

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

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PRISON LEGAL NEWS, a project of the :
HUMAN RIGHTS DEFENSE CENTER, :
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Plaintiff, :
:
vs. :
:
KEN STOLLE, Sheriff for Virginia Beach, :
Virginia, sued in his official and individual :
capacity, G. Havens, V. Ogden, A. Torno, :
V. Harris, M. Brittingham, Matthew Wilson, :
E. Rodriguez and Darlene Moore, :
:
Defendants. :
:
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**FIRST AMENDED
COMPLAINT
AND JURY DEMAND**

Civil Action No. 2:13cv424

INTRODUCTION

1. Plaintiff Prison Legal News brings this action to enjoin Defendants’ censorship of its monthly publication, books and other correspondence mailed to prisoners who are held in custody at the Virginia Beach Correctional Center, in violation of the First Amendment. Further, defendants’ policies and practices do not afford due process notice and an opportunity to challenge the censorship as required by the Fourteenth Amendment.

JURISDICTION

2. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over this action under 28 U.S.C. §§1331 and 1343(a)(3) and (a)(4) and 28 U.S.C. §§2201 and 2202.

VENUE

3. Venue properly lies in this District pursuant to 28 U.S.C. §§ 1391(b)(2) and Local Civil Rule 3(B) because the Virginia Beach Correctional Center is located in Virginia Beach, Virginia.

PARTIES

4. Plaintiff Prison Legal News (“PLN”) is a project of the Human Rights Defense Center (“HRDC”), a Washington State 501(c)(3) non-profit corporation with principal offices in Lake Worth, Florida. The core of HRDC’s mission is public education, prisoner education, advocacy, and outreach in support of the rights of prisoners and in furtherance of basic human rights. All prisoners as well as their family, friends, advocates, and attorneys are among the intended beneficiaries of PLN activities.
5. Defendant Kenneth W. Stolle is the Sheriff of Virginia Beach, Virginia, and is responsible for the operation of the Virginia Beach Correctional Center (“VBCC”). The VBCC is the largest jail in the Commonwealth and holds approximately 1,400 prisoners on any given day. Defendant Stolle is responsible for the implementation and enforcement of all VBCC policies and procedures. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.
6. Defendant G. Havens is an employee of the Virginia Beach Sheriff’s Office who works at the Virginia Beach Correctional Center. He was responsible for rejecting at least one issue of PLN as set forth herein. He was also responsible for notifying PLN of that rejection but failed to do so.

7. Defendant V. Ogden is an employee of the Virginia Beach Sheriff's Office who works at the Virginia Beach Correctional Center. He or she was responsible for rejecting a number of issues of PLN as set forth herein. He or she was also responsible for notifying PLN of those rejections but failed to do so.
8. Defendant A. Torno is an employee of the Virginia Beach Sheriff's Office who works at the Virginia Beach Correctional Center. He or she was responsible for rejecting several issues of PLN as set forth herein. He or she was also responsible for notifying PLN of those rejections but failed to do so.
9. Defendant V. Harris is an employee of the Virginia Beach Sheriff's Office who works at the Virginia Beach Correctional Center. He or she was responsible for rejecting at least one issue of PLN as set forth herein. He or she was also responsible for notifying PLN of that rejection but failed to do so.
10. Defendant M. Brittingham is an employee of the Virginia Beach Sheriff's Office who works at the Virginia Beach Correctional Center. He or she was responsible for rejecting at least one issue of PLN as set forth herein. He or she was also responsible for notifying PLN of that rejection but failed to do so.
11. Defendant Matthew Wilson is an employee of the Virginia Beach Sheriff's Office who works at the Virginia Beach Correctional Center. He or she was responsible for rejecting a number of issues of PLN as set forth herein. He or she was also responsible for notifying PLN of those rejections but failed to do so.
12. Defendants E. Rodriguez is an employee of the Virginia Beach Sheriff's Office who works at the Virginia Beach Correctional Center. He or she was responsible for rejecting

at least one issue of PLN as set forth herein. He or she was also responsible for notifying PLN of that rejection but failed to do so.

13. Defendant Darlene Moore is an employee of the Virginia Beach Sheriff's Office who works at the Virginia Beach Correctional Center. She was and is responsible for considering appeals from senders of rejected correspondence and/or publications. Since the initiation of this action, she has upheld numerous decisions to reject PLN correspondence and publications without conducting an independent review of those decisions.

FACTUAL ALLEGATIONS

14. PLN publishes and distributes a 64-page monthly journal entitled "Prison Legal News: Dedicated to Protecting Human Rights," which reports on criminal justice news and issues. PLN also publishes, sells and distributes books on a variety of criminal justice, human rights and self-help issues. PLN also operates a website (www.prisonlegalnews.org) containing an extensive database of case law, verdicts, settlements, commentary, and other material related to these topics.
15. PLN has published monthly since 1990 and has approximately 7,000 subscribers in all 50 states and abroad. PLN's subscribers include lawyers, journalists, judges, courts, public libraries, universities and prisoners. The estimated actual readership is 70,000 per month. PLN's website receives more than 100,000 visitors a month.
16. PLN currently has, and at all times relevant to this Complaint has had, subscribers who are or were prisoners in the custody of the VBCC; some of these prisoners have since

- been transferred to a state prison where PLN is permitted by subscription.
17. Since April 2012, PLN has sent to numerous prisoners in custody of VBCC : (1) Sample issues of PLN mailed in a manila envelope via first class mail; (2) Information Brochure Packets (“Info Packet”) detailing book offers and subscription rates mailed in a regular-sized envelope via first class mail; (3) the soft cover book *Protecting Your Health and Safety* sent via media class mail; (4) Copies of *Clement v. California Department of Corrections, et al.*, 364 F.3d 1148 (9th Cir. 2004), sent in a regular-sized envelope via first class mail; and (5) monthly issues of PLN sent from PLN’s printer.
 18. Since August 2011, PLN has sent more than two hundred of the above items to approximately 30 separate subscribers in custody at the VBCC. As confirmed by at least one prisoner subscriber at VDCC, PLN correspondence was permitted to be received by prisoners for several months prior to April 2012.
 19. Starting in approximately April 2012, PLN began receiving returned items it had mailed to prisoners in VBCC through the U.S. Postal Service’s “Return to Sender” process.
 20. PLN received back copies of its magazine, all of which were individually addressed to its prisoner subscribers. These magazines had a “Return to Sender” stamp on them and handwritten notes stating “Not Here” or “Refused.” A check of the prisoner subscriber’s custody status revealed them to be in custody at VBCC at the time the magazines were returned to PLN, even those marked “Not Here.”
 21. Informational Brochure Packets were also returned with labels and stamps reading “Not Here” and “Refused.” A check of the prisoner subscriber’s custody status revealed that even those marked “Not Here” to be in custody at VBCC at the time the Info Packets

were returned to PLN.

22. PLN has only once been notified by VBCC of the rejection of its correspondence. PLN learned through its subscribers, however, that widespread censorship of PLN correspondence was occurring. PLN is aware of at least 67 items of correspondence censored by VBCC between April 2012 and the filing of this action.
23. According to the Mail Restriction Forms given to prisoners at VBCC, and provided to PLN by its subscribers, monthly PLN issues were censored because it was claimed that its advertisements contain “sexually explicit material.” However, PLN’s advertisements contain no nudity or depictions of sexual acts.
24. According to the Mail Restriction Forms given to prisoners at VBCC, and provided to PLN by its subscribers, the Info Packets were censored because “ordering forms with prices, catalogs [and] brochures” are not permitted.
20. The Mail Restriction Forms also state that an appeal process is provided to both the sender and the recipient. However, prisoner subscribers are only notified after PLN has been rejected and placed in their property box.
21. As previously stated, PLN has received only one such Mail Restriction Form from VBCC prior to the filing of this action. That form was taped to the back of an envelope stamped “Return to Sender” and hand marked “Refused.” Numerous seizures of PLN correspondence have occurred without notice to PLN.
22. Since the initiation of this action, PLN has started to receive notice of the rejection of its correspondence and publications . In each such instance, PLN has appealed the decision and in each case Defendant Sergeant Darlene Moore has upheld the rejection. However, Sgt. Moore does not undertake an independent review of the rejected correspondence but

only checks to see if the correct boxes on the rejection notices are checked.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Lack of Timely and Adequate Notification to Publisher)

23. Plaintiff realleges and incorporates by reference paragraphs 1- 22 herein.
24. The failure to provide timely notification and adequate reasons for disapproval decisions, violates PLN's rights protected by the First and Fourteenth Amendments.
25. As a direct and proximate result of the conduct of Defendants, PLN has suffered a loss of its right to due process and its right to communicate with willing recipients and has also suffered financial injury.

SECOND CAUSE OF ACTION

(Censorship of Constitutionally Protected Speech)

26. Plaintiff realleges and incorporates by reference paragraphs 1- 22 herein.
27. Defendants have disapproved or refused to deliver publications that contain constitutionally protected speech.
28. The aforesaid conduct by Defendants, without adequate penological justification, violates PLN's First Amendment rights.
29. As a direct and proximate result of the aforesaid conduct of Defendants, Plaintiff has suffered a loss of its right to communicate with willing recipients and has also suffered financial injury.

THIRD CAUSE OF ACTION

(Facial Validity of Rule Prohibiting "Sexually Explicit Material")

30. Plaintiff realleges and incorporates by reference paragraphs 1-22 herein.
31. The rule prohibiting "sexually explicit material," is vague and overbroad and therefore

facially invalid as a violation of the First Amendment.

32. As a direct and proximate result of the aforesaid conduct of Defendants enforcing that rule, Plaintiff has suffered a loss of its right to communicate with willing recipients and has also suffered financial injury.

FOURTH CAUSE OF ACTION
(Refusal to allow Information Packets)

33. Plaintiff realleges and incorporates by reference paragraphs 1- 22 herein.
34. Prohibiting the receipt by PLN's subscribers and others of information on how to subscribe to the magazine and about books and other publications for sale by Plaintiff, without adequate penological justification, violates PLN's First Amendment rights.
35. As a direct and proximate result of the conduct of Defendants, as described above, PLN has suffered a loss of its right to communicate with willing recipients and has also suffered financial injury.

FIFTH CAUSE OF ACTION
(Lack of Adequate Appeal Process)

36. Plaintiff realleges and incorporates by reference paragraphs 1-22 herein.
37. The failure to conduct an independent review of censorship decisions violates the First and Fourteenth Amendments.
38. As a direct and proximate result of the conduct of Defendant Moore, as described herein, PLN has suffered a loss of its right to due process and to communicate with willing recipients and has suffered financial injury.

WHEREFORE, Plaintiff requests the following relief:

- a. Declaratory judgment that the failure to provide adequate and timely notice of decisions

- to disapprove a publication and to provide Plaintiff a timely and adequate opportunity to be heard violates PLN's First Amendment and due process rights;
- b. Declaratory judgment that the failure to conduct an independent review of censorship decisions violates the First and Fourteenth Amendments;
 - c. Preliminary and permanent injunction requiring that facilities under the control and direction of Defendant Stolle provide notice to PLN of any proposed decision to disapprove a PLN publication and that the notice indicate what specific article(s) and/or advertisement(s) are at issue and if a book, which pages, an explanation of how the article(s) and/or advertisement(s) or pages in question threaten the valid penological interests of VBCC, and an opportunity to appeal the disapproval to an official other than the one who made the initial censorship decision who conducts an independent review of that initial censorship decision.
 - d. Declaratory judgment that the censorship or refusal to deliver the PLN magazine to prisoners in custody of VBCC violates PLN's First Amendment rights.
 - e. Preliminary and permanent injunction requiring Defendants to allow receipt of the PLN magazine unless there is a valid penological justification to censor that particular issue.
 - f. Declaratory judgment that the rule prohibiting the receipt of "sexually explicit material" is facially invalid as overbroad and vague.
 - g. Preliminary and permanent injunction prohibiting Defendants from censoring or rejecting PLN publications based on the simple standard of "sexually explicit."
 - h. Declaratory judgment that the VBCC rule prohibiting "ordering forms with prices, catalogs, brochures" violates the First Amendment.
 - i. Preliminary and permanent injunction prohibiting Defendants from refusing to allow

PLN's Information Brochure Packets without penological justification.

- j. Awarding PLN nominal, compensatory and punitive damages;
- k. Awarding attorney's fees and costs to Plaintiff;
- l. Awarding such other and further relief as the Court may deem just and proper.

JURY DEMAND

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

Respectfully submitted,

PRISON LEGAL NEWS
By Counsel

s/Jeffrey E. Fogel

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