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for purposes of identification*

October 8, 2019

Literature Review Committee  
c/o Dean Peterson, Library Services Administrator  
Florida Department of Corrections  
Allen.Peterson@fdc.myflorida.com  
501 South Calhoun Street  
Tallahassee, FL 32399-2500

Re: Impoundment of *The Militant*, Vol. 83, Issue Nos. 15, 18, 19, 20, 22, and 23

Dear Literature Review Committee,

The Reporters Committee for Freedom of the Press (“Reporters Committee”) is an unincorporated nonprofit association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media.

We understand that one or more Florida state prisons impounded Vol. 83, Issue Nos. 15, 18, 19, 20, 22, and 23 of *The Militant* in April, May, and June 2019. We also understand that the publisher has appealed the impoundments, and that all six impoundments were affirmed by the Literature Review Committee before the publisher timely filed its appeals. We write to urge you to reverse the impoundments.

These impoundments infringe the First Amendment rights of both *The Militant*’s publisher and its incarcerated subscribers. The justifications offered for the bans are unsupported by the contents of the impounded issues, making the impoundments appear to be a pretense for censoring criticism of prison authorities. We therefore urge that these impoundment decisions be overturned, and that all impounded copies of *The Militant* Vol. 83, Issue Nos. 15, 18, 19, 20, 22, and 23 be delivered to *The Militant*’s subscribers throughout Florida’s correctional system.

*The Militant* is published in New York and describes itself as “a socialist newsweekly published in the interests of working people” that reflects the program, perspectives, and activities of the Socialist Workers Party in the United States. Newspapers like *The Militant* have a First Amendment right to communicate with their incarcerated subscribers. *Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989) (“[T]here is no question that publishers who wish to communicate with those who, through subscription, willingly seek their point of view have a legitimate First Amendment interest in access to prisoners”). Prisoners have a parallel First Amendment right to receive publications like *The*

*Militant* through the mail. *See id*; *see also Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972). While these First Amendment rights are not absolute, “[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.” *Turner v. Safley*, 482 U.S. 78, 84 (1987).

Under the framework set forth by the U.S. Supreme Court in *Turner* and *Thornburgh*, a prison regulation may validly censor incoming mail only when the regulation “is reasonably related to legitimate penological interests.” *Turner*, 482 U.S. at 89; *Thornburgh*, 490 U.S. at 414 (adopting *Turner* standard for incoming prison mail First Amendment challenges). To make such a showing, the government must demonstrate the existence of a “valid, rational connection” between the ban and the claimed penological interest so that the ban is not “arbitrary or irrational.” *Turner*, 482 U.S. at 89–90.

The relevant Notices of Impoundment indicate that the six impounded issues of *The Militant* were prohibited pursuant to one or both of the following provisions of the Florida Administrative Code:

Fla. Admin. Code Ann. r. 33-501.401(3)(e): It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption.

Fla. Admin. Code Ann. r. 33-501.401(3)(m): It otherwise presents a threat to the security, good order, or discipline of the correctional system or safety of any person.

The applicable Notices of Impoundment reference articles on two subjects to justify the bans. Issues 15 and 19 were impounded for the inclusion of articles concerning formerly incarcerated author Albert Woodfox’s book tour. In his book, *Solitary: My Story of Transformation and Hope*, Woodfox describes his experiences in solitary confinement, recalls his efforts to overcome racial divides in prison through organized sports, and advocates for humane treatment of prisoners. Neither Woodfox nor the articles concerning him endorse any kind of disruptive or threatening conduct. Issues 18, 20, 22, and 23 were impounded for reporting on the censorship of other issues of *The Militant* in Florida prisons. The articles describing the impoundments urge readers to “join fight against prison censorship!” by making monetary donations, providing statements of support, and spreading the word on this subject. They do not encourage disorderly or violent action.

The justifications cited for impoundment of the relevant issues of *The Militant* are inapplicable. Neither the articles about Woodfox’s book tour nor the articles about prison censorship of *The Militant* could reasonably be read to encourage violence, threaten safety, or otherwise pose a risk to a prison’s security. The impoundments do not appear to be rationally connected to the penological interests they purportedly further; to the contrary, they appear arbitrary and irrational. Prisons should not invoke facially legitimate but overly broad justifications—such as “safety and security”—to justify censorship of content they simply disagree with or dislike.

For these reasons, the Reporters Committee strongly urges the Literature Review Committee to recognize the important First Amendment interests of both publishers and

prisoners at stake here and overturn the impoundments of Vol. 83, Issue Nos. 15, 18, 19, 20, 22, and 23 of *The Militant*.

Respectfully,

The Reporters Committee for Freedom of the Press