No. 96-2582

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EVERETT HADIX, et al.,

Plaintiffs-Appellees

v.

PERRY M. JOHNSON, et al.,

Defendants

and

UNITED STATES OF AMERICA,

Intervenor-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

PROOF REPLY BRIEF FOR THE UNITED STATES AS INTERVENOR-APPELLANT

ISABELLE KATZ PINZLER
Acting Assistant Attorney General

DAVID K. FLYNN
MARIE K. McELDERRY
MARGO SCHLANGER
Attorneys
Department of Justice
P.O. Box 66078
Washington, D.C. 20035-6078
(202) 514-3068

TABLE OF CONTENTS

PAGE

ARGUMENT 1

CONCLUSION 10

TABLE OF AUTHORITIES

CASES:

Benjamin v. Jacobson, 935 F. Supp. 332 (S.D.N.Y. 1996) 3

Blodgett v. Holden, 275 U.S. 142 (1927) 1

In re Clinton Bridge, 77 U.S. (10 Wall.) 454 (1870) 3

Landgraf v. USI Film Prods., 511 U.S. 244 (1994) 4

Louisiana v. United States, 380 U.S. 145 (1965) 8

Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) 3, 4

Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855) 2, 3

Plaut v. Spendthrift Farm, Inc., 115 S. Ct. 1447 (1995) 2, 3, 4

Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996) 3, 9

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) 8, 9

Rust v. Sullivan, 500 U.S. 173 (1991) 1-2

STATUTES:

Prison Litigation Reform Act, 18 U.S.C.A. 3626 . . . . . passim

18 U.S.C.A. 3626(b)(2) 1, 5
18 U.S.C.A. 3626(b)(3) . . . . . passim
18 U.S.C.A. 3626(e)(2) 6

RULES: **PAGE**

Fed. R. Civ. P. 60(b) 8

MISCELLANEOUS:

T. Cooley, Constitutional Limitations (1868) 6

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 96-2582

EVERETT HADIX, et al.,

Plaintiffs-Appellees

v.

PERRY JOHNSON, et al.,

Defendants-Appellants

and

UNITED STATES OF AMERICA,

Intervenor-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

PROOF REPLY BRIEF FOR THE UNITED STATES AS INTERVENOR-APPELLANT

ARGUMENT

In their brief, plaintiffs misconstrue the Prison Litigation Reform Act (PLRA or the Act), exaggerating its impact in order to support their constitutional challenges to its immediate termination provisions, 18 U.S.C.A. 3626(b)(2) and (b)(3). "[T]o declare an Act of Congress unconstitutional * * * is the gravest and most delicate duty that [a court] is called on to perform." Blodgett v. Holden, 275 U.S. 142, 147-148 (1927) (Holmes, J. concurring). Plaintiffs urge this Court to undertake the task without proper "respect for Congress, which we assume legislates in the light of constitutional limitations." Rust v. Sullivan,

500 U.S. 173, 191 (1991). Because the termination provisions of the PLRA, properly read, do not violate separation of powers principles, equal protection, or due process, this Court should uphold the statute.

1. The PLRA's termination provisions require a court applying Section 3626(b)(3) to focus on the future appropriateness of injunctive relief, not on the past validity of the court's judgment. It is this that distinguishes them from the statute at issue in Plaut v. Spendthrift Farm, Inc., 115 S. Ct. 1447 (1995). The principle of separation of powers highlighted in Plaut is the requirement that Congress not undo judgments that represent "the last word of the judicial department." Id. at 1457. Such judgments the Plaut Court labeled "final," for separation of powers purposes. See ibid. At the same time, Plaut expressly ratified the long-established rule of Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855) (Nelson, J.). See Plaut, 115 S. Ct. at 1459. In Wheeling Bridge, the Court held that a valid Act of Congress could require prospective alteration of an otherwise final injunctive judgment, because injunctions are executory and may affect parties and non-parties alike. But, the Court noted, a judgment for damages is different, because its entry is one-time and its benefit accrues to the individual plaintiff. See id. at 431.

Plaintiffs would superimpose on Plaut, Wheeling Bridge and the other related case law a distinction those cases do not

support. They would hinge the analysis on the statutory or constitutional nature of the claim, and would have this Court hold that Congress may require courts to apply new law in statutory but not constitutional injunction cases. Neither Wheeling Bridge nor the cases plaintiffs cite support their attempt to divide constitutional from statutory rights. In Wheeling Bridge, the Court's holding was clearly based on the nature of the relief granted — not the nature of the claim. See In re Clinton Bridge, 77 U.S. (10 Wall.) 454, 463 (1870) (Nelson, J.) (the distinction between damages and injunctions was dispositive in Wheeling Bridge); Benjamin v. Jacobson, 935 F. Supp. 332, 344-349 (S.D.N.Y. 1996); Plyler v. Moore, 100 F.3d 365, 371 (4th Cir. 1996) (under Plaut and Wheeling Bridge "[a] judgment providing for injunctive relief * * * remains subject to subsequent changes in the law"). Similarly, Plaut does not hint that Congress has any more authority with respect to statutory cases than with respect to constitutional ones. See 115 S. Ct. at 1457. Indeed, the Court overturned the statute in Plaut notwithstanding the fact that it regulated a statutory cause of action.

Plaintiffs rely on Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 83-84 (1982), in support of a different rule for injunctive judgments relating to statutory rights and those relating to constitutional rights. Northern Pipeline is simply not relevant here. It concerned the limits on Congress's control of adjudication of constitutional versus

statutory rights, holding that Article I tribunals could not have final authority over litigation of constitutional rights. Id. at 80-84. Northern Pipeline said nothing about congressional authority to require courts to modify their prospective judgments to reflect valid statutory changes in remedial law.

In sum, under Plaut, the distinction between backward- and forward-looking relief, court-ordered damages and court-ordered injunctions, already-executed and executory remedies, completed and pending cases, controls. The rule is that congressional alteration of legal rights, if otherwise constitutionally proper, should be applied in pending cases,[1/] even where the judgment is "final" for other purposes.[2/]

[1/] In a related area, the Supreme Court has said that "[w]hen [an] intervening statute authorizes or affects the propriety of prospective relief," a court should apply the newly enacted law to cases before it. Landgraf v. USI Film Prods., 511 U.S. 244, 273-274 (1994). Indeed, far from being disfavored under the law, such application is "unquestionably proper" -- "application of [such a] new provision [to a prospective order] is not [considered] retroactive." Ibid..

[2/] Plaintiffs' Plaut argument, which emphasizes a purported difference between changes in "substantive" versus changes in "remedial" law, reflects their doubts that Congress has the power to limit the remedial authority of courts in constitutional cases. Of course, if congressional power were not extensive enough to authorize the remedial restrictions of the PLRA, then those restrictions could not constitutionally be applied either in cases where courts have already ordered relief, or those in which no judgment has been entered. But while we agree with plaintiffs that Congress's power is not plenary with respect to constitutional remedies, that power more than suffices here, because none of the remedial limitations restrict a court's ability to issue effective remedies for violations of constitutional rights. See pp. 7-8, infra, and Proof Brief for the United States As Intervenor-Appellant at 31-39.

2. Plaintiffs argue that the immediate termination provisions of the PLRA violate separation of powers principles because they impermissibly hinder the district court's ability to grant effective relief to remedy constitutional violations of the rights of inmates. In contending (Br. 42) that the termination provisions "strip[] the courts of their inherent power and duty to enforce effective remedies in constitutional cases," however, plaintiffs overstate the effect of the statute.[3/]

First, plaintiffs' contention (Br. 30 n.28) that the "PLRA first terminates a valid consent judgment and requires the matter to be tried," misstates the statutory scheme established by Sections 3626(b)(2) and (b)(3). Section 3626(b)(3) specifically operates as a "limitation" on the immediate termination mandate of Section 3626(b)(2). While Section 3626(b)(2) provides for the termination of prospective relief approved or granted in the absence of specified findings, Section 3626(b)(3) states that "[p]rospective relief shall not terminate if the court makes" findings, in the present, that the relief "remains necessary to correct a current or ongoing violation of the Federal right," and is narrowly tailored within the meaning of the PLRA. The inquiry into the ongoing appropriateness of prospective relief may or may not, at its conclusion, require judicial alteration of the prospective judgment — but the termination provisions do not dictate the outcome of the inquiry, or interfere with the

---

[3/] "Br." refers to Plaintiffs-Appellees' Proof Brief.

judgment while that inquiry goes forward.[4/] Plaintiffs also argue that the PLRA violates separation of powers principles by "dictat[ing] the particular steps to be taken in the judicial inquiry" (Br. 20) and "compelling [the courts] to grant new trials" (Br. 27, quoting T. Cooley, Constitutional Limitations 94-95 (1868)). Again, they are incorrect. The statute requires courts periodically to examine the continuing appropriateness of court-ordered prospective relief, but there is no requirement that Article III courts "retry" old cases. Section 3626(b)(3) does not mandate a hearing, let alone a new trial. Rather, the statute permits limited litigation where a court has insufficient information about current conditions to make the Section 3626(b)(3) findings. Assuming that a district court has enough current knowledge about the facts of a given case to make the requisite findings, no new evidence would be needed at all.

[4/]As we have argued in United States v. Michigan, No. 96-1907, and Hadix v. Johnson, Nos. 96-1908, 96-1943 (pending), the PLRA's automatic stay provision, 18 U.S.C.A. 3626(e)(2), which states that "prospective relief subject to a pending motion [for immediate termination] shall be automatically stayed" beginning 30 days after the motion is filed and continuing until the court enters a final order ruling on the motion, is properly interpreted to preserve the courts' inherent authority to make considered decisions based on the application of law to pertinent facts. We read 18 U.S.C.A. 3626(e)(2) to direct that thirty days after a defendant makes a motion to terminate previously granted relief, the court should stay the relief — unless it finds the existence of a good reason not to. One reason that might justify a judicial refusal to enter a stay is that the complexity of the factual issues precludes the court from assuring itself within the thirty days that the relief is not necessary to remedy federal rights. In any event, this provision and its constitutionality are not at issue in this appeal.

Even where the court finds some additional factual development necessary, moreover, plaintiffs' contention that the PLRA requires a new trial (Br. 39) is an overstatement. The new litigation that is contemplated by Section 3626(b)(3) need not be extensive. All that is required is that the court have sufficient evidence to assure itself that any relief retained is necessary to remedy a current or ongoing violation of federal law and is narrowly tailored, within the meaning of the Act, to remedy that violation.

Moreover, plaintiffs erroneously equate whatever additional inquiry the court requires with the trial that would have occurred if the consent decree had not been entered. Any hearing held pursuant to Section 3626(b)(3), however, would be about the future, not the past. The hearing's purpose would be to gauge the appropriateness of the relief granted in the decree for the future. As discussed below, this distinction is crucial.

Finally, plaintiffs are incorrect in suggesting that the PLRA impedes a court's ability to enforce constitutional rights by making compliance with decree obligations irrelevant to an inquiry whether relief should be retained. See Br. 34, 46-47. As we argued in our opening brief (pp. 37-38), the PLRA would raise grave constitutional concerns if it required a district court to terminate relief previously granted where unconstitutional conduct has ceased but the violation has not been fully remedied or the defendant is poised to resume the unconstitutional conduct when the enforcement power of the court

is withdrawn. Because courts have "not merely the power but the duty to render a decree which will so far as possible eliminate the [unconstitutional] effects of the past as well as bar like [unconstitutionality] in the future," Louisiana v. United States, 380 U.S. 145, 154 (1965), the PLRA should be read so that the concept "current or ongoing violation of the Federal right" encompasses not only present unlawful conduct but also the failure to remedy the proximate effects of past unlawful acts and the present danger of imminent recurrence of the violation.

3. Plaintiffs rest heavy weight upon Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992), arguing that its standard for modification of consent decrees is constitutionally compelled, and that Congress therefore may not alter it. Nothing in Rufo casts constitutional doubt on the PLRA. In Rufo, the Supreme Court held that in ruling on a motion to modify made pursuant to Fed. R. Civ. P. 60(b), district courts may alter decrees to reflect unanticipated "significant change[s] either in factual conditions or in law." 502 U.S. at 384. The Court emphasized that "[a] proposed modification should not strive to rewrite a consent decree so that it conforms to the constitutional floor," and cautioned that changes should be "tailored to resolve the problems created by the change in circumstances." 502 U.S. at 391. The PLRA in one sense alters the modification standard set out in Rufo, by requiring courts to modify consent decrees to meet the new statutory limitations — examining prospective relief to see if it "extends no further

than necessary to correct the violation of the Federal right, and * * * is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C.A. 3626(b)(3). In another sense, however, the Rufo standard remains the same — the PLRA simply amounts to a "significant change in * * * law," and Congress has set out some procedures for a motion to modify decrees in response to that change. Either way, Rufo, which was not a separation of powers case but one guiding district court discretion in modifying institutional injunctions, does not stand in the way of the PLRA. See Rufo, 502 U.S. at 388 ("A consent decree must of course be modified if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under federal law.").

Because the remedial principles established by the PLRA are constitutionally permissible limits on the authority of district courts, Congress has the authority to require that any relief that a court will enforce henceforward, from the time of the PLRA's passage, meets those principles. See Plyler, 100 F.3d at 371-372. The statutory termination provisions are a proper and constitutional vindication of that authority, and should be upheld by this Court.

CONCLUSION

For the foregoing reasons, as well as those stated in our opening brief, this Court should reverse the judgment below.

Respectfully submitted,

ISABELLE KATZ PINZLER
Acting Assistant Attorney General

Marie K. McElderry

DAVID K. FLYNN
MARIE K. McELDERRY
MARGO SCHLANGER
Attorneys
Department of Justice
P.O. Box 66078
Washington, D.C. 20035-6078
(202) 514-3068

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Proof Reply Brief For The United States As Intervenor-Appellant was served by first class mail, postage prepaid, on the following individuals and counsel of record:

Susan Przekop-Shaw
Assistant Attorney General
Corrections Division
Plaza One Building
101 South Washington Square Suite 900
Lansing, Michigan 48909

Dr. F. Warren Benton
149 Beach Avenue
Larchmont, New York 10538

Elizabeth Alexander
National Prison Project
1875 Connecticut Avenue, N.W., Suite 410
Washington, DC 20009

Patricia A. Streeter
One Kennedy Square, 1816
Detroit, Michigan 48226

Michael Barnhart
One Kennedy Square, 1420
Detroit, Michigan 48226

Deborah LaBelle
3310 Cadillac Tower
Detroit, Michigan 48226

This 17th day of April, 1997.

Marie K. McElderry

Marie K. McElderry
Attorney
U.S. Department of Justice
Post Office Box 66078
Washington, D.C. 20035-6078
(202) 514-3068