

## THE REPEAL OF PREVAILING WAGE: A Race To The Bottom

- I. About the organized construction industry:
  - A. Employers employing 90,000 construction workers in fifteen crafts.
  - B. Labor organizations representing these workers, as well as 40,000 retirees.
  - C. These employers and labor organizations negotiate agreements that keep people off of government assistance.<sup>1</sup>
    1. Health Insurance. Because of transitory nature of construction work, merit shop construction workers lose employer-provided health care insurance when they are laid off or change employers. Organized construction employees have negotiated health care plans that ensures coverage during periods of unemployment and when workers switch employers.
    2. Pension Plans. Organized construction employees have pension plans that are "portable" in the sense that they follow workers from employer to employer. That helps ensure that these workers become vested despite having many employers, each for perhaps very short periods of time.
  - D. These employers and labor organizations fund apprenticeship training.
    1. In the organized construction industry, apprenticeship training is borne by signatory contractors employees through an hourly contribution to a training fund used to pay for training facilities, tools and equipment, instructors and a training coordinator. Open shop apprentices typically pay a higher share of the training costs through tuition payments and lower wages.<sup>2</sup>

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<sup>1</sup>Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 4 ("In addition, with repeal [of the prevailing wage law], fewer construction workers are likely to receive paid health insurance. This could cause publicly-financed health care costs to rise, increasing the burden on state budgets."). See also Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 102 ("It has been reported that benefit payments to union construction workers are substantially higher than to non-union workers (Petersen, 2000). Petersen reported that in 1992, health, welfare and pension plans in the construction industry paid \$13.2 billion in benefits to active construction workers and retirees, of which the vast majority was paid to union members. Peterson further reports that the benefits paid per worker for union construction was \$12,798, while the benefits paid per worker for nonunion construction was \$434. \* \* \* [U]nionized benefit programs account for 88 percent of all benefits in the industry. It is clear that union membership is a primary determinant of the probability of receiving benefits in the construction sector.") (citing Petersen, *Health Care and Pension Benefits for Construction Workers: The Role of Prevailing Wage Laws*, 39 *Industrial Relations* 246 (2000)).

<sup>2</sup>Phillips and Bilginsoy, *Apprentice Training in Ohio* at 3. See also Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 10 ("Prevailing wage statutes provide incentives to maintain an effective apprenticeship training system in construction; these apprenticeship programs guarantee that construction employees have the needed skills and technical capacity to earn family supporting wages.").

2. The organized construction industry trains three out of every four apprentices.<sup>3</sup>
3. In Ohio, the latest data available indicates that jointly-trusted programs, *i.e.*, union apprenticeship programs, trained 3866 of the 4600 apprentices (83.9%) who had graduated, as of 2003, from apprenticeship classes that commenced between 1996 and 1998. Nearly 60% of the apprentices who begin apprenticeship training in jointly-trusted programs graduate, while less than 40% in non-jointly trusted programs do.<sup>4</sup>
4. Jointly-trusted programs graduate more apprentices than non-union programs in every construction occupation. Non union programs provided only 6% of all graduating pipefitter apprentices, 8% of all graduating carpenter apprentices, 7% of all graduating sheet metal apprentices, only 6% of graduating painter apprentices, and 17% of all graduating bricklayer apprentices. No operating engineers or iron workers graduated from the non-union entering classes of 1989, 1990 and 1991 in Ohio.<sup>5</sup>

## II. Prevailing Wage Law Does Not Increase Cost.

- A. "The problem for groups who urge wage law repeal to save taxpayers money is that they fail to offer any *credible* study that backs up their savings claims."<sup>6</sup>
- B. Claims of huge savings—usually between 20% and 30%, but sometimes as high as 40%—are simply not credible. In Ohio, according to the U.S. Census of Construction Industries, wages and benefits account for only 27% of total construction project costs.<sup>7</sup>

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<sup>3</sup>Philips, *Kentucky's Prevailing Wage Law: Its History, Purpose and Effect* at 70 (October, 1999). See also Bilginsoy, *Apprenticeship Training in the U.S. Construction Industry* at 22 (Sept., 1998) ("[T]here is a wide discrepancy between the performances of the apprentices enrolled in the two types of programs. The majority of apprentices are in the joint programs, and an overwhelming number of the apprentices who reach journey-level status are trained in the joint programs. \* \* \* The life span of non-joint programs is also much shorter than that of the joint programs."); Loomans & Seaman, *Apprenticeship Utilization in Washington State* at 9 (based on statistics from 1996-2001, 96% of apprentices achieving journey-level status in Washington were from union apprenticeship programs).

<sup>4</sup>See attached table.

<sup>5</sup>Philips & Bilginsoy, *Apprenticeship Training in Ohio* at 11.

<sup>6</sup>*Why Wage Law Repeal Will Not Save \$\$*, Cockshaw's Construction Labor News & Opinion at 2.

<sup>7</sup>Philips, *Wages and Benefits as a Percent of Net Total Costs in the Construction Industry: Evidence from the U.S. Census of the Construction Industry with a Focus on Ohio* at 20. See also Philips, *Kentucky's Prevailing Wage Laws* (1999) at 51 ("For all construction in Kentucky, labor costs—including wages, benefits and payroll taxes—run around 26% of total construction costs."); Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 14

- C. "An overwhelming preponderance of the literature shows that prevailing wage regulations have no effect one way or the other on the cost to government of contracted public works projects. And as studies of the question become more and more sophisticated, this finding becomes stronger, and is reinforced with evidence that prevailing wage laws also help to reduce occupational injuries and fatalities, increase the pool of skilled construction workers, and actually enhance state tax revenues."<sup>8</sup>
- D. The 2002 LSC Report is flawed.<sup>9</sup>
1. Weisberg, *Analysis of Regression and Surveys in Ohio LSC Report on S.B. 102 on Claimed Cost Savings from Exempting School Construction from Prevailing Wage Requirements* (2002) at 11. In a February 12, 2005 Executive Summary of his report, Professor Weisberg stated: "the effect of prevailing wage on costs is NOT statistically significant in any of the LSC Report's equations. In other words, the best statistical evidence from the LSC's own analysis is that prevailing wage has NO effect on school construction costs." Weisberg, *Executive Summary* (Feb. 12, 2005) at 1.
  2. LSC acknowledged the flaws in its report. James Burley, the Legislative Services Commission Director, told reporters that he

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("According to the Census of Construction, labor costs, including benefits, on all construction were 26.2% of total costs in 1987 and decreased to 21.2% by 1997.").

<sup>8</sup>Mahalia, *Prevailing Wages and Government Contracting Costs: A Review of the Research*, EPI Briefing Paper #215 at 9 (July 8, 2008). See also Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 12 ("[R]esearchers have produced evidence that the use of low-wage labor in construction does not generate corresponding savings because low-wage workers are typically less skilled and require more supervision.") (citation and endnote omitted); Azari-Rad, Philips, & Prus, *Making Hay When It Rains: The Effect Prevailing Wage Regulations, Scale Economies, Seasonal, Cyclical and Local Business Patterns Have On School Construction Costs*, 27 J. of Educ. Fin. 997, 1012 (2002) ("[T]here is no measurable difference, controlling for other factors, in public schools built with and without prevailing wage regulations."); Prus, *The Effect of State Prevailing Wage Laws on Total Construction Costs* (1996) at 11; National Alliance for Fair Contracting, *Wages, Productivity, and Highway Construction Costs* (1995) at 3 ("[T]here is no measurable cost difference between similar structures as a result of prevailing wage requirements."); Construction Labor Research Council, *The Impact of Wages on Highway Construction Costs: Updated Analysis* (2004) at 2-3; Philips, *Square Foot Construction Costs for Newly Constructed State and Local Schools, Offices and Warehouses in Nine Southwestern and Intermountain States 1992-1994* (1996) at 21-22; Philips, *Kentucky's Prevailing Wage Law: Its History, Purpose and Effect* (1999) at 66; Bilginsoy & Philips, *Prevailing Wage Regulations and School Construction Costs: Evidence from British Columbia*, 24 J. of Educ. Fin. 415; Philips, *Kansas and Prevailing Wage Legislation* (1998) at 18-19, 21; Prus, *Prevailing Wage Laws and School Construction Costs: An analysis of Public School Construction in Maryland and the Mid Atlantic States* (1999) at 13-14; Philips, *A Comparison of Public School Construction Costs In Three Midwestern States that Have Changed Their Prevailing Wage Laws in the 1990s* (2001) at 12; Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 40 ("The results of this analysis indicate that there is no statistically significant difference in total construction costs between similar structures as a result of a state having a prevailing wage statute. Therefore, the repeal or modification of prevailing wage laws will not result in substantial costs savings as alleged by proponents of repeal or modification of prevailing wage law.").

<sup>9</sup>*S.B. 102 Report: The Effects of the Exemption of School Construction Projects from Ohio's Prevailing Wage Law* (Legislative Serv. Comm'n, May 20, 2002) (LSC's "statistical regression analysis" showed that the prevailing wage exemption for school construction saved 10.7% on all school construction, but only 1.2% on new construction, which was far less than proponents of the exemption had claimed).

"did not dispute Weisberg's analysis." Candisky, *Union studies dispute prevailing-wage claim*, Columbus Dispatch (July 21, 2002).

3. Professor Weisberg's conclusions have been confirmed by researchers at the University of Missouri. Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 20 ("In short, the results of this [LSC] study are empirically meaningless.").

### III. Repeal of the Prevailing Wage Law Would Have An Adverse Impact.

- A. Wages will be reduced—not just on public works, but on all construction.<sup>10</sup>
- B. Health care and pension benefits will be reduced across the construction industry.<sup>11</sup>
- C. Apprenticeship training will be reduced.<sup>12</sup>
- D. On-the-job injuries and fatalities will likely increase.<sup>13</sup>

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<sup>10</sup>Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 2 ("In states which repealed prevailing wage laws, average earnings dropped for all construction workers—union, non-union, those working on public projects, and those working on private projects. Repeal itself caused an average decline of \$1,350 in earnings (5.1% of construction income)."). See also Phillips, *Kansas and Prevailing Wage Legislation* (1998) at 5 (After Kansas repealed its prevailing wage law in 1987, "[w]age incomes in Kansas construction fell by 10% not just on public works but across all construction."); Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 104.

<sup>11</sup>U.S. Bureau of Labor Statistics, *National Compensation Survey: Fee-for-Service Plans*, Program Perspectives Vol. 2, Issue 5 at 2 (Oct. 2010) (union workers are more likely to have access to employer-provided health care benefits than non-union workers and to have lower deductibles). See also Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 4 ("[W]ith repeal [of the prevailing wage law], fewer construction workers are likely to receive paid health insurance. This could cause publicly-financed health care costs to rise, increasing the burden on state budgets."); Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 106. See also Phillips, *Kansas and Prevailing Wage Legislation* (1998) at 5; Philips, *Kentucky's Prevailing Wage Law: Its History, Purpose and Effect* (1999) at 92; Petersen, *Health Care and Pension Benefits for Construction Workers: The Role of Prevailing Wage Laws*, 39 *Industrial Relations* 246, 261 (2000).

<sup>12</sup>Phillips, *Kansas and Prevailing Wage Legislation* (1998) at 5 (After Kansas repealed its prevailing wage law in 1987, "[a]pprenticeship training in Kansas construction fell by 38% after repeal. Minority apprenticeship training in Kansas fell by 54%."). See also Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 4 ("Current proposals to eliminate prevailing wage statutes threaten the stability of the apprenticeship training system. This system ensures a skilled labor force and provides minorities with increased access to construction jobs. \* \* \* [M]inority access to construction training in repeal states dropped 22%."); Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 112; Bilginsoy, *Wage Regulation and Training: The Impact of State Prevailing Wage Laws on Apprenticeship* (2003); Phillips, *Square Foot Construction Costs for Newly Constructed State and Local Schools, Offices and Warehouses in Nine Southwestern and Intermountain States 1992-1994* (1996) at 8; Philips, *Kentucky's Prevailing Wage Law: Its History, Purpose and Effect* (1999) at 82.

<sup>13</sup>Phillips, *Kansas and Prevailing Wage Legislation* (1998) at 45 (After Kansas repealed its prevailing wage law, on-the-job injuries in the construction sector increased 19% and serious injuries increased 21.5%). See also Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 3 ("In states that have repealed prevailing wage laws, occupational injuries have increased. This results in higher workers' compensation costs. Serious construction injuries increased in the states where prevailing wage laws were repealed. \* \* \* This increase in injuries is due to a combination of factors—the use of inexperienced workers, a decline in training and cut-throat competition."); Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 120; Philips, *Kentucky's*

- E. Productivity in the construction industry will be reduced and the quality of construction will go down.<sup>14</sup>
- F. The State and local governments will lose income and sales tax revenue<sup>15</sup> and face increased demands on public services,<sup>16</sup> resulting in an overall adverse impact on the state budget.<sup>17</sup>

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*Prevailing Wage Law: Its History, Purpose and Effect* (1999) at 86; Waitzman, *Worker Beware: The Relationship Between the Strength of State Prevailing Wage Laws and Injuries in Construction, 1976-1991* (1996).

<sup>14</sup>Kelsay, Wray, & Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (2004) at 124 ("[W]e conclude that at least for the time period 1980-93, any savings due to lower wages that might have been achieved in the absence of prevailing wage legislation were more than offset by lower productivity that accompanies payment of lower wages."). See also Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 4 ("Elimination of prevailing wage statutes leads to increased costs associated with the use of low-wage workers. Lower construction wages in repeal states have led to reduced levels of worker skill and efficiency, higher maintenance costs and a dramatic increase in project cost overruns.").

<sup>15</sup>Philips, Mangum, Waitzman, & Yeagle, *Losing Ground: Lessons from the Repeal of Nine "Little Davis-Bacon" Acts* (1995) at 17 ("The tax revenue losses that result from lower construction wage levels are surprisingly large. Whatever the source of this earnings decline among construction workers, states with income taxes have lost tax revenues as a result of this decline in taxable income among construction workers. And, because this lost income means lost purchasing power, states that have repealed their prevailing wage laws have also lost some sales tax revenues. \* \* \* Adding these two losses and bringing them to 1995 values using the consumer price index yields an estimated loss of \$8.2 million in state taxes in Utah in 1991 evaluated in 1995 dollars."). See also Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 2 ("The decrease in wages to construction workers due to repeal of wage standards results in a major loss of tax revenue to state governments. In Wisconsin, repeal of the federal wage statute, the Davis-Bacon Act, would lead to a \$11.6 million annual loss in tax revenues. Repeal of the state statutes in addition to the federal law would lead to an overall loss of \$23 million.").

<sup>16</sup>Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 9 ("[R]epeal of prevailing wage laws raises costs to taxpayers in other ways beyond the simple loss of state tax revenue. Use of low-wage labor on construction projects also imposes costs for medical care and other services needed by employees without benefits. States without prevailing wage laws experience escalated demands on public services, as low-wage workers lacking health care coverage and other benefits increasingly depend on publicly provided services.").

<sup>17</sup>Belman & Voos, *Prevailing Wage Laws in Construction: The Costs of Repeal in Wisconsin*, Institute for Wisconsin's Future (Oct. 1995) at 3 ("Repeal of the prevailing wage laws would hurt, not help, the Wisconsin state budget. This study shows that the decline in state income and sales tax revenues would exceed the minimal savings in construction costs to the state derived from decreasing worker wages.").

**Distribution of New Apprentices Registered in Ohio Apprenticeship Programs between 1996 and 2003**

	No. of Apprentices	%
Joint Programs	20350	78.0
Non-joint Program	5730	22.0
All Programs	26080	100.0

**New Apprentices Registered in Ohio Apprenticeship Programs between 1996 and 2003**

(by gender)	No. of Apprentices	Male	%Male	Female	%Female
Joint Programs	20350	19574	96.2	776	3.8
Non-joint Program	5730	5603	97.8	127	2.2
All Programs	26080	25177	96.5	903	3.5

**New Apprentices Registered in Ohio Apprenticeship Programs between 1996 and 2003**

(by race)	No. of Apprentices	White	%White	Black	%Black	Other	%Other
Joint Programs	20350	18539	91.1	1650	8.1	161	0.8
Non-joint Program	5730	5271	92.0	387	6.9	62	1.1
All Programs	26080	23810	91.3	2047	7.8	223	0.9

Note: "Other" includes Asian American, Native American, and Races not elsewhere classified

**Status of New Apprentices who Started Training between 1996 and 1998 as of the end of 2003**

	No. of Apprentices	No. Cancelled	%Cancelled	No. Completed	%Completed	Still Active	%Still Active	No. Other	%Other
Joint Programs	6604	2523	38.2	3866	58.5	208	3.1	7	0.1
Non-joint Program	2042	1211	59.3	734	35.9	90	4.4	7	0.3
All Programs	8646	3734	43.2	4600	53.2	298	3.4	14	0.2

Note: "Other" includes suspended and reinstated apprentices.

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