No. 99-1964

In the Supreme Court of the United States

TIMOTHY BOOTH, PETITIONER

v.

C.O. CHURNER, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

SETH P. WAXMAN
Solicitor General
Counsel of Record
DAVID W. OGDEN
Assistant Attorney General
BARBARA D. UNDERWOOD
Deputy Solicitor General
IRVING L. GORNSTEIN
Assistant to the Solicitor General
BARBARA L. HERWIG
PETER R. MAIER
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether the exhaustion provision of the Prison Litigation Reform Act of 1995, 42 U.S.C. 1997e(a) (Supp. IV 1998), requires an inmate seeking money damages to exhaust prison administrative remedies that address the problem identified by the inmate, but do not permit the recovery of money damages.

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INTEREST OF THE UNITED STATES

This case presents the question whether the exhaustion provision of the Prison Litigation Reform Act of 1995 (PLRA), 42 U.S.C. 1997e(a) (Supp. IV 1998), requires an inmate seeking money damages to exhaust prison administrative remedies that address the problem identified by the inmate, but do not permit the recovery of money damages. The United States has a substantial interest in the resolution of that question. Pursuant to its authority to manage federal prisons, the Federal Bureau of Prisons (BOP) has adopted an administrative remedy program through which inmates may seek review of issues relating to their confinement. See 28 C.F.R. 542.10 *et seq.* That remedy program does

not permit the recovery of money damages. Inmates also frequently name BOP officials as defendants in actions arising from conditions of confinement in federal correctional institutions. The court's decision in this case will affect both the efficacy of BOP's administrative remedy program and the conduct of litigation against BOP officials.

STATEMENT

1. a. At the time of the events in question, petitioner was confined at the State Correctional Institution at Smithfield Bradford Pennsylvania (SCI Smithfield) in Huntington, Pennsylvania. In April 1997, petitioner filed suit in federal district court against four prison officials (respondents), complaining about his treatment at SCI Smithfield. In his original pleading, petitioner focused on four incidents that allegedly occurred at SCI Smithfield. J.A. 15-16.

First, petitioner alleged that, in April 1996, he was assaulted by two prison guards, causing his shoulder to slip in and out, and that he was subsequently denied an operation to repair his shoulder. J.A. 15. Second, petitioner alleged that, on February 6, 1997, he threw water on a prison guard, and the guard retaliated by throwing a cup of cleaning material in his face. *Ibid.* Third, petitioner alleged that, on February 7, 1997, he exchanged words with respondent Rikus, who then shoved him into a shelf in the storage room. Another officer allegedly pushed petitioner into the door, and still another officer tightened and twisted his handcuffs. J.A. 15-16. Fourth, petitioner alleged that, on March 23, 1997, respondent Churner punched him in the face while respondent Workensher and another officer looked on. J.A. 16. As a result, petitioner's mouth was

allegedly "busted open" and required three stitches. *Ibid.*

In subsequent pleadings, petitioner added additional claims. He alleged that prison officials interfered with his ingoing and outgoing mail, J.A. 19, prevented him from using the library or obtaining access to legal assistance, J.A. 19, 22, denied him food, J.A. 22, denied him due process in a misconduct hearing, J.A. 23, and put a sign on his door stating that he was a "cry baby." *Ibid.*

In his original pleading, petitioner requested that the court transfer him to another prison and punish each of the officers involved in the alleged assaults. J.A. 9, 16. In a subsequent pleading, petitioner sought an injunction against further beatings, an order to obtain an operation, the appointment of counsel, money damages in various amounts, a permanent transfer, an order to permit inmates in segregation to use the law library, an order holding prison officials in contempt, and an order to hire a paralegal. J.A. 26-27.

b. The Pennsylvania Department of Corrections has a grievance system "through which resolution of specific problems can be sought." J.A. 40. Under that system, an inmate may submit a formal written complaint related to a problem encountered during the course of confinement. J.A. 41. The complaint must be submitted for initial review within fifteen days of the events giving rise to the complaint. J.A. 46. The complaint is then referred to a Grievance Officer for investigation and resolution. J.A. 47. An inmate who has requested a personal interview "shall be interviewed." *Ibid.* Within ten working days after the Grievance Officer receives the complaint, "the grievant shall be provided a written response to the grievance to include a brief rationale, summarizing the conclusions

and any action taken or recommended to resolve the issues raised in the grievance." *Ibid.*

An inmate may appeal the initial determination to an intermediate reviewing authority. J.A. 47. Such an appeal must be filed within five days from the date on which the inmate receives the initial decision. J.A. 47-48. Within ten working days after receiving the appeal, the intermediate reviewing authority must notify the inmate of his or her decision and supply a brief explanation of the basis for it. J.A. 48.

Within seven days after receiving a decision from the reviewing authority, an inmate may file a final appeal. J.A. 48-49. The final reviewing authority may require additional investigation before deciding that appeal. J.A. 49. The final reviewing authority has 21 days to issue its decision, and the decision must include a brief statement of reasons. J.A. 49-50. At the time that petitioner filed his complaint, the State's grievance program addressed complaints about the use of excessive force, but it did not permit the recovery of money damages. The State has since amended its grievance policy to permit the recovery of money damages. J.A. 60.

c. The PLRA contains a provision that requires an inmate to exhaust available administrative remedies before filing suit. That provision specifies that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a) (Supp. IV 1998).

Before filing suit in district court, petitioner had filed an initial administrative grievance relating to at least some of the issues raised in his district court pleadings.

J.A. 10-13. Petitioner did not seek intermediate or final review, however, on any issue contained in his district court pleadings. Pet. App. 6a n.2. The district court, acting sua sponte, dismissed petitioner's action without prejudice, on the ground that petitioner had failed to exhaust administrative remedies as required by Section 1997e(a). *Id.* at 36a-39a.

2. The court of appeals affirmed. Pet. App. 1a-28a. The court rejected petitioner's argument that exhaustion of administrative remedies was not required because the prison's administrative process did not permit the recovery of money damages. *Id.* at 3a. The court of appeals relied on its holding in *Nyhuis* v. *Reno*, 204 F.3d 65, 67 (3d Cir. 2000), that the PLRA makes the exhaustion of administrative remedies mandatory "whether or not they provide the inmate-plaintiff with the relief he says he desires in his federal action." Pet. App. 3a.

In *Nyhuis*, the court based its interpretation on the change in the statutory language of Section 1997e(a) effected by the PLRA. 204 F.3d at 72. As explained in *Nyhuis*, before enactment of the PLRA, a plaintiff could be required to exhaust such "*plain*, *speedy*, *and effective* remedies *as are available*." *Id.* at 70. The PLRA removed the qualifiers "plain, speedy, and effective." *Id.* at 72. The effect of that change, the *Nyhuis* court concluded, is that an inmate must now exhaust available prison remedies, without regard to whether they are "effective." *Ibid.*

The court in *Nyhuis* rejected the view that the term "available" in the new provision creates a futility exception to exhaustion. 204 F.3d at 72-73. The court explained that such an interpretation would reintroduce the very inquiry into the effectiveness of administrative remedies that Congress had deliberately elimi-

nated. *Ibid.* By using the term "available," the court of appeals concluded, "Congress merely meant to convey that if a prison provided no internal remedies, exhaustion would not be required." *Id.* at 73.

The court in *Nyhuis* also emphasized that a principal purpose of the new exhaustion requirement was to reduce the volume of frivolous prison litigation in federal courts. 204 F.3d at 73-74. That purpose would be thwarted, the court explained, if inmates could avoid the exhaustion requirement simply by asking for money damages. *Id.* at 74. The court also stressed that a broad exhaustion requirement would give a prison institution a chance to correct its own errors, reduce the need for judicial intervention, and improve the efficacy of the administrative process. *Id.* at 75.

The court of appeals in this case noted that *Nyhuis* involved a claim brought by a federal inmate, rather than a claim brought by a state inmate like petitioner. Pet. App. 3a. Since the PLRA treats a *Bivens* action and an action under Section 1983 as "functional equivalents," however, the court viewed the decision in *Nyhuis* as "controlling in this case." *Ibid.*[1]

SUMMARY OF ARGUMENT

A. The PLRA conditions its exhaustion requirement on the existence of administrative "remedies" that are "available." 42 U.S.C. 1997e(a) (Supp. IV 1998). Under the ordinary meaning of those terms, Section 1997e(a) requires an inmate to exhaust administrative remedies as long as the administrative process will address the kind of problem identified by the inmate's complaint.

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[1] The court of appeals also held that a suit alleging that a prison guard has used excessive force is an "action . . . with respect to prison conditions" within the meaning of Section 1997a(e). Pet. App. 8a-19a. That holding is not at issue here.

Exhaustion is not excused simply because the administrative process does not permit an inmate to recover the relief that the inmate would like.

Thus, if a prison administrative process does not review complaints about excessive force, "administrative remedies" would not be "available" for that kind of complaint. If the grievance procedure addresses complaints about excessive force, however, the absence of a damages remedy would not show that administrative remedies for that kind of complaint are unavailable. A prison grievance procedure can offer other "remedies" for complaints about excessive force, such as disciplining the officer involved, retraining the officer, transferring the inmate involved to a different area of the prison, or issuing a decision that the inmate's complaint is meritorious and the guard's conduct should not be repeated. In such circumstances, the institution would have "administrative remedies" that are "available" to inmates who wish to complain about a guard's use of excessive force, and the inmate would be required to exhaust the prison's grievance process before filing a suit challenging a guard's use of excessive force.

The PLRA's broad and categorical exhaustion requirement reflects a deliberate change from the exhaustion requirement in prior legislation. Before Section 1997e(a) was amended by the PLRA, a court had discretion to require a state inmate to exhaust "such plain, speedy, and effective administrative remedies as are available." 42 U.S.C. 1997e(a) (1994). In *McCarthy* v. *Madigan*, 503 U.S. 140, 150 (1992), this Court construed the term "effective" in Section 1997e(a) to excuse exhaustion when an inmate seeks only money damages and the prison's grievance procedure does not offer such relief. In that legal context, Congress's elimination of the term "effective" from Section

1997e(a) can have only one meaning: Congress was dissatisfied with the outcome in *McCarthy*, and it wished to require exhaustion of available administrative remedies, even when an inmate seeks only monetary relief and the administrative process does not offer such relief.

In addition to eliminating the term "effective" from Section 1997e(a), Congress also (1) eliminated the terms plain and speedy, (2) eliminated the requirement that administrative procedures must satisfy certain minimum acceptable standards of fairness and effectiveness before inmates can be required to exhaust them, and (3) eliminated a court's discretion to excuse exhaustion when it would not be appropriate and in the interests of justice. Those dramatic changes in Section 1997e(a) reflect one overriding theme: Congress no longer wanted its statutory exhaustion requirement to track the traditional exhaustion doctrine under which courts have discretion to excuse exhaustion when they conclude that an administrative remedy is inadequate. In its place, Congress substituted a broad mandatory exhaustion requirement.

B. In imposing a strict exhaustion requirement, Congress was animated in large part by a desire to arrest the alarming upward trend in the volume of frivolous prison litigation. Inmates who diligently pursue their claims through a prison's entire administrative process are far less likely to pursue a frivolous claim in court than inmates who deliberately bypass the administrative process or neglect to observe the applicable administrative deadlines for filing complaints and pursuing administrative appeals. The exhaustion provision also works in tandem with the "three strikes" provision of the PLRA, 28 U.S.C. 1915(g) (Supp. IV 1998), which precludes inmates from bringing suits *in forma*

pauperis after they have had three or more cases dismissed as frivolous, malicious, or for failure to state a claim. After an administrative claim has been rejected as insubstantial, an inmate may well refrain from filing suit in court on that claim when the consequence may be a loss of *in forma pauperis* status for other, more meritorious, complaints.

Because Congress viewed an exhaustion requirement as an important means of reducing the volume of frivolous prison litigation, it understandably wanted to eliminate the exception to exhaustion that this Court had recognized in *McCarthy*. If Congress had carried that exception forward, inmates would have been able to evade the exhaustion requirement through the simple expedient of limiting their complaints to requests for money damages, and Congress's purpose of deterring frivolous lawsuits would have been undermined.

C. Other considerations that have particular force in the prison setting also help to explain why Congress imposed a broad mandatory exhaustion requirement on inmates. Such a requirement gives prison authorities an opportunity to investigate and evaluate prisoner complaints in the first instance. It helps to ensure that inmates bring dangerous conditions or abusive practices to the attention of responsible prison officials quickly, so that prison officials can take corrective action before the problem becomes even more serious. The airing of a grievance in a less adversarial setting can help to reduce tensions that might otherwise exist. In some cases, an inmate's complaint can be resolved in the grievance process even when the inmate seeks only money damages. And even when a complaint is not resolved, exhaustion can lead to a fuller understanding of the nature of the inmate's complaint.

ARGUMENT

SECTION 1997e(a) REQUIRES AN INMATE TO EXHAUST AVAILABLE ADMINISTRATIVE REMEDIES, WITHOUT REGARD TO WHETHER THE ADMINISTRATIVE PROCESS PERMITS THE RECOVERY OF THE RELIEF THAT THE INMATE SEEKS IN THE JUDICIAL ACTION

Petitioner contends (Br. 12-13) that the PLRA's exhaustion provision, 42 U.S.C. 1997e(a) (Supp. IV 1998), does not require an inmate to exhaust administrative remedies when the inmate seeks only monetary relief and the grievance procedure does not offer such relief. In addition to seeking monetary relief, however, petitioner sought various other forms of relief in the district court, J.A. 9, 16, and the administrative grievance procedure could have provided at least some of those forms of relief. The question presented by petitioner's complaint is therefore whether exhaustion is required when an inmate seeks monetary and other relief and the administrative grievance process does not provide all the relief that the inmate seeks.[2]

For purposes of the analysis we present here, however, it does not matter whether an inmate seeks only money damages or money damages and other forms of relief. As the court of appeals concluded, the PLRA's

[2] Petitioner contends (Br. 12) that his claims for relief other than money damages became moot when he was transferred to another institution. The transfer did not moot all petitioner's requests for relief. J.A. 26-27 (seeking, *inter alia*, an order to obtain an operation). In any event, the text of the PLRA's exhaustion provision specifies that "no action shall be brought" unless administrative remedies have been exhausted. 42 U.S.C. 1997e(a) (Supp. IV 1998). The requirement of exhaustion therefore depends on the circumstances that exist at the time that an inmate files a complaint, not on what transpires thereafter.

exhaustion provision requires an inmate to exhaust administrative remedies as long as the administrative process will address the kind of problem identified by the inmate's complaint. Exhaustion is not excused simply because the administrative process does not permit an inmate to recover the relief that the inmate would like. Thus, when an administrative process will address the kind of problem identified by the inmate's complaint, exhaustion is required even when the inmate seeks only money damages and the prison grievance procedure does not offer such relief. Under that same analysis, an inmate seeking money and other relief would also have to exhaust available administrative remedies.

A. The Text Of The Act Requires Exhaustion Of Administrative Remedies Without Regard To Whether The Administrative Process Offers The Form Of Relief Sought By The Inmate

1. The text of the PLRA exhaustion provision supports the court of appeals' interpretation. That statutory text conditions the requirement of exhaustion on the existence of administrative "remedies" that are "available." 42 U.S.C. 1997e(a) (Supp. IV 1998). The term "remedy" means "the legal means to recover a right or to prevent or obtain redress for a wrong," *Webster's Third New International Dictionary* 1920 (1993), and "available" means "capable of use for the accomplishment of a purpose," *id.* at 150.

Under those definitions, "administrative remedies" are "available" when the prison grievance procedure provides a "means" to "obtain redress" for the kind of "wrong" identified by the inmate, and the administrative procedure is "capable of use" by the inmate "for the accomplishment of [that] purpose." As the court of

appeals explained in *Nyhuis*, "the administrative process * * * must be capable of addressing the events that could generate a lawsuit." 204 F.3d at 75 n.9. Contrary to petitioner's contention (Br. 15-16), however, those definitions do not suggest that administrative remedies are unavailable simply because the administrative process does not offer to redress the kind of wrong identified by the inmate *in the manner that the inmate desires*.

An example helps to illuminate the distinction. If a prison administrative process does not review complaints about excessive force, "administrative remedies" would not be "available" for that kind of complaint since the grievance process would not be "capable of use" by an inmate to "obtain redress" for the "wrong" of excessive force. If the grievance procedure addresses complaints about excessive force, however, the absence of a damages remedy would not show that administrative remedies for that wrong are unavailable. A prison grievance procedure can offer other forms of "redress" for the "wrong" of excessive force, such as disciplining the officer involved, retraining the officer, transferring the inmate involved to a different area of the prison, or issuing a decision that the inmate's complaint is meritorious and the guard's conduct should not be repeated. In such circumstances, the institution would have "administrative remedies" that are "available" to inmates who wish to complain about a guard's use of excessive force, and the inmate would be required to exhaust the prison's grievance process before filing a suit challenging a guard's use of excessive force.[3]

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[3] Under the regulations that currently govern the Bureau of Prison's Administrative Remedy Program, institutions have dis-

2. The PLRA's broad and categorical exhaustion requirement reflects a deliberate change from the exhaustion requirement that had been imposed on inmates by prior legislation. Before Section 1997e(a) was amended by the PLRA, a court had discretion to require a state inmate to exhaust "such plain, speedy, and effective administrative remedies as are available." 42 U.S.C. 1997e(a) (1994). In *McCarthy* v. *Madigan*, 503 U.S. 140 (1992), this Court construed that statutory language in the context of a case in which a federal inmate sought only money damages against federal prison officials, and the Bureau of Prison's administrative procedure did not offer that form of relief. Although Section 1997e(a) did not then apply to suits brought against federal officials, the government argued that the Court should create an analogous exhaustion requirement for *Bivens* actions. *Id.* at 149-150. The Court concluded that Section 1997e(a) "cut against" the government's argument that exhaustion should be required when an inmate seeks only monetary relief and the grievance procedure does not offer that form of relief. *Id.* at 150. In reaching that

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cretion not to consider a prison grievance when "it is clear that the only possible relief is monetary." BOP Program Statement 1330.13(6)(b)(1) (Dec. 22, 1995). Under those regulations, Section 1997e(a) requires exhaustion of money-only claims because prison officials may process a complaint seeking money damages based on the possibility that other relief could be awarded. In those circumstances, the BOP has "remedies available" for inmates who seek only money damages. If BOP returns a grievance seeking money damages without processing it on the ground that no other relief is possible, the inmate would have exhausted administrative remedies. BOP has recently proposed new regulations that would require officials to consider the substance of an inmate's grievance without regard to the specific form of relief sought by the inmate. See 65 Fed. Reg. 39,768 (2000) (to be codified at 28 C.F.R. Pt. 542).

conclusion, the Court relied on the language in Section 1997e(a) that made an "effective" administrative remedy a precondition to exhaustion. *Ibid.* The Court specifically explained that, "in contrast to the absence of any provision for the award of money damages under the Bureau's general grievance procedure, the statute conditions exhaustion on the existence of 'effective administrative remedies.'" *Ibid.* Three Justices concurring in the judgment agreed with the Court that "in cases * * * where prisoners seek monetary relief, the Bureau's administrative remedy furnishes no *effective* remedy." *Id.* at 156 (Rehnquist, C.J., joined by Scalia, J. and Thomas, J., concurring in the judgment) (emphasis added).

Thus, at the time that Congress enacted the PLRA, it understood that, under *McCarthy*, the term "effective" in Section 1997e(a) excused a failure to exhaust administrative remedies when an inmate sought only monetary relief and the administrative process did not offer such relief. In that legal context, Congress's elimination of the term "effective" from Section 1997e(a) can have only one meaning: Congress was dissatisfied with the outcome in *McCarthy*, and it wished to require exhaustion of available administrative remedies, even when an inmate seeks only monetary relief and the administrative process does not offer such relief. See *Sale* v. *Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 174-176 (1993).

Petitioner contends (Br. 37-38) that Congress's elimination of the term "effective" from Section 1997e(a) affected only "the procedural aspects of the administrative remedy, whereas, in contrast, Congress intended the words 'such administrative remedies as are available'—the words it preserved—to refer to the substantive aspect of whether the remedy could provide

the relief sought." But, as discussed above, *McCarthy* identified the term "effective" as the basis for declining to require exhaustion when the administrative remedy does not provide the relief sought, and Congress eliminated that term based on that understanding. Petitioner's explanation for the removal of the term "effective" simply ignores the decision in *McCarthy* and Congress's response to it.

3. The other changes in Section 1997e(a) reinforce the conclusion that Congress amended Section 1997e(a) for the express purpose of eliminating the exception to exhaustion proposed by petitioner. In addition to eliminating the term "effective" from Section 1997e(a), Congress also (1) eliminated the terms "plain" and "speedy," (2) eliminated the requirement that administrative procedures must satisfy certain "minimum acceptable standards" of fairness and effectiveness before inmates can be required to exhaust them, and (3) eliminated a court's discretion to excuse exhaustion when it would not be "appropriate and in the interests of justice." Compare 42 U.S.C. 1997e(a) (Supp. IV 1998) with 42 U.S.C. 1997e(a) (1994). In place of the previous version of Section 1997e(a), Congress substituted a broad and firm mandate that "[n]o action shall be brought with respect to prison conditions" by an inmate "until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a) (Supp. IV 1998).

The dramatic changes in Section 1997e(a) effected by the PLRA reflect one overriding theme: Congress no longer wanted its statutory exhaustion requirement to track the traditional exhaustion doctrine under which courts have discretion to excuse exhaustion when they conclude that an administrative remedy is inadequate. *McCarthy*, 503 U.S. at 146-149 (discussing the scope of that traditional doctrine). Under the traditional ex-

haustion doctrine, in the absence of a statutory direction to the contrary, courts exercise discretion to excuse exhaustion in a variety of circumstances, including when the administrative process does not establish an adequate time-frame for administrative action, *Coit Independence Joint Venture* v. *FSLIC*, 489 U.S. 561, 587 (1989), when the agency does not have the authority to grant the relief that is requested, *Reiter* v. *Cooper*, 507 U.S. 258, 269 (1993), and when an agency's prior pronouncements demonstrate that exhaustion would be futile, *Steele* v. *Louisville & Nashville R.R.*, 323 U.S. 192, 205-206 (1944). When Congress excised the terms "plain, speedy, and effective," eliminated the requirement that the administrative process satisfy "minimum acceptable standards" of fairness and effectiveness before an inmate can be required to exhaust, and eliminated a court's discretion to dispense with exhaustion when "appropriate and in the interests of justice," it decisively rejected the traditional approach. As the Eleventh Circuit explained in *Alexander* v. *Hawk*, 159 F.3d 1321, 1325 (1998), "the judicially recognized futility and inadequacy exceptions do not survive the new mandatory exhaustion requirement of the PLRA." Instead, "Congress now has mandated exhaustion in section 1997e(a)," and "courts cannot simply waive those requirements where they determine they are futile or inadequate." *Id.* at 1325-1326.

Petitioner nonetheless contends (Br. 23-27) that traditional exhaustion principles should be engrafted onto Section 1997e(a) based on a "presumption" that Congress intends to carry forward "traditional legal concepts." Because Congress's amendments to Section 1997e(a) so clearly demonstrate that Congress did not wish to incorporate traditional exhaustion principles, however, petitioner's reliance on such a presumption is

misplaced. Instead, the principle that is controlling here is that "[w]here Congress specifically mandates, exhaustion is required." *McCarthy*, 503 U.S. at 144. As the Court explained in *Weinberger* v. *Salfi*, 422 U.S. 749, 766 (1975), when exhaustion is statutorily mandated as a precondition to suit, "[t]he requirement * * * may not be dispensed with merely by a judicial conclusion of futility."

4. In sum, as the text of the Act makes clear, an inmate must exhaust available administrative remedies even when a grievance procedure does not provide the remedy that the inmate seeks. As long as the grievance process addresses the kind of problem identified by the inmate, exhaustion is mandatory.[4]

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[4] All of the legislative history, including the one statement identified by petitioner, is consistent with that interpretation. H.R. Conf. Rep. No. 378, 104th Cong., 1st. Sess. 166 (1995) ("Section 803 amends the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997a(c)) to require that administrative remedies be exhausted prior to any prison conditions action being brought under any federal law by an inmate in federal court."); H.R. Rep. No. 21, 104th Cong., 1st Sess. 7 (1995) (The exhaustion provision "requires that all administrative remedies be exhausted prior to a prisoner initiating a civil rights action in court."); 141 Cong. Rec. 4275 (1995) (Rep. Canady) ("Title II of the bill will * * * forc[e] prisoners to exhaust all administrative remedies before bringing suit in Federal court."); *id.* at 14,571 (Sen. Dole) ("The act also requires State prisoners to exhaust all administrative remedies before filing a lawsuit in Federal court."); *id.* at 14,573 (Sen. Kyl) ("Section 7 will make the exhaustion of administrative remedies mandatory. Many prisoner cases seek relief for matters that are relatively minor and for which the prison grievance system would provide an adequate remedy.").

B. The PLRA's Special Exhaustion Requirement Advances Congress's Intent To Deter The Filing Of Frivolous Complaints

In imposing a strict exhaustion requirement, Congress was animated in large part by a desire to arrest the alarming upward trend in the volume of frivolous prison litigation. Congress was deeply concerned that inmates were overwhelming the courts with frivolous complaints. As one supporter of the PLRA explained, Congress was faced with a "flood of frivolous lawsuits brought by inmates. In 1994, over 39,000 lawsuits were filed by inmates in Federal courts, a staggering 15 percent over the number filed the previous year. The vast majority of these suits are completely without merit." 141 Cong. Rec. 27,042 (1995) (Sen. Hatch).

Congress believed that one important reason that frivolous prisoner litigation was increasing was that this Court in *McCarthy* had excused inmates from exhausting administrative remedies when they sought only money damages. As one member of Congress explained:

> The real problem with these cases came with the Court's decision in 1992 that an inmate need not exhaust the administrative remedies available prior to proceeding with a Bivens action for money damages only. * * * Since 1993 there has been a total of 1,365 new Bivens cases filed in Federal court tying up the time of Federal judges and lawyers for the Bureau of Prisons at a time when we already have overcrowded dockets.

141 Cong. Rec. at 35,623 (Rep. LoBiondo). By "forcing prisoners to exhaust all administrative remedies before bringing suit in Federal court," Congress sought to "significantly curtail the ability of prisoners to bring

frivolous and malicious lawsuits." *Id.* at 35,624 (Rep. Canady); *ibid.* (Rep. LoBiondo) (an exhaustion requirement "would aid in deterring frivolous claims"); see also H.R. Rep. No. 21, *supra*, at 7 ("The title addresses the problem of frivolous lawsuits in three significant ways. First, it requires that all administrative remedies be exhausted prior to a prisoner initiating a civil rights action in court.").

Congress's judgment that exhaustion would reduce the volume of frivolous prison litigation is supported by the special features of prison grievance procedures. Prison administrative procedures ordinarily require inmates to file their grievances within a short time after the incident giving rise to the complaint; inmates also must observe strict deadlines for processing appeals; and inmates who deliberately abuse a prison's grievance process may be subject to disciplinary action. J.A. 44-48. In light of those features of prison grievance procedures, inmates who diligently pursue their claims through a prison's entire administrative process are far less likely to pursue a frivolous claim in court than inmates who deliberately bypass the administrative process or neglect to observe the applicable administrative deadlines. See 141 Cong. Rec. at 35,624 (Rep. LoBiondo) (An exhaustion requirement "would aid in deterring frivolous claims: by raising the cost, in time/money terms, of pursuing a Bivens action, only those claims with a greater probability/magnitude of success would, presumably, proceed.").

A requirement of administrative exhaustion helps to reduce the volume of frivolous litigation for a second reason. When an inmate receives an administrative response rejecting a claim and explaining the reasons why, J.A. 47, the inmate may well be persuaded that the claim lacks sufficient merit to pursue in court. In

that respect, the exhaustion provision works in tandem with the "three strikes" provision of the PLRA, 28 U.S.C. 1915(g) (Supp. IV 1998), to deter the filing of frivolous complaints. The "three strikes" provision precludes inmates from bringing suits *in forma pauperis* after they have had three or more cases dismissed as frivolous, malicious, or for failure to state a claim. 28 U.S.C. 1915(g) (Supp. IV 1998). After an administrative claim has been rejected as insubstantial, an inmate may well refrain from filing suit in court on that claim when the consequence may be a loss of *in forma pauperis* status for other, more meritorious, complaints.

Because Congress viewed an exhaustion requirement as an important means of reducing the volume of frivolous prison litigation, it understandably wanted to eliminate the exception to exhaustion that this Court had recognized in *McCarthy*. As the Third Circuit explained in *Nyhuis*, if Congress had carried that exception forward, inmates would have been able "to evade the exhaustion requirement, merely by limiting their complaints to requests for money damages," and Congress's purpose of deterring frivolous lawsuits would have been "undermined." 204 F.3d at 74. The Seventh Circuit similarly has explained that "Section 1997e would not be worth much if prisoners could evade it simply by asking for relief that the administrative process is unable to provide." *Perez* v. *Wisconsin Dep't of Corrections*, 182 F.3d 532, 537 (1999).

C. The PLRA's Special Exhaustion Requirement Is Also Supported By Other Considerations That Have Particular Force In The Prison Setting

1. Other considerations that have particular force in the prison setting also help to explain why Congress

imposed a broad mandatory exhaustion requirement on inmates. First, prison authorities are in the best position to investigate and evaluate prisoner complaints in the first instance and to decide what corrective action, if any, to take. Courts are "ill suited to act as the front-line agencies for the consideration and resolution of the infinite variety of prisoner complaints." *Procunier* v. *Martinez*, 416 U.S. 396, 405 n.9 (1974). The proper response to prison grievances falls squarely within the expertise of prison officials, and, in general, courts owe deference to the solutions chosen by those officials. *Bell* v. *Wolfish*, 441 U.S. 520, 547 n.29 (1979). Thus, it is appropriate for courts to exercise jurisdiction only after prison officials have had the opportunity to address the problem raised by an inmate's complaint.

Second, exhaustion of administrative remedies helps to ensure that inmates bring dangerous conditions or abusive practices to the attention of responsible prison officials quickly, so that prison officials can take corrective action before the problem becomes even more serious. An inmate who has been abused by a prison guard may only be interested in money damages or some other remedy that the institution does not offer. But the institution has an overriding interest in learning about that incident quickly so that it can make sure that the guard does not abuse that inmate or any other inmate again. The PLRA's exhaustion requirement promotes that interest.

Third, a prison grievance process has the potential to be a far less adversarial and far more cooperative means for resolving inmate complaints than litigation in federal court. When inmates can bypass the administrative process and immediately name their guards as defendants in lawsuits, it can needlessly exacerbate the tensions that exist in a prison. Even when the inmate

is only interested in a remedy that the institution does not offer, airing the grievance in a less adversarial setting can help to reduce the tensions that might otherwise exist.

Fourth, in some cases in which inmates seek a remedy that the grievance process does not offer, exhaustion of that grievance process can still lead to a resolution of the complaint. Sometimes, the opportunity to air a grievance and to receive a response may turn out to be all that the inmate really wanted. Sometimes the institution may take corrective action that satisfies the inmate, even if it is not the action that the inmate would have preferred. And, as noted above, sometimes the administrative rejection of a claim may persuade the inmate that the claim is not worth pursuing in court.

Finally, when exhaustion of the administrative process does not lead to a resolution of the complaint, it nonetheless can lead to the development of a factual record and a fuller understanding of the nature of the inmate's complaint. In general, complaints filed by inmates in court are notoriously difficult to decipher. Exhaustion of administrative remedies may help inmates to make their complaints more understandable. Even if exhaustion does not have that effect, the administrative record may help the court to understand the nature of the inmate's complaint. The administrative process may also put the government in a much better position to move for summary judgment based on qualified immunity or on other grounds and to avert the extraordinary costs of discovery that may arise when an inmate is free to question prison officials. Congress thus had numerous reasons to require an inmate to exhaust available administrative remedies

without regard to whether the administrative process offers the precise remedy that the inmate seeks.

2. Petitioner contends (Br. 27-34) that exhaustion should not be required when an inmate seeks only monetary relief because the burden of exhaustion in that context outweighs its benefits. For the most part, however, petitioner either ignores the benefits that we have identified or asserts without support that those benefits do not arise when an inmate seeks only money damages. Petitioner's evaluation of the costs and benefits of exhaustion therefore greatly understates the benefits.

Nor is petitioner correct in asserting (Br. 29, 32) that an institution waives the important interests in exhaustion we have identified by failing to offer monetary relief. The question whether to offer money damages as a component of a prison grievance procedure raises fundamental policy questions that must be initially addressed by the legislative branches of government. Some States may believe that an offer of money damages will make a prison grievance procedure more effective. Others may conclude that including money damages as an element of relief would be counterproductive. A State that makes the latter choice does not waive the important interests in exhaustion that we have identified.

Petitioner's effort to seek an exception to the exhaustion requirement based on a balancing of its costs and benefits is subject to an even more fundamental objection. Under Section 1997e(a), a court no longer has discretion to weigh the costs and benefits of requiring an inmate to exhaust administrative remedies. Congress has weighed the costs and benefits itself and has mandated exhaustion in all cases in which a

grievance procedure addresses the kind of problem identified in an inmate's complaint.

D. Petitioner's Remaining Contentions Are Unpersuasive

Petitioner advances several additional arguments in support of his contention that exhaustion is not required when the administrative process does not offer the remedy that the inmate seeks. None of those arguments is persuasive.

1. Petitioner first contends (Br. 17-18) that *Steele* v. *Louisville & Nashville Railroad*, 323 U.S. 192 (1944), interpreted "available remedies" to mean that the administrative process must supply the very remedy sought. Petitioner further argues (Br. 17-18) that the PLRA should be interpreted to conform to that "well known" meaning. In *Steele*, however, the Court held only that an individual union member did not have an administrative remedy available from an adjustment board when "[t]he Adjustment Board ha[d] consistently declined in more than 400 cases to entertain grievance complaints by individual members of a craft represented by a labor organization." 323 U.S. at 205. We have acknowledged that when an administrative agency fails "to entertain grievance complaints" of a particular kind, an administrative remedy is not "available." That is very different, however, from saying that a remedy is unavailable when an administrative body will "entertain grievance complaints," but will not provide the precise relief that is requested.

Petitioner also attempts to read far too much into several sentences in an opinion written 50 years before the enactment of the PLRA. *Steele* did not purport to apply a well-established meaning of the term "available remedies," and that decision did not purport to establish a definition of those terms. The meaning of

those terms in the PLRA exhaustion provision therefore cannot reasonably be drawn from that decision. Regardless of how the Court used those terms in 1944, the Congress that enacted the PLRA in 1995 did not use those terms to excuse exhaustion any time an administrative procedure does not offer the remedy preferred by an inmate. As we have explained, any such interpretation would reintroduce into the statute the very inquiry into the "effectiveness" of a prison institution's administrative remedies that Congress deliberately eliminated.

2. Petitioner argues (Br. 19-21) that the court of appeals has rendered the terms "available" and "remedies" superfluous because it has equated them with any existing grievance procedure. That argument rests on a misreading of the court of appeals' decision. The Third Circuit carefully explained in its decision in *Nyhuis* that "for the administrative process to constitute a bar, it must be capable of addressing the events that could generate a lawsuit." 204 F.3d at 75 n.9. The court added that "[i]f, for example, the only grievance procedure available dealt *exclusively* with work assignments, it would not have to be exhausted unless the subsequent lawsuit was related thereto." *Ibid.* The court of appeals' interpretation of available remedies therefore gives content to those terms. Petitioner's interpretation, on the other hand, gives them a meaning that cannot be reconciled with the statutory text as a whole or with Congress's intent.

3. Finally, petitioner seeks to derive support for his interpretation from Congress's failure to enact a different bill that contained an exhaustion requirement. That bill provided in part that "[t]he fact that the administrative remedies do not include all the possible procedures and forms of recovery that are available in

the civil action does not render such administrative remedies inadequate or excuse the failure to exhaust them." Br. 39-40 (quoting Prisoner Lawsuit Efficiency Act of 1995, H.R. 2468, 104th Cong., 1st Sess. § 4048 (1995)). Failed legislative proposals, however, are almost always an unreliable basis for discerning Congress's intent in enacting a different bill. *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994). "A bill can be proposed for any number of reasons, and it can be rejected for just as many others." *Solid Waste Agency of N. Cook County* v. *Army Corps of Engineers*, No. 99-1178 (Jan. 9, 2001), slip op. 9.

The only evidence from the legislative history concerning why Congress did not enact the language identified by petitioner is that it regarded it as superfluous. 141 Cong. Rec. at 35,623-35,624 (Rep. LoBiondo) (explaining that the bill Congress enacted imposed the same exhaustion requirement as the bill identified by petitioner). Congress may also have been concerned that the language identified by petitioner might suggest by negative implication that a court could excuse exhaustion in other circumstances. The reason that Congress did not include the language identified by petitioner, however, is ultimately unknowable. That is why Congress's intent must be derived from the language that Congress enacted, and not from the language that it did not enact. Here, the language that Congress enacted mandates exhaustion of available remedies without regard to whether the grievance process offers the remedy that the inmate seeks.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
DAVID W. OGDEN
Assistant Attorney General
BARBARA D. UNDERWOOD
Deputy Solicitor General
IRVING L. GORNSTEIN
Assistant to the Solicitor General
BARBARA L. HERWIG
PETER R. MAIER
Attorneys

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