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Affiliations appear only for purposes of identification.

February 16, 2023

Literature Review Committee
c/o Charles Huber and Melvin Herring
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Re: Impoundment of *The Militant*, Vol. 87, Issue No. 4 at Blackwater River Correctional & Rehabilitation Facility and confiscation of *The Militant* at Wakulla Correctional Institute and Charlotte Correctional Institute

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 that Blackwater River Correctional & Rehabilitation Facility impounded Vol. 87, Issue No. 4 of *The Militant* on February 1, 2023. We also understand that Wakulla Correctional Institute and Charlotte Correctional Institute have confiscated *The Militant* without formal notice of rejection or impoundment. The impoundment and confiscation of *The Militant* infringes upon the First Amendment rights of both *The Militant*’s publisher and its incarcerated subscribers. Accordingly, we write to urge you to overturn the impoundment of Vol. 87, Issue No. 4 of *The Militant*, and to direct Wakulla Correctional Institute and Charlotte Correctional Institute to cease confiscating *The Militant* without notice or justification.

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 also have a 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 issued by the Blackwater River Correctional & Rehabilitation Facility states that Vol. 87, Issue No. 4 of *The Militant* was impounded pursuant to Fla. Admin. Code Ann. r. 33-501.401(15)(p), which prohibits material that “otherwise presents a threat to the security, order, or rehabilitative objectives of the correctional system or the safety of any persons.” The Notice references two articles as justification for the ban. The first, *Iran Unrest Fueled by Attacks on Labor, Women, and Nationalities*, reports on protests in Iran demanding policy and political reforms, including that political protestors be released from prison, wages be increased, and healthcare and pensions be improved. The second, *New York Nurses Strike, Solidarity, Force More Hiring and Higher Pay*, discusses a nurses’ strike in New York that led to an increase in staffing levels and salaries.

The justification cited for impoundment of Vol. 87, Issue No. 4 of *The Militant* is inapplicable. Beyond identifying the articles and citing to Fla. Admin. Code Ann. R. 33-501.401 (15)(p), the Notice of Impoundment does not provide an explanation as to why these articles present a threat to security, order, or rehabilitative objectives of the correctional system or the safety of others. Indeed, nothing about the titles, headings, and contents of the articles could reasonably be interpreted to present such a threat. *Iran Unrest Fueled by Attacks on Labor, Women, and Nationalities* seeks to inform readers about a matter of global relevance: protests for better, more equitable governance in Iran. *New York Nurses Strike, Solidarity, Force More Hiring and Higher Pay* seeks to inform readers about the results of a labor strike, both in terms of how the leadership of hospitals responded to the strike and how nurses felt about the strike and its results. 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 “safety and security”—to censor content.

Moreover, the confiscation of *The Militant* at Wakulla Correctional Institute and Charlotte Correctional Institute without any formal notice is a violation of the First Amendment right of prisoners to receive *The Militant*, and *The Militant*’s First Amendment right to communicate with them. While the constitutional right is not absolute, if Wakulla Correctional Institute and Charlotte Correctional Institute seek to confiscate or reject issues of *The Militant*, they must do so only for a legitimate, penological interest and must show that there is a rational connection between that penological interest and the confiscation of *The Militant*. Wakulla Correctional Institute and Charlotte Correctional Institute have not

identified any penological interest or provided any justification, whatsoever, for their confiscation of *The Militant*. Prisons cannot ban a publication without notice or reason.

For these reasons, the Reporters Committee strongly urges the Literature Review Committee to overturn the impoundment of Vol. 87, Issue No. 4 of *The Militant*, and to deliver all impounded copies to *The Militant's* subscribers at the Blackwater River Correctional & Rehabilitation Facility. The Reporters Committee further urges the Literature Review Committee to direct Wakulla Correctional Institute and Charlotte Correctional Institute to cease confiscating *The Militant* without notice or justification, and to deliver all issues of *The Militant* to its subscribers at those facilities.

Respectfully,

The Reporters Committee for Freedom of the Press