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The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

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Dear Mr. Chairman:

I am writing to provide the views of the Administration concerning a provision in H.R. 1501 that we did not include in our August 12, 1999, letter detailing the Administration's views concerning S. 254 and H.R. 1501, juvenile justice and firearms bills pending in conference. As we explain below, the Department has strong constitutional and policy objections to subsections (a) and (c) of section 110 of H.R. 1501.

1. House Bill Section 110(a):
Limitation on Court Jurisdiction to Enter or Carry Out Certain
Prisoner Release Orders

Section 110(a) of H.R. 1501 would create a new 28 U.S.C. § 1632. Proposed § 1632(a) would provide that "no court of the United States or other court listed in section 610 [of Title 28] shall have jurisdiction to enter or carry out any prisoner release order" that would result in a prisoner's release or nonadmission on the basis of prison conditions. The "court[s] listed in section 610" include the courts of appeals and district courts of the United States, the district courts of Guam, the Virgin Islands, and the Canal Zone, and the Courts of Federal Claims and International Trade. 28 U.S.C. § 610. We assume that the term "prisoner release order" is to have the meaning assigned that term in the Prison Litigation Reform Act of 1995 ("PLRA"), 18 U.S.C. § 3626(g)(4), which includes "any order . . . that has the purpose or effect of reducing or limiting the prison population."

The current PLRA already substantially limits the power of federal courts to enter prisoner release orders as a remedy for unconstitutional prison conditions. Pursuant to 18 U.S.C. § 3626(a)(3), "no court shall enter a prisoner release order unless" (1) a court has previously ordered "less intrusive relief that has failed to remedy the deprivation of the Federal right," and (2) a three-judge court finds "by clear and convincing evidence" that crowding is the primary cause of the constitutional violation and that "no other relief will remedy the violation of the Federal right." In light of this preexisting limitation, it appears that proposed § 1632(a) would, in effect, operate to prohibit federal courts from entering

¹ Theoretically it is possible that, under the current PLRA, a court could enter or carry out a prisoner release order in order to remedy a federal statutory (as opposed to constitutional) right. The constitutional analysis in the text above would not apply to any such cases where the remedy is based only on federal statutory authority. We are unaware, however, of any statutory

prisoner release orders only in those cases where such an order would be necessary to fully remedy a constitutional violation.¹ Such a limitation on the power of federal courts to provide an effective remedy for constitutional violations and to require the cessation of ongoing unconstitutional state conduct would raise a number of very serious constitutional concerns.

The gravity of the constitutional problems would depend, in large part, on the extent to which § 1632(a) would prevent plaintiffs from obtaining judicial relief for unconstitutional prison conditions, and the extent to which the federal judiciary would be able to superintend state prison conditions to ensure that they satisfy constitutional requirements. Although the Supreme Court has not squarely addressed the question whether the Constitution mandates that the federal judiciary be available to provide or assure such relief, the Court frequently has presumed that an effective remedy must be available to curtail a continuing state practice that transgresses constitutional requirements. See, e.g., Green v. Mansour, 474 U.S. 64, 68 (1985) ("Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law"); North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43, 45-46 (1971) (state statute prohibiting state officials from effecting race-based assignment and transportation of students violates command "that all reasonable methods be available to formulate an effective remedy"); Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 391 (1992) (a court's modification of a judgment in a prison conditions case under Federal Rule of Civil Procedure 60(b) "must not create or perpetuate a constitutional violation").² Indeed, the presumption of an effective judicial remedy for constitutional violations underlies the Supreme Court's consistent practice of declining to construe statutes to preclude all federal judicial redress for a constitutional claim, in order "to avoid the 'serious constitutional question' that would arise" from such constructions. Webster v. Doe, 486 U.S. 592, 603 (1988). This presumption appears to extend to Eighth Amendment

basis for such orders where there is no constitutional violation. Accordingly, it appears that the proposed restriction would apply only in cases where courts find that a prisoner release order is necessary to fully remedy a constitutional violation.

² See also, e.g., Henry M. Hart, Jr., The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic, 66 Harv. L. Rev. 1362, 1386-96 (1953); Daniel J. Meltzer, Congress, Courts, and Constitutional Remedies, 86 Geo. L. J. 2537, 2563-65 (1998); Richard H. Fallon, Jr. & Daniel J. Meltzer, New Law, Non-Retroactivity, and Constitutional Remedies, 104 Harv. L. Rev. 1731, 1787-90 (1991); cf. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803) ("[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded.' . . . The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.") (quoting 3 W. Blackstone, Commentaries 23 (1783)); Schweiker v. Chilicky, 487 U.S. 412, 423 (1988) (courts should decline to create Bivens remedy when "Congress has provided what it considers to be adequate remedial mechanisms for constitutional violations").

violations as well. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (federal courts must "discharge their duty to protect constitutional rights"); id. at 354 (Brennan, J., concurring) (noting that "judicial intervention is indispensable if constitutional dictates . . . are to be observed in the prisons") (emphasis in original); id. at 369 (Blackmun, J., concurring) ("the federal courts must continue to be available to those state inmates who sincerely claim that the conditions to which they are subjected are violative of the [Eighth] Amendment Against that kind of penal condition, the Constitution and the federal courts . . . together remain as an available bastion").

For this reason, we believe courts would not construe proposed § 1632(a) to eliminate the jurisdiction of all federal courts, including the Supreme Court, to order or effect a remedy involving prisoner release in any prison conditions case in which such a remedy is necessary to prevent an ongoing constitutional violation. See Constitutionality of Legislation Withdrawing Supreme Court Jurisdiction to Consider Cases Relating to Voluntary Prayer, 6 Op. O.L.C. 13, 14 (1982) (Opinion of Attorney General Smith) ("Congress may not . . . , consistent with the Constitution, make 'exceptions' to Supreme Court jurisdiction which would intrude upon the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers"); see also, e.g., Felker v. Turpin, 518 U.S. 651, 660-62 (1996) (construing statute to preserve Supreme Court's power to hear habeas corpus petitions filed as original matters, and thereby obviating the constitutional question that would have been raised had the statute been construed to completely repeal the Court's authority to entertain a habeas petition). Rather, in light of the constitutional concern we have identified, as well as the punctuation and context of proposed § 1632(a), we believe that the phrase "listed in section 610" would best be understood to modify "court of the United States" as well as "other court," thus excluding coverage of the Supreme Court from the limitation in § 1632(a).³ To avoid possible confusion and unnecessary litigation, however, we recommend that the provision at least be amended to clarify that it does not restrict the remedial powers of the Supreme Court, perhaps by deleting the words "of the United States or other," thereby leaving the provision to refer simply to "any court listed in Section 610."

Even so construed or amended, however, proposed § 1632(a) would still raise the serious question whether Congress may strip the lower federal courts of the authority to order

³ Moreover, the Supreme Court ordinarily does not itself "enter or carry out" orders.

⁴ As explained above, section, proposed § 1632(a) apparently would operate only if and where a prisoner release order is necessary to remedy or halt unconstitutional conduct.

⁵ See, e.g., Lawrence Gene Sager, Foreword: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts, 95 Harv. L. Rev. 17, 80-89 (1981); Meltzer, Congress, Courts, and Constitutional Remedies, 86 Geo. L. J. at 2549-65; John Harrison, Jurisdiction, Congressional Power, and Constitutional Remedies, 86 Geo. L.J. 2513 (1998). This debate is closely related to the broader question of Congress's power to limit the jurisdiction of the lower federal courts to hear particular kinds of cases. The seminal treatment of

the only remedy capable of ending an ongoing constitutional violation.⁴ While this question has been the subject of extensive scholarly debate,⁵ the Supreme Court has not yet definitively addressed the question, and its resolution cannot be predicted with any degree of confidence. The likelihood that § 1632(a) would be declared invalid, however, is increased significantly by the fact that, as a practical matter, it could operate to prevent plaintiffs from obtaining effective relief from any court, state or federal. If plaintiffs were to seek the same type of relief in state court, the federal removal statute, 28 U.S.C. § 1441, presumably would permit state and local defendants to remove the suit to a federal court, and proposed § 1632(a) would prevent that federal court from providing any remedy involving or requiring a prisoner release, thereby making it impossible for plaintiffs to obtain the relief necessary to cure the unconstitutional state conduct. Cf. Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235, 246-247 (1970) (noting that removal would leave an “injunction remedy technically available in the state courts but render[] [it] inefficacious”).

In addition to the foregoing constitutional problem, the remedial restrictions in proposed § 1632(a) would raise further significant separation of powers and article III concerns. Even assuming arguendo that the Constitution would permit Congress to withdraw the jurisdiction of the lower federal courts to entertain prison conditions cases altogether, a serious constitutional question nevertheless would arise if Congress were to permit article III courts to decide such cases but selectively withdraw the courts’ power to decide how such cases should be resolved under governing constitutional and statutory law. See United States v. Klein, 80 U.S. (13 Wall.) 128, 145-47 (1871).⁶ Because federal courts would continue to have jurisdiction over Eighth Amendment claims but would be precluded by proposed § 1632(a) from resolving such cases in the manner they believe to be mandated by the Constitution, the proposed legislation would be vulnerable to challenge on the ground that Congress was impermissibly intruding on the judiciary’s full article III powers. Moreover, because section 1632(a) apparently would, in the only cases in which it would apply, “usurp

that topic remains Henry M. Hart, Jr., The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic, 66 Harv. L. Rev. 1362 (1953). See also, e.g., Sager, Foreword: Constitutional Limitations, supra; Charles L. Black, Jr., Decision According to Law 17-19, 37-39 (1981); Gerald Gunther, Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate, 36 Stan. L. Rev. 895 (1984).

⁴ As explained above, section, proposed § 1632(a) apparently would operate only if and where a prisoner release order is necessary to remedy or halt unconstitutional conduct.

⁶ See also Hart, The Power of Congress to Limit the Jurisdiction of Federal Courts, 66 Harv. L. Rev. at 1372-73; Sager, Foreword: Constitutional Limitations, 95 Harv. L. Rev. at 87-88; cf. Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 218-219 (1995) (“Article III establishes a ‘judicial department’ with the ‘province and duty . . . to say what the law is’ in particular cases,” and “gives the Federal Judiciary the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy”) (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803)).

the judicial function by depriving the inferior federal courts of their power to issue any remedy at all," it might "convert the judicial power . . . into the essentially legislative function of deciding cases without any power to issue relief affecting individual legal rights or obligations in specific cases." Constitutionality of Legislation Limiting the Remedial Powers of the Inferior Federal Courts in School Desegregation Litigation, 6 Op. O.L.C. 1, 9 (1982) (Opinion of Attorney General Smith).⁷

In addition to the foregoing serious constitutional concerns, we strongly oppose section 110(a) on policy grounds. Section 110(a) is unnecessary. The PLRA already greatly limits the authority of federal courts to issue prisoner release orders in causes of action arising under federal law, and has effectively protected against the unwarranted issuance of prisoner release orders. In fact, as far we are aware, since enactment of the PLRA no court has entered a new prisoner release order pursuant to the current statutory procedures for imposing such orders. We also are concerned that Congress not create a precedent of attempting to deprive article III courts of jurisdiction to issue effective remedies in civil rights cases. Even if this is within Congress's constitutional power, such a precedent need not and should not be set.

⁷ In addition, proposed § 1632(a)'s restriction on "carrying out" prisoner release orders could raise another serious constitutional concern, because apparently it would restrict the power of courts to enforce prisoner release orders that they already have entered. Insofar as this restriction were applied to previously entered orders that were necessary to remedy or arrest ongoing constitutional violations, it would appear to transgress the principle that the federal judiciary has "the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy." Plaut, 514 U.S. at 218-19. As we explain in further detail in the following section, Congress may, by changing the underlying law on which an injunction is premised, require courts to alter the terms of ongoing injunctive relief, see, e.g., Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421, 431-32 (1855)); see also Rufo, 502 U.S. at 388; Plaut, 514 U.S. at 232 (citing Wheeling & Belmont Bridge Co.). Congress may not, however, alter the constitutional law that may underlie an injunction, such as the requirements of the Eighth Amendment. Therefore there is a serious question whether Congress has the power to prohibit courts from carrying out previously entered injunctive relief that is constitutionally required, see Gavin v. Branstad, 122 F.3d 1081, 1086 (8th Cir. 1997) (Congress would have no power to effect the alteration of existing decrees by changing the law of the Eighth Amendment), cert. denied, 118 S. Ct. 2374 (1998); see also Imprisoned Citizens Union v. Ridge, 169 F.3d 178, 183-87 (3d Cir.1999) ("This would be a very different case if . . . the PLRA categorically terminates all relief available to 'prisoners who claim constitutional violations.' But the PLRA expressly preserves the courts' authority to remedy violations of prisoners' federal rights.") (citation omitted), and there is a serious risk that application of proposed § 1632(a) to such injunctions would violate separation of powers principles such as those discussed in Plaut.

2. House Bill Section 110(c)(1):
Termination of Existing Consent Decrees

Section 110(c)(1) of H.R. 1501 would provide that any consent decree that was "entered into" prior to the enactment of the Prison Litigation Reform Act of 1995 ("PLRA"), that "provides for remedies relating to prison conditions," and that is "in effect" on the day before the date of enactment of [section 110(c)], "shall cease to be effective on the date of the enactment of this Act." Section 110(c)(1) would raise serious separation of powers concerns.

In Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995), the Court held that Congress transgresses the separation of powers when it attempts to alter a final judgment entered by an article III court. At issue in Plaut was legislation that allowed plaintiffs in certain securities fraud suits to revive actions previously dismissed as time-barred. The Court held that the legislation represented an attempt by Congress to "set aside the final judgment of an Article III court by retroactive legislation," id. at 230, and thus violated separation of powers principles. In Plaut's context of money damages, the Court stated that "[h]aving achieved finality . . . a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy," id. at 227, which Congress cannot review or disturb.

In contrast, the Court noted that a prospective order issued by a court, whether in the form of a litigated judgment or a consent decree, does not similarly represent "the last word of the judicial department with regard to a particular case or controversy." Id. The Court stated that its ruling in Plaut regarding a final monetary judgment was distinguishable from decisions approving statutes "that altered the prospective effect of injunctions entered by Article III courts." Id. at 232 (citing Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855)). In particular, the Court in Plaut indicated that its decision in that case does not affect the rule that Congress may, by changing the underlying law on which an injunction is premised (including the law respecting the power of the court to award such relief), require courts to alter the terms of ongoing injunctive relief. For example, in Wheeling & Belmont Bridge Co. (cited by the Court in Plaut), the Court upheld a lower court's abatement of a decree enjoining construction of a bridge over navigable waters, where Congress had passed legislation rendering the bridge a lawful structure. 59 U.S. (18 How.) at 431-32. This principle extends, as well, to ongoing relief contained in a consent decree. See Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 388 (1992); System Fed'n No. 91 v. Wright, 364 U.S. 642, 651-52 (1961).

So, for example, the current PLRA changed the law respecting the authority of courts to provide relief in prison condition cases, limiting such relief to that "necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. § 3626(a)(1). And a cognate provision of the PLRA, 18 U.S.C. § 3626(b), entitles the defendant to a court-ordered termination of an existing decree, unless the district court finds that continuing prospective relief satisfies the new statutory limitations — i.e., that such relief is "necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." Numerous courts of appeals have concluded that the termination provision does not violate the separation

of powers principle discussed in Plaut, because Congress may require courts to terminate executory portions of injunctions and consent decrees that exceed the courts' current statutory remedial authority.⁸

Section 110(c)(1), by contrast, would terminate consent decrees, and would do so even in cases where the ongoing decrees are in conformity with the applicable law that Congress has prescribed for prospective decrees. The bill, in other words, would not (like the current PLRA termination provision) merely set forth a statutory standard for courts to apply in determining whether to continue relief and thereby "affect[] the adjudication of the cases . . . by effectively modifying the [law] at issue in those cases," Robertson v. Seattle Audubon Society, 503 U.S. 429, 440 (1992); instead, it would automatically terminate judicial decrees without permitting the courts to determine whether that relief is permissible and authorized under the prevailing statutory and constitutional law. Accordingly, section 110(c)(1) would raise very serious constitutional questions under the separation of powers principles discussed in Plaut. Cf. also United States v. Klein, 80 U.S. (13 Wall.) 128, 146-47 (1871) (although Congress may establish new law and leave a court to "apply its ordinary rules to the new circumstances created by the act," it may not "prescribe[]" an "arbitrary rule of decision" for a case); id. at 147 (Congress may not forbid an article III court to "give effect to evidence which, in its own judgment, such evidence should have").

This constitutional problem would arise even if section 110(c) were to require the courts themselves to terminate outstanding decrees without any change in the law. But in this case that constitutional problem would be exacerbated because section 110(c) would not require or permit the courts to do anything: instead, it would be self-executing. To be sure, even after section 110(c) would cause a consent decree to "cease to be effective," a court could thereafter reenter a consent decree — possibly even the same decree — in accordance with applicable law. In the interim, however, section 110(c) would in practical terms constitute a "temporary legislative veto over court-ordered relief in an ongoing case before the court." Hadix v. Johnson, 144 F.3d 925, 941 (6th Cir. 1998). This would, in effect, give Congress a form of "direct review," Plaut, 514 U.S. at 218, of certain court orders. There is a serious question whether such direct subvention of judicial decrees would impermissibly

⁸ See Berwanger v. Cottey, 178 F.3d 834, 839 (7th Cir. 1999); Benjamin v. Jacobson, 172 F.3d 144, 159-63 (2d Cir. 1999) (en banc), pet. for cert. filed, No. 98-2042 (June 21, 1999); Imprisoned Citizens Union v. Ridge, 169 F.3d 178, 183-87 (3d Cir.1999); Hadix v. Johnson, 133 F.3d 940, 942-43 (6th Cir.1998); Dougan v. Singletary, 129 F.3d 1424, 1426 (11th Cir.1997), cert. denied, 118 S. Ct. 2375 (1998); Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649, 655-59 (1st Cir.1997), cert. denied, 118 S. Ct. 2366 (1998); Gavin v. Branstad, 122 F.3d 1081, 1085-89 (8th Cir.1997), cert. denied, 118 S. Ct. 2374 (1998); Plyler v. Moore, 100 F.3d 365, 371-72 (4th Cir.1996), cert. denied, 520 U.S. 1277 (1997).

⁹ See Brian M. Hoffstadt, Retaking the Field: The Constitutional Constraints on Federal Legislation That Displaces Consent Decrees, 77 Wash. U. L. Q. 53, 90 (1999) (the current PLRA

upset the “constitutional equilibrium created by the separation of the legislative power to make general law from the judicial power to apply that law in particular cases,” *id.* at 224.⁹

Moreover, section 110(c)(1) apparently would terminate consent decrees even where such decrees are necessary to remedy or to halt unconstitutional state conduct. By restricting courts' authority to effectuate prior decrees that are necessary to remedy or arrest constitutional violations, this prohibition would raise the substantial constitutional concerns that we discussed in the previous section with respect to section 110(a) of H.R.1501.¹⁰

In addition to the foregoing serious constitutional concerns, we strongly oppose section 110(c) on policy grounds. Section 110(c) would directly and substantially undermine the Civil Rights Division's program of enforcing constitutional rights in correctional facilities throughout the nation. It would lead to much unnecessary and burdensome litigation by the Department to re-establish through litigation the remedies previously reached through amicable settlements. Moreover, it would unnecessarily displace the authority of local and state officials to decide for themselves whether to seek termination of existing consent decrees

termination provision, which in effect instructs courts to modify existing decrees to the extent the courts find the decrees inconsistent with new law, is constitutional because the court “is still the entity responsible for performing the judicial function of actually modifying the decree”; but “[w]hen Congress declares an outstanding decree null and void, it may cross the line of permissible activity by negating a judicial order and encroaching upon the prerogative of the Judiciary to render dispositive judgments”); *Hadix*, 144 F.3d at 940-41 (dicta) (“[b]ecause the suspension of a judicial order is a judicial act not to be undertaken directly by the Legislature,” a “direct legislative suspension of orders of Article III courts” could not “be harmonized with our tripartite system of governance”); *French v. Duckworth*, 178 F.3d 437, 446 (7th Cir. 1999) (a “self-executing legislative determination that a specific decree of a federal court . . . must be set aside” would “place[] the power to review judicial decisions outside of the judiciary” and “amount[] to an unconstitutional intrusion on the power of the courts to adjudicate cases”); *cf. id.* at 449 (Easterbrook, J., dissenting from denial of rehearing en banc) (“If Congress should provide that injunctions in prison litigation expire five minutes after the court receives a motion, this would indeed be unconstitutional, . . . not because of anything in Article III,” but because of “the due process clause, which entitles litigants to a meaningful opportunity to be heard before a final decision”).

¹⁰ See *Imprisoned Citizens Union*, 169 F.3d at 186 (“This would be a very different case if . . . the PLRA categorically terminates all relief available to ‘prisoners who claim constitutional violations.’ But the PLRA expressly preserves the courts' authority to remedy violations of prisoners' federal rights.”) (citation omitted). Furthermore, the constitutional concerns would be magnified still further where the terminated decree includes a “prisoner release order,” because section 110(a) of the bill (discussed above) would prohibit lower federal courts from entering such prisoner release orders even where necessary to remedy and abate constitutional violations.

through the current termination procedures in the PLRA.

The PLRA already provides defendants with ample opportunity to seek termination of consent decrees where defendants believe such decrees pose an undue burden or unnecessary interference with local administration of correctional facilities. See 18 U.S.C. §§ 3626(b), (e). And defendants may file a new motion for termination of relief one year after an earlier motion has been denied. Section 110(c) would terminate a consent decree even in those cases in which courts have denied such motions on the basis of "written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of . . . Federal right[s]." 18 U.S.C. § 3626(b)(3). It also would terminate relief in cases in which the defendants have chosen not to avail themselves of the opportunity to move for termination of relief. The reasons local officials have chosen not to seek such relief undoubtedly vary from case to case. In many instances, the jurisdiction will have made an informed decision that it cannot defend the constitutionality of current conditions (as is particularly likely in cases just recently settled), or would prefer to focus its resources on improving conditions rather than on litigation or negotiations to re-institute a consent decree. Section 110(c) would displace that considered judgment of local and state officials.

Moreover, the provision would pose an unwarranted and significant burden to the United States. When the PLRA became law, the Department of Justice was plaintiff or plaintiff-intervenor in about 25 active prison, jail, and juvenile cases in which courts had entered litigated or consent decrees. The Civil Rights Division has monitored these cases carefully since passage of the PLRA, reviewing current conditions at the covered facilities. On the basis of this review, the Division has been able to dismiss many of these cases, including a longstanding consent decree covering Michigan's prisons for men. Almost all the defendants in the other cases have decided not to seek termination of the decrees, preferring instead to focus their efforts on compliance. In these cases, the proposed amendment would terminate decrees that the United States and the defendants agree remain appropriate and necessary, and would trigger new and unnecessary litigation relating to reentering judicial relief.

* * * *

For all of the foregoing reasons, we strongly recommend that section 110 not be included in the conference bill, leaving intact the current PLRA procedures for the termination of consent decrees and other prospective relief.

Sincerely,

Jon P. Jennings
Acting Assistant Attorney General