



the remedial provisions of the P.L.R.A. and place the Court in a position of micromanaging the entire governmental organization of the county. Given the fact that there was not enough staff to operate the jail prior to the layoffs and, given the fact that the situation has become worse with layoffs, a prisoner release order is necessary to protect the health and safety of the Plaintiff class.

It should be noted that, although the Sheriff has attempted to reduce the population by moving some inmates (approximately 50) to correctional facilities in other counties, Defendants fully admit that there are not enough beds in other counties to remove a sufficient amount of inmates. Most inmates will remain incarcerated at the Mahoning County Jail.

Plaintiffs, at this point, are without any remedy absent a release order. The issues which have created the unconstitutional conditions, i.e., lack of funding, is what is now operating to prevent this Court from ordering an effective remedy. Lack of funding created the unconstitutional condition and now is the bar to allowing the Court to remedy the condition.

It should be noted in the case of Cummings v. Nemeth, the Court was faced with a similar situation. The county was forced to lay off a significant number of deputies who staffed the jail due to insufficient funding. The insufficient funding resulted because the voters failed to pass a sales tax. The Parties were able to agree to a remedy which provided that certain floors of the jail would be closed, reduced staffing levels for the jail, and an inmate release mechanism so that the jail population could be reduced to facilitate the floor closures. The agreement was approved by the Court and became the Order of the Court.

Plaintiffs contend that this Court must act now. Delay will only increase the harm to the Plaintiff class. The only viable solution being offered by the Defendants to cure the unconstitutional condition is the release of prisoners. The release of prisoners cannot be accomplished without an order of this Court.

Respectfully submitted,

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**PROOF OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of March, 2005, a copy of the foregoing Plaintiffs' Response to Defendants' Request for a Three Judge Panel has been filed electronically and the Parties will have access to same by means of the Court's electronic filing system.

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