Case No. S277120

IN THE SUPREME COURT OF CALIFORNIA

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

Plaintiffs-Respondents,

v.

COUNTY OF ALAMEDA; GREGORY J. AHERN, SHERIFF; ARAMARK CORRECTIONAL SERVICES, LLC; and DOES 1 through 10,

Defendants-Petitioners.

United States Court of Appeals for the Ninth Circuit,
Case No. 21-16528

United States District Court for the Northern District of California,
Case No. 4:19-cv-07637-JST, Hon. Jon S. Tigar

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INTRODUCTION

Aramark Correctional Services, LLC ("Aramark"), a for-profit company that uses the labor of pretrial detainees who have not been convicted of any crime to further its private business interests, asks this Court to legitimize its practices by creating an unprecedented limitation on the historically broad coverage of the California Labor Code. The County of Alameda joins this request.

Plaintiffs challenge the practices of Petitioners Aramark, the County of Alameda, and Sheriff Gregory J. Ahern. This appeal asks this Court to decide only whether certain provisions of the California Labor Code apply to plaintiffs and the class they seek to represent. The United States District Court properly concluded that the Labor Code, which includes no exception for pretrial detainees or those facing deportation, and encompasses all persons who work for private companies, applies in this context.

Petitioners argue that the Labor Code's wage provisions are inapplicable because they conflict with later-enacted laws that are concerned with different issues. Their arguments center on the incorrect assertion that California Proposition 139, which authorized county jails to contract with private companies to provide detainee labor and requires the enactment of local ordinances to govern detainee work, preempts liability for compensation under the Labor Code. The district court ruled that Proposition 139 does not apply to this case and does not prevent the application of other statutes relevant to plaintiffs' claims.

Petitioners also argue that paying those non-convicted people who produce goods and services for a large corporation and receive no wages in return would somehow offend the purposes and policies of laws enacted to advance a more just and less exploitative society.

They argue that there is no relevant legal distinction between pretrial detainees and convicted prisoners and that paying pretrial detainees prevailing wages for the labor performed to the profit of Aramark would lead to "absurd results." Aramark's Opening Brief ("AOB") 41. Such arguments contradict the well-established principle that convicted prisoners' free labor for a private company is only made possible by a narrow exception to the Constitutional ban on involuntary servitude. Their technical, statutory arguments are similarly unavailing.

Petitioners' arguments should be rejected. Respondents urge this Court to answer the certified question in the affirmative.

STATEMENT OF THE CASE

Aramark uses the labor of non-convicted detainees in Santa Rita jail to produce meals that it sells to Alameda and other county jails. 1-ER-024. This practice is enabled by a contractual relationship between Aramark and the County of Alameda, which owns and operates Santa Rita jail. Aramark employees direct and supervise the work of detained Santa Rita jail laborers, set their shifts, and report any perceived misconduct to jail deputies for discipline. Both Aramark and the County of Alameda enjoy financial benefits from this contractual relationship. 2-ER-175. Aramark received $19,097,148 under its food services contract with the County of Alameda for a roughly three-year period between 2015 and 2018, and the County receives a direct benefit in the form of commissions. 2-ER-175. The detainees whose labor is monetized by petitioners do not receive the minimum and overtime wages provided for workers under the California Labor Code or, indeed, any wages at all.

Respondents Armida Ruelas, De'Andre Eugene Cox, Bert Davis, Katrish Jones, Joseph Mebrahtu, Dahryl Reynolds, Monica

Mason, Luis Nunez-Romero, and Scott Abbey were non-convicted pretrial detainees who worked for Aramark while held at Santa Rita Jail and worked without compensation. 2-ER-284. Their work involved preparing and packaging food in an industrial kitchen at Santa Rita jail and cleaning and sanitizing the kitchen after food preparation was completed. 2-ER-284. Respondents sued Aramark and the County of Alameda in 2020 for wages provided by the minimum and overtime wage provisions of the California Labor Code and for multiple other constitutional and statutory violations. 2-ER-296. Petitioners filed motions to dismiss in 2020. 2-ER-300. The district court denied defendants' motions to dismiss plaintiffs' California Labor Code claims, finding that "in the absence of regulation from the Penal Code or any relevant local ordinance . . . non-convicted detainees working for a private company that sells the goods produced by Plaintiffs to third parties outside of Alameda County . . . are entitled to the protections of the Labor Code." 1-ER-024. Dissatisfied with the district court's decision, petitioners renewed their efforts to dismiss the case the following year.

Still dissatisfied, petitioners moved the district court for an order certifying its decision with respect to respondents' claims under the California Labor Code only for immediate interlocutory appeal. The district court granted the motion and certified the following question for the Ninth Circuit's review:

> Do non-convicted incarcerated individuals performing services in county jails for a for-profit company that sells goods produced by incarcerated individuals to third parties outside of the county have a claim for minimum wages and overtime under Section 1194 of the California Labor Code in the absence of any local

> ordinance prescribing or prohibiting the payment of wages for these individuals? 1-ER-042.

The Ninth Circuit, recognizing that before them was a "novel and important question of California statutory interpretation," certified the following question:

> Do non-convicted incarcerated individuals performing services in county jails for a for-profit company to supply meals within the county jails and related custody facilities have a claim for minimum wages and overtime under Section 1194 of the California Labor Code in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals? *Ruelas v. County of Alameda, et al.* 51 F.4th 1187 (9th Cir. Nov. 1, 2022), No. 21-16528, ECF No. 69 at 7.

Despite petitioners' efforts to dissuade this Court from deciding this question, it is now before you for review.

ARGUMENT

I. The California Labor Code Applies To Detained But Not Convicted Individuals Performing Services In County Jails For A For-Profit Company That Sells Goods Produced By Detainees To Third Parties.

Petitioners dedicate much of their briefs to outlining a web of disparate laws that they argue thwart the application of the California Labor Code to the class of individuals at issue here. But petitioners all but ignore the text and policies of the California Labor Code, the body of law at the heart of this appeal. Both the text and policies of the California Labor Code support its application to non-convicted incarcerated individuals performing services in county jails for a for-profit company that sells the goods produced by that labor to parties outside of the county. The state and federal laws

cited by petitioners—including California Penal Code § 4019.3, the federal Fair Labor Standards Act, and the state laws enacted pursuant to Proposition 139—do not preclude its application in any way.

A. The California Labor Code protects non-convicted individuals in county jails who work for a for-profit company to produce goods sold to third parties.

Petitioners argue that the district court erred in finding that the California Labor Code applies generally to the individuals at issue here. The California Labor Code was enacted to protect workers and is to be liberally construed in favor of worker protection. *Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 561–562 (2018) ("The state's labor laws are to be liberally construed in favor of worker protection."); *Leyva v. Medline Industries Inc.* 716 F.3d 510, 515 (9th Cir. 2013) ("The California Labor Code protects all workers").

Petitioners assert that "the Labor Code applies to inmate work only when it does so expressly and only in narrow circumstances," but they fail to provide any authority or other support for that conclusion. County of Alameda and Sheriff Gregory J. Ahern's Opening Brief ("COB") 39. Petitioners' only attempt to support that argument is their reference to two provisions of the Labor Code, §§ 3370 and 6304.2, that explicitly reference state prison inmates (not county prisoners) but are otherwise completely unrelated to the issues here. *Id*; Cal. Lab. Code § 3370, Cal. Lab. Code § 6304.2.

First, it is clear that the Labor Code's general provisions embrace non-convicted detainees working for private companies. The district court found that the non-convicted detainees working for Aramark have an employment relationship with Aramark under this

state's employment laws, as the detainees in this case are "suffer[ed] or permit[ted] to work." 1-ER-026.

In *Martinez v. Combs*, 49 Cal.4th 35, 49 (2010), this Court held that the Industrial Welfare Commission's ("IWC") wage orders define an "employer" as a person who "directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person (citation omitted.) Pursuant to the IWC, "employ" is defined to mean "to engage, suffer, or permit to work." *Id.* at 57 (quoting Wage Order No. 14). 'To employ, then, under the IWC's definition, has three alternative definitions. It means: (a) to exercise control over the wages, hours or working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common law employment relationship.' Any of the three is sufficient to create an employment relationship." *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1233 (N.D. Cal. 2015).

It makes sense for the Legislature to explicitly provide for worker benefits and protections to convicted state inmates in Labor Code §§ 3370 and 6304.2 and to choose not to do the same for non-convicted prisoners. Convicted prisoners may be required under the Thirteenth Amendment to submit to involuntary servitude and are thus not necessarily protected by the California Labor Code, which was enacted, in part, to prevent such exploitation. U.S. Const. Amend. XIII; *Adams v. Neubauer*, 195 F. App'x 711, 713 (10th Cir. 2006); *Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992). It was necessary for the state Legislature to enact provisions of the Labor Code to create exceptions to the Thirteenth Amendment's allowance of involuntary servitude for convicted prisoners if it wished to provide for their compensation.

Non-convicted prisoners, on the other hand, do not fall within the ambit of the Thirteenth Amendment's exception and are not, for this reason, excluded from the Labor Code's protections. *McGarry v. Pallito*, 687 F.3d 505, 511 (2d Cir. 2012).

B. Payment of minimum and overtime wages to non-convicted detainees would advance the policies underlying the California Labor Code's minimum and overtime wage provisions.

Petitioners argue that the policies underlying the Labor Code's minimum and overtime wage provisions are inapplicable in the context of inmate labor. AOB 46–47.

The California Legislature passed the state's first minimum wage law in 1913. The Labor Code initially granted the Industrial Welfare Commission the power to enact a "minimum wage to be paid to women and minors engaged in any occupation, trade, or industry in the State, which shall not be less than a wage adequate to supply the necessary costs of proper living to, and maintain the health and welfare of . . . women and minors." Stats. 1913, ch. 324, § 3, subd. (a), p. 633; *Martinez*, 49 Cal.4th at 54; *Kerr's Catering Serv. v. Dep't of Indus. Rels.*, 57 Cal.2d 319 (1962).

The purpose of the law was to protect the workers with the least bargaining power at the time, women and children, from wage exploitation by more powerful industry and to protect society from the injurious effects of such exploitation. *Martinez*, 49 Cal.4th at 54. Petitioners, invoking cases construing federal minimum wage laws, assert that inmates have no need for wages that maintain their health and welfare and supply the necessary cost of living, which were at the core of the Legislature's purpose in setting minimum wages. AOB 47. Petitioners are wrong.

Detention imposes direct economic costs on non-convicted detainees, which can be alleviated by the payment of wages for the labor they undertake during their detention.

Pretrial detention can result in the loss of paid employment and property. Thomas Bak, *Pretrial Release Behavior of Defendants Whom the U. S. Attorney Wished to Detain*, 30 AM. J. CRIM. L. 45, 64-65 (2002). Non-convicted detainees who lose employment as a result of their detention will likely encounter reduced wages if they can find new employment when they are released, as serving time generally reduces earning power. Shima Baradaran Baughman, *Costs of Pretrial Detention*, 97 B.U.L. Rev. 1, 5 (2017). Some of these detainees have families who depend on them for financial support and suffer economically when the detainee is no longer receiving wages. *Barker v. Wingo*, 407 U.S. 514, 521, 92 S. Ct. 2182, 2187, 33 L. Ed. 2d 101 (1972). Many households with a family member in jail "struggle to meet their most essential needs." *In re Humphrey*, 19 Cal.App.5th 1006, 1032 (2018). The expenses associated with incarceration or jail time, such as phone, commissary, and travel costs, can push families who were living above the poverty line before becoming involved with the criminal justice system into penury. *Id.*

These financial losses may result in detainees' families and dependents becoming dependent on the state for support or becoming involved in criminal conduct themselves. Pretrial detention may also result in indirect costs to society. For example, because detention of non-convicted individuals often deprives detainees' children of financial support, these children may be more likely to drop out of school and eventually find themselves in state or county custody. *Reimagining a Prosecutor's Role in Sentencing*, 32

Fed.Sent.R. 195, WL 2020 3163370, Vera Inst. Just. Cost shifting is further enhanced by the fact that that these children are more likely to receive public assistance. Mark Pogrebin, Mary Dodge & Paul Katsampes, *The Collateral Costs of Short-Term Jail Incarceration: The Long-Term Social and Economic Disruptions*, Corr. Mgmt. Q., Fall 2001, at 64, 65.

Paying prevailing wages to non-convicted inmates thus provides them with the means to maintain their own and their families' health and welfare during their detention, but also to ensure that they and their dependents do not become dependent on the state after their release.

C. The Court should not adopt the reasoning of federal courts interpreting the Federal Labor Standards Act, because this case is governed by California, not federal law.

Petitioners ask this Court to adopt the reasoning of federal courts interpreting the Fair Labor Standards Act's ("FLSA") definition of employment to find that the California Labor Code cannot apply to plaintiffs because their relationship to the jail is a unique one that is penological in nature. COB 34–35. The district court declined to do so, and petitioners fail to repair the logical gaps that the court identified in their argument.

As the district court noted, "cases involving claims under the FLSA do not determine the outcome here because . . . this case is governed by California labor law rather than federal labor law." *See Owino v. CoreCivic, Inc.*, WL 2018, 2194644, at *24 (S.D. Cal. May 14, 2018). ("The defect in Defendant's argument is that California's employment definition is explicitly different from FLSA's economic reality test. The California Supreme Court cannot be much clearer

when it said '[i]n no sense is the IWC's definition of the term 'employ' based on federal law.'") (citations omitted.)

The laws of this state are clear: the Labor Code's wage provisions apply to workers who labor for private industry, and pre-trial detainees working for Aramark in this context are no exception.

II. The State Laws Cited By Petitioners Do Not Preclude Application Of The California Labor Code To Non-Convicted Persons In County Jails Who Perform Work For A For-Profit Company That Sells The Goods Produced To Third Parties.

Petitioners focus much of their argument on the claim that California Penal Code § 4019.3 applies to the individuals at issue in this case, and, because it conflicts with the wage provisions of the Labor Code, the Labor Code cannot apply. Petitioners argue that § 4019.3 permits but does not require counties to authorize wages not to exceed two dollars for all county inmates for eight hours of work. AOB 10; COB 10.

Petitioners' interpretation of this provision and its significance to this case, however, is based on a misapprehension of the text and legislative background of this provision, as well as basic principles of statutory interpretation.

California Penal Code § 4019.3 provides:

> "The board of supervisors may provide that each prisoner confined in or committed to a county jail shall be credited with a sum not to exceed two dollars ($2) for each eight hours of work done by him in such county jail." Cal. Pen. Code § 4019.3.

A. Penal Code § 4019.3 does not preclude application of the California Labor Code to this case, because Penal Code § 4019.3 does not apply here.

Petitioners argue that the Labor Code's wage provisions could not apply to the individuals at issue because Penal Code § 4019.3, which limits prisoner compensation to two dollars per eight hours of work, applies to all prison and county jail inmates, regardless of their conviction status. They reject respondents' argument before the Ninth Circuit that the Penal Code and the Labor Code's wage provisions are not in conflict, but they fail to address the substance of this argument. Petitioners appear to base their argument regarding Penal Code § 4019.3 on not only a partial reading of respondents' arguments, but also on a partial reading of § 4019.3 and the statutory scheme to which it belongs. The plain language and statutory context of § 4019.3 make clear that the provision *only* applies to county jail inmates working in *public works programs*. Such work programs are sharply distinct from the profit-driven regime in which petitioner Aramark workers find themselves.

B. The text and history of Penal Code § 4019.3 make clear that the statute does not apply to private-public work programs.

Petitioners fix their attention on the phrase "each prisoner confined in or committed to a county jail," which they argue indicates that this provision applies to all detainees in California carceral institutions, regardless of their conviction status. COB 32–33; AOB 49–50. In their discussion of this part of the statutory text, however, petitioners sidestep not only the legislative context of this provision but also the remainder of the provision's text. Most critically, petitioners neglect to address the text that provides that

the board of supervisors may provide a credit to each prisoner for work done by him "in such county jail." Cal. Pen. Code § 4019.3.

As petitioners have acknowledged in their briefs, courts must read a statute to give effect to every word in its text and avoid a reading of statute that renders some words altogether redundant. AOB 29-30; *See, e.g.*, *Lowe v. S.E.C.,* 472 U.S. 181, 208 (1985) ("[W]e must give effect to every word that Congress used in the statute."); *In re Marquez,* 3 Cal.2d 625, 629 (1935) ("To ascertain the meaning of statute, phases therein must be construed in connection with associated phrases."); Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 58 (1868) ("[T]he courts must … lean in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory.").

Here, the phrase "in such county jail" appears after the description of the type of prisoners to whom the provision applies, that is, "each prisoner confined in or committed to a county jail." Because the phrase "confined in or committed to a county jail" modifies "prisoner," the phrase "in such county jail," which comes after it, cannot also serve to signify the state of being detained. Such an interpretation would render the phrase surplusage. Thus, "in such county jail" must refer to work done *for* a county jail.

C. The statutory context of Penal Code § 4019.3 makes clear that the statute does not apply to private-public work programs.

Petitioners also err in interpreting this statute as if it exists in a vacuum rather than as part of a body of law, more specifically, as a provision of a chapter of the California Penal Code. Courts generally interpret provisions of the same body of law together. "Statutes

cannot be read intelligently if the eye is closed to considerations evidenced in affiliated statutes. Part of the statute's context is the corpus juris of which it forms a part." Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539 (1947). A reading of the corpus juris to which § 4019.3 belongs elucidates the meaning of the provision's plain text, particularly its subject matter, that is, the terms of compensation for inmates working in public works programs.

California Penal Code Part 3, Title 4, Chapter 1, which encompasses this provision, refers only to public works programs. In fact, two provisions that appear just before § 4019.3 explicitly refer to labor on public works. *See* Cal. Penal Code §§ 4017 and 4018. Section 4017 authorizes "the board of supervisors or city council" to require "[a]ll persons confined in the county jail … under a final judgment of imprisonment rendered in a criminal action or proceeding … to perform labor on the public works or ways in the county or city." Cal. Penal Code § 4017. Section 4018 provides that the board of supervisors may prescribe and enforce rules and regulations under which labor on public works or ways may be performed. The board of supervisors making such order may prescribe and enforce the rules and regulations under which such labor is to be performed. Cal. Penal Code § 4018.

Because these statutes together form the same corpus juris, the Court should conclude that the labor referred to in § 4019.3 is public works program labor.

D. The legislative background of Penal Code § 4019.3 makes clear that statute does not apply to private-public work programs.

The legislative background of § 4019.3 further supports this conclusion. It is clear that when the legislature passed and enacted § 4019.3 in 1959, it did not intend for the provision to apply to detainees working for private entities. Contemporaneous analysis of the bill reflects this intent. In a 1934 Senate analysis of the bill, the Senate writes that "[p]risoners assigned to honor farms can now be paid a small wage. The services of men working in the jail kitchens, laundry, or various maintenance assignments are of equal value." *See* Analysis of Senate Bill 139 (June 10, 1959) (from the Hugo Fisher Papers, 1958-1962, UCLA Library, Department of Special Collections). These work assignments fall within the definition of public works, which "includes clerical and menial labor in the county jail, industrial farm, camps maintained for the labor of such persons upon the ways in the county, or city jail." Cal. Lab. Code § 1720; Cal. Penal Code § 4017. But, as petitioners concede, respondents' labor falls outside the scope of "public works" projects. COB 33.

The legal backdrop against which § 4019.3 was enacted also confirms this intent. When the provision was enacted in 1959, the California Constitution prohibited contracting with any private company for the use of "convict labor." 1990 Cal. Legis. Serv. Prop 139. It was not until 1990, when Article X, § 6 of the California Constitution was repealed by Proposition 139, that such contracts between private and public entities were authorized by state law. *Id.*

Petitioners argue that voters would have amended or repealed § 4019.3 had they intended to make wages mandatory or allow compensation in excess of the two dollar per eight hours in the context of a public-private work program. COB 25. Petitioners are,

again, incorrect. There is no need to repeal or amend § 4019.3 to reflect that intent, because it already does so: the provision's text, statutory context, and the circumstances around its enactment already make clear that it applies only to public works programs. More sharply put, the law may cover county public works programs but to expand it to cover private-sector expropriation of detainee labor would be to dramatically distort it.

E. Penal Code § 4019.3 does not preclude application of the California Labor Code to respondents, because the provision sets forth a permissive, non-exclusive, procedure.

Even in a hypothetical situation in which § 4019.3 would apply to all detainee-workers, the provision would not preclude the application of the Labor Code to respondents here. That is because, as petitioners acknowledge, § 4019.3 is permissive, meaning it sets forth how the board of supervisors "may" act, not how it is required to act. AOB 35. *See* Analysis of Senate Bill 139 (June 10, 1959) (from the Hugo Fisher Papers, 1958-1962, UCLA Library, Department of Special Collections) (clarifying that the adoption of the measure will "permit a County Board of Supervisors to pay a county jail prisoner.") But petitioners fail to recognize that the provision is inapplicable here for that reason, in addition to those discussed above.

Given that the provision describes a permissive board-initiated payment scheme, it is not and does not claim to be exclusive or to wholly occupy the field of what the board of supervisors may do. Petitioners fail to recognize that "[t]hough it is a general rule that a special controls a general statute, without regard to their respective dates, still it is not always or necessarily true that a special law entirely excludes from its field of operations the provisions of a general law, where the two can occupy the same domain without any

inherent antagonism." *Cohn v. Isensee*, 45 Cal.App. 531, 536 (Cal. Ct. App. 1920).

For example, in *Anderson v. Sherman*, 125 Cal.App.3d 228 (Cal. Ct. App. 1981), appellants appealed a judgment entered against them in superior court on the grounds that they were not served properly, because they were served under the general rules of service set forth in the Code of Civil Procedure, rather than more specific provisions of the Vehicle Code, §§ 17450 through 17456 and 17462, which govern the means by which out-of-state residents may be served in an auto accident case. The court ruled against the appellants, reasoning that "nowhere do these Vehicle Code sections declare this procedure for service of summons to be the exclusive method of service in the cases to which it applies; nor have defendants cited any case construing it as such" and that the service provisions of the more general statute "have universal application." *Anderson*, 125 Cal.App.3d at 235-237.

Petitioners invoke *Stoetzl v. Department of Human Resources* 7 Cal.5th 718 (2019) for the proposition that § 4019.3 cannot apply in this context because it is more specific than the Labor Code's wage provisions. AOB 32. But *Stoetzl* does nothing to support petitioners' argument. That case is distinguishable from the case here because the more specific provision there *conflicted* with the Labor Code in the context of wages for state employees. 7 Cal.5th at 744.

Here, as explained above, there is no conflict between the Labor Code and Penal Code § 4019.3 in this particular context. The salient takeaway of *Stoetzl* for this Court's purposes is that, as a background principle, the Labor Code's wage rules apply to workers. *Id.* at 946.

While § 4019.3 specifies what a county board of supervisors *may* do in regard to compensating detainees, it says nothing at all about what a private company may or must do when it employs detainee labor. But the answer to that question is an obvious one. Aramark must follow all applicable state laws governing employment of workers, including the California Labor Code, and the Penal Code does not provide any mechanism to allow the company to shirk this obligation.

III. Proposition 139 Does Not Preclude Application Of The California Labor Code To Pretrial Detainees In A County Jail.

Proposition 139, enacted in 1990, created a legal framework that allows state prisons and county jails to contract with private companies for inmate labor. 1990 Cal. Legis. Serv. Prop 139. The initiative adds a number of provisions related to inmate labor and repeals the 1879 Constitutional prohibition of convict labor, which provided that "the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for working of convicts for the benefit of the State." Cal. Const. of 1879, Art. X, § 6 <https://archives.cdn.sos.ca.gov/collections/1879/archive/1879-constitution.pdf>.

Petitioners argue that the district court erred in finding that Proposition 139 does not preclude wage claims under the Labor Code. Petitioners base their argument on a blinkered examination of the text and legislative background of Proposition 139 and a misstatement of respondents' arguments before the district court and the Ninth Circuit. COB 26. Petitioners also heavily rely on the proposition that voters and lawmakers did not intend to ensure the payment of wages to pre-trial detainees working in public-private

work programs, because they did not enact any legislation with language parallel to that of Penal Code § 4019.3 or language that is otherwise explicit enough for petitioners.

A. The text of Proposition 139 does not foreclose the application of the labor code to respondents.

Petitioners argue that Proposition 139 gave local governments the exclusive means to determine whether and how to pay wages for people incarcerated in county jails and implicitly foreclosed all other legal bases for such payments. Because Alameda County has not enacted a relevant local ordinance within the meaning of Proposition 139, Petitioners argue that non-convicted incarcerated people in Alameda County jails who work for for-profit companies can be forced to work for those companies without the wages prescribed by the Labor Code. The district court correctly rejected this argument.

Proposition 139 neither makes mention of non-convicted detained individuals, nor does it address wages for those individuals who are detained in a jail that is not governed by a local ordinance. As the district court concluded, Proposition 139 simply does not address the circumstances at hand. 1-ER-018.

Petitioners ask the Court to accept their reasoning that the Labor Code does not apply to non-convicted detainees because it does not expressly mention them. They simultaneously ask the Court to accept the argument that Proposition 139 applies to non-convicted detainees working for private companies in detention, because it does not expressly mention them. Petitioners' reasoning for their conclusion that the Labor Code is not applicable here is faulty, because the Labor Code is concerned with workers, among whom are non-convicted detainees working for private companies. But that strain of logic employed by petitioners can be properly applied here,

and petitioners cannot challenge the conclusion it yields without contradicting themselves.

B. The policies and legislative intent undergirding Proposition 139 would be advanced by the payment of wages to the individuals at issue in this case.

Petitioners accuse the district court of reaching its conclusion by engaging in an incomplete consideration of Proposition 139's purposes and policies. But petitioners themselves cherry-pick and present only parts of the law's legislative background, and, moreover, they engage in a narrow interpretation of those cherry-picked materials to advance their arguments.

Petitioners argue that the district court wrongly focused on two policies of Proposition 139 and consequently came to an incorrect ruling on the issue here. Those policies are (1) compensating state prisoners for their work, and (2) ensuring that working inmates do not replace striking, non-incarcerated workers. COB 27. Petitioners argue that "[w]hile Proposition 139 did provide for compensation to state inmates and protections for non-incarcerated workers on strike, it was also sought to expand work opportunities in state prisons and county jails." Payment of wages under the Labor Code to non-convicted individuals working for private companies would not contravene these interests but advance them. Cal. Penal Code § 2717.8, which is among the provisions of law enacted by Proposition 139, illustrates that such payment would advance the purpose of Proposition 139 to mitigate costs of incarceration and provide support for inmates' families. That provision provides that compensation for state prisoners engaged in private-public work programs shall be comparable to the wages paid to non-inmate employees who perform similar work, subject to

deductions that may not exceed 80 percent of gross wages and shall be limited to taxes, reasonable charges for room and board, restitution fine or contributions to funds established by law to compensate crime victims, and allocations for support of family pursuant to state statute, court order, or agreement by the prisoner. Cal. Penal Code § 2717.8.

Petitioners assert that this provision "demonstrates that the drafters of Proposition 139 were well aware of how to alter the compensation scheme for work performed by incarcerated persons" but chose not to do so. AOB 23; COB 37. Petitioners overlook two obvious yet critical points.

First, the payment of wages to state prisoners under this provision shows that the voters who enacted Proposition 139 and the Legislature contemplated the payment of wages to inmates working for private companies and decided that such payment would be compatible with the law's purposes.

Second, the goal of compensating crime victims is not relevant to non-convicted detainees. Non-convicted detainees have not been convicted of crimes, and must be considered innocent until proven guilty. Legally, they are not "criminals," a term often invoked in Proposition 139's ballot materials. 3-ER-504. For example, the argument in favor of the law in the Proposition 139 ballot pamphlet, signed by then-governor George Deukmejian, asks voters the hypothetical question: "Why should law abiding citizens have to work and pay taxes to support a free ride for convicted criminals[?] It's the criminal who owe a debt to society…NO MORE FREE RIDE FOR FELONS!" *Id.*

The goal of providing support for detainees' families would also be better advanced by paying non-convicted detainees.

Detainees' families are not provided with any compensation under the status quo but could receive a portion of their detained family members' wages if detainees are paid under the Labor Code.

It is also clear that paying detained workers prevailing wages would not cut against the policy goal of providing detainees work opportunities. Detainees would not be deprived of work opportunities as a result of receiving payment, and, if anything, inmates' work experiences in these programs would better reflect those of workers in the larger labor market.

Finally, the district court rightly underscored the significance of the fact that the statutes enacted by Proposition 139 reflect the voters' will that detainees should be paid for their labor in private-public work programs. "Proposition 139 makes no mention of pretrial detainees . . . and therefore does not address the circumstances at hand. If anything, the text of Proposition 139—and specifically its requirements that (1) individuals incarcerated in state prisons working for a private company be paid and (2) inmate labor not replace non-incarcerated individuals on strike—supports a finding that voters intended non-convicted individuals incarcerated in county jails working for private companies be paid for their labor," the district court wrote. 1-ER-18–19.

Indeed, it is undisputed that voters intended that convicted prisoners required to submit to involuntary servitude be paid for their labor for private companies. It follows, then, that if voters intended that this sector of prisoners who can be forced to labor without wages to be paid under Proposition 139, they also support paying wages to non-convicted detainees, who cannot, consistent with the Thirteenth Amendment, be forced into involuntary servitude.

CONCLUSION

A growing number of California's population is experiencing pretrial detention despite efforts to reduce incarceration of people because they cannot afford to make bail. Sawyer, Wendy and Wagner, Peter, *Mass Incarceration: The Whole Pie 2023* (March 14, 2023) <https://www.prisonpolicy.org/reports/pie2023.html>. At the same time, private-public contracts, such as the one between Aramark and the County of Alameda, are on the rise and result in big profits for private companies. Project on Government Oversight, *Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors* (2011); Charles A. Reich, *The New Property*, 73 Yale L.J. 733, 762 (1964).

The question before the Court is an important one whose significance is only likely to increase in the future. Application of the California Labor Code to this segment of our population is consistent with the history and purposes of these statutes. Petitioners' arguments ignore established law and would lead to the establishment of a backwards-facing regimen contrary to California's efforts to eradicate poverty and limit income inequality.

For these and all of the reasons discussed herein, this Court should answer the certified question in the affirmative.

Dated: April 12, 2023

SIEGEL, YEE, BRUNNER & MEHTA

By: /s/ *Dan Siegel*
Dan Siegel

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Dated: April 12, 2023

/s/ *Dan Siegel*
Dan Siegel

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/s/ *Kayla Webster*
Kayla Webster

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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