

IN THE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNSHACKLED HEARTS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:23-cv-01079
	)	
HOWARD COUNTY SHERIFF, in his	)	
official capacity, and CAPT. MATTHEW	)	
DECKARD, in his official capacity as	)	
Commander of the Howard County Jail and	)	
in his individual capacity,	)	
	)	
Defendants.	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

**Introductory Statement**

1. Unshackled Hearts, Inc. (“Unshackled Hearts”) is a not-for-profit prison ministry that attempts to assist in the rehabilitation of incarcerated Hoosiers by offering spiritual counseling, by communicating with incarcerated persons through a variety of means, and by providing persons with reading materials, many but not all of which are religious in nature, by ordering materials from an established distributor (most frequently Amazon.com) and having those materials delivered directly to the prison or jail in which an individual is incarcerated. Unshackled Hearts serves persons incarcerated within facilities operated by the Indiana Department of Correction and, while it serves a limited number of persons in other county jails, because of its location in Kokomo it serves numerous persons incarcerated within the Howard County Jail (“the Jail”). Over the past several years, however, the Jail has implemented a series of policies that have severely restricted the ability of Unshackled Hearts to send books to persons in the Jail. While the organization encountered difficulties in 2021 and 2022, due apparently to a series of ad hoc policies that it still

does not fully understand, beginning on January 1, 2023, with a couple of limited exceptions, the Jail banned inmate receipt of books entirely. After Unshackled Hearts raised concerns about the legality of this policy, the Jail amended its policy effective May 1, 2023 to allow a limited number of books to be sent to inmates directly from publishers (such as Penguin Random House or Simon & Shuster) but not from distributors (such as Amazon.com or Barnes & Noble). Aside from the fact that there is no penological justification for differentiating between publishers and distributors, for a variety of reasons having Unshackled Hearts send books to incarcerated persons directly from a publisher is not a workable alternative.

2. Both the Jail's initial book ban and its current policy violate the First Amendment to the United States Constitution. Because the services offered by Unshackled Hearts constitute an exercise of its own religion that has been substantially burdened by the Jail's policies, and because these policies are not narrowly tailored to advance a compelling governmental interest, the Jail's policies also violate Indiana's Religious Freedom Restoration Act, Ind. Code § 34-13-9-1, *et seq.* Unshackled Hearts is entitled to an injunction, and corresponding declaratory relief, against the enforcement of the Jail's current book policy. It is also entitled to its damages resulting from the enforcement of both policies.

### **Jurisdiction, Venue, and Cause of Action**

3. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.

4. This Court has jurisdiction of the supplemental state law claim pursuant to 28 U.S.C. § 1367.

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

6. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 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, and pursuant to Indiana law.

### **Parties**

8. Unshackled Hearts is a not-for-profit corporation with its principal place of business in Howard County, Indiana.

9. The Howard County Sheriff is the duly elected Sheriff of Howard County, Indiana who is responsible, among other things, for overseeing the Howard County Jail. He is sued in his official capacity.

10. Captain Matthew Deckard is the duly appointed Commander of the Howard County Jail. He is sued both in his official capacity and in his individual capacity.

### **Factual Allegations**

#### Unshackled Hearts and the Services it Offers to Incarcerated Persons

11. Unshackled Hearts is a not-for-profit prison ministry located in Kokomo, Indiana.

12. As a prison ministry, Unshackled Hearts seeks to bring restoration and freedom to incarcerated persons—“those with broken hearts,” according to its formal mission statement—through the power and love of Jesus Christ.

13. To do so, Unshackled Hearts communicates with incarcerated persons (via mail or e-mail, over the telephone, and in person) to offer mentorship and other forms of counseling, to provide these persons with workbooks and other reading materials that match their needs and interests, and overall to assist in these persons’ rehabilitation.

14. The aim of Unshackled Hearts is for all requests for its services to be filled in a way that matches each inmate’s needs, education, and place in life, so that the inmate takes joy in reading and applying the Word of God.

15. Often, Unshackled Hearts will remain in touch with incarcerated persons even after they have been released from jail or prison and will continue to offer counseling, spiritual guidance, and other assistance to these persons.

16. Unshackled Hearts believes that it is exceedingly important for it to spread the Word of God to persons in need, and it views the services it offers to these persons to be an exercise of its own religion.

17. The services of Unshackled Hearts are most frequently provided to persons incarcerated within the Indiana Department of Correction and, given the organization's location, to persons incarcerated within the Howard County Jail, although it occasionally serves persons incarcerated within other Indiana jails as well.

18. When an incarcerated person requests reading materials from Unshackled Hearts, the organization endeavors to ensure that the materials it provides are appropriate for that individual. If the incarcerated person requests a specific book, such as a Bible, this is obviously an easy task. Often, however, an incarcerated person will request reading material on a particular subject and Unshackled Hearts will select a book or books on that subject that it believes will be of interest and beneficial to that person and that it believes to be commensurate with that person's education. And other times an incarcerated person will simply request reading material in general and Unshackled Hearts will choose a book or books that it believes to be appropriate.

19. Many but not all of the books that Unshackled Hearts provides to incarcerated persons are religious in nature.

20. When Unshackled Hearts sends a book to an incarcerated person, it orders that book from an established distributor—most frequently Amazon.com (“Amazon”)—and has the book delivered directly to the person at the facility in which he or she is incarcerated. This has a variety

of benefits, both to the facility and to Unshackled Hearts. For the facility, a book sent by a large distributor such as Amazon is far less likely to contain contraband than a book sent by an incarcerated person's friends or family members. And for Unshackled Hearts, not only does Amazon offer an incredibly large selection of books on virtually every topic under the sun but it also offers free returns if, for instance, a book is rejected by a facility or a person is released or transferred prior to the book's arrival at the facility. Amazon's free-return policy is particularly important to Unshackled Hearts as it is a not-for-profit organization operating on a limited budget.

21. Because of the number of books that it sends to incarcerated persons, Unshackled Hearts is an Amazon Prime member, which entitles it to order materials from Amazon without paying for shipping and ensures that books will be delivered within a day or two.

22. Unshackled Hearts offers its services to a constant stream of persons incarcerated in the Howard County Jail ("the Jail"). Through the beginning of 2021, on average Unshackled Hearts was receiving approximately fifty letters each week from incarcerated persons throughout Indiana, and at any one time was in communication with dozens of persons in the Jail. Over the past couple of years, however, due in part to the limitations challenged in this litigation and in part to staffing issues that have since been resolved, Unshackled Hearts has only been in communication with ten or fewer persons in the Jail at a time.

23. In early 2021, Capt. Matthew Deckard was appointed Commander of the Jail. Throughout the majority of 2021 and 2022, Unshackled Hearts witnessed apparent changes to the Jail's policies regarding receipt of books by incarcerated individuals, including a period of time, later explained by Capt. Deckard as a "mistake," where Unshackled Hearts was entirely prohibited from having books sent into the Jail. Despite several requests and multiple meetings with Capt. Deckard and other staff of the Jail during this time period, however, Unshackled Hearts received inconsistent

and occasionally self-contradictory explanations of the Jail's policy concerning the issue.

The Jail's Since-Superseded Book Ban

24. On December 28, 2022, Capt. Deckard forwarded to Unshackled Hearts a formal policy titled "Inmate Book/Periodical Procedure," which is referenced herein as the "Since-Superseded Book Ban." A true and correct copy of this document, which took effect on January 1, 2023, is attached and incorporated herein as Exhibit 1.

25. The Since-Superseded Book Ban provides as follows (emphasis removed): "Books will no longer be accepted."

26. This policy allowed only three exceptions for books that would be allowed into the Jail: (a) "[h]oly scripture books . . . directly from a verified religious organization"; (b) "[e]ducational books directly from a verified education center"; and (c) "[r]ehab information directly from a verified rehab center."

27. The meaning of these extremely limited exceptions was not remotely clear to Unshackled Hearts, nor was it clear what it meant for an organization or center to be "verified."

28. There was no legitimate penological justification for the Since-Superseded Book Ban, and the exceptions to that policy represented impermissible content-based discrimination.

The Jail's Current Book Policy

29. Shortly after the Since-Superseded Book Ban took effect, Unshackled Hearts contacted Capt. Deckard to inform him that, in the estimation of Unshackled Hearts, the Since-Superseded Book Ban was unlawful. Capt. Deckard responded by indicating that he would "provide an official response" to Unshackled Hearts about its concerns "in the near future."

30. Despite multiple attempts by Unshackled Hearts to follow up with Capt. Deckard, as well as with the Howard County Sheriff, neither person addressed Unshackled Hearts's concerns until

mid-April of 2023. On April 17, 2023, Capt. Deckard forwarded to Unshackled Hearts a revised “Inmate Book Policy and Ordering Instructions” (“Current Book Policy”), which took effect on May 1, 2023. Three provisions of this Current Book Policy, which is attached and incorporated herein as Exhibit 2, are at issue in this litigation.

*Publisher-Only Rule*

31. Among other things, the Current Book Policy requires all books to “come directly from a recognized publisher.” This “Publisher-Only Rule” provides the following examples of “recognized publishers”: Penguin, Random House, Hachette Book Group, HarperCollins, Simon and Schuster, and MacMillan. Although the Current Book Policy describes them as separate publishers, Penguin and Random House merged in 2013.

32. The Current Book Policy is then explicit that the Jail will not allow inmates to receive books from distributors such as Amazon:

**Distributor:** A business that supplies goods to be sold to customers. **Examples** of distributor, but not limited to, Amazon, eBay, Books a Million and other book stores. As stated above we **WILL NOT** accept books from distributors and it will be returned.

33. For Unshackled Hearts, there are a number of problems with limiting incoming books to those that come directly from publishers rather than distributors such as Amazon.

34. For one, not all publishers even sell and ship books directly. For instance, when one selects a book through the website of either Simon & Shuster or MacMillan Publishers, two of the options specifically identified in the Current Book Policy, there is no option to purchase the book directly from those publishers. Instead, these publishers offer links to purchase books from various distributors such as Amazon, Barnes & Noble, and Books a Million. Ordering from these distributors is, of course, not allowed by the Jail’s Publisher-Only Rule, which means that, for all intents and purposes, the Jail does not permit incarcerated persons to receive (or Unshackled Hearts

to send) any book that has been published by Simon & Shuster or MacMillan Publishers.

35. On top of this, even the publishers that do sell and ship books directly have only a limited selection of books for sale. Publishers only sell and ship books that they publish themselves, but they do not sell and ship all such books. For instance, a publisher may not sell the paperback version of a book directly when the hardcover version of the same book is still in print. Given that hardcover books are prohibited by a portion of the Current Book Policy that is not challenged by Unshackled Hearts, this means that many if not most newer books cannot be sent into the Jail at all. In addition to these limitations, even when it is searching for a specific title, Unshackled Hearts cannot easily determine the identity of the publisher of books that it wishes to order for incarcerated persons.

36. This task, however, is made even more daunting when Unshackled Hearts is not searching for a specific title but is instead searching for a specific genre or type of book to send to an incarcerated person. Far from the one-stop shopping offered by Amazon (and other distributors), each publisher has only a limited number of materials pertaining to any topic and so, in order to find the book or books that it believes to be most appropriate for an inmate, Unshackled Hearts is required to search the websites of numerous publishers and, given the plethora of publishing houses in existence, even then cannot be assured that its selection is the most appropriate for an inmate or is the same book that it would have ordered had it been allowed to use Amazon.

37. Additionally, ordering books from publishers rather than through Amazon may require Unshackled Hearts to pay shipping fees and will almost certainly involve delays not present if books were ordered through Amazon. For instance, Penguin Random House advertises that books do not even ship for 4-6 business days and that, once shipped, normal delivery will take 7-10 business days. *See* Penguin Random House, *Frequently Asked Questions: Shipping and Delivery*,



at <https://www.penguinrandomhouse.com/faqs/#shipping>. Both the shipping fees and the delivery delays for any book ordered from an international publisher will doubtless be even greater.

38. And, publishers likely do not offer Amazon's free and simple return policy, which, as noted, is particularly important to Unshackled Hearts insofar as they are having books sent to incarcerated persons who may be released or transferred with little or no notice.

39. Against all this, there is no legitimate penological justification for prohibiting Unshackled Hearts from ordering books from Amazon to be delivered to incarcerated persons. It is exceedingly unlikely that contraband will be introduced to the Jail in a book sent directly from Amazon (or any other established distributor), and it is certainly not any more likely that this will happen than if a book is sent from a publishing house.

#### *Two-Book Rule*

40. The Jail's Current Book Policy also imposes a limit on the number of books an incarcerated person may receive each month: "[a]n inmate may only receive two (2) books a month." Unshackled Hearts does not know whether this Two-Book Rule is measured by a calendar month or by a rolling 30-day period.

41. The Current Book Policy establishes certain exceptions to the Two-Book Rule: "Bibles, Qurans or other religious holy scripture books, holy scripture study material, workbooks, education material and rehab information does [*sic*] not count towards this number."

42. Although many of the books that Unshackled Hearts sends to incarcerated persons may fall within this exception, although it does not understand the precise contours of the exception, certainly not all of these books do.

43. There are times when Unshackled Hearts will send more than two books to an incarcerated person in a month, for the person may be a voracious reader or may have requested literature on

multiple subjects, or Unshackled Hearts will determine that the person might benefit from several shorter books. Or, even when Unshackled Hearts itself does not send more than two books to an incarcerated person in a month, its materials will still be prohibited by the Two-Book Rule if the person has received books that month from a different source.

44. There is no legitimate penological justification for prohibiting Unshackled Hearts from sending more than two books to an incarcerated person in a month. In a provision of the Current Book Policy not challenged by Unshackled Hearts, inmates may only have four books in their possession at any one time. Any interest in restricting the amount of materials entering the Jail is fully served by this provision. Moreover, not only do the exceptions to the Two-Book Rule for certain religious or educational materials undermine any attempt to justify this rule, but allowing books that fall within these exceptions but not other books represents impermissible content-based discrimination.

*Prior-Permission Rule*

45. Finally, the Current Book Policy provides as follows: “If a book or periodical is received without prior permission it will be rejected [*sic*] and sent back to the publisher.”

46. Unshackled Hearts understands, of course, that all materials entering the Jail may be reviewed by staff to ensure that they do not represent a legitimate threat to institutional security. But to the extent that this Prior-Permission Rule requires incarcerated persons to obtain advanced permission for books to be sent to them—presumably through some process that is not spelled out in the Current Book Policy—it imposes enormous burdens on Unshackled Hearts (and the incarcerated persons it serves) without justification.

47. Upon receiving a request from an incarcerated person for a book, the Prior-Permission Rule will require Unshackled Hearts to identify the precise book or books that it wishes to send to the

person, will require Unshackled Hearts to notify the person of the precise titles, will require the person to request permission from staff at the Jail to receive these books, will require staff to process and approve this request, and then will require the incarcerated person to notify Unshackled Hearts that the request has been approved. Given that Unshackled Hearts most frequently communicates with incarcerated persons through the mail, this process will add at least several weeks to the process of sending literature to incarcerated persons.

48. Depending on the Jail's process for approving books, it may add substantially more time than this. This is particularly so if the process is intended to determine whether a book would threaten institutional security. After all, the content of many books will not be readily identifiable based on their titles alone, and so the process will require staff of the Jail to conduct research regarding the nature of each book and under some circumstances may require staff to even procure a copy of the book.

49. Given the frequency with which persons incarcerated within the Jail may be transferred or released, any significant delay in the process dramatically increases the likelihood that an incarcerated person will *never* receive a book that is intended for him or her.

50. There is no legitimate penological justification for the Prior-Permission Policy that is not fully served by allowing staff of the Jail to review all incoming materials before disseminating those materials to incarcerated persons.

#### Concluding Factual Allegations

51. Since the Since-Superseded Book Ban took effect on January 1, 2023, Unshackled Hearts has by policy not been permitted to send books directly from established distributors to individuals incarcerated within the Jail. It was prohibited from doing so under the Since-Superseded Book Ban and, for all of the reasons noted above, doing so under the Current Book Policy is simply too

difficult and costly for Unshackled Hearts. Indeed, Unshackled Hearts has been unable to effectively operate its prison ministry under either the Since-Superseded Book Ban or the Current Book Policy.

52. As a result of the enforcement of both the Since-Superseded Book Ban and the Current Book Policy, Unshackled Hearts has suffered damages. These damages include, but are not limited to, the frustration of its organizational mission.

53. Unshackled Hearts acknowledges that the Jail has offered it the ability to donate books that will then be placed on book carts inside the Jail. While Unshackled Hearts is certainly willing to assist the Jail in growing its library, this is not remotely a suitable alternative to allowing Unshackled Hearts to have books sent into the Jail directly from Amazon or another established distributor to be received by a specific inmate: the services that it offers to incarcerated persons are personal to the persons who have contacted Unshackled Hearts, and Unshackled Hearts certainly cannot be assured that a book placed on a book cart inside the Jail will reach its intended recipient. This is particularly so given that it is Unshackled Hearts's understanding that each of the Jail's seven housing units has its own book cart, such that a book placed on a book cart would likely not even be on the same unit as its intended recipient.

54. Moreover, the Jail's willingness to accept books from Unshackled Hearts to be placed on its book carts entirely undercuts any justification for the Since-Superseded Book Ban and the Current Book Policy.

55. Both the Since-Superseded Book Ban and the Current Book Policy have substantially burdened the religious exercise of Unshackled Hearts. This burden is not in furtherance of a compelling governmental interest and is not the least restrictive means of furthering any such interest.

56. As a result of the Jail's enforcement of the Current Book Policy, Unshackled Hearts is suffering irreparable harm for which there is no adequate remedy at all.

57. At all times the defendants have acted under color of state law.

### **Legal Claims**

58. Both the Since-Superseded Book Ban and the Current Book Policy violate Unshackled Hearts's rights under the First Amendment to the United States Constitution.

59. Both the Since-Superseded Book Ban and the Current Book Policy violated Unshackled Hearts's rights under Indiana's Religious Freedom Restoration Act, Ind. Code § 34-13-9-1, *et seq.*

### **Request for Relief**

**WHEREFORE**, Unshackled Hearts requests that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing.
2. Declare that the defendants have violated the rights of the plaintiff for the reasons described above.
3. Issue a preliminary injunction against the official-capacity defendants, later to be made permanent, enjoining the enforcement of the challenged provisions of the Current Book Policy and enjoining the defendants to allow the plaintiff to have books sent directly from Amazon or another established distributor to incarcerated individuals in the Howard County Jail, subject to the ability of jail staff to review these materials for any content that might threaten the safety or security of the facility.
4. Award the plaintiff its damages against all defendants.
5. Award the plaintiff its costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and Indiana Code § 34-13-9-10(c).
6. Award all other proper relief.

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