No. 23-1324

IN THE
Supreme Court of the United States

THOMAS PERTTU,
Petitioner,
v.
KYLE BRANDON RICHARDS,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AND THE NATIONAL ASSOCIATION OF COUNTIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE*[1]

The International Municipal Lawyers Association ("IMLA") has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

SUMMARY OF ARGUMENT

Congress enacted the Prison Litigation Reform Act ("PLRA") to reduce the burden inmate litigation imposes on governments operating correctional facilities, notably including state and local governments. While some of these suits had merit, the vast majority did not. To accomplish its purpose, the PLRA requires inmates seeking to bring suit under 42 U.S.C. § 1983 to exhaust administrative remedies before

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

filing suit in court. This exhaustion requirement avoids the costs of extensive litigation and trial for claims that could have been resolved administratively. Many claims may be dismissed summarily for failure to exhaust administrative remedies.

For any claim presenting a genuine disputed issue of fact regarding exhaustion, the judge may conduct an evidentiary hearing to determine whether the exhaustion requirement is met. If not, the case is dismissed. But if the judge concludes that administrative remedies were exhausted or that a failure to exhaust should be excused for some reason, the case will move forward on the merits. This summary procedure works as an efficient and fair way to screen out early on cases that should proceed to the merits from those that should be dismissed for failure to exhaust.

The rule adopted by the Sixth Circuit directly undermines the PLRA's goal by requiring jury trials regarding the exhaustion issue in many cases. In particular, the Sixth Circuit's rule precludes judges from deciding the exhaustion issue by holding a narrow evidentiary hearing and instead requires a jury trial whenever the inmate alleges a claim in which there is a factual dispute regarding exhaustion that overlaps with the merits of the claim asserted. Many inmate suits already include allegations relating to exhaustion that are intertwined with the merits of the claims, and going forward the Sixth Circuit rule will encourage inmate plaintiffs to cast their claims so as to trigger a jury trial right. The Sixth Circuit's approach thus severely undermines the PLRA's goal of limiting the burden imposed by inmate litigation.

Increasing the number of jury trials arising out of inmate litigation will impose significant costs on states and localities, which will have to litigate those cases. Jury trial proceedings will take longer, consume more resources, and require more hours of work. Beyond that, the increased cost of litigation will put state and local government on the horns of a dilemma: the increased costs of litigation will provide significant incentive for states and localities to settle even meritless cases, but entering into such settlement will incentivize inmates to file more claims. In short, recognizing a right to a jury on the issue of exhaustion will result not only in the expenditure of more time and resources in resolving claims in which there is a dispute about exhaustion, but also in more suits alleging claims of interference with exhaustion.

State and local governments' budgets are already overextended—there is rarely any room for additional expenses. Adding costs to inmate litigation for states and localities will necessitate reallocation of funds—potentially leading to either reductions in other government services or increased taxes. This undue financial burden will prejudice governments' ability to perform their essential functions on which citizens rely.

ARGUMENT

I. The Prison Litigation Reform Act was enacted to address the undue burden inmate litigation imposes on governments operating correctional facilities.

A. State and local governments provide most correctional services in the United States.

State and local governments provide most correctional services in the United States, with state and local facilities housing over 1.6 million inmates combined—more than 85 percent of the country's incarcerated population. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, Prison Policy Initiative (Mar. 14, 2024), https://www.prisonpolicy.org/reports/pie2024.html. Those governments employ tens of thousands of correctional officers. *See* David Keech, *State-by-State Ranking: Highest and Lowest Prison Staff Levels in America*, OnFocus (Aug. 17, 2024), https://www.onfocus.news/state-by-state-ranking-highest-and-lowest-prison-staff-levels-in-america/.

Maintaining and operating correctional facilities is extremely costly. Spending on local jails alone topped $25 billion in 2017. *Local Spending on Jails Tops $25 Billion in Latest Nationwide Data*, Pew Charitable Trs., https://www.pewtrusts.org/-/media/assets/2021/01/pew_local_spending_on_jails_tops_25_billion.pdf. Jails were the sixth-largest expense category for counties in 2017, with an average of 1 in every 17 dollars going to correctional facilities. *Id.* at 4.

Litigating inmate suits is a significant source of these costs. State and local governments collectively spend tens, if not hundreds, of millions of dollars each year on inmate litigation. *See, e.g.*, Associated Press, *Inmate lawsuits cost California taxpayers $200 million over last 15 years*, https://www.dailybreeze.com/2013/02/11/inmate-lawsuits-cost-california-taxpayers-200-million-over-last-15-years/ (Sept. 6, 2017, 7:19 AM) ("The state [of California] has paid nearly $83 million to private law firms and the court-appointed authorities involved in [two recent,] major lawsuits.").

B. Congress enacted the PLRA in 1996 to address the untenable growth of inmate litigation in federal courts.

Throughout the 1980s and 1990s, the number of federal civil rights suits brought by inmates steadily increased. In 1995, inmates filed 40,000 new actions, which constituted 19 percent of the federal civil docket. Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1558 (2003) [hereinafter Schlanger, *Inmate Litigation*]. Inmates filed federal lawsuits at a rate 35 times higher than other people, *see id.* at 1575 (noting a 25 per thousand filing rate among inmates compared to a 0.7 per thousand filing rate among non-inmates), and suits filed by prisoners outnumbered new federal criminal prosecutions by more than 38 percent, *see* 142 Cong. Rec. 23255 (1996) (statement of Sen. Abraham). Inmate suits consumed enormous amounts of government and court resources, accounting for 15 percent of all federal civil trials in 1995. Schlanger, *Inmate Litigation*, *supra*, at 1558.

Although some of these inmate suits had merit, the vast majority did not. The National Association of Attorneys General estimated that 95 percent of inmate filings in federal courts were frivolous. 142 Cong. Rec. 8236 (1996) (statement of Sen. Abraham). The overwhelming volume of suits was the product of "[j]ailhouse lawyers with little else to do" other than tie the federal "courts in knots with an endless flood of frivolous litigation." 141 Cong. Rec. 26553 (1995) (statement of Sen. Hatch); *see also Preiser v. Rodriguez*, 411 U.S. 475, 492 (1973) ("For state prisoners, eating, sleeping, dressing, washing, working, and playing are all done under the watchful eye of the State, and so the possibilities for [inmate] litigation under the Fourteenth Amendment are boundless.").

This inmate litigation imposed a heavy burden on state and local governments. *See* Schlanger, *Inmate Litigation*, *supra*, at 1578–88 (examining the number of suits against state and local officials). Congress enacted the PLRA in 1996 to address the rampant increase in inmate litigation. *See* Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Approaches 20*, 28 Corr. L. Rep. 70, 70 (2017) [hereinafter Schlanger, *Trends*]. A central goal of the Act was to reduce the financial strains that inmate litigation placed on state and local governments. For example, although opposing the law, then-Senator Joe Biden noted the PLRA's "effort to relieve . . . State and local governments from the overwhelming task of dealing with frivolous lawsuits." 141 Cong. Rec. 27044 (1995) (statement of Sen. Biden). Similarly, Senator Spencer Abraham observed that the huge number of frivolous lawsuits posed "an enormous drain on the resources of . . . States and localities, resources that would be

better spent incarcerating more dangerous offenders instead of being consumed in court battles without merit." 142 Cong. Rec. 8236 (1996) (statement of Sen. Abraham). He recounted that "[t]hirty-three States ha[d] estimated that they spend at least $54.5 million annually combined on these [frivolous] lawsuits," an estimation which the National Association of Attorneys General "extrapolated . . . to conclude that the annual costs for all of these States [were] approximately $81 million a year to battle [frivolous inmate] cases." *Id.*

To combat the spiraling costs of inmate litigation, the PLRA imposed a variety of procedural and remedial limitations on inmate suits. Most notable was a requirement to exhaust all administrative remedies before filing suit in court. Schlanger, *Trends*, *supra*, at 70. Under this exhaustion requirement, inmates alleging a violation of a constitutional right must pursue internal administrative remedies before bringing suit under 42 U.S.C. § 1983. 42 U.S.C. § 1997e(a). This exhaustion requirement increased efficiency by encouraging the resolution of claims through informal administrative channels instead of through formal judicial proceedings.

The PLRA successfully reduced inmate litigation. By 2014—eighteen years after the PLRA's enactment—the inmate filing rate in U.S. district courts had dropped by 52.9 percent, going from 24.6 filings per thousand inmates in 1995 to 11.6 filings per thousand inmates in 2014. Schlanger, *Trends*, *supra*, at 73. Nonetheless, state and local governments continue to face an enormous burden in defending

against inmate suits. Schlanger, *Inmate Litigation*, *supra*, at 1574.

II. Requiring a jury trial to determine whether a prisoner plaintiff exhausted administrative remedies before filing suit would impose significant costs on state and local governments.

Permitting inmate litigants to demand a jury trial on the issue of exhaustion directly undermines the PLRA's goal of saving costs by reducing the volume of frivolous inmate suits.

Realizing those savings depends on the ability of judges to conduct summary proceedings to determine whether an inmate has properly exhausted administrative remedies and to dismiss cases in which the inmate has failed to do so. Under the rule adopted by the Sixth Circuit, federal judges will be unable to dismiss suits based on failure to exhaust administrative remedies if there is a factual dispute regarding exhaustion that overlaps with the merits. Instead, those suits will proceed to a jury trial regarding both exhaustion and the merits.

Such an expansion in the number of jury trials will place significant burdens on state and local governments by requiring more resources to be devoted to litigation, including discovery and trial preparation. State and local governments may need to hire more staff to meet the increased demands of litigation. The number of suits alleging a claim intertwined with the exhaustion issue will inevitably increase as inmate litigants recognize that making the "right" allegations will provide an avenue to a jury trial.

The unfortunate reality is that funding to meet these increased costs would have to come from somewhere. With states, counties, and municipalities consistently stretched thin economically, this financial burden would not simply impact internal government operations but rather may well require cutting important public programs, defunding existing institutions, or reducing services provided to the area's citizens.

A. Jury trials to resolve exhaustion would impose a material burden on state and local resources.

Recognizing a right to a jury trial on the issue of whether an inmate plaintiff has exhausted administrative remedies will significantly increase the number of jury trials. *See* John Boston, *The Prison Litigation Reform Act,* A Jailhouse Lawyer's Manual 348, 375 (13th ed. 2021), https://jlm.law.columbia.edu/files/2021/02/21.-Chapter-14.pdf ("More incarcerated people lose their cases because they fail to exhaust administrative remedies than from any other part of the PLRA."). As one study found, from 2006 to 2015, thousands of cases were brought by incarcerated litigants who had failed to exhaust their administrative remedies. Allen E. Honick, *It's "Exhausting": Reconciling a Prisoner's Right to Meaningful Remedies for Constitutional Violations with the Need for Agency Autonomy*, 45 U. Balt. L. Rev. 155, 180 (2015).

Until the Sixth Circuit's decision in this case, federal courts agreed that exhaustion was an issue to be decided by a judge, not a jury. *See, e.g.*, *Messa v. Goord*, 652 F.3d 305, 309–10 (2d Cir. 2011) ("[T]he

Seventh Amendment does not guarantee a jury trial on factual disputes regarding administrative exhaustion under the PLRA."); *Small v. Camden Cnty.*, 728 F.3d 265, 271 (3d Cir. 2013) ("[J]udges may resolve factual disputes relevant to the exhaustion issue without the participation of a jury."); *Pavey v. Conley*, 544 F.3d 739, 741 (7th Cir. 2008) ("Until the issue of exhaustion is resolved, the court cannot know whether it is to decide the case or the prison authorities are to."); *see also* Boston, *supra*, at 412 ("Courts are now agreed that exhaustion is not an issue for the jury at trial.").

Even where summary judgment was not available because of a disputed issue of fact, judges could conduct an evidentiary hearing to determine whether an inmate had properly exhausted administrative remedies. *See, e.g.*, *Dillon v. Rogers*, 596 F.3d 260, 273 (5th Cir. 2010) ("If the plaintiff survives summary judgment on exhaustion, the judge may resolve disputed facts concerning exhaustion, holding an evidentiary hearing if necessary."); *Paladino v. Newsome*, 885 F.3d 203, 211 (3d Cir. 2018) (holding that whether a hearing is necessary should be left "to the discretion of the district courts on a case-by-case basis"). If the inmate failed to do so, the judge could dismiss without the need to incur the costs of a jury. A case would go forward only if the judge determined that an inmate had exhausted administrative remedies or that the inmate's failure to exhaust was excused because of an officer's interference or obstruction by an officer. *See, e.g.*, *Tuckel v. Grover*, 660 F.3d 1249, 1252–53 (10th Cir. 2011) (holding that dismissal for failure to exhaust is inappropriate when "a prison official inhibits

an inmate from utilizing an administrative process through threats or intimidation").

Although this process allows for expeditious dismissal of unexhausted claims, state and local governments collectively spend many millions of dollars each year on inmate litigation. *See* Associated Press, *Inmate lawsuits cost California taxpayers $200 million over last 15 years*, Daily Breeze (Feb. 11, 2013, 12:00 AM), https://www.dailybreeze.com/2013/02/11/inmate-lawsuits-cost-california-taxpayers-200-million-over-last-15-years/ (Sept. 6, 2017, 7:19 AM) ("The state [of California] has paid nearly $83 million to private law firms and the court-appointed authorities involved in [two recent,] major lawsuits . . . . The costs were provided by the corrections department, the state Department of Justice and the prison medical receiver's office . . . .").

Recognizing a right to a jury trial to decide whether a plaintiff exhausted his administrative remedies will significantly increase those costs. To start, it will result in many claims in which administrative remedies were not exhausted to proceed all the way through a jury trial, instead of being dismissed by a judge in a limited preliminary proceeding. Extending court proceedings in this way will require state and local government to spend significantly more resources on litigation. *See* Schlanger, *Inmate Litigation*, *supra*, at 1669–71 (asserting that one of the financial burdens of inmate litigation is the fact that "specialized" legal staff are required within the correctional system to manage excessive caseloads).

Exacerbating these costs is the fact that jury trials simply take longer than bench trials. Harry Kalven,

Jr., *The Dignity of the Civil Jury*, 50 Va. L. Rev. 1055, 1059 (1964) (estimating that a bench trial would take about 40 percent less time than a jury trial of the same case); Richard A. Posner, *An Economic Approach to the Law of Evidence*, 51 Stan. L. Rev. 1477, 1491 (1999) ("In the federal courts, civil jury trials are on average more than twice as long as civil bench (that is, judge) trials.").

Many reasons contribute to the increased time for jury trials, including the need to hold sidebars, the need to excuse the jury from the courtroom altogether for extended argument on legal issues, the need to debate jury instructions, the need to accommodate jurors' schedules and attention spans, and the oft-lengthy processes of jury selection and jury deliberation. *Id.* ("Because the jury is an ad hoc tribunal, a significant amount of time is consumed at the outset of trial in the selection of the members of the tribunal."); Rutter Group Practice Guide: Federal Civil Trials and Evidence 2:3 ("Jury trials are inherently more time-consuming than bench trials. Time is required for jury selection and jury deliberations. Moreover, trial usually moves more slowly due to the need for conferences out of the jury's presence and expanded opening and closing statements."); Texas Trial Handbook § 12:3 (3d ed. 2011) (listing various reasons that "the actual trial process is longer in a jury trial" than a bench trial); Posner, *supra*, at 1491 ("[T]he pace of the trial is slowed down by the need to educate the jurors in the rudiments of their job.").

Reserving exhaustion for a jury also expands the scope of litigation. If a judge dismisses a claim for failure to exhaust, the parties need not address the

merits of the claim. But if exhaustion is an issue for the jury because it is intertwined with the merits, the parties must present evidence not only on exhaustion but also on all the other issues that may be relevant to the jury in resolving the claims. Allowing jury trials will thus also significantly increase the costs of discovery. Under the current approach, if a defendant moves to dismiss a claim based on failure to exhaust administrative remedies, a court may prohibit discovery on issues unrelated to exhaustion until the motion is resolved. *See Pavey*, 544 F.3d at 742 (noting that the evidentiary hearing can include "whatever discovery relating to exhaustion [the judge] deems appropriate"). The court has the option of precluding discovery on any other issues until it is determined whether the plaintiff properly exhausted administrative remedies.

To make matters worse, allowing jury trials on exhaustion will increase pressure on state and local governments to settle, regardless of the merits of the case, so as to avoid the additional time and expense of litigation. Local governments regularly settle suits that they believe they would win simply to avoid the costs of litigation. *See* Susan A. MacManus, *The Impact of Litigation on Municipalities: Total Cost, Driving Factors, and Cost Containment Mechanisms*, 44 Syracuse L. Rev. 833, 842, 854 (1993) (reporting a study in which 81.4 percent of municipalities settled some of their "winnable" cases to save on litigation costs, 45.2 percent settled over 10 percent of their "winnable" cases, and 17 percent settled over 25 percent of their "winnable" cases).

This increased pressure to settle in order to avoid litigation expense will leave state and local

governments on the horns of a dilemma. As noted above, the economics of litigation weigh in favor of paying to settle even non-meritorious cases. But once word gets out that the government will pay a settlement to avoid litigation expense, inmates are likely to file even more suits. Not surprisingly, a 1993 study found a "relationship between the propensity to settle cases to save money and the reported increase in frivolous lawsuits." *Id.* at 842.

There is no reason to think that lawsuits in which the exhaustion issue overlaps with merits will be rare. Many inmate lawsuits already include allegations that raise (or could easily be tweaked to raise) an issue of whether the inmate was prevented from exhausting administrative remedies. Some, such as Respondent in this case, allege that officials destroyed their grievances; others claim that they could not exhaust because of fear of retaliation, *see, e.g.*, *Rinaldi v. United States*, 904 F.3d 257, 269 (3d Cir. 2018). Many other types of obstruction claims are possible. For example, inmates often contend that they were denied reasonable access to a library or to a lawyer—both of which could be argued to constitute interference with inmates' efforts to pursue administrative remedies. *See, e.g.*, Margo Schlanger, *Inmate Litigation: Results of a National Survey*, Large Jail Network Exchange, at 1, 3 (2003), https://www.law.umich.edu/facultyhome/margoschlanger/Documents/Publications/Inmate_Litigation_Results_National_Survey.pdf (reporting significant numbers of suits regarding law library services and access to lawyers over a 3-year period).

Requiring jury trials on exhaustion issues would also have an adverse impact on other litigants. The federal courts are already significantly overburdened, and case backlogs result in delays of the resolution of claims. *See The Need for Additional Judgeships: Litigants Suffer When Cases Linger*, U.S. Cts. (Nov. 18, 2024), https://www.uscourts.gov/news/2024/11/18/need-additional-judgeships-litigants-suffer-when-cases-linger ("Over the past 20 years, the number of civil cases pending more than three years rose 346 percent, from 18,280 on March 31, 2004 to 81,617 on March 31, 2024."). The increased volume of inmate litigation, and the time that must be spent on inmate cases as they proceed to a jury, will only increase those delays.

Increasing the number of jury trials in cases in which administrative remedies were not exhausted and which therefore otherwise would have been screened out early on by way of a fair summary proceeding would also impose an undue burden on members of the public who must serve as jurors. It is true, of course, that Americans have a civic duty to serve on a jury and that jury service is a privilege as well as an obligation. *Jury Service*, U.S. Cts., https://www.uscourts.gov/services-forms/jury-service (last visited Dec. 4, 2024). However, it is undeniable that serving as a juror also imposes a burden on those who are selected. *See* Kalven, *supra*, at 1062 ("On the negative side it is urged that jury fees are an added expense to the administration of justice; that jury service often imposes an unfair economic and social burden to those forced to serve; and that exposure to jury service disenchants the citizen and leads him to lose confidence in the administration of justice.").

By expanding inmates' right to a jury trial on exhaustion issues, the number of individuals called for jury duty would need to increase. *See* John Gramlich, *Jury Duty Is Rare, but Most Americans See it as Part of Good Citizenship*, Pew Rsch. Ctr. (Aug. 24, 2017), https://www.pewresearch.org/short-reads/2017/08/24/jury-duty-is-rare-but-most-americans-see-it-as-part-of-good-citizenship/. Not only would state and local governments have to provide financial compensation to that higher number of jurors, *see Juror Pay*, U.S. Cts., https://www.uscourts.gov/services-forms/jury-service/juror-pay (last visited Dec. 4, 2024), but also in some areas—especially those with smaller populations—the frequency of jury service could become a significant burden to citizens. The privilege and duty of serving on a jury should be reserved for cases in which a jury trial is necessary and appropriate.

B. Any additional burden on state and local resources may prejudice the ability of governments to perform their essential functions.

The financial burdens resulting from an increase in jury trials of inmate suits will impact not only correctional facilities but also the operations of state and local governments more broadly.

State, county, and municipal governments provide a vast array of services for their residents and others. *State and Local Expenditures*, Urban Inst., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-

local-backgrounders/state-and-local-expenditures (last visited Dec. 4, 2024). These services include public education, public assistance, health services, road maintenance, community development, public housing, fire and safety, and the criminal justice system. *See, e.g.*, Eric Van Nostrand, Laura Feiveson & Tara Sinclair, *State and Local Governments in the Post-COVID Recovery*, U.S. Dep't of the Treasury (Mar. 11, 2024), https://home.treasury.gov/news/featured-stories/state-and-local-governments-in-the-post-covid-recovery. These services are essential but expensive.

States and local governments have little ability to absorb new costs because most states require the state and local governments to balance their budgets. *See Achieving a Structurally Balanced Budget*, Gov't Fin. Officers Ass'n (Feb. 28, 2012), https://www.gfoa.org/materials/achieving-a-structurally-balanced-budget; Nat'l Ass'n of State Budget Officers, Budget Processes in the States 61–65 (2021), https://www.nasbo.org/reports-data/budget-processes-in-the-states (follow "Full Report" hyperlink next to the image of the state report cover) (describing how all states except Vermont have balanced budget requirements).

Accordingly, funds allocated to maintaining a correctional system (including for handling inmate complaints and litigation) necessarily impact the broader governmental budget. Any increased costs in corrections, even small ones, will require reallocation of funds and additional spending. *See* Josh Goodman, *State Budget Problems Spread*, Pew Rsch. Ctr. (Jan. 9, 2024), https://www.pewtrusts.org/en/research-and-analysis/articles/2024/01/09/state-budget-problems-

spread. In fact, the detrimental impacts of increased correctional spending have already been a focus of public attention in recent years. *See, e.g.*, Michael Maciag, *City Lawsuit Costs Report*, Governing (Oct. 27, 2016), https://www.governing.com/archive/city-lawsuit-legal-costs-financial-data.html; *What Jails Cost: A Look at Spending in America's Large Cities*, Vera Inst. of Just., https://www.vera.org/publications/what-jails-cost-cities (last visited Dec. 4, 2024).

If state and local governments must spend materially more on processing and defending inmate lawsuit, they need to make hard decisions about other important governmental services and tax rates. State and local governments do not have limitless funds. They operate on tight budgets. Increasing the amount spent on one item requires either reducing the amount spent on other services or increasing taxes. John Mullin & Santiago Pinto, *State and Local Governments: Economic Shocks and Fiscal Challenges*, Fed. Rsrv. Bank of Richmond (Oct. 20, 2020), https://www.richmondfed.org/region_communities/regional_data_analysis/regional_matters/2020/rm_10_20_2020_state_and_local ("When this belt tightening happens, state and local governments almost always end up paring down on essential services, including education, health care, and social welfare programs. Research tells us that these kinds of funding disruptions create long-lasting damage to individuals' earnings.").

In sum, the cost of requiring jury trials whenever an inmate can allege a claim in which exhaustion overlaps with the merits far exceeds any potential benefit. The current system is working well and

affords inmate plaintiffs with a full and fair opportunity to litigate their claims, while at the same time permitting early dismissal after summary proceedings for claims as to which the exhaustion requirement has not been satisfied.

CONCLUSION

The judgment of the Court of Appeals for the Sixth Circuit should be reversed.

Respectfully submitted,

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