

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

PRISON LEGAL NEWS, INC., and)	
AVEN H. COTTON,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 99-D-486-N
)	
MICHAEL HALEY, Commissioner)	
of the Alabama Department of Corrections,)	
)	
Defendant.)	

AMENDED COMPLAINT

NATURE OF THE ACTION

1. This is a civil action brought pursuant to 42 U.S.C. § 1983 to vindicate the Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution. The Plaintiffs seek injunctive relief to require the Defendant to cease the Alabama Department of Corrections’ unduly harsh policy of prohibiting inmates from receiving any book, magazine or newspaper from a publisher, unless the publication has been paid for with funds from the inmate’s Prisoner Money on Deposit (“PMOD”) account. Under the Defendant’s policy, inmates, many of whom are indigent, may not receive free publications or publications purchased on their behalf by family members, friends, or charitable organizations. The Plaintiffs also seek injunctive relief to require the Defendant to cease the Department of Corrections’ policy and practice of failing to provide due process protections to publishers whose publications are rejected. The challenged policies deprive the Plaintiffs of their First and Fourteenth Amendment rights and serve no neutral, legitimate penological purpose.

JURISDICTION

2. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.

3. This Court has jurisdiction over Plaintiffs' request for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.

PARTIES

4. Plaintiff Prison Legal News publishes Prison Legal News ("PLN"), a monthly publication that is circulated internationally. PLN reports on issues that affect prisoners and prisons around the world. PLN also summarizes recent court decisions, verdicts, and settlements that relate to prisoners.

5. Plaintiff Aven Cotton is an inmate at Holman Prison.

6. Defendant Michael Haley is the Commissioner of the Alabama Department of Corrections. He is responsible for the administration of all Alabama state correctional facilities and for ensuring that the prisons operate in a manner that is consistent with the United States Constitution.

STATEMENT OF FACTS

7. Alabama Department of Corrections Administrative Regulation # 303 provides that:

Inmates may receive a limited number of publications, books, magazines, newspapers, etc. (publications) so long as the publications are received directly from the publisher and pre-paid from inmate's Prisoners Money on Deposit Account. (PMOD) (Any exceptions will be approved by Institutional Head).

DOC Admin. Reg. No. 303 at 9 (1992). Any publication that is received without proof that it was paid for with funds from the inmate's PMOD account is returned to the publisher.

8. A PMOD account is similar to a bank account for prisoners. Inmates may have money put in their PMOD accounts by family members or friends who are on the prisoner's Authorized Fund List. No more than eight people can be placed on the Authorized Fund List. Any money received from an individual not on an inmate's Authorized Fund List is rejected. See DOC Admin. Reg. No. 303 at 11 (1992).

9. Administrative Regulation # 303 prohibits inmates from receiving "free" publications mailed by a publisher.

10. Administrative Regulation # 303 prohibits inmates from receiving publications purchased for them by a third party, such as a friend or relative, even when the publication is mailed to the prisoner directly from the publisher.

11. Administrative Regulation #303 does not contain any due process provision for publishers whose publications have been rejected.

12. To express its appreciation for an article that inmate Cayce Moore had written for PLN, Prison Legal News gave Mr. Moore a one-year free subscription to the publication. Authorities at Donaldson Correctional Facility, where Mr. Moore is incarcerated, rejected the magazine because it was not paid for with funds from Mr. Moore's PMOD account. As a direct result of the challenged policy, Plaintiff Prison Legal News has been denied its First Amendment right to communicate with inmates who share its point of view.

13. Prison Legal News did not receive written notification of the rejection of its publication and was not given an opportunity to contest the denial of its communication with Mr. Moore, in violation of Prison Legal News' constitutional right to procedural due process.

14. Plaintiff Aven Cotton's brother purchased a subscription for Mr. Cotton to his local hometown newspaper, The Washington County News, as a gift to the plaintiff. Authorities at Holman Prison, where Mr. Cotton is

incarcerated, rejected the newspaper because it was not paid for with funds from Mr. Cotton's PMOD account. As a direct result of the challenged policy, plaintiff Cotton has been denied his First Amendment right to receive publications.

15. The Defendant's refusal to allow inmates to receive books, magazines and other publications from publishers unless they are purchased from the inmate's PMOD account is not rationally related to any neutral, legitimate penological objective.

16. The Defendant has a policy and practice of failing to provide publishers with: 1) written notification of a rejected publication, and 2) an opportunity to contest the rejection.

17. Plaintiff Prison Legal News has no alternative means of exercising its First Amendment right to communicate with inmates who share its point of view.

18. Plaintiff Cotton has no reasonable alternative to receiving free publications or publications purchased for him by a third party.

19. The accommodation of the Plaintiffs' First and Fourteenth Amendment rights by the defendant will have little or no impact on others (guards and inmates) in the prison.

20. The Defendant has acted and continues to act under color of state law.

21. The Plaintiffs do not have an adequate remedy at law.

CAUSES OF ACTION

22. The Defendant's policy of refusing to permit inmates to receive and publishers to send books, magazines, or newspapers unless they are paid for with funds from the inmates' PMOD accounts violates the First and Fourteenth Amendments to the United States Constitution.

23. The Defendant's policy and practice of failing to notify publishers that their publications have been rejected by prison authorities and failing to afford

publishers an opportunity to contest the rejection violates the Fourteenth Amendment to the United States Constitution.

24. The violation of the Plaintiffs' rights specified above may be remedied pursuant to 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Honorable Court grant the following relief:

1. Declare unconstitutional and unlawful the Defendant's policy of refusing to allow inmates to receive books, magazines, or newspapers directly from publishers unless they are paid for with funds from the inmates' PMOD accounts;

2. Declare unconstitutional and unlawful the Defendant's policy of failing to notify publishers in writing that their publications have been rejected and failing to afford publishers an opportunity to contest the rejection of their publication;

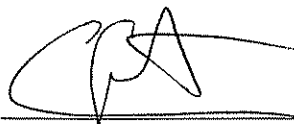
3. Enter a permanent injunction requiring the Defendant, his agents, employees, and all persons acting in concert with him to cease refusing to allow inmates to receive books, magazines, or newspapers from publishers unless they are paid for with funds from the inmates' PMOD accounts;

4. Enter a permanent injunction requiring the Defendant, his agents, employees, and all persons acting in concert with him to notify publishers in writing that their publication has been rejected and afford publishers an opportunity to contest the rejection of their publication;

5. Award the Plaintiffs reasonable costs and attorneys' fees; and

6. Grant the Plaintiffs such other relief as the Court deems necessary and just.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Catherine Smith', written over a horizontal line.

Catherine Smith, 058-68-1281
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Motion to Amend Complaint and Amended Complaint by first-class mail, postage prepaid, on the 13th day of October on the persons address listed below:

William F. Addison
Assistant Attorney General
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