

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
OWENSBORO DIVISION**

[Filed Electronically]

**HUMAN RIGHTS DEFENSE CENTER,**

**Plaintiff**

**v.**

Case Number: 4:20-CV-159-JHM

**HENDERSON COUNTY, KENTUCKY**

**Serve: Brad Schneider  
County Judge-Executive  
20 N. Main Street  
Henderson, KY 42420**

**- and-**

**AMY BRADY, individually**

**Serve: Office of the Jailer  
Henderson County Detention Center  
380 Borax Drive  
Henderson, KY 42420**

**- and –**

**LIRONDA HUNT, individually**

**Serve: Henderson County Detention Center  
380 Borax Drive  
Henderson, KY 42420**

**- and -**

**DOES 1-10, individually**

**Defendants.**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

**Introduction**

1. Plaintiff Human Rights Defense Center (“HRDC”), brings this action to enjoin Defendants from censoring books and magazines it publishes and mails to incarcerated persons at

the Henderson County Detention Center (the “Jail”). Defendants have adopted and implemented mail policies and practices that unconstitutionally prohibit delivery of books, magazines, and other correspondence mailed by HRDC to persons incarcerated at the Jail, and that deny due process of law to senders, like HRDC, whose mail is censored by failing to provide adequate notice and opportunity to challenge each instance of censorship. Defendants’ actions violate HRDC’s rights under the First and Fourteenth Amendments to the United States Constitution, and HRDC seeks injunctive and declaratory relief and damages pursuant to 42 U.S.C. §1983.

### **Jurisdiction and Venue**

2. This action is brought pursuant to 28 U.S.C. § 1331 (federal question), as it arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 (civil rights), as it seeks redress for civil rights violations under 42 U.S.C. § 1983.

3. Venue is proper under 28 U.S.C. § 1391(b). On information and belief, at least one defendant resides within this judicial district, and the events giving rise to the claims asserted herein occurred within this judicial district.

4. HRDC’s claims for relief are predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured to HRDC by the First and Fourteenth Amendments of the U.S. Constitution and the laws of the United States.

5. This Court has jurisdiction over claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, as well as claims seeking nominal and compensatory damages against all Defendants.

6. HRDC's claim for attorneys' fees and costs is predicated upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

### **Parties**

7. HRDC is a not-for-profit charitable organization recognized under § 501(c)(3) of the Internal Revenue Code, incorporated in the state of Washington and with principal offices in Lake Worth, Florida. For over thirty years, HRDC has focused its mission on public education, advocacy and outreach to incarcerated persons and the public about the economic and social costs of jails and prisons to society, helping incarcerated persons educate themselves about their constitutional and human rights, and accessing educational materials. HRDC accomplishes its mission through advocacy, litigation, and publication and/or distribution of books, magazines, and other information concerning jails, prisons, and the rights of incarcerated persons.

8. Defendant Henderson County (the "County") is a political subdivision of the State of Kentucky organized and existing under the laws of Kentucky. The County is, and at all relevant times herein was, responsible for the actions and/or inactions of the individual Defendants named herein and the policies, procedures, customs, and practices of the Jail.

9. Defendant Amy Brady is the elected Jailer of the County and has held that position since April 2017. As Jailer, Brady is the policymaker for the County with respect to the operation of the Jail, including its policies governing incoming mail for incarcerated persons. In addition, Brady is responsible for overseeing the management and operation of the Jail, and for hiring, screening, training, retaining, supervising, disciplining, counseling, and controlling the personnel of the Jail who interpret and apply the Jail's inmate mail policy. She is sued in her individual capacity.

10. Defendant Lironda Hunt is the Mail Clerk of the Jail. Hunt is employed by and is an agent of the County. As Mail Clerk, Hunt is responsible for overseeing the management and operation of the mailroom of the Jail and the delivery and non-delivery of mail to inmates located at the Jail. She is sued in her individual capacity.

11. The true names and identities of Defendants Does 1 through 10 are presently unknown to HRDC. Each of Does 1 through 10 are or were employed by and are or were agents of the County, are or were personally involved in the adoption and/or implementation of the policies and practices governing incoming mail for incarcerated persons at the Jail, and are or were responsible for hiring, screening, training, retaining, supervising, disciplining, counseling, and/or controlling the Jail staff who interpret and implement these incoming mail policies and practices. They are sued in their individual capacities. HRDC will seek to amend this Complaint as soon as the true names and identities of Does 1 through 10 have been ascertained through discovery.

12. At all times material to this action, the actions of all Defendants as alleged herein were taken under the authority and color of state law.

13. At all times material to this action, all individual Defendants were acting within the course and scope of their employment as agents and/or employees of the County.

### **Facts**

14. For more than 30 years, the focus of HRDC's mission has been public education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally guaranteed and other basic human rights. HRDC's mission, if realized, has a salutary effect on public safety.

15. To accomplish its mission, HRDC publishes and distributes books, magazines, and other information containing news and analysis about prisons, jails and other detention facilities,

prisoners' rights, court rulings, management of jails and prison facilities, jail and prison conditions and other matters pertaining to the rights and/or interests of incarcerated individuals. HRDC's publications contain political speech and social commentary, which are core First Amendment rights and are entitled to the highest protection afforded by the United States Constitution.

16. Sending publications through the mail to incarcerated persons is essential to accomplishing HRDC's mission. The primary aim of HRDC is to communicate with incarcerated persons about the developments in the law and protection of one's health and personal safety while in prison and jail. Reading materials enable incarcerated persons to engage in productive activity rather than sitting idle, thus helping to avoid conflicts and incidents of violence in correctional facilities and encouraging lawful methods of dispute resolution. In addition, reading allows incarcerated persons to keep their minds sharp, helping them to prepare to become productive citizens when released back into society.

17. HRDC publishes and distributes an award-winning monthly magazine titled *Prison Legal News: Dedicated to Protecting Human Rights* ("*Prison Legal News*"), which contains news and analysis about prisons, jails, and other detention facilities, prisoners' rights, court opinions, management of jails and prison facilities, jail and prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals. HRDC also publishes a second monthly magazine, *Criminal Legal News*, which contains news and analysis about individual rights, court rulings, and other criminal justice-related issues.

18. HRDC also publishes and/or distributes dozens of different soft-cover books on the subjects of criminal justice, health, self-improvement, and legal issues that are of interest to incarcerated persons and others. Pertinent to this case, HRDC publishes and/or distributes the *Prisoner's Guerilla Handbook: A Guide to Correspondence Programs in the United States and*

*Canada* (“*Prisoners’ Guerilla Handbook*”), which provides information on enrolling at accredited higher educational, vocational and training schools; and (“*PYHS*”), which describes the rights, protections and legal remedies available to persons concerning their health and safety while incarcerated.

19. In addition to the monthly magazines issues and books, HRDC also sends prisoners: (a) informational brochure packets – the packet contains a brochure and subscription order form, a booklist, and a published books brochure (each of which is a single page); (b) copies of judicial opinions of import to incarcerated persons charged with committing crimes; and (c) letters requesting confirmation that the prisoner received HRDC’s materials.

20. Since 1990, HRDC has sent its publications by mail to incarcerated persons and law librarians in more than 3,000 correctional facilities in all fifty states, including death row housing units and “supermax” prisons, such as the federal Administrative Maximum Facility at Florence, Colorado, which is known as the most secure prison in the United States.

21. The Defendants’ incoming mail policy (“Defendants’ Mail Policy”) for persons incarcerated at the Jail is posted on the public website for the Henderson County Detention Center at [http://www.hendersoncountydetection.com/mail\\_policy.html](http://www.hendersoncountydetection.com/mail_policy.html) (last visited September 8, 2020). This policy provides in pertinent part that the following items shall not be allowed through the mail or permitted in the inmate’s possession or in the living quarters and shall be confiscated as censored materials:

- Printed material;
- Books, magazines or publication including newspapers and newspaper clippings; and
- Items deemed inappropriate by staff

22. Defendants' Mail Policy is both unconstitutional on its face and as applied, and is unduly restrictive. There is no legitimate penological justification for Defendants to refuse to accept the magazines, books, or other publications and printed material (in any form) that HRDC supplies to incarcerated persons.

23. In addition to censoring all forms of publications and printed material, Defendants have failed to provide any appellate process to challenge Defendants' censorship policy and practices.

24. Since June 2020, Defendants have been censoring magazines, books, brochures, pamphlets, and letters mailed by HRDC to incarcerated persons held in custody at the Jail by refusing to deliver these materials to the intended recipients, and by returning items to HRDC's offices via the Return to Sender services of the United States Postal Service.

25. Altogether, since June 2020, Plaintiff can identify at least sixty-seven (67) items of mail sent by HRDC to prisoners held in the Jail which were censored by Defendants. This includes: fourteen (14) copies of *Prison Legal News*; ten (10) copies of *Criminal Legal News*; eight (8) copies of the *Prisoner's Guerilla Handbook*; nine (9) copies of *PYHS*; nine (9) copies of *Clement v. California*, 364 F.3d 1148 (9<sup>th</sup> Cir. 2004); nine (9) copies of the informational brochure pack; and eight (8) follow up letters. Such restrictions on written speech sent to prisoners at the Jail are not rationally related to any legitimate penological interest and violates HRDC's First Amendment right to communicate its speech with prisoners.

26. In addition, the Jail staff failed to notify HRDC when it censored these mailings, and simply returned the mailings to HRDC bearing a stamp and/or sticker stating the following phrases or some combination thereof: "RETURN TO SENDER PER MAIL POLICY"; "RETURN TO SENDER: REFUSED: UNABLE TO FORWARD".

27. Defendants did not provide HRDC with notice or opportunity to appeal the censorship decisions in any of these instances where HRDC's magazines, books, brochures, pamphlets, and/or letters were rejected for delivery to persons incarcerated at the Jail.

28. Defendants' conduct prohibiting HRDC from mailing its magazines, books, brochures, pamphlets, and letters to persons incarcerated at the Jail violates the First Amendment by censoring these expressive activities and has a chilling effect on future speech and expression directed at the persons incarcerated at the Jail.

29. HRDC will continue to mail its magazines, books, brochures, pamphlets, and letters to subscribers, customers, and other persons incarcerated at the Jail.

30. The accommodation of the free speech, free expression, and due process rights of HRDC with respect to written speech will not have any significant impact on the Jail's staff, other incarcerated persons at the Jail, or Defendants' allocation of resources.

31. Due to Defendants' actions as described above, HRDC has suffered damages, and will continue to suffer damages, including, but not limited to: the suppression of HRDC's speech; the impediment of HRDC's ability to disseminate its political message; frustration of HRDC's non-profit organizational mission; diversion of resources; the loss of subscribers and customers; an inability to recruit new subscribers and supporters; the loss of reputation; and the cost of printing, handling, mailing, and staff time, among other damages.

32. Defendants' actions and inactions were and are motivated by ill motive and intent, and were and are all committed under color of law with deliberate indifference to HRDC's rights.

33. Defendants, and other agents of the Jail, are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, Defendant Brady is responsible for training and



supervising the staff persons whose conduct has injured and continues to injure HRDC, and has knowingly participated or acquiesced in, contributed to, encouraged, implicitly authorized or approved such conduct

34. Defendants' unconstitutional policy, practices, and customs are ongoing, continue to violate HRDC's rights, and were and are the moving force behind the injuries suffered by HRDC. As such, HRDC has no adequate remedy at law.

35. HRDC is entitled to injunctive relief prohibiting Defendants from refusing to deliver or refusing to allow delivery of magazines, books, brochures, pamphlets and/or letters published and/or distributed by HRDC to incarcerated persons at the Jail, and prohibiting Defendants from censoring mail without due process of law.

### **Causes of Action**

#### **Count I: Violation of the First Amendment Right to Free Speech**

36. Defendants' acts described above constitute violations of HRDC's rights to communicate with persons incarcerated at the Jail under the First Amendment to the United States Constitution.

37. The conduct of Defendants was objectively unreasonable and was undertaken recklessly, intentionally, willfully, with malice, and with deliberate indifference to the rights of others.

38. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which were and are the moving force of the violations.

39. Defendants' acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

40. HRDC seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. HRDC also seeks punitive damages solely against the individual Defendants in their individual capacities.

**Count II: Violation of the Fourteenth Amendment Right to Notice and Due Process**

41. HRDC has a constitutionally-protected liberty interest in communicating with persons incarcerated at the Jail by sending magazines, books, and letters to them via the United States Postal Service, a right clearly established under existing case law.

42. HRDC has a right under the Due Process Clause of the Fourteenth Amendment to receive notice and an opportunity to object and/or appeal Defendants' decisions to prevent the items mailed by HRDC to from reaching the incarcerated persons at the Jail to whom they were mailed.

43. Defendants have failed to give HRDC sufficient notice of the censorship of its materials, and an opportunity to be heard with respect to that censorship. In doing so, Defendants have deprived and continue to deprive HRDC of liberty and property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

44. The conduct of Defendants was objectively unreasonable and was undertaken recklessly, intentionally, willfully, with malice, and with deliberate indifference to the rights of others.

45. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which were and are the moving force of the violations.

46. Defendants' acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

47. HRDC seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. HRDC also seeks punitive damages solely against the individual Defendants in their individual capacities.

**Request for Relief**

**WHEREFORE**, HRDC respectfully requests relief as follows:

1. A declaration that Defendants' policies and practices violate the First and Fourteenth Amendments of the U.S. Constitution;
2. A preliminary and permanent injunction preventing Defendants and their employees, agents, and any and all persons acting in concert with them from further violation of HRDC's civil rights under the First and Fourteenth Amendments of the U.S. Constitution, and providing other equitable relief;
3. Nominal damages for each violation of HRDC's rights by Defendants;
4. Compensatory damages against Defendants in an amount to be proved at trial;
5. Punitive damages against the individual Defendants in an amount to be proved at trial;
6. Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and other applicable law; and
7. Any other such relief that this Court deems just and equitable.

**JURY DEMAND**

HRDC, by and through its attorneys, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Dated: September 21, 2020

Respectfully submitted,

/s/ Gregory A. Belzley

Gregory A. Belzley  
Belzley, Bathurst & Bentley  
P.O. Box 278  
Prospect, KY 40059  
Telephone: (502) 292-2452  
gbelzley3b@gmail.com

Bruce E.H. Johnson, WA Bar number 7667\*  
Davis Wright Tremaine LLP  
920 Fifth Avenue, Suite 3300  
Seattle, WA 98104  
Telephone: (206) 757-8069  
brucejohnson@dwt.com

HUMAN RIGHTS DEFENSE CENTER  
Daniel Marshall\*, Fla. Bar number 617210  
Eric Taylor\*, Fla. Bar number 1020671  
P.O. Box 1151  
Lake Worth, FL 33460  
Telephone: (561) 360-2523  
dmarshall@hrdc-law.org  
etaylor@humanrightsdefensecenter.org

***Attorneys for Plaintiff Human Rights  
Defense Center***

*\*Pro hac vice applications to be filed.*