No. S284496

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

OFFICE OF THE STATE PUBLIC DEFENDER; EVA PATERSON; LATINOJUSTICE PLRDEF; ELLA BAKER CENTER FOR HUMAN RIGHTS; and WITNESS TO INNOCENCE,

Petitioners,

v.

ROB BONTA,
California Attorney General, in his official capacity,

Respondent.

On Petition for a Writ of Mandate
Pursuant to Original Jurisdiction
(Cal. Const., art. I, § 7; *id.*, art. VI, § 10)

APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF PROSECUTORS ALLIANCE OF CALIFORNIA

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APPLICATION TO FILE *AMICUS CURIAE* BRIEF

Under California Rules of Court, rule 8.520(f), and this Court's order of September 11, 2024, the Prosecutors Alliance of California respectfully requests permission to file the accompanying brief as *amicus curiae*.[†]

The Prosecutors Alliance of California, a fiscally sponsored project of Tides Center, is an organization of prosecutors committed to reforming California's criminal justice system by advancing public safety, human dignity, and community wellbeing. The issues on which petitioners here seek this Court's review are of particular importance to the Alliance, which has thousands of members spread across the vast majority of counties in California. Since the Alliance's inception, it has advocated for a criminal justice system that fairly and consistently respects defendants' rights to equal protection under the law. Based on the interests and experience of its members, the Alliance previously submitted a letter as *amicus curiae* in support of this Court's review in this case.

[†] No party or counsel for any party in this case authored the accompanying *amicus curiae* brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than *amicus*, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of the brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

The Alliance has an acute interest in ensuring that this Court accept review so it can answer the important questions presented. And as an organization whose membership and work often depends on the efficient administration and outcome of structural litigation involving matters of constitutional law and criminal procedure, the Alliance also has a strong interest in preserving California's longstanding, commonsense approach to necessary parties in constitutional litigation. This Court and other appellate courts throughout the State have long recognized that when a state law is challenged, the proper defendant or respondent, and the only party necessary for fair and efficient adjudication, is the state official primarily responsible for the law's enforcement.

The Alliance thus provides this brief in response to this Court's September 11, 2024 order for supplemental briefing, and in particular to its invitation (in question 3) of views on what parties are "necessary" for these proceedings. The Alliance respectfully requests that the Court accept the enclosed brief for filing and consideration.

December 3, 2024

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Matt Aidan Getz
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Counsel for Amicus Curiae
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BRIEF OF *AMICUS CURIAE*

This Court has asked what parties are "necessary" to adjudicate the important constitutional questions presented here. (Order of Sept. 11, 2024 [question 3].) The answer: only those parties already named in the petition.

Petitioners seek a statewide order declaring California's death penalty unconstitutional in its current application. Under this Court's case law, the proper respondent for such a petition would be the state official charged with enforcing the death penalty, who not only has an interest in defending its constitutionality but who also could ensure compliance with petitioners' requested relief. Petitioners were thus correct to sue Attorney General Rob Bonta, the state official who is normally responsible for defending the constitutionality of a state law.

Other government officials or agencies certainly have an interest in the outcome of this proceeding. No doubt that is why two of California's 58 district attorneys filed unsolicited preliminary oppositions to the petition. But California law has long held that a government official's interest in a law's enforcement or constitutionality is not enough to make the official a necessary or indispensable party that must be added to litigation. To the contrary, courts have made clear that officials or agencies that are inferior to the properly named defendant generally should *not* be added to the mix, lest important

constitutional litigation be waylaid by inefficient and duplicative arguments.

There is no reason to depart from those settled principles here. The Attorney General may have agreed that this Court should grant review and address the questions presented, but he hasn't declined to defend the State's death penalty. Individual district attorneys, other law enforcement officers, or any other officials interested in the outcome of the case also could have their views considered in due course, whether through *amicus* briefs or as part of appropriate factfinding by the Court or an appointed special master. But the 58 district attorneys of this State, like other officials interested in the outcome here, are not "necessary" "parties" without whom the case cannot go forward.

ARGUMENT

I. When a state law is challenged, the only necessary respondent is the state official with primary responsibility for implementing the law.

When the state official primarily charged with implementing a challenged statute is named as the defendant in constitutional litigation, courts presume the official will vigorously and appropriately defend the state's interest in the statute's validity. Courts also recognize that when the right official has been named as a defendant, participation by

additional officials—including officers who are inferior to the defendant—is unnecessary and would only burden the administration of justice.

A. California law has a settled approach to necessary parties in constitutional litigation.

This Court's "long-established" rule is that "in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." (*Serrano v. Priest* (1976) 18 Cal.3d 728, 752.) In simple terms, this means that only the state official with primary responsibility over the challenged state law need be made a defendant. Other government officials—including those who claim an interest in the outcome of the litigation or who are involved in some way in the law's administration—need not and should not be joined.

This Court has recognized these principles in a variety of contexts. *Serrano*, for instance, involved a constitutional challenge to California's public school financing system, with state officials including the Treasurer named as defendants. (18 Cal.3d at pp. 750-751.) The defendants challenged the trial court's adjudication

of the dispute, arguing that the Legislature and Governor also should have been joined as parties. (*Ibid.*) But this Court rejected that argument. As it explained, the interests of the executive and legislative branches would be "fully and adequately represented by the appropriate administrative officers of the state" already named as defendants. (*Id.* at p. 752.) And the fact that the Legislature and Governor had an interest in "the validity of statutes enacted by them" was not enough to justify requiring those public officials' participation in the litigation as parties. (*Id.* at p. 752.)

Another illustration comes from *State v. Superior Court (Veta)* (1974) 12 Cal.3d 237. There, after the California Coastal Zone Conservation Commission denied the plaintiffs' application for a permit to develop coastal land, the plaintiffs brought a lawsuit claiming that the law giving the Commission permitting authority was unconstitutional. (*Id.* at p. 244.) The plaintiffs named as defendants the Commission and its members, along with two Commission employees and the State. (*Id.* at p. 243.) On review, this Court held that the employees and State were not proper parties. As it explained, the plaintiffs had no cause to seek relief "against the state (as distinguished from the Commission acting as its agent) or against the Commission employees." (*Id.* at

p. 255.) Put differently, the state agency authorized to act under the statute (the Commission) was the only proper defendant in the litigation, and both the State and individual Commission employees—despite their interest in the law's enforcement—"were misjoined." (*Ibid.*)

Lower courts have long followed this Court's instructions. In *Templo v. State* (2018) 24 Cal.App.5th 730, for example, the Court of Appeal held that the Judicial Council, rather than the State, was the proper defendant in a constitutional challenge to a state statute requiring payment of a nonrefundable fee to secure a jury trial. (*Id.* at p. 736.) Invoking this Court's decision in *Serrano*, the Court of Appeal reasoned that the Judicial Council is the agency with "the immediate interest in upholding the constitutionality" of the challenged statute. (*Id.* at p. 737.) Specifically, the Council is the statewide entity principally charged with managing the judiciary and administering its budget. (See *ibid.*) The party status of the agency primarily responsible for enforcing the challenged law rendered participation by any other government party improper.

These settled principles are founded in efficiency and fairness. Any number of different government officials no doubt

possess *some* interest in defending a state law against a constitutional challenge. Some officials may have played a part in drafting or enacting the law; others may be acting under authority conferred by the law; and still others may be responsible for the law's implementation. But never has this Court or any other appellate court in the State held that those sorts of interests are sufficient to require that those government officials participate as parties in constitutional litigation. Rather, so long as the "appropriate administrative officers of the state" have been named as defendants, those sorts of second-line interests will be "fully and adequately represented." (*Serrano*, 18 Cal.3d at p. 752.) And any other rule, as this Court has put it, would impose an "'arbitrary and burdensome requirement which may thwart rather than accomplish justice.'" (*Id.* at p. 753.)

B. Participation of officers inferior to the appropriate state official is neither necessary nor appropriate.

One well-tread aspect of this line of cases involves public agencies or officials who are inferior to the properly named defendant. Those inferior officers typically have a readily assertible interest in the outcome of constitutional litigation, yet

courts routinely hold that their participation in the litigation is neither necessary nor warranted.

In *Hayes v. State Department of Developmental Services* (2006) 138 Cal.App.4th 1523, the guardian of an autistic child filed a writ petition challenging the decision of an administrative law judge provided by the Office of Administrative Hearings (OAH) affirming the termination of funding for his educational program. (*Id.* at p. 1527.) The petition named as a respondent the State Department of Developmental Services, and the trial court dismissed the petition for failing to join OAH. (See *ibid.*) But the Court of Appeal reversed. (*Id.* at p. 1534.) As the court explained, OAH's participation was unnecessary because the relationship between the Department and OAH was such that any judgment against the Department would have "bound OAH." (*Id.* at p. 1533.) Any involvement of the inferior agency under the respondent agency's authority was therefore unnecessary.

Similarly, in a lawsuit claiming that a city council violated a statutory requirement that its meetings be open and public, the Court of Appeal held that the trial court properly dismissed the city manager and police chief, leaving the city council as the defending party. (*Wolfe v. City of Fremont* (2006) 144 Cal.App.4th

533, 538, 552.) The court recognized the principle that "high-level state executive officers" are generally the proper defendants in actions challenging the validity of a government policy "by virtue of their position in the bureaucratic hierarchy." (*Id.* at p. 551).

Consistent with the rule recognized by *Serrano* and its progeny, then, inferior government officials need not be included in litigation when the statewide administrative official that directs them is already a party.

C. This Court has departed from its settled practice only when the proper government defendant affirmatively declines to defend the statute.

Only in rare circumstances have courts departed from the rule that the statewide official with primary responsibility for a law is the proper defendant. Courts have recognized, for instance, that where challengers claim that a state law is unconstitutional (for instance, because it is violating the fundamental rights of people across the State), and where the public official typically charged with enforcing state laws declines to defend it, it may be appropriate for other parties to step in. (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1127.) In *Perry*, for instance, the Court allowed official proponents of a ballot initiative to assert the State's interest in defending the law when the named state officials,

including the Attorney General, "totally declined to defend the initiative's validity." (*Id.* at pp. 1126, 1128-1129.) But even *Perry* recognized how unusual those circumstances would be, emphasizing that proponents of an initiative enjoy special standing and play a "unique role" under California law. (*Id.* at pp. 1126, 1139-1144.)

Where an entity's interests are already represented by existing parties, there is no need to depart from the general rule. For example, in *Deltakeeper v. Oakdale Irrigation District* (2001) 94 Cal.App.4th 1092, environmental interest groups petitioned for a writ of mandate to set aside a water transfer agreement. (*Id.* at pp. 1098-1099.) The agreement was between municipalities that owned water rights, on the one hand, and municipalities hoping to purchase water rights, on the other. And the challengers named as defendants only the municipalities that already had the rights. (*Ibid.*) The trial court dismissed the petition for failure to join the would-be purchasers. (See *id.* at p. 1099.) But the Court of Appeal reversed. As it explained, although the municipalities were on adverse sides of the purchase agreement, they shared the same interests in the outcome of the litigation—i.e., a ruling on whether the project was lawful. (See *id.* at pp. 1096, 1103.)

Because "the interests of the nonjoined parties" would be "adequately represented by the defendants," requiring the participation of the other municipalities would be unnecessary and duplicative. (*Ibid.*)

The same reasoning drove the decision in *City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69. There, the challengers asked the court to set aside a decision by the San Diego City Employees' Retirement System (SDCERS), and the question on appeal was whether city employees should have been joined in the action. (*Id.* at p. 83.) The Court of Appeal held that it was enough to name SDCERS as the defendant. (*Id.* at p. 84.) The city employees had an interest in the litigation, to be sure, but because they would not have "an argument or defense separate or different" from SDCERS, there was no need to accommodate any additional parties. (*Ibid.*)

These cases make clear that it is not enough for parties to have an articulable interest in the outcome of the litigation. Where the proper party is present and ready to defend the law, the governmental side of the "v." is accounted for, and no other defendants need be added.

II. Under these principles, no additional parties are necessary and indispensable here.

Petitioners have named the correct respondent—and the only government official who needs to be a named party. Attorney General Bonta is the state official who oversees the State's criminal-justice system and who has the power to ensure compliance with a statewide declaration of unconstitutionality of the kind petitioners seek. And the Attorney General has not declined to defend the death penalty against petitioners' challenge. As a result, no other parties are necessary—all the more so because including individual district attorneys or other officials with interest in the death penalty would impose unwarranted burdens on the orderly administration of justice.

A. The Attorney General oversees statewide administration of the death penalty, plans to defend it here, and can ensure compliance with any ruling.

Petitioners ask this Court to "declare California's capital sentencing scheme invalid as applied under the state Constitution and bar future capital prosecutions and trials and the execution of death sentences under those statutes." (Pet. at p. 51.) As discussed, the proper defendant for such a challenge is the "state officer[] with statewide administrative functions" with respect to

the law in question. (*Serrano*, 18 Cal.3d at p. 752.) And joinder of some other party is required "'only when the absentee's nonjoinder precludes the court from rendering complete justice *among those already joined*.'" (*Countrywide Home Loans, Inc. v. Superior Court* (1999) 69 Cal.App.4th 785, 793-794.)

Here, justice can be done, and relief afforded, with Attorney General Bonta alone. The Attorney General is the state's "chief law officer" (Cal. Const., art. V, § 13) and "has charge, as attorney, of all legal matters in which the State is interested" (Gov. Code, § 12511). And part of the Attorney General's duties is ensuring compliance with the California Constitution, and with this Court's opinions interpreting the Constitution. That is why the Attorney General is routinely named as the defendant or respondent in litigation claiming that some state law is violating the constitutional rights of people in this State.

The Attorney General also has not "totally declined to defend" the death-penalty system petitioners challenge. (*Perry*, 52 Cal.4th at p. 1126.) To be sure, Attorney General Bonta agreed that the petition presented a question of "greatest public importance" and that the Court could exercise its original jurisdiction to resolve the question. (See AG Preliminary Resp. at

pp. 14-16.) But he never suggested that the death penalty as currently administered is unconstitutional, or that he would decline to defend the system.

No doubt many officials across the State have an interest in the question presented here. Two county district attorneys, who were not named as respondents, have already asserted such an interest by filing preliminary oppositions to the writ petition. Those district attorneys presumably believe the State's death penalty is constitutional as administered. Other law enforcement officials may share that view. And others may share the view advanced by petitioners. But under longstanding case law, those "interest[s] in the litigation" do not make those officials necessary parties to the proceeding. (E.g., *Deltakeeper*, 94 Cal.App.4th at p. 1102; accord, e.g., *Serrano*, 18 Cal.3d at p. 752; *San Diego City Employees' Retirement Sys.*, 186 Cal.App.4th at p. 85.) Put differently, the interest that individual district attorneys or other law enforcement officers have in the question presented cannot make them "'*indispensable* parties, . . . without whom the action could not fairly proceed.'" (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 432.)

That doesn't mean other government officials will have zero role to play in this litigation. District attorneys or other law enforcement officers who wish to offer views on the legal questions presented can participate as amici. And to the extent county- or region-specific evidence is necessary to the Court's decision, either an appointed special master or this Court as factfinder would be well equipped to take that evidence and to engage with county or local officials in doing so. But the Court's supplemental-briefing request asks about who is a "necessary" "party," and no other party is necessary here.

Nor would proceeding with the present parties in this case run afoul of core principles of prosecutorial independence. Prosecutors enjoy broad discretion in approaching the challenging work of "seek[ing] justice within the bounds of the law." (Am. Bar Assn., Criminal Justice Standards for the Prosecution Function (4th ed. 2017) standard 3-1.2(b), https://tinyurl.com/2zrcwz5x.) That discretion is invaluable—it ensures efficient case resolution and affords public servants the opportunity to mold their work in light of the broad dictates of justice—and each prosecutor charged with exercising that discretion must do so carefully and based on the interests in play in each case. But that discretion would not

permit a prosecutor to disregard an order from this Court holding that this State's death-penalty system is unconstitutional and that no defendants can be sentenced to death consistent with the California Constitution's equal-protection guarantee. The challenge petitioners have brought, therefore, does not require participation by individual district attorneys or other prosecutors or law-enforcement officers as parties.

B. Joining additional parties, including individual district attorneys, as necessary parties would be unmanageable.

This Court's case law is, wisely, cognizant of the negative consequences that would result from a broader view of necessary parties. As it has explained, courts should "be careful to avoid converting a discretionary power or a rule of fairness in procedure into an arbitrary and burdensome requirement which may thwart rather than accomplish justice." (*Serrano*, 18 Cal.3d at p. 753, cleaned up.) Here, holding that all officials with an interest in the death penalty's legality or administration are necessary parties would "'thwart rather than accomplish justice.'" (*Ibid.*)

Take district attorneys. There are 58 in California. (See *Additional Investigations and Reviews*, Office of the Attorney General (accessed Nov. 6, 2024), https://tinyurl.com/bbxf3t9v.)

Each certainly has an articulable interest in the question whether the death penalty is constitutional. But if such an interest were enough to make a party necessary and indispensable under this Court's case law, then an action like this would need to have, *at a minimum*, 59 respondents. Each would have the right to be separately represented and could file its own briefs, craft its own arguments, and seek its own relief. Such a state of affairs would be unmanageable and only "complicate an already complex action"—and that's putting it lightly. (*Harboring Villas*, 63 Cal.App.4th at pp. 431-432 [declining to join 42 new plaintiffs in part on ground that it would be unduly burdensome].)

That view of necessary party status would also have enormous implications for future cases. Every district attorney has at least some interest in California's criminal laws. So any time there was a challenge to one of those laws, the cavalry of individual district attorneys would have to be haled into court to present their views. And the stampede may not stop there. Consider the position taken by Riverside County's district attorney in response to the Court's supplemental-briefing invitation—under that view, the necessary parties include not just the existing parties and all California DAs, but also every

defendant sentenced to death, every defendant "facing" the possibility of a death sentence, and all victims and their next of kin for good measure. (Riverside Suppl. Br. at pp. 25-32.) In other words, "necessary" party would come to mean little more than "interested" party.

Such a scheme would be beyond unruly, and incompatible with the commonsense principles that have long driven this Court's case law. Ultimately, that view is less a principled approach to necessary-party status and more an effort to make constitutional litigation so unmanageable that the Court simply throws up its hands and denies review. (Riverside Suppl. Br. at p. 32.)

* * *

Many county officials undoubtedly have strong, and divergent, views about the question presented. But a defendant's constitutional rights, and ultimately his fate, should not depend on the county in which he is prosecuted, tried, and sentenced. That is both the core justification for this Court's review here and the reason why no additional parties need to be added.

CONCLUSION

No further parties are necessary to the Court's consideration of the important question presented here.

December 3, 2024

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Matt Aidan Getz
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CERTIFICATION OF WORD COUNT

I hereby certify that the text of the proposed *amicus curiae* brief comprises 3,334 words, as counted by the program used to generate this brief.

DATED: December 3, 2024

/s/ Matt Aidan Getz
Matt Aidan Getz

PROOF OF SERVICE

I, Matt Aidan Getz, declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years, and I am not a party to this action. My business address is 333 South Grand Avenue, Los Angeles, California 90071-3197.

On December 3, 2024, I served:

APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF PROSECUTORS ALLIANCE OF CALIFORNIA

on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

☑ **BY ELECTRONIC SERVICE**: True and correct copies of the application and accompanying brief were electronically served through TrueFiling on counsel for the parties as listed on the attached service list.

☑ **BY MAIL SERVICE**: I caused true and correct copies of the application and accompanying brief to be placed in sealed envelopes addressed to counsel for the parties as listed on the attached service list, to be placed for collection and mailing following our ordinary business practices. I am familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage

meter date is more than one day after date of deposit for mailing set forth in this declaration.

☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 3, 2024.

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