

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DONALD LEE LEGER, JR.

vs.

Civil Action
No. 08-cv-820

DRAFT

STATE OF LOUISIANA,
through the Department of Public Safety
and Corrections; JAMES LEBLANC,
Secretary of the Department of Public Safety
and Corrections; BURL CAIN, Warden
of the Louisiana State Penitentiary;
ROBERT BUTLER, Assistant Warden-
Death Row; and ASST. WARDEN TIM DELANEY,
SGT. T. SMITH, SGT. S. LLOYD,
SGT. T. MORGAN, LT. B. MEYER,
SGT. GAIL, LT. J. HUGHES,
SGT. E. GREEN, SGT. LOCKWOOD,
SGT. BROWN, SGT. GRAY, SGT. DUPONT,
SGT. T. ROSS, SGT. BOHANNON,
SGT. HONEYCUTT, SGT. GUIDRY,
SGT. MOREAU, LT. GARY TEMPLETON,
SGT. LEONARD, SGT. A. CLAYTON,
SGT. WEBB, SGT. L. MICHAEL, SGT. HOLSTON,
SGT. FLUMER, LT. W. WASHINGTON,
Louisiana State Penitentiary Employees,
Louisiana State Penitentiary.

COMPLAINT

INTRODUCTION

1. This is an action pursuant to 42 U.S.C. § 1983, and the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc-1, *et seq.*, for

damages and injunctive relief to redress Defendants' violations of the First and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b). At all times relevant, all parties were residents of this District.

THE PARTIES

4. Plaintiff, Donald Lee Leger, Jr., is an individual who at all times relevant has been residing in Louisiana State Penitentiary in West Feliciana Parish, Louisiana, within the district of this Court.
5. Defendant herein is the State of Louisiana, through the Department of Public Safety and Corrections.
6. Defendant herein is James LeBlanc, Secretary of the Louisiana Department of Public Safety and Corrections. In that capacity, he is and was responsible for the proper and legal administration of Louisiana State Penitentiary, including the protection of inmates' federal and constitutional rights such as the free exercise of religion, equal protection of law, the prohibition on government establishment of religion, and prisoner's right of access to court. He is and was responsible for the hiring, training, discipline, supervision and control of wardens at Department of Corrections facilities, including Warden Burl Cain. He is sued in his official and individual capacities.
7. Defendant herein is Warden Burl Cain, who is and at all times pertinent was, the Warden of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana. In that

capacity, he is and was responsible for the proper and legal administration of Louisiana State Penitentiary, including the protection of inmates' federal and constitutional rights such as the free exercise of religion, equal protection of law, the prohibition on government establishment of religion, and prisoner's right of access to court. He is and was responsible for the policy and practice of ensuring that death row prisoners' televisions are set to religious programming on Sunday mornings. He was responsible for the supervision, administration, policies, practices, customs and procedures of Louisiana State Penitentiary, as well as the hiring, training, supervision, discipline and control of employees under his command, which includes the Louisiana State Penitentiary defendants named herein. He is sued in his official and individual capacities.

8. Defendant herein is Assistant Warden Robert Butler, who is and at all times pertinent was, the Assistant Warden of Death Row at Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana. He is and was responsible for the proper and legal administration of death row at Louisiana State Penitentiary, including the protection of inmates' federal and constitutional rights such as the free exercise of religion, equal protection of law, the prohibition on government establishment of religion, and prisoner's right of access to court. He was responsible for the supervision, administration, policies, practices, customs and procedures of Louisiana State Penitentiary's death row, as well as the hiring, training, supervision, discipline and control of employees under his command, which includes the Louisiana State Penitentiary defendants named herein. He is sued in his official and individual capacities.

9. Defendant herein is Assistant Warden Tim Delaney, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is and was responsible for the proper and legal administration of death row at Louisiana State Penitentiary, including the protection of inmates' federal and constitutional rights such as the free exercise of religion, equal protection of law, the prohibition on government establishment of religion, and prisoner's right of access to court. He is sued in his official and individual capacities.
10. Defendant herein is Sgt. Flumer, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
11. Defendant herein is Lt. W. Washington, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
12. Defendant herein is Sgt. T. Smith, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
13. Defendant herein is Sgt. S. Lloyd, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
14. Defendant herein is Sgt. T. Morgan, who is, and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.

15. Defendant herein is Lt. B. Meyer, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He announced to death row prisoners that anyone who changed the channel away from religious programming on Sunday mornings would be disciplined. He is sued in his official and individual capacities.
16. Defendant herein is Lt. J. Hughes, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
17. Defendant herein is Sgt. Gail, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. She is sued in her official and individual capacities.
18. Defendant herein is Sgt. E. Green, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
19. Defendant herein is Sgt. Lockwood, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
20. Defendant herein is Sgt. Brown, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
21. Defendant herein is Sgt. Gray, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death

- row. He is sued in his official and individual capacities.
22. Defendant herein is Sgt. Dupont, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
23. Defendant herein is Sgt. T. Ross, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
24. Defendant herein is Sgt. Bohannon, Jr., who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
25. Defendant herein is Sgt. Honeycutt, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
26. Defendant herein is Sgt. Guidry, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
27. Defendant herein is Sgt. Moreau, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
28. Defendant herein is Lt. Gary Templeton, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.

29. Defendant herein is Sgt. Leonard, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
30. Defendant herein is Sgt. A. Clayton, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
31. Defendant herein is Sgt. Webb, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
32. Defendant herein is Sgt. L. Michael, Jr., who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.
33. Defendant herein is Sgt. Holston, who is and at all times pertinent was, an employee of Louisiana State Penitentiary, located in West Feliciana Parish, Louisiana, working in death row. He is sued in his official and individual capacities.

FACTS

34. Plaintiff is a prisoner incarcerated on death row at Louisiana State Penitentiary, hereinafter "LSP."
35. Plaintiff is a practicing Catholic. Before his incarceration in 2001, he was an active member of the Catholic Church in Bayou Vista, Louisiana.
36. Since April 2007, LSP staff has routinely set every television on death row, where

Mr. Leger resides, to religious programming.

37. On Sunday mornings since April 2007 LSP prison staff has ensured that religious programming is on the television set of every death row prisoner.
38. On Sunday mornings, the overwhelming majority of the religious programming shown on death row televisions is of a Baptist denomination. On a single Sunday morning, televisions on death row will often broadcast two services from the same church. It is typically Baptist churches that have two services broadcast on the same day.
39. Televisions are located in the hallway directly outside of each death row prisoner's cell. Prisoners are normally confined to their cell for twenty three hours per day. The prisoners cannot physically change the television's station from their cell, although they can ask staff or prisoners walking in the hallway to change the television station.
40. However, on Sunday mornings staff will not change the station from Sunday religious programming nor permit prisoners in the hallway to change the station from the religious programming.
41. Defendants have told death row prisoners walking in the hallway that they would be disciplined if they attempted to change the channels, lower the volume, or turn off the televisions during the Sunday religious programming.
42. On at least one tier on death row, the volume on the televisions was raised significantly during religious broadcasting.
43. LSP staff set the televisions on the Baptist and religious programming upon the order, request or instruction of Defendant Cain. Plaintiff and other death row prisoners have complained to the Warden about being compelled to watch religious services and

overwhelmingly Baptist programming on Sunday mornings, but the policy has continued.

44. On separate occasions from April 2007 until present defendants Sgt. T. Smith, Sgt. S. Llyod, Sgt. T. Morgan, , Lt. B. Meyer, Lt. J. Hughes, Sgt. E. Green, Sgt. Lockwood, Sgt. Brown, Sgt. Gray, Sgt. Dupont, Sgt. T. Ross, Sgt. Bohannon, Sgt. Honeycutt, Sgt. Guidry, Sgt. Moreau, Lt. Gary Templeton, Sgt. Leonard, Sgt. A. Clayton, , Sgt. L. Michael, Sgt. Holston, Sgt. Gail, and Lt. W. Washington, each turned, or ordered staff or prisoners to turn, the televisions on death row to religious programming on Sunday mornings. Each also ensured that televisions on death row are and were on religious programming on Sunday mornings.

45. These episodes of forced religious programming have been injurious and unwelcome to Mr. Leger because they overwhelmingly promote a denomination of Christianity that is not Mr. Leger's own.

46. Warden Cain has a policy of endorsing and promoting religion to death row prisoners, as noted in the recent article "Warden saw only one answer for troubled La. prison: Christ": "I decided [...] I would never again put someone to death without telling him about his soul and about Jesus." Dennis Shere, *Warden saw only one answer for troubled La. prison: Christ*, Baptist Messenger, January 3, 2008 available at: <http://www.baptistmessenger.com/story/E69415C6B2652178B5BC37E9D5F6B089>.

47. Warden Cain has appeared on television during Baptist religious services broadcast to prisoners and has addressed the congregation and viewers. In addition, during televised religious services, at least one preacher has blessed the Warden, prison administration and staff.

48. From April 2007 until the end of that year, Plaintiff was not permitted to either view Mass on television or personally attend Mass. Only one Catholic Mass was broadcast to death row prisoners from June 16, 2008 to December 31, 2008. A Baptist service is shown every week.
49. Plaintiff has regularly requested to view Catholic Mass on television. His requests have been and continue to be repeatedly ignored and denied. Prisoners and others have also written to Warden Cain and LSP staff regarding unwelcome compulsory religious programming and the inability of Catholic prisoners to freely exercise their religion.
50. For example, on April 1, 2007, plaintiff filed an administrative remedy procedure grievance regarding the unwelcome religious programming and the denial of his requests to watch Mass. The grievance was reviewed by Assistant Warden Butler, Warden Cain and/or his designee, and Secretary LeBlanc and/or his designee and was later captioned Case Number LSP-2007-1017.
51. On April 8, 2007 plaintiff addressed another administrative remedy procedure grievance to Warden Cain regarding the unwelcome religious programming and the denial of his requests to watch Mass. The grievance was reviewed by Assistant Warden Butler, Warden Cain and/or his designee, and Secretary LeBlanc and/or his designee and was later captioned Case Number LSP-2007-1143.
52. On October 29, 2007, plaintiff addressed yet another administrative remedy procedure grievance to Warden Cain regarding the unwelcome religious programming and the denial of his requests to watch Mass. The grievance, captioned Case Number LSP-2007-3554, was reviewed by Assistant Warden Butler and Warden Cain and/or his designee, and

sent to Secretary LeBlanc and/or his designee.

53. Because Mr. Leger is frequently compelled to view the Defendants' selected programming on Sunday mornings, he has repeatedly been prevented from participating in Catholic Mass on television, a religious activity that is an integral part of the exercise of his religious faith.

54. In addition to not being permitted to participate in Catholic Mass in person or via the television, Leger does not receive the Eucharist weekly, also an integral part of his Catholic faith. In addition, a plastic rosary that was sent to Leger from the Diocese of Alexandria was seized and destroyed by LSP officials. One defendant, Assistant Warden Robert Butler, suggested that the Plaintiff should convert religions.

55. Prisoners are permitted to attend Baptist religious services held in death row's prison yard. However, no similar Catholic services have been held since at least April 2007.

56. In this way, Defendants prevent Mr. Leger from viewing Catholic Mass both on television or attending Mass in person, thereby precluding the exercise of a critical and fundamental component of his faith.

57. In this way, Defendants also permit prisoners of one religious denomination to freely observe their religious obligations while not permitting Catholic prisoners the same.

58. Plaintiff has suffered by the Defendants preferring and endorsing the Baptist religion over Plaintiff's Catholic faith and by compelling Plaintiff to watch religious programming of a faith not his own.

59. Defendants constrain and limit the religious exercise and religious activities of Catholic prisoners beyond that which is reasonable or necessary to the security of the

institution.

60. Defendants have no legitimate interest in compelling death row prisoners to view Baptist and other religious programming and services on television to the exclusion of other programs at certain times decided upon by prison staff and administration. Defendants have no legitimate interest in preventing Catholic Church services on the prison grounds at LSP's death row while permitting other types of religious services.
61. Defendants coerce and force prisoners to participate in Baptist religion by forcing the airing of Baptist programming and services.
62. There is no secular purpose to mandating that on Sunday mornings religious programming be on the televisions of captive death row prisoners, who cannot leave their cell or change the television station. Defendants have no secular purpose for compelling death row prisoners to view Baptist or other religious programming and services, promoting religion in general or allowing prisoners to attend religious services of only one faith while prohibiting those of another faith to do the same.
63. Defendants advance one religious denomination while, at the same time, burdening prisoners of the Catholic faith. Defendants also advance and promote religion over non-religion.
64. The actions and inactions of Defendants excessively entangle government with religion.
65. Leger was exercising his clearly established constitutional right to gain access to courts when he filed the administrative remedy procedure grievances LSP-2007-1017 and LSP-2007-1143.

66. After filing the grievances, Leger was repeatedly approached by LSP staff who requested that he withdraw his administrative remedy procedure grievance.
67. On August 7, 2007, Leger was moved in shackles from B-tier and escorted to an interrogation room on death row, where Defendants Col. Delaney and Lt. Washington questioned Leger about the grievances. Leger told the men that he would not withdraw his grievances. Delaney informed Leger that he was acting on behalf of Asst. Warden Butler.
68. Delaney then informed Leger that he would be move Leger from B-tier to E-tier.
69. B-tier is a tier that houses well behaved prisoners. E-tier has a reputation for ill-behaved prisoners who receive many disciplinary infractions.
70. As of that meeting, Leger had not received any disciplinary infractions since arriving to Louisiana State Penitentiary.
71. After the meeting, Leger was transferred to E-tier. While on E-tier, Leger had urine thrown on him, was burned with a cigarette and has his clothes cut and thrown in the trash by other prisoners. Leger experienced no similar problems during his stay on B-tier.
72. On September 12, 2007, Lt. Washington told Leger that Col. Delaney would move him back to B-tier if Leger withdrew his grievance filed on September 7, 2007.
73. Later, Leger told Lt. Washington and Col. Delaney that he would not withdraw his grievance.
74. The retaliatory motive for the adverse action taken by Butler, Delaney and Washington may be inferred from the chronology of events detailed herein.
75. Shortly thereafter, plaintiff wrote an administrative remedy procedure grievance to Warden Cain, grieving that, *inter alia*, Butler, Delaney and Washington retaliated against

him. The grievance, captioned Case Number LSP-2007-3236, was reviewed by Assistant Warden Butler, Warden Cain and/or his designee, and Secretary LeBlanc and/or his designee.

76. On January 14, 2008 Leger was approached by a staff member who recommended that he drop the administrative remedy procedure grievance he filed complaining of Lt. Washington and Col. Delaney's retaliation. He told the staff member that he would not withdraw his grievance.

77. On January 16, 2008 Leger was approached by another staff member who recommended that he drop the administrative remedy procedure grievance he filed complaining of Lt. Washington and Col. Delaney's retaliation. He told that staff member that he would not withdraw his grievance.

78. On January 17, 2008 Leger was approached by yet another staff member and was advised to drop the administrative remedy procedure grievance he filed complaining Col. Delaney's retaliation because Delaney was promoted to Warden.

79. On January 28, 2008, Sgt. Flumer issued a false disciplinary report against Leger for allegedly possessing contraband. The next day Leger received the punishment of ten days on the isolation tier.

80. Leger spent ten days in isolation for the disciplinary report. Nearly two months later, the conviction was overturned and the report was expunged from his record.

81. The retaliatory motive for the adverse action taken against Leger may be inferred from the chronology of events detailed above.

CLAIMS

82. By mandating and ensuring that all televisions on death row are on the religious programming of a specific channel that primarily broadcasts Baptist programming on Sunday mornings, Defendants violated Plaintiff's right to be free from the government establishment of religion secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment, as well as Plaintiff's clearly established right not to have one similarly situated faith receive superior treatment than another, as secured by the Equal Protection Clause of the Fourteenth Amendment.
83. By not allowing Plaintiff the opportunity to view or participate in Catholic Mass on a weekly basis, Defendants violated his clearly established right to free exercise of religion, and to be free from the government establishment of religion secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment, placed a substantial burden on the religious exercise of Plaintiff, as prohibited by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc-1 et seq; and violated his clearly established right not to have one similarly situated faith receive superior treatment than another, as secured by the Equal Protection Clause of the Fourteenth Amendment.
84. The placement of Leger in a much harsher tier in retaliation for filing an administrative remedy procedure grievance interfered with Leger's clearly established right to access the courts, in violation of the First Amendment of the United States Constitution, as extended to the States by the Fourteenth Amendment, and violated the Due Process Clause of the Fourteenth Amendment.

85. Issuing a false disciplinary report against Leger for filing an administrative remedy procedure grievance interfered with Leger's clearly established right to access the courts, in violation of the First Amendment of the United States Constitution, as extended to the States by the Fourteenth Amendment, and violated the Due Process Clause of the Fourteenth Amendment.
86. 42 U.S.C. § 1983 provides Plaintiff redress for the deprivation of his rights guaranteed under the United States Constitution.
87. The actions of the Defendants, as outlined above, are also in violation of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc-1, *et seq.*, as these actions constitute a substantial burden on Mr. Leger's right to exercise his religion, and he is a person confined to an institution.
88. As a result, Mr. Leger is due injunctive relief and damages.
89. In addition, Mr. Leger is entitled to attorneys' fees pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Donald Leger, prays that, in due course, this Honorable Court grant the following relief:

- A. Declare that mandating and ensuring that all televisions on death row are on the religious programming of a specific channel on Sunday mornings, violates Plaintiff's right to be free from the government establishment of religion secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment.
- B. Declare that not allowing plaintiff the opportunity to view or participate in Catholic Mass, violates his clearly established rights to free exercise of religion secured by the First

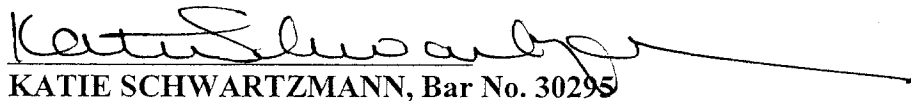
Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment and places a substantial burden on the religious exercise of Plaintiff, as prohibited by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc-1 et seq.

- C. Declare that allowing church services of one religion to take place in death row, but no Catholic Mass to be held, violates Plaintiff's clearly established rights to free exercise of religion, to be free from the government establishment of religion secured by the First Amendment to the United States Constitution, as extended to the States by the Fourteenth Amendment, places a substantial burden on the religious exercise of Plaintiff, as prohibited by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc-1 et seq; and violates his clearly established right not to have one similarly situated faith receive superior treatment than another, as secured by the Equal Protection Clause of the Fourteenth Amendment.
- D. Declare that by placing Leger in a much harsher tier and by issuing a false disciplinary report to Leger in retaliation for filing an administrative remedy procedure grievance, Defendants interfered with Leger's clearly established right to access the courts, in violation of the First Amendment of the United States Constitution, as extended to the States by the Fourteenth Amendment, as well as the Fourteenth Amendment.
- E. Enjoin Defendants, their agents or employees, and anyone acting in concert with them from further violating Plaintiff's rights to freely exercise his religion and to be free from government endorsement of religion;
- F. Enjoin Defendants, their agents or employees, and anyone acting in concert with them, from

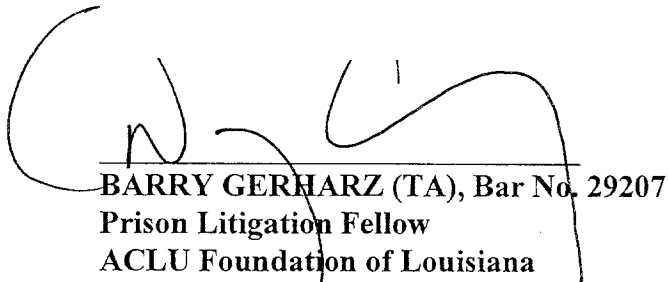
preventing or hindering Leger from, or retaliating against him for, exercising any right guaranteed by the Constitution of the United States.

- G. Order that Plaintiff be awarded a sum of damages, as may be fitting and proper.
- H. Order Defendants to pay (i) Plaintiff's attorneys' costs actually expended and (ii) attorneys' fees authorized by statute.
- I. Award any other relief this Court deems just and necessary.

Respectfully Submitted,



KATIE SCHWARTZMANN, Bar No. 30295
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ACLU Foundation of Louisiana



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ACLU Foundation of Louisiana