

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question), §1343 (civil rights), and §2201 (Declaratory Judgment Act). This Court has supplemental jurisdiction to consider Plaintiffs' state law claims pursuant to 28 U.S.C. §1367(a).

3. Venue is proper pursuant to 24 U.S.C. §1391(b), as the events complained of occurred in this district and division.

PARTIES

4. PLN is a wholly owned subsidiary of the Human Rights Defense Center ("HRDC"), a non-profit, tax-exempt corporation. HRDC's mission is centered on public education, prisoner education, and advocacy in support of basic human rights. PLN's primary offices are in Lake Worth, Florida. PLN publishes a monthly magazine distributed across the nation to prisoners, attorneys, judges, law libraries, and other subscribers. PLN also distributes books, specializing in self-help materials regarding prisoner's rights and issues related to the criminal justice and corrections systems.

5. Defendant Anthony Betterton, Sheriff of Upshur County, is responsible for the policies, procedures, and operation of the Upshur County Jail. All his acts and omissions complained of herein were under color of state law. Betterton is the final policymaker for Upshur County. He is sued in his official capacity for injunctive and declaratory relief, and in his individual capacity for compensatory, nominal, and punitive damages. The official policy of the Upshur County Jail, along with the custom and practices of the Jail Staff persons pursuant to Defendant Betterton's command and instruction, were the moving force that caused the constitutional violations alleged herein.

6. Defendant Jill McCauley is a lieutenant at the Upshur County Jail. All her acts and omissions complained of herein were under color of State law. She is a final policymaker

for the Upshur County Jail. She is sued in her official capacity for injunctive and declaratory relief, and in her individual capacity for compensatory, nominal, and punitive damages. The official policy of the Upshur County Jail, along with the custom and practices of the Jail Staff persons pursuant to Defendant McCauley's command and instruction, were the moving force that caused the constitutional violations alleged herein.

7. Upshur County is a political subdivision of the State of Texas. The County funds and operates the jail, employs and compensates the jail staff, and is charged with ensuring that, at all times, the jail remains in compliance with federal and state law. Upshur County is sued for compensatory damages as well as injunctive and declaratory relief.

STATEMENT OF FACTS

PLN Educates Prison and Jail Inmates

8. PLN publishes and distributes *Prison Legal News*, a 64-page legal information magazine addressing the rights of incarcerated people. The magazine has been published continuously since 1990. PLN has approximately 7,000 subscribers nationwide, including prisoners, attorneys, judges, public libraries, and members of the general public. PLN distributes the magazine to prisoners in approximately 2,200 correctional facilities across the United States, including institutions within the Federal Bureau of Prisons and prisons and jails in all 50 states. *Prison Legal News* also is distributed to prisoners housed in death row units and "supermax" prisons, including the federal Administrative Maximum Facility ("ADX" or "Supermax") at Florence, Colorado, the most secure prison in the United States. More than 1 million copies of *Prison Legal News* have been distributed over the past 23 years.

9. The magazine is core-protected speech; it is not objectionable on security or other grounds. Each monthly issue of the magazine provides information about important legal issues, such as access to courts and counsel, disciplinary hearings, prison conditions, excessive force,

mail censorship, jail litigation, visitation, access to telephones, religious freedom, prison rape, and the death penalty, among other topics.

10. PLN also distributes approximately fifty different books regarding the criminal justice system by a variety of publishers. These books foster a better understanding of criminal justice policies and issues and allow prisoners to educate themselves about the law and related issues.

Defendants' Censorship Policy is Not Narrow, Objective, or Definite

11. Prior to revisions adopted in September 2013, Upshur County Jail's written inmate handbook contained no written criteria explaining when a publication will be rejected. It merely stated:

All periodicals, magazines, newspapers, and other similar items will be individually inspected. This inspection will be conducted to ensure these items do not contain restricted information and will be rejected on a case-by-case basis. All such materials must have prior approval to be received and must be mailed from the publisher to the inmate.

12. The policy does not provide a sender any notice or explanation when Defendants censor a publication. Only a prisoner may file a written appeal of a censorship decision, not the sender.

Defendants Censor PLN's Mail to Inmates

13. Beginning in July 2011 and continuing to the present, PLN has been mailing its magazine to inmates in the Upshur County Jail.

14. Individual detainees at Upshur County Jail were also sent copies of the paperback book, *Protecting Your Health and Safety: A Litigation Guide for Inmates*, published by the Southern Poverty Law Center. The book gives inmates information about their rights to medical care and protection against inhumane treatment.

15. Since July 2011, PLN has received returned copies of its individually addressed monthly magazine, letters to prisoners, renewal subscription letters, brochures, books and other mail from the Upshur County Jail. Many other issues were never delivered and never returned. Many books have been returned the same way. In sum, as many as 350 items of mail sent by PLN to Upshur County inmates were wrongfully rejected and not delivered to inmates.

- In July 2011, PLN received eight returned copies of the magazine sent to prisoners at Upshur County Jail. Each magazine was officially stamped “Refused,” “Return To Sender” and “No Newspaper.” PLN also received one returned copy of *Protecting Your Health and Safety*, which was marked “RTS” (Return To Sender).
- In October 2011, PLN received a returned copy of the magazine sent to one of the prisoners at Upshur County Jail. The packaging was stamped with “Refused,” “Return To Sender” and “No Newspaper.”
- In January 2012, PLN received eighteen returned copies of the magazine sent to prisoners at Upshur County Jail. Each issue was stamped “Refused.” PLN also received two returned copies of *Protecting Your Health and Safety* marked “RTS,” “Returned to Sender,” and “Refused.”
- In February 2012, PLN received seven returned copies of the magazine sent to prisoners at Upshur County Jail. Each of these issues was stamped “Refused.”
- In March 2012, PLN received five returned copies of the magazine sent to prisoners at Upshur County Jail. Each issue was stamped “Refused.” Plaintiff also received three returned copies of *Protecting Your Health and Safety*. Each copy of the book was marked “RTS” and “Not Approved by Chief.”
- In April 2012, PLN received twenty-seven returned copies of the magazine sent to prisoners at Upshur County Jail. Each of these issues was stamped “Refused,” “Return To Sender” and/or “No Newspaper.”
- In June 2012, PLN received nine returned copies of the magazine sent to prisoners at Upshur County Jail. Each of these issues was marked “Refused.”
- In July 2012, PLN received five returned copies of the magazine sent to prisoners at Upshur County Jail. Each of these issues was marked “Refused.”
- In August 2012, PLN received five returned copies of the magazine sent to prisoners at Upshur County Jail. Each of these issues was marked “Refused.”

This pattern of rejection is ongoing. Copies of *Prison Legal News* mailed in July 2013 were rejected and returned to PLN in August and September 2013.

16. After suspecting the books and magazines were being censored, PLN's in-house counsel sent personally addressed letters to individual prisoners to ask if they were receiving the magazine and books. These letters, despite being sent in envelopes marked "Special Mail" and "Legal Mail," were returned to PLN, unopened, though the prisoners were still incarcerated at the Upshur County Jail.

17. Defendants censored PLN's mailings under a blanket "no newspapers" policy, prohibiting the delivery of any newspaper to inmates. This policy rejects all newspapers mailed to inmates, as well as all other publications printed on newsprint. Defendants make no individualized determination regarding the contents of the publications before arbitrarily rejecting them.

PLN is not Given Due Process for Censorship Decisions

18. Defendants do not provide PLN with constitutionally adequate notice of the censorship of the magazine and books.

19. Likewise, Defendants do not provide PLN an opportunity to be heard or to contest Defendants' censorship decisions.

20. On information and belief, Upshur County Jail officials, including Defendants, are not making individualized determinations about the content of each publication before censoring and excluding the material, in violation of the First Amendment.

21. Defendants' censorship and exclusion of PLN magazine by Upshur County Jail officials is arbitrary and void of any constitutionally valid standards or criteria.

Defendants' Censorship Violates Free Speech and Press Guarantees

22. Defendants know their policies and practices unconstitutionally violate PLN's rights to free speech.

23. Due to Defendants' actions, PLN has suffered pecuniary loss of potential subscribers, customers, correspondents and supporters; diversion of resources; frustration of mission; loss of reputation; suppression of its political message and other damages to be shown at trial.

24. Due to Defendants' actions, as described herein, PLN has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

Defendants' Revised September 2013 Correspondence Plan Continues to Violate Free Speech and Press Guarantees and Fails to Give Due Process for Censorship Decisions

25. In September 2013, Defendants claimed that they adopted a revised "Correspondence Plan." The revised Correspondence Plan, while an improvement on Defendants' former policies, still falls short of the Constitutional requirements for several reasons, including, but not limited to: (1) the blanket "no newspaper" policy still exists; (2) Defendants continue to enforce an unconstitutional pre-approval requirement for publications; and (3) the revised Correspondence Plan lacks sufficiently detailed appeal procedures.

FIRST CAUSE OF ACTION – UNITED STATES CONSTITUTION
FIRST AMENDMENT – FREEDOM OF SPEECH

26. PLN has a constitutionally protected liberty interest in communicating with incarcerated people. This right is clearly established under existing case law.

27. Defendants' censorship of PLN's reading material is arbitrary, unrelated to any legitimate penological interest, and without any individualized determination based on content, in violation PLN's free speech and press rights secured by the First and Fourteenth Amendments.

28. PLN's right to communicate with prisoners through the mail is clearly established, as are the constitutional deficiencies in Defendants' prior and current mail policies. Thus, Defendants Betterton and McCauley are not entitled to qualified immunity.

SECOND CAUSE OF ACTION – TEXAS CONSTITUTION
FREEDOM OF SPEECH

29. The Texas Constitution offers greater free speech protections than the U.S. Constitution. Article I, Section 8 guarantees:

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press...

30. Defendants' policy requiring official approval of materials before they are passed on to inmates is an unconstitutional prior restraint on speech.

THIRD CAUSE OF ACTION– DUE PROCESS OF LAW

31. PLN has a right under the Fourteenth Amendment to receive notice when Defendants prevent PLN's magazine and books from reaching prisoners, and to be given the opportunity to object.

32. Defendants' policy does not provide notice or an opportunity to be heard before Defendants deprive PLN of its free speech and press rights, in violation of the Due Process Clause of the Fourteenth Amendment.

33. The right to due process before censorship is clearly established under decades of well-settled case law, as are the constitutional deficiencies in Defendants' mail policies. As such, Betterton and McCauley are not entitled to qualified immunity.

DAMAGES

34. PLN seeks compensatory, punitive, and nominal damages for violations of its constitutional free speech, press, and due process rights under the First and Fourteenth

Amendments for suppression of its political message; diversion of its resources; frustration of its organizational mission; injuries to its business reputation; and loss of revenue.

DECLARATORY RELIEF

35. PLN requests all appropriate declaratory relief to which it is entitled.

INJUNCTIVE RELIEF

36. PLN requests the Court permanently enjoin Defendants from continuing to violate its free speech and due process rights.

37. PLN seeks permanent injunctive relief requiring Defendants to provide written notice to senders and an opportunity to respond before censoring their mail, and requiring the adoption of specific, constitutionally sufficient guidelines delineating what materials may be delivered to prisoners though the mail, as well as any other appropriate injunctive relief.

ATTORNEYS' FEES AND COSTS

38. Pursuant to 42 U.S.C. § 1988, PLN is entitled to recover attorneys' fees and litigation costs and expenses.

JURY DEMAND

39. In accordance with Federal Rule of Civil Procedure 38(b), PLN demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

THEREFORE, Prison Legal News requests the Court:

1. Declare that Defendants' censorship policies and practices are unconstitutional;
2. Grant a permanent injunction ordering Defendants to stop violating Plaintiff's rights to due process and free speech and press, requiring Defendants to provide written notice to senders and an opportunity to respond before censoring their mail, and requiring the adoption of

specific, constitutionally sufficient guidelines delineating what materials may be delivered to prisoners through the mail;

3. Award compensatory, nominal, and punitive damages against Defendants;
4. Grant reasonable attorneys' fees, litigation expenses, and court costs pursuant to 42 U.S.C. §1988; and
5. Grant all other and further relief as appears reasonable and just, to which PLN may be entitled.

Dated: October 7, 2013

Respectfully submitted,

/s/ Sean W. Kelly

Thomas S. Leatherbury
Texas Bar No. 12095275
Sean W. Kelly
Texas Bar No. 24065550
Kimberly R. McCoy
Texas Bar No. 24079492
Marissa A. Wilson
Texas Bar No. 24075626
VINSON & ELKINS LLP
2001 Ross Avenue, Suite 3700
Dallas, TX 75201-2975
Telephone: 214.220.7720
Facsimile: 214.999.7720
tleatherbury@velaw.com
skelly@velaw.com
kmccoy@velaw.com
mwilson@velaw.com

Scott Medlock
Texas Bar No. 24044783
Brian McGiverin
Texas Bar No. 24067760
TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Dr.
Austin, TX 78741
Telephone: 512.474.5073
Facsimile: 512.474.0726
smedlock@texascivilrightsproject.org
brian@texascivilrightsproject.org

Lance T. Weber
Admitted *Pro Hac Vice*
HUMAN RIGHTS DEFENSE CENTER
P.O. Box 1151
Lake Worth, FL 33460
Telephone: 561.360.2523
Facsimile: 866.228.1681
lweber@hrdc-law.org

Attorneys for Plaintiff Prison Legal News

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2013, a true and correct copy of the foregoing document was served by the notice of electronic filing generated by the Court's CM/ECF system.

/s/ Sean W. Kelly _____

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