S277120

IN THE SUPREME COURT OF CALIFORNIA

ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS; KATRISH JONES; JOSEPH MEBRAHTU; DAHRYL REYNOLDS; MONICA MASON; LOUIS NUNEZ-ROMERO; SCOTT ABBEY, and all others similarly situated

Plaintiffs and Respondents,

v.

COUNTY OF ALAMEDA; SHERIFF GREGORY J. AHERN; ARAMARK CORRECTIONAL SERVICES, LLC

Defendants and Petitioners.

On Review from an Order Certifying a Question of California Law from the United States Court of Appeals For the Ninth Circuit, Case No. 21-16528

After an Appeal from the United States District Court, Northern District of California, Case Number 4:19-cv-07637-JST, Hon. Jon S. Tigar

COUNTY OF ALAMEDA AND SHERIFF GREGORY J. AHERN'S OPENING BRIEF ON THE MERITS

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ISSUE STATEMENT

Pursuant to California Rules of Court, rule 8.520(b), the United States Court of Appeals for the Ninth Circuit specified the following issue for review:

Do non-convicted incarcerated individuals performing services in county jails for a for-profit company to supply meals within the county jails and related custody facilities have a claim for minimum wages and overtime under Section 1194 of the California Labor Code in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals?

INTRODUCTION

California law permits its state prisons and county jails to develop inmate work programs in partnership with outside organizations. By working in those programs, inmates earn sentence credits and develop job skills. Under the California Penal Code, state inmates also earn money, but up to 80% of the wages paid for their work are used to mitigate the costs of their incarceration, compensate crime victims, and support the inmates' families. In turn, the law makes no express provision for payment of wages to county inmates who participate in these work programs. Instead, it allows counties to decide whether and how much to pay the inmates in their jails. And even that authority is constrained by the Penal Code which permits, but does not require, counties to authorize monetary compensation for county inmates not to exceed two dollars for eight hours of work.

Respondents purport to represent a class of persons who worked in one of these programs while awaiting trial in Alameda County's Santa Rita Jail. They have sued Alameda County, its former sheriff Gregory J. Ahern, and its work-program partner Aramark Correctional Services, LLC, challenging various aspects of the County-Aramark program. As relevant to this Court's review, they claim they are entitled to the minimum wages prescribed by California's Labor Code for the work they performed.

They are wrong. As a function of their undisputed constitutional rights, non-convicted inmates like Respondents

may decline to participate in work programs, and constitutional remedies are available if they are forced to work against their will. If however, they choose to participate in a work program in order to secure the significant, non-monetary benefits that come with that choice, the terms of their work are set by the Penal Code and any applicable county ordinance, not by the Labor Code.

Consistently, even Respondents concede that the Labor Code provides no wage rights to inmates performing work in state prisons or to convicted inmates performing work in county jails. Still, they contend that, in the absence of a contrary local ordinance, pre-trial detainees are entitled to the Labor Code's minimum wages. Neither the text nor the background of any relevant law grants county inmates such a right, regardless of the existence of a county ordinance, or grants pre-trial detainees compensation rights that are different from convicted inmates of county jails.

Responding to the question posed by the Ninth Circuit, this Court should hold that non-convicted detainees who choose to participate in a work program are entitled only to the benefits prescribed by the Penal Code and any local ordinance, not to wages prescribed by the Labor Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. California voters enact Proposition 139 to authorize state prisons and county jails to develop work programs in cooperation with private businesses.

In 1990, California voters approved a state-wide ballot initiative entitled Proposition 139. (See Prison Inmate Labor - Tax Credit - Initiative Constitutional Amendment and Statute, 1990 Cal. Legis. Serv. Prop. 139 (West).) As the related ballot materials explained, inmates in California jails and prisons were already working in various jobs, including manufacturing furniture for government offices and providing a range of services to support prison operations. (3 ER 503.) Those work programs were designed "to reduce inmate idleness, minimize the cost of imprisonment, provide an incentive for good behavior, and provide job training." (*Ibid.*)

Before Proposition 139, however, the California Constitution prohibited implementing such programs in cooperation with any other organization. (3 ER 503.) As a consequence, there were not enough job opportunities for the inmates who wanted them. (*Ibid.*) Proposition 139 sought to change that and to allow state prison and local jail officials to develop inmate-work programs in cooperation with private organizations. (*Ibid.*) The express purposes of this initiative were (1) to reduce the financial burden of providing food, clothing, shelter, and medical care for incarcerated persons; (2) establish a system for inmates to pay restitution to the victims of their

crimes; and (3) provide job training to inmates in order to reduce recidivism. (3 ER 504.)

To further those aims, Proposition 139 amended the California Constitution, Penal, Government, and Revenue and Taxation Codes. (1990 Cal. Legis. Serv. Prop. 139.) By repealing and replacing Article 14, section 5 of the California Constitution, Proposition 139 authorized the operators of state prisons to implement work programs through contracts with public, non-profit, and business organizations. (*Id.* §§ 3, 4; Cal. Const., art. XIV, § 5, subd. (a).) Proposition 139 also amended Part 3, Title 1 of the Penal Code to establish specific requirements for the payment of wages to inmates of state prisons and to provide for deductions to achieve the initiatives' goals of cost recovery and restitution to victims. (3 ER 503; Pen. Code §§ 2717.1-2717.9.)

In contrast to the specific rules governing state-inmate work, Proposition 139 added no corresponding provisions for inmates in county jails. (3 ER 503.) Instead, it provided for county work programs to be governed by local ordinances, which were relevantly "not required to contain specific fiscal provisions." (*Ibid.*; Cal. Const., art. XIV, § 5, subd. (a); see also 3 ER 503 [noting that "the measure does].) Consistently, it made no change to Title 4 of the Penal Code, which governs the operation of county jails. (1990 Cal. Legis. Serv. Prop. 139; Pen. Code, § 4000, *et seq*.)

Proposition 139's proponents also wanted to protect the rights of non-incarcerated workers. (3 ER 503-504.) As a result, the initiative prohibited the use of inmates by private industry to

replace striking workers during a labor dispute. (*Ibid.*; Cal. Const., art. XIV, § 5, subd. (b).)

B. Respondents were previously incarcerated in Alameda County's Santa Rita Jail and, during their incarceration, worked preparing food.[1]

Respondents are individuals who were incarcerated in Santa Rita Jail, a county jail operated by the Alameda County Sheriff's Department. (2 ER 282-284.) During their respective incarcerations, Respondents participated in a work program, preparing and packaging food pursuant to a contract between the County and Aramark. (2 ER 284.)

Through that program, participating inmates do not receive monetary compensation for their work, but do receive job training and earn credits to reduce any sentences imposed after trial. (2 ER 284, 286; see also Pen. Code, § 4019, subd. (a)(1).) In addition, they earn the opportunity to spend more time outside of their cells each day, "which is beneficial to their physical and mental health," they "obtain additional food for their own enjoyment and nutrition," and earn access to special housing. (2 ER 285-286.)

C. Respondents sue, claiming they are entitled to minimum wages for their work.

Respondents filed suit in the U.S. District Court for the Northern District of California, challenging the conditions of

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[1] Consistent with the procedural posture of this case, the County's brief assumes the truth of well-pleaded, material allegations in Respondents' operative complaint.

their participation in the work program on various statutory and constitutional grounds. (2 ER 293-297.) As relevant to this Court's review, they alleged that Petitioners have failed to pay minimum wages Respondents contend are required by California's Labor Code.[2] (2 ER 296.)

D. The district court dismisses the claims of convicted inmates, but allows Respondents' claims to proceed based on their pre-trial status.

When they originally filed this action, Respondents purported to represent a class of convicted and pre-trial inmates. (2 ER 300-301.) The district court dismissed the claims of convicted inmates, finding the Labor Code does not apply to convicted persons incarcerated in county jails, except to the extent expressly provided by the relevant statutes. (2 ER 316-318.)

In contrast, however, the district court found that, as pre-trial detainees, Respondents could maintain wage claims under the Labor Code to the same extent as non-incarcerated workers.

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[2] Respondents also alleged violations of Labor Code provisions requiring the payment of wages within a certain period from separation and requiring payment of overtime. The district court dismissed those claims, finding Respondents were not entitled to relief under those provisions. (1 ER 24-25, 27-28.) On the other hand, the district court allowed Respondents to proceed with their claims under the Trafficking Victims Protection Act, the Thirteenth and Fourteenth Amendments of the U.S. Constitution, Unlawful Competition Law, and Bane Act. (1 ER 16, 29-36; 2 ER 293-297.) The parties are litigating those claims in the district court now.

(2 ER 319.) The court rested that conclusion on its recognition that pre-trial detainees could not be compelled to work under the Thirteenth Amendment to the U.S. Constitution. (*Ibid.*)

Accordingly, Respondents amended their complaint and now purport to represent a class of current and former inmates who performed work in the County-Aramark program while awaiting trial at Santa Rita Jail. (2 ER 289-290.) Petitioners again moved to dismiss on the ground that pre-trial detainees are not entitled to statutory minimum wages any more than convicted inmates. (2 ER 252-260.) As they argued, the Labor Code does not apply by its own terms to any inmates, whether convicted or awaiting trial. (*Ibid.*) Moreover, the California Constitution and Penal Code expressly grant counties discretion to decide whether and how much to pay jail inmates—also without regard to conviction status—while also guaranteeing all working inmates non-monetary compensation. (*Ibid.* [discussing Cal. Const., art. XIV, § 5; Pen. Code, §§ 2717.8, 4000, 4011.11, 4018.5, 4019.3].)

The district court again agreed with Petitioners' that Proposition 139 did not require payment of minimum wages to Respondents. (1 ER 16-19.) It required compensation in specified amounts for inmates in state prisons. (1 ER 19 [discussing Cal. Const., art. XIV, § 5, subd. (b); Pen. Code § 2717.8].) But "as to county jails . . . Proposition 139 left wages to be determined by local ordinance." (1 ER 23-24.) The court also backed away from its prior reliance on the Thirteenth Amendment as a basis for Respondents' wage claims, noting that

it did not need to resolve the relationship between the Thirteenth Amendment and the Labor Code at the pleading stage. (1 ER 24, fn. 6.)

Despite this, the district court did not agree that these laws granted counties discretion to decide whether and how much to pay pre-trial detainees, as it had with respect to convicted jail inmates. (Compare 1 ER 24, with 2 ER 315-318.) Instead, it concluded that the Penal Code "does not give any guidance regarding the wages owed to non-convicted detainees," and the Labor Code accordingly governs in the absence of a relevant local ordinance. (1 ER 24.)

E. Acknowledging that a reasonable jurist could adopt Petitioners' reading of the relevant laws, the federal courts allow interlocutory review and then certify the question to this Court.

Petitioners then sought permission for an immediate appeal from the district court's ruling on Respondents' minimum-wage claims. (1 ER 37.) The district court agreed that the Labor Code's applicability to pre-trial detainees was an issue of first impression that fit the standards for interlocutory review under federal law and certified the issue for immediate appeal. (*Ibid*.) The U.S. Court of Appeals for the Ninth Circuit then granted permission for the appeal . (Case No. 21-16528, Dkt. 1, 2.)

The parties then briefed the question certified, and the Ninth Circuit held oral argument on October 17, 2022. (Case No. 21-16528, Dkt. 21, 22, 41, 55, 57.) Following argument, the court certified the following question for this Court's review:

> Do non-convicted incarcerated individuals performing services in county jails for a for-profit company to supply meals within the county jails and related custody facilities have a claim for minimum wages and overtime under Section 1194 of the California Labor Code in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals?

(Case No. 21-16528, Dkt. 69.) And this Court granted review of that question on January 11, 2023.

STANDARD OF REVIEW

This case comes before the Court following an order partially denying Petitioners' motion to dismiss in the district court. Review is accordingly de novo, assuming the truth of well-pleaded, material allegations. (Compare, e.g., *Carlin v. DairyAmerica, Inc.* (9th Cir. 2013) 705 F.3d 856, 866 [discussing the standard of review on motion to dismiss under federal rules], with, e.g., *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 346 [discussing the standard of review on demurrer under California law].) This Court also independently reviews the questions of constitutional and statutory construction presented here. (E.g., *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 934 (*California Cannabis*), as modified on denial of rehg. (Nov. 1, 2017).)

DISCUSSION

I. Consistent with settled principles of statutory construction, the Court should seek to ascertain and effectuate the voter intent embodied by Proposition 139 and the legislative intent reflected in the relevant statutes.

In this case, the Ninth Circuit certified to this Court a question of pure constitutional and statutory construction. The answer to that question thus rests entirely on the intent of voters, in the case of Proposition 139, and the Legislature in the case of the Penal Code provisions governing county jails. (Code Civ. Proc., § 1859; *In re Corrine W.* (2009) 45 Cal.4th 522, 529 (*Corrine W.*); *Legislature v. Eu* (1991) 54 Cal.3d 492, 504 (*Eu*).)

Determining intent begins with the laws' plain language, "as the words the Legislature chose to enact are the most reliable indicator of its intent." (*Corrine W.*, *supra*, 45 Cal.4th at p. 529; see also *Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 409 (*Mutual Life*) [applying the same approach to ballot initiatives].) If a statute's words are "reasonably free from ambiguity and uncertainty," the Court determines intent solely from the words' ordinary meaning. (*Bldg. Industry Assn. of S. Cal., Inc. v. City of Camarillo* (1986) 41 Cal.3d 810, 819; see also *People v. Valencia* (2017) 3 Cal.5th 347, 357 (*Valencia*) [holding California courts construe statutory terms consistent with their "plain and common sense" meaning].)

A law's terms must also be read together so as to give effect to every part, with each clause helping to interpret the other. (Code Civ. Proc., § 1858.) And courts must accord significance to

every word, phrase, and sentence in a statute, if possible, avoiding an interpretation that would reduce some terms to "surplusage." (*Valencia*, *supra*, 3 Cal.5th at p. 357.)

If text alone does not demonstrate legislative intent clearly, courts then turn to secondary indicia, including legislative history, context, and underlying policy goals. (*Corrine W.*, *supra*, 45 Cal.4th at p. 529.) For laws enacted by voters, the relevant legislative history includes the analysis and arguments contained in the official ballot pamphlet. (*Eu*, *supra*, 54 Cal.3d at p. 504.) The statutory context, in turn, includes laws existing at the time of the measure's enactment, which voters are presumed to have understood. (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243-244 (*Amador Valley*).) "Ultimately [courts] choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute." (*Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227.)

Courts, however, "may not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed." (*Cornette v. Dept. of Transportation* (2001) 26 Cal.4th 63, 73-74 (*Cornette*), citing Code Civ. Proc., § 1858.) And, where the legislature or voters have included a term or provision in one part of a law, the omission of that term or provision elsewhere in the law indicates intent to exclude. (*Id.* at p. 73; *Mutual Life*, *supra*, 50 Cal.3d at p. 410 [applying the same rule to construction of ballot initiatives]; accord

58 Cal.Jur.3d (2023) *Statutes* § 126; Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (1st ed. 2012) pp. 93-100.)

II. California law neither expressly establishes nor otherwise suggests an intent to establish a minimum wage to be paid to any county inmate, regardless of conviction status.

A. The California Constitution and Penal Code grant counties exclusive authority to set monetary compensation for jail inmates, not to exceed two dollars per day.

Through Proposition 139, California voters enacted the legal framework that governs work by prison and jail inmates for outside organizations. (1990 Cal. Legis. Serv. Prop. 139.) As relevant here, Proposition 139 differentiated between state-prison inmates and those incarcerated in county jails. For state prisoners, Proposition 139 enacted specific, statutory requirements and authorized the Director of Corrections to set additional rules and regulations. (*Ibid.*; Cal. Const., art. XIV, § 5, subd. (a).) For county jails, however, Proposition 139 expressly left the terms governing inmate work to be set "by local ordinances." (*Ibid.*) Thus, Proposition 139 itself does not prescribe any wage for county inmates participating in a work program.

This conclusion is clear from the plain language of the Constitution, and no statute suggests a contrary result, obviating the need for consideration of secondary indicia of voter intent. (See *Corrine W.*, *supra*, 45 Cal.4th at p. 529; *Mutual Life*, *supra*,

50 Cal.3d at p. 409.) However, all relevant indicia also confirm voter intent consistent with the constitutional and statutory language they enacted. (See *Mutual Life*, at p. 409; *Eu*, *supra*, 54 Cal.3d at p. 504.)

1. Proposition 139's ballot materials reflect voters' intent to allow county governments to determine whether and how much county inmates should be paid for participation in work programs.

Proposition 139's ballot materials repeatedly noted that terms of work for county inmates would be set by "local ordinances" and advised voters that "the measure [did] not specify the content of the local ordinances" and that such ordinances were not "required to contain specific fiscal provisions." (3 ER 503.) Voters thus understood and intended that counties would have discretion to set the financial terms of inmate participation in work programs established under Proposition 139. (See *Eu*, *supra*, 54 Cal.3d at p. 504.)

Moreover, Proposition 139 was designed to provide primarily non-monetary benefits to inmates, while conferring financial benefits primarily to carceral institutions and crime victims. As the ballot pamphlet explained, county inmates had the opportunity to earn sentence-reduction credits and to benefit from job training, which would help improve their life prospects upon release. (3 ER 503-504.) This was consistent with existing law governing work by county inmates, which provided sentence reductions for all county inmates who work—convicted inmates and pretrial detainees alike. (Pen. Code, § 4019; see also *Amador*

Valley, *supra*, 22 Cal.3d at pp. 243-244 [holding voters are presumed to be aware of existing law when they enact ballot initiatives].)

By contrast, no mention was made of county inmates having the opportunity to earn wages or otherwise to benefit financially from their work. (3 ER 502-505; but see 3 ER 504 [noting the opportunity that *state* inmates would have to earn money].) Instead, the measure's financial benefits were expressly designed to help state and local governments offset the costs they incur providing for inmates and to provide funding for a victim's restitution fund. (3 ER 502-504.)

The ballot materials thus confirm that county inmates who choose to participate in a Proposition 139 work program are entitled to the non-monetary benefits conferred by state law, but are only entitled to wages to the extent required by a local ordinance.

2. By enacting specific wage requirements for state inmates, while omitting such requirements for county inmates, voters again demonstrated their intent to allow counties to decide whether and how much to pay county inmates.

Voters' intent not to require payment of any wage to county inmates is further confirmed by the specific wage requirements they enacted for inmates working in state prisons. (1990 Cal. Legis. Serv. Prop. 139, § 5; Pen. Code, § 2717.8.) Those provisions demonstrate voters' ability to require payment of wages when they intend to do so. Their choice not to enact such a

requirement for county inmates should be construed as intentional and should accordingly be effectuated by courts. (See, e.g., *Cornette*, *supra*, 26 Cal.4th at p. 73; *Mutual Life*, *supra*, 50 Cal.3d at p. 410.)

While this conclusion can be drawn from the contents of Proposition 139 and related rules of construction, the ballot materials confirm that the omission of wage provisions for county inmates was a conscious choice. Those materials advised voters that *state* inmates who participate in work programs "earn 'credits' which reduce the amount of time they spend in prison" and that they would also have "an opportunity to earn money for use upon release from prison." (3 ER 503.) In contrast, the pamphlet advised, "Inmates in local jails may receive similar *credits*," omitting any mention of money they might earn. (*Ibid.*, italics added.) Further, the ballot materials advised voters that the "local ordinances that would implement contracts for use of jail labor are not required to contain specific fiscal provisions." (*Ibid.*)

This demonstrates that voters understood that state and county inmates would receive different benefits for participating in work programs. State inmates would receive sentence credits, job training, and money. County inmates would only receive sentence credits and job training, unless otherwise specified by local ordinances.

3. Voters intended to maintain the Penal Code's limited authorization for county-inmate wages by granting counties exclusive authority to set wages.

The existing statutory context against which voters enacted Proposition 139 further demonstrates that voters did not intend for county inmates to be paid any specific wage. Section 4019.3 of the Penal Code, which was enacted decades before Proposition 139, provides that counties "may" set inmate compensation in an amount not to exceed two dollars for each eight hours work performed. The voters who enacted Proposition 139 are presumed to have known of this statute. (See *Amador Valley*, *supra*, 22 Cal.3d at pp. 243-244.) Had they intended to make wages mandatory, or to allow compensation in excess of the two-dollar-per-shift maximum, they would have needed to amend or repeal section 4019.3, and they would have had to do so expressly. (See *California Cannabis*, *supra*, 3 Cal.5th at p. 945 [discussing the presumption that voter initiatives do not repeal statutes unless they do so expressly]; see also *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 433 [holding "the word 'may' connotes a discretionary or permissive act"].)

The statutory context against which voters enacted Proposition 139 thus further confirms their intent not to require monetary compensation for county inmates except to the extent authorized by local ordinance and in an amount not to exceed two dollars per eight hours of work. Against this legal backdrop, Respondents' demand for minimum wages under the Labor Code must be rejected.

B. Policy arguments cannot justify superimposing the Labor Code on Proposition 139 work programs.

Proposition 139 sought to achieve several different policy objectives. It did this through implementation of specific, express provisions that balanced a range of different interests.

At earlier stages of this case, the district court and Respondents identified and focused on two animating policies for Proposition 139: (1) compensating state prisoners for their work and (2) ensuring that working inmates do not replace striking, non-incarcerated workers. (1 ER 18-19.) From this, they conclude voters must have intended pre-trial detainees to "be paid for their labor." (1 ER 19, citing Pen. Code, § 2717.8; 1 ER 23.) That analysis is wrong in two respects.

First, Proposition 139 advanced thsee two goals through enactment of specific statutes, not by implicitly importing the Labor Code's requirements. To ensure that state prisoners were compensated, Proposition 139 added provisions to the Penal Code expressly requiring payment of wages to state prisoners participating in work programs, subject to significant deductions to fund Proposition 139's other policy goals. (1990 Cal. Legis. Serv. Prop. 139, § 5; Pen. Code, § 2717.8.) And to guard the interests of non-incarcerated workers during labor disputes, Proposition 139 enacted express prohibitions against use of inmate labor to replace striking workers. (1990 Cal. Legis. Serv. Prop. 139, § 4; Cal. Const., art. XIV, § 5, subd. (b); 3 ER 504 [responding to concerns over use of inmate labor to replace non-

incarcerated workers by noting that "inmates may not be used as strikebreakers under this proposition"].)

Voters thus designed Proposition 139's express terms to advance the policy goals they sought to achieve. There is accordingly no reason for courts to add the Labor Code's wage requirements in service of those policies. (Accord *Cornette*, *supra*, 26 Cal.4th at pp. 73-74, citing Code Civ. Proc., § 1858 ["A court may not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed."].)

Second, the district court and Respondents' discussion of policy is materially incomplete. While Proposition 139 did provide for compensation to state inmates and protections for non-incarcerated workers on strike, it was also sought to expand work opportunities in state prisons and county jails. (3 ER 503-504.) As voters understood, many inmates desired the sentence credits and job training that came from such work, and indeed there was more demand among inmates for work than there were job opportunities. (3 ER 503.)

That perception of inmate desire and the significant, non-monetary value of inmate-work programs have since been justified. Studies demonstrate that prisoners who participate in public-private work programs secure employment more quickly after release, maintain their employment longer, and have lower rates of recidivism. (See, e.g., Marilyn C. Moses & Cindy J. Smith, Ph.D., *Factories Behind Fences: Do Prison Real Work Programs Work?*, National Institute of Justice Journal (June 1,

2007); Christopher Stafford, *Finding Work: How to Approach the Intersection of Prisoner Reentry, Employment, and Recidivism* (2006) 13 Geo. J. Poverty L. & Pol'y 261.) Thus, even though pre-trial detainees may not ultimately be convicted and may accordingly derive no benefit from sentence reductions, the other non-monetary benefits of work-program participation are considerable.

Proposition 139 sought to address the unmet need for work opportunities through cooperation with outside organizations. (3 ER 503.) Importation of the Labor Code's minimum wage requirements would not advance that goal.

Respondents' analysis of Proposition 139's purely financial goals was also incomplete. Through that law, voters sought primarily to mitigate the costs of incarceration, compensate victims, and provide support for inmates' families during incarceration. (3 ER 503-504.) In the context of state inmates, these goals are achieved by the Penal Code's express requirement that up to 80% of the wages paid by outside organizations be used not to compensate working prisoners, but to reimburse the state for the costs of incarceration, fund victim restitution, provide for prisoners' family, and cover prisoner taxes. (1990 Cal. Legis. Serv. Prop. 139, § 5; Pen. Code, § 2717.8; see also 3 ER 504 [emphasizing the costs the public bears from both crime and incarceration and arguing that prisoners should work to help cover those costs].)

In contrast, none of *these* aims are served by requiring outside companies to pay county inmates minimum wages under

the Labor Code. Even more so, requiring counties to pay minimum wages to inmates, as Respondents have demanded, would either increase the costs of incarceration or reduce much sought after work-program opportunities, in direct conflict with Proposition 139's goals.

Moreover, simply superimposing the Labor Code's minimum wage, as Respondents advocate, would provide none of the deductions that Proposition 139 established for state-inmate wages, further undermining that law's balance between competing policy goals. That cannot be a correct interpretation of existing law.

This concern is exacerbated by the absence of any limiting principle in Respondents' arguments. While Respondents presently assert only wage claims, there is nothing in their arguments or in the district court's order to explain why the Labor Code's wage provisions apply to them implicitly, but not other employment protections, such as paid leave and unionization rights. (See, e.g., Lab. Code, § 245; Gov. Code, § 3500, *et seq*.) A ruling by this Court in Respondents' favor would thus seem likely to open the door to a wide array of other employment claims, further undermining the balance of policies embodied in Proposition 139 and the Penal Code.

The Legislature *could* enact amendments to the Penal Code to provide county inmates a right to specified wages and related deductions similar to Proposition 139's statutory provisions governing state-inmate work. Such a change to the law could balance the policy goals advocated by Respondents while

ensuring appropriate limiting principles and maintaining at least some of Proposition 139's other objectives. But courts cannot rewrite existing statutes to achieve those ends. (*Cornette*, *supra*, 26 Cal.4th at p. 73.)

Moreover, recent actions by the California Legislature reflect that the Legislature does not intend to disrupt the statutory status quo regarding county-inmate wages. First, in 2016, California enacted AB 2012, which created a pilot "Jail Industry Authority" in certain counties. (See Pen. Code, § 4325.) That law expressly sought to advance the interests of the public, jail authorities, and inmates, whom the Legislature determined "clearly benefit from increased work activities, experience, and, *sometimes, earnings*." (County Motion for Judicial Notice, Ex. 1, pp. 6-7, italics added.) Yet, despite having the opportunity to require payment of wages, the Legislature chose not to do so and instead recognized the option of counties to set wages limited by section 4019.3. (*Ibid.*; Pen. Code, § 4325; see also Pen. Code, § 4327 [describing the dispensation of "any prisoner compensation"].)

Even more recently, in 2022, the Legislature took up two bills—ACA 3 and SB 1371—which sought, respectively, to ban involuntary servitude in California prisons and to increase wages earned by state prisoners. (County Motion for Judicial Notice, Exs. 2, 3.) Ultimately, neither bill became law. (*Ibid.*) But even if they had passed, neither would have supported Respondents' wage claims here. Neither applied the Labor Code to inmate work, and neither required payment of wages to county inmates.

Instead, the bill to increase prison-inmate wages—which the Governor vetoed—would have increased wages for *state* inmates through an amendment to the Penal Code. (*Id.*, Ex. 3.) And the proposed constitutional ban on involuntary servitude—which failed on the Senate floor—was expressly "not intended to have any effect on voluntary work programs in correctional settings." (*Id.*, Ex. 2.)

In other words, each time the State Legislature takes up the question of inmate work, it reaches a consistent result. Any wages should be controlled by the Penal Code, and county inmates are only entitled to be paid to the extent and in the amount determined by local ordinances, limited by section 4019.3. Respondents may disagree with the Legislature's conclusions in that regard, but they cannot achieve their wage goals through litigation in the face of this legislative background.

C. Pre-trial detainees are no more entitled to minimum wages under the Labor Code than convicted inmates.

Respondents' operative complaint and the district court's order rest on the theory that pre-trial detainees are entitled to minimum wages under the Labor Code, even though convicted county inmates are concededly not. (1 ER 18-24; 2 ER 289-290.) The Ninth Circuit framed the issue for this Court's review in consistent terms, asking whether the Labor Code requires payment of minimum wages to "*non-convicted* individuals performing services in county jails. . . ." (Case No. 21-16528, Dkt. 69, italics added.) But there is no legal basis for the distinction

Respondents and the district court have drawn between convicted and non-convicted inmates, and this Court should affirm that the Labor Code does not govern the work of any group of county inmates.

1. It is only Respondents' arguments—not anything in relevant law—that differentiates county inmates based on their conviction status.

No relevant constitutional or statutory text supports Respondents' claim that the Labor Code applies to pre-trial detainees, despite applying to no other inmate. As noted, Proposition 139 sets different rules for inmates in state prisons and those in county jails, but it does not differentiate between different types of county inmates. (1990 Cal. Legis. Serv. Prop. 139; Cal. Const., art. XIV, § 5, subd. (a).) And, as also discussed, Proposition 139 expressly delegated to counties the authority to determine whether and how much monetary compensation should be paid to county inmates, without qualification based on conviction status. (*Ibid.*)

The Penal Code's relevant text likewise draws no distinction between the rights of pre-trial detainees and convicted inmates. For example, sections 4019-4019.2 expressly provide the same sentence-reduction credits for all county-jail inmates, including those incarcerated "under a judgment of imprisonment" and those incarcerated "following arrest and prior to the imposition of sentence. . . ." (Pen. Code, § 4019, subd. (a)(1), (4).) Section 4019.3 consistently authorizes and limits payment of wages to "each prisoner confined in or committed to a county

jail," which includes not only convicted inmates, but also pre-trial detainees. (See Pen. Code, § 4000 [identifying the use of county jails "[f]or the detention of persons charged with crime and committed for trial"]; accord Opinion No. CR 73-51, 57 Op. Cal. Att'y Gen. 276, 283 (1974) [determining that Section 4019.3 "applies to pre-sentence as well as post-sentence work time."].)

In contrast, one section of the Penal Code does apply only to convicted inmates. (1 ER 22.) But that provision, section 4017, authorizes counties to require convicted inmates to work on public works and roads. It neither applies to inmates who choose to participate in a work program established under Proposition 139, nor prescribes any form of compensation for the work it authorizes. Moreover, by expressly limiting its application to convicted inmates, it confirms that the legislature sets different rules for inmates based on conviction status expressly when it intends to do so. In contrast, Sections 4019 through 4019.3 define the benefits inmates earn from work in terms that apply equally regardless of conviction status, demonstrating that the Legislature did not intend to grant pre-trial detainees greater benefits for working than those granted convicted inmates. (See, e.g., *Cornette*, *supra*, 26 Cal.4th at p. 73.)

Secondary indicia of intent similarly contradicts Respondents' view of the law. Like the laws Proposition 139 enacted, the related ballot materials discussed two categories of inmates: those incarcerated in state prisons and those in county jails. (3 ER 504.) State inmates would have the opportunity to earn credits and money, while county inmates would only have

the opportunity to earn credits. (3 ER 503.) But the ballot materials drew no distinction among county inmates based on conviction status, and thus neither did voters. (See *Eu*, *supra*, 54 Cal.3d at p. 504.)

Moreover, as discussed, the statutory context into which voters enacted Proposition 139 provided equally for both non-monetary and monetary compensation for all types of county inmates, regardless of conviction status. By granting counties authority to set compensation terms under that pre-existing statutory framework, voters must be understood to have intended to continue treating all county inmates equally. (See *Amador Valley*, *supra*, 22 Cal.3d at pp. 243-244.)

Finally, case law interpreting the Fair Labor Standards Act confirms that pre-trial detainees should not be treated differently from convicted inmates when considering their entitlement to wages. (See, e.g., *Villarreal v. Woodham* (11th Cir. 1997) 113 F.3d 202, 207.) As the Eleventh Circuit explained, "pretrial detainees are in a custodial relationship like convicted prisoners." (*Ibid.*) "Correctional facilities provide pretrial detainees with their everyday needs such as food, shelter, and clothing." (*Ibid.*)[3]

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[3] As Respondents and the district court have noted, the definition of employment under the Fair Labor Standards Act is different from that under California law. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 70.) However, *Villarreal's* discussion of the relationship between inmates and jails, regardless of conviction status, reflects what California's constitution and statutes suggest: the terms of voluntary work by incarcerated persons should be prescribed by the laws governing incarceration, not by the laws governing work by the general population.

Thus, just like all incarcerated persons, the unique relationship between pre-trial detainees and jail operators makes ordinary employment standards inapplicable and inappropriate.

2. The Thirteenth Amendment is neither relevant to nor implicated by the Labor Code claims certified for this Court's consideration.

In the absence of any basis in California law for granting pre-trial detainees greater wage rights than convicted inmates, Respondents have leaned on the U.S. Constitution's Thirteenth Amendment, an argument the district court initially accepted and later left open for future resolution. (See, e.g., 2 ER 318-319; see also 1 ER 24, fn. 6.) There is no dispute that pre-trial detainees have a Thirteenth Amendment right to be free from forced labor that convicted inmates do not. (See *United States v. Kozminski* (1988) 487 U.S. 931, 943; *McGarry v. Pallito* (2d Cir. 2012) 687 F.3d 505, 511.) Indeed, Respondents related constitutional claims that Respondents forced them to work—though disputed—are currently being litigated in the district court. (See 1 ER 28-30.) If Respondents ultimately prove that their rights under the Thirteenth Amendment have been violated, they will be entitled to the remedies afforded by federal law. But the question certified first to the Ninth Circuit and then to this Court is one of state law, distinct from Respondents' constitutional claims, and proceeds from the assumption that inmates participating in the County-Aramark program do so by choice.

Moreover, the Thirteenth Amendment does not grant Respondents any right to minimum wages under California's Labor Code. Research has not uncovered a single case holding that there is a constitutional right to wages of any amount, and the record below reveals none.

Further, even assuming that a constitutional wage right were possible, it would fall to Congress to set that wage. (See U.S. Const., Amend. XIII, § 2 [delegating to Congress exclusive authority to effectuate the Thirteenth Amendment through legislation].) Needless to say, Congress has not enacted a constitutional wage minimum. And the minimum wage it *has* prescribed does not apply to pre-trial detainees as a matter of federal law. (*Villarreal*, *supra*, 113 F.3d at p. 206.)

Respondents' claims and arguments that rest on distinguishing the wage rights of pre-trial detainees thus finds no support in the Thirteenth Amendment.

III. The Labor Code does not govern county inmates' participation in Proposition 139 work programs in the absence of a contrary local ordinance.

The County has not enacted an ordinance prescribing compensation for inmates at Santa Rita Jail. (See 2 ER 280-299; 1 ER 17; 2 ER 317.)[4] As a result, under the foregoing principles,

[4] In the district court, Respondents suggested that the County's contract with Aramark was a local ordinance, an argument they did not pursue in the Ninth Circuit. (1 ER 17-18.) The district court properly rejected that contention, which was inconsistent with governing law. (See *ibid.*) Consistently, the question certified by the Ninth Circuit assumes an absence of local ordinance.

inmates who choose to participate in the County-Aramark work program are entitled to the non-monetary benefits prescribed by statute and provided by the County, but they are not entitled to any financial compensation.

Nonetheless, Respondents and the district court have suggested that, even if counties have exclusive authority to set compensation for participation in Proposition 139 programs, the Labor Code governs in the absence of a local wage ordinance. (See, e.g., 1 ER 18, 24.) The question certified to this Court by the Ninth Circuit reflects that argument. (Case No. 21-16528, Dkt. 69.) Here too, though, no law reflects an intent by voters or the Legislature to impose the Labor Code in the absence of a local ordinance.

A. Proposition 139 does not require counties to enact local ordinances and, even if it did, does not impose the Labor Code as a consequence for a county's failure to do so.

Respondents and the district court have suggested that Proposition 139 requires the County to adopt a local ordinance prescribing compensation as a prerequisite to implementing a work program. (1 ER 16-17.) Not so. Proposition 139 does not mandate enactment of a local ordinance, and it speaks separately of the contracts it authorizes and the local ordinances it permits counties to enact. (3 ER 503.)

Even if Respondents were correct in this regard, however, California law establishes a remedy: a writ of mandate to compel the County to adopt an ordinance. (See Code Civ. Proc., § 1085.) There is no basis for Respondents to compel the County to adopt

an ordinance with any specific terms. (See, e.g., *Common Cause of Cal. v. Bd. of Supervisors of Los Angeles County* (1989) 49 Cal.3d 432, 442 [reflecting the settled rule that a writ of mandate may issue to compel a mandatory duty to act, but may not control the exercise of related discretion].) And it certainly could not require enactment of an ordinance with any specific financial terms. (See 3 ER 503.) In turn, any writ could not compel payment of wages that have not been previously required. The absence of a County ordinance thus does not support Respondents' Labor Code claim.

B. The Labor Code's general wage requirements are incompatible with the more specifically applicable provisions of Proposition 139 and the Penal Code and so cannot be a background requirement for jail work programs.

The relevant statutory context also precludes treating the Labor Code as a kind of background wage standard for county inmates in the absence of a local ordinance. Minimum-wage laws governing work outside of the carceral environment are in direct conflict with the laws expressly governing inmate work.

As noted, Proposition 139 created the legal framework for the kinds of work programs that gave rise to Respondents' suit, and in doing so it expressly granted counties the authority to set any compensation terms for county inmates' participation in those programs. (Cal. Const., art. XIV, § 5, subd. (a).) The voters who enacted Proposition 139 intended to impose no specific requirements for the contents or fiscal provisions of such ordinances. (3 ER 503.) And they granted that authority against

a statutory background that allowed but did not require counties to set compensation for working inmates not to exceed two dollars per eight hours of work. (Pen. Code, § 4019.3.)

In contrast, California's Labor Code requires all employees to be paid a wage currently no less than $15. (Lab. Code, §§ 510, 1182, 1182.12.) These statutes cannot be applied to Respondents without contradicting the wage-setting authority Proposition 139 granted the County and the limitations the Penal Code places on that authority. (Cal. Const., art. XIV, § 5, subd. (a); Pen. Code, § 4019.3.)

The County thus literally cannot authorize wages for Respondents that comply with both Penal Code section 4019.3 and Labor Code section 1182.12. Given that conflict, the more specific provisions of Proposition 139 and the Penal Code must prevail against the more general requirements of the Labor Code. (See Code Civ. Proc., § 1859; *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 284-285 [holding "the California Constitution is a limitation or restriction on the powers of the Legislature."].)

Moreover, as even the district court earlier recognized, the Labor Code applies to inmates only when it does so expressly. (2 ER 317-318.) There are only two Labor Code provisions that apply expressly to prisoners: section 3370 gives state inmates the benefits of the Labor Code's workers' compensation rules. And section 6304.2 establishes an employer/employee relationship between the Department of Corrections and state inmates "engaged in correctional industry, as defined by the

Department of Corrections. . . ." Neither of these statutes would be necessary if the Labor Code applied to inmates by default. (See *Valencia*, *supra*, 3 Cal.5th at p. 357 [holding statutes should not be construed to render terms surplusage].) The Court should not interpret the Labor Code to apply generally and implicitly to inmates, when the Legislature has chosen to apply it only narrowly and expressly. (See *Cornette*, *supra*, 26 Cal.4th at p. 73; *Mutual Life*, *supra*, 50 Cal.3d at p. 410.)

CONCLUSION

In the end, Respondents' advocate for a change in the law to reflect their policy objective: wages for working pre-trial detainees. While that objective may carry some appeal, it cannot be achieved through litigation or simply by superimposing the Labor Code onto a constitutional and statutory system that carefully balances complex and competing policy needs relevant in, and only in, the carceral environment.

Construing the law as it exists today, this Court should recognize that both California voters and the Legislature have vested in counties the authority to determine whether and how much to pay inmates who choose to participate in Proposition 139 work programs, regardless of their conviction status and regardless of the absence of a local ordinance.

DATED: February 10, 2023 HANSON BRIDGETT LLP

By: 

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Gregory J. Ahern, Sheriff

WORD COUNT CERTIFICATION

I, Adam W. Hofmann, counsel for petitioners County of Alameda and Sheriff Gregory J. Ahern, hereby certify that, according to Microsoft Word, the computer program used to prepare this Respondent's Brief, the number of words in the document, including footnotes, is 7,452, exclusive of caption, tables, signature block, and this certification.

DATED: February 10, 2023

ADAM W. HOFMANN

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STATE OF CALIFORNIA
Supreme Court of California

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