No. S277120

IN THE SUPREME COURT OF CALIFORNIA

ARMIDA RUELAS, et al.,
Respondents,

vs.

COUNTY OF ALAMEDA, et al.,
Petitioners.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE NO. 21-16528

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE NO. 4:19-CV-07637-JST
HONORABLE JON S. TIGAR

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INTRODUCTION

There are three fundamental shortcomings in Respondents' argument that they are entitled to the full measure of minimum and overtime compensation under the Labor Code.

First, Respondents never provide a persuasive reason why section 4019.3 of the Penal Code does not govern their work in the Santa Rita Jail kitchen. That provision governs work by "prisoner[s] confined in or committed to a county jail" performed "in such county jail." (Pen. Code, § 4019.3.) Respondents do not dispute that they are persons confined in a county jail, or that they performed work, as alleged, within that county jail. The straightforward conclusion is that section 4019.3, which vests county boards of supervisors with authority to prescribe wages up to a statutory maximum level that is well below the Labor Code's minimum wage rate, applies here.

Respondents' attempts to avoid that straightforward conclusion fall short. They contend, for example, that section 4019.3 is inapplicable because the clause "in such county jail" should be read to mean "for such county jail." (Respondents' Answering Brief at pp. 17–18 (hereafter Answering Br.).) That argument is at odds with the statute's plain text, the broader statutory context, and the legislative history—which show that section 4019.3 governs *all* work performed by incarcerated persons within the confines of a county jail. Respondents equally miss the mark in asserting that the Penal Code chapter in which section 4019.3 is situated "refers only to public works programs." (*Id.* at pp. 18–19.) Only two of the seventy-two statutes in the relevant Penal

Code chapter mention "public works," showing that the Legislature knows how to limit specific provisions to such programs *and* that the remaining seventy provisions are not limited in that fashion. A "public works" restriction would also deprive many incarcerated persons of important rights, for example by restricting good-time credits authorized by a neighboring provision only to individuals participating in public works programs. Respondents never acknowledge those consequences or address the broader effects their "public works" limitation would have on a broad range of Penal Code provisions.

Second, Respondents fail to rebut Petitioners' showing that the Penal Code's compensation scheme precludes application of the Labor Code's minimum and overtime wage requirements. Those frameworks conflict with one another because the Penal Code *permits* county boards of supervisors to provide compensation rather than *mandating* compensation, prescribes a *maximum* wage rate that is well below the Labor Code's *minimum* wage rate, and allows *each county* to make its own compensation decisions rather than applying a uniform *statewide* rule. This Court's precedent dictates that the more specific provision—here, Penal Code section 4019.3—controls in that scenario.

Respondents' counterarguments on that point do not withstand scrutiny. Although Respondents cite cases in which general and specific provisions could both be applied because there was no "inherent antagonism" between them, those cases are immaterial in light of the conflicts explained above. Respondents also point out that section 4019.3 "is permissive" and speaks to

"how the board of supervisors 'may' act, not how it is required to act." (Answering Br. at pp. 21.) But that point undercuts, rather than supports, Respondents' argument: If a county government *may* elect to provide compensation up to a statutory maximum of two dollars per eight hours worked, it makes no sense to say (as Respondents do here) that the same county government *must* provide a much higher level of compensation.

Respondents seek to make up for these shortcomings by invoking policies underlying the Labor Code and other compensation schemes, such as those applicable to state prisoners. Respondents identify reasons why the law *should*, in their view, guarantee compensation for incarcerated persons who perform work in county jails. These policy arguments may implicate weighty and important interests, but they are properly directed to the Legislature rather than this Court, particularly given the clear and specific language in Penal Code section 4019.3. Respondents' policy arguments concerning Proposition 139 fare no better. The drafters of Proposition 139 considered the policies cited by Respondents and chose to amend the compensation laws only for persons incarcerated in state prisons, leaving in place the Penal Code's permissive framework for persons incarcerated in county jails. The voters thus chose to continue the legislative policy, embodied in section 4019.3, of delegating questions of compensation for persons incarcerated in county jails to the county officials charged with operating those jails.

Third, Respondents never address the inconsistency their interpretation would create between the compensation rules for

persons incarcerated in state prisons and county jails. With respect to state prisons, the Penal Code provides that incarcerated persons may (depending on the nature of their work) earn either "one-half the minimum wage" (Pen. Code, § 2811), or prevailing market wages "subject to deductions" of up to "80 percent of gross wages" for "room and board" and other charges (Pen. Code, § 2717.8). Incarcerated persons working in state prisons thus are not entitled to the full minimum and overtime wage rates established by the Labor Code. Yet according to Respondents, those rates would govern work performed by persons incarcerated in county jails, without any deductions. Respondents have not explained why it would make sense for much higher wage rates to apply in county jails than state prisons, and that outcome would be particularly incongruous given the fact that county governments lack the resources available to the State.

For these reasons, and those set forth below and in the County's brief, we respectfully submit that the answer to the certified question is "no."

ARGUMENT

Respondents' answering brief is notable for the arguments it does *not* raise. Respondents concede that Penal Code section 4019.3 adopts a permissive compensation scheme under which county boards of supervisors need not—and in the case of Alameda County, did not—provide monetary compensation for persons incarcerated in county jails. (See Answering Br. at p. 21.) Likewise, Respondents do not dispute that section 4019.3 is

more specific than the Labor Code's generally-applicable minimum wage and overtime provisions. Most notably, Respondents do not advance any statutory argument for why section 4019.3 applies to convicted persons but not non-convicted persons—the central distinction at issue on appeal. They entirely ignore the California Attorney General's explanation that section 4019.3 "applies to pre-sentence as well as post-sentence work time." (57 Ops.Cal.Atty.Gen. 276, 283 (1974); see also Aramark Opening Br. at p. 50.)

Instead, Respondents focus on whether they could adequately plead an employment relationship under the Labor Code in a hypothetical world in which the Penal Code and Proposition 139 did not exist. (See Answering Br. at pp. 10–13.) This argument puts the cart before the horse. There is no need to reach the question whether Respondents have adequately pleaded an employment relationship for purposes of the Labor Code if the Labor Code does not apply as a threshold matter. Because application of the Labor Code's minimum and overtime wage provisions to Respondents cannot be reconciled with the Penal Code and Proposition 139, the Court need not address the subsidiary question of an employment relationship.[1] (See, e.g., *People v.*

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[1] Although Respondents invoke *Leyva v. Medline Industries Inc.* (9th Cir. 2013) 716 F.3d 510, 515 (hereafter *Leyva*), for the proposition that the "[t]he California Labor Code protects all workers," that statement is both dicta and inapposite. The Court in *Leyva*—a case about certification of a putative class of hourly employees working in a company's warehouses—did not consider (and had no

Jones (1993) 5 Cal.4th 1142, 1152 (declining to reach issue that was unnecessary to "resolve the specific question . . . before us").

As for the Penal Code and Proposition 139, Respondents advance three unsustainable arguments: (1) Penal Code section 4019.3 does not apply here (see Answering Br. at pp. 16–21); (2) Penal Code section 4019.3 does not conflict with the Labor Code's minimum and overtime wage provisions (see Answering Br. at pp. 21–23); and (3) the policies underlying Proposition 139 and other laws, including the Thirteenth Amendment, support applying the Labor Code's minimum and overtime wage provisions to Respondents' alleged work (see Answering Br. at pp. 12–13, 24–27). We address each of those flawed arguments in turn below.

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reason to consider) the scope of the Labor Code, let alone whether the Labor Code's minimum and overtime wage provisions apply to work performed by persons incarcerated in county jails. Moreover, contrary to Respondents' selective quotation, the Court in *Levya* was merely noting that the Labor Code's application does not turn on a person's "immigration status or financial resources"—factors that are not at issue here. (*Leyva*, *supra*, 716 F.3d 510 at p. 515 ["The California Labor Code protects all workers *regardless of their immigration status or financial resources*." (italics added)].)

Respondents' argument concerning cases interpreting the federal Fair Labor Standards Act ("FLSA") is similarly beside the point. (See Answering Br. at pp. 15–16.) Contrary to Respondents' argument, Aramark does not contend that the FLSA's definition of employment applies here. Nevertheless, the fact that federal cases uniformly recognize that non-convicted persons are not employees under the FLSA lends support for the general reasonableness of the Legislature's policy judgment in enacting section 4019.3's permissive compensation scheme.

I. Respondents Cannot Evade Section 4019.3's Plain Language.

Although Respondents raise a series of arguments for why Penal Code section 4019.3 does not apply to the work they allegedly performed in the Santa Rita Jail kitchen, each of those arguments is misguided. (Answering Br. at pp. 16–21.)

A. Respondents' Arguments Concerning the Statutory Clause "In Such County Jail" Are Meritless.

Respondents claim that section 4019.3 is inapplicable because the statutory clause "work done . . . in such county jail" should be construed as "work done . . . *for* such county jail," and they did not perform work for the Santa Rita Jail. (Answering Br. 17–17, italics added.) Both arguments are incorrect.

Respondents' lead argument inappropriately seeks to rewrite the plain terms of the statute. "When interpreting statutes," this Court "begin[s] with the plain, commonsense meaning of the language used by the Legislature." (*Riverside Cnty. Sheriff's Dep't v. Stiglitz* (2014) 60 Cal.4th 624, 630, quotation marks and citation omitted.) As a matter of common sense and everyday usage, "work done . . . in such county jail" does not mean "work done . . . for such county jail." Rather, the word "in" refers to *where* the work is performed. (See "in, *prep*." OED Online, Oxford University Press, https://www.oed.com/view/Entry/92970 [as of Apr. 25, 2023] [defining "in" as "[e]xpressing the situation of something that is or appears to be enclosed by something else: within the limits or bounds of, within (any place or thing)"]; see also, e.g., *Mendez v. Rancho Valencia Resort Partners, LLC* (2016)

3 Cal.App.5th 248, 275 [affording the term "in" its ordinary meaning of "inside," and declining to construe it as "on"].) The kitchen work at issue in this case was undisputedly done "in" the Santa Rita Jail. (See 2-ER-285, 286 [Amended Complaint].)

Respondents argue, however, that affording the term "in such county jail" its ordinary meaning would violate the canon against superfluity, in light of the preceding statutory clause "each prisoner confined in or committed to a county jail." (Answering Br. at p. 18.) Not so. The phrase "in such county jail" (meaning *where* the work is done) is not the same as the phrase "each prisoner confined in or committed to a county jail" (meaning *who* does the work). And, there is nothing superfluous in the Legislature specifying both who does the work and where the work is performed.

Section 4019.3's legislative history provides further support for giving the text its ordinary meaning. Before section 4019.3 was enacted in 1959, persons incarcerated in county jails could be paid a small wage if they worked on county industrial road farms or camps. (See Aramark Opening Br. at pp. 15–16 [describing history of Penal Code sections 4125 and 4126].) Recognizing that those laws applied to work done *outside* of a county jail, the Legislature enacted section 4019.3 to allow (but not require) boards of supervisors to likewise pay a small wage to incarcerated persons who performed work *in* county jails. (See *ibid.*, citing 9th Cir. No. 21-16528, ECF No. 40, Ex. A [Analysis of Senate Bill 1394 (June 10, 1959)].) Indeed, the Legislature expressly referred to work performed in the county "*jail kitchens*, laundry or

various maintenance assignments" when enacting section 4019.3. (*Ibid.*, italics added, citation omitted.) Work performed in the Santa Rita Jail kitchen thus falls squarely within the scope of the phrase "in such county jail."

Respondents' related argument—that they did not perform work "for" the Santa Rita Jail—is therefore legally irrelevant. But, in any event, this claim is also incorrect as a factual matter. Respondents' work was allegedly performed pursuant to a contract between Aramark and the County under which meals prepared in the Santa Rita Jail kitchen are provided to the Jail's inmate population. (2-ER-193, 197–202; 2-ER-284.) Most of Respondents' alleged work thus involved a core element of the jail's day-to-day operation, and was certainly performed *for* the jail. With respect to the limited number of meals prepared in the Santa Rita Jail kitchen that went to other county jails, the County received commissions for those meals. (9th Cir. No. 21-16528, ECF No. 18 at pp. 13–14.) The commissions, in turn, offset the County's costs of operating the Santa Rita Jail—one of the central purposes of Proposition 139. (See 1990 West's Cal. Legis. Service Prop. 139, § 2 [listing "reimburse[ment] . . . [of] counties for a portion of the costs associated with their incarceration" as a purpose of Proposition 139].) In short, there is no aspect of Respondents' alleged work in the Santa Rita Jail kitchen that was not *for* the Santa Rita Jail. Thus, Respondents' repeated claim that the alleged work at issue was done solely for a private entity is both irrelevant and unsupported by their own allegations and the record on appeal.

B. Respondents' "Public Works" Argument Has No Basis in the Statutory Text and Would Strip Incarcerated Persons of Important Rights.

Respondents next assert section 4019.3 does not apply here because Penal Code Part 3, Title 4, Chapter 1 (hereafter Chapter 1), which encompasses section 4019.3, "refers only to public works programs." That purported limitation is dispositive, Respondents claim, because their alleged work did not constitute "public works." (Answering Br. at pp. 19–21.)

The premise of Respondents' argument is flawed because there is no evidence that Chapter 1, titled "County Jails," is limited to public works programs. Chapter 1 includes 72 sections, only two of which refer to "public works." In particular, Penal Code section 4017 provides that *convicted* persons may be *required* to perform "labor on the public works," which is defined as work that "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." (Pen. Code, § 4017.) In addition, Penal Code section 4018 states that county boards of supervisors may prescribe rules and regulations governing such labor. (See Pen. Code, § 4018.) These provisions in no way preclude incarcerated persons from performing other types of work, let alone create an implied public works limitation in Penal Code section 4019.3 or the dozens of other statutes in Chapter 1 that make no mention of public works programs.

Indeed, even Penal Code section 4017 itself is not limited to "public works." Beyond providing that convicted persons may be

required to perform labor on the public works, section 4017 applies the Labor Code's workers' compensation protections to incarcerated persons who perform certain firefighting work, which is different from "labor on the public works." (Pen. Code, § 4017; see *Parsons v. Workers' Comp. Appeals Bd.* (1981) 126 Cal.App.3d 629, 634 ["The phrase 'labor on the public works' [in section 4017] refers only to the type of labor which may be required of prisoners by the board of supervisors or city council; it does not mean such labor is covered by workers' compensation."].) This Court need look no further than the provision cited by Respondents for an example of a Chapter 1 statute that reaches beyond public works programs.

What is more, the contrast between the references to "public works" in the provisions cited by Respondents and the rest of Chapter 1 undermines, rather than supports, Respondents' argument for an implied public works limitation. By adopting rules expressly limited to public works programs in sections 4017 and 4018, but omitting similar language in section 4019.3 and other parts of Chapter 1, the Legislature showed that it knew how to restrict the scope of its laws governing the operation of county jails to public works, but decided not to do so in section 4019.3. (See, e.g., *People v. Cole* (2006) 38 Cal.4th 964, 979 [explaining that, "[h]ad the Legislature intended" a proffered statutory reading, "it no doubt would have included similar language" as in a neighboring provision, and the fact "[t]hat the Legislature did not include such language suggests it did not intend" that proffered reading]; *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257,

266–267 [similarly finding the "absence of language" in one provision that was included in another provision "telling"].)

The "public works" limitation advocated by Respondents would also strip many incarcerated persons of important statutory rights. Section 4019—which allows persons incarcerated in county jails to earn good-time credits (including during pre-conviction confinement) in exchange for satisfactorily performing work—illustrates the point. Section 4019 does not mention public works programs. But if section 4019 were limited to public works programs, as Respondents contend, persons incarcerated in county jails performing *other* types of work would be ineligible to earn good-time credits. The same problem would arise throughout Chapter 1: provisions that on their face provide *all* persons incarcerated in county jails with important benefits would instead apply only to the subset of persons who participate in public works programs. (See, e.g., Pen. Code, §§ 4019.1 [allowing county jails to grant "additional time credits" for completion of certain "job training programs"], 4019.2 [similar provision regarding completion of "approved rehabilitative programming"], 4026 [authorizing county officials to permit prisoners to manufacture "small articles of handiwork," sell the handiwork to the public, and receive a portion of the sale price].)

Respondents never acknowledge the far-reaching effects of their "public works" argument or explain why it would make sense to graft such a limitation onto each and every one of Chapter 1's provisions. Interpreting section 4019.3 according to its plain meaning, in contrast, avoids that problem.

In any event, Respondents' argument would fail even if section 4019.3 were restricted to public works programs. As noted above, Penal Code section 4017 defines "labor on the public works" as "includ[ing] clerical and menial labor in the county jail." (Pen. Code, § 4017.) Respondents allegedly performed menial labor in the Santa Rita Jail kitchen (and, as explained above, such work directly benefited Alameda County). Thus, even under Respondents' erroneous view of the law, Penal Code section 4019.3 would apply to Respondents' alleged work.

C. Respondents' Arguments Concerning the Identity of the Alleged Employer Also Fail.

Respondents are equally off base in arguing that Penal Code section 4019.3 does not apply where, as here, incarcerated persons allegedly perform work in part for a county's duly authorized contractor.[2]

First, contrary to Respondents' suggestion (Answering Br. at p. 23), the fact that section 4019.3 does not specifically mention private employers does not mean that such employers are excluded from the scope of the statute. Indeed, section 4019.3 does not mention the identity of the employer at all: Although the statute authorizes the "board of supervisors" to set compensation rates, the rest of the provision focuses on *who performs* the work

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[2] Respondents have alleged that the County and Aramark are joint employers. (See, e.g., 1-ER-27 [District Court ruling that Respondents adequately alleged an employment relationship with the County Defendants]; see also N.D. Cal. No. 4:19-CV-07637-JST, ECF No. 54 at pp. 10–12 [Plaintiffs' Opposition to County's Motion to Dismiss].)

("prisoner[s] confined in or committed to a county jail") and *where* the work is performed ("in such county jail"). There is no dispute that Respondents were "prisoner[s] confined in or committed to a county jail," or that they allegedly performed work "in such county jail." Respondents are therefore subject to section 4019.3.

Second, Respondents argue that, because the legislative history of section 4019.3 mentions certain types of work—specifically, "work[] in the jail kitchens, laundry, or various maintenance assignments"—that could also fall under the statutory definition of "public works," the Legislature did not intend section 4019.3 to govern public-private work programs. (Answering Br. at p. 20, citation omitted.) As noted above, however, the Senate Analysis cited by Respondents referred to these types of work merely as examples of work that may be performed by incarcerated persons *in* a county jail, rather than outside the county jail on road camps or farms. (See Analysis of Senate Bill 1394 (June 10, 1959) ["Prisoners 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."].) Nothing about the Senate Analysis (or any other legislative history) suggests that the drafters of Penal Code section 4019.3 intended to limit the scope of the statute in the manner Respondents claim. Regardless, the text of section 4019.3 is sufficiently clear that the legislative history could not alter its scope. (See, e.g., *In re Steele* (2004) 32 Cal.4th 682, 694 ["legislative history . . . cannot change the plain meaning of clear language"].)

Third, Respondents argue that, because public-private county jail work programs were not authorized when Penal Code section 4019.3 was enacted in 1959, section 4019.3 cannot apply here.[3] (Answering Br. at pp. 21–22.) That argument suffers from a fatal flaw: the fact that the Legislature "did not consider [a] statute's application to the setting at issue" does not preclude the statute from applying to that setting. (Aramark Opening Br. at pp. 56–57, quoting *Los Angeles Unified School District v. Garcia* (2013) 58 Cal.4th 175, 192 (hereafter *Garcia*); see also *People v. Bell* (2015) 241 Cal.App.4th 315, 344 (hereafter *Bell*) ["[E]ven when a legislature likely would have enacted a differently-worded law had it foreseen future developments, any statutory

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[3] The premise that the alleged work at issue in this appeal would have been prohibited in 1959 is far from certain. The relevant constitutional bar, repealed by Proposition 139, provided that "[t]he 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 the working of convicts for the benefit of *the State*." (Cal. Const., art. X, § 6 (1959), italics added.) Given the reference to "convicts" and "the State," the constitutional bar may well not have applied to work performed by persons (or at least non-convicted persons) in *county* jails. (See *Copeland v. Kern Cnty.* (1951) 105 Cal.App.2d 821 [noting uncertainty as to this issue but ruling on other grounds]; cf. also *Pitts v. Reagan* (1971) 14 Cal.App.3d 112, 115 [enforcing the constitutional bar in the context of *state* prisoners harvesting crops for private companies, while separately noting that "[i]t has been the practice in California, at least in some areas, for 'local county prisoners' to aid in crop harvesting during periods when a farm labor shortage was believed to exist"].) In any event, there is no need for the Court to reach the issue, since Respondents' arguments fail for the reasons stated in the text.

revision reflecting that reality must come from that legislature, not the judiciary."].) Although Aramark pointed out that principle in its opening brief, Respondents do not address *Bell*, *Garcia*, or any of the other "countless cases" in which courts have "refus[ed] to read an exception into a statute merely because a particular application was likely unanticipated by the enacting legislature." (*Bell*, *supra*, 241 Cal.App.4th at p. 344.) The rule stated in *Bell* and *Garcia* is particularly relevant here because the drafters of Proposition 139 could have included an amendment to 4019.3 as part of the initiative, but instead chose only to amend the compensation scheme applicable to persons incarcerated in *state* prisons.

II. Penal Code Section 4019.3's Compensation Scheme Precludes Application of the Labor Code's Minimum and Overtime Wage Requirements.

Respondents next argue that, if Penal Code section 4019.3 applies, it still does not preclude application of the Labor Code's minimum and overtime wage provisions because section 4019.3 "is permissive" rather than mandatory. (Answering Br. at pp. 21–23.) That argument fails to account for the principle that specific statutes govern over general provisions where, as here, the two bodies of law conflict with one another.[4] (See *Lopez v. Sony Elecs., Inc.* (2018) 5 Cal.5th 627, 634–35 (hereafter *Lopez*).)

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[4] Respondents also have no answer for Aramark's separate argument that application of the Labor Code's minimum and overtime wage provisions would render Penal Code section 4019.3 superfluous. (See Aramark Opening Br. at pp. 29–30.)

As explained in Aramark's opening brief, section 4019.3's permissive nature—*i.e.*, the fact that boards of supervisors need not authorize any compensation—is one source of conflict (among others) with the Labor Code, not a basis for finding harmony. (See Aramark Opening Br. at p. 31.) Moreover, Respondents overlook that section 4019.3 also prohibits county boards of supervisors from authorizing compensation in excess of two dollars for each eight hours of work. It would defy common sense to conclude that the Legislature enacted a specific compensation scheme permitting county boards of supervisors to authorize compensation capped at a level well *below* the Labor Code's minimum and overtime wage rates for persons incarcerated in county jails, if the Labor Code's compensation rates already applied in this context. (See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1122 ["The court will apply common sense to the language at hand."].)

Respondents' attempt to distinguish *Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718 (hereafter *Stoetzl*) is equally unpersuasive. Respondents assert that *Stoetzl* is distinguishable because "the more specific provision there *conflicted* with the Labor Code in the context of wages for state employees" (Answering Br. at p. 22, italics original)—but Respondents do not explain why a similar conflict does not exist here. In fact, the specific delegating statute in *Stoetzl* was, like Penal Code section 4019.3, permissive in nature, providing that the California Department of Human Resources "is authorized to provide for overtime payments." (*Stoetzl*, *supra*, 7 Cal.5th 718 at p. 748; see also,

e.g., *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 506 [statute providing that the Department of Transportation "shall have the authority" to withhold building permits in certain circumstances was a "permissive statement"].) As in *Stoetzl*, Penal Code section 4019.3 supersedes the Labor Code's conflicting and more general minimum and overtime wage provisions.

The two cases that Respondents rely upon also do not support their position. In *Cohn v. Isensee*, the Court of Appeal found "no inconsistency" between the general and specific election provisions at issue. ((1920) 45 Cal.App.531, 537.) The general provision required blank spaces for write-in candidates to be included on all ballots, while the specific provision included certain requirements for ballots to be used in city recall elections, but was silent on the issue of write-in spaces. (See *id.* at pp. 533–536.) The Court held that the general provision's requirement regarding write-in spaces also applied in the specific context of city recall elections, given that the general and specific provisions were consistent with each other. (See *id.* at pp. 534, 537.) In other words, the two provisions could be simultaneously applied without any conflict. Here, in contrast, the Labor Code and section 4019.3 are mutually exclusive of one another because it is impossible to comply with both at the same time (*e.g.*, incarcerated persons cannot be subject to both a statutory *minimum* wage of $15 per hour and a statutory *maximum* wage of $2 per each eight hours of work). (See Aramark Opening Br. at pp. 30–33.)

Respondents' suggestion that this case is akin to *Anderson v. Sherman* (1981) 125 Cal.App.3d 228, fails for similar reasons.

Anderson, in stark contrast to this case, involved general and specific statutes that included "compatible alternatives" for service of process. (*Id.* at p. 230.) In fact, the Legislature's comments on the general service-of-process statute recognized that "special methods for effectuating service that are authorized by other statutes of this state *may* be used in appropriate instances." (*Id.* at p. 236*,* italics added, quoting Code Civ. Proc., § 413.10.) The Court in *Anderson* thus determined that the general service-of-process provisions were not superseded by the specific alternative methods of process. (See *id.* at p. 237.) In this case, however, Penal Code section 4019.3's permissive compensation scheme for persons incarcerated in county jails is *in*compatible with the Labor Code's minimum wage and overtime requirements.

III. Respondents' Remaining Arguments Do Not Justify Applying the Labor Code's Minimum and Overtime Wage Provisions Here.

Respondents advance several arguments for why Proposition 139 and other laws support applying the Labor Code's minimum and overtime wage requirements to the work alleged in this case. (Answering Br. at pp. 24–25.) These arguments, too, should be rejected.

A. Respondents' Arguments Concerning Proposition 139's Text and Policies Are Meritless.

Respondents do not dispute that Proposition 139 expressly altered the existing compensation scheme only for persons incarcerated in *state* prisons, nor do they dispute that Proposition 139

delegates the operation of public-private county jail work programs to county officials. (See Aramark Opening Br. at pp. 41–44, 52.) Instead, Respondents point to the fact that Proposition 139 does not specifically mention work performed by non-convicted persons. (Answering Br. at p. 24.) But that is irrelevant. Proposition 139 likewise does not specifically refer to work performed by *convicted* persons. Rather, it applies to *all* "inmates"—*i.e.*, all incarcerated persons—in state prisons and county jails, regardless of conviction status. (1990 West's Cal. Legis. Service Prop. 139.) Thus, the absence of language in Proposition 139 separately and specifically addressing work performed by non-convicted persons is not a basis to conclude that the voters intended the Labor Code to apply to non-convicted persons.

Indeed, as noted above, the only distinction Proposition 139 makes between incarcerated persons is through the creation of a new compensation framework, codified in Penal Code section 2717.8, for persons incarcerated in state prisons but not county jails. That distinction demonstrates that the voters were aware of how to alter the existing compensation frameworks but chose to keep in place Penal Code section 4019.3's framework in the county jail context. (See Aramark Opening Br. at pp. 43–44, 52.)

Respondents argue, however, that Proposition 139's creation of a new compensation scheme for persons incarcerated in state prisons shows that the drafters of Proposition 139 also intended to provide compensation to persons incarcerated in county jails. In effect, Respondents ask this Court to implement this unexpressed voter intent and redraft Proposition 139 on policy

grounds. (Answering Br. at p. 26.) This Court, however, does not "speculate that the Legislature meant something other than what it said, and rewrite a statute to posit an unexpressed intent." (*Siry Inv., L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 366, cleaned up; see also *People v. Lopez* (2020) 51 Cal.App.5th 589, 597 ["When we interpret an initiative, we apply the same principles governing statutory construction."].) So too, here, Proposition 139 may not be judicially rewritten to alter section 4019.3's compensation scheme for persons incarcerated in county jails, based on the unexpressed voter intent claimed by Respondents.

Likewise, as to Respondents' policy arguments, "[w]here the application of firmly established rules of statutory construction establish a[n] [initiative's] meaning, [this Court] may not rest [its] decision on the weighing and balancing of public policy considerations." (*Skidgel v. California Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 26 (hereafter *Skidgel*), citation and quotation marks omitted.) The drafters of Proposition 139 considered the policies invoked by Respondents, as well as other policies *not* mentioned by Respondents—such as the policy of reducing the costs of incarceration (see 1990 West's Cal. Legis. Service Prop. 139, § 2)—and, in the context of county jails, chose to retain the Penal Code's compensation scheme authorizing counties to make their own compensation decisions.

At bottom, Respondents' policy arguments amount to contentions that, in Respondents' view, the law *should* entitle persons incarcerated in county jails to minimum and overtime wages

under the Labor Code—not that the law *does* entitle them to Labor Code wages. While these contentions may implicate legitimate policy considerations (in addition to policy considerations not addressed by Respondents), they must be must directed to the Legislature, not this Court. (See *Presbyterian Camp & Conf. Centers, Inc. v. Superior Court* (2021) 12 Cal.5th 493, 516 ["To the extent that Presbyterian believes the wildfire context requires a different balancing of policy goals, it may address its concerns to the Legislature, which has made deliberate decisions about how to allocate risks and balance competing interests in this arena."]; *Skidgel*, *supra*, 12 Cal.5th 1 at p. 27 ["[P]laintiff's argument that the statutes could or should have been written differently is more appropriately addressed to the Legislature." (cleaned up)].)

As for the policy considerations not mentioned by Respondents, Respondents' approach would also depart from Proposition 139 in another important way: It would impose on counties a statewide compensation scheme that lacks the substantial deductions (*i.e.*, up to 80 percent off of prevailing wages) that apply in the context of public-private work programs in state prisons under Penal Code section 2717.8. (See Aramark Opening Br. at pp. 43–44.) In other words, while the Penal Code dictates that persons incarcerated in state prisons earn much less than the Labor Code's minimum and overtime wage rates, Respondents' argument would entitle persons incarcerated in county jails to the full amount of those rates, without any deductions. There is nothing to suggest the voters who approved Proposition 139 intended to adopt that inconsistent scheme, which would impose *higher* costs

on counties than on the State, even though counties lack the resources available to the State.

As with the other shortcomings noted above, Respondents do not acknowledge this consequence of their argument or explain why the voters would adopt such a regime. Nor do Respondents acknowledge that their position, if adopted, would undermine the discretion afforded to county governments under Proposition 139 and Penal Code section 4019.3 regarding matters of county jail operation. (See *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 664 ["courts should proceed cautiously lest they might unnecessarily interfere with rights of local self-governance"], aff'd sub nom. *Fisher v. City of Berkeley* (1986) 475 U.S. 260.)

B. The Absence of a County Ordinance Is Immaterial.

Respondents likewise err in suggesting that the Labor Code's minimum and overtime wage provisions apply because Alameda County has not enacted an ordinance governing compensation for the work that Respondents allegedly performed in the Santa Rita Jail kitchen. (See Answering Br. at p. 24.)

As Respondents concede (see Answering Br. at p. 21), section 4019.3 is permissive: it does not require county boards of supervisors to authorize compensation for incarcerated persons who perform work in a county jail; indeed, it does not require boards of supervisors to take any action regarding compensation. Boards of supervisors "may provide" compensation up to a statutory maximum level, but retain discretion whether to take that step. (Pen. Code, § 4019.3.)

Proposition 139 likewise does not require county boards of supervisors to enact an ordinance governing compensation. In fact, Proposition 139 does not mention compensation for persons incarcerated in county jails at all. Rather, Proposition 139 simply provides that public-private work programs covered by the initiative "shall be operated and implemented pursuant to statutes enacted by or in accordance with the provisions of the [initiative], and by rules and regulations prescribed by the Director of Corrections and, for county jail programs, by local ordinances." (See 1990 West's Cal. Legis. Service Prop. 139, § 2.) This language would, of course, require a county's Proposition 139 work program to operate pursuant to any local ordinances governing compensation for work performed as part of the program. It does not, however, require the County to enact such an ordinance, let alone suggest that the Labor Code's minimum and overtime wage provisions apply in the absence of one. Rather, consistent with Penal Code section 4019.3, section 2 of Proposition 139 reaffirms that county officials are vested with authority to make decisions regarding the operation of county jail work programs.

C. Respondents' Arguments Concerning the Thirteenth Amendment Are Meritless.

While Respondents frequently mention the Thirteenth Amendment and its prohibition against involuntary servitude (see Answering Br. at pp. 8, 12–13, 27), neither the Thirteenth Amendment nor involuntary servitude bears on the proper disposition of this appeal. The question whether Respondents can plead a Thirteenth Amendment claim—a claim which, notably, Respondents have not asserted against Aramark—is distinct

from the question of which state-law framework governs compensation for work that Respondents allegedly performed. (See Aramark Opening Br. at p. 53 & fn.13; see also, e.g., 1-ER-30 [District Court recognizing that "claims of unpaid labor are distinct from claims of forced labor"].) Respondents' claims of compelled labor remain pending in the district court,[5] but they form no part of this appeal.[6]

Indeed, despite Respondents' numerous invocations of the Thirteenth Amendment, Respondents raise only one narrow legal argument related to it. In particular, Respondents claim that the Legislature has applied specific parts of the Labor Code to incarcerated persons in state prisons because otherwise such persons, having been convicted of crimes, could be compelled to work without any protections, consistent with the Thirteenth Amendment. (See Answering Br. at pp. 12–13, citing Lab. Code, §§ 3370 [applying workers' compensation laws] and 6304.2 [applying occupa-

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[5] Following the Ninth Circuit's certification order, the District Court stayed, pending the resolution of this appeal, litigation with respect to these claims and all other aspects of the case, with one exception. On April 14, 2023, the District Court granted Petitioners' motion for terminating sanctions against the sole immigration detainee plaintiff, dismissing his individual claims with prejudice, and also deeming another plaintiff unfit to serve as class representative. (See N.D. Cal. No. 4:19-CV-07637-JST, ECF No. 150.)

[6] The fact that this appeal does not turn on a federal constitutional provision is also implicit in the Ninth Circuit's decision to certify the case to this Court. Indeed, the Ninth Circuit's Certification Order focuses exclusively on state law and does not mention the Thirteenth Amendment, or any other federal law.

tional safety and health laws].) Respondents advance this argument in an attempt to explain why the Legislature has applied specific provisions of the Labor Code to incarcerated persons in certain contexts. As Aramark has explained, the most natural interpretation of the Legislature's actions is that the Legislature understands that the Labor Code does not apply to incarcerated persons as a general matter, but has chosen to apply specific provisions of the Labor Code to incarcerated persons in certain circumstances—and has never intended to do so with respect to the Labor Code's minimum and overtime wage provisions. (See Aramark Opening Br. at pp. 40–41.) In Respondents' view, however, the Thirteenth Amendment's distinction between convicted and non-convicted persons is the reason why the Legislature applied certain provisions of the Labor Code to incarcerated persons.

Respondents do not cite any support for their theory, and it is belied by a statute that they do not address. Beyond the state-prison statutes cited by Respondents, the Legislature has also incorporated a specific Labor Code provision relating to workers' compensation in the context of *county jails*, which house convicted *and* non-convicted persons. (See Pen. Code, § 4024.2 [providing that boards of supervisors shall obtain workers' compensation insurance in accordance with section 3363.5 of the Labor Code for certain work performed in work release programs].) Contrary to Respondents' argument, the Thirteenth Amendment's distinction between convicted and non-convicted persons cannot explain away the Legislature's decision to incorporate through this statute a specific Labor Code provision in the county

jail context. In any event, as noted above, Respondents cite no authority to support their theory that the Legislature enacted statutes incorporating specific Labor Code provisions in the context of state prisons for reasons having to do with the Thirteenth Amendment. Rather, the most natural inference to be drawn from these statutes and Penal Code section 4024.2 is that the Legislature knows how to apply Labor Code provisions to incarcerated persons in both state prisons and county jails, but has chosen to do so only in narrow and well-defined circumstances. (See, e.g., *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735 ["The Legislature clearly knows how to create an exemption from the anti-SLAPP statute when it wishes to do so. It has not done so for malicious prosecution claims."].)

Moreover, Respondents' narrow Thirteenth Amendment argument regarding the purported legislative intent behind statutes incorporating workers' compensation and occupational safety and health laws is far afield from the core issue on appeal. Regardless of the Legislature's intent when enacting workers' compensation and occupational safety and health laws, the Legislature has spoken clearly on the issue of what *wage* scheme applies to incarcerated persons who perform work in county jails: Penal Code section 4019.3 specifically addresses this issue, and it does so equally for convicted and non-convicted persons. (See Aramark Opening Br. at pp. 48–50; 57 Ops.Cal.Atty.Gen. 276, 283 (1974).)

CONCLUSION

Contrary to Respondents' arguments, application of the Labor Code's minimum and overtime wage provisions to their work cannot be squared with the text, statutory context, or legislative history of Penal Code section 4019.3. The Legislature enacted section 4019.3 precisely because incarcerated persons in county jails were not already entitled to compensation under statewide minimum and overtime wage laws. The Legislature did not, in other words, enact section 4019.3 to create a new and superfluous compensation scheme. Section 4019.3 speaks directly to compensation for work performed by persons incarcerated in county jails, unlike the Labor Code, and it prescribes rules (such as a maximum discretionary pay rate) that make it impossible to apply the two frameworks simultaneously. This Court's precedent thus dictates that section 4019.3's more specific provisions govern here. (See *Lopez*, *supra*, 5 Cal.5th 627 at pp. 634–635.)

Proposition 139 preserved that framework, recognizing that county governments are best situated to make compensation decisions for the jails they operate. Consistent with the purposes of Proposition 139, the kitchen program at issue here offsets Alameda County's costs of operating the Santa Rita Jail, affords job training and other benefits to participating incarcerated persons, and provides meals for all persons incarcerated in the Jail. Although Respondents raise other weighty and important matters, their argument is, at bottom, a proposal to rewrite the Penal Code's clear terms on public policy grounds. That proposal is appropriately directed to the Legislature.

For the foregoing reasons and those stated in Aramark's opening brief and the County's briefs, this Court should answer the certified question, "No."

Respectfully submitted,

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May 2, 2023 By: 

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CERTIFICATE OF WORD COUNT

Pursuant to rules 8.204(c) and 8.504(d) of the California Rules of Court, I hereby certify that the text of this Reply Brief on the Merits contains 7,175 words, including footnotes. In making this certification, I have relied upon the word count of Microsoft Word, used to prepare the Brief.

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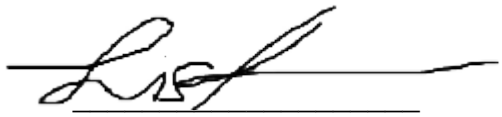

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