Nos. 99-224 and 99-582

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES B. MILLER, ET AL.,
Petitioners,

v.

RICHARD A. FRENCH, ET AL.
Respondents.

UNITED STATES OF AMERICA,
Petitioner,

v.

RICHARD A. FRENCH, ET AL.
Respondents.

BRIEF FOR RESPONDENTS

Filed March 6, 2000

QUESTIONS PRESENTED

The Prison Litigation Reform Act, 18 U.S.C. § 3626(e) (Supp. III 1997), provides for an automatic stay of any final court order directing prospective relief in a prison conditions case whenever a motion to terminate the order has been filed by defendants and has not been resolved by the trial court within a thirty (30) day period. This period can be extended for an additional sixty (60) days for good cause; however, good cause can not include calendar congestion. The questions presented are:

1. Whether 18 U.S.C. § 3626(e) is unconstitutional as violating the separation of powers because it is a direct legislative suspension of a final judgment with no apparent discretion in the trial court to override the legislative determination that suspension is required in all cases after 90 days, and because it mandates suspension of an injunction without allowing the court to apply facts to law in a case in which Congress has not changed the substantive law?

2. Whether, in order to avoid the serious constitutional question that would otherwise arise, 18 U.S.C. § 3626(e) can be construed in a manner that permits trial judges to retain their traditional equitable power to enjoin the automatic stay in appropriate circumstances?

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STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

In addition to the text of the Prison Litigation Reform Act, 18 U.S.C. § 3626 (Supp. III 1997), relevant portions of which are reprinted in the brief of petitioners Charles Miller, *et al.*, at 2-4, this case also involves the separation of powers as mandated by Article III, § 1 of the United States Constitution, which provides, in pertinent part:

> The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

STATEMENT OF THE CASE

1. In 1975, the respondent prisoners (hereinafter referred to as "the prisoners") at the Indiana Reformatory (now known as the Pendleton Correctional Facility) brought suit against the predecessors in office of petitioners Miller, *et al.* (hereinafter referred to as "the State"). The original complaint alleged that conditions at the facility violated state and federal law, including the United States Constitution. After a trial, the district court found violations of both the Constitution and state law and entered a remedial order to correct the violations. *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982). The State appealed to the Seventh Circuit, which remanded the case to the trial court for reconsideration in light of this Court's intervening decision in *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984).

On remand, the trial court entered a new memorandum decision reaffirming its earlier constitutional determination and further indicating that a number of the state law violations were also violations of the Eighth Amendment. (Joint Appendix [hereinafter "J.A."] at 27-42). The trial court also modified its prior injunctive relief in recognition of progress that had been made by the State in remedying earlier violations. (J.A. 41).

When the State again appealed, the Seventh Circuit affirmed the trial court in part and vacated in part. *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985), *cert. denied*, 479 U.S. 817 (1986). Most significantly, the Seventh Circuit agreed with the trial court that the conditions at Pendleton resulted in cruel and unusual punishment in violation of the Eighth Amendment. *Id.* at 1252-58. These conditions included brutal mechanical restraints, lack of space and furnishing for prisoners, unwholesome food, continuous threats to safety, and medical neglect. *Id.* Based on these findings, the Seventh Circuit upheld those portions of the remedial injunction entered by the trial court that had: ordered a comprehensive overhaul of the medical staff (*id.* at 1254-55); ordered an immediate modification of mechanical restraint practices which had led to inmates being chained, spread-eagled, to their beds for up to 2½ days (*id.* at 1253-54); ordered an end to double celling, which had caused gross overcrowding and deplorable and unsafe conditions (*id.* at 1251-53); and ordered the State to submit a plan to ensure that there were sufficient security personnel at the institution to insure that the inmates were safe. (*Id.* at 1257). Other portions of the trial court's order were reversed.

The last substantive modifications of the trial court's order occurred on October 6, 1988, when the parties entered into a stipulation concerning fire safety and OSHA standards at Pendleton (J.A. 43).

2. The Prison Litigation Reform Act of 1995 (hereinafter "PLRA") was enacted in 1996 as part of Pub. L. No. 104-134 (§§ 801-810), 110 Stat. 1321-66 to 110 Stat. 1321-77. Relevant portions are codified at 18 U.S.C. § 3626. It became effective on April 26, 1996.

The PLRA imposes limits on future prospective relief by requiring that any relief in prison conditions cases designed to remedy the violation of a federal right must: extend no further than necessary to correct a federal right; be narrowly drawn; and be the least intrusive means necessary to correct the violation of the federal right. 18 U.S.C. § 3626(a)(1) (Supp. III 1997).

These new limits on "prospective relief" apply to final judgments as well as to future ones. Thus, the PLRA specifically provides that any final judgment for prospective relief entered without the above requisite findings shall be "immediately terminated" upon motion by the defendant. 18 U.S. C. § 3626(b)(2) (Supp. III 1997). In addition, defendants may move to terminate prospective relief, even if the relief is embodied in a final judgment supported by the requisite findings, if two years has passed since the original entry of prospective relief or the passage of the PLRA or if one year has passed since a prior order denying termination of relief. 18 U.S.C. § 3626(b)(1) (Supp. III 1997). However, motions to terminate under (b)(1) and (b)(2) are subject to the limitation in

18 U.S.C. § 3626(b)(3) (Supp. III 1997), which provides that the

> "[p]rospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation."

The PLRA therefore contemplates a process in which, after a termination motion is filed, the trial court reviews the previous relief and, if necessary, conducts a hearing or does whatever else is necessary to create a record to determine if the requirements of 18 U.S.C. § 3626(b)(3) are met. 18 U.S.C. § 3626(e)(1) (Supp. III 1997) provides that the trial court is to rule promptly on any termination motion and that mandamus is available to the aggrieved party to challenge a failure to rule. However, the statute also provides that if the trial court does not rule on the termination motion within thirty (30) days after the motion is filed, all prospective relief is stayed until the court enters a final order ruling on the pending motion. 18 U.S.C. § 3626(e)(2). While this case was pending on appeal, the PLRA was modified by P.L. 105-119, § 123(a)(3)(C), codified at 18 U.S.C. § 3626(e)(3) (Supp. III 1997), which permits the trial court to postpone the automatic stay for not more than sixty (60) days upon a showing of good cause. The statute further provides that "[n]o postponement shall be permissible because of general congestion of the court's calendar." *Id.* Other than this sixty (60) day extension, any order which stays, suspends or otherwise delays the automatic stay of 18

U.S.C. § 3626(e)(2) is immediately appealable pursuant to 28 U.S.C. § 1292(a)(1) (1994).

3. The State filed its Motion to Terminate Decree on June 5, 1997. (J.A. 45). On July 3, 1997, the prisoners filed and received a temporary restraining order. (J.A. 4). On July 11, 1997, after hearing, the trial court entered a preliminary injunction against 18 U.S.C. § 3626(e)(2) and ordered that, pending resolution of the termination motions, "there shall be no stay of prospective relief in this matter and the parties shall continue to comply with this Court's prior orders and judgments until further orders of the Court." (Appendix to Petition for Writ of Certiorari of the State at 10-11 [hereinafter "State's App.]).

The State's original termination motion has remained in the trial court during the pendency of this appeal. The termination motion was initially set for hearing in the trial court on December 13, 1999. However, following an agreed motion by all parties, including the United States, the hearing was postponed until March 27, 2000. It was rescheduled on the prisoners' motion to June 27, 2000.

4. On appeal, the Seventh Circuit first addressed the statutory construction argument advanced by the Justice Department. In order to avoid what it conceded would be serious constitutional issues, the Justice Department urged an interpretation of § 3626(e)(2) that would allow the trial court to enjoin the automatic stay in appropriate

cases and thereby preserve its traditional equitable powers. (State App. at 21-22).[1]

Although sharing the Justice Department's constitutional concerns, the Seventh Circuit rejected its interpretation of the statutory language. Instead, the court ruled that the statutory language precluded the trial court from doing anything but entering the stay after the 30 or 90 day period expired. In reaching this conclusion the Seventh Circuit acknowledged that its interpretation differed not only from that promoted by the Justice Department, but that it also differed from the conclusion of the Sixth Circuit in *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998). (State's App. at 20-23).[2]

The Seventh Circuit panel explained its conclusion on the statutory construction issue by noting that "[e]ven though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we

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[1] The panel noted that:

> the United States is of the view that (e)(2) would be an unconstitutional violation of either the separation of powers doctrine or the prohibition against legislative suspension of a particular judgment if (e)(2) really required automatic stays. The United States argues, however, that the automatic stay provision should be read to instruct a court reviewing prospective relief that the court should – but is not required to – stay the relief, an interpretation that avoids the constitutional flaws.

(State's App. at 22).

[2] Subsequent to the panel's decision in this case the Fifth Circuit also agreed with the Justice Department's interpretation of § 3626(e)(2). *See, Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999).

find it impossible to read this language as doing anything less than that." (State's App. at 23).

Having concluded that the automatic stay was indeed mandatory and not subject to modification or delay by a trial court, the Seventh Circuit affirmed the district court's determination that the statute was unconstitutional. The court acknowledged that Congress can prescribe rules of practice and procedure which bind the federal courts. (State's App. at 25). However, the court found that 18 U.S.C. § 3626(e)(2) does more because it ties a substantive judicial outcome to a legislative time restriction without allowing the trial court to do anything to preserve the status quo in whole or in part even though it retains jurisdiction of the case. (State's App. at 25-28). The provision was deemed to be unconstitutional for two reasons. First, it violates the principle established in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), that Congress cannot give other branches the power to review final decisions of Article III courts. Section 3626(e)(2) violates this rule since "it is a self-executing legislative determination that a specific decree of a federal court- . . . must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place. This amounts to an unconstitutional intrusion on the power of the courts to adjudicate cases." (State's App. at 29).

Additionally, the Seventh Circuit found that § 3626(e)(2) violates the principle established in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), where the Court held that, although Congress has the power to change underlying law, it does not have the power to impose a rule of decision for pending cases. While the

termination petition is pending, § 3626(e)(2) "does mandate a particular rule of decision: the prospective relief must be terminated. In our view, this falls comfortably within the rule of *Klein*, and as such, it exceeds the power of the legislative branch." (State's App. at 30).

Recognizing that its decision conflicted with *Hadix*, the panel circulated its opinion among all active judges to determine if the matter should be reheard *en banc* pursuant to Seventh Circuit Rule 40(e). A majority of the judges in active service did not vote to hear the case *en banc*. (State's App. at 33). However, Chief Judge Posner and Judges Manion and Easterbrook dissented from this determination. Although the dissenters agreed with the panel that § 3626(e)(2) could not be interpreted as giving courts the power to enjoin the stay, the dissenters argued that § 3626(e)(2) was nothing more than a procedural rule implementing new substantive law. Accordingly, the dissenters did not perceive a separation of powers problem.

SUMMARY OF THE ARGUMENT

I. Both the majority and dissenters below, joined by the State of Indiana in this Court, conclude that the automatic stay, 18 U.S.C. § 3626(e)(2), is indeed automatic and is not subject to any stay or other equitable modification by the trial court. If the statute is interpreted in this way, it is unconstitutional as violating the separation of powers.

The separation of powers doctrine does not demand that an absolute wall be erected between each branch of government. Instead, the key question is a functional one:

has one branch of the government intruded on the essential and central prerogatives of another? *Loving v. United States*, 517 U.S. 748, 757 (1996). The concern prompted by such an intrusion is that the institutional integrity of the Judicial Branch is threatened by the action of a coordinate branch. *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 851 (1986). Section 3626(e)(2) gives a trial court only a brief period of time to rule on pending termination motions before they are automatically stayed. If § 3626(e)(2) mandates an automatic stay after that brief passage of time with no ability of a court to enjoin its operation after weighing the equities, it threatens core judicial functions and attacks the institutional integrity of the judiciary in three distinct, but interrelated, ways.

A. As construed by the Seventh Circuit, § 3626(e)(2) represents an effort by the Legislative Branch to automatically terminate, albeit temporarily, the final judgment of an Article III court. More than two centuries ago, this Court in *Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792), established the principle that Congress may not direct a suspension of a judicial decision. This principle has been continuously recognized, and in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), this Court proclaimed that legislative reopening of a final judgment violates separation of powers principles. Of course, Congress may prescribe substantive rules to be applied prospectively, and injunctive judgments that reach into the future may be subject to the new law. However, § 3626(e)(2) does not create a new substantive rule of law for a court to apply. Nor is it a procedural rule in any ordinary sense. Rather, as interpreted by the Seventh Circuit, it entirely displaces the

role of the court and replaces that role with the Congressional mandate that a final judgment be suspended. The court has no judicial role whatsoever since the stay is automatic and outside of its control. This violates the specific separation of powers principles expressed in *Hayburn's Case* and *Plaut* in that final judgments are being affected retroactively.

B. Section 3626(e)(2) also violates another separation of powers principle: Congress cannot prescribe a rule of decision for a court. This principle, first expressed in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), prevents Congress from compelling a specific judicial outcome in the government's favor, without giving any authority to the courts to affect the outcome, regardless of the circumstances. Again, *Klein* is not violated if Congress amends applicable law. But, § 3626(e)(2) does not represent an amendment of substantive law for courts to use in evaluating the continuing propriety of prospective relief involving prison conditions cases. Instead, it is a mandate from Congress that a decision, albeit temporary, in an ongoing case must be made in favor of the government.

C. The common thread uniting *Hayburn's Case*, *Plaut*, and *Klein* is that they all represent cases where this Court emphasized that the separation of powers precludes a coordinate branch of government from interfering with a core judicial function. Section 3626(e)(2) impinges upon the core function of Article III courts, the power to hear a case and apply relevant law to applicable facts. Section 3626(e)(2) is not a procedural rule regulating the courts. Nor is it a substantive change in the law for courts to apply to facts. It is, instead, a direct mandate from Congress that a final order be suspended with no

apparent ability for a court to affect that legislative determination. It thus represents an effort by Congress to intervene in an ongoing case while stripping the court of its ability to act in the case. This act of legislative aggrandizement is unique and is easily distinguishable from other statutes which impose deadlines that are either non-binding or that apply to non-final judgments. In no other existing statute has Congress presumed to retroactively reach into a final judgment and order it suspended with no ability in a court to affect the suspension order. This interferes with the core function of the judiciary and is further evidence that the statute is unconstitutional.

II. The United States recognizes that § 3626(e)(2) presents serious constitutional questions and urges this Court, under the principle of constitutional doubt, to interpret the statute in a manner that would avoid the constitutional difficulty. Specifically, the United States argues that the statute must be interpreted to allow trial courts to retain their equitable authority, under proper circumstances, to enjoin the operation of the automatic stay. While the prisoners would welcome any view of the statute which would allow district courts to recognize that an automatic stay can cause irreparable harm in particular cases, and which would therefore allow a stay of the stay, the doctrine of constitutional doubt can be utilized only if there is sufficient ambiguity in the statute that it is actually susceptible to two constructions. *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998). A review of the language of the statute and the limited legislative history leads to doubt that this statute can be stretched this far. The trial court and the

court of appeals properly found § 3626(e)(2) to be unconstitutional.

ARGUMENT

I. IF SECTION 3626(e)(2) IS INTERPRETED AS PRECLUDING A FEDERAL COURT'S ABILITY TO AVOID THE AUTOMATIC STAY IT IS UNCONSTITUTIONAL AS VIOLATING SEPARATION OF POWERS

The essential purpose of Article III was laid out in THE FEDERALIST No. 47. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." THE FEDERALIST No. 47 at 313 (James Madison) (Modern Library ed., 1937). Nevertheless, this Court has rejected "the notion that the three Branches must be entirely separate and distinct." *Mistretta v. United States*, 488 U.S. 361, 380 (1989). The three branches are not hermetically sealed from one another since the founders understood that this "would preclude the establishment of a Nation capable of governing itself effectively." *Buckley v. Valeo*, 424 U.S. 1, 122 (1976) (per curiam). What is key is that "one branch of the Government may not intrude upon the central prerogatives of another." *Loving*, 517 U.S. at 757.

In cases involving intrusion on the prerogatives of the judiciary, two particular concerns have stood out. First, this Court has been vigilant to ensure that the judiciary not be given "tasks that are more properly

accomplished by [the other] branches." *Morrison v. Olson*, 487 U.S. 654, 680-81 (1988). Secondly, this Court has insisted that no branch do anything which "impermissibly threatens the institutional integrity of the Judicial Branch." *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 851 (1986). Simply put, the separation of powers prevents "the encroachment or aggrandizement of one branch at the expense of the other." *Buckley*, 424 U.S. at 122.

Contrary to the interpretation given to it by the Justice Department and the courts in *Hadix* and *Ruiz*, both the panel and the dissenters in the Seventh Circuit agreed that the language and legislative history of § 3626(e)(2) was not elastic enough to encompass a right in the trial court to enjoin the operation of the automatic stay. If the statute is interpreted as mandating a stay without any ability in the trial court to modify its terms, it is unconstitutional as violating the separation of powers.

A. Section 3626(e)(2) violates the separation of powers by disrupting the final judgment of an Article III court

The final judgment which the State seeks to terminate is exactly that, a final judgment. Permanent injunctive relief, for which all appeals have been exhausted, and final consent decrees are final judgments. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 391 (1992). In entering its judgment in this case, the trial court found that serious and systemic constitutional violations existed at the Pendleton Correctional Facility. Had § 3626(e)(2) not been enjoined in this case the court's final judgment would

have been automatically suspended, with no authority in the trial court to affect that suspension. Thus, the prisoners would have been deprived of the benefit of this final judgment, not because of any judicial finding that the constitutional violations had been cured, but solely by virtue of the automatic stay that Congress imposed without regard to any particular facts or circumstances. This Court has often recognized that attempts by Congress to interfere, retroactively, with judicial decisions violate the separation of powers. Section 3626(e)(2) is another attempt to interfere, retroactively, with a final decision. It is therefore unconstitutional.

In *Hayburn's Case*, 2 U.S. (2 Dall) 408 (1792), an act of Congress provided that courts would set pensions for disabled Revolutionary War veterans but that the Secretary of War had the discretion to either adopt or reject the judicial findings. This Court did not resolve the constitutionality of the statute since the statute was changed during the pendency of the appeal. 2 U.S. (2 Dall.) at 409. However, the reported decision contains the opinions of three circuit courts, on which five Justices sat, which address the constitutionality of the statute, and the circuit court rulings "have since been taken to reflect a proper understanding of the role of the Judiciary under the Constitution." *Morrison v. Olson*, 487 U.S. at 677, n. 15. The opinion of the Circuit Court for the District of North Carolina, consisting of Justice Iredell and District Judge Sitgreaves, noted that "no decision of any court of the United States can, under any circumstance, in our opinion, agreeable to the constitution, be liable to a revision, or even suspension, by the legislature itself, in whom no judicial power of any kind appears to be vested . . . " 2

U.S. (2 Dall.) at 412. And, the opinion of the Circuit Court of the District of Pennsylvania, consisting of Justices Wilson and Blair and District Judge Peters, noted that granting a coordinate branch the right and ability to revise judgments of the courts would be "radically inconsistent with the independence of that judicial power which is vested in the courts; and consequently, with that important principle which is so strictly observed by the constitution of the United States." 2 U.S. (2 Dall.) at 411. In the two hundred years since, the basic principle in *Hayburn's Case*, that other branches cannot revise or suspend the judgments of Article III courts, has never been questioned.

Most recently, in *Plaut v. Spendthrift Farms, Inc., supra*, this Court considered an attempt by Congress to overturn this Court's decision in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991), which had held that claims under § 10(b) of the Securities Exchange Act of 1934 had to be commenced within one year of the discovery of the violation and within three years of the violation itself. This holding had resulted in dismissal of an earlier case brought by the petitioners in *Plaut*. Their claims, however, were seemingly resurrected when Congress amended federal law to change the limitation period of § 10(b) actions and which further allowed cases that had previously been dismissed to be reinstated if the basis for their earlier dismissal was because they were time barred. The *Plaut* Court struck down this amendment as a violation of separation of powers since it had the affect of interfering with a final determination of an Article III court. The challenged amendment, this Court

noted, "does no more and no less than 'reverse a determination once made in a particular case.' The Federalist No. 81, p. 545 (J. Cooke ed. 1961). Our decisions stemming from *Hayburn's Case* . . . have uniformly provided fair warning that such an act exceeds the powers of Congress." *Id.*, 514 U.S. at 225. More specifically, the Court held, separation of powers principles are violated when a judgment is "legislatively rescinded." *Id.*, 514 U.S. at 228.

Of course, Congress has the right to enact changes in substantive law that courts must apply prospectively. *Robertson v. Seattle Audubon Society*, 503 U.S. 435 (1992); *Pope v. United States*, 323 U.S. 1, 9 (1944) ("We perceive no constitutional obstacle to Congress' imposing on the Government a new obligation where there had been none before . . . "). But nothing in that principle authorizes Congress to reopen a final judgment or direct the suspension of an injunctive decree without any change in the substantive law. This distinction is critical to understanding this Court's opinion in *State of Pennsylvania v. The Wheeling and Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855), which addressed the issue of prospective relief altered by Congress. In a prior appeal, this Court had affirmed a lower court decision holding that a certain bridge erected pursuant to an act of the State of Virginia over the Ohio River was too low and was an obstruction to river traffic. The earlier case directed that the bridge be raised or removed since it interfered with the navigation of the Ohio River as regulated by Congress. Following the earlier case, Congress changed federal law by enacting legislation declaring the bridge to be a lawful structure at its original elevation and further declaring it to be a post

road. The *Wheeling* Court acknowledged the principle, later recognized in *Plaut*, that "the act of Congress cannot have the effect and operation to annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff . . . When they have passed into judgment the right becomes absolute, and it is the duty of the court to enforce it." 59 U.S. (18 How.) at 431. However, the Court found that the earlier judgment was executory and as a continuing decree it could be prospectively modified by changes in law. 59 U.S. (18 How.) at 430-431. *Wheeling Bridge* continues to stand for the proposition that Congress may enact legislation which alters "the prospective effect of injunctions entered by Article III courts." *Plaut*, 514 U.S. at 232. A defendant cannot be bound in perpetuity to obey a federal law that Congress subsequently rewrites so that it no longer applies.[3]

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[3] Courts which have upheld the constitutionality of the PLRA's immediate termination provision, 18 U.S.C. § 3626(b)(2) (Supp. III 1997), have interpreted *Wheeling Bridge* as allowing Congress to impose new requirements for the future maintenance of injunctive relief in prison conditions cases and that it is therefore appropriate and constitutional to require courts to determine if existing decrees meet these new conditions. (*See* cases cited in Brief of State at 28, n. 9. A contrary opinion was issued by the panel decision in *Taylor v. United States*, 143 F.3d 1178 (9th Cir.), *rehearing granted and opinion withdrawn*, 158 F.3d 1017 (9th Cir. 1998), *on rehearing* 181 F.3d 1017 (9th Cir. 1999). The *en banc* majority found that the matter was moot.) The circuits in these cases have misapplied this principle since *Wheeling Bridge* requires new substantive law to apply, and in the case of the PLRA there has been no change in the Eighth Amendment which is the substantive law underlying both consent decrees and judgments in prison litigation. Of

But, contrary to the argument of the State, this principle, derived from *Wheeling Bridge*, has no application here.

Unlike the legislation in *Wheeling Bridge*, Congress, in § 3626(e)(2), does not purport to give new law to a court with which to judge the continued validity of a final judgment. The notion that Congress can affect prospective relief with new legislation presupposes that the legislation imposes a new obligation which is then applied prospectively by the court to the particular case before it. If new legislation does this, by giving the court new law to apply, it in no way suspends the prior decision of the court. It is in no way retroactive. However, if Congress reaches back with new legislation to change a final decision or to suspend it, *Hayburn* and *Plaut* principles are violated because new law is not being applied prospectively. Rather, there is only the suspension of the current decree. In *Hadix*, the court of appeals recognized that, if the automatic stay were to be interpreted as precluding any ability in the trial court to enjoin it, *Hayburn-Plaut* principles would be violated since the automatic stay would then result in "direct legislative suspension of orders of Article III courts . . . " 144 F.3d at 941. As both

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course, Congress can not dictate the meaning of the Eighth Amendment. *See, e.g., City of Boerne v. Flores*, 521 U.S. 507 (1997). Section 3626(b)(2) has therefore not effected a change in the law, other than Congress' mandate that relief be terminated, and it is therefore also unconstitutional. But, the question of the validity of the immediate termination provision of § 3626(b)(2) is not before the Court. The only question is the validity of the automatic stay provision of § 3626(e)(2).

the Sixth and Seventh Circuits have recognized, the automatic stay does not require a court to apply new law prospectively. Instead, it operates as a legislative injunction against on-going relief without affording any judicial role in the process whatsoever. This is unconstitutional.

The State argues that § 3626(e)(2) is necessary to give an incentive for a district court to rule promptly on motions to terminate. Of course, § 3626(e)(1), which subjects a court to mandamus if a ruling is not made promptly, illustrates that a judicial remedy can be provided to control a dilatory court.[4] It is not for Congress to provide judicial incentives when the "incentives" infringe on the judiciary's Article III powers.

In proposing the automatic stay, the sponsor of § 3626(e)(2) noted that it was based on the automatic stay in bankruptcy. 11 U.S.C. § 362 (1994). 143 Cong. Rec. S12269 (Nov. 9, 1997) (Sen. Abraham). However, there are significant differences between the bankruptcy stay and the automatic stay under the PLRA. First, as the Court recognized in *Kalb v. Feuerstein*, 308 U.S. 433 (1940), bankruptcy is different because Article I, § 8 of the Constitution gives Congress exclusive power to "establish uniform laws on the subject of bankruptcies throughout the United States." Therefore, Congress, in the exercise of its plenary power over bankruptcy, may constitutionally require other litigation to be stayed. *Kalb*, 308 U.S. at 438-39. Moreover, the bankruptcy stay is not analogous to

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[4] Despite the State's complaints concerning the delay in the district court's ruling in this case, the State has never taken advantage of the mandamus remedy.

the PLRA's automatic stay since in the bankruptcy context the judiciary remains able to terminate, annul, modify or condition the stay. 11 U.S.C. § 362(d). Finally, as the United States recognizes (Brief of United States at 34-35), the existence of the bankruptcy statute pre-dates the cases which are stayed by the bankruptcy stay. There is therefore no retroactivity since every judgment that has been issued has built into it the possibility of a stay through bankruptcy. Assuming that § 3626(e)(2) is interpreted as it is written, this is a power which Congress has stripped from the courts. The retroactive and automatic suspension of a judicial order by Congress violates the separation of powers.

B. Section 3626(e)(2) is unconstitutional because Congress is prescribing a rule of decision for the trial court

In *United States v. Klein, supra,* the Court found that Congress had overstepped its bounds in attempting to control the authority of the courts. Congress had earlier passed a statute providing that property which had been seized in the states that had seceded would be returned to its owner, upon filing a properly supported claim in the Court of Claims, provided that the owner had "never given any aid or comfort to the present rebellion." 80 U.S (13 Wall.) at 131. In a prior case, *United States v. Padelford,* 76 U.S. (9 Wall.) 531 (1870), this Court had agreed that recipients of a presidential pardon could not be considered as having given any aid or comfort. Congress responded immediately by enacting legislation which provided that proof of the pardon was not admissible in

Court of Claims litigation as evidence that the recipient had not given aid or comfort and that, further, acceptance of the pardon would be deemed to be proof that the recipient did in fact provide aid and comfort. 80 U.S. (13 Wall.) at 133-34. Finally, the statute provided that upon proof that a pardon was received, both the Court of Claims and Supreme Court would be deprived of further jurisdiction of the case. *Id.*

The Court began its decision in *Klein* by recognizing that Congress has the power to organize and establish lower courts and to control their jurisdiction. 80 U.S. (13 Wall.) at 145. Therefore, Congress could determine that appeals could not be pursued from Court of Claims cases generally. *Id.* But, the Court also recognized in *Klein* that Congress was not regulating jurisdiction; instead it was attempting to affect the decision in particular cases. "It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power. The court is required to ascertain the existence of certain facts and thereupon to declare that its jurisdiction on appeal has ceased . . . What is this but to prescribe a rule for the decision of a cause in a particular way?" 80 U.S. (13 Wall.) at 146. The Court took pains to contrast *Wheeling Bridge* where there was no rule of decision "but the court was left to apply its ordinary rules to the new circumstances created by the act. In the case before us no new circumstances have been created by legislation. But the Court is forbidden to give the effect to evidence which, in its own judgment, such evidence should have . . . " 80 U.S. (13 Wall.) at 147.

The precise meaning of *Klein* and how it informs cases today has been the subject of much scholarly debate. *See, e.g.*, Ira Bloom, *Prisons, Prisoners and Pine Forests: Congress Breaches the Wall Separating Legislative from Judicial Power*, 40 ARIZ. L. REV. 389, 403-04 (1998); Brian M. Hoffstadt, *Retaking the Field: The Constitutional Constraints on Federal Legislation that Displaces Consent Decrees*, 77 WASH. U. L.Q. 53, 66 (1999); Lawrence G. Sager, *Klein's First Principle: A Proposed Solution*, 86 GEO. L. J. 2525 (1998). However, a review of this Court's interpretations of *Klein* makes it clear that *Klein* concerns arise when Congress compels a judicial outcome in the government's favor without giving authority to the courts to evaluate or affect the outcome, regardless of the circumstances.

For example, in *United States v. Sioux Nation of Indians*, 448 U.S. 371, 404 (1980), the Court noted that the constitutional infirmity in *Klein* was, in part, that Congress had "prescribed a rule of decision in a case pending before the courts, and did so in a manner that required the courts to decide a controversy in the Government's favor."[5] In *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 430 (1995), this Court examined whether the Attorney

[5] In *Sioux Nation* the Court held that Congress could pass a law which waived the government's defense of *res judicata*, thereby allowing a claim to be relitigated against the United States. In doing so the Court reaffirmed its earlier holding in *Cherokee Nation v. United States*, 270 U.S. 476 (1926), allowing such a waiver by Congress as part of Congress' plenary power to pay the debts of the United States. U.S. CONST. Art. I, § 8.

General's scope of employment determinations for purposes of the Federal Tort Claims Act were subject to review. The employee who had been sued was involved in the alleged tort outside of the United States. Because there is no waiver of sovereign immunity for torts of United States' employees occurring outside of the United States, the Attorney General's certification that the employee was acting within the scope, which had the effect of dismissing the employee from the action and substituting the United States as the defendant, lead to dismissal of the action. This Court noted that Congress had provided a judicial procedure for determining whether the United States or its employees were liable in tort, and, unless the courts were able to actually review the determinations "[t]he key question presented – scope of employment – however contestable in fact, would receive no judicial audience. The Court could do no more, and no less, than convert the executive's scarcely disinterested decision into a court judgment." *Id.* The Court noted that this would be akin to "instructing a court automatically to enter a judgment pursuant to a decision the court has no authority to evaluate. *Cf. United States v. Klein . . .* " *Id.* Accordingly, the Court stated that it would "resist ascribing to Congress an intention to place courts in this untenable position." *Id.*

At the very least, then, *Klein* is violated where a court is instructed by Congress to enter a decision in the government's favor that the court has no ability to modify, or change. Of course, "its prohibition does not take hold when Congress 'amend[s] applicable law.' " *Plaut*, 514

U.S. at 218. (Internal citation omitted). But, § 3626(e)(2) is not an amendment of applicable law. It is merely an act of Congress instructing courts to retroactively revise a prior judgment and to enter a decision, albeit a provisional one, in the government's favor that the court has no power to stop or control. Section 3626(e)(2) provides no law for a trial court to apply, other than the ministerial duty of entering the stay when the thirty (30) or ninety (90) day period passes. Nor, as the State argues, is § 3626(e)(2) a mere regulation of procedure with the trial court retaining discretion as to the substantive result. It directs a particular decision. As the Seventh Circuit noted, for the period of time until a final decision is made on a motion to terminate prospective relief, § 3626(e)(2) "does mandate a particular rule of decision: the prospective relief must be terminated. In our view, this falls comfortably within the rule of *Klein*, and as such, it exceeds the power of the legislative branch." (State's App. at 30).

C. Section 3626(e)(2) violates the separation of powers because, in addition to the specific rules of *Plaut* and *Klein*, it interferes with a core judicial function

The essence of separation of powers analysis in the context of Article III is whether an action of the coordinate branch has prevented the Judiciary "from accomplishing its constitutionally assigned functions." *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977). "It is emphatically the province and duty of the judicial department to say what the law is" in the cases pending before it. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177

(1803). Section 3626(e)(2) strips from courts the ability to perform this essential function. The judiciary is rendered powerless because, regardless of facts and circumstances, it loses its ability to act after thirty (30) or ninety (90) days. Congress, not the courts, make the decision. This is the epitome of interference with a constitutionally assigned function because it absolutely precludes any judicial function in an ongoing case.

At the core of Article III's establishment of a judicial department is the notion that the 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. *Hayburn's Case*, *Plaut*, and *Klein* all uphold the core notion that courts must be allowed to rule on and decide cases properly before them. Congress has the ability and duty to establish the jurisdiction of federal courts, U.S. CONST. Art. I, § 8, Art. III, § 1, and that power enables Congress to regulate practice and procedure in the federal courts as well. *See, e.g., Hanna v. Plumer*, 380 U.S. 460, 473 (1965); *Sibbach v. Wilson & Co.*, 312 U.S. 1, 9 (1941). However, once a court has jurisdiction of an issue, it must be allowed to function as a court and apply law to fact.

"Judicial jurisdiction implies the power to hear and determine a cause . . . " *United States v. O'Grady*, 89 U.S. (22 Wall.) 647 (1874). If in a particular case this power is removed or severely limited, it would "prevent[ ] the Judicial Branch 'from accomplishing its constitutionally assigned function.' " *Mistretta*, 488 U.S. at 396 (*quoting Nixon v. Administrator of General Services*, 433 U.S. at 443). As *Plaut* demonstrates, nowhere is this more clear than when Congress purports to interfere with a case that has

already become final. But, as *Klein* demonstrates, interference with a final judgment is not the only vice prohibited by separation of powers. Separation of powers is also violated when Congress grants a court jurisdiction over a case but then prevents the court from engaging in judicial decisionmaking – i.e, the application of law to fact – by compelling a decision in favor of the government. Section 3626(e)(2) fails ultimately because it prevents a court from engaging in its core function of judicial decisionmaking and because it compels a court to stand idly by while a final judgment is retroactively changed. Congress has not enacted a procedural rule which restricts a court's jurisdiction. Nor has it enacted a substantive change in the law which is to be applied prospectively. Instead, it has bypassed judicial decisionmaking completely and mandated that a final order be retroactively suspended solely because of the passage of a brief period of time. While allowing the court to hear the termination action, Congress has deprived the courts of ability to act to preserve the existing judgments during the pendency of the action, regardless of the circumstances.

This serves to distinguish 18 U.S.C. § 3626 from the other statutes and rules cited by the dissent in the Seventh Circuit and the State in its brief. As indicated above, the automatic bankruptcy stay still remains subject to judicial modification and involves judgments which have been issued with the implicit qualification that they could be stayed upon a bankruptcy filing. 11 U.S.C. § 362 (1994). The temporal limitations on temporary restraining orders in both Rule 65(b) of the Federal Rules of Civil Procedure and the Norris-LaGuardia Act, 29 U.S.C. § 107

(1994), in no way suspend or otherwise affect final judgments. In both cases the trial court retains jurisdiction to issue further orders as necessary. Time limitations on post-verdict motions, *see e.g., Carlisle v. United States*, 517 U.S. 416 (1996), similarly do not affect the validity of final judgments, nor do they suspend existing injunctive relief. A final judgment is not affected by speedy trial time limits, and courts retain their judicial capacities to determine if there are grounds to toll the limits and also retain discretion to determine if any dismissal is with or without prejudice. 18 U.S.C. §§ 3161(h), 3162 (1994). Although 28 U.S.C. § 1826 (1994) provides that an appeal from a contempt finding against a witness must be disposed of within 30 days, "several decisions have recognized that a serious constitutional question would be created if a court did not decide an appeal within 30 days and the period were treated as jurisdictional." *In re Grand Jury Proceedings*, 605 F.2d 750, 752, n. 1 (5th Cir. 1979). Consequently the deadline, which does not affect a final judgment, is not viewed as mandatory. *Id.; see also, e.g., In re Grand Jury Proceedings*, 946 F.2d 746, 749, n. 3 (11th Cir. 1991). The Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244(b)(3)(D) (Supp. III 1997), also purports to require the court of appeals to enter a decision within 30 days, in this case concerning the appropriateness of a successive application of habeas corpus. But this deadline has also been deemed to be precatory and not jurisdictional. *See, e.g, In re Siggers*, 132 F.3d 333 (7th Cir. 1997).

In none of these other examples has Congress conferred jurisdiction on a court and directed that, if it did not rule in a brief period, its earlier final decision would be overruled or disturbed in any way. In none of these

other examples has Congress directed that a court issue a particular order in the government's favor merely because of the passage of time. "It is one thing for Congress to prescribe judicial procedures to be followed in federal court: conferring jurisdiction and then directing that judicial deliberation be exercised in an unduly restrictive manner is quite a different matter." *Hadix*, 144 F.3d at 944, n. 15.[6]

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[6] Although the amount of time that Congress has given to a trial court under (e)(2) to render a decision before it loses its ability to function is not relevant to its unconstitutionality since Congress may not so intrude on a court's essential prerogative, it is nevertheless worth noting, as the Sixth Circuit found in *Hadix*, that "[i]n many cases, including those now before us on appeal, the district courts' statutory task of ascertaining the presence of a current or ongoing violation of federal right requires delving into complex factual or legal intricacies and a court record spanning many years. Consequently, thirty or ninety days before onset of the automatic stay may prove an inadequate period of time in which to find a constitutional violation . . . " 144 F.3d at 944. And, the Seventh Circuit noted below that "[i]t may be, however, that in some cases the courts will not be able to carry out their adjudicative function in a responsible way within the time limits imposed by (e)(2)." (State App. at 31). This is especially true if the trial court believes that an evidentiary hearing is necessary to determine if there are on-going violations which would justify a continuation of the orders under § 3626(b)(3). *See, e.g., Cagle v. Hutto*, 177 F.3d 253, 258 (4th Cir. 1999), *petition for cert. filed* ("Even though a district court is not required to hold an evidentiary hearing in all cases, it nevertheless may do so in appropriate circumstances.") Once an evidentiary hearing is set both sides are likely to engage in discovery and perhaps retain experts to tour the institutions involved. Given this, it is unrealistic to expect that everything can be completed within 90 days.

The separation of powers analysis is a functional one that looks to whether the central prerogatives of one branch are being intruded upon by another. *Loving*, 517 U.S. at 757.[7] If § 3626(e)(2) is read to prevent a court from fulfilling its judicial function of applying law to facts, so

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The State argues that prisoners and their counsel should be aware of ongoing constitutional violations so that the 90-day period is not unrealistic. (Brief of State at 10). But, when there is an existing decree the focus of counsel's attention will not be in finding constitutional violations, but on monitoring compliance with the decree. The PLRA requirement that the prisoners once again establish constitutional violations imposes a new duty on the lawyers and prisoners not dissimilar from that which existed when the case was originally filed. They will have to muster the evidence and witnesses to demonstrate the violations, to conduct the hearing, and to allow time for reasoned decisionmaking, all within 90 days.

[7] *See also*, Dean Alfange, Jr., *The Supreme Court and the Separation of Powers: A Welcome Return to Normalcy?*, 58 GEO. WASH. L. REV. 668, 712 (1990)

> The measure of the constitutionality of a government action challenged as violating the principle of separation of powers, therefore, should not be whether it brings about a separation or blending of powers but whether it threatens in any way the underlying purposes of the separation principle. That is, does it create a risk that there will be such a degree of accumulation of powers in a single branch that no effective check on the abuse of those powers can be anticipated, thus threatening liberty; or does it so hamstring the ability of any of the branches independently to exercise its powers or to perform its functions that it is prevented from effectively carrying out its constitutional responsibilities, thus threatening government efficiency? In short, separation of powers questions should be resolved by a functional, rather than a formal, mode of analysis.

that its prior final orders are automatically suspended by legislative fiat after the passage of time, the statute unconstitutionally interferes with a core judicial function.

II. ALTHOUGH INTERPRETING § 3626(e)(2) AS PRESERVING THE RIGHT OF THE TRIAL COURT TO USE EQUITY TO ENJOIN THE AUTOMATIC STAY WOULD AVOID THE NECESSITY OF DECLARING THE STATUTE UNCONSTITUTIONAL, THE DOCTRINE OF CONSTITUTIONAL DOUBT DOES NOT EASILY APPLY HERE AND THE SEVENTH CIRCUIT'S DECISION IS CORRECT

In its brief, the United States asserts that if § 3626(e)(2) is interpreted absolutely to preclude a trial court from using its equitable powers to enjoin the operation of the automatic stay, that a substantial constitutional question would be posed. The prisoners certainly agree with this assertion since, as indicated above, interpreting the statute in this manner would render it unconstitutional. Because of this, the United States urges this Court to construe the statute as preserving the right of a trial court to issue a preliminary injunction against the automatic stay if the prisoners come forward and meet the traditional equitable standards for granting a preliminary injunction. However, this construction can be considered only if the text of § 3626(e)(2) is deemed to be ambiguous on this issue of whether the trial court has been allowed to retain any equitable power to enjoin the stay. "[T]he doctrine of constitutional doubt which requires that we interpret statutes to avoid 'grave and doubtful constitutional questions' . . . enters in only 'where a statute is susceptible of two constructions'. . . . " *Pennsylvania*

Department of Corrections v. Yeskey, 524 U.S. at 212 (1998) (internal citations omitted); *see also, e.g., Almendarez-Torres v. United States*, 523 U.S. 224, 237-38 (1998). The doctrine of constitutional doubt "does not give a court the prerogative to ignore the legislative will in order to avoid constitutional adjudication." *Commodity Futures Trading Commission v. Schor*, 478 U.S. at 841. Relying on that principle, the State argues that the meaning and intent of § 3626(e)(2) clearly and unambiguously establishes that the trial court is not permitted to stay the stay. The State therefore argues that the doctrine of constitutional doubt cannot be applied.

The prisoners believe that, if possible within the constraints of statutory interpretation, the United States' interpretation would be preferable to a literal reading of the statute, since it allows the trial court to stop the automatic stay from going into effect in situations where prisoners would be immediately harmed by the suspension. This is an interpretation which has been accepted by the courts of appeals in both *Ruiz* and *Hadix*. However, the prisoners also believe that the statute cannot easily be stretched to accommodate the statutory construction that the United States has put forth. Like the Seventh Circuit, therefore, the prisoners in this case agree that the more appropriate and straightforward response to the statute's fatal constitutional flaws is to declare § 3626(e)(2) unconstitutional.

As the United States correctly points out in support of its statutory construction claim, "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *Califano v. Yamasaki*,

442 U.S. 682, 705 (1979). However, this principle merely focuses the inquiry on whether Congress has given such a clear command in this case.

The first place to look is the language of the statute itself. It is the best evidence of statutory purpose and if it is unambiguous the inquiry into statutory meaning must end there. *See, e.g., West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83, 98 (1991). Here, the statute indicates that the motion to terminate "shall operate as a stay." 18 U.S.C. § 3626(e)(2). Moreover, in 18 U.S.C. § 3262(e)(3), Congress has clearly indicated the only circumstance under which the stay can be extended and has further indicated that it can only be extended for a 60-day period.[8]

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[8] The United States cites cases where this Court found that district courts retained equitable discretion even though the statutes were silent on the question of whether the court had this power. However, none of these cases deal with a situation where the explicit language of the statute mandated a stay and did not contain any other language allowing the district court to do anything else. For example, in *Honig v. Doe*, 484 U.S. 305 (1988), the Court found that the automatic "stay put" portion of the Education of the Handicapped Act did not preclude an injunction on behalf of the school to enjoin the "stay put" provision. The Court based this conclusion on the fact that the relevant statute provided for judicial review of all determinations and thus the Court deemed the "stay put" provision to be a limitation on the school's ability to move the child, and not a court's. 484 U.S. at 327. The contrast here is clear since § 3626(e)(2) is a direct limitation on the court. In *Hecht v. Bowles*, 321 U.S. 321 (1944), the Court found that a statute providing that "a permanent or temporary injunction, restraining order, or other order shall be granted without bond" upon a showing that the Emergency Price Control Act had been violated nevertheless allowed a court to deny an injunction

The United States finds support for its statutory position in the language of § 3626(e)(4), which provides for an appeal of any order staying, suspending, delaying or barring the operation of the stay. The United States reads into this language an indication that Congress did not intend to remove trial courts' equitable discretion to enjoin the operation of the stay. The difficulty with this argument is that (e)(4) applies in only one direction: it permits immediate appeals from the grant of an injunction against the automatic stay but not from the denial of such a motion. This is contrary to the customary procedures under 28 U.S.C. § 1292(a)(1) (1994) and, at the very least, casts doubt on the United States' claim that Congress even contemplated such injunctions within the

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even if a violation had been shown. *Id.* at 322. The Court found that a trial court maintained its full equity powers to deny injunctive relief since the Act explicitly gave the trial court discretion by providing that some "other order" could be issued in case of a violation. *Id.* at 328. In this case, Congress has not explicitly given the trial court any options other than to enter the stay, automatically, after 30 or 90 days. Finally, in *Scripps-Howard Radio v. Federal Communication Commission*, 316 U.S. 4 (1942), the Court found that a stay could be issued by the Court of Appeals under the Communications Act of 1934. The statute was silent as to whether the court had this power and the Supreme Court was unwilling to find, in this silence, a Congressional desire to remove the power to issue the stay. However, the Communications Act was not a statute which explicitly concerned modifying prior decisions and which had written into it an automatic stay provision. Here, on the other hand, the automatic stay already expresses Congress' desire to temporarily end the orders and to remove the ability of the trial court to interfere with such a result. Unlike the cases cited by the United States, § 3626(e) bears the clear imprint of a Congressional desire to remove the court's equitable power.

statutory framework of the PLRA. To be sure, as the United States argues, Congress could have provided for mandamus review of any injunction against the automatic stay if it believed that all such injunctions were *ultra vires*. But the fact that Congress eschewed the "extraordinary remedy" of mandamus, *Pittson Coal Corp. v. Sebben*, 488 U.S. 105, 121 (1988), in favor of the normal appellate process must be balanced against the fact that Congress provided no appellate review at all when a request for a stay of the stay is denied. In reviewing the significance of § 3626(e)(4), the Seventh Circuit concluded that "[t]he drafters of the PLRA realized that they were skating close to the line in (e)(2), and they wanted to ensure that the issue that is now before us could be resolved in an interlocutory appeal." (State App. at 23).

Certainly, the little legislative history that exists does not support the argument of the United States. As the State has demonstrated in its brief, there is absolutely no hint that Congress desired the automatic stay to be anything but that, an automatic stay. (State's Brief at 15-16).

If this were an appropriate case for application of the constitutional doubt doctrine the prisoners would welcome the interpretation of the United States since it allows trial courts to continue prospective relief in prison cases and it acknowledges the fact that irreparable harm may befall prisoners when injunctive relief is terminated, even temporarily. However, the doctrine cannot easily be applied here since Congressional intent to preclude the ability of trial courts to enjoin the stay appears to be clear. The Seventh Circuit properly struck down the statute as unconstitutional.

CONCLUSION

This Court should therefore affirm the judgment of the court of appeals.

Respectfully submitted,

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