

1 ERNEST GALVAN (CA Bar No. 196065)*
2 KENNETH M. WALCZAK (CA Bar No. 247389)*
3 ROSEN, BIEN & GALVAN, LLP
4 315 Montgomery Street, 10th Floor
5 San Francisco, California 94104-1823
6 Telephone: (415) 433-6830
7 Facsimile: (415) 433-7104
8 Email: kwalczak@rbg-law.com

6 LANCE WEBER (NH Bar No. 19942)*
7 HUMAN RIGHTS DEFENSE CENTER
8 P. O. Box 2420
9 Brattleboro, VT 05303
10 Telephone: (802) 579-1309
11 Facsimile: (866) 228-1681
12 Email: lweber@humanrightsdefensecenter.org

10 DANIEL J. POCHODA (AZ Bar. No. 021979)
11 ACLU FOUNDATION OF ARIZONA
12 3707 North 7th Street, Suite 235
13 Phoenix, Arizona 85014
14 Telephone: (602) 650-1854
15 Facsimile: (602) 650-1376
16 Email: dpochoda@acluaz.org

14 * *Pro Hac Vice Applications to be filed*
15 Attorneys for Plaintiff Prison Legal News

17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE DISTRICT OF ARIZONA

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

21 Plaintiff,

22 v.

23 PAUL BABEU, individually and in his official
24 capacity as Sheriff of Pinal County, Arizona;
25 PINAL COUNTY, ARIZONA; DOES 1-20 in
26 their individual capacities,

27 Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
DECLARATORY AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF 42 U.S.C.
§ 1983 – FIRST AMENDMENT FREEDOM
OF SPEECH AND FREEDOM OF THE
PRESS AND DUE PROCESS OF LAW –
AND VIOLATIONS OF THE ARIZONA
CONSTITUTION**

JURY TRIAL DEMANDED

1 COMES NOW Plaintiff PRISON LEGAL NEWS, a project of the Washington
2 nonprofit corporation HUMAN RIGHTS DEFENSE CENTER, and for its complaint
3 against Defendants PAUL BABEU, individually and in his official capacity as Sheriff of
4 Pinal County; PINAL COUNTY, and DOES 1-20, inclusive, in their individual capacities,
5 alleges as follows:

6 **INTRODUCTORY STATEMENT**

7 1. Plaintiff PRISON LEGAL NEWS (“PLN”), a project of the Washington
8 nonprofit HUMAN RIGHTS DEFENSE CENTER (“HRDC”), brings this action pursuant
9 to 42 U.S.C. § 1983 (“Section 1983”) and the Arizona Constitution, to redress the harm
10 caused by Defendants’ censorship of its monthly publication and correspondence mailed to
11 Pinal County prisoners.

12 2. Defendants have adopted and implemented mail policies and practices that
13 unconstitutionally restrict the right to free expression held by PLN and its subscribers, and
14 protected by the United States and Arizona Constitutions. Defendants have adopted and
15 implemented mail policies and practices that unconstitutionally prohibit delivery to
16 prisoners of all magazines, hardcover books, and letters of more than one page in length.

17 3. On dozens of occasions, Defendants have prohibited subscribers and
18 correspondents from receiving mail sent by PLN. Defendants have undertaken this blanket
19 suppression of speech without any reference to or justification in, safety concerns or any
20 other correctional necessity.

21 4. Defendants’ policies and practices do not provide constitutionally adequate
22 due process protections to senders of mail, such as notice of the Defendants’ decision to
23 censor mail and an opportunity to challenge the censorship.

24 5. Defendants’ actions therefore violate PLN’s rights to freedom of speech,
25 freedom of the press and freedom of association under the First Amendment and its right
26 to due process of law and equal protection under the Fourteenth Amendment to the United
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1 States Constitution, and PLN's rights under Article II, Sections 4 and 6 of the Arizona
2 Constitution. Plaintiff seeks damages in an amount to be proved at trial, and injunctive
3 and declaratory relief, pursuant to 42 U.S.C. § 1983.

4 **DEMAND FOR JURY TRIAL**

5 6. Plaintiff respectfully demands a jury trial on all causes of action set forth
6 herein.

7 **JURISDICTION AND VENUE**

8 7. This action arises under 42 U.S.C. § 1983, which provides for recovery of
9 damages for violations of the First and Fourteenth Amendments to the United States
10 Constitution, and under the Arizona Constitution. This Court has jurisdiction, including
11 diversity jurisdiction, over this action under 28 U.S.C. §§ 1331, 1332 and 1343. This
12 Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C.
13 § 1367. This Court is authorized to grant declaratory relief pursuant to 28 U.S.C. §§2201
14 and 2202 and Fed. R. Civ. P. 57, and is further empowered to grant injunctive relief
15 pursuant to Fed. R. Civ. P. 65.

16 8. Venue is proper in the District of Arizona under 28 U.S.C. § 1391(b) because
17 the Defendants reside in and a substantial part of the events complained of occurred in this
18 District.

19 **PARTIES**

20 9. Plaintiff PRISON LEGAL NEWS is a project of the Human Rights Defense
21 Center, a Washington non-profit corporation.

22 10. For the past 21 years, the core of PLN's mission has been public education,
23 advocacy and outreach in support of the rights of prisoners and in furtherance of basic
24 human rights. PLN maintains a website, operates an email list, publishes and distributes
25 books about the criminal justice system and legal issues affecting prisoners, and publishes
26 and distributes a monthly journal of corrections news and analysis, *Prison Legal News*, to
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1 prisoners, lawyers, courts, libraries, and the public throughout the country. Prisoners, their
2 family, friends and advocates are among the intended beneficiaries of PLN's activities.

3 11. Defendant PINAL COUNTY is a municipal corporation formed under the
4 laws of the State of Arizona.

5 12. Defendant PAUL BABEU is the Sheriff of Pinal County. Sheriff Babeu is
6 employed by and is an agent of Pinal County and the Pinal County Sheriff's Department.
7 As the Sheriff, he is the final decision maker for Pinal County for jail operations, practices,
8 and policies. He is sued in his individual and official capacities and was acting under color
9 of state law at all times relevant hereto.

10 13. Defendants DOES 1 through 20 are all employed by and are agents of Pinal
11 County and the Pinal County Sheriff's Department and were each acting under color of
12 state law at all times relevant hereto. They are sued in their individual capacities.

13 **FACTUAL ALLEGATIONS**

14 14. Prison Legal News ("PLN") publishes and distributes *Prison Legal News*, a
15 monthly journal of corrections news and analysis regarding prisoners' rights, court rulings,
16 management of prison and jail facilities and conditions of confinement. PLN also
17 distributes books about the criminal justice system and legal issues affecting prisoners.

18 15. PLN engages in core protected political speech and expressive conduct on
19 matters of public concern.

20 16. PLN has approximately 7,000 subscribers throughout the United States and
21 abroad, including prisoners, pre-trial detainees, attorneys, journalists, public libraries,
22 judges, and other members of the public.

23 17. Defendants have written, instituted and implemented policies at the Pinal
24 County Jail that prohibit delivery to prisoners of all magazines, hardcover books, and
25 letters of more than one page.

1 18. As of August 18, 2011, the Frequently Asked Questions page of the Pinal
2 County Jail website reads, in pertinent part:

3 **How do I send mail to an inmate?**

4 You may send post cards no larger than 5X7 mailed via United States Postal
5 Service Only.

6 ...

7 Magazines of any kind or hard cover books are not permitted, however
8 paperback books (limited to 3) may be sent via a publisher or publishing
9 company only using the address listed.

10 *See*

11 [http://pinalcountyaz.gov/DEPARTMENTS/SHERIFF/ADULTDETENTIONCENTER/Pa](http://pinalcountyaz.gov/DEPARTMENTS/SHERIFF/ADULTDETENTIONCENTER/Pages/FAQ.aspx#2008-02-26%2009:33:53)
12 [ges/FAQ.aspx#2008-02-26%2009:33:53](http://pinalcountyaz.gov/DEPARTMENTS/SHERIFF/ADULTDETENTIONCENTER/Pages/FAQ.aspx#2008-02-26%2009:33:53) (last accessed 8/18/11).

13 19. Pursuant to this and other policies, Defendants have improperly and illegally
14 censored PLN's publications, books, brochures, and other correspondence sent to prisoners
15 at the Pinal County Jail. Defendants have improperly and illegally refused to deliver
16 paperback copies of the publication *Protecting your Health and Safety*, sent by PLN to
17 prisoners at the Pinal County Jail.

18 20. Since at least February 2011 and continuing to the present day, Defendants
19 have censored at least three different types of publications distributed by PLN: the monthly
20 publication *Prison Legal News* and subscription notices for said publication; PLN's
21 "Informational Brochure Pack" and individual brochures contained therein (including a
22 Prison Legal News Brochure and Subscription Order Form, a Book List, and an
23 Educational Courses Brochure); and the paperback book *Protecting Your Health and*
24 *Safety*. The censorship took the form of failing to deliver the mailed material to the
25 addressee.

1 (a) **Prison Legal News:** This is PLN's monthly journal of corrections
2 news and analysis regarding prisoners' rights, court rulings, management of prison and jail
3 facilities and conditions of confinement.

4 (b) **Informational Brochure Pack:** This includes 3 items: (1) a *Prison*
5 *Legal News* subscription order form and brochure about the topics covered in PLN's
6 monthly magazine and a description of three books available for purchase or included with
7 a subscription (*Protecting Your Health & Safety, With Liberty for Some: 500 Years of*
8 *Imprisonment in America*, and *Prison Profiteers: Who Makes Money from Mass*
9 *Incarceration*); (2) a book list including a description of 42 dictionaries, resource materials
10 and books available for purchase, with information about a variety of topics, including: the
11 basic health and safety rights of prisoners, the criminal justice system, finding the right
12 lawyer, DNA testing, issues related to imprisoned women, self-representation in court,
13 developing a successful re-entry plan upon release from prison, searching for a job, crime
14 and poverty, and the mental health crisis in U.S. prisons and jails; and (3) an educational
15 courses brochure including detailed information about and an order form for a book on
16 high school, vocational, paralegal, undergraduate, and graduate courses available through
17 correspondence study, as well as detailed information about and an order form for a book
18 on ineffective assistance of counsel and *habeas corpus* litigation.

19 (c) **Protecting Your Health and Safety:** This book, published by the
20 Southern Poverty Law Center and distributed by PLN, is an easy to read, plain language
21 guide prisoners can use to identify and litigate federal civil rights claims against prison
22 officials. Despite the language on the Pinal County Jail website suggesting that paperback
23 books may be sent, Defendants prohibited delivery of the paperback edition of this book
24 on numerous occasions.

25 21. As described below, Defendants have censored materials from PLN on at
26 least 65 occasions from February 2011 to the present.

1 22. The methods by which Defendants have censored PLN publications being
2 sent to prisoners held in custody in the Pinal County Jail (“Jail”) include refusing to deliver
3 said items to the prisoners and/or returning items to PLN’s offices via the Return To
4 Sender (“RTS”) service of the United States Postal Service.

5 23. When Defendants have censored and returned PLN’s mailings, Defendants
6 have often have often drawn a red line through the addressee information on the mailings,
7 marking the outside of various items with red pen notations of “RTS,” and writing the
8 words “NOT ALLOWED,” “ONLY 1 PAGE LETTERS ALLOWED,” or “NOT FROM
9 AN APPROVED PUBLISHER” near the recipient’s address.

10 24. From February to June 2011, PLN sent a sample issue of *Prison Legal News*,
11 in a manila envelope via first-class mail, to each of more than 60 prisoners. During the
12 same period, PLN sent the same prisoners copies of the informational brochure pack,
13 under separate cover in a standard #10 sized envelope via first-class mail. During the same
14 period, PLN sent the same prisoners a new copy of the paperback book *Protecting Your*
15 *Health & Safety* via Media Mail. All items were addressed to specific, individual inmates
16 using the format:

17 [Inmate Name] [Inmate Number]
18 Pinal County Jail
19 P.O. Box 2610
20 Florence, AZ 85132

21 All items bore a return address of:

22 Prison Legal News
23 PO Box 2420
24 W. Brattleboro, VT 05303.

1 25. Beginning in February 2011 and monthly thereafter, PLN has sent current
2 issues of *Prison Legal News* directly from its printer addressed individually to several
3 individual prisoners in Defendants' custody.

4 26. As a result of Defendants' policies and practices, this mail was not received
5 by its intended recipients at the Pinal County Jail.

6 27. In April and June 2011, counsel for PLN sent single-page letters to more
7 than 60 prisoners in Defendants' custody, listing the items that had been mailed under
8 separate cover, and asking "for confirmation of your receipt of these three (3) items which
9 have all been mailed separately. ... If you have not received all three of the items
10 mentioned above within the next few weeks, please write to us and let us know."

11 28. At least 7 of these prisoners wrote back via postcards, to say that they had
12 not received any correspondence other than the letter from PLN's counsel. No letters or
13 postcards were received from any prisoner in Pinal County Jail *confirming* his or her
14 receipt of a sample issue of *Prison Legal News*, the informational brochure pack, or
15 *Protecting Your Health and Safety*.

16 29. To date, PLN has received returns of at least: 50 issues of *Prison Legal News*
17 marked "RTS not allowed" or "Refused"; 31 paperback copies of *Protecting Your Health*
18 *and Safety* marked "RTS" or "RTS not allowed" or "RTS not from an approved
19 publisher"; 29 envelopes containing the informational brochure pack, marked "RTS only 1
20 page letters allowed" or "RTS not allowed" or "RTS only a 1 page letter allowed;" and 17
21 letters related to subscription renewal or cancellations, marked "RTS not allowed."

22 30. Defendants did not provide Plaintiff with constitutionally adequate notice
23 nor with any opportunity to appeal the decision to censor or exclude any of its
24 correspondence or publications.

25 31. Defendants' conduct prohibiting PLN from mailing its publications,
26 informational brochures, books, and subscription renewal letters to prisoners confined at
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1 the Jail violates the First Amendment by censoring these expressive activities and has a
2 chilling effect on future speech and expression directed at prisoners confined there.

3 32. Defendants' policy governing incoming mail does not provide notice or an
4 opportunity for the sender or the intended recipient to appeal the Jail's censorship
5 decisions.

6 33. In adopting and implementing the above censorship policies, Defendants
7 have knowingly violated, continue to violate, and are reasonably expected to violate in the
8 future, PLN's constitutional rights, and have caused PLN serious and irreparable harm
9 including, but not limited to: suppression of its political message, frustration of its
10 organizational mission, lost ability to recruit new supporters, subscribers and writers, lost
11 subscriptions, lost opportunities for purchases and sales of its publications, lost
12 opportunities for book sales, and diversion of its resources. Absent intervention by this
13 Court these actions will continue and PLN will be subjected to the same irreparable and
14 serious injuries.

15 34. The above violations of PLN's rights and the harms to PLN were caused by
16 mail and censorship policies adopted or approved by Defendant BABEU in his capacity as
17 Sheriff of Pinal County.

18 35. Defendants BABEU, DOES 1-20 and other agents of the County of Pinal are
19 responsible for or personally participated in, creating and implementing these
20 unconstitutional mail and censorship policies, practices, and customs, and for training and
21 supervising the mail staff at the Pinal County Jail who carry out these policies and whose
22 conduct has injured and continues to injure PLN.

23 36. Defendants' unconstitutional policy, practices, and customs are ongoing and
24 continue to violate PLN's rights, and as such PLN has no adequate remedy at law.

25 37. PLN is entitled to injunctive relief prohibiting Defendants from refusing to
26 deliver or refusing to allow delivery of publications, books, informational brochures and
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1 catalogs, and other correspondence from Prison Legal News, and prohibiting Defendants
2 from censoring mail without due process of law.

3 **CLAIMS FOR RELIEF**

4 **FIRST CLAIM FOR RELIEF**
5 **(For Violations of the First Amendment, As Incorporated**
6 **Through the Fourteenth Amendment, Under Color Of**
7 **State Law – Free Speech; Section 1983)**

8 38. Plaintiff realleges and incorporates by reference the preceding paragraphs.

9 39. The acts described above constitute violations of Plaintiff’s rights to freedom
10 of the press, to freedom of speech, and Plaintiff’s right to be free of government
11 censorship, under the First Amendment to the United States Constitution through 42
12 U.S.C. § 1983, and have caused damages to Plaintiff, and will continue to cause damage.

13 40. Plaintiff seeks declaratory and injunctive relief and compensatory damages
14 against all Defendants. Plaintiff also seeks punitive damages solely against the individual
15 Defendants.

16 **SECOND CLAIM FOR RELIEF**
17 **(For Violations of Article 2, Section 6 of the Arizona**
18 **Constitution Under Color of State Law)**

19 41. Plaintiff realleges and incorporates by reference the preceding paragraphs.

20 42. The censorship policies and practices complained of herein violate Plaintiff’s
21 right to freedom of expression as guaranteed by Article 2, Section 6 of the Arizona
22 Constitution.

23 43. As a direct and proximate result of Defendants’ conduct in violation of
24 Plaintiff’s rights under the Arizona Constitution as set forth above, Plaintiff has suffered,
25 and continues to suffer, damages.

26 **THIRD CLAIM FOR RELIEF**
27 **(For Violations of Fourteenth Amendment Due Process**
28 **Clause Under Color of State Law, Actionable Through 42**
U.S.C. § 1983)

44. Plaintiff realleges and incorporates by reference the preceding paragraphs.

1 45. By failing to give Plaintiff sufficient notice of the censorship of its
2 publications, and an opportunity to be heard with respect to that censorship, Defendants
3 have deprived and continue to deprive Plaintiff of liberty and property without due process
4 of law, in violation of the Fourteenth Amendment to the United States Constitution
5 through 42 U.S.C. § 1983.

6 46. As a direct and proximate result of Defendants' conduct in violation of
7 Plaintiff's rights as set forth above, Plaintiff has suffered, and continues to suffer,
8 damages.

9 **FOURTH CLAIM FOR RELIEF**
10 **(For Violations of the Due Process Clause in Article 2,**
11 **Section 4 of the Arizona Constitution)**

12 47. Plaintiff realleges and incorporates by reference the preceding paragraphs.

13 48. By failing to give Plaintiff sufficient notice of the censorship of its
14 publications, and an opportunity to be heard with respect to that censorship, Defendants
15 have deprived and continue to deprive Plaintiff of liberty and property without due process
16 of law, in violation of the Article 2, Section 4 of the Arizona Constitution, and have caused
17 damage to Plaintiff, and will continue to cause damage.

18 49. As a direct and proximate result of Defendants' conduct as set forth above,
19 Plaintiff has suffered, and continues to suffer damage.

20 50. As a result of the conduct of Defendants, Plaintiff seeks declaratory and
21 injunctive relief against all Defendants.

22 **DAMAGES**

23 51. Plaintiff realleges and incorporates by reference the preceding paragraphs.

24 52. As a direct and proximate result of the infringement of Plaintiff's rights in
25 each of the above claims for relief, Plaintiff sustained and continues to sustain substantial
26 injuries including but not limited to: suppression of its political message, frustration of its
27 organizational mission, lost ability to recruit new supporters, subscribers and writers,
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1 diversion of resources, lost business income, lost business goodwill, and a chilling effect
2 on future exercise of Plaintiff's rights. Plaintiff is entitled to compensation for the harms
3 resulting from the unconstitutional and illegal acts by Defendants.

4 53. As set forth above, the individual Defendants' actions demonstrated a
5 reckless disregard for the rights and interests of Plaintiff. On information and belief,
6 Defendants will continue to act in this manner absent legal deterrents. Exemplary damages
7 are required as punishment and to deter Defendants from repeating these harmful and
8 illegal acts in the future.

9 **PRAYER FOR RELIEF**

10 The conduct previously alleged, unless and until enjoined by order of this Court,
11 will cause great and irreparable injury to Plaintiff. Further, a judicial declaration is
12 necessary and appropriate at this time so that all parties may know their respective rights
13 and act accordingly.

14 WHEREFORE, Plaintiff prays for judgment as follows:

- 15 1. A declaration that Defendants' policies, practices, and customs violate the
16 United States and Arizona Constitutions as set forth herein;
- 17 2. A preliminary and permanent injunction preventing Defendants and their
18 employees, agents, and any and all persons acting in concert with them from continuing to
19 violate the United States and Arizona Constitutions;
- 20 3. An order awarding compensatory and punitive damages in amounts to be
21 proven at trial for each incident that violated Plaintiff's rights;
- 22 4. An order awarding Plaintiff its reasonable attorney's fees, litigation expenses
23 and costs under 42 U.S.C. § 1988, under the Arizona private attorney general doctrine, as
24 recognized in *Arnold v. Arizona Dept. of Health Services*, 775 P.2d 521 (Ariz. 1989), and
25 any other applicable law; and
26

1 5. Such other relief as the Court deems just and proper.

2 **PLAINTIFF DEMANDS A JURY TRIAL.**

3
4 DATED: September 7, 2011

Respectfully submitted,

5
6 By /s/ Daniel J. Pochoda

7 Daniel J. Pochoda
8 ACLU FOUNDATION OF ARIZONA
9 3707 North 7th Street, Suite 235
Phoenix, Arizona 85014

10 *Attorneys for Plaintiff Prison Legal News*
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