S277120

IN THE SUPREME COURT OF CALIFORNIA

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 Respondents,

v.

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

Defendants and 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

After an Appeal from the United States District Court, Northern District of California, Case Number 4:19-cv-07637-JST, Hon. Jon S. Tigar

COUNTY OF ALAMEDA AND SHERIFF GREGORY J. AHERN'S RESPONSE TO AMICUS CURIAE BRIEFS

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INTRODUCTION

The Ninth Circuit asked this Court to rule on a statutory question: whether pre-trial detainees participating in a public-private work program must be paid wages prescribed by California's Labor Code. Several Amici Curiae have argued that the Court should rule that such a right exists. Although thorough and impassioned, their arguments are misplaced in the context of this case and do not actually help answer the question posed.

Instead, they reflect a much broader critique of mass incarceration in the United States and in California, discussing its historical context—especially as it relates to racism and slavery—and the difficulties incarcerated persons face both during and after incarceration. Their arguments may suggest a need for reform of our criminal justice laws generally or, more specifically, a need for California's Legislature and voters to reassess the policy balance they struck when enacting the laws that govern work by incarcerated persons.

But their arguments provide no basis for this Court to conclude that the Labor Code governs work-program participation by pre-trial detainees. Achieving Amici's goals requires legislation and the related ability to design a compensation system that both prescribes an appropriate wage and accounts for the realities of incarceration. Simply ruling in favor of Respondents in this case will not only be inconsistent with state laws as they exists today, it will lead to adverse consequences for inmates and chaos for jail operators.

Notwithstanding Amici's arguments, this Court should rule that pre-trial detainees are not entitled to wages prescribed by the Labor Code for their voluntary participation in public-private work programs.

DISCUSSION

I. Only California's Legislature and voters can resolve Amici's critiques regarding the general consequences and conditions of incarceration; their arguments provide no basis for ruling in Respondents' favor in this case.

In their Answering Brief, Respondents highlighted the financial costs of incarceration, arguing this justified importation of the Labor Code's employee protections to jail work programs. (RAB 14-15.) Supporting Amici amplify that discussion, reviewing social-science research they contend reflects the various hardships incarcerated persons confront. That analysis may lead the Court to conclude that California's Legislature and/or voters should revisit the policy balance struck in the laws they enacted to govern work by incarcerated persons. But that rebalancing must not occur in this Court and cannot be achieved by simply treating pre-trial detainees as employees under the Labor Code. (See COB 26-31; CRB 14, 25-26.)

For example, without disputing that jails provide inmates with "shelter, wholesome food and sufficient clothing" (ACLU ACB 11, quoting *Martinez v. Combs* (2010) 49 Cal.4th 35, 54), the

ACLU[1] and LSPC[2] highlight the various costs inmates can incur purchasing other goods from jail commissaries and using pay phones. (ACLU ACB 12-23; LSPC 17-18.) This discussion—which focuses heavily on national data regarding the experience of incarceration—may suggest that prisons and jails nationwide are not adequately providing for the needs of inmates. Indeed, others have raised constitutional claims of this kind. (See *Tiedemann v. von Blanckensee* (9th Cir., July 3, 2023, No. 21-15073) __ F.4th __ [2023 WL 4308939].) But that does not help answer the statutory question posed in this case.

Respondents here do not seek to ensure that California jails and prisons provide inmates with improved food or easier, less expensive means to communicate with family. They seek only to apply the Labor Code to those few inmates who have the opportunity to participate in public-private work programs. That will not address the concerns raised by the ACLU. It will only increase the costs of these work programs and, with little doubt, the amount of related litigation. The likely result is that those programs will be reduced or eliminated, contravening the purposes of the relevant laws. (See 3 ER 503 [reflecting that voters enacted Proposition 139, in part, to expand work

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[1] Arguments attributed to the "ACLU" are those reflected in the brief submitted on May 11, 2023, by the American Civil Liberties Union Foundation, American Civil Liberties Union Foundation of Northern California, and American Civil Liberties Union Foundation of Southern California.

[2] Arguments attributed to the "LSPC" are those reflected in the brief submitted on June 1, 2023 by Legal Services for Prisoners with Children.

opportunities for inmates that were previously inadequate to meet demand]; COB 14, 27-29.) The ACLU's analysis is thus misplaced.

Legal Aid at Work[3] raises a different policy concern. Contradicting the goals voters expressly sought to achieve through Proposition 139, Legal Aid at Work argues that participation in a public-private work programs does not provide meaningful, non-monetary benefits to participating inmates. (LAW ACB 19, 39, 43-48; see also LSPC 21-24 [highlighting the financial consequences of incarceration]; but see 3 ER 503-504.) This discussion, however, is also unhelpful in answering the question posed in this case.

First, Legal Aid at Work's arguments focus on the question of whether work-program participation results in financial benefits after incarceration. But it ignores the other non-monetary benefits that work confers, including sentence reductions and, at least in the case of the County-Aramark program, access to preferential food, housing, and out-of-cell time. (2 ER 284-286; see also Pen. Code, § 4019, subd. (a)(1).) In this way, Legal Aid at Work has not meaningfully rebutted the non-monetary benefits of work-program participation.

Second, Legal Aid at Work's arguments rest primarily on research describing the financial consequences of discrimination

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[3] Arguments attributed to "Legal Aid at Work" or "LAW" are those reflected in the brief submitted on June 1, 2023, by Legal Aid at Work, California Employment Lawyers Association, Communities United for Restorative Youth Justice, Impact Fund, National Employment Law Project, and Root & Rebound.

against former inmates and other systemic obstacles to post-incarceration employment. (LAW ACB 44-45.) Neither Legal Aid at Work nor the studies they cite address or rebut the idea presented by the County and others that, whatever difficulties formerly incarcerated persons have securing work, work-program participation during incarceration lessens those difficulties. (Compare COB 27-28 [discussing research demonstrating the rehabilitative benefits of job training in jail], with LAW ACB 43, 45, 46 [asserting repeatedly that the County has provided no evidence of those rehabilitative benefits].) Legal Aid at Work's arguments are thus largely orthogonal to the point they are trying to make.

Ultimately, even Legal Aid at Work has to acknowledge that there are at least some rehabilitative benefits to work-program participation. (LAW ACB 45-46.) But it still complains that the programs are not a complete solution to the financial hardships of incarceration.[4] That may be, but a benefit need not be perfect to be meaningful.

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[4] As part of this argument, Legal Aid at Work highlights research suggesting that only vocational programs serve rehabilitative purposes, and that absence of work certification can still be an obstacle to post-incarceration employment. (LAW ACB 47-48.) But, as discussed in the brief filed by the California State Association of Counties and California State Sheriffs' Association, work of the kind at issue in this case can allow inmates to earn Saf-Serve certificates, which aid in securing post-incarceration work in the food industry. (CSAC ACB 7; see also *id.* at 9, discussing Hopper, *Benefits of Inmate Employment Programs: Evidence from the Prison Industry Enhancement Certification Program* (2013) 11 J. of Business & Econ. Research 213, 220.) Legal Aid at Work's arguments are thus factually misplaced.

Third, Legal Aid at Works fails to confront the fact that the inmates themselves appear to agree that the non-monetary benefits of program participation provide a meaningful, valuable benefit, as demonstrated by the fact that they *choose* to participate. If pre-trial detainees believe that the non-monetary benefits of participation are inadequate, they can choose not to participate.

Respondents or the Court may note that the voluntary nature of employment outside of the carceral environment does not eliminate the obligation to pay minimum wages. But the relationship between employer and employee remains fundamentally different from the relationship between prison and prisoner. (COB 34-35; CRB 11.) Unlike individuals outside of prisons and jails, inmates essential needs are provided for them, regardless of whether they work. Amici can criticize the quality of those provisions, but the unassailable fact is that inmates who choose not to work will still be provided with food, clothing, and shelter.

In short, Amici have demonstrated a principled basis for their view that California's Legislature and voters have struck the wrong balance in designing the laws governing participation in public-private work programs in county jails. The solution to that concern, however, is for the Legislature or voters to change existing law to grant county inmates a right to some wages. For example, Penal Code provisions for county jails that mirror the wage provisions Proposition 139 enacted for state prisons could address the policy concerns Amici highlight.

In contrast, as the California State Association of Counties and California State Sheriffs' Association have explained, judicial superimposition of the Labor Code on jail work programs will have chaotic and counter-productive consequences. (CSAC ACB 6-7, 13-16; compare also COB 29 [highlighting the other consequences that would seem to flow from ruling that pre-trial detainees are "employees" and the resulting litigation risks], with LAW ACB 38 [suggesting that one of the problems with existing law is that inmates are unable to form labor unions].) However well intentioned, Amici's arguments thus provide no basis for the Court to grant the statutory rights Respondents seek here.

II. Legal Aid at Work's arguments regarding the history of forced prison labor do not help answer the question posed in this case: whether inmates who *choose* to participate in a public-private work program are entitled to wages prescribed by California's Labor Code.

In its brief, Legal Aid at Work provides a detailed discussion of the racialized history of mass incarceration and forced prison labor in both the United States generally and in California specifically. (LAW ACB 18-43.) This history presents legitimate concerns and criticisms of this country's criminal-justice system, but it does not help answer the statutory question posed to this Court.

Legal Aid at Work's arguments are directed at Constitutional questions, even by their own terms. (LAW ACB 18, 23 [highlighting the connection between forced prison labor and the "badges and incidents of slavery"].) As discussed in the

parties' briefs, Respondents have alleged and are litigating in the district court claims that their Thirteenth Amendment rights have been violated. (1 ER 16, 29-36; 2 ER 293-297.) Those claims are disputed. But if Respondents prove violations, they will have a right to a remedy prescribed by federal law. (See COB 35-36.) Those claims, however, cannot support application of California's Labor Code to pre-trial detainees' participation in public-private work programs. (*Ibid.*)

Nonetheless, Legal Aid at Work argues that the Court should rule in Respondents' favor in order to avoid interpreting California law in a way that would violate the Thirteenth Amendment. (LAW ACB 19-21.) This is a non sequitur. The Thirteenth Amendment does not prescribe any minimum wage for work performed, let alone the California Labor Code's wage provisions. (See COB 35-36.) Neither Respondents nor Legal Aid at Work have identified any authority tying the Thirteenth Amendment's prohibition against forced labor to any wage requirements. Moreover, they have not cited any authority for the implicit proposition that payment of minimum wages absolves a party from constitutional liability for forcing another person to work against their will. There is accordingly no basis for Legal Aid at Work's argument that the Labor Code must govern prison work programs in order to avoid constitutional violations.

Anticipating this disconnect between their constitutional arguments and the nature of this case, Legal Aid at Work suggests that Respondents' work—indeed, work of any kind by

any incarcerated person—cannot be seen as truly voluntary. (LAW ACB 18, 33-34, 41-42.) There are several problems with this argument.

Most importantly, the argument still does not answer the question posed. If Legal Aid at Work were correct, then working pre-trial detainees like Respondents have a Thirteenth Amendment claim, not a claim for wages under the Labor Code. Moreover, as noted, payment of minimum wages would not appear to resolve the constitutional problem that Legal Aid at Work has suggested.

The implications of this argument are also truly staggering. If work by inmates can never be considered voluntary, then pre-trial detainees cannot be permitted to participate in any work program. Nor, according to Legal Aid at Work, can they be asked to perform essential tasks around the jail, like picking up their cells or cleaning common areas, as this is all to be understood as forced labor. (LAW ACB 33-34.) The result would be not only the complete elimination of public-private work programs, in contravention of Proposition 139's purposes (3 ER 503), but also the elimination of all opportunities for pre-trial detainees to earn sentence credits through work (see Pen. Code, § 4019, subd. (a)(1)) and a significant impediment to counties' ability to manage jail conditions (see CSAC ACB 6).

In turn, no authority appears to support Legal Aid at Work's view that all incarcerated work is constitutionally involuntary. The case cited by Legal Aid at Work certainly does not. That case considered whether an incarcerated person can

meaningfully consent to a *sexual relationship with a guard*. (*Wood v. Beauclair* (9th Cir. 2012) 692 F.3d 1041, 1047.) It neither considered nor held that all work by incarcerated persons should be considered forced. In the absence of any supporting authority, this Court should not adopt a view with such sweeping consequences, especially when the issue posed in this case is one of narrow statutory interpretation.

In any event, if Respondents or Amici believe that the general structure of work by pre-trial detainees is inherently unconstitutional, then they can pursue that claim in the district court under the Thirteenth Amendment, or even under Article I, section 6 of the California Constitution. None of their arguments, however, justify—or, as noted, are meaningfully addressed by—importation of the Labor Code to Respondents' participation in the County-Aramark work program.

III. Amici's statutory discussion is also misguided.

Beyond their policy concerns, Amici also offer some limited statutory analysis on the issue posed in this case. Their arguments, however, add little to those already presented by Respondents, and they reflect the same misunderstandings.

For example, the ACLU highlights the policies underlying Proposition 139 and section 4019.3 as evidence of the Legislature and voters' intent to authorize "a small wage" for inmate work. (ACLU ACB 11.) As discussed in the County's briefing, however, this merely confirms that (1) the Labor Code's minimum wage does not govern work by inmates and (2) that the Legislature and

voters pursue their policy objectives through express enactments. (CRB 24-25.)

The ACLU also suggests that the Labor Code applies because there is no exemption in the statutes for Aramark as an employer. (ACLU ACB 9-11.) But the question posed in this case is whether pre-trial detainees have a right to minimum wages under Labor Code section 1194. Section 1194, in turn, grants minimum wage rights to "employees." Thus, the question posed turns on the rights of the person performing work, not on the identity of the nominal employer.

Further, the ACLU's argument implicitly acknowledges that the governing laws neither require nor permit the *County* to pay pre-trial detainees wages set by the Labor Code. (See Pen. Code, § 4019.3.) Yet Respondents here have sued both Aramark and the County for wages. So, consistent with the framing of the question before this Court, Respondents' position turns on *their* purported rights, not whether Aramark is exempt from the Labor Code.

Flipping that coin, LSPC argues that Labor Code section 1182.12 applies unambiguously to all persons performing work in California, with no exception for incarcerated persons. (LSPC ACB 7-15.) But LSPC's nominally plain-language analysis elides other rules of statutory construction and paves over the conflict between their reading of the Labor Code and the plain language of various other, more specifically relevant statutes. (Compare COB 38-40, with LSPC ACB 11-12 [suggesting that the State's prisons are subject to the Labor Code when employing inmates,

notwithstanding the more specific provisions of the Penal Code]; LSPC ACB 13-15 [acknowledging the Penal Code's limits on wages for state inmates, but nonetheless insisting that the Labor Code governs].) In fact, LSPC ignores section 4019.3 entirely, and so fails to address the inherent conflict between a specific law that limits compensation for county inmates to no more than two dollars per day and a more general law that requires wages in excess of $15 per hour. (COB 39; CRB 21, 23-24.) Their argument thus fails for the same reason that Respondents' arguments do.

For its part, Legal Aid at Work repeats and amplifies Respondents' discussion of the history and purposes of California's minimum-wage laws. (LAW ACB 35-40.) It argues that laws enacted to protect the state's most vulnerable populations must apply to incarcerated persons. (*Ibid.*) But there remains nothing in the text or history of the relevant laws to suggest that the Legislature ever intended to extend minimum-wage protections to incarcerated persons; and there is much in the relevant laws and their backgrounds to suggest that the Legislature and voters did *not* intend to grant such rights to inmates. (See COB 13-14, 38-40; CRB 9-12; Pen. Code, § 4019.3; 3 ER 503.) Legal Aid at Work's argument reflects a policy preference that can only be addressed to the Legislature or voters.

CONCLUSION

Amici present a range of concerns and passionate critiques of mass incarceration in the United States. Their arguments may suggest the need for the Legislature or voters to change the existing laws that govern prison work. But they provide no basis for this Court to superimpose the Labor Code on pre-trial detainees' voluntary participation in public-private work programs. It remains, accordingly, that this Court should answer the question posed by the Ninth Circuit in the negative.

DATED: July 14, 2023 HANSON BRIDGETT LLP

By: 

ADAM W. HOFMANN
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I, Adam W. Hofmann, counsel for petitioners County of Alameda and Sheriff Gregory J. Ahern, hereby certify that, according to Microsoft Word, the computer program used to prepare this Respondent's Brief, the number of words in the document, including footnotes, is 2,951, exclusive of caption, tables, signature block, and this certification.

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