

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

Cheryl Simpson,)	
)	
Plaintiff,)	
)	
v.)	No. 1:14-cv-13
)	
County of Cape Girardeau, Missouri,)	
)	
Defendant.)	

COMPLAINT

INTRODUCTION

1. This is civil rights action filed by Cheryl Simpson, an individual residing in the State of Missouri who corresponds with an inmate held at the Cape Girardeau County Jail (“Jail”). She brings suit pursuant to 42 U.S.C. § 1983.

2. Plaintiff challenges Defendant County of Cape Girardeau’s policy or custom of forbidding parents, children, spouses, relatives, friends and other correspondents from sending letters enclosed in envelopes to Jail inmates (“Postcard-Only Mail Policy” or “policy”). Instead, outside correspondents must write all of their correspondence on postcards no larger than five inches by seven inches. The only exception to this Postcard-Only Mail Policy applies to “privileged correspondence.” This policy or custom impermissibly restricts the ability of outside correspondents to exercise their rights to communicate with inmates, in violation of the First and Fourteenth Amendments to the United States Constitution.

3. Plaintiff asks this court to enjoin the Postcard-Only Mail Policy and declare that it violates her constitutional rights.

JURISDICTION AND VENUE

4. 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.

5. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution of the United States.

6. Venue lies in the United States District Court for the Eastern District of Missouri because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the County of Cape Girardeau, Missouri. 28 U.S.C. § 1391(b)(2).

7. Divisional venue is in the Southeastern Division because the events leading to the claim for relief arose in the County of Cape Girardeau and Defendant is located in the County of Cape Girardeau. E.D. MO. L.R. 2.07(A)(3), (B)(1).

PARTIES

9. Plaintiff, Cheryl Simpson, resides in Missouri.

10. Defendant County of Cape Girardeau, Missouri, is a political subdivision of the State of Missouri and is responsible for the operation of, and establishing policy for, the Cape Girardeau County Jail.

11. The Postcard-Only Mail policy is the policy of the County of Cape Girardeau that restricts what incoming mail may be received by those detained by the County of Cape Girardeau.

12. All actions by Defendant, its officers, employees, or agents, described herein are taken under color of state law.

FACTS

13. The Jail is located in Jackson, Missouri, and houses convicted prisoners and pretrial detainees.
14. Plaintiff's son is an inmate at the Jail.
15. Plaintiff corresponds with her son regularly.
16. Effective on or about January 1, 2014, Defendant instituted a policy that requires all non-privileged incoming mail sent to inmates "be post cards."
17. The policy states:
 - (a) All postcards must be standard white postcards, no index cards or photographs
 - (b) Postcards must be no larger than 5" x 7"
 - (c) Postcards will have their stamps removed and discarded prior to delivery to the inmate
 - (d) Postcards must be addressed with the return address clearly readable.
 - (e) There will be no limit on how many postcards inmates can receive but inmates will be limited to ten postcards in their cell at any one time.
 - (f) Unacceptable postcards will be returned to sender
 - (1) Defaced or altered postcards are unacceptable
 - (2) No plastic/wrappings on postcards
 - (3) No labels or stickers will be accepted
 - (4) No postcards with watermarks or stains
 - (5) No postcards with biohazards, including lipsticks or perfumes
 - (6) No postcards depicting nudity, weapons, alcohol or gang references.

18. Plaintiff learned of this policy change from her son.

19. Prior to January 1, 2014, Plaintiff regularly sent printed materials, including multiple page letters and photographs to her son.

20. If not for the policy, Plaintiff would continue to send printed materials, including multiple page letters and photographs, to her son.

21. Since the policy change on or about January 1, 2014, Plaintiff has not been able to communicate with her son as she would like and as she had done in the past.

22. If not for the policy, Plaintiff would correspond with her son regarding such matters as family, health conditions and healthcare, finances, and his reintegration (e.g., jobs and education) after his release from jail.

23. Prior to the policy, Plaintiff regularly sent two and three-page double-sided letters written on legal pad paper (8.5" x 14") to her son, but because of the policy she cannot do so.

24. A three-page, double-sided letter written on legal paper and mailed in an envelope for \$0.49 has 714 square inches of writing space for Plaintiff to express her ideas, thoughts, and prayers.

25. Under the challenged policy, Plaintiff would need to use forty-one postcards, costing \$15.58 in postage, to mail the same content she used to send in one envelope.¹

26. The added cost to Plaintiff of mailing the same content to her son under the challenged policy is \$15.09 per correspondence, compared to a \$0.49 envelope.²

¹ Despite the Jail policy allowing for postcards measuring 5 inches by 7 inches, the United States Postal Service requires postcards to be "[n]o more than 4-1/4 inches high x 6 inches long x 0.016 inches thick." *See* U.S. Postal Service, "Sizes of Post Cards," at <http://pe.usps.com/businessmail101/mailcharacteristics/cards.htm> (last visited January 31, 2014). Plaintiff and others who go to the post office can purchase pre-stamped blank postcards, which measure 3.5 inches by 5 inches, for \$0.38.

27. The policy places a logistical burden on Plaintiff, who must go to multiple post offices to find and purchase sufficient 3.5” by 5” postcards.

28. Furthermore, because under the policy the Plaintiff’s son is “limited to ten postcards in [his] cell at any one time,” the content of a three-page, double-sided legal paper letter mailed in an envelope is more than can be kept in his cell.

29. Plaintiff’s son receives correspondence from others besides Plaintiff, including his father, sister, grandmother, and nephew.

30. Because the ten-postcard limit is an aggregate limit and not by sender, when the Plaintiff’s son receives other mail from other correspondents, her mail may not be kept in his cell.

31. Plaintiff must now try to express all of her thoughts, feelings, and ideas in an abbreviated and incomplete form because of the policy.

32. Plaintiff is unable to adequately communicate her thoughts, feelings, and ideas to her son via correspondence as she did before the policy.

33. The content of her written correspondence is quantitatively less, and substantively different, than it would be had the policy not changed.

34. Plaintiff is worried that her son’s reintegration after release from jail will be jeopardized by the qualitative and substantive differences in her correspondence since January 1, 2014, when the policy changed.

35. Since the policy change on or about January 1, 2014, Plaintiff has also not been able to send her son photographs, financial documents, or anything private or confidential.

² A two-page, double-sided letter on legal pad paper has 476 square inches of writing space and would require 28 postcards costing \$10.64 under the challenged policy (\$10.15 more than a single \$0.49 stamped envelope).

36. Friends and family of inmates, like Plaintiff, have few alternatives by which to communicate with inmates.

37. Plaintiff talks on the phone to her son once a week, but such calls are an inadequate substitute for letters in that:

(a) Pursuant to Jail policy, friends and family members –including Plaintiff– cannot telephone inmates at the Jail;

(b) While Jail inmates are permitted to call out to friends and family members, the cost of such calls is expensive. Collect telephone calls from Plaintiff’s son to Plaintiff cost \$10.00 for a ten-minute call; and

(c) Even when an inmate can 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.

38. Plaintiff usually visits her son in jail weekly, but such visits are an inadequate substitute for letters in that:

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

(b) Often one or more of the telephones do not work properly such that it is often difficult or impossible to hear what the other party is saying. Plaintiff has been assigned phones that do not work and has observed during some visits that only four of seven phones are operational;

(c) There is no privacy for visitation, so other inmates or visitors overhear conversations;

(d) Family and friends may only visit inmates during a specific one-hour time period, which prevents those with a conflict during this time period from visiting at all;

(e) Visits are limited to 15 minutes; and

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

39. Correspondence by letter is the most feasible, practical, and private method for Plaintiff to communicate and maintain a relationship with her son.

40. Because letters written before the Postcard-Only Mail Policy were enclosed in envelopes and only subject to review by Defendant's assigned officers, employees, or agents, Plaintiff was confident that any sensitive information included in her correspondence would not be exposed to non-authorized people, including those transporting the mail, other inmates, and Defendant's employees who are not assigned to review mail.

41. Since the new policy took effect on or about January 1, 2014, Plaintiff has been chilled in what she writes for fear that unauthorized persons will read it.

42. Before Defendant 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. An assigned officer or employee would open and then read or scan the letters for contraband content that violated the Jail's mail policy. After reading or scanning the incoming letters mail, the assigned officer or employee would deliver the mail to the inmate without incident.

43. Now, jail officials will not transmit to an inmate mail that does not conform to the Postcard-Only Mail Policy. Instead, the mail will be returned to the sender.

COUNT I
Violation of First and Fourteenth Amendments

to the United States Constitution

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

45. Defendant's Postcard-Only Mail Policy impermissibly curtails the ability of Plaintiff to send communications to her son.

46. Defendant's Postcard-Only Mail Policy prevents Plaintiff from fully expressing her thoughts and messages to her son.

47. Defendant's Postcard-Only Mail Policy exposes the content of Plaintiff's communications to anyone who handles, processes, or views the postcards in route, both within the Jail and outside the facility.

48. Defendant's Postcard-Only Mail Policy continues to inhibit, infringe, limit, chill, suppress, and interfere with Plaintiff's constitutionally protected communications.

49. Plaintiff has suffered, and will continue to suffer, an injury as a result of Defendant's Postcard-Only Mail Policy.

50. Defendant's Postcard-Only Mail Policy infringes on Plaintiff's constitutional right to communicate in a complete and meaningful way.

51. Defendant has deprived, and continues to deprive, Plaintiff of her rights under the First Amendment to the United States Constitution, which are incorporated through the Fourteenth Amendment. Defendant's Postcard-Only Mail Policy is the cause-in-fact of the constitutional violations.

52. Upon information and belief, unless restrained by this court, Defendant will continue to enforce the Postcard-Only Mail Policy.

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. Upon proper motion, issue a preliminary injunction prohibiting Defendant, its officers, employees, or agents, from continuing the Postcard-Only Mail Policy;
- B. Enter declaratory judgment, pursuant to 42 U.S.C. § 1983, that Defendant's policies and customs violate the Constitution;
- C. Enter a permanent injunction prohibiting Defendant, its officers, employees, or agents, from continuing the Postcard-Only Mail Policy;
- D. Award Plaintiff costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 or any other applicable law; and
- E. 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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