

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PRISON LEGAL NEWS, a Washington  
corporation; and ROLLIN WRIGHT,

Plaintiff,

v.

JOSEPH LEHMAN, in his official and  
individual capacities; ELDON VAIL, in his  
official and individual capacities; CAROL  
PORTER, in her official and individual  
capacities; JAMES BLODGETT, in his  
official and individual capacities; SCOTT  
FRAKES, in his official and individual  
capacities; KAY WALTER, in her official  
and individual capacities; ALICE PAYNE,  
in her official and individual capacities;  
MAGGIE MILLER-SCOTT, in her official  
and individual capacities; RICHARD  
MORGAN, in his official and individual  
capacities; BOB MOORE, in his official  
and individual capacities; JOHN LAMBERT,  
in his official and individual capacities;  
DOUG WADDINGTON, in his official and  
individual capacities; and BELINDA D.  
STEWART, in her official and individual  
capacities;

Defendants.

No.

AMENDED  
COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF AND DAMAGES  
FOR VIOLATION OF CONSTITUTIONAL  
RIGHTS

JURY DEMAND

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Plaintiffs Prison Legal News and Rollin Wright hereby make the following claim against the defendants for violating their U.S. constitutional rights of free speech and due process as guaranteed by the First and Fourteenth Amendments.

## **I. PARTIES**

### **1.1 Plaintiffs:**

1.1.1 Prison Legal News (“PLN”) is a non-profit Washington corporation located at 851 SW 122<sup>nd</sup> Street, Seattle, Washington. PLN publishes a monthly journal about prison conditions and legal rights affecting prison and jail inmates. PLN is a vendor and distributor of books and other publications about these topics as well. PLN has a nationwide circulation that includes regular subscribers who are inmates in the custody of defendants, as well as subscribers who are non-inmates, attorneys, and courts.

1.1.2 Rollin Wright is the publisher of PLN. He resides in Lake Worth, Florida.

### **1.2 Defendants:**

1.2.1 At all times relevant, Joseph Lehman was and is employed as Secretary of the Washington Department of Corrections (hereinafter “DOC”). DOC is a state agency, whose employees run the day-to-day operations of all Washington prisons and have custody of all inmates housed in its facilities, including Airway Heights Correctional Center (hereinafter “AHCC”), Clallam Bay Corrections Center (hereinafter “CBCC”), McNeil Island Corrections Center (hereinafter “MICC”), Monroe Correctional Complex (hereinafter “MCC”), Washington State Penitentiary (hereinafter “WSP”), Stafford Creek Corrections Center (hereinafter “SCCC”), Washington Correctional Center for Women (hereinafter “WCCW”), and Washington Correctional Center (hereinafter “WCC”).

Secretary Lehman is the chief administrator and policy-maker of DOC. Lehman was and is vested with the authority to establish and interpret DOC policy, to admit or refuse mail sent to

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DOC inmates, and to grant or deny inmate appeals pertaining to mail rejection. Secretary Lehman is sued in his official and individual capacities.

1.2.2 At all times relevant, Eldon Vail was and is employed as the Deputy Secretary of DOC in charge of Correctional Operations. Deputy Secretary Vail was and is vested with authority to establish and interpret policy for DOC, to admit or refuse mail sent to DOC inmates, and to grant or deny inmate appeals pertaining to mail rejection. Deputy Secretary Vail is sued in his official and individual capacities.

1.2.3 At times relevant, Carol Porter was employed as a Regional Administrator of DOC and is employed as Superintendent of WCC for DOC. In her capacity as Regional Administrator, Porter was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates within facilities in her region, and to grant or deny inmate appeals pertaining to mail rejection. Regional Administrator Porter is sued in her official and individual capacities.

1.2.4 At times relevant, James Blodgett was and is employed as a Regional Administrator of DOC. In his capacity as Regional Administrator, Porter was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates within facilities in his region, and to grant or deny inmate appeals pertaining to mail rejection. Administrator Blodgett is sued in his official and individual capacities.

1.2.5 At times relevant, Scott Frakes was and is employed as an Associate Superintendent of MICC for DOC. In his capacity as an Associate Superintendent, Frakes was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates at MICC, and to grant or deny inmate appeals pertaining to mail rejection. Associate Superintendent Frakes is sued in his official and individual capacities.

1.2.6 At times relevant, Kay Walter was employed as Superintendent of AHCC for DOC. On information and belief, Walter is now superintendent of another DOC facility. As a superintendent for DOC, Walter was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates in her facility, and to grant or deny inmate appeals pertaining to mail rejection. Superintendent Walter is sued in her official and individual capacities.

1.2.7 At times relevant, Alice Payne was and is employed as Superintendent of MICC for DOC. As a superintendent for DOC, Payne was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates in her facility, and to grant or deny inmate appeals pertaining to mail rejection. Superintendent Payne is sued in her official and individual capacities.

1.2.8 At times relevant, Maggie Miller-Scott was and is employed as the Superintendent of AHCC for DOC. As a superintendent for DOC, Miller-Scott was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates in her facility, and to grant or deny inmate appeals pertaining to mail rejection. Superintendent Miller-Scott is sued in her official and individual capacities.

1.2.9 At times relevant, Richard Morgan was and is employed as Superintendent of CBCC for DOC. As a superintendent for DOC, Morgan was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates in his facility, and to grant or deny inmate appeals pertaining to mail rejection. Superintendent Morgan is sued in his official and individual capacities.

1.2.10 At times relevant, Bob Moore was and is employed as Superintendent of MCC for DOC. As a superintendent for DOC, Moore was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates in his facility, and to grant or deny

inmate appeals pertaining to mail rejection. Superintendent Moore is sued in his official and individual capacities.

1.2.11 At times relevant, John Lambert was and is employed as Superintendent of WSP for DOC. As a superintendent for DOC, Lambert was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates in his facility, and to grant or deny inmate appeals pertaining to mail rejection. Superintendent Lambert is sued in his official and individual capacities.

1.2.12 At times relevant, Doug Waddington was and is employed as the Superintendent of SCCC for DOC. As a superintendent for DOC, Waddington was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates in his facility, and to grant or deny inmate appeals pertaining to mail rejection. Superintendent Waddington is sued in his official and individual capacities.

1.2.13 At times relevant, Belinda D. Stewart was and is employed as Superintendent of WCCW for DOC. As a superintendent for DOC, Stewart was and is vested with the authority to interpret DOC policy, to admit or refuse mail sent to inmates in her facility, and to grant or deny inmate appeals pertaining to mail rejection. Superintendent Stewart is sued in her official and individual capacities.

## **II. JURISDICTION AND VENUE**

2.1 The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1343, 28 U.S.C. Section 2201, and 42 U.S.C. Section 1983. Plaintiffs claim a violation of their free expression rights and rights to due process guaranteed by the Constitution of the United States.

2.2 Venue is appropriate in the Western District of Washington because a substantial part of the events complained of occurred in this District and because some of the defendants reside in this District. See 28 U.S.C. Section 1391(b).

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**III. STATEMENT OF FACTS**

A. Refusal to deliver PLN subscription renewal notices, subscription notices, book catalogs, book order forms, and correspondence, which are protected by the First Amendment.

3.1 Approximately 125 inmates in the custody of DOC subscribe to PLN journal.

3.2 Plaintiffs send renewal notices to PLN's subscribers to encourage them to re-subscribe.

3.3 Plaintiffs also send to PLN subscribers and other interested parties PLN subscription notices, PLN catalogs of books relating to prison conditions and prisoners' legal rights, order forms to purchase books from the PLN catalog, and other PLN subscription correspondence and communications.

3.4 DOC policy and practice prohibits delivery of "catalogs" to inmates. DOC policy defines a catalog as "A publication which [is] predominantly or substantially focused on offering items for sale." DOC policy No. 450.100.

3.5 Defendants censor PLN renewal notices by refusing to deliver them to DOC inmate subscribers on the ground that the notices constitute "catalogs" within the meaning of DOC policy.

3.6 Defendants also censor other PLN materials by refusing to deliver to DOC inmates PLN subscription notices, the PLN catalog of books, PLN book catalog order forms, and other subscriber correspondence on the ground that these items constitute prohibited "catalogs" within the meaning of DOC policy.

3.7 As described above in paragraphs 3.5-3.6, defendants have censored PLN mailings by rejecting plaintiffs' mailings sent to inmates at least as follows:

<b>Inmate</b>	<b>Date</b>	<b>File #</b>	<b>Facility</b>
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D. Richard	9-27-00	09-00-322	CBCC
D. Williams	7-26-00	07-00-344	CBCC
Leigh	5-15-00	F5-515	WSP
P. McCollum	11-18-99	111-899-113	AHCC
R. Smith	11-18-99	111-899-111	AHCC
F. Aylward	11-18-99	111-899-110	AHCC
M. White	11-18-99	111-899-112	AHCC
D. Gronquist	11-18-99	111-899-109	AHCC
J. Jury	11-15-99	111-599-308	AHCC
W. Bacon	9-13-99	091-399-134	AHCC
E. Bozarth	9-13-99	091-399-133	AHCC
D. Anderson	9-13-99	091-399-132	AHCC
C. Ellis	9-13-99	091-399-131	AHCC
D. Gronquist	9-13-99	091-399-204	AHCC
P. McCollum	9-13-99	091-399-200	AHCC
E. Markel	Approx. 9-99		AHCC
P. Wright	6-21-00	00-06-083	MICC
P. Wright	6-16-00	00-06-070	MICC
P. Wright	6-16-00	00-06-065	MICC
P. Wright	6-16-00	00-06-068	MICC
R. Gitchel	5-31-01	05-01-575	CBCC
R. Waldron	5-18-01	05-01-334	CBCC
Palmer	5-30-01	F5-812	WSP
M. Grabill	6-14-01	06-01-208	CBCC

D. Richard	6-4-01	06-01-011	CBCC
S. Sandoval	6-4-01	06-01-021	CBCC
R. Schmitz	6-19-01	06-01-264	CBCC
J. Zaleski	6-26-01	06-26-012-04	AHCC
Pires	8-28-01	F8-642	WSP
R. Schmitz	5-4-01	05-01-109	CBCC

3.8 As applied by defendants to the plaintiffs' PLN mailings described above, DOC policy and practice violates the First and Fourteenth Amendments to the U.S. Constitution.

3.9 Defendant Lehman established DOC policy described above and his staff has put him on notice that DOC applies the policy against plaintiffs as alleged herein. For example, defendant Vail sent to Lehman copies of Vail's letters to PLN dated February 8, 2000 and November 22, 2000, in which Vail applies DOC policy to PLN. (See paragraph 3.10 below)

3.10 Defendant Vail has, on more than one occasion, applied DOC policy to censor PLN mailings as alleged herein. For example, in a letter to PLN employee Fred Markham dated February 8, 2000, Vail stated: PLN's subscription and book notices "meet the current [DOC] policy definition of 'catalog' and can be rejected by the institutions.... Flyers sent to individual inmates will be rejected." Similarly, by letters to Markham dated March 13, 2000 and November 22, 2000, Vail explained that DOC policy prohibited PLN from sending its subscription and book notices to inmates.

3.11 Defendant Porter denied the censorship appeals of DOC's rejection of materials sent by PLN to inmate Paul Wright, as set forth above in paragraph 3.7.

3.12 Defendant Payne denied the censorship appeals of DOC's rejection of materials sent by PLN to inmate Paul Wright, as set forth above in paragraph 3.7.

3.13 Defendant Walter denied a censorship appeal of DOC's rejection of materials sent by PLN to inmate Eric Markel, as set forth above in paragraph 3.7.

3.14 The materials sent to inmates by PLN, as described above, are protected by the First Amendment. On information and belief, all defendants have in the past and continue to knowingly enforce or direct others to enforce DOC policy so as to censor PLN materials sent to DOC inmates, as set forth above in paragraph 3.7, in violation of plaintiffs' free speech rights.

B. Refusal to Deliver Publications Distributed by Plaintiffs.

3.15 Plaintiffs distribute publications by mail to DOC inmates for education purposes and to write articles for PLN.

3.16 DOC policy prohibits inmates from receiving publications unless they are sent directly by the publisher or a vendor approved by DOC.

3.17 On more than one occasion, PLN has requested that DOC approve it as a vendor of publications for inmates.

3.18 Nevertheless, defendants have censored PLN's mailings by refusing to deliver publications to DOC inmates on the ground that DOC has not approved PLN as a vendor.

3.19 As described above in paragraph 3.18, defendants have refused to deliver publications at least as follows:

<u>Inmate</u>	<u>Date</u>	<u>File #</u>	<u>Facility</u>
P. Wright	11-22-00	00-11-027	MICC
P. Wright	5-29-01	01-05-076	MICC
P. Wright	7-10-01	01-07-048	MICC
P. Wright	7-11-00	00-07-032	MICC
P. Wright	7-05-00	00-07-021	MICC
P. Wright	8-28-00	00-08-053	MICC

P. Wright	7-18-00	00-07-050	MICC
P. Wright	7-17-00	00-07-045	MICC
P. Wright	5-29-01	01-05-076	MICC
P. Wright	7-27-99		MCC
P. Wright	8-4-99		MCC

3.20 Defendant Lehman established DOC policy described above and on information and belief his staff has put him on notice that DOC applies the policy against plaintiffs as alleged herein.

3.21 On more than one occasion, defendant Vail has applied DOC policy to censor PLN mailings as alleged herein.

3.22 Defendant Payne denied the censorship appeals of DOC's rejection of publications sent by PLN to inmate Paul Wright on or about November 22, 2000, July 5, 2000, July 11, 2000, August 28, 2000, July 18, 2000, and July 17, 2000, as set forth above in paragraph 3.18 (File Numbers 00-11-027, 00-07-032, 00-07-021, 00-08-053, 00-07-050, and 00-07-045 respectively).

3.23 In June, 2001, Defendants Blodgett and Payne approved a Field Instruction for MICC, effective August 3, 2001, containing a three-page list of approved vendors that does not include PLN.

3.24 On information and belief, all defendants knowingly applied or directed others to apply DOC policy to censor publications sent from PLN to DOC inmates, as set forth above.

3.25 As applied by defendants to prohibit publications sent by PLN, DOC policy and practice violates plaintiffs' free speech rights.

C. Destruction of Mail Sent by Plaintiffs Without Notice and Opportunity to be Heard.

3.26 PLN sends subscription renewal notices, PLN subscription information, PLN reader surveys, PLN fundraising requests, PLN legislative action alerts, PLN book catalogs, PLN book catalog order forms, PLN publications, and other subscriber correspondence to DOC inmates by "standard" non-profit (formerly known as "third class") U.S. mail.

3.27 Defendants censor such PLN mailings sent by standard class mail by rejecting and destroying the mailings without notifying plaintiffs or the inmate to whom the mail was sent and without giving plaintiffs an opportunity to be heard.

3.28 For example, on or about October 11, 2001, defendants disposed of standard rate PLN mailings to PLN subscribers and other interested inmates at least at the following correctional facilities: MCC, AHCC, MICC, CBCC, WSP, SCCC, WCCW, and WCC.

3.29 On information and belief, the censorship of PLN mailings described above in paragraph 3.27 was done at the general direction of the individual defendants.

3.30 Washington Administrative Code ("WAC") 137-48-050 "requires defendants to provide notice and an opportunity to be heard to plaintiffs when their mailings are censored and to the inmates whose mail has been censored.

3.31 Nevertheless, Defendant Lehman established current DOC policy on which defendants have relied and continue to rely to destroy PLN standard rate mailings without providing plaintiffs notice of censorship and an opportunity to be heard.

3.32 Therefore, by letter dated May 23, 2001, PLN employee Donald Miniken notified defendant Lehman that DOC's application of its policy to PLN as described above violates plaintiffs' free speech rights as articulated by the U.S. Court of Appeals for the Ninth Circuit in Prison Legal News v. Cook, 238 F.3d 1145 (9th Cir. 2001).

3.33 Moreover, four years earlier, a federal court in Washington held that defendant Walter and other state employees violated Constitutional due process by their "failure to notify

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either the Plaintiff or the publisher of Prison Legal News of its rejection.” Miniken v. Walter, 978 F. Supp. 1356, 1364 (E.D. Wa. 1997).

3.34 To date, as explained above, defendant Lehman has ignored the WAC, Miniken’s letter, and the Eastern District of Washington and Ninth Circuit rulings.

3.35 Defendant Vail also applied this DOC policy to PLN. For example, by letter to PLN employee Fred Markham dated March 13, 2000, Vail stated: “...DOC Policy is quite clear in that bulk mail shall not be delivered to offenders unless the bulk mail is a subscription publication. No rejection notice is required for bulk mail that is not a subscription publication.” In short, Vail approved the destruction without notice to plaintiffs of all materials sent by plaintiffs to their subscribers apart from PLN journal itself.

3.36 On information and belief, all other defendants knowingly applied, or directed others to apply, DOC policy to censor PLN mailings sent to DOC inmates without providing to plaintiffs notice and an opportunity to be heard, as set forth above.

3.37 As applied by defendants to destroy materials sent by plaintiffs to DOC inmates by standard rate mail without notice or an opportunity to be heard, DOC policy and practice violates plaintiffs’ free speech and due process rights.

C. Censorship of Legal Materials sent by PLN.

3.38 Plaintiffs send legal documents about prison conditions, treatment of prisoners, and other prison issues, to DOC inmates.

3.39 Defendants have refused to deliver such legal documents, including court orders, court judgments, civil rights complaints, tort claims, and other similar documents, sent to inmates at least as follows:

<u>Inmate</u>	<u>Date</u>	<u>File #</u>	<u>Facility</u>
P. Wright	11-22-00	00-11-027	MICC

P. Wright	8-27-01	01-08-096	MICC
P. Wright	8-31-01		MICC
P. Wright	8-9-01	01-08-026	MICC

3.40 Defendant Frakes denied an appeal of DOC's rejection of legal materials sent by plaintiffs to inmate Paul Wright on or about August 27, 2001 (see File No. 01-08-096).

Likewise, Defendant Frakes denied an appeal of DOC's rejection of legal materials sent by plaintiffs to inmate Paul Wright on or about August 9, 2001 (see File No. 01-08-026).

3.41 By inaction, defendants Blodgett and Porter denied appeals of DOC's rejection of legal materials sent by plaintiffs to inmate Paul Wright during the years 2000 and 2001.

3.42 On information and belief, other defendants knowingly applied, or directed others to apply, DOC policy to censor PLN mailings of legal materials sent to inmate Wright and other DOC inmates.

3.43 The legal materials PLN sends to subscribers and other DOC inmates, including inmate Wright, are protected by the First Amendment. As applied by defendants to prohibit legal materials sent by plaintiffs as described above, DOC policy and practice violates plaintiffs' free speech rights as protected by the U.S. Constitution.

E. Proximate Cause of Harm to Plaintiffs.

3.40 Each defendant has knowingly and intentionally or recklessly participated in establishing, interpreting, or enforcing the above DOC policies or practices and has applied one or more of them to plaintiffs.

3.41 As a direct and proximate result of defendants' conduct, defendants have illegally interfered with and continue to interfere with plaintiffs' constitutional rights of free speech and due process. Through these same actions, defendants have caused and continue to cause plaintiffs to suffer economic harm. In addition, defendants' conduct continues to cause

irreparable harm to plaintiffs by violating their First Amendment Rights.

#### **IV. STATE ACTION AND COLOR OF STATE LAW**

4.1 Defendants committed the above-described acts within the scope of their authority as employees of the DOC and under color of the laws of the State of Washington.

#### **V. CLAIMS FOR RELIEF**

5.1 First Cause of Action: Violation of First Amendment Rights. By the above-described acts, defendants denied and continue to deny plaintiffs the right to be free from governmental interference with their freedom of expression as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. Section 1983.

5.2 Defendants' conduct has proximately caused and likely will proximately cause in the future economic and other harm to plaintiffs.

5.3 Defendants' conduct causes irreparable harm to plaintiffs as well.

5.4 Defendants' conduct was done intentionally, with deliberate indifference, or with reckless disregard of plaintiffs' constitutional rights.

5.5 Second Cause of Action: Deprivation of Liberty without Due Process. By censoring mail sent by plaintiffs without giving plaintiffs notice and the opportunity to be heard, defendants denied and continue to deny plaintiffs the right to be free from governmental deprivation of liberty without due process as guaranteed by the Fourteenth Amendment of the Constitution to the United States and 42 U.S.C. Section 1983.

5.6 Defendants' conduct has proximately caused and likely will proximately cause in the future economic and other harm to plaintiffs.

5.7 Defendants' conduct causes irreparable harm to plaintiffs as well.

5.8 Defendants' conduct was done intentionally, with deliberate indifference, or with reckless disregard of plaintiffs' constitutional rights.

**VI. REQUEST FOR RELIEF**

WHEREFORE, the plaintiffs request relief as follows:

6.1 A declaration that defendants' actions violate the Constitution.

6.2 A permanent injunction preventing defendants from continuing to violate the Constitution and other equitable relief.

6.3 Trial by jury.

6.4 Compensatory damages in an amount to be proved at trial.

6.5 Punitive damages against the individual defendants in an amount to be proved at trial.

6.6 Costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.

6.7 The right to conform the pleadings to the proof and evidence presented at trial.

6.8 Such other relief as the Court deems just and equitable.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2002.

MacDONALD, HOAGUE & BAYLESS

By \_\_\_\_\_  
Jesse Wing, WSBA #27751  
Attorneys for Plaintiffs