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Supreme Court of California
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SUPREME COURT NO. S279137

IN THE SUPREME COURT OF CALIFORNIA

TAMELIN STONE, et al.,
Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,
Defendant and Respondent,

On Petition from a Decision by the First Appellate District, Case No. A164021
On Appeal from the Superior Court of California, County of Alameda,
Case No. RG21092734

APPLICATION FOR LEAVE TO FILE AND BRIEF OF *AMICUS CURIAE* AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) IN SUPPORT OF PLAINTIFFS ANDAPPELLANTS TAMELIN STONE, ET AL.

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The undersigned certifies that there are no interested entities or persons that must be listed in this Certificate Under California Rules of Court, Rule 8.208(e)(3)

Date: January 5, 2024

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, Rule 8.520(f), the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") hereby respectfully requests leave to file the accompanying brief in support of Plaintiffs and Appellants, Tamelin Stone, *et al*.

Amicus Curiae AFSCME is a labor organization representing approximately 1.4 million members in the United States. The majority of AFSCME members are employed by states, counties, municipalities, and other local government entities, including more than 100,000 employees in California, some of whom, like the Appellants in this case, are nurses, medical assistants, and medical technicians working at hospitals and other medical facilities. Of particular relevance to the instant case, the California-based Union of American Physicians and Dentists ("UAPD"), an AFSCME affiliate, represents medical physicians and dentists including those employed by Respondent, Alameda Health Systems ("AHS").

Labor unions affiliated with *Amicus*, such as UAPD, serve as their members' exclusive bargaining representatives and regularly negotiate the terms and conditions of employment for their members, including healthcare workers, with their employers. The subjects of those negotiations often include the terms and conditions at issue in this case—wages, overtime, and meal and rest periods.

Amicus and its affiliates in California also advocate for workplace health and safety and high-quality healthcare benefitting patients and their local communities. They do this, in part, by supporting legislation that expands the rights and benefits of healthcare workers in California, including but not limited to Senate Bill 1334, which provided public sector healthcare employees with meal and rest periods, and which was codified as Labor Code Section 512.1 effective January 1, 2023.

As a result, *Amicus* has a deep and abiding interest in the outcome of this case. If the Court were to grant the relief requested by Respondent accepting all the theories it espouses—specifically, holding that under the sovereign powers doctrine, labor rights necessarily interfere with governmental purposes and functions—such a decision could have dramatic legal and practical impacts detrimental to *Amicus's* members, making *Amicus* uniquely positioned to explain that detrimental impact to the Court.

The accompanying brief, therefore, does not restate the same arguments made by the parties, but aims to offer additional perspective and analysis on why the enforcement of wage and hour laws must not be made to yield—as a general rule—to any assertion whatsoever of an entity's operational autonomy in the State of California; and discusses the detrimental impact of accepting Respondent's requested relief under the sovereign powers doctrine on unionized *and* nonunionized public sector employees.

In accordance with California Rules of Court, Rule 8.520(f)(4), *Amicus* affirms that no party or counsel for any party, other than counsel for *Amicus*, has authored this brief in whole or in part. Moreover, no party, no counsel for a party and no person or entity—other than *Amicus*, their members, or their counsel—made a monetary contribution intended to fund the preparation or submission of this brief.

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INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus takes no position on the threshold issues disputed by the parties in this case, namely, whether there exist positive indicia of a legislative intent exempting Respondent from obligations under the Labor Code or whether the sovereign powers doctrine applies. However, to the extent that the Court finds that the sovereign powers doctrine does apply, *Amicus* offers this brief in support of Appellants, requesting a broader interpretation of the doctrine than Respondent's, which asks this Court to hold that labor rights necessarily interfere with government functions. To the contrary, due to the workplace realities faced by employees in the healthcare industry and California's longstanding public policy of promoting worker protections, if the Court applies the sovereign powers doctrine, it should take care *not* to hold that all wage and hour protections under the Labor Code—such as those entitling workers to payment merely for basic meal and rest breaks, which are the protections at issue here—necessarily impede a public purpose.

"For the better part of a century, California law has guaranteed to employees wage and hour protection, including meal and rest periods intended to ameliorate the consequences of long hours." (Brinker Restaurant Group v. Superior Court, (2012) 53 Cal.4th 1004, 1017.) For most of that time, the *express* statutory right to paid meal and rest periods was applied only to private sector employees. This changed in 2022 when Governor

Newsom signed Senate Bill 1334 ("SB 1334") into law, expanding meal and rest breaks entitlements to employees who provide direct patient care in public healthcare facilities beginning January 1, 2023.

SB 1334's enactment memorializes the Legislature's recognition that employee wellbeing is necessary to the success and function of the health care system, and is positive indicia that the State's interest in promoting this worker protection accords with statutory liability for employers, like Respondent, that have failed to ensure their healthcare workers were provided rest and meal breaks in compliance with the Labor Code. SB 1334 is therefore strong evidence that this Court should reject Respondent's argument that such liability—which now definitively exists prospectively by statute—should not be accorded retrospectively because, as a doctrinal matter according to Respondent, paid rest and meal breaks necessarily impede a public entity's ability to perform core government functions.

Contrary to Respondent's theory, SB 1334 recognizes that providing public sector employees with the same meal and rest periods as their private sector counterparts contributes to a healthier workplace environment for employees and improves quality of patient care. Rather than protecting government operations as Respondent suggests, issuing the expansive holding sought by Respondents could lead other courts to interpret Labor Code provisions too narrowly and thereby exacerbate the current staffing and turnover crisis in the State's public sector, which is especially acute in its

health care industry. While *Amicus's* members would have the ability through their union to try to mitigate the effects of any negative holdings of this nature by negotiating alternatives under their collective bargaining agreements, unfortunately not all public sector employees in California are represented by a labor union. This case is therefore of particular doctrinal importance for those nonunionized public employees.

ARGUMENT

I. If The Court Applies the Sovereign Powers Doctrine, Respondent's Argument that Labor Rights Necessarily Interfere with Governmental Purposes and Functions Should be Rejected.

A. California's Longstanding Public Policy of Promoting Worker Protection Means that if the Sovereign Powers Doctrine Applies, It Must be Broadly Interpreted and Applied Consistent with the Labor Code's Intended Remedial Purpose.

While *Amicus* takes no position on whether the sovereign powers doctrine applies in this case, *Amicus* are concerned by Respondent's argument that, assuming the sovereign powers doctrine does apply, the Court should find for Respondent on the ground that all wage and hour laws necessarily impede a public purpose. (Resp. Reply Br. at 23-25.) To the contrary, Respondent's argument runs directly counter to case law, interpreting the Labor Code and Wage Orders, emphasizing that in California, such statutes must be interpreted in favor of promoting worker protection. This policy cannot be squared with Respondent's argument that

any promotion of workers' rights, through benefits as simple as paid meal and rest breaks, necessarily impedes a public purpose.

The prompt payment of wages due to an employee has long been recognized as a fundamental public policy of California. (*Mclean v. State of California* (2014) 174 Cal.Rptr. 3d 734 [citing *Smith v. Superior Court* (2006) 39 Cal 4th 77, 82]; *Gould v. Maryland Sound Indus., Inc.* (1995) 31 Cal.App.4th 1137, 1147; and *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 837.) The "[d]elay of payment or loss of wages results in the deprivation of the necessities of life, suffering inability to meet just obligations to others, and in many cases make the wage-earner a charge upon the public." (*Kerr's Catering Service v. Dept. of Indus. Relations* (1962) 57 Cal.2d 319, 326 [citing *Moore v. Indian Spring, etc., Mining Co.* (1918) 37 Cal.App. 370, 379-380.]) It is therefore "essential to the welfare of the public that [employees] receive pay when pay is due." (*Smith v. Superior Court*, *supra*, at p. 221.)

The upshot is that, as a general matter of judicial interpretation, because "the policy involves a broad public interest, not merely the interest of the employee," the Labor Code and Wage Orders are "remedial in nature and must be liberally construed with an eye to promoting [worker] protection." (*Brinker Restaurant v. Superior Court*, *supra*, 53 Cal.4th at p. 1026-1027.)

Despite the weight of this longstanding rule, Respondent insists that if this Court applies the sovereign powers doctrine, under two cases—*Wells v. One2One* (2006) 39 Cal.4th 1164 and *Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729—the relevant question before the Court is "whether applying the wage and hour laws to AHS would *significantly* impede [its] fiscal ability to carry out [its] core public mission[]." (Resp. Merits Br. at 21; Resp. Reply Br. at 23-24 (emphasis added).) Applying that rule, Respondent argues, requires the enforcement of wage and hour laws on hospital authorities like AHS to yield because these laws necessarily "impede" a government entity's ability to carry out core government functions.

However, Respondent's oversimplified explanation of the sovereign powers doctrine standard, based on its inappropriately narrow reading of *Wells*, entirely ignores the other important factor that this Court must consider in light of California's public policy of promoting worker protection—whether the practical impact of granting such an exemption would advance the Labor Code's legislative intent and purpose.[1]

[1] Respondent also cites *Krug v. Board of Trustees of California State University* (2023) 94 Cal.App.5th 1158 in support of its assertion. In *Krug*, a professor at the California State University (CSU) alleged a violation of the Labor Code when CSU denied his reimbursement request for a computer on the basis that "indemnify[ing] [an] employee for all necessary expenditures…incurred…in direct consequence of the discharge of his or her duties" would infringe on CSU's sovereign powers as a department of the state. But the Court held that CSU was exempt under the sovereign powers doctrine on grounds inapplicable to the instant case. In *Krug*, the Court found that the Education Code granted

A closer reading of *Wells* demonstrates why Respondent's omission of this important factor is out-of-step with *Wells* itself: *Wells* was applying a different statute—not the Labor Code—with an entirely different purpose than worker protection, and the statutory purpose of that statute factored into the Court's analysis. In *Wells,* the Court held that the language of the California False Claims Act ("CFCA") strongly suggested that the school district defendants in that case were not "persons" subject to liability. (*Wells v. One2One*, *supra,* 39 Cal.4th at p. 1193.) Nevertheless, the Court engaged in an analysis of the sovereign powers doctrine with respect to the CFCA claims and found that, even if the CFCA's language did not include positive indicia of a clear legislative intent exempting the school districts, they were nevertheless exempt under the sovereign powers doctrine on the basis that "exposing them to the draconian liabilities of the CFCA would *significantly* impede their fiscal ability to carry out their core public missions." (*Ibid.* (emphasis added).)

Critically, however, this Court's analysis in *Wells* did not end there: it also noted that since the "'ultimate purpose of the [CFCA] is to protect the public fisc…' given that school district finances are largely dependent on and

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CSU extensive powers and discretion to set rules for procuring equipment and included a proviso that CSU's discretion "exists notwithstanding any other provision of law." *Id.* at 830. Thus, the Court found that subjecting CSU to liability under the Labor Code would violate CSU's powers under the Education Code, not based on the broad and generalizable reading of the sovereign powers doctrine advanced by Respondent here.

intertwined with state financial aid, the assessment of double and treble damages, as well as other penalties, to school districts would not advance that purpose." (*Wells v. One2One*, *supra*, 39 Cal.4th at p. 1196 (emphasis added.)) Therefore, penalties could not be imposed. (*Ibid.*) In other words, the very purpose of the statute at issue in *Wells*—fiscal conservation—supported application of the sovereign powers doctrine to limit liability. The opposite, of course, is true with respect to the Labor Code.

To be sure, in *Johnson*, the Court of Appeal for the Fifth District reached a contrary conclusion, but this Court is not bound by that decision and should not repeat *Johnson's* failure to follow this Court's own worker-protective jurisprudence interpreting the Labor Code. *Johnson* held that the sovereign powers doctrine exempted the water district defendant in that case from violations of Wage Order No. 17 and the Labor Code because the water district "can only perform its purposes and functions through its employees" and statutory liability would infringe on those functions. (*Johnson v. Arvin-Edison Water Storage Dist., supra,* 174 Cal.App.4th at p. 738.) That holding was in error, and no petition for review was presented to this Court to correct it.

To reiterate, the Courts' sovereign powers doctrine analysis in *Wells* and *Johnson* differed in one significant aspect: in addition to considering whether the imposition of liability would significantly infringe on the public entity's sovereign powers, this Court in *Wells* correctly considered and

determined that the practical impact of subjecting the school districts to statutory liability would not advance the violated statute's intended purpose. To the contrary, the Court of Appeal for the Fifth District in *Johnson* failed to apply the full logical extent of the *Wells* framework to plaintiff employees by failing to consider whether an exemption from liability would effectuate the Labor Code's purpose, and instead erred in limiting its analysis of the asserted imposition on government functions to whether government functions were impacted whatsoever, conducting that analysis as if in a vacuum divorced from the very statute at issue.

Here, applying the broader *Wells* approach also requires application of the Court's precedent that Labor Code provisions are not to be "construed within narrow limits of the letter of the law, but rather are to be given liberal effect to promote the general object sought to be accomplished." (*Industrial Welfare Com. v. Superior Court* (1980) 27 Cal.3d 690, 702.) That is because California labor and employment laws "'reflect the strong public policy favoring protection of workers' general welfare and 'society's interest in a stable job market.'" (*United Parcel Service Wage & Hour Cases* (2010) 190 Cal.App.4th 1001, 1009 [citing *Gould v. Maryland Sound Industries, Inc., supra*, 31 Cal.App.4th at p.1148]; and *Murphy v. Kenneth Cole Productions,* Inc. (2007) 40 Cal.4th 1094, 1103 [recognizing that statutes governing conditions of employment are to be construed broadly in favor of protecting employees].) While there can be no doubt that any entity, private or public,

may only perform its functions through the work of its employees, the state's longstanding public policy of promoting worker protection requires that the enforcement of wage and hour laws must not be made to yield—as a general rule—to any assertion whatsoever of an entity's operational autonomy in the State of California.

B. *Labor Code Liability for Paid Rest and Meal Breaks Does Not Pose an Impediment to the Ability to Perform a Core Government Function.*

As discussed in the previous section, the worker-protective intent of the Labor Code is relevant to any analysis, applying the sovereign powers doctrine, of the question of whether according Respondent liability here would significantly "impede" its core government function. As discussed below, such analysis reveals plainly that the answer to this question is "no."

As a threshold matter, Respondent presumably recognizes the important work of its employees and their necessity to the healthcare system's ability to function. Indeed, in the healthcare industry, the wellbeing and physical ability of healthcare employees to adequately perform their duties directly affects the health and wellness of sick patients and the quality of care that those patients receive.[2] But there is a difference between labor relations affecting government operations in a general sense, which of course

[2] University of St. Augustine for Health Sciences, *Nurse Burnout: Risks, Causes, and Precautions for Nurses* (July 30, 2020) at https://www.usa.edu/blog/nurse-burnout/#:~:text=The%20most%20dangerous%20risk%20associated%20with%20burnout%20is,incidence%20of%20urinary%20tract%20and%20surgical%20site%20infections.

they do, versus worker protections necessarily significantly impeding government operations, which of course they do not.

As relevant here, an employee without adequate meal and rest periods is more prone to making mistakes on the job, putting patients at risk; and, important to emphasize in this case, opens AHS and hospitals to potential liability for medical malpractice, negligence, and other torts. (California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022, Pl. ex. "F".)[3]

Recognizing the importance of public sector healthcare workers' paid meal and rest breaks, as well as the adverse impact of appellate district decisions in *Johnson* and *Gomez v. Regents of the University of California* (2021) 63 Cal.App.5th 386, in preventing employees from doing so, the California Legislature passed Senate Bill 1334 ("SB 1334") in 2022. (California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022, Pl. ex. "F".) Senate Bill 1334, now Labor Code Section 512.1, made explicit the paid meal and rest period entitlements to public employees who support or provide direct patient care in healthcare facilities beginning January 1, 2023. (*Ibid.*)

While SB 1334 applies only prospectively, it is nevertheless strong evidence against Respondent's contention that exposure to that liability

[3] *Ibid.*

retrospectively would "significantly impede [its] fiscal ability to carry out [its] core public mission, thereby impeding [Alameda] [County's] duty to provide medical care for the indigent." (Resp. Repl. Br. at 12.)

Respondent points to Johnson, where the Court of Appeals found that the imposition of penalties under the overtime and meal and rest period provisions of Sections 510 and 512 of the Labor Code would infringe on the water district's power to set employees' compensation. (*Johnson v. Arvin-Edison Water Storage Dist., supra*,174 Cal.App.4th at p. 739.) Yet Respondent does not claim that the enforcement of wage and hour laws against it would infringe on its power to set its employees' compensation nor does it forward that it has that power in the first place.

More fundamentally, the enactment of SB 1334 signals the irrationality of Respondent elevating the mere payment of meal and rest breaks to a significant, necessary imposition on a core government function.[4] The enactment not only memorializes the importance of healthcare

[4] This is especially true given the existence of at least two Memoranda of Understanding between Respondent and the Union of American Physicians and Dentists (UAPD), representing physicians at AHS facilities, and the Service Employees International Union (SEIU), representing other hospital staff at AHS facilities, both of which include provisions permitting employees to take adequate meal and rest periods. See Section 18 (Hours of Work, Shifts, Schedules, and Rest Periods of the UAPD-AHS Memorandum of Understanding, Effective July 1, 2021 through June 30, 2025 at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.alamedahealthsystem.org/wp-content/uploads/2022/03/UAPD-MOU-2021-2025.pdf*; and* Article 7 (Hours of Work, Shifts, Schedules, and Rest Periods) of the SEIU-AHS Memorandum of Understanding April 1, 2020 to May 31, 2024 at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.seiu1021.org/sites/main/files/file-attachments/alameda-health-system_acmc_general-unit_mou_4.1.2020-5.31.2024.pdf?1666215698

employees' wellbeing in maintaining a well-functioning healthcare system by providing them adequate meal and rest periods for every five hours worked, but more relevant to the case at bar, supports the conclusion that, in the view of the Legislature, an imposition of statutory liability under the Labor Code for violations of Section 512 would not, in fact, have a significant impact on the ability of *any* public entity to meet its core government functions.

Furthermore, the legislative history of SB 1334 shows that at the time of its consideration, the Legislature determined that enforcement of meal and rest break provisions on public entities would impose "*minor* and absorbable costs to the Division of Labor Standards Enforcement (DLSE)," the state agency processing wage and hour claims. ((California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022, Pl. ex. "F" at p. 4.) (emphasis added).) While DLSE's absorbable costs and funding are independent from, and do not impact the funding and fiscal obligations of AHS as an entity, the Legislature's conclusion that "DLSE . . . does not estimate significant increase[] [in] [its] workload," (*Ibid*.), for processing meal and rest period claims of public sector employees, shows that the impact of subjecting Respondent and public entities like it to statutory liability would be minimal, if any impact exists at all, and therefore, not necessarily impede its ability to meet its core public mission.

Respondent's additional reliance on *Wells* in asserting that liability would significantly impede its fiscal ability to perform its function is also misplaced (Resp. Reply Br. at 12.), because the facts and law at issue in *Wells* were largely inapposite. For example, a primary factor considered by this Court in *Wells* were the special financial circumstances faced by school district defendants in that case, but there is no similar evidence of record here. Specifically, the *Wells* Court explained that in addition to stringent revenue, appropriations, and budget restrictions faced by all public entities,

> [p]ublic school districts face an additional restriction on their ability to tax and spend for their educational mission. Because disparities in school funding levels based on the comparative wealth of local districts violate the equal protection clause of the California Constitution, the legislature has adopted a strict system of equalized funding . . . the current system of public school finance largely eliminates the ability of local districts, rich or poor, to increase local ad valorem property taxes to fund current operations at a level exceeding their [s]tate-equalized revenue per average daily attendance.
>
> School districts must [therefore] use the limited funds at their disposal to carry out a constitutionally mandated duty.

Wells v. One2One, supra, 39 Cal.4th at p.1194-1195.

Here, in contrast, Respondent cites no specific, substantive evidence supporting its claim that statutory liability for rest and meal breaks would significantly impede its public mission or pose a major hurdle like the one faced by the public school districts in *Wells*, which the Court there expressly

held to be substantial in exempting the school districts from statutory liability. At most, Respondent very briefly asserts that exposure to liability would impact its fiscal ability to meet its core government function "because the County is intrinsically involved in AHS finances," citing as examples that the County leases hospital buildings to Respondent for $1 per year; that the County tracks Respondent's accounts receivable and payable; and that the "County supplies AHS with funds to support its working capital needs." (Resp. Merits Br. at 44.)

However, unlike the "stringent revenues and appropriations" received by the school districts in *Wells*, according to Respondent's own submitted record exhibits, Respondent is not subject to stringent appropriations constraints but is instead an ongoing, fee-generating operation. In fact, as Alameda County's "Notes to Basic Financial Statements," published in June 30, 2021 and submitted as Respondent's Exhibit "B," states, "a substantial portion of AHS' gross revenues is derived from services provided to patients." (Resp. Ex. "B" at 93.)

At bottom, Respondent treats *Johnson* and *Wells* as if context does not matter when determining whether to exempt healthcare employers from statutory liability under the Labor Code. However, the Labor Code's statutory purpose of protecting workers, the Legislature's passage of 2022 legislation explicitly subjecting Respondent to statutory liability for paid meal and rest breaks, and the evidence of record here all point to the same

conclusion: any impact of providing healthcare employees with adequate paid breaks should not be held to be a significant imposition on a public entity's ability to meet its public purpose.

C. *Accepting Respondent's Theory of the Sovereign Powers Doctrine Would Especially Threaten Nonunionized Workers, and the Staffing Crisis in Healthcare in Particular, Which Should Provide this Court Pause.*

Unions have played a major role in influencing California's labor and employment policies and wage and hour protections through organizing, lobbying, collective action, and the negotiation and enforcement of strong collective bargaining agreements. Recognizing the power of collective bargaining, approximately 2.5 million employees in the state of California have formed unions and sought additional protections under valid collective bargaining agreements that go beyond the minimum standards guaranteed to workers by the Labor Code.[5] These collective bargaining agreements, otherwise referred to as "Memoranda of Understanding" in California, can not only establish health and safety workplace standards but also provide employees with an avenue to pursue grievances or claims against management for contractual violations, including but not limited to unpaid overtime; reasonable accommodation, leave and meal and rest period

[5] Hunter Savannah, UC Berkley Labor Center, *Snapshot of California Union Membership: 'It's not your grandfather's union anymore,* (Aug. 29, 2023) at https://laborcenter.berkeley.edu/snapshot-of-california-union-membership/#_edn2.

denials; unpaid wages; incorrect scheduling; unjustifiable work transfers; and improper discipline and discharge.[6]

In California, the rights of public sector employees, in positions like those involved in this case, to form unions and collectively bargain are protected by the Meyers-Millias-Brown Act, as *Amici* in support of Respondent emphasize. (Local Government Association's Amicus Br. In Support of Respondent, at 16, 28, and 36.) However, while union contracts, like those fought and won by *Amicus AFSCME's* members, certainly can and do provide critical additional protections, benefits, and remedies to a unionized workplace, for nonunionized public sector employees, reliance on the Labor Code remains paramount in the absence of a CBA.

Thus, if this Court were to adopt the entirety of Respondent's broad theory of the sovereign powers doctrine—that virtually any labor rights protection necessarily interferes significantly with core government functions—it could significantly threaten the protections of nonunion workers to basic protections, without immediate recourse to a CBA for mitigation. This Court should not take that risk, especially in light of the

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[6] *See* the Union of American Physicians and Dentists (UAPD) and Alameda Health Systems (AHS) Memorandum of Understanding, Section 18 (Hours of Work, Shifts, Schedules, and Rest Periods) and Section 45 (Grievance Procedure), Effective July 1, 2021 through June 30, 2025 at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.alamedahealthsystem.org/wp-content/uploads/2022/03/UAPD-MOU-2021-2025.pdf; *and* the Service Employees International Union (SEIU) and Alameda Health Systems (AHS) Memorandum of Understanding, Article 7 (Hours of Work, Shifts, Schedules, and Rest Periods) and Article 32 (Grievance and Arbitration), Effective April 1, 2020 to May 31, 2024 at ahs-mou_san-leandro-unit-0_070114-123116-searchable-1.pdf (seiu1021.org). Each of AHS' Memorandum of Understanding with UAPD and SEIU provide Respondent's unionized employees with adequate meal and rest periods.

Labor Code's intended ameliorative purpose and California's public policy of promoting worker protection.

But the above risks are exceptionally salient in the healthcare industry implicated by this case, because of the extraordinary staffing and employment crisis it is currently experiencing.

To bring this crisis to light, and to combat it, in February 2023 *Amicus* launched its "Staff the Front Lines" campaign.[7] The campaign is a new initiative focused on retention and recruitment of public service workers designed to ignite the public's interest in joining the public sector workforce at the state, county, and local levels—and to ensure that state and local governments are doing what it is necessary to recruit and retain these essential public servants.[8]

During the COVID-19 pandemic, state and local government employers significantly decreased their workforces by "laying off more than one million public service workers and instituting hiring freezes."[9] In response, Congress passed the American Rescue Plan Act (ARPA), giving state and local governments additional funding to retain essential workers on the job. However, even with additional assistance from the federal

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[7] Pete Levine, AFSCME, *AFSCME Launches 'Staff the Front Lines' Initiative*, (Feb. 22, 2023) at https://www.afscme.org/blog/afscme-launches-staff-the-front-lines-initiative.
[8] *Ibid.*
[9] AFSCME, *Interested Parties Memo: AFSCME Staffing the Front Lines*, (Feb. 27, 2023) at *https://www.afscme.org/press/releases/2023/staffing-the-front-lines*

government, turnovers and staffing shortage continued.[10] Nearly four years after the COVID-19 breakout, various industries in the public sector at the state and local levels continue to suffer from unmanageable workloads resulting from the resignation and retirement of overworked employees—the health care industry being one of them.[11]

By 2026, the American Hospital Association estimates that there will be a shortage of up to 3.2 million health care workers in the United States.[12] A survey conducted by AMN Healthcare, one of the nation's leading health care staffing companies, confirmed those projections and found that in 2023, "only 15% of nurses employed in hospitals say they 'will continue working as I am' in one year," while "36% of hospital nurses say they will continue working as nurses but seek a new place of employment."[13]

This healthcare staffing crisis is perhaps more dangerous here in California than any other state in the country. In 2022, California had a shortage of 45,000 nurses, despite having the highest nursing salaries in the

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[10] U.S. Department of Treasury, Policy Issues, *Coronavirus State and Local Fiscal Recovery Funds* at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds; and Jaclyn Diaz, *Nearly a Third of Nurses Nationwide Say They Are Likely to Leave the Profession,* (May 2, 2023) at https://www.npr.org/2023/05/02/1173107527/nursing-staffing-crisis.

[11] *Ibid*.

[12] Andrew Malley, Forbes, *Navigating the Healthcare Staffing Crisis: A Treatment Plan for Workforce Stability*, (Dec. 29 2023) at https://www.forbes.com/sites/forbesbusinesscouncil/2023/12/29/navigating-the-healthcare-staffing-crisis-a-treatment-plan-for-workforce-stability/?sh=3c7e0db0b257.

[13] AMN Healthcare, *2023 AMN Healthcare Survey of Registered Nurses*, (May 1, 2023) at https://www.amnhealthcare.com/amn-insights/nursing/surveys/2023/.

country with an average of $120,000 per year.[14] As a result, hospitals have struggled to maintain compliance with the State's hospital staffing requirements and have resorted to allowing unlicensed workers or student nurses to provide care for patients, lowering the standards of care of hospitals.[15] By the summer of 2023, concerns over staffing shortages led to some Southern California hospitals reporting a significant 30% vacancy rate of nursing positions at their facilities, noting that the staffing shortage is at an all-time high, bypassing numbers at the height of the pandemic.[16] According to the United States Department of Health and Human Services, California is set to have the greatest need for nurses by 2030.[17]

In August 2023, members of *Amicus* met with U.S. Secretary of Health and Human Services, Xavier Becerra, to share employee concerns about the nationwide staffing crisis in the health care industry putting patients

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[14] Robert Goldberg, RealClear Health, *Is California Causing the National Nursing Shortage?* (June 7, 2022) at https://www.realclearhealth.com/articles/2022/06/07/is_california_causing_the_national_nursing_shortage_111345.html#!#:~:text=Despite%20this%20high%20compensation%2C%20California%20has%20a%20shortage,54%2C823%20qualified%20applications%20but%20could%20only%20accept%2015%2C002.

[15] California Hospital Association*, FAQs for Hospitals Facing Critical Staffing Shortages* (Dec. 21, 2022) p. 5 at https://calhospital.org/wp-content/uploads/2022/12/FAQs-for-Hospitals-Facing-Critical-Staffing-Shortages-Updated-Dec-2022-1.pdf.

[16] Kristen Hwang, Jefferson Public Radio*, California Needs Thousands of Nurses, But Leaders Can't Agree on How to Fill Jobs,* (July 31, 2023) at https://www.ijpr.org/labor-employment/2023-07-31/california-needs-thousands-of-nurses-but-leaders-cant-agree-on-how-to-fill-jobs.

[17] U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Workforce, *Supply and Demand Projections of the Nursing Workforce: 2014 to 2030* (July 21, 2017) at https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/nchwa-hrsa-nursing-report.pdf.

and health care workers at risk.[18] Amicus's members called for safer workplace and better patient outcomes as they recounted their first-hand experiences of burnout, doom, exhaustion, depression, anxiety, and being overwhelmed due to unmanageable workloads, including issues related to meal breaks and rest periods—well-documented health care industry challenges.[19]

Respondent is surely aware of these challenges and the specific hurdles that employees encounter on hospital floors throughout California and this entire nation. It is therefore perplexing that Respondent advances such a broad theory to evade liability for adequate meal and rest breaks that advance AHS's and *Amicus's* shared desire for safe and effective patient care.

These dire circumstances in the healthcare industry help illustrate the risks that would be posed by this Court adopting Respondent's expansive interpretation of how to apply the sovereign powers doctrine to this case. Essential public healthcare employees are increasingly hard to find and retain, and this Court should not create new doctrinal hurdles to according them statutory protections under the Labor Code.

CONCLUSION

[18] AFSCME Staff, AFSCME California, *AFSCME Nurses Share Worries About Staffing Crisis With Biden Administration*, (Aug. 8, 2023) at https://www.calafscme.org/afscme-california-people/news/afscme-nurses-share-worries-about-staffing-crisis-biden-administration.

[19] Amy Witkoski, MS, RN and Dickson, Victoria Vaughan, PhD, CRNP, American Association of Occupational Health Nurses, Inc., *Hospital Staff Nurses' Work Hours, Meal Periods, and Rest Breaks: A Review From an Occupational Health Nurse Perspective*, (2010) at https://journals.sagepub.com/doi/pdf/10.1177/216507991005801106.

For the aforementioned reasons, *Amicus* respectfully request the Court to affirm the judgment for the Plaintiffs, and in doing so, if the Court applies the sovereign powers doctrine, not to find that basic meal and rest breaks necessarily significantly impact the sovereign functions of public entities like Respondent.

Respectfully submitted,

Date: January 5, 2024

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