Testimony of the Stop Abuse and Violence Everywhere (SAVE) Coalition For the House Judiciary Subcommittees on Crime, Terrorism and Homeland Security and Constitution, Civil Rights and Civil Liberties
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By the Coalition to Stop Abuse and Violence Everywhere (SAVE)

The SAVE (Stop Abuse and Violence Everywhere) Coalition is a broad, bi-partisan group of organizations and individuals dedicated to protecting the U.S. prison and jail population--a group that is increasingly vulnerable to violence and abuse since the 1996 enactment of the Prison Litigation Reform Act (PLRA). The SAVE Coalition includes faith-based organizations; legal organizations; advocacy organizations for rape victims, children, and the mentally ill; and others. Members of the SAVE Coalition have studied the impact of the PLRA and developed proposed reforms to the law that do not interfere with its stated purpose: to reduce frivolous litigation by prisoners. The SAVE Coalition's proposed reforms, which are described below, seek to preserve the rule of law in America's jails and prisons and better protect prisoners from rape, assault, denials of religious freedom, and other constitutional violations by fixing the unintended consequences of the PLRA. We would like to thank the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties for holding a hearing on this important issue that requires Congress's attention. In addition to our recommended changes to the PLRA, we have included as an attachment a list of members of the SAVE Coalition, as well as a list of ten cases in which prisoners' constitutional rights were not protected because of the PLRA.

Under the PLRA, prisoners are required to prove a physical injury, regardless of any mental or emotional injury, in order to obtain compensatory damages in federal court. As a result, prisoners can be raped and sexually assaulted but be barred from filing a civil rights action against those responsible because some courts say they've suffered no "physical injury." Other forms of abuse, such as disgusting, unsanitary conditions and degrading treatment, also do not meet the "physical injury" requirement of the PLRA. Many other constitutional violations do not result in physical injuries. As a result of the PLRA's "physical injury" requirement, many courts deny prisoners remedies for

violations of their First Amendment rights to freedom of religion. **The SAVE Coalition recommends that Congress repeal this provision prohibiting prisoners from bringing lawsuits for mental or emotional injury without demonstrating a "physical injury." (Repeal 42 U.S.C. § 1997e(e).)**

The PLRA's exhaustion provisions require courts to dismiss prisoners' suits if they have failed to exhaust their facilities' grievance process, no matter how meritorious the claims, and many prisoners who are ill, hospitalized, intimidated, traumatized, or otherwise incapacitated have meritorious cases dismissed for missing those short deadlines. In addition, prisoners are forced to use internal grievance systems to exhaust administrative remedies regardless of whether use of those systems can even resolve the issue being grieved. While it is essential that prison officials have an opportunity to resolve issues before they are brought to court, exhaustion requirements are an enormous barrier for prisoners because prison and jail grievance systems have created a baffling maze in which a barely literate, mentally ill, physically incapacitated, or juvenile prisoner's procedural misstep in a facility's informal grievance system forever bars even the most meritorious constitutional claims. These grievance systems often have many levels for appeals and grievance deadlines are often a matter of days, with rare exceptions. Exhaustion is especially problematic for the most vulnerable prisoners, who are the least likely to be aware of exhaustion requirements and grievance procedures, even though they are frequently the victims of sexual abuse and other violations. **For these reasons the SAVE Coalition calls on Congress to amend the requirement for exhaustion of administrative remedies to require prisoners to present their claims to responsible prison officials before filing suit, and, if they fail to do so, require the court to stay the case for up to 90 days and return it to prison officials to provide them the opportunity to resolve the complaint administratively. (Amend 42 U.S.C. § 1997e(a).)**

The power imbalance inherent in prison leaves incarcerated people, and especially children, concerned about experiencing retaliation if they file grievances. This means that many prisoners, including youth, will not take part in the grievance system because they fear its consequences. For example, children detained by the Texas Youth Commission were subject to sexual abuse by staff for years and could not safely

complain. In one facility, a supervisor who forced children to perform sexual acts on him also held the key to the complaint box, leaving children with no where to go for help and the courts powerless to intervene. Once the scandal broke and the Texas legislature stepped in, detained children and their parents were able to come forward and over 1,000 complaints of sexual abuse have now been alleged. But such atrocities should never have happened. Because of the PLRA, federal courts frequently cannot protect incarcerated children from rape and other forms of abuse. **Therefore, children must be exempted from the PLRA. (Amend 18 U.S.C. § 3626(g), 42 U.S.C. § 1997e(h), 28 U.S.C. § 1915(h), 28 U.S.C. § 1915A(c).)**

The PLRA's "three strikes" provision, intended to prevent prisoners from filing more than three frivolous cases in a lifetime, bars not only cases that are frivolous or malicious, but also those filed by prisoners who make mistakes in their legal documents due to their lack of access to counsel or legal training. **The SAVE Coalition calls on Congress to amend the "three-strikes provision" (which requires certain indigent prisoners who have previously had three cases dismissed to pay the full filing fee up front) by limiting it to prisoners who have had 3 lawsuits or appeals dismissed as malicious within the past 5 years. (Amend 28 U.S.C. § 1915(g).)**

Courts must be able to decide on the best remedies for constitutional violations, and their authority to ensure that violations do not recur should not be curtailed when hearing cases brought by prisoners. Although the purpose of the PLRA was to lessen the burden of prisoner suits on the courts, many of its provisions actually increase that litigation burden. For example, the PLRA requires defendants to admit that they violated the Constitution in order to enter into a settlement agreement. Because defendants are understandably reluctant to admit such liability, even the strongest cases rarely settle. As a result, parties often find themselves going to trial where they would preferably have settled the case prior to the implementation of the PLRA. **Congress should restore judicial discretion to grant the same range of remedies in prisoners' civil rights actions that they possess in other civil rights cases. (Repeal 18 U.S.C. § 3626.)**

The PLRA's attorney's fee restrictions make it cost-prohibitive for attorneys to represent prisoners. Ironically, this places greater burdens on courts to process cases in which prisoners, who are not conversant with the law and court rules, must represent

themselves. **The PLRA needs to be fixed to allow prisoners who prevail on civil rights claims to recover reasonable attorney's fees to the same extent as others whose civil rights have been violated. (Repeal 42 U.S.C. § 1997e(d).)**

The PLRA's filing-fee provisions may deter indigent prisoners whose constitutional rights have been violated from seeking the legal redress to which they are entitled. On average, prisoners who are given the opportunity work while in prison make less than $1-$2/day. **Congress should change the PLRA to allow indigent prisoners whose cases are found to state a valid claim at the preliminary screening stage to pay a partial filing fee rather than the full filing fee, now $350 in district courts and $450 in appellate courts. (Amend 28 U.S.C. § 1915(a), (b).)**

The screening provision of the PLRA allows the courts to dismiss a case that appears to be frivolous before the case is served on defendants or entered into the docket. This provision is the core of the law and these recommended reforms will leave the core unchanged. With the screening provision in place, and the adoption of amendments we have recommended, the PLRA will still serve its purpose and not open the flood gates to frivolous litigation. Instead, our recommendations, if adopted, will allow meritorious constitutional claims to be heard while continuing to protect the courts from frivolous litigation.

SAVE: Coalition to Stop Abuse and Violence Everywhere

Reform The Prison Litigation Reform Act:

Top 10 Harmful PLRA Results

1. A court found that several men who were raped and sodomized by a corrections officer could not seek damages for their abuse because their allegations of sexual assault did not constitute the "physical injury" required by the PLRA is such cases.

2. Corrections staff allowed the rape and repeated assault of a child detainee. The boy's lawsuit was thrown out of court because he did not file a formal grievance, even though he feared further abuse if he reported the incidents, and even though his mother repeatedly contacted prison and juvenile court officials to try to get them to stop the abuse. To satisfy the PLRA's exhaustion requirement, the boy would have had to file his formal grievance within 48 hours of any incident he complained about.

3. Jail staff beat a man who asked for formal grievance forms. The staff not only inflicted new injuries, but also extremely aggravated the man's preexisting skull fracture. Although the facility did not deny that the man then participated in an internal investigation against one of the staff members, after which the staff member was punished, the court found that he had failed to exhaust his formal administrative grievances and threw out his lawsuit. Under the PLRA, he had to go through every level of appeal available in the formal grievance process and do so perfectly before he could bring a lawsuit.

4. A corrections officer opened the sealed medical records of an HIV-positive man and announced this confidential information to other prisoners. The court threw out his lawsuit for lack of "physical injury" under the PLRA.

5. Two men were housed in a bare, squalid isolation cell, where they had to defecate into a clogged floor drain. They had no means to wash and were forced to sleep on the bare cell floor, which was covered with sewage and vomit. The court concluded that any harm they suffered as a result of these unconscionable conditions, which were not denied by the jail, was trivial and did not constitute "physical injury," which the PLRA requires.

6. A man was forced to stand in a two-and-a half foot square cage for twelve hours, during ten of which he was naked. He was in a tremendous amount of pain due to leg injuries from a previous motorcycle accident that were exacerbated from the prolonged standing. His leg was visibly swollen and he repeatedly asked to see a doctor, but his requests were all denied. The court ruled that his suffering was not serious enough for a lawsuit under the PLRA's "physical injury" requirement.

7. A man filed formal grievances after being harassed by fellow inmates. In response, the prison officers sprayed his cell with gas, punched him twice in the face, and later contaminated his food with feces. The man's lawsuit was thrown out of court because the only "visible" physical injury was an abrasion on his head and that was not enough to go forward under the PLRA.

8. A court threw out a suit by women challenging their strip-searches by male corrections officers. One of the women had subsequently attempted suicide allegedly as a result of the trauma of the strip search. The court decided that the women had shown no "physical injuries" and that they had failed to exhaust the grievance system, even though they had given written complaints about the searches to prison officials. Under the PLRA, the court had no choice but to throw out the lawsuit.

9. A jury found that corrections officers trumped up disciplinary charges in order to keep a man in "supermax" confinement in extreme isolation for over a year in retaliation for his First Amendment-protected complaints about prison conditions. The court affirmed the judge's decision to not allow any monetary damages to the man, because he did not have a PLRA "physical injury."

10. A man was denied a kosher diet in accordance with his Jewish beliefs. After a trial, the jury found that the defendant was responsible and awarded the man damages for the denial of his right to practice his religion. The appellate court threw out the award, because forcing a man to violate his religious beliefs is not a "physical injury" within the requirement of the PLRA.

For More Information, Contact Jody Kent, (202)548-6617

REFERENCES

1. *Hancock v. Payne,* 2006 U.S. Dist. LEXIS 1648 (S.D. Miss. Jan. 4, 2006) (42 U.S.C. § 1997e(e)). This case was decided at summary judgment, which means that all facts are assumed in favor of the plaintiffs, but there were no findings of fact because the suit was dismissed prior to trial.

2. *Minix v. Pazera,* 2005 WL 1799538, 2005 U.S. Dist. LEXIS 10913 (N.D. Ind. July 27, 2005) (42 U.S.C. § 1997e(a)). This case was decided at summary judgment, which means that all facts are assumed in favor of the plaintiff, but there were no findings of fact because the suit was dismissed prior to trial.

3. *Panaro v. City of North Las Vegas,* 432 F.3d 949 (9th Cir. 2005) (42 U.S.C. § 1997e(a)). This case was decided at summary judgment, which means that all facts are assumed in favor of the plaintiff, but there were no findings of fact because the suit was dismissed prior to trial.

4. *Davis v. District of Columbia, 158 F.3d 1342 (D.C. Cir. 1998)* (42 U.S.C. § 1997e(e)). This case was decided at summary judgment, which means that all facts are assumed in favor of the plaintiff, but there were no findings of fact because the suit was dismissed prior to trial.

5. *Alexander v. Tippah County,* 351 F.3d 626 (5th Cir. 2003) (42 U.S.C. § 1997e(e)). This case was decided at summary judgment, which means that all facts are assumed in favor of the plaintiffs, but there are no findings of fact because the suit was dismissed prior to trial.

6. *Jarriet v. Wilson,* 2005 U.S. App. LEXIS 13661 (6th Cir. July 7, 2005) (42 U.S.C. § 1997e (e)).This case was decided at summary judgment, which means that all facts are assumed in favor of the plaintiff, but there are no findings of fact because the suit was dismissed prior to trial.

7. *Trevino v. Johnson,* 2005 WL 3360252 (E.D. Tex., Dec. 8, 2005) (42 U.S.C. § 1997e(e)). This case was decided after a preliminary evidentiary hearing.

8. *Moya v. City of Albuquerque,* No. 96-1257 DJS/RLP, Mem. Op. and Order (D.N.M. Nov. 17, 1997) (42 U.S.C. § 1997e(e)). This case was decided after all evidence was presented at trial and the judge entered a judgment as a matter of law.

9. *Pearson v. Welborn,* 471 F.3d 732 (7th Cir. 2006) (42 U.S.C. § 1997e(e)). These facts were decided by a jury, after trial.

10. *Searles v. Van Bebber,* 251 F.3d 869 (10th Cir. 2001). These facts were decided by a jury, after a trial.

Organizations supporting written testimony by the Coalition to Stop Abuse and Violence Everywhere (SAVE):

ACLU
Center for Children's Law and Policy
Church of the Brethren Witness/Washington Office
Church of Scientology Washington, DC
Criminon New Life DC
D.C. Prisoners' Project, Washington Lawyers' Committee for Civil Rights and Urban Affairs
Human Rights Watch
International CURE
Justice Policy Institute
Juvenile Law Center
Legal Aid Society of New York
National Juvenile Justice Network
Penal Reform International
Pennsylvania Institutional Law Project
Prison Legal News
Public Justice Center
Sentencing Project
Stop Prisoner Rape
United Methodist Church, General Board of Church and Society