

230 F.3d 1367

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.

Gary JORDAN; Douglas Smalley; Robert C. Curvey; Raymond Wielebski; Wallace Washington; Richard Kienitz; Herman Jackson; Donald Cobbs, Plaintiffs-Appellants,

v.

MULTNOMAH COUNTY; Gladys McCoy, Chairperson of Multnomah County Commission; Fred B. Pearce, Multnomah County Sheriff; Robert Skipper, Multnomah County Director, Division of Corrections, Defendants-Appellees.

No. 97-36116. | D.C. No. CV 80-841-JAR. | Argued and Submitted May 5, 2000. | Submission Vacated May 9, 2000. | Resubmitted Aug. 22, 2000. | Decided Aug. 30, 2000.

Appeal from the United States District Court for the of Oregon, James A. Redden, District Judge, Presiding.

Before LAY, TASHIMA, and MCKEOWN, Circuit Judges.

### Opinion

#### MEMORANDUM\*

\*1 Plaintiffs appeal the district court's judgment terminating the Modified Final Order of June 1990, pursuant to the Prison Litigation Reform Act of 1996 ("PLRA"), 18 U.S.C. § 3626(b), in plaintiffs' case regarding prison conditions in Multnomah County, Oregon. Plaintiffs contend that § 3626(b), which is the codification, in part, of the PLRA, is unconstitutional because it violates separation of powers principles. The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). We have jurisdiction pursuant to 28 U.S.C. § 1291 and we affirm.

Whether a statute is constitutional is an issue of law subject to de novo review. *See Masayeva v. Hale*, 118 F.3d 1371, 1377 (9th Cir.1997). In *Gilmore v. California*, No. 98-15198, 2000 WL 1070235 (9th Cir. Aug. 4, 2000), we held that § 3626(b) was constitutional in the face of separation of powers, due process, and equal protection challenges. *See slip op.* at 9473, 9489-90. This case is no different; consequently, *Gilmore* controls.

Accordingly, the judgment of the district court is

AFFIRMED.<sup>1</sup>

### Parallel Citations

2000 WL 1234247 (C.A.9 (Or.))

### Footnotes

\*\* The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

<sup>1</sup> Although there are two exceptions to the termination provision of § 3626(b), plaintiffs have not raised the applicability of either exception on appeal, or the district court's refusal to reopen the case, presumably to make findings under § 3626(b)(3).

