

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>MUMIA ABU JAMAL, ROBERT L.</b>	:	
<b>HOLBROOK, KERRY</b>	:	
<b>SHAKABOONA MARSHALL,</b>	:	<b>Case No.</b>
<b>PRISON RADIO, HUMAN RIGHTS</b>	:	
<b>COALITION, EDUCATORS FOR</b>	:	
<b>MUMIA ABU-JAMAL</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>ELECTRONICALLY FILED</b>
	:	
<b>v.</b>	:	
	:	
<b>KATHLEEN KANE, Attorney General</b>	:	
<b>of Pennsylvania, and R. SETH</b>	:	
<b>WILLIAMS, District Attorney of</b>	:	
<b>Philadelphia County</b>	:	
	:	
<b>Defendants.</b>	:	

**Complaint**

Plaintiffs, Mumia Abu-Jamal, Robert L. Holbrook, Kerry Shakaboona Marshall, Prison Radio, Human Rights Coalition, and Educators for Mumia Abu-Jamal, by and through their undersigned counsel, file the following Complaint.

**Introduction**

1. This case is an injunctive challenge, pursuant to 42 U.S.C. § 1983, the First and Fourteenth Amendments to the United States Constitution, and Article 1, § 7 of the Pennsylvania Constitution, to 18 P.S. § 11.1304, signed into law by the Governor of Pennsylvania on October 21, 2014.

2. The statute provides, in full:

Section 1. The act of November 24, 1998 (P.L. 882, No. 111), known as the Crime Victims Act, is amended by adding a section to read:

<< PA ST 18 P.S. § 11.1304 >>

Section 1304 Revictimization relief

(a) Action.—In addition to any other right of action and any other remedy provided by law, a victim of a personal injury crime may bring a civil action against an offender in any court of competent jurisdiction to obtain injunctive and other appropriate relief, including reasonable attorney fees and other costs associated with the litigation, for conduct which perpetuates the continuing effect of the crime on the victim.

(b) Redress on behalf of victim.—The district attorney of the county in which a personal injury crime took place or the Attorney General, after consulting with the district attorney, may institute a civil action against an offender for injunctive or other appropriate relief for conduct which perpetuates the continuing effect of the crime on the victim.

(c) Injunctive relief.—Upon a showing of cause for the issuance of injunctive relief, a court may issue special, preliminary, permanent or any other injunctive relief as may be appropriate under this section.

(d) Definition.—As used in this section, the term “conduct which perpetuates the continuing effect of the crime on the victim” includes conduct which causes a temporary or permanent state of mental anguish.

Section 2. This act shall take effect immediately.

3. The statute was enacted principally to silence Plaintiff Mumia Abu-Jamal. It chills his ability--and the ability of the other Plaintiffs and other current and former prisoners—to engage in speech protected by the First Amendment.

### **Jurisdiction and Venue**

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 28 U.S.C. § 1367(a).

5. This Court is the appropriate venue pursuant to 28 U.S.C. § 1391(b)(2) because the events and omissions giving rise to the claims occurred in the Middle District of Pennsylvania.

### **Parties**

6. Plaintiff Mumia Abu-Jamal is an imprisoned writer and journalist currently held at the State Correctional Institution (SCI) Mahanoy in Frackville, Pennsylvania.

7. Plaintiff Robert L. Holbrook is an imprisoned member of the Human Rights Coalition, activist and writer held at SCI Greene in Waynesburg, Pennsylvania.

8. Plaintiff Kerry Shakaboona Marshall is an imprisoned member of the Human Rights Coalition, activist and commentator for Prison Radio held at SCI Rockview in Bellefonte, Pennsylvania.

9. Plaintiff Prison Radio ([prisonradio.org](http://prisonradio.org)) is a multi-media production company that records the voices of prisoners and broadcasts them via radio, television, Internet, and film. Prison Radio is a project of the Redwood Justice Fund, a non-profit corporation based in California.

10. Plaintiff the Human Rights Coalition (HRC) is a nonprofit corporation based in Philadelphia, Pennsylvania whose mission is to protect the human rights of

prisoners and criminal defendants and advocate for changes to the criminal legal and prison systems.

11. Plaintiff Educators for Mumia Abu-Jamal (EMAJ) is an unincorporated network of teachers who organize and advocate for the release of Mumia Abu-Jamal from prison, prioritizing education over incarceration, and bringing the experiences and perspectives of imprisoned intellectuals to a broader public.

12. Defendant Kathleen Kane is the Attorney General of the State of Pennsylvania. As the Attorney General she acts under color of state law and has the power to enforce 18 P.S. § 11.1304. She is sued in her official capacity.

13. Defendant Seth Williams is the District Attorney of the County of Philadelphia. As the District Attorney he acts under color of state law and has the power to enforce 18 P.S. § 11.1304. He is sued in his official capacity.

### **Statement of Facts**

#### *A Law to Silence Current and Former Prisoners*

14. On September 29, 2014, Goddard College in Plainfield, Vermont announced that “Mumia Abu-Jamal, an American prisoner, author, and journalist who received his Bachelor of Arts from Goddard in 1996, was selected by the students of the Undergraduate Program’s Fall 2014 graduating class to be their commencement speaker this Sunday, October 5.” Because Abu-Jamal is incarcerated, the speech was pre-recorded by Prison Radio via telephone at SCI Mahanoy.

15. In response, the Fraternal Order of Police, Pennsylvania Governor Tom Corbett, Pennsylvania Department of Corrections (DOC) Secretary John Wetzel, Philadelphia District Attorney Seth Williams, and a number of Pennsylvania state legislators led by Pennsylvania State Representative Michael Vereb launched a media campaign against Abu-Jamal's exercise of First Amendment rights.

16. Maureen Faulkner, the widow of Daniel Faulkner, the police officer Abu-Jamal was convicted of killing, stated in the press, "The only thing I would want to hear from Mumia Abu-Jamal is him admitting and confessing to my husband's murder."

17. "It's a disgrace that you have to even hear his voice. My husband has been dead for 32 years and his voice was taken from him by Abu-Jamal," Faulkner told CNN over a phone interview. She also asked "Why does he have any constitutional rights?"

18. DOC press secretary Susan McNaughton told CNN, "We have tried to intervene but we have been told by the court that we can't," indicating that the DOC is aware that Abu-Jamal's commencement address and other public commentaries are constitutionally protected.

19. DOC Secretary Wetzel expressed his "disdain" for Goddard's decision to invite Abu-Jamal to give the commencement address, but also acknowledged that Abu-Jamal was permitted to make phone calls, and the prison had no authority to prevent the recording of these calls.

20. Governor Corbett and Pennsylvania state legislators seized the opportunity to draft legislation that would allow crime victims and prosecutors to strip those convicted of personal injury crimes of their constitutional rights under the First Amendment.

21. On October 6, 2014, a press conference led by Pennsylvania House Representative Michael Vereb took place in Harrisburg, Pennsylvania to promote House Bill 2533. The press conference was attended by the head of the Office of the Victims Advocate, state Senator Raferty, House Representative Turzai, several District Attorneys, members of the Fraternal Order of Police, the Pennsylvania State Police, former U.S. Marshalls, and Governor Corbett.

22. House Bill 2533 provides a cause of action for victims of personal injury crimes to file a civil action against an offender if that offender has engaged in conduct that causes temporary or permanent mental anguish. The text of the Bill, which has become law, is the exact same text contained in paragraph 2 of this complaint.

23. At the October 6 press conference, a statement from Maureen Faulkner was read where she stated that Abu-Jamal's speech activity, including his publishing books, giving "countless live and recorded interviews," appearing in "supportive documentaries," and as a commencement speaker has been "emotionally painful." She went on to state, "The time has come to put an end to the desecration of our free speech laws by Mumia and anyone else in the Pennsylvania State system who has violently taken the life of another."

24. Governor Corbett gave a speech at the press conference in which he made it explicit that House Bill 2533 was intended to restrict the ability of Abu-Jamal and other “violent felons” from “using public venues to promote themselves and their own agenda.” The Governor stated, “nobody has a right to continually taunt the victims of their violent crimes in the public square.”

25. Pennsylvania House Representative Michael Vereb, who co-sponsored the legislation, also spoke at the press conference, reiterating that the primary purpose of this Bill was to silence Mumia Abu-Jamal. Vereb’s co-sponsor memo in support of the legislation also made clear that the intent of the Bill was to silence Mumia Abu-Jamal. “Memorandum: Cosponsor Request – Revictimization Relief Act,” Representative Michael Vereb, October 2, 2014, <http://www.repvereb.com/NewsItem.aspx?NewsID=21644>.

26. Vereb falsely stated that there are “TV production studios in prison” and that prisoners are permitted 25-minute phone calls. Vereb referred to Abu-Jamal’s speech as “taxpayer-paid rants.”

27. Defendant R. Seth Williams spoke at the press conference as well. As the District Attorney in the county where Abu-Jamal was convicted, he has standing to sue Abu-Jamal on behalf of Maureen Faulkner under 18 P.S. § 11.1304.

28. As the District Attorney in the county where Plaintiffs Holbrook and Marshall were convicted, he has standing to sue either of them as well under 18 P.S. § 11.1304.

29. Defendant Williams expressed his support for the House Bill 2533, denounced Abu-Jamal, and boasted of his participation in the recent successful campaign to defeat President Obama's nomination of Debo Adebile to head the Civil Rights Division of the United States Justice Department due to Adebile's affiliation with the NAACP Legal Defense Fund, an organization that represented Abu-Jamal in his criminal appeals.

30. House Bill 2533 passed through the House of Representatives Judiciary Subcommittee on October 6, 2014. The discussion in the subcommittee focused on Abu-Jamal's commencement address, and how this bill would restrict his ability to speak in the future.

31. During the Subcommittee hearing, in response to a question from a legislator, the Executive Director of the Pennsylvania House Judiciary Committee, attorney Thomas Dymek, stated that the bill was designed to permit a judge "to exercise his or her equitable discretion to see whether this is a situation where an injunction is called for. Or that is constitutionally permissible."

32. In response to a question as to how it could be known ahead of time whether Abu-Jamal's speech would have "the intent to revictimize" anyone, the Commonwealth of Pennsylvania's Victims Advocate stated that Abu-Jamal's lack of remorse for the crime of his conviction – a crime he maintains he is innocent of – was sufficient evidence to prove that he would seek to revictimize the family of Daniel Faulkner.



33. Subcommittee members also expressed their desire that a court could enjoin the delivery or publishing of speech by “a third party who was the vessel of that conduct or speech[.]” This discussion was directly addressing the situation of the commencement address of Abu-Jamal, which was recorded by Prison Radio.

34. The Pennsylvania House of Representatives took an existing bill that had been passed in the Pennsylvania Senate, known as Senate Bill 508, and entirely replaced its text with the text of House Bill 2533.

35. On October 15, 2014, the Pennsylvania House of Representatives voted to pass Senate Bill 508, which now consisted of the text of House Bill 2533. The vote was 197-0.

36. On October 16, 2014, the Pennsylvania Senate passed the amended Senate Bill 508 37-11.

37. During the Senate debate, Pennsylvania State Senator Shirley Kitchen stated that “this bill has turned into part of a plan by a group of people that is flexing their power,” and that the “bill does not help victims, and what it does is stifle free speech.”

38. On October 21, 2014, incumbent Governor Tom Corbett signed the bill into law while campaigning for re-election in Philadelphia. He signed the bill on the corner of 13th and Locust Streets, where officer Faulkner was killed and Mumia Abu-Jamal shot in the chest in the early morning hours of December 9, 1981. Maureen Faulkner was present at the signing.

39. The accompanying press conference focused on the Goddard College commencement speech given by Abu-Jamal, and how this new law was intended to silence him.

*Mumia Abu-Jamal*

40. Mumia Abu-Jamal is a writer and radio commentator confined at SCI Mahanoy in Frackville, Pennsylvania. He was convicted of a personal-injury crime in Philadelphia County.

41. The state of Pennsylvania held Abu-Jamal in solitary confinement on death row for 29 years pursuant to a death sentence. The death sentence in Abu-Jamal's case was overturned as unconstitutional in 2001 by a judge in the federal district court for the Eastern District of Pennsylvania. The Third Circuit Court of Appeals affirmed this decision on two occasions. Although his sentence was reversed in 2001, Abu-Jamal remained on death row until December 2011 while the state appealed the reversal of the death sentence.

42. During his time on death row, Abu-Jamal earned a Bachelor of Arts Degree from Goddard College, and a Masters of Arts Degree from California State University Dominguez Hills.

43. During Abu-Jamal's appeals of his conviction and sentence, a massive international movement developed in opposition to his death sentence and conviction. Demonstrations were held in cities around the world, Amnesty International found his original trial "failed to meet minimum international standards

safeguarding the fairness of legal proceedings,” and civil and human rights organizations and individuals across the United States rallied for his freedom.

44. While he was incarcerated on death row, Abu-Jamal was visited by Pierre Sane, then-Secretary General of Amnesty International, Danielle Mitterrand, First Lady of France, and Nobel Peace laureate Archbishop Desmond Tutu. Each of these individuals made public comments about their visit with Abu-Jamal.

45. Prior to Abu-Jamal’s incarceration, he had been a journalist who earned a reputation for challenging injustice and abuse of authority, including abusive policing practices in Philadelphia.

46. At the time of his arrest and incarceration in December 1981, Abu-Jamal was the President of the Philadelphia Chapter of the National Association of Black Journalists. As a staff reporter for WHYY, Philadelphia’s National Public Radio (NPR) affiliate, Abu-Jamal won the Major Armstrong Award from Columbia University in 1980. During the 1970s, he filed stories and anchored shows for more than a dozen radio and television stations throughout the Delaware Valley and appeared on nationally distributed NPR broadcasts such as *Morning Edition*.

47. After he was incarcerated, Abu-Jamal continued his journalism from death row, writing thousands of commentaries about a range of topics, including life on death row, U.S. politics, war and militarism, the criminal legal system, African-American religious traditions, education, history, and countless others.

48. Abu-Jamal authored the following seven books while on death row:

- a. *Live From Death Row*, Addison-Wesley (1995); Harper Perennial (1996).
  - b. *Death Blossoms: Reflections from a Prisoner of Conscience*, Litmus Books (1996); South End Press (2003).
  - c. *All Things Censored*, Seven Stories Press (2000).
  - d. *Faith of Our Fathers: An Examination of the Spiritual Life of African and African-American People*, Africa World Press (2003).
  - e. *We Want Freedom: A Life in the Black Panther Party*, South End Press (2004).
  - f. *Jailhouse Lawyers: Prisoners Defending Prisoners v. the USA*, City Lights Publishers (2009).
  - g. *The Classroom and the Cell: Conversations on Black Life in America*, co-authored with Marc Lamont Hill, Third World Press (2011).
49. In 2015, two additional books authored by Abu-Jamal will be published.
50. In addition to the books he has authored and his thousands of radio commentaries, Abu-Jamal has written for numerous publications such as the Yale Law Journal, The Nation, Forbes, Connecticut Public Interest Law Journal, Essence, Emerge, and had articles included in anthologies published by Rowan & Littlefield, Temple University Press, Penguin Books, The Red Sea Press, and others.
51. Pennsylvania state officials and the Fraternal Order of Police have tried to censor Mumia Abu-Jamal in the past. In May 1994, Prison Radio recorded commentaries by Abu-Jamal that were planned for broadcast by NPRs flagship

program, *All Things Considered*. The FOP contacted the Pennsylvania DOC to protest, and enlisted U.S. Senator Robert Dole in their efforts. Senator Dole threatened NPR's funding from the floor of the U.S. Senate. After initially promoting the series, NPR fired Abu-Jamal.

52. In response to the lobbying of the FOP, the DOC punished Abu-Jamal for violating a prison rule that forbid prisoners from conducting a business or profession. *Abu-Jamal v. Price*, 154 F.3d 128, 131 (3d Cir. 1998).

53. The Third Circuit ordered the entry of an injunction prohibiting DOC defendants from enforcing the business profession rule against Abu-Jamal, holding that Abu-Jamal had met the standard for obtaining a preliminary injunction since enforcement of the rule would cause him irreparable harm under the First Amendment.

54. After publication of Abu-Jamal's first book in 1995, *Live From Death Row*, the FOP launched a campaign intended to keep sales of the book down. The FOP even flew a plane with a banner denouncing the publisher Addison-Wesley over the publisher's corporate headquarters.

55. In November 1996, the DOC responded to FOP pressure by eliminating in-person broadcast media visits with all prisoners.

56. Abu-Jamal has also been the subject of several feature-length films, most of which feature interviews with him:

- a. *A Case for Reasonable Doubt*, aired on HBO and Channel 4 England (1998).
- b. *In Prison My Whole Life*, nominated for a Grand Jury Prize at the Sundance Film Festival (2007).
- c. *Justice on Trial*, Big Noise Media (2010).
- d. *Mumia – Long Distance Revolutionary: A Journey with Mumia Abu-Jamal*, produced by Street Legal Cinema and Prison Radio (2013).
- e. *Manufacturing Guilt*, Street Legal Cinema and Prison Radio (2013).

57. On October 5, 2014, Abu-Jamal presented a commencement address via a pre-recorded statement to a graduating class at Goddard College in Vermont. Abu-Jamal is an alumnus of Goddard College.

58. Abu-Jamal has given three other commencement addresses in the past: Goddard College in 2008, Antioch College in 2000, and Evergreen College in 1999.

59. Abu-Jamal has also given lectures and participated in classroom discussions in colleges and universities through his work with Educators for Mumia Abu-Jamal.

60. Politicians in Pennsylvania and the Fraternal Order of Police have consistently attempted to silence Abu-Jamal on account of his maintaining his innocence and continuing to work as a journalist.

61. Abu-Jamal faces a credible threat that Defendants in this litigation will file an enforcement action pursuant to 18 P.S. § 11.1304. The Governor, Defendant

R. Seth Williams, and legislators who drafted the legislation made it clear that the principal purpose of the law was to censor Abu-Jamal.

62. The statute, and the threat of enforcement, chill Abu-Jamal's First Amendment rights by constraining his ability to speak, publish, and otherwise communicate.

Robert L. Holbrook

63. Plaintiff Robert Holbrook is an activist and writer currently imprisoned at SCI Greene. He is serving a sentence of life-without-parole for a criminal conviction imposed when he was 16 years-old. He was convicted of a personal-injury crime in Philadelphia County.

64. Since 2008, Holbrook's conviction and sentence has been the subject of numerous articles published in print and Internet sources.

65. Holbrook has written articles on an array of subjects of public concern, including juvenile life without parole, mandatory minimum sentencing, the killing of Trayvon Martin, prison censorship, drone warfare, the Egyptian Revolution, use of confidential informants by police, solitary confinement, and many more.

66. Articles written by or quoting Holbrook have been published in the *Philadelphia Sunday Sun*, *Impacto Latin Newspaper*, the *Philadelphia City Paper*, the *Philadelphia Metro*, the Philly Independent Media Center, the *Las Vegas Weekly*, the *San Francisco Bay View*, and *The Defenestrator* online newspaper.

67. Holbrook also regularly contributes to Plaintiff HRC's publication *The Movement*, and works closely with prisoner advocacy organizations in support of protecting and advancing the human rights of former and current prisoners.

68. Pennsylvania state officials have sought to silence Mr. Holbrook's speech and advocacy in the past. Prison officials have prevented him from receiving correspondence pertaining to his case and the issue of juvenile life without parole, censored academic articles sent to him by a college professor with whom he was writing a research paper, and issued him a demotional transfer to a more restrictive prison due to his challenging conditions of confinement via administrative grievances and writing to outside advocates.

69. Holbrook's speech and conduct on matters of public concern is threatened by 18 P.S. § 11.1304.

70. 18 P.S. § 11.1304 does not contain any limiting principle or language that would prevent it from being applied against Holbrook.

71. Given that Holbrook writes on matters of public concern that rouse intense passions, including issues pertaining to sentencing juvenile offenders, he has a credible fear that 18 P.S. § 11.1304 will be used to censor him.

72. 18 P.S. § 11.1304, and the threat of enforcement, chill Holbrook's First Amendment rights by constraining his ability to speak, publish, and otherwise communicate.



Kerry Shakaboona Marshall

73. Plaintiff Kerry Shakaboona Marshall is an activist and writer currently imprisoned at SCI Rockview. He is serving a sentence of life-without-parole for a criminal conviction imposed when he was 17-years-old. He was convicted of a personal-injury crime in Philadelphia County.

74. Marshall is the founder and editor of HRC's publication, *The Movement*, a magazine containing content that is critical of the criminal legal and prison systems, and supportive of the efforts of prisoners, their families, support people, and advocates to effect positive changes in these systems.

75. Marshall contributes a column at the front of each edition of *The Movement*. These columns focus on mass incarceration, the criminal legal system, and prison conditions, and regularly encourage people in prison and their loved ones not in prison to get involved with HRC.

76. Marshall is also a commentator for Prison Radio, and has recorded more than 10 commentaries thus far in 2014. Much of the work he does in collaboration with Prison Radio is about issues of youth incarceration and the effect it has on individuals, families and communities. His commentaries have discussed institutional racism, human rights problems in the U.S., juvenile life without parole, the National Security Agency's surveillance programs, and prison censorship.

77. Marshall's speech and conduct on matters of public concern is threatened by 18 P.S. § 11.1304.

78. 18 P.S. § 11.1304 does not contain any limiting principle or language that would prevent it from being applied against Marshall.

79. Given that Marshall writes on matters of public concern that rouse intense passions, including issues pertaining to sentencing juvenile offenders, human rights violations in the U.S, and institutional racism, he has a credible fear that the 18 P.S. § 11.1304 will be used to censor him.

80. 18 P.S. § 11.1304, and the threat of enforcement, chill Marshall's First Amendment rights by constraining his ability to speak, publish, and otherwise communicate.

*Prison Radio*

81. Prison Radio is a multi-media production company that was founded in 1990 with the purpose of bringing the voices of prisoners to the public. Prisoner commentaries on a range of subjects are recorded by Prison Radio on location and via telephone and broadcast via radio, television, film, and the Internet. Prison Radio produces commentaries that are aired on hundreds of radio and television stations every week, and more than a thousand broadcast outlets routinely carry their material to an international audience.

82. Prison Radio has recorded hundreds of prisoners over the last 25 years. In 2014, Prison Radio has worked with 30 imprisoned correspondents who have recorded more than 200 essays. Many of these prisoners have been convicted of personal injury crimes.

83. Prison Radio has contributed content to ABC News, CBS News, NBC News, MSNBC, BET, MTV, HBO, 20/20, Channel 4 England, Telesur, German TV, French National TV, Democracy Now on the Pacifica Network, Free Speech Radio News, and countless other networks and programs.

84. In 2013, Prison Radio co-produced the film *Mumia: Long Distance Revolutionary*, with Street Legal Films. The film was released by First Run Features and has been screened in more than 100 cities all over the United States. More than 20,000 DVDs of the film have been sold, and the film was broadcast on the STARZ network. It has also been translated into German and Spanish, has broadcast on Telesur, and is currently being subtitled in French.

85. Prison Radio is the producer of Mumia Abu-Jamal's commentaries, including his Goddard College commencement address.

86. Prison Radio produces the commentaries of Kerry Shakaboona Marshall.

87. Prison Radio also features commentaries from other imprisoned correspondents in Pennsylvania, many of who have been convicted of personal injury crimes.

88. Bryant Arroyo is a state prisoner at SCI Frackville who has contributed commentaries to Prison Radio. These commentaries focus on Arroyo's efforts to prove his innocence, censorship in prison, and his leading a successful campaign to

prevent the construction of a coal gasification plant near the prison where he was confined. Arroyo has been convicted of a personal injury crime.

89. This speech on matters of public concern by Prison Radio correspondents is threatened by the 18 P.S. § 11.1304.

90. 18 P.S. § 11.1304 does not contain any limiting principle or language that would prevent it from being applied against Prison Radio correspondents.

91. Given that each correspondent writes on matters of public concern that rouse intense passions, Prison Radio has a credible fear that 18 P.S. § 11.1304 will be used to censor its correspondents and enjoin Prison Radio from broadcasting their voices.

92. The Pennsylvania House Judiciary Committee explicitly discussed the possibility that this legislation could and should be used to enjoin the conduct of individuals and organizations that broadcast speech such as Mumia Abu-Jamal's commencement address.

93. 18 P.S. § 11.1304, and the threat of enforcement, chill Prison Radio's First Amendment rights by constraining its ability to speak, publish, broadcast, and otherwise communicate.

*Human Rights Coalition*

94. The Human Rights Coalition (HRC) was founded in the year 2000, and incorporated in Pennsylvania on August 13, 2012. HRC's membership is comprised of prisoners' families, formerly and currently imprisoned people, community activists,

and human rights defenders. Many of its members have been convicted of personal injury crimes.

95. HRC is consistently critical of human rights violations within the Pennsylvania Department of Corrections (DOC). Since 2007, HRC has documented several hundred reported human rights violations within the DOC, including accounts of physical, verbal, and sexual abuse, retaliation, inadequate and negligent medical and mental health care, warehousing of mentally ill prisoners in psychologically damaging conditions of solitary confinement, obstruction and denial of access to the courts, pervasive racial discrimination, and deprivations of food, recreation time, personal property, and necessary hygiene items. Prisoners contact HRC to report these abuses and HRC follows up by telephone and mail to obtain as much information and corroboration as possible. These violations are compiled by HRC members outside of prison into a prison abuse log available online at <http://hrcoalition.org/AbuseLogs>.

96. Media outlets have relied on HRC for information regarding human rights violations within the DOC, including the *Harrisburg Patriot News*, *Pittsburgh Post Gazette*, *Wilkes Barre Times Leader*, *Citizens Voice*, *Philadelphia City Paper*, *Philadelphia Weekly*, *Huffington Post*, *The Nation*, as well as several online, radio, and television outlets. HRC relies on prisoners in order to disseminate information to these and other news outlets.

97. Since 2009, the Special Litigation Section of the Civil Rights Division of the United States Department of Justice (DOJ) has utilized HRC's documentation of

human rights violations as one source amongst others for assessing the DOC's compliance with constitutional standards. These reports assisted the DOJ in launching a civil rights investigation within DOC prisons. In May 2013, this investigation was expanded to include every prison within the DOC on the grounds that DOJ had uncovered substantial evidence that prisoners with mental illness and/or intellectual disabilities were being subjected to cruel and unusual punishment in the state's solitary confinement units.

98. On August 2, 2010, HRC members testified in front of the Pennsylvania House Judiciary Committee regarding human rights violations within the DOC reported by former and current prisoners.

99. On September 18, 2012, Pennsylvania State Representative Ronald Waters held a hearing in front of the state House Democratic Policy Committee titled "Effects of Solitary Confinement." This hearing was held at Temple University. HRC members assisted hearing organizers by identifying lawyers, mental health professionals, former prisoners, and prisoner family members who should testify. HRC members provided testimony as well based on the experiences and reports of former and current prisoners.

100. HRC submitted written testimony to the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights in June 2012, when that body held a hearing on the use of solitary confinement in the United States.

This testimony contained descriptions of human rights violations in the DOC's solitary confinement units based on reports from prisoners.

101. HRC also publishes a news magazine titled *The Movement*. It covers news related to HRC's mission, including legal news, political analysis, human rights reports, interviews with and articles by community activists and professionals, academic essays, letters and articles by prisoners and their families, and updates and information on HRC's work.

102. Correspondence and articles by prisoners, many of whom have been convicted of personal injury crimes, is a core feature of *The Movement*. Plaintiffs Holbrook and Marshall are regular contributors to *The Movement*, for example. Stories by and about Mumia Abu-Jamal have been published in *The Movement* as well.

103. HRC has members who are currently imprisoned and an Advisory Board of prisoners. This Advisory Board is a critical component of HRC. The Advisory Board provides HRC with campaign strategies and ideas for events and actions.

104. At HRC's public events, statements from prisoners, especially members of the Advisory Board, are read.

105. HRC has been on multiple radio shows on WPEB 88.1 FM in Philadelphia and shows broadcast on the Internet. In these media appearances, HRC's outside members frequently utilize the words and stories from HRC's inside membership and Advisory Board.

106. *The Movement* is the primary means through which HRC communicates with supporters inside and outside of prison. The publication provides updates on important political and legal developments related to the criminal legal and prison systems, and keeps supporters informed as to the activities and initiatives of HRC.

107. HRC has a credible fear that 18 P.S. § 11.1304 will be used to censor current and former prisoners who contribute to *The Movement*, thereby compromising HRC's publication of *The Movement*.

108. HRC has a credible fear that 18 P.S. § 11.1304 will be used to censor current prisoners who report abuse in the DOC, thereby compromising HRC's ability to produce and publish prison abuse logs.

109. HRC has a credible fear that 18 P.S. § 11.1304 will be used to censor current prisoners who are members of HRC and members of HRC's Advisory Board in their communications with HRC on the strategy, campaign, and actions of HRC, thereby compromising HRC's ability to associate with current prisoners and fulfill a crucial component of HRC's mission and work.

110. HRC's speech on matters of public concern is threatened by 18 P.S. § 11.1304.

111. 18 P.S. § 11.1304 does not contain any limiting principle or language that would prevent it from being applied against HRC for publishing, quoting, or associating with current and former prisoners.



112. Given that HRC's mission focuses on matters of public concern that rouse intense passions, HRC has a credible fear that 18 P.S. § 11.1304 will be used to censor it on account of its publishing or otherwise disseminating the words and opinions of current and former prisoners.

113. 18 P.S. § 11.1304, and the threat of enforcement, chill HRC's First Amendment rights by constraining its ability to speak, publish, broadcast, and otherwise communicate.

*Educators for Mumia Abu-Jamal*

114. Educators for Mumia Abu-Jamal (EMAJ) was founded in 1995 when Tom Ridge, then the Governor of Pennsylvania, signed a death warrant for the execution of Abu-Jamal. Throughout these years, EMAJ's purpose has been (a) to expose the violations of due process and of other constitutional rights Abu-Jamal experienced at his arrest and in his 1982 trial, (b) to call for a new trial, and (c) across the last decade, in particular, to call for Abu-Jamal's immediate release because of years of torturous solitary confinement, and because of the state's refusal to review what EMAJ holds to be clearly exculpatory evidence.

115. EMAJ has worked for nineteen years as a loose network of national and world scholars to present material about Abu-Jamal's case in their regularly-scheduled classes, at campus teach-ins, in community press conferences (at venues as diverse as labor union halls, legislative rotundas, and even Philadelphia's National Constitution Center), in two major newspaper public service advertisements, and in a host of

educational events and university gatherings. These presentations about Abu-Jamal's case regularly include commentary by Abu-Jamal, often specifically recorded for the occasion.

116. In May 2000, EMAJ published a full-page advertisement on behalf of Mumia Abu-Jamal in *The New York Times*. It featured scholars across the United States and world, and hundreds of signatories from all levels of education.

117. EMAJ members utilize the works and participation of imprisoned writers and intellectuals, including political dissidents and radicals, in their work in an effort to bring these voices into liberal arts education. EMAJ takes this approach so that a broader section of the public has access to perspectives and experiences that contribute to critical inquiry and discourse on matters of public concern.

118. EMAJ has often featured the live phone-in voice of Abu-Jamal and other incarcerated persons, pre-recorded audio and video materials of them, as well as printed writings by them in teachers' university and college classrooms. Hundreds of such educators have taught in this way. EMAJ members who have engaged in such interactions with prisoners include: Bob Buchanan, Goddard College; Neema Caughran, Goddard College; Jan Clausen, Goddard College; Angela Y. Davis, University of California, Santa Cruz; David G. Embrick, Loyola University (IL); Robert A. Ferguson, Columbia University Law School; Johanna Fernandez, Baruch College, City University of New York; Maike Garland, Goddard College; Craig Gordon, Oakland Unified School District (CA); Lisa Noelle Guenther, Vanderbilt

University; Tom Hansen, Autonomous University of Social Movements (Chicago); Marc Lamont Hill, Morehouse College; Joy A. James, Williams College; Jamal Joseph, Columbia University; Wonhee Anne Joh, Garrett Seminary (IL), Robin D. G. Kelley, University of California, Los Angeles; Ibram X. Kendi, State University of New York, Albany; Ju-Pong Lin, Goddard College; Bob Mandel, Oakland Unified School District (CA); Anthony Monteiro, Temple University; Mary Phillips, Lehman College, City University of New York; Peter J. Paris, Princeton Theological Seminary; Vijay Prashad, Trinity College (CT); Dylan Rodriguez, University of California, Riverside; Robyn Spencer, Lehman College, City University of New York; Eva-Maria Swidler, Goddard College; Karen Stupski, Goddard College; Mark Lewis Taylor, Princeton Theological Seminary; Christopher Tinson, Hampshire College; Victor Wallis, Berklee College of Music; Robert Wells, Oakland Unified School District (CA); Cornel West, Union Theological Seminary.

119. At the invitation of either an outside scholar or the prisoner, the EMAJ scholars named in this Complaint have participated in, and depend upon, the following kinds of interactions with Mumia Abu-Jamal, other prisoners in Pennsylvania, and prisoners in other states:

- a. Prisoner phone calls to EMAJ members: these calls are typically amplified and a prisoner speaks to students in a professor's classroom.
- b. Amplification of prisoner voices at public forums: EMAJ members have amplified voices and recordings of prisoners via telephone or audio

speakers at campus-wide events such as teach-ins and colloquia, as well as off-campus events.

- c. Publication by or influenced by prisoners: EMAJ members have worked with prisoners to facilitate publications by prisoners in book or article form, and EMAJ members have published work that was informed by prisoners' views and publications.
- d. Meetings with prisoners: EMAJ members have met with prisoners inside prison in order to develop relationships, understanding, and knowledge that carries over into EMAJ members' classrooms and other professional endeavors.
- e. Mail correspondence with prisoners: Several EMAJ members have exchanged letters and documents with prisoners that cultivate deeper knowledge and understanding of prison life, social systems, and almost all areas of human endeavor, including letters and assessments received by EMAJ members in response to their published works.

120. Most of the above-listed activities have involved Mumia Abu-Jamal, or other Pennsylvania prisoners.

121. Most of these EMAJ members have been in the past, or will be in the future, part of conferences that invite the airing of Pennsylvania prisoners' recorded and amplified voices, their writings and their perspectives.

122. EMAJ has a credible fear that 18 P.S. § 11.1304 will be used to censor Mumia Abu-Jamal, thereby compromising the ability of EMAJ members to invite Abu-Jamal to lecture to and dialogue with students in their courses or at other academic forums, or otherwise communicate with EMAJ members.

123. EMAJ has a credible fear that 18 P.S. § 11.1304 will be used to censor other Pennsylvania prisoners, including Plaintiffs Holbrook and Marshall, thereby compromising the ability of EMAJ members to invite them to lecture to and dialogue with students in their courses or at other academic forums, or otherwise communicate with EMAJ members.

124. EMAJ's speech on matters of public concern is threatened by the 18 P.S. § 11.1304.

125. 18 P.S. § 11.1304 does not contain any limiting principle or language that would prevent it from being applied against EMAJ for inviting Abu-Jamal or other Pennsylvania prisoners to speak to students; broadcasting, quoting, or publishing Abu-Jamal or other Pennsylvania prisoners; or engaging in advocacy efforts in association with Abu-Jamal or other Pennsylvania prisoners.

126. Given that EMAJ's mission focuses on matters of public concern that rouse intense passions, EMAJ has a credible fear that 18 P.S. § 11.1304 will be used to censor it on account of its publishing or otherwise disseminating the words and opinions of Mumia Abu-Jamal or other current or former prisoners of the state of Pennsylvania.

127. 18 P.S. § 11.1304, and the threat of enforcement, chill EMAJ's First Amendment rights by constraining its ability to speak, publish, broadcast, and otherwise communicate.

### **Causes of Action**

#### **COUNT I – First and Fourteenth Amendment – Against All Defendants**

128. Plaintiffs re-allege paragraphs 1-127 as if fully stated herein.

129. 18 P.S. § 11.1304 violates the First Amendment to the United States Constitution.

130. 18 P.S. § 11.1304 is overbroad, vague, and penalizes a substantial amount of lawful speech, including truthful statements and speech on matters of public concern. The statute was explicitly written and passed in an attempt to penalize lawful speech.

131. 18 P.S. § 11.1304 is void for vagueness. It provides no guidance as to what conduct it prohibits.

132. 18 P.S. § 11.1304 discriminates on the basis of the content of the speech and the identity of the speaker.

133. 18 P.S. § 11.1304 was enacted in retaliation for Plaintiff Abu-Jamal's exercise of his First Amendment rights.

#### **COUNT II – Article 1, § 7 of the Pennsylvania Constitution – Against R.**

##### **Seth Williams**

134. Plaintiffs re-allege paragraphs 1-127 as if fully stated herein.

135. 18 P.S. § 11.1304 violates Article 1, § 7 of the Pennsylvania Constitution, which provides for freedom of the press, proclaiming that “every citizen may freely speak, write and print on any subject[.]”

### **Prayer for Relief**

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- A. Grant a Preliminary Injunction invalidating and prohibiting enforcement of the statute;
- B. Grant a Permanent Injunction invalidating the statute;
- C. Declare the statute to be a violation of the First and Fourteenth Amendments and Article 1, § 7 of the Pennsylvania Constitution;
- D. Grant attorneys’ fees and costs;
- E. Award such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Bret D. Grote

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