

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

**(1) PRISON LEGAL NEWS, a project
of the HUMAN RIGHTS DEFENSE
CENTER, a not-for-profit corporation,**

Plaintiff,

v.

Case No. CIV-15-1090-M

**(1) POTTAWATOMIE COUNTY
PUBLIC SAFETY CENTER TRUST, an
Oklahoma public trust;**

**(2) SIDNEY LANIER STELL,
Executive Director of the PCPSC, in his
individual and official capacity;**

**(3) BREONA ROCHELLE
THOMPSON, Jail Administrator, in her
individual and official capacity; and**

**(4) DOES 1-10, in their individual and
official capacities,**

Defendants.

COMPLAINT

Plaintiff Prison Legal News (“PLN”) for its complaint against Defendants alleges and states as follows:

I. INTRODUCTION.

1. PLN brings this action to enjoin censorship of its publications and other correspondence mailed to prisoners in Defendants’ custody at the Pottawatomie County Public Safety Center (“PCPSC”). Defendants’ mail policies and practices unconstitutionally prohibit delivery of Plaintiff’s mail to prisoners at PCPSC in violation of the First Amendment to the United States Constitution. Defendants’ policies and practices also deny due process of law to senders of censored mail by failing to provide

notice of and an opportunity to challenge each instance of censorship as required by the Fourteenth Amendment to the United States Constitution.

II. JURISDICTION AND VENUE.

2. This action is brought pursuant to 28 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. 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.

4. 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.

5. This Court has jurisdiction over claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

6. 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.

7. Plaintiff is informed, believes, and therefore alleges that in engaging in the

conduct alleged herein, 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. PLN is a wholly owned project of the Human Rights Defense Center, a not-for-profit Washington charitable corporation recognized under §501(c)(3) of the Internal Revenue Code with principal offices in Lake Worth, Florida. PLN publishes *Prison Legal News: Dedicated to Protecting Human Rights*, a monthly, seventy-two (72) page black-and-white journal of prison news and analysis in addition to publishing and distributing books of interest to prisoners.

10. Defendant Pottawatomie County Public Safety Center Trust ("Trust") is a public trust organized under Title 60 of the Oklahoma Statutes for the purposes of the operation and management of the PCPSC—the jail and detention facilities of Pottawatomie County, Oklahoma—and constitutes a separate and distinct legal entity under Oklahoma law (Okla. Stat. tit. 60 § 176.1(a)(2)). Trust is responsible for the training, supervision, acts, omissions, conduct, policies (written or unwritten), patterns, practices, customs and procedures of the public employees acting within the scope of their duties who worked for the PCPSC at all times relevant hereto.

11. Defendant Sidney Lanier Stell is the Executive Director of the PCPSC, and

was personally involved in the adoption and/or implementation of the mail policies at issue and is responsible for overseeing, planning, coordinating and evaluating the legality of the mail policies and practices at the PCPSC. Since December 2007, and at all times relevant to this action, the PCPSC has been under the direction of Stell.

12. Defendant Breona Rochelle Thompson is the Jail Administrator of the PCPSC. This Defendant supervises and manages the daily operations of the PCPSC and mailroom staff, to include enactment and enforcement of all PCPSC policies, including mail.

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 Defendants 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 PCPSC 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. In addition to the publication of the monthly journal *Prison Legal News*,

PLN also offers and sells and/or distributes approximately fifty (50) different softcover books about the criminal justice system, legal reference books, and self-help books of interest to prisoners, including *The Habeas Citebook: Ineffective Assistance of Counsel*, which describes the procedural and substantive complexities of Federal *habeas corpus* litigation. PLN's books are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about related issues, such as legal research, how to write a business letter, health care issues, and similar topics.

16. PLN distributes its journal of prison news and books to prisoners in approximately 2,600 correctional facilities located in all fifty states, including those operated by the Oklahoma Department of Corrections, and those operated by the Federal Bureau of Prisons, such as the El Reno Federal Correctional Institute, the Great Plains Correctional Institute, and the ADX Supermax at Florence, Colorado, the most secure prison in the United States.

17. 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 books, as described above, contain political speech and social commentary, which are entitled to the highest protection afforded by the U.S. Constitution.

A. Censorship and Lack of Due Process.

18. Defendants have censored the following materials from PLN: (1) issues of the monthly journal, *Prison Legal News*; (2) individual copies of the book, *The Habeas Citebook*; and (3) enveloped mail to individual prisoners. Altogether, since July 2015,

Defendants have censored PLN's monthly journal, books and other correspondence on at least eighty-four (84) occasions. Restricting the speech of PLN and other senders of censored mail is not rationally related to any legitimate penological interest. This violates PLN's First Amendment right to communicate its speech with prisoners. Defendants' censorship policies, practices, and customs have a chilling effect on PLN's future speech and expression directed toward people confined at the PCPSC. Defendants' policies, practices, and customs are unconstitutional both facially and as applied to PLN.

19. In all the above instances of censorship, Defendants failed to provide due process notice to PLN of the reason for rejecting PLN materials in violation of PLN's Fourteenth Amendment rights. Defendants fail to explain the penological justification for their censorship decisions, fail to identify the specific mail policy they relied on, state different reasons for censoring identical items of mail, and otherwise fail to give meaningful notice of the censorship. At no time did Defendants provide an opportunity for PLN to appeal the censorship of its mail.

20. Defendants' mail policy, as stated on the PCPSC website, fails to provide any explanation why PLN's publications and other correspondence are censored by the PCPSC. Rather, the website mail policy provides, in pertinent part:

Inmates can receive letters and PLAIN greeting cards. No stamps, no envelopes, no extra writing paper, no pages from books, etc. These items are not allowed. Some of these items may be purchased from the commissary. Only letters with complete Return address and name will be accepted for processing and delivery to an inmate. Letters that do not contain these items will be considered "dead mail" and

disposed of accordingly. At NO TIME will mail or other item not processed through the US Postal System be passed to an inmate. If an inmate leaves the facility all incoming mail articles will be unopened and returned to sender. The facility accepts no responsibility for any Return to Sender articles.

See PCPSC Website at <http://www.pcpsct.org/mail.html> (last visited September 28, 2015).

The policy further states:

Unauthorized Mail and Materials: The following items will be returned to sender or confiscated. No glitter, glue, tape, crayon, marker, stickers or unknown substances will be allowed on incoming items. No postcards, business cards, card type items or bookmarks. No cards that are musical, that have removable parts, or with extra folds, loose paper, compartments, buttons, ribbon, raised surfaces, etc. No photographs of any kind. No drawings or clipart of any kind. NO PHOTOS OF ANY KIND ARE ACCEPTED IN THE FACILITY.

Id.

21. Additionally, the mail policy fails to require that notice of censorship be given to either the intended recipient or the sender of a censored mail, nor does it provide an avenue by which the censorship decision can be appealed.

B. Censorship of *Prison Legal News*.

22. On information and belief, at least forty-two (42) copies of *Prison Legal News* individually addressed to prisoners at the PCPSC have been censored by Defendants since July 2015. Fourteen (14) of those copies of *Prison Legal News* were sent back to Plaintiff by return mail, at PLN's expense, indicating various reasons for the return including the following: (1) "CAN'T HAVE"; (2) "CANNOT HAVE"; (3) "CAN

NOT HAVE!!!”; (4) “REFUSED”; and (5) “RTS.” Plaintiff did not receive returned copies of the other issues, but on information and belief, these issues were never delivered to the intended recipients at the PCPSC.

23. Defendants did not provide any notice to Plaintiff of the reasons for censorship, or allow it an opportunity to appeal the censorship decision.

24. Plaintiff will continue to mail copies of *Prison Legal News* to subscribers imprisoned at the PCPSC.

C. Censorship of *The Habeas Citebook*.

25. Defendants have censored copies of one of PLN’s softcover books, *The Habeas Citebook*, mailed to prisoners held in custody at the PCPSC, by refusing to deliver the books and, in some instances, by returning the books to Plaintiff’s offices via the “Return To Sender” service of the U.S. Postal Service. Since July 2015, PLN mailed fourteen (14) individually addressed copies of *The Habeas Citebook* to prisoners at PCPSC, which were subsequently censored. All of the above copies of *The Habeas Citebook* were sent back to Plaintiff by return mail, at PLN’s expense, indicating various reasons for the return including the following: (1) “REFUSED”; or (2) “CAN’T HAVE.”

26. Defendants did not provide any notice to Plaintiff of the reason for the censorship, or allow it an opportunity to appeal the censorship decisions.

27. Plaintiff will continue to mail copies of its softcover book, *The Habeas Citebook*, to prisoners at the PCPSC.

D. Censorship of Informational Brochure Packets.

28. PLN sends prisoners an “Informational Brochure Packet,” which includes

three single-page items in a #10 sized business envelope: (1) a PLN Brochure and Subscription Order Form; (2) a PLN Book List; and (3) a Published Books Brochure. These brochures are sent directly to individuals who have requested information about PLN publications and to others who are identified by PLN as people likely to be in need of the information that PLN distributes.

29. Since July 2015, Plaintiff mailed fourteen (14) individually addressed informational brochure packets to prisoners at the PCPSC, which were subsequently censored. All of the above information packs were sent back to Plaintiff by return mail, at Plaintiff's expense, indicating various reasons for the return including the following: (1) "REFUSED"; or (2) variations of "CANNOT HAVE."

E. Censorship of Enveloped Mail.

30. Since July 2015, in-house counsel for Plaintiff wrote fourteen (14) letters on PLN's behalf conspicuously marked "Legal Mail" on the envelope and addressed to prisoners at the PCPSC. All fourteen letters mailed to individual prisoners in envelopes were censored by Defendants. Defendants returned the enveloped mail to Plaintiff by return mail, at Plaintiff's expense, indicating various reasons for the return including the following: (1) "REFUSED"; or (2) variations of "CANNOT HAVE."

31. Defendants did not provide any notice to Plaintiff of the reasons for the censorship of its enveloped mail, nor did it allow PLN an opportunity to appeal the censorship decisions.

32. Plaintiff will continue to mail Informational Brochure Packs, Legal Mail letters and other enveloped correspondence to prisoners at the PCPSC.

F. Defendants' Unconstitutional Mail Policy and Practice is Ongoing.

33. Plaintiff publishes and distributes content concerning the rights of inmates and the means by which they may obtain relief from unconstitutional conditions of confinement. As a result, Plaintiff is informed and believes that Defendants have retaliated against Plaintiff by refusing to deliver Plaintiff's written materials to inmates held at the PCPSC.

34. Due to Defendants' actions 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.

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

36. Defendants, and its agents, are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, Defendants are responsible for training and supervising the staff persons whose conduct has injured and continues to injure Plaintiff.

37. Defendants' unconstitutional policy, practices, and customs are ongoing,

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

38. Plaintiff is entitled to injunctive relief prohibiting Defendants from refusing to deliver its monthly journal, books, and other correspondence 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

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

40. The acts described above constitute violations of Plaintiff's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at the PCPSC, and the rights of prisoners confined at the PCPSC, under the First Amendment of the United States Constitution.

41. Plaintiff has a constitutionally-protected liberty interest in communicating with incarcerated individuals by sending books, information packets, and publications to them via U.S. Mail, a right clearly established under existing case law.

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

43. Plaintiff's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, and those

policies were the moving force behind the violations.

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

45. 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

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

47. The acts described above constitute violations of Plaintiff's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at the PCPSC, and the rights of prisoners confined at the PCPSC, under the Fourteenth Amendment of the United States Constitution.

48. Plaintiff has a right under the Due Process Clause of the Fourteenth Amendment to receive notice and an opportunity to object and/or appeal Defendants' decisions to prevent Plaintiff's mail from reaching prisoners at the PCPSC.

49. Defendants' policy and practice of banning *Prison Legal News*, information brochure packets, enveloped mail, and the *Habeas Citebook* fails to provide Plaintiff with individualized notice of the censorship or an opportunity to be heard.

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

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

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

53. 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.

VI. Request for Relief

WHEREFORE, the Plaintiff respectfully requests relief as follows:

54. A declaration that Defendants' policies and practices violate the Constitution.

55. A preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief.

56. Nominal damages for each violation of Plaintiff's rights by the Defendants.

57. Compensatory damages in an amount to be proved at trial.

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

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

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

VII. JURY DEMAND.

61. Prison Legal News hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Dated: September 30, 2015

Respectfully submitted,

**HALL, ESTILL, HARDWICK,
GABLE, GOLDEN & NELSON, P.C.**

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*Admission application pending.

***Pro hac vice* applications to be filed.

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