

# Saint Louis University Public Law Review

---

Volume 21  
Number 2 *A Look at Smart Growth and Urban  
Sprawl (Volume XXI, No. 2)*

---

Article 8

2002

## The Prison Litigation Reform Act: Excessive Force as a Prison Condition

John Collins

Follow this and additional works at: <https://scholarship.law.slu.edu/plr>



Part of the [Law Commons](#)

---

### Recommended Citation

Collins, John (2002) "The Prison Litigation Reform Act: Excessive Force as a Prison Condition," *Saint Louis University Public Law Review*: Vol. 21 : No. 2 , Article 8.  
Available at: <https://scholarship.law.slu.edu/plr/vol21/iss2/8>

This Notes and Comments is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Public Law Review by an authorized editor of Scholarship Commons. For more information, please contact [Susie Lee](#).

## THE PRISON LITIGATION REFORM ACT: EXCESSIVE FORCE AS A PRISON CONDITION

### I. INTRODUCTION

In 1996, the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a), was enacted as a means to deter frivolous lawsuits by prisoners and to discourage federal judges from micromanaging prison systems.<sup>1</sup> Complaints filed by prisoners had grown from 6,600 in 1975 to more than 39,000 in 1994.<sup>2</sup> Congress noted that prisoners seemed to enjoy filing frivolous lawsuits.<sup>3</sup> Some of these suits included claims of insufficient storage locker space, a defective haircut by a prison barber, the failure of prison officials to invite a prisoner to a pizza party for a departing prison employee and being served chunky peanut butter instead of the creamy variety.<sup>4</sup> Frivolous inmate litigation costs the U.S. taxpayers millions of dollars every year as a result of fighting these claims and from delaying legitimate claims from being heard.<sup>5</sup>

#### A. *Importance of this Issue*

The PLRA provides that a prisoner shall bring no action with respect to prison conditions until all available administrative remedies have been exhausted.<sup>6</sup> Section 1997e(a) does not define the term “prison conditions.” Prisoners have seen this as an end run opportunity to proceed directly to

---

1. 141 CONG. REC. S7498-01, S7525 (daily ed. May 25, 1995) (statement of Sen. Dole); 141 CONG. REC. S14312-03, S14317 (daily ed. Sep. 26, 1995) (statement of Sen. Abraham); 141 CONG. REC. S14408-01, S14414 (daily ed. Sep. 27, 1995) (statement of Sen. Dole). “These guidelines will work to restrain liberal Federal judges who see violation on constitutional rights in every prisoner complaint and who have used these complaints to micromanage State and local prison systems.” *Id.*

2. 141 CONG. REC. S7498-01, S7524 (daily ed. May 25, 1995) (statement of Sen. Dole).

3. 141 CONG. REC. S7498-01, S7526 (daily ed. May 25, 1995); (statement of Sen. Kyl); 141 CONG. REC. S14408-01, S14418 (daily ed. Sep. 27, 1995) (statement of Sen. Hatch). “Jailhouse lawyers with little else to do are tying our courts in knots with an endless flood of frivolous litigation.” *Id.*

4. 141 CONG. REC. S14408-01, S14413 (daily ed. Sep. 27, 1995) (statement of Sen. Dole).

5. 141 CONG. REC. S14312-03, S14316 (daily ed. Sep. 26, 1995) (statement of Sen. Abraham). Thirty three States have estimated that Federal prisoner suits cost them at least \$54.5 million annually. *Id.* The National Association of Attorneys General estimate the nationwide costs at more than \$81.3 million. *Id.*

6. 42 U.S.C. § 1997e(a) (Supp. 2001).

federal court with their claims of excessive force. While most circuits have seen through this and ordered the exhaustion requirement met, the Second Circuit, however, has decided otherwise.

The Supreme Court granted *certiorari* to hear the case of *Nussle v. Willette*. In *Nussle*, the Second Circuit held that the PLRA exhaustion requirement does not encompass claims of excessive force. The Second Circuit defined “prison conditions” as those referring to “circumstances affecting everyone in the area” and held that Nussle’s beating was a single or momentary matter and was not a prison condition, thus he could go directly to federal court. The Supreme Court, reversing the Second Circuit, held that the PLRA’s exhaustion requirement applies to all inmate suits regardless of their claim.

This comment is in response to the Supreme Court’s decision in *Nussle*. It will be argued that this decision has effectively foreclosed any prisoner’s attempt to bypass administrative grievance procedures and take the claim directly to court. The Supreme Court’s decision not only resolved the Circuit split with respect to the PLRA excessive force issue, it also left no doubt that an inmate must exhaust any and all available administrative remedies.

#### B. *Summary of Comment*

Section II of the comment will describe the development and background of the PLRA. Section III will examine the circuit split in detail. The split is one-sided, with the Third, Sixth, Seventh and Eleventh Circuits holding that a claim of excessive force is a “prison condition” under the PLRA. Only the Second Circuit has held otherwise. Section IV will analyze the Supreme Court’s holding in *Nussle v. Willette*. As support for the Court’s decision, the case history and text of the PLRA will be analyzed. The legislative intent behind the amended act will also be examined. Lastly, the implications of the Court’s ruling in *Nussle* will be discussed.

Section V is the conclusion statement.

## II. BACKGROUND & DEVELOPMENT OF THE PLRA

Generally, when asserting a claim of excessive force, a prisoner will allege under 42 U.S.C. § 1983 that a prison official has violated his Eighth and Fourteenth Amendment rights to be free from cruel and unusual punishment.<sup>7</sup>

---

7. 42 U.S.C. 1983 (1994). Section 1983 reads in part: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subject, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” *Id.*

Section 1983 can be traced back to post-Civil War legislation.<sup>8</sup> In 1871, Congress enacted the Civil Rights Act as a means of protecting Southern African-Americans from reprisals during reconstruction.<sup>9</sup> In the 1960's, the United States Supreme Court determined that citizens could sue local and state government officials under § 1983 when certain actions or policies fell below constitutional standards.<sup>10</sup> Eventually, the U.S. Supreme Court held that prisoners could bring claims under § 1983 as a means to challenge the unconstitutional conditions of their confinement.<sup>11</sup>

#### A. *Civil Rights of Institutionalized Persons Act*

In 1980, Congress enacted the Civil Rights of Institutionalized Persons Act (CRIPA) and codified it as 42 U.S.C. § 1997. CRIPA authorized the U.S. Attorney General and the federal courts to certify state administrative grievance mechanisms and gave the courts discretion to require exhaustion of these mechanisms before the claim could reach federal court. Section 1997e(a) of CRIPA provided the discretionary mechanism by which courts could require a prisoner to exhaust state administrative remedies before asserting a § 1983 claim.<sup>12</sup> One goal of CRIPA was to resolve prisoner complaints on their merits, short of litigation; however, that goal was not achieved because most state prisons did not seek certification and were not encouraged by the Attorney General or the federal courts to obtain certification.<sup>13</sup>

#### B. *Prison Litigation Reform Act*

President Clinton signed the Prison Litigation Reform Act (PLRA) into law on April 26, 1996. The PLRA was Congress' attempt to reduce the enormous amount of frivolous prisoner litigation burdening the federal courts

---

8. ROGER A. HANSON & HENRY W.K. DALEY, CHALLENGING THE CONDITIONS OF PRISONS AND JAILS, A REPORT ON SECTION 1983 LITIGATION 12 (1995).

9. *Id.*

10. *Id.* at 13.

11. *Id.* at 13-14.

12. 42 U.S.C. § 1997e(a) (1994) (amended 1996). Section 1997e(a) reads: "(1) Subject to the provisions of paragraph (2), in any action brought pursuant to section 1983 of this title by an adult convicted of a crime confined in any jail, prison, or other correctional facility, the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed 180 days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available. (2) The exhaustion of administrative remedies under paragraph (1) may not be required unless the Attorney General has certified or the court has determined that such administrative remedies are in substantial compliance with the minimum acceptable standards promulgated under subsection (b) of this section or are otherwise fair and effective." *Id.*

13. HANSON & DALEY, *supra* note 8, at 40.

and to suppress the micromanagement of prison systems by federal judges.<sup>14</sup> The PLRA created major changes in 42 U.S.C. § 1997e(a) by requiring prisoners to exhaust all available administrative remedies before bringing a claim with respect to prison conditions.<sup>15</sup> The PLRA changed § 1997e(a) in three ways. First, § 1997e(a) originally only applied to § 1983 actions.<sup>16</sup> The amended section now applies to any federal claim with respect to prison conditions.<sup>17</sup> Second, the courts originally had discretion to require exhaustion of administrative remedies. The courts were allowed to continue the action for a maximum of 180 days. Under the PLRA, the court has absolutely no discretion because the exhaustion requirement is mandatory. Third, the amended section has eliminated the “plain, speedy and effective” language and the certification process by the Attorney General or the court. Effectiveness of administrative remedies is not an issue under the PLRA.

### III. THE CIRCUIT SPLIT

The current circuit court split is heavily weighted to one side. The Third, Fifth, Sixth, Seventh, Tenth and Eleventh Circuit courts hold that excessive force is a prison condition for purposes of the PLRA, thus the prisoner must exhaust administrative remedies before bringing a § 1983 claim.<sup>18</sup> The Second Circuit, relying on Webster’s Dictionary, stands alone in finding that excessive force is not a prison condition, such that the prisoner may bypass administrative remedies and proceed directly to federal court.<sup>19</sup>

#### A. *Circuits Finding Excessive Force to be a Prison Condition*

##### 1. Third Circuit

*Booth v. Churner* is perhaps the most relevant and interesting case concerning a claim of excessive force brought under the PLRA.<sup>20</sup> *Booth* is

14. 141 CONG. REC. S14408-01, S14418 (daily ed. Sep. 27, 1995) (statement of Sen. Hatch).

15. 42 U.S.C. § 1997e(a) (Supp. 2001). Section 1997e(a) now reads: No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” *Id.*

16. 42 U.S.C. § 1997e(a).

17. 42 U.S.C. § 1997e(a).

18. *Booth v. Churner*, 206 F.3d 289 (3rd Cir. 2000), *aff’d*, 532 U.S. 731 (2001); *Wendell v. Asher*, 162 F.3d 887 (5th Cir. 1998); *Freeman v. Francis*, 196 F.3d 641 (6th Cir. 1999); *Smith v. Zachary*, 255 F.3d 446 (7th Cir. 2001); *Garrett v. Hawk*, 127 F.3d 1263 (10th Cir. 1997); *Higginbottom v. Carter*, 223 F.3d 1259 (11th Cir. 2000).

19. *Nussle v. Willette*, 224 F.3d 95 (2nd Cir. 2000), *rev’d*, *Porter v. Nussle*, 122 S. Ct. 983 (2002).

20. *Booth*, 206 F.3d 289 (3rd Cir. 2000), *aff’d*, 532 U.S. 731 (2001).

relevant because the primary issue before the Third Circuit was whether excessive force should be considered a “prison condition” for purposes of the PLRA. *Booth* is also interesting because upon being granted *certiorari*, the United States Supreme Court’s ruling on the case was centered on an analysis of the PLRA phrase “administrative remedies. . .available.”<sup>21</sup> The Court completely ignored the Third Circuit’s exhaustive efforts to categorize excessive force as a prison condition.<sup>22</sup>

Timothy Booth, a prisoner in the Pennsylvania State Correctional Institute at Smithfield, initiated his claim under 42 U.S.C. § 1983.<sup>23</sup> The District Court dismissed the case because Booth had failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a).<sup>24</sup> On appeal, Booth made three arguments that § 1997e(a) did not control. First, he asserted that “prison conditions” could not be read to include a prison official’s intentional act of violence. Second, there was nothing in the legislative history of the PLRA that would indicate that an act of excessive force should be considered a “prison condition,” and third, that the Supreme Court had made a distinction between excessive force actions which require an intentional act of violence and conditions-of-confinement actions which do not.<sup>25</sup>

The Third Circuit, holding that excessive force was a “prison condition”, recognized that “prison conditions” was not defined in § 1997e(a), however, the definition could be located in another section of the PLRA, § 3626(g)(2). That section defines the term “civil action with respect to prison conditions” as

“any civil proceeding arising under Federal law with respect to the *conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison*, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison.”<sup>26</sup>

The court, in referring to the Supreme Court case *Sullivan v. Stroop*, commented “[t]he substantial relation between the two [provisions in the

21. *Booth*, 532 U.S. 731 (2001).

22. *Id.*

23. *Booth*, 206 F.3d at 292. Booth alleged that various prison officials punched him in the mouth, shoved him into a shelf and a door, threw a cleaning material in his face, and bruised his wrists from over-tightening handcuffs. *Id.* Booth believed that his Eighth Amendment right to be free of cruel and unusual punishment was violated, thus he filed his claim for an injunction and money damages in the District Court. Booth subsequently filed additional petitions requesting more injunctions, money damages and protective orders for transfer to another prison. *Id.* at 291. Booth also requested an order to improve the prison law library, to hire a paralegal for himself and to fine prison officials for contempt of court. *Id.* at 292.

24. *Id.* at 293. The court observed that the Pennsylvania Department of Corrections had established a three-step grievance procedure and that Booth had only satisfied the first step prior to bringing his claim to federal court. *Id.* at 202.

25. *Id.* at 294.

26. 18 U.S.C. § 3626(g)(2) (2000) (emphasis added).

PLRA] presents a classic case for application of the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.”<sup>27</sup>

The Third Circuit described its analysis of § 3626(g)(2) as one of common sense, holding that the term “conditions of confinement” consists of actions relating to “the environment in which prisoners live, the physical conditions of that environment, and the nature of the services provided therein.”<sup>28</sup> The court held that a claim of excessive force does fall under the term “the effects of actions by government officials on the lives of persons confined in prison.” Actions ranging from excessive force to not making basic prison repairs or intentionally denying a prisoner his basic right to food, heat or medical attention affect the lives of each prisoner similarly by making their lives worse.<sup>29</sup>

The Third Circuit also supported its holding with the Supreme Court’s analysis from another case concerning prison litigation.<sup>30</sup> The Supreme Court, basing its decision on reading the statute in its entirety, held that the term “conditions of confinement” from § 636(b)(1)(B) included continuous prison conditions *and* isolated acts by prison officials.<sup>31</sup> The *Booth* Court reasoned that an excessive force claim would be considered an isolated act of unconstitutional conduct, thus falling within the definition of a “condition of confinement.”

Judge Noonan began his dissent, “The crux of the case is what Congress meant by the statutory term ‘prison conditions.’”<sup>32</sup> In arguing that excessive force was not a prison condition, Judge Noonan relied upon the Webster’s Dictionary definition of the word “conditions.”<sup>33</sup> He stated that the relevant definition was an “existing state of affairs” or “something needing remedy.” He then proceeded to define “prison conditions” as “a state of affairs in a prison” or “something needing remedy in a prison.”<sup>34</sup> Judge Noonan argued

---

27. *Booth*, 206 F.3d at 294.

28. *Id.* Cell overcrowding, poor prison construction and inadequate facilities would be considered “conditions of confinement.” *Id.*

29. *Id.* at 295.

30. *McCarthy v. Bronson*, 500 U.S. 136 (1991). In *McCarthy*, a prisoner claimed that prison officials had used excessive force when moving him to another cell. *Id.* at 138. The prisoner alleged that § 636(b)(1)(B) allowed nonconsensual referral to a magistrate only when a prisoner challenges ongoing prison conditions. *Id.* *McCarthy* claimed that isolated, unconstitutional acts by prison officials are not “conditions of confinement.” *Id.* at 139. The term “conditions of confinement,” he asserted, referred to continuous conditions and not isolated incidents. *Id.* 138-39.

31. *Id.* at 142.

32. *Booth*, 206 F.3d at 300 (Noonan, J., dissenting).

33. *Id.* at 300-01.

34. *Id.*

that the physical beating Booth took was not a prison condition or state of affairs, but a single act that could not possibly affect the prison population as a whole.

On being granted *certiorari*, the United States Supreme Court, in unanimously affirming the appeals court, declared, “The meaning of the phrase ‘administrative remedies. . .available’ is the crux of the case.”<sup>35</sup> The Court completely ignored the issue of “prison conditions.” Instead, the Court’s analysis centered on whether or not Pennsylvania had an administrative process in place that could provide Booth with an adequate remedy. In lieu of referring to a dictionary to define “prison conditions,” the Court relied upon the statutory requirement that the prisoner must exhaust all available administrative remedies before taking his claim to federal court.<sup>36</sup> The Court also supported its decision by noting that § 1997e(a) was amended by Congress to remove the court’s discretion to require exhaustion of administrative remedies. The Court held that Congress made its intent very clear by making the exhaustion requirement mandatory.<sup>37</sup>

## 2. Sixth Circuit

Prior to *Booth*, the Sixth Circuit addressed the issue of excessive force as a prison condition. In *Freeman v. Francis* the Sixth Circuit held that a prisoner’s claim of excessive force was a “prison condition,” resulting in mandatory exhaustion of available administrative remedies.<sup>38</sup>

Recognizing that the term “prison conditions” was not defined in § 1997e(a), the court turned to the rule of statutory construction described above in *Booth*. The court applied that reasoning to hold that the definition of “prison conditions” in § 3626(g)(2), “. . .conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison. . .,” applies to § 1997e(a).<sup>39</sup> The court also held that the legislative history indicated Congressional intent to create a broad exhaustion requirement that encompassed claims of excessive force.<sup>40</sup> The Sixth Circuit believed that a claim of excessive force should follow proper administrative grievance procedures like any other inmate complaint so that the prison can take

---

35. *Booth*, 532 U.S. at 732 (2001).

36. *Id.* at 740.

37. *Id.*

38. *Freeman v. Francis*, 196 F.3d 641 (6th Cir. 1999). *Freeman* concerned an inmate at a prison hospital. *Freeman* alleged that a guard assaulted him after he had requested medical attention from a nurse. *Id.* at 642-43. *Freeman* also claimed that he suffered a separated shoulder and sued the hospital staff and the guard for damages. *Id.* at 643.

39. *Id.*

40. *Id.* at 644 (determining that the PLRA was enacted to reduce frivolous lawsuits by prisoners and to prevent the judicial system from micromanaging the nation’s prison systems).



immediate corrective action if a problem truly exists.<sup>41</sup> The court also briefly referred to the Supreme Court's holding in *McCarthy v. Bronson* to find that a prisoner's claim of excessive force should be considered a "condition of confinement."<sup>42</sup>

### 3. Seventh Circuit

The Seventh Circuit held in *Smith v. Zachary*, that excessive force was to be considered a prison condition for purposes of the PLRA.<sup>43</sup> The court based its decision upon the rule of statutory construction and the legislative intent behind the enactment of the PLRA.

The Seventh Circuit began its analysis by recognizing that § 1997e(a) did not define the term "prison conditions," however, a definition could be found in § 3626(g)(2).

The court remarked, "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme. Thus, the meaning of a statute may be affected by a related act, especially if that act provides greater specificity on the issue at hand."<sup>44</sup> The court found both sections (1) concerned prison litigation, (2) were multi-issue acts, (3) were designed to specifically address inmate issues, and (4) both were part of the same legislation with the similar objectives of encouraging prisons to handle inmate grievances internally and reducing the court's attempts to micromanage the prison system.<sup>45</sup> The court's statutory construction analysis mirrored that of the *Booth* and *Freeman* courts to find that a claim of excessive force comes within the § 3626(g)(2) definition of "prison conditions." The court supported its finding by stating that Smith's assault claim met the second half definition of "prison condition" in § 3626(g)(2) because he was affected by an action, the assault, by government officials, the guards.<sup>46</sup>

---

41. *Id.*

42. *Id.* McCarthy held that inmate claims challenging conditions of confinement include ongoing prison conditions and specific acts of unconstitutional conduct by prison officials. *Id.*

43. *Smith*, 255 F.3d 446 (7th Cir. 2001). Inmate Smith alleged that he had been assaulted by prison guards in retaliation for his participation in a prison riot. *Id.* at 453. He claimed to have been beaten in the face, buttocks and groin. *Id.* Then Smith claimed that he was handcuffed, beaten again and placed in a prison shower unit where he was hit and jabbed with batons. *Id.* Smith also alleged the guards then stripped him naked and continued to beat him over an unspecified period of time. *Id.* Finally, Smith claimed he was denied medical treatment for the injuries until one week later. *Id.* He failed to follow an established administrative review process for prisoner complaints. *Id.* at 448. He also failed to follow the administrative review process in appeal to the warden's response. *Id.*

44. *Id.*

45. *Id.* at 449.

46. *Id.*

The Seventh Circuit then proceeded to determine the plain-meaning of the term “prison conditions” in § 1997e(a). Smith argued that by applying the plain-meaning rule to the term “prison conditions” one could only conclude that the word “conditions” does not include a single, isolated event. The court concluded that congressional intent of the word “conditions” was to include a single, isolated event by referring to the opening section of the United States Code of which § 1997e(a) is a part.<sup>47</sup>

Based upon its analysis of the legislative history, the Seventh Circuit concluded that Congress intended to broaden the administrative remedy exhaustion requirement to include all federal claims. The court determined that Congress broadened the exhaustion requirement of § 1997e(a) in three ways: (1) by requiring mandatory exhaustion rather than giving the court discretion, (2) by not limiting the requirement to only § 1983 claims, and (3) by eliminating the restriction that exhaustion was required only if the prison had an effective means of administrative review.<sup>48</sup>

Smith argued that Congress intended to exclude claims of excessive force from having to meet the exhaustion requirement. In rejecting this argument, the court noted that the PLRA contained an exclusion only for habeas corpus proceedings and that Congress would have enumerated claims of excessive force as an exclusion had it intended to exempt them.<sup>49</sup>

Dissenting, Judge Williams argued that the alleged beatings Smith took did not meet the plain-meaning of “prison conditions” under § 1997e(a) or the definition of “prison conditions” in § 3626(g)(2).<sup>50</sup> Judge Williams believed the majority altered the language of § 1997e(a) to achieve their perception of the Congressional intent. He argued that it was the court’s duty to apply the statute as Congress had written, not to mold the language to create a statute that Congress did not intend.<sup>51</sup>

Judge Williams also referred to the Webster’s Dictionary definition of “conditions.” He argued that “conditions” as “attendant circumstances” or “existing state of affairs” refer to the environment or surroundings in which one lived and “conditions” would require that something occur routinely or with regularity.<sup>52</sup> He was unable to determine how an isolated, violent assault would fit into this definition of “conditions.” Judge Williams also declared

---

47. *Id.* The Code states: “In determining the meaning of any Act of Congress, unless the context indicates otherwise. . . words importing the plural include the singular.” *Id.*

48. *Id.* at 451.

49. *Id.* (quoting 2A SUTHERLAND STATUTORY CONSTRUCTION § 47.23) (“The general rule of statutory construction is that the enumeration of specific exclusions from the operation of a statute should apply to all cases not specifically excluded.”).

50. *Smith*, 255 F.3d at 454 (Williams, J., dissenting).

51. *Id.*

52. *Id.* at 453-54.

that excessive force claims do not fit within the second half of the “prison conditions” definition of § 3626(g)(2). He argued that the language of that section addresses claims only relating to the effects of actions. He believed that claims of excessive force were related to actions, not to claims related to effects.<sup>53</sup> Judge Williams concluded that since Congress did not explicitly write into the statute that claims of excessive force were to be considered a “prison condition,” the court was not justified to accomplish something they perceived was Congress’ intent.<sup>54</sup>

*B. Circuits Finding Excessive Force to not be a Prison Condition*

1. Second Circuit

The Second Circuit stands alone in its determination that claims of excessive force are not “prison conditions” for purposes of the PLRA. In *Nussle v. Willette*, the court, in noting that the issue was a matter of first impression, held that the exhaustion of administrative remedies requirement under § 1997e(a) did not apply to claims of excessive force.<sup>55</sup> The Second Circuit analyzed the statutory text of § 1997e(a), the relationship between § 1997e(a) and § 3626(g)(2) and the structure, purpose and legislative history of the PLRA.<sup>56</sup> Nussle alleged that prison guards violated his Eighth and Fourteenth Amendment rights to be free from cruel and unusual punishment and his Fourteenth Amendment right to substantive due process.<sup>57</sup> The District Court dismissed the case because Nussle failed to exhaust the available administrative remedies as required by the PLRA.

The Second Circuit found the term “prison conditions” to be ambiguous. The court noted that the term was not defined anywhere in § 1997 so a reading of Webster’s Dictionary was required. The court proceeded to apply the reasoning in the *Booth* dissent to find that a particular violent incident is not encompassed by the term “prison conditions.”<sup>58</sup>

Next, the court proceeded to examine the relationship between 42 U.S.C. § 1997e(a) and 18 U.S.C. § 3626(g)(2). The court found the definition of “prison conditions” in § 3626(g)(2) to be just as ambiguous as the text in §

---

53. *Id.* at 454-55.

54. *Id.* at 455.

55. *Nussle*, 224 F.3d 95 (2nd Cir. 2000), *rev’d*, *Porter v. Nussle*, 122 S. Ct. 983 (2002).

56. *Id.*

57. *Id.* at 97. Nussle alleged that guards beat him without provocation or justification. *Id.* Nussle also claimed the guards beat him so much that he lost control of his bowels and that the guards threatened to kill him if he reported the incident. *Id.*

58. *Id.* at 101. The court found the term “conditions” meant “attendant circumstances” or an “existing state of affairs.” *Id.* The term “prison conditions” would refer to circumstances affecting everyone in the area affected by them rather than a single momentary beating. *Id.*

1997e(a).<sup>59</sup> The court decided the § 3626(g)(2) definition only applied to itself and not to § 1997e(a). The Second Circuit then analyzed the definition of “prison conditions” from § 3626(g)(2). Like most courts, the Second Circuit found the first half of the definition, “conditions of confinement” to not encompass claims of excessive force. In examining the second half of the definition, “the effects of actions by government officials on the lives of persons confined in prison,” the court declared that such language would never be used to describe an isolated incident of assault.<sup>60</sup>

Because the Second Circuit found the text of § 1997e(a) and § 3626(g)(2) to be ambiguous, it looked to the structure and purpose of the PLRA as a whole, the legislative history of the PLRA, and the legal context for direction in determining the meaning of “prison conditions.”<sup>61</sup> The court first turned its attention to § 3626(g)(2) to determine whether or not this section should actually be read to provide a definition of “prison conditions” for § 1997e(a), as many courts have so held. The court found that the purpose of § 1997e(a) was to discourage and eliminate frivolous lawsuits by inmates before they got to federal court and the purpose of § 3626(g)(2) was to prohibit liberal Federal judges from micromanaging the prison system.<sup>62</sup> The Second Circuit also analyzed the term “government officials” from the second part of the definition of “prison conditions” from § 3626(g)(2).<sup>63</sup> The term “government officials”, the court reasoned, would include administrative or policymaking employees, rather than the guards, having daily contact with the inmates, who would not have administrative authority.<sup>64</sup> The court held that importing the definition of “prison conditions” from § 3626(g)(2) into § 1997e(a), would be to ignore the context and statutory purposes the two sections advanced.<sup>65</sup>

The Second Circuit also concluded that the legislative history of the PLRA demonstrated that the definition of “prison conditions,” as used in § 3626(g)(2), was not meant to be imported into § 1997e(a). The court found the

59. *Id.* at 102.

60. *Id.* at 102-03 (referring to the Booth dissent in which Judge Noonan argued that if a guard hit a prisoner in the mouth, it would be highly unlikely that the prisoner would say, “A government official has taken an action having an effect on my life”).

61. *Id.* at 103-07.

62. *Id.* at 103-04.

63. *Id.* at 105( holding that “it stretched that provision’s definition too far to characterize lower level government employees, such as corrections officers, as ‘government officials,’ since such a reading of the term ‘officials’ would include just about any government employee without regard to level of responsibility or authority).

64. *Id.* at 104. The court supported this reasoning by referring to the term “official,” used in section § 3626(a)(3)(F) (That section reads: “Any State or local official [whose] jurisdiction or function “[includes the appropriation of funds for the construction, operation, or maintenance of prison facilities, or the prosecution or custody of persons. . . .”] *Id.*

65. *Id.* at 105.

sponsors of the PLRA intended to divide the bill into two sets of provisions.<sup>66</sup> The first being those directed at reducing frivolous lawsuits and the second being those that would prevent the micromanagement of prison systems by federal judges.<sup>67</sup> Based upon the court's analysis of the statutory purpose and context, the court determined that isolated incidents of assault were not to be considered as falling under § 3626(g)(2). The court found no reason to apply the definition of "prison conditions" in § 3626(g)(2) to claims of excessive force, especially if those claims do not pertain to the effects on prisoners from judicial micromanagement.

#### IV. ANALYSIS: EXCESSIVE FORCE AS A "PRISON CONDITION"

##### A. *Statutory Text*

###### 1. Analysis of the plain meaning of § 1997e(a)

To ascertain the plain meaning of a statute, the particular statutory language at issue must be examined, as well as the language and design of the statute as a whole.<sup>68</sup> Although the term "prison conditions" is not defined in section 1997, one can apply a common sense approach to realize that excessive force used by a prison official to control an inmate is a "prison condition" for purposes of the PLRA.

Physical force used by guards upon inmates takes place everyday in America's prison systems. Violence is a way of life for inmates and guards alike. While the majority of these acts are probably justified to contain a violent prisoner, there are times when guards exceed their bounds and violate the prisoner's constitutional right to be free from cruel and unusual punishment. These actions may occur as single or momentary matters but they affect the entire prison population.

Because not all prisons are managed as model correctional institutions, excessive force by prison officials may be considered a living condition of prison life at certain facilities. Extreme physical acts of force upon inmates would be considered a circumstance of that prison society. As such, the act of excessive force could be a by-product of systemic problems, including poor hiring and training procedures or inadequate procedures for responding to insubordinate or violent behavior by inmates.<sup>69</sup>

---

66. *Id.*

67. *Id.* The court supported this conclusion by noting floor statements that the court said "suggest that the concern over 'frivolous' suits in this context refers to subject matter, rather than to the factual merits of a claim, that, if proven, would be meritorious." *Id.*

68. *K Mart v. Cartier, Inc.* 486 U.S. 281, 291 (1988).

69. *Smith*, 255 F.3d at 459.

Acts of excessive force by prison officials may be made possible by the prison environment itself, thus the remedy lies in addressing the prison conditions that facilitate these acts at the source. While screening out frivolous lawsuits was a driving force behind enacting the PLRA, one mandate of the PLRA was to exhaust all available administrative remedies.<sup>70</sup> The exhaustion requirement is the most efficient means of alerting the prison system that a problem exists. The administrative grievance process provides prompt notice to prison officials, while a lawsuit could take years before a court makes a decision. Requiring the prisoner to follow administrative grievance procedures affords prison officials the opportunity to address the situation internally. In the case of excessive force claims, prison officials can take immediate action, such as firing the guards responsible for the acts, implementing training procedures or providing additional supervision of staff. Any of these actions taken by the prison will affect, hopefully improving, the living conditions of the entire prison population.

## 2. Canon of Statutory Construction

At dispute is whether or not the definition of “prison conditions” found in 18 U.S.C. § 3626(g)(2) can be applied to PLRA claims of excessive force. Since 42 U.S.C. § 1997e(a) does not define “prison conditions”, those courts ruling in favor of administrative exhaustion have relied upon the rule of statutory construction to hold that the definition of “prison conditions” from § 3626(g)(2) can be used in PLRA litigation. The rule of statutory construction can be applied when a substantial relationship exists between two sections of legislation.<sup>71</sup> The rule states that when identical words are used in different parts of related legislation, the words are intended to have the same meaning.<sup>72</sup>

Sections 3626 and 1997e are substantially related. Both sections were part of the same legislation and each concern inmate issues and prison litigation. Section 3626 provides inmates with a means of remedy for any civil action with respect to prison conditions. It details the requirements of prospective relief and preliminary injunctive relief and also the termination of prospective relief. Section 3626(g)(2) defines the term “civil action with respect to prison condition” as any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison.<sup>73</sup> Section 1997e concerns Federal suits by inmates with respect to prison

---

70. 141 CONG. REC. S7498-01, S7527 (daily ed. May 25, 1995) (statement of Sen. Kyl).

71. *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990).

72. *Id.*

73. 18 U.S.C. § 3626(g)(2) (2000).

conditions. It requires that prisoners exhaust all administrative grievance procedures prior to initiating a Federal claim if the claim relates to prison conditions. Since both sections are primarily concerned with violations of prison conditions, it is clear the sections are substantially related and the rule of statutory construction can be applied.

The next issue is whether or not the definition of “prison conditions” from § 3626(g)(2) is an appropriate fit for § 1997e(a). The first half of the definition in § 3626(g)(2), “conditions of confinement” can include claims of excessive force with respect to the PLRA. Prior to the enactment of the PLRA, the Supreme Court held that an inmate’s suit challenging conditions of confinement, included claims involving isolated incidents of unconstitutional conduct as well as challenges to ongoing prison conditions.<sup>74</sup> Based upon the Supreme Court’s ruling in *McCarthy*, a claim of excessive force should be considered a “condition of confinement.” The use of excessive force by prison officials on an inmate is an isolated incident of unconstitutional conduct as far as that inmate is concerned. It can also be representative of an ongoing prison condition if excessive force is routinely used by the same officials within the same prison system.

The second half of the definition in § 3626(g)(2), “the effects of actions by government officials on the lives of persons confined in prison” is perhaps an even better fit for § 1997e(a). Clearly, a dictionary is not required to interpret this part of the definition of “prison conditions.” The use of excessive force upon an inmate is an “action.” A prison guard employed at a state or federal penitentiary should be considered a government official. The guard’s supervisors, prison administrative personnel and any other prison employees responsible for inmate security or inmate care should also be considered a government official. The act of excessive force by a government official upon an inmate will have an immediate and possible long-term physical and mental affect on that inmate. The use of excessive force could also be indicative of conditions of poor hiring practices, lack of training or insufficient supervision of prison officials responsible for inmate security. All of these conditions affect the prison environment as a whole.

#### *B. Legislative History*

The limited legislative history of the PLRA indicates that Congress intended claims of excessive force to be subject to the exhaustion requirement of § 1997e(a). Senators Dole, Hatch and Kyl introduced the PLRA in 1995. Senator Dole noted the drastic increase in prisoner litigation and the

---

74. *McCarthy*, 500 U.S. 136.

detrimental effects it was having on the judicial system.<sup>75</sup> The initial draft of the PLRA applied only to civil rights violations under § 1983 and allowed for judicial discretion concerning the exhaustion of administrative remedies.<sup>76</sup> The goal of the PLRA was not only to limit frivolous lawsuits by prisoners, but to also deter courts from micromanaging America's prisons.<sup>77</sup> Section 1997e(a) was eventually amended to require mandatory, rather than discretionary, exhaustion of administrative remedies and applied to all federal claims, not just § 1983 suits.<sup>78</sup>

Congress did not enumerate a claim of excessive force, or any other specific claim, as exclusions to § 1997e(a). In fact, there is no record indicating any congressional intent to exclude claims of excessive force from the PLRA. Also, there is no legislative history indicating any distinctions between excessive force claims and "prison conditions" claims. Congress allowed for a broad exhaustion requirement to ensnare all varieties of frivolous inmate suits. Congress would have defeated the purpose of a broad exhaustion requirement by shielding certain types of claims from the PLRA's reach. While most of the legislative comments concern frivolous suits that seem ludicrous, it was realized that all inmate suits, even claims of excessive force, have the potential to be frivolous and overburden the judicial system. The burden these lawsuits presented to the courts was supported by statistical evidence. The cited statistical studies did not distinguish between conditions of confinement actions and excessive force actions.<sup>79</sup> The requirement of subjecting the claim to the administrative grievance process does not prevent the inmate from eventually filing suit. The broad exhaustion requirement merely serves to weed out those claims of excessive force that are frivolous and to provide prison officials the opportunity to correct a system failure when the claim is valid.

There was limited resistance to the enactment of the PLRA.<sup>80</sup> The opponent's main objection to the PLRA was that it would frustrate meritorious

75. 141 CONG. REC. S7498-01, S7525 (daily ed. May 25, 1995) (statement of Sen. Dole). "Over the past two decades, we have witnessed an alarming explosion in the number of lawsuits filed by State and Federal prisoners." *Id.* "Frivolous lawsuits filed by prisoners tie up the courts, waste valuable judicial and legal resources, and affect the quality of justice enjoyed by the law-abiding population." *Id.*

76. 141 CONG. REC. S7498-01, S7526 (daily ed. May 25, 1995) (statement of Sen. Kyl).

77. 141 CONG. REC. S14408-01, S14418 (daily ed. Sep. 27, 1995) (statement of Sen. Hatch). "While prison conditions that actually violate the Constitution should not be allowed to persist, I believe that the courts have gone too far in micromanaging our Nation's prisons." *Id.*

78. 42 U.S.C. § 1997e(a) (Supp. 2001).

79. ABRAHAM, *supra* note 5.

80. 142 CONG. REC. S2285-02, S2297 (daily ed. Mar. 19, 1996) (statement of Sen. Kennedy). "I do not intend to offer an amendment to this bill, because it is clear that a majority of the Senate would not vote to strike the provision, and I do not believe the Senate is positioned to



claims.<sup>81</sup> In passing the PLRA, Congress did not eliminate the court's ability to remedy a constitutional violation of an inmate's civil rights. Congress merely took steps that would ensure only those claims with merit would be heard by processing the inmate's claim through the administrative grievance chain.

C. *Analysis of the Supreme Court's Ruling on Nussle v. Willette*

The Second Circuit, ruling in *Nussle v. Willette*, held that excessive force was not a "prison condition" and thus not subject to the exhaustion requirement of the PLRA.<sup>82</sup> The Supreme Court resolved the Circuit split by unanimously reversing the Second Circuit. The Court, in siding with the majority of the Circuits, held that the PLRA's exhaustion requirement applies to all prisoner suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege an Eighth Amendment violation based upon the use of excessive force or some other wrong.<sup>83</sup> The Supreme Court's decision was not limited to claims of excessive force. The Court made it clear that all prisoner suits must proceed through the administrative grievance process. No shortcuts to federal court are to be allowed.

To determine the meaning of the term "prison condition," the Supreme Court relied on the text and purpose of the PLRA, Court precedent, and the weight of lower court rulings.<sup>84</sup> The Court also noted that the Second Circuit might have reached the opposite decision had the opinion of a unanimous Supreme Court in *Booth v. Churner*, decided almost one year later, been available.<sup>85</sup>

In its analysis of the legislative intent and text of the PLRA, the Court recognized that all available remedies must be exhausted, even if the relief sought is not available through grievance proceedings. The Court stated that the legislative intent of § 1997e(a) was to reduce the quantity and increase the

---

consider detailed improvements to the PLRA during debate on this omnibus appropriations bill. But the abbreviated nature of the legislative process should not suggest that the proposal is noncontroversial in Congress." *Id.*

81. 142 CONG. REC. S2285-02, S2297 (daily ed. Mar. 19, 1996) (statement of Sen. Simon). "In attempting to curtail frivolous prisoner lawsuits, this legislation goes much too far, and instead may make it impossible for the Federal courts to remedy constitutional and statutory violations in prisons, jails and juvenile detention facilities." *Id.* "In seeking to curtail frivolous lawsuits, we cannot deprive individuals of their basic civil rights." *Id.*

82. *Nussle*, 224 F.3d 95 (2nd Cir. 2000), *rev'd*, *Porter v. Nussle*, 122 S. Ct. 983 (2002).

83. *Porter*, 122 S. Ct. 983, 992 (2002).

84. *Id.* at 986.

85. *Id.* at 988.

quality of inmate suits.<sup>86</sup> The Court determined that attempting to resolve the prisoner's claim through the internal prison grievance process might actually improve prison administration and satisfy the inmate, such that there would be no need for litigation.<sup>87</sup> The process would filter out frivolous claims and create an administrative record that more accurately describes the issues involved in the claim.<sup>88</sup>

The Court also noted that the title of a statute and the heading of a section can be used for the resolution of a doubt about the meaning of a statute.<sup>89</sup> Here, § 1997e is titled "Suits by prisoners." The Court reasoned that based upon this title, Congress did not intend to segregate excessive force claims from the universe of inmate suits.<sup>90</sup> The Court held that it seemed unlikely that Congress, after including a mandatory exhaustion requirement in the PLRA, would allow a prisoner to plead an excessive force claim and then allow him the option of administratively exhausting the claim.<sup>91</sup>

The Supreme Court's analysis of the congressional intent of the PLRA was correct. As noted above, Congress did not specifically define "prison conditions" in section 1997. Congress also made no mention to exclude claims of excessive force from § 1997e(a). In fact, there are no enumerated exclusions to § 1997e(a). There is also no evidence indicating that Congress provided an avenue for prisoners to bypass the exhaustion requirement by filing a claim of excessive force. Congress intended that any occurrence in prison is a condition of that environment, thus any suit by an inmate relating to the inmate's existence within the prison system is subject to the PLRA. In *Booth*, the Court made note of the congressional intent to broaden the exhaustion requirement.<sup>92</sup> The Supreme Court recognized that the intent of Congress was to create a statute that would deter frivolous lawsuits by requiring inmates to exhaust the administrative grievance process regardless of the claim. Thus, whether the suit is for excessive force or for being served the wrong type of peanut butter, the claim must proceed through the administrative grievance system first.

A large part of the Second Circuit's opinion was devoted to an analysis of the relationship between 18 U.S.C. § 3626(g)(2) and 42 U.S.C. § 1997e(a). The Second Circuit held that the second part of the definition of "prison conditions" from § 3626(g)(2) is ambiguous and applies only to itself, while a

---

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at 990.

90. *Id.*

91. *Id.*

92. *Booth*, 532 U.S. at 740 (2001). The Court commented, ". . . we think that Congress has mandated exhaustion clearly enough. . ." *Id.*

majority of other Circuits have held otherwise.<sup>93</sup> The Supreme Court did not issue an opinion on the reading of § 3626(g)(2) and whether or not it could be applied to § 1997e(a). The Court held that the canon of statutory construction was not required since Congress had clearly implemented a general rule of exhaustion within the PLRA.<sup>94</sup>

In addition to examining the legislative intent and text of the PLRA, the Supreme Court also relied upon its analysis in *McCarthy v. Bronson*.<sup>95</sup> *McCarthy* involved a suit by a prisoner alleging his rights had been violated as a result of prison officials using excessive force upon him.<sup>96</sup> The petitioner in *McCarthy* argued that an unconstitutional, isolated act of violence against a prisoner should not be classified as an ongoing prison condition.<sup>97</sup> The Court determined that the statutory phrase “challenging conditions of confinement” must be viewed in its proper context and not in isolation and that a broad reading of the statute was necessary to comport with the legislative intent behind the statute.<sup>98</sup> The Supreme Court held that prisoner suits challenging “conditions of confinement” when read in context, authorized suits involving isolated incidents of unconstitutional conduct as well as challenges to ongoing prison conditions.

In *Nussle*, the Supreme Court again read the statutory term at issue not in isolation but in its proper context. Based on the congressional intent to promote administrative remedies, filter out frivolous claims and to create improved claims for litigation, the Court held that inmate suits alleging the use of excessive force, whether just once or many times, could only be classified as a “prison condition.”<sup>99</sup> Perhaps more importantly, the Court noted the folly of *Nussle*’s isolated incident argument. The Court asked why a prisoner should be able to bypass the administrative grievance process when he has been assaulted on only one occasion, but not when the beatings are widespread and routine, as *Nussle* alleged would be indicative of an on going prison condition.<sup>100</sup>

## V. CONCLUSION

93. 18 U.S.C. § 3626(g)(2) (2000). The second part of the “prison conditions” definition reads: “. . .the effects of actions by government officials on the lives of persons confined in prison. . .” *Id.*

94. *Porter*, 122 S. Ct. 983, 988 (2002).

95. *Id.* at 989.

96. *McCarthy*, 500 U.S. 136 (1991). The case involved the interpretation the term “conditions of confinement” under 28 U.S.C. § 636(b)(1)(B).

97. *Id.* at 138-39.

98. *Id.* at 139-42 (holding that the Court must look to the statutory language at issue, as well as the language and design of the statute as a whole).

99. *Porter*, 122 S. Ct. 983, 990.

100. *Id.* at 991-92.

Congress created the PLRA to curb the escalating number of frivolous lawsuits by prisoners and to prevent Federal judges from micromanaging the nation's prison systems. Originally, the Act only applied to 42 U.S.C. § 1983 claims and gave the courts discretion to require an inmate to exhaust administrative remedies prior to taking the claim to court. The PLRA was eventually amended to encompass all federal claims by prisoners and made the exhaustion requirement mandatory. It is apparent from the legislative history that Congress intended all inmate claims to be subjected to the exhaustion requirement. Congress reasoned that inmate suits should be resolved at the administrative hearing level and that if the prisoner was still not satisfied with the results after exhausting all available administrative remedies, at least a better record of the complaint would already be developed prior to the suit reaching federal court.

The PLRA does not enumerate a claim of excessive force as an exclusion to the exhaustion requirement. Congress realized that any prisoner complaint might be frivolous so the PLRA was drafted without exclusions. Congress also reasoned that by utilizing the administrative grievance process, prison officials could take immediate action should a problem actually exist within the prison system. Processing a claim of excessive force through the administrative grievance process will allow prison officials to resolve the matter in a more effective manner by either immediately removing the offending guards, adding more supervisors or by changing an internal process or procedure.

The Supreme Court's decision in *Porter v. Nussle* has effectively slammed the door shut on inmates trying to shortcut the exhaustion requirement of the PLRA. The *Porter* holding will have broad implications on prisoner litigation. The Court not only held that a claim of excessive force is a prison condition for purposes of the PLRA, but the holding also made it perfectly clear that *any* suit brought by a prisoner relating to prison life, whether an isolated incident or systemic, must be carried through the administrative grievance process before moving to federal court. As a result of *Porter*, the PLRA goal to reduce inmate litigation in federal courts can finally be realized. Ultimately, the inmate, America's judicial and prison systems, and taxpayers will benefit as a result of the Supreme Court's holding in *Porter*.

JOHN COLLINS\*

---

\* J.D. Candidate, Saint Louis University School of Law, 2003; B.S., University of Iowa, 1986. M.A., Webster University, 1999. The author would like to thank Patti, Jack and Jason for allowing him to spend so much time in his "cave."

