

**Bruce L. Campbell**, P.C., OSB No. 925377

bruce.campbell@millernash.com

**Elisa J. Dozono**, OSB No. 063150

elisa.dozono@millernash.com

**Jesús Miguel Palomares**, OSB No. 114874

jesus.palomares@millernash.com

MILLER NASH LLP

3400 U.S. Bancorp Tower

111 S.W. Fifth Avenue

Portland, Oregon 97204

Telephone: (503) 224-5858

Facsimile: (503) 224-0155

**Kevin Díaz**, OSB No. 970480

kdiaz@aclu-or.org

ACLU Foundation of Oregon

P.O. Box 40585

Portland, Oregon 97240

Telephone: (503) 227-6928

Facsimile: (503) 227-6948

Attorneys for Plaintiff American Civil Liberties

Union Foundation of Oregon

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF OREGON,

Plaintiff,

v.

JACKSON COUNTY; JACKSON  
COUNTY SHERIFF'S DEPARTMENT;  
MICHAEL WINTERS, in his official  
capacity as Jackson County Sheriff,

Defendants.

---

CV No. 1:12-cv-1007

COMPLAINT

(First Amendment; 42 U.S.C. § 1983; Oregon  
Constitution Article 1 § 8)

**DEMAND FOR JURY TRIAL**

Plaintiff, the American Civil Liberties Union Foundation of Oregon, alleges as follows:

### **PRELIMINARY STATEMENT**

1. This action challenges the recently changed legal mail policy at the Jackson County Jail – effective on December 27, 2010 – that forbids any prisoner from receiving incoming legal mail from an attorney unless the attorney is the prisoner’s attorney of record. This restrictive policy denies the American Civil Liberties Union Foundation of Oregon its rights of free speech and expression by denying it the opportunity to communicate with inmates and inform them of available legal resources. Furthermore, the current restrictive mail policy serves no legitimate or compelling penological interest of the Jackson County Jail.

2. This action seeks injunctive and declaratory relief, as well as damages, including attorney fees and costs, to redress the violation of plaintiff’s federal and state constitutional and statutory rights.

### **JURISDICTION AND VENUE**

3. This action arises under the Constitution and laws of the United States, including the First Amendment and 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over the claims based on Oregon law pursuant to 28 U.S.C. § 1367.

4. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b). All parties reside within the District of Oregon, and the events described in this Complaint occurred in the District of Oregon.

### **PARTIES**

6. The American Civil Liberties Union of Oregon is a nonprofit, nonpartisan organization with more than 10,000 members dedicated to the principles of liberty and equality

embodied in the Oregon and United States Constitutions and civil rights laws. The American Civil Liberties Union Foundation of Oregon (the “ACLU”) is the non-profit legal and educational arm of the American Civil Liberties Union of Oregon and works in tandem with its sister organization to further the common interests of the two corporate entities.

7. The ACLU engages in litigation and educational efforts on behalf of incarcerated individuals as a form of free expression and free association, offering its services in furtherance of civil liberties. The ACLU does not charge its clients for any of the services it renders and thus does not obtain any pecuniary gain from any inmates at any jail.

8. Defendant Jackson County is a municipal corporation formed under the laws of the State of Oregon.

9. Defendant Jackson County Sheriff’s Department is a department within Jackson County and operates the Jackson County Jail (the “Jail”) in Medford, Oregon. The Jail houses both pretrial detainees and convicted prisoners.

10. Defendant Michael Winters is the Jackson County Sheriff. Sheriff Winters is employed by and is an agent of Jackson County. He is responsible for the operations at the Jail as well as the training and supervision of the Jail staff that interpret and implement the Jail regulations and policies, including the mail policy at issue in this action. Sheriff Winters has the authority to create and enforce regulations and policies at the Jail, such as the challenged mail policy at issue in this action.

11. The persons responsible for the acts and omissions alleged herein acted under color of state law and within the scope of their official duties as employees and officers of Jackson County and the Jackson County Sheriff’s Department.

## FACTS COMMON TO ALL CLAIMS

### A. THE ACLU'S EFFORTS ARE PROTECTED FREE SPEECH

12. The ACLU has received and responded to requests from Oregon inmates for legal assistance and educational materials for at least the past 25 years.

13. The Jail houses approximately 230 male and female inmates on a daily basis.

14. Due to a number of press reports and complaints received from current and past inmates of the Jail and their family members, the ACLU designed a jail survey focused on common areas of concern related to jail conditions.

15. Beginning in March of 2009, on six separate occasions the ACLU sent surveys to all inmates that were incarcerated in the Jail.

16. The ACLU jail survey asks inmates about their experience in the Jail, with the purpose of monitoring living conditions at the correctional facility and ensuring the civil rights of prisoners are not being violated. A representative example of an ACLU jail survey is attached as Exhibit 1 and incorporated herein.

17. The ACLU engages in ongoing correspondence with inmates to better understand the legal complaints they may have, apprise them of free legal resources that might be available, including referrals to other legal resource providers, provide legal information related to their rights and responsibilities, and to determine whether or not their concerns would be appropriate for representation by the ACLU.

18. The ACLU's correspondence to inmates at the Jail is not for pecuniary gain and is protected speech.

19. The ACLU sends correspondence, including surveys, to inmates at the Jail in its capacity as a legal services provider.

20. The ACLU's correspondence, including the surveys, is legal mail because it is mail from a legal services organization, is clearly marked as "Legal Mail" on the outside of the mailing, and contains information designed to provide legal resources to the recipient.

**B. THE JAIL PREVIOUSLY ALLOWED THE ACLU'S CORRESPONDENCE**

21. In October 2008, staff from the ACLU met with Sheriff Winters to explain the ACLU's intention of sending surveys to inmates at the Jail.

22. The Jail's mail policy with respect to incoming mail intended for prisoners is set forth in the document titled "Jackson County Sheriff's SOP 14.5, Subject: Prisoner Mail."

23. Sheriff Winters did not object at that time to the ACLU sending the surveys. Contemporaneously, other ACLU correspondence clearly marked as legal mail was not rejected by the Jail.

24. Beginning in March 2009, the ACLU sent the surveys to inmates at the Jail. The surveys were enclosed in envelopes which were clearly marked with the words "Legal Mail."

**C. THE JAIL CHANGED ITS INCOMING MAIL POLICY TO SUPPRESS THE ACLU'S FREE SPEECH**

25. The mail policy in effect at the time the ACLU began sending the surveys (March 2009), titled "Jackson County Sheriff's SOP 14.5, Subject: Prisoner Mail (revised 9-11-09)" (the "2009 SOP"), expressly instructed the Jail's staff that incoming mail from the ACLU should be treated as legal mail. The 2009 SOP states in pertinent part:

"Privileged mail is defined in ORS 169.076(10). Privileged mail is any mail addressed to or from the Governor, Sheriff, Jail Commander, Attorney General, the Corrections Division of the State of Oregon, the Judge or the attorney of record of the affected prisoner. **In addition, incoming mail from the *American Civil Liberties Union (ACLU)*, Legal Aid or corrections division official shall remain sealed.**"

Section 2A (Emphasis added). A copy of the 2009 SOP is attached as Exhibit 2 and incorporated

by reference herein.

26. The Jail began rejecting the ACLU's correspondence under the 2009 SOP in 2010 without providing any explanation or reasoning to the ACLU as to why the Jail was no longer following its own written procedures.

27. The ACLU contacted Sheriff Winters asking for clarification and pointing out that the 2009 SOP specifically allowed inmates to receive ACLU mailings.

28. Near the end of 2010, the ACLU communicated with Jackson County's legal counsel to try to resolve concerns about the handling of the ACLU's correspondence to inmates at the Jail. The ACLU was told that possible changes to the Jail's mail policy were being considered and the ACLU requested to be informed if any such changes took place.

29. From the end of December 2010 until June 2011, the ACLU's mail to inmates continued to be rejected because the Jail did not consider the correspondence from the ACLU, clearly marked as legal mail, to be legal mail under the Jail's operating procedures. Because the Jail no longer considered the correspondence legal mail and the correspondence was not solely contained on a postcard, the Jail rejected the mail.

30. By barring the ACLU from sending legal mail to inmates in an envelope the Jail makes substantive legal communication with inmates nearly impossible, in part, because without envelopes, the ACLU cannot meet its ethical duty to maintain secrets and confidences of potential clients.

31. In June 2011, Jackson County responded to the ACLU's further inquiry regarding the Jail's mail policy, stating that the 2009 SOP was still in effect but undergoing revisions.

32. In July 2011, the Jail informed the ACLU that the 2009 SOP had been replaced on December 27, 2010, by a new document titled "Jackson County Sheriff's SOP 14.5, Subject: Prisoner Mail (revised 12-27-10)" (the "2010 SOP"). Section 2A now reads:

“Privileged mail is defined in ORS 169.076(10). Privileged mail is any mail addressed to or from the Governor, Sheriff, Jail Commander, Attorney General, the Corrections Division of the State of Oregon, the Judge or the attorney of record of the affected prisoner. In addition, incoming mail from Legal Aid or corrections division official shall remain sealed.”

A copy of the 2010 SOP is attached as Exhibit 3 and incorporated by reference herein.

33. On or about March 28, 2012, the Jail informed the ACLU that its mail policy – Section 2A of the 2010 SOP – did not classify correspondence from the ACLU as either “privileged communications” or “acceptable non-privileged incoming mail.”

34. As a matter of policy, the Jail continues to reject correspondence to inmates from the ACLU, despite that correspondence being clearly marked as legal mail. A sample copy of envelopes that were rejected by the Jail is attached as Exhibit 4 and incorporated by reference herein.

35. On information and belief, as a matter of policy, the Jail continues to bar inmates from sending correspondence to the ACLU in envelopes, even when clearly marked as legal mail.

**FIRST CLAIM FOR RELIEF  
(VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES  
CONSTITUTION – 42 U.S.C. § 1983)**

36. Plaintiff realleges paragraphs 1 through 35.

37. The ACLU’s actions in sending correspondence to inmates at the Jail constitute a collective activity undertaken to obtain meaningful access to the courts. Such action by the ACLU is an exercise of a fundamental right within the protection of the First Amendment.

38. The mail policy in place at the Jail (the 2010 SOP) is a governmental regulation that has violated, and threatens to continue violating, the ACLU’s rights under the First Amendment.

39. Defendants have willfully refused to allow correspondence from the ACLU to be delivered to inmates despite being apprised that such refusal violates the ACLU's civil rights and those of the inmates at the Jail.

40. Pursuant to 42 U.S.C. § 1983, defendants are liable to the ACLU for damages resulting from defendants' violation of the ACLU's First Amendment rights.

41. Wherefore, the ACLU is entitled to damages in an amount to be proven at trial.

42. Pursuant to 42 U.S.C. § 1988, the ACLU is entitled to its reasonable attorney fees and costs.

**SECOND CLAIM FOR RELIEF  
(OREGON CONSTITUTION, ARTICLE 1, SECTION 8)**

43. Plaintiff realleges paragraphs 1 through 42.

44. The challenged mail policy (the 2010 SOP) has violated, and threatens to continue violating, the ACLU's rights under Article 1, section 8, of the Oregon Constitution, which protects the rights of free speech and expression.

45. Defendants have willfully refused to deliver the ACLU's correspondence to inmates despite being apprised that such refusal violates the ACLU's civil rights and those of the inmates at the Jail.

46. Defendants are liable to the ACLU for damages resulting from defendants' violation of the ACLU's rights under Article 1, section 8, of the Oregon Constitution.

47. Wherefore, the ACLU is entitled to damages in an amount to be proven at trial.

48. Pursuant to *Deras v. Myers*, 272 Or 47, 65-67, 535 P2d 541 (1975); *Armatta v. Kitzhaber*, 327 Or 250, 286-88, 959 P2d 49 (1998), and the court's inherent power, the ACLU is entitled to its reasonable attorney fees and costs.



**THIRD CLAIM FOR RELIEF  
(DECLARATORY JUDGMENT)**

49. The ACLU realleges paragraphs 1 through 48.

50. An actual and immediate controversy exists between the parties.

51. The 2010 SOP violates the ACLU's rights under the United States and Oregon Constitutions, including, but not limited to, the First Amendment of the United States Constitution and Article 1, section 8, of the Oregon Constitution.

52. The acts described above have caused damage to the ACLU, and will continue to cause damage.

53. In requesting declaratory relief, the ACLU requests an interpretation of the rights, legal status, and relationships of the parties under the law and facts. The ACLU also requests a declaration that affirms the ACLU's right to send and receive legal correspondence to and from inmates without being forced to do so using postcards.

**FOURTH CLAIM FOR RELIEF  
(INJUNCTIVE RELIEF)**

54. The ACLU realleges paragraphs 1 through 53.

55. Defendants have acted and threaten to continue acting under color of state law to deprive the ACLU of its constitutional rights. The ACLU faces a real and immediate threat of irreparable injury as a result of defendants' actual and threatened actions, as well from the existence, operation, and threat of enforcement of the challenged mail policy.

56. The ACLU is entitled to injunctive relief prohibiting defendants from rejecting, censoring, or otherwise refusing to deliver or allow delivery of the ACLU's appropriately marked legal mail because it is not in the form of a postcard.

**PRAYER FOR RELIEF**

Wherefore, plaintiff respectfully asks that this Court:

1. Declare that the challenged mail policy violates the rights of the ACLU;
2. Permanently enjoin defendants from enforcing the challenged mail policy, or any other policy that limits mail to or from attorneys offering free legal resources to inmates;
3. Award the ACLU nominal and compensatory damages in an amount to be proven at trial;
4. Award the ACLU its reasonable costs and attorney fees; and
5. Provide whatever additional relief the Court deems just and appropriate.

DATED this 6th day of June, 2012.

MILLER NASH LLP

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF OREGON

/s/ Bruce L. Campbell

Bruce L. Campbell, P.C., OSB No. 925377

bruce.campbell@millernash.com

Elisa J. Dozono, OSB No. 063150

elisa.dozono@millernash.com

Jesús Miguel Palomares, OSB No. 114874

jesus.palomares@millernash.com

Telephone: (503) 224-5858

Facsimile: (503) 224-0155

On behalf of the American Civil Liberties Union  
Foundation of Oregon

Kevin Díaz, OSB No. 970480

kdiaz@aclu-or.org

ACLU Foundation of Oregon, Legal Director

Post Office Box 40585

Portland, Oregon

Telephone: (503) 227-6928

Facsimile: (503) 227-6948