

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

Tara Ballenger, individually and on behalf of)	
those similarly situated,)	
)	
Plaintiff,)	
)	
v.)	No. 2:13-cv-4177
)	
County of Morgan, Missouri,)	
)	
Defendant.)	

COMPLAINT

INTRODUCTION

1. This is civil rights action filed by Tara Ballenger, an individual residing in the State of Oregon who corresponds with a detainee held at the Morgan County Adult Detention Center. She brings suit pursuant to 42 U.S.C. § 1983, on her own behalf and on behalf of a class of current and future individuals who correspond with a detainee held at the Morgan County Adult Detention Center, alleging a violation of Due Process.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 42 U.S.C. § 1983 over Plaintiff's claims of the deprivation under color of state law of rights, privileges, or immunities secured by the Constitution.

3. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiff's civil action arising under the Constitution of the United States.

4. In addition, this Court has jurisdiction pursuant to 28 U.S.C. § 1343 to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution of the United States.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and L.R. 3.1(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in Morgan County, Missouri.

PARTIES

6. Plaintiff, Tara Ballenger, resides in the State of Oregon.

7. Plaintiff is not incarcerated.

8. Defendant County of Morgan, Missouri, is a political subdivision of the State of Missouri and is the government entity responsible for operation of and establishing policy for the Morgan County Adult Detention Center.

9. All actions by officers, employees, or agents of Morgan County described herein are taken under color of state law.

FACTS

10. Plaintiff has regularly sent printed materials, including letters, newspaper and magazine clippings, photocopies of newspaper and magazine articles, and books, to a detainee at the Morgan County Adult Detention Center.

11. Several of items Plaintiff has mailed to a detainee at Morgan County Adult Detention Center have been confiscated by Detention Center personnel without being delivered to the intended recipient, including on June 1, 2013; June 5, 2013; and June 17, 2013.

12. Defendant has provided to Plaintiff no notice of rejections or opportunity to contest rejection decisions.

13. It is the policy and custom of Defendant to not provide notice to senders of written materials intended for detainees at the Morgan County Adult Detention Center when

written materials are have been rejected and to not provide senders of written materials that have been rejected the opportunity to contest the rejection decisions.

14. The policy and custom of not providing notice or the opportunity to contest decisions to reject written materials intended for detainees at the Morgan County Adult Detention Center is applied not only to Plaintiff but to all senders of written materials that are rejected.

15. The written materials sent by Plaintiff and rejected by the Morgan County Adult Detention Center have not been returned to Plaintiff.

COUNT I
Class-Action Due Process Claim

16. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if set forth verbatim.

17. Plaintiff is a member of a class of current and future individuals who send, or will send, written materials intended for recipients who are confined in the Morgan County Adult Detention Center.

18. The total number of persons in the class of current and future individuals who send, or will send, written materials intended for recipients who are confined in the Morgan County Adult Detention Center is so numerous that joinder of all members of the class would be impracticable. In addition, it is not possible to identify all individuals who will send written materials intended for recipients who are confined in the Morgan County Adult Detention Center in the future, so joinder of all members of the class would be impossible.

19. There are questions of law and fact that are common to the claim of the class, including the legal question of whether the Fourteenth Amendment requires senders of written materials intended for recipients confined in a jail to receive notice and an opportunity to be

heard when the written materials are rejected by jail officials and the factual question of what notice and opportunity to be heard, if any, Defendant provides to senders of written materials that are rejected.

20. The Due Process claim of Plaintiff is typical of the Due Process claim of the class.

21. Plaintiff will fairly and adequately protect the interests of the class.

22. The challenge to the policy and custom of Defendant to not provide Due Process to senders of written materials that Defendant rejects is generally applicable to the class, making appropriate the grant of relief to the class as a whole.

23. Defendant's policy and custom fails to provide individualized notice to senders of written materials when Defendant rejects written materials and fails to give senders an opportunity to be heard on the issue of the rejection of the written materials they send.

24. The Due Process Clause of the Fourteenth Amendment gives Plaintiff and members of the putative class the right to individualized notice Defendant rejects written materials directed to a detainee.

25. The Due Process Clause of the Fourteenth Amendment gives Plaintiff and members of the putative class the right to a process by which they have an opportunity to challenge Defendant's rejection of written materials.

26. The acts described above violate the rights of Plaintiff and other members of the putative class under the Fourteenth Amendment, have harmed them, and, until enjoined, will continue to cause harm.

WHEREFORE Plaintiff prays this Court:

- A. Upon proper motion, certify a Plaintiff Class, name Plaintiff as class representative, and appoint Plaintiff's attorneys as class counsel;

- B. Upon proper motion, issue a temporary restraining order, preliminary injunction, or both, requiring Defendants, upon making a decision to reject written material sent to a detainee, to provide notice and an opportunity to be heard to the sender of the written material;
- C. Enter declaratory judgment, pursuant to 42 U.S.C. § 1983, that Defendant's policies and customs violate the Constitution;
- D. Enter a permanent injunction requiring Defendant, upon making a decision to reject written material sent to a detainee, to provide notice and an opportunity to be heard to the sender of the written material;
- E. Award Plaintiff costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 or any other applicable law; and
- F. Allow to Plaintiff such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Anthony E. Rothert
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