STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INNOCENCE PROJECT OF FLORIDA,

Petitioner,

and

DISABILITY RIGHTS FLORIDA, INC.,

Intervenor,

vs. Case No. 25-6068RX

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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PETITIONER AND INTERVENOR'S JOINT MOTION FOR SUMMARY FINAL ORDER

Petitioner, Innocence Project of Florida, and Intervenor, Disability Rights Florida, Inc., respectfully move for a summary final order declaring that Rule 33-210.102, Florida Administrative Code (the "Rule" or "Legal Mail Rule"), is an invalid exercise of delegated legislative authority.

Under the ostensible authority to regulate mail, the Florida Department of Corrections (FDC) has promulgated a sweeping rule regulating the conduct of attorneys and nonprofit legal organizations that represent incarcerated people. The Legal Mail Rule (a) forces attorneys to obtain FDC's preapproval every time they wish to send confidential mail to their incarcerated clients, (b) limits the scope of attorney-client confidentiality, and (c) affords FDC line officers with unbridled authority to determine when written materials are "of a legal nature."

The Rule is invalid because FDC has no authority to regulate the conduct of attorneys, nonprofit legal organizations, or notaries. Nor does FDC have authority to narrow Florida's

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statutory definition of "Lawyer-client privilege." Separately, the Rule is invalid because it vests unbridled discretion in guards to determine what materials are "of a legal nature." Lastly, the Rule is arbitrary and capricious because it was developed without due consideration to the burden imposed upon attorneys and nonprofit legal organizations.

BACKGROUND

Petitioner Innocence Project of Florida (IPF) is a nonprofit legal organization founded in 2003 to help innocent incarcerated people in Florida obtain their freedom and rebuild their lives. *See* Declaration of Seth Miller ¶ 1, attached hereto as **Exhibit 1**. Intervenor Disability Rights Florida, Inc. (DRF) is a nonprofit legal organization that provides legal advice and representation to individuals with disabilities, including inmates with disabilities. Declaration of Peter Sleasman ¶ 1, attached hereto as **Exhibit 2**. To achieve their respective missions of exonerating innocent individuals and protecting the rights of incarcerated people with disabilities, IPF and DRF regularly send legal mail to their clients in FDC custody. Prior to 2025, IPF and DRF merely needed to stamp their mail to clients as "Legal Mail" to indicate that it was protected by attorney-client confidentiality. *See Christmas v. Nabors*, 76 F.4th 1320, 1328 (11th Cir. 2023) (explaining that the First Amendment prohibits prison officials from reading legal mail).

In 2025, FDC promulgated a sweeping amendment to the Legal Mail Rule. Now, attorneys from IPF and DRF must obtain FDC's preapproval every time they wish to send a piece of confidential legal mail to an incarcerated client. That preapproval process has four steps: First, the attorney must "register and obtain an Attorney Registration Number (ARN) from the Department." Rule 33-210.102(4)(a)1. Second, for each piece of legal mail, the attorney must provide eight categories of information, including the attorney's signature and information about the incarcerated person. *Id*. § (4)(c)3a-h. Third, FDC will email the attorney a "Legal Mail Tracking

Number (LMTN)." *Id.* § (4)(c)4. Fourth, the attorney must write the ARN and LMTN on the outside of any envelope containing legal mail to a person in FDC custody. *Id*. § (4)(c)5. Failure to comply with any of these requirements will result in FDC rejecting the mail. *Id.* § (13)(b).

The 2025 amendment also limits the categories of documents an attorney can designate as confidential legal mail. "[O]nly legal documents, legal correspondence, written materials of a legal nature (other than publications), and self-addressed reply envelopes" are permitted. Rule 33-210.102(7). Seven types of documents are explicitly excluded, including "written materials of a non-legal nature," and "Photographs, unless related to the inmate's legal case." *Id.* § (7)(a).

FDC officials are required to open incoming legal mail "to determine that the correspondence is legitimate legal mail and that it contains no unauthorized items." Rule 33-210.102(13)(d). Similarly, guards must open outgoing legal mail "to determine, in the presence of the inmate, that the correspondence is legal mail[.]" *Id* § (15)(b). The line officers tasked with these responsibilities do not have legal training, and there are no standards to assist them in evaluating whether written materials are "of a legal nature." *Id.* § (7).

Lastly, subsection (19) of the Legal Mail Rule requires FDC to designate FDC employees as Notaries Public and to notarize "legal material presented by inmates." Prior to doing so, "the "designated employee must: 1. Ascertain that the inmate can read and has read the document and understands its contents; or 2. Read the document to the inmate and ascertain that the inmate understands its contents." *Id.* § (19)(a).

Each of these provisions substantially affect IPF and DRF by interfering with attorney-client confidentiality and creating substantial administrative burdens.[1] In this proceeding,

[1] FDC stipulates to IPF's and DRF's standing. Joint Stipulation of Facts and Law ("Joint Stip.") ¶ 25.

Petitioner and Intervenor challenge subsections (3), (4), (7), (13), (15), and (19) of the Legal Mail Rule, individually and in combination, as an invalid exercise of FDC's legislative authority.

LEGAL STANDARD

Summary final order is appropriate when "there is no genuine issue as to any material fact" and "the moving party is entitled as a matter of law to the entry of a final order." Fla. Stat. § 120.57(1)(h).

"In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo." Fla. Const. art. V, § 21. "If reasonable doubt exists as to the lawful existence of a particular power that is being exercised, the further exercise of the power should be arrested." *State, Bd. of Trs. v. Day Cruise Ass'n*, 794 So. 2d 696, 701 (Fla. 1st DCA 2001) (internal quotation marks omitted).

ARGUMENT

The Legal Mail Rule is an "invalid exercise of delegated legislative authority" because FDC has no statutory authority to regulate the conduct of attorneys, nonprofit legal organizations, or notaries, nor to define the scope of attorney-client confidentiality. Fla. Stat. § 120.52(8). Specifically, the Legal Mail Rule (I) exceeds FDC's grant of rulemaking authority; (II) enlarges, modifies, or contravenes the specific provisions of law implemented; (III) is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the FDC; and (IV) is arbitrary and capricious.

I. The Legal Mail Rule Exceeds FDC's Grant of Rulemaking Authority.

The Legal Mail Rule is invalid because FDC "has exceeded its grant of rulemaking authority." Fla. Stat. § 120.52(8)(b). Rulemaking authority is the "statutory language that explicitly

authorizes or requires an agency to adopt, develop, establish, or otherwise create" the rule. Fla. Stat. § 120.52(17).

A valid rule "implements or interprets specific powers or duties, as opposed to improvising in an area that can be said to fall only generally within some class of powers or duties the Legislature has conferred on the agency." *Day Cruise Ass'n*, 794 So. 2d at 700. This standard requires "a close examination of the statutes cited by the agency as authority for the rule at issue to determine whether those statutes explicitly grant the agency authority to adopt the rule." *MB Doral, LLC v. Dep't of Bus. & Pro. Regul., Div. of Alcoholic Beverages & Tobacco*, 295 So. 3d 850, 854 (Fla. 1st DCA 2020).

Here, FDC cites Fla. Stat. § 944.09 as its Rulemaking Authority. As Florida courts have repeatedly explained, § 944.09 "is merely the general statutory authority for the Department to promulgate rules[.]" *Smith v. Fla. Dep't of Corr.*, 920 So. 2d 638, 642-43 (Fla. 1st DCA 2005) (quoting *Hall v. State*, 752 So. 2d 575, 579 (Fla. 2000)). FDC has "long looked to other statutory provisions for the specific authority to promulgate particular rules." *Id.* (quotation marks omitted).

It is likely that FDC will rely on § 944.09(1)(o), which authorizes FDC to regulate "Mail to and from inmates, including rules specifying the circumstances under which an inmate must pay for the cost of postage for mail that the inmate sends." Alternatively, FDC may point to § 944.09(1)(g), which allows regulation of "Mail to and from the state correctional system."

But the 2025 amendment to the Legal Mail Rule extends far beyond regulation of mail. Rather, it regulates attorneys and nonprofit legal organizations like IPF and DRF. For example, the preapproval process of subsections (3) and (4) of the Legal Mail Rule requires attorneys to register with FDC and obtain FDC's permission every time they wish to send legal mail to an incarcerated person. Subsection (7) regulates what materials can be protected by attorney-client confidentiality.

Subsection (8) regulates attorneys and firms that are "soliciting clients." Subsection (4)(a)2 incorporates a registration form that requires attorneys to attest, under penalty of perjury, that they are sending legal mail for permissible purposes, and that the attorney is complying with the Rules Regulating the Florida Bar. *See* Form DC1-214 (incorporated via Rule 33-210.102(4)(a)2). These provisions directly regulate not just mail, but also attorneys and their ability to maintain attorney-client confidentiality.

Thus, for subsections (3) and (4) of the Legal Mail Rule to fall within FDC's rulemaking authority, FDC must identify an "explicit power or duty" to create and enforce a registration system that requires attorneys to seek permission from FDC each time they wish to send legal mail. *See Sw. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594, 599 (Fla. 1st DCA 2000). FDC's purported Rulemaking Authority, Fla. Stat. § 944.09, does not mention attorneys, authentication, or registration. Nothing in that statute authorizes FDC to create this burdensome and intrusive system, which requires attorneys to provide FDC with eight categories of information relating to every piece of legal mail.[2] *See Dep't of Bus. & Pro. Regul. v. Calder Race Course, Inc.*, 724 So. 2d 100, 103-104 (Fla. 1st DCA 1998) (holding that a regulation granting authority to "conduct investigations" provided no authority to conduct "searches of persons and places"); *see also State, Dep't of Fin. Servs. v. Peter R. Brown Const., Inc.*, 108 So. 3d 723, 727 (Fla. 1st DCA 2013) (holding that an agency had "no authority to supervise the operation of other state officers or state agencies in the exercise of the discretion vested in them by law").

In fact, no valid statute could delegate to FDC the power to regulate attorneys' conduct—that power rests exclusively with the judiciary. *See* Fla. Const. art. V, § 15. Any statute to the contrary would violate Florida's separation of powers. *See id.*, art. II, § 3. ("No person belonging

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[2] Providing FDC with that information is particularly problematic for organizations like DRF that frequently litigate against FDC. *See* Sleasman Decl. ¶ 6.

to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."). FDC has no statutory or constitutional authority to enforce rules relating to solicitation, *see* Rule 33-210.102(8) (regulating solicitation), nor to regulate attorneys' compliance with the Rules Regulating the Florida Bar. *See id.* § (4)(a)2 (incorporating a form that requires attorneys to attest, under penalty of perjury, that their conduct is permissible). As DRF's Litigation director explains, FDC's "attempt to regulate [DRF's] attorneys' conduct" is particularly inappropriate because DRF's lawyers "frequently litigate against FDC." Sleasman Decl. ¶ 6.

Turning to subsection (7) of the Legal Mail Rule, FDC has no "explicit power or duty" to define the scope of attorney-client communications. *See Save the Manatee Club*, 773 So. 2d at 599. Even if Fla. Stat. § 944.09(1)(g) and (o) grant FDC authority to regulate mail, the right to regulate certain operations does not entail the right "to make rules which set forth" definitions. *See St. Petersburg Kennel Club v. Dep't of Bus. & Pro. Regul., Div. of Pari-Mutuel Wagering*, 719 So. 2d 1210, 1211 (Fla. 2d DCA 1998) (authority to "regulate the operations of cardrooms" did not provide "authority to make rules which set forth the definition of poker"); *see also Peter R. Brown Const.*, 108 So. 3d at 727 (agency's statutory duty to "examine, audit, and settle all claims against the state" did not explicitly allow the CFO to restrict an agency's expenditures for particular categories of items"). Thus, the general authority to regulate mail does not entail the specific power to define the scope of "legal mail."

In fact, subsection (7)'s definition of "legal mail" contravenes the statutory definition of "Lawyer-client privilege" under Florida law. Fla. Stat. § 90.502(1)(c) ("A communication between lawyer and client is 'confidential' if it is not intended to be disclosed to third persons[.]"). According to that broad definition, attorney-client confidentiality depends on the purpose, not the content, of the communication. *See id*. § 90.502(4) (providing exceptions to confidentiality when,

for example, communications are in furtherance of a crime). Subsection (7) of the Legal Mail Rule, by contrast, limits attorney-client confidentiality to certain categories of documents. Given that the Legal Mail Rule's definition of legal mail abridges the statutorily-defined right, a heightened test applies: "the language of the statute delegating" the power to abridge attorney-client confidentiality must "do so in clear and unambiguous terms." *Calder Race Course*, 724 So. 2d at 104. Section 944.09 contains no such language.

For subsection (19) of the Legal Mail Rule, FDC has no authority to define how notaries operate. Fla. Stat. § 944.09 does not mention notaries or notarization. Moreover, subsection (19) conflicts with Florida's statute governing notarization, Fla. Stat. § 117.107(5), which directs notaries public to decline notarization only "if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization." The focus is on an individual's *capacity*, not the *contents* of the documents to be notarized. Subsection (19) of the Legal Mail Rule, by contrast, requires FDC's Notaries Public to "1. Ascertain that the inmate can read and has read the document and understands its contents; or 2. Read the document to the inmate and ascertain that the inmate understands its contents." Rule 33-210.102(19)(a). Plainly, the process outlined in subsection (19) is more intrusive than that described in Fla. Stat. § 117.107(5); the prison's Notaries Public must evaluate not just the affiant's capacity, but the "contents" of the document being notarized. The Legal Mail Rule's contravention of multiple Florida statutes is strong evidence that FDC is "improvising in an area that can be said to fall only generally within" its rulemaking authority. *Day Cruise Ass'n*, 794 So. 2d at 700.

Even assuming, arguendo, that FDC intends the Legal Mail Rule to further a valid objective, e.g., stemming the flow of contraband, "arguments as to the wisdom of the challenged portions of the rule . . . cannot save [them] in the absence of specific statutory authority for those

provisions." *Smith*, 920 So. 2d at 641; *see also Calder Race Course*, 724 So. 2d at 101-02 (rejecting an agency's argument that a rule was "necessary for the protection of the general werfare, morals and safety of the public"). Such arguments might have passed muster under the lenient "reasonableness standard" that was formerly applied to rulemaking challenges, but that standard was abrogated "by the 1996 amendments to the Florida's Administrative Procedure Act." *Calder Race Course*, 724 So. 2d at 101-02; *see also Smith*, 920 So. 2d at 642 (explaining that "policy decision[s] should be made by the Legislature rather than the executive branch"). If the authority to regulate mail were interpreted to authorize the Legal Mail Rule, FDC "would have unbridled discretion" to create any impediments or hurdles upon attorneys who wish to communicate confidentially with incarcerated people. *Smith*, 920 So. 2d at 642. Such agency discretion is impermissible under Fla. Stat. § 120.52(8)(b).

In sum, the Legal Mail Rule is invalid because FDC has exceeded the grant of rulemaking authority provided in Fla. Stat. § 944.09.

II. The Legal Mail Rule Enlarges, Modifies, or Contravenes the Specific Provisions of Law Implemented.

The Legal Mail Rule is also invalid because it "enlarges, modifies, or contravenes the specific provisions of law[s] implemented." *See* Fla. Stat. § 120.52(8)(c). "Under section 120.52(8)(c), the test is whether a (proposed) rule gives effect to a 'specific law to be implemented,' and whether the (proposed) rule implements or interprets 'specific powers and duties.'" *Day Cruise Ass'n*, 794 So. 2d at 704. "It is not enough that the Agency's rule is 'reasonably related' to the Legislature's purpose or statutory provisions." *G.B. v. Agency for Persons with Disabilities*, 143 So. 3d 454, 457 (Fla. 1st DCA 2014) (citing Fla. Stat. § 120.536(1)).

Here, instead of citing to "specific provisions of law implemented," as required by Fla. Stat. § 120.52(8)(c), the Legal Mail Rule cites the entirety of three statutes as the Law

Implemented: Fla. Stat. §§ 20.315, 944.09, and 944.11. This "laissez-faire reliance" on broad statutes instead of specific provisions is highly suspect. *See MB Doral, LLC,* 295 So. 3d at 854 (rejecting an agency's "laissez-faire reliance" on a statute "as a whole" instead of specific provisions). Relatedly, the Legal Mail Rule's failure to cite specific provisions makes it difficult for petitioners to challenge the Rule in the first place; Petitioner and Intervenor must guess as to which of 21 possible subsections FDC will assert.

Regardless, a thorough review of FDC's purported authorities confirms that none "explicitly grant the [FDC] authority to adopt the rule." *MB Doral*, 295 So. 3d at 854 (quotation marks omitted). First, Fla. Stat. § 20.315 creates the Department of Corrections and describes FDC's purpose and duties in broad terms. It says nothing about regulating attorneys, attorney-client confidentiality, or mail. Given that Fla. Stat. § 120.52(8) explicitly prohibits an agency from relying on "statutory provisions setting forth general legislative intent or policy," FDC cannot seriously contend that the Legal Mail Rule implements Fla. Stat. § 20.315. Moreover, the Legal Mail Rule is contrary to the legislative intent for FDC to "focus its attention on the removal of barriers that could prevent the inmate's successful return to society[.]" Fla. Stat. § 20.315(2)(a). The Legal Mail Rule instead erects a barrier that inhibits communications from nonprofit legal organizations like IPF that seek to help incarcerated people return to society. *See* Miller Decl. ¶ 2 (stating that IPF's work has led to the release of 38 people who were wrongfully convicted).

Second, Fla. Stat. § 944.11, titled "Department to regulate admission of books," contains two subsections, neither of which relate to the case at hand. Subsection (1) directs FDC to "regulate the admission of educational and other reading matter . . . for the use of the prisoners, and for the proper observance of days of religious significance . . . and for the proper instruction of the prisoners in their basic moral and religious duties." Subsection (2) authorizes FDC to "prohibit

admission of reading materials or publications with content which depicts sexual conduct[.]" These provisions solely address educational, religious, and sexual material; they say nothing about regulating attorneys, attorney-client confidentiality, or legal mail.

The third statute cited as the "Law Implemented" is Fla. Stat. § 944.09—the same statute cited as Rulemaking Authority. FDC's simultaneous reliance on § 944.09 as Rulemaking Authority and Implementing Law is suspect; Florida's Administrative Procedure Act strongly indicates that the implementing law should be distinct from the rulemaking authority. Fla. Stat. § 120.52(8) ("A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required."). Moreover, as explained in section (I), *supra*, Fla. Stat. § 944.09 "is merely the general statutory authority for the Department to promulgate rules," and FDC has "long looked to other statutory provisions for the specific authority to promulgate particular rules." *Smith*, 920 So. 2d at 642-43 (quotation marks omitted).

FDC's authority to regulate mail does not allow FDC to impose a burdensome registration "prerequisite" upon attorneys who wish to communicate confidentially with their clients. *MB Doral*, 295 So. 3d at 855 (holding that, absent explicit statutory authority, an agency could not "place a county or ownership prerequisite upon the issuance of" a permit). The authority to regulate mail reasonably includes rules prohibiting contraband, as explicitly defined in Fla. Stat. § 944.47. But it does not confer upon FDC "the authority to promulgate" the multistep approval process set forth in subsections (3) and (4) of the Legal Mail Rule. *Subirats v. Fid. Nat. Prop.*, 106 So. 3d 997, 1000 (Fla. 3d DCA 2013) (holding that an agency lacked "the authority to promulgate a deadline" not mentioned in any statute). And, as explained in Section I, *supra*, the right to regulate mail does not authorize FDC to define legal mail, particularly in a way that abridges the statutory definition of "Lawyer-client" privilege. Fla. Stat. § 90.502(1)(c).

In sum: None of three ostensible Laws Implemented discuss legal mail, notaries, attorney-client communications, or the regulation of attorneys. None authorize FDC to define attorney-client confidentiality and force attorneys to seek FDC's approval every time they wish to send confidential legal mail to a client. Accordingly, the Rule is invalid because it "enlarges, modifies, or contravenes the specific provisions of law[s] implemented." Fla. Stat. § 120.52(8)(c).

III. **The Legal Mail Rule Is Impermissibly Vague, Fails to Establish Adequate Standards, and Vests Unbridled Discretion in FDC Officers.**

The Legal Mail Rule is an invalid exercise of delegated legislative authority because it "is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency." Fla. Stat. § 120.52(8)(d). A rule violates this provision if "it forbids or requires the performance of an act in terms that are so vague that persons of common intelligence must guess at its meaning and differ as to its application." *Peter R. Brown Const., Inc*., 108 So. 3d at 728.

The Legal Mail Rule's core definition of "legal mail" is hopelessly vague. The Rule defines "legal mail" to include "only legal documents, legal correspondence, written materials of a legal nature (other than publications), and self-addressed reply envelopes[.]" Rule 33-210.102(7). Photographs are prohibited, "unless related to the inmate's legal case." *Id.* § (7)(a). Determining whether communications are "of a legal nature" or "related to [a] legal case" is an inherently difficult task, even for lawyers and judges. Disputes over attorney-client privilege frequently require judges to "conduct an in-camera inspection to determine whether" attorney-client protections apply. *Genovese v. Provident Life & Accident Ins. Co.*, 74 So. 3d 1064, 1068 (Fla. 2011).

Here, FDC has afforded its line officers with unfettered discretion to make such determinations. Rule 33-210.102(13)(d) (requiring FDC officers to open incoming legal mail "to determine that the correspondence is legitimate legal mail"); *id.* § (15)(b) (same for outgoing mail).

Those officers lack standards to guide their decision-making, as FDC has provided none. Joint Stip., Ex. 8 at 56 (Interr. 12).[3] They also lack qualifications to make these legal determinations because they have no legal training. Joint Stip., Ex. 7 at 48 (Admis. 26). And they lack impartiality because they are agents of FDC, a frequent defendant in litigation brought by lawyers subject to the Legal Mail Rule. *See* Sleasman Decl. ¶ 6.

In sum, FDC's untrained officers can only "guess at" what it means for communications to be of a legal nature or related to an inmate's case. *See Peter R. Brown Const*, 108 So. 3d at 728 (invalidating a rule prohibiting expenditures on "decorative items" because different people could "come up with various interpretations" of the term); *Florida Dep't of Bus. & Prof'l Regulation, Div. of Alcoholic Beverages & Tobacco v. Target Corp.*, 321 So. 3d 320, 325 (Fla. 1st DCA 2021) (invalidating a rule as vague because the standard "customarily sold in a restaurant" is "'subject to inconsistent application' and leaves the Division 'with unbridled discretion'"). "Thus, because no sufficient standard was provided, the existing rule 'is subject to inconsistent application' and leaves [FDC officers] 'with unbridled discretion.'" *Target Corp.*, 321 So. 3d at 325.

These vagueness concerns are not alleviated by the Rule's provision that "[o]nly the signature and letterhead may be read." Rule 33-210.102(13)(d). That prohibition is irreconcilable with officers' duty "to determine that the correspondence is legitimate legal mail." *Id.* As a result, DRF's "staff assumes there is a strong likelihood that [their] legal mail to and from [their] incarcerated clients will be read by prison staff." Sleasman Decl. ¶ 5; *see also* Miller Decl. ¶ 8 ("The 2025 amendment . . . has increased our concerns that FDC officers are reading [IPF's] legal mail."). Thus, the Rule "creates a chilling effect on DRF attorneys' willingness or ability to include sensitive confidential information in written correspondence." Sleasman Decl. ¶ 5.

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[3] When citing to Exhibits attached to the Joint Stip., we cite to the page numbers of the full pdf document.

Accordingly, the Legal Mail Rule is invalid under Section 120.52(8)(d), Florida Statutes.

IV. The Legal Mail Rule Is Arbitrary and Capricious.

The Legal Mail Rule is invalid pursuant to Fla Stat. § 120.52(8)(e) because it is "arbitrary and capricious." "A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational[.]" *Id.* When analyzing if a rule is arbitrary and capricious, courts must scrutinize the rule for "signs of blind prejudice or inattention to crucial facts." *Adam Smith Enters., Inc. v. State Dep't of Env't Regul.*, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989). Additionally, the reviewing court must consider whether the agency "(1) has considered all relevant factors; (2) has given actual, good faith consideration to those factors; and (3) has used reason rather than whim to progress from consideration of these factors to its final decision." *Id.*

A. FDC Did Not Meaningfully Consider how the Rule Burdens Nonprofit Legal Organizations.

FDC failed to consider the substantial administrative burden that the Rule's preapproval registration process imposes upon legal organizations like IPF and DRF. In its Rulemaking Notification Form, FDC was required to "[s]ummarize qualitative and quantitative *costs* of the proposed" rule. Joint Stip., Ex. 3 at 22. Despite the form's explicit instruction to include costs "to businesses and professionals in complying with the regulation," FDC responded that it was "unaware of any qualitative costs" and that "any quantitative costs of implementation will be borne by the Department's current budget." *Id.* Elsewhere, FDC has estimated compliance costs of the registration process to be "minimal." Joint Stip., Ex. 7 at 46 (Admis. 12).

Throughout the rulemaking process, nonprofit legal organizations, including IPF and DRF, repeatedly explained to FDC that the registration process would cause them substantial administrative burden. Joint Stip. ¶¶ 7, 10, 12. Following publication of the (then) proposed rule,

"a coalition of nonprofit legal organizations and private lawyers wrote to FDC to state objections to the proposed rule and to request a hearing." Joint Stip. ¶ 10. In the letter—which IPF and DRF joined—the lawyers and nonprofits explained how the 2025 amendment would impose "significant administrative costs" upon them. Joint Stip., Ex. 4 at 30. At the public hearing, thirteen people, including a representative of DRF, spoke in opposition to the 2025 amendment. Joint Stip. ¶ 12. "No one—apart from FDC—spoke in favor[.]" *Id.* Ignoring the public's concerns, "FDC made no changes to the proposed amendment to the Legal Mail Rule following the hearing." *Id.* ¶ 13.

The concerns of IPF and DRF "have been borne out since the 2025 amendment went into effect." Miller Decl. ¶ 6. For IPF, complying with the Legal Mail Rule's registration process takes "25 to 43 minutes of staff time, on average, per day." *Id*. ¶ 6. DRF, which sent approximately 400 pieces of legal mail in 2025, has to expend "hours of attorney and administrative time each month to comply with the new Rule" Sleasman Decl. ¶ 8. Compliance with the registration requirement has "proven to be a significant administrative" burden for both organizations. *Id.*; Miller Decl. ¶ 6 ("The amendment imposes a substantial administrative burden on our operations.").

The Rule's registration process also causes significant delay. "Since the 2025 amendment went into effect," IPF's legal mail has been rejected and returned "around a dozen times." Miller Decl. ¶ 7. "It has taken anywhere from a few weeks to a month" for IPF to "receive the returned mail indicating the rejection by FDC." *Id.* DRF has had similar experiences, estimating "a delay, on average, of four (4) weeks each time this occurs." Sleasman Decl. ¶ 9. These delays can be disastrous for the organizations' clients. *See id.* ¶ 10 (describing "the very short time limits prisoners now have for filing litigation"); Miller Decl. ¶ 7 (explaining why a "one-month delay can be fatal to a client's claims").

The record is clear: FDC failed to give "actual, good faith consideration" to the burden that the 2025 amendment of the Legal Mail Rule imposes upon nonprofit legal organizations. *Adam Smith Enters.*, 553 So. 2d at 1273.

B. The Legal Mail Rule Unreasonably Prejudices Lawyers and Organizations that Seek to Help Incarcerated People.

Not all legal mail is subject to the registration process described in subsection (4) of the Legal Mail Rule. Legal mail from "Agency clerks" and "Municipal, County, state, and federal courts" is exempt. Rule 33-210.102(2)(f-g), (3). Although "State attorneys" are theoretically subject to the registration requirement, *id.* § (2)(a), in practice FDC affords them an exception. Following adoption of the 2025 amendment, "FDC provided guidance to FDC mailroom staff regarding the processing of legal mail[.]" Joint Stip. ¶ 17. That guidance provides that privileged mail from the State Attorney's Office is exempt from the registration process as long as the return address does not include the name of an attorney. Joint Stip., Ex. 6 at 39-40. No such workaround exists for nonprofit legal organizations like IPF and DRF.[4] *See* Joint Stip. ¶ 19; Joint Stip., Ex. 7 at 47.

It is illogical to impose the registration requirement on nonprofit legal organizations like IPF and DRF, but not agency clerks, courts, and State attorneys' offices. According to FDC, the sole purpose of the 2025 Amendment was "to establish a procedure for authenticating incoming legal mail from attorneys, with the goal of limiting the introduction of contraband through unauthorized legal mail." Joint Stip., Ex. 8 at 54 (Interr. 1). But FDC concedes that it is just as easy "for a person to disguise their mail as coming from a court or agency clerk, compared to mail

[4] Confusingly, FDC has taken inconsistent positions on whether IPF is "an approved legal aid organization" under Rule 33-210.102(2)(e). *Compare* Joint Stip., Ex. 7 at 47 (Admis. 14), *with* Joint Stip. ¶ 1. Apparently, it makes no difference whether IPF is an "approved legal aid organization" or not—either way, it is subject to the Rule's registration requirement. *See* Joint Stip. ¶ 19. The Rule's definition of "approved legal aid organization" was "adopted without thought or reason." Fla Stat. § 120.52(8)(e).

coming from a legal aid organization." *Id.* (Interr. 13). Given that smugglers can so easily circumvent the registration process, it should come as no surprise that, following the 2025 amendment, "[c]ontraband and/or prohibited items . . . continue to be sent to inmates by mail, including by legal mail." Joint Stip. ¶ 20. Thus, the Legal Mail Rule "is not supported by logic." Fla. Stat. § 120.52(8)(e).

Moreover, the Rule benefits FDC's lawyers by facilitating FDC's creation of an "electronic database" that will allow FDC to easily track every individual an attorney or legal organization has contacted. Joint Stip., Ex. 8 at 57 (Interr. 15). Such information is potentially valuable to FDC and its attorneys, because it allows them to discover people who are preparing litigation, and could reveal the identity of witnesses, thus implicating attorneys' work product. The Legal Mail Rule's simultaneous benefit to FDC and burden on those who litigate against FDC is a "sign[] of blind prejudice." *Adam Smith Enters.*, 553 So. 2d 1273.

C. FDC Did Not Consider How the Rule Limits Statutory and Constitutional Rights.

In crafting the Legal Mail Rule, FDC did not consider how the Rule affects and narrows statutory and Constitutional rights. In the adoption packet FDC sent to the Secretary of State upon the Rule's publication, FDC stated: "There are no federal standards or rules concerning the subject matter of this rule." Joint Stip., Ex. 5 at 36.

That is false. It is well established that the First Amendment prohibits prison officials from reading legal mail. *Christmas v. Nabors*, 76 F.4th 1320, 1328 (11th Cir. 2023) (explaining the rules that have "governed prison mail procedures in our Circuit for nearly 50 years" (quotation marks omitted)). "Interference with legal mail implicates a prison inmate's rights to access the courts and free speech as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution." *Raulerson v. Mitchell*, 916 So. 2d 891, 893 (Fla. 4th DCA 2005). The Legal Mail Rule violates

these federal standards by defining legal mail to include “written materials of a legal nature,” Rule 33-210.102(7), and requiring prison officials to “determine that the correspondence is legitimate legal mail.” *Id.* § (13)(d). The only way a prison official can determine whether written materials are “of a legal nature” is by reading the content of those materials. Federal law squarely forbids this. *Christmas*, 76 F.4th at 1328.

Moreover, as explained in Section I, *supra*, the Legal Mail Rule contravenes Florida’s statute that defines the scope of lawyer-client confidentiality. Fla. Stat. § 90.502(1)(c). In fact, one type of document categorically excluded from the Rule’s definition of legal mail—“publications”—is unquestionably protected by attorney-client confidentiality in many circumstances. *See* Rule 33-210.102(7). According to FDC, the prohibition on publications “prohibits an attorney from including in legal correspondence a publication of a legal nature[.]” Joint Stip., Ex. 8 at 55 (Interr. 10).

The Rule itself lacks a definition of “publication,” but FDC points to a separate rule defining it to include any “printed material offered to the public by sale or by gratuitous distribution.” Joint Stip., Ex. 8 at 56 (Interr. 10). Both the Florida Statutes and the Florida Administrative Code fall within this definition of “publications”; they are printed and published by the Florida Senate and the Florida Department of State, respectively. Joint Stip., Ex. 7 at 49 (Admis. 31, 32). Thus, the Legal Mail Rule arguably prohibits an attorney from including with his legal mail a portion of the Florida Statutes or Florida Administrative Code that is relevant to his client’s legal issue. And it certainly prohibits DRF from sending clients DRF’s “own, or government-created, publications.” Sleasman Decl. ¶ 7 (explaining how the prohibition on “publications” further increases DRF’s administrative burden). Such materials are covered by

attorney-client confidentiality, as disclosure of the rules, statutes, or publications would obviously reveal the substance of the legal issue.

D. The Rule Is Internally Inconsistent and Illogical

Lastly, the rule is illogical and internally inconsistent in several ways. First, as explained above, the categorical exclusion of "publications" from the definition of legal mail is illogical. When a rule contains an "exclusive list" that omits items that should logically be included on the list, "then the list itself is not supported by the necessary facts and does not operate according to reason." *Target Corp.*, 321 So. 3d at 324 (holding that a rule that purportedly created an exhaustive list of items "customarily sold in a restaurant" was arbitrary and capricious because it omitted items that are, in fact, customarily sold in restaurants).

Second, the Legal Mail Rule empowers guards to verify that written correspondence from attorneys is "of a legal nature" and that certain documents are "related to an inmate's case." Rule 33-210.102(7). Officers cannot make those determinations without reading legal mail. It therefore conflicts with section (13)(d) of the Legal Mail Rule, which allows guards to read "[o]nly the signature and letterhead" of legal mail. Thus, the rule is internally inconsistent, evincing that it was "adopted without thought or reason or is irrational." Fla. Stat. § 120.52(8)(e).

Third, the Legal Mail Rule requires attorneys to treat their ARNs "as confidential," FAC 33-210.102(4)(c)2, but also requires them to print their ARNs on the outside of legal mail envelopes. *Id.* § (4)(c)5. Information on the outside of envelopes is inherently *not* confidential. Again, the Legal Mail Rule's contradictory requirements evince that it is "adopted without thought or reason or is irrational." Fla. Stat. § 120.52(8)(e).

CONCLUSION

For the foregoing reasons, the Legal Mail Rule is an "invalid exercise of delegated legislative authority." Fla. Stat. § 120.52(8).

Respectfully submitted on this 23rd day of January, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 23, 2026, a true and correct copy of the foregoing document was electronically served on all counsel of record.

/s/ Andrew Udelsman
Attorney

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INNOCENCE PROJECT OF FLORIDA,

Petitioner,

EXHIBIT 1

and

DISABILITY RIGHTS FLORIDA, INC.,

Intervenor,

vs. Case No. 25-6068RX

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

____/

DECLARATION OF SETH MILLER

1. My name is Seth Miller. I am an attorney and have been a member in good standing of the Florida Bar for over 20 years. I am the Executive Director of Innocence Project of Florida ("IPF"). In that capacity, I am responsible for managing the operations of the entire organization, including its lawyers and legal staff.

2. IPF is an IRS-certified 501(c)(3), non-profit organization founded in January 2003 to help innocent incarcerated people in Florida obtain their freedom and rebuild their lives. Our work has led to the release of 38 people who were wrongfully convicted, many of whom spent decades in prison for crimes they did not commit. We do not charge for our services and provide all legal services *pro bono*.

3. IPF is currently litigating over three dozen postconviction cases, with hundreds more in various stages of review and investigation. Our intake team handles nearly 1,000 requests for legal assistance each year.

4. IPF sends, on average, 43 pieces of legal mail per week to people in FDC custody.

5. When FDC released the proposed amended Legal Mail Rule in 2025, IPF signed on to written comments objecting to the proposed rule due to concerns that it interfered with attorney-client confidentiality and created a substantial administrative burden for IPF.

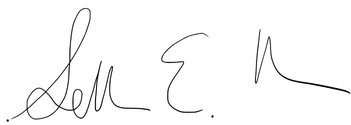
6. Our concerns have been borne out since the 2025 amendment went into effect. The amendment increases the time it takes for my staff to process mail by 3 to 5 minutes per piece of mail. That amounts to 25 to 43 minutes of staff time, on average, per day. The amendment imposes a substantial administrative burden on our operations.

7. Since the 2025 amendment went into effect, we have had legal mail rejected by FDC and returned to us around a dozen times. It has taken anywhere from a few weeks to a month for us to receive the returned mail indicating the rejection by FDC. There are strict time limitations on postconviction filings. A one-month delay can be fatal to a client's claims.

8. The 2025 amendment to the Legal Mail Rule has increased our concerns that FDC officers are reading our legal mail. We are therefore more inclined to speak on the phone with a client or visit them in person, as opposed to putting confidential information in a written letter. Phone calls and in-person visits require additional administrative burden to coordinate and take substantially more time to participate in than drafting and sending written correspondence.

I declare under penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on January 23, 2026.



Seth Miller, Esq.
Fla. Bar. No. 0806471

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INNOCENCE PROJECT OF FLORIDA,

Petitioner, **EXHIBIT 2**

and

DISABILITY RIGHTS FLORIDA, INC.,

Intervenor,

vs. DOAH Case No.: 25-6068RX

FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent.

____/

DECLARATION OF PETER SLEASMAN

1. I have held the position of Litigation Director of Disability Rights Florida (DRF) since April 2025. In that capacity, I supervise and manage DRF's legal teams, which include attorneys, paralegals and advocates. As part of my job duties, I meet with DRF legal team regularly regarding their work, including work involving individuals incarcerated in the Florida Department of Corrections (FDC). I have personal knowledge of Rule 33-210.102 ("Legal Mail Rule") and how compliance with the Rule impacts our work.

2. DRF is a legal organization which provides legal advice and representation to individuals with disabilities, including inmates with disabilities in the custody of FDC. DRF is an independent, non-profit organization. DRF does not charge for the legal services it provides.

3. Under the supervision of attorneys, DRF staff routinely send legal mail to people in FDC custody. In 2025, DRF corresponded with individuals in FDC custody on 330 cases or requests for service, for which the primary form of communication was via the legal mail process.

4. Although FDC allows confidential in-person attorney-client meetings and attorney-client phone calls, legal mail remains the most efficient means of contact. In person visits require a significant amount of travel and time, and giving legal documents or correspondence to an inmate during in-person visits is often not permitted. Attorney-client phone calls require a multi-step approval process and are often difficult and time consuming to arrange. Prearranged calls are frequently cancelled or not answered by FDC staff responsible for facilitating the calls.

5. The Legal Mail Rule does not explain, and our legal staff does not know, how prison staff determine whether our letters are "of a legal nature," or whether they are "related to the inmate's legal case." Because of this, our staff assumes that there is a strong likelihood that our legal mail to and from our incarcerated clients will be read by prison staff. This creates a chilling effect on DRF attorneys' willingness or ability to include sensitive confidential information in written correspondence. The result is that our legal staff must conduct any sensitive conversations with our clients in person at the prison, a much more time-consuming and expensive process.

6. It is problematic to me that, when registering to mail correspondence to FDC inmates, our attorneys must attest that they are complying with the Rules Regulating the Florida Bar; we believe that compliance with the Legal Mail Rule will impair our ability to maintain attorney-client confidentiality as required by those same rules. Given the fact that we frequently litigate against FDC, it feels inappropriate for FDC to attempt to regulate our attorneys' conduct.

7. DRF often receives inquiries from FDC inmates regarding legal services or their rights that could easily be answered by sending them our own, or government-created, publications. We frequently do this with non-incarcerated clients. Due to the vague description of prohibited publications in 33-210.102, and our ongoing efforts to avoid having legal mail rejected by FDC further delaying our client's access to the legal process, DRF operates under the

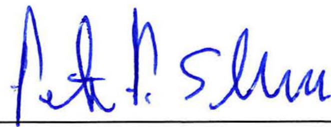
assumption that we may be prohibited from sending such materials to FDC inmates. DRF legal staff are often forced to spend time drafting correspondence to explain the breadth of our services or the process for accessing relevant information rather than enclosing a simple trifold brochure.

8. DRF conservatively estimates that 400 pieces of legal mail were sent to FDC clients by our staff during 2025. Even given this conservative estimate, the new ARN/LMTN requirement in the Legal Mail Rule adds hours of attorney and administrative time each month to comply with the new Rule, which has proven to be a significant administrative and financial burden.

9. Since the inception of the Legal Mail Rule, occasional administrative errors, such as the transposition of numbers in ARN/LMTNs, have led to delays in delivery of legal mail. In such instances, legal mail has been refused by FDC and returned to DRF, at which point staff must re-initiate the legal mail process. This has caused additional, unnecessary delay in client's access to counsel. DRF estimates a delay, on average, of four (4) weeks each time this occurs.

10. *Any* delay in legal correspondence could jeopardize an inmate's ability to bring a claim in court because of the very short time limits prisoners now have for filing litigation. In 2025 the Florida Legislature shortened the time limit for filing such tort actions or actions relating to the conditions of confinement by prisoners against the FDC to one year. §§ 95.11(6)(f); 760.701, Fla Stat. (2025). DRF has in the past filed negligence claims for inmates against the FDC. Such claims require inmates to exhaust the FDC grievance process and file a notice of claim with the FDC and the Department of Financial Services before initiating litigation in state court. §768.28(6) Fla Stat.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 23rd day of January, 2026.



Peter P. Sleasman
Fla. Bar No. 367931