IN THE SUPREME COURT OF CALIFORNIA

Case No. S277120

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

Plaintiffs-Respondents,

v.

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

Defendants-Petitioners.

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

On Appeal from the United States District Court
For the Northern District of California, Case No. 4:19-CV-07637-JST
Honorable Jon S. Tigar, United States District Judge

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

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I. INTRODUCTION

This case presents an important question with potentially broad ramifications for counties 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-Petitioners 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 nevertheless concluded that because Prop. 139 does not preclude wage claims made by pre-trial detainees under the Labor Code, such claims for minimum wages under California Labor Code section 1194 can go forward. (*Ruelas v. County of Alameda* (N.D. Cal. 2021) 519 F.Supp.3d 636, 653.)

This analysis essentially infers that the California Labor Code applies in the absence of specific language precluding its application in either Prop. 139 or the California Penal Code.[1] Such a reading of the Labor Code could have significant consequences for jail operations in this State for several reasons. First, inmate

[1] As Defendants-Petitioners note throughout their opening briefs, the Penal Code does in fact include a specific provision, California Penal Code section 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.

work programs serve important functions in jails. These programs provide rehabilitation and job/skill training, which has proven effective at improving employment upon release and reducing recidivism.[2] 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 inmates.[3]

Further, the position advanced by Plaintiffs-Respondents provides no limiting principle as to which Labor Code provisions would be applicable. If, as intimated by the district court, the standard is that the Labor Code applies so long as nothing in the California Constitution or Penal Code would prohibit its application, there are any number of Labor Code provisions under which a claim could be asserted against counties that have not, to date, been contemplated in a criminal custodial setting, such as new parent leave or family leave. The question

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[2] With respect to rehabilitation and recidivism, amici recognize that the certified question is limited to the class of non-convicted detainees, who are presumed innocent. Nevertheless, Plaintiffs-Respondents' position, if accepted, would implicate the viability of county jail work programs for all inmates, including convicted persons, who make up a meaningful proportion of the county jail population, and for whom rehabilitation and recidivism-reduction are important goals. In addition, while non-convicted detainees are presumed innocent, the goals of rehabilitation and recidivism-reduction apply to any non-convicted detainees who are ultimately convicted.

[3] This is certainly one of the express purposes of Prop. 139, as noted in Alameda County's Opening Brief at page 12, 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.

presented to this Court certainly cannot be answered in a manner that leads to such an absurd application of the law.

Finally, in adopting Prop. 139, the voters intended to provide wages to State inmates while leaving counties with discretion whether to provide wages (up to the statutory maximum) for county inmates. This Court should not assume that this distinction was made arbitrarily. There are important differences between state prisons and county jails that support this policy decision. These differences warrant municipal discretion and illustrate that requiring minimum compensation, as well as applying the Labor Code's minimum wage or overtime provisions, are particularly inapposite for county inmates.

II. ARGUMENT

A. Work Programs, Including Enterprise Work Programs, Serve Important Penological and Jail Administration Purposes, But Would be at Risk if Minimum Wage and Overtime Provisions Were to Apply.

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 or mere payment of wages. 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 for detainees in securing employment upon release from jail. Work programs can also provide inmates with a sense of dignity and competence, which helps promote rehabilitation. (Pritikin, *Fine*-

Labor: The Symbiosis Between Monetary and Work Sanctions (2010) 81 U. Colo. L.Rev. 343, 363.) Work during incarceration can also allow inmates to visualize working regular hours at a job upon release, often with new skills, which may be very different for many than their prior employment history. Further, 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 result in positive life changes upon release. A variety of programs, such as kitchen preparation, horticulture programs, construction and animal husbandry expose participants to new job opportunities and can be instrumental in motivating the formerly incarcerated into employment fields and away from engaging in activities that may return them to jail. In particular, CSSA's members have heard from inmates that have had life-changing experiences from being engaged in work programs during incarceration.

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." (Moses and Smith, *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).[4] *See* Stafford, *Finding Work: How to Approach the Intersection of Prisoner Reentry, Employment, and Recidivism* (2006) 13 Geo. J. Poverty L. & Pol'y 261, 261 [describing the advantages of prison work programs for inmates upon release]; Minn. Dep't of Corrections, The Effects of Prison Labor on Institutional Misconduct, Post-Prison Employment and Recidivism (2018) p. 26 ["In general, as the percentage of prison time spent working increased, we found significant improvements in prison misconduct, post-prison employment, and several measures of recidivism."][5]; Hopper, *Benefits of Inmate Employment Programs: Evidence from the Prison Industry Enhancement Certification Program* (2013) 11 J. of Business & Econ. Research 213, 220 [finding participants in the federal prison work program have a significant reduction in the odds of recidivism]; *United States v. Stowe* (E.D.N.Y. 2019) 375 F.Supp.3d 276, 279-280 [reviewing the academic literature showing that steady employment after release from incarceration addresses concerns that a convicted individual might reoffend].) These benefits may be further developed by enterprise work programs that provide an employment experience more similar to the outside work than simply performing institutional maintenance tasks. (Stafford, *Finding*

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[4] Available at: https://nij.ojp.gov/topics/articles/factories-behind-fences-do-prison-real-work-programs-work (last accessed on May 29, 2023).

[5] Available at: https://mn.gov/doc/assets/Effects%20of%20Prison%20Labor%20on%20Institutional%20Misconduct%2C%20Post-Prison%20Employment%20and%20Recidivism_tcm1089-320173.pdf (last accessed on May 24, 2023).

Work: How to Approach the Intersection of Prisoner Reentry, Employment, and Recidivism (2006) 13 Geo. J. Poverty L. & Pol'y 261, 272.)

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* (D.R.I. 1977) 443 F. Supp. 956, 970. *See also* Robertson, *The Constitution in Protective Custody: An Analysis of the Rights of Protective* Custody Inmates (1997) 56 U. Cin. L. Rev. 91, 134-135.) Preventing idleness and boredom improves institutional order by reducing violence and other misconduct. ((Pritikin, *Fine-Labor: The Symbiosis Between Monetary and Work Sanctions* (2010) 81 U. Colo. L.Rev. 343, 363.) The programs can also enhance the security and safety of the facilities. It is not unusual for inmate workers to remain well-behaved, especially in response to the extra freedoms and privileges are provided to them while committed to work programs, which can include extra exposure to "day rooms," with amenities such as a coffee maker, video games, movies, etc. These can be positive reinforcers of good behavior, as well as encouraging commitment to the work programs, self-esteem enhancers, and fostering pride in accomplishment.

In addition, there is certainly a financial component to these programs as well. According to the Secretary of State's Office, counties spent $7.25 billion in fiscal year 2020-2021 for detention and corrections, which is nearly 7% of all

county expenditures.[6] 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, which could result in elimination of some programs not necessary for jail operations and incentivizing counties to look for more cost-effective means of replacing inmates for necessary jail functions.

For 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. (Pen. 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

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[6] Calif. Secretary of State, *Counties Fiscal Data* (Oct. 4, 2022) Available at: https://counties.bythenumbers.sco.ca.gov/#!/year/2021/operating/0/subcategory_1 (last accessed on May 27, 2023). Counties and other local agencies are required by law to report financial data to the State Controller's Office (Gov. Code, § 53892), which is required to make the data publicly available as an open-source website document (Gov. 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.

> 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.

(Sen. Com. on Public Safety, Analysis of Assem. Bill No. 2012 (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." (Pen. 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 and the overall detention environment. 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 Analysis Proposed by Plaintiffs-Respondents 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.

In answering the question before this Court, 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." (*Ruelas, supra,* 519 F.Supp.3d at p. 653.) 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, the district court's analysis means that pre-trial detainees could possibly state a cause of action against counties and sheriffs for any number of employment-related claims.

The district court's analysis and Plaintiffs-Respondents' interpretation would potentially encompass all manner of claims clearly not intended to apply to a custodial setting. Examples could include paid sick leave (Lab. Code, §§ 245-249), paid rest periods (Lab. Code, § 512, subd. (d); Cal. Code Regs, tit. 8, § 11050(12)), family leave and new parent leave with benefits (Gov. Code, § 12945.2; Unemp. Ins. Code, § 3301), and access to personnel records (Lab. Code, § 1198.5). 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." (*Ruelas, supra,* 519 F.Supp.3d at p. 653.) In fact, applying these provisions in a custodial setting could present particular problems, and indeed, could unreasonably burden custodial facilities or impose insurmountable and prohibitive restrictions due to cost or security concerns. For instance, implementation of some of these provisions may require additional custodial officer or separate facilities and would likely render the work programs unfeasible.

Further, public employees also have a right to join or form unions. (Gov. 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 (Penal Code, Part 3, Title 4) that makes any mention of unions. The district court's analysis provides no rational basis on which to limit application of the above 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, supra*, 519 F.Supp.3d at p. 656), 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 usually 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.

Section 1(b) of article XI of the California Constitution also gives the governing body of each California county the plenary authority to determine how many employees it employs and to provide for the compensation of county employees. The provision reads:

> The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. **The governing body shall provide for the number, compensation, tenure, and appointment of employees**.

(Cal. Cont., art. XI § 1(b) ("Section 1(b)" (emphasis added); Gov. Code, § 25300. *See County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322; *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278.) This Court has previously determined that the ballot measure creating Section 1(b) "'gives the board *complete authority* over the number, method of appointment, terms of office and employment, and compensation of all deputies, assistants, and employees.'" (*County of Riverside, supra,* 30

Cal.4th at p. 286, citing Ballot Pamp., Special Elec. (June 27, 1933) argument in favor of Prop. 8, p. 10 (italics in original).)

For this reason, treating inmates as employees of the County, when the Board of Supervisors has no control over the number, tenure or appointment of those inmates, is inconsistent with constitutional and statutory provisions, and does not make rational sense. Indeed, granting pre-trial detainees employee rights by inference conflicts with the rule in California that ballot initiatives can only be repealed or limited expressly, and laws should not be read to limit or change past ballot initiatives by implication. (*See City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 716.) In addition, the district court provides no guidance on how to distinguish a myriad of 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 Court must answer the question presented to it in a manner that avoids this unworkable and non-sensical outcome of impeding the Board of Supervisor's rights and obligations with respect to its employees.

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

The district court's opinion notes that there are several provisions of state law that address employment and wages of state prison inmates, including Penal Code sections 2811 and 2700. (*Ruelas, supra,* 519 F.Supp.3d at p. 653.) The court

goes on to conclude that since pre-trial detainees are not included in those statutes, the omission 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 would account for the legislative decision to require compensation for state prison inmates but provide discretion on compensation with the Board of Supervisors for county jail inmates. In other words, the language in Prop. 139 expressly grants counties authority to set the terms of compensation for inmates working in these programs, and it does so for valid reasons.

One important distinction between State prisons and county jails is that more than 74% of all inmates in county jails 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).)[7] 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 did here.

[7] Available at: https://www.ppic.org/wp-content/uploads/JTF_CountyJailsJTF.pdf (last accessed on May 27, 2023).

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 support 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.

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.[8]

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[8] Program information is provided by the Department of Justice at: https://bja.ojp.gov/program/prison-industry-enhancement-certification-program-piecp/overview#overview (last accessed on May 27, 2023).

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 Penal Code section 4325.[9] It should come as no surprise that 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* Pen. Code, § 2717.8 with 18 U.S.C. § 1761, subd. (c)(2).)

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[9] Information about Sonoma County's horticulture project and "The Nursery" retail shop are available here: https://sonomacounty.ca.gov/Sheriff/Jail-Industries/ (last accessed on May 27, 2023).

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-Petitioners in their opening briefs, it is apparent that the Court must answer the question before it by finding that the wage and overtime requirements of the Labor Code do not apply.

Applying the Labor Code here could have far-reaching and severe ramifications for county law enforcement facilities that may be forced to end valuable work programs. Based on the district court's analysis, an unknown number of Labor Code and other worker requirements may apply to county inmate work programs, which would drastically increase costs or cause other prohibitive operational problems for such programs in detention environments.

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III. CONCLUSION

For these reasons, Amici Curiae respectfully request that the Court answer the question certified by the Ninth Circuit in the negative and conclude that detainees working at enterprise programs such as the one in this case do not have any valid claims for minimum wage and overtime under Labor Code section 1194 in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals.

Dated: June 1, 2023

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 3,696 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1st day of June, 2023 in Sacramento, California.

Respectfully submitted,

/s/ *Jennifer B. Henning*
By: _____
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