FIRST AMENDMENT CLAIMS UNDER THE PRISON LITIGATION REFORM ACT: A MENTAL OR EMOTIONAL INJURY?

*by Jeff B. Allison**

I. INTRODUCTION

Convicted of cattle rustling, Jeffery Royal was sentenced to five years in the Iowa Department of Corrections system.[1] Prior to his conviction, Royal suffered a spinal cord injury when he fell through a haymow.[2] The injury to his spinal cord required him to use a wheelchair while serving his sentence.[3] Initially, Royal was sent to Iowa Medical and Classification Center (IMCC).[4] However, he soon became dissatisfied with the medical treatment he was receiving and with the overall failure of prison officials to acknowledge his condition.[5] As a result, Royal filed a pro se complaint alleging, among other things, that: 1) he was unable to turn his wheelchair while in his cell; 2) that he could not get to the toilet or shower without first falling to the ground and crawling; and 3) that he was transported in a van not equipped for disabled persons, which necessitated his crawling on the floor prior to pulling himself onto the van seat.[6] However, no action was taken to address Royal's complaint.

Two months into his incarceration, the IMCC medical director, Tom Reid, decided that Royal no longer needed his analgesics and took away his wheelchair.[7] Instead, he was given crutches to use.[8] Royal complained that using the crutches caused pain and tingling in his hands.[9] He also complained that because of his difficulty with the crutches, he was unable to attend his periodic exercises in the health

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1. Royal v. Kautzky, 375 F.3d 720, 726 (8th Cir. 2004) (Heaney, J., dissenting). Because the majority opinion provided scant background facts, the background here is taken from the dissent.

2. *Id*. A haymow is mass of hay stored in a barn. WEBSTERS ONLINE DICTIONARY, Trocar, at http://www.websters-online-dictionary.org/definition/haymow (last visited Jan. 1, 2006).

3. *Royal*, 375 F.3d at 726.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

service unit and had to crawl on the floor to get around.[10] In all, Royal submitted seventeen grievances between November 1998 and January 1999 for the purpose of getting his wheelchair back, all of which were ignored by prison officials.[11] Then, in December 1999, Royal sought a preliminary injunction attempting to regain his wheelchair.[12] He included an affidavit in which he stated "that his leg brace had broken and, without his wheel chair, he had to crawl on the floor."[13] Royal also claimed that when Reid learned of this, "Reid issued a memorandum stating that any inmate seen crawling on the floor would be subject to discipline."[14]

In January 1999, prior to the preliminary injunction hearing, Royal consulted a neurosurgeon.[15] After examining him, the doctor determined that the crutches were placing excessive pressure on a nerve in Royal's elbow.[16] As a result, Royal's wheelchair was subsequently returned to him.[17] However, Reid, apparently unhappy with Royal's behavior, had him removed from the general population and placed in segregation, where he remained for nearly two months.[18]

Royal was paroled in December 1999, and subsequently brought suit pursuant to 42 U.S.C. § 1983 against Reid and other IMCC officials claiming that Reid's decision to have him placed in lock up was a retaliatory measure taken to punish Royal for exercising his First Amendment right of seeking redress of his grievances.[19] On appeal, the U.S. Court of Appeals for the Eighth Circuit affirmed the district court's holding that, because Royal did not suffer a physical injury, his claims were barred by the Prison Litigation Reform Act of 1995 (PLRA).[20] The relevant provision of the PLRA, codified at 42 U.S.C. § 1997e(e), states: "No Federal civil action may be brought by a prisoner . . . for mental or emotional injury . . . without a prior showing of physical

10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id*. at 726–27.
15. *Id*. at 727.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* Among the more well-known freedoms of religion, speech, and press, the First Amendment also guarantees citizens the right "to petition the Government for a redress of grievances." U.S. CONST. amend. I.
20. *Royal*, 375 F.3d at 722–23 (majority opinion).

injury."[21]

The Eighth Circuit's decision in *Royal* widens the existing circuit split on the issue of whether First Amendment claims are claims for mental or emotional injury within the meaning of 42 U.S.C. § 1997e(e). Section II of this Casenote discusses the legislative history leading to the enactment of the Prison Reform Litigation Act and § 1997e(e). Section III discusses how the circuit and district courts have interpreted the PLRA's physical injury requirement contained in § 1997e(e) with respect to First Amendment claims. Section IV discusses the availability of compensatory damages for constitutional violations. Section V analyzes the Eighth Circuit's decision in *Royal v. Kautzky*. Section VI concludes that First Amendment claims should not be considered an action for mental or emotional injury within the scope of § 1997e(e). Additionally, compensatory damages can be awarded for First Amendment violations so long as the harm is reasonably quantifiable.

II. THE PLRA'S LEGISLATIVE HISTORY AND PHYSICAL INJURY REQUIREMENT

Prior to the late 1960s, inmate civil suits rarely met with success as federal courts frequently deferred to the judgment of prison administrators.[22] These courts, among other reasons, considered themselves "less knowledgeable about penal administration" than prison authorities and feared opening the door to a dramatic increase in prisoner litigation.[23] Unfortunately, this "hands off" approach left inmates at the mercy of prison officials frequently subjecting them to "brutal and degrading" conditions.[24]

21. 42 U.S.C. § 1997e(e) (1996).

22. James E. Robertson, *Psychological Injury and the Prison Litigation Reform Act: "A Not Exactly," Equal Protection Analysis*, 37 HARV. J. ON LEGIS. 105, 108.

23. Molly R. Schimmels, Comment, *First Amendment Suits and the Prison Litigation Reform Act's "Physical Injury Requirement": The Availability of Damage Awards for Inmate Claimants*, 51 U. KAN. L. REV. 935, 937 (2003) (arguing that First Amendment claims are claims within the meaning of § 1997e(e)).

24. Robertson, *supra* note 22, at 108–10 ("The hands-off doctrine masked from public view a sorry state of affairs. Correctional staff received little training and meager resources. Some institutions abandoned inmates to the exploitation of trustees. Racial discrimination reached into the day-to-day operations of the prison. An inmate's lot included harsh and arbitrary discipline and little medical care. 'Life in many institutions,' wrote the President's Commission on Law Enforcement and Administration of Justice, 'is at best barren and futile, at worst unspeakably brutal and degrading.'" (quoting PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 12 (1967))).

That changed in 1961, however, when the U.S. Supreme Court rendered its decision in *Monroe v. Pape*.[25] In that case, the Court held that 42 U.S.C. § 1983,[26] the re-codified Civil Rights Act of 1871, afforded a federal damage remedy to an individual for violation of his constitutional rights.[27] Then, in 1964, the Supreme Court held for the first time that a prisoner's claim stated a cause of action under § 1983.[28] While going far in protecting the constitutional rights of prisoners, these decisions paved the way for a substantial increase in prisoner litigation. For example, in 1970, about two thousand inmate claims were brought under § 1983.[29] Over the next two decades, the number steadily climbed and by 1994 exceeded 39,000 annually.[30] But many of those claims were less than meritorious.[31]

Concerned with this increase in prisoner litigation, Congress responded by passing the PLRA in 1996. "It was intended to reduce frivolous prisoner litigation about conditions of confinement and conserve scarce judicial resources."[32] Among the senators testifying in support of the act, Senator Orrin Hatch claimed that the PLRA would "help bring relief to a civil justice system overburdened by frivolous prisoner lawsuits."[33] Senator Bob Dole argued that Congress needed to curtail "[f]rivolous lawsuits filed by prisoners [that] tie up the courts, waste valuable legal resources, and affect the quality of justice enjoyed

25. 365 U.S. 167 (1961).

26. 42 U.S.C. § 1983 (1994) ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.").

27. *Monroe*, 365 U.S. at 172. *See also* Robertson, *supra* note 22, at 110.

28. Cooper v. Pate, 378 U.S. 546 (1964).

29. Schimmels, *supra* note 23, at 938.

30. Jennifer Winslow, Comment, *The Prison Litigation Reform Act's Physical Injury Requirement Bars Meritorious Lawsuits: Was It Meant To?*, 49 UCLA L. REV. 1655, 1662–63 (2002) (explaining that although there has been an increase in the number of claims filed by inmates, a comparison of the growth rates of prisoner petitions and prisoner populations between 1980 and 1996 demonstrates that "the rate at which inmates filed petitions *declined* by approximately 17 percent.").

31. James E. Robertson, *A Saving Construction: How to Read the Physical Injury Rule of the Prison Litigation Reform Act*, 26 S. ILL. U. L.J. 1, 3 (2001) (explaining that ninety-seven percent of inmate suits are dismissed).

32. *Id.* at 109. *See also* United States v. Simmonds, 111 F.3d 737, 743 (10th Cir. 1997) ("The main purpose of the Prison Litigation Reform Act was to curtail abusive prison-condition litigation."); Santana v. United States, 98 F.3d 752, 755 (3d Cir. 1996) ("Congress enacted the PLRA primarily to curtail claims brought by prisoners under 42 U.S.C. § 1983 and the Federal Torts Claims Act, most of which concern prison conditions and many of which are routinely dismissed as legally frivolous.").

33. 141 CONG. REC. S14413, S14418 (daily ed. Sept. 27, 1995) (statement of Sen. Hatch).

by law-abiding citizens,"[34] considering that the number of lawsuits filed by prisoners concerning prison conditions had risen from 6,600 in 1975 to more than 39,000 in 1994.[35] As proponents of the act, Senator Hatch and Senator Dole also provided examples of frivolous inmate claims. Senator Hatch listed examples from Utah, his home state, including a case in which "an inmate sued demanding that he be issued Reebok or LA Gear brand shoes instead of the Converse brand being issued."[36] Senator Dole discussed suits complaining of "insufficient storage locker space, a defective haircut by a prison barber, [and] the failure of prison officials to invite a prisoner to a pizza party for a departing prison employee."[37]

The PLRA imposes several limitations on prisoner civil complaints regarding prison conditions. For example, one provision requires an inmate to exhaust the available administrative remedies before filing a lawsuit.[38] Other provisions require a judge to dismiss inmate cases if they are deemed malicious or frivolous.[39] Additionally, the PLRA contains a "three strikes provision," which prevents a prisoner from filing a suit in forma pauperis[40] if the inmate has had three previous suits dismissed as frivolous, malicious, or failing to state a claim.[41] These provisions place substantial procedural barriers to the filing of prisoner lawsuits. However, § 1997e(e), entitled "Limitation on recovery" and commonly referred to as the "physical injury requirement," has been the

34. 141 CONG. REC. S7523, S7524 (daily ed. May 25, 1995) (statement of Sen. Dole).

35. 141 CONG. REC. S14413, S14413 (daily ed. Sept. 27, 1995) (statement of Sen. Dole).

36. 141 CONG. REC. S14611, S14627 (daily ed. Sept. 29, 1995) (statement of Sen. Hatch).

37. 141 CONG. REC. S14413, S14413 (daily ed. Sept. 27, 1995) (statement of Sen. Dole).

38. 42 U.S.C. § 1997e(a) (2000); 28 U.S.C. § 1915(b)(1) (1996).

39. 28 U.S.C. § § 1915A(a), (b).

40. "In forma pauperis" is a procedure in which an indigent person may receive free services such as public assistance, appointment of counsel, waiver of court fees, or other services. BLACK'S LAW DICTIONARY 783 (7th ed. 1999). Additionally, there are fees an inmate must pay when filing in forma pauperis. The inmate must pay an initial fee and then monthly fees from his own account until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(1)–(2) ("[I]f a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal. (2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.").

41. *See* § 1915(g). If a prisoner is "under imminent danger of serious physical injury," this provision does not apply. *Id.*

subject of significant judicial scrutiny. That section provides that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury."[42] What remains unclear is whether the physical injury requirement applies to First Amendment claims which rarely involve any physical injury to the claimant, and whether compensatory damages may be awarded for the violation of such rights.[43]

The legislative history of the PLRA clearly shows Congress's intent to limit the number of frivolous lawsuits filed by inmates.[44] At the same time, however, members of the Senate expressly stated that the PLRA would not prevent legitimate claims brought by prisoner plaintiffs.[45] Senator Hatch stated, "Indeed, I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised. The legislation will, however, go far in preventing inmates from abusing the Federal judicial system."[46] Senator Strom Thurmond added, "This amendment will allow meritorious claims to be filed, but gives the judge broader discretion to prevent frivolous and malicious lawsuits filed by prison inmates."[47] Senator Abraham went so far as to say that the PLRA would actually "help protect convicted criminals' constitutional rights."[48]

III. INTERPRETING § 1997E(E): CIRCUIT & DISTRICT COURT DECISIONS

Courts have come to different conclusions in determining whether 42 U.S.C. § 1997e(e)'s "physical injury requirement" applies to claims that allege violations of an inmate's constitutional rights. Some courts, when reading § 1997e(e), concentrate on the language "for mental or

42. 42 U.S.C. § 1997e(e).

43. Royal v. Kautzky, 375 F.3d 720, 727 (8th Cir. 2004) (Heaney, J., dissenting).

44. *See supra* note 34.

45. 141 CONG. REC. S14611, S14627 (daily ed. Sept. 29, 1995) (statement of Sen. Hatch). Senator Kennedy, referring to the time allotted for considering passage of the PLRA, called the process inappropriate. 142 CONG. REC. S2292, S2296 (daily ed. March 19, 1996) (statement of Sen. Kennedy). *See also* Winslow, *supra* note 30, at 1658–59 (explaining that Congress hardly discussed section 1997e(e) at all stating that "Senators debated the legislation for only five days before voting to approve the PLRA.").

46. 141 CONG. REC. S14611, S14627 (daily ed. Sept. 29, 1995) (statement of Sen. Hatch).

47. *Id.* at S14628 (statement of Sen. Thurmond).

48. 141 CONG. REC. S14316, S14317 (daily ed. Sept. 26, 1995) (statement of Sen. Abraham).

emotional injury."[49] These courts have held that § 1997e(e) does not apply to First Amendment claims because they are not claims for mental or emotional injury.[50] Rather, First Amendment claims are for violations of intangible and invaluable rights which are compensable whether or not a plaintiff can show any mental or emotional injury.[51]

On the other hand, courts holding that § 1997e(e)'s physical injury requirement encompasses First Amendment claims concentrate on the statute's "no [f]ederal civil action" language.[52] They reason that because this language fails to distinguish between claims for which the statute is intended to apply and claims for which it is not, the language shows Congress's intent that § 1997e(e) be applied to all constitutional claims without exception.[53] With respect to compensatory damages, these courts hold that a plaintiff must demonstrate some actual injury in order to receive such an award.[54] Under tort law, however, actual injury is limited to either physical or emotional injury.[55] As such, if a plaintiff seeks compensatory damages in the absence of any physical injury, the plaintiff must be bringing a claim for mental or emotional damages, which § 1997e(e) explicitly prohibits.[56]

Even when courts decide that the PLRA applies to First Amendment or other constitutional claims, they sometimes have declined to hold that § 1997e(e) bars all forms of relief.[57] Courts have recognized that such an interpretation would have the practical effect of denying a prisoner all relief for many constitutional deprivations, which could pose serious questions as to the statue's constitutionality.[58] Instead, courts interpret the statute as a limitation on the remedies available for such claims.[59]

49. *See, e.g.*, Canell v. Lightner, 143 F.3d 1210 (9th Cir. 1998); Rowe v. Shake, 196 F.3d 778 (7th Cir. 1999); Amaker v. Haponik, No. 98 CIV. 2663(JGK), 1999 WL 76798 (S.D.N.Y. Feb. 17, 1999). *See also* Schimmels, *supra* note 23, at 942 (explaining that "courts have questioned whether a Section 1983 claim for the deprivation of a person's First Amendment rights is a claim 'for mental or emotional injury.'").

50. Royal v. Kautzky, 375 F.3d 720, 729 (8th Cir. 2004) (Heaney, J., dissenting).

51. *Id.*

52. *See, e.g.*, Thompson v. Carter, 284 F.3d 411, 417–18 (2nd Cir. 2002); Searles v. Van Bebber, 251 F.3d 869, 877 (10th Cir. 2001); Allah v. Al-Hafeez, 226 F.3d 247, 248 (3rd Cir. 2000).

53. *Royal*, 375 F.3d at 729 (Heaney, J., dissenting).

54. *Id.*

55. *Id.*

56. *Id.*

57. Mason v. Schriro, 45 F. Supp. 2d 709, 719 (W.D. Mo. 1999) (explaining that if § 1997e(e) were construed as barring all relief for non-physical injury constitutional claims "serious constitutional questions" would arise). *See also* Robertson, *supra* note 31, at 3 (stating that § 1997e(e) would be unconstitutional unless punitive damages were "spared from its reach").

58. *Id.*

59. Schimmels, *supra* note 23, at 944 ("No court has construed § 1997e(e) as barring injunctive

A. Courts Excluding First Amendment Claims from the Scope of § 1997e(e)

In *Canell v. Lightner*, Alvin Howard Canell, the inmate plaintiff, was a pre-trial detainee at Multnomah County Detention Center (MCDC) during a two month period from March 4, 1993, to May 17, 1993.[60] During this time, Canell complained that a correctional officer at MCDC, Lightner, was pressuring inmates to convert to Christianity.[61] According to Canell, Lightner performed mock preaching, sang Christian songs while on duty, and continually interfered with Canell when he was engaged in Muslim prayer.[62] When prison officials failed to respond to Canell's complaints, he brought suit under 42 U.S.C. § 1983 claiming that his rights under the Establishment and Free Exercise Clauses of the First Amendment[63] were violated by Lightner's continuous disruption of his prayer.[64]

Addressing the application of 42 U.S.C. § 1997e(e) to his Free Exercise claim, the Ninth Circuit held that Canell, in bringing a § 1983 claim for the deprivation of his First Amendment rights, "is not asserting a claim for 'mental or emotional injury.' He is asserting a claim for a violation of his First Amendment rights."[65] The court went on to hold that the "deprivation of First Amendment rights entitles a plaintiff to judicial relief wholly aside from any physical injury he can show, or any mental or emotional injury he may have incurred."[66] The Ninth Circuit concluded, therefore, that § 1997e(e) did not encompass Canell's First Amendment claim.[67]

The Seventh Circuit came to a similar conclusion in *Rowe v. Shake*.[68]

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or declaratory relief for claims for mental or emotional injury."). *But see* Winslow, *supra* note 30, at 1679 ("While it is true that other remedies are still technically available to prisoners complaining of mental or emotional injuries, these remedies are frequently unavailable given the realities of prisoner litigation. Injunctive relief is only available if a plaintiff can show 'a threat of substantial and immediate irreparable injury' or probability that the injury or violation will recur. Thus, in the case of a single violation of a prisoner's constitutional right by a single actor, injunctive relief would not be available, unless the prisoner could demonstrate that the violation was likely to recur and to result in a substantial injury.").

60. 143 F.3d 1210, 1211 (9th Cir. 1998).

61. *Id.* at 1211–12.

62. *Id.*

63. U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .").

64. *Id.* at 1212.

65. *Id.* at 1213.

66. *Id.*

67. *Id.*

68. 196 F.3d 778 (7th Cir. 1999).

In that case, the inmate, John Rowe, brought suit alleging that several mail clerks at the prison purposefully delayed the delivery of his mail in violation of his First Amendment rights.[69] Although the claim was ultimately dismissed on other grounds,[70] the court acknowledged that a First Amendment violation, in and of itself, would entitle a plaintiff to relief in the form of compensatory damages regardless of whether he sustained any physical injury.[71]

The U.S. District Court for the District of Massachusetts in *Shaheed-Muhammad v. Dipaolo*, in addressing the application of § 1997e(e) to First Amendment claims, held that it does not apply to violations of abstract rights.[72] It reasoned that "the harms proscribed by the First Amendment, Due Process, or Equal Protection are assaults on individual freedom and personal liberty, even on spiritual autonomy, and not on physical well-being."[73] In *Shaheed-Muhammad*, the plaintiff was an inmate at the Southeastern Correctional Center (SECC) in Bridgewater, Massachusetts.[74] He claimed that his First Amendment right to religious freedom was violated when, among other reasons, prison staff prevented him from receiving a particular newspaper devoted to Islamic issues.[75] The court, in determining whether § 1997e(e) extended to First Amendment claims, explained that "[w]here the harm that is constitutionally actionable *is* physical or emotional injury occasioned by a violation of rights, § 1997e(e) applies. In contrast, where the harm that is constitutionally actionable is the violation of intangible rights—regardless of actual physical or emotional injury—section 1997e(e) does not govern."[76] The court stated that this construction made sense for several reasons.[77] First, using similar reasoning to that of the Ninth Circuit in *Canell*, the court reasoned that a First Amendment claim is not a claim for emotional distress.[78] Second, the court stated that its interpretation of § 1997e(e) was consistent with legislative "history and purposes of the PLRA," explaining that the act's purpose was not to insulate from review legitimate claims that are not accompanied by

69. *Id.* at 780.
70. *Id.*
71. *Id.* at 781.
72. Shaheed-Muhammad v. Dipaolo, 138 F. Supp. 2d 99, 101 (D. Mass. 2001).
73. *Id.*
74. *Id.* at 100.
75. *Id.*
76. *Id.* at 107.
77. *Id.*
78. *Id.* at 107 (citing Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299, 308 n.11 (1986)).

physical injury.[79]

The U.S. District Court for the Southern District of New York took a slightly different approach in finding that the language of § 1997e(e) barring suits for emotional distress does not extend to First Amendment claims.[80] In *Amaker v. Haponik*, the court reasoned that the language "for mental or emotional injury" was qualifying language that would be given no meaning if § 1997e(e) were read to apply all federal civil actions.[81] In this case, the family of Anthony D. Amaker sent important legal documents to Amaker while he was an inmate at Green Haven Correctional Facility.[82] However, prison officials failed to deliver these documents to Amaker and, instead, sent them back to his family.[83] Three months later, Amaker received a letter from one of the prison guards stating that "mail from [his] family had been returned because it had not been sent by a legal return sender and thus was not recognized as legal mail."[84] With prison officials failing to deliver Amaker's mail a few weeks before a court date, Amaker claimed that the interference with his mail infringed on his right of access to the courts.[85]

Examining the plain language of § 1997e(e), the court concluded that it did not foreclose Amaker's First Amendment claim.[86] The court explained that because § 1997e(e) prohibits "'Federal civil action[s] . . . *for mental or emotional injury* . . . without a prior showing of physical injury,'" it does not apply where a plaintiff is not claiming such injury.[87] The court reasoned that if the physical injury requirement were held to apply to all federal civil suits, the language "for mental or emotional injury" would be superfluous, which is "contrary to the well-established principle that all words in a statute should be read to have meaning."[88] By including the language "for mental or emotional injury," therefore, Congress could not have intended for § 1997e(e) to bar all suits by inmate plaintiffs.[89]

79. *Id.* at 108–09.
80. Amaker v. Haponik, No. 98 CIV. 2663(JGK), 1999 WL 76798 (S.D.N.Y. Feb. 17, 1999).
81. *Id.* at *7.
82. *Id.* at *1.
83. *Id.*
84. *Id.*
85. *Id.* at **1–2.
86. *Id.* at *7.
87. *Id.*
88. *Id.*
89. *Id.*

B. Courts Including First Amendment Claims Within the Scope of § 1997e(e)

In *Allah v. Al-Hafeez*, Michael Malik Allah, a prisoner at the Frackville correctional institution, filed a claim under § 1983 alleging that the institution's appointment of Humza Al-Hafeez as the prison's Islamic minister violated his First Amendment right to religious freedom.[90] According to Allah, Al-Hafeez was not a member of the Nation of Islam and his teachings were not in line with those of Elijah Muhammad, the leader of the Nation of Islam.[91] As part of his claim, Allah sought compensatory damages.[92]

The Third Circuit, explaining that § 1997e(e) applied to Allah's First Amendment claim, stated simply that "[t]he plain language . . . makes no distinction between the various claims encompassed within the phrase 'federal civil action' to which the section applies."[93] The court then turned to Allah's request for compensatory damages.[94] It asserted that "[i]t is well settled that compensatory damages under § 1983 are governed by general tort-law compensation theory."[95] It further explained that, in and of itself, "'the abstract value of a constitutional right . . . may not form the basis for § 1983 damages.'"[96] The court reasoned, therefore, that § 1997e(e) would prohibit Allah's request for compensation if mental or emotional injury was the only harm resulting from the First Amendment deprivation.[97] It stated:

> As we read [Allah's] complaint, the only actual injury that could form the basis [for compensatory damages] would be mental and/or emotional injury. Under § 1997e(e), however, in order to bring a claim for mental or emotional injury . . . a prisoner must allege physical injury, an allegation that Allah undisputedly does not make. Accordingly, Allah's claims for compensatory damages are barred by § 1997e(e).[98]

The Tenth Circuit came to a similar conclusion in *Searles v. Van Bebber*.[99] In that case, Jimmy Searles, an inmate at the Hutchinson

90. 226 F.3d 247, 248 (3d Cir. 2000).
91. *Id.*
92. *Id.* at 248–49.
93. *Id.* at 250.
94. *Id.*
95. *Id.*
96. *Id.* (quoting Memphis Cmty. Sch. Bd. v. Stachura, 477 U.S. 299, 308 (1986)).
97. *Id.* at 250–51.
98. *Id.*
99. 251 F.3d 869 (10th Cir. 2001).

Correctional Facility (HCF) in Kansas, sued the prison chaplain, Durward A. Van Bebber, asserting that he violated his First Amendment rights by failing to provide him with a kosher diet.[100] Searles had been transferred to HCF after serving parts of his sentence at two other prisons.[101] Prior to his transfer to HFC, Searles had successfully requested a kosher diet at the other two facilities.[102] At HFC, however, Searles requested a kosher diet on three separate occasions, all of which were denied.[103] Searles then brought suit alleging violation of his right to free exercise of religion under the First Amendment.[104] The Tenth Circuit held, however, that First Amendment claims were not exempt from § 1997e(e).[105] The court stated that "section 1997e(e) should be held to apply in the instant case because of its plain language."[106] The Tenth Circuit reasoned, therefore, that "[t]he underlying substantive violation . . . should not be divorced from the resulting injury, such as 'mental or emotional injury,' thus avoiding the clear mandate of § 1997e(e)."[107]

In *Thompson v. Carter*, the Second Circuit, similar to the Third and Tenth Circuits, also held that § 1997e(e) prevents a plaintiff from receiving compensatory damages for a violation of his constitutional rights where the plaintiff is unable to show any physical injury.[108] In *Thompson*, Louis Thompson, claimed that corrections officers' confiscating his medications violated his Fifth Amendment right against seizure of property without due process and his Eighth Amendment right against cruel and unusual punishment.[109] He failed, however, to demonstrate any physical injury.[110] In rejecting Thompson's claims, the court asserted that the plain language of § 1997e(e) clearly applies to all federal civil actions.[111] "Because the words 'federal civil action' are not qualified, they include federal civil actions brought to vindicate constitutional rights."[112]

100. *Id.* at 872.
101. *Id.* at 872–73.
102. *Id.*
103. *Id.*
104. *Id.* at 872.
105. *Id.* at 876.
106. *Id.*
107. *Id.*
108. 284 F.3d 411, 416 (2d Cir 2002).
109. *Id.* at 414–15.
110. *Id.*
111. *Id.* at 417.
112. *Id.*

C. Mason v. Schriro*: Two Approaches to the Meaning of "For Mental or Emotional Injury"*

As the case law demonstrates, courts have struggled in determining whether the language of § 1997e(e) applies to constitutional claims such as First Amendment violations. Therefore, the language of § 1997e(e) is clearly susceptible to more than one interpretation.

The Supreme Court has instructed that when interpreting a statute, courts should begin with the plain language.[113] An interpreting court may stop its inquiry where the language is clear and unambiguous.[114] However, "[w]here the plain language of a statute is ambiguous" or susceptible to more than one interpretation, the court may look beyond its plain language and determine the congressional intent behind enacting the legislation.[115] A statute may be considered ambiguous when its application, based on a particular interpretation of its language, could lead to an unusual result.[116]

In *Mason v. Schriro*, the court articulated two interpretations for determining whether a First Amendment claim is an action for mental or emotional injury within the meaning of § 1997e(e).[117] The court explained that there is both a broad interpretation and a narrow interpretation of the phrase "for mental or emotional injury."[118] The broad interpretation means "'for [violations of constitutional or statutory rights that result in a request for relief for] mental or emotional injury."[119] This interpretation focuses on the type of relief requested as opposed to the underlying claim and treats the constitutional violation as a claim for mental or emotional injury if the claim seeks compensatory damages but does not allege any physical injury.

In *Mason*, the court stated that the broad interpretation would be "quite sweeping" in its reach extending to Equal Protection and First Amendment claims.[120] The court added that "such a construction [would raise] serious constitutional concerns."[121] In the context of an equal protection claim, it explained that if the court were to construe §

113. Negonsott v. Samuels, 507 U.S. 99, 104 (1993).

114. Rubin v. United States, 449 U.S. 424, 430 (1981); United States v. Sosa, 997 F.2d 1130, 1132 (5th Cir. 1993).

115. NORMAN J. SINGER, 2A STATUTES AND STATUTORY CONSTRUCTION § 46:4 (6th ed. 2000).

116. *Id.*

117. 45 F. Supp. 2d 709, 717 (W.D. Mo. 1999).

118. *Id.*

119. *Id.* (alteration in original) (emphasis omitted).

120. *Id.*

121. *Id.*

1997e(e) to preclude relief in such instances, it would, in effect, "interpret section 1997e(e) as granting prison officials immunity from suit even where there is blatant and systematic racial or religious discrimination."[122] As an example, the court explained that under the broad interpretation of § 1997e(e), "if minority inmates were systematically assigned to poorer facilities . . . or if members of a non-Christian religion, in contrast to members of a Christian religion, were systematically denied any opportunity to practice their religion," they would be denied any damages remedy.[123] The court reasoned that because Congress was focused on limiting only frivolous lawsuits by inmates when it enacted the PLRA, it was highly unlikely that it intended to preclude a damages remedy for such claims simply because the inmate could not show physical injury.[124]

On the other hand, the narrow interpretation considers the phrase "for mental or emotional injury" to mean "for [inflictions of] mental or emotional injury [where the infliction of mental or emotional distress is alleged to constitute the violation of plaintiff's constitutional or statutory rights]."[125] Under this interpretation, infliction of mental or emotional distress is the result of the underlying substantive violation for which relief is sought. Therefore, if an inmate is not claiming that mental or emotional distress resulted from the violation of his constitutional rights, his claim is not subject to § 1997e(e)'s bar on compensatory damages. The court in *Mason* adopted the narrow interpretation asserting that Congress did not intend § 1997e(e) to apply across the board to all federal actions, especially to certain "historically actionable" constitutional rights violations such as First and Fourteenth Amendment claims.[126]

IV. AWARDING COMPENSATORY DAMAGES FOR FIRST AMENDMENT/CONSTITUTIONAL VIOLATIONS

Damages are a monetary award given to a person who has been injured by another person's tortious act.[127] Compensatory damages are a specific type of damages intended to compensate that person for the

122. *Id.* at 719.

123. *Id.* at 718.

124. *Id.*

125. *Id.* at 717 (emphasis omitted).

126. *Id.* at 718.

127. RESTATEMENT (SECOND) OF TORTS § 902 (1965).

injury caused by the tortuous conduct of another.[128] Tort law states that any claim that requests compensatory damages must allege actual injury, which consists of physical harm or mental or emotional harm.[129] Courts holding that compensatory damages are barred by § 1997e(e) for all federal actions absent a showing of physical injury by an inmate cite the Supreme Court's decision in *Carey v. Piphus*, which held that common law tort principles are applicable to § 1983 claims.[130] However, the Court in *Carey* held that common law tort principles serve only as a starting point in assessing damages for § 1983 claims.[131]

Carey dealt with a suit by high school freshman Jarius Piphus, who was suspended for smoking marijuana.[132] Because he was never given an opportunity to challenge the suspension, Piphus brought a § 1983 suit claiming that he was denied procedural due process and sought compensatory damages.[133] The Supreme Court held that the student could recover compensatory damages only if the denial of his constitutional rights resulted in some actual injury.[134] The Court explained that "[r]ights, constitutional and otherwise, do not exist in a vacuum. Their purpose is to protect persons from injuries to particular interests."[135] As such, in the absence of any actual injury, compensatory damages may not be awarded.[136]

The Court acknowledged, however, that in some cases there may not be a common law equivalent for the interests protected by a particular constitutional right.[137] In such instances, awarding compensatory damages is still an appropriate form of relief and should be measured by the interests protected by the constitutional right at issue.[138] The Court stated, "In order to further the purpose of § 1983, the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question."[139]

After the decision in *Carey*, other courts recognized that violations of

128. *Id.* § 903.
129. *Id.* § 907.
130. 435 U.S. 247, 255 (1978).
131. *Id.* at 258.
132. *Id.* at 248–49.
133. *Id.* at 249–50.
134. *Id.* at 264.
135. *Id.* at 254.
136. *Id.* at 264.
137. *Id.* at 258.
138. *Id.*
139. *Id.* at 258–59.

constitutional rights may cause injuries that cannot be redressed by an inflexible application of common law damages rules.[140] In *Hobson v. Wilson*, the plaintiffs claimed that F.B.I. agents had violated their First Amendment rights by preventing them from participating in a demonstration.[141] The U.S. Court of Appeals for the D.C. Circuit held that compensatory damages can be awarded for the violation of a First Amendment right regardless of any mental or emotional injury the plaintiffs sustained.[142] The court explained, however, that compensatory damages can only be awarded for an injury that is "reasonably quantifiable."[143] Citing the Supreme Court's opinion in *Carey*, the court also explained that "intangible interests must be compensated if they can be conceptualized and if harm can be shown with sufficient certainty to avoid damages based either on pure speculation or the so-called inherent value of the rights violated."[144] The court went on to hold that "proof that a plaintiff was deterred from . . . participating in a demonstration . . . would merit 'fair compensation.'"[145]

The Seventh Circuit has also recognized that a violation of constitutional rights is compensable so long as the plaintiff can show some actual harm.[146] In *Kincaid v. Rusk*, pretrial detainee Darrell Kincaid claimed that his First Amendment rights were violated when he was prevented from reading any pictorial magazines, such as *Sports Illustrated*, during his detention.[147] The Seventh Circuit held that this restriction on reading material did violate Kincaid's First Amendment rights.[148] While the court explained that Kincaid may have had a compensable injury if he had shown that "jail conditions were 'less desirable' because of the restricted access to reading material,"[149] it nevertheless found that the deprivations "do not rise to the level of such 'deplorable' conditions as might otherwise justify an award of substantial compensatory damages."

140. Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984).

141. *Id.* at 57.

142. *Id.* at 62.

143. *Id.*

144. *Id.*

145. *Id.*

146. Kincaid v. Rusk, 670 F.2d 737, 745–46 (7th Cir. 1982) *overruled on other grounds by* Salazar v. City of Chicago, 940 F.2d 233 (7th Cir. 1991).

147. *Id.* at 743.

148. *Id.* at 744.

149. *Id.* at 746.

V. ANALYSIS OF *ROYAL V. KAUTZKY*

The Eighth Circuit in *Royal v. Kautzky*, concluded that 42 U.S.C § 1997e(e)'s ban on inmate claim alleging mental or emotional injuries applied to Jeffery Royal's First Amendment claim.[150] The court began its discussion by noting that Royal had acknowledged that he did not suffer any physical injury.[151] It explained that it found persuasive the reasoning of courts holding that First Amendment claims fell within 1997e(e)'s language.[152] The court stated that in its view, Congress did not intend § 1997e(e) to limit recovery only to a select group of federal actions brought by prisoners.[153] Instead, the statute limits recovery for mental or emotional injury in all federal actions brought by prisoners.[154] The court explained that it could not "escape the unmistakably clear language Congress used . . . . To read the statute to exempt First Amendment claims would require us to interpret 'no Federal civil action' to mean 'no Federal civil action [except for First Amendment violations].'"[155] Having reached that conclusion, the court also held that compensatory damages were barred by § 1997e(e).[156]

Other circuits, including the Tenth, Second, and Third Circuits, have come to these same conclusions: 1) that § 1997e(e) limits recovery for all federal claims that do not allege physical injury and 2) that compensatory damages are, therefore, not available.[157] With regard to the conclusion that § 1997e(e) applies to all federal claims failing to allege physical injury, these circuits reach this conclusion by asserting that the language of § 1997e(e) unambiguously limits recovery for all types of claims including claims for violations of constitutional rights.[158] However, other courts have come to the opposite conclusion regarding this same statutory language.[159] The U.S. District Court for the Southern District of New York in *Amaker v. Haponik*, for example, stated

150. Royal v. Kautzky, 375 F.3d 720, 723 (8th Cir. 2004).

151. *Id.* at 722.

152. *Id.* at 723 (citing Thompson v. Carter, 284 F.3d 411, 416 (2d Cir. 2002); Searles v. Van Bebber, 251 F.3d 869, 876 (10th Cir. 2001); Allah v. Al-Hafeez, 226 F.3d 247, 250-51 (3d Cir. 2000); Todd v. Graves, 217 F. Supp. 2d 958, 961 (S.D. Iowa 2002)).

153. *Id.*

154. *Id.*

155. *Id.* (quoting 42 U.S.C. § 1997e(e)) (alterations in original).

156. *Id.*

157. Thompson v. Carter, 284 F.3d 411, 417–18 (2d Cir. 2002); Searles v. Van Bebber, 251 F.3d 869, 877 (10th Cir. 2001); Allah v. Al-Hafeez, 226 F.3d 247, 248 (3d Cir. 2000).

158. *See supra* note 153.

159. No. 98 CIV. 2663(JGK), 1999 WL 76798, at *7 (S.D.N.Y. Feb. 17, 1999).

persuasively that the language "for mental or emotional injury" would be rendered meaningless if § 1997e(e) was held to apply to all federal civil actions.[160] Additionally, the D.C. Circuit's explanation in *Mason v. Schriro* that there are two possible interpretations of the language "for mental or emotional injury" demonstrates that the meaning of the statute is ambiguous.[161] Of the two approaches articulated, the court in *Mason* adopted the narrow approach to the language "for mental or emotional injury" reasoning that it was most consistent with congressional intent.[162]

As the Supreme Court has instructed, when a statute is susceptible to more than one interpretation, courts must examine Congress's intent in enacting the legislation.[163] If the Eighth Circuit had done this, it would have discovered that members of Congress have expressly stated that they did not intend for § 1997e(e) to limit legitimate claims by inmates.[164] Rather, § 1997e(e) was aimed at frivolous claims such as claims alleging insufficient storage locker space or a defective haircut by a prison barber.[165] The narrow approach adopted by the court in *Mason*, and utilized by other circuits holding that a First Amendment claim is not within the meaning of § 1997e(e)'s limitation on damages, is most consistent with Congress's stated intention to not limit legitimate claims. Under the narrow interpretation, the available remedies for a violation of an inmate's First Amendment rights would be limited by § 1997e(e) only when emotional or mental injury served as the basis for the First Amendment claim.

Jeffery Royal's claim that he was retaliated against for exercising his First Amendment right of access to the courts when he was placed in segregation was not frivolous.[166] If the Eighth Circuit had more thoroughly examined Congress's intent in passing § 1997e(e), it would have seen that the statute was never mean to apply to claims like Royal's. The court, therefore, should have adopted the narrow interpretation of the language "for mental or emotional injury" articulated by the court in *Mason.* Under this narrow interpretation, the Eighth Circuit would have appropriately concluded that Royal's claim was not limited by § 1997e(e) as mental or emotional harm did not

160. *Id.*

161. 45 F. Supp. 2d 709, 717 (W.D. Mo. 1999).

162. *Id.* at 718.

163. Negonsott v. Samuels, 507 U.S. 99, 104 (1993).

164. *See supra* note 45.

165. *See supra* note 37 and accompanying text.

166. Royal v. Kautzky, 375 F.3d 720, 726 (8th Cir. 2004).

provide the foundation for his First Amendment claim.

Once the Eighth Circuit determined that Royal's First Amendment claim was a claim for mental or emotional injury within the meaning of § 1997e(e), it then held that compensatory damages were precluded.[167] Again, the Tenth, Second, and Third Circuits have all reached the same conclusion[168] by citing the Supreme Court's decision in *Carey v. Piphus* that common law tort principles apply to § 1983 claims.[169] As stated above, common law principles allow for an award of compensatory damages only in instances where the plaintiff has suffered either physical or mental or emotional injury.[170] Therefore, if a First Amendment claim requesting compensatory damages is not alleging physical harm, these courts reason that the claim must be alleging mental or emotional harm, which § 1997e(e) directly bars. Implicit in the reasoning of these courts is that even if a First Amendment claim were held not to be a claim for mental or emotional injury and, therefore, not within the scope of § 1997e(e), an inmate plaintiff would still be prevented from recovering compensatory damages because such damages cannot be awarded for the value of an abstract right such as a right protected by the First Amendment.

However, *Carey v. Piphus* held that common law tort principles serve only as a starting point for determining damages for § 1983 claims.[171] Additionally, several courts have found First Amendment claims compensable so long as the plaintiff can demonstrate a quantifiable injury.[172] Moreover, these courts have found that a First Amendment violation results in a quantifiable injury in instances where a plaintiff was prevented from participating in a demonstration, and where an inmate was denied access to certain books.[173] Courts that have refused to apply § 1997e(e) to First Amendment claims and allowed an award of compensatory damages have done so in analogous circumstances. For example, the Ninth Circuit in *Canell v. Lightner* allowed for an award of compensatory damages where the inmate plaintiff alleged that his rights under the First Amendment were violated

167. *Id.* at 727.

168. Thompson v. Carter, 284 F.3d 411, 417–18 (2d Cir. 2002); Searles v. Van Bebber, 251 F.3d 869, 877 (10th Cir. 2001); Allah v. Al-Hafeez, 226 F.3d 247, 248 (3d Cir. 2000).

169. *Thompson*, 284 F.3d at 417–18; *Searles*, 251 F.3d at 877; *Allah*, 226 F.3d at 248.

170. RESTATEMENT (SECOND) OF TORTS § 907 (1965).

171. 435 U.S. 247, 258 (1978).

172. *See e.g.*, Hobson v. Wilson, 737 F.2d 1, 62 (D.C. Cir. 1984); Kincaid v. Rusk, 670 F.2d 737, 746 (7th Cir. 1982).

173. *Hobson*, 737 F.2d at 62; *Kincaid*, 670 F.2d at 746. (see above).

when he was prevented from practicing his religion.[174] Similarly, the U.S. District Court for the District of Massachusetts in *Shaheed-Muhammad v. Dipaolo* allowed a claim for compensatory damages to go forward where the inmate plaintiff was denied access to a particular newspaper.[175] At the same time, however, these courts fail to acknowledge that compensatory damages can only be awarded for constitutional violations in circumstances where the injury to the inmate plaintiff is reasonably quantifiable. In this sense, even courts that allow for an award of compensatory damages for First Amendment violations do not apply the law in accordance with Supreme Court precedent. Nevertheless, when a First Amendment violation results in quantifiable injury to an inmate plaintiff, compensatory damages are an appropriate remedy.

In *Royal v. Kautzky*, Jeffery Royal was retaliated against in violation his First Amendment right to petition for redress of his grievances when he was placed in segregation for almost two months.[176] Suggesting that no damage was done or that his injury was not reasonably quantifiable would be wrong. Moreover, there is no reason why such an injury should not be compensable in damages so long as the amount awarded is proportional to the actual loss sustained. Therefore, the Eighth Circuit should have concluded: 1) that Jeffery Royal's First Amendment claim was not a claim for mental or emotional injury within the meaning of § 1997e(e) and 2) that compensatory damages could be awarded provided the award was proportional to the actual loss Royal sustained.

VI. CONCLUSION

The Prison Litigation Reform Act and 42 U.S.C. § 1997e(e) were enacted by Congress to limit the steadily increasing number of less-than-meritorious claims brought by inmates.[177] While the legislative history of § 1997e(e) evinces an intention by Congress to limit frivolous claims brought by inmates, Senators expressly stated that they did not intend this limitation to extend to meritorious claims filed by inmates. Courts that hold that First Amendment claims do not fall within the meaning § 1997e(e), such as the Ninth and Seventh Circuits, protect an inmate's ability to receive compensation when he or she has been the victim of a

174. 143 F.3d 1210, 1213 (9th Cir. 1998).

175. 138 F. Supp. 2d 99, 107 (D. Mass. 2001) (denying a motion to dismiss the compensatory damages claim).

176. Royal v. Kautzky, 375 F.3d 720, 723 (8th Cir. 2004).

177. *See supra* note 32.

legitimate First Amendment violation. These courts adopt a narrow approach to the language "for mental or emotional injury." Under this interpretation, First Amendment claims will only be subject to § 1997e(e)'s limitation on available remedies in circumstances where mental or emotional injury provides the foundation for the rights asserted. Additionally, these courts allow for an award of compensatory damages when such violations occur. This approach is most consistent with Congress's stated intention that § 1997e(e) not limit legitimate claims by inmates and avoids constitutional concerns regarding First Amendment claims. Unfortunately, even if this approach was adopted by every court of appeals, legitimate claims alleging constitutional violations will still be limited by § 1997e(e)'s physical injury requirement.

Claims for mental or emotional injury are not inherently frivolous claims. In the context of an Eighth Amendment violation, mental or emotional injury will often serve as the basis for the claim.[178] Whether Congress considered this when enacting § 1997e(e) or whether its members simply believed that all claims for mental or emotional injury are inherently frivolous is uncertain. What is clear is that Congress did not intend for § 1997e(e) to limit the remedies available for inmates bringing legitimate claims. However, § 1997e(e) does just that. Certainly there are many other provisions contained within the PLRA which serve to fulfill the act's intended purpose of limiting frivolous claims. Congress should, therefore, amend the PLRA to abandon the physical injury requirement contained in § 1997e(e) of the PLRA as it limits the available remedies for inmates even when they file legitimate claims.

178. *See* Winslow, *supra* note 30, at 1678–79.