IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DANNY WILLIAMS	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION FILE
	)	
JAMES E. DONALD, Commissioner	)	NO. 5:01-CV-292-2(DF)
Georgia Department of	)	
Corrections,	)	
And Warden VICTOR WALKER	)	
	)	
Defendants.	)	

MEMORANDUM OF AMICUS PRISON LEGAL NEWS IN SUPPORT OF PLAINTIFF DANNY WILLIAMS'S MOTION FOR SUMMARY JUDGMENT

I. INTERESTS OF AMICUS

Amicus Curiae Prison Legal News ("PLN") publishes a 48-page monthly magazine providing cutting-edge review and analysis of prisoner rights, prisoner-relevant legislation and court rulings, and news about general prison issues. This information helps prisoners and other concerned individuals and organizations protect prisoners' rights, and has been characterized as "core protected speech." *Prison Legal News v. Cook*, 238 F.3d 1145, 1149 (9th Cir. 2001). Founded in 1990 by two prison inmates with a budget of $50 and access only to a typewriter

and a prison law library, PLN is now a non-profit corporation with four full-time and two part-time employees, based in Seattle, Washington.

PLN subscribers and readers include state and federal prisoners, civil and criminal trial and appellate attorneys, judges, public defenders, journalists, academics, paralegals, prison rights activists, students, family members of prisoners, concerned private individuals, politicians and government officials. As of November 2005, PLN had 4,600 subscribers; roughly 65% of those subscribers are state and federal prisoners, representing prisoners from every state including Georgia.

PLN maintains a stable of regular contributing writers, most of whom are imprisoned. These writers rely extensively on the Internet for much of their source material. Further, PLN relies heavily on the Internet for publicity and distribution. PLN's website currently has all 185 issues of PLN online in PDF format as well as in a searchable database, and contains the full case text of more than 4,000 prison and jail related court rulings. PLN's website (www.prisonlegalnews.org) also includes legal briefs and other informational material of use to prisoners and prisoner-rights activists. PLN's website is specifically designed to make all of its content easy for users to print hard copies and mail to prisoners who do not have direct Internet access.

PLN has litigated the speech rights of prisoners and their correspondents in order to preserve its own ability to accurately report and effectively distribute legal news relevant to prisoners. *See, e.g., Prison Legal News v. Cook*, 238 F.3d at 1149 (challenge to a prison regulation banning standard or "bulk" mail); *Prison Legal News v. Schumacher*, USDC OR, Case No. 02-248-MA (negotiated settlement with Oregon Department of Corrections under which all mailings from PLN will now be delivered to prisoners regardless of postal classification); *Jacklovich v. Simmons*, 392 F.3d 420 (10th Cir. 2004); and *Prison Legal News v. Lehman*, 397 F.3d 692 (9th Cir. 2005).

Because of its reliance on the Internet in its mission to provide timely and accurate legal news to prisoners and concerned citizens, PLN has a strong interest in defending the right of prisoners to receive mail containing speech printed from the Internet, and the corresponding right of non-incarcerated citizens to send it.

II. ARGUMENT

Prisoners have a First Amendment right to receive information by mail. *See Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125 (1977). To be constitutionally valid, prison regulation of incoming mail must be reasonably related to legitimate penological interests. *See Turner v. Safley*, 482 U.S. 78, 89 (1987).

This case presents the simple question of whether prison officials may prevent prisoners from receiving information via ordinary postal mail simply because that information had been downloaded from the Internet. Under the policy at issue here, a Georgia state prisoner may not receive a printout from an article on a newspaper's website from his or her family or friends. However, if those same family or friends were to take that exact same article and hand-copy it into a letter, the prisoner would be permitted to receive it.

PLN respectfully submits that this policy is not rationally related to any legitimate penological interests. The government's arguments – that Internet materials will present a special risk of contraband and flood the mailroom – are either illogical or unsupported by any evidence. Equally importantly, much information today is available only on the Internet. And even when information is available from non-Internet sources, Internet sources are often easier and cheaper to use – an important consideration for those of modest means, whether a small non-profit group like PLN or a prisoner's friends and family. The Georgia Department of Corrections's ("GDOC's") blanket ban on receipt of Internet materials by ordinary post therefore significantly reduces prisoners' access to valuable information without providing any penological benefit.

Accordingly, PLN urges that this Court find that the GDOC's policy violates Danny Williams' First Amendment rights and grant his motion for summary judgment.

A. Prisoners have a First Amendment right to receive mail.

Prison inmates do not surrender their First Amendment rights merely because they are incarcerated. "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution, nor do they bar free citizens from exercising their own constitutional rights by reaching out to those on the inside." *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989) (internal quotations and citations omitted). Therefore, a prison regulation that infringes inmates' constitutional rights is valid only if it "reasonably related to [the prison's] legitimate penological interests." *Turner*, 482 U.S. at 89. *Turner* defines the relevant test of reasonableness:

> **First**, there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it. . . . A **second** factor . . . is whether there are alternative means of exercising the right that remain open to prison inmates. . . . A **third** consideration is the impact accommodation of the asserted right will have on guards and other inmates, and on the allocation of prison resources generally. . . . **Finally**, the absence of ready alternatives is evidence of the reasonableness of a prison regulation. By the same token, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an exaggerated response to prison concerns.

Id. at 89-90 (internal citations omitted) (emphasis added). *See also Thornburgh*, 490 U.S. at 413-14 (holding that the *Turner* test applies to a prison's regulation of incoming mail).

Several courts have found that policies like the GDOC's are unconstitutional. *See, e.g., Clement v. California Dep't of Corrections*, 220 F. Supp. 2d 1098, 1108-14 (N.D. Cal. 2002), *aff'd* 364 F.3d 1148 (9th Cir. 2004) (holding that a regulation prohibiting inmates from receiving mail containing material downloaded from the Internet was unconstitutional); *Lindell v. Frank*, 377 F.3d 655 (7th Cir. 2004) (holding that under *Turner*, a prohibition on mail containing newspaper clippings and photocopies was invalid). Under the *Turner* test, prohibiting all mail that contains information printed from the Internet is not reasonably related to the Georgia prison system's legitimate penological interests.

B. There is no rational connection between the ban on Internet-generated mail and the reasons the government puts forward for that ban.

Under *Turner,* there must be a "rational connection between the prison regulation and the legitimate governmental interest put forward to justify it." *Turner*, 482 U.S. at 89. In *Prison Legal News v. Cook*, 238 F.3d at 1151, the court held that if this first *Turner* factor alone is not met, then the policy will be unconstitutional. When challenged, "[p]rison authorities cannot rely on general or

conclusory assertions to support their policies." *Walker v. Sumner*, 917 F.2d 382, 386 (9th Cir. 1990). Even if their concerns are legitimate, exaggerated responses are unacceptable. *Turner*, 482 U.S. at 90. Rather, Defendants must at least advance a connection between their policy and the asserted goal that is not "so remotely connected … as to render the policy arbitrary or irrational." *Harris v. Thigpen*, 941 F.2d 1495 (11th Cir. 1991) (quoting *Turner*, 482 U.S. at 88-89). They have not done so.

1. There is no common-sense connection between the ban on Internet-generated mail and the government's fear of contraband in personal mail.

The government's fear that friends or family of prisoners will be able to transmit contraband more effectively through material generated off the Internet is unfounded. For instance, a "6 page letter written to a man in woman's hand writing with perfume and smiley faces and flowers drawn on it . . . would be much more effective in the current methods of screening content" than would altering a web page, which would likely require "someone with training and at least one year of experience in HTML." Cherry Decl., Exh. G to Plaintiff's Motion for Summary Judgment, ¶¶ 12-13. Indeed, mail room staff at Hancock State Prison allow typewritten letters from family members, Donald Dep., Exh. B to Plaintiff's Motion for Summary Judgment, at 56, and do not read personal letters for content.

Rather, they flip through such letters, checking for forbidden materials such as pornography, prison schematics, or hate mail. *See* Glover Dep., Exh. N to Plaintiff's Motion for Summary Judgment, at 8-9; Brown Dep., Exh. L to Plaintiff's Motion for Summary Judgment, at 17. The government offers no reasons that these procedures would be less effective for Internet-generated material than for handwritten or typewritten letters.

While the government asserts that the Internet contains much information it does not want reaching prisoners, Adams Dep., Exh. C to Plaintiff's Motion for Summary Judgment, at 13, it has not shown that rejecting Internet-generated mail will stop the flow of this information. Even if Internet content is not allowed into Georgia prisons, the information is still available to those who correspond with prisoners. "Inmates can obtain illegal information through a variety of channels while incarcerated, *i.e.*, visits with friends and family members, telephone calls, unscreened mail, etc.," all of which are available to Georgia prisoners. Romine Decl., Exh. F to Plaintiff's Motion for Summary Judgment, ¶ 23.

Finally, as in *Canadian Coalition Against the Death Penalty v. Ryan*, prison officials already have policies in place that directly address the claimed interest. *See Ryan*, 269 F. Supp. 2d 1199, 1202 (D. Ariz. 2003). The GDOC's standard operating procedures already specifically prohibit mail that contains contraband,

including "materials featuring nudity," as well as any publication that "depicts, encourages, or describes methods of escape," "is written in code," or "encourages or instructs in the commission of criminal activity," regardless of whether that material came from the Internet. Georgia D.O.C. Standard Operating Procedures for Inmate Mail and Receipt of Funds, Exh. I to Plaintiff's Motion for Summary Judgment, at 12 [hereinafter Mail SOP]. Without evidence that current procedures are insufficient when applied to Internet-generated mail, a blanket source-based restriction is not a rational way to further that interest. *See Ryan*, 269 F. Supp. 2d at 1202.

2. There is no common-sense connection between the ban on Internet-generated mail and Defendants' concern over mail volume.

Defendants maintain that accepting Internet-generated mail would result in a "sheer volume that makes it almost impossible to manage," Donald Dep., Exh. B to Plaintiff's Motion for Summary Judgment, at 56. Defendants have not provided any evidence of the volume of Internet-generated mail that was received before the policy was put in place, or of the amount of mail that is currently rejected because of its origins on the Internet. Yet even if the Internet ban did result in a substantial reduction in volume, and as the court in *Clement* recognized, "[p]rohibiting all

Internet-generated mail is an arbitrary way to achieve a reduction in mail volume" when volume can be regulated directly. *Clement*, 364 F.3d at 1152.

C. **The ban on Internet-generated mail leaves prisoners with no alternative means of accessing valuable speech that is actually or practically available only online.**

The second *Turner* factor asks "whether there are alternative means of exercising the right [in question] that remain open to prison inmates." *Turner*, 482 U.S. at 89-90. Here, that right is access to constitutionally protected information and expression that comes from outside the prison walls. As the trial court in *Clement* pointed out, and the Ninth Circuit approved, "certain information of particular interest to prisoners is only available on the Internet." *Clement*, 220 F. Supp. 2d at 1112. The ban on Internet-generated mail prevents prisoners from getting information that is available only online, whether actually or practically, leaving no alternative means of access to that information.

For instance, the ban on Internet-generated mail prevents PLN from providing its incarcerated writers with the source materials needed to accurately report on prison legal issues. It also stops PLN from reaching the very people who can most use the information they disseminate. To enable imprisoned writers to adequately research and report on an assignment, PLN typically must send source material, including news articles, case law, and commentary, via mail. To the

extent resources allow, PLN also sends such materials to prisoners who request them, regardless of whether they are contributing writers. Additionally, since PLN's back issues and other legal materials are on their website, prisoners' friends and family can print out relevant material and mail it to them. If Internet-generated mail is not allowed, then PLN will not only be unable to provide the necessary source materials to its writers, but will be unable to provide those same materials to prisoners who require them for their own legal needs.

The countless online resources concerning the law, medicine, religion, and an untold number of other topics often contain unique material that is unavailable in print publications. Additionally, many printed publications and public records, although technically available in the offline world, are out of print, or otherwise difficult to obtain because only available from geographically far-flung research libraries or government offices, and therefore only practically available to most people online. Such "Internet-only" documents could prove crucial to a prisoner for succeeding in an appeal, maintaining his health, or even saving his soul.

For timely access to new statutes and legal opinions, which is especially important to PLN's work, Internet access is a must. For example, both the U.S. and Georgia Supreme Courts release their decisions online before they ever appear on paper (at www.supremecourtus.gov and www.gasupreme.us, respectively). The

Westlaw online database provides access to the briefs filed in appellate cases – documents which would otherwise only be available directly from their respective courts. The online service Findlaw (www.findlaw.com) offers a free, searchable database of state and federal cases and statutes, as well as legal commentary (writ.news.findlaw.com) and legal news (news.findlaw.com) that is published nowhere else. Online legal "blogs" such as SCOTUSblog (www.scotusblog.com) and How Appealing (legalaffairs.org/howappealing/) contain up-to-the-minute legal news and analysis, and are not published in hard copy. In short, Internet sources are critically important for timely reporting on new court decisions and statutes that have not yet been published on paper. Without the ability to get information from these Internet-based sources to its writers *and* readers, PLN and other online sources of legal information cannot fulfill their missions.

In addition to accessing legal information, many people use the Internet to share their religious views and values. Much of this material is not available offline, or is available for free only online. For instance, the Internet Sacred Text Archive (www.sacred-texts.com/index.htm) is a free online service that contains the primary texts and supporting materials about all major world religions. The primary texts generally must be purchased in book form, while much of the supporting material is not available in print at all.

The Internet has also become most people's first step when researching an illness. As AIDS is one of PLN's most important issues, online medical information is of particular value. Offline medical information is often expensive, difficult to locate, bulky, and out of date. By contrast, websites such as the U.S. government's own AIDSinfo website (www.aidsinfo.nih.gov) offer current, free, targeted information from expert sources. Users of free medical websites can search for and learn about diseases, symptoms, drugs, treatments, and preventive measures. A printout from one of these websites could quickly apprise a prisoner of the resources available online and enable him to request further information for his friends or family to send along. Many health sites also offer e-mail newsletters tailored to a subscriber's individual interests and concerns. For instance, a prisoner interested in quitting smoking and the latest discoveries in cancer treatment could have a friend regularly print and mail a short, individualized newsletter covering those topics (lungnews.kintera.org).

Just as electronic documents are replacing paper and online discussion is supplementing real-world dialogue in ways that ignore geography, digital pictures are transcending the limits of traditional film photography. Before being printed, such pictures usually must pass through a computer, and are often shared with others via attachment to e-mail or posting on the Internet. Digital pictures taken by

most camera-phones must be sent by e-mail to reach a printer, and such cameras are quickly becoming as common here as they are overseas. There is no reason why a prisoner's access to pictures of a family reunion or child's school recital should be limited based on the manner in which his relatives choose to capture and then to share the information.

In sum, a variety of educational, legal, and religious materials are primarily or only available on the Internet, and families are communicating increasingly using the Internet. Prisoners should not be completely cut off from these valuable sources of information and communication based on a misinformed and overly broad ban on all materials that happen to be printed from the Internet.

D. Allowing Internet-generated mail into Georgia prisons will have minimal impact on the functioning of the prison system.

The third *Turner* factor asks what "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally." *Turner*, 482 U.S. at 90. The government has made no allegation that allowing Internet mail into the prisons will have any adverse effect on the guards or other inmates. They rely only on unsubstantiated claims that Internet-generated mail would be harder to screen for contraband and increase the volume of mail that must be screened. As in *Clement*, "[t]he prohibition at issue here is an imperfect and arbitrary substitute for regulating

quantity of mail. Whatever impact increased mail volume may have on prison resources cannot justify [the] ban on materials generated from this particular source." *Clement*, 220 F. Supp. 2d at 1112. Even if the amount of mail received by prisoners would increase if Internet-generated materials were permitted, there are other, less arbitrary methods to reduce mail volume and screen its content than a blanket source-based ban.

E. **The presence of ready alternatives to filtering all Internet-generated mail is evidence of the policy's unreasonableness.**

The fourth *Turner* factor states that "the absence of ready alternatives is evidence of the reasonableness of a prison regulation" but that "the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable." *Turner*, 482 U.S. at 90. If limiting mail volume is truly a legitimate penological interest, there are "obvious, easy" alternatives to a ban on Internet-generated materials. Just as the trial court in *Clement* observed, "[b]ecause the prison may directly regulate the quantity of pages or the number of pieces of mail received by each prisoner, Defendant's policy of identifying an arbitrary substitute for volume and regulating that substitute lacks any rational basis." *Clement*, 220 F. Supp. 2d at 1110.

The standard operating procedures for mail specifically state that "[i]nmates/probationers may correspond with any person with no limitation on

number or volume of letters." Mail SOP, Exh. H to Plaintiff's Motion for Summary Judgment, at 8. However, the government admits that it is feasible to limit either the number of pieces of mail or the number of pages of mail that a prisoner received. Donald Dep., Exh. B to Plaintiff's Motion for Summary Judgment, at 56-59. The government has no rational reason to choose an arbitrary policy based on the source of the mail rather than one that directly addresses its concern: volume. The existence, simplicity, and less arbitrary nature of these alternatives is further evidence that the policy of preventing prisoners from receiving any Internet-generated mail is irrational, and is both unnecessary and ineffective in meeting the penological interests of the prison system.

III. CONCLUSION

The GDOC's ban on mail that is printed from the Internet is not rationally related to its legitimate penological concerns, and prohibits prisoners from accessing valuable information that they have no practical means of accessing otherwise. For these reasons, PLN urges that the Plaintiff's motion for summary judgment should be granted.

Respectfully submitted this 14th day of December, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed **MEMORANDUM OF AMICUS PRISON LEGAL NEWS IN SUPPORT OF PLAINTIFF DANNY WILLIAMS' MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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This 14th day of December, 2005.

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