

No. 13-A57

IN THE SUPREME COURT OF THE UNITED STATES

Governor Edmund G. Brown Jr., et al.,
Applicants-Appellants,

v.

Marciano Plata and Ralph Coleman, et al.,
Appellees.

On Application for Stay of Injunctive Relief Pending This Court's Final
Disposition of Appeals Pursuant to 28 U.S.C. § 1253

**AMICUS CURIAE BRIEF BY THE
CALIFORNIA STATE ASSOCIATION OF COUNTIES AND
THE CHIEF PROBATION OFFICERS OF CALIFORNIA
IN SUPPORT OF APPLICANTS AND APPELLANTS**

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INTERESTS OF THE AMICI CURIAE¹

The California State Association of Counties (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.

The Chief Probation Officers of California is a non-profit organization representing the appointed chiefs in all 58 counties in the State of California. The mission of the Chief Probation Officers of California (CPOC) is to provide leadership in the mobilization, coordination, and implementation of probation programs and provide for public protection, including detention and treatment, victim services and the prevention of crime and delinquency; and to insure the provision of quality investigations and supervision of offenders for the courts.

CSAC and CPOC have a substantial interest in this case. Counties have been on the front line of implementing the State's realignment of

¹ Pursuant to this Court's Rule 37.6, this brief was not authored in whole or in part by counsel for any party, and no person or entity other than the amici curiae made a monetary contribution to this brief's preparation or submission.

certain State prisoners and parolees to county custody and supervision (“Realignment”). A.B. 109, 2011-2012 Leg., Reg. Sess. (Cal. 2011). During the first year of Realignment alone, California’s 58 counties assumed responsibility for more than 50,000 persons realigned to the county criminal justice system, both offenders now sentenced to county jails and State inmates who now must be supervised by county probation officers. This number does not include offenders who are serving detention time in county jail following parole revocation, as Realignment precludes them from being sent back to State prison. Nor does it capture likely several thousand more released or sentenced between October 1, 2012 and today – given that statewide data for this period is not yet available. And finally, the impact of these numbers has already resulted in many counties having to utilize alternative sanctions for displaced offenders in county jails that have reached maximum capacity. This significant and unprecedented shift in responsibility from the State to counties greatly limits the counties’ ability to absorb additional offenders into their systems.

California counties have been committed partners with the State in making Realignment successful. As required by the Realignment statutes, counties have established Community Corrections Partnerships to develop alternatives to incarceration and programs designed to reduce recidivism. CSAC and CPOC, along with other statewide criminal justice partners, have sponsored trainings to share best practices and effective programs

among the counties in order to rise to the challenges of Realignment. These efforts, which are less than two years old, are designed to rehabilitate offenders and reduce the overall rate of incarceration in the State of California, which serves to increase public safety as well as the quality of life for the offenders and the population at large.

The capacity of counties to undertake this effort, however, is not without limits. CSAC and CPOC have a significant and immediate interest in ensuring the success of current Realignment endeavors, which are already pushing counties to the limits of their resources. As such, CSAC and CPOC support the State's Application for a Stay to allow for a thorough review of the program that has already been made through Realignment, and to avoid irreparable harm to the progress counties have made thus far in taking tens of thousands of offenders out of the State prison and parole systems. Failure to grant the stay would dramatically undermine the thoughtful system of reform currently in place. Counties have developed strategies and programs to protect our communities and create lasting changes to our criminal justice system.

SUMMARY OF THE ARGUMENTS

CSAC and CPOC respectfully request that this Court grant the Application to stay the three-judge court's June 20, 2013 order imposing additional injunctive relief for the following reasons:

1. Counties have absorbed significant and unprecedented new responsibilities under Realignment. Realignment was adopted in response to this Court's prior order to reduce the State prison population. Realignment has shifted State responsibilities to the counties, resulting in more inmates in our county jails, more offenders supervised by county probation, and more in-custody offenders being placed in county jails for violating the terms or conditions of postrelease community supervision and parole. In addition, counties have developed, created, and expanded alternative incarceration programs and rehabilitation services designed to reduce the overall population incarcerated in this State. Realignment has resulted in profound changes for counties and has significantly impacted county capacity and functions, which limits the ability of counties to absorb additional prisoners into our communities. None of these programmatic changes were in effect when this Court first examined this case, and they warrant careful consideration to determine whether the counties can manage any additional released prisoners without adversely impacting public safety.

2. The release into the community of more than 4,000 inmates presents a real and potentially dangerous challenge for counties, and puts at risk the successes that counties have already achieved in Realignment. California Department of Corrections and Rehabilitation Secretary Jeffrey Beard has testified that the cap cannot be met without releasing serious and violent

offenders. *Application for Stay*, p. 31. Although the characteristics of the specific inmates who would be released under the three-judge court's order may be unknown, what is known is that non-violent offenders sentenced after October 1, 2011 are already in county custody, and all eligible offenders released from State prison after October 1, 2011 are already being supervised by county probation. The counties are therefore justifiably concerned that those prisoners remaining in State prison who would be eligible for release under the June 20th order are more violent and serious offenders than those the counties have already been charged with supervising. The three-judge court's order therefore presents a risk to community safety in all counties, and adds potentially unmanageable pressures on a system that is already difficult to manage under Realignment. Such an adverse impact on public safety cannot be sanctioned under the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(1)(A).

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**REASONS WHY THE THREE-JUDGE COURT'S ORDER
IMPOSING ADDITIONAL INJUNCTIVE
RELIEF SHOULD BE STAYED**

**I. PUBLIC SAFETY REALIGNMENT CREATED A
PROFOUND SHIFT IN PRISONER MANAGEMENT IN
CALIFORNIA, AND SHOULD BE CAREFULLY
CONSIDERED BEFORE ADDITIONAL RELEASES
ARE ORDERED.**

In response to this Court's prior order in this case, *Brown v. Plata* 131 S.Ct. 1910 (2011), the State of California embarked on a monumental public safety realignment. See A.B. 109, 2011-2012 Leg., Reg. Sess. (Cal. 2011); AB 117, 2011-2012 Leg., Reg. Sess. (Cal. 2011). Among other changes to the State's criminal justice system, Realignment created two new responsibilities for the counties to assume for the purpose of reducing the State's prison population.

First, the Realignment legislation changed sentencing requirements to mandate that certain felons be sentenced to serve time in county jails rather than State prisons. See Cal. Penal Code § 1170(h). In general, felony convictions that involved non-violent, non-sex, and non-serious offenses now require sentencing in county jail. Cal. Penal Code § 1170(h)(1)-(3). Further, parole violators, who were initially sentenced to State prison, are now required to be sentenced to county jails. Cal. Penal Code § 3056.

Second, counties became responsible (for the first time) to supervise certain adult offenders released from State prison through a program called

Postrelease Community Supervision (PRCS), rather than State parole. Cal. Penal Code § 3450, *et seq.* Effective October 1, 2011, PRCS supervision for offenders upon release from prison includes current non-violent offenders (irrespective of prior crimes), current non-serious offenders (irrespective of prior crimes), and some sex offenders. County probation departments have taken the responsibility to manage the PRCS populations as the supervising agencies. PRCS places many responsibilities on the counties to supervise offenders, including a process for dealing with those who violate conditions of their release. Further, beginning on July 1, 2013, parole revocations are no longer handled by the State Board of Parole Hearings, but rather by the local courts, which will presumably accelerate revocations and return parole offenders to custody in county jails. Cal. Penal Code § 3000.08.

A final critical aspect of Realignment was the expansion of the duties of the Community Corrections Partnerships (CCP), which exist in each of the 58 counties. See Cal. Penal Code § 1230(b). Realignment legislation created a CCP Executive Committee comprised of participants from law enforcement, the courts, and social and rehabilitation services. Cal. Penal Code § 1230.1(b). The CCP Executive Committee was charged with developing a local plan for implementing Realignment. With the notion that the realigned population would be limited to non-violent, non-sex, non-serious offenders, the CCPs developed local alternatives to

incarceration and rehabilitation programs designed to reduce recidivism and overall incarceration rates. Most plans were completed by October 1, 2011 or shortly thereafter. Implementation of the plans has been occurring for less than two years.

The shift in responsibilities over the realigned prison population has indeed been profound. Between October 1, 2011 and September 30, 2012, 36,329 state prison inmates have been released to county probation supervision rather than State parole, and 29,027 offenders have been sentenced to county jail instead of State prison terms. CPOC, *Mandatory Supervision: The Benefits of Evidence Based Supervision Under Public Safety Realignment* (Winter 2012), available at <http://www.cpoc.org/assets/Realignment/issuebrief2.pdf>. Further, these numbers do not include offenders who violated terms of supervision and are now required to serve additional time in county jail rather than State prison (for which data is not available). The rate of the transfer of responsibilities over offenders from the State to the counties continues as sentences are handed down daily, likely meaning that counties are responsible for several thousand more offenders released or sentenced in the last eight months.

Counties have made substantial progress in working together to address the requirements and impacts of Realignment, and have been largely successful to date. However, the impacts Realignment has had on

county resources has been dramatic. A recent study conducted by the Public Policy Institute of California emphasizes the impact on county public safety resources:

Our data indicate that realignment has significantly affected county jail populations. Between June 2011 and June 2012, during which time California's prison population declined by roughly 26,600, the average daily population of California's jails grew by about 8,600 inmates, or about 12 percent. As a result, 16 counties are operating jails above rated capacity, up from 11 counties in the previous year. On a statewide basis, county jails have been operating above 100 percent of rated capacity since February 2012. In addition, we have observed an increase in the number of counties reporting early release of jail inmates due to insufficient capacity. By June 2012, 35 counties reported releasing pretrial inmates and/or sentenced offenders early due to capacity constraints (compared to 27 counties in June 2011).

Magnus Lofstrom and Steven Raphael, Public Policy Institute of California, *Impact of Realignment on County Jail Populations 2* (June 2013).

Yet, despite this rapid increase in county jail incarceration rates, the overall incarceration rates in the State decreased, which serves as evidence that the alternatives to incarceration and rehabilitation programs established by the counties under Realignment are working to reduce recidivism:

While realignment has certainly increased the population of county jails, the overall California incarceration rate (prisons and jails combined) has declined due to realignment. That is to say, there has not been a statewide, one-to-one transfer of felons from state prison to county jails. We estimate that, on average, a county's jail population increases by one for every three felons no longer assigned to state prison.

Id. at p. 2.

Since Realignment is less than two years into its implementation, but shows early signs of success in reducing the State's prison population and overall incarceration rates, it is exceedingly important that counties be given additional time and resources to address any further prisoner release before it is implemented. The State, through its partnership with counties, has made significant strides in addressing the problems raised by this case and resulting orders. Any order that risks jeopardizing this progress should be stayed and carefully reviewed before irreparable harm threatens the successes counties have achieved to date.

**II. RELEASE OF HIGHER RISK OFFENDERS
JEOPARDIZES PUBLIC SAFETY AND BURDENS
COUNTY RESOURCES, WHICH ARE DEDICATED
TO SUCCESSFULLY IMPLEMENTING
REALIGNMENT.**

As explained above, beginning October 1, 2011, many categories of non-violent, non-sexual, non-serious offenders have been sentenced to county jails rather than State prison. Similar offenders who have been imprisoned in State prison, as well as those whose commitment offense is non-violent, non-sexual, and non-serious, irrespective of prior criminal history, are being released to county supervision. The three-judge court's order does not specify which prisoners should be released to meet the injunctive relief granted. See, e.g., *Coleman v. Brown/Plata v. Brown*, ___ F.Supp.2d ___, Nos. 2:90-CV-520-LKK, C01-1351-THE, 2013 WL 3326873, at *22-24 (E.D.Cal., N.D. Cal. June 20, 2013). But as a practical

matter, many, if not most, of the non-serious offenders have already been realigned out of the State prison system.

Those who remain, therefore, include the more serious offenders with a higher risk of recidivism and behaviors that are more difficult to treat with the programs that counties have designed through Realignment to deal with less violent offenders. The risk that releasing substantial numbers of such offenders poses to public safety is immediate and significant. For example, as the Applicants explain in their Application for Stay (See Application for Stay at p. 33, fn. 19), the three judge court's order contemplates releasing those serving lengthy third-strike or life sentences to whom the Parole Board has denied parole precisely because the risk they pose to public safety makes them unfit for release. These considerations warrant a stay of the three-judge court's order for a careful evaluation of the profile of those prisoners who would be eligible for release, the impact to public safety of such release, and whether such release is justified under the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(1)(A) ["The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by [prospective] relief."]

CONCLUSION

The requested stay is justified to prevent irreparable harm to public safety and to county administration of the criminal justice programs that are very much in their infancy under Realignment. Before this burden is

placed on counties and our constituencies, Amici Curiae urge this Court to pause and closely evaluate whether this result, which in the new world of Realignment would uniquely impact counties, is absolutely required by the Prison Litigation Reform Act.

For the foregoing reasons, Amici Curiae support the Applicant's request for a stay of the three-judge court's June 20 order imposing additional injunctive relief.

Dated: July 12, 2013

Respectfully Submitted,

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