

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

INDIANA CIVIL LIBERTIES UNION	)	
FOUNDATION, INC., d/b/a ACLU of	)	
INDIANA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-cv-528
	)	
SHERIFF, HUNTINGTON COUNTY,	)	
INDIANA,	)	
	)	
Defendant.	)	

**Complaint for Declaratory and Injunctive Relief**

1. The Indiana Civil Liberties Union Foundation, Inc., doing business as the ACLU of Indiana (“ACLU of Indiana”), is a prominent Indiana civil rights organization. Its advocacy and litigation efforts are directed to preserving and advancing the constitutional rights of Hoosiers. Among other things, its lawyers frequently represent prisoners, both in rendering legal advice and in civil litigation challenging conditions of confinement, after the prisoners reach out to the ACLU of Indiana for legal assistance.

2. A number of prisoners confined to the Huntington County Jail have contacted the ACLU of Indiana for legal assistance. In order to determine if the ACLU of Indiana can be of assistance, the organization’s legal director sought to visit the prisoners at the Jail. However, he was informed by the Jail Commander that he would not be permitted to have a confidential visit with the prisoners as this is reserved to their counsel of record in

pending litigation. Instead, any visitation would have to be through a third party that provides either telephone calls or video visitation that are not confidential.

3. The ACLU of Indiana, its members, and its lawyers have the right to associate for the purpose of assisting persons who seek legal redress as an essential part of its mission and the lawyers have the right to meaningfully communicate with the prisoners seeking assistance from the ACLU of Indiana and the failure of defendant to allow the lawyers to engage in confidential and privileged communication absolutely subverts these rights without justification in violation of the First Amendment to the United States Constitution.

#### **Jurisdiction, venue, cause of action**

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331.

5. Venue is appropriate in this district pursuant to 28 U.S.C. §1391.

6. Declaratory relief is authorized by Federal Rule of Civil Procedure 57 and by 28 U.S.C. §§ 2201, 2202.

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

#### **Parties**

8. The Indiana Civil Liberties Union Foundation, Inc., d/b/a ACLU of Indiana, is a domestic nonprofit corporation incorporated under the laws of the State of Indiana. Its principal and sole office is located in Indianapolis.

9. The Sheriff of Huntington County, Indiana, is the duly elected Sheriff of the County and is charged with housing prisoners in, and operating, the Huntington County Jail.

### **Factual allegations**

10. The ACLU of Indiana is one of the preeminent civil rights organizations in the State of Indiana.

11. The ACLU of Indiana has approximately 15,000 members.

12. The ACLU of Indiana and its members are dedicated to advocating for the constitutional rights of Hoosiers and to advance that goal the ACLU of Indiana engages in, among other things, legislative and administrative advocacy and litigation.

13. The ACLU of Indiana employs three lawyers and, last year, received more than 3,100 requests for assistance, more than 60% of which came from prisoners.

14. The ACLU of Indiana therefore frequently litigates civil cases where its lawyers represent and advocate for prisoners.

15. The ACLU of Indiana frequently represents prisoners in county jails in civil litigation. At the current time its lawyers have active litigation against a number of sheriffs and county jails in Indiana concerning conditions allegedly present in the jails and its lawyers are investigating other claims by county jail prisoners of constitutional violations that they are allegedly suffering, or have suffered, in county jails.

16. As a result, ACLU of Indiana attorneys frequently visit the prisoners who have contacted the organization in the county jails where the prisoners are confined.

17. In every jail in Indiana that the attorneys from the ACLU of Indiana have visited to talk to prisoners who have contacted the organization the attorneys have been allowed to meet with the prisoners and speak with them privately and confidentially.

18. Such a communication is essential as the prisoners are frequently, if not always, complaining of conditions existing in the jail and absent this privileged communication the prisoner may very well be reluctant to fully disclose the nature of his or her complaint. This reluctance will thwart or inhibit the essential purpose of the ACLU of Indiana and its members.

19. The ACLU of Indiana has received, on a number of occasions, letters from persons incarcerated in the Huntington County Jail who are seeking assistance with civil legal matters.

20. On December 9, 2019, Kenneth Falk, the legal director of the ACLU of Indiana, contacted the Huntington County Jail to set up a visit with Huntington County Jail prisoners who had contacted the ACLU of Indiana by mail.

21. Mr. Falk was directed to the Jail Commander, Jeff Kyle. Commander Kyle initially indicated he would have to check to see if Mr. Falk could have in-person, confidential visits with the prisoners because he was not their counsel of record in a pending case.

22. On December 10, 2019, Commander Kyle left a message on Mr. Falk's telephone indicating that he could not enter the Jail to visit prisoners, but he could only contact them by mail or do visitation via video or phone through a third-party service that is not confidential.

23. As noted, this is the first time that the ACLU of Indiana is aware of this type of restriction being imposed on its attorneys meeting with county jail prisoners.

24. In some prisons, depending on the security status of the prisoner, ACLU of Indiana attorneys will speak with prisoners separated by a glass or similar partition, but even in this situation the communications are confidential.

25. The ACLU of Indiana attorneys would be willing to have such communications with prisoners at the Huntington County Jail, if necessary, assuming that the communications would be private and confidential.

26. However, Commander Kyle confirmed that even if Mr. Falk travelled to the Jail, he could not speak with his clients privately, but would be using the same non-confidential third-party service noted above.

27. There is no justification to treat the attorneys from the ACLU of Indiana differently than the prisoners' attorneys of record in their pending cases.

28. The ACLU of Indiana and its members have the right to associate for the purpose of assisting prisoners who are seeking legal redress for infringement of their constitutionally guaranteed rights.

29. The ACLU of Indiana and its attorneys have the right to meaningful communication with Huntington County Jail prisoners seeking legal assistance and without the ability to consult with them in person in a confidential setting there cannot be meaningful communication.

30. The Sheriff of Huntington County is interfering with and attempting to thwart these rights.

31. The actions of the Sheriff of Huntington County are causing the ACLU of Indiana and its members irreparable harm for which there is no adequate remedy at law.

32. At all times the Sheriff of Huntington County has acted under color or state law.

**Claim for relief**

33. The failure of the Sheriff of Huntington County to allow attorneys from the ACLU of Indiana to have private, confidential communications with prisoners who have contacted the organization violates the First Amendment.

**Request for relief**

WHEREFORE, on behalf of itself, its attorneys and its members, the ACLU of Indiana requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare that the actions of the Sheriff of Huntington County are unconstitutional for the reason noted above.

3. Permanently enjoin the Sheriff of Huntington County to allow attorneys from the ACLU of Indiana to have private and confidential contact with Huntington County Jail prisoners who have contacted the organization when the attorneys visit the Huntington County Jail.
4. Award plaintiff its costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award plaintiff all other proper relief.

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