IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Case No. 21-16528

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

Honorable Jon S. Tigar, United States District Judge

AMICUS CURIAE BRIEF BY CALIFORNIA STATE ASSOCIATION OF COUNTIES AND CALIFORNIA STATE SHERIFFS' ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLANTS COUNTY OF ALAMEDA, ET AL.

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I. CORPORATE DISCLOSURE STATEMENT [F.R.A.P., Rule 20(a)(4)(A), 26.1]

Both the California State Association of Counties ("CSAC") and the California State Sheriffs' Association ("CSSA") are non-profit corporations. Neither CSAC nor CSSA have a parent corporation, and no publicly held corporation owns 10% or more of CSAC or CSSA stock.

II. AMICUS IDENTITY STATEMENT AND INTEREST IN THE CASE [F.R.A.P. Rule 29(a)(4)(D)]

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of County Counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

CSSA is a nonprofit professional organization that represents the 58 elected Sheriffs in California. CSSA was formed in 1894 for the purpose of giving California Sheriffs a single effective voice. It was also formed for the purpose of sharing information and resources between sheriffs and departmental personnel, thus enabling them to improve the delivery of law enforcement services to the citizens of this State.

CSSA's membership is made up of all of the Sheriffs in the counties throughout the State of California, with authority over many law enforcement officers and the majority of inmates throughout the State. These Sheriff members of CSSA are Constitutional officers within California counties, who have policy making authority and oversight over their Departments and jail facilities within the State. Sheriff members have management of rank and file officers, including correctional officers.

CSAC and CSSA have a direct interest in this case, as their members are responsible for operating and managing the budget for all county jails throughout the State. Amici can provide this Court with a practical and distinct perspective, unique from the parties involved, as to the potential negative safety and other implications of the issues in this matter, particularly as it may more broadly impact varying jail and inmate circumstances, or interfere with Sheriff management of varying custodian facilities and populations. The concerns of counties and Sheriffs relate to the impact of the relevant legal principles and decisions of this Court to their daily management and implementation of security protocols in numerous jail facilities, as well as effects that may impede the control, supervision, and administration by the members of CSSA of the inmates within their custody and control, and the potential deleterious impact on county budgets as it

relates to the important work of operating jails and providing rehabilitative services to jail inmates.

III. STATEMENT OF AUTHORSHIP AND FINANCIAL SUPPORT [F.R.A.P. Rule 29 (a)(4)(E)]

No party's counsel authored this amicus brief in whole or in part. No party or party's counsel contributed money intended to fund preparation or submission of this amicus brief. No one other than amici and their counsel contributed money intended to fund preparation or submission of this amicus brief.

IV. STATEMENT CONCERNING CONSENT TO FILE [F.R.A.P. Rule 29(a)(2), Circuit Rule 29-3]

Defendants-Appellants consented to the filing of this amicus brief. However, Plaintiffs-Appellees withheld consent to file. As such, this amicus brief is accompanied by a motion seeking leave of this Court to file an amicus brief.

V. STATEMENT OF FACTS

Amici Curiae join Appellants' Statement of Facts found in the County of Alameda's Opening Brief at pages 5-15.

VI. INTRODUCTION

This case presents an important question with potentially broad ramifications for jail operations throughout the State: Do the minimum- and overtime-wage provisions of the California Labor Code apply to non-convicted inmates in California county jails?

CSAC and CSSA agree with Defendants-Appellants that the answer to this question must be no. While Proposition 139 (Cal. Const. Art. XIV, § 5 ("Prop. 139")), created the opportunity for counties to enter into agreements with private entities to create work programs for jail inmates, it did not in itself create a right to a minimum wage, a point with which the district court agreed. However, the district court instead concluded that because Prop. 139 does not preclude wage claims under the Labor Code and makes no mention of pre-trial detainees, the claims made by pre-trial detainees for minimum wages under California Labor Code section 1194 can go forward. *Ruelas v. County of Alameda,* No. 19-cv-07637, slip. op. at 15-16 (N.D. Cal. June 24, 2021).

This analysis essentially infers that the California Labor Code applies in the absence of specific language in Prop. 139 or the California Penal Code

precluding its application.[2] Such a reading of the Labor Code could have significant consequences for jail operations in this State for several reasons. First, inmate work programs serve important functions in jails. From an inmate's perspective, these programs provide rehabilitation that has proven effective at improving employment upon release and reducing recidivism. From the perspective of sheriffs and jail administrators, work programs reduce idleness, which can be a cause for security concern in jail facilities. Such programs also serve the benefit of helping defray the costs of housing the inmates.[3]

Further, the district court's analysis provides no limiting principle as to which Labor Code provisions would be applicable under its analysis. If the standard is that nothing in the California Constitution or Penal Code would prohibit application of the Labor Code, there are any number of Labor Code provisions under which a claim could be asserted against counties that

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[2] As Defendants-Appellants note throughout their opening briefs, the Penal Code does in fact include a specific provision, Cal. Penal Code § 4019.3, that would make compliance with minimum wage requirements in the Labor Code impossible. Amici will not repeat those arguments here but do note that the district court did not reference section 4019.3 in concluding that the Penal Code does not preclude application of the Labor Code.

[3] This is certainly one of the express purposes of Prop. 139, as noted in Alameda County's Opening Brief at page 16, but would also be true for other enterprise programs, such as those authorized by California Penal Code section 4325, or other work programs that assist in jail operations or public works.

have not, to date, been contemplated in a criminal custodial setting. Guidance is needed from this Court to avoid such an absurd application of the law in future cases.

Finally, the district court's opinion fails to implement the voters' intent to provide wages to State inmates while leaving to the discretion of counties whether to provide wages (up to the statutory maximum) for county inmates. There are important differences between state prisons and county jails that support this policy decision, and these differences warrant municipal discretion and make requiring minimum compensation (let alone applying the Labor Code's minimum wage or overtime provisions) especially inapposite for county inmates.

VII. ARGUMENT

A. Work Programs, Including Enterprise Work Programs, Serve Important Penological and Jail Administration Purposes, But Would be at Risk Under the District Court's Ruling.

Work and vocational programs in a jail setting, including enterprise programs such as the ones authorized by Prop. 139 and Penal Code sections 4325 and 4327, serve important functions for both inmates and jail administrators. All inmates derive valuable benefits from such programs beyond sentencing credits. Such work assignments provide on-the-job training, sometimes accompanied by certificates of skill, such as a "Saf-

Serve" certificate for food handling, which can be beneficial in securing employment upon release from jail. Work programs can provide inmates with a sense of value and purpose, and allow them to visualize working regular hours at a job upon release, which for many may not be part of their prior employment history. Such programs allow inmates to develop so-called "soft skills," such as conflict resolution, aggression replacement and time management, which serve inmates both in the work force and in their interpersonal relationships upon release.

Work programs, including enterprise programs such as the one at issue in this case, can expose inmates to new skills and allow them to discover new interests that can make positive changes upon release. A variety of programs, such as kitchen preparation, horticulture programs, and animal husbandry expose participants to new job opportunities and can be instrumental in motivating the formerly incarcerated to stay of out jail. CSSA's members have heard from inmates that have had life-changing experiences from being engaged in work programs during incarceration. These soft benefits can be, if anything, even more valuable for pre-trial detainees who can immediately return to the workforce with their new certifications and skills upon being released from jail with no conviction overhanging their future employment applications.

Perhaps it is unsurprising, therefore, that "[p]ersons who worked for private companies while imprisoned obtained employment more quickly, maintained employment longer, and had lower recidivism rates than those who worked in traditional correctional industries or were involved in 'other-than-work' (OTW) activities." Marilyn C. Moses and Cindy J. Smith, Ph.D., *Factories Behind Fences: Do Prison Real Work Programs Work?*, Dept. of Justice Office of Justice Programs, Nat'l Institute of Justice Journal (June 1, 2007), https://nij.ojp.gov/topics/articles/factories-behind-fences-do-prison-real-work-programs-work. *See* Christopher Stafford, *Finding Work: How to Approach the Intersection of Prisoner Reentry, Employment, and Recidivism,* 13 Geo. J. Poverty L. & Pol'y 261, 261 (2006) (describing the advantages of prison work programs for inmates upon release).

In addition to the benefits that inmates derive from such programs, there is also a benefit to jail operations. Idleness, including a lack of work, can be an element of substandard jail conditions. *Palmigiano v. Garrahy*, 443 F. Supp. 956, 970 (D.R.I. 1977), *remanded*, 599 F.2d 17 (1st Cir. 1979), *aff'd*, 616 F.2d 598 (1st Cir.), *cert. denied*, 449 U.S. 839 (1980). *See also* James E. Robertson, *The Constitution in Protective Custody: An Analysis of the Rights of Protective* Custody Inmates, 56 U. Cin. L. Rev. 91, 134-135 (1997). The programs can also enhance the security and safety of the

facilities since it is not unusual for inmate workers to remain well-behaved in response to the extra freedoms and privileges that are provided to them, which might include extra exposure to "day rooms," with amenities such as a coffee maker, video games, movies, etc.

In addition, there is certainly a financial component to these programs as well. According to the Secretary of State's Office, counties spent $7.48 billion in fiscal year 2019-2020 for detention and corrections, which is nearly 8% of all county expenditures.[4] As the voters noted in adopting Prop. 139, one of the core purposes in authorizing these enterprise programs is to reduce the financial burden of providing food, clothing, shelter, and medical care for incarcerated people. 3-ER-504. With the small scale of county jails compared to state prison facilities, application 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.

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[4] Calif. Secretary of State, *Counties Fiscal Data* (Jan. 28, 2022) https://counties.bythenumbers.sco.ca.gov/#!/year/2020/operating/0/entity_name. Counties and other local agencies are required by law to report financial data to the State Controller's Office (Cal. Gov't Code § 53892), which is required to make the data publicly available as an open-source website document (Cal. Gov't Code § 12463). Note that this figure includes only 57 of the 58 counties. The City and County of San Francisco's expenditures are reported by the Secretary of State in the city data.

For all of these reasons, CSAC and CSSA supported AB 2012 in 2016 (2016 Cal. Stat. 452), which expanded the pilot "Jail Industry Authority" program to include 12 additional counties. Cal. Penal Code § 4325. The author of that bill noted its purpose, as follows:

> Many counties across the nation have realized enormous benefits from their jail industry programs. Counties that operate jail industries agree that the programs offer one of the few win-win opportunities in corrections. Everyone benefits from a successful industry program-the jail, taxpayers, communities, families, and inmates. The public benefits both financially (the program provides services or products at low or no cost, and there is less vandalism and property damage in the jail) and socially (the program increases the likelihood of inmate success upon release and reduces overcrowding).
>
> Jail administrators and staff benefit from an improved jail environment (less tension, damage, and crowding) and are provided with a management tool both to encourage positive inmate behavior and to form a more visible and positive public image.
>
> Inmates clearly benefit from increased work activities, experience, and, sometimes, earnings. Further, as tension, destruction, and crowding in the jail are reduced, inmates enjoy a better living environment. For some inmates, their experience in the industries program breaks a lifetime pattern of failure by helping them secure and maintain meaningful post release employment. Every county within the state of California should have the authority to start a jail industries program within their jail system.

Senate Committee on Public Safety, AB 2012 Bill Analysis, 2015-2016 Reg. Sess., at 6-7 (June 21, 2016). It is worth noting that the author of the revisions to Penal Code section 4325 understood that paying wages to

inmates who work in county enterprise programs is discretionary, remarking that "sometimes" inmates earn wages. *Ibid.* The author's understanding as reflected in this statement is consistent with the final text of amended Penal Code section 4325, which states that a purpose of the Jail Industry Authority is to "ensure prisoners have the opportunity to work productively and earn funds, *if* approved by the board of supervisors pursuant to Section 4019.3." Cal. Penal Code § 4325 (emphasis added).

In sum, work programs like the ones authorized by Prop. 139 and Penal Code section 4325 serve a myriad of important functions, including significant non-fiscal benefits to inmates. Far from being exploitative, inmate work programs provide meaningful benefits to inmates, are beneficial to the safe operation of jails, and help offset the significant costs of jail operations, which is particularly necessary on the smaller economies of scale for county jail facilities.

B. The District Court's Analysis on Application of Labor Code Wage and Hour Provisions Provides No Limiting Principles, Potentially Exposing Counties to Any Number of Employment-Related Claims that are Inapposite to a Custodial Setting.

The district court found that plaintiffs could move forward with their claims because "nothing in the statutory scheme governing the conditions of inmates indicates that the Labor Code excludes Plaintiffs, nor that the Penal Code governs Plaintiffs." In other words, in the absence of a specific

provision in the Penal Code that would make employment statutes inapplicable, or a specific reference in employment statutes that would exclude their application, detainees could potentially state a cause of action against counties and sheriffs for any number of employment-related claims.

This would seem to potentially encompass all manner of claims clearly not intended to apply to a custodial setting. Examples could include paid sick leave (Cal. Labor Code § 245), meal and rest periods (Cal. Labor Code § 512), paid family leave (Cal. Labor Code § 12945.2), and new parent leave (Cal. Labor Code § 12945.6). None of these make sense in the context of inmates in a county jail, and yet like the minimum wage and overtime at issue in this case, they would arguably apply under the district court's analysis because "nothing in the statutory scheme governing the conditions of inmates indicates that the Labor Code excludes Plaintiffs, nor that the Penal Code governs Plaintiffs."

Public employees also have a right to join or form unions. Cal. Gov't Code § 3500, et seq. ("Meyers-Milias-Brown Act" or "MMBA"). Yet there is no specific exclusion in the MMBA relating to inmates, and no specific reference in the Penal Code sections governing county detention facilities (Cal. Penal Code, Part 3, Title 4) that makes any mention of unions. It seems

the district court provides no rational basis on which to limit application of these employment provisions in the Labor and Government Codes.

Similarly, the district court's conclusion that plaintiff detainees have established an employment relationship with all defendants (*Ruelas v. County of Alameda*, No. 19-cv-07637, slip. op. at 25 (N.D. Cal. June 24, 2021), raises similar concerns over the lack of limiting principles in the context of a custodial setting. Most county employees are hired through a competitive process. There are administrative procedures that must be followed in creating new public employment positions, which is an extensive process. Those positions and salary ranges must be approved by the Board of Supervisors, and the number of positions and costs would be added to county budget allocations. County employees are also often entitled to benefits such as shift deferential pay, and paid vacation and sick leave.

Treating inmates as public employees does not make rational sense, and is not an outcome advanced by any of the parties in this case. Yet the district court provides no guidance on how to distinguish other employment rights and procedures from the one at issue here. Without any limiting principles, the district court's opinion conflates a custodial relationship with an employment relationship, at least as to detainees participating in

enterprise work programs. This is an unworkable outcome and must be reversed.

C. Differences Between State Prisons and County Jails Warrant Municipal Discretion in Setting Compensation.

The opinion below notes that there are several provisions of state law that require compensation for state prison inmates, including Penal Code sections 2811 and 2717.9. *Ruelas v. County of Alameda*, No. 19-cv-07637, slip. op. at 19 (N.D. Cal. June 24, 2021). The court goes on to conclude that since detainees are not mentioned in the Penal Code as persons who can be compelled by counties to perform labor on public works (Cal. Penal Code § 4017), the omission of detainees implies "that the California legislature did not intend to exclude non-convicted detainees working for a private corporation from the Labor Code's protections." *Ibid.* The court's analysis is incomplete, however, because it fails to reflect qualitative differences and relevant policy considerations that could account for the legislative decision to require compensation for state prison inmates, but leave decisions on compensation up to the Board of Supervisors for county jail inmates.

One important distinction is that more than 74% of all inmates in county jail are awaiting either arraignment, trial, or sentencing. Brandon Martin and Magnus Lofstrom, *California's County Jails*, Public Policy

Instit. of Calif., at 1 (Feb. 2021).[5] As a result, the district court's conclusion – based on an *implication* that the statutes did not intend to exclude detainees from the Labor Code – means that as a practical matter, the county can only control whether to pay wages for about one quarter of its jail population. If such a drastic removal of discretion was intended, it should be expressly stated in the statute and not merely inferred as the district court does below.

It is also worth noting another distinction that helps explain why state prison inmates would be treated differently than county jail inmates. The United States Department of Justice Office of Justice Programs supports various criminal justice programs and initiatives, including the Prison Industry Enhancement Certification Program (PIECP). One of the components of the PIECP is to certify that local or state prison industry programs meet all necessary federal requirements. Once a certification is issued, goods made by inmates in such work projects are exempt from federal restrictions on prisoner-made goods in interstate commerce, including the Ashurst-Sumners Act (18 U.S.C. § 1761(a)) and the Walsh-Healey Act (41 U.S.C. § 35). In short, PIECP certified prison-made goods can be sold across state lines.

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[5] Available at: https://www.ppic.org/wp-content/uploads/JTF_CountyJailsJTF.pdf.

To receive that certification from the federal government and have the capacity to sell goods made in prison facilities in interstate commerce, the inmates must receive "wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed, except that such wages may be subject to deductions." 18 U.S.C. § 1761, subd. (c)(2). The Department of Justice states that there are 37 states that have PIECP certifications, whereas in the entire nation, only four counties have PIECP certified programs.[6]

This makes intuitive sense. State prisons are much larger facilities with a much larger inmate population. Enterprise work programs in larger facilities can produce goods on a larger scale, making it advantageous to have the ability to sell those goods across state lines while complying with more strenuous worker requirements. By contrast, smaller county facilities that engage in enterprise work programs tend to focus on smaller scale projects with goods that would not necessarily be put into interstate commerce, like the program at issue in this case, or the commercial plant nursery operated by Sonoma County under the authority granted to it under

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[6] Program information is provided by the Department of Justice at: https://bja.ojp.gov/program/prison-industry-enhancement-certification-program-piecp/overview#overview.

Penal Code section 4325.[7] In fact, products of local work programs are kept local, or at least intrastate.

Thus, the district court's convoluted reading of the statutes to determine that the Labor Code applies to detainees ignores a more obvious reason that state and county inmates are treated differently under Prop. 139: the initiative intended to create a state program that would qualify for federal certification under PIECP. But for counties, Prop. 139 created only the opportunity to create joint venture projects without the need to meet federal standards for PIECP certification. Underscoring this is the fact that the state statutory language regarding state inmate wages is strikingly similar to the federal language for the PIECP. *Compare* Cal. Penal Code § 2717.8 with 18 U.S.C. § 1761, subd. (c)(2).

Unfortunately, the district court did not consider any of these distinctions in its analysis. This Court should review the relevant statutory scheme in light of the real-world differences between prisons and jails. Taken together with the statutory analysis provided by the Defendants-Appellees in their opening briefs, it is apparent that the wage and overtime requirements of the Labor Code do not apply in this case. Applying the

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[7] Information about Sonoma County's horticulture project and "The Nursery" retail shop are available here: https://sonomacounty.ca.gov/Sheriff/Jail-Industries/.

Labor Code here could have far-reaching and severe ramifications for county law enforcement facilities that may be forced to end valuable work programs due to an unknown number of Labor Code and other worker requirements that may apply and drastically increase costs or other operational problems in detention environments.

VIII. CONCLUSION

For these reasons, Amici Curiae respectfully request that the Court reverse the district court ruling below and instruct the lower court to grant Defendants-Appellants' motion to dismiss.

Dated: February 2, 2022

Respectfully submitted,

By: /s/ Jennifer Bacon Henning

Jennifer Bacon Henning, SBN 193915

Counsel for Amici Curiae
California State Association of Counties
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPESTYLE REQUIREMENTS

I certify as follows:

1. The foregoing amicus brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 3,491 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

2. The foregoing amicus brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010, in font size 14, and font style Times New Roman.

Dated: February 2, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 2, 2022.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 2, 2022

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