



State seeks to scuttle prison First Amendment case

Jim Saunders

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In a First Amendment dispute that has drawn attention from a wide range of groups, Attorney General Pam Bondi's office this week asked the U.S. Supreme Court to turn down an appeal by a magazine that has been blocked from distribution to Florida prison inmates.

State attorneys filed a 44-page brief urging the Supreme Court to deny consideration of a long-running legal battle with Prison Legal News. A U.S. district judge and the 11th U.S. Circuit Court of Appeals sided with the state, which argues that advertisements in Prison Legal News pose security risks.

The brief filed Monday disputed arguments that the Florida Department of Corrections has violated First Amendment rights or that it has imposed a "blanket ban" on the publication. The brief said the department has blocked distribution of the monthly magazine because of ads for such things as three-way phone calling services, which can be used to facilitate crimes.

"The policies challenged in this case are neutral on their face and reasonably calculated to curtail prisoners' access to the means of committing crimes; the district court expressly found that those policies do not have the purpose or effect of suppressing disfavored viewpoints; petitioner (Prison Legal News) has not asked this (Supreme) Court to rule that those factual findings are clearly erroneous; and, if and when record evidence supports a finding of invidious discrimination or other comparable malfeasance on the part of prison officials, nothing in the Eleventh Circuit's decision would bar a newspaper or prisoner from proving such a claim and obtaining appropriate judicial relief," the brief said.

But in a petition filed in September asking the Supreme Court to take up the case, attorneys for Prison Legal News argued that "censorship" by the department violates free-speech and free-press rights.

"Publishers, reporters and advertisers have a constitutionally protected interest in communicating with prisoners, and prisoners have a right to receive those communications," the 45-page petition said. "These protections are all the more important when the publication at issue is uniquely designed to inform prisoners of their legal rights, and a prison's decision to silence that speech is all the more suspect when it is applied in a blanket manner to the entire incarcerated population based on bare assertions of security concerns without supporting evidence."

The Supreme Court receives thousands of petitions each year and takes up only a relative handful of cases. It is not clear when the court will decide whether it wants to hear the Prison Legal News dispute.

But Prison Legal News has drawn briefs in support from groups ranging from media and religious organizations to Americans for Prosperity and The Cato Institute.

For instance, a brief filed on behalf of Americans for Prosperity, The Cato Institute, R Street Institute, Reason Foundation and the Rutherford Institute pointed to interest in issues such as criminal-justice reform and protecting civil liberties. The brief said that by “allowing Florida officials to censor Prison Legal News based on an unsupported invocation of nebulous ‘prison security and public safety interests,’ the Eleventh Circuit failed to consider the substantial benefits to providing prisoners access to reading materials that support rehabilitation and civic engagement. The Eleventh Circuit’s decision amounts to an abdication of the judiciary’s constitutional role in safeguarding individual liberty and encourages the government to impose arbitrary and capricious restrictions on the First Amendment rights of prisoners.”

But Bondi’s office framed the issues more narrowly as it said the case should not be heard by the Supreme Court.

“Petitioner (Prison Legal News) asks this court to decide ‘whether the Florida Department of Corrections’ blanket ban of Prison Legal News violates petitioner’s First Amendment right to free speech and a free press.’ The premise of that question is incorrect: FDOC has not adopted a ‘blanket ban,’ ” the brief said. “Nor could it have: Under applicable regulations, prison officials ‘must separately review and decide whether each issue of a publication violates’ the admissible reading rule. Petitioner’s publication has been consistently impounded in recent years, but only because its issues have consistently promoted ads for prohibited services.”