No. 21-16528

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

PLAINTIFFS-APPELLEES,

v.

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

DEFENDANTS-APPELLANTS.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE NO. 4:19-CV-07637 (TIGAR, J.)

REPLY BRIEF OF DEFENDANT-APPELLANT ARAMARK CORRECTIONAL SERVICES, LLC

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Legislative Materials

INTRODUCTION

Contrary to Appellees' arguments, this appeal presents only one issue: whether the Penal Code's permissive compensation scheme—as opposed to the Labor Code's minimum wage and overtime requirements—governs the work that Appellees allegedly performed in the Santa Rita Jail. That issue, in turn, is resolved by answering a single question: are Appellees "prisoner[s] confined in or committed to a county jail" who allegedly worked "in such county jail"? Cal. Penal Code § 4019.3. The answer is yes. Indeed, while Appellees' answering brief raises various arguments that obscure or avoid this dispositive question, Appellees do not (and could not) argue that they are anything other than prisoners "confined in or committed to" the Santa Rita Jail who allegedly performed kitchen work within the jail. As a result, § 4019.3 of the Penal Code applies to their work, and that specific, later-enacted provision precludes application of the Labor Code's conflicting terms.

Appellees largely avoid that straightforward analysis and instead focus much of their attention on collateral issues. Contrary to Appellees' suggestion, the Thirteenth Amendment has nothing to say about which state-law framework governs wages for work performed by non-convicted inmates in county jails—as the District Court recognized. It is likewise irrelevant whether Appellees could plead an employment relationship under the Labor Code, because the Labor Code does not apply. Appellees also invoke policies underlying compensation schemes in other

contexts, such as for state prison inmates, but those policies and compensation schemes undermine, rather than support, Appellees' arguments. The drafters of Proposition 139 considered the policies cited by Appellees and chose to amend existing compensation laws only for state inmates, leaving in place the Penal Code's permissive scheme for county inmates.

As for the Penal Code, the gravamen of Appellees' argument is that § 4019.3 does not mean what it says. They argue, for example, that the statute applies only to work done *for* a county jail rather than a county's duly authorized contractor. This reading finds no support in the text of § 4019.3, nor is it supported by statutory context or legislative background. Regardless, Appellees' factual premise—that their alleged work was not performed for the County, but rather solely for the benefit of Aramark—is incorrect. Appellees' alleged kitchen work went principally toward preparing meals *for the Santa Rita Jail inmate population.* Even as to the limited number of prepared meals that went outside the jail, they were provided exclusively to other county jails, and benefited Alameda County through the commissions it received as a result. In short, the alleged work was performed both "in" and for the Santa Rita Jail, and falls squarely within the scope of § 4019.3. The Jail's kitchen program does nothing more than what is authorized by the Penal Code and Proposition 139.

The application of the Penal Code's permissive compensation scheme to Appellees' alleged work is dispositive. Because that scheme directly conflicts with the Labor Code—by not requiring any compensation for county inmates at all; by setting a maximum potential compensation rate well below the Labor Code's minimum wage rate; and by granting counties discretion to set their own compensation rules—§ 4019.3 precludes application of the Labor Code's general, earlier-enacted minimum wage and overtime requirements to Appellees.

For these reasons, and those set forth below, the District Court's ruling should be reversed.

ARGUMENT

Appellees' answering brief is notable for the arguments it does *not* raise. Appellees concede, as they must, that § 4019.3 sets forth a permissive compensation scheme under which county boards of supervisors need not—and in the case of Alameda County, did not—prescribe wages for county inmates. *See* Appellees' Answering Brief, ECF No. 41 ("Answering Br."), at 16. Likewise, while Appellees dispute the existence of a conflict between the Penal Code and Labor Code in the context of programs involving a private contractor (an argument that is unpersuasive, *see infra* Part I), Appellees do not otherwise address any of the three irreconcilable statutory conflicts identified in Aramark's opening brief. *See* Opening Brief of Defendant-Appellant Aramark Correctional Services, LLC, ECF No. 19 ("Aramark

Opening Br."), at 22–25. Nor do Appellees dispute that § 4019.3 is more specific than the Labor Code's generally-applicable minimum wage and overtime provisions, or that it was enacted after those provisions. *See id.* at 30–31. Most notably, Appellees do not advance any argument for why § 4019.3 applies to convicted inmates but not non-convicted inmates, *see id.* at 25–29—the central distinction at issue on appeal.[1] Thus, even if there were colorable arguments to be raised regarding these issues (there are not), any such arguments would be waived. *See United States v. Dreyer*, 804 F.3d 1266, 1277 (9th Cir. 2015) ("Generally, an appellee waives any argument it fails to raise in its answering brief.").

Instead, much of Appellees' answering brief focuses 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. 6–12. This argument is a red herring. Aramark did not raise this issue in its opening brief, and the District Court considered it a distinct issue from the certified question on appeal. *See* 1-ER-25. There is no need to reach the question whether Appellees have adequately pleaded an employment relationship for purposes of the Labor Code if the Labor Code does not apply to county inmates as a threshold matter.

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[1] Appellees' answering brief states, in conclusory fashion, that "Appellants are incorrect" that § 4019.3 "applies to all county jail inmates, regardless of their conviction status," but then proceeds only to raise an argument about "public works programs," not about inmate conviction status. Answering Br. 18.

Because the District Court's application of the Labor Code's minimum wage and overtime provisions to county jail inmates cannot be reconciled with the Penal Code and Proposition 139, the Court need not address the question of an employment relationship.[2] *See, e.g.*, *Yu v. Idaho State Univ.*, 15 F.4th 1236, 1245 (9th Cir. 2021) (declining to address issue where its resolution was "not necessary to the disposition of th[e] appeal").

As for the Penal Code and Proposition 139, Appellees' answering brief advances three unsustainable arguments: (1) the Labor Code's mandatory

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[2] Appellees' arguments concerning cases interpreting the federal Fair Labor Standards Act ("FLSA"), particularly *Villareal v. Woodham*, 113 F.3d 202 (11th Cir. 1997), and *Burleson v. California*, 83 F.3d 311 (9th Cir. 1996), are similarly irrelevant. *See* Answering Br. 12–14. Contrary to statements in the answering brief, Aramark did not cite these cases in its opening brief, nor does Aramark contend, for purposes of appeal, that the FLSA's definition of employment applies here. Nevertheless, the fact that federal cases uniformly recognize that non-convicted inmates are not employees under the FLSA lends support for the general reasonableness of the California Legislature's policy judgment in enacting § 4019.3's permissive compensation scheme.

In addition, these federal cases serve to further refute any suggestion that the Thirteenth Amendment somehow creates a federal constitutional right to minimum and overtime wages for non-convicted inmates, let alone a right that incorporates one state law compensation scheme over another. In this regard, while Appellees mention the Thirteenth Amendment in their brief, they do not raise any legal argument based on it. For good reason: the question whether Appellees can plead a Thirteenth Amendment claim—a claim which, notably, Appellees have not asserted against Aramark—is distinct from the question of which state-law framework governs compensation for work that Appellees allegedly performed. *See* Aramark Opening Br. 42–43; *see also, e.g.*, 1-ER-30 (District Court recognizing that "claims of unpaid labor are distinct from claims of forced labor"). Thus, any argument based on the Thirteenth Amendment is both waived and meritless.

compensation scheme complements, and does not conflict with, Penal Code § 4019.3's permissive compensation scheme, *see* Answering Br. 16–17; (2) § 4019.3 does not apply to public-private work programs, *see* Answering Br. 18–22; and (3) Proposition 139's provisions directing that *state* inmates be paid for their work (subject to significant deductions) support application of the Labor Code to *county* inmates (without any deductions). These arguments, addressed below, are meritless and should be rejected.

I. Penal Code § 4019.3's Permissive Compensation Scheme Precludes Application of the Labor Code's Mandatory Compensation Scheme Because They Directly Conflict with One Another.

Appellees first claim that the Labor Code applies here because it "can occupy the same domain" as Penal Code § 4019.3 "without any inherent antagonism." Answering Br. 16 (quoting *Cohn v. Isensee*, 45 Cal. App. 531, 536 (1920)). In other words, Appellees insist that the Labor Code applies to county inmate work performed in contexts involving alleged private contractor employers, while Penal Code § 4019.3 governs county inmate work not involving private contractors. *See id.* at 17.

Appellees are mistaken. Contrary to Appellees' statement that Appellants "fail to recognize" the rule stated in *Cohn*, that rule is the same as the framework applied in Aramark's opening brief. *See* Aramark Opening Br. 30 (setting out the test that applies "[w]here California statutes irreconcilably conflict"). Under that

framework, the specific provisions of § 4019.3 displace the earlier-enacted, more general provisions of the Labor Code for three core reasons: Penal Code § 4019.3, unlike the Labor Code, (1) provides that county inmates are not entitled to any compensation; (2) sets a maximum potential compensation rate of $2 for each 8 hours of work, which is well below the Labor Code's minimum-wage rate; and (3) delegates discretion to counties to prescribe or not prescribe the payment of wages. *See* Aramark Opening Br. 22–25. Indeed, such is the nature of these conflicts that applying the Labor Code's minimum wage and overtime provisions to county inmates who perform work in county jails would render § 4019.3 superfluous. *See id.* at 24–25 (citing *Gen. Am. Transp. Corp. v. State Bd. of Equalization*, 193 Cal. App. 3d 1175, 1181 (1987) ("[T]he Legislature presumably does not indulge in idle acts.")).

Appellees' sole argument to the contrary relies on the incorrect inference that Penal Code § 4019.3 does not apply in contexts involving alleged private contractors, given the statute's reference to county boards of supervisors. *See* Answering Br. 17. This argument is meritless. The statute's reference to county boards of supervisors merely reflects that the boards are the governmental bodies to whom the Legislature delegated authority to make compensation decisions—it is not a reference to the alleged employer. Put differently, the statute refers to boards of

supervisors in their policymaking capacity, as bodies that "may provide" by ordinance "that each prisoner confined in or committed to a county jail shall be" compensated for "work done by him in such county jail." Cal. Penal Code § 4019.3.[3]

Nor does anything else in the text of § 4019.3 support Appellees' proffered distinction between private contractor and county employers. The statute does not focus on the identity of the employer, but rather on who *performs* the work ("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 Appellees are (or at the relevant time were) "prisoner[s] confined in or committed to a county jail," or that they allegedly performed work "in such county jail." Appellees are therefore subject to § 4019.3.[4]

The two cases cited by Appellees do not support their position. In *Cohn v. Isensee*, unlike here, the Court of Appeal found "no inconsistency" between the general and specific election provisions at issue. 45 Cal. App. at 537. The general

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[3] In any event, Appellees' argument contradicts their claim that the County and Aramark are joint employers. *See, e.g.*, 1-ER-27 (District Court ruling that Appellees adequately alleged an employment relationship with the County Defendants); *see also* Dist. Ct. Doc. No. 54 at 10–12 (Plaintiffs' Opp. to County's Motion to Dismiss).

[4] Indeed, with respect to convicted county inmates, the District Court held that the Penal Code supersedes the Labor Code's minimum wage and overtime provisions, without differentiating between the County Defendants and Aramark. While the District Court then distinguished convicted inmates from non-convicted inmates, that distinction is unsupportable for the reasons stated in Aramark's opening brief. *See* Aramark Opening Br. 25–29. As noted above, Appellees do not attempt to support any distinction between convicted and non-convicted inmates in their brief.

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 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 534, 537. In other words, the two provisions could be simultaneously applied without any conflict. Here, in contrast, the Labor Code and § 4019.3 are mutually exclusive of one another because it is impossible to comply with both at the same time (*e.g.*, inmates 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).

Appellees' suggestion that this case is akin to *Anderson v. Sherman*, 125 Cal. App. 3d 228 (1981), should likewise be rejected. *See* Answering Br. 16–17. *Anderson*, in stark contrast to this case, involved general and specific statutes that included "compatible alternatives" for service of process. 125 Cal. App. 3d at 230. In fact, the California 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 236 (emphasis original) (quoting Cal. 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 237. In this case, however, Penal Code § 4019.3's permissive compensation scheme for county inmates is *in*compatible with the Labor Code's minimum wage and overtime requirements. Appellees' reliance on *Anderson*, no less than their reliance on *Cohn* and their other statutory conflict-related arguments, should thus be rejected.

II. Contrary to Appellees' Claims, Penal Code § 4019.3's Permissive Compensation Scheme Applies to Public-Private Work Programs.

Appellees next raise a series of arguments concerning the text, statutory context, and legislative background of Penal Code § 4019.3. *See* Answering Br. 18–22. These arguments, too, do not withstand scrutiny.

A. Appellees' Arguments Are Incompatible with § 4019.3's Text.

With respect to the text of § 4019.3, Appellees claim that (1) the statutory phrase "work done . . . in such county jail" should be construed as "work done . . . *for* such county jail," and (2) Appellees did not perform work for the Santa Rita Jail, rendering § 4019.3 inapplicable. Answering Br. 18–19 (emphasis added). Both claims are incorrect.

As for Appellees' first point, the plain meaning of "work done . . . in such county jail" does not mean "work done . . . for such county jail." Rather, it refers to *where* the work is performed. *See, e.g.*, *Mendez v. Rancho Valencia Resort Partners, LLC*, 3 Cal. App. 5th 248, 275 (2016) (affording the term "in" its ordinary meaning of "inside," and declining to construe it as "on"); *see also Riverside Cnty. Sheriff's*

Dep't v. Stiglitz, 60 Cal. 4th 624, 630 (2014) ("When interpreting statutes, we begin with the plain, commonsense meaning of the language used by the Legislature." (quotation marks and citation omitted)). The kitchen work at issue in this case was undisputedly done "in" the Santa Rita Jail. *See* 2-ER-285, 286 (Amended Complaint).

Appellees argue, however, that affording the term "in such county jail" its plain 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. 19. 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.

The legislative history presented in Appellees' motion for judicial notice supports that conclusion. *See* ECF No. 40. Specifically, the record shows that, before § 4019.3's enactment in 1959, county inmates could already be paid a small wage if they worked on "honor farms"—*i.e.*, *outside* a county jail. *See id.* at 6 (Analysis of Senate Bill 1394 (June 10, 1959)). In 1953, the Legislature adopted Penal Code § 4125, which allowed county inmates to earn 50 cents per eight hours worked (or, if the inmate had dependents, two dollars per eight hours worked), for work performed on an "industrial farm or industrial road camp." 1953 Cal. Stat. 742. Six

years later, Penal Code § 4019.3 was enacted to allow (but not require) boards of supervisors to likewise pay a small wage to prisoners who perform work *in* county jails—including "*in the jail kitchens*, laundry or various maintenance assignments," ECF No. 40 at 6 (emphasis added). Appellees' work performed in the Santa Rita Jail kitchen thus falls squarely within the scope of the phrase "in such county jail."

Appellees' related argument—that they did not perform work "for" the Santa Rita Jail—is therefore irrelevant. But, in any event, this claim is also incorrect. Appellees' work was allegedly performed pursuant to a contract between Aramark and the County under which meals prepared in the Santa Rita Jail kitchen would be provided to the Jail's inmate population. 2-ER-193, 197–202 (Aramark-County Food Services Contract, Ex. A-1 at 1, 5–10); 2-ER-284 (Amended Complaint). For the limited number of meals prepared in the Santa Rita Jail kitchen that went to other county jails (*i.e.*, "satellite facilities"), the County received a direct financial benefit in the form of commissions. ECF No. 18 at 13–14 (Aramark's Motion for Judicial Notice, Ex. D, Letter of Understanding). Such commissions, in turn, offset the County's costs of operating the Santa Rita Jail (one of the main purposes of Proposition 139, *see* 3-ER-574). In short, there is no aspect of Appellees' alleged work in the Santa Rita Jail kitchen that is not *for* the Santa Rita Jail. Thus, Appellees' repeated claim that the alleged work at issue was done solely for a private entity is not only irrelevant, it is unsupported by their own allegations and the record on appeal.

B. The Statutory Context Reinforces the Conclusion that § 4019.3 Governs Here.

With respect to statutory context, Appellees assert that Penal Code Part 3, Title 4, Chapter 1 (which encompasses Penal Code § 4019.3) "refers only to public works programs," and that § 4019.3 is therefore implicitly limited to the context of such programs. Answering Br. 19–20. Appellees are mistaken.

This Chapter, titled "County Jails," includes 65 sections, the vast majority of which have nothing to do with public works. The fact that the two sections cited by Appellees refer to "public works," but Penal Code § 4019.3 does not, supports the opposite inference from that argued by Appellees—namely, that the Legislature was well aware of how to limit the scope of its laws governing the operation of county jails to public works, but decided not to do so in § 4019.3. *See, e.g.*, *People v. Cole*, 38 Cal. 4th 964, 979 (2006) (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.*, 2 Cal. 5th 257, 266–67 (2016) (similarly finding the "absence of language" in one provision that was included in another provision "telling"); *accord Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the

disparate inclusion or exclusion."). Penal Code § 4019.3's statutory context thus refutes, rather than supports, the existence of an implied "public works" limitation.

What is more, § 4019.3's statutory context also shows that the statute does not distinguish between convicted and non-convicted inmates. For example, § 4017 (cited by Appellees), unlike § 4019.3, applies only to inmates confined in a county jail "under a final judgment of imprisonment." Cal. Penal Code § 4017; *see also* Aramark Opening Br. 28. As Appellees do not dispute, the presence of such language in § 4017, but not in § 4019.3, reinforces that the latter applies to convicted and non-convicted inmates alike. *See, e.g.*, *Augustus*, 2 Cal. 5th at 267.

C. The Legislative Background of Penal Code § 4019.3 Provides No Support for Appellees' Arguments.

Appellees are equally off base in arguing that § 4019.3's legislative background supports a narrow interpretation limited to public-works programs. In particular, Appellees argue that, because the public-private Santa Rita Jail kitchen program allegedly would not have been authorized when Penal Code § 4019.3 was enacted, § 4019.3 cannot apply here. Answering Br. 21–22. This argument fails.

The legislative background cannot override § 4019.3's text, which, as explained above, extends to work performed by all inmates in county jails, including the work alleged here. There is no indication that the Legislature would have enacted a different compensation scheme for public-private work programs had such programs been authorized at the time of § 4019.3's enactment, but even if there were

any such indication, that is irrelevant: What controls is the text of § 4019.3, the elements of which are satisfied here. *See People v. Bell*, 241 Cal. App. 4th 315, 344 (2015) ("[E]ven when a legislature likely would have enacted a differently-worded law had it foreseen future developments, any statutory revision reflecting that reality must come from that legislature, not the judiciary." (citing *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 76 (1996)). In short, a straightforward textual analysis of § 4019.3 ends the matter without any need to consider legislative background.

Appellees' argument also fails on its own terms. Contrary to Appellees' argument, it is commonplace for a statute to apply in different contexts over time as other laws change, provided that such application is consistent with the statute's text, as it is here. *See id.* at 343. Indeed, the Court of Appeal in *Bell* rejected an argument nearly identical to the one advanced by Appellees here—namely, that a statute's scope should be limited by the fact that the Legislature allegedly "could not have intended" that it be applied in a context that "did not exist" at the time of the statute's enactment. *Id.* The court held that such a contention was "foreclosed by long-standing principles of statutory construction." *Id.* Specifically, the court observed that "[o]ld laws apply to changed situations," and thus "[s]tatutes are not to be confined to the particular application[s] . . . contemplated by the legislators," but rather "they are interpreted as embracing *everything that subsequently fall[s] within their scope.*"

Id. (emphasis added; alterations, citations, and quotation marks omitted). "As a result," the court concluded, "if the statute's language fairly brings a given situation within its terms, it is unimportant that the particular application may not have been contemplated." *Id.* (citation and quotation marks omitted); *accord Mendez-Garcia v. Lynch*, 840 F.3d 655, 668 (9th Cir. 2016) (noting that it is not "impermissible to apply unchanged law to a current factual situation as it has changed or developed over time").

These principles apply with equal force here. It is "unimportant" that the Legislature may not have envisioned § 4019.3 as applying in the context of public-private county jail work programs, since the statute's language "brings [such a] situation within its terms." *Bell*, 241 Cal. App. 4th at 343. Moreover, the law that Appellees allege as authorizing the public-private work program at issue—Proposition 139—provides additional support for the continued application of § 4019.3 in these circumstances. *See* Aramark Opening Br. 33–34, 41; *infra* Part III.

III. Appellees' Arguments Concerning Proposition 139 Are Meritless.

Appellees argue that applying the Labor Code's minimum wage and overtime provisions would advance, or at least not defeat, some of the public policies motivating Proposition 139. *See* Answering Br. 22–26. In support, Appellees argue that a provision of Proposition 139 relating to compensation for *state* prisoners supports

that the Labor Code should be applied to *county* prisoners as a matter of public policy. *See id.* (citing Penal Code § 2717.8 (added by Proposition 139, § 5)). In essence, Appellees seek to redraft Proposition 139, replacing the terms approved by voters with a new, more expansive compensation regime. California courts consistently reject attempts to rewrite statutes in that manner. *See, e.g.*, *Skidgel v. California Unemployment Ins. Appeals Bd.*, 12 Cal. 5th 1, 26 (2021) (rejecting party's request to reweigh public policies to reach an interpretation inconsistent with "established rules of statutory construction" (citation and quotation marks omitted)).

Indeed, as a matter of straightforward statutory interpretation, the provision concerning state prisoner compensation undermines, rather than supports, Appellees' argument. *See* Aramark Opening Br. 33–34, 41; *see also People v. Lopez*, 51 Cal. App. 5th 589, 597 (2020) ("When we interpret an initiative, we apply the same principles governing statutory construction."). In particular, the fact that Proposition 139 included a provision specifically governing compensation for state prison inmates engaged in a joint-venture program, but did not include a parallel provision covering county jail inmates, demonstrates that the People did not alter the status quo—*i.e.*, Penal Code § 4019.3's permissive compensation scheme—for county inmates. *See Russello*, 464 U.S. at 23; *Cole*, 38 Cal. 4th at 979; *Augustus*, 2 Cal. 5th at 267. And the decision to have separate compensation schemes for state and county

inmates makes sense, for all the reasons set out in Aramark's opening brief, *see* Aramark Opening Br. 41–42, as well as the amicus brief submitted by the California State Association of Counties and California State Sheriffs' Association ("CSAC" and "CSSA," respectively), *see* Brief of CSAC and CSSA ("Amicus Br."), ECF No. 29, at 14–18.

Applying the Labor Code to work performed by county inmates would not only disregard Proposition 139's text and underlying policies; it would also lead to absurd consequences by turning those policies on their head, as county inmates would frequently be paid far *more* than state inmates. Penal Code § 2811 generally provides that state inmates shall be paid for the work they perform, "but in no event shall that compensation exceed one-half the minimum wage provided in . . . the Labor Code." Penal Code § 2717.8 prescribes a related scheme for state inmates who work in a joint-venture program; these state inmates are entitled to receive wages comparable to those received by non-inmates, "subject to deductions" of up to "80 percent of gross wages" to account for taxes, "charges for room and board," restitution and fines, and "[a]llocations for support of family" members. Yet under Appellees' interpretation, county inmates would not be subject to *any* of these limitations, and instead would be entitled to the full amount of the minimum and overtime wages prescribed by the Labor Code. Appellees do not explain why it would make sense to pay county inmates more than state inmates—particularly

given that California counties lack the resources available to the State—or why California law would address state inmate wages in detailed language, while implicitly leaving county inmate wages to be governed by the Labor Code's general terms. There is no explanation: the drafters of Proposition 139 did *not* intend the bizarre consequences inherent in Appellees' view that the Labor Code applies here.

Appellees' policy arguments, which are insufficient to overcome the rules of statutory construction as a threshold matter, also disregard other policies that support the plain meaning of Penal Code § 4019.3 and Proposition 139. In particular, nowhere do Appellees acknowledge the legitimate policy of delegating discretion to county officials on matters of county jail operation—a policy embodied in the text of both § 4019.3 and Proposition 139, § 4 (amending Cal. Const. Art. XIV, § 5). In addition, Appellees are mistaken in contending that applying the Labor Code would enhance work opportunities. *See* Answering Br. 25. Basic economics supports Amici's argument that, if the costs of administering work programs increase—as they would greatly if the District Court's ruling is not reversed—fewer programs will be available. *See* Amicus Br. 9 ("[A]pplication of the Labor Code's minimum wage and overtime requirements would significantly reduce the cost saving benefit of these programs, and could cause counties to eliminate such programs altogether.").

Appellees' final argument is that, because Proposition 139 does not explicitly mention non-convicted county inmates, it cannot preclude the Labor Code's application as to those inmates. *See* Answering Br. 26–27. This framing misstates Aramark's argument. Proposition 139, in authorizing public-private work programs, did not need to preclude application of the Labor Code, because the Penal Code's specific, later-enacted wage regime already accomplished that result; Proposition 139 simply left that scheme in place. It is thus irrelevant whether Proposition 139 refers to non-convicted inmates, because both Penal Code § 4019.3 and Proposition 139 apply to all county inmates, without distinction. Indeed, Appellees' own Amended Complaint alleges that Proposition 139 applies to "prisoners confined in [county] jails," 2-ER-283, without distinguishing between convicted and non-convicted inmates. Accordingly, Proposition 139 confirms that the Penal Code's permissive compensation scheme precludes Appellees from stating claims under the Labor Code's minimum wage and overtime provisions.

CONCLUSION

Contrary to Appellees' arguments, the District Court's ruling cannot be squared with the text, statutory context, or legislative history of Penal Code § 4019.3. The permissive compensation scheme enacted through § 4019.3, a provision unaddressed in the decision below, conflicts with the Labor Code's minimum-

and overtime-wage provisions—for both convicted and non-convicted county inmates. That conflict has existed for over sixty years. During this time, the Legislature and People have repeatedly reaffirmed that the Penal Code's permissive compensation scheme applies to work performed by inmates in county jails. Consistent with these legislative actions, the Santa Rita Jail kitchen program at issue offsets the County's costs of incarceration, affords employment skills and other benefits to participating inmates, and provides meals for all the Jail's inmates. Rather than be rendered a nullity by the Labor Code, the specific and later-enacted compensation provisions of the Penal Code and Proposition 139 should be given effect.

For the foregoing reasons and those stated in Aramark's opening brief, this Court should reverse the District Court's decision and remand for entry of a judgment dismissing Appellees' Labor Code claims.

Respectfully submitted,

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