Joining Behind Bars: Reconciling Federal Rule of Civil Procedure 20(a)(1) with the Prison Litigation Act

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NOTES

JOINING BEHIND BARS: RECONCILING FEDERAL RULE OF CIVIL PROCEDURE 20(A)(1) WITH THE PRISON LITIGATION REFORM ACT

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INTRODUCTION

In 2007, three male inmates at Johnson State Prison filed a 42 U.S.C. § 1983 action against nine female corrections officers. The inmates—Paul Tyner, Brian Patrick Malverdi, and Bradford Lee Bagley—claimed that the female officers observed male prisoners while the men showered and used the toilets in the nude. The officers purportedly “pat search[ed]” the men while they were naked, and even “karate chop[ped] them in the groin.” When the inmates “attempt[ed] to shield their nudity by placing paper in their cell windows,” the officers supposedly threatened to issue disciplinary reports.

Tyner, Malverdi, and Bagley sought redress in federal court on behalf of themselves and “the entire class of similarly situated plaintiffs” at Johnson State Prison. Proceeding pro se, the three

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1 Tyner v. Donald, No. CV 307-075, 2007 WL 4553052, at *1–2 (S.D. Ga. Dec. 19, 2007). In addition to the nine female corrections officers, the Plaintiffs also named James Donald, Commissioner; Mr. Washington, Warden; the Georgia Department of Corrections and their rules and regulations as defendants in their complaint. Id. at *1.

2 Id. at *2.

3 Id. (quoting Complaint at 8, Tyner v. Donald, No. CV 307-075, 2007 WL 4553052 (S.D. Ga. 2007)) (internal quotation marks omitted).


5 Id. (quoting Complaint at 5, Tyner v. Donald, No. CV 307-075, 2007 WL 4553052 (S.D. Ga. 2007)) (internal quotation marks omitted).
prisoners joined as plaintiffs by signing and submitting a single complaint to the District Court in the Southern District of Georgia. Each inmate also filed a motion for leave to proceed in forma pauperis ("IFP") under 28 U.S.C. § 1915 of the Prison Litigation Reform Act of 1995 ("PLRA").

However, because the three prisoners joined in a single action, the district court dismissed the case before reaching its merits. Following Eleventh Circuit precedent, the magistrate judge ruled that IFP prisoner plaintiffs could not join as plaintiffs under Federal Rule of Civil Procedure 20(a)(1). The district court judge agreed. Considering both "the plain language of the PLRA" and Congress's intent in enacting that statute, the district court held that Tyner, Malverdi, and Bagley could not join under Federal Rule 20(a)(1), and that each inmate must pay the full $350 filing fee. The court dismissed the case without prejudice to allow each inmate to pursue his claims and pay his filing fee individually.

Cases like Tyner are not unique. The overwhelming majority of pro se prisoner complaints and appeals, especially those concerning civil rights and prison condition violations, are filed...
IFP. Moreover, pro se prisoners are some of the most frequent filers of civil cases in federal courts. In fiscal year 2008, pro se prisoners filed 50,756 civil complaints in United States district courts. This represented about nineteen percent of all district court civil filings, and substantially exceeded the amount of non-prisoner pro se civil cases. During that same period, almost twenty-five percent of civil filings in the United States courts of appeal were filed by pro se prisoners. These cases comprised the second-largest category of civil appeals considered by federal courts.

Given these statistics, federal courts should develop a uniform approach to cases in which pro se prisoners file both to proceed IFP under the PLRA and to join in a single action under Rule 20(a)(1). So far, however, courts have been inconsistent in their handling of PLRA-Rule 20(a)(1) cases and, consequently, their treatment of IFP prisoner litigants. This inconsistency is largely due to a lack of legislative guidance and confusion among the courts as to how to approach PLRA-Rule 20(a)(1) cases. Rule


See FED. JUDICIAL CTR., supra note 14; see also Howard B. Eisenberg, Rethinking Prisoner Civil Rights Cases and the Provision of Counsel, 17 S. ILL. U. L.J. 417, 420 n.8 (1993) (finding that, based on a study of three federal district courts, “[m]ore than [ninety-five percent] of prisoner suits are filed in forma pauperis” and, “[w]ith rare exceptions, all such cases are filed pro se.”) (emphasis omitted). See generally JUDICIAL BUSINESS, supra note 14, at 82 tbl.A-1 (indicating that nearly eighty percent of cases on the U.S. Supreme Court docket in 2007 were filed IFP).

See infra notes 17–20 and accompanying text.

16 JUDICIAL BUSINESS, supra note 14, at 78 tbl.S-23.
17 See id.
18 See id.
19 See JUDICIAL BUSINESS, supra note 14, at 45 tbl.S-4.
20 See id.
21 See infra Part III.
20(a)(1), for its part, does not specify whether joinder by IFP prisoner plaintiffs is permitted. Generally, the Rule defines a liberal standard for permissive joinder of persons, and the United States Supreme Court has held that joinder under Rule 20 is "strongly encouraged" where it is "consistent with fairness to the parties." Yet, it is unclear whether courts should apply this broad standard in cases where the parties are IFP prisoner plaintiffs who, in addition to satisfying the requirements of Rule 20, must also comply with the PLRA.

Remarkably, the PLRA also does not address joinder by IFP prisoner plaintiffs. Section 1915 of the Act requires IFP prisoners to pay "the full amount of a filing fee" for a civil action or appeal, though the fee collected cannot "exceed the amount of fees permitted by statute" in the particular jurisdiction. Furthermore, prisoners are assessed "strikes" for each IFP action that is dismissed as frivolous or malicious, or for failing to state a claim on which relief can be granted. After a prisoner incurs three strikes, he or she may no longer proceed IFP. Accordingly, while § 1915's fee and strike assessment schemes create straightforward standards for single-plaintiff actions, it is uncertain whether these provisions impact IFP prisoners' ability to join in a single action. Additionally, § 1915 does not indicate how courts should assess filing fees and strikes to IFP prisoners who are permitted to join as plaintiffs under Rule 20(a)(1).

In the absence of guidance from the Supreme Court or Congress, federal courts have adopted conflicting approaches to cases involving joinder by IFP prisoner plaintiffs. Some courts, like Tyner, interpret the PLRA and Rule 20 as creating a per se rule barring joinder by IFP prisoner plaintiffs. Other courts reconcile the PLRA and Rule 20 by allowing IFP prisoner

22 See FED. R. CIV. P. 20(a)(1); see infra Part I.  
24 See FED. R. CIV. P. 20(a)(1).  
26 Id. § 1915(b)(3).  
27 Id. § 1915(g).  
28 Id. That said, under § 1915(g), a prisoner with three strikes may still file to proceed IFP if the prisoner "is under imminent danger of serious physical injury." Id.  
29 See infra Part III.A.1; see, e.g., Hubbard v. Haley, 262 F.3d 1194, 1195 (11th Cir. 2001).
plaintiffs to join as long as each plaintiff pays a full filing fee. Finally, one circuit court has held that IFP prisoner plaintiffs may join under Rule 20 and pay a collective filing fee.

These contradictory outcomes create uncertainty in the courts and inequity in the treatment of pro se prisoners. For example, while the court in Tyner barred the three inmates from joining as plaintiffs and assessed each inmate $350 in filing fees, similarly-situated prisoner-plaintiffs in other circuits would be assessed the same fees but would also be permitted to join as plaintiffs under Rule 20(a)(1). While this outcome would not reduce the cost of filing an IFP action, the joined prisoners would enjoy the less-tangible benefits of Rule 20 joinder, such as the ability to divide up the responsibilities of litigating a claim pro se. Similarly, prisoners who are not only permitted to join, but also to split one filing fee, would have a clear financial advantage over the prisoners in Tyner. Had the Tyner court followed this approach, each of the three inmates could have saved over $233 in filing fees. These savings would likely have been significant given that the inmates claimed that they could not afford to pay individual $350 filing fees from their prison trust accounts.

Despite their disparate outcomes, courts have used the same four tools of statutory interpretation to determine whether IFP prisoners may join as plaintiffs under Rule 20(a)(1). First, courts consider the plain meaning of the text of PLRA and the text of Rule 20(a)(1). Second, courts look to Congress's intent in

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33 See supra note 30 and accompanying text.
34 See supra note 31 and accompanying text.
36 Id. While the PLRA provides the procedure by which courts may grant IFP status, the statute does not set out any criteria for determining the level of poverty a prisoner must demonstrate in order to proceed IFP. See 28 U.S.C. § 1915(a)(1)–(2) (2006); FED. JUDICIAL CTR., supra note 14, at 17 (finding that “recourse to pre-PLRA case law may be helpful” in determining what qualifies as “indigence for IFP purposes” under the PLRA).
37 See infra Part III.
38 See infra Part III.A.
promulgating the PLRA and its IFP provisions. Third, courts apply the implied repeals analysis to determine if the PLRA repealed or altered Rule 20(a)(1) by implication. Finally, courts discuss—and in some cases, debunk—the public policy concerns raised by joinder of IFP prisoners.

This Note explores the courts' competing approaches to cases involving joinder by IFP prisoners and endeavors to resolve this troublesome procedural issue. Part I of this Note reviews the history and purpose of Rule 20(a)(1) of the Federal Rules of Civil Procedure. Part II discusses the legislative history and scope of the PLRA, focusing primarily on the IFP provisions contained in § 1915. Part III examines how courts have used the same four interpretive tools—plain meaning, legislative intent, implied repeals, and public policy arguments—to support three conflicting outcomes in PLRA-Rule 20(a)(1) cases: a per se rule against joinder, joinder with individual filing fees, and joinder with a collective filing fee. Part III also analyzes the Supreme Court's decision in Jones v. Bock, where the Court used these four interpretive tools to resolve a separate conflict between the PLRA and the Federal Rules of Civil Procedure. This Part also asserts that, in light of its decision in Jones, the Court would likely permit joinder by IFP prisoner plaintiffs. However, Part IV.A argues that until the Court issues such a ruling, or Congress amends the PLRA to address joinder, it is best for lower courts to permit IFP prisoners to join as plaintiffs and pay a collective filing fee. Finally, Part IV.B urges the Supreme Court to resolve the split among the circuit courts by determining whether IFP prisoner plaintiffs may join in a single action.

39 See infra Part III.B.
40 See infra Part III.C.
41 See infra Part III.D.
42 See infra Part I.
43 See infra Part II.
44 See infra Part III.
46 See infra Part III.E.
47 See infra Part III.E.
48 See infra Part IV.A.
49 See infra Part IV.B.
I. HISTORY AND PURPOSE OF RULE 20

Rule 20 outlines the requirements for “permissive joinder” of parties. Consistent with the Rule’s origin as an equitable remedy, the criteria for permissive joinder are based on practical considerations, and “not on arcane historic formulations of legal relationships.” This pragmatic approach underlies the Rule’s main objective: to promote trial convenience and efficiency. With this purpose in mind, courts have liberally construed Rule 20 to entertain a broad scope of litigation that is “consistent with fairness to the parties” involved in a joint action. Courts’ broad discretion to allow joinder, however, is balanced by a complementary discretion under the Federal Rules of Civil Procedure to deny joinder in the interest of fairness.

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51 See 7 Charles Alan Wright et al., Federal Practice and Procedure ¶ 1651, at 390-91 (4th ed. 2008); Moore, supra note 50, ¶ 20App.100. Where common law courts looked only to the substantive rights of parties to determine whether joinder was proper, federal equity courts considered joinder in terms of “judicial economy and trial convenience.” Wright, supra, at 390; Moore, supra note 50, ¶ 20App.100. Indeed, with the adoption of the Equity Rules of 1912, trial convenience had become the “sole criterion” for courts to evaluate joinder by parties who shared a common interest in an action. Wright, supra, at 394. According to the original Advisory Committee Note, Rule 20 represented “only a moderate expansion” of this federal equity practice “to cover both law and equity actions.” Fed. R. Civ. P. 20 advisory committee’s note.

52 See Moore, supra note 50, ¶ 20.02[1][a], at 20-5 (finding that Rule 20 encourages comprehensive resolution of disputes, deters overlapping litigation, saves time and money for the parties and the court trying the case, and helps avoid inconsistent outcomes by binding all joined parties in a single judgment); see also, e.g., Pujol v. Shearson/Am. Express, Inc., 877 F.2d 132, 134 (1st Cir. 1989) (joinder results in economies of scale); League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency, 558 F.2d 914, 917 (9th Cir. 1977) (joinder necessary for parties to obtain complete relief in single proceeding); Mosley v. Gen. Motors Corp. 497 F.2d 1330, 1332 (8th Cir. 1974) (joinder “expedite[s] the final determination of disputes, thereby preventing multiple lawsuits”).

53 See id. at 20-5 to 20-6; Wright, supra note 51, ¶ 1652, at 395; see also, e.g., Saval v. BL Ltd., 710 F.2d 1027, 1031 (4th Cir. 1983) (finding that Rule 20 “should be construed in light of its purpose” to promote trial convenience and efficiency); League to Save Lake Tahoe, 558 F.2d at 917; Mosley, 497 F.2d at 1332.

54 United Mine Workers v. Gibbs, 383 U.S. 715, 724 (1966); see also League to Save Lake Tahoe, 558 F.2d at 917; Mosley, 497 F.2d at 1332.

55 See infra notes 65-69 and accompanying text.
Rule 20(a)(1) governs the permissive joinder of plaintiffs in a single action.\textsuperscript{57} Like the whole of Rule 20, section (a)(1) is "permissive in character."\textsuperscript{58} Thus, the Rule permits the joinder of plaintiffs "whose presence is procedurally convenient but is not regarded as essential to the court's complete disposition of any particular claim."\textsuperscript{59} On the threshold level, joinder is proper if the plaintiffs' claims both arise out of the same transaction and share a common question of law or fact.\textsuperscript{60} These two requirements are cumulative, and joinder is not proper unless both are satisfied.\textsuperscript{61} That said, they are "flexible concepts" and there are no bright-line rules for either prong of this two-part inquiry.\textsuperscript{62} In practice, the common-question requirement is usually not difficult to satisfy since multiple plaintiffs do not typically join in a single action unless there is some commonality among them.\textsuperscript{63} Meanwhile, courts generally assess transactional relatedness on a case-by-case basis to determine "whether, in view of the theories asserted and the facts alleged in each case, joinder is fair."\textsuperscript{64}

Even if plaintiffs' claims satisfy the common-question and transactional relatedness tests, federal courts still have the discretion to disallow joinder.\textsuperscript{65} Accordingly, once Rule 20(a)(1)'s threshold requirements are met, courts must consider the

\textsuperscript{57} FED. R. CIV. P. 20(a)(1) ("Persons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action.").

\textsuperscript{58} See WRIGHT, supra note 51, § 1652, at 395–96.

\textsuperscript{59} Id. at 397.

\textsuperscript{60} FED. R. CIV. P. 20(a)(1); see Desert Empire Bank v. Ins. Co. of N. Am., 623 F.2d 1371, 1375 (9th Cir. 1980) (finding that "Rule 20(a) imposes two specific requirements for the permissive joinder of parties"); League to Save Lake Tahoe, 558 F.2d at 917 (same); Mosley, 497 F.2d at 1333 (same).

\textsuperscript{61} MOORE, supra note 50, ¶ 20.04[1], at 20-28; WRIGHT, supra note 51, § 1653, at 401–04; see cases cited supra note 60.

\textsuperscript{62} WRIGHT, supra note 51, § 1653, at 415.

\textsuperscript{63} MOORE, supra note 50, ¶ 20.04[1], at 20-28 to 20-29.

\textsuperscript{64} Id. ¶ 20.05 ("In other words, although there might be different occurrences, the claims involve enough related operative facts to make joinder in a single case fair."); see Mosley, 497 F.2d at 1333 (8th Cir. 1974) (finding that there are "[n]o hard and fast rules" for transactional relatedness and that courts take a "a case by case approach" in assessing this prong of Rule 20(a)).

\textsuperscript{65} See WRIGHT, supra note 51, § 1652, at 395–96; see, e.g., Saval v. BL Ltd., 710 F.2d 1027, 1031 (4th Cir. 1983) (stating that the standard of review is whether district court abused discretion in denying joinder).
possibility of prejudice and "other relevant factors in a case" to
determine whether permissive joinder would "comport with the
principles of fundamental fairness." Thus, if a court determines
that the addition of a plaintiff will not foster Rule 20's objective
of trial convenience, but will instead result in "embarrassment,
delay, expense, or other prejudice" to the parties, that court may
deny joinder and order separate trials under Rule 20(b) or Rule
42(b). Similarly, if a court finds that plaintiffs have been
improperly joined under Rule 20(a)(1), it may sever the joint
action and direct each plaintiff to file a separate claim.

II. HISTORY AND SCOPE OF THE PLRA

Before the enactment of the PLRA, 28 U.S.C. § 1915 set
somewhat lenient standards for IFP prisoner litigation. Under
the pre-PLRA statute, courts were authorized to "waive all fees
and costs" for prisoners filing to proceed IFP for a civil complaint
or appeal. If courts determined that a prisoner must pay a
filing fee, courts still had the discretion to allow that prisoner to
proceed without prepayment of the fee, or to require the prisoner
to make a partial payment of the filing fee as funds became

66 Desert Empire Bank v. Ins. Co. of N. Am., 623 F.2d 1371, 1375 (9th Cir. 1980).
67 FED. R. CIV. P. 20(b); see, e.g., Chavez v. Ill. State Police, 251 F.3d 612, 631
(7th Cir. 2001) (affirming district court's discretion to deny "joinder where it would
cause delay, prejudice, or expense"); Coleman v. Quaker Oats Co., 232 F.3d 1271,
1296 (9th Cir. 2000) (holding that, under Rule 20(b), a district court may order
separate trials "to avoid prejudice").
68 FED. R. CIV. P. 42(b) ("For convenience, to avoid prejudice, or to expedite and
economize, the court may order a separate trial of one or more separate issues,
claims, crossclaims, counterclaims, or third-party claims."). If a court orders
separate trials under Rule 20(b) or Rule 42(b), plaintiffs do not file separate cases;
instead, the court conducts a "separate factual inquiry of claims or issues in the
context of a single, properly joined case." MOORE, supra note 50, ¶ 20.02[6][c], at 20-25.
69 See FED. R. CIV. P. 21; see MOORE, supra note 50, ¶ 20.02[6][c], at 20-25 ("If
the court orders severance, claims against misjoined parties are dropped and
pursued in a separate action or actions.").
70 See Marie Cordisco, Pre-PLRA Survey Reflects Courts' Experiences with
Assessing Partial Filing Fees in In Forma Pauperis Cases, FJC DIRECTIONS, no. 9,
Moreover, to be considered for IFP status under the former Act, prisoners only
needed to submit an affidavit stating that they were "unable to pay" the fee or any
portion thereof. See § 1915(a)(1).
available. Moreover, the pre-PLRA statute authorized, but did not require, courts to dismiss cases that were frivolous or malicious. The statute also did not allow any sanctions against prisoners who filed complaints or appeals that were frivolous or malicious, or failed to state a claim.

By the mid-1990s, Congress determined that § 1915 was in need of an overhaul. Concerned by "the alarming explosion in the number of frivolous lawsuits filed by State and Federal prisoners," the House of Representatives and the Senate swiftly passed the PLRA. According to the Act's sparse legislative history, one of the main objectives of the PLRA was to "curtail frivolous prisoner litigation." To achieve that goal, Congress made extensive changes to § 1915 to "establish[] procedural hurdles that [would] prevent frivolous lawsuits."

Primarily, Congress amended § 1915 to require prisoners proceeding IFP "to pay the full amount of a filing fee." Under § 1915(b)(1), courts no longer have the discretion to waive payment of the filing fee. Instead, courts must collect an initial total or partial fee from IFP prisoners once they file a complaint or appeal. Under § 1915(b)(4), prisoners who have "no assets and no means by which to pay the initial partial filing fee" will not be prohibited from bringing an IFP action or appeal because of their indigence. However, prisoners with insufficient funds

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72 Cordisco, supra note 70.
77 See id.; Lynn S. Branhman, The Prison Litigation Reform Act's Enigmatic Exhaustion Requirement: What It Means and What Congress, Courts and Correctional Officials Can Learn from It, 86 Cornell L. Rev. 483, 488 n.12 (2001) (finding that, beyond one "House Report, the PLRA's legislative history consists primarily of isolated comments of legislators found in the Congressional Record and the testimony of witnesses during hearings in the Senate and House of Representatives").
80 Id.; see supra text accompanying note 72.
81 Id. § 1915(b)(1).
82 Id. § 1915(b)(4).
must still pay the entire filing fee over time, and § 1915(b)(1) contains a formula for courts to assess that fee in installments.\textsuperscript{84} After the initial filing fee is paid, prisoners must make monthly payments of twenty percent of the preceding month’s income credited to the prisoner’s account until the full filing fee has been paid.\textsuperscript{85} Finally, the amount of the filing fee the court can collect from an IFP prisoner is tempered by § 1915(b)(3), which states that the filing fee collected cannot “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.”\textsuperscript{86}

According to PLRA proponents, requiring prisoners to pay a full filing fee served three related purposes. First, it eliminated any preferential treatment of prisoners by putting them on a level economic playing field with average “law-abiding citizens” who pay their own litigation costs.\textsuperscript{87} Second, it required prisoners to financially contribute to the large burden prisoner litigation places on the federal judiciary system.\textsuperscript{88} Finally, and perhaps most importantly, it provided a much-needed “economic disincentive” to prisoner litigation that was lacking from the original statute.\textsuperscript{89} Not requiring a filing fee, PLRA proponents reasoned, motivated prisoners to file non-meritorious suits.\textsuperscript{90} Alternatively, requiring a filing fee would “force prisoners to think twice about the case and not just file reflexively.”\textsuperscript{91}

Moreover, Congress amended § 1915 to prohibit prisoners from proceeding IFP if they have filed too many frivolous IFP actions or appeals in the past.\textsuperscript{92} Under § 1915(g), commonly

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\textsuperscript{84} Id. § 1915(b)(1) (“The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of [twenty] percent of the greater of (A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the [six] month period immediately preceding the filing of the complaint or notice of appeal.”).

\textsuperscript{85} Id. § 1915(b)(2). These monthly payments are forwarded to the court by the penal institution that has custody of the prisoner each time the prisoners trust account contains more than ten dollars. Id.

\textsuperscript{86} Id. § 1915(b)(3).


\textsuperscript{90} See id.

\textsuperscript{91} 141 CONG. REC. 14,572 (1995) (statement of Sen. Kyl). As Senator Bob Dole put it, “when prisoners know that they will have to pay these costs—perhaps not at the time of filing, but eventually—they will be less inclined to file a lawsuit in the first place.” 141 CONG. REC. 14,571 (1995) (statement of Sen. Dole).

\textsuperscript{92} See infra notes 93–98 and accompanying text.
known as the “three strikes rule,” prisoners may not proceed IFP if they have filed three or more IFP actions or appeals that were dismissed as frivolous or malicious, or for failing to state a claim.\textsuperscript{93} Further, where courts had the option to dismiss frivolous IFP actions under the pre-PLRA statute,\textsuperscript{94} § 1915(e)(2) creates an affirmative obligation to dismiss.\textsuperscript{95} Thus, if a prisoner files an IFP action or appeal that a court considers frivolous or malicious, or that fails to state a claim, the court must dismiss the action or appeal.\textsuperscript{96} Finally, under the statute, courts must also assess new strikes to IFP prisoners whose actions or appeals are dismissed.\textsuperscript{97} To that end, prisoners can incur multiple strikes in the course of litigating one matter; since filing a complaint and appealing its dismissal are separate actions, courts have held that a prisoner in this scenario can incur two strikes.\textsuperscript{98}

Finally, outside of amending § 1915, Congress also enacted provisions in the PLRA to deter frivolous litigation from the general prisoner population, not just those prisoners proceeding IFP.\textsuperscript{99} The revocation of “good-time credits” is one example.\textsuperscript{100} Under 28 U.S.C. § 1932, courts may, on their own motion or otherwise, revoke the unvested “good time credit” or sentencing reductions of any adult prisoner who brings a civil action if the court finds that the claim was filed for malicious purposes or solely to harass the other party.\textsuperscript{101} The legislative history of the PLRA does not describe this provision in terms of the deterrence it would achieve. Proponents of the PLRA, however, characterized § 1932 as an appropriate “punish[ment]” for prisoners “who waste taxpayer dollars and valuable judicial resources with unnecessary lawsuits.”\textsuperscript{102}

\textsuperscript{94} See Fed. Judicial Ctr., supra note 14, at 15.
\textsuperscript{95} § 1915(e)(2).
\textsuperscript{96} See Fed. Judicial Ctr., supra note 14, at 16. Remarkably, in the legislative history of the PLRA, Congress did not discuss its intent in enacting § 1915(g). That said, the provision’s language and application in federal courts demonstrate that it was designed to curb frivolous filings of prisoner IFP actions.
\textsuperscript{97} See id.
\textsuperscript{98} See, e.g., George v. Smith, 507 F.3d 605, 608 (7th Cir. 2007) (holding that defendant incurred two strikes in a single litigation, “one for filing a complaint containing a frivolous claim, another for an appeal raising at least one frivolous objection to the district court’s ruling”).
\textsuperscript{101} § 1932; see Fed. Judicial Ctr., supra note 14, at 4.
III. COURTS’ ANALYSIS OF RULE 20(A)(1) AND THE PLRA: FOUR INTERPRETIVE TOOLS

Although the legislative history of the PLRA demonstrates Congress’s goal to deter frivolous prisoner litigation, it does not address whether joinder by IFP prisoners would further or undermine that objective. Similarly, neither the text of Rule 20(a)(1) nor the text of the PLRA contain any reference to joinder by IFP prisoner plaintiffs. Given this lack of guidance, courts have resorted to their own methods of resolving cases in which IFP prisoners seek to join as plaintiffs under Rule 20(a)(1). Some courts have adopted a per se rule barring joinder by IFP prisoner plaintiffs. Meanwhile, other courts have allowed IFP prisoner plaintiffs to join as long as each plaintiff pays a full filing fee. Finally, one court has held that IFP prisoner plaintiffs may join under Rule 20 and pay a collective filing fee.

While courts differ in their approaches to PLRA-Rule 20(a)(1) cases, they use the same four interpretive tools to support their rationales: (1) plain meaning; (2) legislative intent; (3) implied repeals; and (4) public policy arguments. This Part examines how courts have applied each of these analytical tools to reach three different results. Part III.A considers the use of plain meaning, which has been the courts’ dominant approach to PLRA-Rule 20(a)(1) cases. Part III.B analyzes the application of legislative intent. Part III.C describes the implied repeals analysis and its role in the PLRA-Rule 20(a)(1) debate. Part III.D examines the public policy concerns raised by joinder of IFP prisoner plaintiffs. Finally, Part III.E examines Jones v. Bock, a recent case where the Supreme Court applied the same four interpretive tools to resolve a different conflict between the PLRA and the Federal Rules of Civil Procedure. Although

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103 See, e.g., Hubbard v. Haley, 262 F.3d 1194, 1198 (11th Cir. 2001).
104 See, e.g., Hagan v. Rogers, 570 F.3d 146, 155 (3d Cir. 2009); Boriboune v. Berge, 391 F.3d 852, 856 (7th Cir. 2004).
105 See, e.g., In re Prison Litig. Reform Act, 105 F.3d 1131, 1138 (6th Cir. 1997).
106 See infra Part III.A.
107 See infra Part III.B.
108 See infra Part III.C.
109 See infra Part III.D.
Jones does not directly address the PLRA-Rule 20(a)(1) conflict, Part III.E asserts that the decision may be predictive of how the Court would likely approach and resolve this procedural issue.112

A. Plain Meaning

To determine whether IFP prisoner plaintiffs may join in a single action, courts have examined the PLRA and Rule 20(a)(1) for their plain meaning.113 The basis of the plain meaning doctrine is that, when the text of a statute or Rule is “clear and unambiguous,” courts should look no further than the plain meaning of the text.114 In other words, courts should give effect to meanings that are “apparent on the face of the text” without reference to external sources or interpretative aids.115 Plain meaning has been courts’ dominant approach to resolving PLRA-Rule 20(a)(1) cases; accordingly, courts on every side of the issue have used plain meaning to support their rationales for and against joinder by IFP prisoner litigants.116 Part III.A.1 will examine courts’ use of plain meaning to support a per se rule barring joinder by IFP prisoner plaintiffs.117 Part III.A.2 will consider courts’ application of plain meaning to support joinder by IFP prisoner plaintiffs with individual filing fees.118 Part III.A.3 will analyze courts’ use of plain meaning to support joinder by IFP prisoner plaintiffs with a collective filing fee.119

1. Plain Meaning Supporting a Per Se Rule Against Joinder

Primarily, courts that adopted a per se rule against joinder have asserted that, since the plain meaning of § 1915(b)(1) of the PLRA requires that each IFP prisoner pay a full individual filing fee, IFP prisoner plaintiffs may not join under Rule 20(a)(1).120 The Eleventh Circuit is the only circuit court to espouse this

112 See infra Part III.E.
113 See, e.g., Hagan v. Rogers, 570 F.3d 146, 152, 155 (3d Cir. 2009) (analyzing the “plain language” of Rule 20 and the PLRA); Hubbard v. Haley, 262 F.3d 1194, 1198 (11th Cir. 2001) (examining “the plain language of the PLRA”).
116 See infra Part III.A.
117 See infra Part III.A.1.
118 See infra Part III.A.2.
119 See infra Part III.A.3.
120 See infra notes 121-35 and accompanying text.
approach.\textsuperscript{121} In \textit{Hubbard v. Haley},\textsuperscript{122} the Eleventh Circuit determined that IFP prisoner plaintiffs may not join in a single action because "the clear language of the PLRA" requires each IFP prisoner to pay individual civil and appellate filing fees.\textsuperscript{123} Noting that questions of statutory interpretation should begin and end "with the words of the statutory provision,"\textsuperscript{124} the court looked primarily at the text of § 1915(b)(1), which requires IFP prisoners "to pay the full amount of a filing fee."\textsuperscript{125} The plain meaning of this provision, the court reasoned, "clearly and unambiguously requires" each IFP prisoner plaintiff to pay individual filing fees for both civil actions and appeals.\textsuperscript{126} Consequently, the court found that, in order to meet this requirement, IFP prisoner plaintiffs must bring separate suits and cannot join in a single action under Rule 20(a)(1).\textsuperscript{127}

Several district courts have adopted \textit{Hubbard}'s plain meaning interpretation of the PLRA.\textsuperscript{128} In \textit{Swenson v. MacDonald},\textsuperscript{129} the U.S. Court for the District of Montana broadened \textit{Hubbard}'s analysis by assessing the plain language of both the PLRA and Rule 20(a)(1).\textsuperscript{120} The court compared the "permissive" language of Rule 20(a)(1) with the PLRA's "mandatory" fee payment scheme, finding that, while plaintiffs

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\item 262 F.3d 1194 (11th Cir. 2001).
\item Id. at 1198. In \textit{Hubbard}, eighteen Alabama state prisoners filed a § 1983 action against their correctional facility and various prison officials, alleging violations of their Eighth Amendment rights. \textit{Id.} at 1195. The district court dismissed the case before reaching the merits, holding that, because the prisoners sought to proceed IFP, each Plaintiff had to file a separate complaint and pay a separate filing fee. \textit{Id.} at 1198. Likewise, the district court changed the Plaintiffs' joint notice of appeal to a singular notice, and assessed the appellate filing fee against the first Plaintiff listed on the complaint. \textit{Id.}
\item Id. at 1197 (quoting Harris v. Garner, 216 F.3d 970, 972 (11th Cir. 2000) (en banc)).
\item \textit{Hubbard}, 262 F.3d at 1197.
\item Id. at 1197–98. The court affirmed the district court's dismissal of the multi-plaintiff IFP action, holding that plaintiffs must file separate suits and pay individual filing fees for both a civil action and an appeal. \textit{Id.} at 1198.
\item \textit{Id.} at *2.
\end{enumerate}
\end{footnotesize}
"may join their claims in one action" under Rule 20(a)(1), they still "must pay" a full individual filing fee under § 1915(b)(1). The Swenson court also considered the mandatory language of § 1915(b)(3), which states that "the amount of the fee collected must not exceed the fee imposed for 'commencement of a civil action.'" According to Swenson, courts could not both adhere to the plain meaning of § 1915(b)(1), which requires each IFP prisoner to pay an individual filing fee, and allow joinder under Rule 20(a)(1) without "running afoul of § 1915(b)(3)'s" mandatory limitation on the total fee a court can collect for a single action. As a result, the court adopted "Hubbard's severance solution," holding that each IFP plaintiff must pursue his case separately and pay an individual filing fee.

2. Plain Meaning Supporting Joinder with Individual Filing Fees

Alternatively, some circuit courts have used plain meaning to show that IFP prisoner plaintiffs may join in a single action if each prisoner pays an individual filing fee. Like the Eleventh Circuit in Hubbard, these other circuit courts found that the plain meaning of § 1915(b)(1) requires each prisoner to pay an individual filing fee. To emphasize this point, the Seventh Circuit in Boriboune v. Berge compared the plain language of § 1915(b)(1) with § 1914(a), which governs filing fees in district

131 Id.
132 Id. (emphasis added) (quoting 28 U.S.C. § 1915(b)(3) (2006)).
133 Swenson, 2006 WL 240233, at *2. In other words, the court concluded that, when read together, the compulsory language of § 1915(b)(1) and (b)(3) impliedly negated IFP prisoners' option to join as plaintiffs under Rule 20(a)(1). Id. See also Hagan v. Rogers, 570 F.3d 146, 161 (3d. Cir. 2009) (Jordan, J., concurring in part and dissenting in part) (arguing that allowing prisoners to join in a single suit and pay individual filing fees "creates an 'event' that we are instructed should in no event be created" by the "reasonably" plain language of the PLRA).
135 Id. at *4–5.
136 See infra notes 137–59 and accompanying text.
137 262 F.3d 1194, 1197 (11th Cir. 2001).
138 See, e.g., Boriboune v. Berge, 391 F.3d 852, 855 (7th Cir. 2004). Indeed, in his majority opinion in Boriboune, Judge Easterbrook asserted that it was "hard to read [the] language [of § 1915(b)(1)] any other way." Id.
139 391 F.3d 852. In Boriboune, the district court dismissed a joint § 1983 action by four inmates at a top-security Wisconsin prison who applied to proceed IFP and to join as plaintiffs in a single action. Id. at 853.
courts. The court noted that § 1914(a) requires “‘parties instituting any civil action’” to pay a filing fee. The use of the plural “parties,” the court reasoned, implies that, under this statute, courts should assess filing fees “per case rather than per litigant.” By contrast, § 1915(b)(1) requires “a prisoner” who brings a civil action to pay “the full amount of a filing fee.”

Given the statute’s reference to a singular “prisoner,” the court determined that the plain meaning of § 1915(b)(1) “specifies a per-litigant approach” to the payment of filing fees for IFP prisoner actions.

However, Boriboune did not adopt Hubbard’s “no-joinder” rule. Instead, the court held that IFP prisoners may join as plaintiffs under Rule 20(a)(1) as long as each prisoner plaintiff pays an individual filing fee and the “criteria of permissive joinder are satisfied.” The Third Circuit adopted a similar position in Hagan v. Rogers. There, the court overturned the lower court’s ruling that prisoners are “categorically excluded from Rule 20” joinder. Like Boriboune, the Hagan court found that, even if “[t]he plain language of § 1915(b)(1)” requires each IFP prisoner to pay an individual filing fee, these plaintiffs may still join in a single action under Rule 20(a)(1).

In Hagan, the majority invoked three plain meaning arguments to support this approach. First, the court contended that, because the text of the PLRA “does not mention Rule 20 or joint litigation,” the plain meaning of the Act cannot be construed

140 Id. at 855-56. “The clerk of each 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 $150 except that on application for a writ of habeas corpus the filing fee shall be [five dollars].” Id. (quoting 28 U.S.C. § 1914(a) (2006)). After the Boriboune decision, the filing fee of $150 was increased by the amendments in Pub. L. No. 108-447, § 307, 118 Stat. 2809, 2895 (2004) (codified as amended at 28 U.S.C. § 1914(a) (2006)).

141 Boriboune, 391 F.3d at 855 (quoting § 1914(a)).

142 See id.

143 Id. (internal quotation marks omitted) (quoting 28 U.S.C. § 1915(b)(1) (2006)).

144 Boriboune, 391 F.3d at 856 (reasoning that this “approach is a natural concomitant to a system that makes permission to proceed in forma pauperis . . . contingent on certain person-specific findings,” such as the balance of a prisoner’s trust account).

145 Id.

146 Id. at 855.

147 570 F.3d 146 (3d Cir. 2009).

148 Id. at 152–53.

149 Id. at 155 & n.2.
as forbidding joinder by IFP prisoner plaintiffs.\textsuperscript{150} Second, it asserted that the plain meaning of § 1915(b)(3) does not implicitly bar joinder by IFP prisoners.\textsuperscript{151} Unlike the district court in Swenson,\textsuperscript{152} the Hagan majority reasoned that § 1915(b)(3) should not be read as limiting the total fee courts can collect for an IFP action.\textsuperscript{153} Alternatively, the court found that § 1915(b)(3) "merely ensures that an IFP prisoner's fees, when paid by installment, will not exceed the standard individual filing fee paid in full."\textsuperscript{154} This interpretation, the court concluded, "harmonizes the PLRA with Rule 20" to allow joinder by IFP prisoner plaintiffs.\textsuperscript{155}

Finally, Hagan reasoned that the plain meaning of Rule 20(a)(1) permits joinder by IFP prisoner plaintiffs.\textsuperscript{156} The majority noted that, according to Supreme Court precedent, Rule 20 should be given its plain meaning if its text is "'clear and unambiguous.'"\textsuperscript{157} The court then examined the text of Rule 20(a)(1), and found that "[n]othing in the plain language of... Rule [20] indicates that prisoners are excluded as 'persons' permitted to join as plaintiffs."\textsuperscript{158} Consequently, the court held that prisoners should be included in the "broad definition of persons capable of joining their claim pursuant to... Rule [20]."\textsuperscript{159}

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\item \textsuperscript{150} Id. at 154–55; see also Boriboune v. Berge, 391 F.3d 852, 854 (7th Cir. 2004) ("The PLRA does not mention Rule 20 or joint litigation."). This point was also crucial to the Seventh and Third Circuits' examination of the implied repeals analysis. See infra notes 205–06 and accompanying text.
\item \textsuperscript{151} Hagan, 570 F.3d at 155.
\item \textsuperscript{152} No. CV 05-93-GF-CSO, 2006 WL 240233 (D. Mont. Jan. 30, 2006); see supra notes 129–35 and accompanying text.
\item \textsuperscript{153} Hagan, 570 F.3d at 155; see 28 U.S.C. § 1915(b)(3) (2006).
\item \textsuperscript{154} Hagan, 570 F.3d at 155. Judge Jordan disagreed with the Hagan majority's view that § 1915(b)(3) permits courts to assess individual filing fees in joint IFP actions. Id. at 161 (Jordan, J., concurring in part and dissenting in part); see also supra note 133. That said, he admitted that this interpretation "is at least a plausible reading of the statute" where the alternative would be for the PLRA to repeal Rule 20 by implication. Id. at 162. See infra Part III.C.
\item \textsuperscript{155} Hagan, 570 F.3d at 155–56.
\item \textsuperscript{156} Id. at 153.
\item \textsuperscript{157} Id. at 157 (quoting Berckeley Inv. Group, Ltd. v. Colkitt, 259 F.3d 135, 142 n.7 (3d Cir. 2001)).
\item \textsuperscript{158} Id. at 153.
\item \textsuperscript{159} Id. at 157.
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\end{footnotesize}
3. Plain Meaning Supporting Joinder with a Collective Filing Fee

The Sixth Circuit is the only court to find that IFP prisoners may both join as plaintiffs and pay a collective filing fee under PLRA. In *In re Prison Litigation Reform Act*, the Chief Judge of the Sixth Circuit issued an administrative order suggesting that each IFP prisoner in a joint action should pay a portion of the filing fee. While the order did not engage in a lengthy analysis of the plain meaning of PLRA, it referenced the text of the statute, noting that it “does not specify how fees are to be assessed when multiple prisoners constitute the plaintiffs or appellants.” The court ultimately concluded that the filing fee should “be equally divided” among all the IFP prisoner plaintiffs in a joint action.

The Sixth Circuit’s interpretation has garnered support from other courts. In her opinion in *Hagan*, Judge Roth disagreed with the majority’s holding that § 1915(b)(1) requires each IFP prisoner to pay a full filing fee. Instead, Roth argued that the plain meaning of § 1915(b)(1) allows “each prisoner [to] pay an apportioned amount” of a filing fee. Similar to the Seventh Circuit in *Boriboune*, Roth based her interpretation of

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160 See *In re Prisoner Litig. Reform Act*, 105 F.3d 1131, 1137–38 (6th Cir. 1997); cf. *Talley-Bey v. Knebl*, 168 F.3d 884, 885 (6th Cir. 1999) (holding that, for the purposes of the PLRA, “when a district court imposes fees and costs upon multiple prisoners, the fees and costs are to be proportionally assessed among the prisoners”).
161 105 F.3d 1131 (6th Cir. 1997).
162 Id. at 1137–38.
163 Id. at 1137.
164 Id. at 1138. The Chief Judge, however, qualified this holding as a temporary measure “to assure uniformity throughout the Sixth Circuit . . . until such time as panels of this court have the opportunity to address the numerous issues raised by the [PLRA].” Id. at 1131. Consequently, at least one district court has questioned whether the law within the Sixth Circuit is settled concerning the apportionment of a collective filing fee in joint IFP actions. See, e.g., *Lawson v. Sizemore*, No. Civ.A. 05-CV-108-KKC, 2005 WL 1514310, at *1, n.1 (E.D. Ky. June 24, 2005) (“No panel of the Sixth Circuit has yet squarely addressed the multiple-in forma pauperis-prisoner-plaintiff-PLRA filing fee issue”). That said, the *Lawson* court did not question the permissibility of joinder by IFP prisoner plaintiffs.
166 Id. at 164 (arguing that the majority’s holding “violates 28 U.S.C. § 1915(b)(3) and misconstrues 28 U.S.C. § 1915(b)(1)”).
167 Id.
168 See supra notes 139–44 and accompanying text.
§ 1915(b)(1) on a grammatical nuance in the statutory text.\footnote{Hagan, 570 F.3d at 164 (Roth, J., concurring in part and dissenting in part).} She concluded that “Congress’s use of ‘a’ instead of ‘the’” before the phrase “filing fee” in § 1915(b)(1) demonstrates that joint IFP litigants may pay a collective fee.\footnote{Id. (quoting 28 U.S.C. § 1915(b)(1) (2006)).} This “subtle difference,” Roth argued, shows both that the PLRA requires one total filing fee and that IFP prisoners who join under Rule 20(a)(1) may satisfy this requirement by each paying an apportioned amount of that fee.\footnote{Hagan, 570 F.3d at 164 (Roth, J., concurring in part and dissenting in part).} Accordingly, this plain language interpretation “would satisfy both § 1915(b)(1), because each prisoner would pay a full filing fee, and § 1915(b)(3), because the prisoners together would pay only one . . . fee.”\footnote{Id. at 165.}

### B. Legislative Intent

In addition to plain meaning, courts have examined legislative intent to determine whether IFP prisoner plaintiffs may join under Rule 20(a)(1).\footnote{See infra Part IV.A.2.} Some courts contend that a per se rule against joinder best aligns with Congress’s intent in enacting the PLRA and its IFP provisions.\footnote{See, e.g., Hubbard v. Haley, 262 F.3d 1194, 1197–98. (11th Cir. 2001); Mackey v. Walker, No. CV 108-129, 2008 WL 4657879, at *2 (S.D. Ga. Oct. 21, 2008) (stating that allowing joinder by IFP prisoners “would circumvent the Congressional purpose in promulgating the PLRA”); Tyner v. Donald, No. CV 307-075, 2007 WL 4553052, at *1 (S.D. Ga. Dec. 19, 2007) (denying joinder based on Hubbard and finding that “Plaintiffs’ contention that Congress never intended for Plaintiffs proceeding jointly . . . to pay separate filing fees is . . . without merit”); cf. Sundstrom v. Frank, No. 06-C-0112, 2006 WL 2038204, at *2 (E.D. Wis. July 12, 2006) (requiring separate filing fees but conceding that “[r]quiring every prisoner plaintiff . . . to pay the full filing fee might further the intent of Congress to curtail prisoner litigation”).} For example, in Hubbard, the Eleventh Circuit held that, because “the Congressional purpose in promulgating the PLRA” was to deter frivolous prisoner litigation, IFP prisoner plaintiffs are prohibited from joining under Rule 20(a)(1).\footnote{Hubbard, 262 F.3d at 1197–98.} To support this view, the court first determined that Congress’s general intent in enacting the PLRA “was to curtail abusive prisoner tort, civil rights and conditions of confinement litigation.”\footnote{Id. at 1196 (citing Anderson v. Singletary, 111 F.3d 801, 805 (11th Cir. 1997)).}
then cited the congressional record to show that Congress enacted the statute’s IFP provisions to further its intent to “‘deter frivolous inmate lawsuits.’”177 Finally, the court looked to decisions from other circuits, which held that, given Congress’s intent “to taper prisoner litigation,” the PLRA should be read as requiring individual filing fees.178 Based on these findings, the court determined that a per se rule prohibiting joinder best supported the legislative intent behind the enactment of the PLRA.179

Conversely, in Hagan, the Third Circuit asserted that Congress intended for IFP prisoners to be permitted to join under Rule 20(a)(1) if each litigant pays an individual filing fee.180 To support this view, the Hagan court evaluated legislative intent through the lens of plain meaning. Primarily, the court found that neither the text of the PLRA nor its legislative history demonstrate Congress’s intent “to alter the plain language of Rule 20” by prohibiting joinder by IFP prisoners plaintiffs.181 This statutory silence, the court reasoned, implies that Congress did not intend for the PLRA to prohibit IFP prisoner plaintiffs from joining in a single action.182 Moreover, when the Hagan court turned to the PLRA’s IFP provisions, it concluded that, “Congress did not intend § 1915(b)(3) to be a vehicle for denying a prisoner’s access to permissive joinder.”183 Instead, the court reasoned that the plain language of § 1915(b)(3), when read in tandem with § 1915(b)(4),184 suggests that Congress “intended to

177 Id. at 1198 (quoting 141 Cong. Rec. S7,526 (daily ed. May 25, 1995) (statement of Sen. Kyl)).
178 Id. at 1196–97 (citing cases).
179 Id. at 1197–98. Essentially, Hubbard determined that Congress intended to require individual filing fees, rather than a collective filing fee, because individual filing fees would provide the most financial deterrence to frivolous prisoner filings. Id. District courts that adopted this reasoning have also noted that a collective filing fee may actually reduce the PLRA’s effectiveness in deterring frivolous prisoner litigation. See Ray v. Evercom Sys. Inc., No. 4:05-2904-RBH, 2006 WL 2475264, at *6 (D.S.C. Aug. 25, 2006) (citing Hubbard, 262 F.3d at 1198) (finding that a collective filing fee “ignores the Congressional purpose in promulgating the PLRA” and would “dramatically reduce[]” the “monetary deterrence intended by the PLRA”); Lawson v. Sizemore, No. Civ.A. 05-CV-108-KKC, 2005 WL 1514310, at *1 n.1 (E.D. Ky. June 24, 2005) (stating that a collective filing fee would “circumvent[]” the intent of the PLRA).
180 Hagan v. Rogers, 570 F.3d 146, 155–56 (3d Cir. 2009).
181 Id. at 152.
182 Id. at 156 n.3.
183 Id. at 155 (emphasis omitted); see 28 U.S.C. § 1915(b)(1) (2006).
184 § 1915(b)(4).
A few courts have used the implied repeals analysis to reconcile the PLRA with Rule 20(a)(1). The Supreme Court has never established the appropriate method for analyzing conflicts between federal statutes and federal rules. The implied repeals analysis is typically applied to statute-to-statute conflicts, but courts often borrow this test to resolve clashes between statutes and Rules. Accordingly, in two cases, the Supreme Court has used the implied repeals analysis to settle statute-rule conflicts.

In the context of a statute-rule conflict, the implied repeals analysis requires a two-part inquiry. First, courts must determine if there is an "irreconcilable conflict" between the statute and the rule. Repeals by implication are generally

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185 Hagan, 570 F.3d at 156 n.3 (emphasis omitted).
186 Id. at 155–56.
187 See infra Part III.C.
189 See id. at 680 (finding that the implied repeals analysis was developed to resolve conflicts between two statutes).
190 Id. at 701 ("Courts have come to rely on the framework of . . . implied repeals when resolving apparent conflicts between statutes and Federal Rules . . . ").
191 See, e.g., Henderson v. United States, 517 U.S. 654, 656 (1996) (finding that the question presented was whether the Suits in Admiralty Act’s "forthwith" instruction for service of process "has been superseded" by Federal Rule 4(j)); Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 445 (1987) (using implied repeals to resolve a conflict between Rule 54(d) and two portions of congressional statutes that provided for taxation of court costs).
192 See Genetin, supra note 188, at 704; see also Radzanower v. Touche Ross & Co., 426 U.S. 148, 154 (1976) (quoting Posadas v. Nat'l City Bank, 296 U.S. 497, 503 (1936)) (finding that there are "two well-settled categories of repeals by implication").
193 See Genetin, supra note 188, at 704 ("In resolving clashes between statutes and Federal Rules . . courts have held that the first line of inquiry is whether there is an irreconcilable conflict . . . "); see also Branch v. Smith, 538 U.S. 254, 273 (2003).
Thus, in addressing this threshold question, many courts have held that courts should favor a harmonizing construction that permits the statute and the rule to coexist.395 Under the second prong of the analysis, a court must determine if there is a clear congressional intent for one provision to repeal the other.396 Where courts find that a statute-rule conflict satisfies either prong of this analysis, they generally hold that the later enacted statute or rule "controls and supersedes the former to the extent of the actual conflict."397

Though the implied repeals analysis has not been the centerpiece of courts’ approach to PLRA-Rule 20(a)(1) cases, a few courts have invoked implied repeals within the context of plain meaning and legislative intent.398 The Eleventh Circuit was the first court to use implied repeals to support a per se rule against joinder.399 In Hubbard, the court held that the PLRA repealed Rule 20(a)(1) as it applies to IFP prisoner plaintiffs.200 Notably, Hubbard did not expressly state that the PLRA and Rule 20 were in "irreconcilable conflict." The court inferred,

(using the "irreconcilable conflict" standard to analyze statute-to-statute conflict); Radzanower, 426 U.S. at 155 (same).

394 Radzanower, 426 U.S. at 154 (quoting United States v. United Cont'l Tuna Corp., 425 U.S. 164, 168 (1976)) (finding that it is "a cardinal principle of statutory construction that repeals by implication are not favored.").

395 Genetin, supra note 188, at 704 (citing Crawford Fitting, 482 U.S. at 442, 445).

396 See, e.g., Henderson, 517 U.S. at 672; Crawford Fitting, 482 U.S. at 445.

397 Genetin, supra note 188, at 705 & n.135 (citing cases); see Henderson, 517 U.S. at 672 (stating that later rule repeals conflicting statute); see also Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 646 (2007) (intention of the legislature to repeal must be "clear and manifest"); Radzanower, 426 U.S. at 155 (finding that where there is an implied repeal, later statute controls only to the "minimum extent necessary" to resolve the conflict).

398 See Hagan v. Rogers, 570 F.3d 146, 152, 156 (3d. Cir. 2009); Boriboune v. Berge, 391 F.3d 852, 854 (7th Cir. 2004); Hubbard v. Haley, 262 F.3d 1194, 1198 (11th Cir. 2001).


200 Hubbard, 262 F.3d at 1198.
however, that Rule 20 conflicted with the PLRA because the plain meaning of § 1915(b)(1) requires IFP prisoners to pay full individual filing fees.\textsuperscript{201} To the court in \textit{Hubbard}, this conflict was sufficient to warrant an implied repeal. Thus, the court held that “to the extent that . . . Rule 20 . . . actually conflicts with the PLRA . . . the statute repeals the Rule.”\textsuperscript{202}

Alternatively, in \textit{Boriboune} and \textit{Hagan}, the Seventh and Third Circuits used the implied repeals analysis to support joinder by IFP prisoner plaintiffs who pay individual filing fees.\textsuperscript{203} Specifically, these courts contended that the PLRA did not impliedly repeal Rule 20 as it applies to IFP prisoner plaintiffs.\textsuperscript{204} \textit{Boriboune} and \textit{Hagan} advanced three rationales to support this conclusion. First, the courts asserted that there is no express conflict between the text of the PLRA and the text of Rule 20 that would warrant repeal by implication.\textsuperscript{205} Without an express reference to permissive joinder in the PLRA, the courts concluded that the statute could not have repealed Rule 20 “unless the two provisions are in irreconcilable conflict.”\textsuperscript{206}

Second, \textit{Boriboune} and \textit{Hagan} reasoned that the PLRA and Rule 20 do not meet the threshold “irreconcilable conflict” standard of the implied repeals analysis.\textsuperscript{207} In \textit{Boriboune}, the court held that an irreconcilable conflict only occurs “when the newer rule is logically incompatible with the older one.”\textsuperscript{208} Any conflict between the PLRA and Rule 20, the court reasoned, falls

\textsuperscript{201} \textit{Id.}
\textsuperscript{202} \textit{Id.} This finding, the court concluded, also coincided with Eleventh Circuit precedent, which held that “[a] statute passed after the effective date of a federal rule repeals the rule to the extent that it actually conflicts.” \textit{Id.} (internal quotation marks omitted) (quoting Mitchell v. Farcass, 112 F.3d 1483, 1489 (11th Cir. 1997)).
\textsuperscript{203} \textit{See Hagan}, 570 F.3d at 152, 156; \textit{Boriboune}, 391 F.3d at 855.
\textsuperscript{204} \textit{See infra} notes 205–17 and accompanying text. Only a handful of district courts have applied these courts’ analysis to determine that the PLRA did not repeal Rule 20 by implication. \textit{See}, e.g., Johnson-Bey v. Ind. Dep’t of Corr., No. 3:09-CV-249, 2009 WL 1691150, at *1 (N.D. Ind. June 16, 2009); Wasko v. Allen Cnty. Jail, No. 1:06-CV-085 TLS, 2006 WL 978956, at *1 (N.D. Ind. Apr. 12, 2006).
\textsuperscript{205} \textit{Hagan}, 570 F.3d at 154 (“finding that “[t]he PLRA did not alter the text of Rule 20, or make any reference to the Rule”); \textit{Boriboune}, 391 F.3d at 854 (noting that, unlike other federal rules that expressly “forbid joinder in prisoners’ collateral attacks on their convictions,” neither Rule 20 nor the PLRA contain comparable prohibitions against joinder).
\textsuperscript{206} \textit{Hagan}, 570 F.3d at 155.
\textsuperscript{207} \textit{See Boriboune}, 391 F.3d at 854 (“[T]here is no irreconcilable conflict between Rule 20 and the PLRA . . . ”).
\textsuperscript{208} \textit{Id.} (citing Branch v. Smith, 538 U.S. 254, 273 (2003)).
short of this standard. Accordingly, the court concluded that, because the PLRA and Rule 20 do not irreconcilably conflict, the statute and the Rule can coexist. This could be achieved, the Boriboune court concluded, if courts take “§ 1915(b)(1) at face value” and require each IFP prisoner in a joint action to pay the full individual fee. The Hagan court agreed, adding that “[s]uch an interpretation can also be read in harmony with § 1915(b)(3).”

Finally, Boriboune and Hagan determined that there was no clear intent by Congress for the PLRA to repeal Rule 20. In Hagan, the court found that, without an irreconcilable conflict between the statute and Rule 20, or a “clear and manifest’ intent by Congress to repeal Rule 20,” there was no repeal by implication. Hagan also warned that allowing the PLRA to repeal Rule 20 by implication could have negative policy effects. Primarily, the court noted that, in the PLRA-Rule 20 context, repeal by implication “would undermine congressional goals” to allow joinder by IFP prisoners. Moreover, in a broader sense, finding an implied repeal where there is no irreconcilable conflict or congressional intent to repeal would “expand repeal by implication” from a limited-use doctrine “into an everyday principle.” This could have far-reaching consequences, the court reasoned, “since Congress routinely enacts legislation with provisions that do not neatly coexist with existing statutes.”

209 Id. (asserting that district court’s public policy arguments against joinder do not create an irreconcilable conflict between the PLRA and Rule 20).

210 Id.; see also Hagan, 570 F.3d at 156 (“The two laws at issue ... can and should coexist.”).


212 Hagan, 570 F.3d at 155 (internal quotation marks omitted) (quoting Boriboune, 391 F.3d at 856); see § 1915(b)(3). Moreover, both the Boriboune and Hagan courts reasoned that the PLRA’s “three strikes” provision harmonizes with Rule 20 if courts hold that all IFP prisoners in a joint action are accountable for strikes levied against the joint claim. Hagan, 570 F.3d at 156; Boriboune, 391 F.3d at 855; see infra notes 240–44 and accompanying text.

213 Hagan, 570 F.3d at 156.

214 See id.

215 Id.

216 Id.

217 Id.
D. Public Policy Arguments

Courts on all sides of the PLRA-Rule 20(a)(1) debate have advanced public policy arguments to support their approach to joinder by IFP prisoners.218 Primarily, many district courts that adopted a per se rule against joinder have asserted that, because joinder by IFP prisoners creates practical and administrative difficulties, these plaintiffs may not join in a single action.219 To support this view, the district courts focused on four policy concerns. First, courts contended that requiring a collective filing fee for joinder would not only weaken the PLRA’s financial deterrence and encourage prisoners to file frivolous claims,220 but it would also create an administrative headache for courts that must apportion one fee to multiple prisoners.221 Second, courts reasoned that allowing joinder complicates the assessment of strikes under § 1915(g) of the PLRA, and may even allow prisoners to avoid strikes if a complaint is not dismissed in its entirety.222 Section 1915(g) requires courts to impose a strike when a prisoner brings “an action or appeal” that is “dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.”223 Generally, district courts have interpreted this language as requiring courts to assess a strike “only if the entire action is dismissed.”224 Joinder, courts averred, confuses matters in IFP

218 See infra Part III.D. Only the Sixth Circuit has used public policy arguments to advocate for joinder with collective filing fee. In In re Prison Litigation Reform Act, 105 F.3d 1131 (6th Cir. 1997), the court pointed to the administrative benefits of permitting a collective fee, finding that this payment scheme would “permit easier accounting for the district courts and prison officials.” Id. at 1138–39. The court also considered fairness as a factor in its decision, noting that “[b]ecause each prisoner chose to join in the prosecution of the case, each prisoner should be proportionally liable for any fees and costs that may be assessed.” Id. at 1137–38.


224 Jones, 2009 WL 2169894, at *1.
actions where “some but not all of the claims are frivolous or dismissed.”

Moreover, in this scenario, a prisoner whose frivolous claim is dismissed may actually avoid a strike under §1915(g) “if his claims are joined with others that may be meritorious.”

Thus, courts contended that, by limiting a frivolous claimant’s exposure under §1915(g), joinder would encourage inmates to file frivolous claims.

Third, courts asserted that prisoners permitted to join in a single action will behave improperly when pursuing their claims. Particularly, prisoners may coerce each other into suits for the sake of saving on the costs of litigation or avoiding strikes under §1915(g). Furthermore, courts have contended that prisoners in a joint action may change legal documents as they are circulated among the parties. To that end, the district judge in Boriboune v. Berge warned that allowing joinder would encourage “[j]ailhouse ‘lawyers’” to “forge others’ signatures” on legal documents, or “otherwise attempt to act on behalf of their fellow plaintiffs.”

Fourth, courts maintained that the circumstances of incarceration make managing joint IFP litigation “exceptionally difficult.” In Swenson, for example, the district court found that the “practical difficulties” of managing litigation among plaintiffs “who have no guarantee that they will all remain at the same prison or in the same area of a prison while they are litigating together” were too great. The District Court for the

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225 Boriboune v. Berge, 391 F.3d 852, 854 (7th Cir. 2004) (recognizing district courts’ concerns that, in this scenario, it would be “hard to know which plaintiffs should be assessed ‘strikes’ under § 1915(g)”).

226 Swenson, 2006 WL 240233, at *3. In other words, “[a] pro se prisoner-plaintiff litigating alone receives a strike if he earns it; the same plaintiff litigating jointly might avoid a strike because someone else did not earn it.” Id. (emphasis omitted).

227 See cases cited supra notes 221–22.

228 See cases cited supra notes 221–22.


230 See, e.g., Beaird, 2006 WL 2051034, at *4; see also cases cited supra notes 221–22.


Northern District of Indiana agreed in *Wasko v. Allen County Jail*, reasoning that, because “jail populations are notably transitory,” obtaining signatures and completing service of process for every co-plaintiff in a joint action was unfeasible. District courts have also contended that allowing joinder by IFP prisoners could raise security concerns if prisoners “seek to compel prison authorities to permit them to gather to discuss the joint litigation.”

Conversely, *Boriboune* and *Hagan* used policy arguments to support allowing joinder with individual filing fees. These courts primarily countered district courts’ four arguments against joinder. First, they contended that the concerns implicated by a collective filing fee “vanish” if courts require prisoners to pay individual fees for joinder. To that end, the court in *Boriboune* found that, unlike a collective fee scheme, requiring prisoners to pay individual fees would not “undermine the system of financial incentives created by the PLRA” but would instead help deter prisoners from filing frivolous lawsuits. Moreover, from a judicial administration perspective, *Boriboune* contended that it would be easier for courts to assess an individual filing fee than “attempt to apportion one fee among multiple prisoners whose litigation histories and trust balances differ.”

Second, these courts contended that allowing joinder would not permit IFP prisoner plaintiffs to avoid strikes under § 1915(g). In *Boriboune*, the court found that the text of § 1915(g) does not limit courts’ assessments of strikes to actions that are dismissed entirely. Instead, the court held that

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236 See *Hagan v. Rogers*, 570 F.3d 146, 156 (3d Cir. 2009); *Boriboune*, 391 F.3d at 855–56.
237 *Boriboune*, 391 F.3d at 856.
238 *Id.* at 854–55. The courts reasoned that, if lower courts inform prisoners about the requirement of a full fee, as well as the risk that they will be held accountable for their co-plaintiffs’ claims under § 1915(g), *see infra* notes 240–44 and accompanying text, “many prisoners will opt to litigate by themselves.” *Boriboune*, 391 F.3d at 856. This process would, ideally, “simplify litigation...without any insult to Rule 20.” *Id.*
239 *Boriboune*, 391 F.3d at 856.
240 See *Hagan*, 570 F.3d at 156; *Boriboune*, 391 F.3d at 855.
241 *Boriboune*, 391 F.3d at 855.
§ 1915(g) requires courts to assess strikes to all plaintiffs in a joint action “when any claim in a complaint or appeal is ‘frivolous, malicious, or fails to state a claim upon which relief may be granted.’”

Under this approach, when a court dismisses some of the claims in a joint complaint or appeal, each IFP prisoner would incur a strike, even if the claims did not concern him or her personally. This interpretation, the Boriboune court reasoned, makes it easier for courts to assess strikes in IFP actions and “creates countervailing costs” to joint litigation that will dissuade prisoners from filing frivolous lawsuits.

Third, Boriboune and Hagan held that district courts could not deny joinder based on generalized concerns about inmate behavior or circumstances of incarceration. In Boriboune, the court found that the policy concerns cited by the district court, such as the proliferation of jailhouse lawyers, were “unrelated to the PLRA” and could not be adequately addressed simply by applying a per se rule against joinder. The court noted that civil cases were “complex whether or not any plaintiff is a prisoner” and that jailhouse lawyers had “surely overstepped their roles on occasion before the PLRA, and they may do so even if multiple prisoners prepay all fees” to join in a non-IFP action. Consequently, the court held that these policy concerns were not adequate grounds for denying joinder as a matter of law.

242 Id. (emphasis added) (quoting 28 U.S.C. § 1915(g)).
243 Id.; see Hagan, 370 F.3d at 156 (finding that, though the question of how strikes should be assessed in joint IFP actions was not before the court, a joint IFP litigant would not necessarily be permitted to avoid a strike under § 1915(g)).
244 Boriboune, 391 F.3d at 854. After Boriboune, the Seventh Circuit re-affirmed the notion that strikes should be assessed on a per-claim, not a per-action, basis in George v. Smith, 507 F.3d 605, 607–08 (7th Cir. 2007). There, the court held that when an IFP prisoner files “a multi-claim, multi-defendant suit, the district court should evaluate each claim for the purpose of § 1915(g).” Id. at 607. Thus, in light of both Boriboune and George, district courts have interpreted the law in the Seventh Circuit as requiring district courts to issue § 1915(g) strikes for each of the “legally meritless claims within an action.” Johnson v. Justus, No. 09-cv-433-GPM, 2009 WL 1971640, at *2 (S.D. Ill. July 8, 2009).
245 Id.
246 Id.
247 Id. at 854–55.
Similarly, the majority in *Hagan* contended that district courts could not deny joinder based on "general assumptions regarding the circumstances of incarceration." The court held that the district court abused its discretion when it prohibited joinder by IFP prisoners based on general concerns about prison conditions that were identified by other courts, without applying those considerations to the Plaintiffs' case. According to the *Hagan* majority, district courts were still free under Rule 20's broad discretion to deny joinder of IFP prisoners, so long as they did so based on the facts of each case. Thus, the court held that conditions of incarceration could be a plausible basis for denying joinder where a court "provide[s] a reasoned analysis that comports with the requirements of the Rule, and that is based on the specific fact pattern presented by the plaintiffs and claims before the court."

**E. Jones v. Bock**

While the Supreme Court has not determined whether IFP prisoners may join as plaintiffs under Rule 20(a)(1), in *Jones v. Bock* the Court used the same four interpretive tools to resolve a procedural clash between the PLRA and Rule 8(a).

Accordingly, although *Jones* does not address the issue of joinder by IFP prisoners, this decision may be predictive both of the approach the Court would take in a PLRA-Rule 20(a)(1) case and, ultimately, how it would likely resolve this conflict between the statute and the Rule.

In *Jones*, the Court considered whether prisoners were required to plead that they had exhausted their administrative remedies under the PLRA. Section 1997e of the PLRA does not specify a pleading requirement for exhaustion; meanwhile,

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248 *Hagan*, 570 F.3d at 157. *But see id.* at 163 (Jordan, J., concurring in part and dissenting in part) (arguing that the district court's "denial of joinder was sufficiently tied to the present particulars that [the court] should recognize the decision as fairly disposing of the case on its facts").

249 *Id.* at 157 (majority opinion) (finding that the district court relied on "extrinsic considerations" rather than determining whether plaintiffs satisfied the criteria for permissive joinder under Rule 20).

250 *Id.*

251 *Id.*


253 *Id.* at 204-05.


255 *Id.* at 211-12; *see also* 42 U.S.C. § 1997e (2006).
the usual practice under Rule 8(a) is to regard exhaustion as an affirmative defense. The Court found that, except where the PLRA specifies a different procedural requirement, courts interpreting the Act should follow the usual practice under the Federal Rules. Accordingly, the Court held that exhaustion is an affirmative defense under the PLRA, and that the Sixth Circuit had exceeded its judicial authority by requiring prisoners to plead exhaustion in their complaints.

The Supreme Court applied the same four interpretative tools to support its holding in Jones. As in many of the PLRA-Rule 20(a)(1) cases, the Jones Court relied on plain meaning as its dominant rationale. It determined that, when Congress intended to override the Federal Rules with its own procedural requirements, it usually did so "expressly" in the text of the PLRA. Thus, the Court examined the plain meaning of the text of § 1997e, finding that the provision did not enumerate any special procedural requirements for exhaustion. This absence of an express requirement, the Court contended, was "strong evidence that the usual practice" under Rule 8(a) should control. Similarly, the Court found that the plain language of the PLRA did not impliedly alter the normal pleading rules for exhaustion. To that end, the Court disagreed with the Sixth Circuit that the PLRA "implicitly" justified deviating from Rule 8(a) simply because this practice would make it easier for courts to screen prisoner complaints under § 1915A.

Second, the Court considered the legislative intent behind the plain meaning of § 1997e. The Court noted that Congress did not intend for § 1997e to create a different pleading requirement than that required under Rule 8(a) because, unlike other provisions of the PLRA, the language of the statute did not expressly reference any intent to depart from the usual practice

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256 Jones, 549 U.S. at 212; see also FED. R. CIV. P. 8(a).
257 Jones, 549 U.S. at 216–17.
258 See id. at 216.
259 Id.
260 Id. at 214.
261 Id. at 212 (finding that, although "[t]he PLRA dealt extensively with the subject of exhaustion," the Act was "silent on the issue whether exhaustion must be plead by the plaintiff").
262 Id. at 215.
under the Federal Rules. Moreover, the Court acknowledged that exhaustion was a "centerpiece" of the PLRA's effort to reduce the quantity of prisoner suits. However, the Court did not comb the congressional record for evidence of Congress's intent to create a pleading requirement in § 1997e.

Third, the Jones decision was consistent with the implied repeals analysis, although the Court did not expressly invoke that doctrine. Following the threshold "irreconcilable conflict" prong of the implied repeals analysis, the Court harmonized the statute and Rule 8(a), holding that, while exhaustion is still "mandatory under the PLRA," failure to exhaust was an affirmative defense governed by Rule 8(a). Then, in accord with the "clear intent" requirement, the Court found that Congress needed to indicate "expressly" that it "meant to depart from the usual procedural requirements" under Rule 8(a) in order to exempt the PLRA from operation under that Rule. Thus, even without referencing the implied repeals analysis, the Court demonstrated that repeal by implication was not appropriate in the Jones case.

Fourth, the Court used public policy arguments to support its holding in Jones. To begin, the Court observed that "[c]ourts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns." Accordingly, the Court held that the policy concerns raised in favor of imposing a pleading requirement for exhaustion, such as courts' need to efficiently screen prisoner complaints, could not serve as the sole basis for deviating from the usual practice under Rule 8(a). Even if the concerns supporting a pleading requirement were valid, the Court reasoned, they could not "fairly be viewed as an interpretation of the PLRA." Consequently, the Court determined that a pleading requirement

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264 Jones, 549 U.S. at 214–16.
265 Id. at 214 (quoting Woodford v. Ngo, 548 U.S. 81, 84 (2006)).
266 Accordingly, Justice Roberts never cited to the Congressional Record to support the Court's propositions in the Jones opinion.
267 See supra Part III.C.
268 Jones, 549 U.S. at 211.
269 See supra Part III.C.
270 Jones, 549 U.S. at 216.
271 Id. at 212.
272 See id. at 212–13.
273 Id. at 216.
for exhaustion could only “be obtained by the process of amending the Federal Rules, and not by judicial interpretation.”

By analogy, Jones demonstrates both how the Supreme Court may approach a PLRA-Rule 20(a) case and how it would likely come out on the issue of joinder by IFP prisoner plaintiffs. Given that the Court used the same four interpretive tools to resolve the procedural conflict in Jones as lower courts have used in PLRA-Rule 20(a)(1) cases, it seems likely that the Court would apply this approach if asked to determine whether IFP prisoners may join as plaintiffs under Rule 20(a)(1). Furthermore, although Jones concerned a procedural clash between the PLRA and a different Federal Rule, the rationales the Court applied to resolve that case are dispositive in the PLRA-Rule 20(a)(1) context. Essentially, the Court determined in Jones that, in the absence of express direction from the PLRA, courts should not interpret the statute as imposing procedural requirements that conflict with the Federal Rules. In light of this holding, the Court would likely find that the “usual practice” under Rule 20(a)(1) should control and courts should allow IFP prisoners to join as plaintiffs. Like § 1997e, § 1915 of the PLRA does not enumerate any procedural requirements related to joinder, or otherwise “explicitly” prohibit joint actions by IFP prisoners. This is “strong evidence” that Rule 20(a)(1) should control in IFP prison litigation. Moreover, § 1915 does not implicitly prohibit joinder by IFP prisoners. Jones makes clear that a statutory inference of a procedural requirement must be reasonably obvious to justify diverging from a Federal Rule. Thus, the Court would likely find that PLRA’s filing fee provisions do not meet this standard. Finally, in the absence of express or implied guidance from the PLRA, the Court would probably find that the policy concerns raised by joinder cannot provide the basis for impinging on Rule 20’s typically broad standards for

274 Id. at 213 (internal quotation marks omitted) (quoting Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993)).
275 Id. at 212.
276 Id.
278 Jones, 549 U.S. at 212.
279 See id. at 214.
280 See supra Part III.A.1.
permissive joinder. Therefore, the Court would ultimately hold that, unless it amends Rule 20 to prohibit joinder by IFP prisoners, courts cannot use "judicial interpretation" to categorically deny these plaintiffs' their right to join in a single action.

IV. RESOLVING THE PLRA-RULE 20(a)(1) CONFLICT

As evidenced in Part III, circuit and district courts remain divided over the issue of joinder by IFP prisoner plaintiffs. Further, although the Supreme Court has resolved other clashes between the PLRA and the Federal Rules, it has not specifically addressed this procedural issue. Part IV explores how to resolve the PLRA-Rule 20(a)(1) conflict. Part IV.A contends that, of the outcomes reached by courts in PLRA-Rule 20(a)(1) cases, the better result is to allow IFP prisoners to join as plaintiffs and pay a collective filing fee. This Part uses both the four interpretative tools and the Supreme Court's analysis in Jones to support this rationale. Finally, Part IV.B avers that the Supreme Court should resolve the PLRA-Rule 20(a)(1) conflict by determining whether IFP prisoners may join in a single action.

A. Courts Should Permit IFP Prisoners To Join with a Collective Filing Fee

Of the three outcomes reached by courts in PLRA-Rule 20(a)(1) cases, the better result is to allow IFP prisoner plaintiffs to join under Rule 20(a)(1) and pay a collective filing fee. This view is supported by courts' four tools of interpretation and the Supreme Court's analysis in Jones. Thus, until the Supreme Court rules on the PLRA-Rule 20(a)(1) issue or Congress amends the PLRA, courts who are asked to decide whether IFP prisoners may join in a single action should follow this view.

281 See Jones, 549 U.S. at 212.
282 Id. at 212-13. (quoting Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993)).
283 See supra Part III.
284 See supra Part III.E.
285 See infra Part IV.A.
286 See infra Part IV.A.
287 See infra Part IV.B.
288 See infra Part IV.A.
1. Plain Meaning

Primarily, the plain meaning of the PLRA and Rule 20(a)(1) demonstrate that IFP prisoners may join under Rule 20(a)(1) and pay a collective filing fee. As discussed in Boriboune and Hagan, the text of PLRA does not even mention Rule 20 joinder. Similarly, the text of Rule 20 does not address the availability of joinder by IFP prisoners; it states only that “persons” may join in a single action when the criteria for permissive joinder are met. In United Mine Workers v. Gibbs, the Supreme Court held that courts should define “persons” permitted to join under Rule 20 in “the broadest possible scope” that is still “consistent with fairness to the parties.” In applying this standard to IFP prison litigation, courts may deny joinder in cases where doing so would best comport with notions of fairness. However, as a general matter, the plain language of Rule 20 indicates that IFP prisoners should “be included within the broad definition of persons capable of joining their claim pursuant to... Rule [20].” Furthermore, the plain meaning of the PLRA does not implicitly prohibit joinder by IFP prisoners. Hubbard and supporting courts have asserted that § 1915(b)(1)’s individual filing fee requirement impliedly bars joinder. However, in light of Jones, courts should find that, because § 1915(b)(1) does not concern joinder or a related procedural issue, this provision cannot implicitly prohibit joinder or provide justification for deviating from usual practice under Rule 20(a)(1). The issue of whether § 1915(b)(1) implicitly bars joinder vanishes if courts simply hold that the plain meaning of that provision requires IFP prisoners to pay a collective filing fee. Indeed, as Judge Roth argued in Hagan, § 1915(b)(1) should not be read as requiring each prisoner to pay the full amount of the filing fee—that is, the full individual fee—but instead as requiring each prisoner to pay “the full amount of a filing fee”—that is, a portion of the full

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289 See supra Part III.A.2.
290 FED. R. CIV. P. 20.
292 See supra Part I.
293 Hagan v. Rogers, 570 F.3d 146, 157 (3d Cir. 2009).
294 See supra Part III.A.1.
individual fee. This interpretation coincides with a plain reading of § 1915(b)(3), which limits the total filing fee the court may collect for an IFP action or appeal. Accordingly, reading these two provisions together, each IFP prisoner should be required to pay an apportioned amount of a filing fee, while the total filing fee collected for the joint action or appeal cannot exceed the statutory limit.

2. Legislative Intent

Resort to legislative intent may not be necessary or advisable in the PLRA-Rule 20(a)(1) context. Commentators have noted that, in recent years, the Supreme Court’s “emphasis in statutory interpretation has shifted away from the divination of legislative intent and toward the parsing of the statutory text’s ordinary meaning.” This trend was evident in Jones: While the Court acknowledged that exhaustion was a “‘centerpiece’” of the PLRA’s effort to reduce the quantity of prisoner suits, it did not search the congressional record for evidence of Congress’s intent to create a pleading requirement in § 1997e. Instead, the Court looked primarily at the plain language of the PLRA.

Similarly, in the PLRA-Rule 20(a)(1) context, legislative intent is not a useful interpretive tool. While one can argue that the plain language of the PLRA is far from plain, based on the Supreme Court’s partiality to plain meaning, courts should rely on the statutory text over legislative intent. Moreover, though the PLRA’s legislative history evidences Congress’s general desire to deter frivolous litigation, like the PLRA itself, it does not address joinder by IFP prisoner plaintiffs. Accordingly, courts that rely on Congress’s general legislative intent as their

298 § 1915(b)(1), (3).
299 MAMMEN, supra note 115, at 26.
300 Jones, 549 U.S. at 214 (quoting Woodford v. Ngo, 548 U.S. 81, 84 (2006)).
301 See supra Part III.E.
302 Compare supra Part III.A.1, with Part III.A.2, and Part III.A.3 (comparing courts’ varying approaches to analyzing and applying the plain meaning of the PLRA and Rule 20 in IFP prisoner cases).
303 See Hagan v. Rogers, 570 F.3d 146, 157 (3d Cir. 2009).
304 See supra Part II.
basis for denying joinder have, essentially, deviated from the Federal Rules because of "perceived policy concerns," a result the Supreme Court warned against in Jones.\textsuperscript{305}

However, if courts analyze legislative intent, they should construe it as permitting joinder by IFP prisoners with a collective filing fee. Like the plain meaning of the text, the PLRA's legislative history is silent on the issue of joinder, and therefore cannot act as a bar to joinder by IFP prisoner plaintiffs. Correspondingly, it is unclear from the legislative history whether Congress intended IFP prisoners to pay individual fees or a collective fee to file a joint complaint or appeal. Many courts contend that, because the PLRA's broader purpose is to curtail prisoner litigation, Congress intended joined prisoners to pay individual filing fees.\textsuperscript{306} This reasoning is unpersuasive, however. For one, it is yet unclear whether the PLRA's mandatory filing fee actual deters prisoners from filing frivolous claims.\textsuperscript{307} In theory, however, a collective fee effectuates this goal. Though a collective fee would erect a lower financial hurdle than a full individual fee, it still creates an "economic disincentive" to frivolous litigation.\textsuperscript{308} Moreover, courts will offset any loss of financial deterrence if, like the Seventh Circuit, they assess § 1915(g) strikes to all IFP prisoners when any claim in their joint complaint or appeal is dismissed.\textsuperscript{309} Similarly, in addition to strikes, courts should hold that joint IFP prisoners are collectively accountable for the revocation of good-time credits when any claim is dismissed as frivolous or malicious.\textsuperscript{310} This final measure of deterrence ensures that a rule allowing joinder with collective filing fees will effectuate Congress's legislative intent.

\textsuperscript{305} Jones, 549 U.S. at 212.

\textsuperscript{306} See supra Part III.B.

\textsuperscript{307} See Cordisco, supra note 70, at 26 (finding that before the enactment of the PLRA, some courts decided not require partial filing fees for IFP actions because "review of data from courts with partial fee plans indicated that no significant decrease in the number of filings had occurred as a result of imposing the fees").


\textsuperscript{309} See Boriboune v. Berge, 391 F.3d 852, 854–55 (7th Cir. 2004).

3. Implied Repeals

Furthermore, the PLRA should not be construed as repealing Rule 20 by implication. Indeed, as both the Ninth and Seventh Circuit contended, this statute-rule conflict does not satisfy either prong of the implied repeals analysis. First, there is no "irreconcilable conflict" between the PLRA and Rule 20: The statute and the rule can co-exist if courts both assess a collective filing fee and levy § 1915(g) strikes against each IFP prisoner that joins in an action or appeal. Second, Congress has not expressed a clear intent for the PLRA to repeal Rule 20. Thus, in absence of either an irreconcilable conflict or a clear intent to repeal, both the PLRA and Rule 20 should be allowed to survive. Finally, as the majority in *Hagan* noted, finding an implied repeal here could have serious policy implications. Repeal by implication is a last-resort measure that should be avoided where reconciliation of the statute and rule is possible. Thus, allowing the PLRA to repeal Rule 20 would stretch this doctrine so far that, in future cases, courts could find any Rule that marginally conflicts with a more recently-enacted statute should be repealed by implication. Accordingly, courts should avoid this result by permitting IFP prisoner plaintiffs to join under Rule 20(a)(1).

4. Public Policy Arguments

Allowing joinder with a collective filing fee is supported by public policy rationales. In *Jones*, the Court found that policy concerns alone could not serve as the basis for deviating from the usual practice under the Federal Rules, even if those concerns were valid. This rationale applies in force to the PLRA-Rule 20(a)(1) context. Here, district courts raised a number of valid concerns about joinder—particularly, the difficulties of managing joint actions where inmates are not guaranteed to remain in the same prison or behave properly in pursing their claims. As reasonable as these concerns may be, however, under *Jones*,

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311 See supra Part III.C.
312 See supra Part III.C.
313 *Hagan v. Rogers*, 570 F.3d 146, 156 (3d Cir. 2009); see also supra notes 213–17 and accompanying text.
314 See supra Part III.C.
316 See supra Part III.D.
courts cannot rely on them as their sole basis for interpreting the PLRA as barring joinder and, thereby, deviate from the usual practice under Rule 20(a)(1).

This view, however, does not impinge on courts' discretion under Rule 20 to deny joinder based on the individual circumstances of each case. Under the Rule, a court could prohibit joinder because of a policy concern, such as inmate coercion, if it found that concern would cause delay, expense, or any other prejudice to the parties in that particular case. That said, as the majority explained in Hagan, courts should have the burden of proving that they exercised this discretion based on individual, and not generalized, concerns by providing "a reasoned analysis that comports with the requirements of" Rule 20(a)(1) and addresses the facts of the case.

Ultimately, allowing IFP prisoners to join with a collective filing fee will likely allow courts to avoid, rather than create, practical and administrative problems. For one, requiring a collective fee will not undermine the PLRA's financial deterrence if courts hold joint litigants accountable for both § 1915(g) strikes and the revocation of good-time credits when any frivolous claim within a complaint or appeal is dismissed. By making these potential consequences clear to IFP litigants, courts will likely dissuade prisoners from filing frivolous actions. Similarly, this clarity and uniformity will help avoid administrative headaches. To that end, the argument that courts could not institute an efficient system for apportioning a collective filing fee is untenable. Before the enactment of the PLRA, roughly half the district courts established their own rules or informal policies for collecting filing fees from IFP prisoners. With the passage of the PLRA, courts conformed their procedures with the requirements of the Act. Accordingly, if courts create a uniform standard for joinder with a collective fee, courts will again adjust their administrative systems to accommodate this new rule. Moreover, once the administrative system is in place,

317 See supra Part I.
318 Hagan, 570 F.3d at 157.
319 See supra Part IV.A.2.
320 See Cordisco, supra note 70.
321 See id.
courts may find joinder less bureaucratically challenging than other options for handling multi-plaintiff actions, such as consolidation.

B. The Supreme Court Should Resolve the PLRA-Rule 20(a)(1) Conflict

To create uniformity among the lower courts, the Supreme Court should determine whether IFP prisoners may join as plaintiffs under Rule 20(a)(1). Although Congress could amend the PLRA to address joinder by IFP prisoners, the Supreme Court is the more appropriate arbiter for this issue. To begin, one of the primary reasons why the Supreme Court grants certiorari is to resolve disputes among the circuit courts. As demonstrated in Part III, four circuit courts have reached three different results in PLRA-Rule 20(a)(1) cases. Given this circuit split and the inequities it creates among the lower courts, it would be most appropriate for the Supreme Court to resolve the PLRA-Rule 20(a)(1) debate and determine whether IFP prisoners may join as plaintiffs. Correspondingly, the Supreme Court may resolve the PLRA-Rule 20(a)(1) conflict more efficiently than Congress, as the process of statutory revision can be slow, particularly when the amendment at issue is not a high priority. Finally, joinder by IFP prisoners largely concerns issues of judicial administration and the need for court efficiency. The Supreme Court has, in a variety of contexts, relied on these factors as a basis for resolving procedural disputes. Further, before the enactment of the PLRA, Congress generally deferred to the courts to resolve administration issues related to the procedural requirements of IFP litigation, such as the processing of IFP applications.

322 See supra Part III.
323 See Genetin, supra note 188, at 691 (characterizing statutory revision as "slow or cumbersome").
324 See FED. JUDICIAL CTR., supra note 14.
326 See generally FED. JUDICIAL CTR., supra note 14 (stating that the purpose of the report was to "highlight critical case-management issues" in IFP prisoner litigation and discuss "management options" for courts implementing the procedural
these reasons, the Supreme Court should reconcile the decisions of the lower courts and establish clear standards for Rule 20 joinder by IFP prisoner plaintiffs.

CONCLUSION

Ultimately, in the absence of clear guidance from the Supreme Court or Congress, circuit and district courts have muddied law as to the availability of joinder by IFP prisoner plaintiffs. Instead of creating a uniform approach to this procedural issue, courts' reliance on tools of statutory interpretation yielded three distinct approaches: a per se rule prohibiting joinder, joinder with individual filing fees, and joinder with a collective fee. This lack of uniformity has led to disparate outcomes in PLRA-Rule 20(a)(1) cases and, consequently, unequal treatment of IFP prisoner plaintiffs across jurisdictions.

This Note encourages the Supreme Court to resolve this procedural problem and concludes that, in light of its decision in Jones v. Bock, the Court would likely permit joinder by IFP prisoner plaintiffs. However, until the Supreme Court addresses this issue, courts should allow IFP prisoners to join as plaintiffs and pay a collective filing fee. This approach not only comports with the Court's analysis in Jones, but is supported by the plain meaning of the PLRA and Rule 20, Congress's legislative intent, the implied repeals analysis, and public policy considerations.

requirements of the PLRA); Cordisco, supra note 70 (finding that, before the enactment of the PLRA, many district courts implemented their own policies for collecting partial filing fees under former § 1915(a)).