

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

HUMAN RIGHTS DEFENSE CENTER,
c/o Gerhardstein & Branch Co. LPA
441 Vine Street, Suite 3400
Cincinnati, OH 45202

Plaintiff,

v.

MANAGEMENT & TRAINING CORPORATION,
a Utah Corporation;
DBA North Central Correctional Complex
670 Marion-Williamsport Road
Marion, OH 43302

and

NEIL TURNER, Warden,
North Central Correctional Complex
670 Marion-Williamsport Road
Marion, OH 43302
individually and in his official capacity;

and

JOHN AND JANE DOES 1-10, Staff,
North Central Correctional Complex
670 Marion-Williamsport Road
Marion, OH 43302
individually and in their official capacities,

Defendants.

Case No.: 3:17-cv-1082

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF UNDER
THE CIVIL RIGHTS ACT 42
U.S.C. §1983 AND DAMAGES**

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff, Human Rights Defense Center (“HRDC” or “Plaintiff”) brings this action to enjoin Defendants’ censorship of books sent from Plaintiff and other publishers to prisoners at the North Central Correctional Complex, in violation of the First and Fourteenth Amendments of the United States Constitution. Defendants have adopted and implemented mail policies prohibiting delivery of written speech from Plaintiff and other speakers, failed to provide

due process notice of and an opportunity to challenge the censorship, and denied Plaintiff equal protection as required under the Constitution.

II. JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. § 1331 (federal question), as this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. § 1983.

3. Venue is proper under 28 U.S.C. § 1391(b). At least one Defendant resides within this judicial district, and the events giving rise to the claims asserted herein all occurred within this judicial district.

4. HRDC's claims for relief are predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to HRDC by the First and Fourteenth Amendments to the U.S. Constitution and the laws of the United States.

5. This Court has jurisdiction over claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

6. HRDC's claim for attorneys' fees and costs is predicated upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

7. HRDC is informed, believes, and based thereon alleges that the individual Defendants acted as described herein with the intent to injure, vex, annoy and harass HRDC, and subjected HRDC to cruel and unjust hardship in conscious disregard of HRDC's rights with the intention of causing HRDC injury and depriving it of its constitutional rights.

8. As a result of the foregoing, HRDC seeks injunctive and declaratory relief, as well as compensatory and punitive damages against the individual Defendants.

III. PARTIES

9. The Human Rights Defense Center is a not-for-profit, Washington charitable corporation recognized under § 501(c)(3) of the Internal Revenue Code with principal offices in Lake Worth, Florida. The purpose of HRDC, as stated in its Articles of Incorporation, is to educate prisoners and the public about the destructive nature of racism, sexism, and the economic and social costs of prisons to society. HRDC accomplishes its mission through litigation, advocacy, and publication and/or distribution of books, magazines and other information concerning prisons and prisoner rights.

10. Defendant Management & Training Corporation (“MTC”) is a Utah-based corporation. MTC provides correctional operation management services to state and local governments around the world and to the Ohio Department of Rehabilitation and Correction (“ODRC”). At all times material to this action, MTC contracted with ODRC to operate and manage the North Central Correctional Complex (“NCCC”) in Marion, Ohio. The NCCC confines a number of prisoners who have been prohibited receipt of HRDC’s books.

11. Defendant Neil Turner is the Warden of the NCCC. Defendant Turner has ultimate responsibility for the promulgation and enforcement of all NCCC staff policies and procedures and is responsible for the overall management of the NCCC, to include processing of mail.

12. The true names and identities of Defendants DOES 1 through 10 are presently unknown to HRDC. Each of Defendants DOES 1 through 10 are or were employed by and are or were agents of Defendants when some or all of the challenged inmate mail policies and practices were adopted and/or implemented. Each of Defendants DOES 1 through 10 were personally involved in the adoption and/or implementation of the mail policies at the NCCC, and/or were responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and/or control of the NCCC staff who interpret and implement these mail policies.

HRDC will seek to amend this Complaint as soon as the true names and identities of Defendants DOES 1 through 10 have been ascertained.

13. At all times material to this action, the actions of all Defendants as alleged herein were taken under the authority and color of state law.

14. At all times material to this action, all Defendants were acting within the course and scope of their employment as agents and/or employees of Defendant MTC.

IV. FACTUAL ALLEGATIONS

A. HRDC's mission and outreach to the NCCC

15. For more than 25 years, the focus of HRDC's mission has been public education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally guaranteed and other basic human rights. HRDC's mission, if realized, has a salutary effect on public safety.

16. To accomplish its mission, HRDC publishes and distributes books, magazines, and other information containing news and analysis about prisons, jails and other detention facilities, prisoners' rights, court rulings, management of prison facilities, prison conditions and other matters pertaining to the rights and/or interests of incarcerated individuals.

17. HRDC publishes and distributes an award-winning, 72-page monthly magazine titled *Prison Legal News: Dedicated to Protecting Human Rights*, which contains news and analysis about prisons, jails and other detention facilities, prisoners' rights, court opinions, management of prison facilities, prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals.

18. Additionally, HRDC publishes and/or distributes approximately fifty (50) different softcover books about the criminal justice system, legal reference books, and self-help books of interest to prisoners. These books are designed to foster a better understanding of criminal

justice policies and to allow prisoners to educate themselves about related issues, such as legal research, how to write a business letter, health care issues, and similar topics.

19. HRDC has thousands of customers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and members of the general public. HRDC distributes its publications to prisoners and law librarians in more than 2,600 correctional facilities located across all fifty states, including the Federal Bureau of Prisons and various facilities within the ODRC.

20. Accordingly, HRDC engages in core protected speech and expressive conduct on matters of public concern, such as the operation of prison facilities, prison conditions, prisoner health and safety, and prisoners' rights. HRDC's publications, as described above, contain political speech and social commentary, which are core First Amendment rights and are entitled to the highest protection afforded by the United States Constitution.

21. HRDC has sent its monthly magazine, *Prison Legal News*, to numerous prisoners at the NCCC. The magazine has not been censored by Defendants; instead, it is delivered to the intended prisoner-recipients.

22. Unlike the magazine, Defendants have adopted a policy and practice of arbitrarily prohibiting receipt of various HRDC's books sent to individual prisoners at NCCC. Specifically, since December 2016, HRDC has sent the following softcover books to prisoners held at the NCCC: 1) *The Habeas Citebook: Ineffective Assistance of Counsel* ("*Habeas Citebook*"), which describes the procedural and substantive complexities of federal habeas corpus litigation with the goal of identifying and litigating claims involving ineffective assistance of counsel; 2) *Protecting Your Health and Safety* ("*PYHS*"), which describes the rights, protections and legal remedies available to prisoners concerning their incarceration; 3) *Prisoners' Guerilla Handbook: A Guide to Correspondence Programs in the United States and Canada* ("*Prisoners' Handbook*"), which provides prisoners information on enrolling at accredited higher educational, vocational and

training schools; and 4) *Prisoner Diabetes Handbook: A Guide to Managing Diabetes – for Prisoners, by Prisoners*, which provides guidance on treating and managing diabetes while incarcerated.

23. Defendants censored these books and did not deliver them to the intended prisoner-recipients at the NCCC. Since December 2016 HRDC separately sent 37 of the books listed in Par. 22 to various prisoners at the NCCC. All of the books were returned to HRDC in their original packaging with writing on the outside stating that the contents were “Not Allowed” or “Not Auth.”

24. Further, Defendants failed to provide HRDC any notice or opportunity to appeal these censorship decisions.

25. Plaintiff will continue to mail copies of its books and other publications to subscribers, customers and other individuals imprisoned at the NCCC, but seeks the protection of this Court to ensure that the materials are delivered and, if not, that due process is afforded to the Plaintiff so it may challenge the basis for any censorship.

B. Defendants’ Unconstitutional Mail Policies and Practices

26. Defendants’ mail policy and practice bans books sent by HRDC and other senders to prisoners at the NCCC because the books have not been pre-approved by Defendants and/or because the sender is not on a pre-approved vendor list. Accordingly, Defendants’ mail policies and practices violate HRDC’s First Amendment right to free speech.

27. Further, Defendants’ pre-approval policy and/or use of a pre-approved vendor list specifically excludes some publishers and vendors, like HRDC, from sending their books to prisoners at the NCCC, while allowing other publishers and vendors access to these same prisoners. Accordingly, Defendants’ mail policy and practices violates HRDC’s Fourteenth Amendment right to equal protection.

28. Lastly, Defendants engage in a policy or practice that fails to provide senders of censored mail notice and an opportunity to appeal the censorship of the mail to the intended prisoner. Accordingly, such policy violates HRDC's Fourteenth Amendment rights to due process.

29. Said mail policies and practices are the moving force behind the constitutional violations at issue herein.

30. The accommodation of the free speech, expression, equal protection and due process rights of HRDC with respect to written speech protected by the Constitution will not have any significant impact on the prison, its staff or prisoners.

31. Due to Defendants' actions as described above, HRDC has suffered damages, and will continue to suffer damages, including, but not limited to: the suppression of HRDC's speech; the impediment of HRDC's ability to disseminate its political message; frustration of HRDC's non-profit organizational mission; the loss of potential subscribers and customers; and the inability to recruit new subscribers and supporters, among other damages.

32. Defendants' actions and inactions were and are motivated by ill motive and intent, and were and are all committed under color of law with deliberate indifference to HRDC's rights.

33. Defendants, and other agents of the NCCC, are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, Defendants are responsible for training and supervising the staff persons whose conduct has injured and continues to injure HRDC.

34. Defendants' unconstitutional policy, practices, and customs are ongoing, continue to violate HRDC's rights, and were and are the moving force behind the injuries HRDC suffered as a direct result of the constitutional violations. As such, HRDC has no adequate remedy at law.

35. Without relief from this Court HRDC will suffer irreparable injury since its fundamental First Amendment, due process and equal protection rights are being denied. The

balance of hardships favors the Plaintiff and the public interest will be served by granting injunctive and declaratory relief.

36. HRDC is entitled to declaratory relief as well as injunctive relief prohibiting Defendants from refusing to deliver publications and correspondence from HRDC and other senders without any legal justification, and prohibiting Defendants from censoring mail without due process of law.

IV. CLAIMS

Count I – 42 U.S.C. § 1983 ***Violation of the First Amendment (Censorship)***

37. HRDC re-alleges and incorporates the allegations of Paragraphs 1 through 36 of the Complaint as if fully set forth herein.

38. The acts described above constitute violations of HRDC's rights, the rights of other publishers who have attempted to or intend to communicate with prisoners at the NCCC, and the rights of the prisoners confined at the NCCC, under the First Amendment to the United States Constitution.

39. HRDC has a constitutionally protected liberty interest in communicating with incarcerated individuals, a right clearly established under existing case law.

40. The conduct of Defendants was objectively unreasonable and was undertaken negligently, recklessly, intentionally, willfully, with malice, and with deliberate indifference to the rights of others.

41. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which were and are the moving force of the violations.

42. Defendants' acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

43. HRDC seeks declaratory and injunctive relief, and nominal, compensatory and punitive damages against all Defendants. HRDC seeks punitive damages against the individual Defendants in their individual capacities.

Count II – 42 U.S.C. § 1983
Violation of Fourteenth Amendment (Due Process)

44. HRDC re-alleges and incorporates the allegations of Paragraphs 1 through 43 of the Complaint as if fully set forth herein.

45. The acts described above constitute violations of HRDC's rights and the rights of other publishers who have attempted to or who intend to communicate with prisoners at the NCCC under the Fourteenth Amendment to the United States Constitution.

46. Because HRDC and others outside the NCCC have a liberty interest in communicating with prisoners, HRDC and other senders have a right under the Due Process Clause of the Fourteenth Amendment to receive notice of and an opportunity to appeal Defendants' decisions to censor their written speech.

47. Defendants' policy and practice fail to provide HRDC and other senders with adequate notice and an opportunity to be heard.

48. The conduct of Defendants was objectively unreasonable and was undertaken negligently, recklessly, intentionally, willfully, with malice, and with deliberate indifference to the rights of others.

49. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which are and were the moving force of the violations.

50. Defendants' acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

51. HRDC seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. HRDC seeks punitive damages against the individual Defendants in their individual capacities.

Count III – 42 U.S.C. § 1983
Violation of the Fourteenth Amendment (Equal Protection)

52. HRDC re-alleges and incorporates the allegations of Paragraphs 1 through 51 of the Complaint as if fully set forth herein.

53. By permitting some publications to be delivered to prisoners at the NCCC, while specifically excluding books sent by HRDC and other senders, Defendants violate HRDC's equal protection rights as guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

54. HRDC is suffering ongoing and irreparable harm as a direct result of Defendants' discriminatory treatment, and the harm will continue unless the conduct is enjoined by this Court.

55. Defendants' conduct was objectively unreasonable and was undertaken negligently, recklessly, intentionally, willfully, with malice, and with deliberate indifference to HRDC's rights.

56. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which are and were the moving force of the violations.

57. Defendants' acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

58. HRDC seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. HRDC seeks punitive damages against the individual Defendants in their individual capacities.

V. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests relief as follows:

59. A declaration that Defendants' policies and practices violate the Constitution.
60. Nominal damages for each violation of HRDC's rights by the Defendants.
61. A preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief.
62. Compensatory damages in an amount to be proved at trial.
63. Punitive damages against the individual Defendants in an amount to be proved at trial.
64. Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988, and under other applicable law.
65. Any other such relief that this Court deems just and equitable.

VI. JURY DEMAND

Plaintiff, Human Rights Defense Center, by and through its attorneys, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Respectfully Submitted,

/s/ Alphonse A. Gerhardstein

Alphonse A. Gerhardstein

Trial Attorney for Plaintiff Human Rights Defense Center

Adam G. Gerhardstein

Attorney for Plaintiffs

Gerhardstein & Branch Co. LPA

441 Vine Street, Suite 3400

Cincinnati, OH 45202

(513) 621-9100

(513) 345-5543 (fax)

agerhardstein@gbfirm.com

adamgerhardstein@gbfirm.com

Attorneys for Plaintiff Human Rights Defense Center

/s/ Sabarish Neelakanta

Sabarish Neelakanta, Fla. Bar No.: 26623*

sneelakanta@hrdc-law.org

Masimba Mutamba, Fla. Bar No.: 102772*

mmutamba@hrdc-law.org

Daniel Marshall, Fla. Bar No.: 617210*

dmarshall@hrdc-law.org

Human Rights Defense Center

P.O. Box 1151

Lake Worth, FL 33460

(561) 360-2523

**Pro Hac Vice* applications to be filed