Cardinal Const. Co.*, 11 Ohio App. 3d 204, 463 N.E.2d 1300 (1983); *Constr. Indus. of Mass. v. Comm'r of Labor & Indus.*, 406 Mass. 162, 546 N.E.2d 367 (1989); *see also Fuldauer v. Cleveland*, 30 Ohio App.2d 237, 240, 285 N.E.2d 80 (1972), *aff'd*, 32 Ohio St. 2d 114, 290 N.E.2d 546 (1972) (in upholding municipal law tying prevailed rates to those of comparably-sized cities, noting that there was "no meaningful distinction" between such law and those based on union contracts, which "it can hardly be contended" is unlawful); *Kugler v. Yocum*, 69 Cal. 2d 371, 445 P.2d 303 (1968) (similar).

To be sure, a substantial minority of authorities in that timeframe continued to adhere to *Wagner*. *See Bradley v. Casey*, 415 Ill. 576, 114 N.E.2d 681 (1953); *Schryver v. Schirmer*, 84 S.D. 352, 171 N.W.2d 634, (1969); *Indus.*

Comm'n v. C & D Pipeline, Inc., 125 Ariz. 64, 607 P.2d 383, (1979); *Gen. Elec. Co. v N.Y. State Dep't of Labor*, 936 F.2d 1448 (2d Cir. 1991).[4]

Yet in the last twenty years, the only courts to consider the question have sided with the majority. *See Associated Builders & Contractors, Saginaw Valley Area Chapter v. Dir., Dep't of Consumer & Indus. Servs.*, 267 Mich. App. 386, 705 N.W.2d 509 (2005) (reaffirming *West Ottawa*, *supra*); *Beary Landscaping, Inc. v. Costigan*, 667 F.3d 947 (7th Cir. 2012).

There is thus an unmistakable link between the expansion of prevailing wage and collective bargaining regimes, on the one hand, and the liberalization of the non-delegation doctrine, on the other.

[4] *General Electric* did not strike down New York's prevailing wage law but did remand the case to district court for discovery on whether the CBA upon which the prevailed rate in question was based was collusively negotiated. *Gen. Elec.*, 936 F.2d at 1457-58.

2. Directing the Industrial Statistician to Identify and Adopt Collectively Bargained Wages Provides Sufficient Guidance to the Act's Enforcers.

The Court of Appeals held that the Act unconstitutionally delegates authority to private parties because it "failed to provide appropriate standards for the setting of the prevailing wage," in that it directed the industrial statistician to "rely on [CBAs] in setting a prevailing wage did not exist at the time the legislature passed SSB 5493." *AGC*, 19 Wn. App. 2d at 110. This holding conflates facts and standards. While *privately created facts*—i.e., the collectively bargained wage and benefit rates—may not exist at the time of the law's enactment, the *legislative standard* to determine those facts—i.e., the statistician must adopt the highest CBA rate for the county in which the occupation is located—does. That is entirely permissible.

First, the court's abhorrence to future facts would, if accepted, invalidate *all* methods of predetermining wages, not just the Department's reliance on CBAs. The wage rates

reported in employer and union survey responses did not exist when Washington first enacted its prevailing wage statute in 1945. *See Kelsay*, *supra* at 17. They are periodically re-negotiated (in the case of unionized employers) or unilaterally altered (in the case non-unionized ones), but in either case are determined by private parties and later reported to the Department. Likewise, the wage data collected by other governmental bodies, on which the statistician may alternatively rely, merely gathers rates and related information created by private parties well after the law went into effect.

The purported vice of future facts is therefore equally present in the old methodology, which Respondents of course do not challenge. Yet the legitimacy of pegging prevailed wage rates to the fluctuations of market forces, as objectively assessed by state agencies, has been settled since *Whitsett* and the 1935 Davis-Bacon amendments.

Second, the dozen of cases sustaining laws similar to SSB 5493 thoroughly addressed and refuted the Court of

Appeals' reasoning. As the Michigan Court of Appeals observed, "there is a vital distinction between conferring the power of making what is essentially a legislative determination on private parties and adopting what private parties do in an independent and unrelated enterprise." *W. Ottawa*, 107 Mich. App. at 246. Therefore, rather than conferring on unions and contractors the authority to determine prevailing wage rates, the legislature, "merely adopted, as the critical standard to be used by the Department of Labor in determining prevailing wage, the wage rate arrived at through a collective bargaining process which is completely unrelated to and independent of the prevailing wage statute." *Id*. at 245-46; *accord Donahue*, 11 Ohio App.3d at 207.

That the private parties' independent act occurs subsequent to the prevailing wage law's enactment is of no moment. A legislature's decision to "tie the adjustments [of wages] into future events which do not lie within the power or control of the council does not constitute an unlawful

delegation of power. It is not unlike a formula which links the wage adjustment to the cost of living index, to average earnings or prevailing wages of a comparable occupation, or to average earnings or prevailing wages generally." *Donahue*, 11 Ohio App.3d at 206 (quoting *Fuldauer*, 30 Ohio App.2d at 121); *accord Kugler*, 69 Cal. 2d at 377 ("The fact that the formula operates upon eventualities which may lie outside the control of the legislative body and within the control of other persons does not convert the legislative action into an unlawful delegation," since many legislative formulae, such as cost of living increases, tie adjustments to external future facts).

Since the Court of Appeals' non-delegation analysis rests on an incorrect understanding of the significance of future facts, its decision must be reversed.

C. Respondents' Collusion Concerns are Groundless.

Respondents raise the specter of employers and unions collusively conspiring to raise prevailing wages by entering into sham CBAs, which they contend the industrial statistician

cannot detect. Res. Br. at 15-17, 28-29. The court below acknowledged, if not endorsed, this assertion. *See AGC*, 119 Wn. App. 2d at 110. Respondents' concerns are legally and factually unsupported.

First, bona fide employers have no economic incentive to collude with unions, as the two sides represent opposing economic interests and the CBAs they negotiate therefore reflect compromise between adversaries. *See Male*, 122 N.J. Super. at 535 ("collective bargaining agreements reached between groups such as these represents a balancing of interests, not the interests of a group having a single purpose"); *W. Ottawa*, 107 Mich. App. at 246 ("The wage scale in the union contract is arrived at through extensive negotiations; it is based on economic realities existing in the market place; it represents a compromise between the opposing interests of the union employee and the contractor/employer; and the contractor/employer will be bound by the negotiated rate in bidding on private construction contracts."); *Constr. Indus. of*

Mass., 406 Mass. at 172 ("the competing interests involved in the formation of those agreements will likely ensure that a fair and reasonable wage rate results").

Second, federal statutes define and police enforceable CBAs. So a sham contract negotiated between parties not operating at arms-length or fabricated by a union relying on a "front" employer would not constitute an enforceable CBA capable of setting prevailed wage rates.

Section 8(d) of the NLRA defines "bargaining collectively" as the process of certified unions and employers meeting periodically to negotiate "in good faith with respect to wages, hours, and other terms and conditions of employment." 29 U.S.C. § 158(d). A contract that is the product of collusion is not negotiated in "good faith" and thus not a genuine CBA. Via a lawsuit filed under Section 301 of the Labor-Management Relations Act, a nominally bound employer could later repudiate such an agreement. *See, e.g.*, *Lewis v. Lowry*, 295 F.2d 197, 198-99 (4th Cir. 1961) (finding employer raised

disputed issue of material fact whether contract obligating it to pay union scale wages was "pretensive" and therefore void).

Nor is it the case that third parties adversely affected by sham contracts would be without remedy. The Sherman Antitrust Act, 15 U.S.C. § 1, recognizes a cause of action against sham CBAs to artificially depress or inflate wages. *See, e.g.*, *Int'l Ass'n of Heat & Frost Insulators & Asbestos Workers v. United Contractors Ass'n, Inc. of Pittsburgh, Pa.*, 483 F.2d 384, 393 (3d Cir. 1973), *amended sub nom.* 494 F.2d 1353 (3d Cir. 1974) (reversing dismissal of company's complaint against unions and competing employer association that allegedly conspired to execute sham CBAs artificially depressing wage rates and insulating association from outside organizing efforts, as such conduct, if proved, did not receive protection under antitrust labor exemptions).

An affected contractor could alternatively alert the Department to alleged collusion, which the Department has the authority to investigate, as more fully explained in Appellants'

merits brief. App. Br. at 22-23. These findings would also be subject to administrative appeal, providing procedural protections to parties dissatisfied with the Department's findings. *Id*.

D. The Legislature's Adoption of Collectively Bargained Wages and Benefits to Determine Prevailed Rates was a Reasonable Policy Choice.

Respondents attack SSB 5493 as "bad policy" which permits statistical outliers "to become the norm." Res. Br. at 19. As an initial matter, Respondents' policy objections are not subject to judicial review. *Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 976, n.12, 977 P.2d 554 (1999) ("It is not the province of this Court to second guess the wisdom of the Legislature's policy judgment so long as the Legislature does not offend constitutional precepts."). The only constitutional defect identified by the Court of Appeals was a violation of the non-delegation doctrine, and with that issue resolved, the Court's inquiry is at an end.

In any event, Respondents' assertion is wrong on its own terms. There are good reasons for the Department to rely on CBA rates over wage surveys to determine prevailing wage rates. Surveys suffer from at least two significant drawbacks.

First, the burdensome issuance, collection, and review process guarantees that the data received from CBA-sources becomes quickly outdated and unusable. A 2011 report issued by the federal Government Accountability Office (GAO) found that "almost 75 percent" of prevailed rates set by the Department of Labor (DOL) which were based on CBAs "were 3 years old or less as of November 12, 2010," whereas only "36 percent of nonunion-prevailing rates" were 3 years old or less and "almost 46 percent were 10 or more years old." GAO, *Davis-Bacon Act: Methodological Changes Needed to Improve Wage Surveys*, GAO-11-12, at 18, Report to the Chairman, Committee on Education and the Workforce, House of

Representatives (Mar. 2011).[5] This difference was attributable to the fact that the CBA-based prevailed rates could be updated when a new CBA was executed, while the non-CBA-based rates could be updated until the DOL conducted a new wage survey. *Id*. Those surveys were subject to "processing delays" of several years, with the result that rates were outdated by the time they were published—in some cases reflecting rates that fell below the new minimum wage. *Id*.

Second, surveys have inconsistent response rates among recipients, which can produce skewed results. Indeed, employer advocates have complained that surveys which rely on self-selected responses—which is the kind the Department issues and reviews—produce non-representative samples. *See* James Sherk, Testimony before the Committee on Education and the Workforce United States House of Representatives (Apr. 14, 2011) ("[M]ost businesses do not return Davis–Bacon wage surveys. Davis–Bacon surveys take considerable time and effort

[5] *Available at* https://www.gao.gov/assets/gao-11-152.pdf.

to complete, and many contractors do not expend staff resources to complete them… This methodology leads to very high non-response rates.").[6]

Use of CBAs corrects these problems by providing a regularly updated, easily accessible wage scale reflecting the product of arms-length negotiations between an employer and its employees' representative.

Accordingly, the Legislature made a reasonable policy choice by replacing wage surveys with CBA rates, where available.

V. CONCLUSION

For the foregoing reasons, the Court should reverse the decision below, find that SSB 5493 is constitutional, and direct judgment be entered in favor of Appellants.

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[6] *Available at* https://www.heritage.org/article/testimony-examining-the-department-labors-implementation-the-davis-bacon-act.

I certify that this memorandum contains 4,253 words, in compliance with RAP 18.17.

Respectfully submitted this 15th day of April, 2022.

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DECLARATION OF SERVICE

I, Rebecca Breault, declare under penalty of perjury in accordance with the laws of the State of Washington that the foregoing document was filed with the Washington State Supreme Court using the Court's appellate efiling system, which will automatically provide notice of such filing to all required parties.

Signed this 15th day of April, 2022, at Eatonville, Washington.

Rebecca Breault, Paralegal

BARNARD IGLITZIN & LAVITT

April 15, 2022 - 1:53 PM

Transmittal Information

Filed with Court:	Supreme Court
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Appellate Court Case Title:	Associated General Contractors of Washington, et al. v. Jay Inslee, et al.
Superior Court Case Number:	19-2-00377-1

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