

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JOSEPH REILLY, on behalf of
himself and all others similarly
situated,

Plaintiff,

No. 4:14-cv-397

v.

**Class Action
Injunctive Relief Sought**

Sheriff Of Leon County, Florida,

Defendant.

/

COMPLAINT

Plaintiff JOSEPH REILLY (“Reilly”), on behalf of himself and all others similarly situated, sues Defendant SHERIFF OF LEON COUNTY, FLORIDA (“Sheriff”) and alleges as follows:

INTRODUCTION

1. Joseph Reilly’s son Sean Reilly is an inmate in the Leon County, Florida, Jail (“Jail”). The Sheriff runs the Jail and enforces restrictive policies and practices governing inmate mail that adversely affects Reilly’s ability to effectively communicate with his son. The Sheriff will not deliver letters or messages enclosed in envelopes to inmates from their family and friends. Instead, family

and friends, like Reilly, may only write to inmates on approved postcards. Thus, Reilly cannot send uncensored speech to his son Sean as he desires.

2. The Sheriff's inmate mail policies impermissibly restrict Reilly's ability to send communications to Jail inmates like his son, in violation of the First and Fourteenth Amendments to the United States Constitution. Reilly asks this Court to enjoin the Sheriff's policies, declare that they violate the constitutional rights of all Jail inmates' correspondents, and award nominal damages.

JURISDICTION AND VENUE

3. Plaintiff brings this action pursuant 42 U.S.C. §1983 for violations of civil rights under the First and Fourteenth Amendments to the United States Constitution.

4. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1343(a)(3) (civil rights).

5. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §1391(b). Defendant Sheriff resides in this district and division, and the unlawful practices that give rise to the claims herein occurred within this district and division.

PARTIES

6. Plaintiff Joseph Reilly (“Reilly”) is the father of Sean Reilly, who is an inmate in the Leon County Jail. Sean Reilly has been in Jail since December 6, 2013. As set forth in the “General Allegations” section, Reilly has been, and continues to be, deprived of constitutional rights as a result of the Sheriff’s policies and practices.

7. Defendant Sheriff is now, and at all material times has been, the Sheriff of Leon County, Florida. As the Sheriff, he is charged with the care and custody of inmates at the Leon County Jail. He exercises overall responsibility for the policies and practices of the Jail, including the challenged policies. Plaintiff sues the Sheriff in his official capacity for nominal damages, injunctive and declaratory relief, and attorneys’ fees and costs.

8. Defendant Sheriff at all times relevant hereto was acting and continues to act under color of law.

9. Jail correctional officers, deputies, and their supervisors, working in the Jail are agents and employees of the Sheriff.

GENERAL ALLEGATIONS

10. The Leon County Jail is located in Tallahassee, Florida. It houses both convicted prisoners and pretrial detainees.

11. In June 2014, the Sheriff instituted and now continues to maintain a policy and practice that requires all incoming mail sent to Jail inmates, except legal or privileged mail, to be in a postcard form (hereinafter “Postcard-Only Mail Policy”). The postcard must be a minimum of 3 x 5 inches and a maximum of 4 x 6 inches, must be written or typed in blue or black ink, must include the inmate’s full name and inmate number, and must include a complete return address.

12. Pursuant to the Postcard-Only Mail Policy, the Sheriff prohibits correspondents like Reilly from mailing to Jail inmates letters, cards, full-page drawings, newspaper and magazine clippings, photocopied materials (including Florida Statutes and case law), and pages printed from an internet webpage. Indeed, the Sheriff refuses to deliver drawings even on postcards.

13. Only mail to or from the courts, attorneys, and government officials or agencies is considered legal or privileged (hereinafter collectively “privileged”). The Postcard-Only Mail Policy is reflected in the written, inmate mail policy (No. 450.K10).

14. The Sheriff enforces these challenged policies and practices by refusing to deliver inmate mail that does not conform to them.

15. Jail inmates and their friends and family have few alternatives to mail by which to communicate privately and freely:

(a) Telephone calls from Jail inmates in the housing areas are limited to collect and pre-paid telephone calls, which are very expensive. The Sheriff gives Jail inmates limited opportunities to make them and limits them to 15 minutes. Unlike inmate mail, the Sheriff deems the use of telephones a privilege, which the Sheriff may withhold for minor infractions. Fellow inmates may easily overhear these telephone calls, which are made in a common area.

(b) The Sheriff limits visitation hours, the number of visits, and the number of different visitors. The Sheriff prohibits persons under 16 from alone visiting family members detained in the Jail. The Sheriff prohibits profanity during visitations. Friends and family who do not live near the Jail cannot easily visit Jail inmates. Some inmates cannot receive visitors. Unlike inmate mail, the Sheriff deems visitation a privilege, which the Sheriff may withhold for minor infractions. When family and friends can visit a Jail inmate, they are separated by glass and speak through an a telephone in ways that may be overheard by other inmates or visitors.

For all these reasons, mail correspondence for many Jail inmates and their family and friends is the most feasible, practical, and private way to communicate and maintain a relationship.

16. The Sheriff, through his Postcard-Only Mail Policy, impermissibly curtails the ability of Jail inmates' correspondents to express themselves to Jail inmates. Postcards allow correspondents significantly less writing space than letters. The Postcard-Only Mail Policy prevents correspondents from fully expressing their thoughts. Instead, correspondents must express these messages in an abbreviated and incomplete form as there is insufficient room on the postcard to fully develop and communicate the inmates' thoughts and ideas.

17. In addition, the postcards expose the content of the correspondents' communications to anyone who handles, processes, or views the postcards, both within the jail and before the postcards arrive at the jail. Prior to the Postcard-Only Mail Policy, correspondents could write letters to Jail inmates that contained sensitive information, including medical, spiritual, intimate, and financial information. Because these letters were enclosed in envelopes and only subject to review by appropriate Jail officials, Jail inmates and their correspondents could feel confident that this sensitive information would not be exposed for others to see, including postal carriers, line guards, and other inmates. The Postcard-Only

Mail Policy has forced correspondents to either abandon including sensitive information in their non-privileged correspondence or risk divulging confidential, sensitive information to unknown third-parties who can easily intercept these messages on postcards. Including sensitive financial information on a postcard increases the chance that the Jail inmate or the correspondent may become a victim of identity theft or fraud. The Postcard-Only Mail Policy either chills correspondents from writing about sensitive matters entirely, or it requires them to expose their communications to a host of strangers or unintended recipients.

18. On July 4, 2014, Reilly mailed a first class a letter from Bethesda, Maryland, to Sean Reilly at the Jail through the U.S. Postal Service. The U.S. Postal Service returned the letter to Reilly. The envelope was stamped "Return to Sender" and contained no further information.

19. The Sheriff failed to provide Reilly with any information about why his letter was rejected or how to administratively challenge the Sheriff's refusal to deliver the letter.

20. Reilly has been, and continues to be, deprived of constitutional rights as a result of the Sheriff's Postcard-Only Mail Policy.

21. Reilly would like to share in a letter to his son sensitive, personal information. He would like to send him drawings, newspaper and magazine

clippings, music lyrics, photocopied materials, and pages printed from an internet webpage. Reilly would like to share fully developed and complete thoughts. However, he cannot do so as a result of the Sheriff's Postcard-Only Mail Policy. But for the Sheriff's policy, he would immediately send these letters and enclosures.

22. Reilly has no other way to send mail to Jail inmates, including his son, but through the Sheriff.

23. The Sheriff's mail policies have, continue, and will continue to inhibit, infringe, limit, chill, suppress, and interfere with Reilly's and other similarly situated inmate correspondents' constitutionally-protected communications between inmates and correspondents or intended correspondents.

24. Reilly and other similarly situated inmate correspondents have suffered and will continue to suffer an injury as a result of the Sheriff's inmate mail policies. The Sheriff caused and will continue to cause this injury. The policies infringe on the U.S. Constitution's First Amendment free speech rights of Plaintiff to communicate in a complete and meaningful way with his inmate son.

25. The Sheriff has acted and threatens to continue acting under color of state law to deprive Plaintiff of his constitutional rights. Plaintiff faces a real and immediate threat of irreparable injury as a result of these actions and threatened

actions of the Sheriff and the existence, operation, and threat of enforcement of the Postcard-Only Mail Policy.

26. Absent intervention by this Court, Plaintiff will suffer injury as a result of the Sheriff's unconstitutional practices. Plaintiff has no adequate remedy at law for the denial of his fundamental constitutional rights.

27. Plaintiff's counsel attempted to resolve this matter with the Sheriff prior to filing this lawsuit, but was unable to do so.

28. In depriving Plaintiff of these rights, Defendant acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

CLASS ACTION ALLEGATIONS

29. Reilly brings this action on behalf of himself and all others similarly situated, pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

30. The Plaintiff seeks to represent a class defined as "all Florida and Maryland residents who are current and future friends, family, or correspondents of inmates incarcerated or detained in the Leon County, Florida, Jail."

31. The proposed class is so numerous and so fluid that joinder of all members is impracticable and uneconomical. Several thousand persons are admitted to the Jail annually. The identity of these inmates' friends, family, and potential correspondents changes daily. In May 2014, the average daily Jail inmate population was 1,043, and the approximate size of the class is three times this—over three thousand persons at a time.

32. There are questions of law and fact common to the members of the Plaintiff Class. The same policies and practices apply to all class members. The question common to all members of the Plaintiff Class is what justification the Sheriff has for maintaining his Postcard-Only Mail Policy and whether these reasons justify the specific free-speech restrictions of the Plaintiff Class. These common questions predominate.

33. Reilly's claims are typical of the claims of the members of the class. Reilly has suffered injuries similar in kind and degree as to the class. His claims raise questions of fact and law common to the class. His injuries arise from the same conduct as the class injuries. Reilly seeks a permanent injunction to end the unlawful policy and practices as the class would desire.

34. Reilly will fairly and adequately protect the interests of the class. Reilly has no interest that is now or may be potentially antagonistic to the interests

of the class. Reilly understands the duties and responsibilities of serving as class representatives. Reilly is represented by attorneys employed by or working in cooperation with the ACLU Foundation of Florida, and the Florida Justice Institute, which have extensive experience in class action cases involving federal civil rights claims for inmates and persons writing to inmates. The same attorneys successfully represented a class of inmates at the Santa Rosa County, Florida, jail in their challenge of a similar postcard-only inmate mail policy as well as another class of persons writing to inmates at the Flagler County, Florida, jail, in a similar case. Both matters eventually settled with the court entering a consent decree in each case.

35. The Sheriff has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

COUNT 1: FREE SPEECH
(Class Claim – Postcard-Only Mail Policy)

36. Plaintiff realleges and incorporates by reference paragraphs 1 through 35 above.

37. The Sheriff has deprived, and continues to deprive, Plaintiff of his rights, and the rights of all others similarly situated, under the First Amendment to the United States Constitution, which are secured through the Fourteenth

Amendment. The Sheriff's Postcard Only Mail Policy is the cause in fact of the constitutional violation.

38. Unless restrained by this Court, the Sheriff will continue to enforce the Postcard Only Mail Policy. Plaintiff and the putative class have been and will continue to be irreparably harmed by the Sheriff's denial of their fundamental constitutional right to free speech.

COUNT 2: DUE PROCESS

(Class Claim – Notice and Opportunity to be Heard After Rejection of Letters)

39. Plaintiff realleges and incorporates by reference paragraphs 1 through 35 above.

40. Friends and family members have a free speech right to communicate with their loved ones who are inmates in the Jail. This right is guaranteed by the First and Fourteenth Amendment to the U.S. Constitution.

41. However, when friends and family members try to send letters to Jail inmates, the Sheriff intercepts them and refuses to deliver them to the intended Jail inmates. Instead, the Sheriff simply returns the correspondence by marking it with "Return to Sender" and depositing it with the U.S. Postal Service.

42. The Sheriff does not advise the sender why the correspondence was rejected or how to administratively challenge the Sheriff's refusal to deliver the

letter. The Sheriff has no procedure by which a sender could administratively challenge the Sheriff's refusal to deliver the letter.

43. The Sheriff's failure and refusal to provide Plaintiff with constitutionally required notice and an opportunity to be heard and/or protest the decision each time Plaintiff's materials are intercepted by Defendant violates Plaintiff's rights, and the rights of all others similarly situated, to due process of law protected by the Fourteenth Amendments to the U.S. Constitution. The Sheriff's Postcard Only Mail Policy is the cause in fact of the constitutional violation.

44. Unless restrained by this Court, the Sheriff will continue to enforce the Postcard Only Mail Policy. Plaintiff and the putative class have been and will continue to be irreparably harmed by the Sheriff's denial of their fundamental constitutional right to due process.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request the following relief:

A. An order certifying this matter as a class action pursuant to Rule 23, Federal Rules of Civil Procedure;

B. An order declaring the Sheriff's Postcard-Only Mail Policy to be in violation of the First and Fourteenth Amendments to the U.S. Constitution;

C. An order declaring the Sheriff's failure to provide notice to Jail inmates' correspondents of the Sheriff's refusal to deliver a letter and an opportunity to be heard and challenge it to be in violation of the Fourteenth Amendments to the U.S. Constitution;

D. An order permanently enjoining the Sheriff and his officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with him, from continuing their unlawful Postcard-Only Mail Policy or any other policy that limits incoming inmate mail to postcards;

E. An order commanding the Sheriff to provide notice to all current Jail inmates and Jail officials implementing the Sheriff's policies that the Postcard-Only Mail Policy is terminated;

F. An order permanently enjoining the Sheriff and his officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with him, from taking retaliatory action against Plaintiff or his son, inmate Sean Reilly, for bringing this lawsuit;

G. An order directing the entry of judgment for Plaintiff against Defendant for nominal damages of \$1;

H. An award to Plaintiff of reasonable attorneys' fees and costs incurred in connection with this action from the Defendant pursuant to 42 U.S.C. §1988;

I. An order retaining the Court's jurisdiction of this matter to enforce the terms of the Court's orders; and

J. Such further and different relief as is just and proper or that is necessary to make the Plaintiff whole.

Respectfully Submitted,

s/Randall C. Berg, Jr.

Randall C. Berg, Jr.

Fla. Bar No. 318371

RBerg@FloridaJusticeInstitute.org

Dante P. Trevisani

Fla. Bar No. 72912

DTrevisani@FloridaJusticeInstitute.org

Florida Justice Institute, Inc.

100 SE Second St., Ste. 3750

Miami, FL 33131-2115

T. 305.358.2081

F. 305.358.0910

Benjamin James Stevenson

Fla. Bar. No. 598909

ACLU Found. of Fla.

P.O. Box 12723

Pensacola, FL 32591-2723

T. 786.363.2738

bstevenson@aclufl.org

Counsel for Plaintiff