**CASE NO. 21-16528**

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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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 Appellees,*

v.

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

*Defendants and Appellants.*

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

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# COUNTY OF ALAMEDA AND SHERIFF GREGORY J. AHERN'S REPLY BRIEF

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**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

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## INTRODUCTION

In its Opening Brief, appellants 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 California 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.

Appellees nonetheless argue that they are entitled to be compensated financially for their work, not based on any local

ordinance and not capped at two dollars per shift, but based on the minimum hourly wages established by the California Labor Code. They argue that Proposition 139 and Section 4019.3 do not apply to work performed by pre-trial detainees like them. Alternatively, Appellees argue that, if those laws apply, policy objectives subordinate them to the Labor Code's minimum-wage requirements. Appellees are wrong.

As the more specific and applicable laws, Proposition 139 and Section 4019.3 must take precedence over the Labor Code's more general wage requirements, unless those laws can be harmonized and applied in concert. They cannot.

Proposition 139 expressly grants counties discretion to set the terms of inmate participation in work programs. That cannot be reconciled with a demand for hourly wages set by state statute. Attempting to show otherwise, Appellees argue that, because they are pre-trial detainees, Proposition 139 does not apply to their work. But, as explained in the County's Opening Brief, Proposition 139 applies in the same manner to all county inmates, whether convicted or awaiting trial. No relevant law creates the distinction drawn by Appellees in this case. And the Thirteenth Amendment—which is concerned with forced

labor, not with statutory minimum wages—does not justify distinguishing pre-trial and convicted detainees with respect to compensation.

Appellees are also wrong when they suggest that Proposition 139's policy goals are advanced by requiring payment of wages under the Labor Code. Voters sought to balance a range of policy objectives when they enacted Proposition 139, and where they intended to grant inmates a right to financial compensation, they did so expressly and also required deductions from that compensation to help achieve the law's other purposes. Simply overlaying the Labor Code's minimum wages, as Appellees seek to do, would disrupt that balance and undermine the discretion voters chose to grant counties.

It is also not possible to reconcile Section 4019.3's cap on county-inmate compensation with a demand for minimum wages set by the Labor Code. Appellees assert that their work is not governed by Section 4019.3 because, they claim, the statute applies only to work performed exclusively for county jails, not participation in Proposition 139 work programs. The statute's terms and context, however, are not limited in the way suggested by Appellees. Section 4019.3 encompasses any work

or job-training program in a county jail, including the work at issue in this case.

Finally, Appellees' general policy arguments are fairly directed to a legislative change to Proposition 139; they do not support Labor Code claims under existing law. The Labor Code does not generally apply to incarcerated persons—regardless of their conviction status—and the policy objectives the minimum wage sought to achieve are inapplicable to prisoners. Appellees preference for inmates to receive minimum wages, thus, cannot overcome the careful balance of competing policy objectives voters enacted in Proposition 139 and cannot justify superimposition of the Labor Code to Proposition 139 work programs.

The Court should reverse the district court's order below.

## ARGUMENT

### I. The California Constitution and Penal Code specifically govern Proposition 139 work programs, not the general and contradictory requirements of the Labor Code.

As discussed in both the County's and Aramark's Opening Briefs, a more specific statute must take precedence over a more general one. COB 25; AOB 30 (citing Cal. Civ. Proc. Code § 1859; *Lopez v. Sony Elecs., Inc.*, 5 Cal. 5th 627, 634–35 (2018)). This principle applies with

even greater force when the conflict is between a general statute and a more-specific provision of the California Constitution. *See, e.g., County of Riverside v. Superior Court*, 30 Cal. 4th 278, 284–85 (2003) (holding "the California Constitution is a limitation or restriction on the powers of the Legislature.").

Here, Article XIV, section 5 of the California Constitution authorizes and regulates work programs in county jails like the one at issue in this case. And California Penal Code Section 4019.3 expressly permits—but does not require—counties to authorize financial compensation for inmates, capped at two dollars per eight-hour shift. Those specific, applicable laws must take precedence over the general provisions of the Labor Code.

Appellees respond that this rule of statutory construction is not absolute, that general statutes can be applied alongside more specific ones. AAB 16–17 (citing *Cohn v. Isensee*, 45 Cal. App. 531, 536 (Cal. Ct. App. 1920) (disapproved in part in *Binns v. Hite*, 61 Cal. 2d 107, 111–12 (1964)); *Anderson v. Sherman*, 125 Cal. App. 3d 228, 235–237 (Cal. Ct. App. 1981)). However, as those cases reflect, that is true only when there is no conflict between the specific and general statutes. *See Cohn*,

45 Cal. App. at 536 (allowing a general statute to apply, despite the existence of a more specific statute, because there was no "inherent antagonism" between them); *Anderson*, 125 Cal. App. 3d at 236–237 (finding that service provisions in the Code of Civil Procedure and Vehicle Code provided "compatible alternatives"); *cf. County of Riverside*, 30 Cal. 4th at 284–85 (reflecting that state statutes cannot directly contradict the California Constitution).

As discussed in the Opening Briefs and below, Appellees' demand for wages set by the Labor Code cannot be reconciled with the exclusive, discretionary authority conferred on counties to determine whether and how much financial compensation to provide county inmates participating in Proposition 139 work programs. *See* COB 42–43. These are not compatible alternatives.

## II. Appellees' Labor Code claims cannot be reconciled with the County's constitutional authority under Proposition 139, and Appellees arguments on appeal do not demonstrate otherwise.

Appellees argue that the Labor Code's general minimum wage supersedes the County's constitutional authority to set the terms of participation in a Proposition 139 work program, including the decision

of whether to pay financial compensation. AAB 22–27. This, they claim, is either because Proposition 139 does not apply to their work or because requiring the County to pay minimum wages would be consistent with Proposition 139's policy aims. *Id.* Neither theory justifies their claims here.

### A. Appellees are wrong when they argue that Proposition 139 applies differently to pre-trial detainees than to other county inmates.

Appellees' central argument—mirroring the views of the district court—is that Proposition 139 does not mention pre-trial detainees and therefore does not grant the County authority to determine compensation for that subset of county inmates. AAB 6, 26–27. As discussed in the County's Opening Brief, however, this argument lacks any legal support. COB 52–57. No relevant law differentiates between convicted and non-convicted county inmates. *Id.* To the contrary, when a law is intended to apply only to convicted inmates, it draws the distinction explicitly. *See, e.g.*, Cal. Penal Code § 4017 (authorizing local governments to require *convicted* inmates to participate in specified work activities). Where voters could have but chose not to

distinguish between different types of county inmates, the courts should not do so either.

For their part, Appellees offer no contrary legal authority. They claim that the Labor Code must govern in the absence of Proposition 139 explicitly mentioning pre-trial detainees because the "Labor Code is concerned with workers, among whom are non-incarcerated detainees working for private companies." AAB 27. Of course, this argument is entirely circular. It provides neither authority nor explanation for the claim that pre-trial detainees should be legally categorized as "workers," entitled to rights under the Labor Code, rather than as county inmates, whose work is governed by Proposition 139 and any applicable county ordinance.

Nor is there any logic to Appellees' suggestion that Proposition 139 applies only to sub-classes of inmates to the extent it refers to them specifically. As discussed, nothing in the relevant law differentiates between county inmates on the basis of their conviction status; it is a distinction invented by Appellees. There is thus no reason for Proposition 139 to have identified this subclass of inmates expressly, any more than there was reason for it to have explicitly referenced, for

example, incarcerated women or people of color. Appellees argument in this respect simply does not withstand scrutiny.

Alternatively, Appellees rely on the Thirteenth Amendment to justify differentiation between convicted and non-convicted inmates. AAB 8-9. As they argue, the Thirteenth Amendment prohibits forced labor by pre-trial detainees. *Accord* COB 57. But the Thirteenth Amendment *does not* compel the payment of wages set by the Labor Code. *See* COB 57-58. As a result, the Thirteenth Amendment ensures that pre-trial detainees cannot be compelled to participate in a Proposition 139 work program. But it does not grant them any greater right to wages than other incarcerated persons.

Nor do the cases cited by Appellees lead to a different conclusion. *Adams v. Neubauer*, 195 F. App'x 711, 713 (10th Cir. 2006) and *Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992), cited at AAB 9, both confirm that inmates working in prisons are not "employees" and have no constitutional right to compensation for their work. That principle is not disputed by any of the parties in this case. *McGarry v. Pallito*, 687 F.3d 505, 511 (2d Cir. 2012), cited at AAB 9 and COB 57, reflects the similarly undisputed fact that the Thirteenth Amendment

protects pre-trial detainees from forced labor. Appellees are litigating a claim in district court that they are being forced to work in violation of the Thirteenth Amendment. *See* 1-ER-28–30. But that disputed contention does nothing to support their argument on appeal that the Labor Code supersedes Article XIV, Section 5 of the California Constitution with regard to pre-trial detainees participating in Proposition 139 work programs.

Further, as a practical matter, if Appellees were correct in this regard, then pre-trial detainees would no longer be eligible to participate in Proposition 139 work programs. As noted, Proposition 139 amended the California Constitution to authorize the kind of work program at issue in this case. 3-ER-503. To the extent Proposition 139 does not encompass pre-trial detainees, as Appellees claim, then it would not authorize that subclass of inmates to participate in work programs at all. In turn, Appellees and others like them would lose the opportunity to earn the sentence reductions and other non-monetary benefits of participation. This would contradict Proposition 139's purposes, which sought to expand work opportunities to better meet the demands of inmates who *wanted* to participate in work programs. *See*

COB 47; 3-ER-503. This provides further grounds for the Court to reject the distinction Appellees would draw between different inmates on the basis of their conviction status.

### B. Through Proposition 139, voters used express terms to balance various policy objectives, and Appellees' arguments about those policies therefore cannot justify adding an implied requirement to pay minimum wages.

The County's Opening Brief described in detail the careful and complex balance of policy objectives that voters pursued when they enacted Proposition 139. *See* COB 45–48; 3-ER-503–504. Where voters intended to provide financial compensation to working inmates, they did so by adding provisions to the Penal Code that required both payment of specified wages and *deductions* from those wages. *Id.* (discussing Cal. Penal Code § 2717.8). Those deductions reflect the unique relationship between prison and prisoner—where the prison incurs the costs of providing for the prisoner's essential needs—and help achieve the Proposition's other policy objectives. *Id.* Voters did not rely on or incorporate the Labor Code in any way. *Id.* And when it came to county inmates voters expressly left to counties the decision

whether to provide monetary compensation and in what amount. *Id.* (discussing Cal. Const. art. XIV, § 5(a); 3-ER-503–504).

Despite all this, Appellees argue that the Labor Code can be read to supersede counties' constitutional discretion. They note that Proposition 139 does not expressly preclude application of the Labor Code, and they claim Proposition 139's policy objectives are served by requiring payment of minimum wages. AAB 5, 24, 26 (citing 1-ER-18–19). But, as also discussed in the County's Opening Brief, this approach would rewrite a detailed initiative to achieve Appellees' interpretation of voter intent. *See* COB 46–47 (citing *Cornette v. Dep't of Transp.*, 26 Cal. 4th 63, 73–74 (2001); Cal. Civ. Proc. Code § 1858). This is not a permissible interpretation of the law. *Id.*

Appellees' approach would also exalt one of Proposition 139's purposes—compensation for inmates—over the initiative's other purposes, including expansion of work opportunities for inmates, helping to defray the costs of incarceration, compensating victims,[1] and

[1] Appellees fairly note that Proposition 139's goal of compensating crime victims should not apply to non-convicted inmates. AAB 25. But that does not diminish the remaining policy objectives, which do apply to pre-trial detainees and which would be undermined by imposition of the Labor Code upon Proposition 139 work programs. And it bears

providing direct support for inmates' families. *See* COB 47–48 (discussing 3-ER-503–504.) Voters balanced those different goals by enacting the express wage and deduction provisions of Section 2717.8. *Id.* In contrast, importing the Labor Code's minimum wages for county inmates—where voters chose to grant counties discretion, rather than enact an analogue to Section 2717.8—would fail to achieve that balance of policy objectives.

Appellees also argue that requiring payment of minimum wages would not reduce work opportunities for inmates, suggesting that Proposition 139's policy objectives would accordingly not be disrupted. AAB 25. That is a debatable contention at best. But the fact remains that voters, in deciding how to balance their policy objectives, chose to enact a specific wage requirement for state prisoners and chose *not* to enact a similar requirement for county inmates. Appellees' argument in this regard is thus better directed at a legislative change, rather than a lawsuit.

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repeating that Proposition 139 does not distinguish between county inmates by conviction status, making the distinction suggested by Appellees irrelevant to determining voter intent.

Finally, Appellees rely again on the Thirteenth Amendment to support their attempt to rewrite Proposition 139. AAB 26. But as discussed above, the Thirteenth Amendment does not support a statutory wage mandate.

## III. Appellees also cannot reconcile their claim for hourly wages in the amounts prescribed by the Labor Code with the Penal Code's specific, two-dollar-per-eight-hour-shift cap on monetary compensation for county inmates.

As discussed above and in the County's Opening Brief, Appellees' wage claims are also inconsistent with the Penal Code, which permits—but does not require—payment of monetary compensation to county inmates *capped* at a rate far below the minimum wage prescribed by the Labor Code. *See* COB 42–43. Under the circumstances, the Penal Code must control. *See id.*; Cal. Civ. Proc. Code § 1859. As with Proposition 139, Appellees argue that either the Penal Code and Labor Code can be reconciled or that the Penal Code does not apply to their participation in the work program. AAB 5, 16–22. Neither argument has merit.

Appellees make only a limited attempt to reconcile the Penal Code's compensation cap with the Labor Code's minimum wage, noting

that Section 4019.3 uses permissive language and does not expressly preclude application of the Labor Code. AAB 5, 16–17 (citing *Cohn*, 45 Cal. App. at 536; *Anderson*, 125 Cal. App. 3d at 235–37). As noted in the County's Opening Brief, however, the two statutes are logically irreconcilable. The County cannot simultaneously pay inmates more than $14 or $15 per hour under the Labor Code and less than two dollars per eight hour shift under the Penal Code. The statutes are thus plainly in conflict, and Appellees have not shown otherwise.

Instead, Appellees argue that Section 4019.3 does not apply to them or to their work. AAB 18–22. They are wrong here too.

First, they suggest that Section 4019.3 applies only to work performed exclusively for the County, not work performed for a private corporation as part of a Proposition 139 program. AAB 18–19 (citing *Lowe v. S.E.C.*, 472 U.S. 181, 208 (1985) (discussing textual principles of statutory construction); *In re Marquez*, 3 Cal. 2d 625, 629 (1935) (same); Thomas M. Cooley, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 58 (1868) (same)). But, applying the very rules of statutory interpretation Appellees invoke, Section 4019.3's plain text

does not limit its application to work performed exclusively for a county. Nonetheless, Appellees argue that the statute's reference to work performed "in such county jail" must be construed to mean "exclusively for such county jail." AAB 19. 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." *Id.*

Not so. As even Appellees acknowledge, the Penal Code chapter that contains Section 4019.3 also authorizes and regulates county inmates' work *outside* of jail. *See* AAB 20. 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 Appellees note, but work on the public ways and on forest fires objectively occurs geographically outside of jail. Thus, reference to work performed "in" jail is not rendered surplusage by a literal reading, and there is no textual justification for construing the statute to mean "exclusively for" the jail.

Second, in a related argument, Appellees argue that Section 4019.3 does not limit compensation for work on Proposition 139 work

programs; it applies only to the specific kinds of work described in Sections 4017 through 4018, *i.e.* on public works, public way, and firefighting. AAB 19–20 (citing Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539 (1947) (discussing the rule that statutes should be construed in context)). This, they claim, is because Sections 4017 through 4018 and 4019.3 appear in the same chapter of the Penal Code. *Id.* But the Penal Code chapter containing Section 4019.3 regulates a wide range of county-jail operations, from the roll of sheriffs to the use of property, healthcare, the provision of food and clothing, etc. *See* Cal. Penal 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 Appellees.

Moreover, to the extent Appellees suggest that proximity in the Code provides relevant context, it must be noted that 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.[2] Section 4019.3, in turn, immediately follows *these* provisions, with a limited authorization for additional monetary compensation. Thus, the statute's most immediate context appears to reference compensable work defined in the same, broad manner as Section 4019 through 4019.2.

Appellees are thus wrong when they attempt to limit Section 4019.3 to public works. AAB 22. As a result, Appellees have not rebutted the point made by the County and Aramark, that the Penal Code governs the compensation that may be paid to county inmates for participation in Proposition 139 work programs. *Compare* AAB 22, with COB 36; AOB 45.

Finally, Appellees contend that even if Section 4019.3 governs the County's ability to provide financial compensation for work on a Proposition 139 work program, it does not limit Aramark. AAB 17. This argument is unavailing for several reasons. First, it is inconsistent with the statute's language. Section 4019.3 caps the

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[2] 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 Appellees 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.

amount of financial compensation boards of supervisors may authorize for work by county inmates. Because county boards set compensation for county inmates' participation in Proposition 139 work programs, that cap applies to those programs. Second, their argument, even if right, would not lead to the conclusion that the Labor Code prescribes compensation owed when, as discussed above, the Labor Code does not generally apply to inmates. And finally, Appellees' arguments in this regard pave over the fact that they have sued the *County* for payment of minimum wages, not just Aramark.

## IV. Contrary to Appellees' arguments, the Labor Code's policy goals do not justify granting inmates a right to minimum wages.

Putting aside their efforts to distinguish or reconcile their claims with Proposition 139 and Section 4019.3, Appellees also present policy justifications for their contention that the Labor Code must prescribe minimum wages for their participation in the Proposition 139 work program established by the County and Aramark. AAB 4, 9–12 (citing *Martinez v. Combs*, 49 Cal. 4th 35, 54 (2010)). To be clear, those policy arguments cannot overcome the irreconcilable conflict between the Labor Code's general provisions and the specific, governing provisions of

Proposition 139 and the Penal Code, as discussed above. Regardless, Appellees' arguments are also misplaced.

For example, Appellees argue that the Legislature enacted the Labor Code's minimum wage in order to help protect the ability of workers, especially those with limited bargaining power, to provide for themselves. AAB 9-10 (citing Stats. 1913, ch. 324, § 3, subd. (a), p. 633; *Kerr's Catering Serv. v. Dep't of Indus. Rels.*, 57 Cal. 2d 319 (1962)). And, having been enacted to protect workers, the Labor Code should be liberally construed to that end. AAB 7 (citing *Leyva v. Medline Indus. Inc.* 716 F.3d 510, 515 (9th Cir. 2013); *Alvarado v. Dart Container Corp. of Cal.*, 4 Cal. 5th 542, 561–562 (2018).

As discussed in the County's Opening Brief, however, nothing in the Labor Code's history suggests it was enacted to protect incarcerated persons, except where it explicitly so provides. *See* COB 25 (discussing Cal. Lab. Code §§ 3370, 6304.2. Appellees note that those statutes have no relationship to this case. AAB 8. But that is exactly the point. Those statutes do not apply to Appellees' claims here. They demonstrate that the Legislature knows how to apply the Labor Code to inmates when it intends to do so. There is thus no merit to Appellees'

contention that the Labor Code should generally be construed to protect inmates.

As also discussed in the County's Opening Brief, the unique relationship between prison and prisoner make the Labor Code's general concerns for ensuring worker self-sufficiency inapplicable to those in jail. *See* COB 26–27, 49–52 (discussing *Matherly v. Andrews*, 859 F.3d 264, 278 (4th Cir. 2017); *Villarreal v. Woodham*, 113 F.3d 202, 207 (11th Cir. 1997); *Burleson v. California*, 83 F.3d 311, 314 (9th Cir. 1996); *Hale v. Arizona*, 993 F.2d 1387, 1395 (9th Cir. 1993) (abrogated on unrelated grounds as described in *Walden v. Nevada*, 945 F.3d 1088, 1094 n.2 (9th Cir. 2019)). Appellees' reliance on the standard test to define an employer-employee relationship under the Labor Code ignores that unique relationship and is thus misplaced, for the reasons discussed in the County's Opening Brief. *Compare* AAB 8 (citing 1-ER-025–026; *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1233 (N.D. Cal. 2015) (describing the factors courts apply to determine the existence of an employment relationship)), with COB 51. Consistently, neither Appellees Answering Brief nor research has revealed a single

case where an incarcerated person—convicted or awaiting trial—has been found to be protected by California's Labor Code.

Unable to cite authority that supports them affirmatively, Appellees focus on distinguishing the federal authorities that reflect the differences between employer-employee and prison-prisoner relationships. But their arguments do not actually support their claims.

For example, they note that their claims arise under the California Labor Code, not under the Fair Labor Standards Act. AAB 12-13 (citing *Owino v. CoreCivic, Inc.*, 2018 WL 2194644, at *24 (S.D. Cal. May 14, 2018)). There is no dispute on this front; the County does not advocate for this Court to apply the federal economic-reality test to the California Labor Code. *See* COB 50. What is relevant—and unrebutted—is the consistent conclusion of this and other Circuit Courts that prisoners' relationships with prisons are fundamentally unlike the relationships between employees and their employers, notwithstanding some superficial similarities. *Id.*

Appellees also attempt to distinguish *Villareal* and *Burleson* on the grounds that the work in those cases was performed for the carceral

institution, not for a private corporation like Aramark. AAB 13–14. But this is not a relevant difference.

While it is true that the plaintiff in *Villareal* was performing work exclusively for the benefit of the prison, it bears repeating that the plaintiff in *Burleson* was producing goods and services sold outside the prison for a profit. *See* COB 51–52 (discussing *Burleson*, 83 F.3d at 312). That work was performed under the auspices of a state-run Prison Industry Authority—a public entity distinct from the State's Department of Corrections—rather than for a private corporation operating under contract with the prison authority. *Burleson*, 83 F.3d at 313. Nonetheless, the plaintiff in that case was still performing profit-generating work, rather than purely prison-oriented tasks.

Regardless, the relevance of *Burleson* and *Villareal* remains, as discussed above, the consistent recognition by courts that the purposes of minimum-wage requirements simply do not apply to inmates who have all their essential needs provided by institutions that imprison them. The ends of their labor do not change that analysis.

Acknowledging that prisoners have no immediate costs of living, Appellees argue incarceration still imposes a financial toll on inmates

and their families. AAB 10-12 (citing *Barker v. Wingo*, 407 U.S. 514, 521, 92 S. Ct. 2182, 2187, 33 L. Ed. 2d 101 (1972) (discussing the financial consequences of incarceration); *In re Humphrey*, 19 Cal. App. 5th 1006, 1032 (2018) (discussing the hardships of pre-trial detention); Thomas Bak, *Pretrial Release Behavior of Defendants Whom the U. S. Attorney Wished to Detain*, 30 AM. J. CRIM. L. 45, 64-65 (2002) (comparing the governmental and societal costs of pre-trial detention and release); Shima Baradaran Baughman, *Costs of Pretrial Detention*, 97 B.U. L. Rev. 1, 5 (2017) (discussing the costs incurred by pre-trial detainees); *Reimagining a Prosecutor's Role in Sentencing*, 32 Fed.Sent.R. 195, 195, 2020 WL 3163370 (Vera Inst.Just.) (discussing the societal costs of mass incarceration); Mark Pogrebin, Mary Dodge & Paul Katsampes, *The Collateral Costs of Short-Term Jail Incarceration: The Long-Term Social and Economic Disruptions*, Corr. Mgmt. Q., Fall 2001, at 64, 64-65). That toll, they argue, can be mitigated by payment of minimum wages.

There can be little debate that incarceration carries financial consequences. But as recognized by the very authorities Appellees 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. *See* COB 47–48; 3-ER-503. If Appellees 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 Appellees demand, would disrupt the balance voters struck, in addition to being legally unjustified.

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## CONCLUSION

Appellees work in the Proposition 139 program is governed by Proposition 139 and Section 4019.3, not by the Labor Code. The district court erred in ruling otherwise, and Appellees' arguments on appeal fail to support that ruling. The Court should reverse the district court's order below and direct entry of an order dismissing Appellees' wage claims under the Labor Code.

DATED: July 5, 2022 HANSON BRIDGETT LLP

By: */s/ Adam Hofmann*
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[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

**Signature** */s/ Adam Hofmann* **Date** July 5, 2022
*(use "s/[typed name]" to sign electronically-filed documents)*