

NYCLU Challenges Erie County's Use of Subpoenas to Attack Nonprofits that Criticized Jail Conditions

FOR IMMEDIATE RELEASE

July 27, 2011 – The New York Civil Liberties Union today filed a motion in federal court to quash subpoenas that Erie County served to three local nonprofit organizations to compel them to turn over a wide range of documents and correspondence concerning their advocacy for better conditions at the county's jails.

The motion was filed in U.S. District Court for the Western District of New York in behalf of the League of Women Voters of Buffalo/Niagara, the Erie County Prisoners' Rights Coalition, and the Partnership for the Public Good. The county subpoenaed these groups on Nov. 10, 2010 in the context of a U.S. Department of Justice lawsuit challenging unconstitutional conditions at the Erie County Holding Center in downtown Buffalo and the Erie County Correctional Facility in Alden. None of the three organizations is a party to the lawsuit.

"These subpoenas are a brazen attempt to chill these organizations' First Amendment right to criticize the county and advocate for humane conditions at the local jails," said John A. Curr III, the director of the NYCLU's Western Regional Office. "This kind of fishing expedition harkens back to the days when southern state governments used subpoenas to go after the NAACP during the civil rights era. We're confident the court will put a stop to it."

The NYCLU's motion challenges the subpoenas on two grounds. First, it argues that the county cannot meet the extraordinary standard for justifying subpoenas served on non-parties to litigation that implicate core First Amendment rights. The First Amendment protects advocacy groups from government agencies using the civil discovery process to suppress free speech activity. Responding to the subpoenas would force the organizations to disclose the details of their activities and investigations regarding the jails to the scrutiny of the county, thereby chilling their free speech rights.

Second, the motion argues that the wide-ranging subpoenas impose an undue burden on the small, nonprofit groups, given that the organizations are not party to the lawsuit and that the county cannot explain why it needs the subpoenaed materials for its defense.

"Community members contact us when they need help concerning the jail, which often involves sensitive matters regarding people's family members," said Karima Amin, co-chair of the grassroots Erie County Prisoners' Rights Coalition. "If people ever had reason to believe that things they tell us could be disclosed to county officials, then they would be very hesitant to rely on us for help."

The League of Women Voters of Buffalo/Niagara had conducted an assessment of the human service needs of inmates housed within the county jails. The assessment found in part that the inmates' health and mental health needs were primarily unmet. It also found that there was a sufficient lack of community support services upon discharge contributing to high recidivism rate.

“The very foundation for the collection of information is trust,” said Therese Warden, alternative sentencing specialist for the statewide League of Women Voters. “This attempt by the county government to jeopardize our relationship with our constituency is deplorable.”

The DOJ’s Civil Rights Division notified the county in 2007 that it was investigating suicides and allegations of excessive force at the Erie County Holding Center. In August 2008, county officials barred federal inspectors from touring the Holding Center or the Erie County Correctional Facility unless a county attorney accompanied them and participated in interviews with jail staff and inmates.

The Civil Rights Division issued a report in July 2010 that described inhumane and unsafe conditions at both facilities and concluded that the county had failed to protect inmates’ civil rights. In September 2010, the Civil Rights Division filed a federal lawsuit after county officials continued to deny federal inspectors from the facilities independent access to the facilities.

Instead of agreeing to reform proposals to settle the lawsuit, the county has hired multiple private law firms to assist in its legal defense.

In June 2010, the NYCLU filed a lawsuit in State Supreme Court challenging Erie County’s refusal to disclose information about the amount of taxpayer money it has spent in the legal defense of its administration of the jails. In August 2010, a judge ordered the county to release 10 years of records, which showed that it was spending more than \$11,000 a month on jail-related legal expenses.