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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

BY _____

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PRISON LEGAL NEWS, COALITION FOR
PRISONERS' RIGHTS, MICHAEL
TUCKER, MARK WILSON, AND LE
HUNG,

Plaintiffs,

v.

DAVID S. COOK, Director of the Oregon
Department of Corrections, DAVID
SCHUMACHER, Rules/Compliance Manager
of the Oregon Department of Corrections, and
JANE AND JOHN DOES 1-10, officers and
agents of the Oregon Department of
Corrections,

Defendants.

CV '98 - 1344 MA

No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMAGES

(Civil Rights)

DEMAND FOR JURY TRIAL

INTRODUCTION

1. The Oregon Department of Corrections censors certain subscription publications, not because their content represents a danger to security, but because they are sent via "standard" mail, i.e., the class of mail available to non-profit organizations. Because of this policy, non-profit organizations that publish subscription newsletters, including Plaintiffs Prison Legal News and Coalition for Prisoners' Rights, have been prevented from sending their publications to Oregon state prisoners subscribers. Plaintiffs Mark Wilson, Michael Tucker and Le Hung have been denied the opportunity to receive publications from the plaintiff-publishers and from the International Prison Ministry.

2. Defendants' policy of censoring mail based upon the class of mail used to send it serves no legitimate penological purpose. Publisher plaintiffs Prison Law News and the Coalition for Prisoners' Rights, and the prisoner plaintiffs, Michael Tucker, Mark Wilson and Le Hung seek declaratory and injunctive relief and damages to enforce their First Amendment rights to send and receive information and ideas.

JURISDICTION

3. This is a civil action seeking declaratory and injunctive relief and damages is brought pursuant to 42 USC section 1983, in that plaintiffs have and continue to be deprived of their rights secured by the United States Constitution under the First and Fourteenth Amendments.

4. The jurisdiction of this court is invoked pursuant to 28 USC section 1331 and 1343(a)(3). Plaintiffs seek declaratory relief under 28 U.S.C., section 2201 and injunctive relief under 28 U.S.C. section 1343.

5. Venue is proper under 28 USC section 1391(b), in that one or more of the defendants reside in the District of Oregon, and plaintiffs' claims for relief arose in this district.

PARTIES

6. Plaintiff Prisoner's Legal News, a non-profit Washington corporation with offices in Seattle, publishes and distributes nation-wide a monthly magazine known as Prison Legal News ("PLN").

7. Plaintiff Coalition for Prisoners' Rights ("CPR"), a non-profit New Mexico corporation with offices in Santa Fe, publishes and distributes nation-wide a monthly newsletter.

8. Plaintiff Mark J. Wilson, is a prisoner committed to the legal and physical custody of the Oregon Department of Corrections ("ODOC"). He is presently confined at the Oregon State Penitentiary ("OSP").

9. Plaintiff Michael Tucker is a prisoners committed to the legal and physical custody of the ODOC. He is presently confined at the OSP.

10. Plaintiff Le Hung is a prisoner committed to the legal and physical custody of the ODOC. He is presently confined at the OSP.

11. Defendant David S. Cook is the Director of the ODOC with responsibility for final review and approval of department rules concerning inmate mail. Defendant Cook also has supervisory responsibility for the operation, rules and administration of the department and its facilities. ORS 423.075(1) and (5). See also ORS 423.020 and 423.030. He is sued in his individual and official capacities.

12. Defendant David Schumacher is the Rules/Compliance Manager for the ODOC. Mr. Schumacher is an agent of Defendant Cook. He is sued in his individual and official capacities.

13. Defendants John and Jane Does I - X are officers and agents of the ODOC. Their full and correct names are unknown to plaintiffs at this time. When plaintiffs discover the full, true and correct names of these defendants, plaintiffs will amend their complaint in this action. These defendants and each of them are involved in the receipt and processing of bulk-rate mail at the Oregon State Penitentiary ("OSP") sent by plaintiffs PLN and CPR and to be received by plaintiffs Tucker, Wilson, Le and other inmates of the ODOC. They enforce the bulk-rate policy on a day-to-day basis at the OSP. They are sued in their official and individual capacities.

14. Defendants have acted, and continue to act, under color of state law at all times relevant to this complaint.

FACTUAL ALLEGATIONS

A. Regulations and Procedures Restricting the Receipt of Publications

15. Defendants and their officers and agents in control of the OSP and ODOC have enacted and are enforcing rules and regulations governing distribution of and access to certain publications.

16. OAR 291-131-0025(6) provides: "Mail shall be required to be sent by first or second class postage. Bulk rate, third and fourth class mail is prohibited." (As of December 1, 1998, this section will be amended to read: "Mail shall be sent by express mail, priority mail, first class mail or periodicals mail (available for authorized publications only). All other forms of US Postal Service mail shall be prohibited.")

17. OAR 291-131-0037(4) provides: "Bulk rate, third and fourth class mail shall be refused and returned to the U.S. Postal Service." (As of December 1, 1998, this section will be

amended to read: "Mail with unauthorized or insufficient postage shall be refused and returned to the US Postal Service.")

18. Third class non-profit mail is now called "standard mail" by the United States Postal Service.

19. ODOC inmates are not given notice when bulk rate, third class and fourth class mail are refused.

B. The Application of the Procedures to the Plaintiffs

Plaintiffs Coalition for Prisoners' Rights and Michael Tucker

20. Plaintiff Coalition for Prisoners Rights publishes a monthly eight page newsletter that covers news of recent court rulings as well as brief news articles on subjects of interest to prisoners and their families. CPR has been publishing and distributing their newsletter since 1977 and currently has 3500 subscribers throughout the country. The newsletter has no paid staff and is produce solely by volunteers.

21. As a non-profit organization, CPR has been granted IRS section 501(c)(3) status by the Internal Revenue Service. Based in part upon that status, CPR has been authorized by the United States Postal Service to send publications by mail under a special mailing status for non-profit organizations that is subsidized by the federal government. That special mailing rate was formerly referred to by the United States Postal Service as "third" or "fourth" class mail; that mailing rate or class is often referred to by the public as "bulk-rate" mail.

22. Each issues of the CPR newsletter sent to prison subscribers is addressed individually to the inmate subscriber and includes the inmate's proper address, committed name and state identification number.

23. CPR uses its bulk mailing permit to mail subscription newsletter to state prisoners around the country. CPR has in the past accommodated Oregon state prisoners by sending their newsletters via first class mail. However, in 1998, CPR determined that it could no longer afford to continue this practice, and it has since stopped sending the newsletter directly to Oregon state inmates.

24. In February, 1998, plaintiff Michael Tucker received notice from plaintiff CPR that CPR would no longer be able to send him the CPR newsletter because the newsletter could no longer afford to send via first class mail. Since then, plaintiff has not received his CPR newsletter.

25. Before CPR discontinued its first class mailings to Oregon prisoners due to defendants' mail policy, CPR had approximately 80 subscribers in ODOC prisons.

Plaintiffs Prison Legal News and Mark Wilson

26. Plaintiff PLN publishes and distributes a monthly magazine which contains news articles and other materials of interest to inmates and correctional officials with regard to litigation affecting inmates. PLN has been distributing its magazine for more than nine years.

27. PLN reports on developments in prisoner legal actions across the countries and includes articles concerning issues of interest to prisoners.

28. As a non-profit organization, PLN has also been granted IRS section 501(c)(3) status by the Internal Revenue Service. Based in part upon that status, PLN has been authorized by the United States Postal Service to send publications by standard mail.

29. Each issue of the PLN that is sent to prisoner subscribers is addressed individually to the inmate subscriber and includes their proper address, committed name and State Identification number (SID).

30. PLN's bulk mailing contractor complies with postal service regulations to send the publication to its subscribers.

31. On September 24, 1998 PLN had their October issue sent from their bulk mailing service in Bellmawr, New Jersey.

32. Plaintiff Wilson is a current subscriber to PLN. He did not receive his October, 1998 edition of PLN. Wilson did not receive notice that his newsletter had been withheld from him.

33. Several editions of PLN have been returned from Oregon state prisons to PLN's office in Washington. Plaintiff Wilson's was not among them.

Plaintiff Le Hung

34. Plaintiff Le Hung requested religious material from International Prison Ministry (IPM). IPM publishes and distributes Bibles to prisoners who request them.

35. On August 11, 1998, Mr. Hung received a letter from IPM notifying him that, in order to maintain their ability to disseminate their materials widely, IPM must send their publications using the subsidized bulk rate for non-profit organizations. IPM indicated they would not be able to fulfill Mr. Hung's request because of ODOC's ban on third class mail.

36. Mr. Hung submitted a grievance asking whether OSP would censor his mail based upon the fact that IPM used third class mail.

37. On August 28, 1998 Mr. Hung received a response confirming that his Bible would be delivered only if it was sent via first or second class mail.

CAUSES OF ACTION

First Claim for Relief

38. Plaintiffs reallege paragraphs 1 through 37.

39. Defendants' bulk-rate policy violates the free expression rights of the plaintiffs protected by the First Amendment of the United States Constitution and Article I, Section 8 of the Oregon Constitution.

Second Claim for Relief

40. Plaintiffs reallege paragraphs 1 through 37.

41. Defendants, pursuant to their bulk-rate policy, have deprived plaintiffs Wilson, Tucker and Hung of property without due process through defendants' summary rejection of the publications sent to those plaintiffs at their request, without notice to the inmate plaintiffs.

42. Defendants' bulk-rate policy violates the due process protections afforded the plaintiffs by the Fourteenth Amendment of the United States Constitution and Article I, Section 10 of the Oregon Constitution.

43. Plaintiffs have suffered, are suffering and will continue to suffer harm as a result of defendants' enforcement of defendants' bulk-rate policy.

Demand for Relief

44. **WHEREFORE**, the plaintiffs demand the following relief:

1. A jury trial;
2. A determination and declaratory judgment that the defendants' bulk-rate policy violates the United States and the Oregon Constitutions;

3. A temporary restraining order and a preliminary injunction during the pendency of this action enjoining defendants from continuing to enforce their bulk-rate policy at OSP and all ODOC facilities;

4. A permanent and final order enjoining defendants henceforth from enforcing their bulk-rate policy at any facility of ODOC;

5. Damages of at least one dollar (\$1) each per day (or as determined by the Court) for each day plaintiffs Tucker, Wilson and Hung were subjected to defendants' bulk-rate policy;

6. Damages to CPR and PLN in an amount to be determined at trial but the sum of at least five hundred dollars (\$500) each;

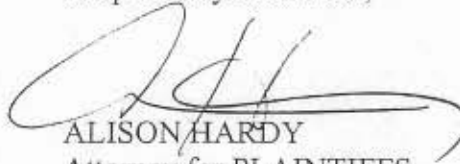
7. An award of plaintiffs' attorneys fees under 42 USC section 1988;

8. An award of plaintiffs' court costs; and

9. For such other and further equitable and monetary relief as the court deems just and proper.

DATED this 22nd day of October, 1998

Respectfully submitted,


ALISON HARDY
Attorney for PLAINTIFFS