

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

GRAYSON COUNTY, TEXAS; and TOM
WATT, individually and in his official
capacity as Sheriff of Grayson County,

Defendants.

COMPLAINT

JURY DEMANDED

COMPLAINT

Plaintiff Human Rights Defense Center (“HRDC”) is a 501(c)(3) nonprofit organization that advocates for the human rights of people in U.S. detention facilities. HRDC publishes *Prison Legal News*, *Criminal Legal News*, and other informational publications that educate incarcerated persons and their families about their legal rights. Defendant Grayson County, through its final policymaker, Defendant Sheriff Tom Watt, enforces an unconstitutional policy that functionally bans Plaintiff, and presumably others, from distributing their literature to people incarcerated in the Grayson County Jail, located in Sherman, Texas. Plaintiff has repeatedly attempted to send its literature to people detained in the Jail. Each time, Plaintiff’s literature was rejected by Defendants and returned to Plaintiff.

Defendants are wrongfully censoring HRDC’s communications with people incarcerated in the Jail. Defendants’ unconstitutional policy of banning outside books and magazines violates HRDC’s rights to freedom of speech and the press under the First Amendment to the United States Constitution. Moreover, because the Texas Constitution’s Bill of Rights goes above and beyond

the floor set by the federal Constitution's speech and press protections, Plaintiff HRDC has a separate claim under the Texas Constitution for Defendants' unconstitutional policies violating its speech and press rights. *See* Tex. Const. art. I, § 8.

Defendants also fail to provide adequate notice of the reasons for censoring HRDC's materials, and fail to provide a constitutionally adequate process for appealing this censorship, in violation of HRDC's Fourteenth Amendment due process rights.

HRDC brings this action to stop Defendants from censoring written communications with incarcerated persons, and to obtain due process in challenging the purported denials. HRDC seeks injunctive and declaratory relief, as well as punitive, compensatory, and nominal damages.

PARTIES

1. HRDC is a nonprofit charitable organization recognized under Section 501(c)(3) of the Internal Revenue Code. It is incorporated in the state of Washington, and its principal offices are in Boynton Beach, Florida. HRDC's mission is to educate the public and incarcerated persons about the economic and social costs of carceral systems. HRDC accomplishes its mission through public advocacy, litigation, and the publication and distribution of books, magazines and other information related to prisons and the rights of incarcerated persons. Through its literature, HRDC engages in core protected political speech and expressive conduct on matters of public concern, such as the operation of detention facilities, prison and jail conditions, and the health, safety, and constitutional and human rights of incarcerated persons. HRDC publishes and distributes two monthly magazines (covering prisons and prison conditions, and criminal legal news and analysis), as well as books about the criminal legal system and legal issues affecting incarcerated persons. HRDC distributes its materials by mail to incarcerated persons, lawyers, courts, libraries, and members of the public throughout the United States.

2. Grayson County is a political subdivision of the State of Texas. The County funds and operates the Jail, employs and compensates Jail staff, and is charged with ensuring that, at all times, the Jail remains in compliance with federal and state law. The County is responsible for the actions and inactions of the Grayson County Sheriff's Office, and its employees and agents, as well as Sheriff's Office policies, procedures, customs, and practices. The Grayson County Sheriff's Office is and was responsible for adopting and implementing mail policies governing incoming mail for incarcerated persons at Grayson County Jail.

3. The office of the Sheriff in Grayson County is tasked with maintaining and operating Grayson County Jail. Defendant Tom Watt, Sheriff of Grayson County, is employed by and is an agent of Defendant Grayson County. He is responsible for the policies, procedures, and operation of the Grayson County Jail, and the hiring, screening, training, supervision, discipline, counseling, and control of the personnel who interpret and apply incoming mail policies at Grayson County Jail. Watt is the final policymaker for Grayson County with respect to the operation of Grayson County Jail, including for policies and practices governing incoming mail for incarcerated persons. All acts and omissions complained of herein were taken under color of law. Defendant Watt is sued in his official capacity for injunctive and declaratory relief, and in his individual capacity for nominal, compensatory, and punitive damages.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. § 1983. This Court has supplemental jurisdiction to consider Plaintiff's state law claims under 28 U.S.C. § 1367, as they arise from the same case or controversy as Plaintiff's federal law claims.

5. Venue is proper in the Eastern District of Texas under 28 U.S.C. § 1391(b)(2) because the events giving rise to this claim occurred at the Grayson County Jail in Sherman, Texas.

6. Plaintiff's federal law claims for relief are brought under 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the First and Fourteenth Amendments to the United States Constitution and laws of the United States.

7. This Court has jurisdiction over claims seeking declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and Federal Rules of Civil Procedure, Rules 57 and 65; and over claims for nominal and compensatory damages against all defendants, and punitive damages against individual defendants in their individual capacities.

8. Plaintiff's claim for attorney's fees and costs is predicated upon 42 U.S.C. § 1988, which authorizes the award of attorney's fees and costs to prevailing plaintiffs in actions brought under 42 U.S.C. § 1983.

9. Plaintiff is informed, believes, and based thereon alleges that the individual Defendant as described herein acted with reckless disregard for Plaintiff's rights or with the intent to injure, vex, annoy, or harass Plaintiff, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights with the intention of causing Plaintiff injury, and depriving Plaintiff of its constitutional rights. As a result, Plaintiff HRDC seeks compensatory and punitive damages against the individual Defendant.

FACTUAL ALLEGATIONS

A. HRDC Educates People Incarcerated in Prisons and Jails Across the U.S.

10. HRDC publishes and distributes a monthly 72-page legal information magazine titled *Prison Legal News* ("PLN"). The magazine has been published continuously since 1990 and

currently serves thousands of subscribers nationwide, including prisoners, attorneys, judges, public libraries, and members of the general public. Based on subscriber survey data, *PLN*'s readership is between eight and ten times that subscriber number. HRDC distributes *PLN* to prisoners in hundreds of penal facilities across the United States, including institutions within the Federal Bureau of Prisons and prisons and jails in all 50 states. *PLN* is also distributed to prisoners housed in death row units and "supermax" prisons, including the federal Administrative Maximum Facility ("ADX" or "Supermax") at Florence, Colorado, the most secure prison in the United States. More than a million copies of *PLN* have been distributed over the past 33 years.

11. HRDC also publishes and distributes a second monthly magazine titled *Criminal Legal News* ("CLN"), a 56-page magazine that contains news and analysis about individual rights, court rulings, and other criminal legal-related issues. *CLN* also serves thousands of subscribers across the United States.

12. In addition to its magazine publications, HRDC publishes and distributes non-fiction books, self-help books, and reference guides that help prisoners educate and improve themselves. These publications include the *Disciplinary Self Help Litigation Manual – 2nd Edition*, the *Prison Education Guide*, *The Habeas Citebook: Ineffective Assistance of Counsel – 2nd Edition*, *The Prisoners Guerilla Handbook*, and *Protecting Your Health and Safety: A Litigation Guide for Inmates*, to name a few.

13. HRDC's publications are core protected political speech and expressive conduct on matters of public concern. *See Prison Legal News v. Cook*, 238 F.3d 1145, 1149 (9th Cir. 2001); *Human Rights Def. Ctr. v. Sw. Va. Regional Jail Auth.*, 396 F. Supp. 3d 607 (W.D. Va. 2019). Each of HRDC's publications provides information about important legal issues, such as access to courts and counsel, disciplinary hearings, prison conditions, court opinions, excessive force cases,

mail censorship, jail litigation, visitation, access to telephones, religious freedom, prison rape, and the death penalty, among other topics.

B. Grayson County Maintains an Unconstitutional Book and Magazine Censorship Policy

**“Books are not allowed to be mailed in to inmates.”
Records Clerk, Grayson County Sheriff’s Office**

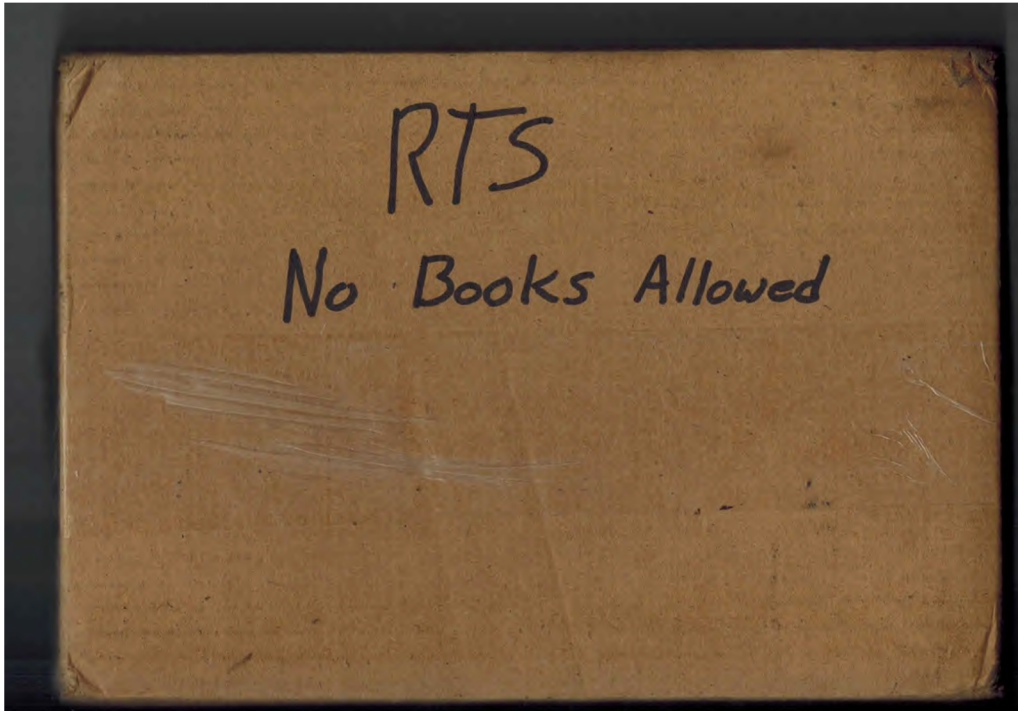


Figure 1 (Example #1 of Returned Package Containing Book)

14. Defendants maintain a policy amounting to a complete ban on books and magazines from being delivered to the Jail by outside senders.

15. Mail can be delivered to Grayson County Jail in one of two ways. Legal mail, money orders, cashier’s checks, newspapers, magazines, and packages may be mailed to the Jail’s physical address at 200 South Crockett Street, Sherman, Texas 75090.

16. Personal, non-privileged correspondence from family members, friends or others who wish to communicate with the incarcerated person must be sent to an offsite address at 2830 South Hulen Street, Box 809, Fort Worth, Texas 76109. This offsite location is operated by JailATM.com, who on information and belief is a contractor of Grayson County and acts as Defendants' agent for the purpose of mail screening and delivery.

17. All privileged and non-privileged mail must meet certain basic requirements for delivery to the Jail. The sender must list their full name and address on the envelope. The sender must also list the full name and "SO #" of the mail's intended recipient.

18. When mail is received by Defendants' agents from an outside sender, it is screened according to Defendants' policies. All non-privileged incoming mail is initially inspected for contraband and reviewed for impermissible content. Mail that includes inflammatory writings, pornography, or information regarding escape plans or the manufacture of explosives, weapons or drugs may be rejected. Mail that encourages disruption, or is detrimental to an inmate's rehabilitation may also be turned down. Mail may also be rejected if the envelopes contain drawings, designs, or logos on them.

19. Non-privileged mail that passes initial screening is then scanned by a third-party scanning company who on information and belief is Defendants' agent JailATM.com. The scanned versions of this mail are then made available for viewing by their intended recipients on one of the Jail's electronic kiosks and tablets. This mail remains electronically viewable for fourteen (14) days, after which the mail may no longer be viewed by its recipient. The only time non-privileged letters are physically delivered to their intended recipients occurs when a person in the Jail does not have access to one of the Jail's kiosks or tablets. When this happens, Jail staff will print out a copy of the scanned letter and deliver it to the recipient after it is received electronically by the

facility. On information and belief, the original letter is discarded by Defendants' agents once it has been scanned for delivery.

20. Privileged mail sent to the Jail is subjected to less rigorous screening compared to non-privileged mail. Jail policy defines incoming privileged mail as mail that is received from a court official, attorney, Federal or State official, or bona fide member of the news media. Incoming privileged mail must be opened for inspection for contraband by Defendants' agents in the presence of the inmate. Unlike non-privileged correspondence, this mail is delivered physically to its intended recipients, rather than being sent to an offsite location for screening, scanning, and electronic delivery.

21. Defendants' policy establishes a separate procedure for delivery of newspapers. Jail prisoners are allowed to receive up to two newspapers per day. Newspapers must be mailed directly from a publisher or nationally recognized supplier through the United States Postal Service to the Jail's physical address in Sherman. Per Jail policy, all inserts are removed from the newspaper by Jail staff, and prisoners may not keep their newspapers for more than three (3) days.

22. When mail delivery is rejected under Defendants' policies, that mail is typically returned to sender. As part of the return process, Defendants' agents will affix a stamp to the rejected mail offering minimal notice of the reason for the mailing's refusal. The stamp says "Refused/Return to Sender" and underneath, lists four possible reasons for rejection: "Contents not Allowed", "Not In Custody", "Incomplete Return Address", and "Unauthorized Ink/Markings". A blank space next to each option may be marked by Defendants' agents to identify the specific basis for denial. Occasionally, Defendants' agents may write beneath this stamp to provide other details explaining the rejection. These reasons—which include "No Books", "No Magazines", and "No Staples", for example—are clear statements of Defendants' policy regarding

material they deem unacceptable for delivery to the Jail. See Figure 2 (Example of Returned Package Containing Book).



Figure 2 (Example #2 of Returned Package Containing Book)

23. The intended recipient of any mailing is also supposed to receive a written notice from Jail officials that their mail was rejected. The standard form notice issued by Defendants lists the sender's information and the reason the mail was returned, and is supposed to be signed and dated by an officer and a supervisor. The sender's information is sometimes omitted from this notice, though, when it is delivered to a person incarcerated at the facility.

24. Besides this stamp and related markings, Defendants offer senders no other notice or detail about the basis for mail rejections. Nor do Defendants inform senders of any procedure

to appeal their decisions. That is because no such process exists to allow external mailers to appeal Defendants' rejection of any particular mailing.

25. Notwithstanding this procedure for the screening and delivery of letters and other mail, packages and books that are mailed to the Jail are banned under Defendants' policies. According to statements on the Jail's website and in its Inmate Rules and Regulations, "Packages/books will not be accepted unless authorized by Jail Administration."¹

26. Defendants' policy of banning books not "authorized by Jail Administration" suggests that Defendants and their agents retain discretion to allow book delivery to the Jail on a case-by-case basis. But in practice, this policy operates as a total ban on books from being delivered to the Jail.

27. A public information request to the Grayson County Jail confirmed as much. On September 7, 2023, in response to a request under the Texas Public Information Act for a list of books and literature not authorized by the Jail, and documentation reflecting internal decisions to reject books or other literature, a Grayson County Sheriff's Office Records Clerk explained that "[b]ooks are not allowed to be mailed in to inmates."²

28. This de facto ban applies even when books mailed to the Jail otherwise satisfy Jail screening criteria. When a book is delivered to the Jail, Defendants' agents—applying Defendants' unconstitutional policy—automatically return the book to its sender. Frequently, the package is marked with a "Refused/Return to Sender" stamp with the "Contents not Allowed" option selected. Beneath that stamp, Defendants' agents write "No Books" to inform the sender of Defendants' policy instituting a blanket ban on books sent to the Jail. *See* Figs. 1, 2. Though Defendants purport

¹ Grayson County Sheriff's Office, Inmate Correspondence, <https://www.co.grayson.tx.us/page/gcso.inmatemail> (last visited Sep. 12, 2024).

² No other records were produced by Defendants in response to this request.

to retain discretion to allow certain books into the Jail from outside senders, on information and belief this discretion is never exercised.

29. Whatever Defendants' justification for its policy banning books from being delivered to individual recipients in the Jail, it is an irrational response to a governmental objective that is not reasonably related to legitimate penological interests. For instance, to the extent Defendants' book-ban policy is intended to reduce the risk of fire, completely banning all books is an irrational and exaggerated response to such concern. Clear and obvious alternatives to a complete book ban exist to address such a concern, including implementing a policy limiting the number of books an inmate can have in his/her cell at any given time. Such alternative would be easy to implement, as demonstrated by the fact that the Jail already limits each inmate to possession of three books at a time from the Jail's book cart, as explained below.

30. Similarly, banning all books is an irrational and exaggerated response to any potential concern that contraband may be smuggled into the Jail through books. Clear and obvious alternatives to a complete book ban exist to address such a concern, including implementing a policy limiting the books that inmates are able to receive to those mailed directly from the publisher (as opposed to friends/family).

31. Indeed, rather than implementing wholesale book bans, on information and belief, the policies of multiple well-run penal institutions throughout the United States include similar provisions limiting the number of books an inmate may possess at any given time and/or limiting the books an inmate may receive to those mailed directly from publishers.

32. Plaintiff has no other means of exercising its right to communicate the messages it publishes in its books with willing listeners inside the Jail, as Defendants' policies prevent Plaintiff from sending its books directly to readers who request or purchase material from HRDC.

Accommodating Plaintiff's clearly established constitutional right is likely to have a net positive effect on the rights of guards and other inmates. Indeed, providing inmates with stimulating literature that engages their minds can reduce disciplinary and behavioral problems, promote group cohesion, and even provide therapeutic benefits.³

33. Besides Defendants' policy completely banning books from delivery to recipients in the Jail, Defendants also maintain a policy banning magazines. As recently as November 2023, Defendants' agents noted on returned mailings their policy that "No Magazines" are accepted for delivery to the Jail either. This policy was written directly on mailings returned to Plaintiff by Defendants' agents: Defendants' agents wrote the words "No Magazines" directly beneath the "Refused/Return to Sender" stamp to communicate Defendants' reason for rejecting Plaintiff's mailings.

34. Nothing in Defendants' statements of policy on its website or in its rules and regulations explicitly state that magazines are not allowed. In practice, however, magazines which otherwise comply with Defendants' correspondence policies are still rejected by Defendants' agents. Mailings containing magazines are marked with a handwritten notation stating "No magazines." Defendants' agents affix this notice either on the front cover of the returned magazine, or the front of the envelope containing the returned magazine. On information and belief, these magazines are being rejected because Defendants have instituted an unconstitutional policy completely banning magazines from delivery to recipients in the Jail.

³ See, e.g., Keri Blakinger, "The Dungeons & Dragons Players of Death Row," N.Y. Times (Aug. 31, 2023), <https://www.nytimes.com/2023/08/31/magazine/dungeons-dragons-death-row.html>.

35. Like Defendants' book ban, Defendants' magazine ban does not rationally serve a governmental objective that advances a legitimate penological interest.

36. This is underscored by the fact that Defendants have chosen to arbitrarily ban magazines, while still allowing Jail inmates to receive up to two newspapers per day. Physically, there is almost no difference between newspapers and Plaintiff's publications—*Prison Legal News* and *Criminal Legal News*. Like newspapers, *PLN* and *CLN* are both printed on newsprint-quality paper, using black ink.

37. Plaintiff has no other means of exercising its right to communicate the messages it publishes in *PLN* and *CLN* with willing listeners inside the Jail. Defendants' "no magazine" policy cuts off Plaintiff from sending its content directly to subscribers and other willing listeners. Nor do alternatives, such as donation of its content, remediate this problem. The timely news and updates published in Plaintiff's materials are intended to be used by inmates and other readers and subscribers contemporaneously with the receipt of each month's issue. Donation, to the extent that is even an option, restricts the reach of Plaintiff's communications to a much smaller audience, and ensures their content may not be timely received by the people who could benefit most from the magazines' content.

38. Defendants also maintain a "No staples" policy, in which any printed material bound by staples is rejected completely and returned to sender. This policy prevents certain publishers from distributing their material to recipients in the Jail, because staples are the only practical way to bind their publications for distribution. The "No staples" policy therefore acts as a de facto ban on certain publications, including *PLN* and *CLN*, which are each bound by small, thin staples.

39. Plaintiff has no alternative means of binding *PLN* and *CLN* that would not be cost-prohibitive. Plaintiff mails *PLN* and *CLN* to its subscribers directly from its printer, through which Plaintiff receives a bulk mail rate. Were Plaintiff required to find some alternative, such as removing the staples and placing the unbound publication in an envelope, Plaintiff's labor, materials, and shipping costs would multiply to a point where distributing its publications would be financially unfeasible.

40. Preventing staple-bound publications from entering the Jail is also an overreaction to the actual threat posed by staples, which is minimal and speculative.

41. Clear and obvious alternatives exist to a policy completely banning publications merely because staples hold them together. For example, Jail officials could simply remove the staples from these publications before delivering them to their recipients. Defendants are aware of this option, because it is commonly known that the Jail's chaplain removes staples from printed publications before delivering literature to people in the Jail. Removing staples is also a less-costly and time-intensive solution than the current return-to-sender process, where the Jail expends resources to repackage rejected material, mark it with the appropriate stamp and reason for denial, write a notice of rejection to the mail's intended recipient, and deliver it to them. *See Human Rights Def. Ctr. v. Sw. Va. Reg. Jail Auth.*, 396 F. Supp. 3d 607, 623 (W.D. Va. 2019).

42. Indeed, on information and belief, the policies of multiple well-run penal institutions throughout the United States include staple-removal provisions, rather than wholesale bans of publications that include staples.

C. HRDC's Attempts to Mail its Literature to People Held in Grayson County Jail are Rejected under Defendants' Unconstitutional Policies

43. HRDC began sending outreach mailings to people incarcerated in Grayson County Jail on September 22, 2021. These mailings contained different kinds of literature that HRDC

provided to recipients free of charge. As part of its outreach, HRDC typically sends four different mailings: (1) an envelope containing a copy of *Prison Legal News*, (2) an envelope containing a copy of *Criminal Legal News*, (3) a letter containing a one-page court ruling, and (4) a letter containing a four-page information packet offering subscription details for *Prison Legal News* and *Criminal Legal News*.

44. *Prison Legal News* and *Criminal Legal News* are both magazines that are printed on newspaper print and bound by two small, thin staples.

45. In addition to these outreach mailings, HRDC also sends copies of two paperback book publications: *The Prisoners Guerilla Handbook*, and *Protecting Your Health and Safety: A Litigation Guide for Inmates*.

46. Between September 13, 2022 and September 12, 2024, Plaintiff sent one-hundred and ninety mailings to Grayson County Jail. Sixty-three mailings were returned to Plaintiff for various reasons, including the packages containing books, staples, or magazines. Of those mailings returned during that time, thirteen were packages containing books, three were mailings containing *HRDC Annual Reports*, twenty-four were mailings containing *Prison Legal News*, and twenty-two were mailings containing *Criminal Legal News*. See Fig. 3 (Chart of HRDC Mailings to Grayson County Jail)

Figure 3 (Chart of HRDC Mailings to Grayson County Jail)

	Total	Returned to Sender	Rejected: “No Books”	Rejected: “No Staples”	Rejected: “No Magazines”
PLN	83	24	N/A	13	4
CLN	80	22	N/A	12	4
Books	27	13	13	N/A	N/A
HRDC Annual Report	Unknown	3	N/A	3	0

47. Plaintiff also made twenty-seven attempts to mail books to prisoners in the Jail. Of those twenty-seven attempts, thirteen packages containing books were rejected because of the Jail's "No books" policy. Each of the returned books contained a handwritten notation on the front of the package stating "Contents Not Allowed/No Books", "Contents Not Allowed, No Books", "No Books Allowed", "No Books", or "Refused."

48. Magazines similarly are rejected by Defendants and returned to Plaintiff. HRDC sent one-hundred sixty-three total magazines, and forty-six were returned. Of the returned magazines, twenty-four issues of *PLN* and twenty-two issues of *CLN*—were rejected due to the Jail's unconstitutional ban on magazines. Like returned books, each returned magazine contained a handwritten notation on its cover, or on the front of the returned envelope containing the magazine, stating "No Magazines" or "No magazines allowed."

49. Defendants also rejected a total of forty-six magazine mailings—twenty-four issues of *PLN*, twenty-two issues of *CLN*, and three copies of the *HRDC Annual Report*—for containing staples. Each of the mailings returned to Plaintiffs contained a handwritten notation on the front of the mailing stating "No staples allowed", "Refused – No staples", "Contents not allowed", "No Stapled Articles Allowed", "No Staples Allowed, & not legal", "No Staples", "Contents not Allowed: Staples", "contains staples", and "Staples not allowed."

50. Upon information and belief, Defendants have censored additional books, magazines, and correspondence, which were mailed by HRDC to prisoners at the Jail but never returned to HRDC.

51. This pattern of rejection is ongoing. People incarcerated in the Grayson County Jail are subscribers of *Prison Legal News* and *Criminal Legal News*, which are published and distributed to subscribers on a monthly basis. HRDC also sends recently-incarcerated inmates

copies of their book publications as a form of outreach. But Defendants continue to screen out and censor Plaintiff's publications under their unconstitutional policies banning books and magazines, and all stapled publications. As long as Defendants and their agents continue to enforce these unconstitutional policies, Plaintiff will be deprived of its right to share its message with willing listeners inside Grayson County Jail. Likewise, people incarcerated in Grayson County Jail will not be able to receive and benefit from Plaintiff's publications.

D. People Detained in Grayson County Jail Desire to Receive Plaintiff's Literature and Would Benefit From Having Access to That Material

52. Detainees of the Grayson County Jail want to receive HRDC's literature. *PLN*, *CLN*, and the other books and publications HRDC provides offer valuable information that helps incarcerated people stay informed about their rights while they are confined.

53. On information and belief, those incarcerated in Grayson County Jail would likely share HRDC's publications widely, because of the legitimate educational value that HRDC's publications provide—information that is not otherwise attainable through the Jail's electronic law library, or from other printed material the Jail makes available to inmates.

54. Indeed, HRDC's literature is an especially valuable resource because the Jail's law library only provides threadbare legal resources to incarcerated persons via a system of electronic kiosks and tablets to which Jail prisoners are given conditional access. These electronic resources are often unhelpful to people who use it to research issues in their legal cases. For example, the law library only provides access to case law—no self-help guides, treatises, or textbooks. To read a case, a prisoner must know the name or case number of the case to locate it. The library offers a rudimentary keyword search function that has been described as unhelpful in locating other useful

cases. Most troublingly, the law library is out of date—incarcerated persons can only pull up case law decided in the last two to three years.⁴

55. Receiving *physical* copies of HRDC’s publications is especially important to inmates, because they lack reliable access to the electronic library’s resources. The electronic law library requires an internet connection to use, but the Jail’s internet access is notoriously inconsistent and regularly goes down during inclement weather. Jail staff also cut off access by shutting down the internet without warning while transferring people out of the Jail—for example, to a hospital for medical care, or to a prison facility for long-term confinement. During these periods, loss of law library access may last hours or entire days. Inconsistent and unpredictable electronic library access makes it especially important that Jail detainees have access to physical, printed resources to aid in their legal research.

56. The lack of consistent, reliable access to the Jail’s electronic law library is especially problematic, because the Jail does not have an on-site law library, nor do Defendants provide printed legal reference material to inmates. The only print material inmates have access to is through the Jail’s book cart, which is brought around to each housing area once per week for incarcerated persons to select up to three books. Inmates may not keep more than three books at a time, and must exchange one in order to pick up another.

57. However, the book cart does not offer any legal reference material; instead it contains a selection of fiction, non-fiction, and religious reading material chosen by Jail staff. Inmates cannot make requests for specific reading material. No legal resources, or information on ways to file grievances, are offered on this book cart.

⁴ Through a second public information request, Plaintiff sought a list of the legal materials available through the Jail’s electronic law library. Defendant was unable to produce any responsive information, and instead referred Plaintiff’s representative to its vendor, which did not respond to Plaintiff’s communications.

58. The information offered in HRDC's publications thus fills an important gap in the literature and resources available to Jail detainees. HRDC's publications offer incarcerated persons much-needed and much-desired information about important developments in case law, analyses about issues affecting their legal rights, and steps available to protect their health and safety while incarcerated. But for Defendants' unconstitutional policies banning HRDC's publications, Plaintiff would be able to share this information with people held in the Jail at no cost or expense to Defendants, and at no risk to Jail security or stability. Plaintiff has a constitutional right to communicate with prisoners.

E. Defendants' Unconstitutional Policies Are Ongoing and Cause Substantial, Irreparable Harm

59. Defendants' unconstitutional policies and practices violated, and continue to violate, HRDC's First Amendment rights regarding free speech and press under the United States Constitution.

60. Additionally, because the Texas Constitution provides speech and press protections above the floor set by the United States Constitution, Defendants' unconstitutional policies and practices also violated, and continue to violate, HRDC's speech and press rights under the Texas Constitution.

61. Defendants engage in a policy or practice that fails to provide senders of censored mail adequate notice and an opportunity to appeal the censorship of the mail to the intended recipient. This policy violates Plaintiff's Fourteenth Amendment right to due process.

62. Due to Defendants' actions, 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 messages; frustration of HRDC's non-profit organizational

mission; the loss of potential subscribers and customers; and the inability to recruit new subscribers and supporters, among other damages.

63. Defendants and their agents are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, Defendants are responsible for training and supervising the staff persons whose conduct has injured and continues to injure Plaintiff.

64. 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.

65. Plaintiff will continue to mail copies of its books and other publications to subscribers, customers, and other individuals detained at the Jail.

66. Defendants' unconstitutional policies, practices, and customs are ongoing, continue to violate HRDC's rights, and were and are the moving force behind the injuries HRDC suffered as a direct result of the constitutional violations. As such, HRDC has no adequate remedy at law.

67. Without relief from this Court, HRDC will suffer irreparable injury, since its fundamental free speech and due process rights are being denied. The balance of hardships favors the Plaintiff and the public interest will be served by granting injunctive and declaratory relief.

68. The accommodation of the free speech and due process rights of HRDC with respect to written speech protected by the United States and Texas Constitutions will not have any significant negative impact on the Jail, its staff, or its prisoners.

69. Plaintiff is entitled to declaratory relief as well as injunctive relief prohibiting Defendants from refusing to deliver publications and correspondence from HRDC and other senders without any legal justification, and prohibiting Defendants from censoring mail without due process of law.

CLAIMS

COUNT I – 42 U.S.C. § 1983
VIOLATION OF FIRST AMENDMENT –
FREEDOM OF SPEECH & THE PRESS, PRIOR RESTRAINT

70. Plaintiff re-alleges and incorporates the allegations of Paragraphs 1 through 69 of the Complaint as if fully set forth herein.

71. HRDC has a constitutionally-protected speech interest in communicating with incarcerated people. That right is clearly established under existing case law.

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

73. Defendant's censorship of HRDC's literature is not reasonably related to a legitimate penological interest.

74. Nor do valid alternatives remain open for HRDC to share their publications, or for recipients of HRDC's publications inside Grayson County Jail to receive them.

75. Accommodation of the right asserted by HRDC to deliver its publications to inmates and detainees inside Grayson County Jail will have a negligible impact on Jail staff and resources, and on the liberty of other prisoners.

76. Defendants' ban on HRDC's books and other publications thus presents an exaggerated response to any valid penological concerns, and readily available alternatives would accommodate HRDC's rights—and the coextensive rights of Jail detainees and inmates—at *de minimis* cost to those penological interests.

77. HRDC's right to communicate with incarcerated people through the mail is clearly established, as are the constitutional deficiencies in Defendants' media screening and correspondence policies. Therefore, Defendant Watt is not entitled to qualified immunity.

78. 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.

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

**COUNT II – VIOLATION OF TEXAS CONSTITUTION ART. 1, SEC. 8 –
FREEDOM OF SPEECH & THE PRESS, PRIOR RESTRAINT**

80. Plaintiff re-alleges and incorporates the allegations of Paragraphs 1 through 79 of the Complaint as if fully set forth herein.

81. Under the Texas Constitution, an implied cause of action exists for suits seeking equitable remedies for violations of the rights guaranteed by the Texas Constitution. *See City of Beaumont v. Bouillion*, 896 S.W.2d 143, 148-49 (Tex. 1995).

82. Article 1, section 8 of the Bill of Rights of the Texas Constitution states:

“Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.”

83. The Texas Constitution provides protections for speech and the press that are greater than the floor set by the United States Constitution. *See LeCroy v. Hanlon*, 713 S.W.2d 335, 338 (Tex. 1986) (recognizing Texas “has been in the mainstream of [a] movement” to “provide additional rights for their citizens” above the rights protected by the United States Constitution, including for free speech).

84. Prior restraints, in particular, are presumptively unlawful absent “the most extraordinary circumstances.” *Davenport v. Garcia*, 834 S.W.2d 4, 10 (Tex. 1992).

85. The Defendants’ “no books,” “no magazines,” and “no staples” policies are each unconstitutional violations of Plaintiff’s rights under the Texas Constitution to freedom of speech and the press.

86. Defendants’ policies act as a prior restraint on Plaintiff’s speech and press rights, because they prevent Plaintiff from sharing its messages with willing listeners inside the Jail.

87. There is no “impending danger” that justifies the imposition of a prior restraint on Plaintiff’s communications to inmates in the Jail. *Davenport*, 834 S.W.2d at 10; *see Pirmantgen v. Feminelli*, 745 S.W.2d 576, 579 (Tex. App.—Corpus Christi-Edinburg 1988, no writ); *Hajek v. Bill Mowbray Motors, Inc.*, 647 S.W. 2d 253, 255 (Tex. 1983).

88. Additionally, post-speech remedies are available to Defendants to remedy any potential violations of law that may be caused by the delivery of illicit material to the Jail. *See Ex parte Tucker*, 220 S.W. 75, 76 (Tex. 1920) (any abuse of the speech and press rights granted under Article I, section 8 “are not to be remedied by denial of the right to speak, but only by appropriate penalties for what is wrongfully spoken.”).

89. Defendants’ actions in preventing delivery of Plaintiff’s reading material to willing listeners in the Jail has damaged Plaintiff. As a direct result of Defendants’ actions, Plaintiff has incurred lost shipping fees, the disruption of its mission, the inability to share its desired message with willing listeners inside the Jail, and a direct infringement on their freedoms of speech and the press. If not enjoined, Defendants’ unconstitutional prior restraint scheme will continue to cause damage to Plaintiff.

COUNT III - 42 U.S.C. § 1983
VIOLATION OF FOURTEENTH AMENDMENT –
DUE PROCESS OF LAW

90. Plaintiff re-alleges and incorporates the allegations of Paragraphs 1 through 89 of the Complaint as if fully set forth herein.

91. HRDC has a right under the Fourteenth Amendment to receive notice when the Defendant prohibits incarcerated persons from receiving their magazines and books.

92. HRDC has a right under the Fourteenth Amendment to have an opportunity to be heard when the Defendant prohibits incarcerated persons from receiving their magazines and books.

93. Due to Defendants' unconstitutional policies and practices, Defendants do not consistently provide notice or an opportunity to be heard before depriving HRDC of its free speech rights.

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

95. The right to due process before censorship is clearly established under decades of well-settled case law, as are the constitutional deficiencies in Defendants' mail policies. Defendant Watt is therefore not entitled to qualified immunity on any of Plaintiff's claims.

96. 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.

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

DAMAGES

98. HRDC seeks compensatory, punitive, and nominal damages for violations of its constitutional free speech and due process rights under the First and Fourteenth Amendments for suppression of its message; diversion of its resources; frustration of its organizational mission; injuries to its business reputation; and loss of revenue.

DECLARATORY RELIEF

99. HRDC requests all declaratory relief to which it is entitled.

INJUNCTIVE RELIEF

100. HRDC requests the court enjoin Defendants from practicing their censorship policies in violation of the First and Fourteenth Amendments of United States Constitution and the Texas Constitution.

101. Plaintiff requests the court enjoin Defendants from censoring HRDC's publications and issue a permanent injunction enjoining the ban on books and magazines at the Jail.

102. Plaintiffs seek permanent injunctive relief requiring Defendants to provide written notice to senders and an opportunity to respond before censoring their mail, and requiring the adoption of specific guidelines delineating what materials the Jail must deliver to incarcerated persons through the mail, as well as any other appropriate injunctive relief.

ATTORNEY'S FEES AND COSTS

103. Pursuant to 42 U.S.C. § 1988 and Tex. Civ. Prac. & Rems. Code § 37.009, HRDC is entitled to recover its reasonable attorney's fees and litigation costs and expenses.

PRAYER FOR RELIEF

104. Human Rights Defense Center requests the Court:

- a. Declare that Defendants' censorship policies and practices are unconstitutional deprivations of Plaintiff's rights to speech and the press under the United States and Texas Constitutions;
- b. Declare that Defendants' failure to provide adequate notice and procedural remedies to appeal the rejection of their material from the Jail violates Plaintiff's due process rights under the United States Constitution;
- c. Grant a preliminary and permanent injunction ordering Defendants to stop violating Plaintiff's rights to free speech, free press, and due process;
- d. Grant a preliminary and permanent injunction ordering the Defendants to provide Plaintiff with due process notice and an opportunity to appeal if and when its materials are censored by the Jail.
- e. Award nominal, compensatory, and punitive damages against Defendants;
- f. Grant reasonable attorney's fees, litigation expenses, and court costs pursuant to 42 U.S.C. § 1988 and Tex. Civ. Prac. & Rems. Code § 37.009; and
- g. Grant all other and further relief as appears reasonable and just, to which Plaintiffs may be entitled.

Dated: September 12, 2024

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** Pro Hac Vice Application to be filed*

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