No. 98-1121

In the Supreme Court of the United States

OCTOBER TERM, 1998

DAVID RUIZ, ET AL., PETITIONERS

v.

REPRESENTATIVE JOHN CULBERSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66, authorized two individual Texas legislators to intervene in ongoing litigation to seek the termination of a consent decree previously entered in the case.

2. Whether individual state and local legislators who are granted a right to intervene under the PLRA must also demonstrate that they have a stake in the litigation sufficient to satisfy the standing requirements of Article III of the United States Constitution.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-48a) is reported at 161 F.3d 814.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 1998. The petition for a writ of certiorari was filed on January 13, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Rule 24(a) of the Federal Rules of Civil Procedure is entitled "Intervention of Right" and provides:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to

> intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

2. In 1972, petitioners David Ruiz, et al., initiated a class action against Texas prison authorities, now the Texas Department of Criminal Justice-Institutional Division (TDCJ), alleging constitutional violations in Texas prisons. Pet. App. 2a. Following a 159-day trial, the district court found that the conditions of confinement in prisons operated by the TDCJ violated the Constitution, and it ordered injunctive relief to remedy the violations. *Ruiz* v. *Estelle*, 503 F. Supp. 1265, 1276, 1391 (S.D. Tex. 1980), aff'd in part, rev'd in part, 679 F.2d 1115, amended in part, vacated in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983). The court of appeals affirmed the district court's finding that the TDCJ's practices imposed cruel and unusual punishment on inmates in its custody, as well as its finding that some of those practices denied inmates due process of law. 679 F.2d at 1126. The court of appeals narrowed the scope of the relief ordered by the district court, however, finding that "some of the remedial measures ordered are not demonstrably required to protect constitutional rights and intrude unduly on matters of state concern." *Ibid.*; see Pet. App. 2a-3a.

In December 1992, the district court approved a comprehensive final judgment proposed by the parties. Pet. App. 3a. The 1992 final judgment terminated the district court's jurisdiction in all but eight substantive

areas, one of which was prison population and crowding conditions. *Ibid.*

3. In March 1996, the defendants filed a motion to terminate the 1992 final judgment so as to end the district court's supervisory role over the Texas prison system. Pet. App. 3a. On April 26, 1996, the President signed into law the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, 110 Stat 1321-66. Section 802 of the Act amended 18 U.S.C. 3626 to establish standards for the entry and termination of prospective relief in civil actions concerning conditions in prisons, jails, and juvenile detention facilities. See 110 Stat. 1321-66 to 1321-70 (18 U.S.C. 3626 (Supp. II 1996)). On May 21, 1996, the respondent state legislators—Representative John Culberson and Senator J.E. ("Buster") Brown—filed a motion to intervene in the district court, pursuant to 18 U.S.C. 3626(a)(3)(F) (Supp. II 1996). Pet. App. 3a. At that time, the PLRA granted a right of intervention to:

> [a]ny State or local official or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of program facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order.

18 U.S.C. 3626(a)(3)(F) (Supp. II 1996). Culberson and Brown also filed a proposed motion to vacate the 1992 final judgment pursuant to 18 U.S.C. 3626(b)(2) (Supp. II 1996).[1] Pet. App. 3a.

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[1] Section 3626(b)(2) provides that "[i]n any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by

4. In an order signed on November 21, 1997, and entered on November 24, 1997, the district court denied respondents' motion to intervene. Pet. App. 4a. The court held that respondents, as individual legislators, were not among the state and local officials authorized to intervene under the PLRA, because only legislative bodies, not individual legislators, have the jurisdiction or function of appropriating funds. *Ruiz* v. *Scott*, No. H-78-987 (S.D. Tex. Nov. 24, 1997), slip op. 2-4.

On November 26, 1997, the President signed into law amendments to the PLRA. See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, § 123, 111 Stat. 2470. Section 123(a)(1)(B)(ii)(I) of that law amended 18 U.S.C. 3626(a)(3)(F) (Supp. II 1996) by adding the phrase "including a legislator" immediately following the phrase "State or local official." 111 Stat. 2470. Based on that amendment, Culberson and Brown moved in the district court for reconsideration of the denial of their motion to intervene. Pet. App. 4a. The district court denied reconsideration, finding that the "amendment does not eviscerate the qualifying language of the provision mandating that, in order to be granted the statutory right to intervene, officials or units of government have the jurisdiction or function of the appropriation of funds." *Ruiz* v. *Scott*, No. H-78-987 (S.D. Tex. Jan. 28, 1998), slip op. 8. The district court also found that the consent decree was not a "prisoner release order" within the meaning of the PLRA. Slip op. 1-7.

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the court that the 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."

5. The court of appeals reversed. Pet. App. 1a-48a.

a. The court of appeals first held that under the November 1997 amendment, Culberson and Brown were within the class of officials entitled to intervene as of right in prison litigation covered by the PLRA. Pet. App. 7a-16a. The court acknowledged that in some contexts, an individual legislator might be deemed not to have the "jurisdiction or function" of appropriating funds, since such action can be accomplished only by the legislative body as a whole. *Id.* at 10a-11a. It concluded, however, that Congress's addition of the phrase "including a legislator" would have been pointless unless Congress had intended to authorize individual legislators to invoke the PLRA's intervention provision. *Id.* at 12a-13a. The court also found that its interpretation was supported by the timing of the amendment and its legislative history. *Id.* at 13a-15a.

b. The court next held that the 1992 final judgment in this case was a "prisoner release order" subject to the intervention provision of the PLRA. Pet. App. 16a-31a. The court rejected the district court's holding that the term "prisoner release order" does not include consent decrees. *Id.* at 17a-27a. The court also held, contrary to the district court's determination, that the 1992 final judgment fell within the PLRA's definition of "prisoner release order" as an order "that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison." 18 U.S.C. 3626(g)(4) (Supp. II 1996). The court acknowledged that the State of Texas could theoretically comply with the density limitations contained in the 1992 final judgment by constructing new prisons to house additional inmates. Pet. App. 28a-30a. The court nevertheless held that the final judgment constitutes a "prisoner release order" because its

effect is "to limit the total number of prisoners incarcerated in the Texas prison system to 51,067, at least unless and until additional incarceration facilities are constructed." *Id.* at 30a. The court also found that Culberson and Brown had invoked the PLRA intervention provision in a timely fashion. *Id.* at 31a-34a.

c. Finally, the court of appeals held that Section 3626(a)(3)(F), if construed to grant individual legislators an unconditional right to intervene in ongoing prison litigation, does not violate Article III of the Constitution. Pet. App. 35a-47a. The court found it "doubtful that, if Brown and Culberson were the only parties before the court seeking termination of (or other relief respecting) the Final Judgment, they would have sufficient standing so that the district court would be presented with an Article III case or controversy." *Id.* at 37a. It concluded, however, that "Article III does not require intervenors to independently possess standing where the intervention is into a subsisting and continuing Article III case or controversy and the ultimate relief sought by the intervenors is also being sought by at least one subsisting party with standing to do so." *Id.* at 38a. The court also noted that in this case, unlike *Diamond* v. *Charles*, 476 U.S. 54 (1986), the putative intervenors had not sought to appeal any merits ruling that the original defendants had declined to appeal. Pet. App. 47a n.28.

ARGUMENT

The decision of the court of appeals in this case is the only appellate decision to date to construe the 1997 PLRA amendment granting state legislators a right of intervention in ongoing prison litigation. Although the courts of appeals have expressed divergent views regarding the "interest" that a putative intervenor must

demonstrate to satisfy the requirements of Federal Rule of Civil Procedure 24(a)(2), the instant case does not present that question. The petition for a writ of certiorari should therefore be denied.

1. Petitioners contend that respondents Culberson and Brown do not satisfy the statutory criteria for intervention under the PLRA because (1) individual legislators do not have jurisdiction to appropriate funds and therefore do not come within the class of officials authorized to intervene (Pet. 21-22), and (2) the 1992 final judgment was not a "prisoner release order" within the meaning of the PLRA (Pet. 22-25). Petitioners do not contend that the Fifth Circuit's resolution of the pertinent statutory issues conflicts with any decision of this Court or of another court of appeals. Indeed, no other appellate court has construed the 1997 PLRA amendment adding the phrase "including a legislator" to the Act's intervention provision. Further review of petitioners' statutory claims is therefore unwarranted.

2. Petitioners' primary argument (Pet. 8-20) is that respondents Culberson and Brown are constitutionally foreclosed from intervening in this lawsuit because they lack a judicially cognizable interest in the outcome of the case. That argument lacks merit and does not warrant this Court's review.

a. In holding that Culberson and Brown would be permitted to intervene, the court of appeals did not suggest that those legislators would be entitled to assert all of the prerogatives available to the other parties to the case. Rather, the court's decision was carefully limited. The court held only that "Article III does not require intervenors to independently possess standing where the intervention is into a subsisting and continuing Article III case or controversy and the

ultimate relief sought by the intervenors is also being sought by at least one subsisting party with standing to do so." Pet. App. 38a. The court recognized that under *Diamond* v. *Charles*, 476 U.S. 54 (1986), intervenors who do not possess Article III standing cannot appeal an adverse district court ruling if the parties with whom they are aligned have declined to do so. See Pet. App. 39a-40a, 47a n.28. See also *Goldin* v. *Bartholow*, Nos. 97-20852 et al., 1999 WL 33241, at *11 n.12 (5th Cir. Jan. 26, 1999) (if intervenors "are the sole party to take an appeal they must independently satisfy Article III").

The court of appeals' approach furthers Congress's intent to permit intervention by state legislators in appropriate cases, without transgressing the limits set by Article III. Article III confines the jurisdiction of the federal courts to actual "Cases" and "Controversies" (U.S. Const. Art. III, § 2), and "the doctrine of standing serves to identify those disputes which are appropriately resolved through the judicial process." *Whitmore* v. *Arkansas*, 495 U.S. 149, 155 (1990). But so long as an intervenor enters an ongoing controversy in order to request the same relief sought by parties who *do* have Article III standing, and does not seek to prolong the litigation after other parties have declined to appeal, his participation creates no danger that the federal court will operate beyond its proper sphere.

b. Petitioners also contend (Pet. 11-20) that respondents Culberson and Brown should be required to demonstrate Article III standing because they seek to raise legal theories different from those asserted by the other defendants in the case. As the court of appeals recognized (Pet. App. 46a), however, nothing in Article III prohibits a federal court from considering legal arguments that have not been raised by a party to the

case. Thus, while a federal court may decline for prudential reasons to address arguments raised only by an amicus curiae, nothing in the Constitution precludes it from considering such arguments if it chooses to do so. See, *e.g.*, *Teague* v. *Lane*, 489 U.S. 288, 300 (1989) (plurality opinion) (O'Connor, J.); *Mapp* v. *Ohio*, 367 U.S. 643, 646 n.3 (1961). So long as an intervenor who lacks Article III standing seeks the same ultimate disposition of the case as does another party, its articulation of different legal bases for that disposition creates no constitutional problem.[2]

c. There is a "considerable diversity of views," *Mausolf* v. *Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996), regarding the "interest" a party must possess to intervene under Rule 24(a)(2) of the Federal Rules of Civil Procedure. See also *Diamond*, 476 U.S. at 68-69 n.21. Some courts have held that a Rule 24(a)(2) intervenor must satisfy Article III standing requirements. *Mausolf*, 85 F.3d at 1299 (citing cases). Others have read Rule 24(a)(2)'s requirement of an "interest relating to the property or transaction which is the subject of the action" as requiring a stronger interest than is needed to satisfy Article III standing, while still other

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[2] Petitioners also assert that "[i]n fact, Brown and Culberson seek relief *beyond* that sought by the state defendants." Pet. 18 n.7. The court of appeals, however, decided this case on the express assumption that "Brown and Culberson seek the same ultimate relief as the TDCJ: the termination of the Final Judgment." Pet. App. 46a. Insofar as petitioners contest the correctness of that assumption, their challenge raises no legal issue of general importance. If the intervenors attempt at some future stage of the litigation to obtain relief different from (or in addition to) that requested by the other defendants, nothing in the court of appeals' opinion suggests that the district court may or should entertain their claims.

courts have read the Rule to require a *less* substantial interest than is mandated by Article III. *Mausolf*, 85 F.3d at 1299 (citing cases).

The instant case, however, does not provide a suitable vehicle for clarification of Rule 24(a)(2)'s "interest" requirement. The court of appeals specifically declined to decide whether putative intervenors under Rule 24(a)(2) must demonstrate Article III standing. Pet. App. 44a n.26. Rather, the court held that Culberson and Brown were entitled to intervene under Rule 24(a)(1) because the PLRA, as amended in November 1997, "confers an unconditional right to intervene." See Pet. App. 6a, 31a.

Two courts of appeals, addressing the right to intervene under Rule 24(a)(2), have held that Article III standing is required by the Constitution. See *Southern Christian Leadership Conference* v. *Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984); *Mausolf*, 85 F.3d at 1298-1301. Those courts reached that conclusion, however, at least partly because they construed Rule 24(a)(2) to grant the intervenor all of the rights of an Article III party. See *Building & Constr. Trades Dep't* v. *Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994) ("we have held that because an intervenor participates on equal footing with the original parties to a suit, a movant for leave to intervene under Rule 24(a)(2) must satisfy the same Article III standing requirements as original parties"); *Mausolf*, 85 F.3d at 1300-1301 (same).

The court of appeals in this case did not suggest that an intervenor may be granted the full rights of a party without establishing that he possesses Article III standing. In essence, the court simply held that Congress is not restricted to an all-or-nothing choice. Consistent with Article III, persons who lack standing to sue may permissibly be denominated "intervenors," and

treated as parties for *some* purposes, even though they may not constitutionally be vested with *all* of the prerogatives normally associated with party status. The Eighth and D.C. Circuit decisions cited above do not squarely address the propriety of that approach. Cf. *Solid Waste Agency* v. *United States Army Corps of Eng'rs*, 101 F.3d 503, 507 (7th Cir. 1996) (Posner, C.J.) (noting the divergent views among the courts of appeals regarding the "interest" required by Rule 24(a)(2), but observing that "there is less to [the conflict] than meets the eye, since *Diamond* makes clear that a case must be dismissed if the only party on one side of the suit is an intervenor who lacks standing").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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