

IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF ILLINOIS, URBANA DIVISION

PRISON LEGAL NEWS, a project of
the HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

COUNTY OF KANKAKEE;
SHERIFF TIMOTHY BUKOWSKI, individually and in
his official capacity;
CHIEF OF CORRECTIONS, CHAD KOLITWENZEW,
individually and in his official capacity;
DOES 1-10, in their individual and
official capacities,

Defendants.

Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF UNDER
THE CIVIL RIGHTS ACT 42
U.S.C. §1983 AND DAMAGES**

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff, PRISON LEGAL NEWS (“PLN” or “Plaintiff”), brings this action to enjoin Defendants’ censorship of its monthly journal, *Prison Legal News*, and their failure to provide due process of law to PLN and other senders of censored mail. Defendants have adopted and implemented mail policies that unconstitutionally prohibit delivery of *Prison Legal News* to pre-trial detainees and other prisoners in their custody at the Kankakee County Detention Center (“KCDC”), in violation of the First Amendment to the United States Constitution, and have failed and refused to provide senders of censored mail due process notice and an opportunity to challenge the censorship as required by the Fourteenth Amendment to the United States Constitution.

II. JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. § 1331 (federal question), as this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. § 1983.

3. Plaintiff's claims for relief are predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to the Plaintiff by the First, Fifth, and Fourteenth Amendments to the U.S. Constitution and laws of the United States.

4. Plaintiff's claim for attorneys' fees and costs is predicated upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

5. Venue is proper under 28 U.S.C. § 1391(b). On information and belief, at least one Defendant resides within this judicial district, and the events giving rise to the claims asserted herein all occurred within this judicial district.

6. Plaintiff seeks declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

7. Plaintiff is informed, believes, and based thereon alleges that in engaging in the conduct alleged herein, individual Defendants acted with the intent to injure, vex, annoy and harass Plaintiff, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights with the intention of causing Plaintiff injury and depriving it of its constitutional rights.

8. As a result of the forgoing, Plaintiff seeks exemplary and punitive damages against the individual Defendants.

III. PARTIES

9. Plaintiff, Prison Legal News (“PLN”), is a publisher project of the Human Rights Defense Center, a not-for-profit, Washington charitable corporation recognized under IRS Code § 501(c)(3), with offices in Lake Worth, Florida. PLN publishes *Prison Legal News*, a monthly journal of prison news and analysis.

10. Defendant, County of Kankakee, is a unit of government organized and existing under the laws of the State of Illinois. Defendant, County of Kankakee is and was at all relevant times mentioned herein, responsible for the policies, procedures, customs and practices of the Kankakee County Sheriff’s Department (“the Sheriff’s Department” or “the Department”) and the actions and/or inactions of its employees and agents. The Department operates the Kankakee County Detention Center (“KCDC”), and is and was responsible for adopting and implementing mail policies governing incoming mail for prisoners at KCDC. Said policies and practices are the moving force behind the constitutional violations at issue herein.

11. Defendant, Sheriff Timothy Bukowski is employed by and is an agent of Defendant County of Kankakee and the Department. He is responsible for overseeing the management and operations of the jails, and for the hiring, screening, training, retention, supervision, discipline, counseling, and control of the personnel of KCDC who interpret and apply the mail policy for prisoners. As Sheriff, Defendant Bukowski is a final policymaker for the Department and for Defendant County of Kankakee with respect to the operations of KCDC, including for policies governing incoming mail for prisoners. He is sued in his individual and official capacities.

12. Defendant, Chief of Corrections, Chad Kolitwenzew, is employed by and is an agent of Defendant County of Kankakee and the Sheriff’s Department. His duties include

overseeing all jail responsibilities, including but not limited to reception, booking and classification, housing, and other jail services. He is responsible for the operation and management of the KCDC and for the promulgation and implementation of its policies, including the prisoner mail policies challenged herein. He is also responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and control of the personnel of KCDC who interpret and apply the mail policy for prisoners. He is sued in his individual and official capacities.

13. The true names and identities of Defendants DOES 1 through 10 are presently unknown to PLN. Each of Defendants DOES 1 through 10 are or were employed by and are or were agents of Defendant County of Kankakee when some or all of the challenged prisoner mail policies and practices were adopted and/or implemented. Each of Defendants DOES 1 through 10 are or were personally involved in the adoption and/or implementation of the mail policies for prisoners, and/or are or were responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and/or control of KCDC staff who interpret and implement these prisoner mail policies. They are sued in their individual and official capacities. PLN will seek to amend this Complaint as soon as the true names and identities of Defendants DOES 1 through 10 have been ascertained.

14. At all times material to this action, the actions of all Defendants as alleged herein were taken under the authority and color of state law.

IV. FACTUAL ALLEGATIONS

15. PLN publishes and distributes a 64-page soft-cover monthly journal containing corrections news and analysis about prisoners' rights, court rulings, management of prison facilities, prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals.

16. PLN has thousands of subscribers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and members of the general public. PLN distributes its monthly publication to prisoners and law librarians in approximately 2,400 correctional facilities located across all fifty states, including the Federal Bureau of Prisons and the Illinois Department of Corrections.

17. The purpose of PLN, as stated in its Articles of Incorporation, Article III, Part 6, is to educate prisoners and the public about the destructive nature of racism, sexism, and the economic and social costs of prisons to society.

18. PLN engages in core protected speech and expressive conduct on matters of public concern, such as the operation of prison facilities, prison conditions, prisoner health and safety, and prisoner rights. Plaintiff's monthly journal, as described above, contains political speech and social commentary, which are at the core of First Amendment values and are entitled to the highest protection afforded by the U.S. Constitution.

19. For the past 24 years, the core of PLN's mission has been public education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally guaranteed and other basic human rights.

Censorship of PLN’s Monthly Journal

20. Defendants have censored PLN’s monthly journal mailed to prisoners held in custody at KCDC, by refusing to deliver it to the prisoners.

21. Since July 2014, PLN has sent at least sixty-two (62) issues of its monthly journal to prisoner-subscribers at KCDC. On information and belief, the current monthly issues of *Prison Legal News* were not delivered to the following prisoners during the following months:

Date Mailed:

Prisoners:

July 1, 2014

Lakesha Baker
Jacob Baker-Hale
Michael Cousins
Keoni Davis
Jon Giles
Devin Jones
Saul Melero
Cody Stilwell
William Thomas
Walter Thompson

August 5, 2014

Lakesha Baker
Jacob Baker-Hale
Michael Cousins
Keoni Davis
Jon Giles
Devin Jones
Saul Melero
Cody Stilwell
William Thomas
Walter Thompson
Robert Rozycki
Jewneus Wilson

September 9, 2014

Lakesha Baker
Jacob Baker-Hale
Michael Cousins
Keoni Davis
Jon Giles
Devin Jones

Saul Melero
Cody Stilwell
William Thomas
Walter Thompson
Robert Rozycki
Jewneus Wilson

October 9, 2014

Lakesha Baker
Jacob Baker-Hale
Michael Cousins
Keoni Davis
Jon Giles
Devin Jones
Saul Melero
Cody Stilwell
William Thomas
Walter Thompson
Robert Rozycki
Jewneus Wilson

November 7, 2014

Lakesha Baker
Jacob Baker-Hale
Lorenzo Baily
Jermaine Brooks
Michael Cousins
Edward Davis
Keoni Davis
Jon Giles
Devin Jones
Kevin Johnson
Saul Melero
Cody Stilwell
William Thomas
Walter Thompson
Robert Rozycki
Jewneus Wilson

22. PLN currently has sixteen (16) subscribers incarcerated at KCDC. PLN intends to continue to mail monthly copies of *Prison Legal News* to pre-trial detainees and other prisoners incarcerated at KCDC.

Failure to Provide Due Process

23. Defendants failed to provide any notice of their censorship decisions to PLN. Nor did Defendants provide PLN with any opportunity to appeal those censorship decisions to someone other than the original decision-maker.

Jail Policies and Practices

24. On information and belief, KCDC's mail policy states:

Magazines, hard cover books, calendars or newspapers are not allowed in the facility and will not be accepted through the mail.

25. Defendants' mail policies, practices and customs have been used to censor PLN's written speech and to deny PLN due process of law when effectuating said censorship.

26. Defendants' conduct prohibiting PLN from mailing its journal to prisoners confined at KCDC violates the First Amendment. Defendants' policies, practices and customs censor these expressive activities and have a chilling effect on PLN's future speech and expression directed toward prisoners confined there. Defendants' policies, practices and customs in this regard are unconstitutional both facially and as applied to *Prison Legal News*.

27. Reasonable discovery will show that Defendants' mail policies do not provide senders of censored mail with due process of law. Defendants' conduct in denying due process of law to PLN and other senders of censored mail violates the Fourteenth Amendment. Defendants' policies, practices and customs in this regard are unconstitutional both facially and as applied to *Prison Legal News*.

28. Due to Defendants' actions as described above, Plaintiff has suffered damages, and will continue to suffer damages, including, but not limited to: the violation of the Plaintiff's constitutional rights; the impediment of Plaintiff's ability to disseminate its political message; frustration of Plaintiff's non-profit organizational mission; diversion of resources; loss of

potential subscribers and customers; an inability to recruit new subscribers and supporters; the loss of reputation; and the costs of printing, handling, mailing, and staff time.

29. Defendants' actions and inactions were and are motivated by ill motive and intent and were and are all committed under color of law with reckless indifference to PLN's Constitutional rights.

30. Defendants and other agents of KCDC are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or they are responsible for ratifying and/or adopting them. Further, Defendants are responsible for training and supervising the mail staff whose conduct has injured and continues to injure PLN.

31. Defendants' unconstitutional policy, practices, and customs are ongoing, continue to violate PLN's rights, and are the moving force behind the constitutional violations. As such, PLN has no adequate remedy at law.

32. PLN is entitled to injunctive relief prohibiting Defendants from refusing to deliver its journal without any legal justification, and prohibiting Defendants from censoring mail without due process of law.

V. CLAIMS

Count I – 42 U.S.C. § 1983 Violation of the First Amendment

33. Each paragraph of this Complaint is incorporated as if restated fully herein.

34. The acts described herein constitute violations of Plaintiffs rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at KCDC, and the rights of prisoners confined at KCDC, under the First Amendment of the United States Constitution.

35. Plaintiff has a constitutionally protected liberty interest in communicating by mail with incarcerated individuals, a right clearly established under existing case law.

36. Defendants' conduct was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference to the rights of others.

37. Plaintiff's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which were the moving force behind such violations.

38. The acts described above have caused damages to Plaintiff, and if not enjoined, will continue to cause damage to Plaintiff.

39. Plaintiff seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. Plaintiff seeks punitive damages against the individual Defendants in their individual capacities.

**Count II – 42 U.S.C. § 1983
Violation of the Fourteenth Amendment**

40. Each paragraph of this Complaint is incorporated as if restated fully herein.

41. The acts described above constitute violations of Plaintiffs rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at KCDC under the Fourteenth Amendment of the United States Constitution.

42. Plaintiff has a right under the Due Process Clause of the Fourteenth Amendment to receive notice and the opportunity to object and/or appeal Defendants' decisions to prevent censors and suppress PLN's written speech.

43. Defendants' policy and practice of banning *Prison Legal News* without notice to PLN and without an opportunity for PLN to be heard violates the Fourteenth Amendment's Due Process Clause.

44. The conduct of Defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference to the rights of others.

45. Plaintiff's injuries and the violations of his constitutional rights were directly and proximately caused by the policies and practices of Defendants.

46. The acts described above have caused damages to Plaintiff, and if not enjoined, will continue to cause damage to Plaintiff.

47. Plaintiff seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. Plaintiff seeks punitive damages against the individual Defendants in their individual capacities.

Injunctive Allegations

48. Defendants' unconstitutional policies and practices are ongoing and continue to violate Plaintiff's constitutional rights and the rights of other correspondents and prisoners. As such, there is no adequate remedy at law.

49. Plaintiff is entitled to injunctive relief prohibiting Defendants from refusing to deliver PLN's monthly journal to people held in their custody. Plaintiff is also entitled to injunctive relief prohibiting Defendants from censoring mail without due process of law.

VI. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests relief as follows:

50. A declaration that Defendants' policies and practices violate the Constitution.
51. Nominal damages for each violation of Plaintiff's rights by the Defendants.
52. A preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief.
53. Compensatory damages in an amount to be proved at trial.

54. Punitive damages against the individual Defendants in an amount to be proved at trial.

55. Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988, and under other applicable law.

56. Any other such relief that this Court deems just and equitable.

Respectfully Submitted,

/s/ Jon Loevy
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*Admission applications to be filed

VII. JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully Submitted,

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