No. S284496

In the Supreme Court of the State of California

OFFICE OF THE STATE PUBLIC DEFENDER, ET AL.,
Petitioners,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA,
Respondent.

SUPPLEMENTAL REPLY BRIEF

ROB BONTA (SBN 202668)
Attorney General of California
MICHAEL J. MONGAN (SBN 250374)
Solicitor General
LANCE E. WINTERS (SBN 162357)
JONATHAN L. WOLFF (SBN 193479)
Chief Assistant Attorneys General
JAMES WILLIAM BILDERBACK II (SBN 161306)
THOMAS S. PATTERSON (SBN 202890)
Senior Assistant Attorneys General
*SAMUEL T. HARBOURT (SBN 313719)
California Supreme Court Civil Coordinator & Deputy Solicitor General
MICA L. MOORE (SBN 321473)
Deputy Solicitor General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 510-3919
Samuel.Harbourt@doj.ca.gov
Attorneys for Respondent

Dec. 17, 2024

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT RULES

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

INTRODUCTION

This brief addresses the arguments advanced by petitioners and amici curiae in response to the Court's supplemental briefing order. As to standing, petitioners do not materially elaborate on the allegations and theories presented in their petition. While at least one petitioner has alleged sufficient facts to support standing at this preliminary stage, petitioners will need to substantiate their allegations of injury if the case moves forward. As to the merits, petitioners' claim under the state equal protection clause fails under this Court's settled precedent. But no decision of this Court squarely addresses whether petitioners' factual allegations (if proven) would warrant relief under the state cruel or unusual punishment clause. If the case proceeds and the Court ultimately holds that petitioners have proven a violation of that provision, petitioners would be entitled to some—but not all—of their requested relief. And there is no basis for treating additional parties as "indispensable," such that their joinder would be mandatory under Code of Civil Procedure section 389. But the Court could entertain motions for permissive intervention under section 387 in the future.

Petitioners also agree with the Attorney General that it would be "appropriate" for the Court to "appoint[] . . . a special master" to oversee a factual inquiry into the validity of petitioners' statistical evidence. (Pet. Supp. Br. 12.) In the Attorney General's view, a factfinding procedure of that nature is not just appropriate, but critical. Only through careful scrutiny of petitioners' studies could the Court develop a complete

understanding of the studies' methodologies, reported findings, and validity—and decide what relief (if any) is appropriate.

ARGUMENT

I. ISSUE 1: ON WHAT GROUND OR GROUNDS HAVE PETITIONERS ESTABLISHED STANDING?

In response to the first question presented by this Court's briefing order, petitioners principally rely on the public interest "exception" to ordinary standing requirements. (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1248; see Pet. Supp. Br. 14-16.) In petitioners' view, that exception applies any time a case implicates "serious public rights" or "presents 'a matter of the greatest public importance.'" (Pet. Supp. Br. 15.) But that sweeping view of the exception would swallow ordinary standing requirements. (AG Supp. Br. 17-18.) Virtually any constitutional challenge to a state law can be characterized as "serious" or "important" in some sense. Petitioners fail to identify any judicially manageable standard that would allow courts to identify what constitutional claims are sufficiently important that they implicate the public interest exception.

The narrower approach adopted by courts in California and other jurisdictions focuses instead on whether the challenged government policy would "be effectively insulated from judicial review" under ordinary standing requirements. (E.g., *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 206.) In *Weiss*, for example, the court allowed a motorist to invoke the public interest exception when challenging certain traffic-citation practices because "typically only a minimal fine is at issue on any individual citation" and "only a short window of time is available"

before citations become final. (*Ibid.*) Those factors made it difficult for directly affected motorists to "mount[] a challenge." (*Ibid.*; see also *Driving Sch. Assn. of Cal. v. San Mateo Union High Sch. Dist.* (1992) 11 Cal.App.4th 1513, 1519 [similar]; *Madera Cmty. Hosp. v. County of Madera* (1984) 155 Cal.App.3d 136, 142-143, 145-146 [similar]; *McDonald v. Stockton Met. Transit Dist.* (1973) 36 Cal.App.3d 436, 443 [similar]; cf. *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 875.)[1]

The cases that petitioners invoke (see Pet. Supp. Br. 14-15) do not support their broad understanding of the public interest exception. As this Court has previously recognized, the discussion of the exception in *Board of Social Welfare v. Los Angeles County* (1945) 27 Cal.2d 98, 99-101 is only "incidental dictum." (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 797.) In *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 170, the Court merely recognized that corporations may invoke the public interest exception in appropriate circumstances. It was ultimately

[1] Scholars and high courts in other jurisdictions have endorsed a similar approach when addressing the scope of public interest standing (or similar doctrines). (See, e.g., Segall, *Standing Between the Court and the Commentators: A Necessity Rationale for Public Actions* (1993) 54 U. Pitt. L.Rev. 351, 391-402; *Schwartz v. Lopez* (2016) 132 Nev. 732, 743; *Pittsburgh Palisades Park, LLC v. Commonwealth* (2005) 585 Pa. 196, 207-208; *Ruckle v. Anchorage School Dist.* (Alaska 2004) 85 P.3d 1030, 1035, 1037; *Transactive Corp. v. Dept. of Social Serv.* (N.Y. 1998) 706 N.E.2d 1180, 1184; *Common Cause v. State* (Me. 1983) 455 A.2d 1, 9; *Jenkins v. Swan* (Utah 1983) 675 P.2d 1145, 1150; cf. *Canada v. Downtown Eastside Sex Workers United Against Violence Society* (Can. 2012) 2 S.C.R. 524 ¶¶ 60-76.)

"unnecessary to resort to the public interest exception" in that case because the corporate plaintiff "plainly possesse[d] the direct, substantial sort of beneficial interest" that satisfies ordinary standing requirements. And in *Green v. Obledo* (1981) 29 Cal.3d 126, 143-145, the Court held that certain recipients of welfare benefits had standing to challenge several subparts of a state regulation governing benefit levels, even though they were directly affected by just one subpart. Because the plaintiffs were challenging each subpart on similar legal grounds (see *id.* at pp. 143-144), it made sense as a matter of judicial economy to hear their related challenges in the same suit.

Properly understood, the public interest exception does not apply here. The State's death penalty laws are hardly insulated from constitutional challenge in a judicial forum. (See AG Supp. Br. 17.) As petitioners acknowledge, capital defendants and prisoners can raise the same claims that petitioners seek to present here in the context of direct appeals or state habeas proceedings. (See Pet. 56-58.) Petitioners assert that such cases would not "reach this Court in a timely manner." (Pet. 56; see also Amici Letter of Former California Jurists 6-7.) While that concern may provide a prudential reason for the Court to exercise original jurisdiction (cf. AG Prelim. Resp. 15-16), it is not a reason to relax or bend ordinary standing requirements. Litigation and judicial review can be time-consuming in many contexts. A decision to apply the public interest exception on that ground here could have far-reaching implications for standing doctrine well beyond this case.

Petitioners also contend that they have standing "under the ordinary 'beneficially interested' test." (Pet. Supp. Br. 16, quoting Code Civ. Proc., § 1086.) With respect to the private organizational petitioners, the Attorney General has explained why they have not yet shown a "beneficial interest" but may able to do so if they elaborate on and substantiate the spare allegations contained in the petition. (See AG Supp. Br. 18-21.) With respect to the Office of the State Public Defender (OSPD), the mere fact that it "directly represent[s]" individuals who have a beneficial interest (Pet. Supp. Br. 15) is not sufficient on its own to show that OSPD itself has such an interest. (See AG Supp. Br. 22.) Attorneys and legal organizations do not generally have standing to step into the shoes of their clients as plaintiffs—at least where there is nothing stopping their clients from asserting the relevant claims directly. (See generally *Kowalski v. Tesmer* (2004) 543 U.S. 125, 131.) But petitioners have also alleged that the State's death penalty laws diminish the resources available to OSPD. (See Pet. 21-22.) If petitioners are able to substantiate that allegation with concrete evidence, it will suffice to satisfy the "beneficial interest" requirement. (See AG. Supp. Br. 22-23.)[2]

[2] The Criminal Justice Legal Foundation (CJLF) invokes this Court's decision in *Dix v. Superior Court* (1991) 53 Cal.3d 442. In that case, the Court held that a victim lacked standing to obtain mandate relief barring a superior court from recalling a particular defendant's sentence. (See *Dix*, at p. 450.) As CJLF notes, it is currently litigating two matters against the California Department of Corrections and Rehabilitation in the lower courts that touch on the scope of *Dix* and how it applies to cases where victims or victims' family members challenge the validity of

(continued…)

Finally, petitioners refer in passing to California's taxpayer standing statute, section 526a of the Code of Civil Procedure. (Pet. Supp. Br. 17.) It is not clear, however, that section 526a applies in original writ proceedings before this Court. (See Amicus Br. of CJLF 20-21.) In any event, section 526a authorizes suits against "local agenc[ies]" alone. (Code Civ. Proc., § 526a.) While certain lower courts have held that "state officers too may be sued under section 526a" (*Serrano v. Priest* (1971) 5 Cal.3d 584, 618, fn. 38 [citing two examples]; see also *Blair v. Pitchess* (1971) 5 Cal. 3d 258, 268 [same]), *this* Court has never endorsed that atextual expansion of the statute. The lower court decisions cited in *Serrano* and *Blair* expanded section 526a "without any real analysis." (*Cornelius v. L.A. County Etc. Auth.* (1996) 49 Cal.App.4th 1761, 1775-1776.) And this Court's modern precedent recognizes the importance of adhering to "the explicit statutory limits . . . impose[d]" by the Legislature "on taxpayer standing." (*Weatherford*, *supra*, 2 Cal.5th at p. 1251.)[3]

---

certain criminal justice reform measures. (See, e.g., *Jessica M. v. CDCR* (Super. Ct. L.A. County, 2024, No. 24STCP02901).) But no party (or amicus) here takes the position that *Dix* precludes standing in this case on the particular grounds discussed in the Attorney General's supplemental brief—and CJLF's own position is that "*Dix* is nowhere near so broad" as to foreclose standing here. (Amicus Br. of CJLF 16.)

[3] In *Taking Offense v. State* (No. S270535, May 17, 2023), the Court called for supplemental briefing on whether "California recognizes a common law taxpayer standing doctrine." Because petitioners have not invoked any such doctrine, the Attorney General does not address that question here.

II. ISSUE 2: WHAT RELIEF, IF ANY, WOULD BE APPROPRIATE IF PETITIONERS PROVE THE FACTS THEY HAVE ALLEGED?

This Court also asked the parties to address whether petitioners would be entitled to relief under the equal protection and cruel or unusual punishment clauses of the California Constitution if they prove their factual allegations. As the Attorney General has explained (AG Supp. Br. 23-29), petitioners' equal protection claim fails under settled precedent. But this Court's precedent does not squarely resolve whether petitioners' allegations, if proven, would establish a violation of the state cruel or unusual punishment clause. If the Court were to recognize a violation of that clause, however, petitioners would at most be entitled to an order barring the Attorney General from prosecuting capital cases under any statutes deemed invalid. (AG Supp. Br. 29-49.) Petitioners' brief does not advance any persuasive argument to the contrary.

1. Petitioners' principal merits contention is that a disparate impact on the basis of race triggers strict scrutiny under California's equal protection clause. (Pet. Supp. Br. 19-30.) But this Court long ago rejected that theory as a matter of state equal protection doctrine. (See *Hardy v. Stumpf* (1978) 21 Cal.3d 1, 7; AG Supp. Br. 24-26; see also Supp. Amicus Br. of Cal. Const. Scholars 14-17.) Contrary to petitioners' assertion, this Court's decision in *Hardy* did not solely address "the *federal* Constitution." (Pet. Supp. Br. 29, fn. 5.) In the section of that decision titled "Equal Protection," the Court expressly referred to equal protection doctrine "in California" (21 Cal.3d at p. 7), as well as the "state Constitution" (*id.* at p. 8); it cited the text of the

California Constitution (*id.* at p. 7., citing former "Cal. Const., art. I, § 8"); and it invoked case law construing the state equal protection clause (*ibid.*, citing *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 16). Although *Hardy* also cited *Washington v. Davis* (1976) 426 U.S. 229, 242, this Court commonly relies on federal precedent when construing the state charter. (See, e.g., *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 571.)[4]

As to the cruel or unusual punishment clause, petitioners acknowledge that they did not invoke that provision in their petition. (Pet. Supp. Br. 31, fn. 6.) In response to the supplemental briefing order, however, petitioners suggest that they would amend their petition to raise a cruel or unusual punishment claim with the Court's permission. (See *ibid.*) As a general matter, this Court should be wary of granting leave to amend extraordinary petitions seeking the exercise of this Court's original jurisdiction.[5] But in the unusual circumstances

---

[4] Not long after *Hardy*, Chief Justice Bird authored an opinion that treats *Hardy* as a decision applying "the California Constitution." (*Hawkins v. Superior Court* (1978) 22 Cal.3d 584, 610, fn. 5 (conc. opn. of Bird, C.J.), abrogated on other grounds as stated in *Strauss v. Horton* (2009) 46 Cal.4th 364, 407.)

[5] While "motions for leave to amend are liberally granted" when writ petitions are filed in superior court (*Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th 1110, 1124; see Code Civ. Proc., §§ 472, 1109), extensive amendments and associated motions practice are not well suited to the exercise of original jurisdiction by a court of last resort (cf. *Nebraska v. Wyoming* (1995) 515 U.S. 1, 8 ["[T]he solicitude for liberal amendment of pleadings animating the Federal Rules of Civil Procedure, Rule 15(a)" "does not suit cases within this Court's original jurisdiction."]).

presented here, the Attorney General would not object to petitioners' proposed amendment. Allowing that amendment would enable the Court to preserve the option of resolving the case on narrower grounds than petitioners' sweeping equal protection theory. (See AG Supp. Br. 29-38 [explaining why a decision on cruel or unusual punishment grounds would be limited to the death penalty context]; cf. *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 296 (conc. opn. of George, C.J.) ["traditional principles of judicial restraint" favor narrower constitutional grounds for decision].)

In analyzing the cruel or unusual punishment clause, petitioners invoke several distinct doctrines and theories, some of which bear little evident connection to the allegations in this case. For example, petitioners point to out-of-state precedent addressing the constitutionality of life sentences for juveniles (Pet. Supp. Br. 36, citing *State v. Kelliher* (N.C. 2022) 873 S.E.2d 366, 387) and the "evolving standards of human decency" and principles "of philosophy" that led the Connecticut Supreme Court to deem that State's death penalty cruel and unusual on a per se basis (Pet. Supp. Br. 39 & fn. 10, citing *State v. Santiago* (Conn. 2015) 122 A.3d 1, 29, 66-67). But petitioners ultimately agree with the Attorney General that the relevant standard here is whether California's procedures for imposing the death penalty give rise to an excessive risk that sentences will be imposed "in an arbitrary manner." (Pet. Supp. Br. 35; see also *id.* at p. 47 [arguing that *Furman v. Georgia* (1972) 408 U.S. 238 "provides a useful analogy"]; AG Supp. Br. 30-31 [discussing *Furman*].)

The central question facing the Court in applying that arbitrariness standard is whether to follow the U.S. Supreme Court's reasoning in *McCleskey v. Kemp* (1987) 481 U.S. 279, 306-319. (See AG Supp. Br. 33-38.) While the Court's general practice would be to defer to *McCleskey* (see, e.g., *People v. Buza* (2018) 4 Cal.5th 658, 685), the Court could decide to depart from that decision as a matter of state constitutional law if there are "'cogent reasons'" or "'independent state interests'" that would justify doing so (*ibid.*). Here, that inquiry would depend in part on the details of petitioners' studies—including the validity and significance of their reported findings. (AG Supp. Br. 33-34.) The active debate between petitioners and several amici about the validity of those studies (see, e.g., Amicus Br. of San Bernardino D.A. 22-25) underscores the need for proceedings before a finder of fact prior to any final resolution of the merits.[6]

2. If petitioners ultimately substantiate their factual allegations and demonstrate a violation of the cruel or unusual punishment clause, they could obtain an order barring the

---

[6] The San Bernardino District Attorney's Office suggests that the Attorney General's proposal for appointment of a "'special master or referee'" would "avoid an open court proceeding." (Amicus Br. of San Bernardino D.A. 22.) But there is nothing inherent about the appointment of a special master or referee that would require proceedings to be conducted in private, and the Court could direct a special master or referee to hold public hearings. (See, e.g., *Wilson v. Eu* (1991) 54 Cal.3d 471, 47 [appointing "three Special Masters to hold public hearings"]; see also *In re Thomas* (2006) 37 Cal.4th 1249, 1255 [describing proceeding where referee "heard testimony from nearly two dozen witnesses"].)

Attorney General from "prosecut[ing]" capital cases until the constitutional infirmities with the challenged system were resolved. (Pet. 62; see AG Supp. Br. 38-49.) It would be improper for the Court to order the Attorney General to refrain from "impos[ing]" or "execut[ing]" sentences of death because he is not directly responsible for those activities. (Pet. 62; see AG. Supp. Br. 39-41, citing *Boggs v. Jordan* (1928) 204 Cal. 207, 216-219.)

In arguing otherwise, petitioners invoke a provision of the Government Code providing that "[a]fter judgment in any of the causes referred to in section 12512, the Attorney General shall direct the issuing of such process as may be necessary to carry the judgment into execution." (§ 12513; see Pet. Supp. Br. 67.) Petitioners appear to read section 12513 as empowering the Attorney General to direct *any* state officials to comply with any judgment this Court might render in this (or any other) proceeding. (See *ibid.*) The text does not compel that expansive understanding. Section 12513 refers only to cases covered by section 12512—cases in which the Attorney General represents "the state, or [a] state officer . . . in the state officer's official capacity." (Gov Code., § 12512.) But the Attorney General is the only named respondent here; there are no other "state officer[s]" appearing in their "official capacit[ies]." (*Ibid.*; see Pet. 19.) And the only appellate decision to cite section 12513 since its enactment in 1945 provides no support for petitioner's view. That decision, *People v. Los Angeles* (1958) 160 Cal.App.2d 494, 500, suggests that the purpose of section 12513 is merely to authorize execution of judgments against *parties* to the

proceedings in which such judgments were entered—not officials who were never named as parties in the first place.[7]

As to the significance of article I, section 27 of the California Constitution and the standard for facial relief, petitioners and the Attorney General agree in part and disagree in part. The parties agree that section 27 prohibits per se challenges to California's death penalty statutes. (See, e.g., Pet. Supp. Br. 53, citing *People v. Superior Court (Engert)* (1982) 31 Cal.3d 797, 808.) They also agree that "[t]he question of whether an action constitutes a challenge to the death penalty per se is a question distinct from" whether a challenge is "facial versus as-applied." (Pet. Supp. Br. 53; see AG Supp. Br. 44-49.) Where the parties appear to diverge is on the precise meaning of the term "per se."

Petitioners advance a narrow definition: a challenge would qualify as "per se" under section 27 only if it maintains that "the death penalty [must] be outlawed in all forms and in all circumstances, for all people and in all cases, for all time, because of the intrinsic, fundamental, and irredeemable nature and quality of the punishment itself." (Pet. Supp. Br. 54.) In the Attorney General's view, a challenge qualifies as "per se" if it

---

[7] *Los Angeles* involved an effort by the City Attorney of Manhattan Beach to enforce a judgment entered against the City of Los Angeles in an earlier case brought by the Attorney General on behalf of several state agencies. (160 Cal.App.2d at p. 500.) The court rejected the City Attorney's attempt on the ground that Manhattan Beach was not a party to the prior proceeding. (See *ibid.*) The court also observed that section 12513 *would* give the Attorney General authority to enforce the judgment against the City of Los Angeles. (*Ibid.*)

would effectively prohibit any system of capital punishment from being administered constitutionally. (See AG Supp. Br. 45-46; Prelim. Resp. 24-25.) For example, petitioners' challenge would qualify as "per se" to the extent they argue that the risk of implicit bias on the part of prosecutors, jurors, or judges—by itself—is sufficient to render California's system of capital punishment unconstitutional. (AG Supp. Br. 45.) Given the unfortunate reality that implicit bias is "pervasive[]" in our society (Liu, *Implicit Bias, Structural Bias, and Implications for Law and Policy* (2023) 25 U. Pa. J. Const. L. 1280, 1301), that theory would effectively render any death penalty system unconstitutional. While portions of the petition in this case can be read to espouse that far-reaching theory (see, e.g., Pet. 47, 49), and several amici explicitly embrace it (see, e.g., Amicus Br. of State Law Research Initiative et al. 41-63), petitioners now appear to disavow it. (See Pet. Supp. Br. 55 ["the remedy petitioners seek is limited to the state's capital punishment system as presently administered"].) If this case proceeds, it will be important for petitioners to clarify the scope of their merits theory and how it comports with section 27.

With respect to the standard for facial relief, petitioners and the Attorney General disagree about whether it governs resolution of this case. (Compare, e.g., Pet. Supp. Br. 44, fn. 12, with AG Supp. Br. 47-49.) But petitioners' bottom line does not appear to differ materially from the Attorney General's: if petitioners are able to prove facts showing that California's death penalty is invalid on a systemwide basis under the cruel or

unusual punishment clause, they would necessarily satisfy the standard for facial relief. (See AG Supp. Br. 48 & fn. 18.) In that event, a system-wide remedy would be appropriate. (See *ibid.*; cf. Pet. Supp. Br. 51.) Whether petitioners can ultimately demonstrate a systemwide constitutional defect will depend on the outcome of proceedings before a finder of fact.

III. ISSUE 3: WHAT PARTIES ARE NECESSARY?

Finally, the Court's briefing order asked "[w]hat parties are necessary to properly consider the requested relief and effectuate it, if warranted?" The Attorney General agrees with petitioners that no other parties qualify as "indispensable" under Code of Civil Procedure section 389, subdivision (b), such that they *must* be added for the case to proceed. (See AG. Supp. Br. 49-56; Pet. Supp. Br. 64.) But to the extent petitioners argue that there would be no conceivable basis for granting party status to anyone else at later stages of proceedings, that argument is premature. It remains possible that an appropriate party could file a motion for permissive intervention under Code of Civil Procedure, section 387, subdivision (d)(2) (section "387(d)(2)"). (See AG Supp. Br. 50, 56.) The Court—and the parties—would need to consider the arguments and evidence in support of such a motion before taking a position on whether it should be granted.

The Riverside District Attorney's Office argues that each of the State's district attorneys qualifies as a real party in interest that must be accorded party status to represent "the People."

(Riverside D.A. Supp. Br. 25-30.)[8] In advancing that claim, the district attorney acknowledges the Attorney General's constitutional role as "chief law officer of the State." (*Id.* at p. 26, quoting Cal. Const., art. V., § 13.) In the district attorney's view, however, he can claim status as an indispensable real party in interest unless and until the Attorney General exercises his "broad discretion" to "take over a case" currently being handled by a district attorney. (*Id.* at p. 29; see Amicus Br. of San Bernardino D.A. 6, 25 [similar].)

That contention fails. (See AG Supp. Br. 50-55.) Compelling the joinder of dozens of district attorney's offices would be irreconcilable with the Court's longstanding approach to "the doctrine of indispensable and necessary parties" (*Serrano v. Priest* (1976) 18 Cal.3d 728, 753), which turns on "practical realities" (*Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1018) and avoids imposing "burdensome requirement[s] which may thwart rather than accomplish justice." (*Serrano*, at p. 753, internal quotation marks omitted; see also Amicus Br. of Prosecutors Alliance 10-12, 22-24.) The district attorney's request to order the joinder of hundreds of "condemned inmates, defendants facing capital punishment, and victims' next of kin" (Riverside D.A. Supp. Br. 31) is unavailing for the same reason.

---

[8] This Court's briefing order invited briefs from "[p]etitioners and the Attorney General." (See Amicus Br. of San Bernardino D.A. 6.) All other interested parties were instructed to proceed by submitting applications to file briefs as amici curiae. Rather than doing so, the Riverside District Attorney's Office filed a brief on the same date that the parties' briefs were due. It did not seek or obtain leave from the Court.

If any interested parties wish to be accorded formal party status, the proper procedure is to file a motion for permissive intervention under section 387(d)(2).

CJLF argues that the Riverside and San Bernardino District Attorneys "have stepped up" and "should be granted party status if this case moves forward." (Amicus Br. of CJLF 24.) But neither of those district attorneys has moved for permissive intervention—or even mentioned that possibility in their briefs. Should they do so in the future, they will need to address the standard for intervention under section 387(d)(2); their statutory authority to participate in civil litigation with full party status (cf. Amicus Br. of CJLF 11-13, discussing *Safer v. Superior Court* (1975) 15 Cal.3d 230); and their standing to participate in the case as respondents (cf. *Cal. Dept. of Toxic Substances Control v. Jim Dobbas* (9th Cir. 2022) 54 F.4th 1078, 1085 [discussing standing requirements under federal law when parties seek to intervene]). The Attorney General takes no position at this time on those issues or other questions pertaining to hypothetical future requests for permissive intervention.

CONCLUSION

If the Court decides to exercise its original jurisdiction, the Attorney General respectfully requests that the Court appoint a special master or referee to assess the empirical studies invoked by petitioners and oversee necessary factual development.

Respectfully submitted,

ROB BONTA (SBN 202668)
Attorney General of California
MICHAEL J. MONGAN (SBN 250374)
Solicitor General
LANCE E. WINTERS (SBN 162357)
JONATHAN L. WOLFF (SBN 193479)
Chief Assistant Attorneys General
JAMES WILLIAM BILDERBACK II (SBN 161306)
THOMAS S. PATTERSON (SBN 202890)
Senior Assistant Attorneys General

s/ Samuel T. Harbourt

SAMUEL T. HARBOURT (SBN 313719)
California Supreme Court Civil Coordinator & Deputy Solicitor General
MICA L. MOORE (SBN 321473)
Deputy Solicitor General

Attorneys for Respondent

Dec. 17, 2024

CERTIFICATE OF COMPLIANCE

I certify that the attached SUPPLEMENTAL REPLY BRIEF uses a 13 point Century Schoolbook font and contains 4,325 words.

ROB BONTA
Attorney General of California

s/ Samuel T. Harbourt

SAMUEL T. HARBOURT
Deputy Solicitor General
Attorneys for Respondent

Dec. 17, 2024