U.S. COURT OF APPEALS DOCKET NO. 13-55620
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRENDA MILES; DANE SULLIVAN; UNION DE VECINOS; COALITION FOR ECONOMIC SURVIVAL; PEOPLE ORGANIZED FOR WESTSIDE RENEWAL; INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA,

Plaintiffs/Appellants,

v.

HON. DAVID S. WESLEY, in his official capacity as Presiding Judge of the Los Angeles Superior Court; STATE OF CALIFORNIA; EDMUND G. BROWN, JR, in his official capacity as Governor of California; and JOHN A. CLARKE, in his official capacity as Executive Officer/Clerk of the Los Angeles Superior Court,

Defendants/Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
D. CT. CASE NO. CV-13-1817 MWF (RZx)
[THE HONORABLE MICHAEL W. FITZGERALD]

Brief for *Amici Curiae* CIVIL RIGHTS ORGANIZATIONS and LAW PROFESSORS SUPPORTING PLAINTIFFS/APPELLANTS

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ACLU of Southern California, Asian Americans Advancing Justice, Civil Rights Enforcement and Education Center, Disability Law & Advocacy Center of Tennessee, Disability Rights California, Legal Aid Association of California, Legal Aid Society –Employment Law Center, Los Angeles Center for Law and Justice, National Housing Law Project, Public Law Center, Tenants Together, Worksafe, and Law Professors Peter Blanck, Erwin Chemerinsky, Simona Grossi, Alan Ides, Karl Manheim and Michael Waterstone

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, all *amici curaie* state that they are either non-profit organizations or professors at non-profit educational institutions. They have no parent companies and have not issued shares of stock

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I. STATEMENT OF INTEREST[1]

Amici Curiae are civil rights organizations who represent low-income clients in federal court and law professors who teach and write in the area of constitutional law, federal jurisdiction and disability law. They file this brief to provide further context for relevant abstention doctrines and to explain how the District Court's application of *O'Shea* abstention expands that doctrine and rejects the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colo. River Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976).

Amicus Peter Blanck is University Professor at Syracuse University and Chairman of the Burton Blatt Institute (BBI), which advances the civic, economic, and social participation of people with disabilities. Professor Blanck teaches and has written widely on the Americans with Disabilities Act (ADA).

Amicus Erwin Chemerinsky is the founding Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California, Irvine, School of Law. His areas of expertise include Constitutional Law, Civil Rights, and Civil Liberties.

Amicus Simona Grossi is Associate Professor of Law at Loyola Law School, where she writes and teaches in the areas of Civil Procedure and Federal Courts.

[1] No party or counsel for a party authored or contributed monetarily to the preparation or submission of any portion of this brief. All appearing parties have consented to the filing of this brief.

Amicus Allan Ides is a Professor of Law at Loyola Law School, Los Angeles, where he writes and teaches in the areas of Civil Procedure, Constitutional Law and Federal Courts.

Amicus Karl Manheim is a Professor of Law at Loyola Law School, Los Angeles, where he writes and teaches in the area of Constitutional Law.

Amicus Michael Waterstone is Associate Dean for Research and Academic Centers, and J. Howard Zeimann Fellow and Professor of Law at Loyola Law School, Los Angeles. He teaches and writes in the area of Disability Law.

Amicus American Civil Liberties Union of Southern California is dedicated to preserving and expanding the civil rights and liberties in the Bill of Rights and civil rights laws, including the Americans with Disabilities Act and other laws barring discrimination against people with disabilities and frequently seeks to vindicate those rights in federal court.

Amicus Asian Americans Advancing Justice - Los Angeles (AAAJ, formerly Asian Pacific American Legal Center) is a non-profit legal services organization based in Southern California. AAAJ works to increase access to justice for all, with a particular focus on low-income, limited English proficient immigrants.

Amicus Civil Rights Education and Enforcement Center ("CREEC") is a national nonprofit membership organization. CREEC represents people with disabilities, including members in Los Angeles, in a variety of types of interactions

with the civil and criminal justice system. CREEC has an interest in ensuring that people with disabilities have access to courts and the legal system.

Amicus Disability Law & Advocacy Center of Tennessee (DLAC) is a non-profit organization authorized to protect the legal rights of people with disabilities. DLAC was co-counsel in *Lane v. Tennessee* and helped secure Tennessee state courts' compliance with the Americans with Disabilities Act.

Amicus Disability Rights California (DRC) is a federally designated protection and advocacy agency and one of the largest IOLTA funded providers of legal services in California. DRC annually provides legal assistance on more than 24,000 matters to individuals with disabilities, many of whom experience accessibility barriers at places of public accommodation.

Amicus Legal Aid Association of California (LAAC) is a non-profit organization created for the purpose of ensuring the effective delivery of legal services to low-income and underserved people and families throughout California. LAAC is the statewide membership organization for over 80 non-profit legal services organizations in the state. LAAC believes that access to the legal system requires access to the courts for all Californians.[2]

[2] LAAC's membership includes organizations who are counsel of record. However, neither the legal services programs representing plaintiffs nor any of their employees participated in LAAC's decision to submit an amicus brief or in the drafting and preparation of the brief itself.

Amicus Legal Aid Society – Employment Law Center is an IOLTA-qualified legal services provider dedicated to advancing and protecting the civil rights of underrepresented people, including persons with disabilities.

Amicus Los Angeles Center for Law and Justice is a non-profit legal services organization. Its Housing Program provides assistance to low-income tenants throughout Los Angeles County, and is committed to ensuring that low-income families have access to justice in order to increase family stability, decrease homelessness, and promote safe, violence-free homes.

Amicus National Housing Law Project (NHLP) is a non-profit corporation whose mission is to advance housing justice for the poor and to increase housing opportunities for people protected by fair housing laws.

Amicus Public Law Center (PLC) is a non-profit pro bono law firm committed to providing access to justice for low-income residents in Orange County.

Amicus Tenants Together is California's only statewide renters' right organization. Its project the Tenant Lawyer Network provides technical assistance to hundreds of attorneys every year.

Amicus Worksafe, Inc. is a California-based non-profit organization dedicated to promoting occupational safety and health through education, training, and advocacy. Worksafe has an interest in the outcome of this case as it relates to access to justice issues of low-income workers.

II. INTRODUCTION

The Los Angeles Superior Court has decided to solve its budgetary problems by selectively closing facilities that service the County's most vulnerable – the poor and persons with disabilities. It has now closed the vast majority of court-rooms hearing unlawful detainer actions, while leaving courts that hear other matters, such as business litigation, virtually untouched.

In her annual State of the Judiciary address, California's Chief Justice warned:

> Justice requires a court … What we once counted on – that courts would be open, and ready, and available to deliver prompt justice – is no longer true in California. Because although California has the distinction of being the largest judiciary in the country, we also have the dubious distinction that our state judicial branch budget has been cut greater and deeper than any other in the United States. … We're seeing that California, normally a leader in social justice, may now be facing a civil rights crisis.[3]

The underfunding of state courts, with its attendant impact on the administration of justice, is nothing new. More than 20 years ago, this Court noted that Los Angeles Superior Court was "badly overburdened." *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697, 700 (9th Cir. 1992). And, of course, the funding crisis is no stranger to this and other federal courts. For instance, Chief Justice Cantil-

[3] 2013 State of the Judiciary Address, available at http://www.courts.ca.gov/21268.htm.

Sakauye's lament has recently been echoed by 87 Chief Judges of the nation's District Courts.[4]

For people with disabilities, the situation is far worse. Physical barriers to the courthouse deny Americans with disabilities a meaningful opportunity to be heard, thus violating their statutory and constitutional rights. *Tennessee v. Lane*, 541 U.S. 509, 528 (2004) (noting "unconstitutional discrimination against persons with disabilities in the provision of public services"). Moreover, it is a basic precept of due process that "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard" in its courts. *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971).

Los Angeles County is the most populous county in the United States, and exceeds the populations of 42 states. More than half of its 10 million inhabitants are renters.[5] In terms of size, Los Angeles County covers more than 4,000 square miles; an area larger than Delaware and Rhode Island combined. Eliminating almost all of the County's housing courts is not merely a lament or theoretical problem. It is a real, substantial and often dispositive impediment to accessing the judicial system for millions of tenants, especially people with disabilities.

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[4] See letter from Chief Judges to the United States Senate, Aug. 13, 2013, available at http://news.uscourts.gov/sites/default/files/Chief-Judges-Letter-to-Joseph-Biden.pdf.

[5] http://quickfacts.census.gov/qfd/states/06/06037.html

III. ARGUMENT

A. The Federal Rights At Issue In This Case Cannot Be Vindicated In State Court

Plaintiffs in this action are tenants with disabilities who are facing eviction from their homes. They claim that defendants' closure of the vast majority of the County's housing courts denies them, as a practical matter, their day in court. These facts are hardly disputed by defendants, nor could they be. Rather, defendants claim that the federal courts lack jurisdiction. Their argument is essentially this: plaintiffs can bring their claim of the *practical unavailability of state courts* only in state court. In defendants' view, this is how it would work under California Rule of Court 1.100:

1. A tenant with disabilities facing eviction would appear in court and request a disability accommodation, which apparently would be to transfer the cause to another court, perhaps one that she could actually get to. The state court would apply California rules to determine whether the defendant was entitled to accommodation. *Biscaro v. Stern*, 181 Cal. App. 4th 702 (2010).
2. The request for accommodation must be presented "no fewer than 5 court days before the requested implementation date," Cal. R. Ct. 1.100(c)(3), which in the case of an unlawful detainer action, means the request must be filed *the same day* the tenant receives the summons. See Appellants' Opening Brief at 7-8.

3. One reason for denying a requested accommodation is that the accommodation "would create an undue financial or administrative burden on the court." (Cal. R. Ct. 1.100(f)(2).) Defendants have already argued that this result would do just that – create an "undue financial burden" - which is why they closed most of the County's housing courts in the first place.[6]

4. If the request for accommodation is denied by a non-judicial officer, the tenant may seek review by the presiding judge or designated judge. Cal. R. Ct. 1.100(g)(1). After final denial, the tenant may file a writ of mandate in the Court of Appeals, *id*. (g)(2), and thereafter seek review in the California Supreme Court. There, given the financial crisis already noted by the Chief Justice, and how few cases are accepted for review, it is hard to see how the request for accommodation could be granted. It is also unclear whether the underlying eviction action would proceed while the extraordinary writ is wending its way through state courts.

5. In the unlikely event that accommodation is granted, it pertains only to that matter. *Id*. (h). Presumably, the process can be repeated if the tenant is evicted again. But, defendants argue, it would have to be "on a case-by-case basis, as appropriate … dealing with [each] litigant's disability."[7]

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[6] See Defendants' Opposition to Ex Parte Application for TRO, at 2-6, 10-11.

[7] Defendants' Opposition to Ex Parte Application for TRO, at 9. See also Defendants' Supplemental Brief on Abstention, at 7-8.

Franz Kafka would be proud of this process. There is no realistic chance that state courts can provide the relief plaintiffs seek, and certainly not before irreparable injury is inflicted. Defendants, who have chosen a solution to their budgetary problems that is aimed at the poor and people with disabilities, now suggest that plaintiffs can obtain relief only from, what is for them, a closed state judicial system.

Underfunding obviously implicates state budgetary choices, but federalism has its limits. Defendants cannot solve their budget crises at the expense of federal rights, and then claim that our nation's courts are impotent to even consider the matter. Yet defendants insist the "due respect for Our Federalism," *Younger v. Harris*, 401 U.S. 37 (1971), deprives federal courts of jurisdiction when the state functionally closes its courts to tenants with disabilities. Indeed, defendants essentially argue that various abstention doctrines prevent federal courts from hearing any claim or issuing any remedy against a state's judicial system, no matter how egregious its actions, how serious its constitutional violations, or how certain, immediate, and irrevocable the harms.

This case challenges systemic defects in Los Angeles County's housing courts. It does not involve the elements of particular judicial proceedings, except to the extent that systemic failures affect all cases within the defective system. Fortunately for due process and the administration of justice, abstention is inapplicable here and the historic purpose of Article III jurisdiction prevails.

B. *O'Shea v. Littleton* Does Not Apply to this Case

This case is about the proper role of federal courts in securing constitutional and statutory rights against state abuse. Defendants raise a familiar cry, that any federal interference with state institutions "offend[s] traditional notions of federalism." Op. TRO at 13 (citing *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974) and *Horne v. Flores*, 557 U.S. 443, 448 (2009)). Surely that cannot be true as a general proposition, for it would upend the very basis of federal supremacy. Rather, it is true only in a limited category of cases where the degree of federal intrusion into state autonomy is great and ultimately unnecessary to secure federal rights. *Los Angeles County Bar Ass'n,* 979 F.2d at 703 ("When the relief sought would require restructuring of state governmental institutions, federal courts will intervene only upon finding a clear constitutional violation, and even then only to the extent necessary to remedy that violation").

Younger v. Harris gave birth to a constellation of federalism-based abstention doctrines with a common thread; namely federal courts should ordinarily refrain from interfering with the intimate details of state institutions. *O'Shea* is an example of that principle. There, the Supreme Court considered injunctive relief against state judges, police officials and the state's attorney for a pattern and practice of civil rights violations. The Court held the case unripe for adjudication, but also expressed doubt on the nature of the relief requested, including "periodic re-

ports of various types of aggregate data on actions on bail and sentencing." 414 U.S. at 492, n.1. Citing *Younger*, the Court noted that federal adjudication would have resulted in "a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings." 414 U.S. at 502. In this sense, *O'Shea* is similar to other cases denying ongoing structural oversight of state institutions. *See, e.g., Rizzo v. Goode*, 423 U.S. 362, 379 (reversing injunction requiring the District Court to "supervise the functioning [and] internal disciplinary affairs" of the Philadelphia Police Department).

Thus *O'Shea* and related federalism doctrines draw a distinction between: 1) identifying and enjoining constitutional and statutory violations, leaving the details of remediation up to the state, and 2) structural oversight by federal courts, issuing and monitoring specific compliance mandates. See, e.g., *Lewis v. Casey*, 518 U.S. 343, 360 (1996) (federal court can determine whether prison library is inadequate such that inmates are unable "to present their grievances to the courts," but do not have authority to supervise the contents of those libraries); *Horne*, 557 U.S. at 450 ("federal courts must vigilantly enforce federal law," but "institutional reform decrees … must take a flexible approach … to ensure that responsibility for discharging the State's obligations is returned promptly to the State") (internal citations omitted).

O'Shea is completely in accord with this principle. Abstention there was premised on the District Court's "anticipatory interference in the state criminal process by means of continuous or piecemeal interruptions of the state proceedings," which essentially constituted "an ongoing federal audit of state …. proceedings." 414 U.S. at 500. *Accord, Los Angeles County Bar Ass'n,* 979 F.2d at 703 (*O'Shea* involved "intrusive [and] continuing federal judicial supervision of the state court system"); *Lyons v. City of Los Angeles*, 615 F.2d 1243, 1247 (9th Cir. 1980) ("plaintiffs in *O'Shea* … sought massive structural relief," asking federal courts, in effect, "to supervise the conduct of state officials and institutions over a long period of time"); *rev'd on other grounds*, 461 U.S. 95 (1983).

Defendants cite *E.T. v. Cantil-Sakauye*, 682 F.3d 1121 (9th Cir. 2012) as an example of the type of institutional interference forbidden by *O'Shea*, and suggest that the instant case raises the same federalism concerns. But *E.T.* must be contrasted to *Los Angeles County Bar Ass'n*, which came to the opposite conclusion. There, as here, plaintiffs sought a declaration that state practices violated federal law, while "leaving the state free, in the first instance, to determine how best to remedy the violation." 979 F.2d at 703. Thus, while some restructuring would be inevitable to cure the constitutional violations, it did not involve the type of interference that triggers *O'Shea*.

The same distinction between identifying constitutional violations and ongoing supervision of the state judiciary was noted in *E.T.:*

> *Los Angeles County Bar Ass'n* is distinguishable from the case at bar. It involved average court delays and the 'speedy civil litigation right,' *id. at 703*, which the Plaintiffs allege would be solved by a simple increase in the number of judges. This case involves average attorney caseloads and the right to counsel. Because the question is one of adequacy of representation, potential remediation might involve examination of the administration of a substantial number of individual cases. Thus, we conclude that the declaratory relief sought by Plaintiffs would amount to an ongoing federal audit of Sacramento County Dependency Court proceedings. 682 F.3d at 1124.

Like *Los Angeles County Bar Ass'n*, but unlike *E.T.*, this case involves only the availability of courts, not the examination of individual cases. Nor does it require "periodic reports" and "continuing supervision" of the workings of state courts. *O'Shea*, at 414 U.S. 493, n.1. The constitutional and statutory violations plaintiffs complain of are not the conduct or outcome of individual cases, but the sheer ability to have those cases heard in the first place. For plaintiffs, the state judicial system is functionally closed to them. Surely the District Court can determine that without needing to oversee how individual eviction cases are handled.

Cases involving access to courts are hardly the only Section 1983 actions challenging state court policies at the systemic level. The manner in which state courts select juries (*Ciudadanos Unidos de San Juan v. Hidalgo County Grand Jury Comm'rs*, 622 F.2d 807, 829-830 (5th Cir. 1980)), pay court-appointed attorneys (*Family Div. Trial Lawyers v. Moultrie*, 725 F.2d 695 (D.C. Cir. 1984)), con-

trol admission to practice (*District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)), hold probable cause hearings (*Gerstein v. Pugh*, 420 U.S. 104 (1975)), seize defendant assets (*Fuentes v. Shevin*, 407 U.S. 67, 71 n.3 (1972)), oversee child foster care (*L.H. v. Jamieson, 643 F.2d 1351* (9th Cir. 1981)) and child welfare (*Nicholson v. Williams*, 203 F.Supp.2d 153 (E.D.N.Y. 2002)), and a host of other challenges to the operating rules of state courts are properly within federal jurisdiction.. Yet, all of these cases would be suspect if *O'Shea* and *E.T.* were read as broadly as defendants suggest.

The distinction between a challenge to a state's general rules and the application of those rules in individual adjudications is fundamental to the question of federal jurisdiction. *D.C. Court of Appeals*, 460 U.S. at 486-87 (drawing a distinction between "challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional" and "a general attack on the constitutionality" of state court rules); *Family Div. Trial Lawyers*, at 725 F.2d 701 ("… local judicial administration is not immune from attacks in federal court on the ground that some of its practices violate federal constitutional rights"). Because the District Court blurred that distinction in this case, dismissal represents a departure from *O'Shea* and a significant expansion of that doctrine.

IV. CONCLUSION

The defendants in this case are state executive officials, including the Presiding Judge of the Superior Court in his executive capacity. No relief is sought against a state court or judicial officer in her adjudicative capacity, nor is any pending state trial at issue. Thus, *Younger v. Harris* is inapplicable by its own terms. Even if it were germane, this would be a classic case for the exception noted in *Younger*, where "adequate vindication of constitutional rights" cannot realistically be had in state court. *O'Shea*, 401 U.S. at 49.

The institutional federalism doctrines of *O'Shea* and related cases are also inapplicable because the primary structural relief sought by plaintiffs is for the Superior Court to provide accessible courthouses. How its judges conduct their trials is not at issue in this case. This difference between rectifying constitutional violations and running state institutions is squarely presented. If, as defendants contend, federal courts cannot examine even the availability of state courts to hear cases, then federalism's delicate balance has taken a new and unfortunate turn.

Respectfully submitted,
/s/ Karl Manheim
Attorney for Amici

COMBINED CERTIFICATION OF COMPLIANCE AND CERTIFICATION OF SERVICE

I, Karl Manheim, certify:

1. That this brief complies with the length limitation of Circuit Rule 40-1 and Fed. R. App. P. 32(a)(7)(B) because it is 15 pages long and contains 3,417 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in Microsoft Word 2011 using the proportionally spaced typeface 14 point Times New Roman.

2. That I caused this brief to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 30, 2013, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: September 30, 2013 /s/ Karl Manheim