UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BILLY JOE TYLER, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

vs.

JAMES W. MURPHY, et al.,

Defendants.

Cause No. 74-40-C (4)

SUGGESTIONS OF THE CITY OF ST. LOUIS REGARDING THE EFFECT ON THIS CASE OF THE "HELMS AMENDMENT" TO THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

Introduction

On September 13, 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994 ("Crime Bill"), Pub.L. No. 103-322. Section 20409 of the Crime Bill provides, in pertinent part, that federal courts may not impose or enforce prison population caps, or any other remedy for overcrowding, unless such caps are necessary to remedy actual constitutional violations suffered by particular identified prisoners. (Section 20409, which has been codified at 18 U.S.C. §3626, is commonly known as the "Helms Amendment").

On December 21, 1994, the Eighth Circuit entered an Order summarily vacating certain orders previously entered herein by Judge Cahill, and remanding the case for "review and further consideration under appropriate rules of statutory construction

and constitutional provisions of the effect, if any, upon the litigation of the [Crime Bill, and particularly the Helms Amendment]." Plaintiffs have submitted a memorandum arguing that the Helms Amendment has no effect on this case because it does not apply to pretrial detainees, and because it is unconstitutional on its face. The judges of the Twenty-Second Judicial Circuit, although presumably not parties to this case, have submitted a memorandum responding to the points raised by plaintiffs.

At the City's request, the Court has granted the City an opportunity to address the effect of the Helms Amendment on this case. The following are the City's suggestions.

I. THE HELMS AMENDMENT, ALTHOUGH IT REFERENCES ONLY EIGHTH AMENDMENT VIOLATIONS, APPLIES TO DETENTION FACILITIES HOUSING MIXED POPULATIONS OF PRETRIAL DETAINEES AND SENTENCED PRISONERS.

Plaintiffs in this case claim that the conditions of their confinement at the City Jail and the Medium Security Institution are, for various reasons, unconstitutional. Plaintiffs correctly observe in their memorandum that the plaintiff class consists mostly ("90% +," in plaintiffs terms) of pretrial detainees. The claims of those plaintiffs arise under the Fourteenth Amendment's Due Process Clause. Whitnack v. Douglas County 16 F.3d 954. 957 (8th Cir. 1994). Plaintiffs necessarily concede, however, that the City, at any given time, houses a certain number of sentenced prisoners in its detention facilities. The claims of these plaintiffs arise under the

Eighth Amendment, which prohibits cruel and unusual punishment. Id.

The Helms Amendment, in proscribing the imposition and enforcement of population caps except under certain narrow circumstances, refers only to constitutional violations arising under the Eighth Amendment. Plaintiffs have seized on that language, arguing that the Helms Amendment, by its terms, applies only to sentenced prisoners. Plaintiffs further argue that, since the plaintiff class in this case consists mostly of pretrial detainees, the Helms Amendment is inapplicable.

Plaintiffs' restrictive view of the Helms Amendment's applicability should be rejected for several reasons. First, the Eighth Circuit has recognized that, regardless of whether a plaintiff challenging his conditions of confinement is a pretrial detainee or a sentenced prisoner, the court applies an "identical" legal standard in weighing his claim. Whitnack, 16 F.3d at 957; Hall v. Dalton, 34 F.3d 648, 650 (8th Cir. 1994). In a conditions-of-confinement case, then, a pretrial detainee is not entitled to any greater protection that a sentenced prisoner. Accordingly, there is no logical reason to apply the Helms Amendment to the claims of sentenced prisoners but not those of pretrial detainees.[1]

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[1] The City also observes that the statute contains no language to the effect that it applies "only" or "exclusively" to Eighth Amendment violations, although such language would have been easy to insert.

The legislative history of the Helms Amendment also confirms Congress' intent that the statute apply to pretrial detainees as well as sentenced prisoners. Senator Helms, the sponsor of the Amendment, stated:

> The standard set forth in this amendment is intended to apply to State correctional facilities as well as local detention facilities, which often have mixed populations of sentenced and pretrial detainees.

140 Cong. Rec. S12,527 (daily ed. August 25, 1994). Statements made by "the sponsor of the language ultimately enacted, are an authoritative guide to the statute's construction." North Haven Board of Education v. Bell, 456 U.S. 512, 526-27 (1982). See also Regents of the University of California v. Public Employment Relations Board, 485 U.S. 589, 596 (1988) (considering statement by "the sponsor of the specific amendment, [that] explained its intent"); Federal Energy Administration v. Algonquin SNG, Inc., 426 U.S. 548, 564 (1976) ("statement of one of the legislation's sponsors... deserves to be accorded substantial weight in interpreting the statute"). The Helms Amendment should thus be interpreted to apply to cases involving facilities that house mixed populations of sentence prisoners and pretrial detainees, such as the City's facilities in this case.

Finally, the Eighth Amendment is applicable to state and local facilities only by incorporation through the Fourteenth Amendment. As the Helms Amendment expressly applies to state and local detention facilities, 18 U.S.C. §3626(b)(1), Congress

necessarily intended that it apply to violations of the Fourteenth Amendment, in addition to the Eighth Amendment.

For these reasons, the City submits that the Helms Amendment's restrictions on the imposition of population caps apply to mixed populations of sentenced prisoners and pretrial detainees, such as those at issue in this case.

II. THE HELMS AMENDMENT'S LIMITATIONS ON REMEDIES FOR OVERCROWDING ARE CONSTITUTIONAL BECAUSE CONGRESS HAS THE AUTHORITY TO LIMIT THE CIRCUMSTANCES UNDER WHICH PARTICULAR REMEDIES MAY BE IMPOSED BY FEDERAL COURTS.

Plaintiffs argue that the Helms Amendment is unconstitutional because it infringes upon the federal courts' authority to redress constitutional violations. To the contrary, however, it is clear that Congress may limit the circumstances under which particular remedies may be imposed by the federal courts to cure constitutional violations. Moreover, the Helms Amendment does not preclude federal courts from providing "adequate" remedies for constitutional violations since the Amendment does not prohibit a federal court from imposing any remedy in an overcrowding case, but simply imposes a strict causation requirement for all remedies and prioritizes available remedies by designating population ceilings as a remedy of last resort.

A. Congress May Limit The Circumstances Under Which Particular Remedies May Be Imposed.

Throughout history, Congress has significantly limited the circumstances under which district courts may issue injunctive relief in special categories of cases. See, e.g., The

Johnson Act of 1934, 28 U.S.C. §1342 (federal courts shall not issue an injunction which would affect an order by a state administrative agency concerning rates charged by a public utility); The Tax Injunction Act of 1937, 28 U.S.C. § 1341 (prohibiting district courts from enjoining the collection of any tax under state law unless no speedy and efficient remedy is available in the state courts); Norris-LaGuardia Act, 29 U.S.C. §§ 101-15 (prohibiting federal courts from issuing any injunction involving a labor dispute except after "a hearing of a described character" and after making specified findings of fact).

The United States Supreme Court consistently has upheld and enforced these statutory limitations on the remedies a federal court may impose. In Lauf v. E. G. Shinner & Co., 303 U.S. 323 (1938), the Supreme Court held that the district court had erred in granting an injunction without making the findings which the Norris-LaGuardia Act made prerequisites to the exercise of jurisdiction. Its reasoning was simple:

> There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States. The District Court made none of the required findings save as to irreparable injury and lack of remedy at law. It follows that in issuing the injunction it exceeded its jurisdiction.

Id. at 330 (footnote omitted). Just as Congress unquestionably had the authority to limit injunctive relief through The Norris-LaGuardia Act, The Johnson Act of 1934, and The Tax Injunction Act of 1937, Congress clearly has the authority to limit the availability of injunctive relief in prison overcrowding cases.

By enacting 42 U.S.C. § 1983, Congress created plaintiffs' federal claims in this case and provided this Court with jurisdiction to adjudicate those claims. In enacting the Crime Bill, Congress has defined limited circumstances under which this Court may impose certain remedies to redress plaintiffs' claims and has prioritized the available remedies. Although plaintiffs' causes of action in this case are created by Congress, Congress may legislate a remedial scheme for constitutional violations even when the federal court's jurisdiction is implicitly derived from the Constitution itself.

In Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 396-97 (1971), the Supreme Court implied the existence of a federal cause of action and a federal damages remedy on behalf of persons whose Fourth Amendment search and seizure rights had been violated by federal agents. The Court recognized, however, that Congress, through legislation, could displace the implied damages remedy with a remedial scheme of its own. Id. at 397. "[W]e have here no explicit congressional declaration that persons injured by a federal officer's violation of the Fourth Amendment may not recover money damages from the agents, but must instead be remitted to another remedy, equally effective in the view of Congress." Id.

In subsequent cases, the Supreme Court has held that statutory remedial schemes preclude implication of a damage remedy. In Bush v. Lucas, 462 U.S. 367 (1983), the plaintiff sought to establish an implied federal damages remedy for federal

employees whose First Amendment rights are violated by their superiors. Finding that Congress had created "an elaborate, comprehensive scheme," both administrative and judicial, for federal employees to redress grievances, the Court refused to infer a federal damages remedy. Id. at 385. Although Congress' remedial scheme provided "meaningful remedies for employees" unfairly disciplined for making critical comments about their agency, Id. at 386, the Court noted that whether the "existing remedies do not provide complete relief for the plaintiff" was not relevant. Id. at 388.

The Bush Court declined to infer an additional remedy to those already in place for violation of the First Amendment because "Congress is in a better position to decide whether or not the public interest would be served by creating it." Id. at 390; see also Chappell v. Wallace, 462 U.S. 296, 304 (1983) (refusing to infer damages remedy for claims by military personnel that constitutional rights have been violated by superior officers because "[a]ny action to provide a judicial response by way of such a remedy would be plainly inconsistent with Congress' authority in this field"). Indeed, the Supreme Court has refused to infer a federal cause of action and a damages remedy even when this has meant that a plaintiff had no remedy available to redress a constitutional violation. United States v. Stanley, 483 U.S. 669 (1987) (serviceman secretly administered LSD pursuant to an army drug testing program had no damages remedy for this constitutional violation).

Although Congress, in the Crime Bill, has taken the very limited step of imposing conditions upon the issuance of equitable remedies in prison conditions cases, Congress possesses the much broader power to eliminate federal court jurisdiction in prison conditions cases. There is no requirement that federal courts, rather than state courts, be available to adjudicate constitutional claims. Indeed, the federal courts did not even have jurisdiction to hear cases arising under the Constitution or federal statutes until 1875.

Article III, §1 of the United States Constitution provides that the judicial power of the United States be vested in one Supreme Court and in such "inferior courts as the Congress may from time to time ordain and establish." Since Congress has discretion to determine whether to create lower federal courts, it logically follows that Congress has the power to define their jurisdiction. The Supreme Court reached this exact conclusion in the seminal case of Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850). In that case, a party challenged the constitutionality of the Judiciary Act of 1789, which prohibited diversity jurisdiction from being created by the assignment of a debt. The Court upheld the restriction on the jurisdiction of the federal courts:

> Congress may withhold from any court of its creation jurisdiction of any of the enumerated controversies. Courts created by statute have no jurisdiction but such as the statute confers . . . "The political truth is, that the disposal of the judicial power (except in a few specified instances) belongs to Congress; and Congress is not bound to enlarge the jurisdiction of the Federal

> courts to every subject, in every form which the Constitution might warrant."

Id. at 449, quoting Turner v. Bank of North America, 4 U.S. (Dall.) 7, 9 (1799).

The Supreme Court has not wavered from this position. In Lockerty v. Phillips, 319 U.S. 182 (1943), Congress set up a non-article III court to adjudicate challenges to price orders set by the Emergency Price Control Act. In upholding the removal of equity jurisdiction of all lower federal courts to enforce such orders, the Supreme Court held:

> By this statute Congress has seen fit to confer on the Emergency Court (and on the Supreme Court upon review of decisions of the Emergency Court) equity jurisdiction to restrain the enforcement of price orders under the Emergency Price Control Act. At the same time it has withdrawn that jurisdiction from every other federal and state court. There is nothing in the Constitution which requires Congress to confer equity jurisdiction on any particular inferior federal court. All federal courts, other than the Supreme Court, derive their jurisdiction wholly from the exercise of the authority to "ordain and establish" inferior courts, conferred on Congress by Article 3, §1, of the Constitution. Article 3 left Congress free to establish inferior courts or not as it thought appropriate. It could have declined to create any such courts, leaving suitors to the remedies afforded by state courts, with such appellate review by this Court as Congress might prescribe. . . <u>The Congressional power to ordain and establish inferior courts includes the power "of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good</u>."

Id. at 187 (citations omitted) (emphasis added), quoting Cary v.

Curtis, 44 U.S. (3 How.) 236, 245 (1845); see also Keene Corp. v. United States, ____ U.S. ____, 124 L.Ed.2d 118, 127 (1993) ("Congress has the constitutional authority to define the jurisdiction of the lower federal courts"); Kline v. Burke Construction Co., 260 U.S. 226, 234 (1922) (Congress "may give, withhold or restrict such jurisdiction [of lower federal courts] at its discretion"); Lauf, 303 U.S. at 330 ("There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States.").

A plaintiff's right to adjudicate a claim in federal court "which thus comes into existence only by virtue of an act of Congress, and which may be withdrawn by an act of Congress after its exercise has begun, cannot well be described as a constitutional right." Kline, 260 U.S. at 234. By necessary implication, a plaintiff's right to have a particular remedy available in a federal court also "cannot well be described as a constitutional right." Id. Thus, the Crime Bill's restrictions on the availability of specified remedies do not, as Plaintiffs contend, implicate the Constitution.

B. The Crime Bill Does Not Prevent Courts From Providing "Adequate" Remedies To Cure Constitutional Violations.

The Crime Bill defines the limited circumstances under which this Court may impose certain remedies to redress plaintiffs' claims and prioritizes the available remedies. The relevant sections of the Crime Bill provide:

> (a)(2) RELIEF - The relief in a case described in paragraph (1) shall extend no

> further than necessary to remove the conditions that are causing the cruel and unusual punishment of the plaintiff inmate.
>
> (b) INMATE POPULATION CEILINGS -
>
> (1) REQUIREMENT OF SHOWING WITH RESPECT TO PARTICULAR PRISONERS - A federal court shall not place a ceiling on the inmate population of any Federal, State or local detention facility as an equitable remedial measure for conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on particular identified prisoners.

18 U.S.C. §3626(a)-(b). These sections provide that each remedy must be directed at ameliorating the specific condition(s) causing the unconstitutional deprivation of basic human needs. Federal courts may not impose remedies to modernize prison systems or improve "overall" prison conditions, but are required to select the most narrowly tailored remedy. The section addressing population ceilings prohibits the use of a ceiling unless crowding (rather than some other condition, such as inadequate medical care), designates population ceilings as the remedy of last resort for unconstitutional crowding.

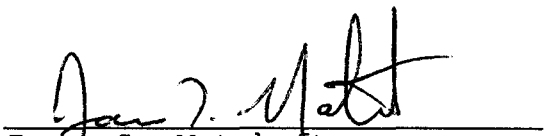
As courts are not prohibited from utilizing any remedy, including population ceilings, if that remedy is narrowly tailored to cure the specific and proven constitutional violation, the Crime Bill obviously does not prevent courts from providing adequate remedies to cure constitutional violations.

Conclusion

For the foregoing reasons, the City respectfully suggests that the Helms Amendment is constitutional and is applicable to cases involving mixed populations of sentenced prisoners and pretrial detainees, such as the instant case.

Respectfully submitted,

TYRONE A. TABORN
CITY COUNSELOR



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CERTIFICATE OF SERVICE

Copy of the foregoing mailed this 30 day of March, 1995 to: Frank Susman, Attorney for Plaintiffs, 7711 Carondelet, St. Louis, MO 63105; William Franz, Attorney for Defendant James Murphy, Sheriff of the City of St. Louis, 720 Olive St., St. Louis, MO 63101; Barry A. Short, Lewis, Rice & Fingersh, Attorney for the Judges of the Twenty-Second Judicial Circuit, 500 N. Broadway, Suite 2000, St. Louis, MO 63102.