No. 21-7362

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MATTHEW JAMES GRIFFIN,
Plaintiff-Appellant,

v.

NADINE J. BRYANT, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of North Carolina
No. 5:17-CT-03173-M
Hon. Richard Myers, II

BRIEF FOR *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, DISABILITY RIGHTS NORTH CAROLINA, EMANCIPATE NC, NORTH CAROLINA PRISONER LEGAL SERVICES, AND RIGHTS BEHIND BARS IN SUPPORT OF THE PLAINTIFF-APPELLANT

Kristi Graunke
Daniel K. Siegel
ACLU OF NORTH CAROLINA LEGAL FOUNDATION
PO Box 28004
Raleigh, NC 27611
(919) 354-5066
kgraunke@acluofnc.org
dsiegel@acluofnc.org

Jennifer Wedekind
AMERICAN CIVIL LIBERTIES UNION
915 15th Street NW
Washington, DC 20005
(202) 548-6610
jwedekind@aclu.org

Ryan J. Murguia
AMERICAN CIVIL LIBERTIES UNION
39 Drumm Street
San Francisco, CA 94111
(202) 393-4930
legal_rm@aclu.org

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are nonprofit organizations with decades of experience litigating on behalf of people who are incarcerated. *Amici* submit this brief to emphasize the outsized impact that minor technical requirements in prison grievance procedures have on incarcerated people's ability to seek enforcement of their civil rights in federal court. In *amici*'s experience, incarcerated people are frequently foreclosed from seeking judicial redress against prison administrators for serious civil rights violations because complex grievance procedures prevent them from being able to fully exhaust administrative remedies.

The **American Civil Liberties Union** ("ACLU") is a nationwide, nonprofit, nonpartisan organization with more than 1.7 million members, dedicated to the principles of liberty and equality embodied in the Constitution and this Nation's civil rights laws. Consistent with that mission, the ACLU established the National Prison Project ("NPP") in 1972 to protect and promote the civil and constitutional rights of incarcerated people. NPP has been involved in litigation concerning the interpretation of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), since the statute's enactment, both as counsel and as *amicus curiae*.

[1] This brief has not been authored, in whole or in part, by counsel to any party in this appeal. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than the amici, their members, or their counsel, contributed money that was intended to fund preparation or submission of this brief. All parties have consented to the filing of this brief.

The **American Civil Liberties Union of North Carolina Legal Foundation** ("ACLU-NCLF") is a state affiliate of the ACLU, with more than 30,000 members statewide. ACLU-NCLF is dedicated to defending and advancing civil rights and civil liberties for all North Carolinians. Among other priorities, the ACLU-NCLF is committed to advocating for lawful treatment of people incarcerated in North Carolina prisons and jails.

Disability Rights North Carolina ("DRNC") is North Carolina's designated Protection and Advocacy System for people with disabilities ("P&A"). DRNC is authorized by federal law to protect and advocate for the rights of individuals with disabilities. *See* Protection and Advocacy for Individuals with Mental Illness ("PAIMI Act"), 42 U.S.C. § 10801 *et seq.* The federal regulations governing the PAIMI Act mandate that, as the P&A, DRNC is empowered to "pursue administrative, legal or other appropriate remedies to protect and advocate on behalf of individuals with mental illness to address abuse, neglect or other violations of rights." 42 C.F.R. § 51.31(a). DRNC has a strong interest in the legal rights of incarcerated people with disabilities to access the courts.

Emancipate NC is a Black-led non-profit community organization that employs attorneys, community organizers, and directly-impacted people dedicated to dismantling structural racism and mass incarceration in North Carolina through litigation, education, narrative shift, and idea incubation.

North Carolina Prisoner Legal Services ("NCPLS") is a non-profit law firm dedicated to ensuring access to the courts for those individuals incarcerated in North Carolina state prisons. NCPLS attorneys advocate for safe, humane, and constitutional prison conditions.

Rights Behind Bars ("RBB") is a non-profit organization representing incarcerated or formerly incarcerated individuals in challenges to their conditions of confinement. Importantly for the present matter, RBB tracks *pro se* litigation filed by incarcerated individuals around the country and regularly serves as appellate counsel for formerly *pro se* litigants. *See*, *e.g.*, *Taylor v. Riojas*, 141 S. Ct. 52 (2020). Through the organization's tracking and representation of *pro se* litigants, RBB has developed particular knowledge, expertise, and interest in the barriers facing incarcerated individuals in accessing courts. RBB is concerned that the decision below misunderstands the realities facing *pro se* incarcerated litigants and will exacerbate already existing difficulties for incarcerated individuals seeking to file civil rights claims.

INTRODUCTION

The administrative exhaustion requirement of the Prison Litigation Reform Act ("PLRA") requires incarcerated people to exhaust all available administrative remedies prior to bringing suit. 42 U.S.C. § 1997e(a). There is virtually no limitation on how complicated a grievance process may be, and incarcerated people must comply with every step in a grievance regime, with few exceptions, to demonstrate "proper" exhaustion. *See Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006); *see also Porter v. Nussle*, 534 U.S. 516, 524 (2002) ("All 'available' remedies must now be exhausted; those remedies need not meet federal standards, nor must they be 'plain, speedy, and effective.'"). Indeed, in the era of the PLRA, prison grievance procedures often resemble the optical illusions of M.C. Escher, with circular stairways and unreachable doors.[2]

Additional barriers further hinder incarcerated people's ability to complete the grievance process. Incarcerated people have disproportionately high rates of disabilities and mental illness, and disproportionately low literacy rates. Threatened or actual retaliation also prevent incarcerated people from completing the grievance process.

[2] M.C. ESCHER COLLECTION, https://mcescher.com/gallery/impossible-constructions/# (last visited Feb. 17, 2022).

Incarcerated people who cannot navigate these complicated pathways—devised, implemented, and enforced by prison administrators—are barred from obtaining judicial redress for serious civil rights violations. First, prison administrators reject their grievances for procedural missteps. Then, courts dismiss those same claims for failure to exhaust. Courts need not, and should not, however, reflexively defer to prison administrators, no matter how dense the thicket of procedural requirements.

The PLRA's exhaustion requirement was intended to limit frivolous litigation—not to keep meritorious cases out of court. And the statute contains a "built-in" exception to the exhaustion mandate: incarcerated people need not exhaust administrative remedies that are not "available." *Ross v. Blake*, 578 U.S. 632, 635-36 (2016) (discussing 42 U.S.C. § 1997e(a)). When deciding whether such remedies are unavailable, courts should bear in mind the "real-world workings of prison grievance systems." *See id.* at 643. The reality is that far too often, prison grievance systems are a "simple dead end" or "practically speaking, incapable of use[.]" *Id.* at 643-44. This is particularly true when they limit how many grievances someone may have pending at any one time. In these cases, as here, remedies should be found to be unavailable under the PLRA.

///

///

ARGUMENT

I. PRISON GRIEVANCE PROCEDURES FREQUENTLY OBSTRUCT EXHAUSTION OF ADMINISTRATIVE REMEDIES.

Under the PLRA, prisoners must exhaust administrative remedies before filing suit in federal court. 42 U.S.C. § 1997e(a). But complex grievance procedures, combined with short deadlines, present myriad potential obstacles to the courthouse doors for incarcerated people.

Grievance systems typically require the incarcerated person to *perfectly* complete three to four stages, which may include an informal resolution attempt, formal grievance, and one or two levels of administrative appeals.[3] At each stage they must meet tight deadlines, which are frequently less than two weeks and can be as short as two days.[4] And any misstep during the grievance process can forever foreclose plaintiffs from pursuing their civil rights claims in federal court.[5] Incarcerated people may lose their claims for including multiple issues on a single

---

[3] *See* Derek Borchardt, *The Iron Curtain Redrawn Between Prisoners and the Constitution*, 43 COLUM. HUM. RTS. L. REV. 469, 492-94 (2012).

[4] Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. PA. J. CONST. L. 139, 148 (2008) ("[I]f prisoners miss deadlines that are often less than fifteen days and in some jurisdictions as short as two to five days, a judge cannot consider valid claims of sexual assault, beatings, or racial or religious discrimination.") (footnote omitted).

[5] *See* Alison M. Mikkor, *Correcting for Bias and Blind Spots in PRLA Exhaustion Law*, 21 GEO. MASON L. REV. 573, 575-76 (2014).

grievance.[6] Or for failing to name the individuals[7] or policy[8] implicated by the grievance with sufficient specificity. Even the most minor of technical errors can prove fatal.[9] For example, filing an "administrative" appeal rather than a "disciplinary" appeal[10] or submitting a proper grievance to the wrong official[11] can lead to dismissal for failure to exhaust. So can mailing multiple grievances in a single

---

[6] *See, e.g.*, *Simpson v. Greenwood*, No. 06-C-612-C, 2007 WL 5445538, at *2-5 (W.D. Wis. Apr. 6, 2007) (dismissing for non-exhaustion where grievance was rejected for including two issues despite acknowledging that the grievance rules "do not define what is meant by the term 'issue' and its meaning is far from self-evident").

[7] *See, e.g.*, *Williams v. Hollibaugh*, No. 3:04-cv-2155, 2006 WL 59334, at *5-6 (M.D. Pa. Jan. 10, 2006) (requiring grievances to name the relevant official in the complaint even if prison administrators have actual knowledge of that official's role in the incident); *Whitener v. Buss*, 268 F. App'x 477, 478-79 (7th Cir. 2008) (unpublished) (dismissing claim of prisoner who was unable to obtain the relevant officers' names within the 48-hour grievance deadline); *Haynes v. Ivens*, No. 08-cv-13091-DT, 2010 WL 420028, *5-6 (E.D. Mich., Jan. 27, 2010) (holding grievance naming "Health Care" did not exhaust against a particular physician assistant).

[8] *See, e.g.*, *Giamboi v. Prison Health Servs*., No. 3:11-CV-00159, 2014 WL 12495641, at *10 (M.D. Pa. Sept. 11, 2014), *report and recommendation adopted*, 2015 WL 12159307 (M.D. Pa. Jan. 13, 2015) (dismissing for non-exhaustion because plaintiff did not specifically attribute claims to an unconstitutional policy of the health care provider).

[9] *See, e.g.,* HUMAN RIGHTS WATCH, NO EQUAL JUSTICE: THE PRISON LITIGATION REFORM ACT IN THE UNITED STATES, at 14 (June 2009), https://www.hrw.org/sites/default/files/reports/us0609web.pdf ("[U]nder the PLRA, it is common for courts to conclude that prisoners have failed to exhaust because they made minor technical errors in the grievance process.").

[10] *Richardson v. Spurlock*, 260 F.3d 495, 499 (5th Cir. 2001).

[11] *See*, *e.g., Keys v. Craig*, 160 F. App'x 125, 126 (3d Cir. 2005) (affirming dismissal of a *pro se* prisoner's lawsuit for non-exhaustion where plaintiff submitted his final appeal to the wrong official).

envelope rather than separately mailing each one;[12] failing to submit a complaint where the requisite form for doing so is unavailable;[13] submitting handwritten copies instead of photocopies even when the photocopier is broken;[14] submitting carbon copies instead of originals;[15] submitting an appeal to the "Inmate Appeals Branch" instead of to the "appeals coordinator";[16] or writing below a form's line that instructed "do not write below this line."[17]

Policies like that of the North Carolina Department of Public Safety's (NCDPS)—which strictly limit the number of grievances a person may have pending at one time—create particularly severe roadblocks. When combined with lengthy response times and content requirements that only allow one issue to be raised per grievance, limitations on the number of pending grievances create significant barriers to the court for incarcerated people.

In this case, the lower court held that Mr. Griffin failed to exhaust administrative remedies available to him because NCDPS's "rule that plaintiff may

---

[12] *Freeland v. Ballard*, No. 2:14-cv-29445, 2017 WL 337997, at *6-7 (S.D. W.Va. Jan. 23, 2017).
[13] *See Mackey v. Kemp*, No. CV 309-039, 2009 WL 2900036, at *3 (S.D. Ga., July 27, 2009).
[14] *Mack v. Klopotoski*, 540 F. App'x 108, 112-13 (3d Cir. 2013).
[15] *Fischer v. Smith*, No. 10-C-870, 2011 WL 3876944, *2 (E.D. Wis. Aug. 31, 2011).
[16] *Chatman v. Johnson*, No. CV S-06-0578 MCE EFB P, 2007 WL 2023544, at *6 (E.D. Cal. July 11, 2007), *report and recommendation adopted*, 2007 WL 2796575 (E.D. Cal. Sept. 25, 2007).
[17] *Bracero v. Sec'y, Fla. Dep't of Corr.*, 748 F. App'x 200, 203 (11th Cir. 2018) (per curiam) (unpublished), *cert. denied*, 139 S. Ct. 1631 (2019).

only pursue one grievance at a time does not render the procedure unavailable under the [*Ross* standard]." *Griffin v. Bryant*, No. 5:17-CT-3173-M, 2021 WL 1187062, at *8 (E.D.N.C. Mar. 29, 2021). The court presumed that Mr. Griffin should have divined, before filing the already-pending grievance, that doing so would preclude him from grieving the future injury caused by his involuntary sedation.

However, such presumption glosses over the real-world consequences of that statement. Of course, prisoners cannot be expected to have clairvoyance as to when and how prison staff will inflict harm. Moreover, limits on the number of pending grievances force people to pick and choose between similarly serious and meritorious concerns. Indeed, the district court's holding requires Mr. Griffin, and plaintiffs like him, to make a Hobson's choice of which civil rights claims to pursue and which to surrender—not because their claims are meritless, but because of artificial and arbitrary constraints created by the prison's grievance protocols.

For instance, when prison officials only allow a single pending grievance at any given time, as here, people contemplating filing a grievance must gamble that another serious issue won't arise during the long time period—here, 90 days—that their grievance may be pending. And people with multiple concerns are forced to choose which issues to raise—an incarcerated person may have to decide whether to file a grievance about her blood pressure medication or a medically necessary diet. Or someone who has been repeatedly assaulted by other prisoners has to choose

which incident to grieve and which incidents will remain unaddressed. And because filing a grievance is a mandatory prerequisite to suing in federal court, limiting the number of grievances that can be pending ultimately forces incarcerated people to surrender some of their civil rights claims. This should not, and cannot, be the law.

II. MANY INCARCERATED PEOPLE FACE ADDITIONAL BARRIERS THAT HINDER THEIR ABILITY TO EXHAUST ADMINISTRATIVE REMEDIES.

A. Common Characteristics Of Incarcerated People Make Completing Complex Grievance Procedures Particularly Onerous.

The complexities of prison grievance procedures may stump even the most proficient jailhouse lawyers. And many incarcerated people face additional barriers that further frustrate their chances of successful administrative exhaustion. Incarcerated people have disproportionately low rates of educational attainment[18] and literacy.[19] Meanwhile, the prevalence of disability and mental illness among

[18] *See*, *e.g.*, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FEDERAL PRISONER STATISTICS COLLECTED UNDER THE FIRST STEP ACT, 2021, at Table 1 (Nov. 2021), https://bjs.ojp.gov/library/publications/federal-prisoner-statistics-collected-under-first-step-act-2021 (finding that in 2020, 28.3% of federal prisoners did not have a high school diploma, general equivalency degree, or other equivalent certificate).

[19] BOBBY D. RAMPEY, *ET AL.*, U.S. DEP'T OF EDU., HIGHLIGHTS FROM THE U.S. PIAAC SURVEY OF INCARCERATED ADULTS: THEIR SKILLS, WORK EXPERIENCE, EDUCATION, AND TRAINING, at Table 1.2 (Nov. 2016), https://nces.ed.gov/pubs2016/2016040.pdf (finding 29% of state and federal prisoners fell into the two lowest levels of a six-level literacy scale, compared to 19% of persons in the general population).

incarcerated people is disproportionately high. Any or all of these characteristics may make it harder for incarcerated people to successfully file and pursue a meritorious claim through the prison grievance system. Compliance with grievance processes is particularly difficult for incarcerated people with disabilities, like Mr. Griffin, who may not be able to read or fill out documents without assistance. According to the most recent numbers reported by the U.S. Department of Justice Bureau of Justice Statistics, 38% of prisoners surveyed in 2016 reported having a disability—a rate roughly two and a half times greater than adults in the general U.S. population.[20] The most commonly reported disability among those surveyed was "cognitive disability."[21] Similarly, 41% of all state and federal prisoners have a history of mental health problems,[22] compared to about 21% of the general population.[23] And about 13% of state and federal prisoners reported experiencing serious psychological distress during the last month.[24]

---

[20] LAURA M. MARUSCHAK, *ET AL.*, BUREAU OF JUSTICE STATISTICS, DISABILITIES REPORTED BY PRISONERS, at 1-2 (Mar. 2021), https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf.

[21] *Id.* at 1-2.

[22] LAURA M. MARUSCHAK, *ET AL.*, BUREAU OF JUSTICE STATISTICS, INDICATORS OF MENTAL HEALTH PROBLEMS REPORTED BY PRISONERS, at 1 (June 2021), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/imhprpspi16st.pdf

[23] National Institute of Mental Health, *Mental Illness*, Fig. 1, https://www.nimh.nih.gov/health/statistics/mental-illness#part_2539 (last visited Feb. 17, 2022).

[24] MARUSCHAK, INDICATORS OF MENTAL HEALTH PROBLEMS REPORTED BY PRISONERS, *supra* note 23, at 5 (Table 1). *See also* Margo Schlanger, *Prisoners with Disabilities*, *in* 4 REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION,

Prisoners with mental disabilities, including mental illness or intellectual disabilities, are at a particular disadvantage when attempting to fulfill the rigorous requirements of grievance procedures. These prisoners may be unable to fully comprehend and comply with the intricacies of the grievance procedure, such as strict timelines, proper formatting, content requirements, or one of many other potentially "bewildering features." *See Ross*, 578 U.S. at 646.

B. Retaliation Also Prevents People From Exhausting Administrative Remedies.

Actual or threatened retaliation far too often acts as a further barrier to accessing and completing the grievance procedure.[25] In response to filing grievances, incarcerated people have been beaten,[26] urinated on,[27] moved to housing

---

AND RELEASE 295, 295 (Erik Luna ed., 2017), https://law.asu.edu/sites/default/files/pdf/academy_for_justice/14_Criminal_Justice_Reform_Vol_4_Prisoners-with-Disabilities.pdf (over half of convicted prisoners report symptoms of mental illness, chiefly mania and depression, and 15% report symptoms such as delusions or hallucinations).

[25] *Woodford*, 548 U.S. at 117-19 (Stevens, J., dissenting) (repeatedly observing that prisoners with meritorious claims might well choose not to file grievances out of fear of retaliation); *see also* James E. Robertson, *"One of the Dirty Secrets of American Corrections": Retaliation, Surplus Power, and Whistleblowing Inmates*, 42 U. MICH. J.L. REFORM 611, 644 (2009) ("[R]etaliation against [incarcerated people who file grievances] acquires a functional quality, to wit, the prospect of deterring the target from filing suit and deterring other inmates from filing grievances.").

[26] *See, e.g.*, *Rodriguez v. Cty. of Los Angeles*, 891 F.3d 776, 793-94 (9th Cir. 2018); *Tuckel v. Grover*, 660 F.3d 1249, 1251 (10th Cir. 2011).

[27] *See Johnson v. Lozano*, No. 2:19-cv-1128 MCE DB P, 2021 WL 38179, at *3 (E.D. Cal. Jan. 5, 2021).

units where they are assaulted by other incarcerated people,[28] and told that they would be transferred so far away as to never be able to see their family until their release from prison, among other retaliatory acts.[29] It is undeniable that "at least some threats disrupt the operation and frustrate the purposes of the administrative remedies process enough that the PLRA's exhaustion requirement does not allow them." *Turner*, 541 F.3d at 1085.

III. PRISON ADMINISTRATORS USE COMPLEX GRIEVANCE SYSTEMS TO OBSTRUCT MERITORIOUS CLAIMS.

The Supreme Court has noted that Congress enacted § 1997e(a) "to reduce the quantity and improve the quality of prisoner suits." *Porter*, 534 U.S. at 524-25. To that end, "Congress afforded corrections officials time and opportunity to address complaints internally" before federal courts became involved. *Id.* at 525. However, prison administrators have taken what was designed as a shield against frivolous lawsuits and converted it into a sword to strike down cases that have merit.

By imposing needlessly complex requirements that make it impossible for incarcerated people to successfully complete the grievance process, prison administrators foreclose incarcerated people from vindicating their rights in federal court. This, of course, should come as no surprise, since prison administrators "have a tangible stake" in whether incarcerated people exhaust their administrative

[28] *See, e.g.*, *Rinaldi v. United States*, 904 F.3d 257, 262 (3d Cir. 2018).
[29] *See, e.g.*, *Turner v. Burnside*, 541 F.3d 1077, 1081 (11th Cir. 2008).

complaints.[30] The fact that prison administrators—the same individuals typically named as defendants in federal lawsuits brought by prisoners—design the very grievance procedures prisoners must satisfy creates a perverse incentive to make grievance processes as impenetrable as possible. Indeed, "[i]t is their pocketbooks, their professional reputations, and in some cases their very livelihoods that are made vulnerable if a prisoner successfully exhausts his claims."[31] With any minimum requirements for grievance systems swept away by the PLRA, it is truly a case of the fox guarding the henhouse. *See Ross*, 578 U.S. at 641 ("[D]iffer[ing] markedly from its predecessor," the PLRA removed the conditions that administrative remedies be "plain, speedy, and effective" and that they satisfy minimum standards." (quoting *Nussle*, 534 U.S. at 524)).

Indeed, since the PLRA's enactment in 1996, several state corrections agencies' grievance procedures "have been updated in ways that cannot be understood as anything but attempts at blocking lawsuits."[32] Some of these tactics reduce the amount of time within which prisoners must file their initial grievance and any subsequent appeals, and extend the time limits within which prison

[30] *See* Alison M. Mikkor, *Correcting for Bias and Blind Spots in PLRA Exhaustion Law*, 21 GEORGE MASON L. REV. 573, 581 (2014).
[31] *Id.*
[32] Derek Borchardt, *The Iron Curtain Redrawn Between Prisoners and the Constitution*, 43 COLUM. HUM. RTS. L. REV. 469, 473 (2012).

administrators must respond.[33] These changes allow officials to effectively run out the clock on grievances until incarcerated people are left without formal recourse. Mr. Griffin's case is a prime example—by the time his grievance advanced past Step 2 of NCDPS' three-step policy, clearing the way to allow Mr. Griffin to re-file the instant grievance, the window to re-file the operative grievance had already closed.

Other grievance procedure modifications similarly appear designed to make it all but impossible to fully exhaust. For example, Oklahoma added a requirement that incarcerated people have every page of a grievance notarized.[34] In Illinois, the prison system revised the grievance policy to require "details regarding each aspect of the offender's complaint, including what happened, when, where, and the name of each person who is the subject of or who is otherwise involved in the complaint."[35]

---

[33] *Id.* at 506-10 (discussing changes in Arkansas Department of Corrections' grievances procedures from 1997 through 2011, including a reduction of the time afforded to prisoners to appeal grievance decisions from ten working days to five working days and the introduction of a provision requiring prisoners to agree to time extensions for administrators to issue grievance decisions).

[34] *See Craft v. Middleton*, No. CIV-11-925-R, 2012 WL 3886378, at *3 (W.D. Okla., Aug. 20, 2012), *report and recommendation adopted*, 2012 WL 3872010 (W.D. Okla., Sept. 6, 2012).

[35] *See, e.g.,* HUMAN RIGHTS WATCH, NO EQUAL JUSTICE: THE PRISON LITIGATION REFORM ACT IN THE UNITED STATES, *supra* note 9, at 12 (referencing *Strong v. David*, 297 F.3d 646, 650 (7th Cir. 2002) and citing ILL. ADMIN. CODE tit. 20, § 504.810(b) (2003)) (pointing out that after a court ruled that a prisoner had complied with the state prison system's grievance process, rejecting prison officials' argument that his grievance was not sufficiently detailed, the prison system revised the policy to require "details regarding each aspect of the offender's complaint, including what happened, when, where, and the name of each person who is the subject of or who is otherwise involved in the complaint.").

Similarly, California, which previously only required incarcerated people to "describe the problem and action requested," revised its protocols to require people to identify by name and title or position each staff member involved along with the dates each staff member was involved.[36] Because "[i]t is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion[,] *Jones*, 549 U.S. at 218, prison administrators' ability to needlessly complicate grievance procedures is limited only by their own creativity.

IV. COURTS SHOULD NOT HESITATE TO FIND REMEDIES UNAVAILABLE AND SAFEGUARD ACCESS TO THE COURTS.

The mandatory exhaustion requirements of the PLRA, combined with intentionally convoluted grievance procedures, result in untold numbers of incarcerated people being unable to vindicate their rights in federal court, no matter the merit of the case. As one scholar summarized, incarcerated people "who experience even grievous loss because of unconstitutional behavior by prison and jail authorities will nonetheless lose cases they once would have won, if they fail to comply with technicalities of administrative exhaustion."[37]

---

[36] *Snowden v. Prada*, No. CV 12-1466, 2013 WL 4804739, *7 (C.D. Cal. Sept. 9, 2013) (citing *Lewis v. Mitchell*, 416 F. Supp. 2d 935, 942 (S.D. Cal. Oct. 5, 2005)) (describing changes to California regulations following a court finding that the PLRA did not dictate or require that a plaintiff identify specific parties in their grievance).

[37] Margo Schlanger, *Inmate Litigation*, 116 HARVARD L. REV. 1555, 1694 (2003) (footnotes omitted).

But the PLRA was not intended to keep meritorious cases out of court based on mere technicalities. The statute's supporters emphasized that the legislation was meant to reduce the number of frivolous lawsuits filed, but not to bar those with serious claims. Senator Hatch explained, "I do not want to prevent inmates from raising legitimate claims. The legislation will not prevent those claims from being raised. The legislation will, however, go far in preventing inmates from abusing the Federal judicial system."[38] Representative Canady similarly stated that the PLRA's requirements "will not impede meritorious claims by inmates but will greatly discourage claims that are without merit."[39]

Further, the statute's plain language includes an exception to the exhaustion requirement: Incarcerated people need not exhaust administrative remedies that are not "available." *See Ross*, 578 U.S. at 635-36. This exception "has real content." *Id.* at 642. For a grievance procedure to be "available" it must be "'capable of use' to obtain 'some relief for the action complained of.'" *Id*. Where prison grievance regimes have requirements that are functionally impossible to meet, remedies cannot be "capable of use."[40] And where a grievance is rejected out of hand because of

---

[38] 141 CONG. REC. S 14,627 (daily ed. Sept. 29, 1995) (statement of Sen. Orrin Hatch).

[39] 141 CONG. REC. H1480 (daily ed. Feb. 9, 1995) (statement of Rep. Charles Canady).

[40] Inaccessible grievance regimes may also run afoul of federal disability rights laws, which require that prisons and jails provide reasonable modifications and auxiliary aids and services to ensure disabled prisoners have an equal opportunity to

limitations on the number of pending grievances, the system is not accessible for the "accomplishment of a purpose." *See id.* at 643 (noting that an administrative procedure is unavailable when "it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates"). Indeed, the Supreme Court has recognized that "officials might devise procedural systems" with "blind alleys and quagmires . . . in order to 'trip[ ] up all but the most skillful prisoners.'" *Ross*, 578 U.S. at 644 (quoting *Woodford*, 548 U.S. at 102). In those cases, too, "such interference with an inmate's pursuit of relief renders the administrative process unavailable." *Ross*, 578 U.S. at 644.

This Court must not hesitate to apply this Congressionally created exception. It should hold that where prison officials impose procedural barriers that make it exceptionally difficult to access the grievance system, such as refusing to accept more than a single grievance at a given time, remedies are unavailable.

///

///

///

---

communicate and to participate in programs and services. *See* 28 C.F.R. §§ 35.130, 35.160; *Pennsylvania Dep't of Corrs. v. Yeskey*, 524 U.S. 206, 209-12 (1998). These obligations include making changes—like plain language documents and flexibility in deadlines and precise requirements—that provide disabled prisoners with a meaningful opportunity to exhaust their administrative remedies and access federal courts.

V. LIMITS ON THE NUMBER OF PENDING GRIEVANCES CAN UNCONSTITUTIONALLY DENY PRISONERS ACCESS TO THE COURTS.

It is "established beyond doubt that prisoners have a constitutional right of access to the courts." *Bounds v. Smith*, 430 U.S. 817, 821 (1977). Prisoners must "have a reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions or conditions of confinement." *Lewis v. Casey*, 518 U.S. 343, 356 (1996). Frustrating or impeding such a claim violates the Constitution. *Id.* at 353.

Yet here, the district court's decision requires incarcerated people to pick and choose between valid civil rights claims because of the limitations of the grievance procedure. Requiring surrender of one claim to preserve another prevents "meaningful" access to the courts, in violation of *Bounds* and *Lewis*.

At a minimum, the canon of constitutional avoidance forecloses the district court's interpretation of the PLRA's exhaustion requirement. "[W]hen statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems." *Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018). Where, as here, a grievance procedure's requirements have effectively barred a plaintiff's access to the courts, this Court should find remedies unavailable under the PLRA instead of implicating the statute's potential unconstitutionality.

CONCLUSION

For the forgoing reasons, the Court should reject the district court's finding that Mr. Griffin failed to exhaust administrative remedies available to him and hold that remedies are unavailable under the PLRA when a grievance procedure's requirements prevent a plaintiff from filing a grievance by limiting the number of complaints that may be filed.

Dated: February 17, 2022

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION

/s/ Ryan Murguia
Ryan J. Murguia

Attorney for Amici Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(b)(4) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 4,647 words.

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 with 14-point Times New Roman font.

Dated: February 17, 2022

/s/ Ryan Murguia
Ryan J. Murguia

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: February 17, 2022

AMERICAN CIVIL LIBERTIES UNION

/s/ Ryan Murguia
Ryan J. Murguia

Attorney for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an Application for Admission before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at Register for eFiling.

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 21-7362 as

☐ Retained ☐ Court-appointed(CJA) ☐ CJA associate ☐ Court-assigned(non-CJA) ☐ Federal Defender

☐ Pro Bono ☐ Government

COUNSEL FOR: American Civil Liberties Union

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

s/ Ryan Murguia
(signature)

Please compare your information below with your information on PACER. Any updates or changes must be made through PACER's Manage My Account.

Ryan Jason Murguia
Name (printed or typed)

(202) 393-4930
Voice Phone

American Civil Liberties Union
Firm Name (if applicable)

_____
Fax Number

39 Drumm Street

San Francisco, CA 94111
Address

legal_rm@aclu.org
E-mail address (print or type)

CERTIFICATE OF SERVICE *(required for parties served outside CM/ECF)*: I certify that this document was served on _____ by ☐ personal delivery; ☐ mail; ☐ third-party commercial carrier; or ☐ email (with written consent) on the following persons at the addresses or email addresses shown:

_____ _____
Signature Date