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August 5, 2013

Via U.S. Mail and Email to fleckenstein.ladawna@mail.dc.state.fl.us

LaDawna Fleckenstein, Esq.
Office of the General Counsel
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399

Dear Ms. Fleckenstein:

The purpose of this letter is to present comments to the Florida Department of Corrections (FDOC) regarding the Notice of Development of Rulemaking published on July 29, 2013. That Notice provides the preliminary text of a proposed rule, F.A.C. 33-602.208, that would ban inmates from having any Internet presence, and ban inmates from having a third party post any information on the Internet on their behalf. This letter is submitted on behalf of the Florida Justice Institute (FJI), the Florida Institutional Legal Services Project of Florida Legal Services (FILS), and the American Civil Liberties Union of Florida (ACLU-FL). FJI and FILS are nonprofit civil rights law firms that frequently represent inmates in Florida's prison and jails. ACLU-FL is an organization that seeks to defend the First Amendment rights of all Floridians, including inmates, through advocacy and litigation. We appreciate the opportunity to submit comments at this stage.

We urge the FDOC not to adopt the proposed rule. It would constitute an overbroad and unnecessary curtailment of inmates' First Amendment rights, as well as the rights of individuals who wish to publish correspondence from inmates on the Internet. The proposed rule would prohibit this type of communication, which would include political commentary, complaints about abuse, possibly unflattering depictions of prison conditions, personal essays or memoirs, news stories, poetry, fiction, artwork, information about their appeals, proclamations of innocence, or pleas for a sentence commutation.

The rule would prohibit inmates from using websites that post inmate letters containing many of the above types of correspondence. These websites help provide the public with information about what prison life is like, give inmates a productive outlet for creative endeavors, and help inmates maintain personal and family connections that are so important to their reentry. It would also prohibit inmates from using websites that post resumes and provide assistance with reentry efforts. As studies repeatedly demonstrate, these connections give inmates something to look forward to when released, provide incentives for good behavior while in prison, and decrease recidivism.

The proposed rule would also require an inmate entering the FDOC to deactivate all their

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personal internet accounts. This is an intrusive and unnecessary requirement, and is counterproductive to reentry goals. Many inmates, especially those entering the FDOC in the last ten years, may have personal accounts on social media websites, and wish for family or friends to maintain those accounts while they are incarcerated. This helps the inmate stay connected to his or her community and maintain personal relationships, which decreases the feelings of isolation and abandonment that many inmates experience, and ultimately leads to decreased recidivism. This Internet presence is especially important now that the Internet has become the primary, and in many cases only, medium of communication used today.

Essentially, the rule would prohibit inmates from using the Internet to disseminate any information. But correspondence from inmates does not lose First Amendment protection simply because it is widely disseminated through the Internet. Inmates are already permitted to write a book and have it published, write an article or essay and have it published in a newspaper or magazine, report issues to the news media, or otherwise disseminate information through traditional means of publishing, as long as they are not paid for it. *See* F.A.C. 33-602.207(2). Many courts have held that allowing these types of correspondence is required by the First Amendment. If inmates are permitted to engage in these activities, they must be allowed to engage in the same activities through the Internet. This is especially important as the Internet rapidly becomes the most popular way that people consume information. The First Amendment right to communicate cannot be diminished simply because the form of communication has changed.

We are cognizant of the fact that FDOC officials may be concerned about inmates using the Internet to engage in criminal activity or harm members of the public. However, numerous rules already exist that restrict inmates' use of the outgoing mail system. For instance, inmates are prohibited from using a third party mailing service to engage in correspondence that does not identify them as inmates (F.A.C. 33-201.101(15)(c)). Inmates cannot use correspondence privileges to solicit or otherwise commercially advertise for money, good, or services, including pen-pal services (F.A.C. 33-201.101(9)). Finally, the routine mail rule contains a long list of things that inmates cannot include in outgoing mail correspondence, including any correspondence that presents a threat to the security, order, or rehabilitative objectives of the correctional system, or to the safety of any person. F.A.C. 33-201.101(11)(o). These rules are sufficient to prevent the harms that may be envisioned, and inmates can still be disciplined for sending any prohibited correspondence and directing that it be posted on the Internet. Perhaps the FDOC might consider a rule that prohibits an inmate from posting, or directing a third party to post, certain forms of harmful communications. But to pass a wholesale ban of all Internet postings would be a wildly disproportionate response, and such an overinclusive rule would likely violate the First Amendment. *See, e.g., Canadian Coalition Against Death Penalty v. Ryan*, 269 F. Supp. 2d 1199 (D. Ariz. 2003); *Cassels v. Stalder*, 342 F. Supp. 2d 555, 564-67 (M.D. La. 2004).

Thus, we urge the FDOC not to adopt the proposed rule. If the proposed rule is adopted, the FDOC may be subjected to litigation for violation of the First Amendment.

LaDawna Fleckenstein, Esq.

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Please do not hesitate to contact us with any questions or concerns.

Sincerely,

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