

US DISTRICT COURT
WESTERN DIST ARKANSAS
FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS

AUG 21 2017

HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

BAXTER COUNTY, ARKANSAS; JOHN MONTGOMERY, Sheriff, in his individual and official capacities; BRAD LEWIS, Jail Administrator, in his individual and official capacities; SGT. ERIC NEAL, in his individual and official capacities; and DOES 1-10, in their individual and official capacities,

Defendants.

DOUGLAS F. YOUNG, Clerk
By
Deputy Clerk

Case No.

17-3070 TLB

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES UNDER THE CIVIL
RIGHTS ACT, 42 U.S.C. § 1983

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff, Human Rights Defense Center (“HRDC” or “Plaintiff”), for its complaint against Defendants alleges and states as follows:

I. INTRODUCTION

2. HRDC brings this action to enjoin Defendants’ censorship of its publications and other correspondence mailed by its publishing project Prison Legal News (“PLN”) to prisoners held in the Baxter County Jail and Detention Center. Defendants’ mail policies and practices unconstitutionally prohibit delivery of Plaintiff’s magazines, books, and enveloped mail to prisoners housed in Defendants’ jail facility, in violation of the First Amendment to the United States Constitution. Defendants’ policies and practices also deny due process of law to senders whose mail is censored, such as Plaintiff, by failing to provide notice of and an opportunity to challenge each instance of censorship as required by the Fourteenth Amendment to the United States Constitution.

II. JURISDICTION AND VENUE

3. This action is brought pursuant to 28 U.S.C. §1331 (federal question), as this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. §1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. §1983.

4. Venue is proper under 28 U.S.C. §1391(b). On information and belief, at least one Defendant resides within this judicial district, and the events giving rise to the claims asserted herein occurred within this judicial district.

5. Plaintiff's claims for relief are predicated upon 42 U.S.C. §1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to the Plaintiff by the First and Fourteenth Amendments to the U.S. Constitution and laws of the United States.

6. This Court has jurisdiction over claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

7. Plaintiff's claim for attorneys' fees and costs is predicated upon 42 U.S.C. §1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. §1983.

8. Plaintiff is informed, believes, and therefore alleges that in engaging in the conduct alleged herein, Defendants acted with the intent to injure, vex, annoy, and harass Plaintiff, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights with the intention of causing Plaintiff injury and depriving it of its constitutional rights.

9. As a result of the forgoing, Plaintiff seeks compensatory and punitive damages against the individual Defendants.

III. PARTIES

10. The Human Rights Defense Center is a not-for-profit charitable organization recognized under §501(c)(3) of the Internal Revenue Code, incorporated in the state of Washington and with principal offices in Lake Worth, Florida. PLN is a wholly-owned project and the publishing arm of the HRDC. The purpose of HRDC, as stated in its Articles of Incorporation, is to educate prisoners and the public about the destructive nature of racism, sexism, and the economic and social costs of prisons to society. HRDC, through its publishing project, engages in core protected speech and expressive conduct on matters of public concern, such as the operation of prison facilities, prison conditions, prisoner health and safety, and prisoners' rights. Plaintiff's publications contain political speech and social commentary, which are core First Amendment rights and are entitled to the highest protection afforded by the U.S. Constitution. For more than 26 years, the focus of HRDC's mission has been public education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally-guaranteed and other basic human rights. HRDC's mission, if realized, has a salutary effect on public safety.

11. Defendant Baxter County, Arkansas (the "County") is a unit of government organized and existing under the laws of the State of Arkansas. The County operates the Baxter County Jail and Detention Center ("BCDC"), and is and was responsible for adopting and implementing mail policies governing incoming mail for prisoners at that facility.

12. Defendant John Montgomery is the Sheriff of Baxter County, Arkansas. Defendant Montgomery is employed by and is an agent of the County. He is responsible for overseeing the management and operations of the BCDC, and for the hiring, screening, training, retention, supervision, discipline, counseling, and control of the personnel of the BCDC who interpret and

apply the mail policy for prisoners. As Sheriff, Defendant Montgomery is a final policymaker with respect to the operations of the BCDC, including for policies governing incoming mail for inmates. He is sued in his individual and official capacities.

13. Defendant Brad Lewis is a Lieutenant in the Baxter County Sheriff's Office, and is the Jail Administrator for the BCDC. Defendant Lewis is employed by and is an agent of the County. He is responsible for overseeing the management and operations of the BCDC, and for the hiring, screening, training, retention, supervision, discipline, counseling, and control of the personnel of the BCDC who interpret and apply the mail policy for prisoners. He is sued in his individual and official capacities.

14. Defendant Eric Neal is a Sergeant in the Baxter County Sheriff's Office, and is in charge of the mail room at the BCDC. Defendant Neal is employed by and is an agent of the County. He is responsible for overseeing the management and operations of the BCDC mail room. He is sued in his individual and official capacities.

15. The true names and identities of Defendants DOES 1 through 10 are presently unknown to HRDC. Each of Defendants DOES 1 through 10 are or were employed by and are or were agents of Defendant County when some or all of the challenged prisoner mail policies and practices at the jail facilities were adopted and/or implemented. Each of Defendants DOES 1 through 10 are or were personally involved in the adoption and/or implementation of the BCDC's mail policies for prisoners, and/or are or were responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and/or control of the BCDC staff who interpret and implement these prisoner mail policies. They are sued in their individual and official capacities. HRDC will seek to amend this Complaint as soon as the true names and identities of Defendants DOES 1 through 10 have been ascertained.

16. At all times material to this action, the actions of all Defendants as alleged herein were taken under the authority and color of state law.

IV. FACTUAL ALLEGATIONS

A. HRDC's Mission and Outreach to the BCDC

17. HRDC, through its publication project, PLN, publishes and distributes a soft-cover monthly magazine titled *Prison Legal News: Dedicated to Protecting Human Rights*, which contains news and analysis about prisons, jails and other detention facilities, prisoners' rights, court opinions, management of prison facilities, prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals. The monthly magazine is published on newsprint and is 72-pages long. HRDC has thousands of subscribers to its monthly magazine in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and members of the general public. HRDC distributes *Prison Legal News* to prisoners in approximately 2,600 correctional facilities across the United States, including death row units and institutions within the Federal Bureau of Prisons, such as the federal Administrative Maximum Facility ("ADX" or "Supermax") at Florence, Colorado - the most secure prison in the United States. *Prison Legal News* is distributed to prisons and jails within the correctional systems of all 50 states, including to dozens of prisoners housed in facilities in the State of Arkansas.

18. HRDC, through its publication project, PLN, also publishes and/or distributes approximately fifty different softcover books about the criminal justice system, legal reference books, and self-help books of interest to prisoners. These books are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about related issues, such as legal research, how to write a business letter, health care issues, and similar topics. Pertinent to this case, HRDC publishes and distributes *The Habeas Citebook: Ineffective*

Assistance of Counsel (“*Habeas Citebook*”), which describes the procedural and substantive complexities of federal habeas corpus litigation with the goal of identifying and litigating claims involving ineffective assistance of counsel.

19. In addition to monthly journal issues and books, HRDC also sends prisoners: (a) informational brochure packets – the packet contains a brochure and subscription order form, a book list, and a published books brochure (each of which is a single page); (b) copies of judicial opinions of import to prisoners; and (c) legal letters.

20. The BCDC is located in Mountain Home, AR and holds nearly 100 prisoners. A substantial number of the prisoners within the detention center have yet to stand trial or be sentenced for a crime.

B. Defendants’ Unconstitutional Policies and Practices

21. On information and belief, Defendants’ mail policy and practice bans publications and correspondence sent by HRDC and other senders to prisoners at the BCDC because the communications were not limited to a postcard.

22. Defendants have censored the following materials sent by Plaintiff to prisoners held in the BCDC: (1) issues of the monthly magazine, *Prison Legal News*; (2) sample issues of *Prison Legal News*; (3) the *Habeas Citebook*; (4) legal letters; (5) informational brochure packets; and (6) court opinions. Defendants refused to deliver said items to the intended prisoner-recipients, and, in many instances, returned items to Plaintiff’s office via the “Return To Sender” service of the United States Postal Service. Defendants continue to censor many of the items listed above.

23. Altogether, since August 2016, Plaintiff can identify at least one hundred ten (110) items of mail sent by HRDC to prisoners held in the BCDC which were censored by Defendants. This includes twenty-one (21) issues of *Prison Legal News*, eleven (11) sample issues of *Prison*

Legal News, twenty-four (24) copies of the *Habeas Citebook*, twelve (12) legal letters, twenty-one (21) informational packets, and twenty-one (21) court opinions. These items were returned to HRDC, many with notations such as “Refused” or “Return to Sender Post Cards Only”. Such restrictions on written speech sent to prisoners at the BCDC are not rationally related to any legitimate penological interest and violates HRDC’s First Amendment right to communicate its speech with prisoners.

24. On information and belief, a substantial portion of the other magazines, books, and other communications mailed by HRDC to individual prisoners held in the BCDC were also censored by the Defendants.

25. In all of the above instances of censorship of HRDC’s communications, Defendants failed to explain the penological justification for their censorship decisions, failed to identify the specific mail policy they relied on, and otherwise failed to give meaningful notice of the censorship, violating the Fourteenth Amendment rights of the Plaintiff.

26. Defendants further failed to provide an opportunity for HRDC to challenge the censorship of its mail, in violation of HRDC’s Fourteenth Amendment rights.

27. Defendants’ policies, practices, and customs are unconstitutional both facially and as applied to HRDC.

28. Defendants’ censorship policies, practices, and customs have a chilling effect on HRDC’s future speech and expression directed toward prisoners held in the BCDC.

29. Plaintiff will continue to mail copies of its books and other publications to subscribers, customers, and other individuals imprisoned at the BCDC, but seeks the protection of this Court to ensure that the materials are delivered and, if not, that due process is afforded to the Plaintiff so it may challenge the basis for any censorship.

C. Defendants' Unconstitutional Mail Policies and Practices are Causing HRDC Ongoing Harm

30. Due to Defendants' actions described above, HRDC has suffered damages, and will continue to suffer damages, including, but not limited to: the violation of the HRDC's constitutional rights; the impediment of HRDC's ability to disseminate its political message; frustration of HRDC's non-profit organizational mission; diversion of resources; loss of potential subscribers and customers; an inability to recruit new subscribers and supporters; the loss of reputation; and the costs of printing, handling, mailing, and staff time.

31. Defendants' actions and inactions were and are motivated by ill motive and intent, and were and are all committed under color of law and with reckless indifference to HRDC's rights.

32. Defendants, and their agents, are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, Defendants are responsible for training and supervising the staff persons whose conduct has injured and continues to injure HRDC.

33. Defendants' unconstitutional policy, practices, and customs are ongoing, continue to violate HRDC's rights, and are the moving force behind the constitutional violations. Defendants' unconstitutional policy, practices, and customs will continue unless enjoined. As such, HRDC has no adequate remedy at law.

34. HRDC is entitled to injunctive relief prohibiting Defendants from refusing to deliver its monthly magazine *Prison Legal News*, sample issues of *Prison Legal News*, books, informational brochure packets, subscription renewal letters, and court opinions without any legal justification, and prohibiting Defendants from censoring mail without due process of law.

V. CLAIMS

A. Count I—42 U.S.C. §1983 Violation of the First Amendment

35. HRDC re-alleges and incorporates the allegations of Paragraphs 1 through 34 of the Complaint as if fully set forth herein.

36. The acts described above constitute violations of HRDC's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners held in the BCDC, and the rights of prisoners confined at the BCDC, under the First Amendment of the United States Constitution.

37. HRDC has a constitutionally protected liberty interest in communicating with incarcerated individuals by sending books, information packets, renewal letters, court opinions and magazines to them via U.S. Mail, a right clearly established under existing case law.

38. The conduct of Defendants was objectively unreasonable and was undertaken recklessly, intentionally, willfully, with malice, and with deliberate indifference to the rights of others.

39. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, and those policies were the moving force behind the violations.

40. The acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

41. HRDC seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. HRDC seeks punitive damages against the individual Defendants in their individual capacities.

B. Count II—42 U.S.C. §1983 Violation of the Fourteenth Amendment

42. HRDC re-alleges and incorporates the allegations of Paragraphs 1 through 41 of the Complaint as if fully set forth herein.

43. The acts described above constitute violations of HRDC's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners held in the BCDC, and the rights of prisoners confined at the BCDC, under the Fourteenth Amendment of the United States Constitution.

44. HRDC has a right under the Due Process Clause of the Fourteenth Amendment to receive notice and an opportunity to object and/or appeal Defendants' decisions to prevent Plaintiff's mail from reaching prisoners held in the BCDC.

45. Defendants' policy and practice of censoring HRDC's books, information packets, renewal letters, court opinions and magazines fails to provide Plaintiff with individualized notice of the censorship or an opportunity to be heard.

46. The conduct of Defendants was objectively unreasonable and was undertaken recklessly, intentionally, willfully, with malice, and with deliberate indifference to the rights of others.

47. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, and which were the moving force behind the same.

48. The acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

49. HRDC seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. HRDC seeks punitive damages against the individual Defendants in their individual capacities.

VI. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests relief as follows:

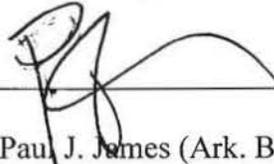
1. A declaration that Defendants' policies and practices violate the Constitution;
2. A preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief;
3. Nominal damages for each violation of HRDC's rights by the Defendants;
4. Compensatory damages in an amount to be proved at trial;
5. Punitive damages against the individual Defendants in an amount to be proved at trial;
6. Costs, including reasonable attorneys' fees, under 42 U.S.C. §1988 and under other applicable law; and
7. Any other such relief that this Court deems just and equitable.

VII. JURY DEMAND

Plaintiff, the Human Rights Defense Center, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Dated: August 18, 2017

Respectfully submitted,



Paul J. James (Ark. Bar No. 83091)
James, Carter & Priebe, LLP
500 Broadway, Suite 400
Little Rock, AR 72201
Telephone: 501-372-1414
Facsimile: 501-372-1659
pjj@jamescarterlaw.com

and

Sabarish Neelakanta, FL Bar #26623*
sneelakanta@hrdc-law.org
Masimba Mutamba, FL Bar #102772*
mmutamba@hrdc-law.org
Daniel Marshall, FL Bar # 617210*
dmarshall@hrdc-law.org
HUMAN RIGHTS DEFENSE CENTER
P.O. Box 1151
Lake Worth, FL 33460
Telephone: (561) 360-2523

Attorneys for Plaintiff

**Pro hac vice applications to be filed.*