No. 18-14824

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JEFFREY GETER, *Plaintiff-Appellant,*

v.

BALDWIN STATE PRISON, *Defendant,*

DR. IKE AKUNWANNE, *Defendant-Appellee,*

DR. KING, *Defendant-Appellee.*

On Appeal from
the United States District Court
for the Middle District of Georgia
Case No. 5:16-CV-00444-TES-CHW

BRIEF OF *AMICI CURIAE* ARIZONA, ALABAMA, ARKANSAS, KANSAS, LOUISIANA, NEBRASKA, OKLAHOMA, SOUTH CAROLINA, TEXAS, AND UTAH IN SUPPORT OF DEFENDANT-APPELLEES AND AFFIRMANCE

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Pursuant to Fed. R. App. P. 26.1 and Eleventh Circuit Rule 26.1-1, the counsel for amici curiae certify that, except for the following, the list of persons or entities that are known to the undersigned to have an interest in the outcome of the case, are listed in the first brief filed.

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The Attorneys General of Arizona, Alabama, Arkansas, Kansas, Louisiana, Nebraska, Oklahoma, South Carolina, Texas, and Utah, are their respective States' chief law enforcement or chief legal officers and have authority to file briefs on behalf of their respective States. The *amici* States interests are particularly implicated here because the Attorneys General defend a myriad of suits under the Prison Litigation Reform Act, 42 U.S.C. § 1997e , ("PLRA") each year, and Plaintiffs' suit seeks to upend the existing, certain, beneficial structure for handling prisoner complaints under the PLRA. In the PLRA, Congress spoke clearly in imposing a rigorous exhaustion requirement as a precondition for suit in federal court. And the Supreme Court has been equally clear in delineating three—and *only* three—exceptions to the PLRA's exhaustion requirement. This clearly has redounded to the benefit of the Courts, the States, and prisoners. *Amici* States offer this brief to highlight how the new requested exception would undermine the existing clarity, harming the States as well as prisoners.

STATEMENT OF THE ISSUES

1. Under *Ross v. Blake*, 136 S. Ct. 1850 (2016), is an inmate's subjective inability to understand a particular grievance procedure a permissible excuse for avoiding the PLRA's exhaustion requirement?

2. Was the district court's factual finding that Geter could have subjectively understood the prison's "single issue" rule, which requires only one issue per grievance, clear error, given that Geter did not assert he could not understand the rule and there was no evidence that Geter's particular mental health conditions were of such severity that he could not have possibly understood the rule?

SUMMARY OF THE ARGUMENT

In the 23 years since the PLRA was enacted and its exhaustion requirement took effect, the Supreme Court has recognized three—and *only* three—exceptions to that exhaustion requirement. Plaintiff, however, seeks to recognize a fourth avenue around the PLRA's exhaustion requirement in contravention of clear Supreme Court authority. But that fourth exception would be bad for the courts, the States, and inmates with legitimate claims for relief. Congress passed the PLRA to facilitate the goal of advancing meritorious prisoner claims while diminishing frivolous litigation. And the requested exception violates Congress's intent as well as the Supreme Court's plain guidance. As the district court said, creating a new exception "would effectively carve out a 'special circumstance' for a particular plaintiff that the United States Supreme Court unequivocally rejected in *Ross*," where it "held that the PLRA may not include discretionary 'judge-made exceptions.'" *Geter v. Baldwin State Prison, et al.,* 2018 WL 3946541 at *7, M.D. Ga. (August 16, 2018). Not only is such an exception foreclosed as a legal matter,

adding this new fourth exception would also undermine predictability for all involved, including inmates seeking relief. With all of this in mind, the Court should confirm what the PLRA's text and the Supreme Court's precedent fairly demand, reinforce the unanimity of the circuit courts on this issue, and affirm the district court's well-reasoned decision.

ARGUMENT

I. PLAINTIFF PRESSES A PATH FORECLOSED BY CONGRESS AND THE SUPREME COURT

A. Congress Acted With Clarity Through The PLRA

Congress passed the Prison Litigation Reform Act of 1995 in a "bipartisan effort" to "allow meritorious claims to be filed" but "prevent frivolous lawsuits" by "prison inmates [who] are abusing our system." 141 CONG. REC. No. 154, S14611, S14627-29 (Sept. 29, 1995) (Senators Kyl, Thurmond, and Reid expressing support). Prior to passing the PLRA, Congress noted "a flood of frivolous lawsuits brought by inmates" involving "such grievances as insufficient storage locker space, a defective haircut … the failure of prison officials to invite a prisoner to a pizza party … and yes, being served chunky peanut butter instead of the creamy variety." *Id.* at S14626.

To facilitate the goal of advancing meritorious prisoner claims while diminishing frivolous litigation, Congress mandated that inmates exhaust "such administrative remedies as are available" as a precondition to filing any § 1983

lawsuit over prison conditions. 42 U.S.C. § 1997e(a). As the Supreme Court has recognized, the PLRA's precursor, the Civil Rights of Institutionalized Persons Act (CRIPA), had "a 'weak exhaustion provision,'" which "proved inadequate to stem the then-rising tide of prisoner litigation," so "Congress thus substituted an 'invigorated' exhaustion provision." *Ross*, 136 S. Ct. at 1858 (quoting *Woodford v. Ngo*, 548 U.S. 81, 84-85 (2006)). Under the PLRA "all inmates must now exhaust all available remedies: 'Exhaustion is no longer left to the discretion of the district court.'" *Id.* (quoting *Woodford*, 548 U.S. at 85).

The PLRA's language sets out its unambiguous administrative exhaustion requirement as a means of refining the types of claims that proceed to federal court while ensuring that those claims that can be resolved within the administrative system do not waste limited court resources. *See, e.g.*, 141 CONG. REC No. 154, S14611, S14627 (Sept. 29, 1995) (statement of Sen. Hatch) ("I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised."). Indeed, Congress foresaw in the PLRA a benefit to inmates since preventing frivolous claims would leave courts better able to address those legitimate claims involving serious violations of inmates' rights, which might otherwise have been buried under the frivolous ones. 141 CONG. REC. NO. 194, S18117, S18136 (Dec. 7, 1995) (statement of Sen. Hatch) ("The crushing burden of these frivolous suits is not only costly, but makes it difficult for courts to

consider meritorious claims.”). In no small part, this benefit to inmates with meritorious claims derives from the clarity of Congress’s intent as expressed in the PLRA’s text, which ensures that courts, prison officials, and inmates all understand that the administrative procedures must be followed and exhausted before a court action may be filed.

B. The Supreme Court In *Ross* Squarely Limited PLRA Exhaustion Exceptions To Three Distinct Categories

As the Supreme Court explained in *Ross*, an inmate may not access the courts under the PLRA without having first exhausted all administrative remedies unless such remedies are shown to be unavailable. 136 S. Ct. at 1857. And, as *Ross* confirmed, the Supreme Court only recognizes three circumstances under which this showing can be made: (1) when the administrative procedure “operates as a simple dead end” in which officers consistently provide no relief, (2) where “an administrative scheme [is] so opaque that it becomes, practically speaking, incapable of use,” or (3) “when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” *Id.* at 1859-60.

C. Lower Courts Have Had No Trouble Maintaining A Consistent Application Of the *Ross* Categories

In response to this well-defined holding, no circuit court has ever recognized any exception beyond the three explicated in *Ross*, with the Second Circuit even

rejecting nearly the same argument presented by Plaintiff here. *Galberth v. Washington*, 743 F. App'x 479, 480 (2d Cir. 2018) (plaintiff's mental illness does not excuse PLRA's exhaustion requirement). Other appellate courts have broadly rejected similar arguments. *Forde v. Miami Fed. Dep't of Corrections*, 730 F. App'x 794, 798–99 (11th Cir. 2018) (applying the *Ross* holding); *Davis v. Mason*, 881 F.3d 982, 986 (7th Cir. 2018); *Williams v. Correction Officer Priatno*, 829 F.3d 118, 123–26 (2d Cir. 2016); *Ratliff v. Graves*, 2019 WL 326485 at *2 (6th Cir. Jan. 24, 2019); *Hinton v. Martin*, 742 F. App'x 14, 15 (5th Cir. 2018); *Burnett v. Miller*, 738 F. App'x 951, 952–53 (10th Cir. 2018); *Shumanis v. Lehigh Cty*, 675 F. App'x 145, 149 (3d Cir. 2017); *Germain v. Shearin*, 653 F. App'x 231, 232–33 (4th Cir. 2016); c*f. Andres v. Marshall*, 867 F.3d 1076, 1078 (9th Cir. 2017) (only applying the three *Ross* factors despite describing factors as "non-exhaustive list").

Indeed, this Court recently expressed its commitment to both *Ross*'s general holding of adherence to the exhaustion requirement and being "[c]onsistent with the law of all other circuits" regarding the procedural details of how exhaustion of administrative remedies (or the affirmative defense of failure to exhaust) may be established. *Whatley v. Smith*, 898 F.3d 1072, 1084 (11th Cir. 2018) ("*Whatley II*") ("These holdings harmonize our approach with other circuits").

II. COURTS, STATES, AND PRISONERS ALL BENEFIT FROM THE CLARITY PROVIDED BY CONGRESS AND THE SUPREME COURT

The PLRA has achieved many of its goals, to the benefit of courts, states, and prisoners. As one study of the PLRA's effects notes, "[c]learly, the goal of reducing the share of federal judicial workload devoted to prisoner litigation has been achieved." Brian J. Ostrom, et. al., *Congress, Courts and Corrections: An Empirical Perspective on the Prison Litigation Reform Act,* 78 NOTRE DAME L. REV. 1525, 1558 (2003). And, "the reduction in cases docketed post-PLRA implies that, on average, the remaining cases are given more time and attention." *Id.* at 1556-57. Indeed, jury trial rates for prisoner lawsuits are up significantly (indicating cases brought were sufficiently meritorious to pass multiple procedural hurdles), suggesting that "the PLRA by design and effect … fairly, but firmly, differentiates cases for the most appropriate handling." *Id.* at 1558 (finding that jury trials were up significantly in seven circuits and up at least some amount in all but one circuit post-PLRA).

And with fewer frivolous cases to defend, state government resources can be redirected to other priorities since handling grievances through administrative processes is more time- and cost-efficient. And it isn't just the state's litigation situation that is improved. The administrative processes for inmate grievances typically work at a far quicker pace than federal courts. For instance, the Georgia

Department of Corrections grievance procedures require that "[i]f the original grievance is not rejected, then a decision … should be delivered within the 40 or 50-day review period." *Geter v. Akunwanne*, 2018 WL 3946558, at *2, M.D. Ga., (June 15, 2018). Thus administrative systems can provide an inmate a formal response—and potentially complete relief—in fewer than the sixty days a federal litigant who waives service may take to even respond to a complaint (to say nothing of the time consumed by subsequent briefing and resolution of motion practice). Fed. R. Civ. P. 12(A)(1)(a)(ii).

Finally, and perhaps most importantly, the efficiency stemming from the existing PLRA system benefits prisoners. Strict adherence to the PLRA's exhaustion requirement means that governmental bodies are able to respond better to prisoners' needs and resolve complaints through efficient, appropriate processes. Prison officials are in many cases better equipped to understand and respond to prisoner complaints, and within less time, than courts are. And the administrative process cannot simply be a dead end, either, as *Ross* makes clear. 136 S. Ct. at 1859. In fact, administrative remedy procedures "are precisely the mechanism that can produce the same result as gained in court in particular kinds of cases," and "the 'win' rate for prisoners under the administrative remedies is many times

greater than victories in court." Ostrom et. al., *Congress, Courts and Corrections*, NOTRE DAME L. REV. at 1557-58.[1]

In the current model of clarity provided by the courts, legitimate grievances that can be addressed locally are ensured to go to the appropriate body first—rather than languishing in an overloaded federal district court's docket—precisely because of the administrative exhaustion mandate. And, any frivolous claims will likely be dealt with appropriately without court involvement. This allows those legitimate claims that need court attention to matriculate out of the administrative system and into the judiciary without being buried under the petty and frivolous. This is a boon to prisoners who need court attention for their legitimate claims, and the success rate for prisoner cases that do make it to trial has climbed since the PLRA was passed. "[I]nmate plaintiffs who filed in 1998 have won about 10%, compared to 7-8% in corresponding portions of the 1994 and 1995 filed cohorts. And the improvement in plaintiffs' trial results seems to be holding." Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1663 (2003).

* * *

Endorsing Plaintiff's unprecedented new exception to the PLRA's exhaustion requirement would be bad for the courts, the States, and the judicial

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[1] The appropriateness of administrative resolution is especially apparent for cases where the remedy sought may be, for example, "a prisoner receiving an apology, receiving a new prosthetic, or having an infraction removed from a disciplinary record." Ostrom et. al., NOTRE DAME L. REV. at 1558.

system because it would diverge from precedent and upend the existing, beneficial certainty that has heretofore been provided by Congress and the courts. This would be especially bad for inmates with legitimate claims for relief, whether such relief would have come from the courts after administrative exhaustion or through the administrative process that would have remedied the concern and thereby obviated any need for federal court litigation. With all of this in mind, the Court should follow the PLRA's clear text and the Supreme Court's precedent, reinforce the unanimity of the circuit courts on this issue, and affirm the district court's well-reasoned decision.

CONCLUSION

For the reasons set forth herein, as well as those in the State of Georgia's Answering Brief, the Court should affirm the decision below.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 2,176 words, excluding the parts of the brief exempted by Fed. R. App P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of Amicus Curiae for the State of Arizona with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system on March 6, 2019. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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