

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

PRISON LEGAL NEWS, a non-profit,
Washington corporation,

Plaintiff

v.

CAUSE NO.

BRAD LIVINGSTON, in his individual
and official capacity as the executive
director of the Texas Department of
Criminal Justice, JENNIFER SMITH, E.
BROWN, JOHN DOE, GILBERT
CAMPUZANO, JONI WHITE,
RICHARD LOPEZ, KEVIN
CAMPBELL, and CHRIS BELL in their
individual capacities

Defendants.

COMPLAINT

Plaintiff Prison Legal News respectfully files this Complaint and will show:

STATEMENT OF CLAIM

1. Plaintiff Prison Legal News brings this civil rights action for redress of violations of its rights to free speech and due process under the law, seeking injunctive and declaratory relief, as well as nominal, compensatory and punitive damages against Defendants, as appropriate.

2. Plaintiff complains Defendants have violated and continue to violate its constitutional rights under color of law and in violation of the First and Fourteenth Amendments of the United States Constitution.

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(b)(1) and (2) because the events complained of occurred within this district.

PARTIES

5. Plaintiff Prison Legal News (PLN) is a project of the Human Rights Defense Center, a Washington non-profit IRS section 501(c)(3) corporation. It has offices in Seattle, Washington and Brattleboro, Vermont.

6. Defendant Brad Livingston is the executive director of the Texas Department of Criminal Justice (TDCJ). As such, Livingston is the commanding officer of all TDCJ correctional officers, guards, and TDCJ employees and contractors, and is responsible for their training, supervision, and conduct. By law, he is responsible for protecting the constitutional rights of all persons and entities interacting with TDCJ, including PLN. At all relevant times, Livingston was acting under color of law and as the agent, and, as a matter of law, the official representative of TDCJ. He is sued in his individual capacity for nominal, punitive, and compensatory damages, and his official capacity for prospective injunctive and declaratory relief. He can be served with process at 209 W. 14th St., Austin, TX 78701. *Service is requested.*

7. Defendant Jennifer Smith is the program specialist for TDCJ's Mail System Coordinators Panel (MSCP). As such, Smith is responsible for review of publications censored by TDCJ mailroom staff. At all relevant times, Smith was acting under color of law and as the agent, and, as a matter of law, the official representative of TDCJ. She is sued in her individual

capacity for nominal, punitive, declaratory, injunctive, and compensatory relief. She can be served with process at P.O. Box 99, Huntsville, TX 77342. *Service is requested.*

8. Defendant E. Brown is a mailroom representative at TDCJ's Garza East Unit in Beeville, Texas. Brown is responsible for censoring publications as they arrive at the Garza East mailroom before they are distributed to prisoners. At all relevant times, Brown was acting under color of law and as the agent, and, as a matter of law, the official representative of TDCJ. She is sued in her individual capacity for nominal, punitive, declaratory, injunctive, and compensatory relief. She can be served with process at 4304 Highway 202, Beeville, TX 78102. *Service is requested.*

9. Defendant John Doe 1 is a mailroom representative at TDCJ's Hilltop Unit in Gatesville, Texas. Doe 1 is responsible for censoring publications as they arrive at the Hilltop mailroom before they are distributed to prisoners. At all relevant times, Doe 1 was acting under color of law and as the agent, and, as a matter of law, the official representative of TDCJ. He is sued in his individual capacity for nominal, punitive, declaratory, injunctive, and compensatory relief.

10. Defendant Gilbert Campuzano is a member of TDCJ's Director's Review Committee (DRC). The DRC is composed of Smith, Campuzano and five other TDCJ administrators, and reviews decisions to censor publications made by the mailroom staff. Campuzano is sued in his individual capacity for nominal, punitive, declaratory, injunctive, and compensatory relief. He can be served with process at 4616 W. Howard Lane, Suite 200, Austin, TX 78728. *Service is requested.*

11. Defendant Joni White is a member of TDCJ's DRC. White is sued in her individual capacity for nominal, punitive, declaratory, injunctive, and compensatory relief. She can be served with process at P.O. Box 99, Huntsville, TX 77342. *Service is requested.*

12. Defendant Richard Lopez is a member of TDCJ's DRC. Lopez is sued in his individual capacity for nominal, punitive, declaratory, injunctive, and compensatory relief. He can be served with process at 1060 Highway 190 East, Huntsville, TX 77340. *Service is requested.*

13. Defendant Kevin Campbell is a member of TDCJ's DRC. Campbell is sued in his individual capacity for nominal, punitive, declaratory, injunctive, and compensatory relief.

14. Defendant Chris Bell is a member of TDCJ's DRC. Bell is sued in his individual capacity for nominal, punitive, declaratory, injunctive, and compensatory relief.

STATEMENT OF FACTS

15. Prison Legal News ("PLN") publishes a monthly 56-page legal information magazine and distributes over fifty books dealing with the rights of incarcerated people. PLN's publications provide information about, *e.g.*, court access, disciplinary hearings, prison conditions, excessive force, mail censorship, jail litigation, visitation, telephones, religious freedom, prison rape, and the death penalty. PLN has published the magazine continuously since 1990. PLN's publications are core protected speech, which is not objectionable on security or other grounds.

16. PLN is a distributor for *Women Behind Bars: The Crisis of Women in the U.S. Prison System*, by Silja J.A. Talvi. Ms. Talvi is an investigative journalist whose work has appeared in publications like *The Nation*, *Salon*, *The Utne Reader*, and *The Christian Science Monitor*. She has won awards from the Society of Professional Journalists of Western Washington, New American Media, and the National Council on Crime and Delinquency.

17. *Women Behind Bars* was described as a "comprehensive and passionately argued indictment of the inhuman treatment of female prisoners ... the sort of shocking expose too seldom seen in these media days of so much celebrity fluff" by the *Seattle Post-Intelligencer*.

Ms. Magazine said, “Like mirrors in a house of horrors , the women in Talvi's book reflect the distorted collective flaws of our society: violence, addiction, poverty, pervasive low self-esteem, and families trapped in chronic financial and emotional crises.” A former police chief said, “I've read few accounts of social injustice that have aroused in me such intense feelings of sadness, shame, and rage. As a cop for thirty-four years, I confess to having given only passing thought to what happened to women after they're arrested and ultimately sentenced to prison. I have been stripped of my ignorance by *Women Behind Bars*. The agonizing experiences of many of these women, described so eloquently by [Ms.] Talvi, will haunt me for the rest of my days.”

18. In December 2008, a prisoner at TDCJ's Hilltop Unit ordered a copy of *Women Behind Bars* from PLN. PLN placed the book in the mail, and it arrived at the Hilltop Unit mailroom.

19. At the Hilltop Unit mailroom, Doe 1 refused to deliver the book to the prisoner. Doe 1 completed a TDCJ “Publication Review/Denial Notification” form informing the prisoner she could not receive *Women Behind Bars* because “a specific determination has been made that the publication is detrimental to offenders' rehabilitation, because it would encourage homosexual or deviant criminal behavior.” The notification suggested the book was censored by the mailroom because page 38 depicted “sex with a minor.” PLN did not receive a copy of the notice, or directions on how to appeal the mailroom's decision. TDCJ policy does not require providing publishers, like PLN, instructions on how to use the publication rejection appeal process.

20. Page 38 of *Women Behind Bars* reads:

What is even more remarkable about [Tina] Thomas [a medical doctor incarcerated in Oklahoma] is that she had overcome the kind of childhood trauma that might have completely derailed her adult life. It might have been precisely that background that first propelled her to become an overachiever and attain a high level of professional success, but then came back to haunt her just as she had gotten to where she wanted to go. The dark secret of her life was that she had

been forced to perform fellatio on her uncle when she was just four years old. Thomas explains that this unresolved trauma became “the template for a lifetime of distrust, fear, uncertainty, and a spirit of self-negation.”

The remainder of the page discusses how this trauma caused Thomas to develop the drug addiction that resulted in her incarceration. The page contains no further discussion of “sex with a minor.”

21. Doe 1’s decision to censor *Women Behind Bars* was reviewed by Smith and the DRC. Campuzano, Smith, White, Lopez, Campbell and Bell, acting as the DRC, upheld Doe 1’s decision, and the prisoner was not allowed to receive *Women Behind Bars*. PLN was not informed of this decision, or given directions on how to present information to the DRC during the review process.

22. After Campuzano, Smith, White, Lopez, Campbell and Bell, acting as the DRC, censor a book, the book’s title is placed on a list of “disapproved” books that is circulated to other TDCJ mailrooms. When a “disapproved” book arrives at a unit, it is sent to Smith for review. Smith reviews books “case-by-case” in conjunction with the DRC.

23. PLN sent two more copies of *Women Behind Bars* to prisoners in TDCJ’s Garza East Unit, in Beeville, Texas in September 2009. Defendant Brown censored the books, again relying on the “sex with a minor” passage on page 38. Brown failed to provide PLN with a copy of the “Publication Review/Denial Notification” or any information about how to contest the decision.

24. In March 2009, PLN sent a copy of another book, *Perpetual Prisoner Machine: How America Profits from Crime* by Joel Dyer to a prisoner incarcerated at TDCJ’s Allred Unit in Iowa Park, Texas.

25. *Perpetual Prisoner Machine* is a critique of the for-profit prison industry. The *Rocky Mountain News* called it “enlightening and frightening ... a moving and gripping social

commentary.” The *San Diego Union Tribune* said it was “a good assault on destructive social policy.” Professor Howard Zinn described it as “a bold and deep-probing analysis of our criminal justice system. It raises serious questions about crime and punishment which reflect not just on prisons, but on our for-profit driven society.”

26. TDCJ “disapproved” of *Perpetual Prisoner Machine* because page 45 discusses “rape.” Page 45, in fact, quotes from a 1968 Philadelphia District Attorney’s Office investigation into sexual assault in prison, and describes crimes committed against prisoners.

27. TDCJ did not provide PLN with any information about how to contest the decision to censor *Perpetual Prisoner Machine* or any opportunity to do so.

28. Defendants’ censorship regime, as authorized and supervised by Livingston, is arbitrary, serves no legitimate penological purpose as applied to PLN’s publications, and violates the constitutional rights of publishers like PLN. Livingston moreover fails to ensure the regime provides publishers constitutionally-required due process to contest decisions to ban their publications. TDCJ’s written policies do not permit censoring publications like *Women Behind Bars* and *Perpetual Prisoner Machine* for the reasons identified by Defendants.

29. It is likely Defendants will continue to censor the books PLN distributes, including *Women Behind Bars* and *Perpetual Prisoner Machine*, in the future without providing PLN due process.

30. Allowing PLN to distribute *Women Behind Bars* and *Perpetual Prisoner Machine* to TDCJ prisoners will not have any significant impact on TDCJ facilities or programs.

31. Readily available alternatives to censoring *Women Behind Bars* and *Perpetual Prisoner Machine* could, at *de minimis* cost, easily satisfy any legitimate or significant interests of TDCJ without sacrificing the free speech and expression rights of PLN and the prisoners in TDCJ custody.

32. The violations of PLN's constitutional rights have resulted in lost revenue from book sales, and loss of business reputation, in addition to the loss of its valuable constitutionally protected free speech and due process rights.

CAUSE OF ACTION I: FREEDOM OF SPEECH AND EXPRESSION

33. Defendants' censorship of *Women Behind Bars* and *Perpetual Prisoner Machine* violates the free speech and expression rights of Prison Legal News secured by the First and Fourteenth Amendments to the United States Constitution.

34. Prison Legal News has a constitutionally-protected liberty interest in communicating with incarcerated individuals. This right is clearly established under existing case law.

35. Defendants' policy does not further any legitimate penological interest. Defendants Livingston, Doe, Smith, Brown, Campuzano, White, Lopez, Campbell and Bell acted wantonly, willfully and/or maliciously in violating PLN's constitutional rights.

CAUSE OF ACTION II: DUE PROCESS OF LAW

36. Defendants' actions banning *Women Behind Bars* and *Perpetual Prisoner Machine* did not provide Prison Legal News with individualized notice that its free speech and expression rights are being violated. Defendants gave PLN no notice of the decisions to deny copies of *Women Behind Bars* and *Perpetual Prisoner Machine* to prisoners, or information about how to contest the decisions.

37. Prison Legal News has a right under the Fourteenth Amendment to receive notice and the opportunity to object when Defendants prevent its publication from reaching prisoners who have requested its publications. This right is clearly established under existing case law.

38. Defendants' failure to provide notice to Prison Legal News that its publication was being censored does not further any legitimate penological interest. Defendants Livingston,

Doe, Smith, Brown, Campuzano, White, Lopez, Campbell and Bell acted wantonly, willfully and/or maliciously in violating PLN's constitutional rights.

DAMAGES

39. Plaintiff seeks compensatory, punitive, and nominal damages for violations of its constitutional free speech and due process rights under the First and Fourteenth Amendments; injuries to its business reputation; and loss of revenue.

DECLARATORY RELIEF

40. Plaintiff requests all appropriate declaratory relief to which it is entitled.

INJUNCTIVE RELIEF

41. Plaintiff requests the Court grant appropriate relief enjoining Defendants from continuing to violate its free speech and due process rights. Plaintiff seeks permanent injunctive relief requiring Defendants to provide written notice to publishers and an opportunity to respond before censoring their publications, and requiring the adoption of specific guidelines delineating what materials may be delivered to prisoners through the mail, as well as any other appropriate injunctive relief.

ATTORNEYS' FEES AND COSTS

42. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to recover attorneys' fees and costs.

PRAYER FOR RELIEF

THEREFORE, Plaintiff requests the Court:

A. Award punitive damages against all individual Defendants sued in their individual capacities, as appropriate and allowed by law;

- B. Award compensatory damages, including damages for lost revenues and damage to business reputation, against all Defendants sued in their individual capacities, jointly and severally;
- C. Award nominal damages against all Defendants sued in their individual capacities, jointly and severally;
- D. Grant declaratory and injunctive relief under federal law against all Defendants, as set out in this Complaint;
- E. Grant reasonable attorneys' fees, litigation expenses and court costs; and,
- F. Grant all such other and further relief as appears reasonable and just, to which Plaintiff may be entitled.

Dated: November 4, 2009.

Respectfully Submitted:

		<u>/s/ Scott Medlock</u>
		Scott Medlock
S.	Texas	Bar No. 24044783
		Dist. No. 608457
		<i>Attorney-in-charge</i>
		Lauren Izzo
	State	Bar No. 24065482
	S.	Dist. No. 1002172
		James C. Harrington
	Texas	Bar No. 09048500
	S.	Dist. No. 4025
	TEXAS	CIVIL RIGHTS PROJECT
	1405	Montopolis Dr.
	Austin,	TX 78741
		(512) 474-5073
		(512) 474-0726 (Fax)

Daniel
Michigan

E. Manville
Bar No. 39731
Pro-hac application pending

HUMAN
P.O.
Ferndale,

RIGHTS DEFENSE CENTER
Box 20321
MI 48220
(248) 890-4720

ATTORNE

YS FOR PLAINTIFF