Supreme Court No. 100258-1
(Court of Appeals No. 54465-2-II)

SUPREME COURT OF THE STATE OF WASHINGTON

ASSOCIATED GENERAL CONTRACTORS OF WASHINGTON; ASSOCIATED BUILDERS AND CONTRACTORS OF WASHINGTON; INLAND PACIFIC CHAPTER OF ASSOCIATED BUILDERS AND CONTRACTORS, INC.; and INLAND NORTHWEST AGC,
Respondents,

v.

STATE OF WASHINGTON, JAY INSLEE, JOEL SACKS, and JIM CHRISTENSEN,
Petitioners.

PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Workers throughout Washington who work on public works projects depend on prevailing wage laws to provide a living wage. Considering this, the Legislature decided that using collectively bargained for wage rates is the best way to set prevailing wages as they reflect negotiated wages among equally empowered groups. SSB 5493 (2018). The Court of Appeals ruled this law an unconstitutional delegation of power as it relies on "future facts," erring because the Legislature may administratively apply a standard to future facts.

The Court of Appeals' decision will create turmoil in prevailing wage law. There are 22,000 prevailing wage rates for trades and occupations, which apply to tens of thousands of public works projects. L&I processes about 130,000 forms on public works projects, each showing several workers. Given the number of workers, contractors, and public agencies affected, undoing the Legislature's chosen method for setting wage rates will have a significant effect. It may take money out of

workers' pockets on future projects after relying on the wages they've received for the last three years.

Three reasons warrant review. First, invalidating a statute based on the constitutional limits on delegation of power warrants review as a significant constitutional question.

Second, the decision conflicts with well-established precedent, including a case that abrogated the case the Court of Appeals relied on,[1] and another line of cases as recent as 2020.[2]

Third, the disruptive effect on Washington workers, employers, and public works, and the Legislature's ability to set standards that require consideration of future events warrants review as an issue of substantial public interest.

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[1] *United Chiropractors of Wash., Inc. v. State*, 90 Wn.2d 1, 4, 578 P.2d 38 (1978) (abrogating *State ex rel. Kirschner v. Urquhart*, 50 Wn.2d 131,135-36, 310 P.2d 261 (1957)).

[2] *State v. Batson*, 196 Wn.2d 670, 675, 478 P.3d 75 (2020); *AUTO v. State,* 183 Wn.2d 842, 861, 357 P.3d 615 (2015); *Diversified Inv. P'ship v. Dep't of Soc. & Health Servs.*, 113 Wn.2d 19, 25, 775 P.2d 947 (1989); *Woodson v. State*, 95 Wn.2d 257, 261, 623 P.2d 683 (1980); *In re Binding Declaratory Ruling of Dep't of Motor Vehicles*, 87 Wn.2d 686, 695-96, 555 P.2d 1361 (1976).

II. IDENTITY OF PETITIONER/DECISION

Petitioners State of Washington, Director Joel Sacks of the Department of Labor and Industries, and Industrial Statistician James Christensen petition for review. *Assoc'd Gen'l Cntrs v. State*, No. 54465-2-II (Aug. 31, 2021) (App.)

III. ISSUES PRESENTED FOR REVIEW

1. Did the Legislature properly direct the Industrial Statistician to consider "future facts" to set prevailing wage rates when the Legislature may delegate "the power to determine some fact … upon which the application of the law is made to depend[.]"?[3]

2. Do the appeal laws of RCW 39.12.060 and WAC 296-127-060 satisfy *AUTO*, which held "separation of powers does not require the safeguards be found in the same statute under challenge—just that the Safeguards exist?"[4]

IV. STATEMENT OF THE CASE

A. Background of Prevailing Wage Laws

Washington has a "long and proud history of being a pioneer in the protection of employee rights." *Drinkwitz v.*

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[3] *Diversified*, 113 Wn.2d at 25.

[4] *AUTO v. State*, 183 Wn.2d 842, 861, 357 P.3d 615, 624 (2015)

Alliant Techsys., Inc., 140 Wn.2d 291, 300, 996 P.2d 582 (2000). The Prevailing Wages on Public Works Act protects workers from substandard earnings by fixing a floor for wages on government projects. *See Everett Concrete Prods., Inc. v. Dep't of Labor & Indus.*, 109 Wn.2d 819, 823-24, 748 P.2d 1112 (1988); *Drake v. Molvik & Olsen Elec., Inc.*, 107 Wn.2d 26, 28-29, 726 P.2d 1238 (1986).

Parallel to the prevailing wage laws, the Legislature recognizes that collective bargaining empowers workers by giving them a voice about their wages and working conditions. *See* RCW 49.32.020. Collective bargaining allows workers "to obtain acceptable terms and conditions of employment," given that an "individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his or her freedom of labor." *Id.*

The Legislature has delegated to L&I's Industrial Statistician the authority to set the prevailing wage used on public works projects. RCW 39.12.015(1) ("All determinations

of the prevailing rate of wage shall be made by the industrial statistician[.]") The Industrial Statistician sets around 22,000 prevailing wages for trades and occupations. CP 2518. There are tens of thousands of public works projects in Washington. Each year the Department processes 130,000 intents to pay prevailing wage and affidavit of wages paid forms, each showing several workers. CP 2518.

B. In 2018, the Legislature Sought to Reduce the Use of Cumbersome Surveys, Instructing the Industrial Statistician to Set Prevailing Wage Rates Using CBAs That Reflect the Negotiated Wage Rate

Before 2018, prevailing wage rates were generally set using a wage survey, which asked contractors and unions to voluntarily report the hours and wages in different trades and occupations. WAC 296-127-019. The wage surveys identify wage facts from private contracts (including CBAs)—*i.e.*, what employers agreed to pay workers. CP 1844, 2119-20, 2124-25.

The Legislature changed the system in 2018 to use rates established in CBAs to set most prevailing wage rates. Laws of 2018, ch. 248, § 1. In adopting the law, the Legislature heard

concerns that filling out and using wage surveys imposed costs to the State and contractors. S. Bill Rep., SB 5493, at 3 (2018). A purpose of SSB 5493 was to simplify the system and provide a "more reasonable" way to determine prevailing wages. S. Labor & Commerce Comm., TVW.org at 22:00–22:26 (Jan. 22, 2018). A transportation study reported that using CBAs would be a cost-saving efficiency measure. Sub. H. Bill Rep., SSB 5493, at 2 (2018); Test., H. Labor & Workplace Standards Comm., TVW.org at 23:03–23:11 (Feb. 19, 2018).

The Legislature heard from industry representatives that the statute would provide consistency by moving away from wage surveys, which are only as accurate as the information provided in a wage survey. Test., H. Labor & Workplace Standards Comm., TVW.org at 24:04–24:37 (Feb. 19, 2018). Using CBAs simplifies the process, and it reflects the true cost of the work. Sen. Bill Rep., SB 5493, at 3. "Using these wages will reflect the true long-term costs of a project and establish a steady reliable wage rate[.] The collectively bargained wage is a

negotiated wage and best represents area standard wages." Sub. House Bill Rep, SSB 5493, at 2.

C. The Industrial Statistician Uses Only Existing Collectively Bargained for Agreements

RCW 39.12.015 now provides that "the industrial statistician shall establish the prevailing rate of wage by adopting the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements." The focus is on: (1) an operative agreement that (2) stems from collective bargaining.

1. The statistician uses only operative agreements

The Industrial Statistician only uses CBAs that have been ratified by the employer and the union—a signed and therefore operative agreement for a specified trade in a particular geographical region. CP 1853-54. Although L&I may not have a signed copy, it only uses agreements where the original is signed. CP 1866-69. And, to ensure accuracy, L&I uses its Wage Update System, with current wage data. CP 2515-16.

Although the Court of Appeals states that the statistician does not verify whether a CBA is valid, signed, or unexpired (slip op. 6), the statistician is confident about the accuracy of the information obtained. CP 2516. Government officials rely on the truthfulness of statements in the administration of their duties. And, if a rate is not accurate, the statistician emphasized that L&I receives calls to fix the rates. CP 1912, 2516, 2518. WAC 296-127-060 allows for challenges of wage rates. Rates are published for unions and contractor review. CP 2518.[5]

2. The Industrial Statistician uses agreements only when they result from collective bargaining

The Industrial Statistician accepts only agreements that

[5] The Court of Appeals stated that the Industrial Statistician acknowledged he had used expired CBAs, referring to AGC's claim. Slip op. 6. AGC asked him if L&I was using an expired agreement that listed its effective period as 2013 to 2015 (Ex. 19, not 16 as misstated), CP 477, 571, 2703, and based on those dates, the statistician agreed it was expired. But the agreement had an evergreen clause to continue in effect "year to year" after the dates listed in the CBA. CP 477. This is a common feature in many CBAs. *E.g.*, CP 394, 396, 398, 404, 407-10, 414, 419, 430-31, 433, 441-44, 467-70, 473-74, 476, 2534, 2615. And the Wage Update System has the current date, so a copy with an old date is immaterial. CP 2515-16.

result from collective bargaining, which means there has to be a bona fide CBA produced by arms' length negotiations. CP 1861-63, 2120-21.[6] In determining whether a CBA is bona fide, the statistician may notice something out of line in the CBA, based on familiarity with CBAs. CP 2121-22. It is normal to see a modest wage rate increase from one agreement to the next to reflect market forces. CP 2121. A departure would cause the statistician to ask questions. CP 2121. If an interested party felt that there was not a bona fide agreement, it could contact L&I about the rate (CP 2517-18), and then formally challenge the rate if not corrected. WAC 296-127-060.

D. The Superior Court Upheld the Constitutionality of SSB 5493, but the Court of Appeals Reversed

After AGC sued the State, the parties cross-moved for summary judgment. CP 1, 184, 1794. The trial court ruled for

[6] Although the Court of Appeals stated that the statistician was seeking to change his answer to discuss the bona fide requirement (slip op. 6), in Christensen's deposition, he repeatedly testified that consistent with the statute, he would only consider bona fide agreements. CP 1854, 1857, 1861-62; *accord* CP 2121 (Christensen declaration).

the State. CP 2536. The Court of Appeals reversed. Slip op. 14.

V. ARGUMENT

The Legislature exercised its policy-making authority to improve workers' lives on public works projects when it directed the Industrial Statistician to set prevailing wage rates using operative agreements that stem from collective bargaining. Two lines of cases help determine the constitutionality of a delegation. First, *Barry & Barry, Inc. v. Department of Motor Vehicles* establishes that delegation is lawful when (1) the Legislature defines "in general terms what is to be done" and (2) when "safeguards exist to control arbitrary administrative action and any administrative abuse of discretionary power." 81 Wn.2d 155, 159, 500 P.2d 540 (1972). And second, *Batson* held that although the Legislature cannot make laws dependent on future standards, it may make a law dependent on a future event or fact. 196 Wn.2d at 675. SSB 5493 satisfies both.

A. Invalidation of a Statute Based on the Legislative Delegation Doctrine Presents a Significant Constitutional Issue Warranting Review

Article II, section 1 of the Washington Constitution vests legislative authority in the Legislature. *Batson*, 196 Wn.2d at 674. The Court of Appeals' decision contravenes this authority, and its decision to constitutionally invalidate a statute presents a significant constitutional issue. RAP 13.4(b)(3).

B. Barring the Legislature From Referring to "Future Facts" Conflicts with Supreme Court Precedent

The Court of Appeals' decision conflicts with at least six decisions of this Court, and this conflict merits review. RAP 13.4(b)(1).

1. SSB 5493 complies with *Barry & Barry*'s requirement that the Legislature set out "in general terms what is to be done"

Decided in 1972, *Barry & Barry* departed from the Court's previous delegation doctrine jurisprudence, finding earlier tests "excessively harsh and needlessly difficult to fulfill." 81 Wn.2d at 159. Holding that the constitution does not

require "exact and precise standards," the Court explained that it is enough that a law provide "in general terms what is to be done." 81 Wn.2d at 159-60. This Court has recognized that the modern delegation doctrine is flexible to further "efficient government" and "the public interest in administrative efficiency in a complex modern society." *Id.* at 159.

RCW 39.12.015 meets this first prong. The Legislature provided clear standards for the agency to follow: (1) "[a]ll determinations of the prevailing rate of wage shall be made by the industrial statistician," and (2) the statistician must use "collective bargaining agreements"—meaning agreements that result from collective bargaining. RCW 39.12.015(1), (3)(a). The Legislature can determine the level of discretion: "We believe that one of the legislative powers … is the power to determine the amount of discretion an administrative agency should exercise in carrying out the duties granted to it by the legislature." *Barry & Barry*, 81 Wn.2d at 162.

Here, the Legislature has given very little leeway to the agency, setting tight standards for determining prevailing wage rates. The agency is to use the highest rate negotiated in a CBA for the relevant county, trade, and occupation that "have collective bargaining agreements." RCW 39.12.015(3)(a). The words "have" and "agreement" require an operative agreement. "Have" means "to hold or maintain as a possession, privilege, or entitlement." *Have*, MERRIAM-WEBSTER DICTIONARY.[7] The word contemplates a present privilege or entitlement, not a past or future one. "Agreement" in this context means "a contract duly executed … and legally binding." *Agreement*, MERRIAM-WEBSTER DICTIONARY.[8] So combining the words shows that the standard directs an operative CBA when the wage rate is set.

Similarly, the CBA must stem from "collective bargaining" as shown by its definitions. A "collective

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[7] https://www.merriam-webster.com/dictionary/have (last visited Sept. 24, 2021).

[8] https://www.merriam-webster.com/dictionary/agreement (last visited Sept. 24, 2021).

bargaining agreement" is "an agreement between an employer and a labor union produced through collective bargaining." *Collective Bargaining Agreement*, MERRIAM-WEBSTER DICTIONARY.[9] "Collective bargaining" in turn is "a negotiation for the settlement of a collective agreement between an employer or group of employers on one side and a union or number of unions on the other." *Collective Bargaining*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (2002).[10] A valid CBA requires unions and employers to negotiate at arm's length to produce a bona fide agreement. *Int'l Longshore & Warehouse Union v. ICTSI Oregon, Inc.*, 863 F.3d 1178, 1190, 1195 (9th Cir. 2017); *see* 15 U.S.C. § 1; 29 U.S.C. § 158(d). Collusive agreements violate anti-trust provisions. *Int'l Longshore*, 863 F.3d at 1190, 1195. Thus, a CBA only exists

[9] https://www.merriam-webster.com/ (last visited Sept. 26, 2021).

[10] *Accord* 29 U.S.C. § 158(d) ("[T]o bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to . . . confer in good faith[.]"); RCW 41.80.005.

when the agreement stems from arm's length negotiations. RCW 39.12.015 exceeds what *Barry & Barry* requires because it contains the Legislature's specific direction to the statistician as to the methodology for determining prevailing wages.

2. The Court of Appeals' decision conflicts with this Court's repeated approval of the use of "future facts"

As is routine in legislation overseeing the government, the Legislature set a standard for the state agency to follow in applying the law to "future facts." Despite controlling law from this Court, the Court of Appeals rejected the use of "future facts," concluding that "SSB 5493 is an unconstitutional delegation of legislative authority based on future facts listed in CBAs to determine the prevailing wage rate." Slip op. 10. This decision conflates future facts with future standards. This Court has routinely upheld statutes that contemplate the use of future facts. *See Batson*, 196 Wn.2d at 676; *Diversified Inv. P'ship*, 113 Wn.2d at 25, 31; *Woodson*, 95 Wn.2d at 261; *Motor Vehicles*, 87 Wn.2d at 695-96.

The Legislature may adopt a statute to address a "future specified event." *Batson*, 196 Wn.2d at 676 (quoting *Diversified*, 113 Wn.2d at 28). In *Batson*, the law "set[] the circumstances under which [the state law] becomes operative," and once this circumstance occurred, Washington could apply the now operative law. *Id.* at 675. The case involved the use of criminal convictions, and the Court noted "that countless Washington laws … incorporate the underlying facts of convictions from other jurisdictions[.]" *Id.* at 675, n.2. Likewise, SSB 5493 is just but one of countless examples of a law that relies on outside facts. SSB 5493, like *Batson*, sets the circumstance when the State uses the "underlying facts"—here ratification of a CBA—from an outside source (like the convictions in *Batson*). Once the "future specified event" of a CBA occurs, the statistician may use its "underlying facts."

Batson relied on *Diversified*, which affirmed the Legislature's ability to legislate with future facts in mind. 196 Wn.2d at 675-76 (citing 113 Wn.2d at 25). There, the Court

considered a Washington statute that provided if an agency of the federal government found the statute to conflict with federal Medicaid law, the Washington statute would stop being operative. *Diversified*, 113 Wn.2d at 24. The trial court ruled, as the Court of Appeals did here, that the Legislature had impermissibly deferred to "future actions of a non-state agency over which [it] has no control." *Id.* at 26.

The Court rejected that reasoning, emphasizing that the Legislature may delegate "the power to determine some fact or state of things upon which the application of the law is made to depend[.]" *Id.* at 25. And it saw no difficulty in the Legislature's choice to make the triggering event dependent on the actions of non-state actors. *Id*. at 28. As the Court held, "conditioning the operative effect of a statute upon a future event specified by the Legislature does not transfer the legislative power to render judgment to the persons or entity capable of bringing about that event." *Id.* at 28. Likewise, SSB 5493 sets the circumstance when the statistician's duty to set

prevailing wage rates based on a CBA becomes operative: the ratification of a CBA for a specified trade in a particular geographical region.

Thus, the delegation doctrine does not limit the Legislature from requiring public agencies to determine and apply future facts. *Id.* at 24, 28; *Woodson*, 95 Wn.2d at 261. Nor does it matter that those future facts may come about through the actions of non-state actors. *See Diversified*, 113 Wn.2d at 28. Instead, the doctrine prohibits laws that require the "adoption of standards such [non-state] bodies may make in the future." *Woodson*, 95 Wn.2d at 261; *see also Diversified*, 113 Wn.2d at 24. This prohibition on the Legislature's use of future standards is echoed by cases like *State v. Dougall*, 89 Wn.2d 118, 570 P.2d 135 (1977), which prohibited the use of future federal rules.

The Court of Appeals' decision misapprehends this distinction. There is a difference between legislating future standards versus future facts. A standard is "[a] criterion for

measuring acceptability[.]" *Standard*, BLACK'S LAW DICTIONARY (11th ed. 2019). A fact, by contrast, is "[s]omething that actually exists; an aspect of reality." *Fact*, BLACK'S LAW DICTIONARY. Here, the "criterion for measuring acceptability"—the standard at issue—was adopted in 2018 as the directive to use operative agreements that result from collective bargaining. The "aspect of reality"—the facts to be applied—is the wage and benefit rates listed in a valid CBA, which are facts that arise independently of the legislation. There is no future methodology to be set under SSB 5493.

3. *Kirschner* has been abrogated

The Court of Appeals mistakenly relied on *Kirschner*. *See* slip op. 10-11 (citing 50 Wn.2d 131). There, the Legislature adopted a statute that required a diploma from an accredited medical school using the accreditation standards of recognized medical societies. 50 Wn.2d at 132-33. The Court said that because those medical societies had not yet compiled a "list" of accredited schools at the time of the law's adoption, the

Legislature's deferral to the medical societies' compilation of a future list was an unlawful delegation. *Kirschner*, 50 Wn.2d at 135-36. The Court of Appeals looked to that case in ruling that the Legislature cannot mandate the use of "CBAs not in existence at the time the legislature passed the bill." Slip op. 10-11. But this Court abrogated *Kirschner* in *United Chiropractors*, where it said that the decision rested on an outdated conclusion that legislative power is nondelegable and the standard has changed:

> Since that time, however, we have recognized that this rule unreasonably restricts the alternatives available to the legislature in approaching a problem or issue. In place of the rule that legislative power is nondelegable, we have substituted a rule that delegation is permissible when (1) the legislature has provided standards or guidelines ..; and (2) that procedural safeguards exist[.]

United Chiropractors, 90 Wn.2d at 4 (citing *Kirschner*, 50 Wn.2d at 135). And indeed, *Woodson* clarified *Kirschner* and explained that it was the Legislature's adoption of a future standard (not future facts) that led to the constitutional

difficulty: "the vice is … that [the Legislature] defers to the adoption of standards such bodies may make in the future." *Woodson*, 90 Wn.2d at 261 (citing *Kirschner*, 50 Wn.2d at 136). Thus, under *Woodson*, it is the Legislature's adoption of future standards, not future facts, that comprises an impermissible delegation. *Id.* Not even citing *Woodson*, the Court of Appeals wrongly relied on the abrogated *Kirschner* in limiting the statistician's use of future facts.

4. Although the Legislature may delegate to private parties, there was no such delegation here

The Court of Appeals appears to have conflated delegation to private parties with the use of information from private parties. Slip op. 10, 13.

The Court of Appeals cited *United Chiropractors* for the proposition that a delegation to a private party requires standards and procedural safeguards. Slip op. 10 (citing 90 Wn.2d at 4-8). *See also Ent. Indus. Coalition v. Tacoma-Pierce*

Cnty. Health Dep't, 153 Wn.2d 657, 664, 105 P.3d 985 (2005) (upholding a private-party delegation of future circumstance).

This line of cases does not apply here because there was no private-party delegation. The Legislature did not ask private parties to set the prevailing wage rate; instead, it directed the Industrial Statistician to do that after looking at independently significant facts and applying the legislative standard. CBAs are not negotiated to set prevailing wage rates, but cover many items from wages and benefits to provisions about working conditions and discipline.

SSB 5493 does not involve delegation to private parties to set prevailing wages, but it involves the use of private information from private parties. The Court of Appeals' implication that this is somehow invalid conflicts with this Court's decision in *Motor Vehicles*. 87 Wn.2d at 695-96. There, the Court allowed use of information derived from private parties and held that future private contractual arrangements may be referenced under the delegation doctrine. *Id.*

The Court upheld a law that required potential car dealer licensees to have a service agreement with a manufacturer. *Motor Vehicles*, 87 Wn.2d at 695-96. The Court rejected the notion that the law delegated authority to private manufacturers to decide eligibility for a dealer license but considered it information the State may use in licensing. *Id.*

And the nature of collective bargaining satisfies the delegation test even if there were a delegation to private parties. The standard to have an agreement from collective bargaining is set in the statute. And the nature of collective bargaining protects against collusive behavior. *See Male v. Ernest Renda Contracting Co.*, 301 A.2d 153, 157 (N.J. Super. Ct. App. Div. 1973), *aff'd*, 314 A.2d 361 (N.J. 1974).

5. The Court of Appeals' approach to "future facts" conflicts with that of other jurisdictions

Other courts have considered similar issues about future facts. An Ohio court held that a charter amendment to use a survey of wages was a constitutional delegation: "[a city] can make a law to delegate a power to determine some fact upon

which that law shall depend." *Fuldauer v. City of Cleveland*, 285 N.E.2d 80, 82 (Ohio Ct. App. 1972), *aff'd*, 290 N.E.2d 546 (Ohio 1972). Ohio's Supreme Court agreed, saying:

> The formula for salary adjustments . . . 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.

Fuldauer, 290 N.E.2d at 551; *Donahue v. Cardinal Constr. Co*., 463 N.E.2d 1300, 1303 (Ohio Ct. App. 1983) (upholding use of CBAs in a prevailing wage statute).

In New Jersey, a state where CBAs were used to determine the prevailing wage, the court held that using a CBA did not violate the delegation rule as the agency was "granted the power, as a matter of legislative convenience, to determine a set of facts, *i.e.*, the wage rates established under [CBAs] in given circumstances." *Male*, 301 A.2d at 157; *accord Constr. Indus. of Mass. v. Comm'r of Labor & Indus.*, 546 N.E.2d 367, 373 (Mass. 1989); *Assoc. Builders & Contractors, Saginaw*

Valley Area Chapter v. Dep't of Consumer & Indus. Servs., 705 N.W.2d 509, 512-14 (Mich. Ct. App. 2005).

The Court of Appeals here believed that some states' laws were distinguishable because they allowed the permissive use of CBAs, used only a certain percentage of workers in each locality, or used them if a prevailing determination was made. Slip op. 12 n.6. This reasoning is no more than an attack on the legislative decision to use CBAs—no Washington delegation principle requires a specific market share. A statute's wisdom is not at issue under the delegation doctrine. *See Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997).

C. The Court of Appeals' Determination that SSB 5493 Must Contain Appeal Procedures Conflicts with this Court's Decision in *AUTO*

The Court of Appeals' decision holds that there needs to be procedural protections *within* a challenged statute to satisfy delegation concerns. Slip op. 12-13. This Court emphasizes the opposite: "separation of powers does not require the safeguards be found in the same statute under challenge—just that the

Safeguards exist." *AUTO*, 183 Wn.2d at 861. Thus, in *AUTO*, the Court rejected an argument that there were insufficient protections in a statute to satisfy the delegation doctrine. 183 Wn.2d at 861-62. This rule makes sense as statutes are construed with related statutes. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002).[11]

The Court of Appeals believed there were insufficient protections against the statistician using unsigned or expired CBAs and against collusion. Slip op. 11-12. But RCW 39.12.060 allows disputes over wage rates to be heard before the L&I director. *Se. Wash. Bldg. & Constr. Trades Council v. Dep't of Labor & Indus.*, 91 Wn.2d 41, 46-47, 586 P.2d 486 (1978). And WAC 296-127-060 provides:

> Any party in interest [which includes contractors who might bid on projects] who is seeking a modification or other change in a wage

[11] Review does not even need to be provided for in the statute because a party may seek a writ of certiorari to satisfy *Barry & Barry*. *Murray v. Dep't of Lab. & Indus.*, 1 Wn. App. 2d 1, 9, 403 P.3d 949 (2017), *rev'd on different grounds*, 192 Wn.2d 488 (2018).

> determination under RCW 39.12.015, and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition [to the director] for arbitration[.]

Thus, the Court of Appeals' concern about unsigned and expired CBAs is misplaced because a party can challenge whether the CBA the statistician relied on satisfied RCW 39.12.015.

Likewise, the concern about determining CBA validity and collusion is unsupported. A director arbitration allows a challenge on these grounds.[12] To be a valid CBA, unions, and employers must negotiate at arm's length and produce bona fide CBAs. *Int'l Longshore*, 863 F.3d at 1190.

The Legislature can decide that a negotiated contract between competing interests protects against collusive

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[12] Presumably to support its collusion concern, the Court of Appeals points to what it terms "side agreements" with the operator's local 302 union as if this is something wrong. Slip op. 8. But Local 302 signed 50 employers to the CBA. CP 2527. No collusion existed.

behavior. *See Constr. Indus.*, 546 N.E.2d at 373. As another court emphasized:

> We regard it as being highly improbable that these competing groups representing opposing economic interests would conspire together or collaborate to subvert the interest of the public in work performed on public construction.

Male, 301 A.2d at 158.

D. The Court of Appeals' Decision Undermines Certainty and Fairness on Public Works Projects and Legislative Judgments to Rely on Factual Sources

The Court should also take review under RAP 13.4(b)(4). The 130,000 wage forms filed show the countless workers implicated. CP 2518. And the wage surveys used before SSB 5493 included facts (hours, wages, and benefits) that existed in 1965 when RCW 39.12.015 was adopted. So the Court of Appeals' decision also casts doubt on the prior method of basing prevailing wages on future wage surveys. The consequence is uncertainty about prevailing wage rates. With 22,000 ever-changing wage rates, this threatens workers' security and could reduce future wages.

The Court of Appeals' decision could lead to arguments that compromise the Legislature's ability to rely on other future facts from private sources. *See, e.g.*, RCW 51.44.073 (relying on "Moody's and Standard & Poor's" ratings for workers' compensation pension annuities); RCW 8.26.190(2) (relying on "fair market value" for agency to provide just compensation). With the invitation for mischief presented here the routine and fair administration of government could be compromised.

VI. CONCLUSION

The State asks this Court to grant review.

This document contains 4884 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 29th day of September, 2021.

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Supreme Court No. _____
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SUPREME COURT
STATE OF WASHINGTON

ASSOCIATED GENERAL CONTRACTORS OF WASHINGTON, ASSOCIATED BUILDERS AND CONTRACTORS OF WASH., INLAND PACIFIC CHAPTER OF ASSOCIATED BUILDERS AND CONTRACTORS, INC., and INLAND NORTHWEST AGC, Respondents, v. STATE OF WASHINGTON, JAY INSLEE, JOEL SACKS, and JIM CHRISTENSEN,, Petitioners.	CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department of Labor & Industries'

Petition for Discretionary Review and this Certificate of Service in the below described manner:

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Court Administrator/Clerk
Court of Appeals, Division II

Erin Lennon
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Washington State
Court of Appeals
Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ASSOCIATED GENERAL CONTRACTORS OF WASHINGTON, a Washington Non-Profit Corporation; ASSOCIATED BUILDERS AND CONTRACTORS OF WESTERN WASHINGTON, INC., a Washington Non-Profit Corporation; INLAND PACIFIC CHAPTER OF ASSOCIATE BUILDERS AND CONTRACTORS, INC., a Washington Non-Profit Corporation; and INLAND NORTHWEST AGC, INC., a Washington Non-Profit Corporation, Appellants, v. STATE OF WASHINGTON; JAY INSLEE, Governor; JOEL SACKS, Director of Washington State Dep't of Labor and Industries; and JIM CHRISTENSEN, Washington State Dep't of Labor and Industries Program Manager and Industrial Statistician, Prevailing Wage Program; in their official capacities, Respondents.	No. 54465-2-II PUBLISHED OPINION

SUTTON, J. — The legislature amended the prevailing wage law and enacted Substitute Senate Bill 5493, which altered the method for how the industrial statistician for the Department of Labor and Industries (L&I) sets the prevailing wages for employees on public works projects. Previously, the industrial statistician conducted wage surveys to determine the prevailing wage for each trade on a county-by-county basis to determine whether the majority or average wage rate

would prevail in that locality. Under Substitute Senate Bill 5493 (SSB 5493),[1] the industrial statistician shall adopt the prevailing wage rate for a geographic jurisdiction solely based on collective bargaining agreements (CBAs) for those trades and occupations that have CBAs, and if there is more than one CBA for that locality, the higher wage rate will prevail.

Associated General Contractors of Washington, Associated Builders and Contractors of Western Washington, Inc., Inland Pacific Chapter of Associate Builders and Contractors, Inc., and Inland Northwest AGC, Inc. (collectively AGC) sued the State of Washington, Washington State Governor Jay Inslee, Director of L&I Joel Sacks, and Industrial Statistician Jim Christensen (collectively the State) over the new law. The State filed a motion for summary judgment, which the superior court granted.

AGC appeals the superior court's order granting summary judgment to the State. AGC argues that SSB 5493, codified as RCW 39.12.015(3), [2] violates the non-delegation doctrine.[3,4]

[1] SUBSTITUTE SENATE BILL 5493, 65th Leg., Reg. Sess. (Wash. 2018).

[2] In 2019, the legislature again amended RCW 39.12.015. Laws of 2019, ch. 29, § 2. The parties refer to the numbering of the current statute. We also refer to the numbering of the current statute.

[3] AGC also argues that RCW 39.12.015(3)(a) violates due process and equal protection. RAP 10.3(a)(6) requires an argument "together with citations to legal authority and references to relevant parts of the record." AGC does not address the *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) factors or otherwise address the rules we use to analyze whether a statute violates procedural due process. And AGC presents no argument regarding the different classes for analyzing an equal protection claim or the standard of review for an equal protection claim. Accordingly, we decline to address these issues. *See* RAP 10.3(a)(6).

[4] AGC further argues that RCW 39.12.015(3)(a) violates article II, section 37 of the Washington State Constitution. Because we hold that RCW 39.12.015(3)(a) violates the non-delegation doctrine, we decline to decide this issue.

We agree and hold that the statute is unconstitutional because it violates the non-delegation doctrine. Accordingly, we reverse the superior court's order granting the State summary judgment and remand for further proceedings consistent with this opinion.

FACTS

I. BACKGROUND

A. AGC

AGC represents contractors and subcontractors who perform public works projects in Washington State. AGC provides support to those in the construction industry. AGC frequently negotiates CBAs with trade unions on behalf of contractors and subcontractors.

B. METHOD TO SET THE PREVAILING WAGE

Washington's "Prevailing Wage Act," requires that the industrial statistician of L&I determine the prevailing wage rate. RCW 39.12.015(1). Employers must pay the "prevailing wage" to all employees performing work on public works projects in Washington. RCW 39.12.010-.020. The "prevailing rate of wage" is defined as "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 "locality is the largest city in the county wherein the physical work is being performed." RCW 39.12.010(2). The "prevailing wage" is determined on a county-by-county basis and is based on the largest city in the county. RCW 39.12.010(1)-(2); RCW 39.12.026.

Twice a year, the industrial statistician of L&I sets the prevailing wages used to determine the wages for employees on public works projects. RCW 39.12.015(1); WAC 296-127-011(1).

The industrial statistician may not use wage data from one county to determine a prevailing wage in a different county. RCW 39.12.026(1).

Prior to SSB 5493, the industrial statistician determined the prevailing wages by collecting prevailing wage surveys and submittal of data per the governing statues and regulations. WAC 296-127-019. Every non-union and union contractor received a survey requesting information about wages paid, benefits, and hours worked by occupation. The industrial statistician would review the data and use it to make a determination of the majority or average rate. Oftentimes, private parties reported paying the CBA laborer wage rate for the majority of hours worked. If the majority of workers in a locality were paid the same wage rate, that rate would become the prevailing wage for the occupation in that particular county. WAC 296-127-019(6)(a). If no single wage rate was paid to a majority of workers for that occupation in that locality, the industrial statistician would determine an average rate, which would become the prevailing wage for that occupation in that county. WAC 296-127-019(6)(b).

II. AMENDMENTS TO RCW 39.12.015

In 2018, the Washington State Legislature amended RCW 39.12.015 by enacting SSB 5493. It added two clauses to the statute:

> (2) Notwithstanding RCW 39.12.010(1), the industrial statistician *shall establish* the prevailing rate of wage *by adopting* the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements. For trades and occupations with more than one collective bargaining agreement in the county, the higher rate will prevail.
>
> (3) For trades and occupations in which there are no collective bargaining agreements in the county, the industrial statistician *shall establish* the prevailing rate of wage *as defined in RCW 39.12.010* by conducting wage and hour surveys. In instances when there are no applicable collective bargaining agreements and

> conducting wage and hour surveys is not feasible, the industrial statistician may employ other appropriate methods to establish the prevailing rate of wage.

Laws of 2018, ch. 248, § 1 (emphasis added) (codified as RCW 39.12.015(3)(a)-(b)).[5]

The legislature made these amendments to save money and to make the process of establishing prevailing wages more efficient. S.B. REP. ON SUBSTITUTE S.B. 5493, at 2, 65th Leg., Reg. Sess. (Wash. 2018). "This is a matter of cost efficiencies. Setting a rate to the CBA rate does not mean it will be done by union workings. It imbeds the true cost of the work. . . . A [Department of Transportation] study says using CBAs is the most accurate way to determine wages." S.B. REP. ON SUBSTITUTE S.B. 5493, at 2.

SSB 5493 made no other amendments to the chapter. Therefore, RCW 39.12.010, which defined "prevailing wage," remained the same, as did RCW 39.12.026, which restricted the use of wage data to the county in which the data originated. The amendment altered the method by which the industrial statistician determines the prevailing wage rate. There is no requirement for the CBA to cover a minimum number of employers, employees, or hours worked. There is no requirement for the relevant, signatory employers to have any employees working in the occupation nor in the county whose prevailing wage is being determined so long as the CBA exists with the highest rate. A CBA can set the prevailing wage rate in counties even where the employer has no employees who work there or where the union has no members who work in that county.

[5] In its 2019 amendments, the legislature amended RCW 39.12.015(3)(a) to incorporate by reference newly enacted RCW 39.12.017. Laws of 2019, ch. 29, § 2. This does not affect our analysis of the 2018 amendments.

III. SUMMARY JUDGMENT

A. PRELIMINARY INJUNCTION

AGC filed this lawsuit against the State, arguing that the 2018 amendments to RCW 39.12.015 rendered the statute invalid and thus, unconstitutional, and sought a preliminary injunction. The superior court denied AGC's motion for a preliminary injunction. Both parties then filed cross motions for summary judgment.

B. EVIDENCE PRESENTED AT SUMMARY JUDGMENT

To support its motion, AGC filed the deposition testimony of the industrial statistician at the relevant time. The industrial statistician conceded that at the time SSB 5493 was enacted, CBAs not in existence would be used to set prevailing wage rates under the new law. He also acknowledged that the union rate will be the prevailing wage rate if there is a CBA. He later attempted to change his answer to adding the phrase "bona fide" CBA. Clerk's Papers (CP) at 2610. The industrial statistician also said he did not know whether the CBAs used to determine the prevailing wages were valid, but that he assumed they were. The industrial statistician admitted that he has used expired CBAs to set the prevailing wage rates.

The industrial statistician acknowledged that an unsigned CBA would not be valid, but the industrial statistician did not and does not verify whether a CBA is signed by a union or employer representative before using it to set prevailing wage rates. A representative for AGC admitted that CBAs are frequently downloaded from public websites without verifying whether they are valid.

Further, under SSB 5493, the industrial statistician may use pre-hire CBA agreements, which are agreements made before any employees are hired and before the union is even recognized by the National Labor Relations Board, to set prevailing wages. Because the industrial

statistician "shall establish" the prevailing wage "by adopting" the rate from CBAs, the industrial statistician may have to use a rate in a CBA from a pre-hire agreement when work has never been performed based on that agreement. RCW 39.12.015(3)(a). And some CBAs cover multiple geographic locations across different counties, so the industrial statistician may have to establish a prevailing wage based on work done in another county in which the prevailing wage is being set under a CBA. RCW 39.12.015.

Before the enactment of SSB 5493, the industrial statistician would consider CBAs in setting the prevailing wage rates, but would ultimately make the determinations. Now, the industrial statistician "shall establish" the prevailing wage "by adopting" the rate from CBAs, thus giving the industrial statistician no discretion. RCW 39.12.015(3)(a). Additionally unlike what the industrial statistician did before to determine the prevailing wage rate, the industrial statistician no longer conducts wage surveys if there is a CBA covering that occupation in that county.

Under SSB 5493, the highest wage rate prevails for an occupation in any given county, even if that particular wage rate only covers 100 feet of a total county. For example, a local agreement made by Seattle operators reaches part of Grant County. Prior to SSB 5493, the Seattle rates never prevailed in Grant County because the vast majority of the work was covered under a different CBA with much lower rates. Now, Seattle rates will prevail in Grant County as the prevailing wage rate because the Seattle rates are higher. Similarly, if a CBA only covers one percent of the hours worked in a given county but has the highest wage rate for the occupation in that county, the industrial statistician will have to adopt that rate.

IV. IMPACT OF AMENDMENTS TO RCW 39.12.015

In 2018, after SSB 5493 was signed into law and codified as RCW 39.12.015, AGC began negotiations with an operators union for a master labor agreement, which would cover almost all operating engineers working in 16 counties in the state. After two unsuccessful ratification votes, the International Union of Operating Engineers, Local 302, called a strike against the employers. After one week of the strike, Local 302 approached small employers and attempted to negotiate a side agreement. Some of these employers are also card-carrying members of Local 302. Shortly thereafter, some of these employers signed agreements to end the strike in exchange for paying a higher wage rate than what AGC had offered. A few weeks later, AGC ratified a new agreement with Local 302 that included lower wage rates than the side agreements. Because the wage rates in the side agreements were higher, those wage rates became the prevailing wage in 16 counties even though those wage rates represented a minority of the hours worked. The industrial statistician never confirmed whether there was a signatory employer doing work in each of the 16 counties or whether the small employers actually employed any operators in any of those counties.

Prior to ruling, the superior court requested a 50-state survey of case law about prevailing wage laws and similar constitutional challenges, which survey identified 15 relevant cases. After hearing arguments, the superior court entered summary judgment for the State and denied summary judgment to AGC.

AGC appeals.

ANALYSIS

AGC argues that the amendments to RCW 39.12.015 violate the non-delegation doctrine. We agree.

I. LEGAL PRINCIPLES

A. SUMMARY JUDGMENT

We review summary judgment decisions de novo. *Strauss v. Premera Blue Cross*, 194 Wn.2d 296, 300, 449 P.3d 640 (2019). Summary judgment is appropriate where the pleadings, admissions on file, and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. CR 56(c). We consider the evidence and all reasonable inferences in favor of the nonmoving party. *Strauss*, 194 Wn.2d at 300.

B. CONSTITUTIONAL INVALIDITY

We presume that a statute is constitutional. *Island County v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998). "A party challenging the statute's unconstitutionality bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000). "This standard is met if argument and research show that there is no reasonable doubt that the statute violates the constitution." *Amalgamated*, 142 Wn.2d at 205.

II. NON-DELEGATION DOCTRINE

A. LEGAL PRINCIPLES

"The Washington Constitution vests legislative authority in the state legislature." *State v. Batson*, 196 Wn.2d 670, 674, 478 P.3d 75 (2020); WASH. CONST. art. II, § 1. "'[I]t is unconstitutional for the [l]egislature to abdicate or transfer its legislative function to others.'" *Batson*, 196 Wn.2d at 674 (quoting *Brower v. State*, 137 Wn.2d 44, 54, 969 P.2d 42 (1998)). "The Legislature may . . . delegate to administrative officers or boards the power to determine some fact

or state of things upon which the application of the law is made to depend provided the law enunciates standards by which those officers or boards will be guided." *Diversified Inv. P'ship v. Dep't of Soc. & Health Servs.*, 113 Wn.2d 19, 25, 775 P.2d 947 (1989).

Delegation by the legislature is proper if two elements are met: "[f]irst, the legislature must provide standards or guidelines which indicate in general terms what is to be done and the administrative body which is to do it." *Barry & Barry, Inc. v. Dep't of Motor Vehicles*, 81 Wn.2d 155, 163, 500 P.2d 540 (1972). "Second, adequate procedural safeguards must be provided, in regard to the procedure for promulgation of the rules and for testing the constitutionality of the rules after promulgation." *Barry & Barry*, 81 Wn.2d at 164.

B. ANALYSIS

1. Standards or Guidelines

AGC argues that SSB 5493 violates the non-delegation doctrine because it mandates the use of schedule wage rate lists in CBAs after its enactment to establish prevailing wages. AGC supports this argument by pointing out the industrial statistician stated that under SSB 5493, he will be adopting future wage rates from CBAs created by private parties that did not exist at the time SSB 5493 was enacted. We agree that SSB 5493 is an unconstitutional delegation of legislative authority based on future facts listed in CBAs to determine the prevailing wage rate.

The legislature may grant regulatory authority to private parties only if proposed standard, guidelines, and procedural safeguards exist. *United Chiropractors of Wash., Inc. v. State*, 90 Wn.2d 1, 4-8, 578 P.2d 38 (1978). In *State ex rel. Kirschner v. Urquhart*, 50 Wn.2d 131, 132, 135-36, 310 P.2d 261 (1957), our Supreme Court held that a statute that set standards for school accreditation to the Association of American Medical Colleges three years before the list of

accredited schools was made was unconstitutional. The court held that "[i]t would have been proper for the legislature to have enacted that accredited schools were only those on a list then in being, whether prescribed by the American Medical Association, or some other learned society; but it was not within permissible constitutional limits to define accredited institutions as those on a list not then in existence, irrespective of the standing of the society which might compile such future list." *Kirschner*, 50 Wn.2d at 135. "The vice in the statute is not that it adopts a standard of accreditation fixed by recognized medical societies, but that there was no such list in existence at the time of the enactment in question." *Kirschner*, 50 Wn.2d at 136.

Courts in other states have held that the legislature may not use CBAs to set prevailing wages and statutes doing so are unconstitutional. *See Wagner v. City of Milwaukee*, 177 Wis. 410, 188 N.W. 487 (1922); *City of Cleveland v. Division 268 of Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emp. of Am.*, 15 Ohio Supp. 76 (1945); *Hunter v. City of Bozeman*, 216 Mont. 251, 700 P.2d 184 (1985).

Here, the industrial statistician acknowledged that under SSB 5493, prevailing CBAs not in existence at the time the legislature passed the bill are relied on. Because the CBAs that the industrial statistician must rely on in setting a prevailing wage did not exist at the time the legislature passed SSB 5493, the legislature failed to provide appropriate standards for the setting of the prevailing wage. Therefore, SSB 5493 violates the first element of the test for proper delegation of legislative power.

2. Procedural Safeguards

AGC also argues that SSB 5493 contains no procedural safeguards against the industrial statistician using data from downloaded CBAs, unsigned or expired CBAs, and pre-hire CBAs to

set prevailing wages, and the State cannot prevent or even detect collusion. We agree with AGC that SSB 5493 lacks procedural safeguards.

In states that use CBAs to determine prevailing wage rates, those states have procedural safeguards that are absent here. *See* N.J. STAT. § 34:11-56.26(9) (2019); MCKINNEY'S LABOR LAW § 220(5)(a), NY Labor § 220 (2020); Haw. Rev. Stat. § 104-34 (1995); *Indpen. Roofing Contractors v. Dep't of Indus. Relations*, 23 Cal. App. 4th 345, 355 (Cal. App. 1994). The State's 50-state survey filed for summary judgment shows that 26 have prevailing wage statutes. Only three of those states—Massachusetts, Ohio, and Hawaii—have laws similar to SSB 5493. Other states have certain procedural protections for which CBAs may be considered in setting the prevailing wage rates.[6] *See* N.J. STAT. § 34:11-56.26(9) (2019); MCKINNEY'S LABOR LAW § 220(5)(a), NY Labor § 220 (2020); *Indpen. Roofing Contractors*, 23 Cal. App. 4th at 355 (Cal. App. 1994).

The amendments of SSB 5493 require that the industrial statistician rely on CBAs when "adopting the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction." Laws of 2018, ch. 248, § 1. Further, the statute does not contain any procedural requirements that specify requirements for a CBA to be valid or applicable to a particular locality or geographical area.

[6] These protections include limiting consideration of CBAs or doing so in a permissive, rather than mandatory, manner; allowing consideration of CBAs only if they cover a certain percentage of workers in each locality; or allowing consideration of CBAs only if they are actually "prevailing."

The State argues that the appeal process provides adequate procedural safeguards; however, the appeal process is not meaningful here. WAC 296-127-060(3) provides,

> Any party in interest who is seeking a modification or other change in a wage determination under RCW 39.12.015, and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

However, because SSB 5493 does not contain any procedural protections, there are no specified grounds under which the appeals process would facilitate a change in the prevailing wage rate.

Because SSB 5493 does not contain procedural protections to protect against misuse of CBAs or abuse by private parties, it fails to satisfy the second element of the test for proper delegation of legislative power.

C. CONCLUSION

RCW 39.12.015 lacks appropriate "standards or guidelines," and it lacks "adequate procedural safeguards." *Barry & Barry*, 81 Wn.2d at 163-64. Therefore, it does not meet the test set forth in *Barry* for the proper delegation of legislative power. *See Barry & Barry*, 81 Wn.2d at 163-64. For these reasons, we agree with AGC and hold that RCW 39.12.015(3) violates the non-delegation doctrine.

Accordingly, we reverse the superior court's order granting summary judgment to the State and remand for further proceedings consistent with this opinion.

SUTTON, J.

We concur:

LEE, C.J.

WORSWICK, J.

WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE

September 29, 2021 - 10:37 AM

Filing Petition for Review

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