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In my view, the effort to enact this proposal as part of an omnibus appropriations bill is inappropriate. Although a version of the PLRA was introduced as a free-standing bill and referred to the Judiciary Committee, it was never the subject of a committee mark-up, and there is no Judiciary Committee report explaining the proposal. The PLRA was the subject of a single hearing before the Judiciary Committee, hardly the type of thorough review that a measure of this scope deserves.

At the hearing, Associate Attorney General John Schmidt expressed serious concerns about the feasibility and consequences of the PLRA. While Mr. Schmidt did not take issue with provisions in the PLRA that merely seek to curb frivolous prison litigation, he noted that other aspects of the proposal would radically and unwisely curtail the power of the Federal courts to remedy constitutional and statutory violations in prisons, jails, and juvenile detention facilities.

I understand that my colleague from Illinois intends to include relevant excerpts of Mr. Schmidt's testimony in the Record, but I will just highlight several of the objections that he raised, all of which I share. Mr. Schmidt observed that:

The effort to terminate all existing constitutional problems under doctrines reaffirmed by the Supreme Court as recently as this year.

Provisions limiting the power of Federal courts to issue relief in prison conditions cases would "create a very substantial impediment to the settlement of prison condition suits—e.g., if all interested parties are fully satisfied with the proposed resolution."

"This would result in litigation that no one wants .... and could require judicial resolution of matters that would otherwise be more promptly resolved by the parties in a mutually agreeable manner.

The proposal to terminate relief two years after issuance is misguided because, in those cases where the problems have not been remedied, of which there are several,

Excerpts from remarks summarized by Mr. Schmidt on the floor, Mr. President, during one of my many unsuccessful attempts to curb the Congress's seemingly unquenchable thirst for more spending, my criticisms about this specific project is about process. In my view, the Alonso-Amtrak amendment that the Devils Lake Basin flood control program is unnecessary. I fully recognize that the Senators from North Dakota are affirmatively responding to projects that are relevant to the needs of Federal disaster aid. While I am opposed to the projects that they did not request ..., I cannot support them merely as an attempt to reduce frivolous prison litigation.

As I have said many times on this floor, Mr. President, during one of my many unsuccessful attempts to curb the Congress's seemingly unquenchable thirst for more spending, my criticisms about this specific project is about process. In my view, the Alonso-Amtrak amendment that the Devils Lake Basin flood control program is unnecessary. I fully recognize that the Senators from North Dakota are affirmatively responding to projects that are relevant to the needs of Federal disaster aid. While I am opposed to the projects that they did not request, I cannot support them merely as an attempt to reduce frivolous prison litigation.

Mr. President, that proposal did not request funding for the Devils Lake Basin project, nor have the project's sponsors officially filed a request for funds with the EDA. Mr. President, despite the fact that many unsuccessful attempts to curb the Congress's seemingly unquenchable thirst for more spending, my criticisms about this specific project is about process. In my view, the Alonso-Amtrak amendment that the Devils Lake Basin flood control program is unnecessary. I fully recognize that the Senators from North Dakota are affirmatively responding to projects that are relevant to the needs of Federal disaster aid. While I am opposed to the projects that they did not request, I cannot support them merely as an attempt to reduce frivolous prison litigation.

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civil rights of powerless and disadvan-
daged groups.

I do not intend to offer an amend-
ment to this bill, because it is clear
that a majority of the Senate would
not vote to strike the provision, and I
do not believe the Senate is positioned
to consider detailed improvements to
the PLRA during debate on this omni
bious measure. But the abbreviated
ature of the legislative process
should not suggest that the proposal is
noncontroversial in Congress.

It is my hope that after the President
votes on this bill, as I expect he will,
that the administration seek to nego-
tiate changes in the PLRA that remedy
the profound constitutional, fiscal, and
practical problems outlined by Mr.
Schmidt and other experts.

I ask unanimous consent that a copy
of a letter sent by myself and four
other Senators to the Attorney Gen-
eral on this subject be printed in the
Record. There being no objection, the letter
was ordered to be printed in the
Record, as follows:

U.S. SENATE,

COMMITTEE ON THE JUDICIARY,


Hon. JANET RENO,

Attorney General of the United States, Depart-
ment of Justice, Washington, D.C.

DEAR MADAM ATTORNEY GENERAL: We write to
express our concerns about aspects of the
Prison Litigation Reform Act (PLRA), which
has passed Congress as title VIII of the Com-
merce, State, and Justice Departments Ap-
propriations Act, 1996. In attempting to
curtail frivolous prisoner lawsuits, this legisla-
tion goes much too far, and instead may make it
impossible for the Federal courts to rem-
edy constitutional and statutory viola-
tions in prisons, jails, and juvenile de-
tention facilities. No doubt there are
prisoners who bring baseless suits that
deserve to be thrown out of court. But
unfortunately, in many instances there are
legitimate claims that deserve to be
addressed. History is replete with examples of
egregious violations of prisoners' rights. These
cases reveal abuses and inhumane treatment which
cannot be justified no matter what the
crime. In seeking to curtail frivolous
lawsuits, we cannot deprive individuals
of their basic civil rights. We must find the
proper remedies.

My colleague from Illinois, Associate
U.S. Attorney General John Schmidt,
testified before the Senate Judiciary
Committee on July 27, 1995, and raised
numerous concerns about this legisla-
tion. I have included a copy of his com-
ments for my colleagues to review. I
should also note that at the same hear-
ing, former Attorney General Barr of the
Bush Administration, in support of the
assertion that there are constitu-
tional problems with the bill as drafted
which have not yet been addressed.

As outlined in Mr. Schmidt's testi-
mony, the bill has so many problems
that I cannot list them all here. So let
me describe just a few. First, the bill
severely limits the options available to
States and courts in remedying legit-
imate complaints. For example, the bill
makes it virtually impossible for
States to enter into consent decrees
even when the consent decree may well
be in the State's best interest for both
fiscal and policy reasons. Similarly,
this legislation, by creating new and
burdensome standards of review, would
effectively prohibit courts from placing
prisoners in overcrowded conditions. Prison
overcrowding obviously creates a seri-
ous threat to the general public, as
well as to prison staffs and the inmates
therein.

We suggest that the administration nego-
tiate changes in the PLRA that remedy
the serious fiscal and practical problems
outlined by other experts.

Thank you for your attention to this im-
portant matter.

Sincerely,

FRANK THOMPSON,

JIM JEFFORDS,

TED KENNEDY,

JEFF BINGAMAN.

Mr. SIMON. Mr. President, I join
Senator KENNEDY in raising my strong
concerns about the Prison Litigation
Reform Act, a section of S. 1594. In at-
tempting to curtail frivolous prisoner
lawsuits, this legislation goes much too
far, and instead may make it impossible
for the Federal courts to remedy
constitutional and statutory violations
in prisons, jails, and juvenile de-
tention facilities. No doubt there are
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Section 2 in S. 866 amends the in forma pauperis status in the following manner: (1) The authority to allow a suit without prepayment of fees—as opposed to costs—in subsection (a) is deleted. (2) A prisoner does not have to file a statement of his prison account balance for the preceding six months. (3) A prisoner would be liable in all cases to pay the full amount of a filing fee. An initial partial fee of 20% of the average monthly deposits to or average monthly balance in the prisoner’s account, together with the agency having custody of the prisoner forwarding such payments whenever the amount in the account exceeds $10. However, if a prisoner sues during a suit for any reason, he or she must pay any action because of inability to pay the initial partial fee. (4) If a judgment is against a prisoner and final judgment, the prisoner would be required to pay the full amount of costs ordered, in the same manner provided for the payment of filing fees by the amendments.

In essence, the point of these amendments is to ensure that prisoners will be fully liable for filing fees. We support this reform in light of the frequency with which prisoners file frivolous and harassing suits, and the general absence of other disincentives to doing so.

However, the complicated standards and detailed numerical prescriptions in this section are not necessary to achieve this objective. It would be adequate to provide simply that prisoners are fully liable for fees and costs, that their applications must be accompanied by adequate information, and that funds from their accounts are to be forwarded periodically when the balance exceeds $10 as long as the liability exists. We would be pleased to work with the sponsors to refine this proposal.

In addition to these amendments relating to fees and costs, §2 of S. 866 strengthens 28 U.S.C. 1915(d) to provide that the court shall dismiss the case at any time if the allegation of poverty is untrue or if the action is frivolous or malicious. This is substantially the same as provisions included in §103 of S. 3 and title II of H.R. 667, which we support.

Section 3 of S. 866 essentially directs courts to review as promptly as possible suits by prisoners against governmental entities or their officers or employees, and to dismiss without prejudice if the complaint fails to state a claim or seeks monetary relief from an immune defendant. This is a desirable provision that could avoid some of the burdens on state and local governments of responding to nonmeritorious prisoner suits.

Section 8 of S. 866 essentially limits remedies for federal prisoners if (1) the court finds that the prisoner filed a malicious or harassing civil claim or testified falsely or otherwise knew that the prisoner fabricated evidence or information to the court, or (2) the Attorney General determines that one of these circumstances has occurred and finds revocation of good time credit to the court.

We support this reform in principle. Engaging in malicious and harassing litigation, and committing perjury or its equivalent, are common forms of misconduct by prisoners. If prisoners who engage in this misconduct can appropriately be punished by denial of good time credits.

However, the procedures specified in section 6 are inconsistent with the normal approach to denial of good time credits under 18 U.S.C. 3624. Singling out one form of misconduct for discretionary denials concerning denial of good time credits—where all other decisions of this type are made by the Justice Department pursuant to guidelines against consistency in prison disciplinary policies, and would make it difficult or impossible to coordinate sanctions imposed for other disciplinary violations by a prisoner.

Accordingly, we recommend that §6 of S. 866 be revised to provide that (1) a court may, and on motion of an adverse party, dismiss a prisoner’s suit in whole or in part on the ground that the prisoner has engaged in misconduct, and (2) on receipt of such a determination, the Attorney General may direct the agency having custody of the prisoner to deny good time credits to the prisoner. We would be pleased to work with the sponsors to refine this proposal.

Section 7 of S. 866 strengthens the requirement of exhaustion of administrative remedies under CRIPA in prisoner suits. It is similar to the same part of S. 3, which we support.

C. The STOP Provisions

As noted above, we support the basic objectives of the STOP proposal. Particularly the principle that population caps must be only a "last resort" measure. Responses to unconstitutional or excessive conditions must be designed and implemented in the manner that is most consistent with public safety.

Incorporated criminals should not enjoy the benefits of parole while serving their sentences and contribute to violence and public safety while threatening the security of the community. The constitutional provision enforced most frequently in prison cases is the Eighth Amendment's prohibition of cruel and unusual punishment. Among the conditions that have been found to violate the Eighth Amendment are excessive violence, whether inflicted by guards or by inmates. There are many other and serious forms of abuse, and the courts have nonetheless treated them as inadequate to the changing demands of prison life. Inmates both in prison and in the community have expressed concern about the use of force by prison guards, preventable rape, deliberate indifference to serious medical needs, and lack of adequate institutional discipline. Prison guards, for example, may also be subject to civil action in a constitutional violation. For example, prisoners may be repeatedly or needlessly subjected to violence, or to unsanitary conditions that lead to break­down in security and contribute to violence. These and other issues, however, have been addressed as a contributing cause of a constitutional violation. See generally Wilson v. Setter, 501 U.S. 294 (1991); Rhodes v. Chapman, 452 U.S. 307 (1981).

2However, there is a typographic error in line 22 of page 22 of the NII. The words "exhausted" in this line should be "exhausted."
In considering reforms, it is essential to remember that inmates do suffer unconstitutional conditions of confinement and that, inevitably, must retain access to meaningful redress when such violations occur. While Congress may validly enact legislative directions that are well-suited to the unique nature and extent of prison conditions remedies, it must also take care to ensure that any measures adopted do not undermine or eclipse these narrow, specific, and effective remedies for real constitutional wrongs.

With this much background, I will now turn to the specific provisions of the STOP legislation.

The STOP provisions of S. 400 and title III of H.R. 5861 provide that relief in prison conditions suits small extend no further than necessary to remove the conditions causing the violation, and that relief must be narrowly drawn and the least intrusive means of removing the unconstitutional conditions adopted.

Proposed 18 U.S.C. S626(b) in the STOP provision requires that relief in a prison conditions action shall automatically terminate after two years (running from the time the federal right violation is found by the court) and that such relief be immediately terminated if it was approved or granted in the event of a judicial finding that prison conditions violated a federal right.

Proposed 18 U.S.C. S626(c) in the STOP provisions requires prompt judicial decisions of motions to modify or terminate prospective relief in prison conditions suits, with automatic stay of such relief 30 days after a motion is filed under 18 U.S.C. S626(b), and after 180 days in any other case.

Proposed 18 U.S.C. S626(d) in the STOP provisions provide that relief reduces or limits prison population on any federal, state, of local official or unit of government whose jurisdiction or function includes custody or management of prisoners in a prison subject to such relief, or who otherwise may be affected by such relief.

Proposed 18 U.S.C. S626(e) in the STOP provisions prohibits the use of masters in prison conditions suits in federal court, except for use of magistrates to make proposed findings concerning complicated factual issues. Proposed 18 U.S.C. S626(f) in the STOP provisions imposes certain limitations on awards of attorney's fees in prison conditions suits under federal civil rights laws.

Finally, the STOP provisions provide that the new version of 18 U.S.C. S626 shall apply to all requests of whether it was originally granted or approved before, on, or after its enactment.

The revisions contained several interpretative questions. While the revised section contains some references to deprivation of federal civil rights, as do certain parts of the section, the concept is not explicitly limited in this manner, and might be understood as limiting relief based on state law claims in prison conditions suits, as in previous versions of such an approach. However, in the STOP provision, however, is more plausibly limited to setting standards for relief which is based on claimed violations of federal rights or improper conditions. If so, this point should be made clearly in relation to all parts of the proposal.

A more pointed constitutional concern is whether the proposed revision of 18 U.S.C. S626 affects prison conditions suits in both federal and state courts, or just suits in federal court. In contrast to the current version of 18 U.S.C. S626, this new provision restricting the use of masters is not, by its terms, limited to federal court proceedings. Hence, most of the revision applies only to both state and federal court suits, and would probably be construed by the courts in a manner that would extend to the basic scope of the proposal, this question should be clearly resolved one way or the other in the proposed statute.

The analysis of constitutional issues raised by this proposal must be mindful of certain fundamental principles. Congress possesses significant authority to set the remedies available in the lower federal courts, subject to the limitations of Article III, and can eliminate the . . . for those suits, such legislation may violate due process. See, e.g., Webster v. Dob, 486 U.S. 592, 603 (1988); Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 676 (1986); Harris v. Bow- man, 681 F.2d 699, 705-07 (D.C. Cir. 1982). We therefore examine the proposal's various remedial results that perspective.

Proposed 18 U.S.C. S626(a)(1) in the proposed statute further the current statute in ensuring that relief is ordered. Proposed 18 U.S.C. S626(a)(2) bars relief that reduces or limits prison population unecessarily. Proposed 18 U.S.C. S626(a)(3) that relief is ordered, or it is otherwise may be affected by such relief.

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Mr. FAIRCLOTH. Mr. President, I rise in strong support of the conference report on H.R. 956, the Common Sense Product Liability Reform Act.

The legislation is modest in its reach, but it includes long-overdue changes, and it pulls together common sense reforms that command broad support in this Congress.

Nonetheless, President Clinton announced that he will veto the bill and, if, indeed, he does veto this legislation, he will line up with the special interests—the trial lawyers—rather than the American people.

The President refused to buck the trial lawyers last year, also, and he vetoed securities litigation reform. His veto was overridden by a bipartisan vote. And in Connecticut, Senator DODD brought strong support from the other side of the aisle, and we overrode the veto. It was not a radical bill. It was a balanced trial, modest reform that lawyers handed him the veto pen, and, politically considerations at the forefront, he signed on the dotted line to veto securities reform.

The Common Sense Product Liability Reform Act is not radical legislation, as Presidential campaign aides insist. It addresses some of the principal abuses—our efforts to pass an expansive bill failed, and cost American jobs. Connecticut Senator Dodd brought strong support from the other side of the aisle, and we overrode the veto. It was not a radical bill. It was a balanced trial, modest reform that lawyers handed him the veto pen, and, politically considerations at the forefront, he signed on the dotted line to veto securities reform.

The argument that this legislation goes too far just does not hold up. The conference report was hard fought, with the 90 votes for cloture in mind. It is, by definition, a consensus bill. So, let the facts be clear, this veto is not about consumer protection—the trial lawyers' bidding, and he insists that he will veto yet another reform measure.

So, despite all the White House rhetoric about wages and growth, the President will take a stand for growth, but it will not be for growth in jobs. No, it will be for continued growth in the frivolous lawsuits that swell court dockets nationwide.

The American tort system is far too expensive. The American people deserve a system that they can afford. It is estimated that at $125 billion in 1994. This is equivalent to 2.2 percent of the gross domestic product. This trial lawyer overreach has cost us many billions and worries about changes to a legal racket that took them years to build—it is about political considerations in an election year.

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