No. 17-6064

IN THE

United States Court of Appeals for the Tenth Circuit

MARCUS D. WOODSON

Plaintiff-Appellant,

v.

TRACY MCCOLLUM, IN HER INDIVIDUAL CAPACITY, ET AL.,

Defendants-Appellees.

On Appeal from the U.S. District Court for the
Western District of Oklahoma, No. 5:17-CV-00094-D
Judge Timothy D. DeGiusti

BRIEF OF APPELLANT

Amir H. Ali
Roderick & Solange MacArthur Justice Center
718 7th Street NW
Washington D.C. 20001
P: (202) 869-3434
F: (202) 689-3435
amir.ali@macarthurjustice.org

Counsel for Appellant Marcus D. Woodson

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF RELATED CASES 1

JURISDICTIONAL STATEMENT 1

STATEMENT OF THE ISSUE 1

STATEMENT OF THE CASE 2

I. Background Regarding Oklahoma's State Scheme And The Federal Scheme Governing Filing Fees And *In Forma Pauperis*. 2

A. Oklahoma's Statutory Scheme. 2

B. The Federal Scheme. 3

II. Mr. Woodson's State Court Action And Defendants' Removal To Initiate Federal Proceedings. 5

III. The District Court's *Sua Sponte* Dismissal Based On Mr. Woodson's Failure To Pay An Additional Federal Filing Fee. 6

SUMMARY OF ARGUMENT 8

STANDARD OF REVIEW 10

ARGUMENT 10

I. Under The Plain Language Of 28 U.S.C. §§ 1914, 1915 Defendants—And Not Mr. Woodson—Were Required To Pay The Federal Filing Fee. 10

II. Imposing A Second Filing Fee Where A Plaintiff Filed His Action In State Court Would Frustrate Congress's Intent And Conflict With Basic Principles Of Federalism. 14

III. Interpreting § 1915(g) To Apply To Actions Filed In State Court Would Render It Unconstitutional. 18

CONCLUSION 21

STATEMENT REGARDING ORAL ARGUMENT 23

TABLE OF AUTHORITIES

Cases

Abdul-Akbar v. McKelvie,
239 F.3d 307 (3d Cir. 2001)...15, 17, 18, 20

Bailey v. Suey,
No. 2:12-CV-01954-JCM, 2014 WL 3897948 (D. Nev. Aug. 11, 2014)................13

Bruce v. Samuels,
136 S. Ct. 627 (2016)..13

Coleman v. Tollefson,
135 S. Ct. 1759 (2015)...14. 15

Davis v. Rice,
299 F. App'x 834 (10th Cir. 2008)...5

Hain v. Mullin,
436 F.3d 1168, 1176 (10th Cir. 2006)..10

Hampton v. Hobbs,
106 F.3d 1281 (6th Cir. 1997)..15

Maine v. Thiboutot,
448 U.S. 1 (1980)...15

Rust v. Sullivan,
500 U.S. 173 (1991)...20

Tafflin v. Levitt,
493 U.S. 455 (1990)...15

United States v. Husted,
545 F.3d 1240 (10th Cir. 2008)...10, 11

United States v. Ron Pair Enterprises, Inc.,
489 U.S. 235 (1989)...10

White v. State of Colo.,
157 F.3d 1226 (10th Cir. 1998)...12, 19

Wilson v. Yaklich,
148 F.3d 596 (6th Cir. 1998) 18

Woodford v. Ngo,
548 U.S. 81 (2006) 14, 15

Statutes

28 U.S.C. § 1291 1

28 U.S.C. § 1331 1

28 U.S.C. § 1367 1

28 U.S.C. § 1441(a) 1, 6

28 U.S.C. § 1914 3

28 U.S.C. § 1914(a) ....*passim*

28 U.S.C. § 1914(b) 3, 8, 11, 12

28 U.S.C. § 1915 3

28 U.S.C. § 1915(a) 4

28 U.S.C. § 1915(a)(1) 12

28 U.S.C. § 1915(b) 4

28 U.S.C. § 1915(b)(3) 14

28 U.S.C. § 1915(g) ....*passim*

42 U.S.C. § 1981 1

42 U.S.C. § 1983 1

42 U.S.C. § 1985 1

Okla. Stat. tit. 12, § 2003.1 ....2, 5, 6

Okla. Stat. tit. 12, § 2003.1(D) 3

Okla. Stat. tit. 28, § 152(A) 2

Okla. Stat. tit. 28, § 152(G) 2

Okla. Stat. tit. 57, § 566.2 6

Okla. Stat. tit. 57, § 566.2(A) 2, 3

Okla. Stat. tit. 57, § 566.2(B) 3

Okla. Stat. tit. 57, § 566.3 .... *passim*

Okla. Stat. tit. 57, § 566.3(A)(1) 2

Other Authorities

141 Cong. Rec. S7498-01 (May 25, 1995) 15, 16

Act of July 20, ch. 209, 27 Stat. 252 (1892) 14

John MacArthur Maguire, *Poverty and Civil Litigation*, 36 Harv. L. Rev. 361 (1923) 15, 19

Joseph T. Lukens, *The Prison Litigation Reform Act: Three Strikes and You're Out of Court-It May Be Effective, but Is It Constitutional?*, 70 Temp. L. Rev. 471 (1997) 19

STATEMENT OF RELATED CASES

There are no prior or related appeals.

JURISDICTIONAL STATEMENT

The United States District Court for the Western District of Oklahoma had jurisdiction over this matter under 28 U.S.C. §§ 1331, 1367, 1441 and 42 U.S.C. §§ 1981, 1983, 1985. The district court issued a final decision dismissing Appellant Marcus D. Woodson's claims on March 9, 2017, and Mr. Woodson timely filed a notice of appeal on March 20, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Mr. Woodson filed an action in Oklahoma state court alleging serious violations of his constitutional rights. The state court granted Mr. Woodson's request to proceed *in forma pauperis*, allowing him to proceed with only partial prepayment of the applicable filing fee and to pay the remaining fees due over time, in accordance with governing Oklahoma law. Defendants thereafter removed, initiating proceedings in federal court, and paid the federal filing fee set forth in 28 U.S.C. § 1914(a).

Did the district court err by concluding that Mr. Woodson was required to pay an additional federal filing fee?

STATEMENT OF THE CASE

I. Background Regarding Oklahoma's State Scheme And The Federal Scheme Governing Filing Fees And *In Forma Pauperis*.

A. Oklahoma's Statutory Scheme.

The Oklahoma State Legislature has enacted laws to govern litigants' payment of filing fees, and exceptions thereto, for actions filed in Oklahoma state courts.

Under those laws, a state court is required to collect a specified filing fee from the plaintiff at the time of filing. Okla. Stat. tit. 28, § 152(A). The Legislature has provided an exception, however, where a plaintiff can satisfy state standards for demonstrating that he "is unable to pay the fees and costs provided for in this section" and may thus proceed *in forma pauperis* ("IFP"), Okla. Stat. tit. 28, § 152(G), and sets forth rules that apply specifically to state prisoners, Okla. Stat. tit. 12, § 2003.1; Okla. Stat. tit. 57, § 566.3. Under those rules, a prisoner who is granted IFP status must still pay the full filing fee; however, the court is authorized to order only partial prepayment, followed by a schedule of payments, until the full fee is recovered. Okla. Stat. tit. 57, § 566.3(A)(1).

In effort to discourage prisoners from repeatedly filing frivolous appeals, Oklahoma has adopted a "three-strikes" provision, which provides that "[a] prisoner who has, on three or more prior occasions" had an action or appeal dismissed "on the grounds that the case was frivolous, or malicious, or failed to state a claim" may

not proceed IFP and must, instead, prepay all fees required by state law. Okla. Stat. tit. 57, § 566.2(A). The state three-strikes provision is administered based on a registry maintained by Oklahoma courts that tracks dismissals that qualify as a "strike," which must be reported to the court by state prosecuting agencies. *Id.* § 566.2(B).

When a prisoner brings an action in Oklahoma state court and files an action for IFP status, the state court is required to review the application for compliance with state law. Okla. Stat. tit. 12, § 2003.1(D); Okla. Stat. tit. 57, § 566.3.

B. The Federal Scheme.

Congress has enacted a federal scheme to govern the payment of filing fees in federal courts. *See* 28 U.S.C. §§ 1914 and 1915.

Under § 1914, a district court "shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350." 28 U.S.C. § 1914(a). In other words, a plaintiff who files an action in federal court must prepay the federal filing fee and, in the case of an action that the defendant removes to federal court, the defendant must prepay the federal filing fee. Section 1914 prevents a court from collecting any other fees unless "prescribed by the Judicial Conference of the United States." 28 U.S.C. § 1914(b).

Like Oklahoma's state court scheme, federal law provides an exception to prepayment of the federal filing fee required by § 1914 where a party is unable to afford it, allowing that party to instead proceed IFP. *See* 28 U.S.C. § 1915(a) ("any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees" where the prisoner who has shown he "is unable to pay such fees"). Similar to Oklahoma's scheme, when a prisoner proceeds IFP under the federal scheme, he is generally "required to pay the full amount of a filing fee," but the court may establish an initial payment and subsequent installment payments until the fee has been collected. *Id.* § 1915(b).

Moreover, like the Oklahoma scheme governing state court actions, Congress has enacted a three-strikes provision, which prevents a prisoner responsible for paying a filing fee under § 1914 from obtaining the waiver of prepayment available individuals who qualify as IFP under the federal scheme. The three-strikes provision, codified in § 1915(g), provides that after a prisoner has had three or more actions or appeals dismissed as frivolous, malicious, or failing to state a claim, "[i]n no event shall [he] bring a civil action or appeal a judgment in a civil action or proceeding under" § 1915's prepayment waiver. *Id.* § 1915(g).

II. Mr. Woodson's State Court Action And Defendants' Removal To Initiate Federal Proceedings.

Appellant Marcus D. Woodson has suffered several serious violations of his constitutional rights. Among other things, Defendant prison officials have subjected him to extended and indefinite solitary confinement, without any legitimate basis, based on fabricated evidence, and without any meaningful review, in retaliation for filing grievances in violation of his Eighth and Fourteenth Amendment rights. Dist. Ct. ECF No. 1 Ex. 4. ¶¶ 1, 3, 4, 5, 6, 7, 8, 11. Defendant prison officials have also physically abused Mr. Woodson, causing him severe injuries, in retaliation for filing grievances against them. *Id.* ¶ 10. Moreover, Defendant prison officials have deliberately denied Mr. Woodson medication necessary to his severe injuries based on an unconstitutional policy and practice of denying pain medication. *Id.* ¶ 9.[1]

On December 12, 2016, Mr. Woodson filed a complaint in state court alleging these constitutional violations. In accordance with the scheme adopted by the Oklahoma Legislature, described above, Mr. Woodson filed an application to proceed IFP. Aplt. App. at 11-12; *see also* Okla. Stat. tit. 57, § 566.3; Okla. Stat. tit. 12, § 2003.1.

---

[1] Where, as here, a district court dismisses an action pursuant to 28 U.S.C. § 1915(g), the complaint must be construed liberally and accepted as true. *Davis v. Rice*, 299 F. App'x 834, 835 (10th Cir. 2008) (citing *Ibrahim v. District of Columbia*, 463 F.3d 3, 6 (D.C. Cir. 2006)).

The state court reviewed Mr. Woodson's application to evaluate whether he was entitled to IFP status under governing state law, *see* Okla. Stat. tit. 57, §§ 566.2, 566.3; Okla. Stat. tit. 12, § 2003.1, and concluded that he was, Aplt. App. at 13-14. Consistent with Oklahoma law, the court thus ordered him to prepay state filing fees in the amount of $144.14 and to thereafter make monthly payments of $10.00 per month until all fees are paid. Aplt. App. at 13.

On January 31, 2017, Defendants exercised their right to remove Mr. Woodson's state action under to 28 U.S.C. § 1441(a), initiating proceedings in federal court. Aplt. App. at 8-10. In accordance with 28 U.S.C. § 1914(a), Defendants paid the full filing fee for initiating federal proceedings. Aplt. App. at 5 (February, 1 2017 docket entry).

III. The District Court's *Sua Sponte* Dismissal Based On Mr. Woodson's Failure To Pay An Additional Federal Filing Fee.

On February 6, 2017, the magistrate judge *sua sponte* recommended that this action be dismissed, reasoning that Mr. Woodson had three strikes within the meaning of the federal three-strikes provision, 28 U.S.C. § 1915(g), and thus could not proceed without paying a federal filing fee. Aplt. App. at 15-20. Relying upon two unpublished decisions from the District of Kansas (which also involved *pro se* plaintiffs), the magistrate judge reasoned that allowing Mr. Woodson to proceed with his lawsuit after Defendants removed the case to federal court would allow him to "circumvent" the federal three-strikes provision. Aplt. App. at 17-18 (citing *Lynn*

v. Peltzer, No. 16-3096-JTM-DJW, 2016 WL 4060272 (D. Kan. July 29, 2016); *Evans v. Bristol-Myers Squibb Co.*, No. 16-1039, 2016 WL 3184421 (D. Kan. June 8, 2016)).

Mr. Woodson filed an objection to the magistrate judge's Report and Recommendation, arguing, among other things, that the federal three-strikes provision, by its terms, did not apply because he had initiated this action in state court. Dist. Ct. ECF No. 9 at 3-8. He further argued that, upon exercising their right to removal and initiating these federal proceedings, Defendants had already paid the federal filing fee. *Id.* at. 5-6.

On March 9, 2017, the district court issued an opinion adopting the magistrate judge's recommendation, concluding that Mr. Woodson's case should be dismissed because he was required to prepay the federal filing fee under the federal three-strikes provision, 28 U.S.C. § 1915(g). Aplt. App. at 21-25. The court observed that federal district courts are split on whether § 1915(g) requires a prisoner to pay a filing fee where he has initiated his action in state court and the Defendants have removed, and that this Court has not yet addressed the issue. Aplt. App. at 23. The court acknowledged that "the filing fee here was paid by the removing defendants,"

but nonetheless ordered that Mr. Woodson "pre-pay in full all filing fees." Aplt. App. at 24.[2]

Mr. Woodson timely appealed. Dist. Ct. ECF Nos. 12, 18.

SUMMARY OF ARGUMENT

Under the plain language of the statutory scheme set forth in §§ 1914 and 1915, Defendants—and not Mr. Woodson—were responsible for paying the federal filing fee upon removing this action to federal court. *See* 28 U.S.C. § 1914(a) (providing that federal courts must collect the filing fee from the defendant where he has "institute[ed] [the] civil action, suit or proceeding in [federal district] court . . . by . . . removal"). Indeed, the imposition of an additional filing fee upon Mr. Woodson conflicts with the statute's directive that courts may collect additional fees "only as are prescribed by the Judicial Conference of the United States." *Id.* § 1914(b).

The district court's conclusion that § 1915(g) required Mr. Woodson to pay an additional federal filing fee is based on a misunderstanding of the statutory structure. Section 1915 authorizes a federal court to waive prepayment of a federal filing fee, unless the plaintiff has previously had three suits dismissed as frivolous,

[2] The court held, in the alternative, that Mr. Woodson must demonstrate "imminent danger of serious physical injury." 28 U.S.C. § 1915(g); Aplt. App. 4-5. The "imminent danger" requirement is not at issue in this appeal.

malicious, or failing to state a claim under § 1915(g). Because Mr. Woodson was not required to pay the federal filing fee, § 1915 has no application here.

Requiring Mr. Woodson to pay an additional federal filing fee after he filed his action in state court would also conflict with Congress's intent in enacting § 1915(g), which sought to disincentivize frivolous prisoner suits in federal court, without disturbing states' ability to keep their courthouse doors open. If it were true that defendants could always simply remove an action from state court and invoke the federal three-strikes provision whenever a prisoner has three strikes under § 1915(g), the rules set forth by state legislatures to allow prisoners access to state courts would be rendered a nullity. This conflicts with Congress's intent to have a federalist scheme and the well-established principle that state courts are competent to resolve federal constitutional claims.

Indeed, requiring Mr. Woodson to pay an additional filing fee, as the district court did here, would render § 1915(g) unconstitutional. In previously upholding the constitutionality of § 1915(g), federal circuits have expressly relied on the fact that prisoners who are prevented from filing their actions in federal court under § 1915(g) would not be prevented from filing in state court. Moreover, because a prisoner whose action was removed from state court may have already been ordered to pay a filing fee to the state court (as Mr. Woodson was here), interpreting § 1915(g) to require an additional, federal filing fee would mean that indigent prisoners—*and*

only indigent prisoners—have to pay *two* filing fees simply because they have had three prior cases dismissed. No other class of plaintiff would ever have to pay two filing fees, no matter how many frivolous cases he had previously filed. There is no rational basis for singling prisoners who have had prior dismissals to pay an extra filing fee, but no other plaintiffs.

This Court should apply the plain language of the statute, which acts in tandem with Congress's intent and respect for federalism, and thereby avoid rendering § 1915(g) unconstitutional.

STANDARD OF REVIEW

This Court reviews a district court's interpretation of a federal statute de novo. *Hain v. Mullin*, 436 F.3d 1168, 1176 (10th Cir. 2006) (en banc).

ARGUMENT

I. Under The Plain Language Of 28 U.S.C. §§ 1914, 1915 Defendants—And Not Mr. Woodson—Were Required To Pay The Federal Filing Fee.

In all cases involving statutory interpretation, courts "must begin" with the language of the statute itself. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). Where "the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Id.* (quoting *Caminetti v. United States,* 242 U.S. 470, 485 (1917)); *see also United States v. Husted*, 545 F.3d 1240, 1245 (10th Cir. 2008) ("When a statute is unambiguous, . . . [this Court] must apply its plain meaning except in the rarest of cases."). "[A]fter all, there can be no greater

statement of legislative intent than an unambiguous statute itself." *Husted*, 545 F.3d at 1245.

The plain language of §§ 1914 and 1915 required Defendants to pay the federal filing fee upon removal and does not authorize the imposition of a further filing fee upon Mr. Woodson. As described above, § 1914 provides that federal district courts "shall require the parties instituting any civil action, suit or proceeding in such court, *whether by original process, removal or otherwise*, to pay a filing fee of $350." 28 U.S.C. § 1914(a) (emphasis added). While a plaintiff who chooses to sue in federal court would be responsible for paying the filing fee under this language, the provision is clear that, in the case of an action initiated in state court, it is "the party instituting [the] civil action . . . by . . . removal" that must pay the fee. *Id.*

The plain language above mandates reversal because, contrary to the district court's conclusion, Mr. Woodson was not required to pay any filing fee. Defendants were properly made responsible for and prepaid the federal filing fee upon their election to remove the action from state court and institute federal proceedings. Aplt. App. 5. There is no further federal filing fee for Mr. Woodson to prepay. Indeed, Congress has explicitly precluded courts from seeking to collect an additional filing fees from parties, providing that a district court "shall collect from the parties such

additional fees only as are prescribed by the Judicial Conference of the United States." 28 U.S.C. § 1914(b).

The district court concluded that "although Defendants properly removed this case and paid the full filing fee," Mr. Woodson was required to "pre-pay in full all filing fees" under § 1915(g). Aplt. App. 24. That reasoning is based on a misunderstanding of the statutory structure and conflicts with its plain language.

The three-strikes provision in § 1915(g) does not impose any independent filing fee; it prohibits a party who *is* required to pay the federal filing fee from avoiding prepayment of that fee, under the IFP provisions in § 1915(a)-(f). *See White v. State of Colo.*, 157 F.3d 1226, 1233 (10th Cir. 1998) ("By its terms, § 1915(g) . . . merely prohibits [a prisoner] from enjoying [*IFP*] status.") (quotation marks omitted, last alteration in original).

In particular, and as set forth above, § 1915(a) authorizes federal courts to waive prepayment of the filing fees specified in § 1914 where the party responsible for those fees—*i.e.*, the plaintiff in the case of an action filed directly in federal court or the defendant in a federal case initiated by removal—satisfies certain criteria. *See* 28 U.S.C. § 1915(a)(1) ("any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor" where the party who has shown he "is unable to pay such fees"). Section 1915(g) simply

provides that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding *under this section*"—*i.e.*, pursuant to § 1915's prepayment waiver for IFP individuals—"if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." *Id.* § 1915(g) (emphasis added); *see also Bruce v. Samuels*, 136 S. Ct. 627, 630 (2016) (Section 1915(g) simply provides that "for most three strikers, all future filing fees become payable in full upfront").

Because it was Defendants who "institute[ed] [the] civil action, suit or proceeding in [federal district] court . . . by . . . removal" and are responsible for the federal filing fee, *id.* § 1914(a), Mr. Woodson—like any other plaintiff whose state court action is removed—is not responsible for the fee and need not avail himself of § 1915's prepayment waiver. Section 1915(g) thus has no application. *See Bailey v. Suey*, No. 2:12-CV-01954-JCM, 2014 WL 3897948, at *3 (D. Nev. Aug. 11, 2014) ("as a consequence of removal, 'there was, and is, no need for plaintiff to seek leave to proceed without prepayment of the filing fee pursuant to Section 1915'" (quoting

Carrea v. California, No. EDCV 07-1148-CAS MAN, 2010 WL 3984832, at *8 (C.D. Cal. Aug. 25, 2010))).[3]

II. Imposing A Second Filing Fee Where A Plaintiff Filed His Action In State Court Would Frustrate Congress's Intent And Conflict With Basic Principles Of Federalism.

Congress enacted the federal three-strikes provision, part of the Prison Litigation Reform Act ("PLRA"), "in the wake of a sharp rise in prisoner litigation in the federal courts." *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (citation omitted). As early as 1892, Congress had authorized individuals who file actions in federal court to obtain IFP status, now codified in 28 U.S.C. § 1915, *see* Act of July 20, 1892, ch. 209, 27 Stat. 252. "[A]s the years passed," however, "Congress came to see that prisoner suits in particular represented a disproportionate share of federal filings." *Coleman v. Tollefson*, 135 S. Ct. 1759, 1762 (2015). The three-strikes provision was thus passed to provide an "'economic incentive to refrain from filing

---

[3] In addition to conflicting with the plain language of § 1915(g), the statutory structure, and § 1914(b), the district court's interpretation of § 1915(g) conflicts with § 1915(b)(3). That provision states that even in circumstances where a prisoner *does* have reason to seek an IFP prepayment waiver, "[i]n no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment." Under the district court's interpretation of § 1915, the court would collect *twice* the normal civil filing fee when a prisoner has three-strikes: one fee from the defendant and one fee from the indigent prisoner. The fees collected would thus "exceed the amount of fees permitted by statute for the commencement of a civil action" in violation of § 1915(b)(3).

frivolous, malicious, or repetitive lawsuits.'" *Id.* at 1762 (quoting *Neitzke v. Williams*, 490 U.S. 319, 324 (1989)).

Although, through the PLRA, Congress intended to introduce disincentives for filing prisoner actions "*in the federal courts*," *Woodford*, 548 U.S. at 84 (emphasis added), it did not intend to interfere with the states' abilities to adjudicate prisoner claims. It is well established that state courts "have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States," *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990), and maintain concurrent jurisdiction over suits brought under 42 U.S.C. § 1983, *Maine v. Thiboutot*, 448 U.S. 1, 3, n.1 (1980). State legislatures have governed access to their state courts through IFP since the founding of this nation. *See* John MacArthur Maguire, *Poverty and Civil Litigation*, 36 Harv. L. Rev. 361, 381-390 (1923). In interpreting the PLRA, it is thus critical to understand that the "[p]otentially negative consequences in *federal* courts, as distinguished from *state* courts, are precisely the consequences intended by Congress." *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 315 (3d Cir. 2001) (en banc) (emphasis in original); *see also Hampton v. Hobbs*, 106 F.3d 1281, 1284 (6th Cir. 1997) (the PLRA "does not affect an inmate's ability to seek relief in state court").[4]

---

[4] Congress's intent to respect federalism is also reflected in the PLRA's legislative history. *See* 141 Cong. Rec. S7498-01, S7526 (May 25, 1995) (statement of co-sponsor explaining that § 1915 is intended to apply when "Federal, State, or local prisoner seeks to commence an action or proceeding *in Federal court* as a poor person" (emphasis added)); *id.* (describing need to "the need to discourage prisoners

The district court's interpretation of §§ 1914 and 1915 directly undermines Congress's purpose to disincentivize suits filed in federal court without interfering with the availability of state courts. If it were true that any time a prisoner filed his action in state court, the defendant could remove and invoke the federal three-strikes provision in § 1915(g), rules set forth by state legislatures that allow more generous access to state courts would be rendered a nullity. Whenever a prisoner with three strikes under federal law pursues his § 1983 action in state court and the state court determines that he is unable to prepay the filing fee and entitled to proceed IFP under state law, the defendants would always be able to remove to federal court, where the plaintiff would be required to prepay the federal filing fee and prevented from moving forward with his action. This would defeat the object of the state legislature, the determination of the state court, and Congress's purpose in adopting a federalist scheme.

That is precisely what happened here: Mr. Woodson filed his action in Oklahoma state court, which determined he was unable to prepay the state filing fee. In accordance with Oklahoma law, the state court allowed Mr. Woodson to proceed with partial prepayment and a schedule for paying the remaining amount due over time. The defendants removed, however, and although they have already paid the

---

from filing frivolous complaints . . . in the nearest *Federal* courthouse" (emphasis added) (citation omitted)).

applicable federal filing fee, the district court imposed upon Mr. Woodson an additional federal filing fee that would result in dismissal of constitutional claims that Mr. Woodson would otherwise have been able to pursue in state court. As addressed further below, not only does this conflict with Congress's intent by interfering with state procedures, but it would lead to indigent prisoners—and, very troublingly, *only indigent prisoners*—paying two filing fees: one partial or full fee required by state courts depending on the governing state IFP procedures and another fee required by federal courts upon the defendants' removal.

The court below thus got it backwards when it concluded that allowing Mr. Woodson to proceed without some extra filing fee would "circumvent" the PLRA. Aplt. App. 22 n.2. To be clear: Yes, an indigent prisoner who has three strikes under federal law, § 1915(g), and would thus be required to prepay the federal filing fee if he filed his action in federal court may be able to file his claim in state court, in accordance with the applicable state IFP rules. That, however, is "exactly the result the PLRA intends." *Abdul-Akbar*, 239 F.3d at 315. It is superimposition of the federal three-strikes provision upon actions initially filed in state court that would frustrate Congress's intent and conflict with the well-established principle that state courts are competent and available to adjudicate federal constitutional claims.

In light of the plain language of §§ 1914 and 1915, the statutory structure, and Congress's purpose, the district court erred by concluding that Mr. Woodson is required to pay a federal filing fee upon Defendants' removal.

III. Interpreting § 1915(g) To Apply To Actions Filed In State Court Would Render It Unconstitutional.

Applying the plain language of the statute leads to a straightforward outcome: The defendant—and not the plaintiff—pays the specified federal filing fee upon removal of an action from state court. And, as discussed above, that straightforward outcome is consistent with Congress's federalist intent in enacting § 1915(g). If this Court were to reach the opposite conclusion, however—and conclude that the plaintiff is responsible for paying a federal filing fee despite filing his action in state court—it would render § 1915 unconstitutional.

First, when parties have previously challenged the constitutionality of § 1915(g), on the basis that it may deny a prisoner with three-strikes any avenue to seek redress for constitutional violations, courts have expressly relied upon the fact that § 1915(g) would not affect the prisoner's access to state court. *See, e.g.*, *Abdul-Akbar*, 239 F.3d 307, 314-15 (3d Cir. 2001) (en banc) (reasoning that argument against § 1915 "overlooks the fact that prisoners may seek relief in state court, where limitations on filing I.F.P. may not be as strict"); *Wilson v. Yaklich*, 148 F.3d 596, 605 (6th Cir. 1998) (prisoner's fundamental right of access to the courts was not infringed upon because he "still had available . . . the opportunity to litigate his

federal constitutional causes of action *in forma pauperis* in state court"); *see also White*, 157 F.3d at 1234-35 (expressing agreement with *Wilson*); Joseph T. Lukens, *The Prison Litigation Reform Act: Three Strikes and You're Out of Court-It May Be Effective, but Is It Constitutional?*, 70 Temp. L. Rev. 471, 511 (1997) ("The strongest argument in support of section 1915(g) is that the affected class of prisoners still has resort to the state court systems," such that "foreclosure of their access to federal courts . . . is not a complete ban on their fundamental right of access to the courts."). Interpreting § 1915(g) to allow the dismissal of actions filed in state court would directly undermine these cases and the constitutionality of § 1915(g) itself.

Second, interpreting § 1915(g) to require a federal filing fee where actions have been filed in state court would be an egregious violation of due process because it would mean that indigent prisoners—*and only indigent prisoners*—may have to pay *two* filing fees simply because they have had three prior cases dismissed. As described above states have always had the latitude to adopt divergent rules concerning IFP plaintiffs, *see* Maguire, *supra* at 382-88—some states provide that IFP plaintiffs are not required to pay any costs, while others, like Oklahoma's prisoner IFP statute, Okla. Stat tit. 57, § 566.3, require IFP plaintiffs to pay a partial filing fee and the remaining amount over time. If this Court were to hold that a prisoner who files his action in state court, and is ordered to pay fees in accordance

with state rules, is later required by § 1915(g) to pay an additional filing fee in federal court, then prisoners in states such as Oklahoma would be required to pay two filing fees. Moreover, because § 1915(g) applies only to "prisoner[s]," no other type of plaintiff would ever be required to pay this duplicative filing fee, no matter the number of frivolous lawsuits he had filed.

There is no rational basis for singling out prisoners, but not other plaintiffs who file frivolous lawsuits, to pay a duplicative filing fee. The constitutionality of § 1915(g) has been a difficult and divisive issue even based on its ordinary interpretation, under which indigent prisoners have three strikes and file their actions in federal court are charged *the same filing fee* as other plaintiffs who file their actions in federal court. *See, e.g.*, *Abdul-Akbar*, 239 F.3d at 325-33 (dividing 9-4 on whether requiring an indigent prisoner to pay the same fee as other plaintiffs because he has three strikes violates due process). An interpretation of § 1915(g) that requires indigent prisoners to pay more than any other class of plaintiffs would be patently unconstitutional.[5]

[5] That the district court's interpretation would raise serious constitutional questions further supports Mr. Woodson's plain meaning reading of the statutory scheme. *Rust v. Sullivan*, 500 U.S. 173, 191 (1991) ("[A] statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score . . . out of respect for Congress, which we assume legislates in the light of constitutional limitations." (citation and internal quotation marks omitted).

The circumstances giving rise to this constitutional infirmity are not some hypothetical possibility—they are presented on this record. As described above, the Oklahoma Legislature's IFP rules do not grant indigent prisoners a free pass—prisoners are required to pay a partial filing fee, followed by payments in accordance with a schedule paid by the court. Consistent with those procedures, the state court has ordered Mr. Woodson prepay $144.14 and pay the remaining filing fees owed over time. Aplt. App. at 13. The district court's conclusion that Mr. Woodson must "pre-pay in full all filing fees" in federal court as well, Aplt. App. at 24, would thus put him on the hook for the full state filing fee *and* the full federal filing fee.

The Court should apply the plain meaning of §§ 1914 and 1915, effectuating Congress's intent, and avoid an interpretation that would render § 1915(g) unconstitutional.

CONCLUSION

For the foregoing reasons, the Court should reverse and remand for consideration of the merits of Mr. Woodson's claims.

Dated: June 12, 2017 Respectfully submitted,

/s/ Amir H. Ali

Amir H. Ali
Roderick & Solange MacArthur Justice Center
718 7th Street NW
Washington D.C. 20001
P: (202) 869-3434
F: (202) 689-3435
Email: amir.ali@macarthurjustice.org

Counsel for Appellant Marcus D. Woodson

STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests oral argument given that this case presents a question of first impression for this Court, upon which federal district courts across the country are divided, and given the serious constitutional questions implicated by the decision below.

CERTIFICATES OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(g)(1) because it contains 5,060 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

Dated: June 12, 2017

/s/ Amir H. Ali
Amir H. Ali

Counsel for Appellant Marcus D. Woodson

CERTIFICATE OF DIGITAL SUBMISSION

Pursuant to this Court's guidelines on the use of the CM/ECF system, I hereby certify that:

a. all required privacy redactions have been made;

b. the hard copies that have been submitted to the Clerk's Office are exact copies of the ECF filing; and

c. the ECF submission was scanned for viruses with the most recent version of a commercial virus scanning program, Windows Defender, version 1.245.775.0, last updated June 12, 2017, and according to the program is free of viruses.

Dated: June 12, 2017

/s/ Amir H. Ali
Amir H. Ali

Counsel for Appellant Marcus D. Woodson

CERTIFICATE OF SERVICE

I certify that on June 12, 2017, I filed a true, correct, and complete copy of the foregoing Brief of Appellant with the Court and served it on the following people via the Court's ECF System:

Stefanie Erin Lawson
Office of the Attorney General for the State of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105
Direct: 405-522-4274
Email: stefanie.lawson@oag.ok.gov

Dated: June 12, 2017

/s/ Amir H. Ali
Amir H. Ali

Counsel for Appellant Marcus D. Woodson