WHAT'S PAST IS PROLOGUE: WHY THE PRISON LITIGATION REFORM ACT DOES NOT—AND SHOULD NOT—CLASSIFY PUNITIVE DAMAGES AS PROSPECTIVE RELIEF

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Abstract: The Prison Litigation Reform Act of 1995 (PLRA) arose from Congress's intent to curb frivolous and institutionally invasive prisoner civil rights litigation. In furtherance of its goals, the PLRA limits the prospective relief prisoners can receive to such relief that is narrowly tailored to the federal rights violation at issue and the least intrusive means necessary to correct the violation, otherwise known as the need-narrowness-intrusiveness standard. Under the PLRA, prospective relief includes all relief other than compensatory monetary damages. However, while the courts have frequently applied and interpreted the PLRA over the past decade, only one circuit has addressed whether prospective relief as defined in the PLRA includes punitive damages. In *Johnson v. Breeden*,[1] the Eleventh Circuit held that the term "prospective relief" includes punitive damages and that as a result, the PLRA requires that punitive damages conform to the need-narrowness-intrusiveness standard. This Comment argues that based on the inherent differences between punitive damages and prospective relief, the text of the PLRA, and the legislative intent behind the statute, prospective relief as defined by the PLRA does not, and should not, encompass punitive damages awarded to prisoners for violations of federal law.

INTRODUCTION

One day after work detail, a prisoner held in a United States correctional facility returns to his cell.[2] He passes a prison guard who questions him about his possession of food items from the prison store. Without warning, the guard chokes him, punches him in the face, and throws him to the ground. The guard then kicks him, stomps on him, and beats him with a baton until the prisoner loses consciousness. The prisoner wakes up in the infirmary with multiple bruises, contusions, and lacerations. The prison investigates the incident and, as a result, fires the guard.

The prisoner files a civil action against the guard, alleging a violation of his Eighth Amendment right to be free from cruel and unusual punishment while imprisoned.[3] The jury finds in the prisoner's favor and

1. 280 F.3d 1308 (11th Cir. 2002).

2. This hypothetical is based on the facts of *Johnson v. Breeden*, 280 F.3d 1308, 1312 (11th Cir. 2002).

3. *See* U.S. CONST. amend. VIII.

awards him $25,000 in compensatory damages plus $45,000 in punitive damages. The trial court upholds the punitive damages award, finding it not grossly excessive or arbitrary given the actual damages the prisoner suffered and the particularly egregious nature of the guard's conduct—the general standard imposed upon punitive damages.[4]

On appeal, the circuit court holds that under the Prison Litigation Reform Act of 1995[5] (PLRA), punitive damages constitute "prospective relief" and as such must comply with the statute's restrictions on prospective relief. Specifically, such relief must be narrowly tailored to the federal rights violation at issue and be the least intrusive means necessary to correct the violation,[6] also known as the need-narrowness-intrusiveness standard.[7] Based on this standard, the circuit court overturns the punitive damages award, holding that by firing the guard, the prison fully corrected the federal rights violation and that awarding punitive damages would therefore violate the need-narrowness-intrusiveness standard. Thus, despite having sustained serious injury as a result of an egregious and intentional violation of his constitutional rights, the prisoner receives no punitive damages.

The Eleventh Circuit made such a scenario more likely when it decided *Johnson v. Breeden*.[8] There, the court held that the PLRA classifies punitive damages as prospective relief, and as a result, courts must ensure that any punitive damages awarded with respect to prison conditions meet the need-narrowness-intrusiveness standard.[9] This decision potentially increases the likelihood that other courts will take a similar approach and will reduce—or even eliminate—punitive damages awards even where a prisoner's federal rights have been intentionally and egregiously violated.[10]

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4. *See* State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 416–18 (2003).

5. Pub. L. No. 104-134, 110 Stat. 1321–66 (1996).

6. 18 U.S.C. § 3626(a)(1) (2006) ("The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.").

7. Alison Brill, Comment, *Rights Without Remedy: The Myth of State Court Accessibility After the Prison Litigation Reform Act*, 30 CARDOZO L. REV. 645, 658 (2008).

8. 280 F.3d 1308 (11th Cir. 2002).

9. *Id*. at 1325.

10. *See* Mitchell v. McDonell (*Mitchell I*), No. 3:06-180-KRG-KAP, 2008 WL 5429704, at *2 (W.D. Pa. Dec. 8, 2008) ("Plaintiff cannot recover punitive damages. In any complaint concerning conditions of an inmate's confinement . . . [the PLRA] prohibits the award of any 'prospective relief' which is not 'necessary to correct a violation' of federal rights. 'Prospective relief' is defined [by the PLRA] to be all relief other than compensatory damages. Since by definition punitive damages are not compensatory damages nor damages which 'correct a violation' of a plaintiff's

This Comment examines whether the PLRA in fact classifies punitive damages as prospective relief in light of each remedy's history and purpose, the text of the PLRA, and the legislative intent behind the statute. Part I compares and contrasts punitive damages with prospective relief and shows how they have historically been treated as two separate remedies that serve different purposes. Part II describes the history of the PLRA and shows how it was enacted to address two main issues: frivolous prisoner lawsuits and judicial micromanagement of prison conditions. Part III describes the *Johnson* opinion and its holding that prospective relief under the PLRA includes punitive damages. Part IV argues that the *Johnson* court erred when it held that the PLRA includes punitive damages as a form of prospective relief.

I. PUNITIVE DAMAGES AND PROSPECTIVE RELIEF ARE DIFFERENT REMEDIES THAT SERVE DISTINCT PURPOSES

Punitive damages and prospective relief have long been treated as separate legal remedies. Punitive damages punish or deter behavior based on past conduct through the imposition of monetary awards, whereas prospective relief prohibits or compels future conduct via court-ordered injunctions. This Part examines the histories and purposes of these two forms of relief and demonstrates that courts consistently recognize them as different remedies that serve distinct—and often divergent—goals.

A. Punitive Damages Punish or Deter Reprehensible Conduct

Punitive damages are non-compensatory monetary awards used primarily to punish or deter reprehensible conduct.[11] They originated in

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rights, but rather are punishment for a defendant's wrongdoing, they are unavailable."), *adopted in part by* Mitchell v. McDonell (*Mitchell II*), No. 3:06-cv-180-KRG-KAP, 2008 WL 5429701, at *1 (W.D. Pa. Dec. 30, 2008) (declining to adopt the portion of the magistrate's opinion denying punitive damages recovery from the plaintiff); *cf.* Hudson v. Singleton, No. CV602-137, 2006 WL 839339 (S.D. Ga. Mar. 27, 2006) (suggesting that punitive damages would not be the least intrusive means of correcting the constitutional violation at issue had the prison administration showed interest in punishing the officer responsible for violating the plaintiff's constitutional rights).

11. Exxon Shipping Co. v. Baker, 554 U.S. __, 128 S. Ct. 2605, 2621 (2008) ("[P]unitives are aimed not at compensation but principally at retribution and deterring harmful conduct."); Cooper Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 432 (2001) (describing punitive damages as non-compensatory damages awarded in excess of actual harm suffered to punish and deter reprehensible conduct and to express the fact finder's moral condemnation of the conduct in question); BLACK'S LAW DICTIONARY 448 (9th ed. 2009) (defining "punitive damages" as "[d]amages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; specif., damages assessed by way of penalizing the wrongdoer or making an

eighteenth-century England, where courts awarded punitive damages as a way of compensating "for mental distress or for intangible losses."[12] Although punitive damages used to possess this compensatory element, as the definition of compensatory damages broadened, the definition of punitive damages shifted toward a "more purely punitive" one.[13] As a result of their punitive nature, they are often viewed as "quasi-criminal" awards even though they are only awarded in civil cases.[14]

Under federal law, punitive damages may be awarded to a prisoner claiming a defendant violated his federal rights where the "defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others."[15] Juries are responsible for deciding whether to award punitive damages and how large the award should be.[16] Courts are responsible for reviewing such awards for reasonableness.[17]

States possess discretion over the imposition of punitive damages, but from a constitutional perspective, courts may only reduce or reverse awards that are "grossly excessive or arbitrary."[18] Courts must consider three factors when reviewing the constitutionality of punitive damages: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases."[19] According to the Supreme Court, "[t]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct."[20] Thus, the standard for reviewing punitive damages awards incorporates a recognition of the stated purposes of punitive damages—

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example to others").

12. 1 DAN B. DOBBS, LAW OF REMEDIES: DAMAGES-EQUITY-RESTITUTION 456 (2d ed. 1993).

13. *Cooper Indus.*, 532 U.S. at 437–38 n.11.

14. *See* David G. Owen, *A Punitive Damages Overview: Functions, Problems and Reform*, 39 VILL. L. REV. 363, 364–65 (1994); *see also Cooper Indus.*, 532 U.S. at 432.

15. Smith v. Wade, 461 U.S. 30, 56 (1983). While the Supreme Court decided *Smith* prior to passage of the PLRA, this case remains good law. *See* Royal v. Kautzky, 375 F.3d 720, 723 (8th Cir. 2004) (citing *Smith* favorably for the proposition that prisoners can seek punitive damages in a post-PLRA prisoner lawsuit); Searles v. Van Bebber, 251 F.3d 869, 879 (10th Cir. 2001) (same); Allah v. Al-Hafeez, 226 F.3d 247, 251–52 (3d Cir. 2000) (same).

16. *See* Atl. Sounding Co. v. Townsend, 557 U.S. __, 129 S. Ct. 2561, 2566 (2009).

17. Exxon Shipping Co. v. Baker, 554 U.S. __, 128 S. Ct. 2605, 2623 (2008).

18. State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

19. *Id.* at 418 (citing BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 575 (1996)).

20. *Id.* at 419 (quoting *Gore*, 517 U.S. at 575).

to punish and deter reprehensible conduct—as well as an acknowledgement of the jury's role as the primary appraiser of those damages.

B. Prospective Relief Compels or Prohibits Future Conduct in Order to Correct or Prevent a Violation of the Law

The concept of prospective relief arose out of Eleventh Amendment sovereign immunity jurisprudence.[21] The Eleventh Amendment generally bars suits against a state and state officials sued in their official capacity absent a waiver by the state or a congressional override.[22] This bar prohibits suits against state officials seeking "retroactive" or "retrospective" relief. [23] However, the Eleventh Amendment does not bar suits against state officials to enjoin those officials from enforcing state law,[24] action which has come to be known as prospective relief.[25] While the distinction between prospective and retrospective relief has at many times been unclear or inadequate, most courts and commentators interpret the prospective-retrospective distinction as barring suits seeking damages and damage-like monetary remedies.[26] Thus, under

21. *See* Carlos Manuel Vázquez, *Night and Day:* Coeur d'Alene, Breard, *and the Unraveling of the Prospective-Retrospective Distinction in Eleventh Amendment Doctrine*, 87 GEO. L.J. 1, 2 (1998).

22. Kentucky v. Graham, 473 U.S. 159, 169 (1985).

23. *E.g.*, Frew *ex rel*. Frew v. Hawkins, 540 U.S. 431, 437 (2004) ("Federal courts may not award retrospective relief, for instance, money damages or its equivalent, if the State invokes its immunity."); P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 145 (1993) (explaining that "suits seeking prospective, *but not compensatory or other retrospective relief*, may be brought against state officials in federal court challenging the constitutionality of official conduct enforcing state law" (emphasis added)); Edelman v. Jordan, 415 U.S. 651, 677 (1974) ("[A] federal court's remedial power, consistent with the Eleventh Amendment . . . may not include a retroactive award which requires the payment of funds from the state treasury." (internal citations omitted)).

24. *Ex parte* Young, 209 U.S. 123, 154 (1908) ("[A] suit against individuals for the purpose of preventing them as officers of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of [the Eleventh] Amendment." (quoting Smyth v. Ames, 169 U.S. 466, 518 (1898))).

25. *See Frew*, 540 U.S. at 437 ("To ensure the enforcement of federal law . . . the Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law."); Seminole Tribe v. Florida, 517 U.S. 44, 73 (1996) ("[S]ince [*Ex parte Young*], we often have found federal jurisdiction over a suit against a state official when that suit seeks only prospective injunctive relief in order to end a continuing violation of federal law." (citation and internal quotations omitted)); *Metcalf & Eddy*, 506 U.S. at 146 ("[T]he [*Ex parte Young*] exception is narrow: It applies only to prospective relief . . . [and] does not permit judgments against state officers declaring that they violated federal law in the past."). *See also* Vázquez, *supra* note 21, at 2.

26. *See* Vázquez, *supra* note 21, at 2–3.

Eleventh Amendment law, punitive damages are retrospective, not prospective.[27]

The prototypical example of prospective relief is the injunction.[28] Just as prospective relief commands state officials to refrain from acting in violation of federal law,[29] injunctive relief commands defendants to act or not act in accordance with a court order.[30] As a result, the history of and law behind injunctive relief is helpful for understanding prospective relief.

Historically, when the American legal system distinguished between courts of law and courts of equity, injunctive relief was a remedy exclusively available in courts of equity.[31] In 1938, the courts of law and equity in the United States merged;[32] however, some remnants of the division between law and equity still remain. For example, under the Seventh Amendment, plaintiffs have a constitutional right to a jury trial when seeking a legal remedy but not an equitable one.[33] Thus, when a plaintiff requests both legal and equitable relief and demands a trial by jury, a jury must consider the legal questions, but a judge decides the equitable claims.[34]

Courts subject injunctive relief to its own unique legal standards. To decide whether injunctive relief should be granted, courts weigh four factors: (1) the likelihood of harm to the plaintiff absent the relief; (2) the likelihood of harm to the defendant if the relief is granted; (3) the likelihood of plaintiff's success on the merits of the case; and (4) the public interest.[35] Once a court decides injunctive relief is warranted, that

27. *See* Mohler v. Mississippi, 782 F.2d 1291, 1293 (5th Cir. 1986); *see also Frew*, 540 U.S. at 437 (noting that retrospective relief seeks monetary damages or its equivalent); Green v. Mansour, 474 U.S. 64, 68 (1985) ("[D]eterrence interests are insufficient to overcome the dictates of the Eleventh Amendment.").

28. Colleen P. Murphy, *Money as a "Specific" Remedy*, 58 ALA. L. REV. 119, 138 (2006).

29. *See supra* notes 24–25 and accompanying text.

30. JAMES M. FISCHER, UNDERSTANDING REMEDIES 5–6 (2d ed. 2006).

31. *See* DOBBS, *supra* note 12, at 11.

32. Rhonda Wasserman, *Equity Transformed: Preliminary Injunctions to Require the Payment of Money*, 70 B.U. L. REV. 623, 653 (1990) (noting the merger of law and equity in the federal courts).

33. Bryan Hart, Comment, *Burden of Proof for Employee Numerosity under § 1981a Statutory Damages Caps*, 75 U. CHI. L. REV. 1657, 1671 (2008).

34. Curtis v. Loether, 415 U.S. 189, 196 n.11 (1974); Dairy Queen, Inc. v. Wood, 369 U.S. 469, 470–73 (1962).

35. Ryan McLeod, Comment, *Injunction Junction: Remembering the Proper Function and Form of Equitable Relief in Trademark Law*, 2006 DUKE L. & TECH. REV. 0013, at ¶ 10, http://www.law.duke.edu/journals/dltr/articles/2006dltr0013.html (citing Metro-Goldwyn Mayer, Inc. v. 007 Safety Prods., Inc., 183 F.3d 10, 15 n.2 (1st Cir. 1999)).

relief must be narrowly tailored to the legal violation at issue[36] and be no more burdensome to the defendant than necessary to remedy the defendant's wrongful conduct and provide the plaintiff with complete relief.[37] Thus, the standards for injunctive relief balance the interest of providing the plaintiff with complete relief against the interest of burdening the defendant no more than necessary to remedy the wrongful conduct.

C. Courts Recognize the Inherent Differences Between Punitive Damages and Injunctive Relief by Subjecting Them to Different Restrictions

In recognition of the differences between punitive damages and injunctive relief, courts subject these remedies to different restrictions. For example, courts generally do not hold a defendant in contempt for failure to pay monetary damages but often will do so to enforce injunctions.[38] Also, unlike damages, injunctive relief is subject to modification.[39] Similarly, courts maintain the distinction between monetary damages and injunctions by refraining from ordering injunctive relief where monetary damages serve as an adequate remedy[40] or where the order would be for payment of monetary damages.[41] Still, injunctive relief can result in monetary expenditures for a defendant, as it may include costly requirements such as hiring additional staff or building new facilities.[42]

Also, as shown above, punitive damages and prospective relief are subjected to different legal standards that take into account their distinct purposes. Courts evaluate punitive damages awards based primarily on the reprehensibility of the defendant's motives and conduct.[43] In

36. *E.g.*, United States v. Schulz, 517 F.3d 606, 607 (2d Cir. 2008); NLRB v. U.S. Postal Serv., 486 F.3d 683, 690 (10th Cir. 2007) (Tymkovich, J., concurring); Fiber Sys. Int'l v. Roehrs, 470 F.3d 1150, 1159 (5th Cir. 2006); McLendon v. Cont'l Can Co., 908 F.2d 1171, 1182 (3d Cir. 1990).

37. Madsen v. Women's Health Ctr., 512 U.S. 753, 765 (1994) (citing Califano v. Yamasaki, 442 U.S. 682, 702 (1979)).

38. DOBBS, *supra* note 12, at 152.

39. FISCHER, *supra* note 30, at 318.

40. McLeod, *supra* note 35, at ¶ 9.

41. DOBBS, *supra* note 12, at 152.

42. *See* Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 374–75 (1992) (discussing a consent decree requiring the construction of a new jail facility); Gates v. Rowland, 39 F.3d 1439, 1442 (9th Cir. 1994) (involving a plaintiff's request for relief in the form of additional correctional staff).

43. *See supra* notes 15, 19–20 and accompanying text.

contrast, injunctive relief standards focus primarily on the harm to the plaintiff, and when imposing injunctive relief, the courts tailor it as narrowly as possible to the goal of assuring that the plaintiff receives complete relief.[44] In this respect, punitive damages and injunctive relief serve divergent purposes: while punitive damages are meant to be intrusive, as a way of punishing the defendant, injunctive relief must be the least intrusive method of providing a plaintiff with a remedy. Thus, the very different histories of punitive damages and prospective relief demonstrate how these two remedies serve different purposes and, as a result, are subject to different requirements.

II. THE PLRA WAS DIRECTED AT FRIVOLOUS PRISONER SUITS AND JUDICIAL MICROMAGEMENT OF PRISONS

The PLRA arose from Congress's concern over two issues: a perceived flood of frivolous prisoner lawsuits and a perceived increase in the judicial micromanagement of prison conditions. This Part describes the context in which these concerns arose and how the PLRA addresses them.

A. A Steady Increase in Prisoner Litigation and the Use of Broad Consent Decrees to Resolve Those Disputes Impelled Congress to Pass the PLRA

Before the 1960s, federal courts maintained a "hands-off" policy regarding prison administration.[45] The courts would not inquire into the treatment or discipline of prisoners except in the limited context of "torturous punishments meted out by statutes or sentencing judges."[46] However, during the 1960s and 1970s, the Supreme Court became more receptive to prisoner lawsuits and permitted prisoners to seek remedies for violations of their constitutional rights.[47] The courts quickly

44. *See supra* notes 35–37 and accompanying text.

45. *See* Procunier v. Martinez, 416 U.S. 396, 404–05 (1974) (noting how federal courts have traditionally taken the position that prisons "require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government").

46. Hudson v. McMillian, 503 U.S. 1, 18 (1992) (Thomas, J., dissenting).

47. *See, e.g.*, Wolff v. McDonnell, 418 U.S. 539, 555 (1974) ("[T]hough his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for a crime."); *Martinez*, 416 U.S. at 405 ("[A] policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution."). For a more detailed description of the history and eventual abandonment of the hands-off policy, see Gilmore v.

experienced an increase in prisoner litigation: while in 1966 only 218 such cases were filed, that number rose to 9730 by 1978,[48] and to 39,008 by 1995,[49] the year Congress debated adopting the PLRA. In relative terms, prisoners filed 6.3 lawsuits for every 1000 prisoners in 1970, but filed 24.6 lawsuits for every 1000 prisoners in 1995.[50]

With the increase in prisoner litigation came an increase in the popularity of consent decrees—court enforced settlements agreed to by the litigants in lieu of going to trial.[51] Prisoner-plaintiffs preferred consent decrees because they allowed agreement to broad, institution-wide remedies that exceeded the bounds of merely correcting the constitutional violations at issue.[52] Administrator-defendants preferred them because they eliminated the need for a finding of, or admission to, the existence of a constitutional violation.[53] All parties benefited from the elimination of the risks and costs associated with litigation that consent decrees provided.[54]

In prisoner litigation, consent decrees generally order future changes to the prison or prison system in question, such as restricting the ability of prison officials to search through an inmate's legal papers,[55] requiring the facilities to review existing staffing levels and hire additional correctional staff if necessary,[56] ordering the construction of new facilities,[57] and capping the number of inmates housed at a given facility.[58] Some consent decrees have stayed in effect for years, even decades, after their initial implementation.[59] Consent decrees must be

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California, 220 F.3d 987, 990–92 (9th Cir. 2000).

48. William Bennett Turner, *When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts*, 92 HARV. L. REV. 610, 611 (1979).

49. Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1583 (2003).

50. *Id*. at 1583. While acknowledging an increase in prisoner civil rights litigation since the 1960s, Margo Schlanger points out that the relative number of such lawsuits peaked not in the mid-1990s, but rather in 1981, and that the increase in the absolute number of such lawsuits after 1981 is more attributable to an increase in the number of prisoners than to an increase in prisoner litigiousness. *See id.* at 1585–87.

51. *See Gilmore*, 220 F.3d at 995 (discussing "second and third generation prison conditions cases," which involved prison administrators agreeing to wide-ranging consent decrees instead of litigating the alleged constitutional violation).

52. Brill, *supra* note 7, at 655–56.

53. *Id*. at 656.

54. *Id*. at 655.

55. Wycoff v. Hedgepeth, 34 F.3d 614, 615 (8th Cir. 1994).

56. Gates v. Rowland, 39 F.3d 1439, 1443 (9th Cir. 1994).

57. Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 374–75 (1992).

58. Harris v. City of Philadelphia, 35 F.3d 840, 842 (3d Cir. 1994).

approved and enforced by the courts, including, when necessary, judicial supervision over prison conditions, imposition of sanctions, and modification of relief.[60]

Although consent decrees had their advantages, some critics blamed the decrees for "limit[ing] state penal policy and prosecutorial discretion" and "escalating prison costs."[61] They blamed the federal judges who approved and enforced the decrees for "exceeding their powers and usurping state executive functions."[62] In 1995, Sarah Vandenbraak, then-Assistant District Attorney in Philadelphia, Pennsylvania,[63] wrote specifically about a nine-year-old consent decree under which the Philadelphia criminal justice system operated, saying that it had persisted so long in the face of opposition from Philadelphia's elected leaders that "it no longer enjoy[ed] the consent of the governed."[64] It was in this climate that Congress responded to these criticisms by passing the PLRA.[65]

The PLRA was introduced to Congress in two parts of House Resolution 667: Title II, entitled "Stopping Abusive Prisoner Lawsuits," and Title III, entitled "Stop Turning Out Prisoners."[66] Proponents of the PLRA saw it as rectifying two main problems with prisoner litigation: a perceived flood of frivolous prisoner lawsuits and the perceived judicial micromanagement of prison conditions.[67]

59. *See, e.g.*, *Rufo*, 502 U.S. at 401 (seeking to modify a 1979 consent decree in 1992); Kindred v. Duckworth, 9 F.3d 638, 639 (7th Cir. 1993) (seeking to modify a 1977 consent decree in 1993).

60. *See* Gilmore v. California, 220 F.3d 987, 995 (9th Cir. 2000).

61. Brill, *supra* note 7, at 656; *see also* Anthony Lewis, Op-Ed., *Immigrants Denied Their Day in Court*, SEATTLE POST-INTELLIGENCER, Oct. 23, 1996, at A15 (criticizing judicial enforcement of consent decrees as leading to "overcrowding, the early release of dangerous felons, higher costs to taxpayers and a massive prison building program").

62. Brill, *supra* note 7, at 656–57.

63. *Id*. at 657 n.69.

64. Sarah B. Vandenbraak, *Bail, Humbug! Why Criminals Would Rather Be in Philadelphia*, 73 POL'Y REV. 73, 73 (1995), *available at* http://www.hoover.org/publications/policyreview/3565992.html.

65. Brill, *supra* note 7, at 657.

66. Richard J. Costa, Note, *The Prison Litigation Reform Act of 1995: A Legitimate Attempt to Curtail Frivolous Inmate Lawsuits and End the Alleged Micro-Management of State Prisons or a Violation of Separation of Powers?*, 63 BROOK. L. REV. 319, 325 n.30 (1997); *see also* H.R. REP. NO. 104-21, at 5 (1995).

67. Costa, *supra* note 66, at 319.

B. Title II Addressed the Perceived Flood of Prisoner Suits by Limiting When Prisoners Can Sue and Requiring Courts to Identify and Dismiss Frivolous Lawsuits Early

Title II aimed to stem the tide of frivolous prisoner lawsuits filed against prisons and prison officials. The House Judiciary Committee Report describing the PLRA asserts that "frivolous lawsuits" clogged the courts and undermined the "administration of justice," and that Title II would place "sensible limits" on the ability of prisoners to challenge the conditions of their confinement.[68] This report tracks similar arguments made by proponents of the PLRA on the House and Senate floors. For example, Senator Bob Dole remarked that he had witnessed an "alarming explosion" in lawsuits filed by prisoners and warned that these lawsuits "tie up the courts, waste valuable judicial and legal resources, and affect the quality of justice enjoyed by the law-abiding population."[69] He further argued that the resources spent defending these suits "could be better spent prosecuting criminals, fighting illegal drugs, or cracking down on consumer fraud."[70] Similarly, Senator Spencer Abraham asserted that the courts dismissed over ninety-five percent of prisoner lawsuits[71] as a way of emphasizing the frivolous nature of the suits. Senator Orrin Hatch saw Title II as a means of "preventing inmates from abusing the Federal judicial system" but emphasized that it was not intended to prevent the litigation of "legitimate claims" by prisoners.[72]

In furtherance of its goal, Title II contains provisions that discourage prisoners from filing frivolous or premature cases and require courts to identify and dismiss such cases early. First, prisoners filing in forma pauperis must still generally pay the full filing fee.[73] Second, prisoners must exhaust all administrative remedies prior to filing a case in court.[74] Third, courts must screen prisoner cases at the earliest opportunity and dismiss them if the claims are frivolous, malicious, fail to state a claim

68. H.R. REP. NO. 104-21, at 7.

69. 141 CONG. REC. 14,570–71 (1995) (remarks of Sen. Dole); *accord* 141 CONG. REC. 26,553 (letter from the National Association of Attorneys General stating that "[a]lthough occasional meritorious claims absorb state resources, nonetheless, we believe the vast majority of the $81.3 million figure [estimated cost of inmate civil suits to the states] is attributable to the non-meritorious suits").

70. 141 CONG. REC. 14,571 (remarks of Sen. Dole).

71. *Id*. at 26,449 (remarks of Sen. Abraham).

72. *Id*. at 27,042 (remarks of Sen. Hatch).

73. 28 U.S.C. § 1915(b) (2006).

74. 42 U.S.C. § 1997e(a) (2006).

upon which relief may be granted, or seek monetary relief from immune defendants.[75] Fourth, prisoners who have previously brought three or more prisoner cases that were dismissed for being frivolous, malicious, or for failing to state a claim may not bring a prisoner action in forma pauperis "unless the prisoner is under imminent danger of serious physical injury."[76] Fifth, the court may revoke a prisoner's unvested earned release credit if the court finds that the prisoner filed a malicious claim, filed a claim with the sole intent to harass the defendant, or presented false testimony or evidence to the court.[77] Finally, prisoners may not bring causes of action without first showing they suffered a physical injury.[78]

C. Title III Addressed the Perceived Judicial Micromanagement of Prison Conditions by Making it Harder for Federal Judges to Order Injunctive Relief

Title III addressed Congress's second goal: ending the continued "micromanaging" of prison facilities by the courts. The House Committee Report describing the PLRA reflects that purpose, particularly underscoring Title III's effect on court-ordered population caps:

> Title III provides much needed relief by providing reasonable limits on the remedies available in prison crowding suits. The title limits court-ordered relief to those specific conditions affecting the individual plaintiff, and requires the court to consider the potential impact of such relief on public safety. Title III includes provisions that will guard against court-ordered caps dragging on and on, with nothing but the whims of federal judges sustaining them.[79]

The Report emphasizes the role of prison population caps in causing "revolving door justice"[80] and decries judges for "imposing remedies intended to effect an overall modernization of local prison systems or provide an overall improvement in prison conditions."[81] It asserts that Title III addressed these problems by "limiting the remedies that can be

75. 28 U.S.C. § 1915A.

76. *Id*. § 1915(g).

77. *Id*. § 1932.

78. 42 U.S.C. § 1997e(e).

79. H.R. REP. NO. 104-21, at 7–8 (1995).

80. *Id*. at 9.

81. *Id*. at 24 n.2.

granted or enforced by a court in a prison conditions suit alleging a violation of a federal right."[82] It notes, however, that Title III's basic restrictions on court-ordered relief were "not a departure from current jurisprudence concerning injunctive relief."[83]

The House Report tracks comments on the House and Senate floors made by proponents of the bill. For example, Senator Dole decried court enforced population caps as "[p]erhaps the most pernicious form of judicial micromanagement."[84] Senator Abraham saw the overinvolvement of federal judges in prison administration as raising prison costs unnecessarily, undermining the punitive and deterrent effect of prison, and leading to the release of dangerous criminals into society.[85] He further claimed that "[p]eople deserve to keep their tax dollars or have them spent on projects they approve . . . . [rather than] on keeping prisoners in conditions some Federal judge feels are desirable (although not required by any provision of the Constitution or any law)" and asserted that Title III would eliminate consent decrees "under which judges control the prisons literally for decades."[86] However, he claimed to have no desire to eliminate all judicial relief, only "to retain it for cases where it is needed while curtailing its destructive use."[87] Similarly, Representative Charles Canady saw Title III as a positive step toward stopping the "overinvolvement" of the federal courts in prison management and enabling local governments and states to "obtain relief in an expeditious manner."[88]

When discussing the perceived judicial micromanagement of prison systems, Senator Abraham cited what he saw as prototypical examples of that micromanagement, such as federal courts dictating "1. How warm the food is. 2. How bright the lights are. 3. Whether there are electrical outlets in each cell. 4. Whether windows are inspected and up to code. 5. Whether prisoners' hair is cut only by licensed barbers. 6. And whether air and water temperatures are comfortable."[89] He emphasized that "[m]ost fundamentally, the proposed bill forbids courts from entering orders for prospective relief (such as regulating food

82. *Id*. at 8.

83. *Id*. at 24 n.2.

84. 141 CONG. REC. 26,549 (1995) (remarks of Sen. Dole).

85. *Id*. at 26,448 (remarks of Sen. Abraham).

86. *Id*. at 26,449.

87. *Id*.

88. *Id*. at 4368 (remarks of Rep. Canady).

89. *Id*. at 26,448 (remarks of Sen. Abraham).

temperatures) unless the order is necessary to correct violations of individual plaintiffs' Federal rights."[90]

Newspaper publications written around the time Congress debated and passed the PLRA echoed the sentiments of the congressional proponents of the bill. For example, one editorial discussed how the judicial enforcement of consent decrees led to "overcrowding, the early release of dangerous felons, higher costs to taxpayers and a massive prison building program."[91] Similarly, the *Philadelphia Inquirer* called the statute a "legislative end run around U.S. District Judge Norma Shapiro," the judge known for strictly enforcing population caps on the Philadelphia prisons under its then nine-year-old consent decree.[92]

In furtherance of its goal, Title III contains various limitations on when and to what extent prospective relief may be ordered. First and foremost, in any civil action regarding prison conditions, a court "shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right"[93]—the need-narrowness-intrusiveness standard.[94] When evaluating whether an order meets the need-narrowness-intrusiveness standard, courts must give "substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief"[95] and may only order a government official to exceed his state or local authority under a few prescribed situations.[96] Even consent decrees, which are normally agreed upon by the parties and involve no formal finding of a federal rights violation,[97] must meet the need-narrowness-intrusiveness standard.[98]

The PLRA places particularly strong restrictions on court-ordered prison releases. For example, prison release orders may only be ordered by a three-judge panel after the prison system has had a reasonable

90. *Id*. at 26,449.

91. Editorial, *Proposed STOP Bill Would Restrict Federal Judges*, HOUSTON CHRON., Sept. 30, 1995, at 42A.

92. Julia Cass, *Attached to U.S. Spending Bill is a Rider Curbing Prison Caps*, PHILA. INQUIRER, Oct. 3, 1995, at B4; *see also supra* note 64 and accompanying text.

93. 18 U.S.C. § 3626(a)(1)(A) (2006).

94. Brill, *supra* note 7, at 658.

95. 18 U.S.C. § 3626(a)(1)(A).

96. *Id*. § 3626(a)(1)(B).

97. *See supra* notes 51–53 and accompanying text.

98. 18 U.S.C. § 3626(c)(1).

amount of time to comply with less intrusive relief and either the prison failed to comply or the relief failed to remedy the violation.[99] Furthermore, before the panel may enter a prison release order, it must find by clear and convincing evidence that crowding is the primary cause of the violation of a federal right and that no other relief will remedy the violation.[100]

The PLRA also provides for the termination or stay of prospective relief instead of allowing court-ordered relief to continue indefinitely. Any party may move for termination of prospective relief under certain time constraints.[101] Upon such a motion, the court must immediately terminate prospective relief unless it finds the relief "remains necessary to correct a current and ongoing violation of the Federal right" and conforms to the need-narrowness-intrusiveness standard.[102] Motions to modify or terminate prospective relief operate as mandatory automatic stays,[103] further highlighting Congress's desire to limit prospective relief granted to prisoners.

Thus, an examination of the climate immediately preceding the adoption of the PLRA, as well as the text and legislative history of the statute, demonstrate how the PLRA was enacted to address two specific issues—frivolous prisoner lawsuits and judicial micromanagement of prison conditions—and how all of the statute's provisions are geared toward eliminating those two problems.

III. THE ELEVENTH CIRCUIT HELD THAT UNDER THE PLRA, PUNITIVE DAMAGES ARE PROSPECTIVE RELIEF

In *Johnson v. Breeden*,[104] the Eleventh Circuit became the first and only circuit court to address the issue of whether prospective relief under the PLRA includes punitive damages.[105] In the case, Ernest Johnson, an inmate of Phillips Correctional Institution in Buford, Georgia, alleged that on August 22, 1995, multiple corrections officers—including

99. *Id*. § 3626(a)(3)(A)–(B).

100. *Id*. § 3626(a)(3)(E).

101. *Id*. § 3626(b)(1).

102. *Id*. § 3626(b)(3).

103. *Id*. § 3626(e)(2).

104. 280 F.3d 1308 (11th Cir. 2002).

105. Searches on several legal databases failed to identify any other circuit courts that have addressed this issue. *See also* Angus R. Love, *The Prison Litigation Reform Act*, *in* 2008 PA. BAR INST., PRISONER CIVIL RIGHTS LITIGATION 1, 12–14 (noting that only the Eleventh Circuit and a few federal district courts have addressed whether punitive damages are prospective relief and citing *Johnson v. Breeden*).

defendants Brian Breeden and Rudolph Gomez—subjected Johnson to cruel and unusual punishment in violation of his Eighth Amendment rights by using excessive force against him.[106] Johnson maintained that the officers, without provocation, choked, punched, kicked, and beat him until he lost consciousness and required medical attention.[107] In contrast, the officers claimed that Johnson "became unruly," attacked Breeden, and injured himself by falling and hitting his head on a heater when the officers tried to restrain him.[108] A jury found in favor of Johnson and awarded him $25,000 in compensatory damages, $30,000 in punitive damages from Breeden, and $15,000 in punitive damages from Gomez.[109]

The Eleventh Circuit affirmed the jury's award of compensatory damages.[110] However, the court held that punitive damages are "prospective relief" as defined by the PLRA.[111] Under the PLRA, prospective relief is defined as "all relief other than compensatory monetary damages."[112] According to the court, "[t]he plain language of that definition provision is clear, and where the statutory language provides an explicit definition we apply it even if it differs from the term's ordinary meaning."[113] The court elaborated by noting that "Congress has told us that all relief other than compensatory monetary damages is 'prospective relief.' Punitive damages are relief other than compensatory monetary damages. Therefore, punitive damages are prospective relief."[114]

Having determined that punitive damages are prospective relief, the court further held that the trial court should have analyzed whether the punitive damages awarded satisfied the PLRA's need-narrowness-intrusiveness standard.[115] The court recognized the irregularity of calling punitive damages prospective relief, saying "[b]ecause Congress has provided that punitive damages are prospective relief, we must give the requirements of [the need-narrowness-intrusiveness standard] *some*

106. *Johnson*, at 1311–12.

107. *Id*. at 1312.

108. *Id*.

109. *Id*.

110. *Id*. at 1328.

111. *Id*. at 1325.

112. 18 U.S.C. § 3626(g)(7) (2006).

113. *Johnson*, 280 F.3d at 1325 (citing Stenberg v. Carhart, 530 U.S. 914, 942 (2000)).

114. *Id*.

115. *Id*. (citing 18 U.S.C. § 3626(a)(1)(A), the need-narrowness-intrusiveness standard).

meaning in the context of punitive damages."[116] Regardless, the court proceeded to apply the PLRA's definition of prospective relief to punitive damages:

> We think those requirements mean that a punitive damages award must be no larger than reasonably necessary to deter the kind of violations of the federal right that occurred in the case. They also mean that such awards should be imposed against no more defendants than necessary to serve that deterrent function and that they are the least intrusive way of doing so.[117]

The circuit court held that the trial court's analysis was "conclusory" and as such "not enough to satisfy the requirements of [the need-narrowness-intrusiveness standard]."[118] Thus, the circuit court vacated the punitive damages award and remanded the case so that the trial court could "enter findings that are as specific to the case as the circumstances permit."[119]

Since *Johnson*, only four district court cases have addressed whether punitive damages are prospective relief under the PLRA.[120] Two arose within the Eleventh Circuit and, as such, applied *Johnson* without criticism.[121] One district court case in the Third Circuit assumed arguendo that *Johnson* was correct,[122] but expressed dissatisfaction with the circuit court's decision:

> At first blush, it seems that one can neither 'narrowly draw' punitive damages, nor adjust them to better 'correct' a violation of rights, nor render them any more or less 'intrusive.' . . . Congress may have intended the PLRA's 'prospective relief'

116. *Id*. (emphasis added).

117. *Id*.

118. *Id*. at 1326.

119. *Id*. at 1326, 1328.

120. *See* Love, *supra* note 105, at 12–14 (noting three district court cases that had, as of 2008, addressed whether punitive damages are prospective relief under the PLRA). Since the publication of Love's article, an additional district court case has addressed the issue. *See* Mitchell v. McDonell (*Mitchell I*), No. 3:06-180-KRG-KAP, 2008 WL 5429704, at *2 (W.D. Pa. Dec. 8, 2008), *adopted in part by* Mitchell v. McDonell (*Mitchell II*), No. 3:06-cv-180-KRG-KAP, 2008 WL 5429701 (W.D. Pa. Dec. 30, 2008).

121. *See* Rieara v. Sweat, No. CV205-174, 2007 WL 853465, at *6 (S.D. Ga. Mar. 16, 2007) (noting punitive damages are prospective relief but allowing Plaintiff's claim for punitive damages to go before the trier of fact, reserving the right for the court to "review the punitive damages award [if one is made] to determine the reasonableness of said award"); Hudson v. Singleton, No. CV602-137, 2006 WL 839339, at *2 (S.D. Ga. Mar. 27, 2006) (affirming the jury's award of $10,000 in punitive damages against one defendant but reducing the jury's award of punitive damages against a second defendant from $10,000 to $5,000).

122. *See* Tate v. Dragovich, No. 96-4495, 2003 WL 21978141, at *6 (E.D. Pa. Aug. 14, 2003).

> provisions to apply only to injunctive relief and not punitive damages.[123]

One magistrate judge in the Third Circuit went even further than *Johnson* by holding that the PLRA's need-narrowness-intrusiveness standard denies prisoner-plaintiffs any punitive damages under any circumstances.[124] Specifically, the magistrate judge said:

> Plaintiff cannot recover punitive damages. In any complaint concerning conditions of an inmate's confinement . . . [the PLRA] prohibits the award of any 'prospective relief' which is not 'necessary to correct a violation' of federal rights. 'Prospective relief' is defined [by the PLRA] to be *all* relief other than compensatory damages. Since by definition punitive damages are not compensatory damages nor damages which 'correct a violation' of a plaintiff's rights, but rather are punishment for a defendant's wrongdoing, they are unavailable.[125]

This portion of the magistrate's opinion was not adopted by the district court.[126] However, the magistrate's opinion indicates the attractiveness of *Johnson*'s logic and the extent to which that logic can be extended to completely deny prisoner-plaintiffs punitive damages.

IV. THE PLRA DOES NOT—AND SHOULD NOT—CLASSIFY PUNITIVE DAMAGES AS PROSPECTIVE RELIEF

By examining the plain language and legislative history of the PLRA, this Part demonstrates why, using canons of statutory construction, the PLRA's definition of prospective relief does not include punitive damages.[127] First, it applies the canons to the statute and demonstrates

123. *Id*. at *6 n.7.

124. *See Mitchell I*, 2008 WL 5429704, at *2.

125. *Id*.

126. *See* Mitchell v. McDonell (*Mitchell II*), No. 3:06-cv-180-KRG-KAP, 2008 WL 5429701, at *1 (W.D. Pa. Dec. 30, 2008) (declining to adopt the portion of the magistrate's opinion denying punitive damages recovery from the plaintiff).

127. Under the canons of statutory construction, where the language of a statute is plain and unambiguous, courts will not inquire further into the meaning of the statute. Carcieri v. Salazar, 555 U.S. __, 129 S. Ct. 1058, 1063–64 (2009). However, a statutory clause should not be interpreted in isolation but rather in the context of the entire statute as well as its object and policy. U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc., 508 U.S. 439, 454–55 (1993). Also, a seemingly clear statute will not be given an effect that leads to absurd results. United States v. Brown, 333 U.S. 18, 27 (1948). When a statute is ambiguous or when the seemingly clear meaning would lead to absurd results, courts may look to extrinsic aids such as the legislative history and purpose of the statute to determine the statute's meaning. Oklahoma v. New Mexico, 501 U.S. 221, 235 n.5 (1991)

that the Eleventh Circuit Court's interpretation—finding the plain language of the statute clear and unambiguous—was wrong. Then, it argues that Congress could not have intended to classify punitive damages as prospective relief because doing so serves none of Congress's stated goals with regard to the PLRA and withholds an important legal tool from those prisoners who need it the most.

A. Contrary to the Holding in Johnson, *the Plain Language of the PLRA Does Not Clearly and Unambiguously Categorize Punitive Damages as Prospective Relief*

By holding that the plain language of the PLRA is clear, the *Johnson* court failed to properly analyze whether prospective relief includes punitive damages. Generally, where a statute's language is plain and unambiguous, no further inquiry into the meaning of the statute is required.[128] Considered in isolation, the PLRA's definition of prospective relief arguably appears clear. It states that prospective relief is "all relief other than compensatory monetary damages."[129] The statute defines "relief" expansively to mean "all relief in any form that may be granted or approved by the court" not including private settlement agreements.[130] As previously discussed, punitive damages are monetary, but generally non-compensatory, relief.[131] Thus, because punitive damages are relief other than compensatory monetary damages, punitive damages appear to fall within the PLRA's definition of prospective relief.

However, the clarity of a statute's language depends not just on one clause in isolation but on the context of the statute as a whole,[132] and even seemingly clear statutes should not be given an effect that leads to absurd results.[133] When considered based on these criteria, the PLRA's definition of prospective relief no longer clearly encompasses punitive damages. The PLRA requires that courts "*shall not* grant or approve any prospective relief" unless the relief satisfies the need-narrowness-

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(collecting cases). When Congress uses a term of art or a phrase that has acquired a peculiar legal meaning, that term or phrase is construed according to its peculiar meaning in the absence of legislative intent to the contrary. 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, STATUTES AND STATUTORY CONSTRUCTION 474 (7th ed. 2007).

128. *Carcieri*, 129 S. Ct. at 1063–64.

129. 18 U.S.C. § 3626(g)(7) (2006).

130. *Id*. § 3626(g)(9).

131. *See supra* note 11 and accompanying text.

132. *U.S. Nat'l Bank of Or*., 508 U.S. at 454–55.

133. United States v. Brown, 333 U.S. 18, 27 (1948).

intrusiveness standard.[134] It seems counterintuitive that one can "narrowly draw" punitive damages, adjust them to "correct" a violation of a federal right, or render them less "intrusive,"[135] especially given that the purpose of punitive damages is to intrude on wrongdoers by making them pay money in excess of the damages that the plaintiff suffered as punishment for engaging in reprehensible conduct.[136] Yet, if punitive damages are prospective relief, the plain language of the PLRA requires that they be subject to those restrictions, as evidenced by the mandatory language "shall not." Also, the PLRA's need-narrowness-intrusiveness standard does not consider either of the two stated goals of punitive damages: punishment and deterrence.[137] The Johnson court attempted to reconcile this contradiction by saying that the need-narrowness-intrusiveness standard requires punitive damages to be narrowly drawn and extend no further than necessary to deter the federal right violation at issue.[138] However, this is a strained reading of the need-narrowness-intrusiveness standard at best, and furthermore completely ignores the punishment aspect of punitive damages. Thus, subjecting punitive damages to the PLRA's mandatory restrictions on prospective relief absurdly requires a court to evaluate punitive damages against a standard that makes no sense in the context of punitive damages and fails to consider any of the goals that punitive damages serve.

Similarly, the PLRA provides for termination or automatic stays of prospective relief,[139] two actions that do not apply to punitive damages. Both the termination and stay provisions are mandatory, as evidenced by the statute's use of the word "shall."[140] The only way for the court to avoid terminating prospective relief is to find that prospective relief "remains necessary to correct a current and ongoing violation of the Federal right" and conforms to the need-narrowness-intrusiveness

134. 18 U.S.C. § 3626(a)(1)(A) (emphasis added).

135. *See* Tate v. Dragovich, No. 96-4495, 2003 WL 21978141, at *6 n.7 (E.D. Pa. Aug. 14, 2003) (noting the counterintuitive nature of subjecting punitive damages to the PLRA's need-narrowness-intrusiveness standard).

136. *See supra* note 11 and accompanying text.

137. *Compare supra* note 11 and accompanying text (discussing the purpose of punitive damages), *with supra* note 93 and accompanying text (quoting the PLRA's need-narrowness-intrusiveness standard).

138. *See supra* note 117 and accompanying text.

139. *See supra* notes 101–103 and accompanying text.

140. The PLRA mandates that where prospective relief with respect to prison conditions is ordered, "such relief *shall* be terminable upon the motion of any party or intervener" within certain time parameters. 18 U.S.C. § 3626(b)(1)(A) (emphasis added). When a motion to terminate is made, that motion "*shall* operate as a stay" during a specified statutory period. *Id.* § 3626(e)(2) (emphasis added).

standard.[141] Based on these requirements, if punitive damages are prospective relief, one of two equally absurd results would occur: courts would be put into the position of either "terminating" the punitive damages awarded, thus taking them away from the plaintiff, or defying the PLRA's mandatory termination provision by deeming punitive damages non-terminable. Thus, the termination provision of the PLRA underscores the paradoxical nature of classifying punitive damages as prospective relief.

Although the statute defines the term "prospective relief" broadly, when viewed as a whole the PLRA uses the term in a way that approximates injunctive relief, a class of relief which does not include punitive damages.[142] The connection between prospective relief as used by the PLRA and traditional injunctive relief is apparent in the PLRA's requirement that "[p]reliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required . . . for the entry of prospective relief and makes the order final before the expiration of the 90-day period."[143] While the court could enter a preliminary injunction and then subsequently enter an order for punitive damages, the above clause appears to contemplate prospective relief as injunctive relief, and vice versa.

Given these considerations, the *Johnson* court erred when it found that the language of the PLRA clearly and unambiguously classifies punitive damages as prospective relief. In light of this ambiguity, the *Johnson* court should have considered other extrinsic aids such as the legislative history and purpose of the PLRA to determine the statute's meaning.[144]

B. The Congressional History of the PLRA Exhibits No Intent to Classify Punitive Damages as Prospective Relief

Had the *Johnson* court examined the legislative history and purpose of the PLRA, it would have found no support for the argument that Congress intended to classify punitive damages as prospective relief. The legislative history of the PLRA contains no record that Congress considered the effect the PLRA would have—or should have—on punitive damages. At no time does the record discuss punitive damages with reference to the goals or effects of the PLRA.

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141. 18 U.S.C. § 3626(b)(3).

142. *See supra* Part I.

143. 18 U.S.C. § 3626(a)(2).

144. *See* Oklahoma v. New Mexico, 501 U.S. 221, 235 n.5 (1991).

On the other hand, the legislative history does indicate that Congress considered prospective relief synonymous with injunctive relief—the prototypical example of a prospective remedy.[145] For example, in discussing the PLRA's restrictions on prospective relief, both the House Committee Report to H.R. 667 and members of Congress repeatedly referred to judicial micromanaging through court-ordered changes to the way prisons are managed, population caps, and mass prisoner releases, all prototypical examples of injunctive relief.[146] Also, the House Committee Report on the PLRA asserts that the PLRA's need-narrowness-intrusiveness standard does not represent a departure from injunctive relief jurisprudence.[147]

Given the historical connection between prospective and injunctive relief[148] and the legislative history of the PLRA suggesting that Congress considered the two terms to be synonymous, it should be presumed that Congress intended to adopt the conventional legal meaning of prospective relief.[149] Classifying punitive damages as prospective relief would defy that conventional meaning since doing so constitutes a significant departure from injunctive relief jurisprudence[150] and would require judges to apply a different standard to punitive damages than they usually do.[151] Thus, the legislative history and purpose of the PLRA supports the contention that classifying punitive damages as prospective relief would undermine Congress's objective to address injunctive relief, but not other forms of relief.

The only historical support for categorizing punitive damages as prospective relief is that an interim version of the PLRA as introduced on the Senate floor defined "prospective relief" as "all relief other than monetary damages," leaving out the word "compensatory."[152] All other versions of the bill, including one submitted a day later, included the

145. Murphy, *supra* note 28, at 138.

146. *See supra* notes 79–90 and accompanying text.

147. H.R. REP. NO. 104-21, at 24 n.2.

148. *See supra* Part I.B.

149. *See* SINGER & SINGER, *supra* note 127, at 478–79 ("Absent legislative intent to the contrary, or other evidence of a different meaning, legal terms in a statute are presumed to have been used in their legal sense." (citations omitted)).

150. *See supra* Part I.

151. *Compare supra* notes 18–20 and accompanying text (discussing the standard for reviewing punitive damages), *with supra* note 93 and accompanying text (quoting the PLRA's need-narrowness-intrusiveness standard). *See also supra* notes 35–39 and accompanying text (describing the differences between the standards applied to punitive damages and injunctive relief).

152. 141 CONG. REC. 26,450 (1995).

word "compensatory."[153] If these changes occurred consciously, they might indicate some intent to categorize punitive damages as prospective relief, since punitive damages are a prime example of monetary damages that are not compensatory. However, that version of the bill was short-lived and the legislative history lacks any explanation as to why the word "compensatory" was briefly removed and then reinstated. The record is also void of any discussion regarding the phrase "all relief other than compensatory monetary damages" or why it was selected as the definition for prospective relief. Based on this complete dearth of discussion, very little if anything can be extrapolated from such a fleeting language change. Thus, the legislative history of the PLRA as a whole suggests Congress intended prospective relief to encompass injunctive relief, but not punitive damages.

C. Classifying Punitive Damages as Prospective Relief Serves None of the PLRA's Goals and Would Place Undue Restrictions on the Ability of Prisoners to Receive Punitive Damages Awards

Punitive damages should not be classified as prospective relief under the PLRA because doing so serves none of the PLRA's stated goals and would place undue restrictions on the ability of prisoners to receive punitive damages. Unlike the imposition of injunctive relief, assessing punitive damages once at the conclusion of a trial does not represent the judicial micromanaging Congress decried.[154] Categorizing punitive damages as prospective relief does not address Congress's concern for the fiscal impact of judicial micromanagement, which focused on indirect costs caused by wide-ranging and long-term injunctive orders and consent decrees rather than the direct cost of a one-time damages award.[155]

One could argue that reducing or eliminating punitive damages awards serves the PLRA's goal of saving prisons—and by extension the taxpayers—money. Although the states and local government entities that administer prisons on the whole enjoy immunity from punitive damages, they can be obligated indirectly to pay punitive damages if and when they agree to indemnify their employees against such awards.[156]

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153. *See id*. at 26,550.

154. *See supra* notes 84–90 and accompanying text for examples of the micromanaging Congress criticized.

155. *See supra* note 86 and accompanying text.

156. The Supreme Court has held that municipalities are immune from punitive damages in civil rights suits. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981). Lower courts have applied this holding to other local government entities. *See, e.g.*, Doe v. County of Ctr., 242 F.3d

However, given the major differences between punitive damages and prospective relief,[157] the consequences of classifying punitive damages as prospective relief are too drastic to justify doing so without clear and unequivocal intent of Congress. Subjecting punitive damages to the need-narrowness-intrusiveness standard would debilitate punitive damages by failing to take into consideration the goals of punishment and deterrence when evaluating them for reasonableness, thereby significantly reducing their deterrent and punitive effect.[158] Furthermore, given that a person seeking punitive damages must satisfy the extremely high burden of proving not only that his rights were violated but also that the violation was motivated by malice or callous indifference,[159] reducing or eliminating those awards based on the inapt need-narrowness-intrusiveness standard would cripple a key legal tool available only for the few prisoners who most need it and who can satisfy that high burden. Thus, under the PLRA, punitive damages are not—and should not be considered—prospective relief.

CONCLUSION

Historically, punitive damages and prospective relief have served distinct purposes in the American judicial system. Punitive damages punish or deter reprehensible conduct, while prospective relief compels or prohibits future conduct in order to correct a violation of the law. An examination of the text of the PLRA and its legislative history as a

437, 457–58 (3d Cir. 2001) (county); Colvin v. McDougall, 62 F.3d 1316, 1319 (11th Cir. 1995) (county sheriff's department); Bolden v. Se. Pa. Transp. Auth., 953 F.2d 807, 831 (3d Cir. 1991) (regional transportation authority); Healy v. Town of Pembroke Park, 831 F.2d 989, 991 (11th Cir. 1987) (town). Lower courts have extended the same immunity to local officials sued in their official rather than their personal capacities. *See* Powell v. Alexander, 391 F.3d 1, 23 (1st Cir. 2004); Alexander v. Fulton County, 207 F.3d 1303, 1322 n.14 (11th Cir. 2000); Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 262 (2d Cir. 1997); Hill v. Shelander, 924 F.2d 1370, 1374 (7th Cir. 1991). *But see* Youren v. Tintic Sch. Dist., 343 F.3d 1296, 1307 (10th Cir. 2003) ("The fact that municipalities are immune from punitive damages does not, however, mean that individual officials sued in their official capacity are likewise immune."). Also, the vast majority of states statutorily disallow or severely restrict the imposition of punitive damages on local government entities. *See* Jack M. Sabatino, *Privatization and Punitives: Should Government Contractors Share the Sovereign's Immunities from Exemplary Damages?*, 58 OHIO ST. L.J. 175, 217–19 & nn.127–30 (1997). However, local government entities can, and sometimes do, waive their immunities by voluntarily entering into indemnification agreements with officers being sued. *See* O'Neill v. Krzeminski, 839 F.2d 9, 13 (2d Cir. 1988). Thus, a prison that indemnifies its employees can be required to pay punitive damages awards assessed against those employees.

157. *See supra* Part I.

158. *See supra* notes 36–39 and accompanying text.

159. Smith v. Wade, 461 U.S. 30, 56 (1983).

whole reveals a clear congressional intent to regulate sweeping injunctive relief—the prototypical example of prospective relief—but no intent to subject punitive damages to those same regulations. On the contrary, the legislative history of the PLRA shows that the proponents of the statute wanted to adhere to traditional injunctive relief jurisprudence.

This purpose is not served by classifying punitive damages as prospective relief. By holding that prospective relief under the PLRA includes punitive damages, the Eleventh Circuit eviscerated a valuable judicial tool for punishing and deterring reprehensible conduct by government actors against prisoners without adhering to or furthering the PLRA's purpose. In order to follow the intent of the PLRA, courts should not classify punitive damages as prospective relief, and thus should not subject punitive damages to the PLRA's need-narrowness-intrusiveness standard.