

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RUSSELL K. OGDEN, BEATRICE HAMMER,)
 and JOHN SMITH, on behalf of themselves and)
 a class of persons similarly situated;)
)
 Plaintiffs,)
)
 v.)
)
 PETE FIGGINS, in his official capacity as)
 Sheriff for Wilson County, Kansas,)
)
 Defendant.)

Case No. _____
CLASS ACTION

CLASS ACTION COMPLAINT

Plaintiffs Russell K. Ogden, Beatrice Hammer, and John Smith, all on behalf of themselves and all others similarly situated, sue defendant Pete Figgins (“Figgins”) in his official capacity as Sheriff for Wilson County, Kansas, and allege as follows:

INTRODUCTION

1. Plaintiffs challenge defendant’s policy and practice of forbidding inmates of the Wilson County Correctional Facility (the “Jail”) and their parents, children, spouses, relatives, friends and other correspondents from sending letters enclosed in envelopes to and from the Jail (“Postcard-Only Mail Policy”). Instead, Jail inmates and their outside correspondents must write all of their correspondences on pre-paid U.S. Postal postcards. The only exception to this Postcard-Only Mail Policy applies to “Legal Mail,” which is not defined, but includes mail sent from an attorney’s office.

2. This policy impermissibly restricts the ability of inmates and their outside correspondents from exercising their rights to communicate with correspondents in writing, in violation of the First and Fourteenth Amendments to the U.S. Constitution.

3. Moreover, the Postcard-Only Mail Policy does not afford either the sender or intended recipient of any rejected communication any notice of, reasons for, or opportunity to challenge this censorship, in violation of the Jail inmates and their outside correspondents' right to due process.

4. Plaintiffs ask this Court to enjoin the Postcard-Only Mail Policy and declare that it violates their constitutional rights.

JURISDICTION AND VENUE

5. Plaintiffs bring this action pursuant to 42 U.S.C. §1983 for violations of civil rights under the First and Fourteenth Amendments to the United States Constitution.

6. This court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights).

7. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiff Russell K. Ogden ("Ogden") is a private citizen who resides in Wilson County in Coyville, KS. Plaintiff Ogden is the father of Tab Ogden, who is currently incarcerated at the Jail, and is the legal guardian of Tab Ogden's two children, ages 5 and 7. As set forth more fully below, plaintiff Ogden has been, and continues to be, deprived of constitutional rights as a result of the defendant's Postcard-Only Mail Policy.

9. Plaintiff Beatrice Hammer ("Hammer") is a private citizen who resides in Labette County in Altamont, KS. Plaintiff Hammer is the grandmother of Andrew Clines, who is currently incarcerated at the Jail. As set forth more fully below, plaintiff Hammer has been, and continues to be, deprived of constitutional rights as a result of the defendant's Postcard-Only Mail Policy.

10. Plaintiff John Smith (“Smith”) is a private citizen who resides in Labette County in Parsons, KS. Plaintiff Smith is the cousin of Andrew Clines, who is currently incarcerated at the Jail. As set forth more fully below, plaintiff Smith has been, and continues to be, deprived of constitutional rights as a result of the defendant’s Postcard-Only Mail Policy.

11. Defendant Pete Figgins is now, and at all material times has been, the Sheriff of Wilson County, Kansas. As Wilson County Sheriff, defendant is charged with the care and custody of inmates at the Jail. Defendant Figgins exercises overall responsibility for the policies and practices of the Jail, including the Postcard-Only Mail Policy. Plaintiffs sue defendant Figgins in his official capacity for injunctive and declaratory relief and attorneys’ fees and costs.

12. Defendant Figgins at all times relevant hereto was acting and continues to act under color of law.

13. The jail administrator, supervisors, correction officers, deputies, and other staff persons who are responsible for implementing and enforcing the Jail’s Postcard-Only Mail Policy are agents and employees of defendant Figgins.

GENERAL ALLEGATIONS

14. The Jail is located in Fredonia, KS. It houses convicted prisoners, pretrial detainees, and civilly committed individuals.

15. Defendant Figgins has instituted the Postcard-Only Mail Policy, which requires all outgoing and incoming mail, except Legal Mail, sent by or to a Jail inmate to be written on a pre-paid, U.S. Postal postcard.

16. Despite this restriction, the Postcard-Only Mail Policy does not require that the Jail notify either the sender or intended recipient of any non-compliant correspondence that their communication has been rejected, or the reason for that rejection, and fails to provide any

opportunity for either the sender or intended recipient of any rejected communication to administratively appeal and/or challenge the Jail's decision.

17. Upon information and belief, when a communication is rejected by the Jail pursuant to the Postcard-Only Mail Policy, neither the sender nor intended recipient of that correspondence is notified that their communication has been rejected, or the reason for that rejection, nor are they provided any opportunity to administratively appeal and/or challenge the Jail's decision.

18. Plaintiff Ogden has been, and continues to be, deprived of his constitutional rights as a result of the Postcard-Only Mail Policy:

(a) Plaintiff Ogden would like to send letters immediately to his son, Tab, but cannot do so because of defendant's Postcard-Only Mail Policy.

(b) Plaintiff Ogden would like to correspond with Tab regarding such private and sensitive subjects as family and personal relationships, health care and physical conditions, and financial issues. In particular, plaintiff Ogden would like to be able to correspond with Tab about his two children, ages 5 and 7, so that Tab can maintain and further develop a relationship with his children. Tab's children would similarly like to be able to correspond with their father, but do not yet have the writing skills necessary to restrict their writing to the limited space on a postcard.

(c) As a result of defendant's Postcard-Only Mail Policy, plaintiff Ogden and his grandchildren cannot send these personal letters. Though he would like to discuss these sensitive topics with Tab, he cannot because of the restrictions imposed by the Postcard-Only Mail Policy on privacy and space. Additionally, he must express all of his thoughts and messages in an abbreviated and incomplete form as there is insufficient room on the postcard to

fully develop and communicate his thoughts and ideas. As a result, plaintiff Ogden cannot fully discuss his thoughts, feelings and ideas.

(d) Although plaintiff Ogden does occasionally visit Tab and speaks with him on the telephone, visitation and phone calls are not an adequate substitute for written communications about these private and sensitive matters, as more fully set forth below.

(e) Mail correspondence is the best way for plaintiff Ogden to stay in contact with Tab.

19. Plaintiff Hammer has been, and continues to be, deprived of her constitutional rights as a result of the Postcard-Only Mail Policy:

(a) Plaintiff Hammer would like to send letters immediately to her grandson, Andrew Clines, but cannot do so because of defendant's Postcard-Only Mail Policy.

(b) Plaintiff Hammer would like to correspond with Andrew regarding such private and sensitive subjects as family and personal relationships, health care and physical conditions, and financial issues.

(c) Andrew was incarcerated in the Jail on more than one occasion before defendant implemented the Postcard-Only Mail Policy. During those previous periods of incarceration at the Jail, plaintiff Hammer freely sent letters consisting of one or more sheets of paper enclosed in an envelope to Andrew, and those letters were transmitted to Andrew without incident.

(d) As a result of defendant's Postcard-Only Mail Policy, plaintiff Hammer cannot send such personal letters. Though she would like to discuss these sensitive topics with Andrew, she cannot do so because of the restrictions imposed by the Postcard-Only Mail Policy on privacy and space. Additionally, she must express all of her thoughts and messages in an

abbreviated and incomplete form as there is insufficient room on the postcard to fully develop and communicate her thoughts and ideas. As a result, plaintiff Hammer cannot fully discuss her thoughts, feelings and ideas.

(e) As a 78 year old woman, whose husband is suffering from cancer, it is difficult if not impossible for plaintiff Hammer to travel to visit Andrew.

(f) As a result of the aforementioned, mail correspondence is the best way for plaintiff Hammer to stay in contact with Andrew.

20. Plaintiff Smith has been, and continues to be, deprived of his constitutional rights as a result of the Postcard-Only Mail Policy:

(a) Plaintiff Smith would like to send letters immediately to his cousin, Andrew, but cannot do so because of defendant's Postcard-Only Mail Policy.

(b) Plaintiff Smith would like to correspond with Andrew regarding such private and sensitive subjects as family and personal relationships, health care and physical conditions, and financial issues. In particular, plaintiff Smith would like to be able to correspond with Andrew about Andrew's eventual release and reentry into the community, where plaintiff Smith hopes to be able to assist Andrew in finding suitable housing and employment upon release.

(c) As a result of defendant's Postcard-Only Mail Policy, plaintiff Smith cannot send such personal letters. Though he would like to discuss these sensitive topics with Andrew, he cannot because of the restrictions imposed by the Postcard-Only Mail Policy on privacy and space. As a result, Plaintiff Smith does not correspond with his cousin, Andrew.

(d) Telephone calls are very expensive, and Plaintiff Smith can only afford to make them on rare occasion.

(e) Because of Plaintiff Smith's work obligations, which require him to travel, he cannot visit Colby.

(f) Because of these limitations on visitation and telephone calls, mail correspondence is the best way for plaintiff Smith to stay in contact with Andrew.

21. Before defendant Figgins adopted the Postcard-Only Mail Policy, outside correspondents freely sent letters consisting of one or more sheets of paper enclosed in an envelope to inmate correspondents inside the Jail, and – after Jail staff inspected those letters for contraband and read or scanned them for inappropriate content – they were transmitted to Jail inmates without incident.

22. Likewise, before defendant Figgins implemented the Postcard-Only Mail Policy, Jail inmates freely sent non-privileged letters consisting of one or more sheets of paper enclosed in an envelope to correspondents outside the Jail. Jail staff read or scanned such non-privileged outgoing mail for content that violated the Jail's mail policy and then placed the envelope in the custody of the U.S. Postal Service for proper delivery to the inmates' intended addressees, who received such non-privileged envelope mail in due course.

23. Now, defendant Figgins and those acting under his authority will not transmit to an inmate or an outside correspondent mail that does not conform to the Postcard-Only Mail Policy. Had that policy been in place at the Birmingham City Jail on April 16, 1963, for example, Martin Luther King Jr. could not have sent to fellow clergymen his now famous twenty-three pages long "Letter from the Birmingham City Jail." Nor could the Apostle Paul have sent his Epistles to his fellow Christians while imprisoned by the Romans.

24. The Postcard-Only Mail Policy is set forth in the Wilson County Correctional Facility Standard Operating Policies and Procedures - Revised - Operation/Mail, and the Wilson County Correctional Facility Inmate Rules

25. Jail inmates and their friends and family have few alternatives by which to communicate privately and freely with family, friends, and other loved ones:

(a) Telephone calls are an inadequate substitute for letters.

(1) Pursuant to Jail policy, friends and family members cannot telephone inmates at the Jail.

(2) While Jail inmates are permitted to call out to friends and family members who have been placed on an approved list, the cost of such calls are prohibitively expensive.

(3) Even when a Jail inmate can afford to make such phone calls, the manner in which these calls are conducted prevents the discussion of sensitive and/or personal topics, as fellow Jail inmates may easily overhear these telephone calls.

(b) Jail visits are an inadequate substitute for letters.

(1) The Jail does not permit contact visitation. Instead, Jail inmates are separated from their visitors by glass and must talk to visitors over a telephone system.

(2) Family and friends may only visit Jail inmates during specific, limited time blocks on Saturday and Sunday, which prevents many friends and family with a conflict during this time period from visiting at all.

(3) Friends and family who do not live near the Jail or who live in another state cannot easily visit Jail inmates.

(4) Because jail visits may be inappropriate for young children, correspondence through regular envelope mail allows inmates to maintain and foster healthy familial relationships with such young children.

(c) Therefore, for all these reasons, mail correspondence for many Jail inmates and their family and friends is the most feasible, practical, and private way to communicate and maintain a relationship.

26. The Postcard-Only Mail Policy impermissibly curtails the ability of Jail inmates and their outside correspondents to send and receive private and/or sensitive expressions and communications. The Postcard-Only Mail Policy also prevents Jail inmates and their outside correspondents from fully expressing their thoughts. Instead, Jail inmates and their outside correspondents must express these messages in an abbreviated and incomplete form as there is insufficient room on the postcard to fully develop and communicate the inmates' thoughts and ideas. The Postcard-Only Mail Policy prevents inmates and their friends and family members from sending and receiving these fully developed and complete messages.

27. In addition, the postcards required by defendant's Postcard-Only Mail Policy expose the content of the inmates' and their correspondents' communications to anyone who handles, processes, or views the postcards in route, both within the Jail and outside the facility. Prior to the Postcard-Only Mail Policy, Jail inmates and outside correspondents would regularly write letters to family and friends that contained sensitive information, including medical, spiritual, intimate, and financial information. Because these letters were enclosed in envelopes and were only subject to review by a Sheriff's deputy, the writers felt confident that this sensitive

information would not be exposed for others to see, including postal carriers. The Postcard-Only Mail Policy has forced Jail inmates and outside correspondents to either abandon including sensitive information from their non-privileged correspondence or risk divulging confidential, sensitive information to unknown third-parties who can easily intercept these messages on postcards. Including sensitive financial information on a postcard increases the chance that these writers may become a victim of identity theft or fraud.

28. The defendant's Postcard-Only Mail Policy inhibits, infringes, limits, chills, suppresses, and interferes with the plaintiffs' constitutionally protected communications.

29. The plaintiffs have suffered and will continue to suffer an injury as a result of the defendant's Postcard-Only Mail Policy. The Postcard-Only Mail Policy infringes on plaintiffs' constitutional right of free speech to communicate in a complete and meaningful way and to express themselves fully. Moreover, defendant's failure to provide notice to those whose letters have been confiscated or an opportunity for the sender and intended recipient of those letters to appeal and/or protest that decision, violates plaintiffs' Due Process rights.

30. Defendant Figgins has acted under color of state law to deprive plaintiffs of their constitutional rights. Plaintiffs face a real and immediate threat of irreparable injury as a result of these actions and the existence, operation, and threat of enforcement of the defendant's Postcard-Only Mail Policy.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

32. Plaintiffs seek to represent a class defined as "all current and future outside correspondents who wish to write full-length letters to, and/or receive full-length letters from,

inmates in the Wilson County Jail and who are subject to or affected by the Postcard-Only Mail Policy.”

33. The proposed class is so numerous and so fluid that joinder of all members is impracticable and uneconomical. With hundreds of persons admitted to the Jail annually and an average Jail inmate population of roughly 35-40 persons, the approximate size of the class consists of hundreds of inmates and their correspondents.

34. There are questions of law and fact common to the members of the plaintiff class. These common questions of law and fact include, but are not limited to, the following:

- a) the scope and nature of defendant’s Postcard-Only Mail Policy;
- b) the scope, criteria, and process for invoking the alleged “Legal Mail” exception to defendant’s Postcard-Only Mail Policy;
- c) the scope and nature of defendant’s interests and/or justifications in instituting and maintaining the Postcard-Only Mail Policy;
- d) whether the defendant’s Postcard-Only Mail Policy provides either the sender or intended recipient of any rejected communication with any notice of, reasons for, or opportunities to challenge, the Jail’s censorship of protected speech; and
- e) whether the application of defendant’s Postcard-Only Mail Policy violates the rights of the members of the Class under the First and Fourteenth Amendments to the U.S. Constitution; and

35. The claims of the class representatives are typical of the claims of the members of the class. The class representatives have suffered injuries similar in kind and degree to injuries suffered by the members of the class. The defendant has acted the same with respect to the class

representatives and all class members. The class representatives make the same claims and seek the same relief for themselves and for all class members.

36. The named class representatives will fairly and adequately protect the interests of each class. The named class representatives have no interest that is now or may be potentially antagonistic to the interests of any of the classes. Plaintiffs understand the duties and responsibilities of serving as class representatives. Plaintiffs have no conflicts, and have retained experienced class counsel to represent the class.

37. Defendants have acted or refused to act on grounds generally applicable to the members of the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

COUNT ONE
SUPPRESSION OF PROTECTED SPEECH

38. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this complaint.

39. The defendant has deprived, and continues to deprive, plaintiffs of their rights under the First Amendment to the U.S. Constitution, which are secured through the Fourteenth Amendment. The defendant's Postcard-Only Mail Policy is the cause in fact of the constitutional violations.

40. Absent intervention by this Court, the named plaintiffs and the members of the plaintiff class will suffer injury as a result of the defendant's unconstitutional practices.

41. Unless restrained by this Court, defendant will continue to enforce the Postcard-Only Mail Policy. Named plaintiffs and the members of the plaintiff class have been and will continue to be irreparably harmed by defendant's denial of plaintiffs' fundamental constitutional right to free speech.

42. Named plaintiffs and the members of the plaintiff class have no adequate remedy at law for the denial of their fundamental constitutional rights.

43. In depriving plaintiffs and the members of the plaintiff class of these rights, defendant acted under color of state law. This deprivation under color of state law is actionable under and may be redressed pursuant to 42 U.S.C. § 1983.

COUNT TWO
VIOLATION OF DUE PROCESS

44. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this complaint.

45. Plaintiffs have a free speech right to communicate with their loved ones who are inmates in the Jail. This right is guaranteed by the First and Fourteenth Amendments to the U.S. Constitution.

46. When plaintiffs attempt to send letters in envelopes to inmates in the Jail, and when inmates attempt to send letters in envelopes to outside correspondents including plaintiffs, Jail staff intercepts and rejects those letters pursuant to the defendant's Postcard-Only Mail Policy, and those letters are not delivered to their intended recipients.

47. Despite this consequence of the Postcard-Only Mail Policy, defendant does not notify either the senders or the intended recipients of any rejected correspondence that their communications have been rejected, or of the reason for that rejection, and fails to provide any opportunity for either the senders or intended recipients of any rejected communications to administratively appeal and/or challenge the Jail's decision.

48. The defendant's failure and refusal to provide Plaintiffs with constitutionally required notice and an opportunity to be heard and/or protest the rejection of their protected

speech violates Plaintiffs' rights, and the rights of all others similarly situated, to the due process of law protected by the Fourteenth Amendment to the U.S. Constitution.

49. Absent intervention by this Court, the named plaintiffs and the members of the plaintiff class will suffer injury as a result of the defendant's unconstitutional practices.

50. Unless restrained by this Court, defendant will continue to enforce the Postcard-Only Mail Policy. Named plaintiffs and the members of the plaintiff class have been and will continue to be irreparably harmed by defendant's denial of plaintiffs' fundamental constitutional right to due process.

51. Named plaintiffs and the members of the plaintiff class have no adequate remedy at law for the denial of their fundamental constitutional rights.

52. In depriving plaintiffs and the members of the plaintiff class of these rights, defendant acted under color of state law. This deprivation under color of state law is actionable under and may be redressed pursuant to 42 U.S.C. § 1983.

RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request the following relief:

A. An order certifying this matter as a class action pursuant to Rule 23, Fed. R. Civ. Pro.;

B. An order declaring defendant's Postcard-Only Mail Policy to be in violation of the First and Fourteenth Amendments to the U.S. Constitution;

C. An order permanently enjoining defendant and his officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with him, from continuing the unlawful Postcard-Only Mail Policy or any other policy that limits mail to postcards, thus restoring the status quo that previously existed;

D. An order requiring defendant to provide notice to all current Jail inmates and Jail officials implementing the defendant's policies that the Postcard-Only Mail Policy is terminated;

E. An order permanently enjoining defendant and his officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with him, from taking retaliatory action against plaintiffs for bringing this lawsuit;

F. An award of reasonable attorneys' fees and costs incurred in connection with this action from defendants pursuant to 42 U.S.C. § 1988;

G. An order retaining the court's jurisdiction of this matter to enforce the terms of the Court's orders; and

H. Such further and different relief as is just and proper or that is necessary to make plaintiffs whole.

Respectfully Submitted,

/s/ Stephen Douglas Bonney
Stephen Douglas Bonney, KS Bar #12322
ACLU Foundation of Kansas
6701 W. 64th Street, Ste. 210
Overland Park, KS 66202
Tel. (913) 490-4102
Fax: (913) 490-4119
E-mail: dbonney@aclukansas.org

and

Joshua A. Glickman, Esq.
Kansas Bar No. 25889
Social Justice Law Collective, PL
6709 W. 119th Street, #198
Overland Park, KS 66209
Tel. (913) 213-3064
Fax: (866) 893-0416
Email: josh@sjlawcollective.com

Counsel for Plaintiffs