

No. 09-1233

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**ARNOLD SCHWARZENEGGER, GOVERNOR OF  
CALIFORNIA, et al., *Appellants*,**

*v.*

**MARCIANO PLATA, et al., *Appellees*.**

—♦—

On Appeal from Orders of the Three-Judge Court in  
the United States District Courts for the Northern  
District of California and the Eastern District of  
California

—♦—

**BRIEF OF *AMICUS CURIAE*  
GREATER STOCKTON CHAMBER OF  
COMMERCE  
IN SUPPORT OF APPELLANTS**

—♦—

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**BRIEF OF *AMICUS CURIAE***  
**GREATER STOCKTON CHAMBER OF**  
**COMMERCE**  
**IN SUPPORT OF APPELLANTS**

The Greater Stockton Chamber of Commerce  
("Chamber") respectfully submits this brief as amicus  
curiae in support of Appellants.<sup>1</sup>

**INTEREST OF *AMICUS CURIAE***

Chamber, a non-profit corporation, includes over 1,680 business members who employ more than 40,000 employees in the Stockton, California area. Its members are taxpayers, voters, and residents of Stockton and San Joaquin County. The Chamber is vitally interested in the quality of life and economic opportunities available in Stockton and San Joaquin County. The central mission of the Chamber is to promote policies encouraging economic growth and opportunity while enhancing the quality of life in the community.

This Amicus Curiae brief is a tad unique when compared to the heightened legal standard of amicus briefs expected and enjoyed by this Court. The Chamber understands the overarching legal question

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<sup>1</sup> Counsel for all parties have consented to the filing of this brief, and those consents have been filed with the Clerk of this Court. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than the amicus curiae, or its counsel, made a monetary contribution intended to fund its preparation or submission.

posed by the review: did a federal court correctly apply an attenuated, exacting, and narrow statutory criteria, deliberately crafted to severely limit the opportunities for a federal court to turn Federalism and indeed Democratic principles on their collective heads, and allow an unelected federal receiver to exercise state legislative and executive powers without any meaningful accountability? The Chamber believes Congress understood the direct threat posed when a federal court usurps state law and public matters traditionally reserved to state and local governments and, as a result, why this Court should make clear that the statutory language shall be strictly applied and followed; therefore, federal intervention into venerated state matters should happen only in extraordinary and limited instances, instances which are simply not present here. The Chamber also believes the parties are fully capable of providing legal arguments and citations concern the underlying Constitutional issues triggered by this dispute.

The Chamber, however, offers a unique perspective concerning the consequence to a local community after traditional notions of Federalism are obliterated, typical state and local responsibilities are usurped by a federal receiver, and the accountability subsumed by the ordinary give-and-take and checks and balances of the legislative and administrative process is omitted. The Chamber's story illustrates how federal intervention granted a receiver relative "immunity from normal democratic process" and why this is antithetical to the essence of Federalism. This brief highlights the Chamber's extraordinary and

unprecedented fight against the federal courts and a federally appointed receiver unfettered by customary checks and balances. The Chamber's story vividly illustrates why this Court should enunciate a standard limiting opportunities for federal intervention into traditional state and local matters. Indeed, the Chamber's actual real world experience of fighting to protect the local community's quality of life and economic development against a threat posed by a federal receiver possessing a focused interest in locating a prison in a disadvantaged and under-represented community – without considering the long-term deleterious effects his decisions may have on the affected community – is relevant to understanding why Congress imposed a substantially difficult criteria to severely limit judicial activism into state and local affairs. While federal intervention into such affairs should not be as infrequent as a “camel (going) through the eye of a needle” [Matt. 19.24; Mark 10.25], the Chamber's lonely fight against a federal receiver persuasively explains why the statute should rarely be invoked by the federal courts.

The Chamber understands this Court frequently hears skilled advocates offer hypothetical adverse consequence that will occur should this Court rule one way or the other. Indeed these skilled advocates can depict hypothetical situations to illustrate the undesirable consequences of a federal district court too actively engaging in a state affair. However, the Chamber's advocacy is very different: it wishes to inform the Court of the *actual* consequences it experienced when a district court loosely applied the strict criteria intended to limit a



zealous federal court's assumption of all or part of a state prison system.

In short, having been at the receiving end of this substantial disruption of the venerated and orderly relationship between the federal, state, and local levels of government, the Chamber believes the circumstances facing the Stockton community warrant a strict and narrow application of instances of federal takeovers of state prison systems. To put a finer point on it, tolerating a lax interpretation of the statutory standard strips local communities of protections ordinarily guaranteed by time honored Federalism safeguards designed to thwart overzealous government officials.

### **SUMMARY OF ARGUMENT**

When a federal court fails to follow the heightened statutory criteria for ordering federal intervention into a state prison system, it potentially wreaks havoc on local communities by wrongly shifting direct and indirect costs of a state prison to local taxpayers. A federal receiver, fully supported by a federal court that appointed him or her, exercises state power with virtually no procedural accountability, is allowed unlimited access to state money, and has the power to ask the appointing court to waive any state regulation that may decelerate the speed of implementing his or her decisions.

This Amicus brief is intended to illustrate to the Court why a federal court's power to take over all

or part of a state's prison system by injecting into the state system a federal administrator with a virtually unchecked ability to spend state money and the right to seek a full waiver any state law requirement should be severely limited as intended by Congress.

A federal district court's exercise of such far reaching and extraordinary power should be an available remedy in only the most extreme situations. It constitutes a situation hostile to traditionally understood notions of Federalism and the relationship between the federal, state, and local levels of government. In order to minimize the frequency of these situations Congress deliberately adopted a heightened standard that must be fully met before federal intervention into traditional state affairs can happen. In this instance this standard was not satisfied and, as a result, a local community faced a seemingly insurmountable battle against an unaccountable federal receiver.

## ARGUMENT

### I. THE CHAMBER'S STORY DEMONSTRATES THE NEGATIVE FORCE AND EFFECT ON A LOCAL COMMUNITY OF A FEDERALLY APPOINTED RECEIVER WITH UNFETTERED FEDERAL POWER AND ACCESS TO STATE RESOURCES.

#### A. Stockton.

Stockton, located in the San Joaquin Delta, is a fertile, agricultural area in California's heartland,

well known for asparagus, cherries, walnuts and as the site of “Casey at the Bat.” It is the thirteenth largest city in California and the sixty-second largest city in the United States.<sup>2</sup> It is primarily a blue collar, working class community, gradually transitioning from an agriculturally based community to the outer San Francisco Bay Area suburbs. According to the United States Census Bureau, Stockton is a majority minority city with 43.3% self-identifying as “white”, 32.5% self-identifying as “hispanic or latino”, 19.9% self-identifying as “asian”, and 11.2% self-identifying as “black”. Language other than English is spoken at 41.5% of Stockton households.<sup>3</sup> Stockton has twice been named an All-American City by the National Civic League. The Port of Stockton, the second largest inland port on the nation’s west coast, imports and exports cargo to and from over thirty-seven different countries. The two main freeways that span the length of the Central Valley cut through Stockton, and are responsible for much of Stockton’s growth and prominence as an important transportation/warehousing hub.

Nevertheless, Stockton faces monumental urban problems. It was an epicenter for the 2007 subprime mortgage melt down, with approximately one in ten homes in foreclosure. At the same time Forbes Magazine listed Stockton as the fifth most

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<sup>2</sup> <http://quickfacts.census.gov/qfd/states/06/0675000.html>.

<sup>3</sup> *Id.*

dangerous city in the nation.<sup>4</sup> Compounding Stockton's challenges, the unemployment rate at the time of preparing this Amicus Brief is approximately twenty percent. In short, the area faces economic challenges while contemporaneously needing to provide essential public services to increasingly needy residents at a moment when local tax revenues are declining.

#### B. The Receiver.

In 2001, inmate Marciano Plata filed a class-action lawsuit against California's Governor and others ("Schwarzenegger"), alleging Constitutional violations in delivering medical care to inmates confined in California state prisons. ("Order Denying Defendants' Motion To Replace Receiver with Special Master and To Terminate the Receiver's Construction Plan," March 16, 2009 ("ODDM"), p. 1.) The parties stipulated for injunctive relief, which was entered as an order in June 2002. (ODDM, p. 1-2.) By the June 2002 Stipulation for Injunctive Relief, Schwarzenegger was ordered to implement new policies and procedures on a staggered basis, with seven prisons to complete implementation in 2003 and statewide implementation to be achieved by the end of 2008. (ODDM, p. 2.)

In May 2005, the lower court concluded the State was out of compliance with the stipulations

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<sup>4</sup> "America's Most Dangerous Cities". *Forbes* (Forbes.com). 2009-04-23. [http://www.forbes.com/2009/04/23/most-dangerous-cities-lifestyle-real-estate-dangerous-american-cities\\_slide\\_12.html](http://www.forbes.com/2009/04/23/most-dangerous-cities-lifestyle-real-estate-dangerous-american-cities_slide_12.html).

and issued an order to show cause why Schwarzenegger should not be found in contempt and why a receiver should not be appointed to manage health care delivery for the California Department of Corrections and Rehabilitation (“CDCR”). (ODDM, p. 3.) In May and June 2005, the court conducted a six-day evidentiary hearing concerning the Order to Show Cause. (ODDM, p. 3.) At the end of June 2005, the court ruled it would take control of CDCR’s medical delivery system and place a federal court appointed receiver in charge. (ODDM, p. 3.) In October 2005, the Court issued findings of fact and conclusions of law explaining the reasoning for the ruling. (ODDM, p. 3-4.) Concluding a contempt finding was unnecessary before appointing a receiver, the Court held the contempt remedy in abeyance. (ODDM, p. 4.) The Court initially appointed Robert Sillen as Receiver in February 2006, but subsequently replaced Mr. Sillen with J.Clark Kelso in January 2008 (“Receiver”). (ODDM, p. 4.) The Receiver’s actions were reviewed by a panel of three District Court judges (“Judicial Panel”).

The order creating a Receivership provided “[t]he Receiver shall exercise all powers vested by law in the Secretary of the CDCR as they relate to the Administration, control, management, operation, and financing of the California prison medical health care system. The Secretary’s exercise of the above powers is suspended for the duration of the Receivership.” (ODDM, p. 8, quoting the Order Appointing Receiver (OAR), Feb. 14, 2006, at p. 4.) Further, the OAR specifically authorizes the Receiver to seek a waiver of any or all state laws or

regulations that impede the performance of his duties. Specifically, “if the Receiver finds that a state law...is clearly preventing the Receiver from developing or implementing a constitutionally adequate medical health care system, or otherwise clearly preventing the Receiver from carrying out his duties as set forth in this Order, or that other alternatives are inadequate, the Receiver shall request the Court to waive the state or contractual requirement that is causing the impediment.” OAR at II.D. <sup>5</sup>

Schwarzenegger subsequently moved to terminate the Receivership and his construction plans, contending, as a legal matter, both the Receivership and the Receiver’s construction plans were prohibited by the Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626. (ODDM, p. 6.) Schwarzenegger also apparently made factual challenges to the Receivership and construction plans as well. (ODDM, p. 6.) On March 16, 2009, the

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<sup>5</sup> This provision of the OAR supplied a clear and unmistakable chilling effect on the Chamber’s vigor in protecting the community: it realized that any time it was “too successful” or “too aggressive” in challenging the Receiver’s decision the Receiver could simply ask the Judicial Panel to take away the Chamber’s state law based challenge and moot the litigation. The principle tool available to the Chamber, the California Environmental Quality Act (CEQA), expansively requires public agencies to study and mitigate adverse environmental effects to a community before approving a project. See, for example, *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 184, 22 Cal.Rptr.3d 203 [even direct project economic impacts—overbuilding retail uses—may result in an indirect environmental effect such as urban decay].)

district court denied Schwarzenegger's motion. (ODDM, p. 1, 7.)

C. The Receiver Locates a Prison Hospital in Stockton.

Before undertaking a development project, such as a 1.2 million square foot prison facility, the California Environmental Quality Act ("CEQA")<sup>6</sup> requires environmental impacts from such construction be assessed, presented to the public, and mitigated if significant. And prior to approving a State project such as a prison hospital CDCR must comply with State environmental laws.<sup>7</sup> A State agency responsible for complying with CEQA cannot approve a project with significant impacts unless the impacts are mitigated and if not, then only if the agency adopts a statement concluding specific project

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<sup>6</sup> California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000-21177; Cal. Code Regs. Tit. 14, §§ 15000-15387.

<sup>7</sup> See Cal. Code Regs. Tit. 14, § 15051(b)(1) ("The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project."). Public participation "is an essential part of the CEQA process." *Id.* at §15200. The goal of CEQA is "maintenance of a quality environment for the people" and require all state agencies to give "major consideration...[to] preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." Cal. Pub.Res.C. §21000. Hence, projects should not be approved if feasible alternatives or mitigation measures are present. *Id.* at §21002.

benefits outweigh the impacts to the environment. Cal. Code Regs. Tit. 14, § 15093.

Here the federal Receiver selected a prison site in Stockton, prepared (under the supervision of a consulting firm he hired) his own Environmental Impact Report (“EIR”), certified this EIR, and personally decided to locate the prison just beyond the city limits of Stockton. Contrary to a well understood principle requiring EIRs to be prepared at an early stage of planning a public project to prevent CEQA from being rendered a meaningless post-hoc rationale (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131, 84 Cal.Rptr.3d 614, 194 P.3d 344; Cal.Code Regs. Tit. 14 §15004), the Receiver expended considerable time and money planning the facility at Stockton before starting an EIR, thereby making bureaucratic momentum in favor of the Stockton site sizeable. In October 2009, the Receiver certified the Final EIR and immediately approved the prison project.<sup>8</sup> The EIR either ignored impacts to the local community or concluded state law prevented the Receiver from taking steps to lessen the severity of impacts identified as significant. In either case, the costs of this State project approved by the federal Receiver shifted from the State to the local community.

The Chamber provided extensive written comments about the EIR’s deficiencies. In short the

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<sup>8</sup> *CHCF Stockton Project Approval*, 10/12/09, at pp. 7-9, 11-13, available at: [http://www.cphcs.ca.gov/docs/projects/Stockton\\_FinalApprovalPacket\\_20091012.pdf](http://www.cphcs.ca.gov/docs/projects/Stockton_FinalApprovalPacket_20091012.pdf).



Chamber complained the EIR ignored project-caused impacts to the local community; accordingly the solutions to these problems fell wrongfully and disproportionately on local government rather than State government. San Joaquin County and the City of Stockton provided parallel comments. The three entities were solid partners throughout the dispute.

Ten days before the 30-day CEQA statute of limitations ran to challenge his decision, the Receiver met with Chamber, City, and County representatives. He told the local officials he had visited Stockton infrequently, but offered that his daughter had attended several birthday parties at the local children's museum. He then explained the project would be constructed and operated even if local impacts caused by the State project were unaddressed. He also warned the group that he would refuse to negotiate with any entity filing a legal action challenging his decision.<sup>9</sup>

D. The Federal Receiver's Prison Construction Plan Posed Significant Impacts the Receiver Determined Not to Mitigate, Intending to Shift State Costs to the Local Community.

Community impacts from the Receiver's proposed 1.2 million square foot, 1,734-bed mental

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<sup>9</sup> This hardball tactic flowing from his expressed revulsion to civil litigation ranges from bizarre to silly. The Receiver, a full time law professor, teaches Remedies at University of the Pacific, McGeorge School of Law in Sacramento and can hardly claim his sensibilities are assaulted by thoughts of civil litigation.

health prison hospital project were numerous and expressed by the Chamber, City, and County. Identified impacts raised by the Chamber, City, and County but ignored by the Receiver included:

- Human and Social Services. The Project would increase the need for various types of public assistance to prisoner families that would relocate to the area.

- Municipal Water and Sewer. The Project would impact Stockton municipal water and sewer services. Strangely the Receiver and the EIR incorrectly assumed Stockton would simply provide the prison facility with municipal water and wastewater disposal services in perpetuity and at little or no cost to the State. According to the Receiver, the capital costs of extending the services and the operational cost of providing the services would be paid by local residents and not the State.

- Traffic. Although the Receiver's EIR concluded the Project would generate significant traffic impacts on both city and county roads, it ultimately concluded the State did not have to pay for roadway improvements required to lessen traffic congestion created by the project.

- County Hospital. The Receiver's EIR assumed the prison project would make substantial use of the County hospital even though this facility lacked a secured ward and therefore could not safely admit felons for medical treatment.

- Public Safety Services. The project would demand significant local law enforcement and coroner services – with no provision for funding such services.

- Local Hospitals. Since the State salaries are greater than salaries for allied health professional in the area, existing hospital employees would migrate to the state facility leaving current medical facilities understaffed and depriving local non-incarcerated residents of access to local health care.

- Local Hire. Though the Receiver touted the alleged job-creation benefits of the project, the project offered no programs to assist local residents or vendors to receive any of the jobs, construction or permanent, or compete for supplying goods needed by the Project.

E. The Chamber, with the City and County, Sues the Receiver.

Facing a recalcitrant Receiver and lacking a viable option, the Chamber decided to preserve its objections and challenge the Receiver's decision certifying the EIR within the short limitations period. Stockton and San Joaquin County also joined the petition.<sup>10</sup> At a Chamber executive board meeting

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<sup>10</sup> *Greater Stockton Chamber of Commerce, et al. v. J. Clark Kelso, et al.*, San Joaquin County Superior Court Case No. 39-2009-00230310-CU-WM-STK (Filed Nov. 17, 2009)

the underfunded Chamber figuratively passed the hat among the executive board members to raise sufficient funds to pay the lawsuit's filing fee. A Stockton law firm, founded by two former Chamber presidents agreed to represent the Chamber without pay. (The Chamber is not aware of any other instance in California where local interests have directly challenged the Receiver for failing to comply with controlling state law.)

After the lawsuit was filed by the Chamber, City, and County, the Receiver refused to meet with the three parties, except for one non-judicially supervised settlement meeting mandated by CEQA. Without prior notice, the Receiver unilaterally removed the case to Federal court.<sup>11</sup> The case was assigned to Judge William B. Shubb, but without prior notice the assignment mysteriously shifted to Judge Lawrence K. Karlton, a member of the federal Judicial Panel to which the Receiver answers.<sup>12</sup>

The Receiver suffered various mishaps in the litigation. First, the record of proceedings the

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<sup>11</sup> *Greater Stockton Chamber of Commerce v. Kelso*, Case No.: 2:09-CV-03308-LKK-JFM (E.D. Cal.).

<sup>12</sup> The Receiver further attempted to frustrate the local concern by demanding an unprecedented deposit amount of approximately \$70,000 to prepare the administrative record. Generally speaking, CEQA challenges are tried with only a record of proceedings as admitted evidence. This bill was more than double the amount of an excessive deposit challenged in California state court published opinions. *See Wagner Farms Inc. v. Modesto Irr. Dist.*, 145 Cal. App. 4th 765, (2006) 52 Cal.Rptr.3d 683.

Receiver proposed preparing omitting key documents undermining the legal sufficiency of the EIR and a dispute erupted over excluding these damaging documents. Second, the Chamber's motion to remand the matter back to the State court was temporarily suspended when it was learned that the Receiver was operating under a suspended California corporation. The Receiver set up the corporation to house his activities but the corporation disobeyed California corporate regulations and consequently the Secretary of State suspended the corporation's right to conduct business. The Receiver ignored written notice from the State requesting he cure the problem. Since the Receiver's suspended corporation technically certified the EIR an open question existed over the validity of this action by a suspended corporation. This legal mistake is puzzling. In the course of the dispute the Chamber encountered a plethora of law firms representing some aspect of the Receiver's efforts to site a prison hospital in Stockton.<sup>13</sup>

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<sup>13</sup> In fact, during a hearing on the Chamber's motion to remand approximately thirteen attorneys attend on behalf of the Receiver and CDCR. The Chamber points this out merely to underscore why federal intervention into a state affair needs to be warranted by an extraordinary event. The Receiver was appointed by a federal court but seemingly enjoyed unlimited and unaccounted access to State money. All of the attorneys working for the Receiver were being paid from State revenues at a time the State faced a budget crisis, threatened to suspend vital government services, and was refusing to make vendor payments and other payments to needy citizens. Yet the Federal judiciary, unfettered by the magnitude of California's economic mess, impliedly determined California budget priorities by compelling State spending on new prison medical facilities, including the services of several law firms to help the

F. The Parties Discuss Settlement.

As the litigation bogged down, for the reasons explained below, the Receiver essentially clogged the lines of clarity by using more State money to hire a former State Senator, the Lieutenant Governor's son, and a politically connected Sacramento law firm to arrange for members of the Stockton business community to persuade local elected officials to withdraw the City and County as parties to the lawsuit. This lobbying effort failed. Yet the Receiver still refused to meet with the Chamber, City, and County.

Faced with a contentious and unresolved dispute about the completeness of the record of proceedings, a threatened appeal by the Chamber of the district court's denial of the Chamber's motion to remand the lawsuit to the state court, the district court's refusal to set a briefing schedule and hearing date on the Chamber's petition until the record dispute was resolved, and the federal Judicial Panel's denial of the Receiver's request to extend the time to open the Stockton hospital prison, the Receiver returned to Stockton and announced he was prepared to meet and negotiate with the Chamber, City, and County in order to settle the litigation.

Negotiations between the parties started on January 8, 2010 and ultimately culminated in

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Receiver, to the detriment of public education and health and safety funding needs.

executing a settlement agreement at the Chamber office on August 2, 2010 (“Settlement Agreement”).

G. The Settlement Agreement.

The Settlement Agreement provides for mitigation of many but not all of the impacts facing the local community caused by the prison hospital. In particular, the Receiver agreed to fund improvements at the County hospital to facilitate sick inmates, agreed to pay for coroner services, agreed to mitigate County and regional, but not City traffic impacts, arranged for the point of sale for sales tax purposes to be the County, agreed to pay to extend water and sewer service to the prison facility, agreed to pay the facility’s fair share operational cost for water and sewer service, agreed to local hire and local vendor programs, and agreed to form meaningful citizen review committees to review and advise the State about the prison facility’s operational impacts to the community.

The Settlement Agreement, however, omitted several important items, including the facility’s indirect demand for additional local law enforcement, the facility’s impact to City streets, and any safeguard against the facility hiring substantial numbers of local health care workers from existing hospitals.

The development project, a prison hospital, agreed to mitigation measures commonly and ordinarily imposed on all California developments. In fact, the prison hospital project actually is financially

responsible for *less* than an ordinary development project would be obligated to provide. To put a finer point on it, the litigation ultimately forced the Receiver to the bargaining table to compel the project to pay for most but not all of the impact it was causing to the local community. However, in the final analysis, the Receiver's mitigation agreement was substantially less than the mitigation package for which a private development in California would be responsible at the time of approval. Why? Because the Chamber, City, and County feared a continued failure to observe Federalism might operate to excuse the Receiver – acting as the CDCR – from mitigating any local impacts.

II. THE CHAMBER'S STORY REVEALS THE IMPORTANCE OF UPHOLDING THE HEIGHTENED STATUTORY CRITERIA EXPRESSED IN THE PLRA SO AS TO AVOID UNDUE BURDENS ON LOCAL COMMUNITIES AND TO PRESERVE THE NATION'S DELICATE AND TIME-HONORED BALANCE OF FEDERALISM AND SEPARATION OF POWERS.

The PLRA expressly limits instances where the federal judiciary actively administers State prisons. Congress was sensitive to this delicate balance of federal and state power and the inchoate awkwardness of federal judges operating a state prison program, spending state money and determining state budgetary priorities, and therefore adopted a comparatively high threshold before federal courts could intervene into State matters and essentially perform state legislative and executive



functions. Even if the threshold is achieved, the relief granted “shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. § 3626 (a)(1)(A).

The Chamber’s actual experience underscores the magnitude of Federal intrusion into fields traditionally occupied exclusively by state and local governments. Siting a state prison hospital involves satisfying countless state and local environmental and land use regulations and requires an elected State Legislature to determine state funding priorities within a legislative procedural framework typically involving numerous legislative hearings and comprehensive evaluations by qualified legislative staff members. The Receiver’s truncated process produced a funding mechanism requiring Stockton and the County to disproportionately pay for the State’s cost of building and operating the facility. This shifting of a State cost to local government amounts to a “wealth transfers to be achieved that could not be achieved otherwise; but rather that it permits them to be achieved ‘off-budget,’ with relative invisibility and thus relative immunity from normal democratic process.” *Pannell v. City of San Jose* (1988) 485 U.S. 1, 22 (Scalia, J., concurring in part and dissenting in part). Indeed this tentative shift in cost from the State to local government was only possible due to the

appointment of an unchecked federal receiver focused on a single purpose—opening a prison hospital—without regard for the chaos created in his wake.

Federal court intervention in California’s prison medical program inherently intertwined a Federal court into state and local land use and CEQA regulations that have been characterized as “a complex, time-consuming undertaking” by federal courts (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (9<sup>th</sup> Cir. 2000) 216 F.3d 764, 777) and “complicated...(with l)egal questions resist(ing) easy resolutions” by state courts. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4<sup>th</sup> 931, 939. As this example vividly illustrates, federal activity inherently minimizes or omits legitimate local interests and concerns, interests and concerns normally ventilated, evaluated and mitigated through California’s land use process. For instance, an EIR must evaluate the availability of municipal services for a proposal. CEQA Guidelines Cal. Code of Regs. Title 14 Appendix G §XIII. <sup>14</sup>

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<sup>14</sup> One small example may suffice. Without the Chamber’s litigation the Receiver would have attempted to compel the City, at the City’s expense, to extend water and sewer infrastructure to the prison hospital and then provide these municipal services for free or for a reduced cost with the City’s taxpayers making up the shortfall. A theory justifying Stockton taxpayers, but not the taxpayers of California, funding a significant operational cost of a State required facility can only be constructed by using a “wilderness of mirrors”. T.S. Elliot, “Gerontion” v. 65.

The Chamber doubts the Federal court anticipated the Receiver's activities would result in this extreme variation from the "normal democratic process" by usurping fundamental State and local affairs. Yet whenever a Receiver decides to build new prison facilities regulatory powers customarily exercised by state and local government and safeguarded from abuse through complex procedures and public review are then exercised by that Receiver without the necessary procedural and public review safeguards. The Receiver operates without sufficient and customary checks and balances. This, to a great extent, is the crux of the problem. The Judicial Panel transferred to the Receiver countless decisions traditionally made by State and local government. State law integrates the exercise of these decisions into a comprehensive regulatory procedural framework emphasizing openness, public participation and due process safeguards as a buttress against overzealous government officials, government misjudgments and abusive use of the police power. Unfortunately, a federal receiver is granted the power to make these decisions, but may dispense with democratically derived procedural safeguards. Consequently, appointing a federal receiver to operate all or part of a State prison system should happen only when the most extreme and extraordinary facts are present. This is why it is critical for the quality of our collective democratic experience that the remedy provided by the Prison Litigation Reform Act be used sparingly and carefully.

### III. CONCLUSION

“The Framers of the Federal Constitution [ ] viewed the principle of separation of powers as the absolutely central guarantee of a just Government.” *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting). For the foregoing reasons, this Court should protect local communities by invalidating the federal intervention into the California Prison System under the decisions in *Plata* and *Coleman*.

Respectfully Submitted,

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