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for purposes of identification.*

August 17, 2020

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

Re: Impoundment of *The Militant*, Vol. 84, Issue No. 30

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. We understand Florida State Prison impounded Vol. 84, Issue No. 30 of *The Militant* on July 31, 2020. We write to urge you to reverse the impoundment.

This impoundment infringes upon the First Amendment rights of both *The Militant*’s publisher and its incarcerated subscribers. The justification offered for the ban is unsupported by the contents of the impounded issue, making the impoundment appear to be a pretense for censoring speech concerning prisoners’ safety and health conditions during the ongoing COVID-19 pandemic. We therefore urge that the impoundment decision be overturned, and that all impounded copies of *The Militant*, Vol. 84, Issue No. 30 be delivered to *The Militant*’s subscribers at Florida State Prison.

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 Notice of Impoundment states that Vol. 84, Issue No. 30 of *The Militant* was impounded pursuant to Fla. Admin. Code Ann. r. 33-501.401(15)(i), which prohibits material that “is dangerously inflammatory in that it advocates or encourages riot, insurrection, rebellion, organized prison protest, disruption of the institution, or the violation of the federal law, state law, or Department rules.” However, the article cited to justify the impoundment merely reports that certain inmates in California prisons have engaged in a peaceful hunger strike in response to overcrowding and other conditions that have led to outbreaks of COVID-19 in their facilities. Newsworthy information about how this ongoing pandemic uniquely affects prison populations should not be conflated with advocacy or encouragement of “rioting” or other dangerous activity.

The justification cited for impoundment of Vol. 84, Issue No. 30 of *The Militant* is inapplicable. The article referenced in the Notice of Impoundment cannot reasonably be read as advocating rioting, rebellion, or any other “dangerously inflammatory” action. The impoundment does not appear to be rationally connected to the penological interests it purportedly furthers; to the contrary, it appears arbitrary and irrational. Prisons should not invoke facially legitimate but overly broad justifications—such as concerns about riot and insurrection—to censor content, particularly when doing so deprives inmates of valuable information about how a deadly disease may affect them.

For these reasons, the Reporters Committee strongly urges the Literature Review Committee to overturn the impoundment of Vol. 84, Issue No. 30 of *The Militant*.

Respectfully,

The Reporters Committee for Freedom of the Press