SUPREME COURT OF THE UNITED STATES

No. 98–262

BILL MARTIN, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL., PETITIONERS *v.* EVERETT HADIX ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 21, 1999]

JUSTICE GINSBURG, with whom JUSTICE STEVENS joins, concurring in part and dissenting in part.

I agree with the Court's determination that §803(d) of the Prison Litigation Reform Act of 1995, 42 U. S. C. §1997e(d) (1994 ed., Supp. III) (PLRA or Act), does not "limit fees for postjudgment monitoring performed before the [Act's] effective date," *ante*, at 1, and with much of the reasoning set out in Parts I, II–A–1, and II–B–1 of the Court's opinion. I disagree, however, with the holding that §803(d) "limits attorney's fees with respect to post-judgment monitoring services performed after . . . the effective date." *Ibid.* I do not find in the PLRA's text or history a satisfactory basis for concluding that Congress meant to order a midstream change, placing cases commenced before the PLRA became law under the new regime. I would therefore affirm in full the judgment of the Court of Appeals for the Sixth Circuit, which held §803(d) inapplicable to cases brought to court prior to the enactment of the PLRA. To explain my view of the case, I retread some of the factual and analytical ground treated in more detail in the Court's opinion.

I

On April 26, 1996, President Clinton signed the PLRA

into law. Section 803(d) of the Act, governing attorney's fees, provides:

> "(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988 of this title, such fees shall not be awarded, except to the extent that—
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> "(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 of this title; and
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> "(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or
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> "(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.
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> "(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.
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> "(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18 for payment of court-appointed counsel." 42 U. S. C. §1997e(d) (1994 ed., Supp. III).

At issue here is whether §803(d) governs post-April 26, 1996 fee awards in two lawsuits commenced before that date. In *Glover* v. *Johnson*, 478 F. Supp. 1075 (ED Mich. 1979), a class of female Michigan inmates filed an action under 42 U. S. C. §1983 against various Michigan prison officials (State) in 1977; the *Glover* plaintiffs alleged principally that they were denied vocational and educational

opportunities afforded their male counterparts, in violation of the Equal Protection Clause. Ruling in plaintiffs' favor, the District Court entered a remedial order and retained jurisdiction over the case pending defendants' substantial compliance with that order. See *Glover* v. *Johnson*, 510 F. Supp. 1019, 1020 (ED Mich. 1981). Under a 1985 ruling governing fee awards, plaintiffs' counsel applied for fees and costs twice yearly. See *Hadix* v. *Johnson*, 143 F. 3d 246, 248 (CA6 1998).

In *Hadix* v. *Johnson*, a class of male Michigan inmates filed a §1983 action against the State in 1980, alleging that the conditions of their confinement violated the First, Eighth, Ninth, and Fourteenth Amendments. In 1985, the parties entered into a consent decree governing sanitation, health care, fire safety, overcrowding, court access, and other aspects of prison life. The District Court retained jurisdiction over the case pending substantial compliance with the decree. Plaintiffs' attorneys remain responsible for monitoring compliance with the decree. In 1987, the District Court entered an order governing the award of fees and costs to plaintiffs' counsel for compliance monitoring. See *id.*, at 249.

Counsel for plaintiffs in both cases filed fee applications for compensation at the court-approved market-based level of $150 per hour for work performed between January 1, 1996 and June 30, 1996. See App. to Pet. for Cert. 27a, 33a. The State objected, arguing that §803(d) limits all fees awarded after April 26, 1996 in these litigations to $112.50 per hour. *Id.*, at 34a. In separate but nearly identical opinions, the District Court refused to apply §803(d)'s fee limitation to work performed before the PLRA's effective date, see *id.*, at 28a, n. 1; *id.*, at 34a, n. 1, but applied the limitation to all work performed thereafter, see *id.*, at 31a, 41a.

Relying on its recent decision in *Glover* v. *Johnson*, 138 F. 3d 229 (1998), the Sixth Circuit affirmed the District

Court's refusal to apply §803(d) to work completed pre-enactment. See 143 F. 3d, at 248. The appeals court reversed the District Court's judgment, however, to the extent that it applied §803(d) to work performed post-enactment. See *id.*, at 255–256. Unpersuaded that Congress intended the PLRA attorney's fee provisions to apply retroactively, the panel held that §803(d) "is inapplicable to cases brought before the statute was enacted whether the underlying work was performed before or after the enactment date of the statute." *Ibid.*

II

In *Landgraf* v. *USI Film Products*, 511 U. S. 244 (1994), we reaffirmed the Court's longstanding presumption against retroactive application of the law. "If [a] statute would operate retroactively," we held, "our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result." *Id.*, at 280.

Emphasizing that §803(d) applies to "any action brought by a prisoner who is confined," the State insists that the statute's plain terms reveal Congress' intent to limit fees in pending as well as future cases. See Brief for Petitioners 14–15. As the Court recognizes, however, §803(d)'s "any action brought" language refers to the provision's substantive scope, not its temporal reach, see *ante*, at 8; "any" appears in the text only in proximity to provisions identifying the law's substantive dimensions.[1] Had Con-

[1] Section §803(d) is thus unlike the unenacted provision discussed in *Landgraf* v. *USI Film Products*, 511 U. S. 244, 260 (1994), which would have made the statute at issue in that case applicable "'to all proceedings pending on or commenced after'" the effective date. Because this language would have linked the word "all" directly to the statute's temporal scope, we recognized that it might have qualified as a clear statement of retroactive effect. The word "any" is not similarly tied to the temporal scope of the PLRA, however, and so the inference suggested in the *Landgraf* discussion is not permissible here.

gress intended that §803(d) apply retroactively, it might easily have specified, as the Court suggests, that all post-enactment awards shall be subject to the limitation, see *ante*, at 9, or prescribed that the provision "shall apply in all proceedings pending on or commenced after the date of enactment of this Act." Congress instead left unaddressed §803(d)'s temporal reach.

Comparison of §803(d)'s text with that of a neighboring provision, §802(b)(1) of the PLRA, is instructive for the retroactivity question we face. Section 802(b)(1), which governs "appropriate remedies" in prison litigation, applies expressly to "all prospective relief whether such relief was originally granted or approved before, on, or after the date of the enactment of this title." 110 Stat. 1321–70, note following 18 U. S. C. §3626. "Congress [thus] saw fit to tell us which part of the Act was to be retroactively applied," *i.e.*, §802. *Jensen* v. *Clarke*, 94 F. 3d 1191, 1203 (CA8 1996). While I agree with the Court that the negative implication created by these two provisions is not dispositive, see *ante*, at 12, Congress' silence nevertheless suggests that §803(d) has no carryback thrust.

Absent an express statutory command respecting retroactivity, *Landgraf* teaches, the attorney's fees provision should not be applied to pending cases if doing so would "have retroactive effect." 511 U. S., at 280. As the Court recognizes, see *ante*, at 15, application of §803(d) to work performed before the PLRA's effective date would be impermissibly retroactive. Instead of the court-approved market-based fee that attorneys anticipated for work performed under the old regime, counsel would be limited to the new statutory rate. We long ago recognized the injustice of interpreting a statute to reduce the level of compensation for work already performed. See *United States* v. *Heth*, 3 Cranch 399, 408–409 (1806) (precluding, as impermissibly retroactive, application of a statute reducing customs collectors' commissions to customs col-

lected before enactment, even when the commission was due after the statute's effective date).

III

In my view, §803(d) is most soundly read to cover all and only representations undertaken after the PLRA's effective date. Application of §803(d) to representations commenced before the PLRA became law would "attac[h] new legal consequences to [an] even[t] completed before [the statute's] enactment"; hence the application would be retroactive under *Landgraf*. 511 U. S., at 270. The critical event effected before the PLRA's effective date is the lawyer's undertaking to prosecute the client's civil rights claim. Applying §803(d) to pending matters significantly alters the consequences of the representation on which the lawyer has embarked.[2] Notably, attorneys engaged before passage of the PLRA have little leeway to alter their conduct in response to the new legal regime; an attorney who initiated a prisoner's rights suit before April 26, 1996 remains subject to a professional obligation to see the litigation through to final disposition. See American Bar Association Model Rules of Professional Conduct, Rule 1.3, and Comment [3] (1999) ("[A] lawyer should carry through to conclusion all matters undertaken for a client."). Counsel's actions before and after that date are thus "inextricab[ly] part of a course of conduct initiated prior to the law." *Inmates of D. C. Jail* v. *Jackson*, 158 F. 3d 1357, 1362 (CADC 1998) (Wald, J., dissenting).

While the injustice in applying the fee limitations to

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[2] An attorney's decision to invest time and energy in a civil rights suit necessarily involves a complex balance of factors, including the likelihood of success, the amount of labor necessary to prosecute the case to completion, and the potential recovery. Applying §803(d) to PLRA representations ongoing before April 26, 1996 effectively reduces the value of the lawyer's prior investment in the litigation, and disappoints reasonable reliance on the law in place at the time of the lawyer's undertaking.

pending actions may be more readily apparent regarding work performed before the PLRA's effective date, application of the statute to work performed thereafter in pending cases also frustrates reasonable reliance on prior law and court-approved market rates. Consider, for example, two attorneys who filed similar prison reform lawsuits at the same time, pre-PLRA. Both attorneys initiated their lawsuits in the expectation that, if they prevailed, they would earn the market rate anticipated by pre-PLRA law. In one case, the lawsuit progressed swiftly, and labor-intensive pretrial discovery was completed before April 26, 1996. In the other, the suit lagged through no fault of plaintiff's counsel, pending the court's disposition of threshold motions, and the attorney was unable to pursue discovery until after April 26, 1996.[3] Both attorneys have prosecuted their claims with due diligence; both were obliged, having accepted the representations, to perform the work for which they seek compensation. There is scarcely greater injustice in denying pre-PLRA compensation for pretrial discovery in the one case than the other. Nor is there any reason to think that Congress intended these similarly situated attorneys to be treated differently.

The Court avoids a conclusion of retroactivity by dismissing as an unsupported assumption the attorneys' assertion of an obligation to continue their representations through to final disposition. See *ante*, at 16. It seems to me, however, that the assertion has secure support.

Like the ABA's Model Rules, the Michigan Rules of Professional Conduct, which apply to counsel in both *Hadix* and *Glover*, see Rule 83.20(j) (1999), provide that absent good cause for terminating a representation, "a

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[3] If counsel's conduct caused delay or protraction, the court could properly exercise discretion to deny or reduce the attorney's fee. See 42 U. S. C. §1988(b) (1994 ed., Supp. II) ("[T]he court, in its discretion, may allow . . . a reasonable attorney's fee.").

lawyer should carry through to conclusion all matters undertaken for a client." Mich. Rules of Prof. Conduct, Rule 1.3 Comment (1999) It is true that withdrawal may be permitted where "the representation will result in an unreasonable financial burden on the lawyer," Rule 1.16(b)(5), but explanatory comments suggest that this exception is designed for situations in which "the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees," Rule 1.16 Comment Consistent with the Michigan Rules, counsel for petitioners affirmed at oral argument their ethical obligation to continue these representations to a natural conclusion. See Tr. of Oral Arg. 43 ("[Continuing the representation] does involve ethical concerns certainly, especially in the[se] circumstance[s]."). There is no reason to think counsel ethically could have abandoned these representations in response to the PLRA fee limitation, nor any basis to believe the trial court would have permitted counsel to withdraw. See Rule 1.16(c) ("When ordered to do so by a tribunal, a lawyer shall continue representation."). As I see it, the attorneys' pre-PLRA pursuit of the civil rights claims thus created an obligation, enduring post-PLRA, to continue to provide effective representation.

Accordingly, I conclude that the Sixth Circuit soundly resisted the "sophisticated construction," 143 F. 3d, at 252, that would split apart, for fee award purposes, a constant course of representation. "[T]he triggering event for retroactivity purposes," I am persuaded, "is when the lawyer undertakes to litigate the civil rights action on behalf of the client." *Inmates of D. C. Jail*, 158 F. 3d, at 1362 (Wald, J. dissenting).

* * *

Landgraf's lesson is that Congress must speak clearly when it wants new rules to govern pending cases. Be-

cause §803(d) contains no clear statement on its temporal reach, and because the provision would operate retroactively as applied to lawsuits pending on the Act's effective date, I would hold that the fee limitation applies only to cases commenced after April 26, 1996.