

GENERAL BOOKBINDING CO.
 (i) 77 333YL 11 002 9 BRIEFS 234
 QUALITY CONTROL MARK

INDEX Volume I

	<i>Page</i>
Docket entries by the Clerk of the District Court in <i>National League of Cities, et al.</i> ,	
<i>v. Brennan</i> , No. 74-1812	1
Complaint of National League of Cities, <i>et al.</i>	6
Amended paragraph 39 of the Complaint of National League of Cities, <i>et al.</i>	41
Complaint in Intervention of the State of California	43
Transcript of Deposition of Allen E. Pritchard, Jr., Dec. 23, 1974	86
Transcript of Deposition of Charles A. Byrley, Dec. 24, 1974	246

Volume II

Index to Exhibits To Depositions of Allen E. Pritchard, Jr. and Charles A. Byrley	<i>E(i)</i>
Defendant's Exhibits to Depositions of Allen E. Pritchard, Jr., and Charles A. Byrley, Nos. 1-36, 38-48	311
Plaintiffs' Exhibit to Depositions of Allen E. Pritchard, Jr., and Charles A. Byrley, No. 1	588
Joint Exhibit to Depositions of Allen E. Pritchard, Jr., and Charles A. Byrley, No. 4(c) (39 Fed. Reg. 44142)	591
Affidavit of Jack I. Karlin, Dec. 27, 1974 (in support of Defendant's Motion to Dismiss)	621
Letter, William F. Danielson to Charles S. Rhyne, Dec. 24, 1974	625
Supplementary Affidavit of Jack I. Karlin, Dec. 30, 1974	639
Opinion and Order of District Court below, dismissing Complaint and denying Preliminary Injunction, Dec. 31, 1974	643

**Docket Entries by the Clerk
of the District Court**

**DOCKET ENTRIES IN 74-1812
NATIONAL LEAGUE OF CITIES, et al.,**

v.

**HON. PETER J. BRENNAN
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

[1974]

Dec. 12, Complaint, appearance filed D.A. & A.G. ser 12-13.

Dec. 12, Summons, Copies (3) and Copies (3) of Complaint issued Deft ser: 12/13/74.

Dec. 12, APPLICATION of pltfs. for Preliminary Injunction; P & A's.

Dec. 12, APPLICATION of pltfs. for convening of Three-Judge Court.

Dec. 12, NOTICE of application of Three-Judge Court, Gasch, J.

Dec. 13, DESIGNATION of the Honorable Barrington D. Parker, United States District Judge and the Honorable Harold Leventhal, United States Circuit Judge, to serve with the Honorable Oliver Gasch, United States District Judge, as members of a three-judge court to hear and determine this action. (N) Bazelon, C.J., U.S.C.A.

Dec. 18, MOTION of deft. for order shortening the time for service of notice of deposition or in the alternative enlarging time to respond to motion for preliminary injunction and postponing hearing on motion for preliminary injunction; P & A's; c/s 12/18/74.

Dec. 18, NOTICE by deft. to take deposition of Allen E. Pritchard, Jr.; c/s 12/18/74.

Dec. 18, NOTICE by deft. to take deposition of Charles A. Byrley; c/s 12/18/74.

Dec. 19, STIPULATION extending time for deft. to

respond to motion of pltfs. for preliminary injunction until Dec. 26, 1974. (signed 12/18/74). (N) Gasch, J.

Dec. 19, ORDER shortening time of defts. for serving notice of taking deposition of depositions set for 12-23-74 & 12-24-74. (See order for details). (N) Gasch, J.

Dec. 26, REQUEST by deft's counsel to the Clerk of the Court to file transcripts of the depositions of Allen E. Pritchard, Jr. and Charles A. Byrley with exhibits; c/m 12-26-74. (app. of Nathan Dodell, Ass't U.S. Atty.)

Dec. 26, DEPOSITION of Allen Pritchard, Jr.

Dec. 26, DEPOSITION of Charles A. Byrley.

Dec. 26, EXHIBITS 1-49 to deft's deposition; exhibit #1 to pltf's deposition; and joint deposition exhibits 4(a), (b), (c) and 6(a), (b), (c).

Dec. 26, MOTION of State of California, Evelle J. Younger, Ronald Reagan, Verne Orr, James G. Stearns, Frank J. Walton, Norman B. Livermore, and James E. Jenkins to intervene as party pltf.; P&A; affidavit c/s 12-26-74. (app. of Talmadge R. Jones, Deputy Attorney General) \$5.00 paid & credited to United States.

Dec. 26, MOTION of State of California for order shortening time for hearing on motion to intervene; affidavit of Talmadge R. Jones; c/s 12-26-74. (fiat) (N) Pratt, J.

Dec. 26, ORDER shortening time for applicants intervenors for leave to move Court for an order granting applicant leave to intervene as party pltf on 2 days notice being given to pltf & deft. (N) Pratt, J.

Dec. 26, ORDER granting motion of State of California to intervene and permitting same to fully participate in pltfs application for Preliminary Injunction set for hearing on three Judge Court set for December 30, 1974. (N) Pratt, J.

Dec. 26, INTERVENOR complaint of The State of California, Evelle J. Younger, Ronald Reagan, Verne Orr, James G. Stearns, Frank J. Walton, Norman Livermore, Jr. and James E. Jenkins vs. Peter J. Brennan; c/s 12-26-74.

Dec. 27, MOTION of deft. to dismiss and opposition to pltffs' motion for preliminary injunction; Affidavit of Jack I. Karlin; Memorandum; c/s 12-27-74.

Dec. 27, APPLICATION of pltf. State of California, et al for preliminary injunction.

Dec. 27, REQUEST by Nathan Dodell, AUSA re: filing of attached letter dated Dec. 26, 1974, from Arnold T. Aikens, AUSA, to Charles S. Rhyne, Esq; attachment; c/m 12/27/74.

Dec. 30, MOTION of The State of Indiana, et al to intervene as parties pltf.; Notice; c/s 12/30/74. \$5.00 paid & credited to U.S. by Rhyne.

Dec. 30, REPLY by pltfs. to motion by deft. to dismiss and opposition by deft. to motion by pltfs. for preliminary injunction; c/s 12/30/74.

Dec. 30, SUPPLEMENTARY affidavit of Jack I. Karlin; c/s & c/m.

Dec. 30, ADDITIONAL deposition exhibit by deft.

Dec. 30, AMENDED paragraph 39 of complaint by pltfs.; c/s 12/30/74.

Dec. 30, MOTION of pltf. for preliminary injunction and motion of deft. to dismiss heard and taken under advisement; motion of State of Indiana, et al to intervene granted. (Reporter: Dennis Bossard) Gasch, J., Leventhal, J., Parker, J.

Dec. 30, APPEARANCE of Talmadge R. Jones, Dep. Attorney General, State of California as counsel for pltfs.-intervenors, State of California, et al.

Dec. 30, APPEARANCE of Donald P. Bogard, Asst. Attorney General, State of Indiana, et al as counsel for pltfs.-intervenors, State of Indiana, et al.

Dec. 30, ORDER granting motion of the State of Indiana, State of Iowa, State of Maryland, State of Massachusetts, State of Mississippi, State of Missouri, State of Montana, State of Nebraska, State of Nevada, State of New Hampshire, State of Oklahoma, State of Oregon, State of South Carolina, State of South Dakota, State of Texas, State of Utah and the State of Washington to intervene as party-pltfs.; complaint filed Dec. 12, 1974, shall stand as complaint of record for intervenor-states. (N) Gasch, J.

Dec. 30, MOTION of the State of Indiana, et al for order shortening time for hearing on motion to intervene; affidavit of Charles S. Rhyne.

Dec. 30, ORDER shortening time for State of Indiana, et al, applicants-intervenors to intervene as parties pltf. (N) Gasch, J.

Dec. 30, APPLICATION of pltf.-intervenors, State of Indiana, et al, for preliminary injunction.

Dec. 31, ORDER denying motion of plaintiffs for preliminary injunction and granting motion of deft. to dismiss complaint. (N) Gasch, J., Leventhal, J., Parker, J.

Dec. 31, NOTICE of appeal by plaintiffs and intervenor-pltfs. to Supreme Court of the United States from order to Dec. 31, 1974. \$5.00 paid and credited to U.S. by Rhyne.

1975

Jan. 6, NOTICE of appeal by pltf.-intervenor, The State of California, et al to Supreme Court of the United States from order of Dec. 31, 1974; c/m 1/3/75.

Jan. 8, CERTIFIED copy order Supreme Court of the United States Staying action pending further order of the Court. (signed 12/31/74) Burger, Chief Justice.

Jan. 13, DEPOSIT by Talmadge R. Jones, Deputy Attorney General, State of Calif. the sum of \$5.00 for notice of appeal filed 1/6/75.

Jan. 14, COPY of letter from Supreme Court of the United States dated 1/13/75 continuing stay granted on 12/31/74 on condition that the appellant file jurisdictional statement on or before 1/17/75, and appellee file reply on or before 12:00 P.M., 1/23/75.

Jan. 31, CERTIFIED copies of orders (2) from Supreme Court of the United States noting probable jurisdiction.

Feb. 6, LETTER from Clerk, Supreme Court of the United States requesting certification and transmittal of entire record to Supreme Court.

**Complaint of National League
of Cities *et al.***

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

The NATIONAL LEAGUE OF CITIES,)
an Illinois Corporation, on)
behalf of its member cities,)
1620 Eye Street, N. W.,)
Washington, D. C. 20006,)
)
The NATIONAL GOVERNORS' CON-)
FERENCE,)
a District of Columbia Corporation,)
on behalf of its members,)
1150 Seventeenth Street, N. W.,)
Washington, D. C. 20036,)
)
The State of ARIZONA)
N. Warner Lee, Attorney General)
State Capitol)
Phoenix, Arizona 85007,)
)
METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON)
COUNTY, Tennessee) Civil Action
Milton H. Sitton, Director of Law) No. 74-1812
204 Courthouse)
Nashville, Tennessee 37201,)
)
The City of SALT LAKE CITY, Utah)
Roger F. Cutler, City Attorney)
101 City and County Building)
Salt Lake City, Utah 84114,)

)
The City of LOMPOC, California)
Alan Davidson, City Attorney)
119 West Walnut Avenue)
Lompoc, California 93436,)
)
The City of CAPE GIRARDEAU, Missouri)
Thomas Utterback, City Attorney)
Office of the City Attorney)
Cape Girardeau, Missouri 63701,)
)
Plaintiffs,)
)
v.)
)
The Honorable PETER J. BRENNAN)
Secretary of Labor)
of the United States,)
)
Defendant.)
)

**COMPLAINT FOR DECLARATORY JUDGMENT
THAT THE 1974 AMENDMENTS TO THE FAIR
LABOR STANDARDS ACT UNCONSTITUTIONALLY
ATTEMPT TO REGULATE ESSENTIAL STATE AND
LOCAL GOVERNMENT FUNCTIONS, AND FOR
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF.**

1. This action arises under the Fair Labor Standards Act (hereinafter sometimes “Act”), 52 Stat. 1060, as

amended, 29 U.S.C. § 201 *et seq.* This Court has jurisdiction, as this is an action relating to commerce, under 28 U.S.C. § 1337.

2. This action further arises under the Constitution of the United States and the Fifth, Tenth and Eleventh Amendments to the Constitution of the United States. The matter in controversy, exclusive of interests and costs, exceeding the sum of ten thousand dollars, this Court has jurisdiction under 28 U.S.C. § 1331.

3. Public Law 93-259, 88 Stat. 55 amending 29 U.S.C. § 201 *et seq.*, (hereinafter sometimes “1974 Amendments”) became effective on May 1, 1974. Provisions of the 1974 Amendments to the Act relating to police and fire protection personnel become effective on January 1, 1975. Plaintiffs challenge specifically the constitutionality of the following provisions of the Act as amended; in § 3(d), the definition of “employer” is amended to include a “Public Agency”; in § 3(e) (2), the definition of “employee” is amended to exclude in the case where the employer is a State public agency, only persons who are (1) not subject to a State’s civil service laws and (2) publicly elected, or member of the personnel staff, or policy making appointee, or immediate legal advisor of one publicly elected; in § 3(h), the definition of “industry” is amended to include “other activity” in addition to the original trade business or industry language; in § 3(r), the definition of “enterprise” is amended to include within the activities deemed to be performed for a business purpose, those activities performed by any person in connection with the activities of a public agency; in § 3(s), the definition of “Enterprise engaged in commerce or in the production of goods for commerce” is amended to include an activity

of a public agency and to state that, “The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce”; in § 3(x), “public agency” is defined to include: “the Government of a State or political subdivision thereof; any agency of . . . a State or political subdivision of a State; or any interstate governmental agency”; in § 6(b), specific rates of compensation are provided for newly covered employees; in § 7(k), a limited and diminishing exemption for police and fire protection employees is created, which exemption is also stated in § 13(b) (20); both § 7(k) and § 13(b) (20) become effective January 1, 1975; in § 13(b) (7) the former overtime exemption for local transit companies, now including publicly owned transit companies, doing an annual business of less than \$250,000 is to be phased out by May 1, 1976; in § 16(b), State employees are granted a cause of action against a public agency in “any Federal or State court of competent jurisdiction”; in § 16(c), the Secretary of Labor is authorized to bring an action for both liquidated damages and back pay on behalf of an employee subject to certain conditions.

4. Section 15 of the Act lists the prohibited acts as violations of § 6, 7, 11, 12 or any regulations issued by the Secretary pursuant to his rulemaking powers under § 14.

5. Plaintiff National League of Cities has as members over 15,000 Cities who have over 2,000,000 employees. These Cities are political subdivisions of the 50 States. The National League of Cities also has as members State

municipal leagues, which leagues also have as members Cities who are political subdivisions of States. The National League of Cities is owned and operated by its member Cities and State municipal leagues, with said State leagues in turn being owned and operated by the leagues' member Cities in each State. The member Cities and State leagues govern the National League of Cities through an elected Board of Directors. The National League of Cities brings this action on its behalf and on behalf of each of its member Cities. Article I of its bylaws states its function as *inter alia*, "the adoption of a national municipal policy and its implementation as the chief vehicle for the development of effective municipal government."

6. Plaintiff National Governors' Conference is a non-profit organization incorporated on April 2, 1974, under the laws of the District of Columbia. The Conference was originally organized in 1908. Its membership is composed of the Governors of the several States of the United States, the Virgin Islands, Guam, American Samoa and the Commonwealth of Puerto Rico. As listed in Art. II of its Articles of Organization, the Conference is established *inter alia*: "to vigorously represent the interests of the states in the Federal system". The Conference brings this action on its own behalf and on behalf of its members.

7. Plaintiff Arizona is one of the fifty sovereign States of the United States. Acting in its sovereign governmental capacity, it performs essential functions which are necessary and indispensable to its existence as a sovereign State and which are required to be performed under its own Constitution and laws and under the Constitution and laws of the United States. Its unique

needs and the needs of its residents for essential governmental services are distinct from those of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which in many respects differ from those made by the other States of the United States. It is not in competition with any of the other States or any private enterprise when making these decisions or performing these essential governmental functions. Arizona's decisions are made through a republican form of Government, by the votes of its citizens in elections conducted under its Constitution. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its own borders into any other State.

8. Plaintiff Metropolitan Nashville (pop. 447,877), a member of Plaintiff National League of Cities, is a metropolitan Government consisting of the City of Nashville and Davidson County established under the laws of the State of Tennessee. As a political subdivision of Tennessee, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of Tennessee and which are required to be performed under its charter and ordinances, the Constitution and laws of Tennessee, and the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services vary from the needs of other political subdivisions within Tennessee and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which

may vary from those of other political subdivisions within Tennessee and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without Tennessee or any private enterprise when making these decisions or performing these essential functions. Instead, it acts through the republican form of its State Government in conjunction with its own municipal Government, through officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the Tennessee borders into any other State.

9. Plaintiff Salt Lake City (pop. 175,885), a member of Plaintiff National League of Cities, is a City established under the laws of the State of Utah. As a political subdivision of Utah, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of Utah and which are required to be performed under its own laws, the Constitution and laws of Utah, and the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services vary from the needs of other political subdivisions within Utah and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which vary from those of other political subdivisions within Utah and which in many respects differ from those made by political subdivisions of the other United States. It is not

in competition with any other political subdivisions within or without Utah or any private enterprise when making these decisions or performing these essential functions. Instead, its decisions are made through the republican form of its State Government in conjunction with its own municipal Government, by those elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the Utah borders into any other State.

10. Plaintiff Lompoc (pop. 25,600), a member of Plaintiff National League of Cities through membership in the League of California Cities, is a City established under the laws of the State of California. As a political subdivision of California, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of California and which are required to be performed under its own laws the Constitution and laws of California, and the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services vary from those of other political subdivisions within California and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which vary from those of other political subdivisions within California and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without California or any private enterprise when

making these decisions or performing these essential functions. Instead, its decisions are made through the republican form of its State Government in conjunction with its own municipal Government officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the California borders into any other State.

11. Plaintiff Cape Girardeau (pop. 31,282), a member of Plaintiff National League of Cities, is a City established under the laws of the State of Missouri. As a political subdivision of Missouri, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of Missouri and which are required to be performed under its own laws, the Constitution and laws of Missouri, and the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services vary from the needs of other political subdivisions within Missouri and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which vary from those of other political subdivisions within Missouri and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without Missouri or any private enterprise when making these decisions or performing these essential functions. Instead, it is governed through the republican form of its State Government in conjunction with its own municipal Government by the

officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the Missouri borders into any other State.

12. Defendant, Peter J. Brennan, is the Secretary of Labor of the United States, who is charged by law with the implementation and enforcement of the Act.

13. The City of Cape Girardeau, Missouri, has officially stated in a letter to Defendant's Regional Solicitor of Labor, dated October 15, 1974, that it will not comply with the 1974 Amendments, because the Act is unconstitutional. It will not therefore make itself available for Federal audits or inspections of any kind by Defendant.

14. On November 20, 1974, Defendant herein notified Plaintiff herein, the City of Cape Girardeau, of a civil action to be filed imminently against Cape Girardeau in the United States District Court for the Eastern District of Missouri, Southeastern Division, alleging violation by Cape Girardeau of §§ 6(b) and 15(a) (2) of the Act and demanding an injunction forcing Cape Girardeau to pay the overtime compensation required under the Act.

15. The City of Lompoc, California, after exchange of correspondence with the agent of Defendant herein, the Chief of the Division of Minimum Wage and Hours Standards of the Department of Labor, and a determination by Defendant and his agent that 29 C.F.R. § 778 prohibiting the use of compensatory time off beyond the work period applied to State and local Government, has indicated by its City Attorney the decision to continue the practice of awarding compensatory time off under existing local law and

procedures on the bases that, (1) the Act itself does not prohibit the use of compensatory time off and, (2) the Act, being unconstitutional, cannot invalidate said practice.

16. Plaintiffs States and Cities provide the following essential Government services, among others, each of which will be affected in cost or quality, or both, by the 1974 Amendments to the Act: police protection services; fire protection services; highway repair and snow removal services; trash collection, sewage treatment and other sanitation and health services; park maintenance and other recreational services; libraries; state and local administrative and regulatory agencies which enforce laws and regulations preserving the public health, safety and welfare, including inspection of buildings, licensing of occupations and businesses, administration of public assistance in emergency and poverty situations, preservation of environmental quality, administration of election, legislative, executive and judicial processes, administration of regulations preserving both public order and free expression of views and information, protection of the public against fraud and sharp practice; non-elected, non-appointed personnel such as tax collectors involved in non-competitive governmental functions which are done or can only be done exclusively by Government. In providing these essential Government services, Plaintiffs extensively use voluntary boards and commissions, whose members are not compensated, or who are paid nominal compensation. The Act makes use of these voluntary boards, commissions and workers financially impossible.

17. These said essential Government services inhere in the existence of States and their political subdivisions.

Without these essential Government services a State could not exist for the protection and benefit of the people within the territory of the State.

18. States and Cities, as political subdivisions of a State, cannot fail or refuse to provide these essential Government services consistently with provisions of State Constitutions, laws, charters, ordinance provisions and provisions of the United States Constitution.

19. Plaintiffs States and Cities have exercised their sovereign judgment in establishing personnel policies which will insure the most effective provision of essential Government services at the least cost to the taxpayers of Plaintiffs, consistently with fairness in compensating and regulating the working hours and conditions of the employees of Plaintiffs who provide essential Government services.

20. Under the Tenth Amendment of the Constitution of the United States one of the most vital sovereign powers reserved to the States is the power to employ personnel to carry out essential governmental functions and to completely control by rules, regulations and orders the performance of said employees in carrying out said essential governmental functions.

21. States and Cities have developed law on personnel, including civil service laws, designed to take care of the unique governmental situation of each State and each City as to industry, weather, and similar considerations. The Act, and its Regulations, purport to nullify such State and local legislation and impose uniform nationwide Federal rules and Regulations for all State and City personnel. For this imposition there is no rational basis.

22. Plaintiff State of Arizona operates under Arizona constitutional and law provisions providing essential Government services, and in performing other functions, through its State and City employees. These law provisions include: a minimum wage for minors which applies to employment in "any industry, trade, business or branch thereof", Ariz. Rev. Stat. §§ 23-311-29 (1974 Supp.); a requirement that each City or town of more than seven thousand inhabitants, having a salaried police and fire department, pay a minimum wage to every foot patrolman and horseman after the third year of employment, Ariz. Rev. Stat. § 9-902 (1965); a constitutional provision defining a lawful day's work in all employment by, or on behalf of, the State or any of its political subdivisions, Ariz. Const. Art. XVIII, § 1; *State v. Boykin*, 109 Ariz. 289, 508 P. 2d 1151 (1973); legislation providing overtime compensation for work by public employees performing manual or mechanical labor, Ariz. Rev. Stat. § 23-391 (1974 Supp.).

23. Plaintiff City of Salt Lake operates under Utah State constitutional and law provisions in providing essential governmental services, and in performing through its employees. These law provisions include: a minimum wage provision for women and minors, an industrial commission to oversee wages and working conditions and to set maximum hours, a wage board made up of industry and employee representatives to determine the minimum wage, Utah Code, § 34-22-5 *et seq.* (Supp. 1973); a constitutional provision defining a day's work on all works or undertakings carried on or aided by the State, County or Municipal Governments, Utah Const. Art. XVI, § 6; a requirement that State and local Government employees working on the

construction of public works excluding maintenance work, must be paid the general prevailing wage rate for work of a similar character in the locality, Utah Code, § 34-30-2 (Supp. 1973), and a provision for overtime compensation, Utah Code, § 34-30-8 (Supp. 1973).

24. Plaintiff, Metropolitan Government of Nashville and Davidson County operates under the Tennessee State laws in providing essential governmental services, and in performing all other functions, through its employees. These laws include a provision making it unlawful for any "person, firm, corporation or association of any kind" to deny employment because of affiliation with a labor organization, Tenn. Code § 50-208 (1956).

25. Plaintiff City of Cape Girardeau operates under Missouri State laws in providing essential governmental services and in performing other functions through its employees. These laws include a provision regulating child labor, Vern. Ann. Mo. Stat., § 294.011 *et seq.* (1971); regulation of wages on public works, requiring that those employed in the construction of public works, including highways, must be paid the prevailing hourly rate for work of a similar character in the locality in which the work is performed, Vern. Ann. Mo. Stat., § 290.210 *et seq.* (1971), as amended (Supp. 1974); laws regulating police and firemen hours, Vern. Ann. Mo. Stat., §§ 85.290, 85.100 (1971); a provision allowing with certain exceptions State and local Government employees to join labor organizations and bargain collectively, Vern. Ann. Mo. Stat., § 105.500 *et seq.* (Supp. 1974); a provision that, with respect to firefighters, a firemen's arbitration board will be appointed, at the request of either the employees or the governing body, to resolve disputes over wages, hours, and conditions of employment, Vern. Ann. Mo. Stat., § 290.350 *et seq.* (1971).

26. Plaintiff City of Lompoc operates under California State laws in providing essential governmental services, and in performing other functions through its employees. These law provisions include a minimum wage law applicable to persons "employed in any occupation, trade or industry" establishing an industrial commission to determine whether wages in any occupation are inadequate to supply the cost of living and commission representatives to determine the appropriate minimum wage, Cal. Labor Code, §§ 1171-1199 (Deering Supp. 1974); provisions defining the workweek of the State employee, and authorizing the State personnel board to provide overtime compensation for State employees, Cal. Govt. Code, §§ 18020, 18021.5 (Deering 1973); specific statutes granting State and local firefighters the right to join labor organizations and bargain collectively, Cal. Labor Code, §§ 1960-1962 (Deering 1964); statutes which grant State employees and employees of public agencies the right to join labor organizations and bargain collectively, requiring that the State and other public employers confer with employee representatives, and provide for mediation of unresolved disputes through either local procedures or through the Department of Industrial Relations, Cal. Govt. Code, §§ 3500-10, 3525-36 (Deering 1973).

27. In programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of compensatory time off, which under the 1974 Amendments to the Act, Plaintiffs would no longer be able to maintain. Compensatory time off is the payment of overtime in the form of paid time off at some future date convenient to both employer and employee. It

allows the employee to have more freedom to choose his time off and more time off. It avoids demeaning and wasteful "make-work" projects during slow periods. It allows the employer to most efficiently deal with many areas of Government which involve "peak" employment problems. It has been enthusiastically supported by employees who welcome the flexible approach it represents, and its invalidation under the 1974 Amendments has created severe morale problems.

28. In programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of paid volunteers, which under the 1974 Amendments to the Act, Plaintiffs would no longer be able to maintain. Paid volunteers are compensated on a per-job or monthly fee basis constituting a nominal stipend for the work done. Many States and Cities pay paid volunteers a wage sufficient only to make these employees eligible for workmen's compensation under State laws. This practice is most prevalent in police and fire protection services. Under Defendant's proposed Regulations for police and fire personnel, § 553.10, intended to be effective January 1, 1975, any stipend beyond reimbursement of out-of-pocket expenses, and other limited exceptions destroys the volunteer status and subjects the policeman or fireman to the Act. This will seriously curtail service now provided by the numerous small, independent volunteer fire departments across the country. The practice of paid volunteers is similarly employed, and will result in similar added expense or diminution of service in areas such as poll workers in elections, and parks, recreation and government projects for involvement of the young, elderly and disadvantaged in the community.

29. In programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of joint employment, which under the 1974 Amendments to the Act, Plaintiffs would no longer be able to maintain. Joint employment is the employment of personnel in more than one capacity within the State and City Government, whereby many full-time workers augment their income by part-time jobs in other areas of Government employment. Under Defendant's proposed Regulations for police and fire personnel, § 553.8, intended to be effective January 1, 1975, if the part-time employment involves activities other than police and fire protection, it is possible to lose the exemption provided in § 7(k) of the Act, subjecting police and firefighters to the 40 hour week required by § 7(a). In areas other than police and fire protection, all hours worked for the State or political subdivision, regardless of which agency or department, must be counted towards the hours worked for that week. The requirement of the Act to pay overtime rates for part-time jointly employed personnel will force the end of this practice, which has been beneficial to employer and employee alike.

30. In programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of mutual aid police and fire agreements, which under the 1974 Amendments to the Act, Plaintiffs will no longer be able to maintain. Mutual aid agreements allow the pooling of police or fire protection during emergencies or disasters which by their immediacy and gravity are too large for a single agency to combat. The participating agencies generally do not charge for the aid

rendered during such emergencies and disasters. However, under Defendant's proposed Regulations for police and fire personnel, § 553.9, intended to be effective January 1, 1975, all hours worked in aid of other jurisdictions must be counted towards hours worked in the home jurisdiction. This requirement forces the choice between abandoning these agreements, or massive unexpected overtime expenses whenever an emergency situation arises. These overtime expenses, by reason of their unpredictability, present a massive hidden liability which could itself bankrupt smaller political subdivisions.

31. In many other programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of employment policies other than those described in Paragraphs 27 through 30 which under the 1974 Amendments to the Act, Plaintiffs would no longer be able to maintain.

32. The Fair Labor Standards Act was enacted in 1938 and has been amended in 1940, 1949, 1955, 1956, 1961, 1963, 1965, 1966, 1972 and 1974. Under the original Act and under amendments prior to the 1966 Amendments, Plaintiffs States and Cities were specifically and unqualifiedly exempted from the Act. The 1974 Amendments, 88 Stat. 55, in express terms include Plaintiffs under the definition of "public agency".

33. The 1974 Amendments to the Act, subject Plaintiffs States and Cities to hundreds of rules, Regulations and interpretations allegedly implementing the Act (29 C.F.R., sections 500-1899) and these rules, Regulations and interpretations are now applicable to the newly covered State and local employees. The most recent proposed addition to this volume of Regulations

are proposed rules pertaining to “Employees of Public Agencies Engaged in Fire Protection or Law Enforcement Activity (Including Security Personnel in Correctional Institutions)”, 39 Fed. Reg. 38663-66 (1974).

34. In addition, Plaintiffs are subject to Opinion Letters of the Wage and Hour Division of the Department of Labor, many of which have been issued to date dealing with the extended coverage to State and local employees. Examples are: Opinion Letter No. 1325, stating that full-time student employees of a public library are not eligible under § 14 of the Act for wage payment at 85% of the minimum wage as employees of a retail or service establishment, since a library is engaged in the cultural improvement of a community, “a purpose entirely foreign to the accepted understanding of a ‘retail’ activity”; Opinion Letter No. 1328, stating that beaches operated by a municipal government are not seasonal industries under § 7(c) of the Act; Opinion Letter No. 1331, reiterating the narrow terms of the exemption for employees in the legislative branch of a State Government, stating that employees can be excluded from the Act’s coverage only if outside the civil service laws of the governmental jurisdiction involved, and meeting one of the other requirements under § 3(e)(2) (c) (ii) and stating four criteria, also set out to determine if an employee “is selected by the holder of such an office to be a member of his personal staff” or “is appointed by such an officeholder to serve on a policymaking level” under § 3(e) (2) (c) (ii) (II) and (III) of the Act; Opinion Letter No. 1334, setting requirements counting volunteer time for City projects toward hours worked; Opinion Letter No. 1336,

exempting petit and grand jurors from coverage under the Act.

35. If constitutional, the Act conflicts with and replaces, by its hundreds of rules and Regulations, the State constitutional, and statutory provisions governing State and City personnel and civil services. The Act also replaces City Charter and ordinance provisions governing personnel and civil service.

36. The Act changes control of State and City employees from States and Cities to Federal control. For the first time in 200 years the Federal Government is claiming constitutional power to thus take over control of this vital internal Government function of States and Cities. The Federal Government's claim of constitutional power to impose employee age, wage, hour, and other personnel controls upon States and Cities is of such sweeping character as to effectively take over control not only of State and City personnel but of State and City budgets because personnel costs are usually a major item in said budgets. No more vital internal function of government exists for States and Cities than control of their employees and the budget items relating to said employees.

37. Unconstitutional interference with the sovereign governmental functions and internal affairs of Plaintiffs occurs through the claim by Defendant of power under the Act to impose upon Plaintiffs a vast number of Regulations, rules, interpretations and decisions issued by Defendant covering employee relations of Plaintiffs and requiring the making, keeping and preservation by Plaintiffs of vast amounts of specified records for numerous inspections by Defendant's enforcement and administrative officials.

38. The Act, Regulations promulgated thereunder and Opinions construing the Act, place Plaintiffs, and all States, political subdivisions and Cities under a massive burden of numerous Federal officers and employees, and remove ultimate control of State and local Government personnel services from States and localities and place that ultimate control in Defendant in Washington, D. C.

39. The Act and its Regulations are confusing, complicated, inequitable and so vague and incomprehensible as applied to State and City employees as to violate the Due Process Clause of the Fifth Amendment of the Constitution of the United States. Said Act and Regulations do not improve State and City personnel, or the services they render, and in many respects are irreparably damaging as they cause enormous expenses and, at the same time, a lessening of service. Existing State law, City Charter and ordinance provisions have been developed and adopted over the years to meet the unique situation of each State and City; and their laws, Charters and provisions are fair, reasonable and devoid of the problems and damage caused by the Act and the proposed Regulations thereunder.

40. The imposing of the Act's provisions and the implementing thereof by Defendant, and the Federal officers and employees acting under his direction and supervision, in replacement of State and City personnel law and State and City implementing officers and employees casts a vast unreasonable burden upon States and Cities. This damaging burden has no rational relation to commerce among the States and cannot be constitutionally based upon the Commerce Clause of the Constitution of the United States, and is in addition a direct violation of the Tenth Amendment of the Constitution of the United States.

41. The 1974 Amendments to the Act have caused and will cause to Plaintiffs irreparable injury and damage, and will irreparably injure and damage all Cities and States situated similarly to Plaintiffs, as described herein. The 1974 Amendments to the Act will require Plaintiffs States, political subdivisions and Cities to meet enormously increased costs in providing the same essential Government services provided presently. The ability of Plaintiffs to meet these increased costs, which will not be accompanied by increases in the services provided, is circumscribed by some State constitutional provisions limiting taxes and debts, the purpose of which is to safeguard the fiscal integrity of Plaintiffs States and Cities, for the benefit of the citizens thereof.

42. The 1974 Amendments to the Act will force Plaintiffs to forego planned new Government services, owing to the greatly increased cost of providing current or reduced essential Government services, said increased costs arising out of inflexible provisions of the Act rather than out of increased total costs of salaries for all municipal services.

43. The 1974 Amendments to the Act will make it substantially more difficult for Plaintiffs States and Cities to get and keep qualified employees to provide essential Government services, owing to the Amendments' and Act's effective prohibition of the employment practices such as compensatory time off and joint employment alleged in Complaint ¶¶ 27-31 *supra* which benefit employees of Plaintiffs.

44. The great diversity of State and local Governments makes full computation of the nationwide impact of these Amendments impossible. However, a recently released International City Management Association

(ICMA) study of fire protection services across the country provides a basis for determining the immense impact for that budget alone, which is but a fraction of each City's budget. The estimated 200,000 full-time paid firefighters constitute a conservatively estimated payroll of \$2 billion annually. The extensive ICMA study indicates that there are three main groups of fire departments which will incur the most liability as a result of the Act: (1) those with an average number of hours per week greater than the 60 hours per week presently required (about 15% of the Cities sampled), (2) those with more than 28 days in their work periods (about 10% of those sampled), and (3) those who employ a pay back system whereby a fireman is paid for more hours than he works in each period but must pay back a certain number of shifts in a year (about 10% of those sampled). Allowing for overlap between these groups and calculating the average increase from the data gathered, the minimum impact for the first year on fire personnel budgets nationwide is estimated at a minimum of \$200,000,000. By 1978 the estimated cumulative impact on fire personnel budgets is estimated to be \$1 billion. This represents a 50% increase in fire protection costs after three years owing to the 1974 Amendments alone. Increased costs for other essential State and City governmental functions are reasonably certain to amount to billions of dollars per year due to the impact of these 1974 Amendments to the Act.

45. Plaintiff Metropolitan Government of Nashville and Davidson County has concluded that the 1974 Amendments to the Act will increase the cost of providing only essential police and fire protection, with no increase in service provided, and no increase in salary levels, by \$938,000 per year.

46. Furthermore, Plaintiff Metropolitan Government of Nashville and Davidson County, Tennessee, estimates that about 40% of its policemen work in joint employment relationships for the State and Metropolitan Government, as defined in Defendant's new proposed Regulations for police and fire personnel (§ 553.8, intended to be effective on January 1, 1975). These police officers average at least 16 hours a week in this employment. If the proposed rules become effective it is possible that the Metropolitan Government would have to pay overtime on this 16 hours a week, resulting in an overtime payment of \$19,000 per week or a total of approximately \$1 million per year. The alternative to this added liability is to curtail necessary services.

47. Plaintiff Lompoc, California, will suffer vast as yet inestimable increased costs if it were to comply with the Act with no increase in salary levels and no increase in services provided.

48. Plaintiff Cape Girardeau, Missouri, estimates the present annual fire department budget of \$350,000 would have to be increased by another \$250,000 to \$400,000 per year in order to comply with the Act. This would translate as an increase from the present expenditure rate of 50 cents per \$100 assessed valuation to 90 cents per \$100 assessed valuation. The citizens of Cape Girardeau cannot comply with such a drastic immediate increase in the cost of their Government.

49. Plaintiff City of Salt Lake will suffer the following irreparable injury as a result of the 1974 Amendments: the payment of time and one-half instead of compensatory time off for the more than 7000 overtime hours accumulated annually merely to provide necessary snow removal services; discontinuance of shift trading,

and flexible scheduling practices; increased costs for the hiring of, or elimination of students to work in the public parks each summer; increased costs for the hiring of, or elimination of student interns from the University of Utah; an estimated \$500,000 in additional overtime costs and a diminution of some Government services to meet even this conservative estimate; and enormous morale problems.

50. Plaintiff Arizona estimates that for fiscal year 1975-76, the Act will require a \$1.5 million increase in the cost of providing State police services, a \$200,000 increase in the cost of providing State health services and a \$300,000 increase in costs of highway services. This, coupled with additional employee related costs of \$300,000, and \$250,000 extra needed in highway construction costs, brings the estimated total impact of the Act for one year to over \$2.5 million for the State of Arizona alone.

51. Member Cities of Plaintiff National League of Cities, in planning their budgets for upcoming years, have reported to Plaintiff National League of Cities many other illustrations of the irreparable injury they will suffer as a result of the Act with special damaging impact on such cities who up to now have depended on much volunteer public service. Examples are here set out in paragraphs 52 through 72.

52. Owing to the burdensome requirements of the 1974 Amendments, the City of Los Angeles, California (pop. 2,816,061) estimates an additional expense for fiscal year 1975-76 in the budget for salaries of fire personnel only, of over \$2.5 million, plus an increase in pension costs of between \$160,000 and \$430,000. This increased cost is the result of time and one-half payment

for overtime and hiring of additional uniformed personnel with no increase in service. If in 1978, police workweeks are brought into parity with other employees under the Act the estimated overtime costs for that department alone would be between \$4 and 6 million. These estimates presume the continuance of present salary levels and take into account no future increases in services provided.

53. Owing to the burdensome requirements of the 1974 Amendments, the Sacramento, California (pop. 254,413) budget for the current fiscal year 1974-75 has already incurred an extra \$350,000 cost due merely to non-police and fire services. Also, the City's carefully developed system of compensatory time off, favored by management and employees alike, must now be abolished as illegal under the Amendments. In the area of fire protection services, a new Memorandum of Understanding will be negotiated between fire personnel and the City for fiscal year 1975-76. The uncertainty presented by the diminishing exemption under § 7(k) of the Act renders these negotiations nearly impossible. By January 1, 1977, in order to merely meet the Act's requirements in fire protection services, the City must either diminish services or hire 16-17 additional firefighters at a cost of \$310,000 in 1974 firemen wages. If in 1978, the Secretary of Labor study (upon which, under the Act, workweeks will be based) should result in a 52 hour workweek, Sacramento's additional cost for present firefighting service would increase \$636,000; if a 50 hour week is established, \$993,000; if a 48 hour week is established, \$1,379,000. Furthermore, conflict between the proposed Regulations for fire and police protection service and the already existing volume of

Regulations (29 C.F.R. §§ 500-1899) create uncertainties as to who is and who is not covered under the Act.

54. Owing to the burdensome requirements of the 1974 Amendments, Pasadena, California (pop. 113,327) estimates that in 1978 when the present police and fire personnel exemption could be expected to be in parity with the present requirement for others covered under the Act, the same level of fire protection service at the same wage rate would cost an additional \$1.5 million representing a 50% increase over the current budget for such activities of \$3 million.

55. Owing to the burdensome requirements of the 1974 Amendments the City of San Buenaventura, California (pop. 47,089) estimates its overtime costs for fire personnel to be \$72,700 in 1975, \$63,200 in 1976, \$126,500 in 1977 and \$31,600 for each additional hour the workweek is decreased by the 1978 survey. These increased costs represent an increased payroll cost by the end of 1977 of 29.1%.

56. Owing to the burdensome requirements of the 1974 Amendments, in Newark, California (pop. 27,153) an immediate impact of nearly \$18,000 will be incurred just to meet the Act's new requirements for overtime for outside training, shift change, manning, call back and staff meetings. The costs of overtime and additional personnel to meet the Act's new hour requirements would range from \$24,000 in 1977 to approximately \$183,000 in 1978.

57. Owing to the burdensome requirements of the 1974 Amendments, Montebello, California (pop. 42,807) estimates its overall additional overtime costs to be \$140,000 per year. In fire suppression service alone it

expects a 27.3% increase in overtime costs for 1975 with an estimated combined regular salary and overtime cost increase of \$117,922 by the impact date of 1977. Its police department will be affected in that "Reserve" officers who previously worked on a call and emergency basis for a stipend of \$25.00 per month, now may not work in excess of 12 and 1/2 hours a month. This program, therefore, has been effectively abolished.

58. Owing to the burdensome requirements of the 1974 Amendments, Menlo Park, California (pop. 26,734) in order to prevent diminution of services in the areas of crime prevention, traffic enforcement, case investigation and emergency incident response must spend an additional \$120,000 annually.

59. Owing to the burdensome requirements of the 1974 Amendments, in Inglewood, California (pop. 87,985) the police department must curtail its effort to achieve affirmative action goals by providing employment opportunities for men and women interested in a career in law enforcement. Under the contractual arrangement trainees worked 20 hours per week at \$3.57 per hour and books and tuition were provided free for the 20 hours per week of classes. Unable to meet the stricter financial burden placed on this program by the Act the City has been forced to abolish it.

60. Owing to the burdensome requirements of the 1974 Amendments, Clovis, California (pop. 13,856) must make a decision regarding its internship programs with California State University in Fresno to give students the opportunity to observe and participate, to a limited extent, in daily government operation. Students received as compensation, school credit and a small stipend. The Fair Labor Standards Act will cause the City

to eliminate the program or the pay for interns. Some students will have to be excluded from the program either way.

61. Owing to the burdensome requirements of the 1974 Amendments, Coronado, California (pop. 20,910) estimates additional overtime costs in its fire department alone of over \$33,000 for 1975, over \$59,000 for 1976 and over \$111,000 for 1977.

62. Owing to the burdensome requirements of the 1974 Amendments, Sumter, South Carolina (pop. 23,895) estimates its overall additional overtime expense and wage increase will amount to \$235,000 per year. In addition, the City of Sumter will have to terminate part-time firefighters who also work in other City departments.

63. Owing to the burdensome requirements of the 1974 Amendments in Lodi, California (pop. 28,691) the necessity that the work period be seven days rather than the previous practice of one month means extra costs in the computation of payrolls which Lodi must do mechanically, there not being the benefit of a computer available to the City.

64. Owing to the burdensome requirements of the 1974 Amendments, Downey, California (pop. 88,445) has been forced to abandon an effective proposal for twelve-hour police dispatcher shifts since the scheduling would have resulted in employees working less than 40 hours in some weeks while more than 40 hours in others with overtime costs incurred.

65. Owing to the burdensome requirements of the 1974 Amendments, in Randolph, New Jersey, some full-time employees no longer may serve as staff for volunteer boards or commissions. Since all of these hours

must be counted towards "hours worked" under the Act, this practice, helpful to the municipality and commission, must be discontinued and paid staff hired, increasing the cost to the City.

66. Owing to the burdensome requirements of the 1974 Amendments, Phoenix, Arizona (pop. 581,562) estimates that the elimination of "compensatory time" will result in an additional annual increased expenditure of \$100,000.

67. Owing to the burdensome requirements of the 1974 Amendments, Tulsa, Oklahoma (pop. 331,638) estimates additional costs in its fire department at \$126,700 for 1976 and \$380,600 additional cost in 1977.

68. Owing to the burdensome requirements of the 1974 Amendments, Sunnyvale, California (pop. 75,408) estimates that additional costs for its public safety personnel overtime will be \$169,000 for 1975, \$186,000 for 1976 and over \$204,000 for 1977.

69. Owing to the burdensome requirements of the 1974 Amendments, Corcoran, California (pop. 5,249) estimates a \$49,000 per year increase to all City functions and that it must reduce training time and ambulance services.

70. Owing to the burdensome requirements of the 1974 Amendments, Columbia, South Carolina (pop. 113,542) estimates that by 1976 its fire protection salary budget will have to be increased by \$110,000 in order to merely continue the service presently provided. Furthermore, since under the proposed Regulation (§ 553.6 intended to be effective on January 1, 1975) all job related training is compensable, and since training programs are difficult to arrange during scheduled work

hours for these departments, decreased in-service training is a likely result. Such decrease is just as damaging in the long run, and mitigates efficiency of police and fire services just as much, as an outright decrease in service.

71. Owing to the burdensome requirements of the 1974 Amendments, Richmond, Virginia (pop. 249,621) estimates that the hiring of necessary additional firefighters in order to maintain present service and still be in compliance with the Act will cost the City an additional \$161,000.

72. Owing to the burdensome requirements of the 1974 Amendments, Reidsville, North Carolina (pop. 13,636) estimates increased police protection costs of \$33,567 next year representing an increase of over 10% of the total annual police salary expenditure, and increased fire protection costs of \$30,635 next year representing an increase of over 15% of the total annual fire salary expenditure.

73. In meeting the increased cost of providing the same essential government services currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Metropolitan Government of Nashville and Davidson County, it is limited by Article II, section 9 of the Constitution of Tennessee, which prohibits municipal income, estate and inheritance taxes.

74. In meeting the increased cost of providing the same essential Government services as currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Arizona, Plaintiff Arizona is limited by Article 9, section 5 of the Constitution of Arizona, which limits State debt. Political subdivisions of Plaintiff Arizona are limited by Article 9, section 8 of the Constitution of Arizona to a debt of four per centum of

taxable property without a special election and, in any case, ten per centum of taxable property.

75. In meeting the increased cost of providing the same essential Government services as currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Lompoc, Plaintiff Lompoc is limited by Article XIII, section 40 of the Constitution of California, which prohibits a City or other municipal corporation from incurring debts in excess of revenue for the current year without a special election.

76. In meeting the increased cost of providing the same essential Government services as currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Salt Lake City, Plaintiff Salt Lake City is limited by Article XIV, section 3 of the Constitution of Utah, which provides that Cities and other municipal corporations may not incur debts in excess of taxes for the current year. Article XIV, section 4 of the Constitution of Utah prohibits taxation by Cities and other municipal corporations in excess of four per centum of the value of taxable property.

77. In meeting the increased cost of providing the same essential Government services as currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Cape Girardeau, Plaintiff Cape Girardeau is limited by Article 6, section 26 of the Constitution of 1945 of Missouri, which prohibits Cities and political subdivisions of the State from incurring debts in excess of revenues for the current year, without a special election. Article 6, section 26(b) of the Constitution of 1945 of Missouri limits the excess of debt over revenue to five per centum of the value of taxable tangible property, even following such a special election.

78. Plaintiffs States, political subdivisions and Cities are and will be required by the 1974 Amendments to the Act to alter work schedules and other personnel policies of long standing and proven effectiveness, for no reasonable reason related to the effective provision of essential Government services to the people within Plaintiffs' jurisdictions. The only purpose to Plaintiffs for this alteration of schedules and policies is to minimize the overtime wages provided for under the Act as amended, so as to keep within budget law requirements.

79. Plaintiffs are further irreparably and immediately harmed in that § 16 of the Act imposes a \$10,000 fine plus up to six months in prison for willful violations. Furthermore, any violation of § 6 or § 7 of the Act results in a civil liability of back pay plus an equal amount in liquidated damages. Thus, literally, each hour of the Act's application to Plaintiffs results in the potential of double damages in a suit under the Act.

80. The facts set forth herein demonstrate the irreparable harm imposed upon Plaintiffs for which Plaintiffs have no adequate remedy at law; Plaintiffs are entitled to a judgment adjudicating their rights and an injunction to prevent Defendant from enforcing this unconstitutional Act against Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendant, declaring the Fair Labor Standards Act as applied to States, Cities and political subdivisions of States to be unconstitutional and for the interlocutory, preliminary and permanent enjoining of Defendant from enforcing or attempting to enforce the Act against Plaintiffs or those situated similarly to Plaintiffs, and for

such other and additional relief as the facts alleged herein may warrant.

Respectfully submitted,

/s/ Charles S. Rhyne
Charles S. Rhyne
Rhyne & Rhyne
400 Hill Building
839 17th Street, N. W.
Washington, D. C. 20006

(202) 347-7992

Attorney for Plaintiffs

District of Washington, D. C.)
)

Allen E. Pritchard, Jr., being duly sworn, deposes and says that his business address is 1620 Eye Street, N.W., Washington, D.C., 20006; that he is Executive Vice President of National League of Cities, Plaintiff herein; and that he has read the foregoing Complaint and knows the contents thereof with respect to Cities and the National League of Cities; and that the same are true of his own knowledge.

/s/ Allen E. Pritchard, Jr.
Allen E. Pritchard, Jr.

Charles A Byrley, being duly sworn, deposes and says that his business address is 1150 Seventeenth Street, N.W., Washington, D.C. 20036; that he is Executive Director of National Governors' Conference, Plaintiff herein; and that he has read the foregoing Complaint and knows the contents thereof with respect to States and the National Governors' Conference; and that the same are true of his own knowledge.

/s/ Charles A. Byrley
Charles A. Byrley

Sworn and subscribed before me
this 12th day of December, 1974.

/s/ Daphne G. Rimmer
Notary Public

My Commission Expires March 31, 1977

**Amended Paragraph 39 of the Complaint
of National League of Cities *et al.***

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

)
THE NATIONAL LEAGUE OF CITIES,)
et al.,)
)
 Plaintiffs,)
) Civil Action
v.) No. 74-1812
)
THE HONORABLE PETER J. BRENNAN,)
Secretary of Labor,)
)
 Defendant.)
)

AMENDED PARAGRAPH 39 OF COMPLAINT

The Act and its Regulations are confusing, complicated, inequitable and so vague and incomprehensible as applied to State and City employees as to violate the Due Process Clause of the Fifth Amendment of the Constitution of the United States. Furthermore, the Regulations to be effective January 1, 1975 violate the Fifth Amendment specifically because they fail to give adequate notice of conduct to be proscribed or the requirements necessary to come into compliance with the Act, as a result of their being issued in final form on December 20, 1974. Said Act and Regulations do not improve State and City personnel, or the services they render, and in many respects are irreparably damaging as they cause enormous expenses

and, at the same time, a lessening of service. Existing State law, City Charter and ordinance provisions have been developed and adopted over the years to meet the unique situation of each State and City; and their laws, Charters and provisions are fair, reasonable and devoid of the problems and damage caused by the Act and the proposed Regulations thereunder.

[Certificate omitted in printing]

**Complaint in Intervention of the
State of California**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE NATIONAL LEAGUE OF CITIES,)
an Illinois Corporation, on)
behalf of its member cities,)
1620 Eye Street, N.W.,)
Washington, D.C. 20006,)
)
THE NATIONAL GOVERNORS')
CONFERENCE,)
a District of Columbia Corporation,)
on behalf of its members,)
1150 Seventeenth Street, N.W.,)
Washington, D.C. 20036,)
)
The State of ARIZONA)
N. Warner Lee, Attorney General)
State Capitol)
Phoenix, Arizona 85007,)
)
METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON)
COUNTY, Tennessee)
Milton H. Sitton, Director of Law)
204 Courthouse)
Nashville, Tennessee 37201,)
)
The City of SALT LAKE CITY, Utah)
Roger F. Cutler, City Attorney)
101 City and County Building)
Salt Lake City, Utah 84114,)
)

The City of LOMPOC, California) Civil Action
Alan Davidson, City Attorney) No. 74-1812
119 West Walnut Avenue)
Lompoc, California 93436,)
)
The City of CAPE GIRARDEAU,)
Missouri)
Thomas Utterback, City Attorney)
Office of the City Attorney)
Cape Girardeau, Missouri 63701,)
)
Plaintiffs,)
)
and)
)
THE STATE OF CALIFORNIA,)
State Capitol,)
Sacramento, California 95814)
)
by and through)
)
EVELLE J. YOUNGER,)
Attorney General, on)
behalf of the People of)
the State of California,)
)
RONALD REAGAN,)
Governor)
)
VERNE ORR,)
Director, Department of Finance)
)
JAMES G. STEARNS)
Secretary, Agriculture)
and Services Agency)

)
FRANK J. WALTON,)
Secretary, Business)
and Transportation Agency)
)
NORMAN B. LIVERMORE, JR.)
Secretary)
Resources Agency)
)
JAMES E. JENKINS)
Secretary, Health and)
Welfare Agency,)
)
Plaintiffs-Intervenors,)
)
v.)
)
The Honorable PETER J. BRENNAN)
Secretary of Labor)
of the United States,)
)
Defendant.)
)

**COMPLAINT IN INTERVENTION FOR
DECLARATORY JUDGMENT THAT THE
1974 AMENDMENTS TO THE FAIR
LABOR STANDARDS ACT UNCONSTITU-
TIONALLY ATTEMPT TO REGULATE
ESSENTIAL STATE AND LOCAL
GOVERNMENT FUNCTIONS, AND FOR
PRELIMINARY AND PERMANENT IN-
JUNCTIVE RELIEF.**

Intervenors allege:

1. This action arises under the Fair Labor Standards Act (hereinafter sometimes "Act"), 52 Stat. 1060, as amended, 29 U.S.C. § 201 *et seq.* This Court has jurisdiction, as this is an action relating to commerce, under 28 U.S.C. § 1337.
2. This action further arises under the Constitution of the United States and the Fifth, Tenth, and Eleventh Amendments to the Constitution of the United States. The matter in controversy, exclusive of interests and costs, exceeds the sum of ten thousand dollars; this Court has jurisdiction under 28 U.S.C. § 1331. Jurisdiction is also based on § 1346 of Title 28, United States Code, which provides that the District Courts shall have original jurisdiction of any other civil action founded either upon the Constitution or any act of Congress; and on the Federal Declaratory Judgment Act (28 U.S.C. §§ 2201, 2202) and the laws of the United States of America.
3. Public Law 93-259, 88 Stat. 55 amending 29 U.S.C. § 201 *et seq.*, (hereinafter sometimes "1974 Amendments") became effective on May 1, 1974. Provisions of the 1974 Amendments to the Act relating to police and fire protection personnel become effective on January 1, 1975. Plaintiffs challenge specifically the constitutionality of the following provisions of the Act as

amended: in § 3(d), the definition of “employer” is amended to include a “Public Agency”; in § 3(e)(2), the definition of “employee” is amended to exclude in the case where the employer is a State public agency, only persons who are (1) not subject to a State’s civil service laws and (2) publicly elected, or member of the personnel staff, or policy making appointee, or immediate legal advisor of one publicly elected; in § 3(h), the definition of “industry” is amended to include “other activity” in addition to the original trade business or industry language; in § 3(r), the definition of “enterprise” is amended to include within the activities deemed to be performed for a business purpose, those activities performed by any person in connection with the activities of a public agency; in § 3(s), the definition of “Enterprise engaged in commerce or in the production of goods for commerce” is amended to include an activity of a public agency and to state that, “The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce”; in § 3(x), “public agency” is defined to include: “the Government of a State or political subdivision thereof; any agency of . . . a State or political subdivision of a State; or any interstate governmental agency”; in § 6(b), specific rates of compensation are provided for newly covered employees; in § 7(k), a limited and diminishing exemption for police and fire protection employees is created, which exemption is also stated in § 13(b)(20); both § 7(k) and § 13(b)(20) become effective January 1, 1975; in § 13(b)(7) the

former overtime exemption for local transit companies, now including publicly owned transit companies, doing an annual business of less than \$250,000 is to be phased out by May 1, 1976; in § 16(b), State employees are granted a cause of action against a public agency in "any Federal or State court of competent jurisdiction"; in § 16(c), the Secretary of Labor is authorized to bring an action for both liquidated damages and back pay on behalf of an employee subject to certain conditions.

4. Section 15 of the Act lists the prohibited acts as violations of §§ 6, 7, 11, 12 or any regulations issued by the Secretary pursuant to his rulemaking powers under § 14.

5. Plaintiff State of California is a sovereign State of the United States of America. Acting in its sovereign governmental capacity, it performs essential functions which are necessary and indispensable to its existence as a sovereign State; said functions are required to be performed under its own Constitution and laws and under the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services are distinct from those of each of the other United States. Its government structure, geography, climate, topography and demography require unique policy and personnel management decisions which in many respects differ from those made by the other states of the United States. The State of California is not in competition with any of the other states, or with any private enterprise, when making these decisions or performing these essential governmental functions. California's decisions are made through a republican form of government, by the votes of its citizens in elections conducted under its Constitution. It does not have the

power, absent agreement, to enforce or effectuate its decisions beyond its own borders into any other state.

6. Plaintiff Evelle J. Younger, Attorney General of the State of California, is the chief law enforcement officer of the State of California pursuant to Article V, Section 13 of the California Constitution, and brings this action in the name of the People of the State of California. The Attorney General possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest, and has the power to file any civil action or proceeding in the federal courts directly involving the rights and interests of the State of California, or which the Attorney General deems necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights and interests. It is the concern and interest of the People of the State of California that State laws and legislative policies, including the State Civil Service Act (California Government Code, Title 2, Division 5, Section 18000, *et seq.*) and pertinent sections of the California Constitution (Article XXIV), be enforced.

7. Plaintiff Ronald Reagan is the duly elected and acting Governor of the State of California and is charged by Article V, Section 1 of the California Constitution to faithfully execute the laws of said State. Plaintiff Verne Orr is the duly-appointed Director of the Department of Finance of the State of California and as such has the power and the duty to supervise the fiscal and business policies of the State, and particularly to certify that funds for wages and salaries to be paid to State employees are in accordance with current budgeting provisions. Plaintiff Frank J. Walton is the

duly-appointed Secretary of the Business and Transportation Agency. Plaintiff Norman B. Livermore, Jr. is the duly-appointed Secretary of the Resources Agency of the State of California. Plaintiff James E. Jenkins is the duly-appointed Secretary of the Health and Welfare Agency of the State of California. Plaintiff James G. Stearns is the duly-appointed Secretary of the Agriculture and Services Agency of the State of California. Each of the four foregoing Agency Secretaries are vested with the duty and responsibility of advising and directing the many and various State departmental programs which fall within the respective jurisdiction of each Agency Secretary.

8. Plaintiff National League of Cities has as members over 15,000 Cities who have over 2,000,000 employees. These Cities are political subdivisions of the 50 States. The National League of Cities also has as members State municipal leagues, which leagues also have as members Cities who are political subdivisions of States. The National League of Cities is owned and operated by its member Cities and State municipal leagues, with said State leagues in turn being owned and operated by the leagues' member Cities in each State. The member Cities and State leagues govern the National League of Cities through an elected Board of Directors. The National League of Cities brings this action on its behalf and on behalf of each of its member Cities. Article I of its bylaws state its function as *inter alia*, "the adoption of a national municipal policy and its implementation as the chief vehicle for the development of effective municipal government."

9. Plaintiff National Governors' Conference is a non-profit organization incorporated on April 2, 1974,

under the laws of the District of Columbia. The Conference was originally organized in 1908. Its membership is composed of the Governors of the several States of the United States, the Virgin Islands, Guam, American Samoa and the Commonwealth of Puerto Rico. As listed in Article II of its Articles of Organization, the Conference is established *inter alia*: "to vigorously represent the interests of the states in the Federal system". The Conference brings this action on its own behalf and on behalf of its members.

10. Plaintiff Arizona is one of the fifty sovereign States of the United States. Acting in its sovereign governmental capacity, it performs essential functions which are necessary and indispensable to its existence as a sovereign State and which are required to be performed under its own Constitution and laws and under the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services are distinct from those of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which in many respects differ from those made by the other States of the United States. It is not in competition with any of the other States or any private enterprise when making these decisions or performing these essential governmental functions. Arizona's decisions are made through a republican form of Government, by the votes of its citizens in elections conducted under its Constitution. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its own borders into any other State.

11. Plaintiff Metropolitan Nashville (pop. 447,877), a member of Plaintiff National League of Cities, is a

metropolitan Government consisting of the City of Nashville and Davidson County established under the laws of the State of Tennessee. As a political subdivision of Tennessee, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of Tennessee and which are required to be performed under its charter and ordinances, the Constitution and laws of Tennessee, and the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services vary from the needs of other political subdivisions within Tennessee and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which may vary from those of other political subdivisions within Tennessee and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without Tennessee or any private enterprise when making these decisions or performing these essential functions. Instead, it acts through the republican form of its State Government in conjunction with its own municipal Government, through officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the Tennessee borders into any other State.

12. Plaintiff Salt Lake City (pop. 175,885), a member of Plaintiff National League of Cities, is a City established under the laws of the State of Utah. As a political subdivision of Utah, it shares in that State's sovereignty

and performs essential functions which are necessary and indispensable to its existence as a political subdivision of Utah and which are required to be performed under its own laws, the Constitution and laws of Utah, and the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services vary from the needs of other political subdivisions within Utah and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which vary from those of other political subdivisions within Utah and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without Utah or any private enterprise when making these decisions or performing these essential functions. Instead, its decisions are made through the republican form of its State Government in conjunction with its own municipal Government, by those elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the Utah borders into any other State.

13. Plaintiff Lompoc (pop. 25,600), a member of Plaintiff National League of Cities through membership in the League of California Cities, is a City established under the laws of the State of California. As a political subdivision of California, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its

existence as a political subdivision of California and which are required to be performed under its own laws, the Constitution and laws of California, and the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services vary from those of other political subdivisions within California and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which vary from those of other political subdivisions within California and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without California or any private enterprise when making these decisions or performing these essential functions. Instead, its decisions are made through the republican form of its State Government in conjunction with its own municipal Government officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the California borders into any other State.

14. Plaintiff Cape Girardeau (pop 31,282), a member of Plaintiff National League of Cities, is a City established under the laws of the State of Missouri. As a political subdivision of Missouri, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of Missouri and which are required to be

performed under its own laws, the Constitution and laws of Missouri, and the Constitution and laws of the United States. Its unique needs and the needs of its residents for essential governmental services vary from the needs of other political subdivisions within Missouri and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography and demography require unique policy and personnel management decisions which vary from those of other political subdivisions within Missouri and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without Missouri or any private enterprise when making these decisions or performing these essential functions. Instead, it is governed through the republican form of its State Government in conjunction with its own municipal Government by the officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the Missouri borders into any other State.

15. Defendant, Peter J. Brennan, is the Secretary of Labor of the United States, who is charged by law with the implementation and enforcement of the Act.

16. The City of Cape Girardeau, Missouri, has officially stated in a letter to Defendant's Regional Solicitor of Labor, dated October 15, 1974, that it will not comply with the 1974 Amendments, because the Act is unconstitutional. It will not therefore make itself available for Federal audits or inspections of any kind by

Defendant.

17. On November 20, 1974, Defendant herein notified Plaintiff herein, the City of Cape Girardeau, of a civil action to be filed imminently against Cape Girardeau in the United States District Court for the Eastern District of Missouri, Southeastern Division, alleging violation by Cape Girardeau of §§ 6(b) and 15(a) (2) of the Act and demanding an injunction forcing Cape Girardeau to pay the overtime compensation required under the Act.

18. The City of Lompoc, California, after exchange of correspondence with the agent of Defendant herein, the Chief of the Division of Minimum Wage and Hours Standards of the Department of Labor, and a determination by Defendant and his agent that 29 C.F.R. § 778 prohibiting the use of compensatory time off beyond the work period applied to State and local Government, has indicated by its City Attorney the decision to continue the practice of awarding compensatory time off under existing local law and procedures on the bases that, (1) the Act itself does not prohibit the use of compensatory time off and, (2) the Act, being unconstitutional, cannot invalidate said practice.

19. Plaintiffs States and Cities provide the following essential Government services, among others, each of which will be affected in cost or quality, or both, by the 1974 Amendments to the Act: police protection services; fire protection services; highway repair and snow removal services; trash collection, sewage treatment and other sanitation and health services; park maintenance and other recreational services; libraries; state and local administrative and regulatory agencies which enforce laws

and regulations preserving the public health, safety and welfare, including inspection of buildings, licensing of occupations and businesses, administration of public assistance in emergency and poverty situations, preservation of environmental quality, administration of election, legislative, executive and judicial processes, administration of regulations preserving both public order and free expression of views and information, protection of the public against fraud and sharp practice; non-elected, non-appointed personnel such as tax collectors involved in non-competitive governmental functions which are done or can only be done exclusively by Government. In providing these essential Government services, Plaintiffs extensively use voluntary boards and commissions, whose members are not compensated, or who are paid nominal compensation. The Act makes use of these voluntary boards, commissions and workers financially impossible.

20. These said essential Government services inhere in the existence of States and their political subdivisions. Without these essential Government services a State could not exist for the protection and benefit of the people within the territory of the State.

21. States and Cities, as political subdivisions of a State, cannot fail or refuse to provide these essential Government services consistently with provisions of State Constitutions, laws, charters, ordinance provisions and provisions of the United States Constitution.

22. Plaintiffs States and Cities have exercised their sovereign judgment in establishing personnel policies which will insure the most effective provision of essential Government services at the least cost to the

taxpayers of Plaintiffs, consistently with fairness in compensating and regulating the working hours and conditions of the employees of Plaintiffs who provide essential Government services.

23. Under the Tenth Amendment of the Constitution of the United States one of the most vital sovereign powers reserved to the States is the power to employ personnel to carry out essential governmental functions and to completely control by rules, regulations and orders the performance of said employees in carrying out said essential governmental functions.

24. States and Cities have developed law on personnel, including civil service laws, designed to take care of the unique governmental situation of each State and each City as to industry, weather, and similar considerations. The Act, and its regulations, purport to nullify such State and local legislation and impose uniform nationwide Federal rules and Regulations for all State and City personnel. For this imposition there is no rational basis.

25. Plaintiff State of California operates under California constitutional and statutory provisions providing essential and indispensable governmental services through its State employees. Appropriation of tax revenues necessary to fund the wages and salaries of California State employees is a legislative power (Cal. Const., Art. IV, § 1), and the authority to appropriate said monies resides with the California State Legislature (Cal. Const., Art. III); neither the State salary-fixing administrative authority (the California State Personnel Board), the executive branch, nor the judiciary, has the power to compel such legislative appropriation of money. *California State Emp. Association v. Flournoy*, 32 Cal. App. 3d 219, 234-235; 108 Cal.Rptr. 251 (1973);

California State Emp. Association v. State of California, 32 Cal.App.3d 104, 109; 108 Cal.Rptr. 60 (1973).

California State employees are appointed and promoted under a general system based on merit ascertained by competitive examination (Cal. Const., Art. XXIV), and are governed exclusively by the State Civil Service Act (Title 2, Cal. Govt. Code, Division 5, § 18000, *et seq.*) relative to appropriate hours, working conditions, and other matters concerning their State employment. Among its many comprehensive provisions, the State Civil Service Act provides:

a. That the policy of the State is that the workweek of the State employee shall be 40 hours, except to meet the varying needs of different State agencies; that the policy of the State is to avoid the necessity for overtime work whenever possible (Govt. Code, § 18020); that the State Personnel Board, when considering prevailing practice concerning overtime compensation may establish workweek groups of the same or different lengths with different methods of recognizing or providing compensation for overtime (*Ibid.*, § 18021); that either cash compensation (at 1 1/2 times the regular rate of pay) or compensatory time off (at 1 1/2 times each hour of overtime worked) may be provided by the State Personnel Board (*Ibid.*, § 18021.5); that the State should comply with those provisions of the Fair Labor Standards Act which the United States Supreme Court has found constitutional as applied to the sovereign states (*Ibid.*, § 18021.6);

b. That the normal workweek of permanent employees in fire suppression classes shall not exceed 84 hours per week; work in excess of 84 hours may be compensated in cash or compensating time off (*Ibid.*, §

18021.7); that compensating time off may be granted within twelve calendar months following the month in which the overtime was worked (*Ibid.*, § 18023); that the State Personnel Board may provide for rates or methods of compensation for overtime work, and in so doing shall consider the needs of State service and prevailing practice in private business and other public employment (*Ibid.*, § 18026);

c. That all provisions of the State Workmen's Compensation Law shall apply to all "firemen" of the State, whether such employees are partly paid, fully paid, or volunteers (*Ibid.*, §§ 18300, 18301, 18302);

d. That to secure substantial justice and equality in the State civil service, the State Personnel Board may provide by rule for days, hours, and conditions of work, taking into consideration the varying needs and requirements of the different State agencies and prevailing practices for comparable services in other public employment and in private business (*Ibid.*, § 18705);

e. That the State Personnel Board shall establish and adjust salary ranges for each class of position in the State civil service, based on the principle that like salaries shall be paid for comparable duties and responsibilities; the Board shall make no adjustments which require expenditures in excess of existing appropriations which may be used for salary increase purposes (*Ibid.*, § 18850); that in classes and positions with unusual conditions or hours of work or where necessary to meet prevailing rates and practices for comparable services in other public employment and in private business the State Personnel Board may establish more than one salary range for rate or method of compensation within a class

(*Ibid.*, § 18852); that automatic salary adjustments shall be made for employees in the State civil service unless there is not sufficient money available for that purpose in the appropriation for which such salaries are to be paid (*Ibid.*, § 18856);

f. That pursuant to the rules and regulations of the California State Personnel Board (Title 2, Calif. Adm. Code, Section 1, *et seq.*) the qualifying monthly pay period is a calendar month (*Ibid.*, §§ 6.1, 6.2); that in order to be compensable by cash or compensating time off, such overtime must be authorized in advance except in emergencies, and subsequently authorized in writing not later than ten days after the end of the pay period during which the overtime was worked (*Ibid.*, § 131); that the time when compensating time off may be taken is at the discretion of the appointing agency (*Ibid.*, § 134), and if the employee fails to take such compensating time off at the designated time, he shall have waived his right to compensation for such overtime (*Ibid.*, § 134); that both “in service training” and “out service training”, and the conditions for the receipt of salary, tuition, or other necessary expenses therefor, are governed by regulations of the State Personnel Board (*Ibid.*, § 530, *et seq.*).

26. Plaintiff State of Arizona operates under Arizona constitutional and law provisions providing essential Government services, and in performing other functions, through its State and City employees. These law provisions include: a minimum wage for minors which applies to employment in “any industry, trade, business or branch thereof”, Ariz. Rev. Stat. §§ 23–311-29 (1974 Supp.); a requirement that each City or town of more than seven thousand inhabitants, having a salaried police

and fire department, pay a minimum wage to every foot patrolman and horseman after the third year of employment, Ariz. Rev. Stat. § 9-902 (1965); a constitutional provision defining a lawful day's work in all employment by, or on behalf of, the State or any of its political subdivisions. Ariz. Const. Art. XVIII, § 1; *State v. Boykin*, 109 Ariz. 289, 508 P. 2d 1151 (1973); legislation providing overtime compensation for work by public employees performing manual or mechanical labor, Ariz. Rev. Stat. § 23-391 (1974 Supp.).

27. Plaintiff City of Salt Lake operates under Utah State constitutional and law provisions in providing essential governmental services, and in performing other functions, through its employees. These law provisions include: a minimum wage provision for women and minors, an industrial commission to oversee wages and working conditions and to set maximum hours, a wage board made up of industry and employee representatives to determine the minimum wage, Utah Code, § 34-22-5 *et seq.* (Supp. 1973); a constitutional provision defining a day's work on all works or undertakings carried on or aided by the State, County or Municipal Governments, Utah Const. Art. XVI, § 6; a requirement that State and local Government employees working on the construction of public works excluding maintenance work, must be paid the general prevailing wage rate for work of a similar character in the locality, Utah Code, § 34-30-2 (Supp. 1973), and a provision for overtime compensation, Utah Code, § 34-30-8 (Supp. 1973).

28. Plaintiff Metropolitan Government of Nashville and Davidson County operates under the Tennessee State laws in providing essential governmental services, and in performing all other functions, through its employees.

These laws include a provision making it unlawful for any "person, firm, corporation or association of any kind" to deny employment because of affiliation with a labor organization, Tenn. Code § 50-208 (1956).

29. Plaintiff City of Cape Girardeau operates under Missouri State laws in providing essential governmental services and in performing other functions through its employees. These laws include a provision regulating child labor, Vern. Ann. Mo. Stat., § 294.011 *et seq.* (1971); regulation of wages on public works, requiring that those employed in the construction of public works, including highways, must be paid the prevailing hourly rate for work of a similar character in the locality in which the work is performed, Vern. Ann. Mo. Stat., § 290.210 *et seq.* (1971), as amended (Supp. 1974); laws regulating police and firemen hours, Vern. Ann. Mo. Stat., §§ 85.290, 85.100 (1971); a provision allowing with certain exceptions State and local Government employees to join labor organizations and bargain collectively, Vern. Ann. Mo. Stat., § 105.500 *et seq.* (Supp. 1974); a provision that, with respect to firefighters, a firemen's arbitration board will be appointed, at the request of either the employees or the governing body, to resolve disputes over wages, hours, and conditions of employment, Vern. Ann. Mo. Stat., § 290.350 *et seq.* (1971).

30. Plaintiff City of Lompoc operates under California State laws in providing essential governmental services, and in performing other functions through its employees. These law provisions include a minimum wage law applicable to persons "employed in any occupation, trade or industry"; establishing an industrial commission to

determine whether wages in any occupation are inadequate to supply the cost of living and commission representatives to determine the appropriate minimum wage, Cal. Labor Code, §§ 1171-1199 (Deering Supp. 1974); provisions defining the workweek of the State employee, and authorizing the State personnel board to provide overtime compensation for State employees, Cal. Govt. Code, §§ 18020, 18021.5 (Deering 1973); specific statutes granting State and local firefighters the right to join labor organizations and bargain collectively, Cal. Labor Code, §§ 1960-1962 (Deering 1964); statutes which grant State employees and employees of public agencies the right to join labor organizations and bargain collectively, requiring that the State and other public employers confer with employee representatives, and provide for mediation of unresolved disputes through either local procedures or through the Department of Industrial Relations, Cal. Govt. Code, §§ 3500-10, 3525-36 (Deering 1973).

31. In programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of compensatory time off, which under the 1974 Amendments to the Act, Plaintiffs would no longer be able to maintain. Compensatory time off is the payment of overtime in the form of paid time off at some future date convenient to both employer and employee. It allows the employee to have more freedom to choose his time off and more time off. It avoids demeaning and wasteful "make-work" projects during slow periods. It allows the employer to most efficiently deal with many areas of Government which involve "peak" employment problems. It has been enthusiastically supported by

employees who welcome the flexible approach it represents, and its invalidation under the 1974 Amendments has created severe morale problems.

32. In programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of paid volunteers, which under the 1974 Amendments to the Act, Plaintiffs would no longer be able to maintain. Paid volunteers are compensated on a per-job or monthly fee basis constituting a nominal stipend for the work done. Many States and Cities pay paid volunteers a wage sufficient only to make these employees eligible for workmen's compensation under State laws. This practice is most prevalent in police and fire protection services. Under Defendant's proposed Regulations for police and fire personnel, § 553.10, intended to be effective January 1, 1975, any stipend beyond reimbursement of out-of-pocket expenses, and other limited exceptions destroys the volunteer status and subjects the policeman or fireman to the Act. This will seriously curtail service now provided by the numerous small, independent volunteer fire departments across the country. The practice of paid volunteers is similarly employed, and will result in similar added expense or diminution of service in areas such as poll workers in elections, and parks, recreation and government projects for involvement of the young, elderly and disadvantaged in the community.

33. In programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of joint employment, which under the 1974

Amendments to the Act, Plaintiffs would no longer be able to maintain. Joint employment is the employment of personnel in more than one capacity within the State and City Government, whereby many full-time workers augment their income by part-time jobs in other areas of Government employment. Under Defendant's proposed Regulations for police and fire personnel, § 553.8, intended to be effective January 1, 1975, if the part-time employment involves activities other than police and fire protection, it is possible to lose the exemption provided in § 7(k) of the Act, subjecting police and firefighters to the 40 hour week required by § 7(a). In areas other than police and fire protection, all hours worked for the State or political subdivision, regardless of which agency or department, must be counted towards the hours worked for that week. The requirement of the Act to pay overtime rates for part-time jointly employed personnel will force the end of this practice, which has been beneficial to employer and employee alike.

34. In programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of mutual aid police and fire agreements, which under the 1974 Amendments to the Act, Plaintiffs will no longer be able to maintain. Mutual aid agreements allow the pooling of police or fire protection during emergencies or disasters which by their immediacy and gravity are too large for a single agency to combat. The participating agencies generally do not charge for the aid rendered during such emergencies and disasters. However, under Defendant's proposed Regulations for police and

fire personnel, § 553.9, intended to be effective January 1, 1975, all hours worked in aid of other jurisdictions must be counted towards hours worked in the home jurisdiction. This requirement forces the choice between abandoning these agreements, or massive unexpected overtime expenses whenever an emergency situation arises. These overtime expenses, by reason of their unpredictability, present a massive hidden liability which could itself bankrupt smaller political subdivisions.

35. In many other programs developed by experience for the most efficient fulfilling of responsibilities to their citizens and others within their territory, Plaintiffs have implemented the use of employment policies other than those described in the foregoing paragraphs which under the 1974 Amendments to the Act, Plaintiffs would no longer be able to maintain.

36. The Fair Labor Standards Act was enacted in 1938 and has been amended in 1940, 1949, 1955, 1956, 1961, 1963, 1965, 1966, 1972 and 1974. Under the original Act and under amendments prior to the 1966 Amendments, Plaintiffs States and Cities were specifically and unqualifiedly exempted from the Act. The 1974 Amendments, 88 Stat. 55, in express terms include Plaintiffs under the definition of "public agency".

37. The 1974 Amendments to the Act, subject Plaintiff States and Cities to hundreds of rules, Regulations and interpretations allegedly implementing the Act (29 C.F.R., sections 500-1899) and these rules, Regulations and interpretations are now applicable to the newly covered State and local employees. The most recent proposed addition to this volume of Regulations

are proposed rules pertaining to "Employees of Public Agencies Engaged in Fire Protection or Law Enforcement Activity (Including Security Personnel in Correctional Institutions)", 39 Fed. Reg. 38663-66 (1974).

38. In addition, Plaintiffs are subject to Opinion Letters of the Wage and Hour Division of the Department of Labor, many of which have been issued to date dealing with the extended coverage to State and local employees. Examples are: Opinion Letter No. 1325, stating that full-time student employees of a public library are not eligible under § 14 of the Act for wage payment at 85% of the minimum wage as employees of a retail or service establishment, since a library is engaged in the cultural improvement of a community, "a purpose entirely foreign to the accepted understanding of a 'retail' activity"; Opinion Letter No. 1328, stating that beaches operated by a municipal government are not seasonal industries under § 7(c) of the Act; Opinion Letter No. 1331, reiterating the narrow terms of the exemption for employees in the legislative branch of a State Government, stating that employees can be excluded from the Act's coverage only if outside the civil service laws of the governmental jurisdiction involved, and meeting one of the other requirements under § 3(e)(2)(c)(ii) and stating four criteria, also set out to determine if an employee "is selected by the holder of such an office to be a member of his personal staff" or "is appointed by such an officeholder to serve on a policymaking level" under § 3(e)(2)(c)(ii)(II) and (III) of the Act; Opinion Letter No. 1334, setting requirements counting volunteer time for city projects toward hours worked; Opinion Letter No. 1336, exempting petit and grand jurors from coverage under the Act.

39. If constitutional, the Act conflicts with and replaces, by its hundreds of rules and Regulations, the State constitutional, and statutory provisions governing State and City personnel and civil services. The Act also replaces City Charter and ordinance provisions governing personnel and civil service.

40. The Act changes control of State and City employees from States and Cities to Federal control. For the first time in 200 years the Federal Government is claiming constitutional power to thus take over control of this vital internal Government function of States and Cities. The Federal Government's claim of constitutional power to impose employee age, wage, hour, and other personnel controls upon States and Cities is of such sweeping character as to effectively take over control not only of State and City personnel but of State and City budgets because personnel costs are usually a major item in said budgets. No more vital internal function of government exists for States and Cities than control of their employees and the budget items relating to said employees.

41. Unconstitutional interference with the sovereign governmental functions and internal affairs of Plaintiffs occurs through the claim by Defendant of power under the Act to impose upon Plaintiffs a vast number of Regulations, rules, interpretations and decisions issued by Defendant covering employee relations of Plaintiffs and requiring the making, keeping and preservation by Plaintiffs of vast amounts of specified records for numerous inspections by Defendant's enforcement and administrative officials.

42. The Act, Regulations promulgated thereunder and Opinions construing the Act, place Plaintiffs, and all States, political subdivisions and Cities under a massive burden of numerous Federal officers and employees, and remove ultimate control of State and local Government personnel services from States and localities and place that ultimate control in Defendant in Washington, D.C.

43. The Act and its Regulations are confusing, complicated, inequitable and so vague and incomprehensible as applied to State and City employees as to violate the Due Process Clause of the Fifth Amendment of the Constitution of the United States. Said Act and Regulations do not improve State and City personnel, or the services they render, and in many respects are irreparably damaging as they cause enormous expenses and, at the same time, a lessening of service. Existing State law, City Charter and ordinance provisions have been developed and adopted over the years to meet the unique situation of each State and City; and their laws, Charters and provisions are fair, reasonable and devoid of the problems and damage caused by the Act and the proposed Regulations thereunder.

44. The imposing of the Act's provisions and the implementing thereof by Defendant, and the Federal officers and employees acting under his direction and supervision, in replacement of State and City personnel law and State and City implementing officers and employees casts a vast unreasonable burden upon States and Cities. This damaging burden has no rational relation to commerce among the States and cannot be constitutionally based upon the Commerce Clause of the Constitution of the United States, and is in addition a direct violation of the Tenth Amendment of the Constitution of the United States.

45. The 1974 Amendments to the Act have caused and will cause to Plaintiffs irreparable injury and damage, and will irreparably injure and damage all Cities and States situated similarly to Plaintiffs, as described herein. The 1974 Amendments to the Act will require Plaintiffs, States, political subdivisions and Cities to meet enormously increased costs in providing the same essential Government services provided presently. The ability of Plaintiffs to meet these increased costs, which will not be accompanied by increases in the services provided, is circumscribed by some State constitutional provisions limiting taxes and debts, the purpose of which is to safeguard the fiscal integrity of Plaintiffs States and Cities, for the benefit of the citizens thereof. →

46. The 1974 Amendments to the Act will force Plaintiffs to forego planned new Government services, owing to the greatly increased cost of providing current or reduced essential Government services, said increased costs arising out of inflexible provisions of the Act rather than out of increased total costs of salaries for all municipal services.

47. The 1974 Amendments to the Act will make it substantially more difficult for Plaintiffs State and Cities to get and keep qualified employees to provide essential Government services, owing to the Amendments' and Act's effective prohibition of the employment practices such as compensatory time off and joint employment alleged in the Complaint, *supra* which benefit employees of Plaintiffs.

48. The great diversity of State and local Governments makes full computation of the nationwide impact of these Amendments impossible. However, a recently

released International City Management Association (ICMA) study of fire protection services across the country provides a basis for determining the immense impact for that budget alone, which is but a fraction of each City's budget. The estimated 200,000 full-time paid firefighters constitute a conservatively estimated payroll of \$2 billion annually. The extensive ICMA study indicates that there are three main groups of fire departments which will incur the most liability as a result of the Act: (1) those with an average number of hours per week greater than the 60 hours per week presently required (about 15% of the Cities sampled), (2) those with more than 28 days in their work periods (about 10% of those sampled), and (3) those who employ a pay back system whereby a fireman is paid for more hours than he works in each period but must pay back a certain number of shifts in a year (about 10% of those sampled). Allowing for overlap between these groups and calculating the average increase from the data gathered, the minimum impact for the first year on fire personnel budgets nationwide is estimated at a minimum of \$200,000,000. By 1978 the estimated cumulative impact on fire personnel budgets is estimated to be \$1 billion. This represents a 50% increase in fire protection costs after three years owing to the 1974 Amendments alone. Increased costs for other essential State and City governmental functions are reasonably certain to amount to billions of dollars per year due to the impact of these 1974 Amendments to the Act.

49. Plaintiff Metropolitan Government of Nashville and Davidson County has concluded that the 1974 Amendments to the Act will increase the cost of

providing only essential police and fire protection, with no increase in service provided, and no increase in salary levels, by \$938,000 per year.

50. Furthermore, Plaintiff Metropolitan Government of Nashville and Davidson County, Tennessee, estimates that about 40% of its policemen work in joint employment relationships for the State and Metropolitan Government, as defined in Defendant's new proposed Regulations for police and fire personnel (§ 553.8, intended to be effective on January 1, 1975). These police officers average at least 16 hours a week in this employment. If the proposed rules become effective it is possible that the Metropolitan Government would have to pay overtime on this 16 hours a week, resulting in an overtime payment of \$19,000 per week or a total of approximately \$1 million per year. The alternative to this added liability is to curtail necessary services.

51. Plaintiff Lompoc, California, will suffer vast as yet inestimable increased costs if it were to comply with the Act with no increase in salary levels and no increase in services provided.

52. Plaintiff Cape Girardeau, Missouri, estimates the present annual fire department budget of \$350,000 would have to be increased by another \$250,000 to \$400,000 per year in order to comply with the Act. This would translate as an increase from the present expenditure rate of 50 cents per \$100 assessed valuation to 90 cents per \$100 assessed valuation. The citizens of Cape Girardeau cannot comply with such a drastic immediate increase in the cost of their Government.

53. Plaintiff City of Salt Lake will suffer the following irreparable injury as a result of the 1974 Amendments:

the payment of time and one-half instead of compensatory time off for the more than 7000 overtime hours accumulated annually merely to provide necessary snow removal services; discontinuance of shift trading, and flexible scheduling practices; increased costs for the hiring of, or elimination of students to work in the public parks each summer; increased costs for the hiring of, or elimination of student interns from the University of Utah; an estimated \$500,000 in additional overtime costs and a diminution of some Government services to meet even this conservative estimate; and enormous morale problems.

54. Plaintiff State of California estimates that for the ensuing Fiscal Year 1975-1976, the Act will require an increase in the cost of providing essential State services among the various departments of the State of California, respectively, as follows:

Department of Justice	\$459,688
Department of Food and	
Agriculture	\$654,567
Department of Parks and	
Recreation	\$46,000
Department of Consumer	
Affairs	\$56,000
Department of Transportation	\$2,000,000
Department of California	
Highway Patrol	\$432,000
Department of Motor Vehicles	\$350,000
Department of Corrections	\$80,000
Department of	
Conservation	\$4,000,000 – \$12,000,000
TOTAL	
– ALL DEPARTMENTS	\$8,168,255 – \$16,168,255

The foregoing estimate does *not* include an estimation of the State's administrative expense for meeting the record-keeping requirements of the Act, *nor* does such estimate include approximately 6 million dollars in additional costs to the State by reason of the fiscal inability of city and county fire departments, who are participants in the California mutual aid program, to meet the overtime requirements of the federal Act. Also *not* included in such estimate is tremendous overtime costs (amounting to approximately \$750,000 per year) which are required to be paid to California Highway Patrol cadets during their academy training program; the California Highway Patrol has been forced to reduce its training program from 2,080 hours to 960 hours to obviate the application of the federal Act, all to the detriment of the academy training program, a program crucial to the safety and welfare of the People of the State of California.

55. Plaintiff Arizona estimates that for fiscal year 1975-76, the Act will require a \$1.5 million increase in the cost of providing State police services, a \$200,000 increase in the cost of providing State health services and a \$300,000 increase in costs of highway services. This, coupled with additional employee related costs of \$300,000, and \$250,000 extra needed in highway construction costs, brings the estimated total impact of the Act for one year to over \$2.5 million dollars for the State of Arizona alone.

56. Member Cities of Plaintiff National League of Cities, in planning their budgets for upcoming years, have reported to Plaintiff National League of Cities many other illustrations of the irreparable injury they will

suffer as a result of the Act with special damaging impact on such cities who up to now have depended on much volunteer public service. Examples are here set out in paragraphs 57 and 77.

57. Owing to the burdensome requirements of the 1974 Amendments, the City of Los Angeles, California, (pop. 2,816,061) estimates an additional expense for fiscal year 1975-76 in the budget for salaries of fire personnel only, of over \$2.5 million, plus an increase in pension costs of between \$160,000 and \$430,000. This increased cost is the result of time and one-half payment for overtime and hiring of additional uniformed personnel with no increase in service. If in 1978, police workweeks are brought into parity with other employees under the Act, the estimated overtime costs for that department alone would be between \$4 and 6 million. These estimates presume the continuance of present salary levels and take into account no future increases in services provided.

58. Owing to the burdensome requirements of the 1974 Amendments, the Sacramento, California, (pop. 254,413) budget for the current fiscal year 1974-75 has already incurred an extra \$350,000 cost due merely to non-police and fire services. Also, the City's carefully developed system of compensatory time off, favored by management and employees alike, must now be abolished as illegal under the Amendments. In the area of fire protection services, a new Memorandum of Understanding will be negotiated between fire personnel and the City for fiscal year 1975-76. The uncertainty presented by the diminishing exemption under § 7(k) of the Act renders these negotiations nearly impossible. By

January 1, 1977, in order to merely meet the Act's requirements in fire protection services, the City must either diminish services or hire 16-17 additional fire-fighters at a cost of \$310,000 in 1974 firemen wages. If in 1978, the Secretary of Labor study (upon which, under the Act, work weeks will be based) should result in a 52 hour work week, Sacramento's additional cost for present firefighting service would increase \$636,000; if a 50 hour week is established, \$993,000; if a 48 hour week is established, \$1,379,000. Furthermore, conflict between the proposed Regulations for fire and police protection service and the already existing volume of Regulations (29 C.F.R. §§ 500-1899) create uncertainties as to who is and who is not covered under the Act.

59. Owing to the burdensome requirements of the 1974 Amendments, Pasadena, California (pop. 113,327) estimates that in 1978 when the present police and fire personnel exemption could be expected to be in parity with the present requirement for others covered under the Act, the same level of fire protection service at the same wage rate would cost an additional \$1.5 million dollars, representing a 50% increase over the current budget for such activities of \$3 million.

60. Owing to the burdensome requirements of the 1974 Amendments the City of San Buenaventura, California, (pop. 47,089) estimates its overtime costs for fire personnel to be \$72,700 in 1975, \$63,200 in 1976, \$126,500 in 1977 and \$31,600 for each additional hour the work week is decreased by the 1978 survey. These increased costs represent an increase payroll cost by the end of 1977 of 29.1%.

61. Owing to the burdensome requirements of the 1974 Amendments, in Newark, California, (pop. 27,153) an immediate impact of nearly \$18,000 will be incurred just to meet the Act's new requirements for overtime for outside training, shift change, manning, call back and staff meetings. The costs of overtime and additional personnel to meet the Act's new hour requirements would range from \$24,000 in 1977 to approximately \$183,000 in 1978.

62. Owing to the burdensome requirements of the 1974 Amendments, Montebello, California (pop. 42,807) estimates its overall additional overtime costs to be \$140,000 per year. In fire suppression service alone it expects a 27.3% increase in overtime costs for 1975 with an estimated combined regular salary and overtime cost increase of \$117,922 by the impact date of 1977. Its police department will be affected in that "Reserve" officers who previously worked on a call and emergency basis for a stipend of \$25.00 per month, now may not work in excess of 12 and 1/2 hours a month. This program, therefore, has been effectively abolished.

63. Owing to the burdensome requirements of the 1974 Amendments, Menlo Park, California, (pop. 26,734) in order to prevent diminution of services in the areas of crime prevention, traffic enforcement, case investigation and emergency incident response must spend an additional \$120,000 annually.

64. Owing to the burdensome requirements of the 1974 Amendments, in Inglewood, California, (pop. 87,985) the police department must curtail its effort to achieve affirmative action goals by providing employment opportunities for men and women interested in a career

in law enforcement. Under the contractual arrangement trainees worked 20 hours per week at \$3.57 per hour and books and tuition were provided free for the 20 hours per week of classes. Unable to meet the stricter financial burden placed on this program by the Act the City has been forced to abolish it.

65. Owing to the burdensome requirements of the 1974 Amendments, Clovis, California, (pop. 13,856) must make a decision regarding its internship programs with California State University in Fresno to give students the opportunity to observe and participate, to a limited extent, in daily government operation. Students received as compensation, school credit and a small stipend. The Fair Labor Standards Act will cause the City to eliminate the program or the pay for interns. Some students will have to be excluded from the program either way.

66. Owing to the burdensome requirements of the 1974 Amendments, Coronado, California, (pop. 20,910) estimates additional overtime costs in its fire department alone of over \$33,000 for 1975, over \$59,000 for 1976 and over \$111,000 for 1977.

67. Owing to the burdensome requirements of the 1974 Amendments, Sumter, South Carolina, (pop. 23,895) estimates its overall additional overtime expense and wage increase will amount to \$235,000 per year. In addition, the City of Sumter will have to terminate part-time firefighters who also work in other City departments.

68. Owing to the burdensome requirements of the 1974 Amendments in Lodi, California, (pop. 28,691) the necessity that the work period be seven days rather than

the previous practice of one month means extra costs in the computation of payrolls which Lodi must do mechanically, there not being the benefit of a computer available to the City.

69. Owing to the burdensome requirements of the 1974 Amendments, Downey, California, (pop. 88,445) has been forced to abandon an effective proposal for twelve-hour police dispatcher shifts since the scheduling would have resulted in employees working less than 40 hours in some weeks while more than 40 hours in others with overtime costs incurred.

70. Owing to the burdensome requirements of the 1974 Amendments, in Randolph, New Jersey, some full-time employees no longer may serve as staff for volunteer boards or commissions. Since all of these hours must be counted towards "hours worked" under the Act, this practice, helpful to the municipality and commission, must be discontinued and paid staff hired, increasing the cost to the City.

71. Owing to the burdensome requirements of the 1974 Amendments, Phoenix, Arizona, (pop. 581,562) estimates that the elimination of "compensatory time" will result in an additional annual increased expenditure of \$100,000.

72. Owing to the burdensome requirements of the 1974 Amendments, Tulsa, Oklahoma, (pop. 331,638) estimates additional costs in its fire department at \$126,700 for 1976 and \$380,600 additional cost in 1977.

73. Owing to the burdensome requirements of the 1974 Amendments, Sunnyvale, California, (pop. 75,408) estimates that additional costs for its public safety

personnel overtime will be \$169,000 for 1975, \$186,000 for 1976 and over \$204,000 for 1977.

74. Owing to the burdensome requirements of the 1974 Amendments, Corcoran, California, (pop. 5,249) estimates a \$49,000 per year increase to all city functions and that it must reduce training time and ambulance services.

75. Owing to the burdensome requirements of the 1974 Amendments, Columbia, South Carolina, (pop. 113,542) estimates that by 1976 its fire protection salary budget will have to be increased by \$110,000 in order to merely continue the service presently provided. Furthermore, since under the proposed Regulation (§ 553.6 intended to be affective on January 1, 1975) all job related training is compensable, and since training programs are difficult to arrange during scheduled work hours for these departments, decreased in-service training is a likely result. Such decrease is just as damaging in the long run, and mitigates efficiency of police and fire services just as much, as an outright decrease in service.

76. Owing to the burdensome requirements of the 1974 Amendments, Richmond, Virginia (pop. 249,621) estimates that the hiring of necessary additional firefighters in order to maintain present services and still be in compliance with the Act will cost the City an additional \$161,000.

77. Owing to the burdensome requirements of the 1974 Amendments, Reidsville, North Carolina (pop. 13,636) estimates increased police protection costs of \$33,567 next year representing an increase of over 10% of the total annual police salary expenditure, and increased fire protection costs of \$30,635 next year

representing an increase of over 15% of the total annual fire salary expenditures.

78. In meeting the increase cost of providing the same essential government services currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Metropolitan Government of Nashville and Davidson County, it is limited by Article II, section 9 of the Constitution of Tennessee, which prohibits municipal income, estate and inheritance taxes.

79. In meeting the increased cost of providing the same essential Government services as currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Arizona, Plaintiff Arizona is limited by Article 9, section 5 of the Constitution of Arizona, which limits State debt. Political subdivisions of Plaintiff Arizona are limited by Article 9, section 8 of the Constitution of Arizona to a debt of four per centum of taxable property without a special election and, in any case, ten per centum of taxable property.

80. In meeting the increased cost of providing the same essential Government services, as currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Lompoc, Plaintiff Lompoc is limited by Article XIII, section 40 of the Constitution of California, which prohibits a City or other municipal corporation from incurring debts in excess of revenue for the current year without a special election.

81. In meeting the increased cost of providing the same essential Government services as currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Salt Lake City, Plaintiff Salt Lake City is limited by Article XIV, section 3 of the

Constitution of Utah, which provides that cities and other municipal corporations may not incur debts in excess of taxes for the current year. Article XIV, section 4 of the Constitution of Utah prohibits taxation by cities and other municipal corporations in excess of four per centum of the value of taxable property.

82. In meeting the increased cost of providing the same essential Government services as currently provided, which increased cost the 1974 Amendments to the Act impose on Plaintiff Cape Girardeau, Plaintiff Cape Girardeau is limited by Article 6, section 26 of the Constitution of 1945 of Missouri, which prohibits Cities and political subdivisions of the State from incurring debts in excess of revenues for the current year, without a special election. Article 6, section 26(b) of the Constitution of 1945 of Missouri limits the excess of debt over revenue to five per centum of the value of taxable tangible property, even following such a special election.

83. Plaintiffs State, political subdivisions and Cities are and will be required by the 1974 Amendments to the Act to alter work schedules and other personnel policies of long standing and proven effectiveness, for no reasonable reason related to the effective provision of essential Government services to the people within Plaintiffs' jurisdictions. The only purpose to Plaintiffs for this alteration of schedules and policies is to minimize the overtime wages provided for under the Act as amended, so as to keep within budget law requirements.

84. Plaintiffs are further irreparably and immediately harmed in that § 16 of the Act imposes a \$10,000 fine plus up to six months in prison for willful violations. Furthermore, any violation of § 6 or § 7 of the Act

results in a Civil liability of back pay plus an equal amount in liquidated damages. Thus, literally, each hour of the Act's application to Plaintiffs results in the potential of double damages in a suit under the Act.

85. The facts set forth herein demonstrate the irreparable harm imposed upon Plaintiffs for which Plaintiffs have no adequate remedy at law; Plaintiffs are entitled to a Judgment adjudicating their rights and an injunction to prevent Defendant from enforcing this unconstitutional Act against Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendant, declaring the Fair Labor Standards Act as applied to States, Cities and political subdivisions of States to be unconstitutional and for the interlocutory, preliminary and permanent enjoining of Defendant from enforcing or attempting to enforce the Act against Plaintiffs or those situated similarly to Plaintiffs, and for such other and additional relief as the facts alleged herein may warrant.

DATED: December 23, 1974.

Respectfully submitted,
EVELLE J. YOUNGER, Attorney General
of the State of California
WILLARD A. SHANK
Assistant Attorney General
TALMADGE R. JONES
Deputy Attorney General

By/s/ TALMADGE R. JONES
TALMADGE R. JONES
Attorneys for Plaintiffs-Intervenors

STATE OF CALIFORNIA)

:

COUNTY OF SACRAMENTO)

JACK WOODARD, being duly sworn, deposes and says that his business address is the Agriculture and Services Agency of the State of California, 1220 N Street, Sacramento, California 95814; that he is Acting Secretary of the Agriculture and Services Agency of the State of California, plaintiff herein; and that he has read the foregoing Complaint in Intervention, knows the contents thereof with respect to the State of California and its named officers, and that the same are true of his own knowledge.

/s/ JACK WOODARD
JACK WOODARD
Subscribed and sworn to before me
this 24th day of December, 1974.

/s/ Billie R. Huntley
NOTARY PUBLIC

**Transcript of Deposition of Allen E. Pritchard, Jr.,
December 23, 1974**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL LEAGUE OF CITIES,)	
et al.,)	
	Plaintiffs,)
) Civil Action
vs.) No. 74-1811
)
HONORABLE PETER J. BRENNAN,)	
Secretary of Labor,)	
)	
	Defendant.)

DEPOSITION OF ALLEN PRITCHARD, JR.

Washington, D. C.
Monday, 23 December 1974

Deposition of ALLEN PRITCHARD, JR., called for examination by agreement of counsel, at Room 4121, Labor Department, 14th and Constitution Avenue, N. W., Washington, D. C., at 10 a.m., before Dennis A. Dinkel, a notary public in and for the District of Columbia, when were present on behalf of the respective parties:

CHARLES S. RHYNE, WILLIAM RHYNE, and RICK BACIGALUPO, Esqs.; on behalf of Plaintiffs.

NATHAN DODELL, Esq.; Assistant United States Attorney; on behalf of Defendant.

CONTENTS

WITNESS

EXAMINATION

Allen Pritchard, Jr.

By Mr. Dodell	4
By Mr. Charles Rhyne	234

EXHIBITS

NUMBER

FOR IDENTIFICATION

Defendant's:

1	14
2	15
3	28
4	38
5	51
6, 7, 8 and 9	55
10 thru 36	60
37	125

Plaintiff's:

1	234
---	-----

[4] Whereupon,

ALLEN PRITCHARD, JR.

was called as a witness and, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. DODELL:

Q State your name.

A Allen E. Pritchard, Jr.

Q Your address?

A My office address?

Q Yes.

A 1620 I Street Northwest, Washington, D.C.

Q What is your position?

A I am the executive vice president of the National League of Cities.

Q And how long have you held that position?

A Position of executive vice president since July of 1972.

Q And prior to that, what was your position?

A I was deputy executive vice president.

Q When did you assume that responsibility?

A 1970.

Q [5] And prior to that, where were you employed?

A I was director of Congressional relations for the National League of Cities since 1966.

Q And prior to that?

A I was for one year the director of the Joint Center for Community Development of the National League of Cities and the United States Conference of Mayors.

Q That was for one year?

A Yes. I organized that.

Q And prior to that?

A I was administrative assistant to Senator James B. Pearson of Kansas, United States Senator, for three and a half years.

Q So that was from —

A From 19 — about April of 1962, as I recall.

MR. CHARLES RHYNE: If it would help you, I have a biographical sketch. Do you want that?

MR. DODELL: That would be helpful.

Thank you, Mr. Rhyne.

BY MR. DODELL:

Q Mr. Pritchard, in the verified complaint, there are a number of allegations made about the impact of the Fair [6] Labor Standards Amendments of 1974 on various cities. I would like to ask you some questions about those allegations.

I would like to start with the city of Nashville; and it is referred to in the complaint as the metropolitan government of Nashville and Davidson County.

I would like to ask you whether Nashville has come into compliance with the amendments with regard to those provisions that were effective May 1, 1974?

A I am not certain that I can answer that they have come into complete compliance. The information that I have as far as Nashville or any other city is concerned, except for those who have indicated an exception as in the case of Cape Girardeau, the cities, the city officials have done their best to comply with what information they have.

I think one of our great concerns is that the lack of information, the lack of understanding, the inability to interpret Title 29 raises great doubts as to whether many of them have complied or are able to comply at this time.

Q So if I understand what you have said —

A I think there is a difference between intent and [7] my ability to swear that they have in all ways come into compliance.

Q Is it — am I correct, then, in understanding what you have said that as far as you know, with the exception of Cape Girardeau, the cities have tried to comply with the act as they understand it?

A I think — yes, it is a general practice of locally elected officials to comply with the law, even though they don't like it.

Q And do you know how much it has cost Nashville to try to come into compliance with those provisions of the act which became effective May 1, 1974?

A I think those figures are in the complaint. Those were figures that were supplied by the city of Nashville. Without detailed papers in front of me, I couldn't recite the details on 15,000 cities; but the data that we have supplied is data that has been supplied us by those cities in their efforts to comply or — what they anticipate will be required to comply.

Q Well, as I read the complaint with regard to Nashville, the only allegations are with regard to police and fire protection; and I don't see any allegations with [8] regard to the cost of complying with the other provisions of the act that became effective May 1, 1974, other than provisions regarding police and firemen. Can we then assume that you are not making any allegation that Nashville has had any extra expense for those other employees?

A I think that the *Congressional Record* indicated that under the — in discussing this legislation that most of the

cities already met the minimum wage standards in most areas.

In fact, there was an indication that the law would have no impact because of that. Our information indicates that most cities do pay the minimum wage, so that as far as — and that has been the big factor in the application that came into effect May 1. There will be an impact in those areas which, under the May 1 application which many of the cities have not completely sorted out yet; and I assume this is also true in the case of Nashville.

In the case of its application to boards and commissions, for example, we still don't understand how that applies and what impact that is going to have. As far as the day-to-day employees in many jurisdictions, the minimum wage did not have an impact.

Q [9] And putting aside for the moment policemen and firemen, since May 1, Nashville has had to pay overtime to employees who have exceeded 40 hours per week; is that correct?

A That's right; and again in Nashville as in many other jurisdictions, as you note — and we can supply data, provisions were made in those cities already for time and a half under local law.

Q Prior to that time?

A That's right.

Q So that provision did not have an impact on Nashville?

A I am not saying it didn't have impact. I don't think the impact has been fully sorted out at this point.

As I indicated, in some areas there are two kinds of impacts that haven't been sorted out that I can identify quickly.

One is that there's a failure to recognize that local government operates much differently than a private business, and much differently than the federal government. A substantial amount of the activity carried on by local government is carried on by lay people who are only [10] nominally compensated. These people serve on planning commissions, zoning boards, hospital boards, all kinds of boards and commissions, library boards, and are only compensated at nominal rates.

There are many other types of semi-volunteer type activities; and how that — these people in their certifications did not understand and do not now understand how that is going to be interpreted.

We have many, many cities that have police — have police reserves, for example, who don't — still don't understand and will not be able to understand the police and fire regulations, the public safety regulations, what the impact of this is going to be.

It is going to be months and months before those things can be sorted out.

There is an impact there.

The other impact which they have not — cannot sort out at this point, which is very critical, is that once these changes are made, they change the whole structure of local salary — the whole local salary structure, the pay schedules, all the way through the system; and what the ripple effect of this is going to be is something that [11] I am sure in terms of an immediate measure at the point in time in which these statements were made had not had an opportunity to be sorted out.

Q Insofar as Nashville is concerned, I think you have said that since May 1, 1974, there's been no substantial

impact on the ordinary, day-to-day employee because Nashville met the minimum wage?

MR. CHARLES RHYNE: I don't think he said that at all. That's your interpretation of what he said. He said there is a ripple effect and an effect they don't realize because of all these other things. You are asking him very general questions. I don't want him to misinterpret your interpretation of his question.

MR. DODELL: I will ask the question again then.

BY MR. DODELL:

Q Since May 1, 1974, you have said that Nashville has tried to come into compliance with the act as well as it can interpret it with regard to its day-to-day employees.

With regard to its day-to-day employees, has there been a substantial impact on Nashville financially in coming — in trying to come into compliance with the provisions that became effective May 1, 1974?

A [12] As far as I can determine at this point, and as far as they can determine, the application on May 1 did not have a substantial impact; but that's as far as they can determine at this point.

Q Now with regard to the figure of 938,000, that is in paragraph 45 of the complaint — and I would like to read you that paragraph.

MR. CHARLES RHYNE: Do you want him to look at it?

MR. DODELL: Do you have a copy?

THE WITNESS: Yes.

MR. DODELL: Thank you for that suggestion, Mr. Rhyne.

MR. CHARLES RHYNE: Which one?

MR. DODELL: Paragraph 45.

BY MR. DODELL:

Q Could you read to yourself paragraph 45?

A Yes. Yes.

Q Now let me ask you first, when that says \$938,000 per year, do you know whether that refers to 1975?

A Yes, that does apply to 1975. The increase would be greater in subsequent years.

Q [13] Now do you know how that figure was computed by the city of Nashville?

A It was computed on the basis of the information that they had available from the advance materials supplied by the Wage and Hour Division.

Q Now do you know how much of that is attributable to the provisions with regard to policemen and how much with regard to the provisions regarding firemen?

A My recollection is, without having their statement in front of me, is that that is entirely attributable to that.

Q Yes, but how much is attributable to police and how much is attributable to firemen?

A I believe that most of it, if not all of it, is attributable to fire at this point.

MR. CHARLES RHYNE: Do you want the piece of paper he's referring to? I don't mean to interfere with your thing, but he obviously is referring to some piece of paper.

If you want that, you can have it.

MR. DODELL: That would be excellent, Mr. Rhyne, if there is such a piece of paper. I would be delighted to [14] see it.

MR. CHARLES RHYNE: Rick, do you have the piece of paper that relates to this?

MR. DODELL: Thank you, Mr. Rhyne.

May we have this?

MR. CHARLES RHYNE: Yes.

MR. DODELL: Could we mark this Defendant's Exhibit No. 1 for identification?

(The document referred to was marked Defendant's Exhibit 1 for identification.)

MR. CHARLES RHYNE: I find there are two pieces of paper.

MR. BACIGALUPO: The next relates to the next paragraph.

MR. CHARLES RHYNE: Well, are they both marked Exhibit A?

MR. WILLIAM RHYNE: The next piece of paper relates to the next paragraph.

MR. CHARLES RHYNE: All right. I am sorry.

MR. DODELL: Could you mark these as plaintiff's exhibits — excuse me, Defendant's Exhibits 1 and 2 for [15] identification?

(The document referred to was marked Defendant's Exhibit 2 for identification.)

BY MR. DODELL:

Q I would like to show you the exhibits marked Defendant's Exhibits No. 1 and 2 for identification.

A I have copies.

Q May I ask, is your knowledge with regard to paragraphs — let me take one at a time.

With regard to paragraph 45, entirely based on Defendant's Exhibit 41 — Nos. 1 and 2 that have been marked for identification?

A That's correct.

Q So for the record then — I think this is implicit in your answer, you don't know how many average hours

per week policemen in Nashville or firemen in Nashville were on duty in 1974?

A No. No, I don't.

Q With regard to paragraph 46 of the complaint it is correct, is it not, that if policemen averaged 44 hours per week for Nashville, and they averaged 16 hours [16] per week for the state government in a police function, then they would not exceed the 60 hour per week figure that is provided for under the amendments and provided that the work period was set up under the act, there would be no additional overtime obligation? Is that correct?

A I don't agree with several parts of your point there. I don't know where you get the 44 hours to begin with; and the 60 hours – to my understanding – does not apply in the situation in which – which is described here. This is joint employment as described in here, which is governed by entirely different sections of the regulations.

Q It is your understanding that if the – if there is a joint employment relationship, and if the policeman works in a police capacity for the state government, and also in a police capacity for the metropolitan government, that the 60-hour provision is not applicable?

A My understanding is that – and you get into very minute details of regulations that have just come out – but my understanding is that the joint employment is covered by another section; and that the – in this case, the 40 hours applies.

Q But –

A [17] 60 hours only applies to firemen, I believe. Not to policemen.

Q This depends in any event upon a reading of the regulations, not on the statute itself?

A No. It applies — the hours set in the statute for firemen and policemen are different.

Q Doesn't the statute provide 60 hours — an aggregate of 240 hours for both policemen and firemen?

A Well, I should check that to verify that. Nevertheless, the joint employment agreement is a different section of the statute.

MR. CHARLES RHYNE: I should add, Mr. Pritchard is not a lawyer, and I think you will understand that he may have difficulty in interpreting the law and the regulations.

THE WITNESS: I should say that the information supplied here is based upon the cities — and as you can see, the city attorney having worked with his city, the director of law, interpretation of the regulations and the law.

BY MR. DODELL:

Q Well, there were no final regulations until [18] last Friday, is that not correct?

A That's right, but in those particular provisions they were not significantly changed, as I understand it.

Q Now do you know whether Nashville has already prepared its budget for the year 1975?

A My understanding is that the city of Nashville is on a July 1 budget year, and is currently in their budget year. The new budget will be under consideration for enactment on July 1.

Q So Nashville is presently under a budget that would encompass the next six months?

A That's right.

Q Do you know whether that budget has been premised on the coming into effect of the amendments

on January 1st or not?

A No, it was not, because the information was not available at that time.

Q Well, the statute was available, was it not, Mr. Pritchard?

A The statute was available, but there was no basis for determining how – for example, the biggest problem in police and fire at this point, particularly on [19] fire where the big cost is, was that there was an assumption based upon the general interpretation of legislative history that sleep and eating time would be exempted.

That makes a very substantial difference in the cost. There was no way for anyone to determine that at that point.

That's true of virtually every city that operates under the July 1 budget year.

Q If I understand you then, Nashville's budget is not geared to the new amendments commencing January 1st?

A Not – there may have been some accommodation, but not entirely.

Q Well, your previous testimony was that the cities tried to comply with the law. What was Nashville's anticipation as to how it would comply with the law starting January 1st, if it didn't construct its budget such that it could –

A I don't know –

Q Excuse me. Could I finish the question?

– such that it could finance compliance?

A I don't pretend to be able to read the minds of the city officials of Nashville. It is my job to rely on [20] their information supplied to me. I represent them in that capacity as I do the other 15,000 cities; and I gather the

information and present it to whoever it is appropriate to present it to, based upon their certification of what their interpretation is, and what their — what the impact is. I am in no position to read the minds of the mayor, the city council. I can only give you the facts as to what they produce.

Q Just so I understand — I am not sure I understood your testimony as to whether or not the budget for the next six months provides for the compliance with the new amendments or not?

A It is my understanding that I said that it did not. No one in — on July, when this act was signed in April — and there were no regulations available at that point, no one was in a position to draw any budgets with full understanding of what the implications would be budgetwise.

I would doubt that there would be 10 percent of the municipalities in the country that have budgets — of those that adopted budgets in July, made any provision for the — I have no factual data to back that up. That [21] would be my experienced judgment that not more than 10 percent of those jurisdictions were able to modify their budgets to accommodate this provision.

They did not know at that point how it would apply. We certainly would not have been able to advise them. I doubt this department would. Even at this point, this department is still advising municipalities that there are interpretations which they are not prepared to provide.

Certainly on July 1, they were not prepared to provide it.

MR. CHARLES RHYNE: You mean July 1, 1974?

THE WITNESS: Yes.