

Dear Member of Congress:

We write in support of amending the Prison Litigation Reform Act (PLRA). As current and former federal and state District Attorneys, U.S. Attorneys, and Attorneys General we understand the importance of a strong criminal justice system. Criminal offenders need to be held accountable for their actions, but this punishment must be imposed in accordance with constitutional standards. The amendments we support, as outlined below, provide the proper balance between weeding out the frivolous civil lawsuits filed by prisoners and ensuring that the meritorious ones receive their day in court.

Enforcement of the law is central to our system of justice and to the protection of our communities. While, as prosecutors, we focused on criminal law enforcement, we also understood and had an abiding commitment to the protection of constitutional standards and compliance with civil laws. The rule of law applies to *everyone* in this country, including prisoners and government officials. Because the PLRA as currently crafted interferes with the rule of law and undermines the protection of the constitutional rights that all Americans, including prisoners, share, it should – and must – be amended.

As prosecutors we were proud to see that justice was served and that wrongdoers were sent to prison for their crimes. But the courts sentenced these individuals to incarceration as their punishment; they did not send them to prison to endure rape, abuse, or the denial of other basic rights.

Now that the PLRA has been in place for over ten years, it is clear that some aspects of the law deny incarcerated adults and juveniles meaningful access to the courts even when their constitutional rights are egregiously violated. For example, the PLRA precludes recovery by prisoners for emotional or mental injury in the absence of physical injury. Compensatory damages are unavailable even where violations of religious freedom, due process, and free speech are proven. The physical injury requirement should be eliminated.

Similarly, the administrative exhaustion provisions bar any judicial review for individuals with legitimate and serious constitutional claims if they failed to comply with some technical aspect of a facility's grievance procedures—sometimes formal and complex processes they may not understand or have the capacity to navigate. Rather than deny incarcerated individuals the opportunity to seek redress in court for what may be legitimate claims because they missed a grievance appeal deadline or other technical matter, the PLRA should provide an option for courts to stay proceedings for prison officials to attempt to resolve the problem.

Notably, the strictures of the PLRA also extend to incarcerated youth, who have even less capacity to navigate technical legal requirements than adults and are even more vulnerable to abuse in correctional institutions. Often these youth come to juvenile justice from the child welfare system, and they have no consistent responsible adults in their lives to assist or guide them. In light of these concerns, the PLRA should be amended to exclude

minors from its restrictive measures. Youth have not been burdening the courts with frivolous litigation and should not be subject to the PLRA's barriers to accessing the courts.

As former and present officers of the court, we take seriously the litigation burden felt by the courts and government officials. At the same time, however, any lessening of that burden must be carefully tailored to maintain accountability for violations of prisoners' constitutional rights.

Significantly, the PLRA can be reformed without changing its most effective measure: the screening provision that requires courts to review prisoners' cases prior to authorizing service on the defendants, and to *sua sponte* dismiss cases that are frivolous, malicious, fail to state a claim, or seek damages from an immune defendant. That provision represents the key mechanism to realize the PLRA's stated purpose of reducing frivolous prisoner suits. The fixes required for the PLRA do not disturb this critical provision.

Congress should address the provisions of the Act that undermine the ability of prisoners with legitimate constitutional grievances to receive redress. Reform of these provisions will restore the rule of law in our nation's prisons, jails and youth detention centers. Therefore, we call on Congress to reassess the PLRA and to amend the law so that it comports with this country's settled and sound principles of justice for all.

Sincerely,

Robert J. Del Tufo, *Attorney General, State of New Jersey, 1990-1993; United States Attorney, District of New Jersey, 1977-1980; First Assistant State Attorney General and Director of New Jersey's Division of Criminal Justice*

W. Thomas Dillard, *United States Attorney, Northern District of Florida, 1983-1987; United States Attorney, Eastern District of Tennessee, 1981; Assistant United States Attorney for the Eastern District of Tennessee, 1967-1976 and 1978 to 1983; United States Magistrate for the Eastern District of Tennessee, 1976-1978*

Daniel F. Goldstein, *Assistant United States Attorney for the District of Maryland, 1976-1982*

Charles Graves, *United States Attorney, District of Wyoming, 1977-1981; Former President, National Association of Former United States Attorneys*

William A. Kimbrough, *United States Attorney, Southern District of Alabama, 1977-1981; Assistant United States Attorney, Southern District of Alabama, 1961-1965*

Gerald Kogan, *Former Chief Justice, Supreme Court of the State of Florida; Former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida*

Miriam Aroni Krinsky, *Assistant United States Attorney, 1987-2002 (Central District of California and District of Maryland); Chief, Criminal Appellate Section, Central District of California, 1992-2002*

Sam D. Millsap, Jr., *Former District Attorney, Bexar County, San Antonio, Texas*

William S. Sessions, *Director, Federal Bureau of Investigation, 1987-1993; Judge, United States District Court for the Western District of Texas, 1974-1987, Chief Judge, 1980-1987; United States Attorney, Western District of Texas, 1971-1974*

Harry Shorstein, *State Attorney for the Fourth Judicial Circuit, Florida (retired)*

James J. West, *United States Attorney, Middle District of Pennsylvania, 1985-1993*