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*Prison Litigation Reform Act in the Supreme Court's 2006
Term*

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Abstract. When prisoners sue in federal court to challenge the conditions of their confinement, the Prison Litigation Reform Act (PLRA) requires that they first exhaust their available administrative remedies by pursuing to completion the prison's internal complaint process before moving forward with their civil rights lawsuits. The Court will decide in three consolidated cases, *Jones v. Bock* (05-7058), *Walton v. Bouchard*, and *Williams v. Overton* (05-7142), whether the PLRA's exhaustion requirement insists that prisoners complete the administrative review process in accordance with applicable procedural rules.

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Prison Litigation Reform Act in the Supreme Court's 2006 Term

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Summary

When prisoners sue in federal court to challenge the conditions of their confinement, the Prison Litigation Reform Act (PLRA) requires that they first exhaust their available administrative remedies by pursuing to completion the prison's internal complaint process before moving forward with their civil rights lawsuits. The Court will decide in three consolidated cases, *Jones v. Bock* (05-7058), *Walton v. Bouchard*, and *Williams v. Overton* (05-7142), whether the PLRA's exhaustion requirement insists that prisoners complete the administrative review process in accordance with applicable procedural rules. More specifically, (1) whether the PLRA prescribes a "total exhaustion" rule that requires a federal court to dismiss a prisoner's federal civil rights complaint for failure to exhaust his or her administrative remedies whenever there is a single unexhausted claim, despite the presence of other exhausted claims, (2) whether the PLRA requires a prisoner to name a particular defendant in his or her administrative grievance in order to exhaust his or her administrative remedies as to that defendant and to preserve his or her right to sue them, and (3) whether satisfaction of the PLRA's exhaustion requirement is a prerequisite to a prisoner's federal civil rights suit such that the prisoner must allege and document in his complaint how he exhausted his administrative remedies, or instead, whether non-exhaustion is an affirmative defense that must be pled and proved by the defense. These cases are important because the Supreme Court's decision will determine the procedures for handling the tens of thousands of inmate civil rights cases filed every year. Oral arguments for these cases were heard on October 30, 2006.

Congress enacted the Civil Rights of Institutionalized Persons Act (CRIPA), the predecessor of the PLRA, in 1980¹ in order to limit the flow of prisoner litigation under

¹ P.L. 96-247, 94 Stat. 349 (1980), 42 U.S.C. §§1997-1997j (1976 & Supp. IV). See also, CRS Report 98-999, *Prison Litigation Reform Act: Survey of Post-Reform Act Prisoners' Civil Rights Cases*; and CRS Report 96-468, *Prisoner Civil Rights Litigation and the 1996 Reform Act*, both by Dorothy Schrader and both archived.

42 U.S.C.A. § 1983 (2000)² and provide a balance in deference to the authority of state officials and the rights of those incarcerated. Prior to 1980, the incarcerated were not required to exhaust their administrative remedies.³ CRIPA applied only to 42 U.S.C. § 1983 complaints and contained the first exhaustion requirement for prisoner lawsuits.⁴ CRIPA did not require mandatory exhaustion, although judges had the authority to require plaintiffs to exhaust their administrative remedies when “appropriate and in the interests of justice.”⁵

In 1996, the civil rights of inmates were again the subject of Congressional legislation with the passage of an amendment to the CRIPA, the Prisoner Litigation Reform Act (PLRA).⁶ The PLRA was not passed as a committee bill, but rather was attached as a rider to the Department of Commerce, Justice, and State, the Judiciary, and Related Appropriations Act of 1996.⁷

² This section states: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” *See generally* Sheldon H. Nahmod, *Civil Rights And Civil Liberties Litigation: The Law Of Section 1983* (4th ed. 2004) (discussing what section 1983 is and how it provides civil rights protection against state officials).

³ *Patsy v. Florida Board of Regents*, 457 U.S. 496, 507-508 (1982) (“This legislative history supports the conclusion that our prior decisions, holding that exhaustion of state administrative remedies is not a prerequisite to an action under §1983, did not misperceive the statutory intent. ... Congress addressed the question of exhaustion under §1983 when it recently enacted 42 U.S.C. §1997e ... In §1997e, Congress ... created a specific, limited exhaustion requirement for adult prisoners bringing actions pursuant to §1983.”). *See also*, Jennifer Winslow, *The Prison Litigation Reform Act’s Physical Injury Requirement Bars Meritorious Lawsuits: Was It Meant To?*, 49 *UCLA L. Rev.* 1655, 1670 (2002) (stating that in 1964, in *Cooper v. Pate*, the Supreme Court held that the Civil Rights Act of 1871 protects the fundamental rights of inmates [378 U.S. 546 (1964)]. Following the *Cooper* decision, inmates began filing suits for civil rights violations at an increased rate).

⁴ Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997e (1976 & Supp.IV).

⁵ 42 U.S.C. § 1997e(a) (1976 & Supp.IV). *See also* *McCarthy v. Madigan*, 503 U.S. 140, 149-50 (1992) (noting that CRIPA’s exhaustion requirement was not mandatory).

⁶ P.L. 104-134, Act of April 26, 1996 amending 42 U.S.C. § 1997 among other sections. In the Prison Litigation Reform Act of 1995, Congress established that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 110 Stat. At 1321-71, 42 U.S.C. § 1997e (a) (1994 & Supp. II). Congress’ intent to limit lawsuits filed by inmates were not limited to conditions of their confinement but included such issues as they quality of medical care and prison food.

⁷ Title VII of H.R. 3019. As a result, floor statements appear to address the legislative intent more exclusively than would otherwise be the case, especially where the floor statements in favor of the bill were uncontested. *See* *Garrett v. Hawk*, 127 F.3d 1263, 1266 at n.2 (10th Cir. 1997) citing *Benjamin v. Jacobson*, 935 F. Supp. 332, 340 (S.D.N.Y. 1996) (indicating the limited legislative history available for PLRA), *aff’d in part, rev’d in part*, 124 F.3d 162 (2nd Cir 1997).

Currently, when an inmate files a suit in federal court to challenge the conditions of his confinement, the Prison Litigation Reform Act requires that he first exhaust his available administrative remedies by completing the prison's internal complaint process before moving forward with his civil rights lawsuit. The Supreme Court agreed to clarify whether, under the Prison Litigation Reform Act, "mixed" inmate civil rights lawsuits contesting prison conditions and containing both exhausted and unexhausted claims must be dismissed in toto.⁸ The United States Courts of Appeal are divided on the issue of total exhaustion now. Courts in the Sixth, Eighth and Tenth Circuits maintain that plaintiff's entire suit must automatically be dismissed if he has not totally exhausted all of his/her administrative remedies with respect to each aspect of the claim.⁹ Other courts, in the Second, Sixth, Ninth and Tenth Circuits, have rejected the total exhaustion rule.¹⁰

Williams and *Walton* present the additional question of whether "the PLRA requires a prisoner to name a particular defendant in his or her administrative grievance in order to exhaust his or her administrative remedies as to that defendant and to preserve his or her right to sue them."¹¹ *Jones* presents a third question: "whether satisfaction of the PLRA's exhaustion requirement is a prerequisite to a prisoner's federal civil rights suit such that the prisoner must allege in his complaint how he exhausted his administrative remedies (or attach proof of exhaustion to the complaint), or instead whether non-exhaustion is an affirmative defense that must be pleaded and proved by the defense."¹² This question has divided the lower federal appellate courts as well.¹³

During his remarks on the floor, Congressman LoBiondo specifically mentioned overruling McCarthy by imposing strict exhaustion requirements on federal prisoners seeking relief under *Bivens* through the enactment of PLRA. See 141 Cong. Rec. 35623 (1995).

⁸ *Jones v. Bock* (05-7058), cert. granted, 126 S.Ct. 1462 (2006); consolidated with, *Walton v. Bouchard* and *William v. Overton* (05-7142), cert. granted jointly, 126 S.Ct. 1463 (2006). See also, Brief for Petitioners at i, *Jones v. Bock*, 126 S.Ct. 1462, 1463 (2006)(Nos. 05-7058 and 05-7142) (*Petitioners' Brief*); Brief for Respondents at i, *Jones v. Bock*, 126 S.Ct. 1462, 1463 (2006)(Nos. 05-7058 and 05-7142) (*Respondents' Brief*).

⁹ *Bey v. Johnson*, 407 F.3d 801, 809 (6th Cir. 2005); *Graves v. Norris*, 218 F.3d 884, 885 (8th Cir. 2006); *Ross v. County of Bernalillo*, 365 F.3d 1181, 1190 (10th Cir. 2004).

¹⁰ *Ortiz v. McBride*, 380 F.3d 649, 656 (2d Cir. 2004); *Spenser v. Bouchard*, 449 F.3d 721, 726 (6th Cir. 2006)(holding that *Bey* had overlooked an earlier, binding precedent that permitted partial exhaustion); *Lira v. Herrera*, 427 F.3d 1164, 1175-176 (9th Cir. 2005); *Kikumura v. Osagie*, 461 F.3d 1269, 1289 (10th Cir. 2006)(In keeping with the *Ross* Court's policy-based analysis and the analogy it drew between habeas and the PLRA, we decline Defendants' invitation to extend the PLRA's total exhaustion rule to the circumstances presented in this case).

¹¹ *Petitioners' Brief* at i; *Respondents' Brief* at i.

¹² *Id.*

¹³ Affirmative defense: *Handberry v. Thompson*, 446 F.3d 335, 342 (2d Cir. 2006); *Westefer v. Snyder*, 422 F.3d 570, 577 (7th Cir. 2005); *Brown v. Valoff*, 422 F.3d 926, 936 (9th Cir. 2005); *Anderson v. XYZ Correctional Health Services Inc.*, 407 F.3d 674, 678-81 (4th Cir. 2005); *Nerness v. Johnson*, 401 F.3d 874, 876 (8th Cir. 2005); and *Brown v. Croak*, 312 F.3d 109, 112 (3d Cir. 2002); contra *Bey v. Johnson*, 407 F.3d 801, 805 (6th Cir. 2005) (plaintiff bears the burden of proving exhaustion); and *Fitzgerald v. Corrections Corp.*, 403 F.3d 1134 (10th Cir. 2005).

Although the three cases arose out of the same Michigan three step administrative grievance process and are being heard together, the issue divergence is attributable to their somewhat individualistic fact patterns. Jones, who suffered back injuries in a car accident while he was in prison custody, sued because he was assigned a job that required him to do physical labor and that resulted in further injury and an adverse work evaluation.¹⁴ At the initial stage of the grievance process, Jones named the officer who provided the evaluation, officer “Opanasenko, Health Care, Classification, Deputy Warden, and Warden.”¹⁵ In subsequent administrative proceedings, he identified the Warden by name, but for the first time identified the classification official and Deputy Warden by name when he filed his civil rights complaint in district court.¹⁶ Jones asserted in his complaint that he had exhausted his administrative remedies, but only later moved to attach supporting documentation with regard to *some* of the defendants (documentation which the defendants had already provided in their reply).¹⁷ The Sixth Circuit held that Jones’ complaint must be dismissed for failure to exhaust because (1) he had not, at any point, included sufficient documentation of exhaustion with regard to *all* defendants (total exhaustion), and (2) he had not included sufficient documentation of exhaustion in his original complaint with regard to any of the defendants (insufficient pleading).¹⁸

Williams filed suit because he was denied surgery on his right arm and hand to remove disfiguring tumors and was denied a single cell assignment to accommodate his handicap.¹⁹ Although he named the defendants in the underlying accommodation grievance, he had not named personally any of the defendants sued when he filed the underlying surgical grievance.²⁰ The Sixth Circuit held that failure to name the defendants through the course of the grievance proceedings rendered Williams’ surgical claim unexhausted and required dismissal of his accompanying exhausted accommodation claim as well.²¹

Walton, who is Black, alleged that he was the victim of racial discrimination because he received a greater discipline for assaulting a corrections officer than White inmates he said had committed similar acts.²² At the first stage of his administrative proceedings Walton charged a particular assistant deputy warden by name.²³ Advised that a different assistant deputy warden had in fact ordered the disciplinary action, Walton charged “corrupt administration[] heads, warden, et[] al[.]” in subsequent grievance proceedings.²⁴

¹⁴ *Petitioners’ Brief* at 11-2.

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 14.

¹⁸ *Jones v. Bock*, 35 Fed.Appx. 837 (6th Cir. 2005).

¹⁹ *Petitioners’ Brief* at 16-9.

²⁰ *Id.*

²¹ *Williams v. Overton*, 136 Fed.Appx. 859 (6th Cir. 2005).

²² *Petitioners’ Brief* at 21-2.

²³ *Id.*

²⁴ *Id.* at 22.

The Sixth Circuit held that Walton's failure in his initial grievance to identify either by name or position the defendants ultimately sued (other than the assistant deputy warden) required dismissal of his entire suit even if his grievance against the assistant deputy warden who approved the disciplinary action were considered exhausted.²⁵

The PLRA has resulted directly in effective yet controversial results. Although the intended goals of the PLRA to reduce the quantity of prisoner litigation have been realized,²⁶ critics of the PLRA express concern that the exhaustion of the administrative remedies requirement is too strict.²⁷

The petitioners — Jones, Williams, and Walton — in conjunction with prisoner rights advocate groups, argue that mandatory dismissal of a prisoner's entire complaint on a technicality is contrary to the plain language and legislative intent of the PLRA and imposes substantial, arbitrary barriers to access to the courts.²⁸ They contend that the Sixth Circuit's requirement that each prisoner include specific documentation of how he exhausted administrative remedies is a judicially created fiction and likewise at odds with the intent of Congress.²⁹ Petitioners also assert that the Sixth Circuit's rule "freezing the universe of potential defendants" at the beginning of the grievance process suffers from the same defects and is inconsistent with the Court's past characterization of the informality of the grievance process.³⁰

The Michigan Department of Corrections, on the other hand, argued that the Sixth Circuit's adherence to the total rule accords with the legislative intent and plain meaning of the PLRA.³¹ Their argument follows that by drafting the PLRA, Congress used specific language to signify that an entire suit must be dismissed from court if all administrative remedies had not been pursued prior the commencement of the action.³² Therefore, they argue that automatic dismissal of an insufficiently exhausted complain is in line with that

²⁵ *Walton v. Bouchard*, 136 Fed.Appx. 846 (6th Cir. 2005).

²⁶ The federal court system has experienced a dramatic decrease in prisoner cases -from 41,679 inmate civil rights/prison condition petitions in 1995 to 24,614 petitions in 2005, Administrative Office of United States Courts, *Judicial Business of the United States Courts*, Table C-2A (1998, 2005), available on Nov. 13, 2006 at [<http://www.uscourts.gov/judbususc/judbus.html>].

²⁷ *See, To Plead or Not to Plead: Does the Prison Litigation Reform Act's Exhaustion Requirement Establish a Pleading Requirement or an Affirmative Defense?* 39 U.C. DAVIS L.REV. 247, 272 (2005)("Applying a highly technical pleading requirement invites prisoners to make mistakes in the administrative grievance process and in pleading their cases to the courts. These mistakes would cause valid litigation to be dismissed if an intolerant pleading requirement was utilized").

²⁸ *Petitioners' Brief* at 26-7; Brief for the American Civil Liberties Union et al. as Amici Curiae Supporting Petitioners, *Jones v. Brock* and *Williams v. Overton*, Nos. 05-7058 and 05-7142 at 1 (*Amici Curiae Brief*).

²⁹ *Petitioners' Brief* at 24-5; *Amici Curiae Brief* at 1.

³⁰ *Petitioners' Brief* at 25-6; *Amici Curiae Brief* at 1-2.

³¹ Brief for Respondents, *Jones v. Brock* and *Williams v. Overton*, Nos. 05-7058 and 05-7142, at 8 (*Respondents' Brief*).

³² *See id.* at 11.

purpose.³³ The Department of Corrections also argues that the total exhaustion rule does not impose an undue hardship on prisoners because cases dismissed on PLRA grounds are dismissed without prejudice, which allows prisoners to refile their complaints in federal court once they have exhausted all remedies.³⁴

The federal courts receive close to 25,000 inmate civil rights suits a year.³⁵ Congress enacted the PLRA to ease the burdens of such suits impose upon the courts and upon prison authorities while nevertheless assuring the survival of meritorious claims. The three challenged procedures — total exhaustion, inmate pleading requirements, and defendant specific exhaustion — all operate to ease the burdens on the courts and prison authorities. The question before the Court is whether any or all of them impermissibly do so at the expense of meritorious claims and contrary to the PLRA.

³³ *Id.* at 12.

³⁴ *Id.* at 1.

³⁵ *Supra* note 27.