The ACLU and its National Prison Project welcome this opportunity to present to the House

Now that we have over eleven years of experience with the effects of the PLRA, it is apparent that the Act has been quite effective in reducing the burden of frivolous prisoner litigation. The year before PLRA was enacted, prisoners and jail detainees filed federal cases at a rate of 26 per thousand prisoners; a decade later, the rate had decreased to eleven per thousand.[4]

At the same time, however, PLRA has had a disastrous effect on the ability of prisoners, particularly prisoners without access to counsel, to have their non-frivolous cases adjudicated on the merits. Certain provisions of the PLRA have kept countless serious prisoner claims from reaching the courts, including claims of brutal physical and sexual abuse; gross mistreatment of [redacted]

[redacted]

and mental health treatment. The Prison Abuse Remedies Act (PARA) addresses these

[redacted]

fact that most federal courts have applied this provision to bar damages claims involving all constitutional violations that intrinsically do not involve a physical injury.[7]

real violations to be made whole under our legal system. PARA addresses these inequities created under the PLRA by eliminating the mandatory physical injury requirement for seeking compensatory damages set forth in 42 U.S.C. § 1997e(e) and 28 U.S.C. § 1346(b)(2). Thus, a

violation of his or her rights – just like any other civil rights plaintiff.

a claim; it may have three or more such deadlines as prisoners must appeal to various levels of a

[20]

Other technical obstacles arise all the time that lead to prisoners being denied their right to sue. The rules may require that grievances be submitted only on approved forms, and the forms may not be available.[21] The forms may be available, but only from the staff member who is responsible for the action the prisoner wishes to challenge.[22] Many grievance system rules give administrators discretion not to process grievances if the prisoner has filed too many; some systems also require that only one subject be raised on each grievance submitted.[23] Further, it is a

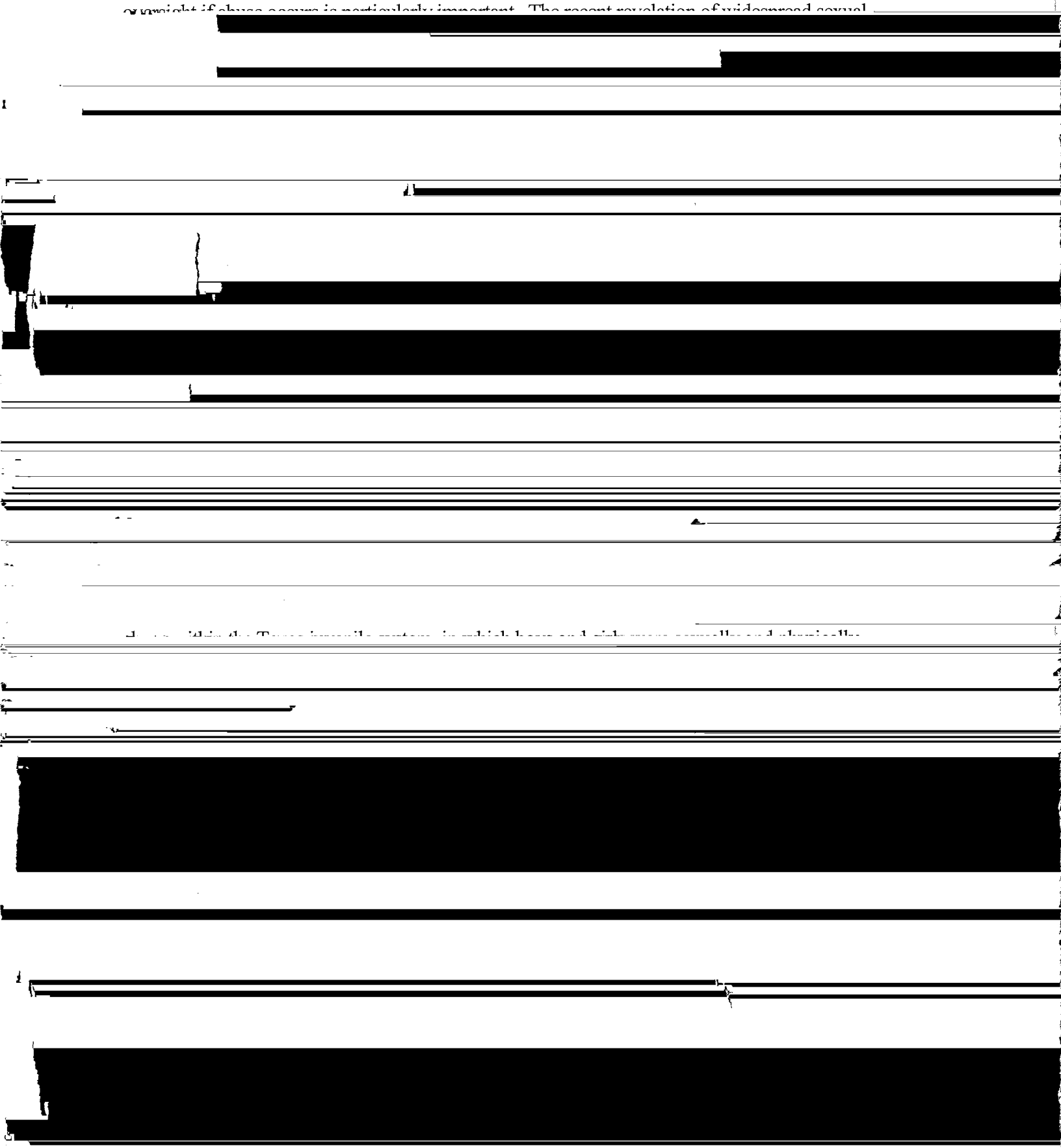
routine practice for grievances not to be given responses by staff in a timely manner, whether or

rights in some way. Many prisoners are simply too afraid to file grievances for fear of the consequences—and with good reason.[26]

Further, too often, there is an inverse relationship between the responsiveness of the grievance

problem. Incarcerated youth do not file lawsuits—frivolous or otherwise. They simply were never part of the problem the PLRA was designed to address.

At the same time, youth are especially vulnerable to abuse in institutions, and so the need for court oversight if abuse occurs is particularly important. The recent revelation of widespread sexual



private attorneys.[31] And since the Supreme Court's 1996 decision in *Lewis v. Casey* substantially cut back on the scope of the constitutional right of prisoners to assistance in filing complaints, many correctional systems have discarded their law books and shut down programs to assist prisoners in filing meaningful legal papers.[32]

Further, it is frequently not easy for anyone to determine whether a particular complaint is frivolous or fails to state a claim—even trained professionals. Courts routinely dismiss cases for "failure to state a claim" even where licensed attorneys are handling the cases. Moreover, courts themselves frequently disagree over the legal standards for "failure to state a claim" and such disputes often reach up to the Supreme Court. Given that attorneys and judges are not held to an absolute understanding of what exactly constitutes "failure to state a claim" under the law, it makes little sense to impose such a severe and incomprehensible standard on unrepresented, often barely literate prisoners.

The PARA Fix: Section 5 of PARA preserves the purpose of the PLRA to discourage frivolous litigation while ending the draconian application of the lifetime ban on a prisoner's qualification for indigent status. First, PARA limits the scope of the provision from all suits ever filed in a prisoner's lifetime to "the preceding five years." This provision prevents so-called "frequent flyers" from abusing the indigency provisions while placing a reasonable limit on the law's application.

in the federal courts and so they do not by themselves change the law applicable to injunctive relief in prison cases.[34]

Automatic Stay of Judge-Ordered Relief: The PLRA's automatic stay provision requires that if a party merely files a motion to terminate or modify an existing injunction, the court must suspend [redacted][38] This means that, if the court is unable to

reach a final decision on whether the defendants are still violating the Constitution because of the

complexity of the issues or congestion in the court's docket, the injunction is suspended and the adjudicated constitutional violations may resume.[39] This provision of the PLRA deprives plaintiffs of previously ordered relief. Further, because the stay provision is automatic and [redacted]

PARA also changes—but does not eliminate—the automatic termination provisions of PLRA. In Section 3626(b)(1)(B), PARA gives discretion to the federal court to extend the time limits for termination of prospective relief on a case-by-case basis. In order to extend these time limits, however, the court must find at the time of granting or approving relief that correcting the violation will take longer than the time periods laid out in PLRA. This discretion is especially important because many cases obviously are far too complicated to resolve in one or two years and the PLRA's imposition of the automatic termination provisions unnecessarily burdens the courts with frequent re-litigation of known violations. PARA recognizes that judges themselves are most frequently in the best position to determine the time needed to cure violations and for the relief ordered to have its effect.

Removing Barriers to Settlement: PARA affirms the importance of settlement in our judicial system and recognizes that when cases have merit, the goal should be for all parties to come to a mutually agreeable settlement. Because PLRA prevents this goal by forcing defendants to admit

[redacted]

provision of the law by striking both Section 3626 (a)(1)(A) and (c)(1).

of work done, hours expended, or the importance of the constitutional right vindicated. Such nominal damage awards are not uncommon in prisoner civil rights cases where juries dislike the plaintiff even though they acknowledge the liability of defendants, or where they are unsure what value to place on the violation of a constitutional right.[41]

PLRA imposes restrictions on prisoner cases that are not imposed on other civil rights cases, and that have nothing to do with the purpose of PLRA; by definition, cases in which the prisoner prevails by proving a violation of the Constitution or federal statute are not frivolous. PLRA fee restrictions do nothing to alter the status quo for the prisoner who brings the frivolous or trivial lawsuit. It serves only to create a significant disadvantage for those presenting significant, meritorious challenges.

The results of the PLRA fee restrictions are devastating. While a few major law firms have done heroic work in this area by undertaking *pro bono* litigation,[42] many small law offices that specialize in general civil rights cases have stopped taking prisoner cases.[43] The fees provisions of PLRA, which are of substantially more concern to lawyers in solo practice or in small firms than to practitioners in large firms, have thus contributed to a substantial decline in the number of lawyers who will consider taking a prisoners' rights case, a trend exacerbated by the ban on representation of prisoners imposed on the Legal Services Corporation.[44] It has also been the

The PLRA Problem: The PLRA radically changes the standards for the access of indigents to

Testimony of The National Prison Project of the

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1. Use a typewriter, black pen, or pencil.
2. Check the appropriate space indicating to whom you are addressing this request.

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