DOCKET NUMBER: 06-12296G

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Thomas F. "Slick" Jones, *et al*,
Appellants

v.

John P. Rowe, *et al*,
Appellees

Appeal from the United States District Court

for the Southern District of Georgia

Case Number: CV281-155

APPELLANTS' BRIEF

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ATTORNEY FOR APPELLANTS

CERTIFICATE OF INTERESTED PERSONS

AND CORPORATE DISCLOSURE STATEMENT

The undersigned certifies that, to the best of his information and belief, the following is a complete list of interested persons as set forth in Eleventh Circuit Rule 26.1-1.

1. The Honorable Anthony Alaimo- Judge, United States District Court for the Southern District of Georgia;
2. Thomas F. "Slick" Jones - Named Defendant
3. Mansy Clark - Named Defendant
4. Ronald E. Dempsey - Named Defendant
5. Alton L. Wooten - Named Defendant
6. Wayne Hutcheson - Named Defendant
7. John M. McClurd - Named Defendant
8. Harold Pate - Named Defendant
9. Willou Copeland Smith - Named Defendant
10. Ronald E. Young - Named Defendant

11. Georgia Department of Offender Rehabilitation, David Evans, Commissioner, Georgia Dept. of Offender Rehabilitation
12. Carl R. Johnson - Current Glynn County Commissioner
13. Don Hogan - Current Glynn County Commissioner
14. Ulrich Keller - Current Glynn County Commissioner
15. Cap Fendig - Current Glynn County Commissioner
16. Tony Thaw - Current Glynn County Commissioner
17. Wayne Bennett - Current Glynn County Sheriff
18. Paul “Howard” Lynn - Current Glynn County Commissioner
19. Alan “Jerome” Clark - Current Glynn County Commissioner
20. John R. Rowe, Jr. - Plaintiff
21. Horace McDuffie - Plaintiff
22. Terry A. Richmond - Plaintiff
23. Mitchell S. Brody - Plaintiff

24. All persons who are, have been, and will be confined in the Glynn County Detention Center under conditions which violate their rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution - the Plaintiff class

25. Gary Moore - Attorney for Defendants/Appellants;

26. Douglas W. Alexander - Attorney for Plaintiffs/Appellees;

27. Glynn County

Gary Moore
Glynn County Attorney
Georgia Bar Number: 521050

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STATEMENT REGARDING ORAL ARGUMENT

The appellants hereby request oral argument pursuant to Federal Rule of Appellate Procedure 34. The appellants believe that oral argument will benefit the Court and the parties by allowing a full and complete presentation of the facts and legal issues necessary to a resolution of the issues on appeal. More particularly, due to the very long history of this litigation (which began in 1981) and the limited amount of space available in this brief, the Court may find that it wishes to inquire further into certain developments that have occurred in this litigation. The question and answer format afforded by oral argument would allow the court an opportunity to do so.

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STATEMENT OF JURISDICTION

The U.S. District Court for the Southern District of Georgia has federal question subject matter jurisdiction over this matter inasmuch as some of plaintiffs' asserted claims arise under federal law—42 U.S.C. § 1983, in particular. See Compl. (Dkt. No. 3). See also Fountain v. Metropolitan Atlanta Rapid Transit Authority, 678 F.2d 1038, 1041 -1042 (11th Cir. 1982); 28 U.S.C. § 1343. This Court also has jurisdiction to consider, with this appeal, the district court's 15 March 2006 order (Dkt. No. 329), in which the district court refused to modify or vacate its previous orders creating the Glynn County Inmate Welfare Fund and promulgating a permanent plan for charitable donations to be made from the Fund. The district court has already held that there are no continuing constitutional violations and has rescinded all of its previous orders, except for the one promulgating the permanent plan for charitable donations. Thus, the district court's 15 March 2006 order is a final order that envisions no future litigation of this matter. As a final order, it is immediately appealable under 28 U.S.C. § 1291.[1]

This appeal was also timely filed within the thirty day time limit imposed by

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[1] Even if it were not a final order within the meaning of 28 U.S.C. § 1291, the order would nonetheless be immediately appealable under 28 U.S.C. § 1292 since it refused to dissolve or modify previous injunctive relief.

FRAP 4(a)(1) since the district court's order denying the motion to modify the plan for annual donations was entered on 16 March 2006, and the Notice of Appeal (Dkt. No. 331) was filed on 13 April 2006.

STATEMENT OF THE ISSUES PRESENTED FOR APPEAL

The ultimate issue to be decided in this appeal is whether the district court erred in denying the Defendants' "Motion to Modify the Plan for Annual Donations from the Inmate Welfare Fund to Charitable Organizations in Glynn County, Georgia." Dkt. No. 316. The Inmate Welfare Fund was created by a "stipulation" (Dkt. No. 105) entered in 1985, and the permanent plan for annual donations therefrom was originally promulgated by a district court order (Dkt. No. 180) entered on 3 August 1994. Since this case falls within the purview of the Prison Litigation Reform Act (PLRA), the general legal issue raised by defendants' motion to modify the plan is whether the 1985 stipulation (which created the Fund) and the 1994 order (which implemented the plan for permanent donations from the Fund) exceed the limitations imposed by the PLRA upon court ordered prospective relief and consent decrees. However, the narrower and more relevant legal question in this appeal is whether the PLRA's restrictions on prospective relief and consent decrees even apply. In this regard, the PLRA carves out an exception for private settlement agreements, which are exempt from the PLRA's limitations on prospective relief. Thus, this Court must determine whether the 1985 stipulation and 1994 district court order are properly characterized as private settlement agreements, thereby making their provisions regarding the Inmate Welfare Fund exempt from the PLRA's limitations.

STATEMENT OF THE CASE

I. Statement of Facts and Proceedings Below

This litigation began roughly a quarter of a century ago, when a complaint was filed on December 21, 1981. Dkt. No. 3. The complaint was filed as a class action by four individuals who were, at that time, inmates at the Glynn County Detention Center (sometimes referred to hereinafter as "Detention Center" or "Center"); the defendants were the then-Sheriff of Glynn County, two individuals then-working as detention center administrators, and the members of the Glynn County Board of Commissioners at that time. Dkt. No. 3. The complaint generally complained of, among other things, the overall physical conditions at the Detention Center, the alleged lack of adequate health care provided to inmates, an alleged lack of training and counseling for inmates, an allegedly deficient disciplinary system for inmates, and alleged abuse of inmates. Dkt. No. 3. The case was certified as a class action on June 12, 1982; the class included "[a]ll persons who are, have been, and will be confined in the Glynn County Detention Center under conditions which violate their rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution." Dkt. No. 57. The parties ultimately entered into a settlement

agreement[2] covering "all issues relating to conditions of confinement at the Detention Center." Dkt. No. 64. That settlement agreement was approved by the District Court in a "Consent Order"entered on December 20, 1982. Dkt. No. 64. The 1982 consent order also incorporated the settlement agreement by reference and ordered the parties to comply with its provisions. Dkt. No. 64.

Subsequently, in 1985, the parties jointly submitted a document entitled "Stipulation," which was approved by the district court on 9 December 1985.[3] Dkt. No. 105. Most notably for the purposes of this litigation, the 1985 Stipulation contained provisions that created the "Inmate Welfare Fund" (sometimes hereinafter

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[2] For the sake of simplicity, this portion of the brief will refer to the 1982 agreement as a "settlement agreement" because that is how the parties referred to the document at that time. However, defendants hasten to add that the subsequently enacted Prison Litigation Reform Act set forth a definition for the term "private settlement agreement." 18 U.S.C. § 3626(g)(6). Although it is ultimately irrelevant whether the 1982 agreement was actually a "private settlement agreement" as defined by the PLRA (since, as will be discussed, the 1982 agreement neither created the Inmate Welfare Fund nor required that any charitable donations be made), defendants nonetheless point out that the 1982 agreement is more properly characterized as a "consent decree" under the PLRA since the inmates made multiple efforts to avail themselves of the district court's contempt powers to enforce it. E.g. Dkt. No.s 78, 100. As discussed in the Argument portion of this brief, the availability of the court's contempt power is the distinguishing feature of consent decrees. See infra pp. 18-19.

[3] As indicated by its first numbered paragraph, the "Stipulation" was the result of the parties' amicable resolution of Plaintiff's Second Petition for Contempt filed on September 18, 1985.

referred to simply as "the Fund"). Dkt. No. 105. With respect to the Fund, the Stipulation provided the following:

> The Glynn County Detention Policy and Procedures Manual shall be amended so as to include a new section to be entitled Inmate Welfare Fund. The new procedure at a minimum shall provide for the following:
>
> a) All profits generated from the sale of merchandise to the inmates by the Glynn County Detention Center shall be deposited in this fund.
>
> b) All profits or commissions received by the Glynn County Sheriff's Department from the pay telephones in the areas of the Glynn County Detention Center where the inmates are housed shall be deposited into the Inmate Welfare Fund.
>
> c) The Inmate Welfare Fund shall be audited on an annual basis by Glynn County and a copy of such audit shall be available for inspection and copying by interested persons.
>
> d) The Sheriff shall appoint a committee of five (5) persons, at least one of whom shall be female, to make recommendations to him as to how best to utilize the funds in the Inmate Welfare Fund. The Committee shall be composed of a Director of the Brunswick-Glynn County Regional Library or his designatee; a member of the Glynn Count Ministerial Association; a citizen who will represent the interest of the minorities in the community; a member of the Brunswick-Glynn County Bar Association; and one member of the Glynn County Sheriffs Department.
>
> e) The Inmate Welfare Fund shall be used to generally promote the welfare of the inmate population and may be used to defray the cost of items furnished to the indigent inmates except for food, clothing, medical or dental care.
>
> Dkt. No. 105, pp.2-3.

As is clear from the above-quoted text, there was no mention in the 1985 Stipulation of any funds being given to charitable organizations.

Following the inception of the Fund in 1985, no funds therefrom were ever

given to any charitable organizations until 1993; on October 1 of that year, the district court granted a "Motion to Donate Inmate Welfare Funds for Charitable Purposes," and the court authorized and ordered the then-sheriff of Glynn County "to make charitable donations on behalf of the inmates" to two charities—the United Way and the Boys Club of Glynn County. Dkt. No. 173. Notably, this 1993 Order did not allow for any donations to be made in perpetuity; rather, it authorized and directed only a one-time donation to each of those two charities. Dkt. No. 173.

The following year, the inmates made a "Motion for a Permanent Plan to Make Annual Donations from the Inmate Welfare Fund to Charitable Organizations in Glynn County." Dkt. No. 174. In support of that motion, the inmates filed a brief setting forth the history of the Inmate Welfare Fund and describing some of the items that had been purchased using money therefrom—e.g., weight lifting equipment, ping pong tables, and television sets. Dkt. No. 174, pp.2-3. The brief went on to explain that, despite the expenditures on various recreational items for inmates (and the then-recent donations to the United Way and Boys Club of Glynn County), the Fund nonetheless had generated a large surplus–over $80,000, in fact. Id. at pp.3-4. In order to dispose of the surplus that had accrued in the Fund (and presumably would continue to accrue), the inmates' motion "ask[ed] the Court to establish a permanent plan to make annual donations from the Inmate Welfare Fund to charitable

organizations in Glynn County[.]" Id. at 5. Before making this request, the attorney for the inmates had "conducted a survey of the inmates housed in the Detention Center on April 15, 1994, with a view toward determining if the inmates would support a permanent plan to make annual donations to charitable organizations in Glynn County." Id. at p.4. According to an affidavit from the inmates' attorney, a majority of the inmates who participated in the survey supported the notion of making annual contributions to charitable organizations with the excess monies in the Fund. Id. at p.9.

Importantly, the inmates' motion for a permanent plan for annual charitable donations was stiffly opposed by defendants. In their response to the inmates' motion, the defendants pointed out that, even though the Fund had accrued a surplus, the operation of the Detention Center was extremely costly for the taxpayers of Glynn County. Dkt. No. 177. Counsel for the defendants wrote:

> During fiscal year 1993-1994, the County budgeted a total of $2,762,369.00 in taxpayer funds for the operation of the Detention Facility. Actual expenditures for the last completed fiscal year, 1992-1993 were $2,781,338. Sheriff Wayne Bennett proposes that excesses in the Inmate Welfare Funds in excess of those necessary to provide for such welfare should be used to defray taxpayer funds in the operation of the Detention Facility. Id. at p.3.

In spite of defendants' stiff opposition, the motion for a "Permanent Plan to Make Annual Donations from the Inmate Welfare Fund to Charitable Organizations"

was granted by the district court on June 15, 1994. Dkt. No. 179. It was soon followed by an August 3, 1994, order in which the Court "promulgated" the permanent plan for making charitable donations from the Fund. Dkt. No. 180. That order had, as an attachment, a copy of a document entitled "GLYNN COUNTY INMATE WELFARE FUND CHARITABLE TRUST," which the order incorporated by reference. Id. The trust agreement established procedures whereby money in the Funds was to be distributed, in perpetuity, to charitable organizations. Though the trust document itself was not signed by Judge Alaimo, his order (to which it is attached) nonetheless states: "Having read and considered the trust document, the Court finds that the document is reasonable and proper for the creation of the intended trust and the same is hereby APPROVED AND ORDERED implemented." Id. The order also stated that the "Court shall retain jurisdiction of this matter such that the trust shall remain under the supervision of this Court." Id. Neither the court's order nor the trust agreement were signed by any of defendants or their attorneys. Id.

Following the 1994 order that created the Glynn County Inmate Welfare Fund Charitable Trust, Congress passed and the President signed into law the Prison Litigation Reform Act. Pub. L. No. 104-134. Relying heavily upon that Act, defendants filed, on 26 June 1998, a "Motion to Terminate the Decree of the Court

Contained in the Consent Order of December 20, 1982, as Amended." Dkt. No. 238. In that motion, the defendants argued that the consent order of 1982 (and the subsequent orders amending it) should be terminated "for surpassing the durational limit under 18 U.S.C. § 3626(b)(1)(A)(iii) and for the lack of the requisite findings required under 18 U.S.C. § 3626(b)(2)." Id. at 1. In response, counsel for the inmates filed a brief that agreed in most, if not all, respects with the motion of defendants. Dkt. No. 240. In fact, counsel for the inmates wrote:

> A very professional atmosphere exists within the Detention Center. The Sheriff and his staff have truly made a good faith effort to comply with the Settlement Agreement and Consent Order. They should be commended for their efforts. *It can truly be said that past constitution violations have been redressed, and no ongoing or current constitutional violations exist in the Glynn County Detention Center.* Id. at 3 (emphasis supplied).

In response to defendants' unopposed motion to terminate the court's prior decrees, the district court entered a "Final Order" on September 22, 1998. Dkt. No. 243. In that order, the district court declared

> that the prospective relief in the . . . Consent Order is subject to termination under 18 U.S.C.A. § 3626(b)(1)(A)(iii) and (b)(2). Furthermore, the Court finds that *the discrimination addressed by this litigation* has been corrected and the PLRA requires immediate termination of the Consent Order. Id. at 1 (emphasis supplied).

However, the district court went on to hold that the 3 August 1994 order, which had promulgated the permanent plan for donations from the Fund to charitable

organizations, remained in full force and effect. Id. at 2. Thus, the district court vacated *all* of its previous orders in the case *except for the August 1994 order*.[4] Id. As a result, monies generated by the commissary and inmate telephone calls remained earmarked for the Fund (and ultimately charitable organizations) even though the court and parties agreed that the deprivations of constitutional rights that had given rise to this litigation had been resolved.

Following the 1998 "Final Order," donations from the Fund continued being made to charitable organizations; in fact, roughly $600,000 were donated between August 1994 and November 2005. Dkt. No. 317 at 3, 7-9. Feeling that the obligation to continue making such donations violated the strictures of the Prison Litigation Reform Act, defendants filed, on 9 November 2005, a "Motion to Modify the Plan for Annual Donations from the Inmate Welfare Fund to Charitable Organizations in Glynn County, Georgia." Dkt. No. 316. In making that motion, defendants argued that

> termination of this prospective relief is mandated by 18 U.S.C. § 3626(b)(1)(A)(iii) since more than two years have elapsed from the enactment of the Prison Litigation Reform Act . . . . [and] that under 18

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[4] This is especially odd considering that neither the defendants' motion nor the inmates' response had even asked that the order promulgating the permanent plan remain in effect. Stranger still is the fact that the 1998 "Final Order" also apparently vacated the December 1985 "Stipulation" that had created the Fund in the first place.

> U.S.C. § 3626(b)(B)(2) [defendants] are entitled to immediate termination of this prospective relief because no finding was ever made that this relief is narrowly drawn, that it extends no further than necessary to correct the violation of the Federal right and that it is the least intrusive means necessary to correct the violation of the Federal right. Indeed, it is impossible to understand any relationship between this prospective relief and the violation of Federal rights which formed the basis of this action. Dkt. No. 318 at 2-3.

In response to defendants' argument, counsel for the inmates essentially argued that the PLRA's limitations on the district court's power to order prospective relief are inapplicable here because the obligation to donate the funds to charity was the result of a private settlement agreement; in the words of their responsive brief,

> the Defendants overlook the fact that this Trust was created as an outgrowth of the Settlement Agreement they entered into which was approved by this Court in the resolution of litigation concerning Constitutional conditions of confinement in the Glynn county jail. The Defendants are bound by the Settlement Agreement and subsequent Stipulation. Dkt. No. 317 at 3.

In an order dated 17 March 2006, the district court denied the motion of defendants to modify the plan for charitable donations. Dkt. No. 329. Interestingly, the court actually noted that the PLRA would have, in fact, prevented it from ordering that money from the Fund be donated to charity. Id. at 10 ("The charitable trust is not the type of relief that the Court could have ordered to remedy constitutional violations at the Glynn County jail."). The court nonetheless avoided this potential problem by agreeing with the inmates that the Fund had been the result of a private settlement

agreement, and therefore, that the court had no authority to vacate or modify the obligation to donate money therefrom to charitable organizations. See id. at 10. It is this decision by the district court that defendants hereby challenge with this appeal.

II. Standard of Review

Defendants are aware of no authority directly addressing the applicable standard of review governing an appeal of a district court's refusal to terminate prospective relief in a case governed by the PLRA. However, one must bear in mind that the essential question presented by this appeal is whether the district court erred in ruling that the existence of the Inmate Welfare Fund and the obligation that funds therefrom be donated to charity resulted from a private settlement agreement, thereby making the PLRA's requisites for prospective relief inapplicable. Defendants submit that determining whether certain statutory provisions of the PLRA apply to the Inmate Welfare Fund is inherently a question of law. Thus, since this Court is being asked to review the district court's decision on a question of law, this Court should apply a *de novo* standard of review. See B.L. Harbert Intern., LLC v. Hercules Steel Co., 441 F.3d 905, 910 (11th Cir. 2006); Peebles v. Merrill Lynch, Pierce, Fenner & Smith Inc., 431 F.3d 1320, 1324 (11th Cir. 2005); Ruiz v. Tenorio, 392 F.3d 1247, 1252 (11th Cir. 2004).

SUMMARY OF THE ARGUMENT

In its March 16, 2006 order, the district court erroneously ruled that it does not have the power to terminate the requirement that monies in the Glynn County Inmate Welfare Fund be donated to charitable organizations. Dkt. No. 329. Fundamental to the district court's holding was the conclusion that the Fund itself, and the obligation to make charitable donations therefrom, resulted from a "private settlement agreement" as that term is defined in the Prison Litigation Reform Act at 18 U.S.C. § 3626(g)(6). By concluding that the Fund's continued existence and the obligation to make charitable donations resulted from a private settlement agreement, the district court managed to circumvent the limitations imposed by the Act upon the authority of a district court to order prospective relief in cases arising out of prison conditions. The district court even noted that those limitations, if they applied, would have prevented it from ordering the creation of the Inmate Welfare Fund and the plan for permanent charitable donations therefrom. E.g., Dkt. No. 329, p.10. Unfortunately, the district court was incorrect in holding that the Inmate Welfare Trust Fund had resulted from a private settlement agreement, and therefore, also wrong to conclude that it lacked authority to terminate or modify its previous orders regarding the Fund. Contrary to the district court's conclusions, the Inmate Welfare Fund was actually created in 1985 by a "stipulation" that is most aptly characterized as a consent decree

rather than a private settlement agreement. Moreover, the obligation to make charitable donations from the Fund did not arise until the district court entered an order in 1994 promulgating a permanent plan for donations. Notably, the order was stiffly opposed by defendants; since defendants opposed the plan for charitable donations, it is impossible to conclude that they agreed to the plan in a settlement agreement. Thus, neither the existence of the Fund nor the plan for charitable donations arose out of a private settlement agreement, the PLRA's limitations on prospective relief *do* apply, and the district court should have vacated its previous orders regarding the Fund.

ARGUMENT

I. Neither the Fund Nor Charitable Donations Therefrom Are Necessary to Correct the Violation of a Federal Right; Therefore, Any Prospective Relief Ordering the Continuation of Either Is Unlawful under the PLRA.

The starting point for analysis of this appeal is the text of the PLRA itself. In pertinent part, the Act states:

> Prospective relief in any civil action with respect to prison conditions 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. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief. 18 U.S.C. §

3626(a)(1)(A).

There is no question that this case is a "civil action with respect to prison conditions," and therefore, subject to the strictures quoted above. In fact, plaintiffs and the district court have conceded that the PLRA generally applies to this case. Dkt. No.s 240, 243. Furthermore, there is no dispute that the above-quoted language would prohibit the district court from ordering, as prospective relief, either that the Inmate Welfare Fund be created or that money from the Fund be donated to charity. In this regard, the above-quoted statutory language imposes three conditions that any prospective relief must satisfy—"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). These conditions are not satisfied with respect to prospective relief requiring charitable donations to be made from a fund of money generated by revenues from an inmate commissary and inmate telephone calls; the primary reason for this conclusion is that there is no link between such a fund or charitable donations and the correction of a violation of a federal right. In fact, defendants can envision no set of circumstances in which the existence of the Fund or the payment of charitable donations therefrom ever would have been "necessary to correct the violation of [a] Federal right."

Additionally, even if the Fund and the obligation to make charitable donations had, at some time in the past, served to correct the violation of a federal right, that time has long since passed. "PLRA analysis . . . requires" one to determine whether there is "a current and ongoing violation of a federal right;" where there is no such ongoing violation, the previous injunctive relief must be dissolved. Baker v. Haun, 333 F.Supp.2d 1162, 1165 (D.Utah 2004). Here, both parties and the court have all agreed that there are no ongoing violations of any federal rights. See, e.g., Dkt. No. 243, p. 1 ("the Court finds that the discrimination addressed by this litigation has been corrected and the PLRA requires immediate termination of the Consent Order"); Dkt. No. 240, p. 3 ("It can truly be said that past constitutional violations have been redressed, and no ongoing or current constitutional violations exist in the Glynn County Detention Center."). Thus, the district court should have terminated any "prospective relief" requiring that charitable donations continue to be made from the Inmate Welfare Fund.

II. Neither the Fund Nor the Obligation That Excess Money in the Fund Be Donated to Charities Resulted from a Private Settlement Agreement.

Unfortunately, it is not enough merely to conclude that the PLRA proscribes the continued viability of any court ordered prospective relief requiring the existence of the Fund or mandating that charitable donations be made in perpetuity. Rather,

one must still address the district court's erroneous conclusion that the limitations contained in 18 U.S.C. § 3626(a)(1)(A) are wholly inapplicable to the issue of the Fund and the charitable donations. In reaching that conclusion, the district court reasoned that 18 U.S.C. § 3626(a)(1)(A) does not apply because the Fund and the permanent plan for donations therefrom had resulted from a private settlement agreement, which is exempt from the requirements of 18 U.S.C. § 3626(a)(1)(A).

Defendants do not take issue with the district court's holding that the PLRA carves out an exception for private settlement agreements. Indeed, as the statute plainly states,

> Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled. 18 U.S.C. § 3626(c)(2)(A).

Defendants also concede that *if* the Fund and the permanent plan for charitable donations had been the result of a private settlement agreement, then the district court would have been correct that the requirements of Section 3626(a)(1)(A) need not be satisfied. But, defendants adamantly dispute any conclusion that either the Fund itself or the plan for charitable donations resulted from a private settlement agreement. To the contrary, a careful review of the history of this litigation reveals that the Fund resulted from what can best be described as a consent decree, rather than a private

settlement. Moreover, an analysis of the relevant documents in the record of this case clearly demonstrates that the parties never mutually assented to the implementation of the permanent plan for charitable donations, and therefore, the permanent plan was not the result of either a consent decree or private settlement. Before proceeding with a discussion of the chronology of relevant documents in this litigation, however, it will likely prove helpful to explore briefly the PLRA's distinction between private settlements and consent decrees; the PLRA's differing treatment of the two ultimately provides the analytical context within which one must examine the creation of the Fund and the plan for charitable donations.

A. Under the PLRA, Consent Decrees Are Enforceable via the Court's Contempt Power, and They Must Meet the Same Requirements Applicable to Other Forms of Prospective Relief.

The PLRA envisions two methods by which a suit may be resolved, in whole or in part, with the consent of the parties—private settlement agreements and consent decrees. See 18 U.S.C. § 3626(c). Notably, the distinction between the two is more than mere nomenclature. Most importantly, the limitations imposed upon prospective relief under 18 U.S.C. § 3626(a)(1)(A) (as discussed above) are equally applicable to consent decrees. "In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a)." 18 U.S.C. § 3626(c)(1). In other words, the relief

afforded by a consent decree must be narrowly drawn, extend no further than necessary to correct the violation of a federal right, and be the least intrusive means necessary to correct the violation of the federal right. 18 U.S.C. § 3626(a)(1)(A). Only a "private settlement agreement" can bypass those requisites. 18 U.S.C. § 3626(c)(2). Thus, if either the Fund or the obligation to make charitable donations resulted from a consent decree, then the district court should have held that the consent decree is no longer of any continuing effect since the conditions of subsection (a) of the statute are not satisfied.

Having now discussed the PLRA's differing treatment of consent decrees and private settlement agreements, the next relevant topic is how one actually distinguishes between the two. Under the statute, "consent decree" is defined to mean "any relief entered by the Court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements." 18 U.S.C. § 3626(g)(1). Thus, the definition of a consent decree largely turns upon the definition of "private settlement agreements." In turn, that term is defined to mean "an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled." 18 U.S.C. § 3626(g)(6). Ultimately, the key to understanding the difference between consent decrees and private settlement agreements lies in unraveling the meaning of

the phrase "not subject to judicial enforcement other than the reinstatement of the civil proceeding" since that is the essential ingredient of a private settlement agreement under 18 U.S.C. § 3626(g)(6). Unfortunately, however, there is very little case law exploring this precise issue.

Still, at least two other Circuit Courts of Appeals have indicated that the "not subject to judicial enforcement" language means that consent decrees under the PLRA are enforceable via the court's contempt power while private settlement agreements are not. For example, the Second Circuit has written:

> A plaintiff willing to settle constitutional claims by way of a consent decree seeks the assurance that, if the defendant fails to fulfill its agreed obligations, those obligations will be enforceable through the court's exercise of its contempt power. We are not aware of any practice whereby the plaintiffs, especially in institutional litigation involving constitutional claims for injunctive relief, agree to a consent decree and also agree—either in the same document or in a separate document—to give up their claims unconditionally in exchange for undertakings by the defendants that would not be enforceable except through the commencement of a new lawsuit for breach of contract. Benjamin v. Jacobson, 172 F.3d 144, 157 (2th Cir. 1999).

Relying upon Benjamin, the Eighth Circuit has likewise held that the cornerstone of a consent decree is the court's ability to enforce its terms via the court's contempt power. In describing the Second Circuit's opinion in Benjamin, the Eighth Circuit wrote:

> In reaching its conclusion, the Second Circuit carefully distinguished

> between consent decrees, which are enforceable through the supervising court's exercise of its contempt powers, and private settlements, enforceable only through a new action for breach of contract. In addition, our sister circuit pointed out that the PLRA defines a consent decree as relief "entered by the court," 18 U.S.C. § 3626(g)(1), whereas the PLRA defines a private settlement agreement as relief that is "not subject to judicial enforcement," and thus not subject to the court's contempt power. Hazen ex rel. LeGear v. Reagen, 208 F.3d 697, 699 (8th Cir. 2000) (some citations omitted).

The notion that a consent decree is enforceable via the court's contempt power, while a private settlement agreement is not, is further supported by the Supreme Court's characterization of consent decrees in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 378, 112 S.Ct. 748, 757 (1992), wherein the Court wrote:

> A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.

Synthesizing the foregoing authorities, the PLRA's use of the phrase "not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled," 18 U.S.C. § 3626(g)(6), signifies that a private settlement agreement is not enforceable via the court's contempt power; rather, plaintiffs in a privately settled PLRA case would have to either reinitiate the settled suit or bring a separate action for breach of contract (i.e., breach of the settlement agreement) if a defendant failed to fulfill his obligations under the agreement.

Bearing in mind these distinctions between private settlement agreements and consent decrees, one must now re-trace certain key developments that have occurred in this litigation in an attempt to determine whether the Inmate Welfare Fund and the plan for charitable donations resulted from a consent decree, private settlement agreement, or neither. Specifically, there are four documents that deserve scrutiny—the 1982 settlement agreement, the 1985 "stipulation," the 1994 order promulgating the permanent plan, and the 1998 "Final Order."

B. The 1982 Settlement Agreement Did Not Create the Inmate Welfare Fund or Promulgate the Plan for Charitable Donations.

Apparently generating some confusion in this matter is the fact that the parties did, in fact, enter into an agreement in 1982 that was called a settlement agreement. See Dkt. No. 64. Pretermitting whether that document was actually a private settlement agreement within the meaning of the PLRA,[5] one must bear in mind that the 1982 agreement neither created the Inmate Welfare Fund nor promulgated any plan for charitable donations to be made therefrom. Rather, the Fund itself did not

[5] As discussed in a previous footnote, despite the name given to that document, it does not appear to have actually been a "private settlement agreement" under the PLRA and cases interpreting it. In this regard, the inmates filed more than one motion for contempt for alleged deviations of its terms. Dkt. No.s 78, 100. As discussed, the ability of a court to use its contempt power to enforce an agreement is the hallmark of a consent decree, not a private settlement agreement.

come into existence until 1985, when the parties submitted to the court a "Stipulation." Dkt. No. 105. Furthermore, no charitable donations were made therefrom until 1993 (eleven years after the settlement agreement), and the permanent plan for donations was not promulgated until 1994. Dkt. 179. Thus, it is of no import that the parties settled most of the issues in this litigation via an agreement in 1982. Rather, one must ascertain whether the *subsequent* creation of the Fund and the plan for charitable donations resulted from one or more private settlement agreements.

C. The 1985 Stipulation That Created the Fund Was Later Vacated by the District Court; Therefore, it Is Irrelevant Whether the Stipulation Was a Consent Decree or a Private Settlement Agreement.

As discussed in the Statement of the Case *supra*, a "Stipulation" was entered on 9 December 1985, which created the Inmate Welfare Fund (although it did *not* contain any provision pertaining to charitable donations). Dkt. No. 105. Admittedly, counsel for the defendants signed, and thereby consented to, the 1985 Stipulation; however, as should be clear from the previous discussion of consent decrees and private settlements, a party's consent to a court order is not sufficient to allow its terms to bypass the requirements of 18 U.S.C. § 3626(a)(1)(A). Fortunately, however, one need not devote much time to determining whether the Stipulation was a consent decree or private settlement agreement since the district court long ago

vacated it.[6] In the district court's "Final Order" entered on 22 September 1998, the court wrote:

> The above matter having come before the Court for hearing on motion . . . that the Consent Order of this Court dated December 20, 1982, as amended . . . *December 9, 1985* . . . to be terminated and declared of no further prospective effect;
>
> The Court finds that the prospective relief in the above-mentioned Consent Order is subject to termination under 18 U.S.C. § 3626(b)(1)(A)(iii) and (b)(2).
>
> Dkt. No. 243 (emphasis supplied).

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[6] As a an aside, if one did choose to examine whether the Stipulation was a consent decree or a private settlement, one ought to conclude that it is more akin to a consent decree than a settlement. This is primarily indicated by its appellation—i.e., that it is self-titled as a "stipulation." Though it may be a rather rare practice to title a court filing as a stipulation, a review of case law reveals that this nomenclature is typically used in the context of consent decrees. E.g., Norfolk Southern Corp. v. Chevron, U.S.A., Inc., 371 F.3d 1285, 1288 (11th Cir. 2004) ("A judgment dismissing an action with prejudice based upon the parties' stipulation, unlike a judgment imposed at the end of an adversarial proceeding, receives its legitimating force from the fact that the parties consented to it. In the closely related context of consent decrees, we have recognized the importance of confining their scope to matters upon which the parties have consented."). See also U.S. v. Armour & Co., 402 U.S. 673, 676, 91 S.Ct. 1752, 1754 (1971) ("On the same day as the complaint was filed, defendants filed their answer, denying its essential allegations, and both sides filed a stipulation to a consent decree, granting the Government the largest part of the relief it had sought."); U.S. v. International Harvester Co., 274 U.S. 693, 696, 47 S.Ct. 748, 749 (1927) ("And after the case had been remanded to the District Court, upon a stipulation signed by the Attorney General of the United States and the solicitors for the defendants, a consent decree was entered therein[.]"); Evers v. Watson, 156 U.S. 527, 535, 15 S.Ct. 430, 433 (1895) ("It further appears that one of the stipulations under which the consent decree was entered was that defendants were to have six months in which to pay and satisfy the decree[.]").

Thus, the district court has already held, in 1998, that the 1985 Stipulation that created the Fund is of no proscriptive effect under the PLRA and the inmates have never appealed that order.[7]

D. Defendants Never Assented to the 1994 Order Promulgating the Permanent Plan for Charitable Donations; Hence, it Was Neither a Private Settlement Nor a Consent Decree.

The most important document with respect to this appeal is the 3 August 1994 Order in which the district court "promulgated" the permanent plan for charitable donations from the Fund. Dkt. No. 180. Its importance results from the fact that this order first imposed the obligation that excess funds from the charity be donated to charity. And, what is most noteworthy for purposes of the present appeal is that Defendants *never assented to the permanent plan for charitable donations*. As is clear from the order and the trust agreement themselves, no representative for the defendants signed either document in order to show any consent to the terms thereof. Moreover, defendants filed a brief in opposition to the motion for the permanent plan in which they argued that any excess money in the Fund should be used to defray the

[7] It is rather anomalous that the subsequent "Final Order" in 1998 vacated the 1985 stipulation that had created the Fund while simultaneously stating that the permanent plan for charitable donations from the Fund remained in effect. One is left to assume that the district court implicitly held that the terms of the 1994 "Glynn County Inmate Welfare Fund Charitable Trust" (attached to the 3 August 1994 order) had superseded the portions of the 1985 stipulation originally creating the Fund.

operational costs of the Detention Center. Dkt. No. 177. Even the district court has recognized that defendants opposed the implementation of the charitable trust in 1994. In fact, in the order presently being appealed, the district court wrote: "Defendants have asserted that they never agreed to the operation of the charitable trust, and the record indicates that Defendants did oppose its creation in 1994." Dkt. No. 329, p.7. Clearly, there can be no settlement agreement regarding the Fund unless the parties actually agreed to the terms thereof. Here, defendants never agreed to terms of the 1994 order promulgating the plan; thus, the existence of the Fund and the plan for charitable donations most certainly did *not* result from a private settlement agreement. Since the 1994 order of the District Court was not consented to by the parties and does not meet the legal requirements of the PLRA for continuance of prospective relief, its termination is mandated by that act. Moreover, even if defendants had consented to the terms of the plan for charitable donations (which they did not), the 1994 order would nonetheless be a consent order rather than a settlement agreement (and therefore still subject to the PLRA's requirements for prospective relief). In this regard, the final paragraph of the order states: "FURTHER ORDERED, that this Court shall retain jurisdiction of this matter such that the trust shall remain under the supervision of this Court." Dkt. No. 180, p.3. If the court retained jurisdiction and supervisory power over the trust, then the order was

obviously "subject to court enforcement other than reinstatement of the civil proceeding," thereby making it something other than a private settlement agreement. See 18 U.S.C. § 3626(c)(2). Thus, the strictures of 18 U.S.C. § 3626(a)(1)(A) apply to the 3 August 1994 order, and the district court should have, therefore, vacated the prospective relief that it imposed upon defendants via that Order.

E. The 1998 "Final Order" Was a Consent Decree and, Therefore, Should Have Been Vacated by the District Court to the Extent That It Kept the 1994 Order in Full Force and Effect.

The final document in this case with which we must concern ourselves is the 1998 "Final Order" (Dkt. No. 243) in which the district court vacated *all* of its previous orders except for the 1994 order promulgating the permanent plan. As is readily apparent from looking at the 1998 order, it has all the earmarkings of a consent decree. First, it is self-titled as an "order." Dkt. No. 243, p.1. Second, the final paragraph begins with the phrase "IT IS HEREBY ORDERED AND DECREED." Id., p.2. Third, the primary signature on the document is that of the judge. Id. Fourth and finally, although attorneys for the parties have signed it, their signatures are prefaced by the phrase "CONSENTED TO." Id. In light of these factors, it is difficult to imagine how the document could be any clearer that it is a consent decree rather than a private settlement agreement.

Additionally important in this regard is the precise language stating that the

August 3, 1994, order remained in effect. Specifically, the 1998 "Final Order" states that the "Order of August 3, 1994 should remain in full force and effect pending further Order of this Court." Dkt. No. 243, p.2. As previously mentioned, that 1994 order states that the court "retain[ed] jurisdiction of this matter such that the trust shall remain under the supervision of this Court." Dkt. No. 180, p.3. If the 1994 order remained in full force and effect under the 1998 order, then presumably the Court also retained jurisdiction to require payments to the trust and to supervise the trust. Given this retention of jurisdiction to supervise the trust, one can safely say that the 1998 order does not comport with the PLRA's definition of a "private settlement agreement," which requires that "the terms of [the] agreement . . . not [be] subject to court enforcement[.]" 18 U.S.C. § 3626(c)(2). In other words, since the 1994 order gave the Court jurisdiction to supervise the trust, and the 1998 order kept the 1994 order in full force and effect, it seems very clear that the district court retained jurisdiction over the trust even after the 1998 order. Since the Court retained the power to supervise the trust, it is fair to say that the Court also retained a power of judicial enforcement that was greater than the mere ability to reinstate the civil proceeding, thereby making the 1998 order a consent decree rather than a private settlement.

To sum up, the obligation to make charitable donations using money in the

Fund was originally imposed, without the consent of defendants, via a 1994 court order; but, defendants subsequently consented, in the 1998 order, to allowing the 1994 order to remain in full force and effect. Thus, one could potentially conclude that the obligation to make donations using money in the Fund has now become the result of a consent decree (i.e., the 1998 order) rather than a order that was stiffly opposed by defendants (i.e., the 1994 order). But, even if the plan for charitable donations can, in the wake of the 1998 order, be characterized as the result of a consent decree, it certainly cannot be described as resulting from a private settlement agreement. After all, there is no question that neither the 1998 nor 1994 order was a private settlement. Moreover, even if the 1985 Stipulation originally creating the Fund had been a private settlement agreement (which it was not), that stipulation was later vacated by the 1998 order, thereby making it of no further effect. And finally, even if the 1982 agreement had been a private settlement agreement within the meaning of the PLRA, it is irrelevant to the issues involved in this appeal since that agreement did not create, address, or even contemplate the Inmate Welfare Fund. Thus, one must conclude that the continuing obligation to make charitable donations using the excess money in the Fund is the result of either court ordered prospective relief (i.e., the 1994 order) or a consent decree (i.e., the 1998 order). Either way, the requirements of 18 U.S.C. § 3626(a)(1)(A) apply. However, those requisites cannot

be satisfied in the present case because, as the district court has noted, there are no ongoing violations of any federal rights. Therefore, the district court erred in refusing to vacate or modify its previous orders regarding the Inmate Welfare Fund and charitable contributions to be made therefrom.

III. The District Court Also Should Have Vacated the Plan for Permanent Donations Because it Violates the Anti-Gratuities Clause of the Georgia Constitution.

Finally, the district court also erred in denying defendants' motion to modify the permanent plan for charitable donations because the plan violates the anti-gratuities clause of the Georgia Constitution. Under that constitutional provision, "the General Assembly shall not have the power to grant any donation . . . ." Ga. Const. Art. 3, § 6, ¶ VI. Although the clause itself only refers to the General Assembly, Georgia courts have held that it also applies to local governments. E.g., City of Lithia Springs v. Turley, 241 Ga.App. 472, 526 S.E.2d 364 (1999). Here, moneys given to charitable organizations would clearly be "donations." Moreover, the money being donated is being generated by the operation of the Detention Center and by inmate telephone calls. Thus, the anti-gratuities clause is implicated, and it should be construed to prohibit the making of donations using money in the Fund. Moreover, the PLRA states the following: "The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority

under State or local law or otherwise violates State or local law . . . ." 18 U.S.C. § 3626(a)(1)(B). Thus, the PLRA explicitly disallows the entry of prospective relief that would require the violation of state law. Here, the district court's orders requiring charitable donations from the Fund do just that.

Of course, the district court avoided the impact of the anti-gratuities clause by reasoning that the charitable donations actually resulted from a settlement agreement, and therefore, were supported by consideration. Dkt. No. 329, p.12, n.6. However, for the numerous reasons already discussed in this brief, any conclusion that the donations are the result of a private settlement agreement is clearly erroneous. Thus, it cannot be said that the donations are, or ever have been, supported by consideration. As a result, the anti-gratuities clause of the Georgia Constitution is violated, and the orders promulgating the plan should have been vacated on the basis that they violate 18 U.S.C. § 3626(a)(1)(B).

CONCLUSION

For the reasons set forth herein, defendants respectfully ask this Court to reverse the district court's order (Dkt. No. 329) denying defendants' "Motion to Modify the Plan for Annual Donations from the Inmate Welfare Fund to Charitable Organizations in Glynn County, Georgia." Dkt. No. 316.

Respectfully submitted, this ___ day of June, 2006.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing pleading by addressing same to:

Douglas W. Alexander, Esq.
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and depositing same in the United States Mail with sufficient postage affixed to assure delivery.

This _____ day of June, 2006.

BY:_____
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