

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

_____)	
Y.F., individually and as next of friend)	
of minor C.F., and)	
A.R., individually and as next of friend)	
of minor X.G,)	
)	
Plaintiffs,)	
)	
v.)	Civil Case. No. 1:15-cv-00510-PB
)	
WILLIAM L. WRENN,)	[REDACTED]
COMMISSIONER, NEW HAMPSHIRE)	
DEPARTMENT OF CORRECTIONS, in)	
his official and individual capacities,)	
)	
Defendant)	
_____)	

SECOND AMENDED COMPLAINT
(DEMAND FOR JURY TRIAL ON DAMAGES)

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 by Plaintiffs Y.F., individually and as next of friend of three-year-old minor child C.F., and A.R., individually and as next of friend of minor X.G., challenging the constitutionality of mail restrictions recently imposed by the New Hampshire Department of Corrections (“NHDOC”) that violate the First and Fourteenth Amendments to the United States Constitution.

PRELIMINARY STATEMENT

1. Effective May 1, 2015, the New Hampshire Department of Corrections imposed a new incoming mail policy that is memorialized in Policy, Procedure, and Directive (“PPD”) 5.26(IV)(B). This incoming mail policy barred “any drawings ... or other depictions” (including those in ink or pencil), as well as all “greeting cards” and “postcards from particular locations or featuring any type of printed design, picture, or depiction.” In a March 28, 2015 memorandum,

the NHDOC explained the policy to staff and prisoners as barring (i) incoming “personal drawings of any kind” or “other depictions,” (ii) incoming “greeting cards ... regardless of the occasion,” and (iii) incoming “post cards with any kind of graphic design, picture, or drawing.” Following the filing of this lawsuit on December 18, 2015, the NHDOC amended the policy effective February 1, 2016. However, the amended policy continues to ban all “original drawings” and “pictures” (including those in ink or pencil), all incoming “greeting cards,” and all incoming “postcards from particular locations or featuring any type of printed design, picture, or depiction.”

2. This new amended mail policy—like the original policy enacted in May 2015—not only violates the First Amendment, but also is particularly cruel to prisoners, like Y.F.’s son, who have young, pre-literate family members. For example, this new rule censors incredibly meaningful forms of communication—i.e., original handwritten pictures and drawings, holiday cards, and birthday cards—from child family members to prisoners (including mothers and fathers). This communication is especially important given that family members—including children—often live far away and cannot visit regularly. This policy also bans a prayer card with a pre-printed image sent from a religious organization to a prisoner who wants to stay connected to her faith.

3. This policy is particularly callous during the holiday season for the NHDOC’s over 2,800 prisoners. For example, during the holidays, this new policy bars Y.F.’s imprisoned son from receiving (i) a Christmas card, or (ii) a holiday drawing from his three-year-old son, C.F. These forms of communication are important because Y.F. and C.F. are low-income and live in a town that is an approximately 80-mile (or a 95-minute) drive from Concord State Prison where Y.F.’s son is imprisoned. Given this long distance, in-person visitation is difficult.

4. Based on the documents received from the NHDOC pursuant to a Right-to-Know Request submitted by the American Civil Liberties Union of New Hampshire (“ACLU-NH”), there is no need for this policy. In the NHDOC’s own documents, there is not a single incident documented where drugs were smuggled into the state’s prisons using handwritten drawings or pictures on regular, non-cardstock paper since 2010. In addition, this mail policy is among the most restrictive in the United States. Plaintiffs’ counsel has been unable to identify a similar state prison mail policy in the country banning *all* original handwritten drawings and pictures, *all* greeting cards, and *all* pre-printed postcards. This is for good reason: such a policy is overbroad and bans vital and innocent forms of communication.

5. Accordingly, the NHDOC’s new mail policy is unconstitutional and must be enjoined. As the United States Supreme Court has recognized: “Communication ... is not accomplished by the act of writing words on paper. Rather, it is effected only when the letter is read by the addressee. Both parties to the correspondence have an interest in securing that result, and censorship of the communication between them necessarily impinges on the interest of each ...” *Procunier v. Martinez*, 416 U.S. 396, 408-409 (1974).

THE PARTIES

I. Plaintiffs Y.F. and C.F.

6. This case is brought by Plaintiffs Y.F. individually and Y.F. as next of friend of three-year-old minor child C.F. Y.F., her husband, and C.F. reside in New Hampshire. Y.F.’s son is currently incarcerated at Concord State Prison for Men. Y.F.’s son is the father of C.F. Y.F. is currently the legal guardian for C.F.

7. The incoming mail policy at issue in this lawsuit interferes with C.F.’s ability to communicate with his father at Concord State Prison, as C.F. is barred from mailing any original

handmade drawings or pictures to his father. Y.F. is also banned from sending her son a pre-printed Christmas card during the holidays.

8. In fact, Y.F. and C.F. have felt the brunt of this new mail policy directly. In late 2015, Y.F. attempted to mail (i) a Thanksgiving card containing the text “I [LOVE] U DADDY” handwritten by C.F., and (ii) two drawings (which were folded inside the card) that C.F. made for his father. C.F.’s two drawings were on coloring paper that Y.F.’s imprisoned son obtained from the prison’s Family Connections Center (“FCC”) and sent to C.F. with the hope that C.F. would then draw on them and mail them back so that Y.F.’s son could maintain a relationship with C.F. (on one paper, Y.F.’s son wrote to C.F. “Happy Halloween [C.F.]”).

9. However, the prison rejected C.F.’s two drawings and the greeting card under the new policy. Copies of the rejected Thanksgiving card and drawings, with a redaction of C.F.’s first name, are attached as Exhibit A.

10. Given the mail policy and the rejection of these items, Y.F. will not send greeting cards and drawings in the future.

II. Plaintiffs A.R. and X.G.

11. This case is also brought by Plaintiffs A.R. individually and A.R. as next of friend of her twelve-year-old minor biological son X.G. A.R. and X.G. reside in New Hampshire. A.R.’s fiancé—and X.G.’s future step-father—is currently incarcerated at Concord State Prison for Men. As X.G.’s biological mother, A.R. is the legal guardian for X.G.

12. The incoming mail policy at issue in this lawsuit interferes with X.G.’s ability to communicate with his mother’s fiancé at Concord State Prison, as X.G. is barred from mailing any original handmade drawings or pictures to his future step-father. A.R. is also barred from sending her inmate fiancé original drawings or pictures, as well as greeting cards.

13. A.R. and X.G. have experienced this new mail policy directly. In September 2016, A.R. attempted to mail an original drawing authored by X.G. to her inmate fiancé. However, this drawing was rejected by the NHDOC on the ground that it was an “[u]nauthorized greeting card/drawing or sticker.” A copy of the drawing and rejection slip sent to A.R., with redactions, are attached as Exhibit F. This rejection slip did not explain to A.R. whether or not she had a right to appeal this rejection decision.

14. Similarly, in early December 2016, A.R. attempted to mail another original drawing authored by X.G. to her inmate fiancé. This picture was a simple line drawing done in pencil. It contained no shading, marker, crayon, or adhesives that may bear any nexus to the smuggling of Suboxone. However, this drawing was similarly rejected by the NHDOC. A copy of the drawing, with a redaction, is attached as Exhibit G.

15. These communications between X.G. and his future step-father are—and have been—incredibly important to X.G. X.G. has learning disabilities which have rendered him unable to fully express his thoughts through written language. While he is working on his language skills, he finds that pictures are a powerful way to express his ideas and emotions. In short, drawing is one of his outlets.

16. In addition, through visits, X.G. and his future inmate step-father have formed a strong bond. Because of these interactions, X.G.’s behavior and performance in school have improved.

17. Moreover, X.G. and his future inmate step-father are generally only able to meet in-person approximately two to three times per month. This is, in part, due to the fact that X.G.’s mother, A.R. is poor, which restricts her ability to travel due to the expense of doing so. Because these visits with X.G. are relatively infrequent, mailing and drawings have become a key way for

X.G. to meaningfully communicate with his future step-father in between visits. However, the prison mail policy restricts these important communications and, in doing so, hinders the development of this important relationship.

18. A.R. has also attempted to send mail with her own original drawings to her inmate fiancé. Most recently, in September 2016, A.R. wrote a letter in ink to her fiancé that also contained simple line drawings. It contained no shading, marker, crayon, or adhesives that may bear any nexus to the smuggling of Suboxone. However, this letter containing the drawing was rejected by the NHDOC on the ground that it was an “[u]nauthorized greeting card/drawing or sticker.” A copy of the letter with the drawing and rejection slip sent to A.R., with redactions, are attached as *Exhibit H*. Again, this rejection slip did not explain to A.R. whether or not she had a right to appeal this rejection decision.

19. A.R. and her son, X.G., wish to continue mailing original drawings and pictures that violate the current policy.

20. In addition, A.R. has noticed that, since the policy went into effect, the NHDOC has allowed some drawings that would otherwise be prohibited under the policy. The NHDOC’s selective enforcement of the policy highlights its arbitrariness and overbreadth. If some drawings are being arbitrarily allowed even though they violate the policy’s plain terms, this only demonstrates that the policy, as written, is overbroad and unnecessary.

III. The Defendant

21. Defendant William L. Wrenn is the Commissioner of the New Hampshire Department of Corrections. He is in charge of administering the New Hampshire Department of Corrections. Specifically, he is the policy maker for the New Hampshire Department of Corrections with respect to its mail policy. His office is located at 105 Pleasant Street, Concord,

NH 03302. Commissioner Wrenn, personally and through the conduct of his agents, servants, and employees, acted under color of state law at all times relevant to this action. Commissioner Wrenn is being sued in his individual capacity for damages, and in his official capacity for injunctive and declaratory relief.

JURISDICTION AND VENUE

22. This action arises under the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983. This Court therefore has subject matter jurisdiction under 28 U.S.C. § 1331.

23. Declaratory relief is authorized by 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

24. Venue in the District of New Hampshire is based on 28 U.S.C. § 1391(b).

FACTS

I. The New Prison Mail Policy Violates The First Amendment

25. Effective May 1, 2015, the New Hampshire Department of Correction's imposed a new incoming mail policy that is memorialized in Policy, Procedure, and Directive ("PPD") 5.26(IV)(B). This incoming mail policy barred "any drawings ... or other depictions" (including those in ink or pencil), as well as all "greeting cards" and "postcards from particular locations or featuring any type of printed design, picture, or depiction." *See* Mar. 27, 2015 Memo. (attached as *Exhibit B*).

26. As explained in a March 10, 2015 Executive Staff Meeting, the Defendant Commissioner "announced that there will be an amendment to the Inmate Mail policy that will prohibit the use of cards (or anything with a thick stock) coming into the prison because it is a

major transmission source of Suboxone.¹ We also will no longer allow drawings or anything with crayon or markers because this can also be source of Suboxone.” See NHDOC Mar. 10, 2015 Executive Staff Meeting Minutes, Page 2 (ACLU98) (attached as *Exhibit D*); see also NHDOC Press Release (Apr. 30, 2015) (noting that policy is “due to the rise in drug-related contraband (in particular, Suboxone strips) entering the prison that can be hidden in these cards and drawings”), available at <http://www.nh.gov/nhdoc/news/2015/043015.htm>; Jeremy Blackman, “Prison Tightens Mail Policy In Effort To Curb Drug Influx,” *Concord Monitor* (Apr. 13, 2015), available at <http://www.concordmonitor.com/home/16462117-95/prison-tightens-mail-policy-in-effort-to-curb-drug-influx>.

27. Following the filing of this lawsuit on December 18, 2015, the NHDOC amended the policy effective February 1, 2016. See Feb. 1, 2016 Operative Mail Policy, PPD 5.26 (attached as *Exhibit E*). However, the amended policy continues to ban all “original drawings” and “pictures” (including those in ink or pencil), all incoming “greeting cards,” and all incoming “postcards from particular locations or featuring any type of printed design, picture, or depiction.” With respect to drawings and pictures, the new February 1, 2016 policy adds: “Inmates may, however, receive photocopies of drawings, pictures, paintings in which the original contained crayon, markers, stickers, lipstick, glitter or chalk.” *Id.* This photocopy language did not exist in the original May 1, 2015 mail policy.

28. This February 1, 2016 policy, and the NHDOC’s practice of enforcing it, unconstitutionally burden Plaintiffs’ First Amendment rights, the First Amendment rights of others who send mail to prisoners at New Hampshire state prisons, and the First Amendment rights of prisoners at New Hampshire State prisons.

¹ Suboxone is a brand-name prescription drug that contains both buprenorphine and naloxone. Buprenorphine is an opiate, and naloxone reverses the effects of narcotics. Suboxone is commonly used to treat opiate addictions. See <http://www.drugs.com/suboxone.html>.

A. The Blanket Ban on All Original Handwritten Drawings or Pictures

29. This new incoming mail policy barring all “original drawings” and “pictures” (including those in ink or pencil) is unconstitutional. *See Barrett v. Premo*, No. 6:11-CV-06358-HZ, 2015 U.S. Dist. LEXIS 41229, at *22-23 (D. Or. Mar. 30, 2015) (“Even assuming arguendo that the policy [prohibiting drawings from the front of envelopes] is applied in a neutral manner, with no restrictions based on content, [the Department of Corrections] fails to show that the policy is rationally related to the objectives of promoting efficiency and enhancing security.”). In a March 28, 2015 memorandum, the NHDOC explained the policy to staff and prisoners as barring incoming “personal drawings of any kind” or “other depictions,” which includes those in pencil or ink. *See* Mar. 28, 2015 Memo. (attached as Exhibit C). With respect to original drawings and pictures, this restriction is still in place under the NHDOC’s new February 1, 2016 mail policy.

30. As explained above, the new policy was put in place to prevent drugs like Suboxone from being smuggled into the State’s prisons through the mail. While the NHDOC unquestionably has an interest in maintaining a secure prison environment, this blanket ban of all original handwritten pictures and drawings is unconstitutional given the real and tangible burdens it imposes on the ability of prisoners to receive innocent and protected forms of communication from family members—particularly, from pre-literate children.

31. *First*, in the documents received from the NHDOC pursuant to a Right-to-Know Request submitted by the ACLU-NH, the NHDOC has not identified a single instance of any drug being smuggled through handwritten drawings or pictures on regular, non-cardstock paper since 2010. *See* May 8, 2015 ACLU-NH Right-to-Know Request and Documents Produced (attached as Exhibit D).

32. Second, there are ample alternatives to this onerous regulation. Inmate safety could be reasonably achieved by simply inspecting pieces of mail that contain handwritten drawings or pictures to determine whether they include contraband.² Of course, all mail is already rigorously inspected by prison security. While imposing a blanket ban on all handwritten drawings and pictures may be more convenient for prison staff, such a minor benefit is an insufficient justification for such a serious infringement on significant First Amendment rights. *See Prison Legal News v. Columbia Cnty.*, No. 3:12-cv-00071-SI, 2013 U.S. Dist. LEXIS 58669, at *35-37 (D. Or. Apr. 24, 2013) (rejecting a postcard-only policy, noting that “[w]hen the postcard-only policy is compared to a policy of opening envelopes and inspecting their contents, the rational relationship between the postcard-only policy and enhancing security dissolves”).³

33. Third, as explained in more detail in Section III *infra*, for children who are too young to write, handwritten pictures and drawings are one of the only ways they can interact with imprisoned family members. Put another way, there may be no alternative ways for many young children to communicate with imprisoned family members other than through pictures and drawings.

34. Finally, the new policy’s allowance for “photocopies of drawings [and] pictures” does not cure the mail policy’s constitutional defects and, in fact, only further demonstrates that lesser restrictive means are available to address the NHDOC’s security interests. This photocopying requirement places a significant burden on low income family members who wish

² To the extent that drugs have been uncovered in the past through inspections of handwritten pictures and drawings—which appears to have occurred infrequently (if at all)—this only confirms the feasibility of this more narrowly tailored approach.

³ It appears that the NHDOC only consulted other state prisons inquiring whether they have similar policies after the NHDOC formally announced its new mail policy on April 30, 2015. *See* NHDOC Documents (ACLU107-34) (attached as *Exhibit D*). Of those states that responded to the NHDOC’s inquiry, none had a similar policy banning all drawings, all greeting cards, and all postcards containing pre-printed images.

to send pictures and drawings to prisoners—a burden which will chill innocent and valuable speech. Indeed, prisoners and their families are disproportionately poor. Plaintiffs Y.F. and A.R. fall within this category.

35. The median pre-incarceration income of a person in prison is approximately \$19,000, and it is likely safe to assume that the income of a prisoner’s family falls within a similar range. *See* Bernadette Rabuy and Daniel Kopf, “Prisons of Poverty: Uncovering the Pre-incarceration Incomes of the Imprisoned,” Prison Policy Initiative (July 9, 2015), <http://www.prisonpolicy.org/reports/income.html>.

36. Also, approximately 40% of people who make less than \$25,000 a year do not even have a computer at home. *See* U.S. Census Bureau American Community Survey, Computer and Internet Use in the United States: 2013, Table 1, *available at* http://www.prisonpolicy.org/blog/2015/03/17/internet_demographics/.

37. Accordingly, it should go without saying that many poor people with imprisoned family members do not possess a photocopier or computer scanner in their homes, and cannot even afford expensive toner or ink cartridges. And, given that New Hampshire is a rural state, there is obviously not a photocopy store around every corner. In the face of these hurdles, a poor family of a prisoner will, in practice, simply not send pictures and drawings to their imprisoned family member.

38. Even under this photocopy provision, the NHDOC must also still inspect prison mail piece by piece to determine if a drawing or picture is original (and therefore banned) or a photocopy (and therefore acceptable). This only proves that the NHDOC could, rather than blanketly banning original drawings and pictures, just as easily inspect each individual piece of mail—including mail with drawings or pictures—to determine whether it contains an indicia of

contraband.

39. Moreover, there is no alternative to an original drawing or picture from a child. As any parent knows, these original documents, with their texture and both tangible and intangible qualities, contain obvious power and sense of connection. The meaning behind a drawing and picture from a child is lost when it is photocopied and non-original. By prohibiting all original drawings and pictures, the new mail policy bars entirely this form of original communication.

B. The Blanket Ban on All Greeting Cards and All Postcards From Particular Locations or Featuring Any Printed Design, Picture, or Depiction

40. The new mail policy also bars all incoming “greeting cards,” and all incoming “postcards from particular locations or featuring any type of printed design, picture, or depiction.” See Feb. 1, 2016 Operative Mail Policy, PPD 5.26 (attached as Exhibit E); see also Mar. 28, 2015 Memo. (attached as Exhibit C). These provisions are also unconstitutional.

41. First, these provisions are overbroad, as they ban, for example, pre-printed holiday and condolence cards that have no nexus to the NHDOC’s public safety concerns. This policy also goes so far as to ban prayer cards with pre-printed images sent from religious organizations to prisoners who want to receive communications about (and maintain a connection with) their faith.

42. The central concerns of the NHDOC are (i) thick cardstock with multiple layers where Suboxone can be hidden in between these layers, and (ii) cardstock where fluid, crayons, stickers, and other items are affixed in an effort to hide Suboxone.

43. However, the new mail policy goes far beyond these situations by banning, for example, (i) a basic, pre-printed holiday or birthday card with nothing affixed and (ii) a generic postcard containing nothing more than a pre-printed picture or a handwritten drawing. If the

NHDOC is concerned about the usage of fluid, crayons, or other items affixed on cardstock as a means of smuggling Suboxone, it could have considered a restriction tailored to these instances. Instead, in sweeping fashion, the NHDOC banned multiple forms of valuable communication unrelated to its security interests.

44. Moreover, this rule is underinclusive, as it permits postcards with cardstock as long as it does not contain a picture “from [a] particular location[.]” or a “printed design, picture, or depiction.”

45. *Second*, there are ample alternatives to this restriction. Again, inmate safety can be reasonably achieved by thoroughly inspecting greetings cards and pre-printed postcards—including their corners and seams—to determine whether they include contraband. The documents the NHDOC produced to the ACLU-NH indicate that it has been successful in detecting Suboxone in this fashion in the past.

46. *Third*, like the drawing ban, for children who are too young to write, pre-printed greeting cards and postcards are one of the few ways these children can interact with imprisoned family members.

47. *Finally*, this current policy’s lack of reasonableness is indicated by the fact that, in late 2013, the NHDOC proposed a policy stating that “[a]ll incoming mail (except for privileged mail) to [high security] C4 and C5 inmates must be in the form of a postcard.” This policy was similarly designed to address the NHDOC’s concern with Suboxone and other drugs entering prison facilities through the mail. *See* Jeremy Blackman, “Prisons Move To Stamp Out Contraband By Limiting Mail Privileges For High-security Inmates,” *Concord Monitor* (Dec. 10, 2013), available at <http://www.concordmonitor.com/news/localstate/9738664-95/prisons-move-to-stamp-out-contraband-by-limiting-mail-privileges-for-high-security-inmates>. This policy was

later withdrawn after the ACLU-NH raised First Amendment concerns.

48. As this withdrawn policy indicates, the NHDOC had little, if any, concern about Suboxone being smuggled into prison facilities through postcards with pre-printed images or designs. Now, to address Suboxone, the NHDOC is banning the very form of communication that it previously said would be the only form of communication permitted for high-security prisoners.

II. The New Prison Mail Policy Violates Procedural Due Process

49. The NHDOC's practice of enforcing this new policy also infringes upon the Fourteenth Amendment's right to procedural due process held by Plaintiffs and others who send mail to prisoners at New Hampshire state prisons.

50. Notwithstanding clearly established interpretations of the federal Due Process Clause, Defendant provided Plaintiffs no notice of his intent to censor their communications prior to his censorship, and no notice of any right to challenge or appeal these censorship decisions.

III. The NHDOC's New Mail Policy Will Stymie Rehabilitation And Have A Devastating Impact On Prisoners And Their Families.

51. These new restrictions banning all original drawings and pictures, all greeting cards, and all postcards with pictures or designs will have a negative impact on the rehabilitative goals of confinement.

52. The ability of prisoners to maintain relationships with family and friends—including preliterate children who can only communicate on paper through drawings, pictures, and pre-printed cards—is an essential component of a sound correctional confinement operation. Preserving these relationships fosters safe and secure management of the prisoner while confined, and facilitates his or her reintegration to the community upon release. *See* NHDOC

PPD 7.09(I) (explaining that visitation policy “is intended to help with fostering relationships with family ... that will improve the opportunities for inmates to successfully reintegrate into the community”), *available at* <http://www.nh.gov/nhdoc/documents/7-09.pdf>. These interactions are especially important for prisoners who are mothers and fathers and who, by virtue of their confinement, already have limited interactions with their children.

53. For example, the new policy bans a female prisoner from receiving an original colored drawing from her 2-year-old daughter.

54. The new policy bans a prisoner from receiving a pre-printed Christmas card from his church—a form of communication which, for some incarcerated, conveys a powerful message during the holiday season.

55. The new policy bans a prisoner from receiving a pre-printed condolence card after the death of a loved one.

56. The new policy also prevents a prisoner parent from receiving an original drawing done using a pen or pencil of the child and prisoner parent holding hands—an obviously powerful image that would have tremendous meaning to an incarcerated parent and assist the parent in maintaining a familial bond.

57. A complete ban on these forms of communication will have a profound effect on prisoners who are desperate to maintain contact with family and friends while in custody, and may even reduce the likelihood of successful reentry. As criminal justice expert and Stanford Law Professor Joan Petersilia points out:

Every known study that has been able to directly examine the relationship between a prisoner’s legitimate community ties and recidivism has found that feelings of being welcome at home and the strength of interpersonal ties outside prison help predict post-prison adjustment.

Joan Petersilia, *When Prisoners Come Home* (New York, NY: Oxford University Press, 2006),

245-46.

58. Indeed, demonstrating the existence of alternatives to this regulation, Plaintiffs' counsel has been unable to identify a single state prison in the United States that has a similar regulation banning all original handwritten drawings and pictures, all greeting cards, and all pre-printed postcards. Clearly, these prisons have found ways to address their identical interest in preventing drug smuggling without banning these meaningful forms of communication.

59. Defendant's policies and actions have violated, continue to violate, and are reasonably expected to violate in the future Plaintiffs' constitutional rights to communicate with prisoners.

60. Defendant Commissioner Wrenn and other agents of the NHDOC are responsible for or personally participated in creating and implementing this unconstitutional policy, practice, and custom, and for training and supervising the mail staff members whose conduct also have injured and continue to injure Plaintiffs and others, or ratified or adopted the policies or actions described herein.

61. The ACLU-NH wrote to Defendant Commissioner Wrenn on July 14, 2015 articulating its concerns about the original mail policy enacted on May 1, 2015 and its censorship of communications received by prisoners. The ACLU-NH, Defendant Commissioner Wrenn, and the New Hampshire Attorney General's Office met in person on August 18, 2015 to discuss the mail policy and the ACLU-NH's concerns. Between that meeting and the filing of this lawsuit on December 18, 2015, Defendant Commissioner Wrenn had not changed the mail policy to correct its constitutional infirmities, thus making this lawsuit necessary.

62. On February 11, 2016, the NHDOC, through counsel, informed Plaintiffs' counsel of changes to the mail policy that were made effective February 1, 2016. *See* Feb. 1, 2016

Operative Mail Policy, PPD 5.26 (attached as *Exhibit E*). These changes were not made in consultation with Plaintiffs' counsel. This amended policy contains the same constitutional infirmities as the original mail policy challenged in this case, thus making the continuation of this lawsuit necessary.

CLAIMS FOR RELIEF

Count I

(Violation of the First Amendment's Free Speech Protections, as enforced by 42 U.S.C. § 1983)

63. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

64. 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

65. The First Amendment to the United States Constitution, as applicable to the States through the Fourteenth Amendment, prohibits the making of any law that “abridg[es] the freedom of speech.”

66. As described above, the NHDOC's new mail policy memorialized in PPD 5.26(IV)(B)(2)-(3) and made effective on February 1, 2016 unconstitutionally infringes (or imminently threatens to infringe) upon the free speech rights under the First Amendment held by Plaintiffs, others who have attempted to or intend to communicate messages banned under the new policy, and prisoners confined in New Hampshire's state prisons.

67. This new mail policy is unconstitutionally overbroad.

68. This new mail policy is not reasonably related to legitimate penological interests.

69. This new mail policy and the NHDOC's censorship of the expressive activities set forth above have a chilling effect on future speech.

70. The NHDOC's unconstitutional mail policy is ongoing and continues to violate and cause irreparable harm to the First Amendment rights of Plaintiffs, other prisoners, and their families. As such, there is no adequate remedy at law.

71. The acts described above have caused damage to Plaintiffs, and will continue to cause damage.

72. Plaintiffs seek declaratory and injunctive relief and compensatory, punitive, and nominal damages against Defendant.

73. Defendant's actions have been committed with reckless indifference to Plaintiffs' federally protected rights.

74. The law establishing the illegality of Defendant's actions was clearly established at the time such actions were taken.

Count II
(Violation of the Fourteenth Amendment's Procedural Due Process Protections, as enforced by 42 U.S.C. § 1983)

75. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

76. 42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

77. Section 1 of the Fourteenth Amendment to the United States Constitution prohibits states from depriving “any person of life, liberty, or property, without due process of law.”

78. As described above, the enforcement of the NHDOC’s new mail policy memorialized in PPD 5.26(IV)(B)(2)-(3) and made effective on February 1, 2016 unconstitutionally infringes (or imminently threatens to infringe) upon the procedural due process rights under the Fourteenth Amendment held by Plaintiffs and others who have attempted to or intend to communicate messages banned under the new policy.

79. This new mail policy is not reasonably related to legitimate penological interests.

80. The NHDOC’s unconstitutional mail policy is ongoing and continues to violate and cause irreparable harm to the Fourteenth Amendment rights of Plaintiffs and the families of other prisoners. As such, there is no adequate remedy at law.

81. The acts described above have caused damage to Plaintiffs, and will continue to cause damage.

82. Plaintiffs seek declaratory and injunctive relief and compensatory, punitive, and nominal damages against Defendant.

83. Defendant’s actions have been committed with reckless indifference to Plaintiffs’ federally protected rights.

84. The law establishing the illegality of Defendant’s actions was clearly established at the time such actions were taken.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

a) Declare that the NHDOC's new mail policy memorialized in PPD 5.26(IV)(B)(2)-(3) and made effective on February 1, 2016 is unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution;

b) Temporarily, preliminarily, and permanently restrain and enjoin Defendant Commissioner Wrenn, his employees, and all others acting in concert with him, from enforcing the new mail policy memorialized in PPD 5.26(IV)(B)(2)-(3) and made effective on February 1, 2016;

c) An award of compensatory, punitive, and nominal damages for each violation of constitutional rights in an amount to be proven at trial;

d) A trial by jury on damages;

e) Award Plaintiffs attorneys' fees in this action pursuant to 42. U.S.C. § 1988(b);

f) Award Plaintiffs their costs of suit;

g) The right to conform the pleadings to the proof and evidence presented at trial;

and

h) Grant such other and further relief as this Court deems just and proper in the circumstances.

A JURY TRIAL IS HEREBY DEMANDED ON PLAINTIFFS' CLAIMS FOR MONETARY DAMAGES.

Respectfully submitted,

Y.F., individually and as next of friend of minor C.F.,
and A.R., individually and as next of friend of minor
X.G.,

By and through their attorneys affiliated with the
American Civil Liberties Union of New Hampshire
Foundation,

/s/ Gilles R. Bissonnette

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Dated: December 21, 2016

CERTIFICATE OF SERVICE

I, Gilles Bissonnette, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Gilles Bissonnette _____
Gilles Bissonnette