

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA INSTITUTIONAL :  
LAW PROJECT, ABOLITIONIST :  
LAW CENTER, AMISTAD LAW :  
PROJECT, AND AMERICAN :  
CIVIL LIBERTIES UNION :  
OF PENNSYLVANIA, :

Plaintiffs, :

v. :

No. 1:18-cv-02100-JEJ-EBC

JOHN E. WETZEL, :  
Secretary of Department of Corrections, :  
SHIRLEY MOORE SMEAL, Executive :  
Deputy Secretary of Department of :  
Corrections, and TABB BICKELL, :  
Executive Deputy Secretary for :  
Institutional Operations, :

Defendants. :

**PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs file this Motion for Preliminary Injunction, the grounds for which are described more fully in the Plaintiffs’ Verified Complaint and Brief in Support of this Motion. In summary, Plaintiffs state as follows:

1. Plaintiffs are legal service organizations that provide legal services to individuals incarcerated within State Correctional Institutions (“SCIs”) owned and operated by the Pennsylvania Department of Corrections (“DOC”). Plaintiffs use

the mail to provide confidential legal advice to thousands of individuals housed in DOC facilities each year.

2. Defendants are officials within the DOC who, among likely others, created and implemented in September 2018, a new policy with respect to legal mail in DOC facilities. That portion of DC-ADM 803 (effective October 3, 2018) (a copy of which is attached as Exhibit 4 to Plaintiffs' Complaint) that relates to legal mail is hereinafter the "New Legal Mail Policy." The New Legal Mail Policy requires DOC staff to confiscate all incoming legal mail, inspect it for contraband, and hold it for 45 days, only allowing recipients a photocopy of their correspondence.

3. This New Legal Mail Policy interferes with confidential attorney-client communications and destroys the legal privilege attached to such communications. As a result, Plaintiffs and their clients have been forced to abandon communications by mail and have no other feasible means of confidential communication.

4. The New Legal Mail Policy infringes upon the First Amendment free-speech rights of free speech of Plaintiffs and their current and prospective clients. Further, Plaintiffs are incurring significant additional time and expense in traveling to visit personally with their clients in order to discharge their ethical duties as attorneys.

5. The New Legal Mail Policy is not reasonably related to a legitimate penological interest. DOC has no information, and no reason to believe, that bona fide legal mail has introduced drugs or other dangerous substances into its facilities. Rather, this is just the type of exaggerated response that the Courts prohibit.

6. The infringement of First Amendment rights, and the intrusion upon the attorney-client privilege, is occurring daily. Plaintiffs and their clients have suffered and are continuing to suffer irreparable harm as a result of this intrusion. The policy chills their speech, interferes with the attorney-client privilege and does not respect the confidentiality of attorney-client communications.

7. The harm to Plaintiffs by denying preliminary injunctive relief outweighs the harm to Defendants by granting such relief because Defendants would not suffer harm if ordered to revert back to DOC's prior legal mail policy or to adopt another policy that does not require the DOC to copy and store confidential attorney-client correspondence.

8. The public interest is best served by granting this preliminary injunction. There is a strong public interest in the protection of free speech, as well as the right to confidential communication between client and attorney.

9. Contemporaneously with this Motion, Plaintiffs are filing a Motion for Expedited Discovery to identify any penological interests that the Defendants

may advance in opposition to this Motion, and discover the rationale for Defendant's new policy as well as any alternatives that they considered.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order enjoining Defendants from implementing the New Legal Mail Policy and prevent the copying or storage of bona fide legal mail.

Respectfully submitted,

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/s/ Stephanie A. Short

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/s/ Danielle T. Bruno

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*Attorneys for Plaintiffs*

Dated: October 30, 2018

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Executive Deputy Secretary for :  
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Defendants. :

**ORDER**

This \_\_\_\_\_ day of \_\_\_\_\_, 2018, upon consideration of the Plaintiffs’ Motion for Preliminary Injunction, and any opposition thereto, and after a hearing, the Court finds as follows:

1. Plaintiffs have a reasonable likelihood of success on the merits of their claims.

2. Plaintiffs have a First Amendment right to communicate confidentially with their clients who are incarcerated in DOC facilities. Similarly,

Plaintiffs' clients and other incarcerated individuals have a First Amendment right to communicate confidentially with their attorneys.

3. The New Legal Mail Policy (as defined in Plaintiffs' Motion) infringes upon the First Amendment rights of incarcerated individuals and their attorneys. In particular, the New Legal Mail Policy requires the copying of privileged legal mail and the storing of original, opened legal mail outside the presence of incarcerated individuals.

4. The New Legal Mail Policy is not reasonably related to legitimate penological interests. In particular, there is no valid, rational connection between the New Legal Mail Policy and the goal of excluding drugs or other dangerous substances from DOC Facilities. Further, the Court finds that there are no reasonable alternative means for Plaintiffs and their clients to exercise their First Amendment rights, that accommodating these rights would not have an adverse effect on the DOC facilities, other incarcerated individuals, DOC staff or government resources, and the Defendants have other alternatives available to meet their legitimate interests.

5. Plaintiffs and their clients will be irreparably harmed unless a preliminary injunction is issued. In particular, their First Amendment rights would continue to be infringed, and the attorney-client privilege would continue to be violated.



6. Defendants have not demonstrated, nor is it likely, that they will suffer any irreparable harm if they are enjoined from implementing the New Legal Mail Policy.

7. The public interest of protecting First Amendment rights and of preserving the attorney-client privilege favors granting a preliminary injunction in this instance.

It is therefore ORDERED that Plaintiffs' Motion for Preliminary Injunction is GRANTED. Defendants and all persons acting pursuant to their direction or authority may not and are hereby enjoined from (1) copying legal mail from attorneys to individuals incarcerated in DOC facilities, (2) storing opened legal mail outside the presence of the incarcerated individuals; or (3) otherwise implementing the New Legal Mail Policy as defined Plaintiff's Motion.

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J.

**CERTIFICATE OF SERVICE**

I do hereby certify that on October 30, 2018, a true and correct copy of the foregoing **Motion for Preliminary Injunction** was served on the following by email and U.S. Mail:

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(agreed to accept service on behalf of Defendants)

SCHNADER HARRISON SEGAL & LEWIS LLP

By: /s/ Keith E. Whitson  
Keith E. Whitson