GRANTED

Nos. 99-224 & 99-582

In The
Supreme Court of the United States

JACK R. DUCKWORTH,
Petitioner,
vs.
RICHARD A. FRENCH,
Respondent.

UNITED STATES OF AMERICA,
Petitioner,
vs.
RICHARD A. FRENCH,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF THE PETITIONERS.

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BRIEF OF *AMICI CURIAE*

This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioners and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal, and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record; Bernard J. Farber, Esq.; and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc., made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national organizations that represent the interests of law enforcement and correctional officials who formulate and implement policy for detention facilities, jails, and prisons. Because of this, we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

The United States Court of Appeals for the Seventh Circuit, *French v. Duckworth, French and United States of America, intervenor-appellant*, 178 F.3d 437 (7th Cir. 1999), held unconstitutional, as a violation of separation-of-powers, the "automatic stay" provision of the Prison Litigation Reform Act, codified at 18 U.S.C. § 3626 (e)(2). This provides that any motion to modify or terminate prospective relief in a prison conditions case operates as an automatic stay beginning on the thirtieth day after such a motion is made (which time period may be extended by an additional sixty days for good cause by the trial court). A panel of the Seventh Circuit ruled

that § 3626(e)(2) violated the principle articulated in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), that Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law.

SUMMARY OF ARGUMENT

Congress, in enacting the Prison Litigation Reform Act, made a legislative determination that there should be an end to unnecessary and burdensome "micro-management" of correctional institutions by the courts. It changed the underlying applicable law concerning the instances in which injunctive relief could be granted, requiring findings that the 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. The procedural deadlines for judicial action on a timely motion to terminate existing prospective relief are just that–procedural, and do not dictate the result which the court entertaining the motion will reach in a particular case.

The "automatic stay" provision of the Act does not violate separation-of-powers or constitute undue interference by the other branches of government in the judicial process. It requires a finding of necessity and prevents relief predicated on superseded legal standards. Congress intended that courts should ordinarily defer to correctional officials for day-to-day decision making and the allocation of resources.

Amici believe that the upholding of this "automatic stay" provision is essential to ensure that injunctive relief that is ongoing actually is necessary to remedy ongoing violations of constitutional rights. Injunctive orders entered prior to the enactment of the Prison Litigation Reform Act may not, in many instances, be adequately based on judicial findings of constitutional violations and also may be overbroad in their scope. The procedural deadlines contained in the "automatic stay" provision of the Prison Litigation Reform Act serve as a safeguard to prevent prospective relief granted under now superseded legal standards, in some cases decades ago, from being continued for years or decades yet to come without judicial findings that such relief is appropriate under current law.

This Court has appropriately and increasingly recognized, in a variety of its recent decisions concerning prison litigation, that correctional officials faced with the already difficult task of administering and running detention facilities, jails, and prisons, should be granted substantial deference in the making of their day-to-day decisions and allocation of resources. The legal standards for injunctive relief enacted by Congress in the Prison Litigation Reform Act, along with the procedural deadlines which assist in enforcing them, are in line with the Court's deference to correctional officials, while still providing judicial remedies in those instances where prisoners' constitutional rights are violated.

Accordingly, *amici* urge this Court to reverse the ruling of the United States Court of Appeals for the Seventh Circuit, and uphold the constitutionality of 18 U.S.C. § 3626(e)(2).

ARGUMENT

THE AUTOMATIC STAY PROVISION OF THE PRISON LITIGATION REFORM ACT IS A PROPER MEASURE TO PREVENT MICRO-MANAGEMENT OF CORRECTIONAL FACILITIES.

A. CONGRESS PROPERLY IMPOSED PROCEDURAL DEADLINES RELATING TO INJUNCTIVE RELIEF IN PRISONER CASES.

When Congress passed the Prison Litigation Reform Act in 1996, it very clearly made a legislative determination that federal courts had engaged, in some instances, in "micro-management" of correctional facilities. *See, e.g.*, 141 Cong. Rec. S14,419 (1995) (statement of Sen. Abraham) ("No longer will prison administration be turned over to Federal judges for the indefinite future for the slightest reason"); *id.* at S14,418 (statement of Sen. Hatch) ("I believe that the courts have gone too far in micro-managing our Nation's prisons.").

In the Act, Congress provided that injunctive relief should be granted only in cases where violations of federally protected rights were found and that such orders should be:

1. Narrowly drawn;
2. Limited in all cases to relief necessary to correct the violation of a federal right; and
3. Utilizing the "least intrusive means" necessary to correct the violation of the federal right.

18 U.S.C. § 3626(a)(1).

Recognizing that many correctional institutions

were already operating under existing injunctions, Congress also provided a mechanism for correctional administrators to seek termination of an outdated injunctive order which does not meet the current legal standard for grants of prospective relief as summarized above. Section 3626(a)(2) provides for the immediate termination of prospective relief upon a finding that it does not meet this standard, with the trial court able to deny such immediate termination upon entering written findings, based on the record, that the standard was met.

Congress evidently was also concerned about what would happen if a trial court did not hold a timely hearing to make a determination, one way or the other, about whether an existing injunctive order met the current legal standard. Accordingly, it adopted, in 18 U.S.C. § 3626(e)(2), the provision involved in this case, that a motion to terminate or modify an existing injunctive order would act as an automatic stay after no judicial action was taken for thirty days. In 1997 amendments to the Prison Litigation Reform Act, Congress provided that the trial court could postpone the effective date of this automatic stay "for not more than 60 days for good cause," but that "no postponement shall be permissible because of general congestion of the court's calendar." 18 U.S.C. § 3626(e)(3). *See* Pub. L. No. 105-119, @ 123, 11 Stat. 2440, 2470 (1997) (adding this language).

The Seventh Circuit panel has incorrectly interpreted these mere procedural guidelines to be improper Congressional interference with the judicial function. Yet these deadlines are no different from procedural deadlines properly imposed on the courts by statutes in many

other areas and upheld even when fundamental constitutional rights such as life, liberty, or property are involved. *See* Judge Easterbrook, joined by Judge Manion and Seventh Circuit Chief Judge Posner, dissenting from the denial of rehearing en banc by the Seventh Circuit, *French v. Duckworth*, 178 F.3d at 448-53.

B. THE AUTOMATIC STAY PROVISION OF THE PRISON LITIGATION REFORM ACT DOES NOT INTERFERE WITH THE JUDICIAL PROCESS.

The Seventh Circuit panel ruled that the "automatic stay" provision violates the principle articulated in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), that Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law. **This concern is misplaced, as the "automatic stay" provision of the Prison Litigation Reform Act is entirely different**. It does not attempt to dictate to the trial judge what *result* to reach, prevent the holding of hearings, the consideration of evidence, the entering of findings, the issuance of orders on those findings, or attempt to remove jurisdiction from the federal courts.

In holding as it did, in Judge Easterbrook's view, the Seventh Circuit panel "has invented a right of the judicial branch to freedom from deadlines." *French v. Duckworth*, 178 F.3d at 453.

Whether or not the "automatic stay" provision is interpreted as preserving the equitable power of the courts to "stay the stay" in appropriate circumstances or

states absolute deadlines which cannot be modified, *see Hadix v. Johnson*, 144 F.3d 925, 946, (6th Cir. 1998) (equitable power to suspend automatic stay remains) and *French v. Duckworth*, 178 F.3d 437, 443 (7th Cir. 1999) (statute does not allow suspension of automatic stay by trial court), the provision, in stating procedural deadlines, does not violate separation-of-powers or constitute undue interference by the other branches of government in the judicial process.

C. THE AUTOMATIC STAY PROVISION IS NEEDED TO PREVENT UNNECESSARY DELAY IN PRISON INJUNCTION PROCEEDINGS.

Many injunctions in prison and jail cases were entered under now superseded legal standards, in some cases decades ago. Sometimes, these orders were entered without detailed findings that ongoing constitutional violations existed then–much less now–years later.

The immediate case is just one example of how litigation over prison conditions has been prolonged, and the dangers of not imposing some procedural deadlines to promote timely review. Prisoners in an Indiana correctional facility filed a class action lawsuit against the state complaining of prison conditions **almost three decades ago**. *French v. Duckworth*, 178 F.3d at 438. Some of the relief sought by the prisoners was granted in an injunction affirmed fifteen years ago in *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985), and the prison has operated under that injunction, as modified over time, ever since.

What happened in the instant case in more recent

years?

> Defendants sought termination of the decree by a motion in June 1997. Almost two years have passed, but the district judge has yet to take a single step toward acting on this request–and the last word of the panel's opinion is "affirmed." A process that is supposed to be rapid drags on with no end in sight."

French v. Duckworth, 178 F. 3d at 449 (Easterbrook, J., dissenting).

Nor, unfortunately, is this case unique. In *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998), the appeals court had to revisit an injunctive order against Michigan correctional officials which stemmed from litigation **begun in 1980.** *Hadix v. Johnson*, 144 F.3d at 930. In *Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999), the court considered whether to terminate federal consent orders that had governed Texas prisons for "**almost twenty-five years.**" *Ruiz v. Johnson*, 178 F.3d at 387. In *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999), a panel of the Seventh Circuit examined the status of injunctive orders against a county jail growing out of litigation **which began in 1972.**

When egregious violations of prisoner rights are found to be ongoing, no one would deny that injunctive relief may be appropriate. On the other hand, the extraordinary relief of injunction should be used only to cure actually present violations and should be terminated or modified in a timely manner when conditions or the underlying law change. Indeed, that is the essence of this Court's ruling in *Rufo v. Inmates of Suffolk County Jail*,

502 U.S. 367 (1991). Instead, in some instances, injunctive orders which once were found appropriate and necessary linger on **despite the passage of new generations of prisoners and correctional officials, despite changing prison conditions, and despite the lawful enactment of a new legal standard for injunctive relief.**

This Court has properly recognized, in a variety of its recent decisions concerning prison litigation, that correctional officials faced with the already difficult task of administering and running detention facilities, jails, and prisons, should be granted substantial deference in the making of their day-to-day decisions and allocation of resources. *See, e.g., Turner v. Safley*, 482 U.S. 78 (1987); *Abbott v. Thornburg*, 490 U.S. 401 (1989).

Prison and jail administrators must manage the housing, feeding, clothing, safety, medical and mental health care, exercise, recreation, telephone use, postal needs, personal funds, and personal property of prisoners. They must provide adequate access to the courts and counsel, access to religious worship, reasonable accommodation for prisoners with disabilities– along with rehabilitative programs such as work and education, counseling and other treatment for alcohol and drug dependency. With limited financial and personnel resources, administrators must manage inmates with violent propensities, and others who refuse to follow institutional rules of behavior.

The legal standards for injunctive relief adopted by Congress in the Act, along with the procedural deadlines for enforcing them, are in line with this Court's past

deference to correctional officials, while still providing judicial remedies in those instances where prisoners' constitutional rights are violated.

Accordingly, *amici* urge this Court to reverse the ruling of the United States Court of Appeals for the Seventh Circuit, and uphold the constitutionality of 18 U.S.C. Sec. 3626(e)(2).

CONCLUSION

Amici urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

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