Cause No. 72950-1-I

THE WASHINGTON STATE SUPREME COURT

SC#932212

FRED STEPHENS,

Appellant,

v.

STATE DEPARTMENT OF CORRECTIONS,

Respondent.

PETITION FOR DISCRETIONARY REVEIW OF THE COURT OF APPEALS' DECISION AFFIRMING SUMMARY JUDGMENT

Fred Stephens, pro se
Monroe Correction
Complex
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Monroe, WA 98272

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I. IDENTITY OF PARTIES

Appellant/Petitioner, Fred Stephens, appearing pro se is an inmate at the Monroe Correctional Complex and seeks review of the Court of Appeals' decision in favor of the Department of Corrections (hereafter the DOC).

II. COURT OF APPEALS DECISION

The Court of Appeals affirmed the Snohomish County Superior Court's order granting Summary Judgment. The case is one of first impression, it concerns free speech and access to the INTERNET. Stephens seeks review of the Court of Appeals decision concerning: 1) Summary Judgment criteria, 2) Free Speech under Article 1, sec. 5, of the State constitution, and 3) Free Speech under the Federal Constitution and the standard of Turner v. Safley. The court's decision of March 7, 2016 is attached, Appendix A.

In addition, Stephens filed a Motion to Reconsider that was simply denied, filed on April 12, 2016.

III. ISSUES PRESENTED FOR REVIEW

1. Did the court ignore principles inherent to the Standard of Review for Summary Judgment?
2. Did the court fail to apply state constitutional principles that protect Free Speech under Article 1, sec, 5, before turning to federalism"

3. Did the court improperly apply the Supreme Court's holding of Turner v. Safley and Ninth Circuit precedent to reject Stephens' First Amendment claim of censorship?

IV. STATEMENT OF THE CASE

This case concerns six mail rejections by DOC; mail that held pages printed from a website and sent by an Internet provider. The DOC rejected the mail with the undefined term: The mail was from a "Third Party". DOC made no complaint that the content of the mail threatened the "Safety & Security" to the prison. To demonstrate the absurdity of DOC's position, Stephens attaches mail rejection of 10/10/2013. (Ex. 15). This rejection was a simple "Service Request form". Also, the mail rejection of 7/1/2014 was not defended.

Stephens challendged DOC's claim that a policy existed. In truth, DOC policy 450.100 only prohibited mail sent to one prisoner and given to another. (See CP 13 & 298). Noteworthy, DOC did not reject emails from Senator Tracey J. Eide or Rep. Jan Angel. (See CP 318).

V. ARGUMENT

A. THE COURT'S DECISION DIRECTLY CONFLICTS WITH THE SUPREME COURT'S STANDARD OF REVIEW FOR SUMMARY JUDGMENT.

1. REVIEW STANDARD. On appeal from an order of Summary Judgment, the review is de novo and the court "construes all facts and reasonable inferences from those facts in the light most

favorable to the non-moving party. Kofmehl v. Base Line Lake, 177 Wn.2d 584, 594 (2013). The court does not weigh the evidence or determine the veracity of the witnesses. Am. Express Centurion Bank v. Stratman, 172 Wn.App. 667, 676 (2012). If the non-moving party presents contradictory evidence, and the evidence is not too incredible to be believed by reasonable minds or the movant's evidence is impeached, an issue of credibility is present, the court should deny the motion. Kampla v. Space Needle, 178 Wn.App. 541, 548 (2013); Balise v. Underwood, 62 Wn.2d 195, 200 (1963); Montaney v. J-M Mfg. Co., 178 Wn.App 548, 314 P.3d 1114, 1147 (2013).

2. COURT ERROR. In spite of the fact that Stephens submitted 26 exhibits that debunked and impeached the single declaration of R. Gonzalez (CP 74-79), the Court of Appeals ignored the rules that govern Summary Judgment and affirmed for DOC. However, Stephens' undisputed evidence compelled a different result and supports these inferences:

a) TRUE SENDER. Stephens received incoming mail (a test) with bogus names & addresses (CP33 & 34). The clear inference, DOC does not have a protocol to discern the "true sender" of mail sent to the prison. If there is no procedure to test for the "true sender", implied by Roy Gonzalez, then his declaration at best is a "bald assertion" and at worst a lie.

b) LACK OF ENFORCEMENT. Stephens provided Mr. Wininger's declaration who claims that he receives "third party" mail printed from the internet. CP 31. His declaration supports the inference that DOC seldomly enforces its "Third Party" mail policy. See Stephens affidavit. CP 312-316. If true, then Mr. Gonzalez's declaration is baseless, the Third Party label is arbitrary & capricious and is no policy at all.

c) SECURITY & SAFETY. Stephens provided evidence that other state prisons allow emails from websites. (CP 40 & 322). This fact, presumed true, undermines Gonzalez's opinion that emails from websites threatens the "Security & Safety" of the prison.

d) BUSINESS PROTECTION. The mails at issue here were sent from licensed businesses. They are internet providers that charge a fee for their services, it is unreasonable to infer they would cooperate with prisoners to violate no contact orders or to further inmate-to-inmate correspondence. Mr. Gonzalez does not cite a single incident to support his declaration.

In summary, accepting Stephens' undisputed exhibits, evidence as true, it impeached Gonzalez's declaration and raised genuine issues of material fact sufficient to defeat Summary Judgment. Indeed, Stephens evidence calls into question the truthfulness of Gonzalez's declaration. The court should have reversed.

B. THE COURT OF APPEALS DEPARTED FROM ESTABLISHED SUPREME COURT PRECEDENT THAT HOLDS ARTICLE 1, SECTION 5 MORE PROTECTIVE THAN THE FIRST AMENDMENT.

1. THE LAW. Addressing Art. 1, §5, the Court of Appeals wrote this astonishing comment: "Stephens has not provided any coherent legal theory or citation to relevant authority to support his sweeping claims" that Art. 1 § 5 provides greater protection than the First Amendment. The court further critized Stephens for "broad generalizations". Slip Op. at 11.

The Constitution was written in 1889 when few citizens had a high school education. Ergo, Article 1, §5 does not require a 10 page brief to understand the right granted to all citizens. Our state constitution is an instrument of "practical nature, founded on the common sense[.] Clean v. State, 130 Wn.2d 782, 826 (1996). In addition, Article 1, §29 compels: "The provisions of this constitution are mandatory, unless by expressed words they identify declared to be otherwise." Stephens did not cite "generalizations", he quoted fundamental principles. CP 17-20. Indeed, Art 1, § 32 reminds the courts that "[a] frequent recurrence of fundamental principles is essential to the security of indivual rights"[.] Brower v. State, 137 Wn.2d 44, 68 (1998). In the context of state prisons, the Legislature directed DOC to adhere to "constitutional constraints"-- they did not.

2. PRISON CONTEXT. The DOC's authority to police mail is granted under RCW 72.05.530, and requires compliance with Article 1, sec. 5. (See CP 17-22); in part it reads:

> "The secretary SHALL establish a method of reviewing all incoming and outoging mail material consistent with CONSTITUTIONAL CONSTRAINTS[.]" (My emphasis).

The words "constitutional constraints" are unique to this statute; it is not found in any other RCW, and it is evidence the Legislature intended the DOC to adopt principles of Free Speech per Art 1, § 5. McDevitt v. Harbor View Med. Crt., 179 Wn.2d 59, 83 n.14 (Legislature must comply with ... constitutional principles); Freedom Found v. Gregoire, 178 Wn.2d 686 (2013) (The same constitutional constraints apply to both initiative and Legislative enactments). Stephens quoted to established principles of Article 1, § 5 to persuade the court that the state constitution grants greater protection of free speech than the First Amendment. Thes basic principles, among others, constrain DOC's mail policy:

1. Court's Duty. All courts have a duty to resolve constitutional questions first under the State Constitution. O'Day v. King County, 109 Wn.2d 796, 801 (1988)

2. The burden of justifying a restriction on speech remains on the State. Collier v. City of Tacoma, 121 Wn.2d 737 (1993).

3. Personal Privilege. "The right to free speech and press in [our state] is a privilege guaranteed to all, and so long as it is not abnused is absolute." State v. Rinaldo, 36 Wn.App. 86, 94 (1984).

In summary, The Legislature enacted RCW 72.09.530 with the intent that the DOC would adhere to fundamental principles inherent to article 1, § 5. Specifically, the key principle: Before speech can be censored, DOC must show the speech is abusive and irresponsible, e.g. threating speech, profanity, call to riots, etc. In this case, the DOC has not carried its burden of showing the right of speech has been abused.

C. THE COURT OF APPEALS FAILED TO APPLY THE TURNER FACTORS AS THE U.S. SUSPREME COURT INTENDED.

1. DOC'S PONTIFICATION. The Court of appeals merely rubber stamped Roy Gonzalez's declaration and "bald assertion" that DOC's Third Party mail policy in some, remote, theoretical way will prevent violation of no-contact orders or prevent inmate-to-inmate communications. The reality, DOC has no control over free citizens determine to circumvent prison policy. (See argument in Plaintiff's Objection and Reply to Summary Judgment. CP 14-16). Stephens reiterates that DOC's Third Party Mail policy is irrational & arbitrary because it cannot achieve the stated objective. Turner, 482 US @ 89.

2. PRECEDENT. The Court of Appeals misapprehends Ninth Circuit precedent and quoted to Mauro v. Arpaio, 188 F.3d 1054, 1060 (9th Cir.1999) (Slp Op 9). The correct standard is found in

Frost v. Symington, 197 F.3d 348 (CA 9 1999). In Frost, the court clarified:

> "...that the level of scrutiny to be applied to the decision of prison administrators depends on the circumstances that refutes a common-sense connection between a legitimate objective and a prison regulation, [then] Walker v. Summer, 917 F.2d 382... applies[.]" PLN v. Cook, 238 F.3d 1145, 1150 (CA 9 2001).

When, as here, the non-moving party presents undisputed evidence that DOC's Third Pary mail policy is irrational, Turner's first factor is "sina qua non". PLN v. Lehman, 397 F.3d 692, 699 (CA 9 2005). Given Stephens' several exhibits, summary judgment was improper under Turner's four part test. The court's decision was predicated on bad law.

3. DISPOSITIVE CASES. The Court of Appeals misread and ignored Ninth Circuit decisons that were directly on point and argued in Stephens' Motion on the Merits. (App. Rly.Brief, pg 1). First, he cited to Canadian Coalition Against the Death Penalty v. Ryan, 269 F.Supp.2d 1199 (D.Ariz 2003), where the court held unconstitution an Arizona Depart. of Corrections (ADC) policy that prohibited inmates from "sending mail to or receiving mail from a communications service provider or from having access to the internet through a provider." Ibid. The ADC claimed, as does the DOC here, that their mail policy was meant to "preclude inappropriate contact with minors, victims

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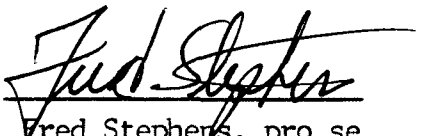
or other inmates" and to protect the public. Ibid, and CP 78. Why the court ignore this dispositive case is a mystery. Second, the Court of Appeals misapprehended Clements v. Calif. Depart. of Corrections, 364 F.3d 1148 (CA 9 2004), cited and argued by Stephens. In Clements, the Ninth Circuit affirmed the U.S. Dist. Court's injunction. See Clement v Calif. DOC, 220 F.Supp.2d 1098 (N.D. Cal.2002). In the U.S. Dist. Court Judge Wilker held that: "Internet mail was easier to trace than regular mail." He noted that: "It is true that the author of an email may not provide his identity. However, this fact does not differenciate email correspondence from anonymous typed messages." Clement, 220 F.Supp2d at 1110. The Clement decision at the district court level is precisely on point concerning internet providers. The only difference between the two federal cases and this appeal is the label "Third Party" used by DOC to censor Stephens' emails printed by internet providers. Otherwise, both federal cases are identical to the current case. The Court of Appeals misunderstood the two cases. In any event, both federal cases were sufficient proof that the Turner v. Safley factors were equally satisfied in Stephens' case, such that Summary Judgment was defeated.

VI. CONCLUSION

The Court of Appeals has written an opinon that is clearly in conflict with established legal precedent of the this court. Importantly, the Court of Appeals has also disregarded depositive case law of the Ninth Circuit that should have controlled the court's resolution of the issue of internet speech. Thus, Stephens respectfully moves this court to accept review and correct the Court of Appeals decision.

Submitted this 12 day of June 2016.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FRED STEPHENS,	)	
	)	No. 72950-1-I
Appellant,	)	
	)	DIVISION ONE
v.	)	
	)	
DEPARTMENT OF CORRECTIONS,	)	UNPUBLISHED OPINION
	)	
Respondent.	)	FILED: March 7, 2016
	)	

APPELWICK, J. — Stephens challenged the constitutionality of a Department of Corrections policy restricting incoming third-party correspondence. The trial court dismissed his claims on summary judgment. Because the Department demonstrated that the policy was reasonably related to legitimate penological interests of security and safety, the trial court properly dismissed Stephens's claims under the First Amendment. Stephens's remaining arguments are also without merit. We affirm.

FACTS

Fred Stephens is an inmate currently incarcerated in the Twin Rivers Unit at the Monroe Correctional Complex. RCW 72.09.530 authorizes the Secretary of the Department of Corrections (Department) to adopt a policy and methods for regulating incoming and outgoing mail, "consistent with constitutional constraints," that provide

"maximum protection of legitimate penological interests, including prison security and order and deterrence of criminal activity."

In accordance with RCW 72.09.530, the Department has adopted Policy 450.100,[1] which establishes procedures "governing mail services for offenders, defining staff responsibility for managing mail and maintaining safety and security of the public, staff, offenders, and facilities." Among other things, Policy 450.100 contains the Department's detailed regulations governing the sending and receipt of mail. The policy also prohibits various types of incoming and outgoing mail, including mail "that is deemed a threat to legitimate penological objectives." The Department has determined that third-party correspondence, i.e., correspondence or mail from someone other than the sender, presents a threat to the safety and security of the facility.

Between October 2013 and April 2014, the Department rejected multiple pieces of Stephens's incoming mail as third-party correspondence. In each case, the rejection involved printed or e-mailed correspondence that was forwarded by a third-party commercial forwarding agent. The forwarded mailings included profiles and personal communications from pen-pal web sites and two envelopes with unidentified

[1] DEP'T OF CORR., POLICY 450.100 (revised July 25, 2011) (Mail for Prison Offenders). A copy of the Policy appears in the record on review.

addresses. Stephens appealed each rejection, and the Department upheld the rejections. The Department notified Stephens that he could correspond directly via e-mail through the JPay System (a correctional e-mail system used to communicate with an offender in a Washington state prison).

In May 2014, Stephens filed this action against the Department and two Department employees, seeking a declaratory judgment, injunctive relief, and monetary damages. Among other things, Stephens alleged that the Department violated his constitutional rights by rejecting his incoming third-party correspondence. Stephens claimed that he was entitled to relief under both the federal and state constitutions.

The Department moved for summary judgment, relying primarily on the declaration of Roy Gonzalez, a correctional manager responsible for the oversight of offender mail. Gonzalez stated that Policy 450.100 contained a variety of provisions designed to prevent third-party correspondence, including limiting the processing of offender mail by other inmates, limiting incoming mail to correspondence and property for the receiving offender, limiting outgoing mail to the correspondence and property of the sending offender, limiting the salutation of non-legal mail to the addressee, and prohibiting mail without an identifiable author or sender.

Gonzalez explained that the restriction on third-party correspondence through commercial forwarding agents was necessary to ensure the safety of both Department facilities and the public:

> Because these mailings [are] from third party commercial forwarding agents, the Department cannot discern the identity of the true sender. Both incoming and outgoing third-party mail interferes with the Department's ability to identify parties with whom offenders are corresponding. It is important for the Department to know the identity of people who are corresponding with offenders to ensure they are not attempting to contact those with whom correspondence is prohibited. Identifying parties with whom offenders correspond is important to public safety, as many offenders have limitations on whom they may contact including minor children, victims of their crimes, other offenders, or individuals who may have a no[-]contact order against particular offenders. Requiring all parties who are corresponding with offenders to properly identify themselves also allows Department staff to accurately assess whether the mail presents security concerns without having to do extensive research for each piece of mail. Without an identifiable sender or author, the Department cannot accurately discern whether correspondence is in violation of any no-contact order.

The trial court entered summary judgment in favor of the Department. Stephens appeals.

DISCUSSION

I. Standard of Review

We review the trial court's decision on summary judgment de novo. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). We consider the materials before the trial court and construe the facts and inferences in the light most favorable

to the nonmoving party. Id. Summary judgment is proper only if there is no genuine issue of material fact. CR 56(c); Keck v. Colins, 184 Wn.2d at 370.

II. First Amendment

Stephens contends that the Department's restrictions on incoming third-party correspondence violate his First Amendment right to free speech. "A prisoner retains those First Amendment rights that are consistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." In re Pers. Restraint of Parmelee, 115 Wn. App. 273, 281, 63 P.3d 800 (2003). "As a condition of confinement, an inmate's First Amendment right to send and receive mail lawfully may be restricted by prison regulations reasonably related to legitimate penological interests." Livingston v. Cedeno, 164 Wn.2d 46, 56, 186 P.3d 1055 (2008).

When determining whether a prison regulation is reasonably related to legitimate penological goals, Washington courts consider the four factors set forth in Turner v. Safley, 482 U.S. 78, 87-89, 107 S. Ct. 2254, 96 L .Ed .2d 64 (1987):

> "First, there must be a 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it. Second, courts consider whether there are 'alternative means of exercising the [constitutional] right that remain open to prison inmates.' Third, courts consider 'the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally.' And fourth, 'the absence of ready alternatives is evidence of the reasonableness of a prison regulation.'"

Parmelee, 115 Wn. App. at 282 (alteration in original) (citations omitted) (quoting Turner, 482 U.S. at 89-90); see also In re Pers. Restraint of Arsenau, 98 Wn. App. 368, 375-76, 989 P.2d 1197 (1999); cf. McNabb v. Dep't of Corr., 163 Wn.2d 393, 404-05, 180 P.3d 1257 (2008). The Turner analysis applies to prison regulations restricting incoming mail. Thornburg v. Abbott, 490 U.S. 401, 413, 109 S. Ct. 1874, 104 L. Ed. 2d (1989). Because judgments regarding prison security " 'are peculiarly within the province and professional expertise of corrections officials,' " courts should " 'ordinarily defer to their expert judgment' " absent substantial evidence to indicate an exaggerated response. Arsenau, 98 Wn. App. at 375 (quoting Turner, 482 U.S. at 86).

In addressing the first Turner factor, the Department maintains that the incoming third-party mail restriction serves the penological interests of ensuring the safety and security of the inmates, the Department facilities, and the general public. Stephens does not dispute that security and safety are legitimate and neutral penological objectives. Nor does Stephens dispute that the Department has the right to review certain types of incoming mail to further these penological interests.

As explained in the declaration of Gonzalez, third-party incoming correspondence poses a threat to the safety of the inmates, corrections officers, and the general public because the Department generally cannot determine the true

identity of the sender. The Department therefore cannot ascertain if the correspondence involves a prohibited sender. As Gonzalez noted, inmates are often restricted from contacting various individuals, including minor children, victims of the crime, and other offenders. Under the circumstances, the Department has demonstrated a valid, rational connection between the restrictions on incoming third-party correspondence and legitimate penological interests. The first Turner factor favors the validity of the challenged policy.

Stephens contends the Department failed to demonstrate a rational connection between the mail restriction and the penological goals, citing Clement v. Cal. Dep't of Corr., 364 F.3d 1148 (9th Cir. 2004). In Clement, the Ninth Circuit affirmed a trial court injunction against the enforcement of a prison internet mail policy that prohibited "mail containing material that has been downloaded from the internet but is not violated if information from the internet is retyped or copied into a document generated in a word processor program." Id. at 1150-51. The court found that the prohibition of "all internet-generated mail" was an arbitrary way to achieve the intended reduction in mail volume and that the evidence failed to support the corrections department's claim that "coded messages" are more likely to be inserted into internet-generated materials than into word-processed documents. Id. at 1152. Under the circumstances, the court concluded that the mail policy did not

demonstrate a rational connection between the policy and legitimate penological interests. Id.

Stephens makes no showing that the sweeping ban of internet materials at issue in Clement bears any resemblance to the more narrow restrictions here, which are based on the Department's undisputed need to ascertain, in most circumstances, the identity of individuals who are sending correspondence to inmates. Nothing in Clement undermines the Department's policy of restricting incoming third-party correspondence.

The second Turner factor considers whether Stephens has alternative means for exercising his constitutional rights. Stephens asserts that there "is simply no alternative to the internet." But the issue before us is the validity of the third-party incoming mail restriction, not the Department's internet access policy. The Department's policy restricts Stephens's ability to correspond through commercial forwarding agents. Stephens retains the right to communicate directly with individuals. The Department expressly advised Stephens that he was permitted to conduct direct e-mail correspondence through the authorized JPay system.

The third and fourth Turner factors also weigh in favor of the Department's policy. Accommodation of third-party correspondence would clearly impose significant burdens on Department staff and resources, given the inherent difficulty of

determining the identity of the sender of forwarded correspondence, e-mail, or website printouts. Stephens asserts that "e-mails and websites are fully traceable" and that this court should "presume that [website providers] will not participate in illegal activities." But, Stephens fails to indicate how this approach would be feasible or practical in the prison setting. Nor does he indicate how, even if the Department could reasonably determine the originating IP address (Internet Protocol address—a numerical label assigned to each device, i.e., computer) of a computer, that information would permit identification of the sender.

Stephens also asserts that there is no evidence that internet providers have facilitated prohibited contact. But, even if true, this does not undermine the rational connection between the restriction on incoming third-party mail and the Department's safety concerns:

> To show a rational relationship between a regulation and a legitimate penological interest, prison officials need not prove that the banned material actually caused problems in the past, or that the materials are 'likely' to cause problems in the future. . . . The only question that we must answer is whether the defendants' judgment was 'rational,' that is, whether the defendants might reasonably have thought that the policy would advance its interests.

Mauro v. Arpaio, 188 F.3d 1054, 1060 (9th Cir. 1999) (citations omitted).

Based on a consideration of the Turner factors, the trial court properly dismissed Stephens' First Amendment challenge on summary judgment.

III. Article 1, § 5

Stephens contends that the trial court committed "plain error" by failing to consider his challenge to the Department's incoming mail policy based on an independent analysis of Article 1, § 5, the free speech provision of the Washington Constitution. Article 1, § 5 provides "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." Stephens asserts that article 1, § 5 independently mandates broader protection for an inmate's free speech rights than the First Amendment of the United States Constitution. He argues that under the State constitution, he therefore "has the same right to receive internet speech as other citizens," unless the Department demonstrates that the incoming third-party mail policy furthers a substantial government interest. Stephens has not provided any coherent legal theory or citation to relevant authority to support his sweeping claims.

It is undisputed that article 1, § 5 provides broader constitutional protection in some circumstances and is subject to independent interpretation. See State v. Reece, 110 Wn.2d 766, 778, 757 P.2d 947 (1988); Bradburn v. N. Cent. Reg'l Library Dist., 168 Wn.2d 789, 800, 231 P.3d 166 (2010). Our Supreme Court has noted that no greater protection than the First Amendment "is afforded to obscenity, speech in nonpublic forums, commercial speech, and false or defamatory statements."

Bradburn, 168 Wn.2d at 800; City of Seattle v. Huff, 111 Wn.2d 923, 926, 767 P.2d 572 (1989); Nat'l Fed'n of Retired Persons v. Ins. Comm'r, 120 Wn.2d 101, 119, 838 P.2d 680 (1992); Richmond v. Thompson, 130 Wn.2d 368, 382, 922 P.2d 1343 (1996).

Contrary to Stephens' suggestions, the relevant inquiry

> must focus on the specific context in which the state constitutional challenge is raised. Even where a state constitutional provision has been subject to independent interpretation and found to be more protective in a particular context, it does not follow that greater protection is provided in all contexts.

Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 115, 937 P.2d 154 (1997) (sexually explicit dance did not warrant application of the more protective time, place, and manner analysis developed under art. 1, § 5). In undertaking this analysis, courts should use the nonexclusive criteria set forth in State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986), to determine "whether the state constitution ultimately provides greater protection than its corresponding federal provision." Ino Ino v. Bellevue, 132 Wn.2d at 114-15.

In support of his claim that article 1, § 5 is more protective of an inmate's incoming mail rights than the First Amendment, Stephens provides no meaningful legal argument. Rather, he relies on broad generalizations of free speech rights and citations from various cases taken out of context. Nor has he provided an adequate

analysis of the Gunwall factors. We therefore decline to address Stephens's claim that article 1, § 5 provides greater protection than the First Amendment in the context of the challenged mail policy. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority).

IV. Communications Decency Act

Stephens contends that the summary judgment must be reversed because the Communications Decency Act (CDA), 47 U.S.C. § 230, preempts RCW 72.09.530 and Department Policy 450.100. Under the CDA, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1); see generally J.S. v. Vill. Voice Media Holdings, LLC, 184 Wn.2d 95, 359 P.3d 714 (2015); Schneider v. Amazon.com, Inc., 108 Wn. App. 454, 31 P.3d 37 (2001). But, Stephens offers no coherent explanation of how the CDA supports his claims against the Department. We therefore decline to consider Stephens's CDA contentions.

V. Retaliation

Stephens contends that his retaliation claim also precludes summary judgment. Stephens alleges that the Department rejected his third-party mail and denied him job opportunities in retaliation for a lawsuit that he filed against the

Department. Generally, to prevail on a claim of retaliation under 42 U.S.C. §1983, Stephens must establish, among other things, that he engaged in constitutionally protected activity and that the conduct was a substantial or motivating factor for the alleged retaliatory acts. See Brodheim v. Cry, 584 F3d 1262, 1271 (9th Cir. 2009).

Stephens relies on the declaration from another inmate who claims to have received "postings from the internet" to establish that the Department treated him differently by rejecting his internet mail. But, the declaration does not identify the specific postings received, the date they were received, or any other circumstances demonstrating some relevance to Stephens's retaliation claim. Under the circumstances, the record fails to demonstrate a material factual dispute as to a causal connection between Stephens's protected activity and the alleged retaliatory actions. The trial court properly dismissed Stephens's retaliation claim on summary judgment.

VI. Prior Restraint

Stephens contends that the Department's third-party mail policy is an unconstitutional prior restraint under article 1, § 5. " 'Unlike the First Amendment, article 1, section 5 categorically rules out prior restraints on constitutionally protected speech under any circumstances.' " Voters Educ. Comm. v. Pub. Disclosure Comm'n., 161 Wn.2d 470, 493-94, 166 P.3d 1174 (2007) (quoting O'Day v. King

County, 109 Wn.2d 796, 804, 749 P.2d 142 (1988)). A prior restraint " 'is an administrative or judicial order forbidding communications prior to their occurrence. Simply stated, a prior restraint prohibits future speech, as opposed to punishing past speech.' " Id. at 494 (emphasis added) (quoting Soundgarden v. Eikenberry, 123 Wn.2d 750, 764, 871 P.2d 1050 (1994)).

Stephens does not articulate how the Department's regulation of third-party incoming mail prohibited his constitutionally protected speech. See Voters Educ. Comm.Id. at 494-95. He therefore fails to demonstrate any basis for application of the highly protective rules against prior restraints.

VII. Overbreadth

Stephens contends that both RCW 72.09.530 and the Department Policy 450.100 are unconstitutionally overbroad. "A law is overbroad if it sweeps within its prohibitions constitutionally protected free speech activities." Huff, 111 Wn.2d 925. Overbreadth requires a showing that the enactment reaches a substantial amount of constitutionally protected conduct. Id.

On its face, RCW 72.09.530 is not overbroad because it expressly authorizes regulations "consistent with constitutional constraints." Moreover, Stephens's overbreadth challenge to policy 450.100 appears to rest on the mistaken premise that the policy prohibits "one of the most comprehensive and advanced platforms for

free speech ever conceived -- the World Wide Web, the internet." But, as the Department points out, the mail rejections at issue here were not based on the fact that the communications originated on the internet, but on the fact they involved prohibited communications from third parties. Stephens's overbreadth claim fails.

Affirmed.

WE CONCUR:

Trickey, J

COX, J.

EXHIBIT #15

Service Request Form

NEW, READ!!

RESEARCH ACTIONS		PRICE	QUANTITY	ATTACHED MATERIAL?
D1	**Google Search** (10 minute web search)	250 credits and 5 credits per page		
D2	**Find a Person's Address / Phone Number** (purchase full Intelius report)	500 credits		
D3	**Find Lyrics / Tabs**	100 credits per song		
D4	**Google A Person** (Not overly reliable; credits are charged whether or not there are any results. Intelius is recommended for people searching.)	250 credits and 10 credits per page		

OTHER ACTIONS		PRICE	QUANTITY	ATTACHED MATERIAL?
E1	**Scan a Document For Email** (Write a letter and we will scan it and send it as an image rather than transcribing it. One sided submissions only.)	50 credits per page		
E2	**Scan A Document (OCR)** (Typed documents only—turns a typed document to text able to be posted on a site, email, blog, etc.; small errors occasionally occur. One sided submissions only.)	50 credits per scan, 75 credits to login and 50 to send		
E3	**Special Task** (Have a special request not listed? We'll try to accommodate.)	Ask price, or specify range willing to pay.		
E4	**Find Friends You Might Know on Facebook** (Have us search and printout pages of possible people you might know based on: friends you already have, high school, university, or workplace.)	125 credits, plus 5 credits per page. Specify pg. limit.		
E5	**Personal Advocacy** (Need a phone call made to a friend, your institution, or a company perhaps? Let Inmate Scribes advocate on your behalf!)	400 credits per ten minute block.		
E6	**Expedited Phone Ordering** (Is your request urgent? Give us a call to have your order taken care of immediately. We will read you messages, run an Intelius, look up a friend, or provide a Google search for you all in real time. No messages over 25 words. All calls must be prepaid.)	250 credits plus work order fees. M-Th, 12pm-5pm. All calls will be recorded for order confirmation.		

In order to reduce the chances of receiving a Denial of Service, please make sure that the form is filled out clearly and correctly, any attached material is included and appropriately labeled, and that you have enough credits in your balance for us to fulfill your requests. (Remember: all requests involving an *account*, will be charged a 50-100 credit surcharge for login, the cost depending on how many accounts are detailed in the request. First accounts are 100 credits; any thereafter in the same request are only 50.) Note: requests are processed in order in which they are received. First come, first processed. We try to get all requests out within 72 hours, however, special circumstances do apply, so please wait up to three weeks before inquiring. We advise you to contact us after 21 days if you haven't heard anything.

To fill out this form correctly, place a value in the box beside your request marked 'QUANTITY', if material is included to support your request check the box marked 'ATTACHED MATERIAL?' then provide the material on a separate piece of paper and clearly mark the request code at the top or to the side of the attached material. **E.G:**

RESEARCH ACTIONS		PRICE	QUANTITY	ATTACHED MATERIAL?
D1	**Google Search** (10 minute web search)	250 credits and 5 credits per page		
D2	**Find a Person's Address / Phone Number** (purchase full Intelius report—include age, previous known locations, and a middle name if possible.)	500 credits	2	✓
D3	**Find Lyrics / Tabs**	100 credits per song		

(On a separate piece of paper—label the task number you wish for, as well as alternative information needed for the task. Make sure that they are organized with the proper request code, and written intelligently, clearly, and with a line space between each separate request. This ensures a timely execution as well as job integrity as we handle your order. If these procedures are not carried out exactly, we hold the right to deny service based upon our service standards and acceptable use agreement. Thank you for your cooperation, and thank you for using Inmate Scribes!)

D2 John Smith - Milwaukee, Wisconsin, (black male, age 30)

D2 Jane Doe - Los Angeles, California, (white female, blonde, age 26)

* Reason for Rejection