

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

OCT 22 2007

JAMES E. HATTEN, Clerk
Deputy Clerk

PRISON LEGAL NEWS,)
)
Plaintiffs,)
)
vs.)
)
FULTON COUNTY, GA and)
SHERIFF MYRON FREEMAN,)
individually and in his official)
capacity as Fulton County Sheriff,)
)
Defendants.)
-----)

CIVIL ACTION
FILE NO. _____

1:07-CV-2618

CAP

COMPLAINT

COME NOW Plaintiffs PRISON LEGAL NEWS files this action challenging Fulton County, Georgia and Fulton County Sheriff Myron Freeman's policy barring prisoners' receipt of any and all books, magazines, and newspapers (other than religious publications). This policy is challenged both on its face, and as applied to *Prison Legal News*. Despite an order in *Daker v. Barrett*, No. 1:00-CV-1065-RWS (July 22, 2002) finding this Reading Materials Policy unconstitutional, the policy is still being applied as to *Prison Legal News*, whose subscribers' copies of the publication are being returned to the sender or destroyed.

JURISDICTION

1.

This action arises under the authority vested in this Court by virtue of 42 U.S.C. §§ 1983 & 1985, 28 U.S.C. § 1331, 28 U.S.C. §§ 2201 & 2202, 28 U.S.C. § 1343(3) and 28 U.S.C. § 1367 (pendent jurisdiction). Venue is proper in this Court.

PARTIES

2.

Plaintiff PRISON LEGAL NEWS publishes a subscriber based publication for inmates, lawyers and advocates about prison issues in the United States and abroad.

3.

Defendant FULTON COUNTY oversees and is responsible for the Fulton County Jail. Defendant MYRON FREEMAN is the Fulton County Sheriff and is responsible for establishing final policies and procedures for the Fulton County Jail relating to inmate mail.

FACTUAL ALLEGATIONS

Prison Legal News

4.

Prison Legal News (PLN) is an independent, monthly magazine that provides review and analysis of prisoner rights, court rulings and news about prison issues.

PLN has a national focus on both state and federal prison issues, with international coverage as well. PLN provides information that enables prisoners and other concerned individuals and organizations to seek the protection and enforcement of prisoner's rights at the grass roots level.

5.

PLN began operations in 1990 and is a 501(c)(3) non-profit organization. PLN's business office is located in Seattle, Washington. PLN's editorial office is located in Brattleboro, Vermont.

6.

PLN is primarily funded by subscription and advertising revenue and book sales and individual donations.

7.

PLN's coverage includes articles regarding court access, disciplinary hearings, prison conditions, excessive force, mail censorship, jail litigation, visiting, telephones, religious freedom, free speech, prison rape, abuse of women prisoners, retaliation, the Prison Legal Reform Act (PLRA), medical treatment, AIDS, the death penalty, control units, attorney fees and much more.

8.

As of October, 2007, PLN has a circulation of approximately 6,700 hardcopy issues per month. PLN also has subscribers in European and Asian countries. About 65% of PLN's subscribers are state and federal prisoners. The balance of PLN's subscribers include civil and criminal trial and appellate attorneys, public defender agencies, judges, journalists, academics, paralegals, public and university libraries, prison law libraries, investment bankers, prison rights activists, students, family members of prisoners and concerned private individuals. State-level government officials also subscribe to PLN, including attorney generals, prison wardens, and members of other prisoner related agencies. PLN has prisoner subscribers in all fifty states. Based on PLN's November 2005 reader survey each subscriber's magazine is read by an average of almost 9 people, so the monthly readership of PLN is around 60,000.

9.

PLN has "regular" writers and also solicits and publishes articles written by other writers, many of them in prison. Authors who have published in PLN include: Noam Chomsky, Dan Savage, William Kunstler and Ron Kuby, Mumia Abu-Jamal, Ken Silverstein, Jennifer Vogel, Adrian Lomax, Raymond Luc Levasseur, John Perotti, Willie Wisely, Christian Parenti, William Greider, and Noelle Hanrahan.

Fulton County Mail Policy

10.

The Fulton County Jail has a policy, adopted and/or ratified by Defendant-Freeman as final decision-maker for Defendant Fulton County, that reading materials mailed to inmates are returned to the sender or destroyed without notice to the inmate-subscriber. The policy provides: *“Books, magazines, and newspapers for inmates shall not be accepted. The only exceptions are religious publications (soft covered), that is [sic] ordered directly from the publisher or provided by approved religious groups. Copies of books or publications, etc., shall not be accepted.”* (hereinafter “Reading Materials Policy”) (Policy V (J)(1) titled “Inmate Mail Procedures” dated January 1, 2002) (A true and correct copy of the policy is attached as Exhibit A). This policy was continued, affirmed and/or ratified by Defendant Freeman by order dated January 3, 2005. (A true and correct copy of this Memoranda is attached as Exhibit B).

11.

The Reading Materials Policy was challenged by an inmate, and found to be unconstitutional in *Daker v. Barrett*, No. 1:00-CV-1065-RWS. (A true and correct copy of the Court’s Order of July 22, 2002 is attached as Exhibit C).

12.

Clearly established law dictates the unconstitutionality of the Reading Materials Policy.

13.

Since the *Daker* decision, Defendants have failed to abandon the Reading Materials Policy. Several inmates have filed additional lawsuits challenging the policy, and continued denial of reading materials. *See, e.g., Daker v. Barrett*, No. 1:05-MI-0398 (Dec. 28, 2005); *Robertson v. Freeman*, No. 1:06-CV-01940-CAM (Aug. 1, 2006).

14.

PLN has several subscribers to its publication housed in the Fulton County Jail. These inmates are sent copies of PLN by standard rate and first-class mail.

15.

These subscribers have not received their copies of PLN, and have reported filing grievances concerning the publication ban.

16.

Copies of PLN, sent to inmate-subscribers, have been returned to PLN by the Defendants or destroyed. PLN has also been informed by subscriber-inmates that

hey have not received copies of PLN. PLN is only aware of one copy of its publication reaching a subscriber in the Fulton County Jail in the last year. At no point has PLN been provided with notice that its publications are being banned nor provided with an opportunity to administratively appeal said decisions.

17.

PLN has suffered financial damages, as well as particularized loss of their constitutional rights.

18.

Because Defendant-Freeman has continued to engage in the constitutionally impermissible Reading Materials Policy for several years since a finding of unconstitutionality, and in the face of several lawsuits and grievances, punitive damages are available due to his reckless, and deliberate indifference to constitutional rights and his actual knowledge of continued enforcement of unconstitutional policies.

19.

All actions of defendants were under color of law and pursuant the policies and procedures of Fulton County.

CAUSES OF ACTION

20.

Each and every allegation is incorporated herein for each claim for relief.

21.

Plaintiff has a free speech and press right to communicate with inmates through the distribution of *Prison Legal News* and inmates retain a right to receive the publication under the United States and Georgia Constitutions' free speech, free press and due process clauses.

22.

The Fulton County Jail's absolute ban on subscription publications is in violation of the free expression protections of the United States and Georgia Constitutions.

23.

There are no individualized determinations made about particular publications by the Fulton County Jail.

24.

A blanket prohibition on receipt of publications intended for delivery to and receipt by a prisoner is presumptively unconstitutional.

25.

The Fulton County Jail's absolute ban on subscription publications is (1) overbroad and overinclusive, (2) arbitrary and capricious, (3) not reasonably related to legitimate penological interests and (4) gives unbridled discretion to licensing authorities in violation of the Due Process and Free Speech and Press protections of the United States and Georgia Constitutions.

26.

The Fulton County Jail's absolute ban on subscription publications is not rationally related to a legitimate, neutral government objective, there are no alternate means for Plaintiffs or inmates to express themselves, the accommodation of the constitutional rights asserted will not have a detrimental impact on prison staff, inmates and the allocation of jail resources and the outright ban is an exaggerated response to prison concerns.

27.

The Fulton County Jail's ban on subscription publications does not bear a logical connection between any asserted governmental interests and is too broad to render its absolute ban rational.

28.

The handful of publications in the Fulton County Jail library, primarily works of fiction provided when an inmate trustee pushes a cart through each zone periodically, provide insufficient alternative reading material for inmates, and Plaintiff has no alternative manner for communicating with their subscribers. On information and belief, no magazines or newspapers are available in the jail library and the *Atlanta Constitution* is the only publication sold in the jail commissary.

29.

Defendants cannot articulate or particularize a detrimental impact on prison staff, inmates or prison resources that would justify either the blanket ban or a particular ban on the distribution of the *Prison Legal News*. Distribution of publications through the regular mail distribution procedures would not create an excessive burden.

30.

The Fulton County Jail's absolute ban on subscription publications is an exaggerated response in light of obvious alternatives such as (1) a "publishers only rule," (2) individualized determinations for security concerns, (3) utilization of disciplinary action if particular inmates abuse the mail/publications process.

31.

The Fulton County Jail's absolute ban on subscription publications is also accompanied by a failure to notify inmates or PLN that publications have been rejected. The failure to notify inmates and PLN of the denial of publications impact the Plaintiff who has undertaken financial expense to maintain subscribers and to ensure delivery of the *Prison Legal News*. This failure to notify subscribers or Plaintiff or to provide a reasonable opportunity to challenge decisions to refuse distribution of publications to a neutral decision-maker not involved in the initial decision violates procedural due process requirements of the United States and Georgia Constitutions.

32.

The Reading Materials Policy states one exception to the absolute ban: "The only exceptions are religious publications (soft covered), that is ordered directly from the publisher or provided by approved religious groups." This exception renders the Reading Materials Policy a content-based restriction on speech that favors religious expression in violation of the free expression, equal protection and separation of church and state provisions of the United States and Georgia Constitutions.

33.

The case law is clear as to the constitutional claims, and a previous decision held that the Defendants conduct was unlawful over five years ago. Defendant Freeman, individually, is not entitled to qualified immunity and his actions meet the requirements for punitive damages. Damages are not sought against Defendant-Fulton County.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant the following relief:

(1) Declaratory judgment that the Fulton County Jail's Reading Materials Policy, an absolute ban on subscription publications and the practice of no due process notice when publications are banned, violates the Free Expression and Due Process clauses of the United States and Georgia Constitutions;

(2) Preliminary and Permanent Injunctive Relief against further enforcement of the Fulton County Jail's Reading Materials Policy;

(3) Preliminary and Permanent Injunctive Relief permitting distribution of the *Prison Legal News*;

(4) Preliminary and Permanent Injunctive Relief requiring notification to PLN of any failure to distribute copies of the *Prison Legal News*;

(5) Damages against Defendant-Freeman in his individual capacity in an amount to be determined by a jury;



(6) Reasonable attorneys' fees, expenses and costs of litigation pursuant to 42 U.S.C. § 1988 and other applicable laws; and

(7) Such further relief as this Court deems just and proper.

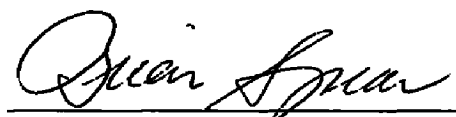
DATED: This the 22nd day of October, 2007.

Respectfully submitted,

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