

JURISDICTION AND VENUE

3. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988. Jurisdiction is based on 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and the aforementioned federal statutory and constitutional provisions.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because the events complained of occurred within this district.

PARTIES

5. Plaintiff Prison Legal News is a project and a wholly owned subsidiary of the plaintiff Human Rights Defense Center, a Washington non-profit IRS section 501(c)(3) corporation. It has offices in Brattleboro, Vermont.

6. Freddie Poor is the Sheriff of Galveston County and is, in his official capacity, by law responsible for the operation of the jail as its chief administrative officer. He is the chief policy maker for the jail. He is sued in his individual capacity for nominal, punitive, and compensatory damages, and injunctive and declaratory relief. He is sued in his official capacity for declaratory and injunctive relief, and nominal and compensatory damages. He can be served with process at 601 54th Street, Galveston, TX 77551.

7. Gean Leonard is the former Sheriff of Galveston County from 2001 to 2008, and was, in his official capacity, by law responsible for the operation of the jail as its chief administrative officer. He was the chief policy maker for the jail. He is sued in his individual capacity for nominal, punitive, and compensatory damages, and declaratory and injunctive relief. He can be served with process at 2016 Castlewind Court, League City, TX 77573.

8. Lieutenant R.C. Delacruz, Jr. is the Director of Inmate Service at the Galveston County Jail. He responds to inmate grievances within the jail. He is sued for nominal, punitive,

declaratory and compensatory damages. He can be served with process through at 601 54th St., Galveston, TX 77551.

9. Galveston County is a political subdivision of the State of Texas. Galveston County is sued for nominal, injunctive, declaratory and compensatory relief. It can be served with process through County Judge James Yarbrough at 722 Moody, Galveston, TX 77550.

STATEMENT OF FACTS

10. Prison Legal News publishes a monthly 56-page legal information magazine (“the publication”) dealing with the rights of incarcerated individuals. The publication provides information about, e.g., court access, disciplinary hearings, prison conditions, excessive force, mail censorship, jail litigation, visitation, telephones, religious freedom, prison rape, and the death penalty. It has been published continuously since 1990. The publication is core protected speech, which is not objectionable on security or other grounds. Prison Legal News has approximately 7,000 subscribers nationwide, and six subscribers who are currently incarcerated in the Galveston County Jail.

11. Plaintiffs also distribute approximately 45 legal and self help books, some published by plaintiffs and others by other publishers, regarding the criminal justice system, which are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about basic related issues such as legal research, how to write a business letter, health care issues and similar topics.

12. The Galveston County jail’s “Inmate Handbook,” which was last updated in December 2006, provides inmates may only receive “books, magazines, or newspapers,” if they are sent through the mail by the publisher, and with prior approval is received from jail administration. Approval is only granted “under special circumstances.” This policy, as written, is an unlawful prior restraint.

13. Although the jail's "Inmate Handbook" does allow for inmates to receive "books, magazines, or newspapers," upon information and belief, prisoners cannot receive books or magazines. When the editor of Prison Legal News called the jail, he was told by a sergeant who answered the phone that prisoners cannot receive books or magazines from any source.

14. Since creation of the policy, Prison Legal News has been unable to have its publication delivered to inmates in the jail. This policy prevents Prison Legal News from communicating with its subscribers in the jail.

15. Since the enactment of the policy, issues of the publication have been placed in the inmates' personal property upon receipt at the jail. The personal property is only available to inmates at the jail upon their release.

16. Prison Legal News did not receive any notice of the policy from the jail that the publication was being summarily censored. It did not receive any opportunity to contest the decisions preventing inmates at the jail from receiving its publication.

17. Prison Legal News has never received any notice from Galveston County that the publication was being censored.

18. On August 13, 2009, one of Prison Legal News' subscribers, inmate Clarence Crawford, filed a grievance with the jail because he learned that on August 3, 2009, the jail confiscated the book, Protecting Your Health and Safety, sent from Prison Legal News to Mr. Crawford, and denied him receipt of his Prison Legal News issue.. He received a response on August 14, from Lieutenant R.C. Delacruz, Jr., Director of Inmate Service. It read "if you received the material and it was not authorized through proper channels the items were placed in your property and a receipt should have been issued to you." Mr. Crawford was unable to receive the book or publication. No notice was provided to Prison Legal News that the book and the magazine were censored.

19. On September 1, 2009, Mr. Crawford filed another grievance because he was not receiving the publication. He received a response on September 4, which read “read the inmate handbook on what you can have or can’t in this facility.”

20. On September 18, 2009, one of Prison Legal News’ subscribers, inmate Travis Mullis, filed a grievance with the jail because he was not receiving the publication. He received a response on September 21, which read “read your inmate handbook and states in there what you can have and what you cannot. Unless approval by Administration will only be granted under special circumstances.” Mr. Mullis’s copy of the publication was placed in his property. On September 22, 2009, the jail’s Inmate Property Record shows it confiscated from Mr. Mullis “1 Prison Legal News Package.” The package contained an issue of Prison Legal News as well as the book Protecting Your Health and Safety. No notice was provided to Prison Legal News that the book and the magazine were censored.

21. The policy, developed, enacted and enforced by Defendants, deprives Prison Legal News of its constitutional rights of free speech and expression and its due process rights. Defendants’ policy provides Prison Legal News with no alternative means of exercising its free speech and expression rights by receipt, possession and enjoyment of otherwise legal reading materials such as magazines and newspapers.

22. Accommodation of the free speech and expression and due process rights of Prison Legal News with respect to materials protected by the First and Fourteenth Amendments to the United States Constitution will not have significant impact at the Galveston County Jail.

23. Readily available alternatives exist to Defendants’ current policy which, at a *de minimis* cost, could easily meet any legitimate or significant interests of Defendants and the jail without sacrificing the free speech and expression rights of Prison Legal News and the inmates.

CAUSE OF ACTION I: FREEDOM OF SPEECH AND EXPRESSION

24. Plaintiff re-alleges and incorporates paragraphs 1 through 23 herein.

25. Defendants' policy banning Prison Legal News,, books and written materials violates the free speech and expression rights of Prison Legal News secured by the First and Fourteenth Amendments to the Untied States Constitution.

26. Prison Legal News has a constitutionally-protected liberty interest in communicating with incarcerated individuals. This right is clearly established under existing case law.

27. Defendants' policy does not further any legitimate penological interest.

CAUSE OF ACTION II: DUE PROCESS OF LAW

28. Plaintiff re-alleges and incorporates paragraphs 1 through 23 herein.

29. Defendants' policy banning newspapers and magazines does not provide Prison Legal News with individualized notice that its free speech and expression rights are being violated. No notice of the new policy was provided to Prison Legal News before the policy prevented the publication from reaching the inmates in the jail.

30. Prison Legal News has a right under the Fourteenth Amendment to receive notice and the opportunity to object when Defendants prevent its publication from reaching its subscribers. This right is clearly established under existing case law.

31. Defendants' failure to provide notice to Prison Legal News that its publication was being censored does not further any legitimate penological interest.

DECLARATORY RELIEF

32. Plaintiff requests all appropriate declaratory relief to which they are entitled.

INJUNCTIVE RELIEF

33. Plaintiff requests the Court grant appropriate relief enjoining Defendants from continuing to violate its free speech and due process rights.

DAMAGES

34. Plaintiff seeks compensatory, punitive, and nominal damages for violations of its constitutional free speech and due process rights under the First and Fourteenth Amendments; injuries to its business reputation; and loss of revenue.

ATTORNEYS' FEES AND COSTS

35. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to recover attorneys' fees and costs.

PRAYER FOR RELIEF

THEREFORE, Plaintiff requests the Court:

- A. Declare that the rights of the Plaintiffs were violated.
- B. Award nominal, compensatory and punitive damages against all individual Defendants, in their individual capacities, as appropriate and allowed by law;
- C. Award nominal and compensatory damages against all Defendants, in their official capacities as appropriate and allowed by law;
- D. Grant declaratory and injunctive relief under federal law, as set out in this Complaint;
- E. Grant reasonable attorneys' fees, litigation expenses and court costs; pursuant to 42 USC 1988; and,
- F. Grant all such other and further relief as appears reasonable and just, to which Plaintiff may be entitled.

Dated: June 28, 2010

Respectfully Submitted,

/s/ Lauren Izzo

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