S277120

IN THE SUPREME COURT OF CALIFORNIA

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

Plaintiffs and Respondents,

v.

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

Defendants and Petitioners.

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

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

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

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

California Cases

Constitutional Provisions

State Statutes

Other Authorities

INTRODUCTION

In its Opening Brief, petitioners County of Alameda and Sheriff Gregory J. Ahern (collectively, the "County") demonstrated that voters established the legal parameters for prison work programs like the one at issue in this case when they enacted Proposition 139. That law sought to expand opportunities for prisoners to participate in work programs—opportunities that had previously been too few to satisfy prisoner demand—allowing them to earn sentence reductions and obtain job training. Consistent with those purposes, the primary benefits county inmates receive when they choose to participate in such programs are *non-financial*, again, sentence reductions and job training. And, while Proposition 139 added provisions to the Penal Code requiring payment of certain wages to *state* prisoners, it granted counties exclusive discretion to decide by local ordinance whether and how much to pay participating *county* inmates, capped by Penal Code section 4019.3 at no more than two dollars per eight-hour shift.

Respondents nonetheless maintain that, as pre-trial detainees, they are entitled to minimum wages set by California's Labor Code for their participation in the County's program with petitioner Aramark Correctional Services, LLC. Respondents argue that neither the Penal Code nor Proposition 139 governs their work. They are wrong.

First, Respondents fail to demonstrate that the Labor Code sets the minimum terms for inmate participation in a public-private work program. As discussed in the County's Opening

Brief, the Labor Code only applies to work by inmates when it does so expressly, which it does only under circumstances not relevant here. Respondents' contrary arguments rest on the general standards for evaluating an employment relationship under California law, the Thirteenth Amendment, and the Labor Code's animating policies. But none of those arguments address the fact that Proposition 139 and the Penal Code are the more specific legal provisions applicable to their claims, or the fact that the Labor Code makes express provision for inmate rights under specific and inapplicable circumstances—provisions that would be unnecessary if the Labor Code simply applied to incarcerated persons who met the general definition of an employee.

Second, compensation for county inmates is governed by Penal Code section 4019.3, and Respondents are wrong when they claim otherwise. That statute's text and context both confirm that it limits the monetary compensation that counties may provide for any county inmate performing work, regardless of conviction status. Its scope is not limited to convicted inmates working in "public works," as Respondents assert; neither the text, context, nor history of the statute supports their argument in this regard. Nor can section 4019.3's limits be reconciled with payment of minimum wages under the Labor Code. While the statute gives counties discretion about whether to provide any monetary compensation, it expressly limits the compensation counties may provide to a rate far below what the Labor Code would require if it applied. The two laws are in direct conflict,

and section 4019.3 is the more specifically applicable law and therefore must control.

Third, there is also no merit to Respondents' contention that their work is not subject to Proposition 139. By its express terms, Proposition 139 governs all inmate work in public-private programs, like the program at issue in this case. It does not distinguish between inmates based on their conviction status. And, contrary to Respondents' arguments, requiring payment of wages set by the Labor Code would not advance Proposition 139's policy objectives; it would disrupt the careful balance of competing policy aims struck by the voters who enacted it.

The Court should rule that pre-trial detainees who participate in a public-private work program under Proposition 139 are not entitled to any wage, except to the extent prescribed by county ordinance, and subject to the limitations of the Penal Code. Respondents' view that this is bad policy can only be resolved by a legislative change, not a court order.

DISCUSSION

I. Respondents' arguments, premised on general principles governing employment, are inapposite to the conditions of work performed by incarcerated persons.

In its Opening Brief, the County laid out the constitutional and statutory bases for concluding that Respondents' work is not governed by the Labor Code. Instead, Proposition 139 and the Penal Code control. The County identified these laws as more specifically applicable and therefore more relevant than the

Labor Code's more general prescriptions. (COB 39, citing Code Civ. Proc., § 1859; see also AOB 32, citing *Stoetzl v. Dept. of Human Resources* (2019) 7 Cal.5th 718, 748-749 (*Stoetzl*).) And the County analyzed their text, context, and history to demonstrate that no law requires payment of minimum wages to pre-trial detainees who participate in a work program like the one at issue in this case. (COB, *passim*.)

In response, Respondents accuse the County and Aramark of largely ignoring the Labor Code's text and underlying policies, which Respondents claim are the heart of this case. (RAB 10-11.) But as the County noted in its Opening Brief, Respondents' argument in this regard remains a statement of policy preferences, not a textual analysis of relevant laws.

For example, Respondents do not identify any provision in the Labor Code that applies expressly to persons incarcerated in county jails or, more importantly, to pre-trial detainees. Nor can they. As they acknowledge, the Labor Code applies *expressly* to incarcerated persons only in narrow circumstances, and those provisions do not apply to Respondents' work or their claims. (RAB 11, citing Lab. Code, §§ 3370, 6304.2; see also COB 39-40.) Those statutes show that the Legislature makes express provision for the Labor Code to govern inmate work when that is its intent. (COB 39-40, citing *Cornette v. Dept. of Transportation* (2001) 26 Cal.4th 63, 73 (*Cornette*); *Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 410 (*Mutual Life*).) If the Labor Code applied broadly to all inmate work, neither section 3370 nor section 6304.2 would be necessary. (*Ibid.*) Respondents

offer no rebuttal to this analysis of the Labor Code's text and the relevant rules of statutory construction.

Instead, Respondents turn to the general standards by which employment is evaluated by California courts. (RAB 12, citing *Martinez v. Combs* (2010) 49 Cal.4th 35, 49 (*Martinez*); *Ochoa v. McDonald's Corp.* (N.D. Cal. 2015) 133 F.Supp.3d 1228, 1233.) And employing that definition, they argue that it is "clear" the Labor Code governs their work because the district court in this case agreed with their arguments that their work met those general standards. (RAB 11-12, citing 1 ER 26.) This argument is unhelpful.

First, this is not a textual argument at all, and it fails to address the premise of the County's argument. There remains no reason for Labor Code sections 3370 and 6304.2 to grant specific rights to incarcerated persons, if all working inmates are entitled to the Labor Code's protections through simple application of California's definition of employment.

And indeed, a blind application of that definition would apply in exactly the same way to all persons working while incarcerated, whether in state prison or county jail, whether convicted or not. Respondents—like the district court before them—identify nothing in the *Martinez* standard that would distinguish their claims from those of any other inmate. Yet all agree that convicted inmates are not entitled to wages prescribed by the Labor Code. (2 ER 316-318.) This tacitly confirms that simple application of California's employment standard cannot answer the question presented for this Court's review.

Second, Respondents' argument fails to address the fact that the relationship between prison and prisoner is fundamentally different from that of an employer and employee, notwithstanding some superficial similarities. (COB 34, fn. 3, discussing *Villarreal v. Woodham* (11th Cir. 1997) 113 F.3d 202, 207 (*Villarreal*); see also AOB 47, citing *Morgan v. MacDonald* (9th Cir. 1994) 41 F.3d 1291, 1292; accord *Burleson v. California* (9th Cir. 1996) 83 F.3d 311, 314.) While federal law defines employment differently from California (RAB 15-16), these cases still reflect the material status differences between an inmate and an employee. And no California case has yet applied the employment standard from *Martinez* to conclude that all inmates are jail employees.

Next, Respondents attempt to explain sections 3370 and 6304.2 by reference to the Thirteenth Amendment. (RAB 12.) They argue that it was necessary for the Legislature to provide specific protections to convicted inmates in state prison because the Thirteenth Amendment does not protect them and so statutes were needed to provide compensation for them. (*Ibid.*, citing U.S. Const., Amend. XIII; *Adams v. Neubauer* (10th Cir. 2006) 195 F. App'x 711, 713 (*Adams*); *Vanskike v. Peters* (7th Cir. 1992) 974 F.2d 806, 809 (*Vanskike*).) Non-convicted inmates, they note, are protected by the Thirteenth Amendment. (RAB 13, citing *McGarry v. Pallito* (2d Cir. 2012) 687 F.3d 505, 511.) This argument is a non-sequitur.

First, it bears repeating that it would *not* be necessary to enact sections 3370 and 6304.2 for the benefit of convicted

inmates, if Respondents were right that the application of the Labor Code depended on simple application of the *Martinez* employment standard. And that conclusion is not altered by the Thirteenth Amendment, which is concerned with forced labor, and does not prescribe any terms of compensation. (See COB 35-36.) Respondents have never identified any contrary authority for their argument that rights under the Labor Code somehow flow from or are dependent in any way on rights under the Thirteenth Amendment.

And neither of the cases Respondents cite support their contention that the Labor Code was enacted to prevent exploitation of convicted inmates. (See RAB 12.) *Adams* and *Vanskike* both merely confirm what Petitioners have often noted, that inmates working in prisons are not "employees" under federal law and have no constitutional right to compensation for their work. (*Adams*, *supra*, 195 F. App'x at p. 713; *Vanskike*, *supra*, 974 F.2d at p. 809.) This same rule applies in the same manner to pre-trial detainees. (*Villarreal*, *supra*, 113 F.3d at p. 206.)

Second, contrary to Respondents' argument, neither section 3370 nor section 6304.2 "provide for [inmates'] compensation." (RAB 12.) Section 3370 grants workers-compensation rights to state inmates for death or injury arising under narrowly defined circumstances. And section 6304.2 establishes that state prisoners "engaged in correctional industry" are considered employees for the exclusive purposes of occupational safety and health regulations. Neither statute provides a minimum wage;

they merely confirm that when the Legislature intends to grant work protections to incarcerated persons, it does so expressly and under carefully defined terms and conditions.

Finally, Respondents argue that the Labor Code was enacted to protect workers and should be liberally construed to that end. (RAB 11, citing *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 561-562; *Leyva v. Medline Industries Inc.* (9th Cir. 2013) 716 F.3d 510, 515.) And they assert that extending minimum wages to pre-trial detainees would promote the Legislature's historical goal to ensure that working people—women and children, at the time of enactment—were paid amounts sufficient to meet the necessary costs of living. (RAB 13, citing Stats. 1913, ch. 324, § 3, subd. (a), p. 633; *Martinez*, *supra*, 49 Cal.4th at p. 54; *Kerr's Catering Service v. Dept. of Industrial Relations* (1962) 57 Cal.2d 319.)

But again, Respondents' arguments do not rest on any construction of the Labor Code; they reflect only Respondents' policy preferences. As noted in the County's Opening Brief, no principles of liberal construction can justify rewriting statutes to reflect an intent never expressed by the Legislature. (COB 20, citing *Cornette*, *supra*, 26 Cal.4th at pp. 73-74; Code Civ. Proc, § 1858.) There remains nothing in the Labor Code's text—or history, for that matter—to reflect a legislative intent to grant minimum-wage rights to persons incarcerated in county jails while awaiting trial. And it remains that the Legislature's goal of ensuring that working people can provide for their basic needs

is inapplicable to inmates who have their basic needs provided for them. (*Villarreal*, *supra*, 113 F.3d at p. 207.)

Still, Respondents attempt to connect the Legislature's concerns with protecting economically vulnerable workers to the economic disadvantages of incarceration. (RAB 14-15, citing Thomas Bak, *Pretrial Release Behavior of Defendants Whom the U. S. Attorney Wished to Detain* (2002) 30 AM. J. CRIM. L. 45, 64-65; Shima Baradaran Baughman, *Costs of Pretrial Detention* (2017) 97 B.U.L. Rev. 1, 5; *Reimagining a Prosecutor's Role in Sentencing*, 32 Fed.Sent.R. 195, 2020 WL 3163370; 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 pp. 64, 65; *Barker v. Wingo* (1972) 407 U.S. 514, 521, 92 S. Ct. 2182, 2187, 33 L. Ed. 2d 101; *In re Humphrey* (2018) 19 Cal.App.5th 1006, 1032.)

There can be little debate that incarceration carries financial consequences. But as recognized by the very authorities Respondents cite, those costs are born not only by incarcerated persons and their families, but also by victims, governments, and society at large. All those concerns were contemplated and *balanced* by voters when they enacted Proposition 139. (3 ER 503.) If Respondents believe that voters struck the wrong balance in that legislation, then the solution is a legislative change. But superimposing the Labor Code's minimum wage on that system, as Respondents demand, would disrupt the balance voters struck, in addition to being legally unjustified.

Moreover, Respondents' view of the policy considerations is blinkered. For example, they cite "Costs of Pretrial Detention" for the proposition that incarceration can reduce post-incarceration wages. (RAB 14.) *Incarceration* may well cause that effect, but participation in work programs during incarceration *counteracts* that effect. (COB 27-28.) That is why voters enacted Proposition 139 to provide more work opportunities, even as they chose not to require monetary compensation for county inmates. (3 ER 503.)

In short, Respondents' emphasis on the Labor Code confirms that their wage claims reflect a policy preference, not a construction of the law as it exists today. The Legislature is the correct venue for achieving their aims, not the courts.

II. Respondents are also wrong when they argue that compensation for their work is not governed by Penal Code section 4109.3.

Respondents' wage claims also fail because they are inconsistent with the Penal Code's express and more specifically applicable limit on the compensation counties are permitted to authorize for inmates in county jails. (See COB 25, discussing § 4019.3; see also AOB 29-38.) That limit applies with equal force to incarcerated persons regardless of their conviction status. (See COB 32-33, discussing §§ 4000, 4019.3; Opinion No. CR 73-51, 57 Op. Cal. Att'y Gen. 276, 283 (1974).) It is literally impossible to pay inmates the minimum wages prescribed by the Labor Code and also pay them less than two dollars per eight-hour shift under the Penal Code, and so the Labor Code cannot be read to

apply. (COB 39.) Attempting to show otherwise, Respondents argue that section 4019.3 does not apply to their work. None of their arguments are persuasive.

A. Respondents' nominally textual argument seeks to rewrite the statute.

First, Respondents argue that section 4019.3 does not apply to prisoners working in public-private work programs. (RAB 17.) They acknowledge that section 4019.3 applies expressly to "each prisoner confined in or committed to a county jail." (*Ibid.*) Of course, that definition would encompass Respondents. But they argue that the scope of *work* referenced in the statute, work performed "in such county jail," does not extend to their participation in the County-Aramark work program. (RAB 18.) Nominally invoking the rules of text-based statutory construction, Respondents argue that the phrase "in such county jail" must mean "*for* a county jail." (*Ibid.*, original italics.) Any other construction of the words "in such county jail" would be rendered surplusage, they say, because the statute already defines "prisoner" by reference to their incarceration, and thus all their work occurs "in jail." (*Ibid.*)

Not so. As even Respondents acknowledge, the Penal Code chapter that contains Section 4019.3 also authorizes and regulates county inmates' work *outside* of jail. (RAB 19.) For example, section 4017 describes inmate work in public works, in the public way, or preventing and suppressing forest fires. Public works includes activities in the jail, as Respondents note, but work on the public ways and on forest fires objectively occurs

geographically outside of jail. Thus, describing inmate work "in such county jail" can and should construed based on the plain meaning of the text, not by rewriting the statute, as Respondents advocate. Their construction is atextual and an impermissible construction of the statute. (See *Cornette*, *supra*, 26 Cal.4th at pp. 73-74; Code Civ. Proc, § 1858.)

B. Respondents' construction of section 4019.3 based on statutory context is incomplete and so also fails.

Next, turning to contextual rules of statutory construction, Respondents argue that section 4019.3 only governs work on public-works programs, not the work of pre-trial detainees in a public-private program. (RAB 19, citing Felix Frankfurter, *Some Reflections on the Reading of Statutes* (1947) 47 Colum. L. Rev. 527, 539.) This is, they claim, because section 4019.3 is in the same chapter of the Penal Code as sections 4017 and 4018, which expressly provide for convicted inmate work on public works. (RAB 19.) Again, they are wrong.

The Penal Code chapter containing Section 4019.3 regulates a wide range of county-jail operations, from the role of sheriffs to the use of property, healthcare, the provision of food and clothing, etc. (See Pen. Code, §§ 4000-4032.) It is not limited to the specific types of work described in Sections 4017 through 4018. And so there is no contextual reason to cabin Section 4019.3 in the way suggested by Respondents.

Indeed, drawing relevant context from the most proximate statutes further bolsters' the County's reading of the law, not

that advocated by Respondents. The provisions immediately preceding section 4019.3—sections 4019 through 4019.2—prescribe a range of non-monetary compensation for an open class of "in-custody or job training program[s]," not limited to the activities described in section 4017. Proposition 139 work programs clearly fit this definition.[1] Section 4019.3, in turn, immediately follows *these* provisions, with a limited authorization for additional monetary compensation. Thus, the statute's most immediate context would support the conclusion that section 4019.3 encompasses work defined in the same, broad manner as sections 4019 through 4019.2.

Section 4019.3's context supports the County, not Respondents.

C. Section 4019.3's legislative history does not support Respondents' arguments.

Respondents also rely on the legislative history as a basis for their argument that section 4019.3 does not apply to pre-trial detainees working for private companies. (RAB 20.) They note that the Legislature enacted that statute to provide a wage for prisoners working in "jail kitchens, laundry, or various maintenance assignments. . . ." (*Ibid.*, citing Analysis of Senate Bill 139 (June 10, 1959).) They then claim that all these tasks

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[1] Indeed, were the Court to conclude otherwise—finding that Section 4019 through 4019.3 apply only to the kinds of work described in Section 4017—that would presumably mean that Respondents did not earn the non-monetary benefits prescribed by Sections 4019 and 4019.1, for their alleged work. This is, presumably, not a result they advocate.

fall within the statutory definition of "public works" under section 4017.[2] (*Ibid*.) And they claim that the County has agreed that their work in the County-Aramark program is not "public works." (*Ibid*, citing COB 33.)

First, Respondents mischaracterize the County's argument. The County noted—and it appears all parties agree—that section 4017 applies only to convicted county inmates. (COB 33.) And, as discussed above, the scope of section 4019.3 is broader than work performed under section 4017. Thus, that statute's definition of "public works"—which expressly applies only in that section—is irrelevant to any issue in this case.

Second, Respondents' argument is not supported by the loose similarity between the types of tasks described in section 4019.3's legislative history and section 4017's definition of "public works." All that the cited history demonstrates is that the Legislature intended to extend very limited wage allowances to county inmates performing a range of tasks. Nothing in that history demonstrates an express intent to limit section 4019.3's application to convicted inmates performing work under section 4017.

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[2] Respondents also cite Labor Code section 1720 for this definition. (RAB 20.) However, nothing in that statute references work in jails, kitchens, or laundry. It is not clear what Respondents intended by their citation to section 1720, but it does not support their argument. Indeed, the scope of "public works" defined by the Labor Code bears no similarity to the work performed by Respondents. The fact that the Penal Code provides a specific definition of public works for incarcerated persons illuminates the County's point: the Penal Code governs incarcerated work, not the Labor Code.

Respondents next highlight the fact that section 4019.3 was enacted against a backdrop in which public-private work programs were prohibited by law. (RAB 20-21.) From this they extrapolate that it was not intended to apply to such programs. But as the County noted, Proposition 139 was enacted by voters who are presumed to have known that section 4019.3 would constrain compensation paid under such programs. (See COB 25, citing *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243-244.) Voters thus implicitly adopted section 4019.3 as part of Proposition 139's authorizations.

Attempting to show otherwise, Respondents argue that section 4019.3 should not be considered part of Proposition 139's statutory background because, they say, section 4019.3 does not apply to work in public-private programs. (RAB 21.) This argument, of course, is entirely circular and should be rejected.

Section 4019.3's legislative history, thus, also supports the County, not Respondents.

D. Respondents are also wrong when they argue that there is no conflict between the minimum wage set by the Labor Code and the much lower maximum wage set by the Penal Code.

Finally, Respondents argue that section 4019.3 does not impact their claims because that statute is written in permissive terms and so does not conflict with the Labor Code as a result. (RAB 21-22, citing *Anderson v. Sherman* (1981) 125 Cal.App.3d 228, 235-237; *Cohn v. Isensee* (1920) 45 Cal.App. 531, 536.) They tacitly acknowledge that section 4019.3, as the more specific

statute, *would* govern in the case of a conflict. (RAB 22, citing AOB 32; *Stoetzl*, *supra*, 7 Cal.5th at p. 740.) But because section 4019.3 is written in permissive language, they say, there is no conflict; the County can choose to ignore the statute's limit on compensation and pay inmates the minimum wages prescribed by the Labor Code. (RAB 22.)

This is a misreading of section 4019.3. The statute is written in a way that permits counties to provide monetary compensation to inmates, without requiring them to do so. By expressly limiting that compensation to two dollars per eight-hour shift, however, the law expressly *constrains* counties' authority. If they prescribe compensation, it cannot exceed the statutory limits, which are not optional.

As noted in the County's Opening Brief, the County cannot simultaneously pay inmates more than $14 or $15 per hour under the Labor Code and no more than two dollars per eight-hour shift under the Penal Code. Section 4019.3 is thus plainly in conflict with the Labor Code's wage provisions, and Respondents have not shown otherwise.

In this same vein, Respondents also note that section 4019.3 may limit what the County's Board of Supervisors may do when compensating inmates, but it does not constrain the compensation Aramark pays. (RAB 23.) But Proposition 139 expressly left to county boards the authority to set by ordinance compensation for work-program participation. (Cal. Const., art. XIV, § 5, subd. (a).) Section 4019.3 constrains the ordinances the

County may enact. It thus constrains the compensation pre-trial detainees may receive.

Moreover, Respondents have sued the *County* for payment of minimum wages, not just Aramark. So their argument regarding Aramark's freedom from constraint under section 4019.3 does not help their case here.

Respondents are wrong to suggest that their wage claims can be reconciled with section 4019.3.

III. Respondents' attempt to reconcile their wage claims with Proposition 139 also fails.

As set forth in the County's Opening Brief, Proposition 139 granted counties express and exclusive authority to determine whether and how much to pay inmates who participate in public-private work programs, without regard to conviction status. (COB 21-23, 32-34.) Despite that, Respondents argue that Proposition 139 does not govern work by non-convicted inmates. (RAB 24.) Their arguments fail to support that assertion.

For example, Respondents note that Proposition 139 makes no mention of pre-trial detainees and omits any prescription of wages in the absence of a county ordinance. (RAB 24.) From this, they draw the conclusion that Proposition 139 does not apply to them and their work. (*Ibid.*)

As discussed in the County's Opening Brief, however, this argument lacks any legal support. (COB 32-34.) No relevant law differentiates between convicted and non-convicted county inmates. (*Ibid.*) Yet, when a law is intended to apply only to convicted inmates, it draws the distinction explicitly. (See, e.g.,

Pen. Code, § 4017 [authorizing local governments to require *convicted* inmates to participate in specified work activities].) This demonstrates intent not to distinguish based on conviction status where, as in the laws relevant to this case, statutes do not draw that distinction expressly. Where voters and the Legislature could have, but chose not to, distinguish between different types of county inmates, the courts should not do so either.

Attempting to show otherwise, Respondents argue that there is some contradiction in Petitioners' arguments. (RAB 24-25.) They characterize Petitioners as arguing that the Labor Code *does not* apply to non-convicted inmates because it does not mention them expressly, and that Proposition 139 *does* apply to non-convicted inmates because it does not mention them expressly. (*Ibid*.)

Respondents misunderstand Petitioners' arguments. The County's position is that none of the relevant laws differentiate pre-trial detainees from convicted county inmates. (COB 32-34.) The Labor Code does not generally apply to any incarcerated person; it applies only when it does so expressly. (See Section I, *supra*; COB 39.) And the Labor Code cannot mandate wages for work by any incarcerated person, because sections 2717.8 and 4019.3 are more specific and in conflict. (See Section II.D, *supra*; COB 38-40.) Proposition 139, in turn, defines the terms of work for *all* incarcerated persons, differentiating only between state and county prisoners. (COB 21-23, 32-34.) The absence of any expressed distinction on the basis of conviction status reveals no

intent to differentiate on that basis. (*Ibid.*) There is nothing inconsistent about these arguments.

Respondents next assert that Proposition 139's policy objectives would be advanced by their reading of the law. (RAB 25-26.) They emphasize, as did the district court, that Proposition 139 sought to provide compensation for working inmates in state prison. (RAB 25-27, discussing Penal Code, § 2717.8.) As they acknowledge, however, Petitioners highlighted this fact as evidence that Proposition 139 accomplishes its policy objectives through enactment of express constitutional and statutory provisions. (RAB 25-26; AOB 23; COB 37.) The Court should not infer a requirement from intent that the voters decided not to incorporate into an express statute. (*Ibid.*)

Still, Respondents say Petitioners' argument in this regard overlooks two points. First, Respondents repeat their argument that by enacting express wage requirements for state prisoners, in the form of section 2717.8, voters demonstrated their belief that payment of wages to inmates was consistent with the law's objectives. (RAB 26.) But Petitioners' arguments did not overlook that. (See COB 26-27.) As the County argued, section 2717.8 merely confirms that the voters enacted specific wage requirements when they intended to provide them. (*Ibid.*) And Proposition 139's ballot materials confirm voters' intent to prescribe specific wages—and related reductions—for state prisoners, while prescribing no specific financial terms for county inmates. (See 3 ER 503; see also *Legislature v. Eu* (1991) 54

Cal.3d 492, 504 [holding ballot pamphlets form part of the legislative history relevant to construing ballot initiatives].)

Second, they say Petitioners' discussion of Proposition 139's policy objectives is inapt because the goal of compensating crime victims is not relevant to pre-trial detainees. (RAB 26.) Their argument in this regard fails to fully confront the County's arguments that (1) Proposition 139 sought to balance a range of different policy objectives, of which victim compensation was only one, and (2) it did so through enactment of express requirements, not by inference. (COB 22-24.) The fact that one of those policy objectives may not be relevant to pre-trial detainees does not support the conclusion that Proposition 139 is inapplicable to their work or that the Labor Code governs in its place.

Further attempting to align their claims with Proposition 139, Respondents argue that requiring payment of minimum wages under the Labor Code *could* advance Proposition 139's objective of supporting inmate families. (RAB 26-27.) That is hypothetically true. But again, the voters who enacted Proposition 139 did not leave it to state inmates to decide whether to use their wages to support their families; they enacted specific provisions allowing deductions from inmate wages for family support under specific circumstances. (Pen. Code, § 2717.8.) In other words, when voters sought to achieve a policy objective, they did so through express enactments carefully designed to balance competing policy objectives and address the realities of incarceration. Superimposing the Labor Code on this

system, as Respondents seek to do, will disrupt rather than advance that balance.

Next, Respondents also argue that requiring payment of minimum wages will not reduce work opportunities for county inmates, and so would not be contrary to Proposition 139's policy objective to increase such opportunities. (RAB 27.) Their argument in this regard, however, is based on neither facts nor logic. The County could as easily speculate that such wage requirements will reduce the incentives for private companies to provide these valuable training opportunities for inmates, rather than work with non-incarcerated employees who, because of their prior training, require less supervision. Dueling speculation aside, the fact remains that nothing in Proposition 139's text or history suggests voters believed their policy objectives would be advanced by requiring payment to county inmates of wages set by the Labor Code.

Finally, it bears emphasizing that Respondents mischaracterize the County's argument when they attribute to them the position that "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." (RAB 24.) The County has been clear that it does not believe Respondents can be or are *forced* to participate in this or any other work program. (COB 35.) If Respondents ultimately prove that they have been forced to work, they will have a constitutional remedy. (*Ibid*.) The question before this Court is thus whether the Labor Code governs work by inmates who *choose* to participate. It does not,

for the reasons discussed, and Respondents' rhetoric should not persuade the Court otherwise.

CONCLUSION

Respondents' work in the County-Aramark program is governed by Proposition 139 and Section 4019.3, not by the Labor Code. They have not shown otherwise in their briefing. This Court should answer the question posed by the Ninth Circuit in the negative, holding that pre-trial detainees who participate in a public-private work program are not entitled to wages prescribed by the Labor Code in the absence of a county ordinance.

DATED: May 2, 2023 HANSON BRIDGETT LLP

By: 

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County of Alameda and
Gregory J. Ahern, Sheriff

WORD COUNTY CERTIFICATION

I, Adam W. Hofmann, counsel for petitioners County of Alameda and Sheriff Gregory J. Ahern, hereby certify that, according to Microsoft Word, the computer program used to prepare this Respondent's Brief, the number of words in the document, including footnotes, is 5,198, exclusive of caption, tables, signature block, and this certification.

DATED: May 2, 2023

ADAM W. HOFMANN

PROOF OF SERVICE

Ruelas v. County of Alameda et al.
California Supreme Court Case No. S277120

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 500 Capitol Mall, Suite 1500, Sacramento, CA 95814.

On May 2, 2023, I served true copies of the following document described as **COUNTY OF ALAMEDA AND SHERIFF GREGORY J. AHERN'S REPLY BRIEF ON THE MERITS** on the interested parties in this action as follows:

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Executed on May 2, 2023, at Sacramento, California.

Emily P. Griffing

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California Supreme Court Case No. S277120

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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RUELAS v. COUNTY OF ALAMEDA**
Case Number: **S277120**
Lower Court Case Number:

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5/2/2023

Date

/s/Emily Griffing

Signature

Hofmann, Adam Wolff (238476)

Last Name, First Name (PNum)

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