IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-6912

Wilburn G. Caple, et al.,

Appellants,

v.

I. D. Hutto, et al.,

Appellees.

On Appeal from the United States District Court for the
Eastern District of Virginia, Richmond Division

BRIEF OF APPELLEES

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Appellees.

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ISSUES PRESENTED

I. WHETHER SECTION 3626(b)(2) VIOLATES THE SEPARATION OF POWERS DOCTRINE.

II. WHETHER THE PLRA VIOLATES THE EQUAL PROTECTION CLAUSE.

III. WHETHER THE PLRA VIOLATES THE DUE PROCESS CLAUSE.

IV. **WHETHER THE RECORD IN THIS CASE SUPPORTS THE FINDINGS REQUIRED BY THE PLRA.**

V. **WHETHER THE STATE'S "WAIVER" OF FINDINGS PRECLUDES TERMINATON UNDER THE PLRA.**

VI. **WHETHER THE PLRA AUTHORIZES AN EVIDENTIARY HEARING TO CONSIDER WHETHER RELIEF REMAINS NECESSARY TO CORRECT A CONSTITUTIONAL OR STATUTORY VIOLATION.**

STATEMENT OF THE CASE

Plaintiff Cagle instituted this action in 1979 alleging that the conditions of his confinement at the Powhatan Correctional Center (hereinafter "Powhatan") violated his constitutional rights. Subsequently, a similar action was filed by another inmate, Calvin Carter, and that case was consolidated with Cagle's on January 15, 1980. Thereafter, other Powhatan inmates filed actions and those cases were consolidated with Cagle's on February 19, 1980. On June 18, 1980, the Plaintiffs filed an Amended Complaint and moved for class certification. (Joint App. at 33). The class (hereinafter the "Inmates") was certified on October 7, 1980. (Joint App. at 63).

By letter dated December 22, 1980, Defendant Hutto, then Director of the Virginia Department of Corrections, made certain representations to counsel for the Inmates. (Joint App. at 265a-e). This letter formed the basis of a Consent Decree entered on February 12, 1981. (Joint App. at 253). Subsequent to the entry of that decree, the Court recertified the class to allow the Inmates to seek money damages, the result of which was a second consent decree entered on June 14, 1983. (Joint App. at 266). Because the second decree did not include injunctive relief, it is not the subject of this proceeding. All references to the "Consent Decree" in this Brief refer to the Consent Decree of February 12, 1981.

On April 26, 1996, the President signed P.L. 104-134, an omnibus act whose Title VIII is

designated the Prison Litigation Reform Act (hereinafter "PLRA"). Section 802 of Title VIII amends 18 U.S.C. § 3626 by generally requiring that prospective relief in prison conditions cases "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. § 3626(a)(1), as amended.

Section 3626(b) provides for the termination of "prospective relief," a term defined in § 3626(g)(7) as "all relief other than compensatory monetary damages." The definition of "relief," found in 18 U.S.C. § 3626(g)(9), includes "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." (Emphasis added).

On March 14, 1997, the Defendants (hereinafter the "State") filed a Motion to Terminate Consent Decree. The Inmates responded and the matter was submitted to the District Court on the pleadings and memoranda in support thereof. On May 14, 1998, the District Court entered a Final Order (Joint App. at 279), based upon a Memorandum Opinion (Joint App. at 280), granting the State's motion and vacating the Consent Decree. It is from that Final Order that the Inmates appeal.

STATEMENT OF THE FACTS

This prison conditions case began with an action filed in May of 1979, by William Cagle, an inmate incarcerated at the Powhatan Correctional Center. Subsequently, other similar actions were filed by inmates at that institution with the result that the claims were consolidated and a class was certified. The gravamen of the complaint was that the totality of conditions at Powhatan violated the Inmates' right to be free from cruel and unusual punishment.

The Amended Complaint of June 18, 1980 (Joint App. at 33) set forth the nature of the Inmates' claims. These allegations included overcrowding of dormitories, unsanitary conditions such as roaches and toilets that often did not work, unsanitary food, inadequate lighting, poor

ventilation, unstable temperatures, deteriorating plumbing and heating systems, an inadequate classification system, lack of employment and constructive activity for the prisoners, idleness, lack of adequate educational opportunities, lack of recreational opportunities, fear of violence, and an inadequate training of correctional staff.

The State respectfully takes issue with the Statement of Facts set forth in the Brief of the Appellants. In their Brief, Appellants discuss certain testimony and findings by Judge Warriner, conclude that such testimony and findings prompted the State to agree to the Consent Decree, and urge this Court to judge the State's Motion to Terminate the Consent Decree within that factual context.

The testimony set out in pages 64 through 229 of the Joint Appendix comes from a hearing on the Inmates' Motion for a Preliminary Injunction, not a trial or evidence presented in the case in chief. (See Civil Docket Continuation Sheet as contained in Joint App. at 8-9). The "findings" made by Judge Warriner (Joint App. at 230) should be read in that context and should not be construed as "findings" sufficient to avoid termination under the PLRA.

While Judge Warriner clearly had concerns about the conditions at Powhatan, he just as clearly acknowledged that those concerns were preliminary in nature and could be changed after a full presentation of the evidence. The Inmates quote only one sentence out of a paragraph, the entirety of which shows the context of Judge Warriner's statement:

> I think there is a pervasive risk of harm to other prisoners at Powhatan. I conclude that preliminarily, that is to say, I presume that on the basis of the evidence which has been presented to me preliminarily. It's surely not the plaintiff's last opportunity to add to the record, nor is the defendant foreclosed at a plenary hearing from showing that the evidence is only partial, that there is countervailing evidence which you did not produce on Tuesday which, fully considered, would change the Court's opinion that there is a pervasive risk. I'm emphasizing that the question is not foreclosed.

(Joint App. at 232).

The matter was thereafter set for trial, a trial which never occurred due to the intervention of the Consent Decree.

The State submits that the foregoing more accurately reflects the context in which the Consent Decree was developed and the context in which the State's Motion to Terminate should be judged.

SUMMARY OF THE ARGUMENT

This case is controlled by Plyler v. Nelson, 100 F.3d 365 (1996), decided by this Court less than two years ago. The issues considered in Plyler are virtually identical to those presented here, with the sole exception of the question concerning whether the District Court should hold an evidentiary hearing prior to terminating the Consent Decree.

In April of 1996, the Prison Litigation Reform Act was enacted. Section 3626(b)(2) of the PLRA provides:

> 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.

The Inmates first claim that § 3626(b)(2) violates the separation of powers doctrine by unconstitutionally setting up Congress as the decisionmaker instead of the courts and by prescribing a rule of decision. The State submits, as was decided in Plyler, that the prospective injunctive relief of the Consent Decree is not a final judgment for purposes of separation of powers, and therefore, Congress is permitted to amend the underlying statutory basis for prospective relief (i.e. the

remedial jurisdiction of the federal courts) without violating the Constitution. Further, because § 3626(b)(2) provides only the standard to which the courts must adhere, and not the decision they must reach, the statute does not unconstitutionally dictate a rule of decision.

The Inmates' second claim is that the PLRA violates the Equal Protection Clause. As decided in Plyler, the termination provision does not substantially burden the prisoners' right of access to the courts and it is rationally related to the need to protect the states' prison systems from micromanagement by the federal courts.

Third, the Inmates claim that the PLRA violates their rights to Due Process. Again, Plyler clearly enunciates the conclusion that the Inmates have no property interest in the prospective relief conferred by the Consent Decree, and therefore, no Due Process rights attach.

Next, the Inmates argue that the record in this case supports a conclusion that findings were made by the District Court to bring the Consent Decree within the exception to the termination provision of the PLRA. The State submits that those "findings" are taken out of context, are set forth by the Inmates in their Brief in an incomplete manner, and in no way are "findings" as required under the PLRA. Moreover, the Consent Decree speaks for itself and explicitly recites that no findings of fact or conclusions of law are made.

The Inmates fifth claim is that the State waived specific findings and cannot now use that waiver to support termination of the Consent Decree. Again, this Court in Plyler has rejected such an argument. Congress' purpose in enacting the PLRA was "to relieve states of the onerous burden of complying with consent decrees that often reach far beyond the dictates of federal law." Plyler, 100 F.3d at 370. The PLRA simply requires a court to look at a consent decree, determine whether it meets the jurisdictional standards, and terminate enforcement of prospective relief if it falls short of those standards.

Finally, the Inmates argue that an evidentiary hearing is required. The State contends that Plyler does not infer that an evidentiary hearing is appropriate. Because there was no finding that a federal right had been violated, there would be no "current or ongoing" violations to be considered at such a hearing. Further, the language of the statute does not support any need for an evidentiary hearing, and preclusion of an evidentiary hearing does not render the PLRA unconstitutional.

ARGUMENT

I. SECTION 3626(b)(2) DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE.

The Inmates first argue that § 3626(b)(2) violates the separation of powers doctrine in two ways: first, that the PLRA unconstitutionally substitutes Congress for the Article III courts as decisionmakers in violation of the principles set forth in Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995), and second, that the PLRA unconstitutionally prescribes a rule of decision in contravention of the holding in United States v. Klein, 80 U.S. (13 Wall) 128 (1871).

Both arguments were considered at length by this Court in Plyler v. Nelson, 100 F.3d 365 (1996), and both were rejected. The Inmates are asking the Court to reverse Plyler, not for any new or previously unconsidered reason, but simply because in their view it was the wrong decision. The State submits that Plyler is correct, well reasoned and is binding precedent in this Circuit.

A. Congress, through the enactment of the PLRA, has not substituted itself as the decisionmaker instead of the courts in violation of Plaut.

In Plaut, the Supreme Court considered the constitutionality of a statute which allowed certain final judgments in securities violation cases to be reopened even though they had been previously dismissed as time barred. The Court held that the law contravened the Constitution's separation of powers doctrine by retroactively commanding the federal courts to reopen final

judgments.

This Court correctly articulated in Plyler that the prospective effect of a consent decree is not a final judgment for separation of powers purposes. Plyler, 100 F. 3d at 371. In Plaut, the statute in question gave the courts the power to reopen finally adjudicated money judgments. Consent decrees, however, are in the nature of injunctions which are subject to modification when there are changes in the underlying law. See Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992).

The Inmates further state that this Court's reliance on Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855) is an "absurd position" (see Appellant's Brief at 11). Not only is that an intemperate remark affronting the dignity of this Court, that position is plainly wrong. The Inmates first distinguish Wheeling Bridge as drawing a distinction between public and private rights, arguing that the legislature may alter judgments involving public rights, but not private ones as are at issue here. This very issue was discussed by the Court of Appeals for the Second Circuit in Benjamin v. Jacobson, 124 F.3d 162 (1997), where that court said:

> But even assuming that we were to adopt the requirement that—under separation of powers principles—executory judgments must concern a public right in order to be susceptible to legislative revision, that would still not render the termination provision unconstitutional under the first interpretation that can be given to that provision. This is because the defendants convincingly argue that the right in question in this case relates not to the private rights of the detainees, which the statute was careful to preserve, but to the right to have non-federal claims vindicated in a federal forum. As noted above, the latter is a question of federal jurisdiction, which is clearly within Congress' plenary power to determine. Thus, even if we accept the plaintiffs' graft of a "public right" requirement as limiting the circumstances in which an executory judgment can be legislatively altered, the termination provision survives. For the provision does not require the nullification of a judgment that gave the plaintiffs a private right. It can be read, rather, as a change of a public law altering the forum in which that private right must be vindicated.

Benjamin, 124 F.3d at 172.

The Inmates next argue that Wheeling Bridge "stands merely for the proposition that when Congress lawfully amends the underlying statutory basis for prospective relief, equity requires modification of the prospective relief." However, the Inmates continue, even if Congress can amend its own statutes, it cannot amend the Eighth Amendment.

This Court clearly answered that argument in Plyler when it says: "The Inmates fail to understand that the applicable law is not the Eighth Amendment, but rather is the authority of the district court to award relief greater than that required by federal law." Plyler, 100 F.3d at 372. Again, Congress has not altered the Constitution, it has merely provided that there should be a limit on the remedial jurisdiction of the federal courts. See Benjamin, 124 F.3d at 173.

B. The PLRA is not an unconstitutional attempt to prescribe a rule of decision in contravention of the holding in United States v. Klein.

Again, the Inmates ask this Court to decide 180 degrees differently from its reasoned opinion in Plyler. Klein prohibits the legislative branch from taking over the decisionmaking function of the judiciary. It does not keep Congress from changing the underlying law on which judicial decisions may be based. See Axel Johnson, Inc. v. Arthur Anderson & Co., 6 F.3d 78, 81 (2d Cir. 1993). As stated by the court in Benjamin:

> The termination provision requires the federal courts to determine whether or not there has been a violation of a federal right. And, unlike the Klein statute, the termination provision does not prevent courts from exercising jurisdiction over those cases that involve violations of such federal rights . . . . [I]t alters no pre-existing judgments. It only ensures that federal claims under those judgments are heard in federal court and state claims are heard in state court. The provision . . . should be read as doing no more than changing the remedial jurisdiction of the federal courts, and not as a means to the improper end of vacating Consent Decrees. In so

> doing, it merely makes "changes in law, not findings or results under old law." Robertson v. Seattle Audubon Society, 503 U.S. 429, 438 (1992).

Benjamin, 124 F.3d at 174. This Court reasons in Plyler:

> The Inmates fail to understand that the applicable law is not the Eighth Amendment, but rather is the authority of the district court to award relief greater than that required by federal law. The consent decree approved by the district court indisputably provides for prospective relief greater than that required by the Eighth Amendment. (Citation omitted). That being the case, it is the authority of the district court to approve relief greater than that required by the Eighth Amendment, not the Eighth Amendment itself, that is at stake. In enacting the PLRA, Congress has deprived district courts of this authority, and in so doing has unquestionably amended the law applicable to this case.
>
> Moreover, even if § 3626(b)(2) did not amend the applicable law, the Inmates would be unable to persuade us that it mandates a rule of decision. While § 3626(b)(2) requires a district court to terminate prospective relief that was approved in the absence of a finding that the relief is no greater than necessary to correct the violation of a federal right, it does not purport to state how much relief is more than necessary. In short, § 3626(b)(2) provides only the standard to which district courts must adhere, not the result they must reach. Accordingly, because § 3626(b)(2) amends the applicable law and does not dictate a rule of decision, we conclude that it is not unconstitutional under Klein.

Plyler, 100 F.3d at 372.

II. THE PLRA DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

Once again, the Inmates take issue with the clear ruling of this Court in Plyler. While the State agrees that the right of access to the courts is fundamental, we disagree with the Inmates' assertion that their right to pursue their legal claims has been severely infringed.

As was true with the plaintiffs in Plyler, it is true with the plaintiffs here. "[T]he Inmates have confused the right of access to the courts with the scope of the available substantive relief.

Under the PLRA, the Inmates remain free to bring civil rights actions challenging the constitutionality of [prison conditions] and are entitled to enforce judgments rendered on those claims. The limitation imposed by § 3626(b)(2) on the relief available in such suits does nothing to burden this right." Plyler, 100 F.3d at 373.

This Court having determined that § 3626(b)(2) passes the rational basis test in its stated purpose of "preserving state sovereignty by protecting states from overzealous supervision by the federal courts in the area of prison conditions litigation," Plyler, 100 F.3d at 374, the Inmates challenge on Equal Protection grounds must fail.

III. THE PLRA DOES NOT VIOLATE THE DUE PROCESS CLAUSE.

Like the plaintiffs in Plyler, the Inmates here do not specify whether the process due is substantive or procedural. But also like Plyler, it makes no difference because the Inmates have no property interest in the rights conferred by the Consent Decree.

"[J]ust as a judgment approving prospective relief is not a final judgment for purposes of the separation of powers analysis, neither is it a final judgment for purposes of the vested rights doctrine." Plyler, 100 F.3d at 374.

IV. THE RECORD IN THIS CASE SUPPORTS THE FINDINGS REQUIRED BY THE PLRA.

Section 3626(b)(2) clearly entitles the State to termination of any decree for 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."

The Inmates argue that the record is clear that "prospective relief was necessary to correct unconstitutional conditions." The nature of the "record" alluded to by the Inmates was discussed in

the Statement of Facts above and repetition here is unnecessary. Suffice it to say that the testimony forming this "record" is solely from a hearing on a Motion for a Preliminary Injunction and the "findings" of Judge Warriner must be read in that context. Even then, those "findings" were only preliminary concerns and the Judge acknowledged that they could be changed after a full hearing on the merits. See Joint App. at 230-242.

To state that the record in this case implicitly meets the PLRA's three part test is simply without basis. The Consent Decree speaks for itself:

> The parties agree that this Decree is desirable for compromising the dispute between them. This Decree is not to be construed to establish or change the standard of culpability for civil or criminal liability of any official, employee, agent or representative of the State of Virginia other than for the sole and limited purpose of enforcement of this Decree. This Decree was voluntarily and mutually agreed upon by the Defendants and Plaintiffs as a compromise settlement of the disputes between the parties, and it does not constitute an admission that any previous or existing condition, policy, procedure or act or omission of the Department of Corrections and the Powhatan Correctional Center or any state official, employee or agent was, or is, in any way improper, negligent, unconstitutional, or in violation of any right of the Plaintiff class. Nothing in this Decree constitutes findings of fact or conclusions of law with respect to the claims of defenses of the parties in this action.

Joint App. at 250.

Nothing could be clearer. There are explicitly no findings of fact or conclusions of law, no acknowledgment that any condition violated the Constitution or any federal right, no statement that the relief is narrowly drawn, and no agreement that the Consent Decree is the least intrusive means to remedy alleged violations. There is no need to remand this case for further review to consider this clear, definite and unambiguous statement agreed upon by the parties and approved by Judge Warriner.

V. THE STATE'S "WAIVER" OF FINDINGS DOES NOT PRECLUDE TERMINATION UNDER THE PLRA.

The Inmates argue that by agreeing to the consent decree, the State waived specific findings of fact and conclusions of law and cannot now assert that the decree is "invalid" for failure to make such findings. In so arguing, the Inmates entirely misconstrue the State's Motion to Terminate. The State at no time has taken the position that the Consent Decree is "invalid," only that the PLRA renders its prospective relief procedurally unenforceable.

The PLRA applies to this case and withdraws jurisdiction from the District Court to enforce the Consent Decree. In considering statutes which confer or withdraw jurisdiction, the Supreme Court has consistently held that when jurisdiction is withdrawn, all existing cases must fall unless Congress expressly reserves jurisdiction over them. Bruner v. United States, 343 U.S. 112, 116-117 (1952).

While the PLRA is not unique in withdrawing jurisdiction to pending cases, it does provide certain procedures for preserving jurisdiction over some existing orders. Section 3626(b)(3) allows existing consent decrees to be continued if the court has made the requisite findings with regard to the necessity of prospective relief to correct ongoing violations of federal rights and that the decree extends no further than necessary to correct the violations. However, because no such findings are present in this Consent Decree in order to bring it within the exception, the State is absolutely entitled to termination pursuant to § 3626(b)(2).

The Inmates rely on Gates v. Gomez, No. 9-87-1536 (E.D. Cal., July 22, 1996), arguing that in waiving their rights to "findings of fact and conclusions of law" the State cannot now rely on the absence of those findings to terminate the consent decree. This argument is analogous to the position taken by the plaintiffs in Plyler, also based on Gates, that the consent decree created "Federal rights" that should remain enforceable.

In Plyler, this Court specifically rejected the Gates analysis, stating:

> The inmates would have us construe the term "Federal Right" to include prospective relief contained in a consent decree.
>
> Under the inmates' proposed interpretation of the term "Federal right," § 3626(b)(2) would provide that the district court is required to terminate prospective relief if it was approved in the absence of a finding "that the relief is narrowly drawn, extends no further than necessary to correct the violation of the [prospective relief], and is the least intrusive means necessary to correct the violation of the [prospective relief]." Obviously, such a reading renders the provision nonsensical because under it, the district court would never be able to terminate a consent decree. Consequently, the inmates' proposed reading of the statute is at odds with Congress' purpose in enacting the PLRA, namely to relieve states of the onerous burden of complying with consent decrees that often reach far beyond the dictates of federal law. See H.R. Rep. No. 21, at 8-9.
>
> Our duty to construe statutes so as to avoid constitutional problems does not require us to adopt a construction that renders the statute meaningless or nonsensical, see Plaut v. Spendthrift Farm, Inc., 115 S.Ct. 1447, 1452 (1995), nor does it require us to interpret a statute in a manner clearly contrary to congressional intent, see Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988).

Plyler, 100 F.3d at 370.

Likewise, if the State's "waiver" of findings would now preclude it from seeking termination under the PLRA, the clear intent of § 3626(b)(2) to terminate all consent decrees which were approved without findings of fact would be frustrated to the point of rendering the statutory language meaningless.

VI. THE PLRA DOES NOT AUTHORIZE AN EVIDENTIARY HEARING TO CONSIDER WHETHER RELIEF REMAINS NECESSARY TO CORRECT A CONSTITUTIONAL OR STATUTORY VIOLATION.

A. Plyler does not provide any inference that an evidentiary hearing is proper.

While it is true that Plyler did not directly decide the question of whether the District Court

should hold an evidentiary hearing, in light of the finding that the consent decree in that case created no "Federal right," that issue would never have arisen. Certainly, Plyler provides no inference that an evidentiary hearing is appropriate, and the State submits that the holding in Plyler necessarily precludes one.

As was true in Plyler, the District Court here made no finding that there was any violation of a federal right. Further, Plyler makes it clear that federal rights are not construed to include prospective relief contained in a consent decree. There being no finding by the District Court of violations of federal rights, and there being none created by the Consent Decree, there is nothing upon which to base any evidentiary hearing.

Section 3626(b)(3) clearly states that the State is entitled to immediate termination of the prospective relief set forth in the Consent Decree unless that "prospective relief remains necessary to correct a current or ongoing violation of the Federal right." (Emphasis supplied). It is significant to note that the words "current or ongoing" modify the phrase "violation of the Federal right." There having never been a finding of a violation of a federal right, and there being no federal rights created by the District Court's approval of the Consent Decree, there is nothing for the District Court to consider in an evidentiary hearing.

B. The language of the statute does not support the need for an evidentiary hearing.

The Inmates again miss the point when they argue that "because the statute prohibits the termination of relief that is necessary to correct current or ongoing violations, the district court necessarily has the authority to examine current conditions." See Appellant's Brief at 26. As stated above, the "current or ongoing violations" mentioned in § 3626(b)(3) are "of the Federal right." There were no findings in the record of any violations of federal rights. Moreover, the Consent

Decree neither recognizes any of its provisions as federal rights nor does the approval of the Consent Decree by the Court make them such. There being no federal rights at issue, the State submits that there is nothing to investigate.

A fair reading of the Consent Decree shows that most, if not all, of its provisions are unrelated to clear federal rights. While the action may have been instituted on Eighth Amendment allegations, there has neither been a determination that there were Eight Amendment violations nor has there been any admission of such violations by the State. The Consent Decree merely sets forth a number of representations on behalf of the Department of Corrections that sufficiently satisfied the Inmates that their living conditions would be more to their liking. Certainly, there is no constitutional right to such things as foot lockers, toilet shields, electric fans, industrial clothes dryers, pay raises to officers, and the like. Further, while the classification process set forth in the Consent Decree eliminated the prospect of violence in the dormitories, even that step in no way acknowledged that a federal right had been violated.

The clear intent of the PLRA is to eliminate the burdens on government and the courts imposed by open-ended, and often outdated, consent decrees which contain no findings of any necessity to protect against violations of federal rights. Where findings have been made that the injunctive relief fashioned in a consent decree is for the purpose of curing a violation of a federal right, certainly the courts may consider whether there are "current and ongoing violations" which warrant a continuation of that relief. Short of that, however, the PLRA does not sanction a fishing expedition to see if there are previously undiscovered federal rights violations.

The State submits that the last thing Congress intended was to reopen the record to explore whether any constitutional violations at Powhatan exist. Even if such violations do exist, the statute contemplates that three elements must be satisfied before retaining the prospective relief in

question, i.e. the relief must be necessary, narrowly construed, and the least intrusive means to remedy the actual violation. Clearly, the "prospective relief" as contemplated by Congress in the PLRA is the existing relief contained in the Consent Decree, not new relief. The limitation provision was designed to address those cases where orders, including consent decrees, were entered based on actual findings of constitutional violations. There is no intent in the PLRA to create a new record and to litigate that which was not done in the past.

This position is even more practical in light of the automatic stay which issues thirty (30) days after the filing of the motion to terminate. Congress was well aware of the time limits imposed by the Federal Rules of Civil Procedure and the prospect of some courts spending significant time and effort to monitor consent decrees. Congress deemed it necessary to evaluate existing jurisdictional relief in a swift and practical manner.

Powhatan prisoners are not deprived of their ability to acquire jurisdictional relief for violations of their constitutional rights. They may still pursue their claims, as they often do, through actions pursuant to 42 U.S.C. § 1983.

Moreover, there is no indication in the existing record of problems with compliance with the Consent Decree. As the District Court said in its Memorandum Opinion:

> During the seventeen years the Powhatan Consent Decree has been in effect, there have been no complaints alleging violations of a federal right which warranted any action from this Court. The existing record documents no unresolved problems with compliance with the Consent Decree. Finally, during the pendency of this motion, Plaintiffs have not brought to the attention of this Court any present violations of federal rights. Under these circumstances, an evidentiary hearing would be inefficient.

Joint App. at 283.

In sum, a new evidentiary process flies in the face of Congressional intent in enacting the PLRA to promptly rule on motions for immediate termination of consent decrees.

C. Preclusion of an evidentiary hearing does not render the statute unconstitutional.

Inmates argue that interpreting the statute to preclude an evidentiary hearing violates procedural and substantive Due Process as well as Article III principles. These arguments too must fail as they were conclusively decided in Plyler.

With regard to Due Process, Judge Wilkins writes in Plyler:

> Due process includes both procedural and substantive components. [Citation omitted]. . . . The Inmates have not troubled themselves to specify whether their due process claim is procedural or substantive in nature, but in the end it makes no difference because both tests require a showing that the Inmates cannot make — that they have a property interest in the rights conferred by the consent decree.
>
> The Inmates' assertion of a property right in the consent decree rests on the vested-rights doctrine, which provides that "[i]t 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 (1898). The vested-rights doctrine is analogous to the separation-of-powers rule that Congress may not mandate the reopening of final judgments; importantly, both rules apply only when a final judgment has been rendered. See Axel Johnson, Inc. v. Arthur Anderson & Co., 6 F.3d 78, 83-84 (2d Cir. 1993). And, just as a judgment approving prospective relief is not a final judgment for purposes of the separation-of-powers analysis, neither is it a final judgment for purposes of the vested-rights doctrine. [Citations omitted].
>
> Accordingly, we conclude that the Inmates had no property right in the continued enforcement of a decree granting prospective relief.

Plyler, 100 F.3d at 374-375.

As in Plyler, the Inmates' Due Process argument fails here as there is no property interest to be protected, and, therefore, the "process" suggested (i.e. the taking of further evidence) is not required.

With regard to their Article III concerns, those too are settled in this Circuit by Plyler. The Court of Appeals specifically rejected the Klein analysis espoused by Plaintiffs. Judge Wilkins writes:

> While the Court has never determined the precise scope of Klein, at the very least it is clear that Congress does not mandate a rule of decision when it amends the law underlying a pending case. [Citations omitted]. The Inmates maintain that this principle does not save the PLRA because § 3626(b)(2) does not change the applicable law, namely the Eighth Amendment. Since Congress lacks power to change the Eighth Amendment, or in any event has not done so here, the Inmates argue § 3626(b)(2) is unconstitutional under Klein.
>
> The Inmates fail to understand that the applicable law is not the Eighth Amendment, but rather is the authority of the district court to award relief greater than that required by federal law. The consent decree approved by the district court indisputably provides for prospective relief greater than that required by the Eighth Amendment. [Citation omitted.] That being the case, it is the authority of the district court to approve relief greater than that required by the Eighth Amendment, not the Eighth Amendment itself, that is at stake. In enacting the PLRA, Congress has deprived district courts of this authority, and in so doing has unquestionably amended the law applicable to this case.
>
> Moreover, even if § 3626(b)(2) did not amend the applicable law, the Inmates would be unable to persuade us that it mandates a rule of decision. While § 3626(b)(2) requires a district court to terminate prospective relief that was approved in the absence of a finding that the relief is no greater than necessary to correct the violation of a federal right, it does not purport to state how much relief is more than necessary. In short, § 3626(b)(2) provides only the standard to which district courts must adhere, not the result they must reach. Accordingly, because § 3626(b)(2) amends the applicable law and does not dictate a rule of decision, we conclude that it is not unconstitutional under Klein.

Plyler, 100 F.3d at 372.

The PLRA's preclusion of the taking of further evidence offends neither constitutional Due Process nor Article III principles.

CONCLUSION

For the reasons stated, the State respectfully requests this Court to affirm the decision of the District Court in terminating the Consent Decree.

ORAL ARGUMENT UNNECESSARY

The State believes that the dispositive issues in this case were recently authoritatively decided by this Court in Plyler v. Nelson, 100 F.3d 365 (1996). Further, the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. Therefore, pursuant to Local Rules 34 and 34(a), and in the interest of docket control and judicial economy, the State submits that oral argument is unnecessary.

Respectfully submitted,

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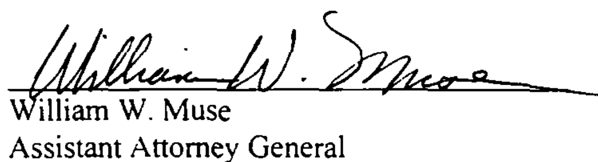
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 1998, two true copies of the foregoing Brief of Appellees was mailed, postage prepaid, to Counsel for the Appellants, Thomas M. Wolf, Esquire, and Karen L. Starke, Esquire, Mezzullo & McCandlish, 1111 East Main Street, Suite 1500, Richmond, Virginia 23218.



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