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March 12, 2010

Members of the Chula Vista Chamber of Commerce

Chula Vista Chamber of Commerce
233 4th Avenue
Chula Vista, CA 91910

Re: Fair and Open Competition Ordinance

Dear Chamber Members:

I have been asked to comment by the ballot measure committee known as Chula Vista Citizens for Jobs and Fair Competition on recently expressed views promulgated by Honorable Members of the Legislature on the prospective impact of the Public Works Contract Initiative on state funded projects. In doing so here, I will briefly reprise and amplify comments made on behalf of the same group to the City Attorney of Chula Vista.

In essence, the argument that the initiative ordinance might affect in any fashion payments into union or non-union benefit trusts is incorrect. To the contrary, the ordinance, as framed, increases the likelihood of compliance with the cited legal requirements, exactly the opposite of the posited effect.

California prevailing wage law plainly requires the payment of prevailing wages and prevailing wages include dollars allocated to wage and fringe benefit packages, as well as to training. However, the requirements are monetary in nature only. It is up to the participating employers to determine whether benefits are deposited into appropriate benefit trusts. This can be a union trust, a non-union trust or the employer's own benefit plans. Payments on account of apprenticeship can be made to various training entities or submitted to the state directly, through the California Apprenticeship Council. Federal requirements are largely similar, though use of apprentices is voluntary under federal law. The sole stated impact of the ordinance, which the summary plainly reflects, is to preclude a preference for one kind of trust or plan over another based on union status.

It is worth noting that the Legislature could not, in the context of federal labor law, enact or interpret state law to institutionalize any such preferences. I have had the privilege of litigating a number of these issues before the U.S. and California Supreme courts and in that context, take the liberty of directing your attention to one such case. In the recent decision of the high court, *Chamber of Commerce v. Brown*, the United States Supreme Court invalidated a

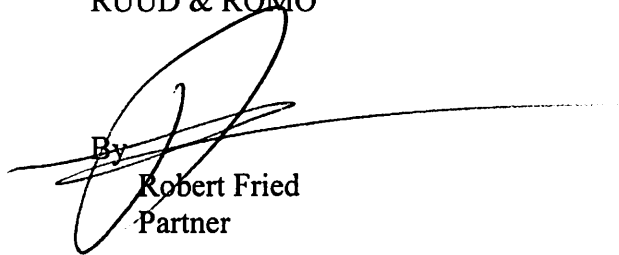
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California statute that would have placed restrictions on state monies intended to affect, in part, freedom of contracting in public works. In oral argument, a strong majority of the justices made it plain that the rights to freedom in the workplace guaranteed and regulated by the National Labor Relation Act were controlling in the face of attempted state regulation to the contrary. In this context, the present proposed ordinance supports those freedoms, rather than posing a barrier to their exercise.

I trust these brief comments will be of some assistance in evaluating the issues before you.

Very truly yours,

ATKINSON, ANDELSON, LOYA,
RUUD & ROMO

A handwritten signature in black ink, appearing to be 'Robert Fried', is written over a horizontal line. The signature is stylized and somewhat cursive.

By Robert Fried
Partner

RF/clg