No. 01-1220

In the Supreme Court of the United States

WILLIAM H. WALKER, JR., PETITIONER

v.

THOMAS BAIN, ET AL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether 42 U.S.C. 1997e(d)(2) (Supp. V 1999) limits an award of attorneys' fees in prison litigation to 150% of the monetary judgment.

2. If so, whether that limitation is constitutional.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-33a) is reported at 257 F.3d 660. The opinion of the district court (Pet. App. 43a-66a) is reported at 65 F. Supp. 2d 591. The opinion of the district court on reconsideration (Pet. App. 34a-66a) is reported at 65 F. Supp. 2d 591.

JURISDICTION

The judgment of the court of appeals was entered on July 20, 2001. A petition for rehearing was denied on November 5, 2001 (Pet. App. 67a). The petition for a writ of certiorari was filed on February 4, 2002 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In enacting the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66 to 1321-77, Congress sought to discourage inmates from filing suits that are unlikely to succeed. *Crawford-El* v. *Britton*, 523 U.S. 574, 596 (1998). One method Congress used to accomplish that goal was to place new limits on the recovery of attorneys' fees. *Ibid.* One of those attorneys' fees limitations specifies that:

> Whenever a monetary judgment is awarded in an action [brought by a prisoner in which attorney's fees are authorized under 42 U.S.C. 1988,], a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

42 U.S.C. 1997e(d) (Supp. V 1999).

2. Petitioner William H. Walker, a state prisoner, filed suit under 42 U.S.C. 1983 against state corrections officers (respondents), alleging that they retaliated against him for filing grievances and lawsuits. Pet. App. 3a-4a. A jury found in petitioner's favor on one of his claims, and the district court entered judgment for petitioner in the amount of $426. *Id.* at 4a-5a. Pursuant to 42 U.S.C. 1988, petitioner filed a motion seeking an award of $36,046.25 in attorney's fees. *Id.* at 5a. Respondents opposed the fee application on the ground that Section 1997e(d)(2) capped the fee award at $629. *Ibid.* Petitioner argued that Section 1997e(d)(2) did not cap the fee sought in this case, but that if it did, the cap would be unconstitutional. *Ibid.*

The district court rejected petitioner's statutory argument, but held the cap unconstitutional. Pet. App. 43a-66a. The district court awarded petitioner $34,493.72 in attorneys' fees. *Id.* at 5a. Both sides appealed, and the United States intervened to defend the constitutionality of Section 1997e(d)(2). *Ibid.*

3. The court of appeals vacated the award of attorneys' fees. Pet. App. 1a-23a. The court first rejected petitioner's contention that the cap in Section 1997e(d)(2) does not apply to fee awards that exceed 150% of the monetary damages award. *Id.* at 7a-10a. The court reasoned that petitioner's interpretation would render that provision meaningless. *Id.* at 9a.

The court then upheld the constitutionality of the 150% cap. The court noted that, because prisoners are not a suspect class, the relevant constitutional inquiry is whether the 150% cap rationally furthers a legitimate government interest. Pet. App. 10a. Relying on its previous decision in *Hadix* v. *Johnson*, 230 F.3d 840 (6th Cir. 2000), the court held that Section 1997e(d)(2) satisfies that standard. Pet. App. 11a-12a. In *Hadix*, the court had upheld the PLRA's cap on hourly rates in attorneys' fee calculations, 42 U.S.C. 1997e(d)(3) (Supp. V 1999). Pet. App. 11a. The *Hadix* court had reasoned that the hourly rate limit rationally furthers the legitimate government interests in reducing the number of marginal lawsuits and protecting the public fisc. *Id.* at 12a. The court concluded that the 150% cap rationally furthers those same purposes. *Ibid.* The court explained that "[b]ecause rational attorneys will demand a greater likelihood of success before taking a prisoner's case, some prisoners with marginal or trivial claims will be dissuaded by the fact that they will have to shoulder the entire workload themselves." *Ibid.* (quotation marks omitted).

Judge Daughtrey dissented in relevant part. Pet. App. 23a-33a. She concluded that the attorneys' fees cap is not rationally related to any legitimate government interest. *Ibid.*

ARGUMENT

1. Petitioner contends (Pet. 24) that Section 1997e(d)(2) does not apply to an award of attorneys' fees when the amount of the award is more than 150% of the damages awarded. That contention is without merit and does not warrant review.

Section 1997e(d)(2) provides that:

> Whenever a monetary judgment is awarded in an action [brought by a prisoner in which attorney's fees are authorized under 42 U.S.C. 1988,], a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

42 U.S.C. 1997e(d) (Supp. V 1999). The second sentence of Section 1997e(d)(2) plainly limits an award of attorneys' fees in prison litigation to 150% of the monetary judgment.

Petitioner argues (Pet. 24) that because the limitation applies "if" the fee award is "not" greater than 150% of the damage award, the limitation does not apply *if* the fee award is *greater* than 150% of the award. That interpretation is misguided. By inserting the clause "[i]f the award of attorney's fees is not greater than 150 percent of the judgment," Congress made clear that a defendant is liable for an amount that exceeds the plaintiff's contribution *only* if the award does not exceed 150% of the judgment. An award of

fees *greater* than 150% of the judgment is simply not authorized. That interpretation furthers Congress's purpose of limiting fee awards in prison litigation. Petitioner's interpretation, by contrast, would render the second sentence meaningless. As the court of appeals explained, under petitioner's interpretation, a defendant would always be liable for the full amount determined in accordance with Section 1988, minus plaintiff's contribution, regardless of the relationship between that amount and the amount of the judgment. Pet. App. 9a.

Every court that has addressed the question has held that Section 1997e(d)(2) limits attorneys' fees in prison litigation to 150% of the monetary judgment. *Foulk* v. *Charrier*, 262 F.3d 687, 704 (8th Cir. 2001); *Volk* v. *Gonzalez*, 262 F.3d 528, 536, (5th Cir. 2001); *Boivin* v. *Black*, 225 F.3d 36, 40 (1st Cir. 2000); *Collins* v. *Montgomery County Bd. of Prison Inspectors*, 176 F.3d 679, 683 (3d Cir. 1999), cert. denied, 528 U.S. 1115 (2000); *Blissett* v. *Casey*, 147 F.3d 218, 220 (2d Cir. 1998), cert. denied, 527 U.S. 1034 (1999). The court of appeals correctly reached that same conclusion here.

2. Petitioner's contention that the 150% cap violates the Constitution is equally without merit. Petitioner initially argues (Pet. 10) that heightened scrutiny applies to Section 1997e(d)(2) because that provision applies only to prisoners, and because prisoners are disproportionately members of suspect classes. But as the courts of appeals have concluded, prisoners do not constitute a suspect class. *Curley* v. *Perry*, 246 F.3d 1278, 1285 n.5 (10th Cir.), cert. denied, 122 S. Ct. 274 (2001); *Abdul-Akbar* v. *McKelvie*, 239 F.3d 307, 317 (3d Cir.), cert. denied, 121 S. Ct. 2600 (2001); *Hadix* v. *Johnson*, 230 F.3d 840, 843 (6th Cir. 2000); *Boivin*, 225 F.3d at 42; *Benjamin* v. *Jacobson*, 172 F.3d 144, 165 (2d

Cir.), cert. denied, 528 U.S. 824 (1999); *Webber* v. *Crabtree*, 158 F.3d 460, 461 (9th Cir. 1998); *Murray* v. *Dosal*, 150 F.3d 814, 818 (8th Cir. 1998), cert. denied, 526 U.S. 1070 (1999); *Tucker* v. *Branker*, 142 F.3d 1294, 1300 (D.C. Cir. 1998); *Carson* v. *Johnson*, 112 F.3d 818, 821-822 (5th Cir. 1997); *Pryor* v. *Brennan*, 914 F.2d 921, 923 (7th Cir. 1990); *Evans* v. *Thompson*, 881 F.2d 117, 121 (4th Cir. 1989), cert. denied, 497 U.S. 1010 (1990). And classifications do not trigger strict scrutiny simply because they have a *disproportionate impact* on suspect classes. *Personnel Adm'r* v. *Feeny*, 442 U.S. 256, 278-279 (1979); *Washington* v. *Davis*, 426 U.S. 229, 239-242 (1976). There is therefore no basis for applying heightened scrutiny to Section 1997e(d)(2). Instead, the relevant question is whether that provision rationally furthers a legitimate government purpose. Every court of appeals to consider the issue has held that Section 1997e(d)(2) rationally furthers legitimate government interests. Pet. App. 13a; *Boivin*, 225 F.3d at 46; *Madrid* v. *Gomez*, 190 F.3d 990, 996 (9th Cir. 1999).

Under the rational basis test, the PLRA attorneys' fees cap enjoys "a strong presumption of validity," *Heller* v. *Doe*, 509 U.S. 312, 319 (1993), and petitioner bears the burden "to negative every conceivable basis which might support it." *Id.* at 320. A statute "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification * * * whether or not the basis has a foundation in the record." *Ibid.* (internal quotation marks and citation omitted). The PLRA attorneys' fees cap rationally furthers at least three legitimate government interests.

First, as the court of appeals concluded, the PLRA attorneys' fees cap is rationally related to the legitimate goal of reducing the number of "marginal, albeit

meritorious claims." Pet. App. 12a. In a world of scarce resources, Congress can establish incentives to attract attorneys to cases that involve serious, rather than de minimis injuries. Tying the amount of the fees to the amount of recovery clearly accomplishes this objective. Moreover, targeting litigation brought by inmates reflects the inmates' unique circumstances. Inmates have incentives to litigate that are not shared by members of the general public: they have no living costs; they have far more free time; and they live in an environment in which litigation is encouraged. *Boivin*, 225 F.3d at 44. Because of those incentives, inmates have a tendency to file more marginal and unimportant claims than non-inmates. Their natural incentives are exacerbated if attorneys are guaranteed attorneys' fees in any successful case, without regard to the injury sustained or the amount awarded. The attorneys' fees cap helps to counteract those incentives. As the court of appeals explained (Pet. App. 12a), the cap decreases the incentives for attorneys to take marginal and unimportant cases and thereby decreases the likelihood that prisoners will file and prosecute them.

Petitioner asserts (Pet. 15) that inmates do not file unimportant and marginal claims that are nonetheless meritorious. But petitioner offers no basis for that assertion. In any event, it is at least "conceivable" that inmates file such claims, and that is all rational basis review requires. *Heller*, 509 U.S. at 320.

Relying on the plurality opinion in *City of Riverside* v. *Rivera*, 477 U.S. 561 (1986), petitioner argues (Pet. 15) that Congress had no authority to use "the size of a damage award" as a measure of "how valuable a meritorious civil rights claim is." Pet. 15. But *Rivera* involved only a question of statutory construction—whether an attorneys' fee award that exceeds the

amount of damages is per se "unreasonable" within the meaning of 42 U.S.C. 1988. 477 U.S. at 564 (plurality opinion). The plurality's conclusion that Section 1988 does not necessarily require fee awards to be proportionate to the amount of damages has no relevance to the question whether Congress has constitutional authority to enact a different statute that ties an award of attorneys' fees to the amount of a recovery. Moreover, the PLRA expressly requires that "the amount of the fee [be] proportionately related to the court ordered relief." 42 U.S.C. 1997e(d)(1)(B)(i) (Supp. V 1999). Certainly, in an effort to draw lawyers toward cases that involve more serious injuries, Congress is entitled to limit the availability of attorneys' fees in cases that produce relatively small damage awards.

Petitioner also argues (Pet. 17) that, even if discouraging marginal or trivial claims is a legitimate governmental goal, Congress lacked a rational basis for applying the cap to prisoners, but not to others. But as noted above, Congress rationally concluded that prisoners have a far greater incentive to file trivial and marginal lawsuits than non-inmates. Congress therefore rationally limited the cap to suits filed by inmates. As the Sixth Circuit explained in *Hadix*, 230 F.3d at 845, "Congress could rationally intend the PLRA's attorney fee cap to provide a counter-balance to a prisoner's numerous incentives to litigate, thereby placing prisoner civil rights plaintiffs more closely in the same decision making position as non-prisoner civil rights plaintiffs."

The attorneys' fees cap also rationally serves the goal of protecting the public fisc. Pet. App. 12a; *Hadix*, 230 F.3d at 845-846 & n.5; *Boivin*, 225 F.3d at 44; *Madrid*, 190 F.3d at 996. Relying on *Rinaldi* v. *Yeager*, 384 U.S.

305 (1966), petitioner contends (Pet. 11-14) that protecting the public fisc is not a legitimate justification for distinguishing between the claims of inmates and non-inmates. Petitioner's reliance on *Rinaldi* is misplaced.

In that case, the Court invalidated a state statute that required criminal defendants who lost their appeals and were sentenced to prison to pay for their trial transcripts. The Court reasoned that the punishment ultimately imposed bore no rational connection to the cost of a transcript. *Schilb* v. *Kuebel*, 404 U.S. 357, 368 (1971) (explaining *Rinaldi*). The situation here is entirely different because there is a rational connection between a person's status as a prisoner and his propensity to file marginal and trivial lawsuits. *Rinaldi* does not hold that any distinction between inmates and non-inmates is unconstitutional, only that such distinctions must be rational. Consistent with that understanding, every court of appeals to address *Rinaldi* in the context of a challenge to the PLRA has rejected the view that it requires invalidation of the PLRA's differential treatment of prisoners and non-prisoners. *E.g.*, *Hadix*, 230 F.3d at 844; *Tucker*, 142 F.3d at 1300-1301; *Mitchell* v. *Farcass*, 112 F.3d 1483, 1489 (11th Cir. 1997); *Roller* v. *Gunn*, 107 F.3d 227, 234 n.2 (4th Cir.), cert. denied, 522 U.S. 874 (1997).

The 150% cap also rationally serves the legitimate goal of deterring frivolous lawsuits. Petitioner argues (Pet. 19) that because prisoners could not recover attorneys' fees in frivolous cases even before the enactment of the PLRA, the attorneys' fees cap "does not affect any frivolous lawsuits." Pet. 19. But Congress could have rationally concluded that some prisoners and their attorneys overestimate the quality of their claims and determine that they have a chance of a small recovery, when, in fact, their claims are frivolous. The

attorneys' fee cap would have the effect of deterring frivolous litigation in those cases. It therefore rationally furthers the interest in deterring frivolous litigation.

Lindsey v. *Normet*, 405 U.S. 56 (1972), relied on by petitioner (Pet. 19), does not suggest otherwise. *Lindsey* invalidated a state law requiring tenants challenging eviction to post a bond of twice the rent expected to accrue pending appellate review. The Court reasoned that this requirement burdened only tenants, that it was "unrelated to actual rent accrued or to specific damage sustained by the landlord," and that it created a unique "barrier to appeal." 405 U.S. at 77-79. These factors are absent here. The cap applies to prisoners, a group that has unique incentives to file insubstantial litigation. By virtue of the 150% ratio, the cap is directly related to the damages at issue. And the cap creates no barrier to filing a lawsuit; it simply limits the available recovery at the end of a lawsuit. Accordingly, *Lindsey* is inapposite here. See *Boivin*, 225 F.3d at 45 (rejecting challenge to PLRA attorneys' fees cap based on *Lindsey*); see also *Bankers Life & Cas. Co.* v. *Crenshaw*, 486 U.S. 71, 82-85 (1988) (*Lindsey* inapplicable where statute is rationally connected to legitimate goal).

3. Finally, petitioner contends (Pet. 22-23) that review is warranted because the court of appeals failed to address his contention that Section 1997e(d)(2) is unconstitutional insofar as it provides that "a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant." But that contention does not fall within any of the questions presented by petitioner. That contention is therefore not properly presented.

In any event, the court of appeals correctly refrained from addressing that issue. Because neither the district court nor the court of appeals required petitioner to contribute to the amount of the attorneys' fee award, he has suffered no injury that is attributable to the contribution provision. Accordingly, petitioner lacks standing under Article III to challenge that provision. See *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 102-103 (1998).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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