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June 5, 2024

Literature Review Committee
c/o Saritza Legault, Library Services Administrator
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Re: Impoundment of *The Militant*, Vol. 88, Issue No. 17 at Jackson Correctional Institution

VIA E-MAIL

Dear Literature Review Committee,

The Reporters Committee for Freedom of the Press (the “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.¹ The Reporters Committee writes in support of the appeal dated May 23, 2024, by the publication *The Militant* concerning the impoundment of *The Militant*, Vol. 88, Issue No. 17 by Jackson Correctional Institution (“Jackson CI”) in Malone, Florida on April 29, 2024. The impoundment and confiscation of *The Militant* infringes upon the First Amendment rights of both *The Militant*’s publisher and its incarcerated subscribers. Accordingly, the Reporters Committee urges the Literature Review Committee to overturn the impoundment of Vol. 88, Issue No. 17 of *The Militant* and direct Jackson CI to cease confiscating the issue.

The Militant is published in New York and describes itself as “a socialist newsweekly published in the interests of working people” and that reflects the programs, perspectives, and activities of the Socialist Workers Party in the United States. Since 1928, *The Militant* has championed the labor movement and efforts to organize and unite the working class, advancing the rights of marginalized communities in the face of discrimination, racism, and oppression.

Publications 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”). Incarcerated individuals also have a First Amendment right to

¹ This letter is not an appeal under Fla. Admin. Code R. 33-501.401 for the author, publisher, or any other third party or an appeal on behalf of an incarcerated person pursuant to Rule 33-501.401.

receive publications like *The Militant* through the mail. *See id.*; *see also Kleindienst v. Mandel*, 408 U.S. 753, 762–63 (1972) (“It is now well established that the Constitution protects the right to receive information and ideas. ‘This freedom (of speech and press) . . . necessarily protects the right to receive . . .’” (internal citations omitted)). And “[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); *see also Hamilton v. Hall*, 790 F. Supp. 2d 1368, 1370 (N.D. Fla. 2011) (holding lawsuit that challenged policy limiting prisoners’ outgoing mail stated a First Amendment claim and survived government’s motion to dismiss) (citing *Turner*, 482 U.S. at 84).

Under the framework set forth by the 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. Further, the Court in *Turner* instructed that it is “important to inquire whether prison regulations restricting inmates’ First Amendment rights operated in a neutral fashion, without regard to the content of the expression.” *Id.* at 90. That is because government censorship of speech based on the viewpoints expressed is presumptively unconstitutional. *See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985) (“[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.”).

The Notice of Impoundment issued by Jackson CI states that Vol. 88, Issue No. 17 of *The Militant* violates Section 15 of Florida Administrative Code Rule 33-501.401. The purported basis for the Notice is a “[p]icture [that] shows [a] dead person being paraded around on a motorcycle”; the photo referred to appears alongside an article on page 7 of the issue. The Notice lists various provisions of the rule purportedly implicated by the photo: sub-sections (15)(h) (“depicts, describes, or encourages activities that may lead to the use of physical violence on another person”), (15)(i) (“is dangerously inflammatory in that it advocates or encourages riot, insurrection, rebellion, organized prison protest, disruption of the institution, or violation of the federal law, state law, or Department rules”), (15)(j) (“includes signs, symbols, or other identifiers of a security threat group, Sor otherwise promotes the gang culture or lifestyle”), and (15)(p) (“otherwise presents a threat to the security, order, or rehabilitative objectives of the correctional system or the safety of any person”). The Notice does not attempt to explain how the photo—taken and republished with permission from the Associated Press (“AP”)—or any other content in the issue violates those provisions or supports Jackson CI’s conclusion that the “[m]agazine depict[s] hatred toward a specific race.”

The image cited in the Notice is part of an article entitled “The fight against Jew-hatred and pogroms in the imperialist epoch: Stakes for the international working class.” The article is a republication of the first chapter of Socialist Workers Party leader David Prince’s new book of the same title, which discusses the persistence of

discrimination and violence against the Jewish community, from the pogroms in Eastern Europe in the late-19th and early-20th centuries, up through the October 7, 2023 attacks in Israel by Hamas. The AP photograph at issue depicts a motorcyclist, viewed from the rear, driving through Gaza City with the body of another man resting on the back of the vehicle. The photo is adjacent to another image of a family after the 1906 pogrom in Belostok in what is now Poland. The images and the accompanying article tie together these historical events.

While the article discusses the historical reality of discrimination, and the photograph itself depicts the aftermath of violence, they do not show, much less celebrate, violent acts or advocate “hatred toward a specific race.” On the contrary, far from encouraging violence, the headline, subheadlines, and text of the article, decry violence and convey a clear message *against* “hatred toward” any specific group.

Since the October 7, 2023, attacks by Hamas in Israel, *The Militant* has run many articles and editorials about rising antisemitism. Some of these articles have included historical analysis of antisemitic violence and discussion of the events that have transpired in Gaza since then. Several of these articles also have included images not unlike the AP image cited in the Notice as the basis for impoundment. For the Jackson CI to single out one AP image in one article on the ground that it purportedly “depict[s] hatred towards a specific race” is arbitrary and irrational, and it violates the publication’s First Amendment right to cover and condemn prejudice and violence motivated by such prejudice. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (observing that a prohibition against “public discussion of an entire topic” is a content-based, viewpoint-based restriction on speech); *see also Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (“[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”) (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983)).

For the foregoing reasons, the Reporters Committee urges the Literature Review Committee to overturn the impoundment of Vol. 88, Issue No. 17 of *The Militant*, and to deliver all impounded copies to *The Militant*’s subscribers at Jackson CI.

Respectfully,

The Reporters Committee for Freedom of the Press