THE CASE FOR ACCOUNTABILITY

The Benefits of Joint and Several Liability Laws for Contractors, Communities, and States

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Jack Kearns, MPP
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I. INTRODUCTION

The construction industry is built in layers. Owner/Developers hire general contractors, who hire specialty subcontractors, who hire labor brokers, who supply the workers who actually swing the hammer, pull the wire, and lay the pipe. This layered structure has been characteristic of the industry for decades, and it has created a system in which those who profit the most from a project are the least accountable for how the actual workers are treated.

This business model incentivizes risk-taking from employers at the top. Developers and general contractors (GCs) can award work to the lowest bidder even when that bidder has a history of breaking labor laws. Subcontractors, competing to win that bid, cut costs by outsourcing hiring to labor brokers, who commonly break labor laws to earn their bid.[1] These exploitative practices harm not only workers but also law-abiding employers, who cannot compete unless they lower their business standards.

When legal action is taken over illegal labor practices on a project, fly-by-night subcontractors or labor brokers are often the only ones deemed responsible by a judge. This complicates the process of recovering wages, as actors at the bottom of the chain frequently lack the money to pay what they owe, or they dodge responsibility altogether by incorporating under a new name, filing for bankruptcy, or simply disappearing.[2]

To address this issue, a growing number of states have passed statutes making developers and GCs jointly and severally liable when a subcontractor fails to pay its workers. Joint and several liability (JSL) allows workers to recover all the wages they are owed from anyone on the chain of hiring. These states include California (2018), Maryland (2018), Virginia (2020), New Jersey (2020), Illinois (2022), New York (2022), Hawaii (2023), Minnesota (2023), Oregon (2026), Delaware (2026), and Connecticut (2026), as well as Washington, D.C. (2015). Minnesota and Oregon take it a step further to include JSL for owners, who hide behind layers of contractors and subcontractors despite being the party that benefits the most from undercutting workers. Nevada has had a law on the books since 1931, although it is among the weakest laws in this group. Denver, Colorado also passed its own JSL ordinance in recent years.[3]

Opponents of these laws have made sweeping claims that they will stifle competition, decrease the diversity of construction business owners, and increase housing costs. This brief tests these claims directly, using twenty-five years of construction industry data from the states that passed these laws. The findings are consistent in that JSL laws do not reduce competition or contractor diversity relative to the states without them (this report's comparison group is Arizona, Florida, and Texas).

There is also no credible basis for the claim that they raise housing costs. What these laws accomplish is giving workers a path to recover their wages without jumping through legal hurdles, creating a culture of compliance by providing a level playing field for contractors to fairly compete in, and increasing state revenue by ensuring GCs hire subcontractors who aren't paying under the table and avoiding paying payroll and corporate taxes.

II. The Problem: Wage Theft in Construction

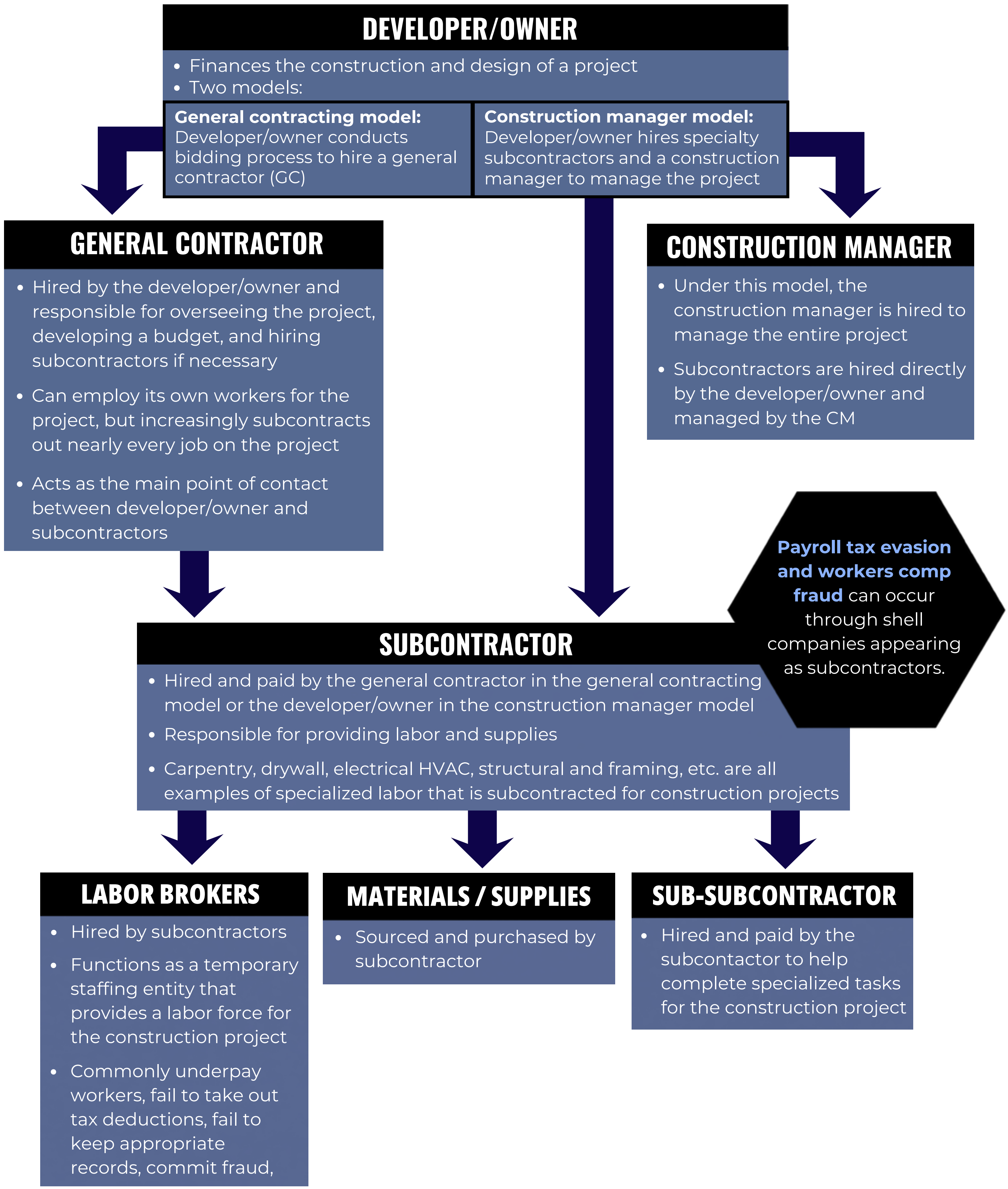
Wage theft – the practice of not paying workers what they've legally earned – is so common in the construction industry that it has become part of the business model for many contractors. Wage theft includes practices such as denying overtime pay, requiring workers to work off the clock, misclassifying employees as independent contractors, paying workers off-the-books, and paying below minimum wage. In order to compete as a contractor, breaking labor laws and undercutting workers is often required and permitted due to a lack of labor law enforcement.[4]

The industry wasn't always like this. Since the 1970s, the industry has seen a decline of construction unions, deregulation of the market, and a weakening of labor enforcement mechanisms.[5] Developers now operate in a complicated web of subcontracting relationships that results in a churning, less experienced workforce, poor labor practices, rushed schedules, more dangerous worksites, and lower-quality buildings. Most projects are no longer managed by one GC who employs everyone on a construction site. They are overseen by a GC or a construction manager, who hires specialty subcontractors for nearly every task on the building, who then hire labor brokers to provide workers. Research estimates that most homebuilders use between eleven and thirty subcontractors to build an average single-family home, with larger homebuilders using up to forty.[6]

The construction labor market has effectively been split into two: a public works or public/private partnership sector with stable, high-quality prevailing wage jobs and a private labor market with often low wages and exploitative activities. Workers in the private market have little occupational mobility. Many are undocumented immigrants, lack English-language fluency, and have limited knowledge of other work opportunities.[7] The desperation of construction workers to find employment allows contractors to treat them poorly despite their need for more workers. These workers are especially unlikely to report violations, particularly because their undocumented status creates fear of retaliation or deportation.

Exploitative practices such as cash-only pay, unpaid overtime, denied breaks, wage kickbacks, workers' compensation premium fraud, labor trafficking, child labor, money

Figure 1: The Layers of a Construction Business[8]



laundering, unsafe working conditions, and numerous forms of wage theft run rampant in the industry.[9] Misclassification (incorrectly labeling an employee as an independent contractor to avoid paying payroll taxes and workers' compensation) and off-the-books employment are among the most common forms. A 2023 report by the Century Foundation found that up to 19 percent, or 2.1 million, of construction workers are misclassified or paid off the books.[10] Counting unpaid overtime, workers' compensation premiums and state and federal taxes, construction employers evaded a total of $12.8 billion in labor costs by operating illegally in 2021 alone.[11] The table shows the report's high and low estimates of misclassification, costs of wage theft to taxpayers, and costs evaded by employers due to wage theft practices in each of the states analyzed in this report.[12]

Figure 2: The Century Foundation State by State Misclassification Cost Estimates[13]

State	Low Est. % of Misclassified Workforce	High Est. % of Misclassified Workforce	Taxpayer Costs ($M)	Costs Evaded by Employers ($M)
Arizona	8.40%	16.70%	$141.00	$194.80
California	9.20%	18.40%	$1,051.50	$1,446.80
District of Columbia	15.20%	30.30%	$35.60	$48.60
Florida	8.80%	17.50%	$403.70	$717.30
Hawaii	7.60%	15.20%	$53.50	$59.50
Illinois	10.40%	20.80%	$357.40	$480.60
Maryland	7.20%	14.40%	$128.10	$154.50
Minnesota	9.80%	19.50%	$188.70	$269.20
Nevada	2.90%	5.90%	$29.10	$34.50
New Jersey	12.30%	24.60%	$329.30	$531.30
New York	10.50%	21.00%	$603.60	$1,064.60
Oregon	6.30%	12.60%	$112.10	$91.60
Texas	11.60%	23.10%	$832.00	$1,125.60
Virginia	7.80%	15.50%	$154.00	$210.60

Employers who misclassify their workers actively defund and defraud government programs, including workers' compensation, Social Security, and Medicare. Misclassified workers and off-the-books workers can't draw on workers' compensation or unemployment insurance when they need it, and they're less likely to receive overtime pay, minimum wage, workplace-safety protections, paid family and medical leave, a workplace free of discrimination and harassment, and the right to collective bargaining.[14]

Many of these workers also end up needing to enroll in safety net programs due to the high levels of wage theft, essentially subsidizing unscrupulous construction industry employers to undercut workers. A 2022 report from the UC Berkeley Labor Center found that 39 percent of construction worker families are enrolled in at least one safety net program — Medicaid, the Earned Income Tax Credit, TANF, or SNAP — costing state and federal taxpayers $28 billion per year. The report attributed this disproportionate reliance on public assistance directly to low pay, wage theft, misclassification, and off-the-books compensation.[15]

State attorneys general and labor departments have a difficult time enforcing existing law, because the fissured structure of the industry makes it difficult to even identify who the true employer is, let alone whether that employer has the money to pay a wage judgment.[16] At the federal level, the Department of Labor has proposed narrowing the federal definition of "joint employer" in a way that would make it more difficult to hold a lead company liable for a contractor's wage violations.[17] This is all the more reason for states to enact their own statutes for JSL rather than depending on winning the argument in federal court.

III. How Joint and Several Liability Laws Work

Joint and several liability (JSL) is a legal doctrine that lets a worker harmed by a legal violation recover the full amount owed from any one of the responsible parties, regardless of the party's proportional share.[18] In construction, that means a worker whose subcontractor-employer failed to pay them the wages they are legally owed can pursue the developer or GC, even if the developer or GC already paid the subcontractor in full for the work. This spares workers and labor departments from having to track down and sue the specific, and possibly insolvent, party actually responsible. It also incentivizes developers and GCs to stop handing work to the cheapest, low-road bidder, since they now share the financial consequences if that bidder breaks the law.[19]

At their core, JSL laws exist because legal action needs to be taken against those at the top, who willingly assume risk by employing sketchy partners to cut costs. This directly counters the fissuring of the construction industry, enforcing labor standards that "prevent unscrupulous labor brokers and dishonest subcontractors from profiting at workers' expense while allowing responsible contractors to compete on a level playing field."[20] They operate on the principle that the owner/developer and the GC are best positioned to prevent wage theft on a construction project.[21] The owner/developer controls the project, selects the GC, establishes the budget and schedule, and ultimately benefits from the work performed. The GC is tasked with delivering a timely and high-quality project to the customer, and therefore must oversee any subcontractors responsible for carrying out this goal. Since both parties exercise significant control over the project and the subcontracting chain, it is only fair for both to also carry responsibility for how subcontractors treat their workers, ensuring the payment of wages and benefits.

Joint and several liability laws "prevent unscrupulous labor brokers and dishonest subcontractors from profiting at workers' expense while allowing responsible contractors to compete on a level playing field."

Opponents to JSL laws may argue that these laws force developers and GCs to pay twice—once through their contract payments to the subcontractor, and again to the workers the subcontractor failed to pay. But this argument is misleading. For one, the underpayment is baked into the subcontractor's bid: the subcontractor can only bid so low by shorting workers in the first place, so the developer or GC isn't actually paying twice. They are paying what the job cost all along.[22] On top of this, most JSL laws also give developers and GCs tools to protect themselves from a subcontractor's illegal practices, whether through a lawsuit for reimbursement or by withholding the amount from any unpaid retainage. California's law gives direct contractors the right to inspect subcontractor payroll records and withhold disputed payments until records are produced.[23] Minnesota's Construction Worker Wage Protection Act and Oregon's recently passed SB 426 both give developers and GCs an explicit right to demand payroll records, worker names, and subcontractor information within 15 days (MN)[24] or by request (OR)[25], and to withhold payment if a subcontractor doesn't comply. Most states also grant good-faith developers and GCs the opportunity to remedy unpaid wages before facing a lawsuit from a private party or a state agency.

Figure 3: States with JSL Laws

Jurisdiction	Statute	Effective	Description
California	Cal. Lab. Code § 218.7; 218.8	2018	The direct contractor is liable for a subcontractor's unpaid wages and benefits at any tier. Only the Labor Commissioner or a joint labor-management committee can sue after 30 days' notice.
Connecticut	Conn. Gen. Stat. § 31-72	2027	GC and subcontractor jointly/severally liable to the subcontractor's employees at any tier; Employee must give GC a 30-day notice before suing; Exempt: public works, home improvement, or small residential construction projects.
Delaware	19 Del. C. § 3505(j)	2026	GC is jointly and severally liable for a subcontractor's civil penalties and restitution for worker misclassification.
Hawaii	Haw. Rev. Stat. § 388-11.5	2023	GC is liable for a subcontractor's unpaid wages at any tier. State Labor Director or a joint labor management committee may file a civil action.
Illinois	820 ILCS 115/13.5	2022 (effective 7/1/2022)	Primary contractor is liable for the unpaid wages, benefits, and fees of a subcontractor at any tier after a 10-day cure notice.
Maryland	Md. Code Ann., Lab. & Empl. § 3-507.2(c)(2)	2018 (effective 10/1/2018)	Prime contractor is automatically liable to the same extent as the subcontractor-employer, regardless of whether the subcontractor is in a direct contractual relationship with the GC; workers can sue the GC directly for up to treble damages plus fees.
Minnesota	Minn. Stat. § 181.165 Subd. 2. (CWWPA)	2023 (effective 8/1/2023)	Contractor liable for unpaid wages, benefits, penalties, and liquidated damages at any tier. Owners are deemed liable too if they enter into a construction contract with more than one contractor. Exempt: home improvement, small residential (<10 units), prevailing-wage, and CBA-signatory projects.

Nevada	Nev. Rev. Stat. § 608.150	1931	Oldest law in the country. The original contractor is liable for the wage debts of any subcontractor acting under it.
New Jersey	N.J. Stat. § 34:11-67.1	2020	Contractor is liable for a subcontractor's unpaid wages and benefits at any tier, after 30 days' notice. CBA work and owner-occupied residences are excluded.
New York	N.Y. Lab. Law § 198-e	2022	Upstream contractors are liable for a subcontractor's unpaid wages, benefits, and damages at any tier. 3-year statute of limitations, waivable only by CBA.
Oregon	SB 426, ORS ch. 652	2026	Owner AND direct contractor are both strictly, jointly, and severally liable for unpaid wages owed to unrepresented workers at any tier, after a 21-day cure period. Exempt: represented workers, ≤5-unit projects, owner's primary residence.
Virginia	Va. Code § 11-4.6	2020 (effective 7/1/2020); amended 2026	A recent amendment under House Bill 238 strengthened its JSL law by removing language protecting GCs from liability if they have sworn statements from subcontractors that they properly paid their employees.
Washington, D.C.	D.C. Code §§ 32-1012(c), & 32-1303(5)	2015	GC and subcontractor jointly/severally liable to the subcontractor's employees at any tier.

WASHINGTON, D.C.

In 2024, DC Attorney General Schwalb secured **$3.75 Million for construction workers who were misclassified and failed to receive overtime pay**. Power Design and John Moriarty & Associates, as upstream contractors, were held jointly and severally liable for violations committed by downstream labor subcontractors.[26]

CALIFORNIA

Since the passage of California's JSL law in 2018, **over $9 million has been recovered from wage claims across 84 cases, covering 477 workers**.[27] Most cases result in settlements brought about by labor-management cooperation committees such as the Carpenters/Contractors Cooperation Committee and the Workforce Defense League. However, the California Department of Industrial Relations has occasionally enforced Lab. Codes § 218.7/218.8. In 2019, its subdivision, the Labor Commissioner's Office, issued citations of nearly $600,000 in unpaid wages and penalties in a case where a GC was held jointly and severally liable for a subcontractor's failure to pay 62 construction workers.[28]

DENVER, CO

The City of Denver passed its Civil Wage Theft Ordinance in 2023, establishing up-the-chain accountability for wage violations. That same year, Denver Labor collected nearly $6,000 from a general contractor whose subcontractor committed wage theft against seven workers. The subcontractor, Tri-M, disappeared after the workers' paychecks bounced, meaning these workers would have gone unpaid without the city's JSL ordinance.[29]

IV. Data and Methodology

This report tests two separate research questions, using two separate datasets. This section explains how each analysis works and the methods behind the results reported in Section V.

Question 1: Do JSL laws lower competition by decreasing the number of construction businesses able to compete?

To test this, we used Bureau of Labor Statistics Quarterly Census of Employment and Wages (QCEW) data from 2001 to 2024.[30] This data gives a complete count of business establishments broken out by state and industry. We looked at two industries – Construction of Buildings (most general contractors) and Specialty Trades (most subcontractors) – so that an effect on either layer of the industry would show up.

To isolate the effect of the law, rather than a housing boom, a recession, or some other trend that happens to coincide with when a law was passed, we used a difference-in-differences regression model. Essentially, this model compares the change in the number of establishments during the time a law was passed in one state to the same stretch of time in a state that never passed a JSL law (Arizona, Florida, and Texas).

We also statistically controlled for other forces that could move establishment counts on their own, including overall construction employment,[31] building permits issued,[32] construction sector GDP,[33] and state population.[34] This further isolates the law so the model doesn't confuse the law being passed with a change in construction industry behaviors caused by other factors.

Nevada, Oregon, Connecticut, and Delaware are also excluded from the analysis, as the years their laws became effective don't fit within the data.

Question 2: Does a JSL law change who owns construction businesses?

For this question, we used survey microdata from the Census Bureau's American Community Survey (ACS, accessed via IPUMS), covering 2003 to 2024.[35] We narrowed the sample to self-employed construction contractors, or people who own and run their own construction business, because this group is most comparable to subcontractors. We then calculated for each year and state what share of that group was Hispanic, Black, women, and women of color.

We ran the same difference-in-differences regression, excluding 2020 ACS data because the pandemic made data collection unreliable that year.

V. Addressing Opponent Claims

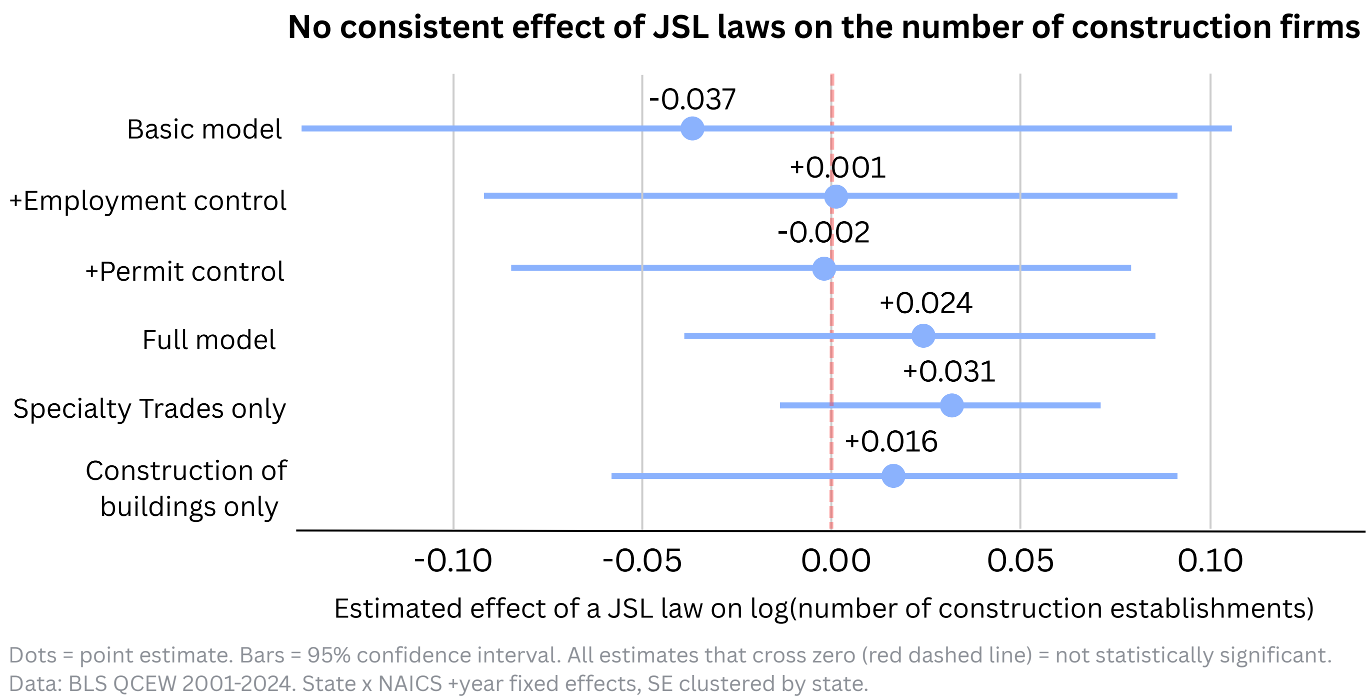
Opponents of JSL laws raise three main objections: they reduce competition, decrease diversity in the contractor pool, and raise housing costs. This section addresses each claim.

1. **Do JSL Laws Reduce Competition?**

The claim: JSL laws will scare contractors out of a state, consolidating market share in the hands of a few large businesses and reducing competition.

Using the difference-in-differences approach described in Section IV, we tested six versions of the model, adding control variables each time, and splitting the sample between general contractors (Construction of Buildings) and subcontractors (Specialty Trades). In every version, the estimated effect of a JSL law on the number of construction establishments was small and not statistically significant, as visualized in Figure 4.

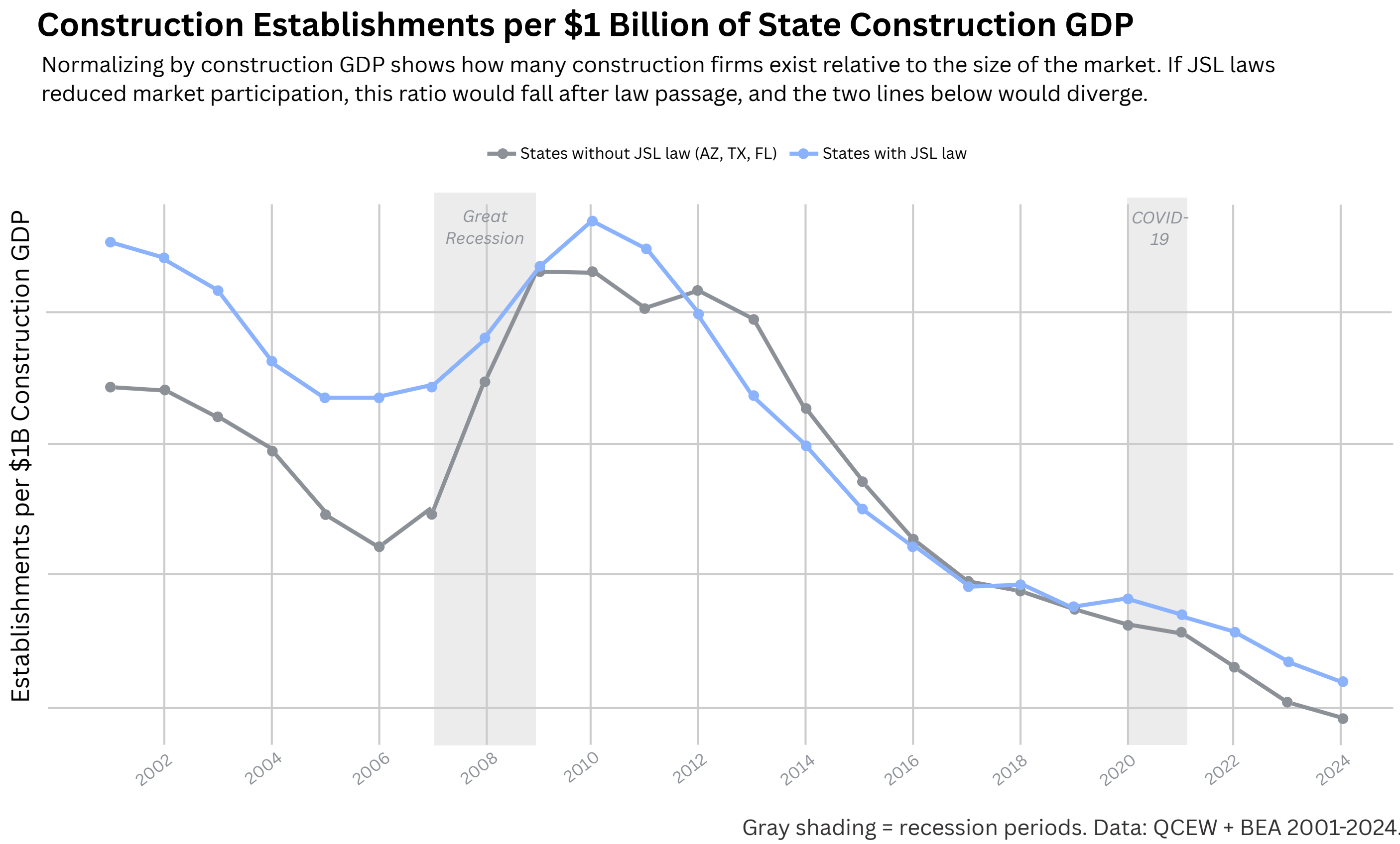
Figure 4: Regression results of JSL laws on number of construction firms



For each model, the blue dot represents the estimated effect of the law on the number of construction firms, while the horizontal blue line indicates a confidence interval of 95%. Essentially, we can say with 95% confidence that the estimated effect for each model falls somewhere along the line, and because each line crosses over zero, we can conclude that there was no effect. The model accounts for year fixed effects, meaning it considers correlated changes across all states, such as the recession. By clustering standard error (SE) by state, the model also accounts for correlation within a state over time, making the estimate more precise and strict.

Moreover, when we track establishment counts as a share of the respective state's construction GDP, we see that states with the law and states without it move together through the Great Recession, the recovery, and the pandemic. In other words, when controlling for how much construction is taking place, states with JSL laws do not become more consolidated and less competitive than those without them. This can be visualized in Figure 5.

Figure 5: Visual Comparison of Number of Construction Establishments Between JSL and non-JSL states



Some of these laws were passed very recently, so there is not much post-passage data yet. But several states have been in effect for five to ten years. We can conclude that JSL laws have not measurably reduced the number of firms competing in these markets.

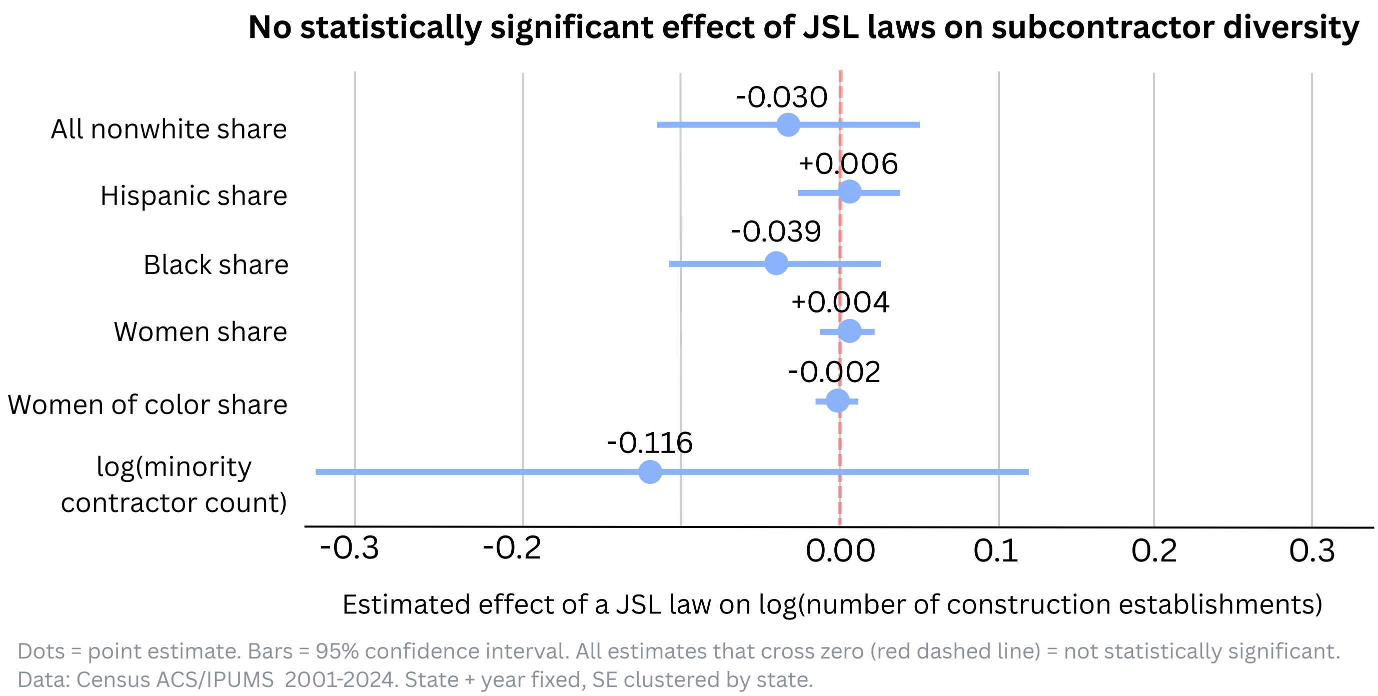
2. Do JSL Laws Harm Nonwhite and Women Contractors?

The claim: JSL laws disproportionately burden nonwhite- and women-owned construction businesses by pricing them out of the market through compliance costs.

It is true that JSL laws raise the bar to enter the market as a contractor in one specific sense: they make it harder to win a bid by cutting corners and breaking labor laws. If lowering that bar meant more opportunity for smaller firms with more diverse ownership, it would come at the expense of the workers those firms employ, who are disproportionately people of color and earn far less than the business owners bidding on their labor. However, is this tradeoff playing out in the data?

Using the same difference-in-differences approach and looking at the demographic makeup of self-employed construction contractors, we found a statistically insignificant effect of JSL laws on every diversity measure tested: the Hispanic share, Black share, women's share, and women-of-color share of self-employed contractors, and the raw count of all these demographics combined. This can be visualized in the graphic below.

Figure 6: Regression Results of JSL Laws on Subcontractor Diversity



The graphic shows that the estimated effect of JSL laws on the demographics of each subcontractor is statistically insignificant, as the 95% confidence interval, represented by a blue horizontal line, crosses zero for each model. The one variable that predicted a more diverse contractor pool was the overall size of the market. Bigger construction markets result in more firms entering the industry, leaving room for more diverse subcontractors. During recession periods, the contractor pool consolidated as the whole industry declined. JSL laws, based on this evidence, are not squeezing out nonwhite and women-owned subcontracting businesses.

3. **Do JSL laws increase housing costs?**

The claim: Contractors facing new liability exposure and compliance overhead will be forced to raise construction costs and eventually pass the cost to homebuyers and renters, raising the price of housing. Rising construction costs will also decrease the amount of housing being built, worsening the housing shortage.

The developer side of the construction industry uses this argument to counter any efforts to improve working conditions for construction workers. It has become a red herring, pitting the housing crisis against a crisis of labor exploitation. In reality, the math does not support the idea that these laws increase housing costs.

The argument treats JSL laws as just another burdensome and costly regulation on the construction industry, arguing specifically that JSL laws would increase labor costs for many projects, as contractors are forced to pay higher wages or subcontract to firms with higher labor standards. However, labor is a small slice of what housing actually costs. An analysis of 107 California affordable housing projects funded through Low-Income Housing Tax Credits with only minimal labor standards (no prevailing wage standards) found that construction labor compensation amounted to just 14% of total development costs.[36] Land costs, permitting fees, financing costs, and the profits captured by landowners, developers, and banks together captured about 35% of the total development cost pie.[37] Other research similarly concludes labor costs are largely inconsequential to the final cost of a housing project. A 2025 RAND Corporation study found that wages for building multifamily housing are basically the same in California and Texas, yet production costs per square foot in California run 2.3 times higher.[38] Most of the differences in total development costs come from land, financing, and soft costs.[39] A 2024 UC Berkeley Labor Center study of Proposition HHH affordable-housing projects found no evidence that the higher wages and benefits that come with Project Labor Agreements increased per-unit costs.[40] Location, the business cycle, and project type explained about 85% of the variation in total development costs, while the effect of prevailing wages had a statistically insignificant effect on project costs.[41]

However, getting into the weeds with the percentage of labor costs on total development costs misses the point. JSL laws explicitly do not raise the costs of labor. A general contractor whose subcontractors already follow the law is already paying the legally required wage. The addition of a JSL law adds no new labor cost for that contractor to pass on to a homebuyer, unless that contractor is committing wage theft.

VI. Conclusion

Three common arguments made by opponents of joint and several liability laws do not hold up when looking at the data. JSL laws have not measurably shrunk the number of construction businesses competing in the states that passed them. They have not reduced the share of nonwhite- and women-owned firms in the market. And there is no supporting research connecting these laws to higher home prices and construction costs. These laws instead grant construction workers, made up largely of an exploited class of immigrant workers, a path to fight back against wage theft.

The dollar amounts at stake as a result of wage theft in construction are not small. Misclassifying workers costs taxpayers within each state mentioned in this report tens of millions to hundreds of millions of dollars annually. Misclassified construction workers in California cost the state over $1 billion in taxpayer dollars in just one year.[42] Employers evade hundreds of millions of dollars that are legally owed to their workers, with Texas, New York, and Florida contractors evading more than $1 billion.[43] JSL laws have made real progress fighting this, achieving huge wins for construction workers who had their wages stolen.

These laws can add zero additional cost to a jurisdiction's annual budget and cost law-abiding contractors nothing. In the end, law-abiding contractors are rewarded for treating workers fairly, as competitors who attempt to undercut them by breaking the law are pushed out of the market.

The recent push to pass JSL laws in states is encouraging. Twelve out of the thirteen JSL state/D.C. jurisdictions passed their laws in the last decade, and Denver has shown that cities can build the same accountability into local ordinances without waiting on the state legislature.[44] Heightened enforcement of labor laws in the construction industry means better quality housing, more state revenue, and most importantly, better lives for one of the largest and hardest-working labor forces. JSL laws are a proven way to get there.

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