

IS CONGRESS HANDCUFFING OUR COURTS?

INTRODUCTION

In 1996, Congress enacted the Prison Litigation Reform Act (PLRA or the Act),¹ responding to public outrage over what is perceived as a barrage of frivolous lawsuits filed by prisoners.² The purpose of the Act is to curtail frivolous prison litigation by placing stringent procedural steps on prisoners³ who attempt to file civil actions⁴ with respect to conditions of confinement. Specifically, the Act deters prisoner litigation by (1) requiring that prisoners first exhaust all administrative remedies;⁵ (2) barring a prisoner from filing further claims after three previously filed claims are dismissed as frivolous, malicious, or failing to state a cause of action;⁶ (3) revoking a prisoner's earned release credit for filing

¹ Pub. L. No. 104-134, § 801, 110 STAT. 1321 (1996) (amending scattered sections of 18 U.S.C., 28 U.S.C., and 42 U.S.C.).

² See 141 CONG. REC. S14626 (daily ed. Sept. 29, 1995) (statement of Sen. Dole). Senator Dole stated that the amendment would put an end to "inmate litigation fun-and-games." *Id.*; Spencer Abraham, *Tough on Crime? Not the Clinton Justice Department*, WALL ST. J., Sept. 25, 1996, at A23 (noting that suits brought by prisoners in federal courts are "often ludicrous" and come at a high cost to taxpayers).

In 1992, 26,824 prisoners' rights cases were filed under 42 U.S.C. § 1983. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CHALLENGING THE CONDITIONS OF PRISONS AND JAILS: A Report on Section 1983 Litigation 2 (1994). Of these suits, however, only 19% were dismissed as frivolous. See *id.* at 20. The most frequent reason for dismissal of the suits was the failure of the defendant to comply with court orders. See *id.* Such failures included indigent prisoners' failure to pay filing fees or to respond to court orders within the required time period. See *id.*

³ See 42 U.S.C.A. § 1997e(h) (West Supp. 1997). The Act defines a "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." *Id.*

⁴ Several United States courts of appeals have held that the term "civil action" in the Act does not refer to habeas corpus petitions. See *Santana v. United States*, 98 F.3d 752, 753 (3d Cir. 1996); see also *Madden v. Myers*, 102 F.3d 74, 76-78 (3d Cir. 1996) (noting that civil action under the Act also does not apply to writs of mandamus). But see *Green v. Nottingham*, 90 F.3d 415, 417-18 (10th Cir. 1996) (holding that the PLRA does apply to writs of mandamus).

⁵ See 42 U.S.C.A. § 1997e(a).

⁶ See 28 U.S.C.A. § 1915(g) (West Supp. 1997). The provision, however, does allow an exception in cases where the prisoner can prove he is in immediate threat of danger. See *id.*

a frivolous claim;⁷ and (4) allowing a court to dismiss sua sponte any claim that fails to state a cause of action upon which relief may be granted.⁸ Many of these provisions represent a dramatic departure from established Supreme Court precedence.⁹

One of the central pieces of the legislation, however, does not deal with the filing of frivolous suits, but rather restricts the ability of federal courts to grant relief in prison litigation cases. The Act creates limitations on the power of a federal court to grant prospective relief¹⁰ or approve such relief.¹¹ The limitations are intended to eliminate judicial intervention in the correctional setting; as such, they are applied retroactively to existing court orders.¹²

The PLRA was enacted primarily in response to state officials' frustration with the federal courts controlling the management of the prison system.¹³ Since the Supreme Court first established that the judiciary has the power to hear the merits of a prisoner's claim and grant relief as needed,¹⁴ federal courts have been responsible for ordering major

⁷ See *id.* § 1932.

⁸ See *id.* § 1915A(b).

⁹ Compare *Bounds v. Smith*, 430 U.S. 817, 821 (1977) (recognizing "that prisoners have a constitutional right of access" to courts), and *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971) (declaring that inmates "are not held to any stricter standard of exhaustion [of remedies]" than other civil rights litigants), with 28 U.S.C.A. § 1915(g) (barring a prisoner from filing a claim once three previously filed claims are dismissed as frivolous), and 42 U.S.C.A. § 1997e(a) (requiring that prisoners exhaust all administrative remedies).

¹⁰ See 18 U.S.C.A. § 3626(a)(1)(A) (West Supp. 1997).

¹¹ See *id.* § 3626(c)(1) (applying the provisions to consent decrees).

¹² See *id.* § 3626(b)(1)-(3).

¹³ See 142 CONG. REC. S3703 (daily ed. Apr. 19, 1996) (statement of Sen. Abraham) (stating that prisoner lawsuits have resulted in "turning over the running of our [state's] prisons to the [federal] courts"); 141 CONG. REG. S14626 (daily ed. Sept. 29, 1995) (statement of Sen. Dole) (detailing how the guidelines set by the PLRA will "restrain liberal Federal judges who see violations of constitutional rights in every prisoner complaint . . . [and use them] to micromanage State and local prison systems."); *id.* at S14628 (statement of Sen. Kyl) (noting that the PLRA will assure that the states "regain control of the Federal court system, and we do not just allow the Federal judges to dictate to the States how their prison systems will be run"); see also Joseph Wharton, *Courts Now Out of Job as Jailers*, A.B.A. J., Aug. 1996, at 40 (quoting South Carolina Attorney General Charlie Condon who characterizes original court orders as giving "federal courts 'the power to micromanage our prisons'").

¹⁴ See *Cooper v. Pate*, 378 U.S. 546, 546 (1964) (per curiam). The Court recognized for the first time that a prisoner can assert a challenge to a state officer's conduct under 42 U.S.C. § 1983. See *id.* Although the decision does not discuss the issue at length, in allowing the claim to proceed, the Court effectively signaled to lower courts that the "hands-off" doctrine was no longer available. See Dorothy Schrader, *Prisoner Civil Rights Litigation and the 1996 Reform Act*, CONGRESSIONAL RESEARCH REPORT, No. 96-468A, CRS-5 (1996) [hereinafter CONGRESSIONAL REPORT I]; see also 1 RIGHTS OF PRISONERS 9 (Michael B. Mushlin ed., 2d ed. 1993) (indicating that the Supreme Court

changes in the administration of correctional institutions.¹⁵ The ordered changes have mandated specific prison reform measures¹⁶ and in some cases even required the release of inmates due to overcrowding.¹⁷ Negotiated consent decrees¹⁸ between individual states and their prisoners have implemented many of these changes.¹⁹ Yet even consent decrees, which are viewed as less costly and more expeditious than litigation, require a multitude of court orders to implement and enforce their terms.²⁰

explicitly "sounded the death knell to the hands-off doctrine" in the early 1970s). Previously, under the "hands-off" doctrine, courts declined to reach the merits of a prisoner's claim. See Comment, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506, 506 (1963). Rather, the court would refuse jurisdiction over any prisoner's claim that addressed the conditions of confinement. See *id.*

¹⁵ See Malcolm M. Feeley & Roger A. Hanson, *The Impact of Judicial Intervention on Prisons and Jails: A Framework for Analysis and a Review of the Literature*, in COURTS, CORRECTIONS, AND THE CONSTITUTION 12, 13-17 (John J. DiIulio, Jr. ed. 1990) (discussing court orders and the extent to which they have resulted in a restructuring of institutional life).

¹⁶ See *Campbell v. McGruder*, 416 F. Supp. 100, 105-06 (D.D.C. 1975). The district court ordered that inmates be given at least an hour of outdoor recreational time; that clean clothing, bed linen, and towels be provided at least once a week; and that a classification system be established to differentiate between high security-risk and low security-risk inmates. See *id.* at 105; see also *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 373 (1992) (ordering that the state "expend the funds reasonably necessary to renovate another existing facility as a substitute detention center.").

¹⁷ See *Finney v. Hutto*, 410 F. Supp. 251, 254 (E.D. Ark. 1976). The court in *Finney* found that the women's reformatory was unconstitutionally overcrowded; thus the court ordered the closing of the institution and either the transfer or the release of all the inmates. See *id.*

¹⁸ See BLACK'S LAW DICTIONARY 410-11 (6th ed. 1990). A consent decree is defined as "[a] judgment entered by consent of the parties whereby the defendant agrees to stop alleged illegal activity without admitting guilt or wrongdoing." *Id.*

¹⁹ See THE NATIONAL PRISON PROJECT, STATUS REPORT: STATE PRISONS AND THE COURTS 1-15 (Jan. 1, 1993) [hereinafter PRISON PROJECT] (detailing the various states that have prisons operating under consent decrees and the changes those decrees have imposed); see also Gregory C. Keating, Note, *Settling Through Consent Decree in Prison Reform Litigation: Exploring the Effects of Rufo v. Inmates of Suffolk County Jail*, 34 B.C. L. REV. 163, 196 (1992) (noting that "inmates nationwide have utilized consent decrees . . . to realize improvement of confinement conditions."). Judges favor settlement by consent decrees in prisoners' rights cases, in large part, because they eliminate the tedious process associated with formulating an order and ensuring that it is implemented and enforced. See BRADLEY STEWART CHILTON, PRISONS UNDER THE GAVEL 44 (1991). Currently, prisons in at least 30 states are operating under consent decrees. See Keating, *supra*, at 164.

²⁰ See *Komyatti v. Bayh*, 96 F.3d 955, 957-58 (7th Cir. 1996) (noting that although consent decrees were adopted in 1992, the parties were still pressing contempt motions in 1996); *Harris v. City of Philadelphia*, 47 F.3d 1311, 1315 (3d Cir. 1995) (observing that litigation surrounding the consent decrees has been ongoing since 1986); *Benjamin v. Jacobson*, 935 F. Supp. 332, 337 (S.D.N.Y. 1996) (explaining that litigation lasted from preliminary negotiations in 1978 to a decision entered in 1996), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997).

Although court orders and consent decrees may be credited with assisting the overall improvement in the conditions of state prisons,²¹ both have been met with general frustration and criticism. Opponents regard court orders as "unnecessary judicial intervention and micromanagement of [the] prison system."²² Consent decrees are viewed with equal hostility because prison officials are often unable to comply with their terms,²³ and the decrees are seen as unwanted restraints left by previous prison administrations.²⁴

This Note will focus on the provisions of the Prison Litigation Reform Act that limit the relief federal courts may grant in prison litigation cases. Part I provides an overview of these provisions. Part II explores the effects the provisions may have on prison litigation and reform, and Part III addresses the constitutional concerns presented by the new restrictions. Part IV concludes that the limitations on a federal court will not only adversely affect prison reform, but will also threaten the independence and strength of the federal judiciary.

I. THE PRISON LITIGATION REFORM ACT

Federal legislators and state officials have viewed the extent of judicial intervention in prison litigation cases²⁵ as an abuse of judicial

²¹ See Susan P. Sturm, *The Legacy and Future of Corrections Litigation*, 142 U. PA. L. REV. 639, 670-72 (1993) (discussing the changes wrought by judicial intervention in prison management, including increased standard of living, improved quality of medical care, and decrease in prison violence). But see Feeley & Hanson, *supra* note 15, at 17-21 (discussing the views of critics who denounce judicial intervention for its role in undermining institutional authority and consequently contributing to a decline in prison institutions).

²² 142 CONG. REC. S3703, S3704 (daily ed. Apr. 19, 1996) (statement of Sen. Abraham); see also Benjamin, 935 F. Supp. at 340-42 (discussing the legislative history of the PLRA, particularly the vocal criticism of federal courts' intervention in state prison management).

²³ See Keating, *supra* note 19, at 164-65 (noting that increases in prison population often make it difficult for prison administrators to comply with consent decrees establishing population caps).

²⁴ See Clair A. Cripe, *Courts, Corrections, and the Constitution: A Practitioner's View*, in COURTS, CORRECTIONS, AND THE CONSTITUTION, *supra* note 15, at 268, 275. Consent decrees seldom contain provisions that provide for changing circumstances. See *id.* Prison administrators, therefore, often find themselves governed under decrees that were once thought advantageous but are now no longer necessary. See *id.*

This frustration is understandable given the fact that the succeeding state administration was probably not a party to the original consent decree. See *Implementation of Prisoners Rights Legislation, Before the Senate Judiciary Committee*, 104th Cong. (1996) available in 1996 WL 10831581 (statement of Gov. John Engler, Michigan) (testifying to the frustration of a subsequent administration that is bound to a decree the administration itself did not adopt).

²⁵ See CONGRESSIONAL REPORT I, *supra* note 14, at CRS-3. Prison litigation cases

power.²⁶ Both groups have criticized the federal judiciary for its excessive involvement in the management of prisons through court orders and consent decrees.²⁷ To curb this involvement, Congress limited the remedies a federal court may provide in a prison litigation case. In addition, to ensure that current judicial intervention ceases, Congress provided for termination of all prior relief granted that exceeds the newly enacted limitations.

A. Requirements for Relief

The PLRA places new restraints on federal court intervention²⁸ in prison administration.²⁹ Previously, when addressing the conditions or practices of a prison, federal courts, upon finding a violation of the Constitution or federal law, intervened using the judicial powers of equity.³⁰ Under the guise of equity, broad remedial decrees were issued to restructure the correctional facilities and eliminate any wrongdoing.³¹

primarily involve prisoners who file civil rights actions under 42 U.S.C. § 1983 alleging unconstitutional conditions existing at the inmates' penal institutions. *See id.*

²⁶ *See Implementation of Prisoners Rights Legislation, Before the Senate Judiciary Committee*, 104th Cong. (1996) available in 1996 WL 10831580 (statement of Sen. Orrin Hatch, Utah) (declaring that "it had become clear that federal courts had gone too far in exercising their equitable remedial powers to micromanage our nation's prisons"); *id.* (statement of Gov. John Engler, Michigan) (accusing the federal courts of exceeding the constitutional authority of the judiciary "[u]nder the guise of enforcing consent decrees entered without any finding of unconstitutional conditions").

²⁷ *See id.*

²⁸ *But see* 18 U.S.C.A. § 3626(d) (West Supp. 1997) (not limiting the extent of relief state courts may provide under state law claims).

²⁹ *See id.* § 3626(g)(5). The PLRA defines prison as "any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law." *Id.*

³⁰ *See* U.S. CONST. art. III, § 2, cl. 1. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority" *Id.* The Framers intended this provision of Article III to vest federal courts with the power to adjudicate cases where the particular facts "would render the matter an object of equitable rather than legal jurisdiction, as the distinction is known and established in several of the States." THE FEDERALIST No. 80, at 480 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

In *Swann v. Charlotte-Mecklenburg Board of Education*, the United States Supreme Court declared that "[o]nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." 402 U.S. 1, 15 (1971). Federal district courts subsequently applied the holding in *Swann* when fashioning prison reform remedies. *See* CHILTON, *supra* note 19, at 43.

³¹ *See* *Campbell v. McGruder*, 416 F. Supp. 100, 105-06 (D.D.C. 1975). Upon finding that the quality of life at the correctional facility violated the Eighth Amendment's prohibition against cruel and unusual punishment, the district court ordered that the offending conditions be remedied. *See id.* at 105. To ensure compliance, the court also ordered periodic prison inspections by various government agencies. *See id.* The court

The resulting decrees were usually complex, containing detailed instructions on prison management,³² necessary implementation schemes,³³ and enforcement mechanisms.³⁴

The PLRA narrows the previously available remedies that were utilized to correct unlawful prison conditions. Under the provisions of the Act, a federal court cannot enter or approve proscriptive relief³⁵ to correct the violation of a federal right unless the relief is (1) narrowly drawn,³⁶ (2) reaches no further than needed to correct the infringement,³⁷ and (3) provides the least intrusive means to correct the violation.³⁸ In addition, when fashioning the appropriate remedy, a court must "give substantial weight to any adverse impact [the relief might have] on public safety or the operation of [the] criminal justice system."³⁹

The PLRA revokes the power of federal district courts to relieve unconstitutional prison overcrowding.⁴⁰ Previously, when prison overcrowding rose to a level constituting cruel and unusual punishment,⁴¹ federal courts remedied the situation by ordering the institution to transfer or release prisoners.⁴² Under the PLRA, however, such an order may only be entered by a three-judge panel.⁴³ The Act further requires that a three-judge panel find by clear and convincing evidence that (1) crowding is the principal cause of the infringement of the federal right⁴⁴

then listed specific directives to be implemented in order to maintain constitutionally-adequate conditions. *See id.* at 105-06.

³² *See id.* at 106 (detailing the procedures to be followed whenever an inmate is restrained).

³³ *See* CHILTON, *supra* note 19, at 53 (noting that it is common practice for district courts to appoint assistants or Special Masters pursuant to Federal Rule of Civil Procedure 53 to oversee the implementation of court orders).

³⁴ *See id.* at 55. Courts are empowered to enforce an order either through the use of contempt citations or by the retention of jurisdiction in the matter. *See id.*

³⁵ *See* 18 U.S.C.A. § 3626(g)(7) (West Supp. 1997) (defining prospective relief as "all relief other than compensatory damages").

³⁶ *See id.* § 3626(a)(1)(A).

³⁷ *See id.*

³⁸ *See id.*

³⁹ *See id.*

⁴⁰ *See id.* § 3626(a)(3).

⁴¹ U.S. CONST. amend. VIII. The Eight Amendment states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *Id.*

⁴² *See* Finney v. Hutto, 410 F. Supp. 251, 254 (E.D. Ark. 1976) (ordering a correctional institution closed and its inmates transferred or released).

⁴³ *See* 18 U.S.C.A. § 3626(a)(3)(B) (West Supp. 1997). The new provision requires that the three-judge panel be appointed in accordance with 28 U.S.C. § 2284. *See id.* Section 2284 provides that "the judge to whom the request is presented shall . . . notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge," to sit on the panel. *See* 28 U.S.C. § 2284(b) (1982).

⁴⁴ *See* 18 U.S.C.A. § 3626(a)(3)(E)(i).

and (2) no other relief will alleviate the violation.⁴⁵ Upon such a finding, a prisoner release order may nonetheless be granted only if a prior, less intrusive order, which allowed the defendant sufficient time to comply,⁴⁶ failed to remedy the violation.⁴⁷

In addition to narrowing the ability of a federal court to enter orders in prison litigation cases, Congress sought to further restrain judicial intervention by restricting the power of a court to enforce consent decrees.⁴⁸ Oftentimes, as an alternative to litigation, parties to a prisoner suit settle by negotiating a consent decree.⁴⁹ Generally, such a decree imposes obligations on prison administrators that are similar to those prescribed under court order⁵⁰ and are equally enforceable.⁵¹ A consent decree, however, may provide greater relief for prisoners while imposing stricter obligations on prison administrators than those otherwise permitted under court order.⁵² Although a consent decree may initially avoid judicial involvement, court intervention may ultimately be necessary in order to enforce the terms of the decree.⁵³

The PLRA restricts judicial enforcement of a consent decree by mandating compliance with the same limits imposed on a court when entering an order.⁵⁴ Thus, if the parties negotiate a settlement and wish the

⁴⁵ See *id.* § 3626(a)(3)(E)(ii).

⁴⁶ See *id.* § 3626(a)(3)(A)(ii).

⁴⁷ See *id.* § 3626(a)(3)(A)(i).

⁴⁸ See *infra* notes 54-56 and accompanying text.

⁴⁹ See Keating, *supra* note 19, at 163-64 (pointing out that in recent years, parties in disputes against public institutions, specifically in the area of prison reform litigation, have utilized consent decrees in order to resolve disputes).

⁵⁰ Compare Benjamin v. Jacobson, 935 F. Supp. 332, 342-43 (S.D.N.Y. 1996) (discussing the terms of the consent decree negotiated by the parties), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997) with Campbell v. McGruder, 416 F. Supp. 100, 105-06 (D.D.C. 1975) (discussing the provisions of the court order entered by the judge).

⁵¹ See Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 378 (1992) (recognizing that although a consent decree is contractual in nature, it is reflected in, and enforceable as "a judicial decree that is subject to the rules generally applicable to other judgments and decrees"); see also Lloyd C. Anderson, *Implementation of Consent Decrees in Structural Reform Litigation*, 1986 U. ILL. L. REV. 725, 725-26 (discussing generally the contours of a consent decree).

⁵² See Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501, 525 (1986). The Court declared that, although a consent decree "must further the objectives of the law upon which the complaint is based," its legal force is animated by the parties' consent. *Id.* Therefore, the Court concluded that "a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial." *Id.*

⁵³ See, e.g., United States v. Swift & Co., 286 U.S. 106, 114 (1932) (using the powers of equity to modify an existing order to address changing conditions).

⁵⁴ See 18 U.S.C.A. § 3626(c)(1) (West Supp. 1997). The PLRA defines a consent decree as "any relief entered by the court that is based in whole or in part upon the con-

agreement to be subject to court enforcement,⁵⁵ the settlement must be narrowly drawn⁵⁶ and necessary to correct a federal right.⁵⁷

B. Termination of Relief

In addition to curtailing the ability of federal courts to intervene in prison administration through the use of court orders and consent decrees, the PLRA also provides for the termination of current judicial involvement. To this end, the PLRA creates a series of termination provisions that defendants in prison litigation cases may utilize to invalidate court orders or consent decrees.⁵⁸ Prior to the enactment of the PLRA, termination or modification of a court order or consent decree required prison administrators to file a motion under Federal Rule of Civil Procedure 60(b), which allowed a reopening of that prior judgment only in very limited circumstances.⁵⁹ Conversely, the PLRA allows considerably broader standards to be utilized when ruling on a motion to terminate.⁶⁰

The termination provisions of the PLRA provide for the automatic termination of any court order or consent decree two years after entry of

sent or acquiescence of the parties but does not include private settlements." *Id.* § 3626(g)(1).

⁵⁵ *See id.* § 3626(c)(2)(A). The PLRA does not preclude parties from entering into a private settlement agreement as long as the terms of the agreement are not subject to court enforcement. *See id.* An exception is made, however, for terms that allow for the reinstatement of the civil proceeding. *See id.* Furthermore, the Act does not preclude a party from filing a state law claim in state court for the breach of a private settlement agreement. *See id.* § 3626(c)(2)(B).

⁵⁶ *See id.* § 3626(a)(1)(A).

⁵⁷ *See id.*

⁵⁸ *See infra* notes 61-64 and accompanying text.

⁵⁹ *See* FED. R. CIV. P. 60(b). Rule 60(b) allows a court to reopen a judgment in very limited circumstances. *See id.* The rule states:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) 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; or (6) any other reason justifying relief from the operation of the judgment.

Id.; *see also* *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992) (holding that a consent decree is a court judgment subject to the provisions of Rule 60(b)).

⁶⁰ *See* 18 U.S.C.A. § 3626(b) (West Supp. 1997). The PLRA does not, however, prevent a party from seeking termination or modification of a court order or consent decree under Rule 60(b). *See id.* § 3626(b)(4).

such relief.⁶¹ Termination may be denied only where a court makes written findings that the granted relief remains applicable and is no broader than necessary to remedy the violation.⁶² If such a finding is made, and the motion for termination is denied, the motion can be renewed one year after the date of denial.⁶³ Further, states presently operating prisons under court orders or consent decrees may petition for termination of those orders unless the record contains findings that satisfy the Act's requirements.⁶⁴

II. EFFECTS ON PRISON LITIGATION AND REFORM

The intended effect of the PLRA is to minimize federal judicial intervention in states' prison administration.⁶⁵ Opponents fear, however, that the Act will not simply minimize judicial intervention but will end the role litigation plays in ensuring that adequate conditions are maintained in correctional facilities.⁶⁶ There is further concern that the termination provisions of the Act will result in the demise of prison reform already achieved through use of the courts.⁶⁷

Judicial intervention, as a result of litigation, provides oversight for an institution that is, for the most part, without independent monitoring.⁶⁸

⁶¹ See *id.* § 3626(b)(1)(A)(i).

⁶² See *id.* § 3626(b)(3).

⁶³ See *id.* § 3626(b)(1)(A)(ii).

⁶⁴ See *id.* § 3626(b)(2).

⁶⁵ See *supra* note 13 and accompanying text.

⁶⁶ See *Implementation of Prisoners Rights Legislation, Before the Senate Judiciary Committee*, 104th Cong. (1996) available in 1996 WL 13104194 (statement of Mark Soler, President of the Youth Law Center) (discussing the adverse effects of the PLRA on the conditions of juvenile correctional institutions); Tom Terrizzi, *Should Prison Consent Decrees Be Vacated? No*, N.Y.L.J., Aug. 22, 1996, at 38 (criticizing the PLRA as "regressive legislation which slams the door to the federal court, making it difficult to address the violation of basic constitutional rights"). See generally Greg Moran, *Cruel and Unusual, Where Does Punishment End and Cruelty Begin?*, SAN DIEGO UNION-TRIB., Aug. 9, 1996, at A1 (discussing the new Act in light of constitutional standards against cruel and unusual punishment).

⁶⁷ See *Benjamin v. Jacobson*, 935 F. Supp. 332, 340 (S.D.N.Y. 1996) (warning about "what will happen to prisoners' rights and the conditions in our prisons as a consequence of [the PLRA]."). After examining the changes in conditions of United States prisons over the last 200 years, Judge Baer warned that the PLRA may hinder the progress achieved. See *id.* at 338-40.

⁶⁸ See Sturm, *supra* note 21, at 693. Currently, there is no professional organization in the corrections field that provides effective oversight of prisons. See *id.* While the American Correctional Association (ACA) has created standards for the administration of prisons and is in the process of auditing state and local prisons to assess compliance, the ACA's ability to pressure prisons to maintain adequate facilities is weakened by the Association's inability to sanction prisons for noncompliance. See *id.* at 694. The ACA is not as effective as the threat of litigation in compelling prison administrators to maintain adequate facilities. See *id.* In fact, prison administrators have reported seeking accredi-

The involvement of the courts has thus aided in improving prison conditions directly through the implementation of court orders.⁶⁹ Moreover, such involvement has played a major role in exposing correctional facilities to general public scrutiny,⁷⁰ which in turn has motivated meaningful prison reform.⁷¹ By concentrating on isolated incidents of unconstitutional conditions, the reform effort has also provided the impetus for general improvements in the management of prisons.⁷²

Yet, many of the more important institutional reforms have not resulted from court orders.⁷³ Instead, consent decrees have played the pivotal role in implementing improved standards.⁷⁴ Currently, no less than thirty states operate at least one state or local prison under a consent decree.⁷⁵

Prisoners often use the potential of state liability resulting from a lawsuit as leverage in persuading the state to adopt a consent decree.⁷⁶

tation from the ACA simply to avoid litigation. *See id.*

⁶⁹ *See id.* at 662 (discussing the profound impact of litigation on the organization and management of prisons). Case studies of correctional facilities have shown that litigation-driven court intervention has generally "improved the living conditions and practices in the facilities at issue." *Id.* at 670.

⁷⁰ *See id.* at 659-60 (discussing the manner in which prisons, prior to judicial intervention, operated as closed communities where living conditions remained hidden from the public).

⁷¹ *See* M. KAY HARRIS & DUDLEY P. SPILLER, JR., *AFTER DECISION: IMPLEMENTATION OF JUDICIAL DECREES IN CORRECTIONAL SETTINGS* 28 (1976) (noting that as a result of public awareness of prison conditions, the legislature faced less resistance when addressing institutional problems and making necessary improvements).

⁷² *See* Sturm, *supra* note 21, at 663, 665 (discussing the role litigation has played in fostering the internalization of professional norms by numerous state correctional institutions). Further, greater public scrutiny resulting from litigation has advanced better training and management skills for those in control of a prison's administration. *See id.*

⁷³ *See, e.g.,* Benjamin v. Jacobson, 935 F. Supp. 332, 337 (S.D.N.Y. 1996), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997). In *Benjamin*, the consent decrees contained detailed provisions addressing various subjects including building maintenance, garbage removal, pest control, and sanitation. *See id.*

⁷⁴ *See* Keating, *supra* note 19, at 196 (discussing the success of utilizing consent decrees in prison litigation cases); Note, *The Modification of Consent Decrees in Institutional Reform Litigation*, 99 HARV. L. REV. 1020, 1020-21 (1986) (noting the prevalence of consent decrees in areas concerning prison conditions, school desegregation, toxic waste litigation, and the decentralization of public mental health institutions). *See generally* John Barlow Weiner, *Institutional Reform Consent Decrees as Conservers of Social Progress*, 27 COLUM. HUM. RTS. L. REV. 355, 369 (1996) (discussing the benefits of using consent decrees in advancing institutional reform).

⁷⁵ *See* Keating, *supra* note 19, at 164.

⁷⁶ *See* Anderson, *supra* note 51, at 726-27. In addition to avoiding time and expense, defendants in a prisoner suit may be "more likely to comply with a [consent] decree" than an order imposed by the court because the agreement will embody terms the state assisted in formulating. *See id.* at 727. Furthermore, because a consent decree will embody the negotiated terms of the parties, defendants can ensure that the decree will not

The negotiated settlement is advantageous to prisoners as the decree allows the inmates to obtain immediate, detailed relief governing the conditions of confinement.⁷⁷ Furthermore, through negotiations, prison administrators and inmates are able to ensure that specific problems are addressed, problems that might otherwise be overlooked by a federal judge.⁷⁸ The particularized expertise of the parties thus allows for the drafting of an effective consent decree.⁷⁹

Consent decrees are inherently more flexible than court orders, and as such, they may provide broader relief than a federal judge could bestow on a prevailing litigant.⁸⁰ In some cases, however, prisoners must file contempt motions to enforce the terms of their initial consent decrees.⁸¹ For example, in response to the contempt motions in *Rufu v. Inmates of Suffolk County Jail*,⁸² the parties negotiated another consent decree that established the Office of Compliance Consultants (OCC).⁸³ The OCC functioned as an independent monitoring unit that made occasional visits to the facilities at Rikers Island to insure that the provisions of the decree were upheld.⁸⁴

contain an admission of unconstitutional conditions, and thus, may avoid potential liability. See Harvey Berkman, *Prisoners' Rights Lawyers Plan Attack on New Law*, NAT'L L.J., May 20, 1996, at A14.

⁷⁷ See Ted S. Storey, *When Intervention Works: Judge Morris E. Lasker and New York City Jails*, in *COURTS, CORRECTIONS, AND THE CONSTITUTION*, *supra* note 15, at 138, 154-55 (discussing the consent decree that resulted from negotiations between prison administrators and inmates at the House of Detention for Men on Rikers Island). The consent decrees that arose out of the Rikers Island negotiations were fifty-page documents containing over 30 provisions concerning the following areas: "laundry facilities, possession and receipt of publications, procedures for cell searches, attorney visits, inmate council participation, due process and programs for detainees in high security categories, environmental health, law library, and lock-in/lock-out time." *Id.*

⁷⁸ Cf. Keating, *supra* note 19, at 164 (commenting that one benefit of consent decrees is that "parties with expert knowledge in the area can tailor terms to their satisfaction in a way that a comparatively inexperienced court could not.").

⁷⁹ See Anderson, *supra* note 51, at 726 (noting that the intimate knowledge of the situation allows the parties to utilize "their own creative efforts [to formulate] a more feasible and finely-tuned decree than can a judge.").

⁸⁰ See *Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 525 (1986) (holding that a court may approve a consent decree even though the relief contained in the decree is broader than what a court could have granted).

⁸¹ See Storey, *supra* note 77, at 158.

⁸² 502 U.S. 367 (1992).

⁸³ See Storey, *supra* note 77, at 159 (noting that the "OCC is not a creature of the court," but rather a result of compromise between the parties).

⁸⁴ See *id.* at 159-60. Utilizing the new PLRA termination procedures, New York City filed a motion to terminate the Rikers Island decrees responsible for the creation of the OCC. See *Benjamin v. Jacobson*, 935 F. Supp. 332, 343 (S.D.N.Y. 1996), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997). The termination motion was granted, thereby eliminating the OCC. See *id.* at 358.

Consent decrees are considered an attractive alternative in prison litigation primarily for two reasons. First, as discussed above, the flexibility of the remedies available allows for the concerns of the parties to be addressed adequately.⁸⁵ Second, the ability of the judiciary to enforce the decrees ensures that the stated remedies will be implemented.⁸⁶ In cases where the rights of prisoners are memorialized in a consent decree but later violated, inmates may file a contempt motion to seek enforcement of the consent decree's terms.⁸⁷ Alternatively, certain consent decrees may provide prisoners further relief such as access to a grievance committee.⁸⁸ Regardless of whether a prisoner files a contempt motion or has access to a grievance committee, the prisoner is assured that the consent decree is enforceable to the same extent as a court order.⁸⁹

The termination provisions of the PLRA are expected to dramatically affect prisoners' rights under consent decrees by allowing states to abandon their obligations set forth in those decrees.⁹⁰ Indeed, termination of a court order or consent decree under the PLRA will not ensure that the alleged wrongs have been fully redressed.⁹¹ Prior to the Act, a court, when entering an order, was not required to make a specific determination that the proposed remedy was the least intrusive method to correct the violation.⁹² Similarly, no such findings by a court were re-

⁸⁵ See *supra* note 77 and accompanying text.

⁸⁶ See Anderson, *supra* note 51, at 736 (noting that courts typically retain jurisdiction over cases settled by consent decrees); see *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 574 (1984) (involving consent decrees that addressed equal employment practices and contained a provision permitting the district court "to enter any later orders that 'may be necessary or appropriate to effectuate the purposes of this decree'"). Even in the absence of such a provision, a federal court would retain jurisdiction over the matter under the inherent powers of the court. See CHILTON, *supra* note 19, at 55; see *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992) (emphasizing that a consent decree is "enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.").

⁸⁷ See, e.g., *Carty v. Farrelly*, 957 F. Supp. 727, 733 (D.V.I. 1997) (addressing the prisoner's motion to show cause why the defendants should not be held in contempt of the settlement agreement between the parties concerning prison conditions).

⁸⁸ See, e.g., *Benjamin*, 935 F. Supp. at 342-43.

⁸⁹ See *supra* notes 76-80 and accompanying text (discussing the benefits of consent decrees in prison litigation).

⁹⁰ Cf. Berkman, *supra* note 76, at A14 (expressing concern that the Act "makes it easier for prisons to terminate court orders and consent decrees").

⁹¹ See Terrizzi, *supra* note 66, at 2 (denouncing the provisions of the PLRA that will let "defendants off the hook, regardless of whether the unconstitutional conditions exist").

⁹² See Berkman, *supra* note 76, at A14. Berkman recognizes that prison litigation decrees, like most consent decrees, fail to contain specific findings of violations because the settlement affords the plaintiffs relief while protecting prison officials from "potential liability in damages suits from prisoners." *Id.*

quired when approving a consent decree.⁹³ In addition, the approval of such a decree was not conditioned upon a finding of a constitutional violation.⁹⁴ In fact, prison administrators usually premised their participation in a consent decree on the stipulation that no state official would admit liability.⁹⁵

Under the new provisions of the Act, a court must grant a termination motion unless specific findings in the record indicate that the relief is necessary and narrowly drawn.⁹⁶ Furthermore, in connection with a consent decree, a finding of a violation of a federal right is required.⁹⁷ Thus, states will be permitted to forego further compliance with court orders or consent decrees without the burden of establishing that termination is warranted under Federal Rule of Civil Procedure 60(b).⁹⁸

Evidence of this problem is already exhibited in cases where states have filed motions to terminate.⁹⁹ For example, in *Benjamin v. Jacobson*,¹⁰⁰ the court granted a motion for termination of consent decrees under the PLRA on the narrow grounds that no findings of constitutional violations were made on the record.¹⁰¹ The court did so while overlooking the plaintiff's contention that noncompliance continued to exist in the areas of fire safety, maintenance, and sanitation.¹⁰² Clearly, as exemplified in *Benjamin*, the adverse effects of the PLRA's termination provisions will dramatically increase as more states file motions to nullify

⁹³ See *id.*; see also Wharton, *supra* note 13, at 40 (noting that "such findings are rarely made because prison officials fear that admitting wrongdoing will subject them to liability for other claims.").

⁹⁴ See Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501, 525 (1986) (declaring that "the parties' consent animates the legal force of a consent decree," and hence, the decree can provide relief broader "than the court could have [otherwise] awarded.").

⁹⁵ See Berkman, *supra* note 76, at A14 (noting that in order to avoid potential liability in prisoner suits, defendants will not admit to the existence of unconstitutional conditions).

⁹⁶ See 18 U.S.C.A. § 3626(b)(2), (c)(1) (West Supp. 1997).

⁹⁷ See *id.* § 3626(a), (c)(1). Section 3626(c) dictates that a consent decree cannot be approved unless it satisfies the requirements for relief detailed in subsection (a). See *id.*

⁹⁸ See Terrizzi, *supra* note 66, at 2 (criticizing the Act for allowing defendants to escape liability while unconstitutional conditions persist).

⁹⁹ See *Plyler v. Moore*, 100 F.3d 365, 369 (4th Cir. 1996), *cert. denied*, 117 S. Ct. 2460 (1997); *Jensen v. County of Lake*, 958 F. Supp. 397, 399 (N.D. Ind. 1997); *Benjamin v. Jacobson*, 935 F. Supp. 332, 343 (S.D.N.Y. 1996), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997).

¹⁰⁰ 935 F. Supp. 332 (S.D.N.Y. 1996), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997).

¹⁰¹ See *id.* at 357.

¹⁰² See *id.* at 342. Despite concerns over the anticipated effects of the PLRA on prison conditions, Judge Baer felt constrained to uphold the constitutionality of the Act. See *id.* at 337, 340.

court orders and consent decrees.¹⁰³ Prisoner-rights advocates have attempted to prevent the enforcement of the PLRA through numerous legal challenges, including arguments of constitutional dimension.¹⁰⁴

III. CONSTITUTIONAL CONCERNS

In an attempt to prevent the termination of court orders and consent decrees under the PLRA, prisoners have posed several constitutional arguments to challenge the validity of the Act.¹⁰⁵ The prisoners have relied on the Fifth Amendment's¹⁰⁶ Equal Protection and Due Process Clauses to challenge the validity of the PLRA termination provisions.¹⁰⁷ The primary argument utilized by PLRA challengers, however, contends that the termination provisions violate the Separation of Powers Doctrine.¹⁰⁸

¹⁰³ See Wharton, *supra* note 13, at 40 (stating that at least 10 states and the District of Columbia had already filed motions to terminate).

¹⁰⁴ See Berkman, *supra* note 76, at A14 (contending that "[e]verything from the drafting to the constitutionality of the Act will be challenged").

¹⁰⁵ See Plyler v. Moore, 100 F.3d 365, 368 (4th Cir. 1996) (challenging 18 U.S.C.A. § 3626(b)(2) as a violation of the Separation of Powers Doctrine, denial of equal protection of the laws, and deprivation of property without due process of law), *cert. denied*, 117 S. Ct. 2460 (1997); *Inmates of Suffolk County Jail v. Sheriff of Suffolk County*, 952 F. Supp. 869, 875 (D. Mass. 1997) (challenging the termination provisions as a violation of the Separation of Powers Doctrine, a denial of due process of law, and an infringement of the right to contract); *Hadix v. Johnson*, 947 F. Supp. 1100, 1102 (E.D. Mich. 1996) (asserting the same challenges); *Benjamin v. Jacobson*, 935 F. Supp. 332, 343 (S.D.N.Y. 1996) (arguing the same constitutional deficiencies), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997); *Hadix v. Johnson*, 933 F. Supp. 1360, 1365, 1369 (E.D. Mich. 1996) (challenging automatic stay provisions as a violation of the Separation of Powers Doctrine and due process of law).

Several plaintiffs in the above cases have also defended the court orders or consent decrees on non-constitutional grounds. See, e.g., *Benjamin*, 935 F. Supp. at 343 (challenging the new procedures for termination as a violation of the Rules Enabling Act, 28 U.S.C. § 2072(a) (1982)).

¹⁰⁶ U.S. CONST. amend. V. The Due Process Clause declares that no person shall "be deprived of life, liberty, or property, without due process of law." *Id.*

¹⁰⁷ See *Benjamin*, 935 F. Supp. at 356 (challenging the PLRA as a violation of the "vested rights" doctrine). The Supreme Court has declared 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 PLRA has also been challenged as impairing the freedom to contract. See *Benjamin*, 935 F. Supp. at 356; see also *National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry.*, 470 U.S. 451, 472 (1985) (recognizing that federal legislation that arbitrarily and irrationally interferes with a private contractual relationship violates due process under the Fifth Amendment).

¹⁰⁸ See U.S. CONST. art. III, § 1. The Constitution establishes that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." *Id.* The Supreme Court has interpreted Article III as reflecting the "intention of the Constitution that each of the great co-ordinate departments of the government—the Legislative, the Executive, and the Judicial—shall be, in its sphere, independent of the others." *United States v.*

In cases where prisoners have raised these constitutional challenges, courts have differed on the constitutionality of the PLRA termination provisions.¹⁰⁹

In addressing the equal protection challenge, courts have concluded that the termination and relief provisions are not unconstitutional.¹¹⁰ Prisoner-rights advocates disagree, arguing that inmates' fundamental rights of access to the courts are hindered by the additional burdens imposed by the Act.¹¹¹ In response to these arguments, however, courts have refused to acknowledge the merits of prisoners' challenges.¹¹²

Instead, courts have applied rational basis analysis and upheld the termination provisions of the Act. For example, in *Plyler v. Moore*,¹¹³ the United States Court of Appeals for the Fourth Circuit declined to apply a strict scrutiny analysis because the prisoners were not members of a suspect class¹¹⁴ and no fundamental rights were implicated.¹¹⁵ Utilizing a rational basis analysis, the *Plyler* court was satisfied that Congress had a legitimate interest in "preserving state sovereignty by protecting states from overzealous supervision" by federal courts in prisoners' rights

Klein, 80 U.S. 128, 147 (1871).

¹⁰⁹ See *Plyler*, 100 F.3d at 375 (holding that 18 U.S.C.A. § 3626(b)(2), as amended by the PLRA, does not violate separation of powers, equal protection, or due process principles); *Jensen v. County of Lake*, 958 F. Supp. 397, 404-05 (N.D. Ind. 1997) (holding same); *Benjamin*, 935 F. Supp. at 358 (holding same), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997) (affirming the constitutionality of the PLRA but only if interpreted to constrict the federal court's jurisdiction and not as annulling the decrees). But see *Hadix*, 947 F. Supp. at 1109 (holding that the termination provisions of the PLRA violate the Separation of Powers Doctrine by instructing federal courts to reopen final judgments); *Hadix*, 933 F. Supp. at 1369 (holding that the PLRA provision that allows for immediate termination of a prior court order or consent decree while the court considers whether the relief was properly granted encroaches upon the powers of the judiciary and denies prisoners the right to due process of law); *Gavin v. Ray*, No. 4-78-CV-70062, 1996 WL 622556, at *4 (S.D. Iowa Sept. 18, 1996) (holding that "the termination provisions of the PLRA violate the separation of powers principles inherent in the Constitution"), *rev'd sub nom. Gavin v. Branstad*, Nos. 96-3746, 96-3748, 1997 WL 434633, at *1 (8th Cir. Aug. 5, 1997).

¹¹⁰ See *Plyler*, 100 F.3d at 374 (holding that the Act satisfies rational basis analysis); *Benjamin*, 935 F. Supp. at 354-55 (same).

¹¹¹ See *Benjamin*, 935 F. Supp. at 352 (articulating that the Supreme Court has recognized that a prisoner has "a right to bring to court a grievance that the inmate wished to present.") (quoting *Lewis v. Casey*, 116 S. Ct. 2174, 2181 (1996)).

¹¹² See *Plyler*, 100 F.3d at 373; *Benjamin*, 935 F. Supp. at 352.

¹¹³ 100 F.3d 365, 373 (4th Cir. 1996), *cert. denied*, 117 S. Ct. 2460 (1997).

¹¹⁴ See *id.*

¹¹⁵ See *id.* While recognizing that the right to access is a fundamental one, the court disagreed with the plaintiffs' contention that the PLRA burdens that right. See *id.* Rather, the court viewed the Act as affecting only the scope of the relief available, but not the right to file an action. See *id.*

cases.¹¹⁶ As such, the court concluded that the Act did not violate the prisoners' equal protection rights.¹¹⁷

Similarly, courts have dismissed the due process challenges brought by prisoners under the Fifth Amendment.¹¹⁸ Prisoners have been unable to persuade courts that the termination provisions of the PLRA violate the "vested rights" doctrine,¹¹⁹ impair the right to contract,¹²⁰ or constitute retroactive legislation that is arbitrary and irrational.¹²¹

Under the "vested rights" doctrine, courts have upheld the PLRA by concluding that a consent decree is not a final judgment, and therefore, any rights thereunder are not "vested."¹²² Thus, when a court terminates a consent decree pursuant to the PLRA, there is no due process violation under the Fifth Amendment.¹²³ In response to the challenge that the PLRA impairs contract rights under a consent decree, one court upheld the Act by finding a rational basis for the impairment of the contract.¹²⁴ Lastly, in addressing the argument that the PLRA operates ret-

¹¹⁶ *Id.* at 374.

¹¹⁷ *See id.* (recognizing that under rational basis scrutiny the government need only establish "that there exists a plausible reason for the congressional action"); *Benjamin*, 935 F. Supp. at 352-55 (addressing the same challenge and agreeing with the *Phyler* court's analysis).

¹¹⁸ *See Phyler*, 100 F.3d at 374 (dismissing the due process challenges of the inmates that the Act violated the "vested rights" doctrine and operated retroactively); *Benjamin*, 935 F. Supp. at 355-57 (dismissing a due process challenge to the PLRA under the "vested rights" doctrine and the freedom to contract).

¹¹⁹ *See Phyler*, 100 F.3d at 374; *Benjamin*, 935 F. Supp. at 356. The "vested rights" doctrine holds that when an action has "passed into [judicial] judgment the power of the legislature to disturb the rights created thereby ceases." *McCullough v. Virginia*, 172 U.S. 102, 124 (1898). The doctrine is grounded in the Fifth Amendment Due Process Clause because the rights created by a judgment constitute a property interest. *See Benjamin*, 935 F. Supp. at 356.

¹²⁰ *See Benjamin*, 935 F. Supp. at 356-57. The Supreme Court held that the Due Process Clause prohibits Congress from enacting federal legislation that arbitrarily and irrationally impairs private contractual obligations. *See National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry.*, 470 U.S. 451, 472 (1985).

¹²¹ *See Phyler*, 100 F.3d at 375. Pursuant to the Due Process Clause of the Fifth Amendment, legislation that operates retroactively must have a rational legislative purpose. *See Pension Benefits Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984).

¹²² *See Phyler*, 100 F.3d at 374. Whether a right is vested depends on whether the judgment conferring the right is final. *See id.* The determination of whether a judgment is final for due process purposes mirrors the analysis utilized under the Separation of Powers Doctrine. *See id.*

¹²³ *See id.*; *see also Fleming v. Rhodes*, 331 U.S. 100, 107 (1947) (holding that "regulation of future action based upon rights previously acquired . . . is not prohibited by the Constitution.").

¹²⁴ *See Benjamin*, 935 F. Supp. at 357 (recognizing that such a challenge to the PLRA must "overcome a presumption of constitutionality" by establishing that the legislation is arbitrary and irrational).

roactively, another court found that the Act affects only prospective relief and is therefore constitutional.¹²⁵

The challenge brought under the Separation of Powers Doctrine has proven the most successful in invalidating the termination provisions of the PLRA.¹²⁶ Accordingly, this argument presents the most serious challenge to the validity of the Act.¹²⁷ The termination provisions present a separation of powers concern because they allow a state to obviate a finally adjudicated court order or consent decree.¹²⁸

The separation of powers challenge relies on three arguments. First, the termination provisions are a legislative act that requires the reopening of final judgments.¹²⁹ Second, Congress exercised judicial power by creating a rule of decision for the federal courts.¹³⁰ Third, the new limitations on a court's power to grant relief unduly restrict the remedial jurisdiction of the federal courts.¹³¹

A. Reopening Final Judgments

Under the Separation of Powers Doctrine, Congress may enact legislation with retroactive application, but Congress may not mandate that a court apply such legislation in a finally adjudicated case.¹³² This prohi-

¹²⁵ See *Plyler*, 100 F.3d at 375 (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273 (1994)). In *Landgraf*, the Court held that "[w]hen the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive." 511 U.S. at 273.

¹²⁶ See *Hadix v. Johnson*, 933 F. Supp. 1360, 1369 (E.D. Mich. 1996) (holding that the termination provisions of the PLRA violate the separation of powers principles inherent in the Constitution); *Gavin v. Ray*, No. 4-78-CV-70062, 1996 WL 622556, at *4 (S.D. Iowa Sept. 18, 1996) (same), *rev'd sub nom. Gavin v. Branstad*, Nos. 96-3746, 96-3748, 1997 WL 434633, at *1 (8th Cir. Aug. 5, 1997).

¹²⁷ See *Berkman*, *supra* note 76, at A14.

¹²⁸ See 18 U.S.C.A. § 3626(b) (West Supp. 1997).

¹²⁹ See, e.g., *Benjamin*, 935 F. Supp. at 344; *Hadix*, 933 F. Supp. at 1367; see also *Chicago & S. Airlines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 113 (1948) (holding that "[j]udgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned, or refused faith and credit by another Department of Government."). If, however, consent decrees are not viewed as final judgments for separation of powers analysis, then the "reopening" provision of the PLRA would not be unconstitutional. See *Plyler*, 100 F.3d at 371 (acknowledging that "[a] judgment providing for injunctive relief . . . remains subject to subsequent changes in the law," and analogizing a consent decree to such a judgment) (citing *System Fed'n No. 91 v. Wright*, 364 U.S. 642, 651-52 (1961)).

¹³⁰ See *Hadix*, 933 F. Supp. at 1366.

¹³¹ See *Benjamin*, 935 F. Supp. at 350.

¹³² See *Hayburn's Case*, 2 U.S. (1 Dall.) 409, 411-12, n.† (1792) (holding that revision and control of judicial judgments by the legislature or executive departments is "radically inconsistent with the independence of that judicial power which is ve[s]ted in the courts; and, consequently, with that important principle [of separation of powers] which is [s]o [s]trictly observed by the Con[s]titution of the United States."); *Plaut v.*

bition, however, presumes that the judgment entered by a court is, in fact, conclusive as to the rights of the interested parties.¹³³ As such, whether the application of the termination provisions to consent decrees violates the Separation of Powers Doctrine depends upon whether a consent decree constitutes a final judgment.¹³⁴

In confronting this issue, it is essential that a court address *Plaut v. Spendthrift Farm, Inc.*,¹³⁵ wherein the Supreme Court explained the "reopening judgments" principle of the Separation of Powers Doctrine.¹³⁶ In *Plaut*, the Court determined whether § 27A(b) of the Securities and Exchange Act of 1934 (1934 Act)¹³⁷ was unconstitutional because the section required a federal court to reopen a final judgment.¹³⁸

Congress enacted § 27A(b) in response to the decision in *Lampf v. Gilbertson*.¹³⁹ In *Lampf*, the Court declared that any § 10(b) suit must be brought within one year after discovery of a violation or within three years after the initial violation.¹⁴⁰ Section 27A(b) sought to overrule *Lampf* by establishing a new statute of limitations period.¹⁴¹ The new law applied the statutory term of each jurisdiction to § 10(b) claims filed there rather than the time period established in *Lampf*.¹⁴² In addition, the statute provided for reinstatement of any § 10(b) action that was commenced on or before June 19, 1991, and was dismissed as untimely under *Lampf*.¹⁴³

Spendthrift Farm, Inc., 115 S. Ct. 1447, 1456 (1995) (recognizing that the "decisions stemming from *Hayburn's Case* . . . have uniformly provided fair warning that [reopening of final judgments] exceeds the powers of Congress.").

¹³³ See *Gordon v. United States*, 117 U.S. 697, 702 (1864) (holding that federal court judgments are "final and conclusive upon the rights of the parties"); see also *Plaut*, 115 S. Ct. at 1457 (declaring that once a judgment has "achieved finality . . . [it] becomes the last word of the judicial department with regard to a particular case or controversy").

¹³⁴ See *Benjamin*, 935 F. Supp. at 345. The court applied a two-part jurisdictional test to determine whether consent decrees are "final" for purposes of separation of powers analysis. See *id.* The first part of the analysis determines whether the court has "jurisdiction over the merits of the complaint." *Id.* The second part evaluates whether the court has "jurisdiction over the remedial orders entered in the case." *Id.*

¹³⁵ 115 S. Ct. 1447 (1995).

¹³⁶ See *id.* at 1453.

¹³⁷ 15 U.S.C. § 78j(b) (1988), 15 U.S.C. § 78aa-1(b) (Supp. V. 1994).

¹³⁸ See *Plaut*, 115 S. Ct. at 1450 (addressing whether the plaintiff's complaint that had previously been dismissed under the rule announced in *Lampf* could constitutionally be reinstated under § 27A(b)).

¹³⁹ 501 U.S. 350 (1991).

¹⁴⁰ See *id.* at 364.

¹⁴¹ See 15 U.S.C. § 78j(b).

¹⁴² See *id.*

¹⁴³ See *id.*

The petitioner in *Plaut* commenced suit in 1987 as a result of events that occurred in 1983 and 1984.¹⁴⁴ The suit stalled in pretrial proceedings until June 20, 1991, when the district court, pursuant to the ruling in *Lampf*, determined that the action was untimely filed, and dismissed it with prejudice.¹⁴⁵ The petitioner failed to file a notice of appeal within the required period and the judgment became final.¹⁴⁶

Subsequently, because of the enactment of § 27A(b), the petitioner sought reinstatement of his previously dismissed suit.¹⁴⁷ The district court denied the motion for reinstatement on the grounds that § 27A(b) was unconstitutional.¹⁴⁸ The United States Court of Appeals for the Sixth Circuit affirmed the ruling of the district court.¹⁴⁹ The Supreme Court granted certiorari to determine whether § 27A(b) violated the Separation of Powers Doctrine.¹⁵⁰

The petitioner argued that § 27A(b) was constitutional because the section did not require the reopening of a final judgment, and thus did

¹⁴⁴ See *Plaut*, 115 S. Ct. at 1450.

¹⁴⁵ See *id.* The district court's decision to apply the *Lampf* holding to the pending suit was based on the holding of a Supreme Court case decided on the same day as *Lampf*. See *id.* (citing *James B. Bean Distilling Co. v. Georgia*, 501 U.S. 529, 544 (1991)). The Court in *James B. Bean* declared that a new rule of law must be applied to the parties in the case that announces the rule, as well as to any cases pending on direct review. See *James B. Bean*, 501 U.S. at 544.

¹⁴⁶ See *Plaut*, 115 S. Ct. at 1451 (citing 28 U.S.C. § 2107 (1988)); *Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987) (articulating the standard for determining the finality of a criminal judgment). Section 2107 precludes an appeal from "any judgment, order or decree in an action, suit or proceeding of a civil nature . . . unless notice of appeal is filed, within 30 days after entry of such judgment, order or decree." 28 U.S.C. § 2107 (1988). Additionally, the *Griffith* Court, in discussing the finality of a criminal judgment, held that a judgment is final once all appeals are exhausted and either certiorari is denied or the time for filing for certiorari has lapsed. See *Griffith*, 479 U.S. at 321 n.6.

¹⁴⁷ See *Plaut*, 115 S. Ct. at 1451.

¹⁴⁸ See *Plaut v. Spendthrift Farm, Inc.*, No. 87-438 (E.D. Ky. Apr. 13, 1992).

¹⁴⁹ See *Plaut v. Spendthrift Farm, Inc.*, 1 F.3d 1487 (6th Cir. 1993).

¹⁵⁰ See *Plaut v. Spendthrift Farm, Inc.*, 114 S. Ct. 2161 (1994). The Supreme Court had previously granted certiorari in another case to determine the constitutionality of § 27A(b) of the Securities and Exchange Act of 1934. See *Morgan Stanley & Co. v. Pacific Mut. Life Ins. Co.*, 114 S. Ct. 1827, 1827 (1994) (per curiam); see also 15 U.S.C. §§ 78j(b) (1988), 78aa-1(b) (Supp. V. 1994). In *Morgan Stanley*, an equally divided Court affirmed the holding of the United States Court of Appeals for the Fifth Circuit that § 27A(b) was constitutional. See *id.* Because the decision in *Morgan Stanley* lacked precedential value, however, the *Plaut* Court considered the issue anew. See *Plaut*, 115 S. Ct. at 1451 n.1.

The *Plaut* Court applied the rule set forth in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 73 n.8 (1977). See *Plaut*, 115 S. Ct. at 1451 n.1. In *Trans World Airlines*, the Court had reiterated the principle that a "[j]udgment entered by an equally divided Court is not 'entitled to precedential weight.'" *Trans World Airlines*, 432 U.S. at 73 n.8. (citation omitted).

not violate separation of powers principles.¹⁵¹ In this regard, the petitioner proffered that the reference in § 27A(b) to “the laws applicable in the jurisdiction . . . as such laws existed on June 19, 1991,” only pertained to the time period set forth in the *Lampf* decision.¹⁵² To bolster this argument, the petitioner highlighted the well-established policy that judicial construction of a statute determines the meaning of a statute both before and after the court has rendered a decision.¹⁵³ Although acknowledging the validity of the policy, the Court noted that fidelity to *Lampf* would render § 27A(b) “utterly without effect.”¹⁵⁴

In the alternative, the petitioner contended that § 27A(b) applied only to cases pending in federal court at the time of the statute’s enactment, and not to cases already adjudicated.¹⁵⁵ Reiterating that such an interpretation would render the statute purposeless, the Court pointed to the absurdity of reinstating pending suits.¹⁵⁶ The Court concluded that “no reasonable construction” of § 27A(b) mandated the reopening of suits already dismissed with prejudice under *Lampf*.¹⁵⁷

The *Plaut* Court next analyzed whether reopening a final judgment would violate the Separation of Powers Doctrine.¹⁵⁸ The Court articulated two types of legislative action that generally violate the doctrine.¹⁵⁹ The first involves statutes that “‘prescribe rules of decision to the Judicial Department of the government in cases pending before it.’”¹⁶⁰ Such

¹⁵¹ See *Plaut*, 115 S. Ct. at 1451.

¹⁵² See *id.*

¹⁵³ See *id.* The Court recognized the principle that the “‘judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.’” *Id.* (quoting *Rivers v. Roadway Express, Inc.*, 114 S. Ct. 1510, 1519 (1994)).

¹⁵⁴ See *id.* at 1452.

¹⁵⁵ See *id.*

¹⁵⁶ See *id.* The statute declares that “dismissed causes of action . . . shall be *reinstated* on motion by the plaintiff.” 15 U.S.C. § 78aa-1(b) (Supp. V. 1994) (emphasis added).

¹⁵⁷ See *Plaut*, 115 S. Ct. at 1452.

¹⁵⁸ See *id.* Respondents challenged the statute on the grounds that it offended both the Separation of Powers Doctrine and the Due Process Clause of the Fifth Amendment. See *id.* The Court explained that the due process argument, “if correct, might dictate a similar result in a challenge to state legislation under the Fourteenth Amendment.” *Id.* Thus, the Court decided to consider first the separation of powers challenge as that argument provided a narrower ground on which to decide the constitutionality of § 27A(b). See *id.*

¹⁵⁹ See *id.* at 1452.

¹⁶⁰ *Id.* at 1452 (quoting *United States v. Klein*, 80 U.S. (13 Wall.) 128, 146 (1871)); see also *United States v. Sioux Nation*, 448 U.S. 371, 392 (1980) (reaffirming that Congress oversteps its law-making authority when it grants a court jurisdiction, “while prescribing a rule for decision that [leaves] the court no adjudicatory function to perform.”) (citing *Klein*, 80 U.S. at 146).

statutes, the Court recounted, are not given effect.¹⁶¹ The Court did acknowledge, however, that Congress is permitted to amend the law applicable to a case on appeal.¹⁶² The second type of legislative action that offends separation of powers principles, the Court articulated, is that which vests the executive branch with appellate review of federal court decisions.¹⁶³

Recognizing that § 27A(b) does not fall within the purview of either of those legislative actions, the Court noted that the statute still offended the Separation of Powers Doctrine.¹⁶⁴ The Court commenced its discussion by observing that Article III confers upon the judiciary the power and the duty to declare what the law is "in particular cases and controversies."¹⁶⁵ The Court further noted that historical records indicate that the Framers of the Constitution intended for the decisions of the judiciary to be reviewed by superior courts *exclusively*.¹⁶⁶ The Court thus concluded that these two principles establish "that 'a judgment conclusively resolves the case' because 'a judicial Power' is one to render dispositive judgments."¹⁶⁷ The Court then declared that § 27A(b), by directing the reopening of final judgments, violated separation of powers principles.¹⁶⁸

In reaching this conclusion, the Court determined that the original dismissal of the petitioner's claim constituted a final judgment.¹⁶⁹ The Court stressed several factors that must be addressed when considering whether a judgment is final. First, the Court observed that the finality of a judgment by statute does not deprive it of constitutional significance for separation of powers analysis.¹⁷⁰ Second, the Court refuted the conten-

¹⁶¹ See *Plaut*, 115 S. Ct. at 1452.

¹⁶² See *id.* (citing *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 441 (1992)).

¹⁶³ See *id.* at 1453. (noting that Congress cannot vest the Executive Branch with the power to review Article III court decisions).

¹⁶⁴ See *id.*

¹⁶⁵ *Id.* (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

¹⁶⁶ See *id.* at 1453 (citing Frank H. Easterbrook, *Presidential Review*, 40 CASE W. RES. L. REV. 905, 926 (1990)).

¹⁶⁷ *Plaut*, 115 S. Ct. at 1453 (citing Easterbrook, *supra* note 166, at 926).

¹⁶⁸ See *id.*

¹⁶⁹ See *id.* at 1457.

¹⁷⁰ See *id.* The Court addressed petitioner's argument that § 27A(b) of the Securities and Exchange Act of 1934 does not affect the finality of judgments any more than the principle that a new law applies to cases pending on appeal. See *id.* Specifically, the petitioner attempted to show that the difference between a case pending on appeal and one finally adjudicated was merely statutory. See *id.* In this regard, the petitioner pointed to 28 U.S.C. § 2107(a) (1982), which provides a 30-day time limit to appeal a district court decision. See *id.* The Court disagreed by drawing an analogy between the finality of a judgment by statute and a benefit created by statute. See *id.* In neither instance, the Court noted, is the statutory nature constitutionally significant for purposes of separation of powers or due process analysis. See *id.*

tion that a statute is constitutional if it reopens final judgments for a class of cases rather than for an individual case.¹⁷¹ Third, the Court noted that the finality of a judgment is not affected because the judgment was the product of a judicially created legal rule rather than a rule created by statute.¹⁷²

The Court also addressed the petitioner's argument that § 27A(b) was analogous to Federal Rule of Civil Procedure 60(b) and, thus, did not violate the Separation of Powers Doctrine.¹⁷³ The Court distinguished Rule 60(b), noting that the rule did nothing more than confirm a court's "inherent and discretionary power . . . to set aside a judgment whose enforcement would work inequity."¹⁷⁴ As such, the Court decided that Rule 60(b), unlike § 27A(b), is not a legislative mandate to reopen final judgments.¹⁷⁵

In conclusion, the *Plaut* Court stressed that the finality of a judgment can only be determined by the law as it exists at the time the judgment is rendered.¹⁷⁶ The Court explained that if the law allows a judgment to be reopened for specific reasons, then such a limitation is part of the judgment, and "its finality is so conditioned."¹⁷⁷ The Court declared, however, that a law permitting a judgment to be reopened is unconstitutional if enacted subsequent to the rendering of that judgment.¹⁷⁸

The PLRA implicates separation of powers principles because, arguably, Congress infringed upon the independence of the judiciary by requiring a court to reopen a court order or consent decree.¹⁷⁹ When addressing this concern in connection with a consent decree, it is essential to understand the prior treatment of such decrees by the Supreme Court.

In *Rufo v. Inmates of Suffolk County Jail*,¹⁸⁰ the Supreme Court articulated the standard that governs a motion to modify a consent decree under Federal Rule of Civil Procedure 60(b).¹⁸¹ In *Rufo*, pretrial detain-

¹⁷¹ See *id.*

¹⁷² See *id.* at 1457.

¹⁷³ See *Plaut*, 115 S. Ct. at 1460; see also *supra* note 59 and accompanying text (discussing the provisions of Federal Rule of Civil Procedure 60(b)).

¹⁷⁴ See *Plaut*, 115 S. Ct. at 1460 (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944)).

¹⁷⁵ See *id.*

¹⁷⁶ See *id.*

¹⁷⁷ *Id.*

¹⁷⁸ See *id.* at 1460.

¹⁷⁹ See Wharton, *supra* note 13, at 40 (acknowledging that the PLRA "appears most vulnerable on the ground that it breaches the separation of powers doctrine" as articulated in *Plaut*).

¹⁸⁰ 502 U.S. 367 (1992), *vacating as moot* *Inmates of Suffolk County Jail v. Kearney*, No. 90-1441 (1st Cir. Sept. 20, 1990).

¹⁸¹ See *id.* at 372.

ees and county officials negotiated numerous consent decrees in response to a district court order enjoining the county from housing inmates at the jail in light of conditions "repugnant to the constitution."¹⁸² The provisions of the consent decrees included design plans for a new jail.¹⁸³ Subsequently, the consent decrees were modified by both parties in order to expand the occupancy of the new facility.¹⁸⁴

After initial construction began, a motion was filed by the county sheriff seeking to modify the decrees to permit the "double bunking" of detainees in response to both a change in the law¹⁸⁵ and an increase in the number of inmates.¹⁸⁶ The district court denied the motion, declaring that "[n]othing less than a clear showing of grievous wrong evoked by new and unforeseen conditions" justifies modifying a consent decree.¹⁸⁷

The United States Court of Appeals for the First Circuit affirmed the judgment,¹⁸⁸ and the Supreme Court granted certiorari.¹⁸⁹ The Court began its analysis by agreeing with the district court and noting that a consent decree is subject to the rules that generally apply to all judgments and decrees.¹⁹⁰ The Court, however, rejected the standard utilized by the district court to modify the consent decrees.¹⁹¹

¹⁸² See *id.* at 374.

¹⁸³ See *id.* at 375. The new jail was "to include a total of 309 '[s]ingle occupancy rooms' of 70 square feet . . . arranged in modular units that included a kitchenette and recreation area, inmate laundry room, education units, and indoor and outdoor exercise areas." *Id.*

¹⁸⁴ See *id.* at 376.

¹⁸⁵ See *id.* The sheriff argued that the Supreme Court's decision in *Bell v. Wolfish*, decided one week after the consent decrees were entered, provided a change in the law justifying modification. See *id.*; see also *Bell v. Wolfish*, 441 U.S. 520, 540-41 (1979).

¹⁸⁶ See *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 376 (1992). The sheriff contended that an increase in pre-trial detainee population provided a change in fact not previously anticipated. See *id.*; see also *Bell*, 441 U.S. at 540-41 (holding that "double-bunking" does not deprive pre-trial detainees of liberty without due process of law under the Fifth Amendment).

¹⁸⁷ See *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932) (plurality opinion). In enunciating the standard for modifying a consent decree and writing for a plurality of the Court, Justice Cardozo directed courts to inquire "whether the changes are so important that dangers, once substantial, have become attenuated to a shadow." *Id.* The Justice further explained that individuals seeking modification of a decree must show that they are suffering a hardship so extreme and unexpected that they can justifiably be labeled "victims of oppressions." *Id.*

¹⁸⁸ See *Inmates of Suffolk County Jail v. Kearney*, No. 90-1441 (1st Cir. Sept. 20, 1990).

¹⁸⁹ See *Rufo v. Inmates of Suffolk County Jail*, 498 U.S. 1081 (1991).

¹⁹⁰ See *Rufo*, 502 U.S. at 378. The Court acknowledged that although a consent decree "embodies an agreement of the parties and thus in some respects is contractual in nature," it is "reflected in, and . . . enforceable as, a judicial decree." *Id.*

¹⁹¹ See *id.* at 378-79. Defendant was seeking modification under either Federal Rule of Civil Procedure 60(b)(5) or 60(b)(6). See *id.* at 378. Rule 60(b)(5) states that a court

Justice White, writing for the majority, limited the stringent "grievous wrong" standard adopted by Justice Cardozo in *United States v. Swift & Co.*¹⁹² Specifically, Justice White distinguished consent decrees that involve "changing conduct or conditions and are thus provisional and tentative," from those that protect rights "fully accrued upon facts so nearly permanent as to be substantially impervious to change."¹⁹³

Recognizing that the consent decrees in *Swift* implicated protected rights of a more permanent nature, Justice White concluded that the "grievous wrong" standard could not apply to decrees that involved changing conduct or conditions.¹⁹⁴ Rather, the Justice reasoned that the burden of a party seeking modification of a consent decree requires only a showing of a significant change in the factual conditions of the decree or in the applicable law.¹⁹⁵

The *Rufo* Court clarified the standard a district court must apply when considering modification of a consent decree under Federal Rule of Civil Procedure 60(b). Such clarification by the Court, however, did not disturb the finality of a consent decree beyond the limitations imposed by Rule 60(b).¹⁹⁶ As the Court later declared in *Plaut*, Rule 60(b) does

may relieve a party from a final judgment when "it is no longer equitable that the judgment should have prospective application." FED. R. CIV. P. 60(b)(5). Alternatively, Rule 60(b)(6) allows a court to terminate a final judgment when there is "any other reason justifying relief from the operation of the judgment." FED. R. CIV. P. 60(b)(6).

¹⁹² See *Rufo*, 502 U.S. at 379; see also *supra* note 187 (discussing the *Swift* standard).

¹⁹³ *Rufo*, 502 U.S. at 379 (citation omitted). Justice White emphasized that the *Swift* standard "was not intended to take on a talismanic quality" and make consent decrees virtually impervious to modification. *Id.* at 380. The Justice noted that Supreme Court decisions since *Swift* have recognized the need for flexibility in administering consent decrees. See *id.*

¹⁹⁴ See *Rufo*, 502 U.S. at 380. Justice White explained that when dealing with consent decrees in prison reform litigation, the need for flexibility, coupled with a lenient standard for modification, is of heightened importance. See *id.* This moderate standard is required, the Justice opined, because an institutional consent decree often remains enforceable for a substantial length of time while the prison governed by the decree undergoes significant change. See *id.*

¹⁹⁵ See *id.* at 384. The Court held that once the moving party meets this burden, a court should consider whether the modification sought "is suitably tailored to the changed circumstances." *Id.* at 383. The Court listed several examples of situations where modification should be approved. See *id.* at 384-90. First, Justice White explained that modification may be warranted when changes in factual conditions have made compliance "substantially more onerous." *Id.* at 384. The Justice stated modification would "also [be] appropriate when a decree proves to be unworkable because of unforeseen obstacles." *Id.* (citations omitted). Justice White clarified this distinction by explaining that although the changed circumstances need not have been both "unforeseen and unforeseeable," the changes could not have been actually anticipated at the time the moving party entered into the decree. See *id.* at 385.

¹⁹⁶ See *id.* at 378-79. The Court explicitly held that a consent decree is "a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Id.* at 378. The Court noted that, like all other judgments, a consent decree is subject to the

nothing more than confirm a court's "own inherent and discretionary power"¹⁹⁷ and thus is not a legislative mandate.¹⁹⁸

The termination provisions of the PLRA, however, represent a dramatic departure from the standard articulated in *Rufo* under Rule 60(b).¹⁹⁹ While the finality of all consent decrees and court orders was always subject to the conditions of Rule 60(b),²⁰⁰ the PLRA significantly expands the ability of a party to seek termination or modification of a consent decree or court order.²⁰¹ Hence, under the Act, court orders and consent decrees are subject "to a reopening requirement which did not exist when the judgment was pronounced."²⁰² Moreover, while the finality of a judgment may be constitutionally subject to certain conditions,²⁰³ those conditions must exist at the time the judgment is entered and cannot be retroactively applied.²⁰⁴ Thus, the PLRA clearly conflicts with the principle expressed in *Plaut*.²⁰⁵

B. Rules of Decision

The principle that Congress may not proscribe a rule prohibiting a court from performing its adjudicatory function is also deeply rooted in

limitations of Federal Rule of Civil Procedure Rule 60(b). *See id.* The Court only disagreed with the district court as to the standard applicable to consent decrees under Rule 60(b). *See id.* at 378-79.

¹⁹⁷ *Plaut v. Spendthrift Farm, Inc.*, 115 S. Ct. 1447, 1460 (1995) (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944)).

¹⁹⁸ *See id.* The court recognized that Federal Rule of Civil Procedure 60(b) "does not impose any legislative mandate-to-reopen upon the courts." *Id.*

¹⁹⁹ *See Hadix v. Johnson*, 947 F. Supp. 1100, 1104 (E.D. Mich. 1996) (opining that "[t]he PLRA completely re-writes the standard for modification in prison litigation, making consent decrees subject to the constitutional floor—in direct contrast to *Rufo*.").

²⁰⁰ *See Rufo v. Inmates of Suffolk County*, 502 U.S. 367, 378 (1992).

²⁰¹ *See infra* Parts I.A and I.B for a discussion of the new provisions.

²⁰² *Plaut*, 115 S. Ct. at 1460.

²⁰³ *See id.* The Court recognized:

The finality that a court can pronounce is no more than what the law in existence at the time of judgment will permit it to pronounce. If the law then applicable says that the judgment may be reopened for certain reasons, that limitation is built into the judgment itself, and its finality so conditioned.

Id.

²⁰⁴ *See id.* at 1460, 1463.

²⁰⁵ *See Hadix v. Johnson*, 947 F. Supp. 1100, 1109-10, 1112 (E.D. Mich. 1996). Upon noting that "the PLRA applies law to the consent decree at issue here that was clearly not the law when it was entered into," the court declared the Act unconstitutional. *Id.* at 1109-10; *see also* *Gavin v. Ray*, No. 4-78-CV-70062, 1996 WL 622556, at *4 (S.D. Iowa Sept. 18, 1996) (holding that consent decrees are final judgments subject to the principles of *Plaut*, and as such, the PLRA is unconstitutional to the extent it violates *Plaut*), *rev'd sub nom.* *Gavin v. Branstad*, Nos. 96-3746, 96-3748, 1997 WL 434633, at *1 (8th Cir. Aug. 5, 1997).

our jurisprudential history.²⁰⁶ This general principle, which necessarily limits the power of Congress to legislate, was first articulated by the Supreme Court in *United States v. Klein*.²⁰⁷

In *Klein*, the respondent brought suit to recover the proceeds of property captured by the United States from confederate sympathizers.²⁰⁸ Although the property was forfeited due to certain disloyal acts by the respondent toward the government, the respondent was entitled to the return of the property pursuant to a presidential pardon that evidenced the respondent's loyalty.²⁰⁹ While the case was pending on appeal from a judgment in favor of the respondent, Congress passed an act that prohibited a court from considering a pardon as evidence of loyalty.²¹⁰ Conversely, the act mandated that a court consider a pardon as conclusive evidence of disloyalty.²¹¹

The Court invalidated the act by concluding that Congress had "passed the limit which separates the legislative from the judicial power."²¹² The Court opined that although Congress may control the jurisdiction of the courts, it is prohibited from articulating other rules that must be utilized by a court in adjudicating a case.²¹³

Klein is credited with formulating the principle that "Congress may not prescribe a rule of decision for the courts to follow without any independent exercise of [its] judicial powers."²¹⁴ Congress is, nonetheless, empowered to amend the law applicable to pending cases.²¹⁵ While vari-

²⁰⁶ See *United States v. Sioux Nation*, 448 U.S. 371, 392 (1980) (articulating the constitutional principle that Congress cannot force its interpretation of a law upon the federal courts in particular cases); see also *Plaut*, 115 S. Ct. at 1452-53 (recognizing the principle as one of three that are deeply rooted in Article III).

²⁰⁷ 80 U.S. (13 Wall.) 128 (1871).

²⁰⁸ See *id.* at 132. The property had been seized by the United States under federal legislation that required the "forfeiture [of] all property of every kind, used or intended to be used in aiding, abetting, or promoting the insurrection" of the confederate states. *Id.* at 130. The act, however, did not completely divest the true owner of ownership rights. See *id.* at 128. Rather, the government acted as trustee for those individuals later found to be entitled to the property. See *id.*

²⁰⁹ See *id.* at 128-29. An individual whose property was captured could later retrieve the property or proceeds thereof if the individual was adjudicated a loyal citizen. See *id.*

²¹⁰ See *id.* at 129.

²¹¹ See *id.*

²¹² *Id.* at 147.

²¹³ See *Klein*, 80 U.S. at 145, 146. The Court announced that when, as a result of a legislative act, "the court is forbidden to give the effect to evidence which, in its own judgment, such evidence should have, and is directed to give it an effect precisely contrary," the Separation of Powers Doctrine is violated. *Id.* at 147.

²¹⁴ *Benjamin v. Jacobson*, 935 F. Supp. 332, 349 (S.D.N.Y. 1996) (citing *United States v. Sioux Nation*, 448 U.S. 371, 391-92 (1980)), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997).

²¹⁵ See *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 441 (1992).

ous prisoners argue that the PLRA denies a court the power to decide independently the motion before it,²¹⁶ the Act has been interpreted by certain courts as amending only the applicable law.²¹⁷ As such, the PLRA is viewed as merely revising the standards a district court must apply when hearing a motion to terminate a decree and is not viewed as directing the end result.²¹⁸

Although the PLRA does not articulate explicitly the weight a court must allocate to certain evidence, as did the act at issue in *Klein*, the PLRA does affect the role of a court when adjudicating a motion to terminate a consent decree.²¹⁹ The Act does so by precluding a court from considering specific factors, such as non-compliance by a state with certain terms of the decree, while requiring a court to give conclusive effect to other factors, such as the absence of a finding of wrongdoing at the time the decree was entered.²²⁰ To this extent, the PLRA usurps the exclusive role occupied by the judiciary in deciding substantive issues of law.²²¹

C. Restrictions on Remedial Jurisdiction

Finally, opponents of the PLRA have challenged the Act as an unconstitutional restriction on the ability of a court to "vindicate constitu-

²¹⁶ See *Benjamin*, 935 F. Supp. at 349.

²¹⁷ See *id.* at 350.

²¹⁸ See *Plyler v. Moore*, 100 F.3d 365, 372 (4th Cir. 1996) (concluding that the PLRA "amends the applicable law and does not dictate a rule of decision."), *cert. denied*, 117 S. Ct. 2460 (1997).

²¹⁹ Compare *United States v. Klein*, 80 U.S. (13 Wall.) 128, 129 (1871) (addressing an act that mandated that a court consider a presidential pardon as conclusive evidence of disloyalty) with 18 U.S.C.A. § 3626(b)(2) (West Supp. 1997) (allowing a court to determine whether in fact the relief granted in the previous court order or consent decree satisfies the new requirements of the PLRA). See also *Gavin v. Branstad*, Nos. 96-3746, 96-3748, 1997 WL 434633, at *8 (8th Cir. Aug. 5, 1997) (stating that "[t]he rule of *Klein* does not apply [to the PLRA] because this is not a case in which Congress . . . has 'left the court no adjudicatory function to perform.'" (quoting *Sioux Nation*, 448 U.S. at 392.)).

²²⁰ See *Benjamin*, 935 F. Supp. at 357 (recognizing that where "the newly required findings [are] not made" at the time the decree is entered, "[t]he language of the PLRA is clear" and requires immediate termination of the decree), *aff'd in part and rev'd in part*, No. 96-7957, 1997 WL 523896, at *1 (2d Cir. Aug. 26, 1997). The Court of Appeals for the Second Circuit affirmed the constitutionality of the PLRA, but declared that the termination provisions are only constitutional if "interpreted as simply constricting the jurisdiction of the federal courts to enforce the Consent Decrees." See *Benjamin v. Jacobson*, No. 96-7957, 1997 WL 523896, at *1. As such, the court announced, the PLRA cannot be interpreted "as annulling those Decrees." *Id.* (positing that "there is nothing to prevent the plaintiffs from seeking enforcement . . . in state courts.").

²²¹ See *Hadix v. Johnson*, 933 F. Supp. 1360, 1366 (E.D. Mich. 1996) (concluding that, "[t]hrough the stay provision, Congress automatically grants the movants relief, albeit temporarily, with no provision for a case-by-case determination.").

tional rights" effectively.²²² The Supreme Court, however, has never indicated that Congress is limited in its authority to restrict the jurisdiction of Article III courts.²²³ In several cases, the Court has explicitly held that Congress does have the power to withhold or restrict the jurisdiction of an Article III court.²²⁴ Therefore, the limits imposed by the PLRA on the power of courts to provide equitable relief to prisoners fall within the purview of Congress's authority under Article III.²²⁵

IV. CONCLUSION

Congress enacted the Prison Litigation Reform Act of 1996 to provide an answer to one of the most drastic problems in today's legal system—prisoner suits.²²⁶ One cannot deny that as a result of the significant number of prisoner suits filed annually,²²⁷ federal courts are extensively involved in prison management.²²⁸ Although the PLRA may successfully terminate judicial involvement, the question still remains whether the Act presents the proper solution. If the purpose of enacting the PLRA was solely to terminate any and all judicial intervention, then the Act successfully accomplishes this goal. If the primary concern was to maintain prison conditions at acceptable standards, however, then it is apparent that the PLRA fails. The Act fails because it does not ensure that conditions are constitutionally adequate when judicial intervention is terminated. This failure is evident from the cases terminating decrees under the Act, where the only concern federal courts must address is whether

²²² *Benjamin*, 935 F. Supp. at 350.

²²³ *Cf. Lockerty v. Phillips*, 319 U.S. 182, 187 (1943) (addressing the constitutionality of a statute that placed jurisdiction over claims under the Emergency Price Control Act in the Emergency Court and stripped all other federal and state courts of that jurisdiction). In *Lockerty*, the Court held that "[t]he Congressional power to ordain and establish inferior courts includes the power 'of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.'" *Id.* (citations omitted); see also *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938) (recognizing that "[t]here can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts").

²²⁴ See *Lockerty*, 319 U.S. at 187; *Lauf*, 303 U.S. at 330.

²²⁵ See *Benjamin*, 935 F. Supp. at 351.

²²⁶ See Dorothy Schrader, *Prison Litigation Reform Act: An Overview*, CONGRESSIONAL RESEARCH REPORT, No. 96-513 A, CRS-2 (1996) (discussing the explosion in prisoner civil rights litigation in the last 25 years and the strain such litigation has placed on the judicial system).

²²⁷ See CONGRESSIONAL REPORT I, *supra* note 14, at CRS-1 (noting that prisoners' civil suits constitute 17% of federal district court civil cases and 17% of federal civil appeals).

²²⁸ See PRISON PROJECT, *supra* note 19, at 1 (detailing the various court orders and consent decrees governing state prisons). Currently, at least 30 states have one or more prisons that are under the control of a federal court as a result of either a court order or consent decree. See *id.*

the relief granted was the minimal relief required. Upon a finding that the relief was not narrowly tailored, the PLRA requires immediate termination.²²⁹ Accordingly, there is serious concern that prison conditions will regress to their previous unsupervised state.²³⁰

Even if this predicted regression does not occur, many pre-existing conditions already threaten the health and safety of inmates.²³¹ It is precisely these conditions that may not be properly addressed through the limited relief available to federal courts. Moreover, the inability of the federal judiciary continuously to oversee a prison presents a serious threat to the discovery of unconstitutional conditions. Although such concerns may be easily disregarded because of the individuals affected, it is important to note that the law that governs the incarceration of an individual indeed "represents the pathology of civilization."²³²

Finally, the PLRA deals a heavy blow to the principles of democracy that govern our nation. Numerous Supreme Court decisions have recognized the separation of powers principle by prohibiting any one branch of government from asserting powers not granted to it by the Constitution.²³³ The PLRA constitutes a direct attack on this sacred principle. As Article III stipulates, "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may . . . establish."²³⁴ Federal courts exercised this judicial power when granting relief by either court order or consent decree to prisoners who challenged institutional conditions. In response, Congress, unsatisfied with the relief granted, has utilized the PLRA to deny enforcement power to judgments the judiciary has already deemed equitable.

²²⁹ See *Plyler v. Moore*, 100 F.3d 365, 372-73 (4th Cir. 1996) (failing to consider whether the previously-entered relief was mandated by principles of equity), *cert. denied*, 117 S. Ct. 2460 (1997); *Benjamin*, 935 F. Supp. at 357 (recognizing that inquiry is not made into whether the terms of the consent decrees have been satisfied by the defendants).

²³⁰ See generally SAMUEL WALKER, *POPULAR JUSTICE* (1980) (discussing the history of prisons and incarceration from Colonial times through the twentieth century).

²³¹ See Sturm, *supra* note 21, at 687-88. The author notes that in cases where prisons lack vigorous judicial supervision, "little progress toward achieving and developing systems for maintaining constitutional conditions has occurred." *Id.*

²³² LAWYER'S WIT AND WISDOM 27 (Bruce Nash et al. eds., 1995) (quoting Morris Cohen, Russian-born American philosopher, who said "[t]he criminal law represents the pathology of civilization.").

²³³ See THE FEDERALIST No. 9, at 72-73 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (noting that the system of separated powers in the government is a "powerful mean[], by which the excellencies of republican government may be retained and its imperfections lessened or avoided.").

²³⁴ U.S. CONST. art. III, § 1.

In so doing, Congress has disturbed the principles of Article III as well as the Supreme Court cases interpreting those principles. Moreover, Congress has undermined our faith that the laws will protect those individuals who need its protection most—the minority. While the other two branches of government answer to constituents, the judiciary answers only to the Constitution, the laws thereunder, and the principles of justice. It is the judiciary, therefore, that protects an individual's rights and grants him or her relief when all else has failed. By restricting the ability of prisoners to obtain judicial relief, the PLRA will assuredly prove to be ineffective in maintaining adequate prison conditions. Perhaps more disturbing, the PLRA may well destroy, or at least irreparably injure, faith in a government that was designed to prohibit tyrannical rule over all classes.²³⁵

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²³⁵ Cf. FYODOR DOSTOYEVSKY, *THE HOUSE OF THE DEAD* 181 (C. Garnett trans. 1957) (warning that “[t]yranny is a habit [that] . . . may develop, and it does develop at last, into a disease.”).