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United States District Court, N.D. Illinois.

Issac GREEN, Plaintiff,
and
George PETER, Jr., Intervenor–Plaintiff,
v.
Howard A. PETERS III, Joseph Cannon, Eugene Buldak, Mary Jurich, Warren W. Wols, Defendants.

No. 71 C 1403. | Dec. 5, 1997.

Opinion

MEMORANDUM OPINION AND ORDER

KOCORAS, District J.

***1** This case involves the application of the recently-enacted Prison Litigation Reform Act, 18 U.S.C. § 3626, to longstanding consent decrees governing the rights of Illinois prisoners under the First Amendment. Defendants seek to terminate the effect of these decrees pursuant to the automatic termination provisions of 18 U.S.C. § 3626(b)(2), arguing that they are overbroad and thus violative of the statute. Plaintiffs contend that this provision of the PLRA is unconstitutional on several grounds, and alternatively request an opportunity to demonstrate an ongoing need for the consent decrees prior to any termination decision. For the following reasons, the Court finds § 3626(b)(2) constitutional, but will stay the effect of the termination provision pending appeal of this matter.

BACKGROUND

This motion is the latest chapter in a case which was first initiated back in 1971. Since many of the details of this ongoing matter are inapposite to the issue currently in dispute, the Court will only briefly summarize them here.

This case was originally brought by Plaintiff Issac Green ("Green"), who was then an inmate at an Illinois correctional institution. Green sued various state prison officials ("the Defendants") alleging that he had been denied access to various publications in violation of his First Amendment rights. Following a denial of cross-motions for summary judgment, the parties adopted a consent decree ("the 1973 Consent Decree") that prohibited the Defendants from restricting the inmates' access to certain non-legal publications.

After a full trial in 1975, the Defendants were held in contempt of court for violating the 1973 Consent Decree. The Court found Defendants' "publishers only" rule, which permitted inmates to receive non-legal publications only if they had been ordered and sent directly from the publisher, to unconstitutionally infringe on the prisoners' First Amendment rights to enjoy the reading material of their choice. As a result, Judge McGarr issued a permanent injunction ("the *Green* injunction") on January 9, 1976. *See Green v. Sielaff et, al.,* No. 71 C 1403 (N.D.Ill.1976). The *Green* injunction covered a broader range of reading material than the 1973 Consent Decree, specifically providing:

> The defendants are further permanently enjoined from enforcing any other rule or regulation which prohibits or restricts the sources from which inmates of Illinois Correctional institutions may receive otherwise admissible publications. The Defendants, their successors, agents, servants, and employees henceforth shall allow and permit inmates to order, solicit, receive as gifts, or otherwise obtain publications from friends, relatives, attorneys, organizations or associations, libraries, book stores, department stores, magazine distributors, publishers, wholesale or retail establishments, or from any other source of publications or written materials.

The next dispute in this case arose in 1987 when Defendants adopted the "No Catalogs Rule." The No Catalogs Rule specifically prohibited inmates from receiving "catalogs, except for books or periodicals." In applying this rule, prison officials had prevented inmates from receiving college-course catalogs designed for Illinois inmates and had refused to open envelopes imprinted with the word "catalog." Inmates George Peter, Jr. ("Intervenor Peter") and Steven Jorgensen complained to this Court claiming that the No Catalogs Rule violated the *Green* injunction.

***2** In an opinion dated October 21, 1992, this Court held that the No Catalogs Rule was a violation of the *Green*

injunction. The Court concluded that catalogs were intended to be within the scope of the injunction, and that the rule improperly restricted the inmates' access to these materials. To implement this decision, an Agreed Order was entered on December 23, 1992. The Agreed Order required that the No Catalogs Rule be rescinded within 30 days. The order further stated that this Court would retain jurisdiction over the Defendants to ensure their compliance with the 1976 permanent injunction, the Court's October 21, 1992 opinion, and the Agreed Order.

Intervenor Peter filed several motions to enforce the Agreed Order during 1993, alleging that Defendants were not in compliance with the Court's decisions. The Court entered an April 27, 1993 implementation order, which set forth recommended language for the rules governing the disputed inmate reading material. Intervenor Peter subsequently brought to the Court's attention additional evidence that some of the wardens had not followed the previous instructions of the Court. In response, this Court issued a minute order on June 14, 1993 stating that "[e]ach warden is personally ordered not to reinstate the Outside List Rule without leave of Court and without motion from defendant to do so."

In the current matter, Intervenor Peter describes recent events at the Dixon Correctional Center which he alleges to be in violation of the standing orders of this Court. He claims that he and others have been denied their right to receive posters, and that this matter has been brought to the attention of prison officials. Peter claims that, in retaliation for his raising this issue, he was placed in segregation for 15 days and was subsequently transferred out of the Dixon facility. Defendants contend that these disciplinary measures were wholly unrelated to Peter's poster complaints; instead, they claim Peter was disciplined for "insolence" and his disregard of prison authorities. Defendants also assert that Peter was not denied his right to receive posters, and that the only time that this right had been denied to an inmate was in a special instance where a high-ranking member of the Gangster Disciples gang was not allowed to receive and transmit signed posters of his daughter to other members of the gang.

Defendants brought this motion on May 14, 1997, pursuant to 18 U.S.C. § 3626(b)(2), to immediately terminate the relief (collectively "the Decrees") granted to Plaintiff in this case. Intervenor Peter responded to this motion by filing his own motion seeking a declaratory judgment that the automatic stay provision of § 3626(e)(2) be adjudged unconstitutional, or in the alternative to stay the effect of this provision. Defendants have agreed to waive the automatic stay provision of the PLRA to allow time for the Court to consider the substance of the parties arguments before ruling.

DISCUSSION

***3** In their motion, Defendants seek to terminate the relief previously granted Plaintiffs by this Court. Though Defendants seek termination of the Decrees pursuant to § 3626(b)(2) of the PLRA, Plaintiffs have requested this Court to additionally rule upon the constitutionality of the automatic stay provision set forth in § 3626(e)(2). This subsection of the statute provides that any prospective relief subject to a pending motion shall be automatically stayed, beginning thirty days after the motion was filed, until the court enters a final ruling on the motion. 18 U.S.C. § 3626(e)(2)(A)(i). The intent of this provision is apparently to ensure that courts rule promptly on such motions involving prospective relief with respect to prison conditions. *See* House Report, H.R. Rep. 104–21, H.R. 667 at 26.

Defendants have agreed to waive the applicability of this automatic stay provision to allow the Court time to consider the merits of the parties' arguments. Though Plaintiffs adamantly seek a ruling on this matter, the Court finds it unnecessary to consider the constitutional validity of the automatic stay provision at this time. *See Benjamin v. Jacobson,* 124 F.3d 162 (2d Cir.1997); *Inmates of the Suffolk County Jail v. Sheriff of Suffolk County,* 952 F.Supp. 869, 874 (D.Mass.1997). Thus, only the immediate termination provision of the PLRA will be considered.

The termination provision of the statute, set forth in section 3626(b)(2), provides as follows:

> Immediate termination of prospective relief.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

18 U.S.C. § 3626(b)(2). Most courts that have considered the language of this provision have generally interpreted it to require annulment of any prospective relief that fails to comply with the strictures of the statute. However, a recent decision of the Second Circuit opted against this interpretation, instead reading the statute to merely divest a federal court of jurisdiction to enforce such relief while leaving the parties free to seek enforcement of the underlying decree in state court. *See Benjamin,* 124 F.3d

at 178. The first issue which this Court must consider, therefore, is how § 3626(b)(2) should be construed in assessing its constitutionality.

In its analysis of the constitutionality of the termination provision, the Second Circuit in *Benjamin* first noted that the § 3626(b)(2)'s language was ambiguous and could be interpreted in one of two ways. The first way to interpret the statute, as explained by the Second Circuit, would limit the jurisdiction of the federal courts to enforce past consent decrees from prison litigation except to the extent such relief was narrowly tailored to a federal right. Prior to *Benjamin,* only one court had adopted, or even considered, this alternative interpretation. *See Inmates of the Suffolk County Jail v. Sheriff of Suffolk County,* 952 F.Supp. 869 (D.Mass.1997). The second possible interpretation—the one followed by all other courts to have construed the statute to date—reads the statute to vacate any prospective relief previously entered by a federal court if such relief is not narrowly tailored to a federal right. *See, e.g., Plyler v. Moore,* 100 F.3d 365 (4th Cir.1996); *Gavin v. Branstad,* 122 F.3d 1081 (8th Cir.1997). The crux of this interpretative question turns on the meaning of the words "termination of prospective relief," with the above interpretations reading this clause respectively to require either (1) that no future enforcement of past decrees is available from federal courts, or (2) that these past decrees are terminated and annulled under the statute. *Benjamin,* 124 F.3d at 167.

***4** In deciding that the first reading gave the termination provision its proper construction, the Second Circuit chose to employ the interpretation of least resistance. Noting the time-honored rule that statutes should be construed to avoid constitutional questions, *see Crowell v. Benson,* 285 U.S. 22, 52 S.Ct. 285, 76 L.Ed. 598 (1932); *DeBartolo v. Florida Gulf Coast Bldg., & Constr., Trades Council,* 485 U.S. 568, 575, 108 S.Ct. 1392, 99 L.Ed.2d 645 (1988), the *Benjamin* court held that the statute must be read to merely divest the federal courts of jurisdiction to enforce prospective relief, but not to terminate the underlying decrees themselves. *Benjamin,* 124 F.3d at 177. The Second Circuit defended its chosen interpretation as necessary to avoid the "grave constitutional problems" which a more strict construction of the statute would present. *Id.,* at 178. Therefore, beyond its effect on the continuing jurisdiction of the federal courts, Section 3626(b)(2) was understood to leave the underlying consent decrees alone, so that inmate plaintiffs could seek their enforcement in state courts. *Id.* The Second Circuit opined that this result was consistent with Congress' intent in enacting the statute to get the federal courts out of the business of micromanaging the prison system. *Id.* at 178, fn. 20.

Ironically, yet not surprisingly, all parties to the instant litigation urge this Court not to follow the Second Circuit's interpretation of the statute. They argue that this interpretation, in contrast to the plain meaning alternative, is the product of interpretative gymnastics beyond that which any court should engage. The Court agrees. Though difficult constitutional questions should be avoided if two "equally plausible" interpretations exist, *DeBartolo,* 495 U.S. at 575, the language of a statute cannot be molded like Silly Puddy to achieve a constitutional result. *See George Moore Ice Cream Co. v. Rose,* 289 U.S. 373, 379, 53 S.Ct. 620, 77 L.Ed. 1265 (1933) (avoidance of constitutional difficulty cannot be pressed to point of "disingenuous evasion"); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984) (court cannot read a statute against its plain meaning to save it).

Though the Second Circuit's analysis is certainly thorough and scholarly, it simply takes the exercise of statutory interpretation too far. First, the *Benjamin* court effectively reads the term "termination" right out of the statute, since the statute does not terminate anything under its interpretation, but merely prevents federal courts from providing relief in the future. The court reads the term "prospective relief" to refer to "remedies arising out of or issued pursuant to consent decrees," rather than to the underlying decrees themselves. *Id.* at 177. This interpretation essentially substitutes the idea of "jurisdiction" for the word "relief" used in the statute; not only does this not conform with the statutory definition of this term, but it also renders other provisions of the statute nonsensical. *See* § 3626(g)(9) (defining "relief" as "all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements."); *see also, e.g.,* § 3626(a)(1) (using term "relief"). Finally, though the Second Circuit attempts to assert otherwise, this Court is convinced that Congress intended that all prospective relief should be "terminated" when it expressly said so in the statute.

***5** Contrary to the conclusions of the Second Circuit, the Court finds that the statute is not ambiguous and thus is susceptible to only a single meaning. Therefore, the Court must now consider the constitutionality of § 3626(b)(2),[1] the assessment of which must rise or fall based on a plain meaning interpretation of this provision—that prospective relief not meeting the requirements of the statute must be vacated.

I. Separation of Powers

Plaintiffs first assert that § 3626(b)(2) is unconstitutional as violative of separation of powers principles. Though not explicitly defined within the parameters of the Constitution, the separation of powers doctrine is deeply rooted in our nation's jurisprudence. *See National Mut., Ins. Co. v. Tidewater Transfer Co.,* 337 U.S. 582, 590–91,

69 S.Ct. 1173, 93 L.Ed. 1556 (1949). Despite its vague origins, its object is simple yet essential—"to preclude a commingling of ... essentially different powers of government in the same hands." *O'Donoghue v. United States,* 289 U.S. 516, 530, 53 S.Ct. 740, 77 L.Ed. 1356 (1933) (citation omitted). The doctrine "is a prophylactic device, establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict." *Plaut v. Spendthrift Farm, Inc.,* 514 U.S. 211, 115 S.Ct., 1447, 1463, 131 L.Ed.2d 328 (1995).

The judicial and legislative branches of our government are the combatants in the separation of powers struggle at issue in this case. Under the constitutional division of power, Congress is to enact laws of general application and the courts are to decide particular cases arising under those laws, exercising their exclusive power to "say what the law is" in particular cases. *Marbury v. Madison,* 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803). Accordingly, it is well-established that Congress may not itself decide cases. *See United States v. Klein,* 13 Wall. 128, 80 U.S. 128, 146–47, 20 L.Ed. 519 (1871).

In this case, Plaintiffs contend that Congress has crossed the separation of powers line in enacting § 3626(b)(2). They make three arguments for why the PLRA's termination provision is unconstitutional in this regard: (1) it impermissibly reopens the final judgment of an Article III court; (2) it strips the inherent power of a court to fashion effective remedies; and (3) it improperly prescribes a rule of decision without permitting an independent exercise of judicial discretion. The Court will consider each of these arguments in turn.

A. Reopening of Final Judgments

Plaintiffs first maintain that § 3626(b)(2) unconstitutionally requires a court to reopen a final judgment in violation of separation of powers principles. The most recent enunciation of this principle prohibiting a legislature from reopening final judgments came from the Supreme Court in *Plaut v. Spendthrift Farm, Inc.,* 514 U.S. 211, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995), a case upon which Plaintiffs heavily rely in support of their argument. In response, Defendants assert that *Plaut* dictates no such result, and that instead *Plaut* specifically distinguished cases such as this one where the relief sought to be modified is prospective in nature. To consider this issue, it is first necessary to consider the facts of *Plaut* and its progenitors.

***6** The *Plaut* case arose out of Congress' attempt to reopen cases that had been previously dismissed as a result of the Supreme Court's decision in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson,* 501 U.S. 350, 111 S.Ct. 2773, 115 L.Ed.2d 321 (1991). In *Lampf,* the Supreme Court adopted a uniform federal limitations period for civil cases under § 10(b) of the Securities Exchange Act of 1934. The effect of *Lampf* was to supersede the state limitations periods which had previously governed such actions, with the result being that numerous pending § 10(b) suits were dismissed as untimely under the new limitations period. Considering this decision unfair, Congress passed a statute which effectively reinstated those cases that had been dismissed under the holding of *Lampf.*

The Supreme Court in *Plaut* held this statute unconstitutional, finding that it improperly tampered with a final judgment of a court in violation of the separation of powers doctrine. Noting the historical roots of the doctrine, the Court explained that "[h]aving achieved finality ... a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was." *Plaut,* 115 S.Ct. at 1457 (emphasis in original). Despite this emphatic holding, the Court expressly distinguished cases which had previously upheld the right of Congress to alter the prospective effect of injunctions entered by Article III courts. *Id.* at 1459 ("[t]hese cases distinguish themselves; nothing in our holding calls them into question").

The battle lines in the instant case are drawn on this *Plaut* distinction: Plaintiffs argue that the general rule of *Plaut* governs this case, while Defendants contend that the exception noted in *Plaut* is rightfully applicable. To fully understand this distinction, it is necessary to consider the case of *Pennsylvania v. Wheeling & Belmont Bridge Co.,* 59 U.S. 421, 18 How. 421, 15 L.Ed. 435 (1855), a case cited by the *Plaut* Court as exemplary of the noted exception. In *Wheeling Bridge,* the Supreme Court upheld congressional legislation which altered the prospective effect of an injunction previously entered by the Supreme Court. The injunction had ordered that a privately-owned bridge across the Ohio River be removed or raised because it was a public nuisance that obstructed the free navigation of the river. *Id.* at 426. Congress subsequently passed a statute, however, declaring the bridge to be a lawful structure and requiring vessels using the river to avoid the bridge. After the bridge was destroyed by a storm, Pennsylvania sought to enjoin its reconstruction, but the Court dissolved its prior injunction in light of the new statute. Though holding that Congress rightfully could vacate the prospective relief previously entered, the Court explained that if the original remedy had been money damages, the right to those damages "would have passed beyond the reach of the power of congress." *Id.* at 431.

***7** Defendants contend that *Wheeling Bridge* creates an exception to the *Plaut* for cases involving prospective relief rather than money damages. Plaintiffs read *Plaut* as

recognizing a much narrower exception, instead interpreting this case to create a distinction between "public" and "private" rights, allowing Congress to alter a final judgment only when public rights are involved (such as access to public waterways in *Wheeling Bridge*). In further support of their contention that the proffered exception is narrow and inapplicable, Plaintiffs cite the clarity with which the Supreme Court has emphasized that "legislated invalidation of final judgments [are] categorically unconstitutional." *See Printz v. United States,* 521 U.S. 898, ——, 117 S.Ct. 2365, 2383, 138 L.Ed.2d 914 (1997) (*citing Plaut,* 514 U.S. at 239–40)). Finally, Plaintiffs argue that, although *Wheeling Bridge* may support the proposition that Congress can alter the substantive law underlying injunctive relief, Congress does not possess the authority to change the constitutional principles upon which the original decrees and orders in this case were based.

Despite Plaintiffs' assertions to the contrary, the Court is convinced that the rationale of *Wheeling Bridge* governs this case and that § 3626(b)(2) does not unconstitutionally reopen a final judgment of an Article III court. As many other courts have determined, and as *Plaut* seemingly makes clear, the critical distinction to be divined from *Wheeling Bridge* rests not on the public nature of the rights involved but rather on the prospective nature of the relief at issue. *See, e.g., Gavin,* 122 F.3d at 1088; *Benjamin,* 124 F.3d at 172. *Plaut* expressly referred to *Wheeling Bridge* as an exception involving "the prospective effect of injunctions entered by Article III courts", *Plaut,* 115 S.Ct. at 1459; no mention was made of any public rights distinction in that case. Thus, the Decrees sought to be terminated in this case are rightfully categorized under the *Wheeling Bridge* exception to the rule against reopening final judgments, and therefore § 3626 does not improperly tamper with a final judgment in violation of *Plaut.*

Plaintiffs final attempt to distinguish *Wheeling Bridge* focuses on the law underlying the injunction in that case. Plaintiffs argue that, although Congress may have plenary power over the public waterways that were at issue in *Wheeling Bridge,* it does not similarly wield such power over the contours of the First Amendment which underlie the Decrees in this case. The Court is unconvinced that such a distinction is warranted. First, the PLRA does nothing to affect the First Amendment principles underlying the Decrees, but instead takes issue with the remedial powers of the presiding court. Second, courts have rejected the notion that the source of the underlying law is relevant to the separation of powers issue raised by the statute. *See Plaut,* 514 U.S. at 230 ("The issue here is not the validity or even the source of the legal rule that produced the Article III judgments"); *see also Gavin,* 122 F.3d at 108. Thus, Plaintiffs's arguments against the applicability of the *Wheeling Bridge* exception are without merit.

***8** The Court finds that § 3626(b)(2) does not unconstitutionally reopen a final judgment. As explained by the Seventh Circuit, "once a court has disposed of a case, Congress may not dictate a different decision...[y]et Congress may invite a court to reconsider even when it may not dictate the outcome." *Tonya K. by Diane K. v.. Bd. of Educ. of Chicago,* 847 F.2d 1243, 1247 (7th Cir.1988). This is all that § 3626(b)(2) does—it provides an invitation to courts to reconsider existing injunctive relief in light of newly enacted guidelines without in any way coercing the result which a court must reach. Though aggressive, this is a constitutionally proper exercise of Congress' power in this arena.

B. Effects on Courts' Ability to Fashion Effective Remedies

Plaintiffs next contend that the PLRA's termination provision unconstitutionally restrains the remedial powers of courts to shape appropriate remedies in prison litigation cases. Plaintiffs assert that district courts have long been vested with broad discretion to consider a range of options in fashioning remedies for constitutional violations. *See Milliken v. Bradley,* 418 U.S. 717, 744, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974); *see also Bivens v. Six Unknown Named Agents,* 403 U.S. 388, 408 n. 8, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). Furthermore, with regard to consent decrees, federal courts have "not necessarily [been] barred from entering a consent decree merely because the decree provide[d] broader relief than the court could have awarded after a trial." *Local Number 93, Int'l Assoc., of Firefighters v. City of Cleveland,* 478 U.S. 501, 525, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986). Thus, Plaintiffs essentially contend that the PLRA ties the hands of federal judges such that they will be unable to effectively deal with unconstitutional practices in our prisons.

Defendants and the United States counter that the PLRA does not in fact deprive courts of their authority to decide and remedy constitutional violations in prison condition cases. The statute's three requirements defining the scope of proper relief, Defendants assert, are completely in line with what case precedent otherwise requires. *See Smith v. Arkansas Dept. of Corrections,* 103 F.3d 637, 645–46 (8th Cir.1996) (*citing Lewis v. Casey,* 518U.S. 343, —— – ——, 116 S.Ct. 2174, 2184–85, 135 L.Ed.2d 606) (in prison conditions case, court explained that Supreme Court precedent requires that "the remedy must not go beyond what is necessary to remedy the particular constitutional injury"); *see also Swann v. Charlotte–Mecklenberg Bd., of Educ.,* 402 U.S. 1, 16, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971) ("the nature of the violation determines the scope of the remedy"). The Court agrees. It has long been a tenet of constitutional jurisprudence that relief should be afforded only to the

extent of an injury, and no farther, to ensure that constitutional violations are properly remedied. *See Lewis v. Casey,* 518 U.S. at ——, 116 S.Ct. at 2184 ("granting a remedy beyond what was necessary to provide relief ... [is] improper"). Furthermore, it is clear that Congress had this precedent in mind when it used the language it did in drafting the PLRA's requirements. *See* H.R.Rep. No. 104–21, at 24 n. 2 (the "dictates of the provision are not a departure from current jurisprudence concerning injunctive relief"). Thus, though the PLRA may take away some of a courts' discretionary power, it still guarantees that a court may provide narrowly-tailored prospective relief upon a finding of an ongoing constitutional violation.

***9** Beyond the substantive restraints of the PLRA, Plaintiffs also attack the effect the statute has in terminating relief previously granted by a court. As Plaintiffs see it, the real evil of the PLRA is in how it treats court orders after they have been entered. Plaintiffs assert that § 3626(b)(2) eviscerates Supreme Court precedent that requires that injunctions not be vacated unless and until compliance has been shown for a reasonable period and the defendant's conduct indicates it is "unlikely to return to its former ways." *Board of Educ. of Oklahoma v. Dowell,* 498 U.S. 237, 247–50, 111 S.Ct. 630, 112 L.Ed.2d 715 (1991); *see also Freeman v. Pitts,* 503 U.S. 467, 491, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992). Where § 3626(b)(2) calls for the termination of relief when one of its three requirements are not met, Plaintiffs argue that this runs afoul of the Supreme Court's established standard for vacatur of a judgment.

As to the PLRA's termination of existing court decrees, Defendants assert that the statute merely formalizes the review of injunctive relief which is already available to litigants under the Federal Rules of Civil Procedure. Rule 60(b)(5) provides that a party may be relieved from a final judgment if "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Fed.R.Civ.P. 60(b)(5). Since § 3626 simply allows litigants a more direct way to facilitate such requests, and the statute provides that relief should be kept in place if it meets the criteria of § 3626(b)(3), Defendants assert that the statute does nothing to significantly change the courts' powers in any significant respect.

Though a close call, the Court finds that § 3626(b)(2) provides for the vacatur of judgments in compliance with the applicable constitutional safeguards. Of course, Congress is free to enact, in addition to Rule 60(b), alternative mechanisms by which parties can seek the termination of prospective relief, so long as these mechanisms are themselves constitutional. The United States argues, and the Court agrees, that the proper reading of § 3626(b) provides that relief should not be vacated where there are recurring violations of Federal rights *or* where a present danger of imminent recurrence of such a violation demonstrates a failure to remedy the violation. This is precisely the standard that has been established and used by the Supreme Court, and thus it is not unconstitutional. In addition, the United States points out that, even if a court finds an existing decree too broad, but that some measure of relief is still necessary, the PLRA does not prohibit the court from imposing revised relief that complies with the statute's requirements. The Court agrees that the statute allows for such flexibility, and it is this flexibility which saves § 3626(b)(2) from more serious constitutional concerns. Thus, the Court finds that the termination provision does not unconstitutionally restrict the equitable powers of an Article III court.

C. Prescribing Rules of Decision

***10** Plaintiffs next maintain that § 3626(b)(2) unconstitutionally prescribes a rule of decision in violation of the separation of powers principle set forth in *United States v. Klein,* 13 Wall. 128, 80 U.S. 128, 20 L.Ed. 519 (1872). Plaintiffs contend that § 3626(b)(2) violates the rule of *Klein* in that it mandates a rule of decision by requiring a court to terminate prospective relief upon a determination that this relief does not comport with the requirements of the statute. In response, Defendants argue that § 3626(b)(2), unlike *Klein,* does not compel the result a court must reach, but rather only modifies the legal standards under which federal courts must rule.

The dispute in *Klein* arose out of Congress' attempt to change the effect that a presidential pardon would have on the property rights of confederates following the Civil War. A prior statute had provided that only those noncombatant confederate rebels that could prove their loyalty to the union had a right to be reimbursed for property confiscated during the rebellion, and that a person was considered loyal as a matter of law if they had received a presidential pardon. The confederate whose estate was at issue in *Klein* had been pardoned by the President despite evidence that he was in fact disloyal, and he thus qualified for reimbursement. Unhappy with the results of this and other decisions, Congress passed a statute establishing that a presidential pardon should be considered conclusive evidence that a person had been disloyal to the United States. *Id.* at 143–44. This new statute also directed courts to dismiss all cases pending on appeal in which recovery had been premised on the effect of a pardon. *Id.* The Supreme Court in *Klein* found the statute violative of separation of powers principles because it was essentially an attempt to prescribe a rule of decision in a pending case. *Id.* at 147. However, the Court did distinguish the *Wheeling Bridge* situation in which

Congress creates a new law and then leaves a Court "to apply its ordinary rules to the new circumstances created by the act." *Id.*

This distinction between *Klein* and *Wheeling Bridge* has recently been summarized as follows: "if legislation can be characterized as changing the underlying law rather than as prescribing a different outcome under the pre-existing law, it will not violate the separation of powers principle formulated in *Klein* ." *Benjamin,* 124 F.3d at 174; *see also Axel Johnson Inc. v. Arthur Andersen & Co.,* 6 F.3d 78, 81 (2d Cir.1993). Applying this distinction, the Court concludes that the termination provision does not unconstitutionally prescribe a rule of decision as prohibited by *Klein.* Section 3626(b)(2) is plainly distinguishable from *Klein* in that it does not unduly constrain a federal court's ability either to evaluate evidence or to draw its own conclusions with regard to certain evidence.

In this instance, Congress has not usurped any judicial power by dictating the result of the case before the Court at this time, nor has it amended the underlying substantive rights upon which this case is based. Congress may amend law applicable to pending cases "without directing particular applications under either the old or the new standards." *See Robertson v. Seattle Audubon Society,* 503 U.S. 429, 437, 112 S.Ct. 1407, 118 L.Ed.2d 73 (1992). That is exactly what Congress has done in this case. The PLRA establishes rough boundaries within which Courts must tailor their prospective relief to remedy constitutional violations, but does nothing to specify how much and what this relief must be. As succinctly stated by the Eighth Circuit in *Gavin,* § 3626(b)(2) "leaves the judging to judges, and therefore it does not violate the *Klein* doctrine." *Gavin,* 122 F.3d at 1089. Thus, the termination provision is not unconstitutional on this basis.

II. Due Process

***11** Plaintiffs next argue that § 3626(b)(2) violates the Due Process Clause of the Fifth Amendment in that denies them of a property interest—the existing Decrees—without due process of law. Plaintiffs assert that they possess a vested right in the Decrees in this case, and that § 3626(b)(2) improperly violates these judgment rights. Plaintiffs also contend that, viewing the Decrees as government contracts, the statute violates due process through its retroactive effect on these contracts. The Court will consider each of these arguments in turn.

A. Vested Rights in Judgments

Plaintiffs argue that § 3626(b)(2), in terminating injunctive relief entered by an Article III court, unconstitutionally deprives them of their vested rights in these litigated judgments. The vested rights doctrine provides that "it is not within the power of a legislature to take away rights which have been once vested by a judgment." *McCullough v. Virginia,* 172 U.S. 102, 123, 19 S.Ct. 134, 43 L.Ed. 382 (1898). It is clear that final money judgments create a vested right which is beyond the constitutional reach of Congress. *Id.; see also Benjamin,* 124 F.3d at 176. What is not so clear, however, and what is at issue in this case, is whether Plaintiffs can claim a vested right in the judgments which have provided them the prospective relief they seek to preserve.

Courts have recognized that the vested rights doctrine is simply the due process analog of the separation of powers principle which prevents Congress from reopening the final judgments of Article III courts. *See Plyler,* 100 F.3d at 374; *Gavin,* 122 F.3d at 1091. It follows that, in order to have a vested right, a judgment must be considered final. *See Tonya K.,* 847 F.2d at 1247–48; *see also Axel Johnson Inc. v. Arthur Andersen & Co.,* 6 F.3d 78, 83–84 (2d Cir.1993). The Supreme Court has defined that "a consent decree is a final judgment that may be reopened only to the extent that equity requires." *Rufo v. Inmates of the Suffolk County Jail,* 502 U.S. 367, 391, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992). Though casually referred to as final judgments, the important issue is whether consent decrees are considered final for the vesting purposes; in other words, does a consent decree represent the "last word" of a court in a given case?

Courts have answered this question "no". A judgment entering prospective relief—which is, of course, subject to future modification based on changes in the relevant law, facts, or other considerations—is not considered a final judgment for these purposes. *See United States v. Locke,* 471 U.S. 84, 104, 105 S.Ct. 1785, 85 L.Ed.2d 64 (1985); *Fleming v. Rhodes,* 331 U.S. 100, 107, 67 S.Ct. 1140, 91 L.Ed. 1368 (1947); *see also Western Union Tel. Co. v. International Bhd., of Elec. Workers,* 133 F.2d 955, 957 (7th Cir.1943) ("[T] hough a decree may be final as it relates to an appeal and all matters included or embodies [sic] in such a step, yet, where the proceedings are of a continuing nature, it is not final."). Therefore, courts have found that no property right in such a judgment vests with the prevailing litigant. *Landgraf v. USI Film Prods.,* 511 U.S. 244, 274 (1994) (explaining that injunctive relief operates "*in futuro* " and that a plaintiff has no vested right in a decree entered by a court); *American Steel Foundries v. Tri–City Central Trades Council,* 257 U.S. 184, 42 S.Ct. 72, 66 L.Ed. 189 (1921). Likewise, Plaintiffs cannot claim to have a vested right in the Decrees previously entered by this Court, since these Decrees were always under the specter of being modified or even eliminated upon a change of any one of many underlying circumstances. Thus, Plaintiffs' due process claim on this basis is without merit.

B. Effect on Government Contracts

***12** As their other due process argument, Plaintiffs claim that the termination provision unconstitutionally exacts a retroactive effect on existing contractual agreements between the parties as represented by the Decrees. Plaintiffs further argue that, because the statute acts to release a governmental entity from its obligations under these pre-existing contracts, this specter of governmental self-interest requires this Court to examine § 3626(b)(2) with heightened scrutiny. Defendants respond that the Decrees are not contracts, and even if they are, they are private contracts for which minimal scrutiny of the statute is dictated.

The first issue is whether the consent decrees in this case should rightfully be construed as contracts. The Supreme Court has, on several occasions, recognized the contractual nature of a consent decree. *See United States v. ITT Continental Baking Co.,* 420 U.S. 223, 238, 95 S.Ct. 926, 43 L.Ed.2d 148 (1975) (consent decree "to be construed for enforcement purposes basically as a contract"); *Rufo v. Inmates of the Suffolk County Jail,* 502 U.S. 367, 378, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) ("A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature."). Without citing any authority, Defendants assert that consent decrees are judicial acts and nothing more. Given the strength of authority in support of Plaintiffs' position, the Court will assume that consent decrees are rightfully construed as contracts for the purpose of this due process analysis.

The next issue is to determine under what level of scrutiny the statute's effect on these contracts should be viewed. This question is dependent on whether the contractual relation affected is public (where the government is a party) or private in nature. When the government enacts legislation impacting its own contracts, given the shadow of self-dealing which exists, the legislation is subject to a heightened form of scrutiny. *United States v. Winstar Corp.,* 518 U.S. 839, ——, 116 S.Ct. 2432, 2466, 135 L.Ed.2d 964 (1996) (Souter, J., plurality opinion). However, when the contracting parties affected are private entities, the statute must merely satisfy a rational basis review. *See National Railroad Passenger Corp. v. Atchison, Topeka & Santa Fe Railway Co.,* 470 U.S. 451, 472, 105 S.Ct. 1441, 84 L.Ed.2d 432 (1985) (when private contracts are affected "judicial scrutiny [is] quite minimal").

In this case, the federal government has not affected a contract of its own, and thus it would seem that the rational basis test should govern. Nonetheless, Plaintiffs argue that, even though it is the state and not the federal government which is a party to the Decrees in this case, the specter of self-dealing still exists because § 3626(b)(2) reflects the interests of both state and federal governments in dealing with prisoner litigation. Citing to *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985), Plaintiffs argue that because the federal legislation benefits the state governments, heightened scrutiny of the statute is warranted.

***13** The Court is wholly unpersuaded by Plaintiffs attempt to conflate the separate entities of our federalism into one. These Decrees are contracts between the state of Illinois and a private party; the federal government has no self-interest in these Decrees. Nor is *Garcia* relevant, as "the fact that state representation in the national legislature is deemed a structural safeguard protecting the states in the balance of federalism concerns does not imply that the states are represented to such a degree that federal legislation benefiting state governments are so tainted by self-interest that heightened scrutiny is required." *Benjamin v. Jacobson,* 935 F.Supp. 332, 357 (S.D.N.Y.1996), *aff'd* 124 F.3d 162 (2d Cir.1997). Thus, in addition to there being no direct threat of federal self-dealing when Congress enacted § 3626(b)(2), Plaintiffs also do not present the Court with any specific evidence of such a taint on the federal lawmaking process. Therefore, since the termination provision affects private contracting entities, the rational basis standard governs our analysis.

This standard requires that Plaintiffs "overcome a presumption of constitutionality and 'establish that the legislature has acted in an arbitrary and irrational way." ' *National Railroad Passenger Corp.,* 470 U.S. at 472 (citations omitted). The statute will be found constitutional if it is rationally related to a legitimate governmental purpose, as it does not have to be a wise or prudent exercise of congressional power. *See, e.g., Village of Belle Terre v. Boraas,* 416 U.S. 1, 8, 94 S.Ct. 1536, 39 L.Ed.2d 797(1974); *Bell v. Wolfish,* 441 U.S. 520, 538–39, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). As discussed more fully in section III below, the Court finds that § 3626(b)(2) easily satisfies the rational basis standard. Thus, the retroactive effect of the statute does not violate Plaintiffs' due process rights in the Decrees as contracts.

III. Equal Protection

Plaintiffs also argue that § 3626(b)(2) violates the equal protection principles embodied within the due process clause of the Fifth Amendment. Plaintiffs assert that the statute burdens their fundamental right of free access to the court system, and that therefore the Court should review the statute with strict scrutiny. Regardless of the level of review, however, Plaintiffs argue that the statute cannot even meet the minimal requirements of rational basis scrutiny, much less strict scrutiny. Defendants

respond that rational basis scrutiny is the appropriate level of review, and that the termination provision easily meets this facile standard.

The threshold question in any equal protection analysis is to determine the scrutiny to which the statute must be subjected. Strict scrutiny—which places the burden on the government to show that it had a compelling interest in passing the law and that the law is narrowly tailored to achieve that interest—is warranted when a law targets a suspect class or jeopardizes a fundamental right. *City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, 437, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). The class of people burdened by this litigation—prisoners—do not qualify as a suspect classification. *See United States v. King,* 62 F.3d 891, 895 (7th Cir.1995). *Wilson v. Giesen,* 956 F.2d 738 (7th Cir.1992). However, Plaintiffs are correct that individuals do have a fundamental right to access the court system. *See, e.g., Bounds v. Smith,* 430 U.S. 817, 828, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). The question that remains, therefore, is whether § 3626(b)(2) unconstitutionally impinges on this fundamental right.

***14** This right of access to courts "assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights." *Wolff v. McDonnell,* 418 U.S. 539, 579, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Prisoners must receive " 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." ' *Lewis v. Casey,* 518U.S. 343, ——, 116 S.Ct. 2174, 2180, 135 L.Ed.2d 606 (1996) (*quoting Bounds,* 430 U.S. at 825)). Plaintiffs assert, and Defendants agree in theory, that this right to access also intrinsically includes the right to obtain and enforce effective relief for a meritorious claim. Thus, Plaintiffs claim that, although the courthouse doors may appear open to the casual observer, in reality § 3626(b)(2) effectively prevents them from seeking ongoing judicial relief for violations of their constitutional rights.

The Court does not agree that § 3626(b)(2) burdens Plaintiffs' access to the courts. The statute limits the scope of substantive relief which a court may provide, but does nothing to obstruct a prisoner's access to the court system. As recently explained by the First Circuit, "while there is a constitutional right to court access, there is no complementary constitutional right to receive or be eligible for a particular form of relief." *Inmates of Suffolk County Jail v. Rouse,* 129 F.3d 649, 1997 WL 685532, at *10 (1st Cir. Nov.7, 1997) (citation omitted). Since Plaintiffs continue to have an opportunity to establish current or ongoing violations of their constitutional rights under the statute, Plaintiffs' fundamental rights are not implicated, and thus rational basis scrutiny is the appropriate standard of review. *See Plyler,* 100 F.3d at 373; *Gavin,* 122 F.3d at 1090.

Under rational basis review, a law is presumed valid and "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." ' *Heller v. Doe,* 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993) (*quoting FCC v. Beach Communications, Inc.,* 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993)). Section 3626(b)(2) has a rational basis if it "bear[s] a rational relationship to an independent and legitimate legislative end." *Romer v. Evans,* 517 U.S. 620, 116 S.Ct. 1620, 1627, 134 L.Ed.2d 855 (1996). Hence, if there exists a plausible reason for the congressional action, regardless of whether this reason in fact motivated passage of the law, the rational basis inquiry is satisfied. *See United States R.R. Retirement Bd. v. Fritz,* 449 U.S. 166, 179, 101 S.Ct. 453, 66 L.Ed.2d 368 (1980).

Section 3626(b)(2) bears a rational relationship to a legitimate end, and thus does not violate equal protection principles. The legislative history for the PLRA reflects an intent to "help restore balance to prison conditions litigation and ... ensure that Federal court orders are limited to remedying actual violations of prisoners' rights," 141 Cong. Rec. S14,418 (daily ed. Sept. 27, 1995) (statement of Sen. Hatch), such that states "will be able to run prisons as they see fit unless there is a constitutional violation." *Id.* at S14,419 (statement of Sen. Abraham). This objective to return control of prisons to the state and local governments to which they are accountable is clearly a legitimate endeavor. Likewise, the statutory means used to achieve this objective, though aggressive, are eminently reasonable. *See Plyler,* 100 F.3d at 374; *Gavin,* 122 F.3d at 1090. Thus, § 3626(b)(2) easily satisfies rational basis review.

***15** As a last-ditch argument, Plaintiffs argue that the sole objective of the statute is to disempower a socially disfavored group, and that such a reason has been denounced as illegitimate in *Romer v. Evans,* 517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996). With regard to a homosexual-rights proposition, the Supreme Court warned that a legislature cannot pass a law "for the purpose of disadvantaging the group burdened by the law." *Romer,* 116 S.Ct. at 1628; *see also United States Dept. of Agric., v. Moreno,* 413 U.S. 528, 534, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973) ("[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest ."). Plaintiffs similarly contend that no objective can be divined from the PLRA other than an intent to more severely punish prisoners, and that this goal cannot be legitimate under *Romer.*

As the Court has previously found, however, Congress has proffered the legitimate objective of getting federal

courts out of the business of running the prisons of this country. This is enough to satisfy the rational basis test, and thus our inquiry is satisfied. The Court finds that *Romer* is clearly distinguishable from the instant case, and therefore Plaintiffs' equal protection arguments are without merit.

IV. Tenth Amendment

Plaintiffs' final constitutional challenge to § 3626(b)(2), one that has not been previously raised by litigants attacking this statute in other jurisdictions, asserts a violation of the Tenth Amendment. The Tenth Amendment states:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people.

Plaintiffs assert that the termination provision infringes on states' rights in that it interferes with the ability of state governments to enter into binding settlement agreements which will be enforceable in the future. Defendants respond that the statute presents no Tenth Amendment problem, as it does not compel a state to do anything, nor does it prevent states from entering enforceable settlements.

In primary support of their claim that § 3626(b)(2) unconstitutionally interferes with states' power to enter into binding settlement contracts, Plaintiffs cite the recent Supreme Court decision in *Printz v. United States,* 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997). In *Printz,* the Supreme Court struck down the Brady Handgun Violence Prevention Act as violative of Tenth Amendment principles. The Brady Act required state and local law enforcement officers to conduct background checks on prospective gun purchasers. The Court held that the Tenth Amendment precluded Congress from compelling the states' use of their executive power to enforce these requirements. *Id.* at 2384. In addition, the Supreme Court specifically noted that "dual sovereignty" principles bar Congress from passing legislation which imposes obligations on state courts. *Id.* at 2370 (*citing United States v. Jones,* 109 U.S. 513, 519–20, 3 S.Ct. 346, 27 L.Ed. 1015 (1883)).

***16** *Printz* essentially stands for the proposition that Congress cannot, within the bounds of the Constitution, compel state officials to participate in a federally-enacted regulatory scheme. Attempting to analogize the PLRA to the Brady Act, Plaintiffs assert that "Congress is without Constitutional authority to tell state prison officials that they cannot enter into binding enforceable settlement contracts." Arguing that the PLRA does just that, Plaintiffs contend that the statute violates the principles of federalism embodied in the Tenth Amendment.

The Court, however, finds no such Tenth Amendment problem. Contrary to Plaintiffs' assertion, the statute does not prevent state officials from doing anything with regard to prison litigation. As provided for in § 3626(c)(2)(A), states are free to enter into private settlement agreements that do not comply with the three requirements of the termination provision. *See* 18 U.S.C. § 3626(c)(2)(A). Nor does the statute compel any actions on the states' part. Though states are given the opportunity to raise the issue of immediate termination by filing a motion such as was done in this case, they are not required to implement any activities in order to carry out this federal remedial program. *Cf. Printz,* 521 U.S. 898, ——, 117 S.Ct. 2365, 2383, 138 L.Ed.2d 914 (1997); *New York v. United States,* 505 U.S. 144, 156, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). Since the states are neither compelled to nor prevented from doing anything with regard to their roles in prisoner litigation, the Tenth Amendment is not implicated by the statute.

It seems clear that § 3626(b)(2) does not pose the same federalism concerns as were found violative of the Tenth Amendment in *Printz.* In fact, not only does the statute not impinge on the rights of state government, but one of the primary purposes of the statute is to end the micromanagement of state prisons systems by federal courts by returning this control back to state prison officials. Thus, far from infringing on states' rights, the Court is comfortably convinced that the PLRA does not violate even the newly-reinvigorated Tenth Amendment.

V. Effect of § 3626(b)(2) of PLRA on this case

Since the Court finds § 3626(b)(2) to be constitutional, the next issue is how the statute should be applied to the Decrees in this case. Defendants assert that the relief provided in these judgments does not meet the requirements of the statute—specifically, that they are not "narrowly drawn," do not "extend[] no further than necessary to correct the violation of the Federal right," and are not "the least intrusive means to correct the violation." Since these requirements are not satisfied, Defendants argue, this Court must immediately terminate the existing Decrees in accordance with the statute.

What § 3626 essentially requires is that a court limit its relief to the constitutional floor, extending no further than that which is required to avoid a constitutional violation. Defendants assert that this floor, as represented by relevant Supreme Court decisional law, has been moving downward in recent years such that the relief Plaintiffs received in the past is broader than that which the Constitution is now interpreted to require. Specifically,

Defendants cite to the Supreme Court's decision in *Bell v. Wolfish,* 441 U.S. 520, 550, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979), which expressly upheld the constitutionality of the "publisher's only" rule which Defendants are now enjoined from enforcing under the Decrees. Though *Bell* specifically dealt with a "publisher's only" rule as applied to hardcover books, other courts have extended its holding to other types of publications. *See, e.g., Johnson v. Moore,* 948 F.2d 517, 520 (9th Cir.1991) (soft cover books); *Ward v. Washtenaw County Sheriff's Dept.,* 881 F.2d 325 (6th Cir.1989) (magazines); *Hurd v. Williams,* 755 F.2d 306 (3d Cir.1985) (soft cover publications); *Kines v. Day,* 754 F.2d 28 (1st Cir.1985) (periodicals). Thus, Defendants argue, and the Court is inclined to agree, that the relief provided by the Decrees is clearly broader than what would minimally be required by the Constitution today.

***17** Plaintiffs do not specifically address this issue of where the constitutional floor is in relation to the relief provided by the Decrees. Instead, Plaintiffs request that the Court, before terminating the Decrees under the statute, conduct an evidentiary hearing into the question of whether the relief remains necessary to redress an ongoing violation of a federal right. *See* § 3626(b)(3). However, such a course of action would merely delay the inevitable. The statute specifically calls for relief to be immediately terminated upon a finding of noncompliance with the requirements of § 3626(b)(2). An evidentiary hearing at this juncture could only provide evidence that the relief remains necessary to redress ongoing violations, but would not cure the overbreadth of the existing Decrees. The PLRA dictates that the Decrees, as they exist in their present form, must be terminated.

However, the Court is also cognizant of the fact that our decision on this statutory provision may not be the last word on this matter. Thus, the Court is willing to stay the effect of this ruling pending appeal of this issue to the Seventh Circuit. Therefore, provided Plaintiffs seek to follow this course of action, the Court shall stay the effect of our decision that the PLRA offends neither the Constitution nor the doctrine of the separation of governmental powers.

CONCLUSION

For the above reasons, the Court finds § 3626(b)(2) constitutional, but will stay effect of the termination provision pending appeal of the constitutionality of the statute.

Footnotes

1 Four courts of appeal have considered the constitutionality of § 3626(b)(2) of the PLRA. The 1st, 2nd, 4th, and 8th Circuits have all found this statute to be constitutional. As previously discussed, the Second Circuit based its opinion on an interpretation of § 3626(b)(2) which reads it to merely divest federal courts of jurisdiction to enforce prospective relief, but not to terminate the underlying decrees themselves. *See Benjamin v. Jacobson,* 124 F.3d 162 (2d Cir.1997). Disagreeing with *Benjamin* 's interpretation of the statute, a very recent decision of the First Circuit read § 3626(b)(2) to "terminate" the underlying consent decrees but not to "vacate" them. *See Inmates of Suffolk County Jail v. Rouse,* 129 F.3d 649, 1997 WL 685532 (1st Cir. Nov.7, 1997). The Fourth and Eighth Circuits, on the other hand, have apparently read the "termination" provision of the statute to require vacatur of the underlying decrees. *See Plyler v. Moore,* 100 F.3d 365 (4th Cir.1996), *cert. denied* 520 U.S. 1277, 117 S.Ct. 2460, 138 L.Ed.2d 217 (1997); *Gavin v. Branstad,* 122 F.3d 1081 (8th Cir.1997).