Testimony by Jeanne Woodford for the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on H.R. 4109, the "Prison Abuse Remedies Act of 2007"

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Good afternoon. Thank you to Congressman Scott, Congressman Gohmert, and all of the Committee members for giving me the opportunity to testify today about H.R. 4109, the "Prison Abuse Remedies Act of 2007." I am the former Warden of San Quentin State Prison and the former Director, Undersecretary and for a short time acting Secretary of the California Department of Corrections and Rehabilitation (CDCR). I have 30 years of experience in the field of Corrections. I am here to testify in support of making necessary fixes to the Prison Litigation Reform Act (PLRA).

I have had many years of experience responding to prison litigation. As a prison administrator, I was often prohibited from addressing deficiencies in our prisons not only due to a lack of resources, but just as often due to a lack of political will. I also was witness to the frustration of the Attorney General's office when put in the difficult position of trying to defend a policy or practice that was clearly in conflict with the law, solely because the Executive Branch of state government was more comfortable following the order of a court than correcting a deficiency itself. The political ramifications that result when a government official appears to choose prisoners and prisons over other state needs continue to prevent the Legislature and the Executive

Branch of state government from adopting policies and appropriating money to address grossly deficient prison conditions.

Any good prison administrator should not fear the involvement of the courts. From my experience over the last 30 years as a corrections official, I have come to understand the importance of court oversight. The courts have been especially crucial during recent years, as California's prison population has exploded, and prison officials have been faced with the daunting task of running outdated and severely overcrowded facilities. It would be impossible for the CDCR to accomplish its mandates without court oversight. Right now, virtually every aspect of California's prison system is under court oversight– this is true for medical care, mental healthcare, dental care, prison overcrowding, conditions for youth, due process for parolees, due process for parole lifer hearings, and the list goes on. The California Department of Corrections and Rehabilitation also has been subject to Federal Court intervention to address such issues as employee investigations, employee discipline, and the code of silence that was responsible for hiding the wrongdoings of some staff in their actions against prisoners. All of this court intervention has been necessary because of my state's unwillingness to provide the Department with the resources it requires. These lawsuits have helped the state make dramatic improvements to its deeply flawed prison system.

The PLRA allows states to move to terminate consent decrees after two years, and then prisoners have to fight their way back into court to prove ongoing constitutional violations. This process can cause major disruption to, or even halt, progress being made

through useful consent decrees. The *Thompson* Consent Decree, which deals with conditions of confinement for death row prisoners at San Quentin State Prison, is one example of a case where improvements were interrupted because of the prospective relief provision of the PLRA. More time was spent litigating about *whether* the decree was in effect than remedying the inadequate conditions on San Quentin's death row. And death row prisoners are a perfect example of where court intervention may be absolutely necessary. Some of the most difficult conversations I have had have been with the family of the victims of death row prisoners. Understandably, these family members are in pain beyond belief. Some asked me why I even fed these prisoners, and I had to explain that as a prison administrator my role was to provide for the safety and security of prisoners, staff, and the public. Without court intervention, I believe I would not have been able to meet this responsibility.

The exhaustion requirement of the PLRA, which was made even more stringent by a Supreme Court decision in a notorious case with my name on it, presents prisoners with often-insurmountable obstacles to overcome in order to file complaints in federal court. I am not making a statement about the merits of this particular case. I am simply speaking to the real world implications of the legal precedent set by the case, based upon my experience as a prison administrator. The *Woodford v. Ngo* decision established that the failure to comply with the minute-technical details of a prison grievance system will almost always lead to the dismissal of a prisoner's claim. While it is important for prison officials to be aware of problems in their facilities before claims are filed in court, it is

absurd to expect prisoners to file grievances within the prison system under *any* circumstances without *ever* making a mistake.

For those prison officials who fear the courts, the PLRA provides an incentive to make their grievance procedures more complicated than necessary. As a result, prisoners and prison officials are likely to get tied up in a game of "gotcha" rather than spending that time resolving a prisoner's complaint.

In the California prison system, it normally takes up to a year to exhaust administrative remedies through every level of appeal. But because of the serious overcrowding and understaffing problems now faced by the California prison system, it frequently takes even longer than that. What is a prisoner to do if he is not receiving adequate medical treatment for a serious heart condition? Because of the PLRA, that prisoner may be forced to suffer for over a year while he completes the exceedingly complex, and forever delayed California CDCR grievance process before he can even file a lawsuit. I do not think that the PLRA was intended to cause such harm, but it undoubtedly has, and needs to be fixed.

There also exist countless reasons why prisoners may be unable to complete the grievances process. For instance, prisoners may be transferred from one institution to another or paroled before they are able to fulfill each level of appeal. Grievances may be rejected because the prisoner could not clearly articulate his complaint, or for a minor problem such as using handwriting that is too small. Many of these prisoners are

mentally ill or barely literate. I also know of a least one state that will screen out appeals if they are not signed in blue ink and yet another state that charges prisoners to file an appeal.

The physical injury requirement of the PLRA is unnecessary and harmful. Prisoners should not have to prove a physical injury in order to obtain compensatory damages if their constitutional rights have been violated. As a prison administrator, I do not want my budget spent on damages due to lawsuits because my staff fails to do their job. Therefore, it is my responsibility to ensure that they are trained appropriately and that they come to work everyday committed to helping me run a safe and constitutional facility. In situations where something goes wrong and a violation is committed, it should not matter whether the injury was physical in nature. My facility and the state need to be held accountable regardless.

In December of last year, the *Sacramento Bee* reported that the release dates for nearly 33,000 prisoners in California were miscalculated. Because sentencing laws were misinterpreted in thousands of cases, it is taking months to review all of them and prisoners have been forced to stay in prison beyond their appropriate sentences. Today there are still hundreds of prisoners unjustly incarcerated due to judicial errors. I have been told that according to some courts these prisoners, however, will not be able to recover compensatory damages for this violation of their rights because over-detention does not meet the physical injury requirement of the PLRA.

The physical injury requirement also makes it extremely difficult for prisoners to find attorneys to represent them if they suffer a constitutional violation that is not physical in nature. Under the physical injury requirement, a prisoner who is forced to stand naked in his cell for an entire day without access to food or water is only eligible for nominal damages. As a result, he is unlikely to find an attorney who can dedicate countless hours to proving his case only to receive as little as $1.50 in compensation.

Having served as the CDCR Director, Undersecretary and acting Secretary for over two years, I have become familiar with the problems faced by youth incarcerated in California. This is an extremely vulnerable population that must be treated differently than the adult population. Requiring youth to exhaust a complicated and neglected grievance process is unreasonable. In some cases, youth are only able to complete the grievance process if they have a caring adult on the outside or the attention of an attorney to assist them. Even then, sometimes they are unsuccessful.

Youth, who rarely complain to prison officials at all, should not be included in the PLRA. They have a much more difficult time navigating convoluted grievance systems than adults. We need to ensure problems in juvenile facilities are brought to light without barriers imposed by needless laws intended to curb prisoners' access to the courts.

In conclusion, good prison administrators do not need the many excessive protections imposed by the PLRA. On the other hand, the obstacles erected by the PLRA frequently prevent necessary court oversight that would serve well both competent and incompetent

prison administrators. The PLRA must be changed to ensure that courts can provide much-needed oversight of correctional facilities, and that prisoners' legitimate claims can reach the courts so that prison and state officials may be held accountable for constitutional violations. H.R. 4109 includes necessary fixes to the PLRA that will not open the floodgates to frivolous lawsuits, but will actually help prison officials to ensure their prisons operate humanely and in accordance with the law. It is, after all, the responsibility of government to protect the rights of all citizens and more importantly to protect those who are the most vulnerable. We know of too many instances of prison abuse to ignore the need for prisoners and incarcerated youth to have appropriate access to the courts. The proposed modification to the PLRA will allow prison administrators to respond to complaints, and will ensure prisoners' grievances about meritorious constitutional violations are not ignored. In addition, the recommended changes to the PLRA will give us all the comfort of knowing that we have a system that will protect the incarcerated youth in our country.

Thank you for allowing me to testify today.