



Rouge Parish Prison detainees. These policies and practices violate plaintiffs' rights to due process of the law, protected by the Fourteenth Amendment to the U.S. Constitution.

The law on these issues is well-established. Defendants have acted in an arbitrary and unreasonable manner in contravention of over thirty years of well-settled case law.

### **Statement of Claims**

1. Plaintiffs Prison Legal News and Human Rights Defense Center bring this civil rights action for redress of violations of their right to free speech and expression and due process under the law, seeking injunctive and declaratory relief, as well as damages.

2. At all relevant times, defendants have acted under color of law and in the course and scope of their employment. Defendants have violated and continue to violate plaintiff's constitutional rights protected by the First and Fourteenth Amendments to the U.S. Constitution. The actions of the defendants have caused and continue to cause injuries to the plaintiffs, as described herein.

### **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 as the events complained of occurred within this district.

### **Parties**

5. Plaintiff Prison Legal News (hereafter referred to as PLN) is a monthly magazine distributed across the nation to prisoners, attorneys, judges, law libraries and other subscribers. Plaintiff PLN is also a book distributor, specializing in books and self-help

materials regarding prisoner's rights and issues related to the criminal justice and corrections systems. Plaintiff PLN is a project and wholly owned subsidiary of the plaintiff Human Rights Defense Center (HRDC) which is a non-profit, tax exempt (IRS § 501(c)(3)) corporation. HRDC's mission is centered on public education, prisoner education, advocacy, and outreach in support of prisoners' rights and in furtherance of basic human rights. HRDC is the publisher of PLN the magazine. PLN's primary offices are in Brattleboro, Vermont.

6. Defendant Sheriff Sid J. Gautreaux is the elected Sheriff of East Baton Rouge Parish. He has overall responsibility for the policies, procedures, operation and supervision of the East Baton Rouge Parish Sheriff's Office, its employees, agents and assigns, including all correctional facilities under the control of his office, including the East Baton Rouge Parish Jail (hereinafter, "the parish prison"). Defendant Gautreaux is a final policymaker for the East Baton Rouge Parish Sheriff's Office and the parish prison. He is sued in his official and individual capacity. He is a resident, of full age of majority, of the Middle District of Louisiana.

7. Defendant Dennis Grimes is an employee of the East Baton Rouge Sheriff's Office, acting under the direction and supervision of Defendant Gautreaux. He is the warden of the parish prison. He has responsibility for the policies, procedures, operation and supervision of the parish prison, its employees, agents and assigns, including receipt and distribution of books, magazines and other materials to detainees. On information and belief, Defendant Grimes is a final policymaker for the parish prison. He is sued in his official and individual capacity. He is a resident, of full age of majority, of the Middle District of Louisiana.

8. Defendant Max Schiele is an employee of the East Baton Rouge Sheriff's Office, acting under the direction and supervision of Defendants Gautreaux and Grimes. He is the deputy warden of the parish prison. He has responsibility for the policies, procedures, operation and supervision of the parish prison, its employees, agents and assigns, including receipt and distribution of books, magazines and other materials to detainees. On information and belief, Defendant Schiele is a final policymaker for the parish prison. He is sued in his official and individual capacity. He is a resident, of full age of majority, of the Middle District of Louisiana.

9. Defendant Johnny Scott is an employee of the East Baton Rouge Sheriff's Office, acting under the direction and supervision of Defendants Gautreaux and Grimes. He is the chief of security of the parish prison. He has responsibility for the policies, procedures, operation and supervision of the parish prison, its employees, agents and assigns, including receipt and distribution of books, magazines and other materials to detainees. On information and belief, Defendant Scott is a final policymaker for the parish prison. He is sued in his official and individual capacity. He is a resident, of full age of majority, of the Middle District of Louisiana.

10. Defendant J. Doe 1 is an employee of the East Baton Rouge Sheriff's office acting under the direction and supervision of Defendants Gautreaux, Grimes, and Scott. S/He is a supervisory official at the parish prison responsible for implementation of the policies, procedures and operations of the parish prison regarding mail receipt and distribution of books, magazines and other reading materials to prisoners. Defendants Doe 1 also supervises East Baton Rouge Sheriff's Office Employees, agents and assigns with duties related to mail receipt and distribution to detainees. S/He is sued in his

official and individual capacity. S/He is a resident, of full age of majority, of the Middle District of Louisiana.

11. Defendant J. Doe 2 is an employee of the East Baton Rouge Sheriff's office in the rank Lieutenant acting under the direction and supervision of Defendants Gautreaux, Grimes, and Scott. S/He is a supervisory official at the parish prison responsible for the daily operation of the prison mailroom. His / her responsibilities include sorting, opening, and distributing incoming mail, processing and directing outgoing mail from the parish prison, retrieving from parish prison mailboxes inmates' outgoing mail, grievance forms, request forms and distributing accordingly, receiving sorting and distributing packages to inmates, processing incoming and outgoing certified mail, screening of all incoming inmate mail for contraband and holding contraband for disposal and / or pick up by sender, allowing inmates to receive only soft cover books of appropriate subject matter mailed from book retailers, and enforcing the parish prison's current prohibition on magazines. Defendant Lt. Doe 2 also supervises East Baton Rouge Sheriff's Office Employees, agents and assigns with duties related to mail receipt and distribution to detainees. S/He is sued in his official and individual capacity. S/He is a resident, of full age of majority, of the Middle District of Louisiana.

12. Defendant J. Doe 3 is an employee of the East Baton Rouge Sheriff's office acting under the direction and supervision of Defendants Gautreaux, Grimes, Scott, and J. Doe 1. S/He is responsible for implementation of the policies, procedures and operations of the parish prison regarding mail receipt and distribution of books, magazines and other reading materials to prisoners. Defendant Doe 3 also supervises East Baton Rouge Sheriff's Office Employees, agents and assigns with duties related to mail receipt and

distribution to detainees. S/He is sued in his official and individual capacity. S/He is a resident, of full age of majority, of the Middle District of Louisiana.

### **Statement of Facts**

13. Plaintiff's publish and distribute a monthly 56-page legal information magazine entitled "Prison Legal News" (PLN the magazine) dealing with the rights of incarcerated individuals. Each monthly issue of PLN the magazine provides updates on legal cases and court decisions, as well as 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 related topics. PLN the magazine has been published continuously since 1990. The publication is core-protected speech, which is not objectionable on security or other grounds. PLN has approximately 7,000 subscribers nationwide, including prisoners, attorneys, judges, public libraries, and members of the general public. PLN distributes its publication to prisoners and law libraries in approximately 2,200 correctional facilities across the United States.

14. Plaintiffs also publish and distribute approximately fifty (50) legal and self-help books by other publishers, regarding the criminal justice system. These reading materials are designed to foster a better understanding of criminal justice policies and issues and to allow prisoners to educate themselves about basic related issues including legal research, how to write a business letter, health care issues and similar topics. Subscribers to PLN the magazine at the parish prison were also sent a copy of the soft-cover book, "Protecting Your Health and Safety: Prisoners' Rights", (hereafter "Protecting Your

Health and Safety”) published by the Southern Poverty Law Center (SPLC), based in Montgomery, Alabama.

15. Beginning on January 15, 2011, and continuing to the present, plaintiffs have sent PLN the magazine to prisoners in the parish prison. Plaintiffs have sent each prisoner, monthly, a copy of PLN the magazine, postage pre-paid, via U.S. mail.

16. Defendant Sheriff Gautreaux has adopted a policy and practice, implemented by and through defendants and other East Baton Rouge Sheriff’s Office employees and staff, that impermissibly infringes upon plaintiffs’ rights to distribute its magazines to prisoners confined in the parish prison.

17. Defendant Sheriff Gautreaux’s policy, as obtained pursuant to the Louisiana Public Records Act, provides in the section entitled “I. Package Regulations” that “Permissible Items” include, “1. All books including Bibles must be soft cover. 2. All books must be mailed from the publisher or store where purchased. No more than 10<sup>1</sup> per package.” Under the heading, “Items not Permitted,” the policy states, “1. Magazines and periodicals are not permitted.”<sup>2</sup>

18. The defendants’ policy creates a blanket ban on all magazines and periodicals, with no provision for an individualized evaluation of each magazine or periodical. In addition, defendants’ policy does not provide for any notice of the censorship and exclusion to the sender, it does not provide any explanation for the censorship and exclusion, nor does the defendants’ policy provide for any opportunity for the sender or the intended recipient to appeal or challenge the censorship decision.

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<sup>1</sup> An “Addendum to Inmate Rules and Regulations Handbook” dated 1/27/2010, states, “Package Regulations #2 will be amended as follows: All books must be mailed from the publisher or store where purchased. No one more than 5 per package.”

19. Plaintiffs have sent copies of PLN the magazine to subscribers at the parish prison. Beginning on or around March 1, 2011, plaintiffs began receiving returned copies of PLN the magazine from the parish prison.

20. For each of the censored and excluded copies of PLN the magazine returned to plaintiffs, defendants provided no legitimate basis for exclusion, and no opportunity for an appeal of the rejection.

21. In April 2011, plaintiffs received eleven (11) returned copies of the March 2011 issue of PLN, sent to prisoners at the parish prison. Each of these issues was stamped, "Magazines Not Allowed" and a sticker indicating a return to sender fee of fifty (50) cents.

22. In May 2011, plaintiffs received eleven (11) returned copies of the April 2011 issue of PLN, sent to prisoners at the parish prison. Each of these issues was stamped, "Magazines Not Allowed" and had sticker stating, "Refused" and "Return to Sender."

23. In June 2011, plaintiffs received ten (10) returned copies of the May 2011 issue of PLN, sent to prisoners at the parish prison. Again, each of the magazines was stamped with "Magazines Not Allowed" and "Refused" and "Return to Sender." Plaintiffs also received ten (10) returned copies of the June 2011 issue of PLN, sent to prisoners at the parish prison. Each of these magazines had the "Refused" and "Return to Sender" sticker on them. One magazine had the hand-written notation, "refused."

24. In August 2011, plaintiffs received twelve (12) returned copies of the July 2011 issue of PLN, sent to prisoners at the parish prison. Each of the magazines was stamped, "Magazines Not Allowed" and "Return to Sender." The magazines also had a sticker stating, "Refused." Plaintiffs also received eleven (11) returned copies of the August



2011 issues of PLN the magazine, sent to prisoners at the parish prison. Each of these issues had a sticker indicating, “Refused” and “Return to Sender.”

25. In October 2011, plaintiffs received eighteen (18) returned copies of the September 2011 issue of PLN, sent to prisoners at the parish prison. Each of the returned copies of the magazines had been stamped “Magazines Not Allowed” and had a sticker indicating, “Refused” and “Return to Sender.”

26. In November 2011, plaintiffs received seventeen (17) returned copies of the October 2011 issue of PLN, sent to prisoners at the parish prison. Each of the returned copies of the magazines had the sticker, “Refused” and “Return to Sender.”

27. In December 2011, plaintiffs received eighteen (18) returned copies of the November 2011 issue of PLN, sent to prisoners at the parish prison. Each of the returned copies of the magazines had been stamped, “Magazines Not Allowed” and had the sticker, “Refused” and “Return to Sender.”

28. Defendants have not offered any content based explanation or basis for censoring and excluding PLN, nor have defendants provided any mechanism for appealing the rejections.

29. Plaintiffs have sent in additional copies of PLN the magazine, which have not been returned. For those missing copies of the magazine, defendants provided no information at all regarding whether the magazines were censored and excluded or the basis for such censorship and exclusion.

30. On information and belief, defendants are not making individualized determinations about the content of each publication before censoring and excluding them, in violation of clearly established First Amendment law.

31. The censorship and exclusion of the magazine by defendants is arbitrary and void of any constitutionally valid standards or criteria.

32. The contents of PLN the magazine are protected speech and expression and these publications have been unlawfully censored and excluded by defendants.

33. The defendants' written policy that "Magazines and periodicals are not permitted" is void for overbreadth and vagueness.

34. Plaintiffs have not been provided with adequate notice regarding the censorship and exclusion of their magazine, nor have plaintiffs been provided with a meaningful opportunity to be heard or to contest the decisions of the defendants, which prevent individuals in custody at the parish prison from receiving the plaintiffs' publications.

35. Defendants' policy and practice fails to provide plaintiffs with any alternative means of exercising plaintiff's rights to free speech and expression in distributing plaintiffs' publications and exchanging information with their readership, customers and supporters of otherwise legal reading materials. Accommodation of the free speech, free expression and due process rights of plaintiffs with respect to materials protected by the First and Fourteenth Amendments to the U.S. Constitution, will not have any significant impact on the operation and security of the parish prison.

36. Defendants know, should have known, or must have known that their policies and practices were unconstitutional and violated plaintiffs' rights to free speech, expression and due process.

37. Defendants' actions, as described herein, were done willfully, wantonly, maliciously and / or with reckless disregard for plaintiff's constitutional rights.

38. Due to the defendants' actions as described herein, the plaintiffs have suffered damages, including violation of the plaintiffs' constitutional rights, including the right to disseminate plaintiffs' message, loss of potential subscribers, customers, correspondents and supporters, diversion of resources, loss of reputation, and other damages to be shown at trial.

39. Due to the defendants' actions as described herein, the plaintiffs have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

### **Cause of Action I**

#### **Freedom of Speech and Expression**

40. Plaintiffs re-allege and incorporate paragraphs 1 through 39 herein.

41. Defendants' policy and practice of arbitrary and unlawful exclusion of "Prison Legal News" the magazine distributed by plaintiffs, violates plaintiffs' rights of free speech and expression secured by the First and Fourteenth Amendments to the U.S. Constitution.

42. Plaintiffs have a constitutionally protected liberty interest in communicating with incarcerated individuals. This right is clearly established under existing case law.

43. The defendants' blanket ban on all magazines and periodicals, permits the censorship and exclusion of reading material unrelated to any legitimate penological interest, without any individualized determination based on content, in violation of the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution.

44. Defendants' mail policies and practices are overbroad and do not further any legitimate penological interest.

### **Cause of Action II**

#### **Due Process of Law**

45. Plaintiffs re-allege and incorporate paragraphs 1 through 39 herein.

46. Defendants' policy and practice regarding censorship and exclusion of publications protected by the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution and published and distributed by plaintiffs, fails to provide adequate notice and an opportunity to be heard, in violation of the Due Process Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution. This existing right is clearly established under decades of well settled law.

47. Defendants' failure and refusal to consistently provide plaintiffs with adequate notice of the censorship and exclusion of plaintiff's literature and an opportunity to be heard does not further any legitimate penological interest.

#### **Prayer for Relief**

THEREFORE, plaintiffs request that the Court:

1. Declare that the rights of the plaintiffs were violated by the defendants and that the defendants' policies and practices are unconstitutional;
2. Grant a preliminary injunction and a permanent injunction preventing defendants from continuing to violate plaintiffs' rights now and in the future;;
3. Award nominal, compensatory and punitive damages against the defendants;
4. That this matter be tried before a jury;

5. Grant reasonable attorneys' fees, litigation expenses and court costs pursuant to 42 U.S.C. § 1988; and
6. Grant all other and further relief as appears reasonable and just, to which plaintiffs may be entitled.

Respectfully submitted,



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