No. 09-1233

In the
Supreme Court of the United States

GOVERNOR EDMUND G. BROWN, JR., ET AL.,
APPELLANTS,
v.
MARCIANO PLATA AND RALPH COLEMAN, ET AL.,
APPELLEES.

On Appeal from the United States District Courts for the Eastern District of California and the Northern District of California

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AND SUPPLEMENTAL BRIEF OF *PLATA* AND *COLEMAN* APPELLEES

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APPELLEES' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF IN RESPONSE TO APPELLANTS' SUPPLEMENTAL BRIEF

On April 19, 2011, the State of California and the other appellants filed a "Supplemental Brief Describing Post-Argument Legislative Developments." On April 22, 2011, Appellants filed a motion seeking leave to file their supplemental brief. Appellants' brief summarizes certain provisions of California Assembly Bill 109, 2011-12 Sess., § 1 (Cal. 2011) ("A.B. 109"), which Governor Brown signed into law on April 4, 2011. But Appellants have not attempted to explain A.B. 109's relevance to the questions presented or provided any basis for this Court to take judicial notice of this recent legislation.

In light of Appellants' submission, and to avoid unnecessary confusion, Appellees respectfully seek leave to file a short, two-page response. *See* S. Ct. R. 25.7. This short supplemental brief explains why A.B. 109 is not relevant to the issues properly before the Court.

Respectfully submitted,

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SUPPLEMENTAL BRIEF OF THE *PLATA* AND *COLEMAN* APPELLEES

The State's Supplemental Brief describes recently enacted public safety legislation, Assembly Bill 109. But A.B. 109 has no direct bearing on the questions presented and, if anything, confirms the appropriateness of the three-judge court's order.

As with other purported post-judgment "improvements" to California's prisons raised in the State's merits brief, this Court is not the proper forum to assess A.B. 109 and its potential effects, if any, on prison overcrowding and the underlying constitutional violations. If A.B. 109 causes any meaningful change to the provision of medical and mental health care in California's prisons, the State should go back to the lower court, demonstrate that circumstances have changed, and seek appropriate relief under Rule 60(b)(5). That it has not done.

To the extent it should be considered by this Court, A.B. 109 underscores the three-judge court's finding that the State may address its prison overcrowding crisis without adversely impacting public safety. The legislation states that "building and operating more prisons" is not a "sustainable solution" and would not "result in improved public safety." A.B. 109, 2011-12 Sess., § 229. It also is consistent with the lower court's order granting the State "maximum flexibility" to devise its own approach to remedying the constitutional violations.

Any suggestion that California might be taking steps to address its longstanding constitutional violations is welcome, but premature. A.B. 109 is contingent on funding; its measures do not take

effect unless and until the State legislature appropriates the necessary funds. A.B. 109, 2011-12 Sess., § 636. Moreover, even if funds are ultimately appropriated, there is no evidence that the measures it implements will address the prison overcrowding crisis sufficiently to resolve the constitutional violations. In fact, A.B. 109 states that "[t]he provisions of this act are not intended to alleviate state prison overcrowding." A.B. 109, 2011-12 Sess. § 229(b). And it is impossible to predict what effect A.B. 109 might have on prison overcrowding and the ongoing constitutional violations. For example, to comply with the legislation's requirements, the State might well choose to close prisons and operate a smaller number of prisons at the same current high levels of crowding. The highly fact-bound and contingent questions raised by A.B. 109 are properly left for the district court to resolve.

Respectfully submitted,

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