

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEONARD GREGORY, DEE J. RADEKE, *	Case No. <u>6NCV057085</u>
SEAN O'GEARY, ZACHARY ZIMPEL, *	
PHILIP STACY, RICHARD CORTEZ, *	PETITION FOR DECLARATORY
JERRY NEWELL, ROGER SELLERS, *	JUDGMENT, AND BOTH TEMPORARY
MELVIN DENNIS, CHAD WELSH, *	AND PERMANENT INJUNCTIVE
CLARENCE FENTON, and *	RELIEF; PURSUANT TO <u>IOWA</u>
JACK HAYS, *	LAW AND CONSTITUTION
Plaintiffs, *	
v. *	
STATE OF IOWA, Iowa State *	
Legislature, and the Iowa *	
Department of Corrections, *	
Defendants. *	

FILED  
 POLK COUNTY, IA.  
 2018 SEP 26 AM 8:35  
 CLERK DISTRICT COURT

PARTIES

1. The plaintiffs are citizens, fathers, veterans, former civil servants, husbands, brothers, etc. whom happen to be prisoners in the Anamosa State Pen., 406 N. High St., Anamosa, IA. 52205.
2. The defendants are the State of Iowa, the Iowa State Legislature (Senators and Representatives) located at the Iowa State Capitol in Des Moines, IA. 50319, and the Iowa Dept. of Corrections, at 510 E.12th St., Des Moines, IA. 50319.

FACTS SUPPORTING GROUNDS FOR RELIEF

3. In Early July, 2018, a Memo was posted throughout the Anamosa State Pen. (ASP) stating all "material or information" containing "nudity" or "sexually explicit" content was banned and must be turned in to staff by November 14th, 2018, or prisoners would be disciplined; i.e., solitary confinement, etc.

4. The Memo cited "HF 2492" as authority. Does not define "nudity" or "sexually explicit" and, coupled with the facts cited here in paragraphs #7-#9, is so vague that it encourages arbitrary and discriminatory enforcement. It was later determined by the Plaintiffs that "HF 2492" is a law, Iowa Code §904.310A, stating: "Funds appropriated to the department...shall not be used to distribute or make available any commercially published information or material to an inmate when...(it) is sexually explicit or features nudity." (emphasis ours) This law sweeps so broadly as to prohibit substantial amounts of constitutionally protected speech, art, fine art, etc. Moreover, it is clear that the Iowa Dept. of Corrections (IDOC) intend to take property already acquired and/or acquired legally with private funds; neither of which is mentioned in the vague statute.

5. Three of the Plaintiffs, Radeke, Hays, and O'Geary, contacted the Iowa Ombudsman. A Senior Assistant conveyed that: (1) The IDOC requested this law be passed, and (2) That it was clear that the IDOC was broadly interpreting the statute beyond what the plain language of the statute conveyed.

6. §904.310A is modeled after a Federal Prison regulation. The General Counsel and Administration of IDOC clearly lobbied the Iowa State Legislature to target First and Fourteenth Amendment material, to deny access to this material and to "commercially" deny the sale of the material by way of refusing to "distribute" this material. The law and its application effects free commerce, free speech, and due process rights. Moreover, the state and its agents intend to take private property for public use.

7. The Plaintiffs have been subjected, as well as their fellow prisoners, to the arbitrary denial of mail, pictures, magazines, newsletters, books, and other "material or information" by the mail clerk Marvin Kurt, his supervisors, and other staff. In fact, Kurt has been regularly seen reading every piece of mail that goes in-and-out of ASP. This violates Iowa Administrative Code, 201--20.4(1), which state IDOC will not read and censor mail. Now IDOC has all the encouragement they need to be arbitrary and discriminate against prisoners.

8. The defendants' agents in IDOC have already delayed mail, lost mail, denied mail, etc. whether it contained nudity or not. In fact, mail that involves litigation is also targeted. The ASP staff and administration have targeted prisoners for legal material and retaliated. Indeed, some of the Plaintiffs are concerned that they will be transferred, placed in solitary confinement, lose their property, or otherwise targeted.

9. When hundreds of complaints have been made about the Mail room—including complaints from co-workers whom have quit their job—and the way that staff has lost, delayed, denied, or otherwise molested the mail, ASP moved the Mail Room to an area not visible to prisoners and discontinued the mail list; prisoners no longer know for certain if they even have mail, nor can they see what is being done to their mail.

#### GROUNDS FOR RELIEF

10. Iowa R. Civ. P., Rule 1.1101, states, "Courts of record... shall decalre rights, status, and other legal relations...". See §4.1(30), Iowa Code, "...shall...confers a duty..." (2018).

11. Rule 1.1102 states, "Any person...whose rights, status or other legal relations are effected by any statute...may have any question of the construction or validity...determined...". (all above empasis ours).

12. The purpose and result of §904.310A is the following:  
A. This law violates the Ex Post Facto provision of the Iowa Constitution by making sentences more onerous.  
B. The statute and its application denies free speech to prisoners and society, it effects commerce, it denies the pursuit of happiness, it violates the "takings clause", and denies Due Process and Equal Protection, and the defendants are using their rights to deny and impair the Plaintiffs'; violation of Iowa Const. Art. I §1, 2\* 6, 7, 8, 9,\*17, 21, and 25\*

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\* Political power is inherent in the "people". the defendants cannot use their rights under Iowa Const. Arts. III and IV to deny and impair the Plaintiffs' rights under Art. I, nor the rights simply "retained".

C. All the defendants are seeking to subject the Plaintiffs to Cruel and Unusual Punishment which is forbidden by both the Iowa and the U.S. Constitutions. However, Iowans have greater protection.

13. The Iowa Constitution, Art. I §1, "Rights of Persons", includes the right to "pursuing and obtaining safety and happiness". Moreover, the U.S. Constitution states that, "The enumeration in the Constitution of Certain Rights, shall not be construed to deny or disparage others retained by the people"; Iowa Const., Art. I §25, "Rights reserved", is similar to the 9th Amendment cited above for the "enumeration" of rights. However, the Iowa constitution cites the rights of man to "safety and happiness". The Plaintiffs submit that at the heart of liberty is the right to define one's own concept of existence, of meaning, and the mystery of Human Life; including what may, or may, not be obscene... When a person chooses to define reality, pursue meaning, and observe and obtain happiness and meaning (especially in the de-prive environment of the Penitentiary) through the arts.\*

14. The defendants seek to take from the Plaintiffs what they may, or may not find as meaning and beauty in this universe. Indeed, it cannot be contested that the arts have sought and achieved to perform a religious or sacred function by conferring meaning, by synthesizing, and welding together and making sense of one's reality and the Universe. There is no disputing test, and "nudity" or something one may consider "sexually explicit" might be beautiful and help bring meaning and happiness to one man or woman's life, to another it may be obscene.

15. The Plaintiffs, and the majority of their fellow prisoners, do not find "nudity" or anything that is "sexually explicit" in the context of the arts obscene. Moreover, there would be no penological interest in trying to ban it either. The Plaintiffs, and the class they represent, are in a Penitentiary (most of them have LIFE without Parole sentences) wherein there is no treatment or even anything resembling true "rehabilitation". Indeed, any effort to try to pass the statute §904.310A, or any of the actions to enforce it, in reality is thinly veiled excrement.

16. In the past three years, the Plaintiffs have lost more at the Anamosa State Pen. under this Administration than all the years of the past 2 decades, and all the previous Wardens and IDOC directors. The defendants have no other purpose of passing this law other than to take more and make more suffering for the Plaintiffs and their families.

17. The passing of §904.310A also comes on the wake of the \$2 Million jury award after Sink v. State, 888 N.W.2d 682 (Iowa 2017), was remanded back to the Polk County District Court. However, the problems and issues in that case result from Iowa DOC staff retaliating against their own employee, Kris Sink,

\* By "the arts" the Plaintiffs submit that this is loosely defined by any information and material that is visual, written, auditory, video or photographic.

<sup>2</sup> The facts in para. #16 are merely to demonstrate the pattern and practice of the defendants of merely taking things (like thermals) to save money or simply to make the Plaintiffs suffer and go without.

and calling her a "whore", firing her from her job, and general harassment after she complained about films that were played on the Unit television at the Mental Health Unit, the "Clinical Care Unit", in Iowa State Pen., former facility at Fort Madison, Iowa. It is not the Plaintiffs' fault that the Administration and her co-workers chose to harass and retaliate against Ms. Sink when she complained about playing films she believed inappropriate for Mentally Deranged, Mentally Ill sex offenders whom were unstable; not General Population.

18. The Code of Iowa §904.310A is unconstitutional under both the Iowa and U.S. constitutions. Moreover, it is overbroad and vague. It is unconstitutional facially and applied.

#### REQUESTS FOR RELIEF

19. The Plaintiffs request the court grant declaratory relief by a judgment stating that the Code of Iowa §904.310A violates the constitutions of the state of IOWA based on the grounds and facts submitted, as well as any facts, evidence, affidavits, etc. that may be submitted to the court.

#### Injunctive Relief TEMPORARY & PERMANENT

20. "A temporary injunction may be allowed...(w)hen the petition, supported by affidavit, shows...some act which would greatly or irreparably injury the plaintiff(s)...(or) a party is...or threatens or is about to do, an act violating the other party(s)' right(s)...tending to make the judgment ineffectual." Iowa R. Civ. P., Rule 1.1502(1) & (2) (2018).

21. The defendants seek to take property and refuse to deliver Mail\*, from the U.S. Postal Service or other Mail entities, which they may arbitrarily deem is "sexually explicit" or has "nudity". The deadline is set for November 14th, 2018.

22. The defendants, through the agents of Iowa DOC, already arbitrarily withhold property, destroy it, etc.

23. Irreparable injury: some of the Plaintiffs have been incarcerated for decades. Some of the property the defendants are seeking to take from them is decades old, can no longer be purchased and, in some cases, even Collectors items. Moreover, the defendants are deliberately seeking to violate Constitutional Rights.

24. No adequate remedy: There is no other adequate remedy to preserve the rights of the Plaintiffs but to issue both temporary and permanent (after a hearing on the permanent) injunctive relief.

25. Balance of the Hardships; the defendants will lose nothing. In fact they will save hours and hours of time and money that they will waste enforcing this Draconian statute. The balance

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\* Though the statute merely states that Iowa DOC cannot "distribute" the "nudity" or "sexually explicit" material, Plaintiffs have written many letters to the Iowa DOC General Counsel asking them to stop interpreting the law to BAN ALL MATERIAL OR INFO. The response is attached...the defendants intend to deliberately violate free speech and property rights.



of hardships weighs overwhelmingly in favor of the Plaintiffs who stand to lose thousands of dollars in literature, art, etc.

26. **Bond:** the Plaintiffs request the court waive any bond, as the defendants will lose nothing and the Plaintiffs are indigent prisoners pursuant to Code of Iowa §815.9.

27. **Affidavit:** "(a)ny pleading, motion, affidavit, or other document" may be certified under Code of Iowa §622.1 and Iowa Rules of Civil Procedure, Rule 1.413(4) (2018). The Plaintiffs have certified this document to be considered as an affidavit because they are indigent prisoners, at the mercy of the defendants who deliberately suppress free speech and access to the courts. (e.g., we are still using archaic typewriters; this one is missing letters and punctuation).

WHEREFORE, the Plaintiffs pray for Declaratory Relief and Injunctive relief forthwith. The Plaintiffs also reserve any right to a jury trial. Waiver of any bond is appropriate for indigent Plaintiff:

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct. I.C.A. §622.1.

9-14-18  
Date

*Leonard Gregory*  
LEONARD GREGORY, Anamosa State Pen.

9-13-18  
Date

*Dee J. Radeke*  
Dee J. Radeke, Anamosa State Pnn.

9-14-18  
Date

*Zachary Zimpel*  
Zachary Zimpel, Anamosa State Pen.

9-14-18  
Date

*Philip Stacy*  
Philip Stacy, Anamosa State Pen.

9-15-18  
Date

*Jerry Newell*  
Jerry Newell, Anamosa State Pe.

9-14-18  
Date

*Roger Sellers*  
Roger Sellers, Anamosa State Pen.

9-14-18  
Date

*Melvin Dennis*  
Melvin Dennis, Anamosa State Pen.

9-13-18  
Date

*Clarence Ralph Fenton*  
Clarence Fenton, Anamosa State Pen.

9-14-18  
Date

*Chico Newman*  
Chico Newman, Anamosa State Pen.

9-13-18  
Date

*JACK HAYS*  
JACK HAYS, Anamosa State Pen.

9-15-18  
Date

*Richard Cortez*  
Richard Cortez, Anamosa State Pen.

9-14-18  
Date

*Chad Welsh*  
Chad Welsh, Anamosa State Pen.

9-14-18  
Date

*Chad Welsh*  
Chad Welsh, Anamosa State Pen.

JACK HAYS #1059729  
Anamosa State Pen.  
406 N. High St.  
Anamosa, IA. 52205

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