

**98-6189**

No. 98-6189

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

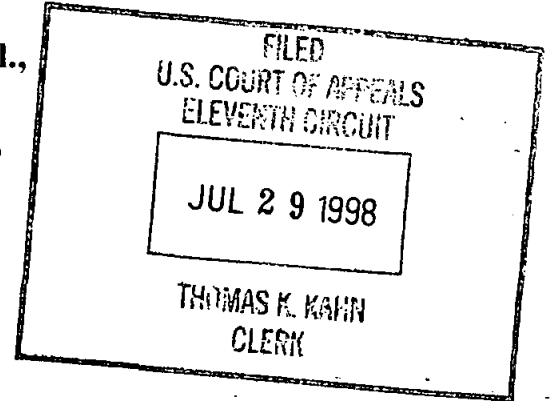
**JEFFREY LOYD, et al.,**

**Plaintiffs-Appellants,**

v.

**JOE HOPPER, et al.**

**Defendants-Appellees.**



**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA**

**BRIEF OF APPELLEES**

**JACKSON COUNTY, ALABAMA, JACKSON COUNTY  
COMMISSIONERS, MIKE WELLS AND OZELLE BROWN**

**CLOSED**

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COUNTY COMMISSIONERS,  
MIKE WELLS and OZELLE  
BROWN**

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**JEFFREY LOYD, et al.,**

**Plaintiffs-Appellants,**

**vs.**

**JOE HOPPER, et al.**

**Defendants-Appellees.**

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**CERTIFICATE OF INTERESTED PERSONS AND ENTITIES**

The undersigned counsel of record for Appellees certify that the following persons or entities have an interest in the outcome of this case:

1. The Alabama Department of Corrections, Defendant/Appellee.
2. Herbert Bradford, Defendant/Appellee (Jackson County Commissioner.)
3. Ozelle F. Brown, Defendant/Appellee (Chief Jailer of Jackson County Jail).
4. Gary Bryant, Plaintiff/Appellant.
5. Joe Buttram, Defendant/Appellee (Jackson County Commissioner).

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6. Alice Ann Byrne, Attorney for Defendants.
7. Bruce Capshaw, Plaintiff/Appellant.
8. Hoyt Carrol, Defendant/Appellee (Jackson County Commissioner).
9. Phillip Clanton, Plaintiff/Appellant.
10. Undral Davis, Plaintiff/Appellant.
11. Larry Dempsey, Plaintiff Appellant.
12. Perry Esslinger, Plaintiff/Appellant.
13. Calvin Evans, Plaintiff/Appellant.
14. Jessie Grider, Plaintiff/Appellant.
15. Lyle Haas, Defendant/Appellee (Administrator of Jackson County Department of Health).
16. Ashley Hamlett, Attorney for Department of Public Health.
17. Bart Harmon, Attorney for Jackson County Defendants.
18. Joe S. Hopper, Defendant/Appellee (Commissioner of the Department of Corrections).
19. Christopher M. Johnson, Attorney for Plaintiffs.

20. Gary Lackey, Attorney for Jackson County Defendants.
21. Ellen Leonard, Attorney for Defendant Department of Corrections.
22. Jeffrey Loyd, Plaintiff/Appellant.
23. Joseph Marsh, Plaintiff/Appellant.
24. Daryl Masters, Attorney for Jackson County Defendants.
25. Joey Miller, Plaintiff/Appellant.
26. Honorable Edwin L. Nelson, United States District Judge for the Northern District of Alabama.
27. Thomas Pacscal, Plaintiff/Appellant.
28. Bill Pryor, Attorney General of Alabama.
29. Kim Thomas, Attorney for Defendant Department of Corrections.
30. Robert E. Toone, Attorney for Plaintiff.
31. Ed Tubas, Defendant/Appellee (Jackson County Commissioner).
32. Brad Waldrop, Plaintiff/Appellant.

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33. Jake Wallingsford, Defendant/Appellee (Jackson County Commissioner).
34. Webb & Eley, P.C., law firm representing Jackson County Defendants.
35. Mike Wells, Defendant/Appellee (Sheriff of Jackson County).

This representation is made so that the judges of this Court may evaluate possible disqualification and recusal.



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DARYL MASTERS



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BART HARMON

Attorneys for Defendants-Appellees

**STATEMENT REGARDING ORAL ARGUMENT**

Appellees do not request to be heard orally on the issues as such are adequately addressed herein, but will participate if the Court deems oral argument necessary.

**CERTIFICATE OF TYPE SIZE AND STYLE**

The type size and style used in this brief is Times New Roman 14 point.



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**STATEMENT REGARDING JURISDICTION**

Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1291 .

**STATEMENT OF THE ISSUE**

**WHETHER THE DISTRICT COURT PROPERLY TERMINATED  
THE TWO CONSENT DECREES AND THE PERMANENT  
INJUNCTION INVOLVING THE JACKSON COUNTY JAIL?**

## STATEMENT OF THE CASE

**(i.) Proceedings below**

In November of 1991 the Plaintiffs/Appellants filed a class action lawsuit alleging that inmates at the Jackson County Jail, in Jackson County, Alabama, were being subjected to unconstitutional conditions. On January 9, 1992, the class action lawsuit was transferred from the Middle District of Alabama to the Northern District of Alabama. *R1-1.*

On March 5, 1992, the Defendants James Nevels, Marvin Wells, Jackson County, Alabama, Houston Kennemer, Calvin Durham, and Bill Payne (hereafter referred to as the Jackson County Defendants) filed their Answer with the court. *R2-5, R2-6.* On March 12, 1992, the Defendant Morris Thigpen, a Commissioner of the Alabama Department of Corrections, filed his Answer with the court. *R2-10.*

After nearly two years of discovery and various motions before the District Court, on November 7, 1994, the District Court entered an ordering approving and adopting a consent decree prepared and agreed to by the Plaintiffs and the Jackson County Defendants. *R5-93.* On January 12, 1995, the District Court entered a permanent injunction against the Defendant the Alabama Department of Corrections ordering the Department

of Corrections to “within thirty (30) days of the date on which the necessary documents associated with [an inmates] conviction, sentence, and transfer have been completed and forwarded to the Department of Corrections, be transferred in the usual manner from the physical custody of the Jackson County, Alabama, sheriff to the physical custody of the Alabama Department of Corrections.” *R5-96*. On March 17, 1995, the District Court entered an order approving and adopting a consent decree entered into and agreed upon by the Plaintiffs and the Commissioner of the Alabama Department of Corrections, the Alabama Department of Public Health and the Administrator of the Jackson County Health Department. *R5-99*.

On July 2, 1997, the Attorney General and the Commissioner of the Alabama Department of Corrections filed a Motion to Terminate the Consent Decree and Permanent Injunction pursuant to the Prison Litigation Reform Act. *R5-117*. Pursuant to an order by the District Court, a supplemental motion was filed on July 23, 1997. *R5-119*.

On January 27, 1998, the District Court granted the Motion to Terminate the Consent Decree and Permanent Injunction pursuant to the Prison Litigation Reform Act. *R5-127*.

On February 26, 1998, the Plaintiffs filed a Notice of Appeal. *R5-*

128.

**(ii.) Statement of Facts**

The Defendants/Appellees, Jackson County, Alabama, Jackson County Commissioners, Mike Wells and Ozelle Brown, hereby adopt and incorporate the Statement of Facts contained in the brief of the Appellees, Joe Hopper, Commissioner of the Alabama Department of Corrections.

**(iii.) Standard of Review**

The proper standard of review for reviewing a district court's interpretation of a statute, is *de novo*. Ochran v. U. S., 117 F.3d 495, 499 (11th Cir. 1997).

## SUMMARY OF THE ARGUMENT

It is the position of the Jackson County Appellees that 18 U.S.C. § 36(b) of the Prison Litigation Reform Act is constitutional and was properly employed by the district court below to terminate both consent decrees and the permanent injunction previously entered by the district court with respect to the Jackson County Jail.



ARGUMENT

**THE DISTRICT COURT PROPERLY TERMINATED THE TWO  
CONSENT DECREES AND THE PERMANENT INJUNCTION  
INVOLVING THE JACKSON COUNTY JAIL.**

This action was initiated by inmates at the Jackson County Jail, Jackson County, Alabama, who filed a class action lawsuit against various defendants, including the Commissioner of the Alabama Department of Corrections, the Alabama Department of Corrections, Jackson County, the Jackson County Commissioners, the Sheriff of Jackson County, the head jailer of Jackson County, and the administrator of the Jackson County Department of Health. *R1-1*. The Complaint alleged unconstitutional conditions, policies and practices extant at the Jackson County Jail.

On November 7, 1994, the district court below entered an Order approving and adopting a consent decree entered into by the Plaintiff class and the Jackson County Defendants. Signatories to the agreement for the Defendants were Jackson County Sheriff Mike Wells, Jackson County Commission Chairman Houston Kennemer, and Jackson County Commissioners Ralph Eustace, Buddy Harris, Eddie Smith, and then-jail administrator Ozelle Z. Brown. *R5-93-50*. The agreement covered a host of

jail conditions and policies. The most significant requirement of this agreement was the construction of a new jail. Jackson County has been in compliance with this consent decree for a considerable amount of time and, if not for the termination provisions of the Prison Litigation Reform Act, the decree should have been terminated according to its own provisions. *R5-93-1.*

The district court later entered a permanent injunction against the Alabama Department of Corrections compelling them to “within thirty (30) days of the date on which the necessary documents associated with [an inmate’s] conviction, sentence, and transfer have been completed and forwarded to the Department of Corrections, be transferred in the usual manner from the physical custody of the Jackson County, Alabama, sheriff to the physical custody of the Alabama Department of Corrections.” The district court, still later, approved a consent decree entered into by the Plaintiffs and Department of Corrections, the Alabama Department of Public Health, and the Administrator of the Jackson County Health Department. This agreement primarily covered inspection requirements to be followed at the Jackson County Jail by the Department of Corrections and the Department of Public Health. *R5-99.*

The Jackson County Appellees do not take issue with the district court's termination of the permanent injunction and the consent decree as described above. With respect to the first consent decree, the one most directly involving the Jackson County Defendants, the decree has been fully complied with and the decree is due to be terminated anyway. The Jackson County Defendants certainly have no objection to the termination of the latter consent decree either – the one imposing inspection requirements upon the Department of Corrections and the Department of Public Health.

In the best of all worlds, the Jackson County Defendants would prefer for the permanent injunction which requires timely transfer of state inmates into DOC custody to remain in place. Without such court enforcement (and often, even when there is attempted court enforcement), the Department of Corrections has shown great reluctance in following state law which requires timely transfer of state inmates from county jails. Alabama law provides, in relevant part, that

[w]hen any convict is sentenced to the penitentiary, the judge of the court in which the sentence is rendered shall order the inmate to be confined in the nearest secured jail. The clerk of the court shall at once notify the Department of Corrections as to the jail where the inmate is confined, forward to the department a copy of the judgment entry and sentence within the case, and inform the department if any special care is necessary to guard

the inmate. *Thereupon,<sup>1</sup> the department shall direct where the inmate shall be taken for confinement or hard labor.* (emphasis added).

Ala. Code § 14-4-30 (1995). Jackson County has joined with nearly every other county in the State of Alabama in an attempt to force compliance with this statute by the filing of a class action in state court styled Barbour County v. Joe Hopper, CV-92-88-S (In the Circuit Court of Montgomery County, Alabama). The Montgomery County Circuit Court ordered compliance with § 14-3-30, allowing the Department of Corrections thirty days after receipt of proper notification and paperwork to remove state-ready inmates (A shorter period is allowed for removal of state-ready inmates from county jails which are already populated in excess of capacity.) Nonetheless, the Department of Corrections has consistently failed to abide by the Circuit Court's Order, often creating dangerous situations within the county jail system. As of April 10, 1997, Alabama counties were housing a total of 1,300 state inmates in county jails. Of the 1,300 state inmates, 229 had transcripts that were over the thirty day limit imposed by the Preliminary Injunction. As of July 17, 1997, Alabama

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<sup>1</sup> Black's law dictionary defines thereupon to mean "without delay or lapse of time."

counties housed 1,571 state inmates in county jails. Of the 1,571 state inmates, 525 had transcripts that were over the thirty day limit imposed by the Preliminary Injunction. As of August 25, 1997, Alabama counties were housing 1,601 state inmates in county jails. Of the 1,601 state inmates, 761 had transcripts which were over the thirty day limit imposed by the Preliminary Injunction. As of September 15, 1997, Alabama counties housed 1,699 state inmates in county jails. Of the 1,699 state inmates, 822 had transcripts over the thirty day limit imposed by the Preliminary Injunction. As of July 13, 1998, the Department of Corrections was housing 1,515 state inmates in county jails. Of the 1,515 state inmates, 912 had transcripts over the thirty day limit imposed by the Preliminary Injunction. A motion for contempt filed by the county plaintiffs remains pending in the *Montgomery County Circuit Court*.<sup>2</sup>

Nonetheless, it appears to the Jackson County Defendants that the Attorney General had standing to move for termination of the consent

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<sup>2</sup> Interestingly, in contrast to the position taken by the County Defendants here, the Department of Corrections takes the position in the Barbour County case that the county has no standing to attempt enforcement of § 14-3-30.

decrees and the permanent injunction in this case pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 36-26(b)(3).

The Jackson County Defendants also take the position that the Prison Litigation Reform Act is constitutional as this Court and other jurisdictions have found. With only one notable exception, every circuit court of appeals which has reviewed the provisions have held them to be constitutional under the separation of powers doctrine, due process clause, and equal protection clause. See Dougan v. Singletary, 129 F.3d 1424, 1426-27 (11th Cir. 1997) (per curium); Inmates of Suffolk Co. Jail v. Rouse, 129 F.3d 649, 655 (1st Cir. 1997); Benjamin v. Jacobson, 124 F.3d 162 (2nd Cir. 1997), reh'g granted en banc (2nd Cir. Dec. 23, 1997); Plyler v. Moore, 100 F.3d 365, 361 (4th Cir. 1996), cert. denied, 117 S. Ct. 2460 (1997); Hadix v. Johnson, 133 F.3d 940, 943 (6th Cir. 1998); Gavin v. Branstad, 122 F.3d 1081, 1088 (8th Cir. 1997); Tyler v. Murphy, 135 F.3d 594, 597 (8th Cir. 1998); contra, Taylor v. United States, 143 F.3d 1178, 1181 (9th Cir. 1998).

With respect to the issue of whether the district judge erred in failing to allow additional evidence to be presented by the Plaintiffs before termination, the Jackson County Defendants adopt the brief filed on behalf of the State Appellees.

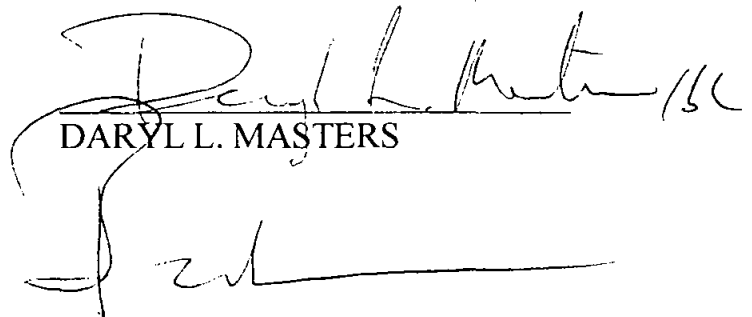
This position should not be taken as a concession that the Attorney General or any counsel for the Department of Corrections may speak for Jackson County Sheriff Mike Wells, although it does not appear from the brief filed on behalf of the Attorney General that his office takes that position in this case.

Nonetheless, because the termination provision of PRLA allows for “any party or intervener” to make a motion for termination, the district judge did not err by allowing the Attorney General to make the termination motion on behalf of the State and the Department of Corrections. See 18 U.S.C. § 36-26(b)(1).

**CONCLUSION**

Based on the foregoing, Appellees Jackson County, Alabama, Jackson County Commissioners, Mike Wells And Ozelle Brown, respectfully request that the district court's Order terminating the consent decrees and the permanent injunction be affirmed.

Respectfully submitted this the 27<sup>th</sup> day of July, 1998.



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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing Brief of Jackson County Defendant/Appellees upon:

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