Case No. S279137

IN THE SUPREME COURT OF CALIFORNIA

TAMELIN STONE, et al.,

Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,

Defendant and Respondent.

No Fee (Gov. Code, § 6103)
After a Decision by the Court of Appeal,
First Appellate District, Division Five
Case No. A164021

ALAMEDA HEALTH SYSTEM'S CONSOLIDATED ANSWER TO AMICI CURIAE BRIEFS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS: (continued) **Page**

TABLE OF CONTENTS: (continued) **Page**

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

Statutes

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

TABLE OF AUTHORITIES: (continued) **Page(s)**

Other Authorities

INTRODUCTION

The American Federation of State, County and Municipal Employees ("AFSCME") and the California Employment Lawyers Association ("CELA") do not meaningfully dispute that Alameda Health System ("AHS") is a political subdivision exempt from the meal and rest period, overtime, and payroll records obligations of the wage orders and corresponding Labor Code provisions.[1] (OBOM 31-47; RBOM 17-19; see AFSCME Br. 10, 12 [taking "no position on the threshold issues disputed by the parties in this case"]; CELA Br. [no mention of political subdivisions].) Nor do they seriously contest that AHS is a "municipal corporation" exempt from the prompt payment statutes. (OBOM 53-64; RBOM 32-36; see generally AFSCME Br. [no mention of municipal corporation]; CELA Br. [no discussion of whether public hospital authorities qualify as municipal corporations].)

Rather, CELA argues that public agencies are subject to general Labor Code provisions unless specifically excepted, including the penalty provisions of the Private Attorneys General Act of 2004 ("PAGA"). The premise of CELA's argument—that public employers are subject to the Labor Code unless specifically exempted—would upend decades of judicial, administrative, and legislative guidance. What's more, the result of CELA's argument—draining the public fisc of millions of dollars in attorney fees and statutory penalties under PAGA—not only

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[1] Unless otherwise noted, all statutory references are to the Labor Code.

defies PAGA's text, structure, and history but also runs counter to the "purpose behind the statutory ban on punitive damages against public entities—to protect their tax-funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1196, fn. 20.)

Both amici take issue with AHS's application of the sovereign powers canon in the context of public employment, arguing that it is too broad. But AHS's formulation of the canon derives from this Court's decision in *Wells*, *supra*, 39 Cal.4th 1164, and decades of undisturbed guidance from the Attorney General. Amici's invitation to depart from that framework here not only confuses the canon with sovereign immunity and home rule, but also fails to fully account for how exposing public hospital authorities to fees and penalties under the Labor Code would interfere with their statutory duty to provide medical care for the indigent.

Finally, amici argue that AHS's understanding of PAGA and the sovereign powers canon would threaten "basic" labor protections and "create two castes of employees." (AFSCME Br. 25; CELA Br. 37.) Amici ignore that public employees in many instances have more workplace protections and benefits than their private counterparts. And while AFSCME to its credit admits that AHS's collective bargaining agreements "include provisions permitting employees to take adequate meal and rest periods," (AFSCME Br. 20, fn. 4), neither CELA nor AFSCME adequately explains how exposing public agencies to general

Labor Code penalties would promote the public interest without significantly impeding core governmental purposes and functions.

The question, therefore, is not whether public employees should be treated as a different "caste[]" without "basic" labor protections. The question is whether the Legislature and the Industrial Welfare Commission intended to expose public agencies (and in turn, taxpayers) to punitive actions costing millions of dollars in attorney fees and penalties. The answer to that question—guided by the positive indicia of intent to exclude public agencies from the specific laws at issue and the concern that imposing such fees and penalties on public hospital authorities would impede their public functions and purposes of discharging counties' sovereign obligation to provide medical care to the indigent—is a resounding "no."

For the reasons discussed below, CELA's and AFSCME's arguments should be rejected, and the Court of Appeal reversed.

LEGAL ARGUMENT

I. CELA's Efforts to Rewrite Decades of Law Providing That General Labor Code Provisions Do Not Apply to Public Employers Should Be Rejected.

CELA concedes—as it must—that this Court and the Legislature have recognized that "'[g]enerally, provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees.'" (CELA Br. 24, quoting *Campbell v. Regents* (2005) 35 Cal.4th 311, 330.) But CELA contends that this language from *Campbell* is "dicta" and should not prevent courts from turning

longstanding principles of construction on their head to apply "general statutes to public entities unless doing so would conflict with a grant of sovereignty." (CELA Br. 24.) For a variety of reasons, this argument should be rejected.

A. A Long Line of Judicial, Administrative, and Legislative Authorities Have Recognized the Presumption Articulated in *Campbell*.

CELA's efforts to minimize the foregoing language from *Campbell* overlooks its importance to that decision and its wide embrace—both before and after *Campbell*. One issue in *Campbell* was whether the Legislature intended Labor Code section 1102.5 to exempt University of California employees from the requirement to exhaust administrative remedies before bringing a suit for whistleblower retaliation. (*Campbell*, *supra*, 35 Cal.4th at p. 317, 330.) The plaintiff asserted that a 1992 amendment—which added Labor Code section 1106 to the whistleblower retaliation statutes—was meant to give public employees the right to file a private action without having to exhaust administrative remedies. (*Id.* at p. 330.)

This Court disagreed, explaining that "[t]he addition of section 1106 to the Labor Code was intended to extend the rights available to private employees to include public employees, and nothing more." (*Campbell*, *supra*, 35 Cal.4th at p. 330.) The plaintiff had cited earlier Assembly analyses of the bill, but when the bill reached the Senate, "the analysis no longer mentioned the exhaustion of administrative remedies." (*Id.* at p. 330.) Recognizing that "'[t]hese provisions are silent as to their

applicability to public employees,'" the Senate analysis explained that the bill arose from a case in which a district attorney declined to prosecute a public employer for retaliating against a local building inspector who had reported to the police that his supervisor ordered him to violate the building inspection law. (*Ibid.*) The Senate Rules Committee's third reading analysis further asserted that the bill "'would give public employees the same right of redress against retaliation for whistle blowing as the private sector enjoys.'" (*Ibid.*)

Accordingly, this language from *Campbell* was critical to this Court's holding that the 1992 amendment did not permit public employees to file a whistleblower retaliation action without first satisfying the administrative exhaustion requirement. More fundamentally, *Campbell* shows that in 1992, the Legislature was keenly aware of the rule that public employers are typically excluded from general Labor Code provisions and knew precisely how to deviate from that presumption when circumstances warrant.

Nor, contrary to CELA's assertions, is this presumption unique to *Campbell*. Both before and after *Campbell*, a long line of judicial, administrative, and legislative authorities has recognized this presumption. (See *Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718, 752 [citing *Campbell* with approval and discussing Labor Code sections 222 and 223]; see also *Allen v. San Diego Convention Center Corporation, Inc.* (2022) 86 Cal.App.5th 589, 597 [following *Campbell*]; *California Correctional Peace Officers' Assn. v. State of California* (2010) 188

Cal.App.4th 646, 653 [same]; *Johnson v. Arvin-Edison Water Storage District* (2009) 174 Cal.App.4th 736, 736 [following *Campbell* and recognizing that "[t]he Legislature has acknowledged this rule applies to the Labor Code"]; 71 Ops.Cal.Atty.Gen. 39 (1988) ["we are aware of no cases which have held public agencies bound by a general statute which regulates the employment relationship. On the contrary, we have, on a number of occasions, construed such statutes as not applicable to public jurisdictions, in the absence of any expression of legislative intent to the contrary" (citing Attorney General opinions dating back to 1943)]; OBOM 40-43; RBOM 38.)

To its credit, AFSCME acknowledges that "[f]or most of the time, the *express* statutory right to paid meal and rest periods was applied only to private sector employees." (AFSCME Br. 10.) AFSCME further concedes that the recent extension of meal and rest break entitlements to "public healthcare facilities beginning January 1, 2023" "applies only prospectively." (AFSCME Br. 11, 19.) That is not surprising given that the Legislature in 2022 again recognized that the "California Labor Code regulates private employment unless a provision explicitly states that it applies to public sector employment." (AHS's MJN, Ex. J at p. 4.)

But CELA resists this conclusion, pointing to cases where it says courts refused to apply the presumption from *Campbell* and applied "general statutes" regarding minimum wages to public entities. (CELA Br. 24.) CELA contends that these cases reached this conclusion because the minimum wage law at "applies to 'employers' generally—not to public employers

specifically." (CELA Br. 21, citing *Sheppard v. North Orange Regional Occupational Program* (2010) 191 Cal.App.4th 289; *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912; *Flowers v. Los Angeles County Metropolitan Transportation Authority* (2015) 243 Cal.App.4th 66.) This argument fails to recognize that the text, structure, and history of the relevant wage orders in these cases revealed positive indicia of intent to extend the minimum wage obligations to public agencies and rebut the presumption recognized in *Campbell*.[2]

For example, *Sheppard* held that a regional occupational program established by public school districts was subject to the minimum wage obligation in Wage Order No. 4, which governs professional, technical, clerical, mechanical and similar occupations. (*Sheppard*, *supra*, 191 Cal.App.4th at pp. 300-301; see 8 C.C.R. § 11040.) Prior versions of the wage order had provided that public employees were fully exempt from the wage order, but a 2001 amendment extended the sections regarding definitions, minimum wages, meals and lodgings, and penalties to public entities. (*Id.* at p. 300, fn. 7.) As a result of that amendment, the section imposing the minimum wage obligation is "an express exception to its general statement that Wage Order No. 4-2001 does not apply to state employees or employees of political subdivisions of the state." (*Id.* at p. 301.) Accordingly, the *Sheppard* court interpreted the language of the wage order

[2] For this reason, the courts in these cases had no need to resort to the sovereign powers doctrine to resolve an unclear intent.

"by its terms, to impose the minimum wage provision as to all employees in the occupations described therein, including employees directly employed by the state or any political subdivision of the state." (*Id.* at pp. 300-301 & fn. 7; see also *Stoetzl*, *supra*, 7 Cal.5th at p. 748 ["the IWC amended Wage Order No. 4 in 2001 to apply that order's minimum wage provision to the state government's rank-and-file employees"]; *id.* at p. 753 (conc. opn. of Liu, J.) [same].)

Flowers also recognized that the IWC expressly extended the minimum wage obligations to public agencies in 2001 "by making certain enumerated sections of the wage order applicable to government employees." (*Flowers*, *supra*, 243 Cal.App.4th at p. 76 ["Prior to January 1, 2001, wage order 9 did not apply to public employees"].) Notably, for purposes of the meal and rest period claims at issue here, *Flowers* dealt with a different wage order (No. 9, Transportation) that—unlike Wage Order No. 5—expressly extends meal and rest period obligations to public transit agencies under certain circumstances. As the *Flowers* court explained, "[a] further amendment in 2004[3] made meal period and rest period requirements in sections 11 and 12 of the wage order applicable to public transit drivers, except for those

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[3] Curiously, this 2004 amendment does not appear in the California Code of Regulations on Westlaw. (Compare 8 C.C.R. § 11090, subds. 1(B), 2(C), 2(L), 11(F) & 12, with Wage Order No. 9, subds. 1(B), 2(C), 2(L), 11(F) & 12(C), available at https://www.dir.ca.gov/IWC/WageOrders2023/IWCArticle09.pdf.)

covered by a collective bargaining agreement containing certain specified terms." (*Id.* at pp. 76-77.)

Guerrero, for its part, held that a county and a public services authority were joint employers of in-home supportive services providers and subject to a variety of obligations in Wage Order No. 15, which governs private household services. (*Guerrero*, *supra*, 213 Cal.App.4th at p. 954-955; see 8 C.C.R. § 11150.) Unlike most other wage orders (including the wage orders in *Sheppard* and *Flowers*), the wage order in *Guerrero* is one of the few that does not contain any express exemption for public employers. (See *Guerrero*, at p. 954, fn. 29.)[4] Given this comparative structure, the *Guerrero* court unsurprisingly concluded that "the plain language of wage order No. 15-2001, when compared with that of the other industrial and occupation wage orders, demonstrates the IWC did not intend to exempt

[4] "The other two wage orders that do not exempt political subdivision[s] are wage orders Nos. 14 ['Agricultural Operations'] (Cal. Code Regs., tit. 8, § 11140) and 17 ['Miscellaneous Employees'] (*id.*, § 11170)." (*Guerrero*, *supra*, 213 Cal.App.4th at p. 954, fn. 28.)

public agencies or political subdivisions generally from its provisions applicable to household occupations." (*Id.* at p. 955.)[5]

Finally, CELA misreads *Sargent* in suggesting that it rebuffed the *Campbell* presumption when it "rejected a public employer's argument to make it 'exempt from all laws of general application unless they expressly include' it." (CELA Br. 24, quoting *Sargent v. Board of Trustees of California State University* (2021) 61 Cal.App.5th 658, 667.) *Sargent* made that statement in response to CSU's argument that a specific provision of the Education Code exempted CSU from PAGA. (See *Sargent*, at pp. 667-668.)[6] The court's reasoning in this portion of the opinion did not serve as the basis for its subsequent analysis of whether PAGA applies to public entities like CSU. Indeed, the *Sargent* court correctly recognized (without engaging in any

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[5] To be sure, the *Guerrero* court also pointed to the fact that the IWC's wage orders expressly apply to "*all persons* employed" in the named industry or occupations. (*Guerrero*, *supra*, 213 Cal.App.4th at p. 954.) Because public *employees* are "persons," the court reasoned, they are covered by the wage order "unless the wage order expressly exempts public agency employers from its coverage." (*Ibid.*) But the court did not hold that public *employers* are "persons" or "employers" under the wage orders or the Labor Code. In any event, because the wage orders define an "employee" to be a "person employed by an employer" and define "employer" by reference to Labor Code section 18's definition of "person," the *Guerrero* court's structural analysis is more persuasive.

[6] This is the same provision that the DLSE has concluded did not exempt CSU from the minimum wage obligations in the wage order after they were extended to public entities. (See CELA Br. 20, citing DLSE Opn. Ltr. Apr. 25, 2001 [quoting same statute but misnumbering it].)

sovereign powers analysis) that public entities are *not* "persons" subject to PAGA's default penalties. (*Id.* at pp. 672-673, citing *Wells*.) The court's subsequent conclusion that public entities are still "subject to PAGA claims premised on Labor Code provisions that themselves provide for penalties" and indisputably apply to public agencies (*id.* at pp. 671, 674) was based on its misreading of PAGA's legislative history,[7] not on any rejection of the presumption that Labor Code provisions do not apply to public entities unless specifically applicable. Notably, the only time the *Sargent* court cited *Campbell* was for another point in the unpublished portion of the opinion. (See *id.* at p. 675.)[8]

B. Excluding Public Employers from General Statutes Regarding "Persons" and "Employers" Does Not Render More Specific Exclusions Meaningless.

CELA argues that various provisions of the Labor Code expressly excluding public entities from certain obligations "would become surplusage" if the defined term "person" and undefined term "employer" did not include public employers. (CELA Br. 27-28, 34-37.) For a variety of reasons, CELA is mistaken.

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[7] (See OBOM 71-73; *infra* § II.B.)

[8] CELA also cites *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759. But that case did not involve the Labor Code and merely held that permitting public agencies to use the Public Records Act to request public records from other public agencies that are already obligated to "make open for inspection and to copy public records" was the "only rational and reasonable interpretation of the statute." (*Id.* at p. 770-772.)

1. CELA Cannot Overcome the Textual, Structural, and Historical Evidence That the Legislature Purposely Excluded Public Agencies from the Definition of "Person" in Labor Code Section 18.

As an initial matter, CELA ignores that the Legislature knows how to define the term "person" to include public agencies and conspicuously declined to do so with respect to Labor Code section 18. When the Legislature enacted the Labor Code in 1937, it defined "person" for purposes of the Code generally to "mean[] any person, association, organization, association, partnership, business trust, or corporation." (Stats. 1937, ch. 90, p. 186, Lab. Code, § 18.)[9] This definition did not include public agencies.

By contrast, in the very same legislation, in the specific context of workers' compensation, the Legislature opted for a broader definition of "person" that "includes an individual, firm, voluntary association, or a *public*, *quasi public*, or private *corporation*." (Stats. 1937, ch. 90, p. 266, Lab. Code, § 3210 [emphasis added]; see also Lab. Code, § 3204 [noting the limited scope of this and other definitions].) This express inclusion of public agencies is consistent with how the Legislature defined "employer" for purposes of workers compensation in that same legislation. (See Stats. 1937, ch. 90, p. 266, Lab. Code, § 3300 [defining "employer" to mean the "State and every State agency,"

[9] In 1994, the Legislature added "limited liability company" to the definition of "person" in section 18. (Stats.1994, ch. 1010, p. 6118.)

"[e]ach county, city, district, and all public and quasi public corporations and public agencies therein," "[e]very person including any public service corporation, which has any natural person in service," and "[t]he legal representative of any deceased employer"].)[10]

As this Court has recognized in the context of the Unruh Act, the specific enumeration of public entities in one context but not another "'weighs heavily against a conclusion' that the coverage provisions should be identical," especially where "the statutes' coverage provisions were drafted by the very same Legislature during the same legislative session." (*Brennon B. v. Superior Court* (2022) 13 Cal.5th 662, 678.)

2. The Other Statutory Regimes CELA Cites Shed No Light on the Legislature's Intent in Enacting the Labor Code.

Remarkably, CELA completely ignores *Brennon B.* in asserting that "Unruh Act civil penalties are applicable to public entities" "[d]espite the absence of any reference to public entities anywhere in the statute." (CELA Br. 35, citing *Los Angeles County Metropolitan Transportation Authority v. Superior Court* (2004) 123 Cal.App.4th 261 (*LACMTA*); compare *Brennon B.*,

[10] That same year, the Legislature defined "person" to expressly include public agencies on multiple other occasions. (Stats. 1937, ch. 352, p. 763; ch. 683, pp. 1936-1937; ch. 778, p. 2223; ch. 860, p. 2400.) Yet this language is conspicuously absent from section 18 of the Labor Code and other provisions enacted that session. (E.g., Stats. 1937, ch. 90, p. 230; ch. 283, p. 622; ch. 304, p. 666; ch. 404, p. 1331; ch. 500, p. 1489; ch. 521, p. 1508.)

supra, 13 Cal.5th at p. 668 [holding that "statutory penalties and attorney fees" are not available against public school districts under the Unruh Act].)

CELA also points to this Court's decision in *State of California v. Marin Municipal Water District* (1941) 17 Cal.2d 699, which concluded that water districts are "persons" under the Streets and Highways Code. But *Wells* is (far) more recent authority on whether public agencies are "persons" under definitions like those in the CFCA and the Labor Code. (*Wells*, *supra*, 39 Cal.4th at p. 1191 & fn. 14; *Sargent*, *supra*, 61 Cal.App.5th at p. 673.) And, in hindsight, positive indicia to treat water districts as "persons" existed in *Marin Municipal Water District* because the water district's enabling statutes "confer[red] upon it a right to maintain a pipeline along the streets and highways of the State only 'in such manner as to afford security for life and property'" and it was "reasonable to assume that the Legislature intended to provide some method for the enforcement of this restriction upon municipal water district[s]." (*Marin Municipal Water District*, at pp. 704-705.)

3. The Labor Code's Express Exemptions for Public Employers Do Not Implicitly Subject Them to All General Provisions.

CELA argues that the specific exemptions for public employers in various Labor Code provisions must mean that any provisions that are silent as to public employers necessarily apply to public employers. (CELA Br. 25-29.) This argument fails to appreciate the specific contextual reasons why the Legislature

may have felt the need to expressly exclude public agencies from certain laws. Take, for example, the prompt payment statutes (§§ 200 et seq.) and the express exemptions for public employers in sections 213 and 220. As this Court has recognized, those laws pre-date the codification of the Labor Code and date back to 1911. (See *McLean v. State of California* (2016) 1 Cal.5th 615, 619, fn. 1.) They were reenacted in 1919 after a court held the 1911 act invalid. (OBOM 58-59.) The 1919 law made clear in the section exempting public employers that "[a]ll other employments shall for the purposes of this act be deemed private employments and subject to the provisions thereof," (Stats.1919, ch. 202, p. 297), reflecting an understanding that the general language in the prompt payment statutes only applied to private employers.

When the Legislature codified the prompt payment statutes in 1937, there was no indication that it intended the public employer exemptions in sections 213 and 220 to include public agencies in section 18's definition of "person" or general references to "employer" in completely different portions of the Labor Code. (Cf. *Mendoza v. Fonseca McElroy Grinding Co., Inc.* (2021) 11 Cal.5th 1118, 1130 & fn. 14 [finding no legislative intent to alter the earlier-enacted prevailing wage laws' applicability to public agencies when those laws were codified in the Labor Code, despite omission of certain language].) Put another way, just because the Legislature saw no need to remove the express exemptions for public employers from those discrete provisions when it folded them into the broader Labor Code does not mean that it meant to include public employers in the general

definition of "person" or other undefined references to "employer" in completely different parts of the Labor Code.

Indeed, the exemption in section 220(b)—which says that sections 200 to 211 and 215 to 219 do not apply to the payment of wages of public employees—can be read to expressly extend sections 212, 213, and 214 to public employees. (§ 220, subd. (b).) When the Legislature codified the public employer exemptions in section 220, it provided that "[a]ll other employments are for the purposes of these sections private employments and subject to the provisions thereof." (Stats. 1937, ch. 90, p. 200.) For that reason, the Legislature may have felt the need to retain the express exemption for public entities set forth in section 213 from the obligations in 212 even though section 212 only applies to "persons."

CELA argues that the use of the phrase "state employer" in sections 201(b) and 202(b) would be "superfluous or nonsensical" if the general language in sections 201(a) and 202(a) did not apply to public employers. (CELA Br. 26.) That is partially true, but not for the reasons CELA thinks. As this Court recognized in *McLean*, *supra*, although these provisions originally did not apply to public employers, "[i]n 2000, the Legislature amended the Labor Code to extend these provisions to 'employees directly employed by the State of California.'" (1 Cal.5th at p. 619, quoting Stats. 2000, ch. 885, § 1, p. 6524.) Given this development, it is not surprising that the Legislature later "amended the statute to add special rules governing the prompt payment of accrued leave to state employees upon termination of

their employment." (*Id.* at p. 619-620, citing Stats. 2002, ch. 40, §§ 6, 7, 8, pp. 460-462.) The fact that the Legislature decided to enact special rules governing state employers after expressly extending those obligations to state employers (but not local public employers) does not mean that the prompt payment obligations in sections 201(a) and 202(a) apply to all public agencies.

CELA also contends that the DLSE "has found that the Code's public-entity exclusions show an intent to bring those entities within the Labor Code's coverage *unless otherwise specified*." (CELA Br. 28, citing DLSE Opn. Letter Jan. 29, 2002.) But this overreads the opinion letter, which merely found the express exemptions in section 220 "indicates an intent to make the remaining sections *of the Chapter* applicable to such public entities." (DLSE Opn. Letter Jan. 29, 2002, at p. 11, fn. 5 [emphasis added].) As the DLSE recognized, this "Chapter" resides in "Division 2, Part 1, Chapter 1 of the Labor Code" and—at the time of the DLSE's opinion—"include[d] sections 200-243." (*Ibid.*) What's more, the DLSE's interpretation of this discrete portion of the Labor Code overlooked sections 220.2, 230.3, and 233 (which all expressly apply to public entities) and fails to account for the fact that subsequently enacted statutes in the same Chapter define "employer" to include public agencies. (§§ 245.5, subd. (b)(1), 238.5, 248, subd. (a)(2), 248.6, subd. (a)(3); see also RBOM 16.)

Regardless, just because references to "persons" or "employers" in the Labor Code are generally presumed not to

include public agencies, that does not mean that the Legislature is forbidden from (a) expressly defining those terms to include public agencies for purposes of certain portions of the Labor Code (e.g., §§ 3210, 3300, 6304, 245.5, subd. (b)(1)) or (b) implicitly using those terms in a manner that conveys a structural intent to include public entities as "employers" in certain discrete portions (e.g., § 432.2, subd. (b)).

In fact, many of the other Labor Code provisions that CELA points to exemplify this issue and help explain why the Labor Code may not always appear to be a "model of uniformity in its references to public employees." (*Sheppard*, *supra*, 191 Cal.App.4th at p. 307; see also CELA Br. 25-29.)

Take, for example, section 2755, which provides that "[f]or purposes of implementing Section 12316.1 of the Welfare and Institutions Code, the state, counties, and public authorities are not the employer or joint employer of any In-Home Supportive Services provider, except as explicitly set forth under state law." (§ 2755.) Given the statutory and jurisprudential context in which that statute was enacted, it stands to reason that the Legislature included that express exemption when it created the Career Pathways Program for providers of in-home supportive services because existing case law and statutes recognized the state, counties, and public authorities as the employers (or joint employers) of in-home supportive services providers in certain contexts. (See *Skidgel v. California Unemployment Insurance Appeals Board* (2018) 24 Cal.App.5th 574, 580-581, 583 ["The IHSS statutory scheme expressly identifies the 'employer' of

IHSS providers in some instances"], citing Welf. & Inst. Code, §§ 12302.25, subd. (a) [counties], 12301.6, subds. (c), (f)(1) [public authorities]; *In-Home Supportive Services v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3d 720, 725 [holding that "the state is also the employer of an IHSS worker" under the workers' compensation laws].)

Section 432.2 can similarly be explained by statutory structure. That law prohibits employers from requiring applicants or employees from taking polygraphs or lie detectors as a condition of employment or continued employment but expressly excludes public agencies from this prohibition. (See Lab. Code, § 432.2, subd. (a); CELA Br. 25.) This provision appears in the same article ("Contracts and Applications for Employment" (see Lab. Code, §§ 430-435)) as several provisions that expressly apply to public employers. (See, e.g., Lab. Code, § 432.3, subd. (g) [forbidding "all employers, including state and local government employers and the Legislature," from relying on salary history information of an applicant for employment as a factor in determining whether to offer employment or what salary to that applicant]; *id.*, § 432.7, subd. (a)(1) [forbidding "[a]n employer, whether a public agency or private individual or corporation," from asking an applicant for employment to disclose information regarding an arrest or detention that did not result in conviction or diversion]; *id.*, § 435, subd. (a) [forbidding "private or public employer[s]" aside from the federal government from recording employees in restrooms and other private spaces].) Viewed in that context, the Legislature's decision to

expressly exclude public employers from certain obligations within that article makes perfect sense. It does not—contrary to CELA's assertion—mean that courts should dispense with the presumption that generally applicable Labor Code provisions do not apply to public employers.

II. PAGA Should Not Be Construed to Apply to Public Entities.

A. CELA's Textual Arguments for Applying PAGA to Public Employers Are Unpersuasive and Overwhelmed by the Remainder of the Statute.

1. Public Entities Are Not Persons Under the Labor Code Unless Expressly Included.

PAGA applies to "persons," which is defined as "any person, association, organization, partnership, business trust, limited liability company, or corporation." (§ 2699(b), incorporating the definition in § 18.) Under the plain language of the statute, a public entity is not a person within the meaning of this provision. For the reasons discussed above, CELA's arguments that the Legislature has "plainly used section 18's definition of 'person' to refer to public entities" (CELA Br. 36) should be rejected.

Indeed, the same year that the Legislature enacted PAGA and used Labor Code section 18's definition of "person" to define the scope of possible defendants in PAGA actions, the Legislature defined "person" in other contexts to expressly include public entities. (See Stats.2003, ch. 229, p. 2039 ["individual, public entity, firm, corporation, association, or any other business unit, whether operating on a for a profit or nonprofit basis"]; *id.*, ch.

341, p. 2741 [expressly including "a governmental corporation" and "any city, county, district, the state" and various out of state public agencies]; see also *id.*, ch. 42, p. 166 [same]; ch. 62, p. 511 [similar]; ch. 696, p. 5288 [similar]; ch. 474, pp. 3464-3465 [similar]; ch. 491, p. 3612 [similar]; compare *id.*, ch. 62, p. 414 [no public agencies]; ch. 515, p. 3932 [same].)

2. CELA's Remaining Textual Arguments Fall Flat.

CELA makes two textual arguments for construing PAGA as applying to public entities. First, CELA claims that Labor Code section 2699, subdivision (f)(3) "resolves any doubt" regarding PAGA's applicability to public entities. (CELA Br. 33.) Section 2699(f)(3) states: "If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty." CELA contends that if public agencies were exempt from PAGA liability, there would be no need to exclude the Labor and Workplace Development Agency ("LWDA") from the default penalty provisions. CELA misinterprets this section.

PAGA imposes a series of express obligations on the LWDA to assist in investigating and enforcing Labor Code violations. (§§ 2699, subds. (a), (d), 2699.3, subds. (a)(2), (c)(3).) Section 2699(f)(3) excludes an aggrieved employee from recovering civil penalties if the alleged violation is a failure by the LWDA or a subsidiary agency to act as expressly required under the statute. As demonstrated below, PAGA was intended to remediate the

state agency's lack of resources to pursue Labor Code violations by enabling an aggrieved employee to act in the agency's stead. To grant employees the right to enforce Labor Code violations as an agent of LWDA and then sue and collect penalties on the basis that LWDA did not pursue enforcement would be nonsensical. Section 2699(f)(3) prevents this absurd result by making clear that the LWDA and its employees may not be sued for falling short of the agency's express enforcement obligations. It fails to demonstrate that the Legislature intended that *other* public entities having no express role in the enforcement process could be sued under PAGA.

Second, CELA contends section 6434.5 "confirm[s]" that PAGA applies generally to public entities. Not so. This section applies to the penalties assessed against police or fire agencies for violations under the Cal/OSHA Act. It requires those penalties to be deposited into specific funds used for effective occupational injury and illness prevention programs. (§ 6434.5, subd. (b)(1)(2).) Subdivision (b) allows police and fire agencies to apply for a refund for any penalties they have paid for safety violations if the agency has abated all unsafe conditions and the agency has no citations for a serious violation within the past two years. Subdivision (c) provides that "[t]his section does not apply to that portion of any civil or administrative penalty that is distributed directly to an aggrieved employee or employees pursuant to the provisions of Section 2699."

The Legislature added section 6434.5 to the Labor Code in 2005. (Stats. 2005, ch. 141 (A.B. 186).) "Prior to 2000, the Labor

Code contained a statutory exemption for governmental entities from the imposition of Cal/OSHA civil penalties. However, AB 1127 (Steinberg), Chapter 615, Statutes of 1999, repealed that exemption, thereby treating governmental entities the same as private employers for purposes of Cal/OSHA penalties." (AHS's MJN ISO Consolidated Answer, Ex. B at pp. 1-2.) AB 1127 contained a limited carve-out for specified educational entities, which allowed them to apply for a refund of the penalties if the previous citations had been abated and there have been no citations for serious violations for a period of two years. (*Id.* at p. 2.) The California Fire Chiefs Association sponsored AB 186 to "establish a similar refund mechanism for public police and fire departments, and the Department of Forestry and Fire Protection." (*Id.* at p. 2.) The Assembly Analysis notes that "[s]upporters, including local governments and public fire departments, argue that passage of this bill will contribute to a safer workplace for public safety employees. In addition, it will eliminate an unnecessary negative financial impact on public safety operational revenues. These revenues are essential to provide the highest level of public safety services possible to the citizens of California." (*Id.* at p. 2.)

The legislative history of AB 186 barely addresses subsection (c) of section 6434.5 and does not state that PAGA applies to public entities. (See AHS's MJN ISO Consolidated Answer, Exs. B-1 through B-5.) Thus, there is no evidence that the Legislature intended, by allowing fire and police agencies to recover civil penalties paid for workplace safety violations, to

address, consider, or "confirm" the application of PAGA to public entities. Such an implication should not be presumed. (*People v. Welch* (1971) 20 Cal.App.3d 997, 1003 ["'An intention to legislate by implication is not to be presumed'"].) Even if there were an express statement of intent to this effect, "the view of a subsequent Legislature of the meaning of a prior legislative enactment is not controlling." (*California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 506.)

It is equally possible that the Legislature wanted to ensure that public police and fire departments could not use section 6434.5 to pursue civil penalties awarded to plaintiffs who successfully bring PAGA actions against private entities that could be deemed to be joint employers with police and fire agencies, such as the nonprofit California Firefighter Joint Apprenticeship Program expressly identified in the statute. (See § 6434.5, subd. (b)(1); cf. *Bradley v. Department of Corrections & Rehabilitation* (2008) 158 Cal.App.4th 1612, 1627-1628 & fn. 3 [discussing possibility that temporary service agency that contracted with clinical social worker to provide services to prison might "technically" be "a joint employer" with the state Department of Corrections under FEHA].) At best, section 6434.5 raises ambiguity about PAGA's application, and other tools of construction counsel against reading PAGA to apply to public entities.

B. CELA's Legislative History Arguments Are Unavailing.

Relying on snippets of legislative history that do not reflect the Legislature's views as a whole, CELA argues that the legislative history supports the Legislature's intent to apply PAGA to public employers. This contention lacks merit.

The Legislature intended PAGA to address two problems: (1) the lack of enforcement of many Labor Code provisions due to violations being punishable only as criminal misdemeanors and (2) the shortage of government resources to pursue enforcement. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 379, abrogated on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906.) This Court recognized that the "legislative history discussed the lack of enforcement at length," noting that the Department of Industrial Relations "was failing to effectively enforce labor law violations. Estimates of the size of California's 'underground economy'—*businesses* operating outside the state's tax and licensing requirements—ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but that DIR was issuing fewer than 100 wage citations per year for all industries throughout the state." (*Id.* at 379; emphasis added, citing

Assembly Com. on Labor and Employment, Analysis of Sen. Bill No. 796 (Reg. Sess. 2003-2004) as amended July 2, 2003, p. 4.)

In 2001, the Assembly Committee on Labor and Employment held hearings regarding "the effectiveness and efficiency of the enforcement of wage and hours laws" by the Department of Industrial Relations. (AHS's MJN, Ex. D-7, p.3.) That Committee's hearings on labor law enforcement by the DIR addressed four industries: agriculture, construction, garment, and janitorial. (AHS's MJN ISO Consolidated Answer, Ex. C, Legislative Summary for the Year 2001, Assembly Committee on Labor and Employment.) As the Chair of the Committee noted: "These hearings have raised significant concerns about the lack of enforcement of existing laws, and therefore I expect the Committee's oversight process to be ongoing." (*Ibid.*, Introductory Letter.)

Despite this Court's comprehensive analysis of the Legislature's intent in enacting PAGA, and the lack of mention of public agencies in the committee reports, CELA erroneously contends that the Legislature "clearly intended" PAGA to apply to public sector workers. (CELA Br. 37.)

First, CELA notes that the Assembly Republican Bill Analysis, which warned the bill would likely result in major costs to state and local employers to defend lawsuits and pay increased penalties and attorneys' fees, demonstrates the Legislature's intent to apply PAGA to public agencies. (CELA Br. 37.) "[S]nippets of legislative history carry little weight." (*Los Angeles Unified School Dist. v. Superior Court* (2023) 14 Cal.5th 758, 782

(*LAUSD*).) "[T]he views of the bill's opponents found in committee and floor analyses regarding [a] measure shed little light on the *Legislature's* intent, which is the focus of our analysis. (*Ibid*., emphasis in the original; see also *That v. Alders Maintenance Assn.* (2012) 206 Cal.App.4th 1419, 1428 fn. 9 [rejecting a "partisan bill analysis" as "cognizable legislative history" for failing to "shed light on the view of the Legislature as a whole"].) The Republican analysis fails to shed light on the view of the Legislature as a whole and this Court should disregard it.

Second, CELA notes that the bill had the support of several public-sector labor unions. (CELA Br. 38.) However, "letters to various legislators and to the Governor expressing opinions in support of or opposition to a bill are not evidence of the Legislature's collective intent and generally should not be considered." (*Estate of Bartsch* (2011) 193 Cal.App.4th 885, 898, fn. 12.)

Third, CELA points to language in the Assembly Committee on Labor and Employment Bill Analysis noting that, California's enforcement agencies are responsible for regulating "almost 800,000 private establishments, in addition to all public sector workplaces in the state." (CELA Br. 38.) Read in context, however, this sentence simply supports the paragraph's assertion that the "evidence demonstrates that the resources dedicated to labor law enforcement have not kept pace with the growth of the economy in California." (AHS's MJN, Ex. D-7, p. 3; see *LAUSD*, *supra*, 14 Cal.5th at p. 782 [rejecting plaintiff's interpretation of

clause for failing to consider the clause in context].) A lone statement describing the vast size of California's economy fails to establish the Legislature's collective intent that the Legislature intended the law to apply to public sector employees.

Fourth, CELA argues that the Legislature's use of the word "person" rather than "employer" was intended to provide a more expansive applicability than employer and therefore, cannot support an interpretation that excludes PAGA's application to public sector agencies. (CELA Br. 38 [citing committee report].) But while the consultant that wrote the report noted that the definition of "person" in the Labor Code is generally considered more expansive than the term "employer," nothing in the report indicates any intent to include public sector agencies in the definition of "person" (or, for that matter, the phrase "employer" when used generically in the Labor Code). (AHS's MJN, Ex. D-2, p. 5.) In fact, the consultant explained, the definition of "person" in the "Garment Manufacturing" Part of the Labor Code was different than the definition "for the general purpose of the Code." (*Id.*, p. 5.) The author wrote that since PAGA would (if enacted) be located in the "Garment Manufacturing" part of the Code, "the author may wish to add a definition of 'person' specifically applicable to that Part of the Labor Code." (*Ibid.*; compare § 18, with § 2671, subd. (a).)

The bill's author subsequently added a definition of "person" to the bill: "For the purposes of this part, 'person' has the same meaning as defined in Section 18." (MFJN, Ex. D-3, p. 2.) The author could have expanded the definition of "person"

to include public entities. As noted above, in other laws passed that same legislative session, the Legislature saw fit to include public agencies in statutory definitions of "persons." (*Supra* § II.A.1.) But here, it did no such thing.

Fifth, CELA argues that the Legislature's concern with labor violations in the "underground economy" does not support the notion that PAGA was enacted exclusively to regulate particular industries or illegal settings. AHS agrees that the Legislature intended PAGA to apply to all private employers—both "underground" and above ground. But the fact that the Legislature intended to apply PAGA to all private industry and the subsequent application of PAGA to an array of private employers is not evidence of the Legislature's intent to apply PAGA to public entities, particularly in light of the Legislature's adoption of the limited definition of "person." CELA cites a handful of cases permitting PAGA claims to proceed against public agencies (CELA Br. 39), but none of those cases adequately grappled with PAGA's text, structure, and legislative history or the ways in which applying PAGA to public agencies would interfere with their governmental purposes and functions. (See, e.g., *Flowers*, *supra*, 243 Cal.App.4th at p. 86 [noting that the transportation authority's "sole basis for demurring to plaintiff's PAGA cause of action" was that Public Utilities Code sections barred plaintiff's underlying statutory minimum wage claim].)

Finally, CELA appears to contend that because PAGA's drafters placed limits on PAGA's scope to distinguish it from the Unfair Competition Act's private attorney general provision, it

did not intend to limit its application to private employers. CELA adds that the Legislature's subsequent amendment of PAGA to further limit its scope provides support for its argument. (CELA Br. 39-41.) AHS agrees that PAGA placed limits on the scope of PAGA's private attorney general provision compared with that of the Unfair Competition Act. But the fact that the Legislature intended to prevent PAGA from being misused as the Unfair Competition Law provides no evidence the Legislature intended to include public sector employees in a definition of "person" that—just like the UCL—conspicuously omits public agencies. (OBOM 71, 76-77.)

C. PAGA, Like Other Remedial Acts, Must Be Interpreted to Avoid Conflict with Government Code Section 818.

CELA does not dispute that this Court has previously pointed to Government Code section 818 as "an additional indication that the Legislature did not intend, without expressly saying so, to apply [a given legislative enactment] to public entities." (*Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.) Nevertheless, CELA argues that section 818 does not apply to civil penalties. The argument lacks merit.

In *LAUSD*, *supra*, 14 Cal.5th 758, this Court held that Government Code section 818 prohibits an award against a public entity of enhanced damages for covering up sexual assault permitted under Code of Civil Procedure section 340.1, subdivision (b)(1). This Court rejected the plaintiff's argument that section 818 "prohibits only the imposition of damages that

are 'simply and solely' punitive." (*Id.* at p. 767.) Instead, it held that section 818 "immunizes public entities from damages awarded under Civil Code section 3294[11] and from other damages that would function, in essence, as an award of punitive or exemplary damages." (*Ibid.*)

This Court explained that section 818 requires a "fact-specific inquiry" of the "statutory text and basic objective characteristics of the award at issue" as a "starting point." (*Id.* at p. 773.) "Whenever this inquiry occurs, the ultimate question remains whether, by virtue of being imposed 'primarily for the sake of example and by way of punishing the defendant' the damages before the court function, in essence, as a form of punitive or exemplary damages." (*Ibid.*) The Court also noted additional relevant considerations when further inquiry is required:

> whether the damages involved go beyond those necessary to fully compensate the plaintiff; whether a damages remedy functions to offset some otherwise applicable restriction on compensatory damages; whether the challenged form of damages is conditioned on morally culpable conduct, beyond mere negligence; whether there is an element of discretion by the fact finder in the award of damages; and whether in the

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[11] Civil Code section 3294 permits the recovery of "damages for the sake of example and by way of punishing the defendant" where a defendant "has been guilty of oppression, fraud, or malice."

> normal course actual damages are likely to be difficult to establish or quantify.

(*Ibid*., citations omitted.)

Following this Court's analysis, section 818 immunizes public entities from penalties under PAGA. First, as to the "ultimate question," PAGA penalties are "imposed primarily for the sake of example and by way of punishing the defendant." (See *LAUSD, supra,* 14 Cal.5th at p. 773.) "A PAGA claim is legally and conceptually different from an employee's own suit for damages and statutory penalties." (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81.) An action to recover civil penalties under PAGA "is fundamentally a law enforcement action designed to protect the public and not to benefit private parties." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) "PAGA's default civil penalties are thus calculated 'to punish the employer for wrongdoing' [citation] and 'to deter violations' [citation] rather than compensate employees for actual losses incurred.'" (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1117, quoting *Z.B., N.A. v. Superior Court* (2019) 8 Cal.5th 175, 185-186 & *Iskanian*, *supra*, 59 Cal.4th at p. 379; accord *Kim*, *supra*, at p. 86 ["civil penalties recovered on the state's behalf are intended to 'remediate present violations and deter future ones'"]; *ibid.* [discussing with approval case stating that "'Civil penalties, like punitive damages, are intended to punish the wrongdoer and to deter future misconduct'"].)

In *Kim*, *supra*, 9 Cal.5th 73, this Court held that the plaintiff, who settled his claims against his employer, continued

to have standing to bring a PAGA action. The Court noted that if a plaintiff who settled their claim no longer had standing under PAGA, "violations against them would no longer be included in this calculation. As a result, the state's recovery in future PAGA suits, or through its own suit, would be diminished. Employers could potentially avoid paying any penalties to the state simply by settling with the individual employees." (*Id.* at p. 88.) Thus, this Court concluded that the purpose of the PAGA penalties is *not* compensation of employees, for an employee retains the right to bring a PAGA action even after they have received compensation. The penalties are imposed primarily to deter future violations by punishing the defendant.

Other factors articulated by this Court in *LAUSD* also support this conclusion. The penalties go beyond those necessary to fully compensate the plaintiff. (*LAUSD, supra,* 14 Cal.5th at p. 773.) As noted above, the employee is entitled to compensation *and* the recovery of civil penalties. In addition, the bulk of the penalties are not provided to the plaintiff who suffered the harm. (§ 2699, subd. (i) [Providing that 75 percent of the civil penalties are distributed to the LWDA].) In fact, "injury is not a requirement for civil penalties." (*Kim*, *supra*, 9 Cal.5th at p. 86.) Thus, the penalties are for purposes other than compensating the plaintiff. (*LAUSD,* at p. 773.)

In some circumstances, higher penalties are "conditioned on morally culpable conduct, beyond mere negligence." (*LAUSD*, *supra*, 14 Cal.5th at p. 773; see e.g., § 210, subd. (a)(2) [civil penalties in the amount of $200 for each failure to pay each

employee plus 25 percent of the amount unlawfully withheld for "any willful or intentional violation" of various prompt payment statutes and section 1197.5]; § 225.5 [providing higher civil penalties for "any willful or intentional violation" of sections 212, 216, 221, 222, or 223]; § 1288 [providing "higher civil penalties" for "[w]illful or repeated violations" of sections 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1308, 1308.1, and 1392]; § 230.8, subd. (d) [civil penalties for willfully refusing to rehire, promote or restore employees who are discharged, demoted, suspended or discriminated against because they took time off to engage in child-related activities "in an amount equal to three times the amount of the employee's lost wages and work benefits"].)

Finally, there is an element of discretion by the factfinder in the award of damages. (*LAUSD, supra,* 14 Cal.5th at p. 773.) Section 2699 provides that whenever the LWDA or its departments, divisions, commissions, boards, agencies, or employees "has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty." (§ 2699, subd. (e)(1).) Further, "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (*Id.*, subd. (e)(2).)

Thus, under the fact-specific inquiry provided in *LAUSD*, the civil penalty provisions in PAGA function, in essence, as an award of punitive damages. Accordingly, construing PAGA to

permit penalties against public entities would violate Government Code section 818.

To avoid this result, CELA fails to analyze whether the civil penalties available under PAGA function, in essence, as an award of punitive or exemplary damages under the standards articulated by this Court in *LAUSD*. Instead, it argues section 818 simply does not apply to civil penalties based on cases applying the defunct "'simply and solely' punitive" standard: *People ex. rel. Younger v. Superior* Court (1976) 16 Cal.3d 30 [permitting the state to seek statutory civil penalties against public entities for allowing oil in state waters]; *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139 [allowing the state to seek statutory penalties from county-run health care facility].) But this elevates form over substance. As this Court recognized in rejecting a "strict distinction between 'punitive and exemplary damages' [citation] on the one hand and a 'statutory penalty,' including treble damages, on the other [citation]," "the language of section 818 and the intent behind this text call for a more functional analysis that does not cleave in quite the same manner." (*LAUSD*, *supra*, 14 Cal.5th at p. 787.)

Regardless, the civil penalties sought by state officials in both of those cases were distinguishable from the civil penalties available under PAGA. (See *Kizer*, *supra*, 53 Cal.3d at p. 147 ["it is not necessary for the Department to allege or prove that a health facility's actions in violating specific health and safety regulations are malicious, willful, or even intentional"]; *Younger*, *supra*, 16 Cal.3d at pp. 38-39 [explaining that the penalties

"operate to more fully compensate the people of this state and are not beyond an amount equivalent to the harm done"].)

CELA also relies on *LACMTA*, *supra*, 123 Cal.App.4th 261, in which the court of appeal held that civil penalties under the Unruh Act were not precluded by section 818. But as this Court recently explained, *LACMTA* likewise "relied heavily on our characterization of section 818 as concerned exclusively with damages that are 'simply and solely punitive' or 'simply or solely punitive,' an understanding of the statute that we have rejected today." (*LAUSD*, *supra,* 14 Cal.5th at p. 789, fn. 12.) Given this Court's rejection of the *LACMTA* court's analysis, as well as its decision in *Brennon B.*, *supra*, 13 Cal.5th 662, that the Unruh Act does not apply to public entities (see *supra* § I.B.2), CELA's reliance is misplaced.

In *Wells*, this Court conceded that "[o]ne might argue that the CFCA's treble-damages provisions are not strictly, or even primarily, 'punitive,' in that they are necessary to ensure both (1) full recovery by the state or political subdivision against which the false claim was made and (2) due compensation to the party who undertook the false claim action on behalf of the defrauded entity." (*Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.) Yet this Court explained that "the purpose behind the statutory ban on punitive damages against public entities—to protect their tax-funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party—applies equally here. In our view, this is an additional indication that the Legislature did not intend, without expressly saying so, to

apply the CFCA to public entities such as school districts." (*Ibid.*; cf. *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 398 ["In light of the partially penal nature of section 5814, we believe that application of the statutory penalty provision to the UEF is not permitted, absent express legislative authorization"].)

So, too, here. For the foregoing reasons, PAGA should not be construed to apply to public entities.

III. Amici Misunderstand the Sovereign Powers Doctrine and Its Application Here.

Putting aside their failure to meaningfully dispute that the underlying wage and hour obligations in this case do not apply to AHS or to rebut AHS's arguments for why PAGA does not apply to public entities, amici take issue with AHS's formulation of the sovereign powers doctrine. But amici's arguments—which at times conflate the doctrine with sovereign immunity and home rule—fail to recognize how exposing public hospital authorities to exorbitant statutory penalties and attorney fee awards would significantly impede their public functions and intrude on the sovereign obligation to provide medical care for the indigent.

A. The Sovereign Powers Doctrine Is Distinct from Sovereign Immunity and Home Rule.

At times in their briefing, amici conflate the sovereign powers doctrine with principles of sovereign immunity and home rule. CELA, for its part, asserts that "[w]hile the Legislature lacks the power to create rules entrenching on sovereign rights, all public employers do not enjoy an exemption simply because they're public." (CELA Br. 13; see also CELA Br. 11 [warning

against a "blanket exemption" for public employers]; CELA Br. 18 [discussing a "sovereignty defense"].) Similarly, AFSCME at points describes the doctrine as a complete bar to liability. (AFSCME Br. 16 ["application of the sovereign powers doctrine to limit liability"]; see also AFSCME Br. 15, fn. 1 ["subjecting CSU to liability under the Labor Code would violate CSU's powers under the Education Code"].)

But the sovereign powers doctrine is simply a "rule of statutory construction" (*Mayrhofer v. Board of Education* (1891) 89 Cal. 110, 112) presuming that the Legislature did not mean to subject public entities to laws without "positive indicia" of contrary intent. (*Wells*, *supra*, 39 Cal.4th at pp. 1193, 1199 & fn. 21 [explaining that it was "unnecessary to reach the district defendants' claims that they are immune from liability"]; see also OBOM 28-31; RBOM 24.) If a court applies the sovereign powers doctrine to conclude that a specific law does not apply to public entities, the Legislature is free to amend the law to expressly make certain Labor Code obligations applicable to specific public entities. Indeed, as amici acknowledge, the Legislature recently did so on a prospective basis with Labor Code section 512.1. (AFSCME Br. 19.)

Sovereign immunity, by contrast, is a substantive immunity from liability. (*Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 813.) Although it derived from common law, this Court abrogated the doctrine in 1961. (See *id.* at p. 812, citing *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211.) In response, the Legislature enacted the

Government Claims Act, which provides that "even when there are statutory grounds for imposing liability, … a public entity's liability is 'subject to any immunity of the public entity provided by statute.'" (*Id.* at p. 804, quoting Gov. Code, § 815, subd. (b).) The Legislature has extended immunities to public agencies in a variety of contexts. (See, e.g., Gov. Code, § 818.2 [adopting or failing to adopt "enactment" or "law"]; *id.*, § 818.4 [failing to issue "permit, license, … or similar authorization"]; *id.*, § 818.8 [misrepresentations by employees]; *id.*, § 820.2 [discretionary acts and omissions]; *id.*, § 850.4 [injuries resulting from the condition of fire protection or firefighting equipment or facilities or certain injuries caused in fighting fires]; *id.*, § 855.6 [failure to perform certain physical or mental health examinations].)

The Legislature remains free to alter this statutory immunity framework or expose public agencies to new statutory liabilities. (See *Wells*, *supra*, 39 Cal.4th at p. 1216, fn. 38 [explaining that the Government Claims Act "does not preclude the Legislature from adopting other statutes that impose liability in specific circumstances, despite immunities stated in the" Act].) In other cases, however, constitutional principles grounded in home rule principles limit what the Legislature may do. (See *State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 566 [holding that prevailing wage law did not apply to charter cities]; *In re Work Uniform Cases* (2005) 133 Cal.App.4th 328, 342-344 [section 2802's reimbursement obligations infringed on "the constitutional power of cities and counties to set the terms of employee compensation"

and the Regents' "authority to manage its own internal affairs"]; *Gomez v. Regents of University of California* (2021) 63 Cal.App.5th 386, 396, 403-404 [the minimum wage laws cannot "penetrate the Regents' autonomy regarding the setting of wages and benefits"].) Contrary to amici's characterizations, both sovereign immunity and home rule are distinct from the sovereign powers doctrine.

CELA argues that AHS's understanding of the sovereign powers doctrine "reduces" the analysis in *Work Uniform* and *Gomez* "to dicta" because reimbursing expenses and paying minimum wages would impact these public entities' functions, making them exempt and rendering their "sovereignty analysis" "unnecessary." (CELA Br. 22-23.) But this again confuses constitutional prohibitions on liability with presumptions of statutory construction.

Work Uniform holds that the Legislature is constitutionally forbidden from applying the reimbursement statute to charter cities and counties (under home rule principles) and to the Regents (under the internal affairs doctrine). *Gomez* holds that the Legislature is constitutionally forbidden under the internal affairs doctrine from requiring the Regents to pay minimum wage. By contrast, applying the sovereign powers canon to a statute that is silent as to its applicability to public employers does not preclude the Legislature from expressly extending the statute to public employers (so long as that does not independently abridge charter cities and counties' home rule authority or the Regents' authority over its internal affairs).

B. Amici's Efforts to Distort the Sovereign Powers Doctrine Should Be Rejected.

1. Amici Fail to Acknowledge How Exposing Public Hospital Authorities to Labor Code Penalties Would Impinge on Their Core Functions.

CELA and AFSCME urge this Court to reject *Johnson*'s application of the *Wells*' sovereignty framework to public employers—whether the statute would interfere with the agency's "governmental purposes and functions." As an initial matter, they completely ignore that *Johnson*'s articulation of the sovereignty framework derives from a long line of Attorney General opinions and has support in this Court's own caselaw. (See OBOM 40, fn. 4, 50-51; RBOM 24-25; 71 Ops.Cal.Atty.Gen. 39, 43 (1988); *Mayrhofer*, *supra*, 89 Cal. at p. 112 ["injuriously affect its capacity to perform its functions"]; *Miles v. Ryan* (1916) 172 Cal. 205, 207 [same]; *Mariposa County v. Merced Irr. Dist.* (1948) 32 Cal.2d 467, 475 [same]; *North Bay Construction, Inc. v. City of Petaluma* (2006) 143 Cal.App.4th 552, 556-557 & fn. 3 [explaining that *Wells* is consistent with *Mayrhofer* because both are concerned with "the potential diversion of public funds from core governmental functions"]; cf. *Regents of University of California v. Superior Court* (1976) 17 Cal.3d 533, 537 [explaining that unlike its "educational decisions," the 'investment decisions the University makes are not uniquely governmental functions" protected under the sovereign powers doctrine].)

Nor, contrary to AFSCME's assertions, is AHS's articulation of the sovereign powers framework "out-of-step with *Wells* itself." (AFSCME Br. 15.) True: *Wells* did mention that that ultimate purpose of the False Claims Act is to protect the public fisc. But that was in the context of explaining that "the assessment of double and treble damages, as well as other penalties, to school districts would not advance that purpose." (*Wells*, *supra*, 39 Cal.4th at p. 1196.) It was not the focal point of the sovereign powers analysis, which asks about the effect of liability on public agencies and "their core public missions." (*Id.* at pp. 1193, 1196.) By way of example, in the context of public-school districts, *Wells* was concerned with how "exposure would interfere with the state's plenary power and duty, exercised at the local level by the individual districts, to provide the free public education mandated by the Constitution." (*Id.* at p. 1193.)

Regardless, AFSCME's assertion that AHS's reading of *Wells* ignores California's "longstanding public policy of promoting worker protection" (AFSCME Br. 12, 14-15) fails to recognize the broad protections the Legislature granted to AHS employees in its enabling statute.

The Legislature granted AHS employees protection under the County Employees Retirement Law of 1937 and Meyers-Milias-Brown Act. (Health and Saf. Code, § 101850, subds. (s), (u).) It required AHS to recognize existing employee organizations and negotiate possible preservation of seniority, pensions, health benefits and other applicable benefits, and employee seniority rights when the hospitals were transferred

under the authority of the AHS Board. (*Id.*, subds. (s), (u), (v), (w).) AHS was bound by existing memoranda of understanding with employees. (*Id.*, subds. (s), (u), (v), (w).) In addition, the Legislature granted AHS the exclusive right and responsibility to negotiate and approve all future agreements with employees. (*Id.*, subd. (x).) Those protections exceed those available to most private employees. Accordingly, using the governmental purposes and functions test does not conflict with AHS's obligations to protect its employees.

Next, both AFSCME and CELA urge this Court to reject the "purposes and functions test" because, they contend, it confers a blanket exemption since complying with minimum labor standards necessarily decreases the budget for other functions. Their contention ignores the facts before this Court.

As county hospital for Alameda County, AHS has "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county" (Health & Saf. Code, § 101850, subd. (m)), and must provide health care for the indigent, under Welfare and Institutions Code section 17000. (*Id.*, subd. (d).) As this Court has repeatedly held, "counties have no discretion to refuse to provide medical care to 'indigent persons' within the meaning of section 17000 who do not receive it from other sources." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 101; see also *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1002 ["a county's duty to provide medical care pursuant to section 17000 is independent of other obligations imposed by that section, including the obligation to pay general assistance"].)

Providing medical care to indigent residents is a core public mission. (*Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 208 ["it is beyond dispute that the County has a legitimate interest in providing medical care to the indigent"].)

Not only must AHS provide medical care, it must do so regardless of its financial resources. "A county's section 17000 duty to provide emergency and medically necessary care must be fulfilled without regard to its fiscal plight." (*Fuchino v. Edwards-Buckley* (2011) 196 Cal.App.4th 1128, 1134.) "Not only must an indigent be provided with emergency and medically necessary care, the county must relieve the indigent of the cost of such care." (*Id.* at p. 1134 [requiring home county to pay the costs of out-of-county emergency ambulance services used by indigent resident.]; *County of Alameda v. State Board of Control* (1993) 14 Cal.App.4th 1096, 1108 [county ineligible for reimbursement from state crime victims fund for treating indigent crime victims because county has a mandatory duty to provide "medically necessary care, not just emergency care"].)

AFSCME tries to distinguish AHS from school districts on the ground that it is "not subject to stringent appropriations constraints but is instead an ongoing, fee-generating operation." (AFSCME Br. 23.) But *Wells* also recognized the "stringent revenue, appropriations, and budget restraints *under which all California governmental entities operate*" in concluding that exposure under the False Claims Act would "significantly impede their fiscal ability to carry out their core public missions." (*Wells*,

supra, 39 Cal.4th at p. 1193, emphasis added.) And, as reflected in Alameda County's financial reports, AHS had a fund deficit in June 2021 of $270,333,000 that is "expected to remain in the succeeding years as the County is to provide ongoing liquidity support until 2034." (AHS's MJN, Ex. B. at p. 67; see also *id.* at p. 92 ["AHS has experienced significant operating losses and negative cash flows from operations in recent years"].)

Thus, just like a school district, AHS must carry out its mandated duty to provide medically necessary care to the indigent residents of Alameda County, regardless of its finances. (*Well*s, *supra*, 39 Cal.4th at p. 1195 ["School districts must use the limited funds at their disposal to carry out the state's constitutionally mandated duty to provide a system of public education."].) AHS can do so only through its employees. The Legislature recognized the key role its employees serve in carrying out its mission by providing them worker protections, as described above, and by granting to AHS the duty to and responsibility of negotiating agreements for compensation and benefits with these employees.

Imposing Labor Code provisions not intended to apply to public employees and the costly penalties for violating those provisions would interfere with the Legislature's intent that AHS negotiate compensation and benefits with employees. Further, it would interfere with its core governmental function. As clearly illustrated by one amicus (CSU), the financial repercussions of applying Labor Code provisions and penalties could be severe. (E.g., CSU Br. 32-33.) AHS has limited financial resources with

which to carry out its mandated duty. The Legislature granted authority to AHS to negotiate compensation and benefits with its employees to ensure it can carry out its duties. Thus, applying Labor Code provisions not intended to apply to public employees would significantly impede its fiscal ability to carry out its core governmental purpose and function—providing medical care to indigent Alameda County residents. (See *Wells*, *supra*, 39 Cal.4th at p. 1195 ["Laws that divert limited educational funds from this core function are an obvious interference with the effective exercise of that power"].)

2. The Cases CELA Relies on for a "Narrow" Reading of the Sovereignty Canon Are Inapposite.

CELA argues that "*Flowers*, *Marquez*, *Guerrero*, *Grier*, and *Sheppard* all applied general Labor Code protections to public employees notwithstanding the impact that compliance might have on the employer's functions" or "sovereign powers." (CELA Br. 20; see also CELA Br. 16-17, citing *Flowers*, *supra*, 243 Cal.App.4th at p. 82; *Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 571; *Guerrero*, *supra*, 213 Cal.App.4th at p. 953; *Grier v. Alameda-Contra Costa Transit District* (1976) 55 Cal.App.3d 325, 334; *Sheppard*, *supra*, 191 Cal.App.4th at p. 308.) But most of these cases had no need to apply a sovereign powers analysis since the wage and hour obligations expressly applied to public employers under the terms and structure of the wage orders themselves and a corresponding Labor Code provision providing that public agencies are subject to scheduled

minimum wage increases. (See Lab. Code, § 1182.12, subd. (b)(3).)

Flowers, *Marquez*, and *Sheppard* each dealt with wage orders that expressly apply minimum wage obligations to public employers. (See *supra* at § I.A; *Flowers*, *supra*, 243 Cal.App.4th at pp. 78-79 [Wage Order No. 9, transportation occupations]; *Marquez*, *supra*, 32 Cal.App.5th at p. 569 [Wage Order No. 4, professional, technical, clerical, mechanical occupations]; *Sheppard*, *supra*, 191 Cal.App.4th at p. 300 [same].) *Guerrero* dealt with claims for unpaid minimum wage and overtime under the household occupations wage order (no. 15), which unlike most wage orders, provides no exemption for public employers. (See *supra* § I.A; *Guerrero*, *supra*, 213 Cal.App.4th at pp. 954-955.)

Contrary to CELA's assertions, therefore, these cases did not apply "general Labor Code protections to public employees." As a result, these cases did not need to (and did not) apply *Wells*' sovereign powers framework to determine whether extending the laws at issue to public employers would interfere significantly with their fiscal ability to carry out their public missions.

Nevertheless, CELA maintains that these cases considered the "impact that compliance might have on the employer's functions." (CELA Br. 20.) Not quite, and certainly not within the meaning of the sovereign powers doctrine. *Flowers* refused to hold that provisions of the Public Utilities Code "exempt[ed] the [transportation agency] as a matter of law from minimum wage requirements imposed by the Labor Code and wage order 9" but said nothing about the sovereign powers doctrine. (*Flowers*,

supra, 243 Cal.App.4th at p. 83.) *Sheppard* acknowledged the sovereign powers doctrine in reciting the "Applicable Rules of Statutory Interpretation" but did not ultimately apply the doctrine since the minimum wage law expressly applied to public agencies. (*Sheppard*, *supra*, 191 Cal.App.4th at pp. 299, 301.) *Guerrero* likewise referenced the sovereign powers doctrine in setting forth the "applicable rules of statutory interpretation" but never mentioned the doctrine when analyzing the wage order at issue. (*Guerrero*, *supra*, 213 Cal.App.4th at pp. 953-955.)

Marquez did not mention *Wells* or the sovereign powers doctrine at all. Rather, that court concluded that the minimum wage law did "not deprive the City completely of its authority to determine wages" in violation of constitutional home rule[12] principles because the "City retains authority to provide wages for its employees above that minimum as it sees fit." (*Marquez*, *supra*, 32 Cal.App.5th at p. 576.)

That leaves *Grier*, *supra*, 55 Cal.App.3d 325, as the only case CELA cites that expressly applied the sovereign powers doctrine (albeit an outdated version) to expose a public entity to liability under the Labor Code.[13] *Grier* concluded that applying section 2928, which prohibits disproportionately deducting wages

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[12] As discussed above, CELA confuses the sovereign powers doctrine with home rule principles at various points in its brief.

[13] *Wood v. Kaiser Foundation Hospitals* (2023) 88 Cal.App.5th 742, did not deal with "a statute that imposes liability or some other negative consequence on a government entity" and merely permitted the government to "enforce [the Labor Code] against private employers." (*Id.* at p. 762.)

of an employee for "coming late to work," to a public transit district would not intrude on its sovereign powers. (*Id.* at pp. 333-334.)

But this application of the sovereign powers principle predates this Court's clarification of the sovereign powers framework in *Wells* and ignores the Attorney General's longstanding guidance. (See RBOM 20-22.)[14] The *Grier* court did not consider whether exposing the transit district to millions of dollars in claims for attorney's fees or statutory penalties would impact its governmental functions. Rather, "*Grier* dealt with the impermissible withholding of wages actually earned by employees." (*In re Work Uniform Cases*, *supra*, 133 Cal.App.4th at p. 344.)

Moreover, *Grier*'s analysis of the sovereign powers issue also stems from the unique collective bargaining law governing the transit district in that case. In the court's view, the Labor Code provision did not intrude on the transit district's sovereign powers because the transit district had to engage in collective bargaining over wages, salaries, hours, working conditions and grievance procedures and did not "have any power to unilaterally

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[14] Despite CELA's assertions (CELA Br. 13-14), this Court's decision in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, is not to the contrary. There, this Court concluded that public entities were among the "persons" that cannot gain "prescriptive title against certain public entities" under Civil Code section 1007 because such a construction deprives public entities "of nothing except the power to take away the property rights of their fellow public entities through adverse possession." (*Id.* at p. 277.)

adopt rules or regulations affecting such matters." (55 Cal.App.3d at p. 334.) Under the collective bargaining law governing the transit district, any disputes over these matters must be resolved by interest arbitration. (Pub. Util. Code, § 25051, subd. (a)(1).)

"Unlike grievance arbitration, which focuses on construing the terms of an existing agreement and applying them to a particular set of facts, interest arbitration focuses on what the terms of a new agreement should be." (*Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1133, internal quotation marks omitted.) Thus, the "'terms and conditions of employment are established by a final and binding decision of an arbitrator.'" (*Ibid.*) As "Professor (later Justice) Joseph Grodin recognized, when binding interest arbitration is applied to the public sector, it may result in the arbitrator's involvement in matters that extend beyond those over which labor and management customarily bargain in private sector disputes; binding interest arbitration may push the arbitrator into the realm of social planning and fiscal policy." (*County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 342.)

By contrast, "a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding." (Gov. Code, § 3505.7.)

IV. Amici's Policy Arguments Overlook the Myriad Ways in Which Public Employees Are Treated Better Than Private Employees.

In support of their arguments that PAGA applies to public agencies and for a narrower understanding of the sovereign powers doctrine, amici raise several policy arguments. None warrants applying the laws at issue here to public hospital authorities like AHS.

First, amici invoke the rule of liberally construing the Labor Code with an eye towards promoting the protection of workers. (CELA Br. 16, 41-46; AFSCME Br. 14, 17-18.) But the liberal construction rule should not be used to "'extend coverage to those for whom it obviously was not intended.'" (*Skidgel v. California Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 23-24 [unemployment insurance code]; RBOM 16-17.) And, as discussed above and in AHS's briefing, there is positive indicia of intent to exclude public agencies from the specific laws at issue here.[15]

Moreover, since the advent of the Labor Code, the Attorney General and the courts have consistently concluded that "general statute[s] which regulate[] the employment relationship" are "not applicable to public jurisdictions, in the absence of any expression

[15] AFSCME's invocation of the "fundamental public policy" behind the prompt payment statutes (AFSCME Br. 13) overlooks the fact that those provisions "continue to exempt 'employees directly employed by any county, incorporated city, or town or other municipal corporation.'" (*McLean*, *supra*, 1 Cal.5th at p. 619, quoting § 220, subd. (b).)

of legislative intent to the contrary." (71 Ops.Cal.Atty.Gen. 39, *4 (1988) [citing opinions and cases dating back to 1930s and 1940s].) The rule of liberal construction must be balanced against the "presumption that the interpretations set forth in the Attorney General's opinion[s] … and related cases, have come to the attention of the Legislature, and if they were contrary to legislative intent that some corrective measure would have been adopted during the course of the intervening period." (71 Ops.Cal.Atty.Gen. 39, *5 (1988); see also OBOM 40, fn. 4.) Indeed, AFSCME acknowledges that for the better part of a century, "the *express* statutory right to paid meal and rest periods was applied only to private sector employees." (AFSCME Br. 10; see also *ibid.* [noting that "[t]his 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" (emphasis added)].)

Second, CELA asserts that PAGA was meant to address the lack of public resources to enforce labor protections and "as a matter of sound public policy it must be applied to the protection of public and private sector workers alike." (CELA Br. 41-46.) This ignores that the collection of penalties from public entities harms the public by taking needed funding for public services from the agencies. (See *LAUSD*, *supra*, 14 Cal.5th at p. 769 ["[T]he money in the public treasury is derived from the pockets of taxpayers who have comparatively little to say about the actual management of the public corporation's business."]; *Wells*,

supra, 39 Cal.4th at p. 1195 ["The Legislature is aware of the stringent revenue, budget, and appropriations limitations affecting all agencies of government … diversion of limited taxpayer funds would interfere significantly with government agencies' fiscal ability to carry out their public missions"].) Applying PAGA to public entities would interfere significantly with their ability to carry out their missions and provide services to the public. Amicus curiae, the Board of Trustees of the California State University, clearly articulates why public policy does not favor applying PAGA to public entities. (CSU Br. 24-28.)

Amici's remaining policy arguments—which are both hypothetical and hyperbolic—do not warrant deviating from longstanding law differentiating between public and private employers in the absence of clear legislative intent to include public agencies. CELA says that "creat[ing] two castes of employees" (private and public) is "baseless and dangerous." (CELA Br. 37.) But distinguishing between private and public employees is neither "baseless" nor "dangerous." The Legislature has long distinguished between private and public employees. Public employees in California have extensive procedural protections under laws like the Meyers-Milias-Brown Act,[16] resulting in collective bargaining agreements with a variety of

[16] (Gov. Code, § 3500 et seq. [governing local agencies]; see also *id.*, § 3512 et seq. [Ralph C. Dills Act, state employees]; *id.*, § 3524.50 [Judicial Council Employer-Employee Relations Act]; *id.*, § 3540 et seq. [Educational Employment Relations Act]; *id.*, § 3560 et seq. [Higher Education Employer-Employee Relations Act].)

fringe benefits and protections that are far more favorable than the terms and conditions of average private employees in the state. Such benefits often include, but are not limited to, retiree medical benefits, dental coverage, life insurance, death benefits, long-term care insurance, longevity benefits, annual wage increases, vacation, and procedural protections against discipline and/or termination.

Indeed, AFSCME acknowledges that AHS's unionized employees (which includes Plaintiffs here) are protected by memoranda of understanding that "include provisions permitting employees to take adequate meal and rest periods." (AFSCME Br. 20, fn. 4; see also AHS's MJN ISO Consolidated Answer, Ex. A, AHS-SEIU MOU, at pp. 10 [Meal and Rest Periods], 42-43 [Overtime].)[17] It is not surprising, therefore, that in many of the limited circumstances in which the Legislature and IWC have extended certain wage and hour obligations to public employers, they have maintained collective bargaining exemptions. (See,

[17] The memorandum of understanding between AHS and the Service Employees International Union referenced in AFSCME's briefing (AFSCME Br. 20, fn. 4) applies to Licensed Vocational Nurses (the classification held by Plaintiff Amanda Kunwar) and Medical Assistants (the classification held by Plaintiff Tamelin Stone). (See AHS's MJN ISO Consolidated Answer, Ex. A, at pp. 1 [incorporating the classifications listed in Appendix A] 84 [Appendix A], 86 [listing Licensed Vocational Nurse and Medical Assistant].) For the Court's ease of reference, AHS has attached a copy of this memorandum of understanding in the concurrently filed motion for judicial notice.

e.g., § 512.1, subd. (d), 512.5, subd. (a); Wage Order No. 9, subds. 1(B), 11(F), 12(C).)[18]

Additionally, unlike many private employees, public employees have a vested contractual right to pension benefits that may be modified only under certain circumstances. (See *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032, 1091, 1100.)

Amici nevertheless assert that AHS's interpretation of the sovereign powers doctrine would deprive public employees of "basic" labor protections. (See AFSCME Br. 10; CELA Br. 18 [asserting that AHS "could argue it will achieve greater cost-savings by paying employees $1.00 per hour or by utilizing child labor"].) But that is simply not so.

Public employees (both unionized and nonunionized) are expressly entitled to a host of protections under state and federal law. Public employees are entitled to workers compensation when injured on the job (§ 3300); unemployment insurance (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58, citing Unemp. Ins. Code, §§ 135, subd. (a), 605, 634.5, 802-804); protection against workplace harassment and discrimination (Gov. Code, § 12926, subd. (d) [defining "employer" under FEHA to include public agencies]); civil service protections (e.g.,

[18] The fact that the Legislature and IWC have drawn these distinctions shows that they know how to extend these provisions to nonunionized public employees when they want to do so. (Cf. AFSCME Br. 24-25.)

Valenzuela v. Board of Civil Service Comrs. (1974) 40 Cal.App.3d 557); procedural due process protections (see *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194); whistleblower protection (§ 1106); protections under the Fair Labor Standards Act ("FLSA") (see 29 U.S.C. § 201 et seq.); and many other protections under the Labor Code. (See Holtzman & Hartinger, Public Sector Employment Litigation, §§ 5:495-5:509 [discussing kin care leave, ban the box protections, lactation breaks, and other provisions applicable to public employers].)

They are also entitled to minimum wage and any meals and lodging can only be credited against the minimum wage in certain circumstances. (E.g., Wage Order No. 5, subds. 4, 10; see also Lab. Code, § 1182.12, subd. (b)(3) [entitling public employees to scheduled minimum wage increases].)[19] In certain contexts (public transportation), government employees are also entitled to meal and rest breaks under the wage orders. (See Wage Order No. 9, subds. 1(B), 11(F), 12(C) [deviating from typical public employer exemptions to provide that the meal and rest period provisions apply to "commercial drivers employed by governmental entities" in some circumstances].) And while administrative agencies agree that governmental entities are not

[19] It bears mentioning that the hourly rate of pay for Plaintiffs' classifications ranges from $30.07 to $36.28 (Medical Assistant) and $38.51 to $44.93 (Licensed Vocational Nurse). (See AHS Salary Table Lookup, https://forms.alamedahealthsystem.org/salary/.)

subject to California's child labor statutes,[20] they are still subject to the federal child labor provisions in the FLSA. (See 29 U.S.C. § 212; see also *id.*, § 203, subd. (d) [defining "employer" to include public agencies].)

Finally, AFSCME argues that AHS's theory "could significantly threaten the protections of nonunion workers to basic protections, without immediate recourse to a CBA for mitigation." (AFSCME Br. 25.) But this ignores that nonunionized workers are entitled to the basic protections outlined above and often occupy managerial positions with more flexibility and higher compensation than their unionized colleagues. (See e.g., Cal. Legis. Analyst's Office, Bargaining Unit Profiles, State Workforce [explaining that 80% of the 200,000 people who work for a state department or agency are represented by one of the state's bargaining units and the "rest are excluded from the collective bargaining because they are managers, supervisors, or employees who assist management develop employee compensation policies"].)[21]

CONCLUSION

The Court of Appeal's judgment should be reversed.

[20] See Cal. Dep't of Educ., Frequently Asked Questions: Work Permits, No. 11: https://www.cde.ca.gov/ci/ct/we/wpfaq.asp#Q11.

[21] Available at: https://lao.ca.gov/stateworkforce/BargainingUnits.

Respectfully submitted,

Dated: February 8, 2024 RENNE PUBLIC LAW GROUP

By: _____
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CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.520(c)(1))

The foregoing brief contains 13,928 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word processing program used to generate the brief.

Dated: February 8, 2024 RENNE PUBLIC LAW GROUP

By: _____
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PROOF OF SERVICE

Case Name: *Stone et al. v. Alameda Health System*
Case No.: S279137

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On February 8, 2024, I served the following document: **ALAMEDA HEALTH SYSTEM'S CONSOLIDATED ANSWER TO AMICI CURIAE BRIEFS** on the party below ***via TrueFiling***:

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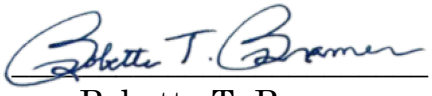
Hon. Noël Wise Alameda County Superior Court 1221 Oak Street, Floor 3 Oakland, CA 94612	*Judge of the Superior Court of Alameda County*

I declare, under penalty of perjury that the foregoing is true and correct. Executed on February 8, 2024, at San Francisco, California.



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STATE OF CALIFORNIA
Supreme Court of California

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2/8/2024

Date

/s/Ryan McGinley-Stempel

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