

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

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KEVIN HOULE and HARVEY REESE,

Plaintiffs,

File No.

v.

Hon.

BARBARA SAMPSON, chair of the Michigan  
Parole Board, and the nine board members:  
JAMES ATTERBERRY, MIGUEL BERRIOS,  
CHARLES BROWN, PAUL CONDINO,  
STEPHEN DEBOER, ARTINA HARDMAN,  
ANTHONY KING, DAVID KLEINHARDT,  
and LAURIN THOMAS, in their official capacities,

Mag. Judge

Defendants.

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**COMPLAINT**

**Preliminary Statement**

1. Plaintiffs Kevin Houle and Harvey Reese are Michigan parolees who, as a condition of their parole, have been denied the right to have contact with their children and minor siblings, have been prohibited from marrying or maintaining adult personal relationships, and have been

restricted from the practice of their religion. The plaintiffs face re-imprisonment if they see, call, or write their children, if they marry or date their partners, or if they go to church.

2. By imposing these parole conditions on the plaintiffs, the Michigan Parole Board has violated the due process clause of the U.S. Constitution and the First Amendment to the U.S. Constitution.

3. The plaintiffs seek declaratory and injunctive relief.

### **Jurisdiction**

4. This Court has jurisdiction over the claims presented in this action pursuant to 28 U.S.C. § 1331. The plaintiffs' federal claims are made pursuant to 42 U.S.C. § 1983. Declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201-2202.

### **Parties**

#### **Plaintiff Kevin Houle**

5. Plaintiff Kevin Houle resides in Plymouth, Michigan, and is currently on parole. In 2002, he was charged with criminal sexual conduct for having oral sex with a teenaged step-daughter. He pled *nolo contendere* to Criminal Sexual Conduct III, and was sentenced to prison. See Declaration of Kevin Houle, Exh. I.<sup>1</sup>

6. Mr. Houle has a son, T.H.<sup>2</sup>, who is currently 13 years old.

7. There is no evidence to suggest that Mr. Houle poses an ongoing danger to young children generally, let alone to his own 13-year-old male child.

8. Before Mr. Houle was sent to prison, T.H. had lived with him, and they had established a close father-son relationship.

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<sup>1</sup> All exhibits are attached to the plaintiffs' motion for preliminary injunction, which is being filed concurrently with this complaint.

<sup>2</sup> The names and dates of birth of the children have been redacted in this complaint pursuant to Fed. R. Civ. P. 5.2(a).

9. While incarcerated, Mr. Houle had regular contact with T.H., in the form of visits, phone calls, and correspondence.

10. Mr. Houle was paroled in June 2008.

11. Mr. Houle's parole conditions prohibit him from having any contact with his son. Mr. Houle cannot see T.H., cannot call him, cannot e-mail him, cannot write to him, and cannot pass messages to him through a third party.

12. Mr. Houle is a loving and attentive father. It would be in his son's best interests for Mr. Houle to continue to have contact with T.H., as Mr. Houle did while he was in prison, and as he will be able to do when he completes his parole.

13. Mr. Houle faces re-incarceration if he has any contact with T.H. while he is on parole.

14. Mr. Houle and T.H.'s mother divorced in 2005. She gave up custody of T.H. to Mr. Houle's parents, and T.H. moved in with them.

15. T.H. and his grandparents regularly visited Mr. Houle while he was in prison.

16. Mr. Houle's parents are elderly and are now disabled. Given the living arrangements, Mr. Houle cannot visit his disabled parents unless they can arrange to remove T.H. from the house for the entire period of his visit.

#### **Plaintiff Harvey Reese**

17. Plaintiff Harvey Reese resides in Lansing, Michigan, and is currently on parole. He pled guilty in 1999 to attempted Criminal Sexual Conduct III for having sexual contact with a 15-year-old girl, and was sentenced to prison. *See* Declaration of Harvey Reese, Exh. A.

18. Mr. Reese is the father of four-year-old A.R. and nine-year-old T.M. Mr. Reese also has a minor brother, D.R., who is sixteen.

19. There is no evidence to suggest that Mr. Reese poses a danger to young children, let

alone to his own children. There is also no evidence to suggest that he is a danger to his brother.

20. Mr. Reese had regular contact with his children and his brother while Mr. Reese was incarcerated.

21. Mr. Reese was originally paroled in November 2002. His parole conditions prohibited him from having any contact with minors.

22. Because Mr. Reese gave a ride to his girlfriend and her children, he was returned to prison in 2004 for violating his parole conditions by having contact with minors. He served an additional 3.5 years in prison for that parole violation.

23. Mr. Reese was again paroled in May 2007.

24. His parole conditions prohibit him from having any contact with his children or brother. He cannot see them, call them, e-mail them, write them, or pass messages to them through a third party.

25. Mr. Reese is a loving and attentive father and brother. It would be in the best interests of Mr. Reese's children and brother if he were able to continue to have contact with them, as he did while he was in prison, and as he will be able to do when he completes his parole.

26. Mr. Reese faces re-incarceration if he has any contact with his children or brother while on parole.

27. Mr. Reese was engaged to be married to A.R.'s mother, Tonja Parker. Mr. Reese and Ms. Parker have been a couple for approximately seven years. *See* Declaration of Harvey Reese, Exh. A; Declaration of Tonja Parker, Exh. G.

28. At one time Mr. Reese and Ms. Parker wanted to get married while Mr. Reese was in prison, and the marriage would have been permitted under prison regulations. They did not get married because of scheduling problems and Mr. Reese's unexpected transfer to another prison.

29. Now that he has been paroled, Mr. Reese's parole conditions prohibit him from marrying, dating, or having any romantic involvement with Ms. Parker, because she has custody of minor children, including the couple's daughter, A.R.

30. Mr. Reese faces re-incarceration if he marries, lives with, dates, or is romantically involved with Ms. Parker.

31. Mr. Reese's parole agent has indicated that Mr. Reese may be in violation of his parole conditions simply by referring to Ms. Parker as his fiancé. *See* Letter from Agent Bowker to Miriam Aukerman, Exh. F.

32. Mr. Reese regularly attended Christian worship services while in prison.

33. Now that he has been paroled, Mr. Reese would like to attend services at the New Hope Church of God in Christ, in Lansing, Michigan.

34. Mr. Reese's parole agent has refused to grant Mr. Reese permission to attend worship services at the New Hope Church, because children may be present at the services. *See* Letter from Agent Bowker to Miriam Aukerman, Exh. F.

35. Mr. Reese faces re-incarceration if he goes to church.

### **The Defendants**

36. Defendant Barbara Sampson is the chair of the Michigan Parole Board. She is sued in her official capacity.

37. Defendants James Atterberry, Miguel Berrios, Charles Brown, Paul Condino, Stephen DeBoer, Artina Hardman, Dr. Anthony King, Dave Kleinhardt, and Laurin' Thomas are members of the Michigan Parole Board. They are sued in their official capacities.

38. As the composition of the Michigan Parole Board changes periodically, this suit also includes as a defendant any person who subsequently becomes a member of the Michigan Parole

Board. Such persons are sued in their official capacity.

**Parole Board Policy and Practice**

39. The defendants, as members of the Michigan Parole Board, impose conditions of parole on individuals released from the custody of the Michigan Department of Corrections (MDOC) who are subject to parole supervision.

40. The Parole Board imposes certain standard conditions of parole on all parolees. Those standard conditions of parole are not at issue in this case.

41. The Parole Board also imposes certain “Standard Special Conditions of Parole,” which are keyed to a parolee’s underlying offense. *See* List of Default Conditions of Parole, Exh. Q.

42. Upon information and belief, the Special Conditions are computer-generated, so that individuals whose underlying offense is coded as having particular elements are automatically subject to any special conditions that are coded as relating to that offense. *See* List of Default Conditions of Parole, Exh. Q (produced by the MDOC in response to a Freedom of Information Act request asking for “all documents that address which conditions of parole are to be imposed on which offenders”).

43. The plaintiffs challenge the Special Conditions that affect their ability to have contact with their own children or minor siblings, to marry or maintain personal relationships, and to exercise their faith.

44. Plaintiffs Houle and Reese are subject, among other conditions, to Special Conditions 1.0, 1.1, 1.3, 1.6, 1.7 and 1.8. *See* Parole Conditions of Kevin Houle, Exh. J; Parole Conditions of Harvey Reese, Exh.B.

45. Special Condition 1.0 provides: “You must not have any verbal, written, electronic, or physical contact with any individual age 17 or under, or attempt to do so, either directly or

through another person.”

46. Special Condition 1.1 provides: “You must not live in a residence where any individual age 17 or under stays or is cared for. You must not provide care for any individual age 17 or under.”

47. Special Condition 1.3 provides: “You must not marry, date, or have any romantic involvement with anyone who resides with or has physical custody of any individual age 17 or under, without getting written permission from the field agent.”

48. Special Conditions 1.0, 1.1 and 1.3 contain the direct prohibition on contact with children, as well as the prohibition on marriage to or relationships with persons who have physical custody of children.

49. In addition, Mr. Houle and Mr. Reese are subject to additional parole conditions that would make it very difficult for them to parent their children, if this Court grants them the right to have contact with their children. Those parole conditions include: Special Condition 1.6 (“You must not reside, work, or be within 1,000 feet of the property of any kindergarten through 12th grade school, preschool, or child care center without first getting written permission from the field agent”); Special Condition 1.7 (“You must not go or be with 1,000 feet of parks, public swimming pools, playgrounds, arcades, or other places primarily used by individuals age 17 or under without first getting written permission from the field agent”); and Special Condition 1.8 (“You must not possess children’s clothing, toys, games, or videos without first getting written permission from the field agent”).

50. Upon information and belief, the Special Conditions prohibiting contact with minors are automatically imposed by the defendants on all parolees whose underlying conviction involves a sex offense, regardless of whether that offense involved children, regardless of whether

that offense involved consensual sexual activity, and regardless of whether there is evidence to suggest that the parolee is likely to harm children.

51. Upon information and belief, the Special Conditions prohibiting contact with minors are automatically imposed by the defendants in cases where there is a victim or witness who was a minor, regardless of whether the parolee's individual circumstances suggest that the parolee is likely to harm children in the future.

52. The defendants have interpreted the Special Conditions prohibiting contact with minors to apply to a parolee's own children and minor siblings. Thus, a parolee who is subject to a restriction on contact with minors is also automatically barred from seeing his or her own minor children or minor siblings.

53. The defendants have interpreted the Special Conditions prohibiting marriage, dating, and romantic involvement with custodial parents to apply regardless of whether that parent and the parolee have had a long-term relationship, and regardless of whether they have children together.

54. The plaintiffs were not given notice of what parole conditions the Parole Board was considering imposing prior to the actual imposition of those conditions.

55. Upon information and belief, the Parole Board does not give notice to any parolees regarding the parole conditions to be imposed prior to actual imposition of those conditions.

56. The plaintiffs were not given an opportunity to be heard regarding the appropriateness of the parole conditions that were imposed on them.

57. Upon information and belief, the Parole Board does not give any parolees an opportunity to be heard regarding the appropriateness of the parole conditions that are imposed on them.

58. Only parole agents can request the addition or deletion of special conditions of parole. According to the MDOC's Operating Procedures, those requests are to be processed through the Parole Supervision Unit. The Parole Board then makes a decision about whether to add or delete a special condition. *See* Operating Procedure: Order for Parole and Amendment of Orders, 06.04.130G , Exh. R.

59. There is no process by which a parolee can request an individualized review of special parole conditions by the Parole Board if the parole agent refuses to make the request for modification of the special conditions, which is within the agent's sole discretion.

60. Parolees are specifically prohibited from grieving a condition of parole. *See* Operating Procedure 06.04.100: Probation/Parole Orientation Checklist, Exh. S, at ¶12; MDOC Policy Directive 03.02.130, Exh. T, at ¶ F.3.

61. For many parolees, including the plaintiffs, the challenged conditions of parole undermine rehabilitation and make it more difficult for the parolees to reintegrate into society. *See* Declaration of Thomas Fluent, Exh. M; Declaration of Arthur Marroquin, Exh. H; Declaration of John Simpson, Exh. O.

### **Claims for Relief**

#### **I. Violation of Fundamental Rights: Children**

62. The plaintiffs have been deprived of their fundamental right to maintain relationships with their children.

63. This deprivation is not directly related to advancing the plaintiffs' rehabilitation or to protecting the public.

64. This deprivation is not narrowly tailored to serve a compelling government interest.

65. The defendants' refusal to allow the plaintiffs any contact with their children violates

rights secured by the due process clause of the Fourteenth Amendment to the U.S. Constitution, and is actionable pursuant to 42 U.S.C. § 1983.

## **II. Violation of Fundamental Rights: Minor Sibling**

66. Plaintiff Harvey Reese has been deprived of his fundamental right to maintain a relationship with his minor brother, D.R.

67. This deprivation is not directly related to advancing Mr. Reese's rehabilitation or to protecting the public.

68. This deprivation is not narrowly tailored to serve a compelling government interest.

69. The defendants' refusal to allow Mr. Reese any contact with his minor brother violates rights secured to Mr. Reese by the due process clause of the Fourteenth Amendment to the U.S. Constitution, and is actionable pursuant to 42 U.S.C. § 1983.

## **III. Violation of Fundamental Rights: Marriage and Personal Relationships**

70. The plaintiffs have been deprived of their fundamental right to marry and maintain personal relationships.

71. This deprivation is not directly related to advancing the plaintiffs' rehabilitation or to protecting the public.

72. This deprivation is not narrowly tailored to serve a compelling government interest.

73. The defendants' refusal to allow the plaintiffs to marry or maintain personal relationships violates rights secured to the plaintiffs by the due process clause of the Fourteenth Amendment to the U.S. Constitution, and is actionable pursuant to 42 U.S.C. § 1983.

## **IV. Violation of Fundamental Rights: Religion**

74. Plaintiff Reese has been deprived of his right to practice his religion.

75. This deprivation is not directly related to advancing the plaintiff's rehabilitation or to

protecting the public.

76. This deprivation is not narrowly tailored to serve a compelling government interest.

77. The defendants' refusal to allow Mr. Reese to attend church violates rights secured to Mr. Reese by the First Amendment to and the due process clause of the U.S. Constitution, and is actionable pursuant to 42 U.S.C. § 1983.

#### **V. Violation of Procedural Due Process**

78. The challenged conditions of parole were imposed upon the plaintiffs as computer-generated defaults without any individualized assessment or consideration of whether those conditions were appropriate in the plaintiffs' cases.

79. The plaintiffs were not given notice of the challenged conditions of parole prior to their imposition.

80. The plaintiffs were not given an opportunity to be heard regarding the appropriateness of the challenged conditions of parole prior to their imposition.

81. No administrative procedure exists by which the plaintiffs can challenge the conditions of their parole, once those conditions are imposed, absent the cooperation of their parole officer.

82. The procedures used to impose the above-mentioned parole conditions violate rights secured to the plaintiffs by the due process clause of the Fourteenth Amendment to the U.S. Constitution, and are actionable pursuant to 42 U.S.C. § 1983.

#### **VI. Vagueness**

83. As a matter of due process, a parole condition must be written with sufficient specificity that persons of ordinary intelligence need not guess at its meaning and will not differ as to its application.

84. The challenged parole conditions do not convey a sufficiently definite and precise

warning as to what conduct is proscribed, making it extremely difficult for the plaintiffs to conform their conduct to these vague standards, and making it likely that different parole officers will enforce the conditions in different ways or will enforce them differently against different parolees.

85. The challenged parole conditions are void for vagueness, and therefore violate rights secured to the plaintiffs by the due process clause of the Fourteenth Amendment to the U.S. Constitution, which violation is actionable pursuant to 42 U.S.C. § 1983.

#### **Lack of Legal Remedy**

86. Upon information and belief, the defendants apply the Special Conditions of parole to all parolees who are similarly situated to Mr. Houle and Mr. Reese.

87. No remedy is available at law.

#### **Request For Relief**

Wherefore, the plaintiffs request that this Court:

- a. issue a preliminary and permanent injunction barring enforcement of the challenged conditions of parole as applied to the plaintiffs;
- b. issue a declaratory judgment, pursuant to 28 U.S.C. § 2201, finding that the challenged conditions of parole unconstitutionally deprive the plaintiffs of their fundamental rights (i) to maintain contact with their children, (ii) to maintain contact with siblings, (iii) to marry and maintain personal relationships with their partners, and (iv) to practice their religion;
- c. issue a declaratory judgment, pursuant to 28 U.S.C. § 2201, declaring that the special conditions of parole violate the plaintiffs' rights to procedural due process, and are void for vagueness;
- d. award the plaintiffs their costs as permitted by law, including actual attorneys' fees pursuant to 42 U.S.C. § 1988, for work performed in this case by the American Civil Liberties Union and the Michigan Clinical Law Program; and
- e. grant such other relief as the Court finds just and proper.

Respectfully submitted,

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