

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2009 DEC -3 PM 4:11
LORETTA G. WYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

PRISON LEGAL NEWS and
HUMAN RIGHTS DEFENSE CENTER,
Plaintiffs
VERSUS

* NUMBER:
*
* SECTION:
*
* JUDGE:
*
* MAG. SECTION:
*
* MAGISTRATE:
*
*
*
*
*
*
*

09-7515

SECT. S MAG. 3

JACK A. STEPHENS, Sheriff, St. Bernard
Parish, DAVID MOWERS, Warden, St.
Bernard Parish Prison, CHARLES BURAS,
Captain, St. Bernard Parish Prison,
JOHN DOE 1, Mailroom Supervisor, St.
Bernard Parish Prison and JOHN DOE 2,
Mailroom Employee, St. Bernard Parish
Prison
Defendants

COMPLAINT

Introduction: Statement of the Case

1. Plaintiff Prison Legal News is a monthly prison law magazine distributed across the nation to prisoners, attorneys, judges, law libraries and other subscribers. Plaintiff Prison Legal News is also a book distributor, specializing in books and materials regarding prisoners' rights and issues related to the criminal justice and corrections

Fee \$358.
✓ Process 16 (3) mm
X Dkt _____
CRMDep _____
Doc. No. _____

systems. Plaintiff Human Rights Defense Center is a non-profit corporation based in Washington state which is the publisher and owner of Prison Legal News. Defendant Sheriff Jack Stephens is Sheriff of St. Bernard Parish and has responsibility for operating the St. Bernard Parish Prison facilities. The other defendants are all employees of the St. Bernard Parish Sheriff's office who have responsibilities regarding the receipt and distribution of books and other published materials addressed to persons in custody of the St. Bernard Parish Prison. Sheriff Stephens and the other defendants have prohibited individuals in their custody from receiving Prison Legal News or any publications distributed by plaintiffs. Sheriff Stevens has also failed to provide the plaintiffs with notice or an opportunity to be heard regarding the rejection and/or destruction of plaintiffs' publications.

Statement of Claims

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

3. At all relevant times defendants have acted under color of law. Defendants have violated and continue to violate plaintiffs' constitutional rights protected by the First and Fourteenth Amendments to the United States Constitution. The actions of the defendants have caused injuries to the plaintiffs, as described herein.

Jurisdiction and Venue

4. This action is brought pursuant to 42 U.S.C. Sec. 1983 and 1988. Jurisdiction is based on 28 U.S.C. Section 1331, 1343(a)(3) and (4), and the aforementioned federal statutory and constitutional provisions.

5. Venue is proper in this Court under 28 U.S. C. Sec. 1391 as the events complained of occurred within this district.

PARTIES

6. Plaintiff Prison Legal News (sometimes hereafter referred to as PLN) is a project and a wholly owned subsidiary of the plaintiff Human Rights Defense Center, a Washington state, non-profit, tax exempt (IRS section 501(c)(3)) corporation. The plaintiffs have offices in Seattle, Washington and Brattleboro, Vermont.

7. Defendant Jack A. Stephens is the elected Sheriff of St. Bernard Parish, State of Louisiana. He has responsibility for the policies, procedures and operations of the St. Bernard Parish Sheriff's Office, its employees, agents and assigns, including all correctional facilities under the control of his office, including the St. Bernard Parish Prison. He is a final policymaker for the St. Bernard Parish Sheriff's Office and the St. Bernard Parish Prison. He is sued in his individual capacity for nominal, compensatory and punitive damages. He is sued in his official capacity for declaratory and injunctive relief and nominal and compensatory damages. He is a resident of the Eastern District of Louisiana.

8. Defendant David Mowers is an employee of the St. Bernard Parish Sheriff's Office, under the direction and supervision of defendant Stephens. He is the warden of the St. Bernard Parish Prison. He has responsibility for the policies, procedures and operations of the St. Bernard Parish Prison, its employees, agents and

assigns. On information and belief he is a final policymaker for the St. Bernard Parish Prison. He is sued in his individual capacity for nominal, compensatory and punitive damages. He is sued in his official capacity for declaratory and injunctive relief and nominal and compensatory damages. He is a resident of the Eastern District of Louisiana.

9. Defendant Captain Charles Buras is an employee of the St. Bernard Parish Sheriff's Office, under the direction and supervision of defendants Stephens and Mowrer. He is a supervisory official at the St. Bernard Parish Prison. He has responsibility for implementation of the policies, procedures and operations of the St. Bernard Parish Prison and supervising various employees, agents and assigns. He is sued in his individual capacity for nominal, compensatory and punitive damages. He is sued in his official capacity for declaratory and injunctive relief and nominal and compensatory damages. He is a resident of the Eastern District of Louisiana.

10. Defendant John Doe I is an employee of the St. Bernard Parish Sheriff's Office, under the direction and supervision of defendants Stephens and Mowrer. He is a supervisory official at the St. Bernard Parish Prison responsible for implementation of the policies, procedures and operations of the St. Bernard Parish Prison regarding mail delivery and supervising various employees, agents and assigns with related duties. He is sued in his individual capacity for nominal, compensatory and punitive damages. He is sued in his official capacity for declaratory and injunctive relief and nominal and compensatory damages. He is a resident of the Eastern District of Louisiana.

11. Defendant John Doe 2 is an employee of the St. Bernard Parish Sheriff's Office, under the direction and supervision of defendants Stephens, Mowrer and

defendant John Doe 1. He is responsible for implementation of the policies, procedures and operations of the St. Bernard Parish Prison regarding mail delivery. He is sued in his individual capacity for nominal, compensatory and punitive damages. He is sued in his official capacity for declaratory and injunctive relief and nominal and compensatory damages. He is a resident of the Eastern District of Louisiana.

Statement of Facts

12. Plaintiffs publish and distribute a monthly 56-page legal information magazine entitled "Prison Legal News" ("the publication") dealing with the rights of incarcerated individuals. The publication provides information about legal issues such as access to the courts, disciplinary hearings, prison conditions, excessive force, mail censorship, jail litigation, visitation, telephones, religious freedom, prison rape, and the death penalty. It has been published continuously since 1990. The publication is core protected speech, which is not objectionable on security or other grounds. Prison Legal News has approximately 7,000 subscribers nationwide.

13. Plaintiffs also distribute approximately 45 legal and self help books, some published by plaintiffs and others by other publishers, regarding the criminal justice system, which are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about basic related issues such as legal research, how to write a business letter, health care issues and similar topics.

14. Starting in February, 2009 and continuing for a period of several months, the plaintiffs have sent, upon request, to a number of individuals confined in the St. Bernard Parish Prison in the custody of defendant Sheriff Stephens and the St. Bernard

Parish Sheriff's Office, copies of the monthly publication "Prison Legal News", as well as various soft-cover legal and self-help books.

15. Defendant Stephens has a policy and practice of prohibiting newspapers, magazines, and books from outside publishers and distributors or vendors, which policy and practice has precluded and continues to preclude those confined at the St. Bernard Parish Prison from receiving the publication "Prison Legal News" as well as soft-cover books that were ordered or may be ordered in the future through plaintiffs.

16. Detainees at the jail have filed grievances challenging the denial of the publications and/or books that they have sought and which were sent to them by plaintiffs, but these grievances are not responded to by prison staff or have upheld the denial of receipt of the publications.

17. Plaintiffs have never received notice from the defendants or any person acting on behalf of the defendants, that "Prison Legal News", the monthly publication or any of the books distributed by plaintiffs were being summarily banned and/or destroyed. Plaintiffs have not been provided with any opportunity to contest the decisions of the defendants which prevent individuals in custody at the St. Bernard Parish Prison from receiving plaintiffs' publication or the books plaintiffs distribute.

18. Defendants' policy and practice fails to provide plaintiffs with any alternative means of exercising plaintiffs' rights to free speech and expression in distributing plaintiffs' publications and exchanging information with their readership and customers of otherwise legal reading materials.

19. 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 United States Constitution, will not have any significant impact on the operations and security of the St. Bernard Parish Prison.

20. Readily available alternatives exist to defendants' current policy and practice which could easily meet any legitimate or significant interests of defendants and the parish prison without sacrificing the free speech and expression and due process rights of plaintiffs, as well as other publishers and distributors of books and materials protected by the 1st Amendment to persons in the custody of the defendants.

21. Defendants' actions, as described above, were done willfully, wantonly and/or maliciously.

22. Due to the defendants' actions as described herein, the plaintiffs have suffered damages, including violation of plaintiffs' constitutional rights, loss of potential subscribers and customers, loss of reputation, costs of printing, handling and mailing materials, costs of staff time and other damages to be shown at trial.

23. 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

24. Plaintiffs re-allege and incorporate paragraphs 1 through 23 herein.

25. Defendants' policy and practice banning "Prison Legal News" and books and written materials distributed by plaintiffs, violates the free speech and expression rights of plaintiffs secured by the First and Fourteenth Amendments to the United States Constitution.

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

27. Defendants' policy and practice does not further any legitimate penological interest.

Cause of Action II:

Due Process of Law

28. Plaintiff re-alleges and incorporates paragraphs 1 through 23 herein.

29. Defendants' policy and practice banning "Prison Legal News" and books and written materials distributed by plaintiffs fails to provide plaintiffs with individualized notice that its publications are being banned or an opportunity to be heard.

30. Plaintiffs have the right, under the Due Process clause of the Fourteenth Amendment to the U.S. Constitution, to receive notice and the opportunity to object when defendants prevent plaintiffs' publications from reaching their subscribers. This right is clearly established under existing case law.

31. Defendants' failure to provide notice and an opportunity to be heard to plaintiffs that their publications were being banned does not further any legitimate penological interest.

Prayer for Relief

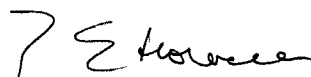
THEREFORE, plaintiffs request that the Court:

1. Declare that the rights of the plaintiffs were violated;
2. Award nominal, compensatory and punitive damages against the defendants, in their individual capacities, as appropriate and allowed by law;

3. Award nominal and compensatory damages against the defendants, in their official capacities, as appropriate and allowed by law;
4. Grant declaratory and injunctive relief;
5. Grant reasonable attorneys' fees, litigation expenses and court costs pursuant to 42 USC 1988; and,
6. Grant all such other and further relief as appears reasonable and just, to which plaintiffs may be entitled.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFFS



MARY E. HOWELL, LSBA #7030
Attorney at Law
P.O. Box 19043
New Orleans, LA 70179
(504) 822-4455 (O)
(504) 822 4458 (Fax)

ELIZABETH C. CUMMING, LSBA#31685
The Justice Center
636 Baronne Street
New Orleans, LA 70113
(504) 529-3955