



March 7, 2023

VIA EMAIL ONLY

Saritza Legault, Library Services Administrator (Saritza.Legault@fdc.myflorida.com)
Melvin Herring (Melvin.Herring@fdc.myflorida.com)
Literature Review Committee
Florida Department of Corrections
501 South Calhoun St.
Tallahassee, FL 32399-2500

RE: Improper Impoundment and Confiscation of Issues of *The Militant*

Dear Ms. Legault, Mr. Herring and the Literature Review Committee:

We have learned that, in February 2023, Florida Department of Corrections (FDC) Blackwater River Correctional Institute authorities impounded the Vol. 87, No. 4, January 30, 2023 issue of the publication *The Militant*. We have also learned that authorities at the Wakulla Correctional Institute and Charlotte Correctional Institute have confiscated copies of *The Militant* without stating a reason, and without proper notice to the publication of the rejection or its impoundment. Unfortunately, this is not the first time this matter has arisen with this publication. The American Civil Liberties Union (ACLU) of Florida has contacted FDC about improper censorship of *The Militant* multiple times before.

The ACLU Foundation and the ACLU of Florida strongly urge the Literature Review Committee (LRC) to reverse this impoundment decision by Blackwater River CI. We also urge the FDC to ensure that authorities at Wakulla CI and Charlotte CI immediately end their arbitrary confiscation of issues of this publication. We urge the FDC to reinstate the access of incarcerated people in FDC custody to *The Militant*, as the First Amendment requires.¹ Our understanding is that the Committee will be meeting on March 9, 2023.

Banning issues of *The Militant* violates the First Amendment and does nothing to protect the “safe and secure operation” of Florida’s correctional facilities. *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989) (holding that “[p]rison walls do not form a barrier

¹ This letter is written on behalf of the ACLU and the ACLU of Florida, and is not an appeal under Fla. Admin. Code R. 33-501.401 for the author, publisher, or any other third party; nor is it an appeal on behalf of an incarcerated person pursuant to Rule 33-501.401.

separating prison inmates from the protections of the Constitution.”) (quoting *Turner v. Safley*, 482 U.S. 78, 84 (1987)). “Prisoners have a First Amendment right to receive information while incarcerated.” *Jones v. Slade*, 23 F.4th 1124, 1134 (9th Cir. 2022).

While it is permissible under certain narrow circumstances to prevent incarcerated people from reading publications of their own choosing, this is far from such a circumstance. The two articles cited by the FDC as endangering the security or order of the Blackwater facility do no such thing, and the facility does not explain what in the articles threatens to disrupt FDC’s ability to maintain security and order. One article discusses protests in Iran about the Iranian government’s conduct towards women, and the other covers a successful strike by unionized nurses in New York. At Wakulla and Charlotte, officials confiscated *The Militant* without providing any explanation or notice to the publisher at all, violating the rights of both the publisher and the incarcerated subscribers. *See Prison Legal News v. Sec’y, Fla. Dep’t of Corr.*, 890 F.3d 954, 976 (11th Cir. 2018) (“PLN must receive notice and an opportunity to be heard each time the Department impounds an issue of the magazine”).

The First Amendment protects the “flow of information to prisoners,” including the independent rights of publishers, authors, friends, and other third parties to communicate with incarcerated audiences. *Crofton v. Roe*, 170 F.3d 957, 959 (9th Cir. 1999) (categorical ban on orders of books and publications violates the senders’ First Amendment rights). The banning of a particular publication represents content-based censorship, and is unlawful without a showing that the prohibition is “reasonably related to legitimate penological interests” and that the censored material in fact implicates legitimate security concerns. *Thornburgh*, 490 U.S. at 409; *Turner*, 482 U.S. at 89. “A regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational,” *Turner*, 482 U.S. at 89-90, or is an “exaggerated response” to prison concerns in light of available alternatives. *Id.* at 89-91, *Thornburgh*, 490 U.S. at 414-19.

In sum, the impoundment and confiscation of *The Militant* – a publication in print for half a century that is widely read in prisons – was unconstitutional. We urge the LRC to reverse the impoundment and reinstate the access of people incarcerated at all FDC facilities to this publication.

If the LRC instead affirms the impoundment and prohibits these or other issues of *The Militant*, please detail with specificity its reasons for doing so, in line with your constitutional duty to detail the reason(s) for the denial. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

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Sincerely yours,



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cc: Seth Galinsky, *The Militant*