

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION**

PRISON LEGAL NEWS , a project of the)	
HUMAN RIGHTS DEFENSE CENTER,)	
)	Case No. 2:13-cv-266
Plaintiff,)	
)	Judge J. Ronnie Greer
v.)	
)	
SULLIVAN COUNTY, TENNESSEE;)	
SULLIVAN COUNTY SHERIFF'S)	
OFFICE ; and J. WAYNE ANDERSON , in)	
his official and individual capacities,)	
)	
Defendants.)	JURY DEMAND

**FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND DAMAGES**

NATURE OF THE CASE

1. Plaintiff Prison Legal News, a project of the Human Rights Defense Center, hereby amends its Complaint in compliance with the Court's order denying preliminary injunctive relief, (Doc. 24).

2. Plaintiff brings this action to enjoin Defendants' censorship of Prison Legal News' monthly publication and correspondence mailed to prisoners who are held in custody at the Sullivan County Jail, in violation of the First Amendment and the Fourteenth Amendment's Due Process Clause. Defendants have adopted and implemented written mail policies and practices that violate the First Amendment by unconstitutionally restricting correspondence to prisoners to postcards only, and that prohibit delivery of book catalogs and magazines to

prisoners. Further, Defendants' policies and practices do not afford Prison Legal News due process, including notice and an opportunity to challenge the censorship, as required by the Fourteenth Amendment to the United States Constitution.

JURISDICTION AND VENUE

3. This action arises under the First and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343, and additionally under 28 U.S.C. § 2201, and 2202.

4. Venue is proper in the Eastern District of Tennessee under 28 U.S.C. § 1391 (b)(2) because a substantial part of the events complained of occurred in this District, and because the Defendants reside in this District.

PARTIES

5. Plaintiff Prison Legal News ("PLN") is a project of the Human Rights Defense Center ("HRDC"), a Washington Non-Profit Corporation. 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. PLN publishes and distributes a monthly journal of corrections news and analysis and certain books about the criminal justice system and legal issues affecting prisoners to prisoners, lawyers, courts, libraries, and the public throughout the Country. PLN also maintains a website (www.prisonlegalnews.org) and operates an email list. Prisoners of all types, family and friends of prisoners, and prisoner advocates are among the intended beneficiaries of PLN's activities.

6. Defendant Sullivan County is a municipality formed under the laws of the State of Tennessee. The official jail prisoner mail policies at issue in this case were the moving force behind the constitutional violations alleged herein.

7. The Sullivan County Sheriff's Office is a department of Sullivan County and operates the Sullivan County Jail located in Blountville, Tennessee. The Sullivan County Jail facility houses convicted prisoners and pretrial detainees.

8. Defendant J. Wayne Anderson is the Sheriff of Sullivan County. Sheriff Anderson is employed by and is an agent of Sullivan County and the Sheriff's Office. He is responsible for the operations of the Sullivan County Jail, and the training and supervision of the Jail staff who interpret and implement the Jail's mail policy for prisoners. He is the policymaker for the Jail policy governing mail for prisoners.

9. Each of the acts and omissions of the persons alleged herein were taken under color of state law and within the scope of their official duties as employees and officers of Sullivan County and the Sullivan County Sheriff's Office.

FACTUAL ALLEGATIONS

PRISON LEGAL NEWS

10. PLN publishes and distributes a soft-cover monthly journal and publishes and distributes paperback books about the criminal justice system and legal issues affecting prisoners.

11. Prison Legal News has thousands of subscribers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and other members of the public. PLN distributes its publication to prisoners and law libraries in approximately 2,200 correctional facilities across the United States, including the Federal Bureau of Prisons and the Tennessee Department of Corrections.

12. Prison Legal News engages in core protected speech and expressive conduct on matters of public concern, such as operations of prison facilities, prison conditions, prisoner health and safety, and prisoners' rights.

CENSORSHIP AND LACK OF DUE PROCESS

13. Defendants have rejected PLN's monthly publications, books, book catalogs, book offers, informational brochures, subscription forms, subscription renewal letters, fundraising letters, and online articles mailed to prisoners held in custody at the Sullivan County Jail. The mail items rejected by Defendants include, but are not limited to, the items identified below.

Monthly Publications and Books

14. Beginning on or about February 15, 2012, Prison Legal News sent its monthly journal to certain prisoners at the Sullivan County Jail by U.S. Mail on or about the 15th day of each month.

15. PLN's monthly journal is a 64-page publication titled *Prison Legal News*. It contains various articles on corrections news and analysis, about prisoner rights, court rulings, management of prison facilities and prison conditions.

16. Similarly, from February 2012 to May 2013, PLN mailed 46 copies of the book *Protecting Your Health & Safety: A Litigation Guide for Inmates* to 46 separate prisoners in custody at the Sullivan County Jail by U.S. Mail.

17. On information and belief, Defendants have censored and refused to deliver the *Prison Legal News* journals and the books that PLN sent to prisoner-addressees. For example, on or about February 2012, PLN personally addressed and mailed a copy of the book *Protecting Your Health & Safety* to prisoner Clovis Jones at the Sullivan County Jail. Mr. Jones was a

prisoner at the Sullivan County Jail at the time that the Jail received the book from PLN. The Jail refused to deliver the book to Mr. Jones and returned the book to PLN.

18. On or about February 15, 2012, PLN mailed a sample copy of the monthly journal *Prison Legal News* addressed individually to prisoner Christopher Hooker at the Sullivan County Jail. Mr. Hooker was a prisoner at the Sullivan County Jail at the time that the Jail received the copy of *Prison Legal News* in the mail from PLN. The Jail refused to deliver the journal to Mr. Hooker and returned it to PLN.

19. On or about February 15, 2012, PLN mailed a sample copy of the journal *Prison Legal News* individually addressed to prisoner Constance Gilbert at the Sullivan County Jail. Gilbert was a prisoner at the Sullivan County Jail at the time that the Jail received the sample *Prison Legal News* publication from PLN. The envelope was returned to PLN with the markings “Post cards only! Can not [sic] have.” The envelope arrived at PLN with those words struck through and replaced with writing that reads, “not here.”

20. On or about February 15, 2012, PLN mailed a sample copy of the journal *Prison Legal News* individually addressed to prisoner John Puckett at the Sullivan County Jail. Mr. Puckett was a prisoner at the Sullivan County Jail at the time that the Jail received the sample *Prison Legal News* magazine from PLN. On information and belief, Jail employees marked the envelope “Can not [sic] have [sic] post cards only!” The envelope returned to PLN had those words struck through and replaced with the words, “Not here!”

21. On or about March 15, 2012, PLN mailed the March 2012 *Prison Legal News* publication addressed to prisoner Jeffery Gragg at the Sullivan County Jail. Mr. Gragg was a prisoner at the Sullivan County Jail at the time that the Jail received the *Prison Legal News* publication from PLN. The Jail returned the publication to PLN.

22. Including the items listed above, from on or about February 15, 2012 through on or about September 15, 2012, PLN mailed approximately 200 individually addressed copies of its monthly journal, *Prison Legal News*, to 33 separate prisoners at the Sullivan County Jail. Each one of the 33 prisoners had also been mailed a copy of the book *Protecting Your Health & Safety* from PLN's offices.

23. On October 10, 2012, former Sullivan County inmate Joseph Samples notified Plaintiff that the Jail's major had refused to deliver the vast majority of the books PLN sent to prisoners and that the major kept approximately thirty copies of *Protecting Your Health & Safety* and approximately ninety copies of *Prison Legal News* on his desk, undelivered to inmate-addressees.

24. Beginning in October 2012, PLN mailed approximately ten copies of its monthly journal *Prison Legal News* individually addressed to approximately ten separate prisoners at the Sullivan County Jail, each of whom was a prisoner of the Jail at the time the Jail received the *Prison Legal News* publication from PLN. On information and belief, none of these monthly journals were delivered to the intended recipients under the "postcards-only" mail policy ("Policy I"), but these journals were instead censored by jail staff persons.

25. Additionally, PLN mailed 12 copies of the book *Protecting Your Health & Safety* to 12 separate prisoners at the Sullivan County Jail from on or about October 18, 2012. On information and belief, none of these books were delivered by Jail staff persons to the prisoners who were the intended recipients of the same, but said mail was censored by jail staff under Policy I.

26. PLN also mailed individually addressed letters from PLN Editor Paul Wright to 14 separate prisoners at the Sullivan County Jail on or about October 18, 2012. On information

and belief, none of the letters were delivered to the prisoners who were the intended recipients of the same, but said mail was censored by jail staff.

27. On or about October 22, 2012, PLN mailed its annual fundraiser letter to 14 separate prisoners at the Sullivan County Jail. On information and belief, none of these 14 letters were delivered to their intended recipients who were prisoners at the jail but were instead censored by jail staff persons.

28. Defendants did not provide PLN notice or an opportunity to appeal the censorship decisions.

29. Defendants did not provide the prisoner-addressees due process, including notice or an opportunity to appeal any of the aforementioned censorship decisions.

30. PLN intends to continue its mission to promote public safety through educational and journalistic avenues by sending its monthly journal, copies of books, and letters to prisoners at the Sullivan County Jail in the future.

Informational Brochures, Subscription Order Forms, Book Catalogs

31. Prison Legal News sent informational brochures about PLN and subscription order forms, book catalogs, and book offers to prisoners at the Sullivan County Jail in white standard #10 envelopes via first-class mail.

32. **Prison Legal News Brochure and Subscription Order Form:** Prison Legal News sent certain prisoners at the Sullivan County Jail an informational brochure about its organization and publications. The double-sided, single-page brochure includes: a description of the topics covered in PLN's monthly journal, subscription rates, special subscription offers, and an order form; a description of three books available for purchase or included with a subscription to *Prison Legal News – Protecting Your Health & Safety, With Liberty for Some: 500 Years of*

Imprisonment in America, and *Prison Profiteers: Who Makes Money from Mass Incarceration*; and other information about PLN's bookstore.

33. **Book Catalog:** Prison Legal News sent certain prisoners at the Sullivan County Jail its PLN Book List. The double-sided single page book list includes a description of 43 books, dictionaries, and resources materials available for purchase. The books available for purchase include information about a variety of topics, including but not limited to: the basic rights of prisoners regarding health and safety; the American criminal justice system; self-representation in court; finding the right lawyer; DNA testing; issues related to imprisoned women; developing a successful re-entry plan upon release from prison; searching for a job; crime and poverty; and the mental health crisis in U.S. prisons and jails.

34. **Book Offers:** Prison Legal News sent certain prisoners at the Sullivan County Jail a double-sided single-page informational brochure about two books for sale: *The Habeas Citebook: Ineffective Assistance of Counsel*, a handbook containing case citations, pleadings, and forms designed to help a prisoner seek habeas corpus relief; and *Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada*, a handbook on high school, vocational, paralegal, undergraduate, and graduate courses available through correspondence study.

35. Collectively, the PLN Brochure, Book List, and Book Offer described above in paragraphs 32 through 34 are referred to as "Informational Brochure Packs" below.

36. From on or about February 15, 2012 to May 15, 2013, Prison Legal News mailed 46 individually addressed Information Brochure Packs to 46 separate prisoners at the Sullivan County Jail, each of whom was a prisoner at the Sullivan County Jail at the time the Jail received the Informational Brochure Packs.

37. On information and belief, Defendants rejected each Informational Brochure Pack sent by PLN and did not deliver them to the prisoner-addressees.

38. For the Informational Brochure Packs that Defendants returned to Prison Legal News, Defendants simply wrote “RTS” or sometimes “not here.”

39. For example, PLN sent Ahmad Abdul-Khaaliq such a Brochure Pack in a standard, white envelope on December 19, 2012, but Jail employees marked “not here” and “RTS” and caused the brochures to be returned to PLN. On information and belief, Mr. Abdul-Khaaliq did not receive this mail from PLN even though he was a prisoner at the Sullivan County Jail at the time that the mail arrived at the jail.

40. On or about February 16, 2012, PLN mailed an Informational Brochure Packet addressed to prisoner Donald Wilcox at the Sullivan County Jail. Mr. Wilcox was a prisoner at the Sullivan County Jail at the time that the Jail received the packet from PLN. The Jail returned the mail to PLN without separate notification.

41. Inmate Nicholas Hillis requested PLN’s materials in January 2013. PLN sent Mr. Hillis an initial mailing including *Protecting Your Health & Safety* and other sample and informational materials in April 2013. On information and belief, Mr. Hillis’s copy of *Protecting Your Health & Safety* never reached him under Policy I.

42. Inmate Ryan Davis requested materials from PLN on or about April 30, 2012.

43. PLN mailed an Informational Brochure Pack to Mr. Davis, along with a sample copy of *Prison Legal News*, in June 2012. Mr. Davis received some materials, but he did not receive his monthly gift subscription to *Prison Legal News* while Policy I was in effect.

44. Defendants did not provide PLN due process notice or an opportunity to appeal the censorship decisions for any of the censored mail described in this Amended Complaint.

45. Likewise, Defendants did not provide the prisoner-addressees notice or an opportunity to appeal the censorship decisions for any of the mail described herein.

46. The Defendants failed to provide due process, including notice and an opportunity to be heard, to PLN and the prisoner-addressees.

47. Prison Legal News intends to continue sending Informational Brochure Packs to prisoners at the Sullivan County Jail in the future.

JAIL POLICIES

I. Policy I

48. On October 14, 2011 the Sullivan County Jail, on the orders of Defendant J. Wayne Anderson, promulgated and implemented a new policy governing mail to prisoners (“Policy I”).

49. The Jail’s Postcard-Only Mail Policy stated, in pertinent part:

As a general rule, incoming mail shall be limited to the Following:

1. Standard postcard, of which the minimum size is 3.5 x 4.25, and maximum size 8.5 x 11.
2. Postcards must be white in color front and back.

50. The Postcard-Only Mail Policy also stated, “If any items are received in the mail other than postcards, (ex. Stamps. envelopes) the mail will be returned to sender.”

51. Defendants have used their Postcard-Only Mail Policy to censor Plaintiff’s *Prison Legal News* journal, Informational Brochure Packs, Renewal Brochure Packs, Fundraising Packs, online articles, and other correspondence.

52. Defendants’ Policy I and their practice of enforcing this policy unconstitutionally burdens Plaintiff’s First Amendment rights, the First Amendment rights of other correspondents who send mail to prisoners confined at the Sullivan County Jail, the First Amendment rights of

the intended recipients of outgoing mail from prisoners confined at the Sullivan County Jail, and the First Amendment rights of prisoners at the Sullivan County Jail.

53. Defendant Anderson and other agents of Sullivan County are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, and for training and supervising the mail staff members whose conduct also has injured Plaintiff and others, or ratified or adopted the policies or actions described herein.

II. Policy II

54. During the course of this litigation and days after the filing of the Complaint in this action was reported by the local press, (*see, e.g.*, Matthew Lane, “Group files lawsuit against Sullivan County Sheriff’s office, Anderson,” *TIMES NEWS* (Oct. 29, 2013), *available at*: <<http://www.timesnews.net/article/9069259/group-files-lawsuit-against-sullivan-county-sheriffs-office-anderson>>), and by the Tennessee Bar Association, (*see* Brittany Sims, “Group Files Lawsuit against Sullivan County Sheriff’s Office,” *TENN. BAR ASS’N* (Oct. 30, 2013), *available at*: <<http://www.tba.org/news/group-files-lawsuit-against-sullivan-county-sheriff-s-office>>), Defendants issued and promulgated a new policy for jail mail (“Policy II”).

55. Policy II went into effect on November 4, 2013. (*See* Docs. 15-3, 24 at 3).¹

56. Policy II abandoned the postcards-only policy and returned to accepting regular mail.

57. Policy II, like Policy I, is silent as to magazines. (*See* Doc. 24 at 3).

58. Section IV of Policy II, regarding “Mail Rejection,” remained unchanged from Policy I.

¹ While the effective date for Policy II is listed on the policy as November 4, 2013, Defendant Anderson did not sign the policy until November 5, 2013. (*See* Doc. 15-3 at 3).

59. The “Mail Rejection” section of Policy II fails to provide any due process protections to senders.

60. The “Mail Collection and Delivery” section of Policy II fails to provide any due process protections to senders or recipients.

61. Defendants’ failure to provide for adequate due-process protections continues to cause Plaintiff irreparable harm and denial of their constitutional rights.

62. Defendants’ Policy II and their practice of enforcing this policy unconstitutionally burdens Plaintiff’s First Amendment rights, the First Amendment rights of other correspondents who send mail to prisoners confined at the Sullivan County Jail, the First Amendment rights of the intended recipients of outgoing mail from prisoners confined at the Sullivan County Jail, and the First Amendment rights of prisoners at the Sullivan County Jail.

III. Content-Based Discrimination

63. Additionally, Defendants have maintained a policy and practice of permitting other magazines into the Jail while censoring Plaintiffs’ materials.

64. Specifically, Defendants have allowed inmates access to *O Magazine*, *Men’s Journal*, *Glamour*, *Outdoor Life*, *Field & Stream*, *Hot Rod*, *Us*, and *Star* magazines.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

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

66. 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

Sullivan County Jail, and the rights of prisoners confined at the Sullivan County Jail, under the First Amendment to the United States Constitution, through 42 U.S.C. § 1983.

67. The acts described above have caused damages to Plaintiff, and will continue to cause damage.

68. Plaintiff seeks declaratory and injunctive relief and nominal and compensatory damages against all Defendants and additionally, punitive damages against Defendant Anderson in his individual capacity.

COUNT II
VIOLATION OF THE DUE PROCESS CLAUSE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

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

70. The acts described above constitute violations of Plaintiff's rights, and rights of other correspondents who have attempted to or intend to correspond with prisoners at the Sullivan County Jail, and the rights of prisoners confined at the Sullivan County Jail, under the Fourteenth Amendment to the United States Constitution through 42 U.S.C. § 1983.

71. The due-process protections for both Policy I and Policy II are facially unconstitutional.

72. The acts described above have caused damages to Plaintiff, and will continue to cause damage.

73. Plaintiff seeks declaratory and injunctive relief and nominal and compensatory damages against all Defendants. Plaintiff seeks punitive damages solely against Defendant Anderson in his individual capacity.

COUNT III
CONTENT-BASED DISCRIMINATION
FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

74. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

75. The Jail permits inmates to have access to eight other periodical publications without interference.

76. The magazines accessible to inmates are on a range of entertainment, gossip, lifestyle, and sports topics. By permitting access to periodicals such as *O Magazine*, *Field and Stream*, and *Outdoor Life*, while banning access to core political speech such as PLN's monthly magazine, Defendants engaged in unlawful discrimination based on content.

77. The actions described above have caused PLN damage, and will continue to cause damage.

78. PLN is entitled to punitive, compensatory, presumed, and nominal damages, as well as injunctive and declaratory relief, for Defendants' content-based discrimination, and additionally, punitive damages against Defendant Anderson in his personal capacity.

INJUNCTION ALLEGATIONS

79. Defendants' unconstitutional policy, practices, and customs, pursuant to Policy II, are ongoing and continue to violate Plaintiff's constitutional rights and the rights of other correspondents and prisoners, and as such there is no adequate remedy at law.

80. Plaintiff is entitled to preliminary and then permanent injunctive relief prohibiting Defendants from failing to provide adequate due-process protections to Plaintiff, including notice and a reasonable opportunity to appeal rejection decisions to an independent decision-maker for both incoming and outgoing mail.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiff requests relief as follows:

1. Enter an order granting a preliminary injunction and a permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief.
2. A declaration that Defendants' policies, practices, and customs violate the Constitution.
3. An award of nominal, punitive, compensatory, and presumed damages for each violation of its First Amendment rights to free speech and expression in an amount to be proved at trial.
4. An award of nominal, punitive, and compensatory damages for each violation of its Fourteenth Amendment rights to due process in an amount to be proved at trial.
5. Costs, including reasonable attorney's and expert fees, under 42 U.S.C. § 1988, and under other applicable law.
6. Pre-judgment and post-judgment interest.
7. The right to conform the pleadings to the proof and evidence presented at trial.
8. Such other relief as the Court deems just and equitable.

Dated: March 26, 2015

Respectfully submitted,

By: s/ Tricia Herzfeld
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CERTIFICATE OF SERVICE

I certify that I caused the foregoing filing to be served upon the following attorneys of record for Defendants by operation of the Court's ECF/CM system on March 26, 2015:

Daniel P. Street, Sullivan County Attorney
P.O. Box 509
Blountville, TN 37617

s/Tricia R. Herzfeld