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H.R. 4109, "The Prison Abuse Remedies Act of 2007"

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Mr. Chairman and members of the Committee, thank you for inviting me to speak on H.R. 4109, the "Prison Abuse Remedies Act of 2007." My name is John Gibbons. Over many years as both a Judge on the U.S. Court of Appeals for the Third Circuit and as an attorney I have become familiar with the difficult challenges faced by inmates and correctional facilities. I became most informed on the scope and degree of these challenges, however, serving with former U.S. Attorney General Nicholas de B. Katzenb

settlement; and (4) change the exhaustion rule and require meaningful grievance procedures. THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, CONFRONTING CONFINEMENT,

under a consent decree entered into in 1992, before the PLRA, which prohibited segregated housing and led to improved medical treatment. *Roe v Fauver*, C.A. No. 88-1225 (AET) (D.N.J. March 3, 1992). Decrees like these are advances that should be praised and preserved, not bemoaned and rolled back.

The most obvious winners from court involvement in jails and prisons may be inmates. But as the Commission Report makes clear, the improvement of safety and reduction of abuse in prisons in America benefits everyone, including corrections staff, inmates' family members, and the greater public. *Confronting Confinement*, at 11. This fact is all the more significant given

lawyers' involvement in prisoner cases if the purported goal of the PLRA is in part to improve the quality of claims. Indeed, counsel may serve as a screening mechanism, vetting some claims raised by an inmate and often presenting them more clearly than might the inmate.

Section 6 of H.R. 4109 removes provisions in the PLRA that permit federal courts to

dismissal of the case. Section 3 amends the PLRA, providing that while an inmate must first present her claim for consideration to prison officials, if a prisoner fails to so present and the federal court does not find the claim to be frivolous or malicious, then the court shall stay the action for up to 90 days and direct the prison officials to consider the claims through the relevant procedures.

The amendment goes a long way toward curing the inequities that occur when an otherwise valid claim is dismissed on the basis of technical violations, technical processes that are often unfair and unclear to prisoners.

Consider, for example, the scenario Justice Stevens discusses in his dissent in *oodford v Ngo*. An inmate who is raped by prison guards and suffers a serious violation of his Eighth Amendment rights may be barred by the PLRA from bringing such a claim if he fails to file a grievance within the narrow time requirements that are often fifteen days, but in nine states span only two to five days. 126 S. Ct. 2401-02.

Or consider the case of *Balorck v Reece*, in which a prisoner was hospitalized during the five-day period he had to file a grievance for failing to treat his heart conditions. Discharged

filing his claim in federal court. As Senator Orrin Hatch explained in introducing the legislation, "I do not want to prevent inmates from raising legitimate claims." 141 Cong. Rec. 27042 (Sept. 29, 1995) (quoted in *oodford*, 126 S. Ct. 2401). Added co-sponsor Senator Strom Thurmond, "[The PLRA] will allow meritorious claims to be filed, but gives the judge broader discretion to prevent frivolous and malicious lawsuits filed by prison inmates." 141 Cong. Rec. 27044 (Sept. 29, 1995) (quoted in *oodford*, 126 S. Ct. 2401). The amendments in H.R. 4109 help realize that laudable goal of the sponsors of the PLRA. Some critics suggests that alleviating the exhaustion requirements will reward lazy inmates who fail to file timely grievances and will result in stale claims. However, in my experience in both adjudicating and litigating prisoner complaints, I rarely encountered an inmate who was loathe to complain and file a grievance, barring fear of retaliation.

It deserves mentioning that the grievance procedures themselves must be improved. It is neither sensible nor just to require that inmates exhaust procedures that do not afford them legitimat89 34aquna89(x)-10.9756(p)6cedurest.6 Td [(c8(e)3.15789(v)-0.95886(p)6)2.374 tr tts ina89(x)-16.8588(

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At a minimum, Congress should not apply the exhaustion requirement in instances where the grievance procedures do not provide a meaningful opportunity to raise meritorious grievances. Congress previously tethered exhaustion to fulfillment of federal standards for grievance procedures. The predecessor to the PLRA, the Civil Rights of Institutionalized Persons Act (CRIPA), limited application of the exhaustion rule to the existence of grievance procedures that met the standards set by the Department of Justice. 42 U.S.C. § 1997e(a)(2) (1994), *amended by* Prison Litigation Reform Act of 1995 § 803(d); 28 C.F.R. §§ 40.1-40.22.

laudable goal on its head, making exhaustion a blunt instrument barring even meritorious claims regardless of the inadequacy of the grievance procedures.

Also improperly included in the overbroad sweep of the PLRA are juvenile inmates. Happily, section 4 of H.R. 4109 seeks to rectify this morally unsound application and exempts juveniles from the PLRA. Especially vulnerable to abuse in jails and prisons, yet less mentally equipped than adults to maneuver administrative and legal processes, it is especially galling to burden juveniles with the stringent time and filing requirements of the PLRA. Moreover, I have not seen statistical evidence that juveniles have filed excessive, frivolous lawsuits.

In conclusion, I unhesitatingly express my support for H.R. 4109. The bill takes significant steps toward rectifying the overbroad and overly harsh provisions of the PLRA that have denied inmates with meritorious claims their day in court. In addition, the bill reaffirms Congress's faith in the Judiciary to resolve and improve conditions and abuses in our Nation's teeming jails and prisons.

As Justice Stevens observed in commenting on the PLRA, Congress has a "constitutional duty 'to respect the dignity of all persons,' even 'those convicted of heinous crimes.'" *oodford v Ngo*, 126 S. Ct. at 2404 (Stevens, J., dissenting) (quoting *Roper v Simmons*, 543 U.S. 551, 560 (2005)). These amendments in H.R. 4109 go a long way toward recognizing and fulfilling that duty. I thank the Chairman and the members of the Committee for the opportunity to present this information to you.