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Court of Appeals
Division I
State of Washington
NO. 72950-1-I

72950-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

FRED STEPHENS,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Fred Stephens, a Washington State prisoner, appeals a ruling in a civil rights action against the Washington Department of Corrections (the Department) and two Department mail officials. Stephens' claims stem from five pieces of incoming mail that were rejected by the mailroom at the Monroe Correctional Complex, a Department facility, in 2013 and 2014. All five mailings were mailed to Stephens by commercial forwarding agents who were not the originators of the correspondence and thus were considered third parties. Stephens filed a complaint on October 8, 2014, raising claims under the First Amendment of the U.S. Constitution, under article I, section 5 of the Washington State Constitution, and under the Communications Decency Act.

The trial court correctly granted the Department's motion for summary judgment. The Department's rejection of Stephens' mail is constitutional because it furthered legitimate safety and security concerns. Article I, section 5 grants no greater protection than the U.S. Constitution to prisoner's incoming mail. And Stephens fails to raise a cognizable prior restraint, overbreadth, Communications Decency Act, or retaliation claim. This Court should affirm all of the trial court's decisions.

II. COUNTER STATEMENTS OF THE ISSUES

1. Was the Department's rejection of Stephens' mail proper under the First Amendment when he concedes that the mail was from a third party and the Department presented evidence that third-party mail threatens the safety and security of Department facilities?

2. Did Stephens demonstrate that article I, section 5 of the Washington Constitution provides greater constitutional protection than the First Amendment in the context of prison mail?

3. Did the Department place an unlawful prior restraint under article 1 section 5 of the Washington Constitution on Stephens' speech when it restricted his mail pursuant to Department policy?

4. Is RCW 72.09.530 overbroad when it grants the Department authority to enact a mail policy, and the Department uses the mail policy to restrict mail that threatens facility security and order?

5. Does the Communications Decency Act provide Stephens any relief when the act insulates internet providers from liability for content provided by others, where the Department is not a plaintiff in this action and is not attempting to hold any internet provider liable for the contents of its website?

6. Has Stephens stated a viable claim for retaliation when he provides no evidence other than timing to support a retaliatory motive?

7. Should this Court decline to consider Stephens' arguments because his brief fails to comply with the Rules of Appellate Procedure?

III. STATEMENT OF THE CASE

Department Policy 450.100 governs mail services for offenders, "defining staff responsibility for managing mail and maintaining safety and security of the public, staff, offenders and facilities." CP 82. The policy prohibits many types of incoming mail, including mail which threatens the legitimate facility interests of order and security. CP 89. The Department has determined that incoming third-party mail presents a threat to the safety and security of facilities. CP 78. Third-party mail is mail that contains correspondence from someone other than the party sending it. CP 76. Because the mail is sent through a third party, the Department cannot discern the identity of the true sender of the mail. CP 78. It is important for the Department to know the identity of people who are corresponding with offenders to ensure offenders are not attempting to contact those with whom correspondence is prohibited. CP 78-79. 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. CP 78-79. Requiring all parties who are corresponding with offenders to properly identify themselves allows Department staff to accurately assess

whether the mail presents security concerns without having to do extensive research for each piece of mail. CP 79.

Between October 2013 and April 2014, the Department rejected five pieces of Stephens' incoming mail. CP 159-160. Stephens admits that each of these mailings were from third-party commercial forwarding agents, Inmate Scribes or Help From Outside. CP 159-160; 273. The items of rejected mail included printed and forwarded email correspondence not initiated from the sender, profiles and forwarded communications from a pen-pal website, and envelopes forwarded with two unidentified California addresses on them. *See* CP 103, 106-108, 123-130, 141, 146-147. Each of these pieces of mail were rejected because they were forwarded third-party correspondence or envelopes addressed with unidentified addresses. *Id*. Under Department policy, Stephens could appeal the rejection and ultimately have the rejected mail sent to a representative outside of prison. Stephens appealed some of these rejections and had other articles of mail sent outside the facility. CP 104, 109-121, 131-139, 142-144, 149-156.

Stephens filed suit against the Department challenging the rejection of his incoming mail from third-party commercial forwarding agents. CP 157-173. On November 7, 2014, the Department filed a motion for summary judgment. CP 57-156. The trial court granted the

Department's motion for summary judgment on December 9, 2014. CP ___, Docket Sub No. 66. Stephens filed a timely notice of appeal on January 5, 2015. CP ___, Docket Sub No. 70.

IV. STANDARD OF REVIEW

On appeal of summary judgment, the standard of review is *de novo*, and the appellate court performs the same inquiry as the trial court. *Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 197-98, 943 P.2d 286 (1997). When ruling on a summary judgment motion, the court is to view all facts and reasonable inferences therefrom most favorably toward the nonmoving party. *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994). A court may grant summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Ruff v. County of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995); *see also* CR 56(c).

V. ARGUMENT

A. The Department's Rejection of the Mail at Issue Was Constitutional Under *Turner v. Safley* Because the Rejection of Third-Party Mail Is Reasonably Related to Maintaining the Order and Security of Department Facilities and the General Public

Prisoners have a limited First Amendment right to send and receive mail. *Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995). This right may

be limited by prison regulations that are reasonably related to legitimate penological interests. *See Thornburgh v. Abbott*, 490 U.S. 401, 411-13, 109 S. Ct. 1874, 104 L. Ed. 2d 459 (1989) (citing *Turner v. Safley*, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987)). The *Turner* Court identified four factors to use in determining whether a prison regulation is reasonably related to a legitimate penological interest. *Turner*, 482 U.S. at 89. First, there must be a "valid, rational connection" between the regulation and the governmental interest put forward to justify it. *Id.* Second, the court should consider whether there are alternative means of exercising the right at issue, while being "particularly conscious of the 'measure of judicial deference owed to corrections officials . . . in gauging the validity of the regulation.'" *Id.* at 90 (quoting *Pell v. Procunier*, 417 U.S. 817, 827, 94 S. Ct. 2800, 41 L. Ed. 2d 495 (1974)). Third, the court should consider the impact accommodation of the right will have on guards, other inmates, and the allocation of prison resources. *Id.* Fourth, the court may consider the absence of ready alternatives that fully accommodate the inmate's rights at a *de minimus* cost to valid penological objectives. *Id.*

"Prison officials need not prove that the prohibited material actually caused problems in the past, or that the materials are 'likely' to cause problems in the future" in order to show a rational relationship

between a regulation and a legitimate penological interest. *Mauro v. Arpaio*, 188 F.3d 1054, 1060 (9th Cir. 1999). It also "does not matter" whether the court agrees with the prison officials or whether the policy "'in fact advances' the [prison's] legitimate interests." *Id.* Instead, courts examine simply "whether the defendants' judgment was 'rational,' that is, whether the defendants might reasonably have thought that the policy would advance its interests." *Id.* (quoting *Amatel v. Reno*, 156 F.3d 192, 199 (D.C. Cir.1998)).

Here, the Department's restriction of Stephens' incoming third-party mail is rationally related to the legitimate penological interest of ensuring the safety and security of Department facilities and the general public. 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. CP 78-79. Mail from a third party presents a security threat because the Department is unable to determine the true identity of the sender, and therefore cannot evaluate whether the offender is restricted from corresponding with the sender. *Id.*

Stephens argues that the Department has not specifically shown that his mail was sent by a prohibited party or was a threat to facility security. Opening Brief at 10, 21-22. That is not the test. The Department

"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." *Mauro*, 188 F.3d at 1060. Instead, the proper inquiry is whether the Department "might reasonably have thought that the policy would advance its interests." *Id.*

In the trial court, Stephens failed to address, and therefore potentially waived arguments regarding the remaining *Turner* factors. However, the remaining factors also weigh in favor of the Department's restriction of incoming third-party mail from commercial forwarding agents. As to the second factor, Stephens has an alternative means of communication in that he can correspond with individuals directly, as opposed to through a commercial forwarding agent. Indeed, the Department explicitly notified Stephens of this requirement of direct communication in response to his mail rejection appeal. CP 116.

Despite Stephens' claims to the contrary, the Department has made sufficient argument regarding the third factor. CP 65. Specifically, accommodation of Stephens' preference to correspond with individuals through a third party would be burdensome because it would require Department staff to research the identity of these individuals to discern whether correspondence is permitted or prohibited. *See* CP 78.

As to the fourth factor, there is no ready alternative to accommodate Stephens' preference to correspond with individuals through third-parties at a *de minimus* cost. Stephens' assertion that mailroom staff could easily determine the source of internet printouts by tracing the IP address of the computer that sent the information is unpersuasive. Opening Brief at 20. Even assuming mailroom staff could discover a relevant IP address from the printed screenshot of a website or email (which may not show any IP address), the resulting research needed to trace the source of the IP address would not occur at a *de minimus* cost to the Department, as is required under *Turner*.

Stephens has conceded that all of his restricted mailings were from commercial forwarding agents and that the content of each of the mailings was not from either Inmate Scribes or Help From Outside but rather from a third party. CP 273. In light of the Department's legitimate penological interest in knowing the identities of persons who correspond with incarcerated persons, coupled with Stephens' concession that his rejected mail was from third-party commercial forwarding agents, the Department's rejection of Stephens' mail was constitutional, and the lower court's decision should be affirmed.

B. Under the *Gunwall* Analysis, Article I, Section 5 of the Washington State Constitution Does Not Provide Greater Protection to Incoming Prison Mail

When a party claims a provision of the Washington constitution provides greater protection than a provision of the federal constitution, courts conduct a two-step inquiry. The first step is to ask whether an independent interpretation of the state constitutional provision is warranted. *State v. McKinney*, 148 Wn.2d 20, 26, 60 P.3d 46 (2002) (citing *State v. Gunwall*, 106 Wn.2d 54, 64, 720 P.2d 808 (1986)). The second step is to apply the *Gunwall* factors to determine "whether the provision in question extends greater protections for the citizens of this state." *McKinney*, 148 Wn.2d at 26. The factors include "(1) the textual language; (2) differences in the texts; (3) constitutional history; (4) preexisting state law; (5) structural differences; and (6) matters of particular state or local concern." *Gunwall*, 106 Wn.2d at 58.

While article 1, section 5 provides broader constitutional protection in some circumstances, it does not follow that greater protection is provided in all contexts. *See State v. Russell*, 125 Wn.2d 24, 57, 882 P.2d 747 (1994); *State v. Reece*, 110 Wn.2d 766, 777–78, 757 P.2d 947 (1988). "For example, no greater protection is afforded to obscenity, speech in nonpublic forums, commercial speech, and false or defamatory statements." *Bradburn v. North Cent. Regional Library Dist.*, 168 Wn.2d

789, 800, 231 P.3d 166 (2010) (internal citations omitted). Instead, the "proper inquiry under *Gunwall* is . . . to ask whether *on a given subject matter* the Washington constitutional provision should afford greater protection than the minimum protection afforded by the federal constitution." *State v. Reece*, 110 Wn.2d 766, 777–78, 757 P.2d 947 (1988) (emphasis added); *McKinney*, 148 Wn.2d at 48-49.

Stephens does not demonstrate that article I, section 5 affords greater protection in the context of prison mail. In his attempt to apply the six *Gunwall* factors, Stephens argues that, historically, article I, section 5 was intended to protect all persons; that the state constitution includes prisoners in its definition of "person"; and that other constitutional provisions expressly exclude prisoners, while article I, section 5 does not. Opening Brief at 8-9. However, these generalized arguments are insufficient under *Gunwall* to show that article 1, section 5 provides greater protection specifically as related to incoming prison mail. And a mere difference in language does not settle the issue, for if this were the case, the remaining *Gunwall* factors would be superfluous. *Reece*, 110 Wn.2d at 778.

The burden is on Stephens to show that article I, section 5 provides broader protection for incoming prison mail than provided by the First Amendment. *See State v. Wethered*, 110 Wn.2d 466, 472, 755 P.2d 797

(1988) (burden is on the party seeking to expand state constitutional protection to demonstrate "adequate and independent state grounds"); *accord State v. K H-H*, ___ Wn. App. ___, 353 P.3d 661, 666 (June 16, 2015) (discussing article I, section 5). He fails to do so. Instead, Stephens raises generic arguments about freedom of speech and prior restraint, without any attempt to demonstrate how the textual language of article I, section 5 provides greater protection for incoming prison mail than the First Amendment.

Stephens identifies no constitutional history or preexisting state law showing that the framers intended to provide greater protection to incoming inmate mail than already afforded by the federal constitution. This third *Gunwall* factor also allows for judicial consideration of current values and conditions, *Reece*, 110 Wn.2d at 778, which also weighs against greater protection to incoming inmate mail: the courts and the legislature have recognized the limited speech rights afforded to prisoners. *See* RCW 72.09.530; *DeLong v. Parmelee*, 157 Wn. App. 119, 144-145, 236 P.3d 936 (2010), (inmates do not retain all the rights a free citizen would have, including freedom of speech), *remanded*, 157 Wn. App. 119 (2010). While state courts have addressed speech rights under the First Amendment, Stephens has shown no reason why the same analysis should not apply under article I, section 5. *See also In re Parmelee*, 115 Wn. App.

273, 281, 63 P.3d 800 (2003) ("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."); *id* at 288 (a prisoner's First Amendment rights are "subject to limitation" while incarcerated "because institutional goals and policies take top priority."); *Livingston v. Cedeno*, 164 Wn.2d 46, 55-56, 186 P.3d 1055 (2008) ("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." (citing *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989)).

Washington courts have found that the language and history of article I, section 5 supports a broader protection for free speech in some circumstances than provided by the First Amendment. The narrow inquiry here, however, is whether third-party mail addressed to prison inmates deserves broader protection under article I, section 5 than is afforded by the federal constitution. Stephens has failed to demonstrate any basis for providing broader protection for incoming prison mail under article I, section 5.

C. The Department's Restriction of Stephens' Mail Pursuant to Policy Was not a Prior Restraint Under Article I, Section 5 of the Washington Constitution

Stephens' prior restraint claim fails because the state constitution provides no greater protection to incoming inmate mail and mail policies are plainly constitutional under *Turner v. Safley*. While Stephens asserts Department mail policies are an unconstitutional prior restraint under article 1 section 5, scrutiny of the state constitution is unnecessary as argued in section (V)(B) *supra*. Indeed, "article I, section 5, prohibits prior restraints against protected speech but *permits prior restraints against unprotected speech*." *In re Marriage of Suggs*, 152 Wn.2d 74, 80, 93 P.3d 161 (2004) (emphasis added). Here, because the incoming third-party mail was constitutionally restricted under *Turner*, Stephens was not engaged in protected speech.

Moreover, Stephens' claims fail because the Department did not prevent him from speaking or publishing but merely restricted his access to information. A prior restraint is "an official restriction imposed on speech or another form of expression in advance of its occurrence." *Bradburn v. North Cent. Regional Library Dist.*, 168 Wn.2d 789, 801-02, 231 P.3d 166 (2010) (*quoting Sanders v. City of Seattle*, 160 Wn.2d 198, 224, 156 P.3d 874 (2007)). Courts have distinguished between a prior restraint, which prohibits future speech, and a regulation related to the

access of information. *Bradburn*, 168 Wn.2d at 789; *Halquist v. Dep't of Corr.*, 113 Wn.2d 818, 821, 783 P.2d 1065 (1989) ("this court distinguished between prior restraints and restraints on access to information . . ."). While article I, section 5 confers strong protection against prior restraints, it does not protect the right to access information. *Federated Publications, Inc. v. Kurtz*, 94 Wn.2d 51, 58, 615 P.2d 440 (1980).

Here, Stephens asserts a "prior restraint" occurred when the Department rejected his third-party mail before Stephens could receive it. Opening Brief at 11-14. However, Stephens fails to identify a Department restriction prohibiting future speech or assert that the Department prohibited his future speech. The only assertion here is that the Department regulated Stephens' access to information; regulations controlling access to information are not included in the protection that article I, section 5 affords to prior restraints. *Kurtz*, 94 Wn.2d at 58. Instead, "[t]he First Amendment protects the right to receive information and ideas," *Bradburn*, 168 Wn.2d at 802, and regulations abridging an inmate's First Amendment right to receive mail are analyzed using the *Turner* factors. *See Thornburgh* 490 U.S. at 411-13 (citing *Turner*, 482 U.S. 78). As previously discussed, the Department's restriction of

Stephens' third party mail meets the *Turner* test. *See supra* section (V)(A). Thus, Stephens fails to make any cognizable prior restraint claim.

D. RCW 72.09.530 is not Overbroad

Stephens alleges that RCW 72.09.530 is unconstitutionally overbroad when the Department employs it to censor all internet materials as "third party."[1] Opening Brief at 15-16. A law is overbroad if it sweeps within its prohibitions of constitutionally protected speech. *City of Seattle v. Huff*, 111 Wn.2d 923, 925, 767 P.2d 572 (1989). To be invalidated as overbroad, a law must be substantially overbroad on its face. *Id.*

RCW 72.09.530 is not overbroad, as it gives the Secretary of the Department of Corrections the authority to review incoming mail and confiscate contraband, but only "*consistent with constitutional constraints*". RCW 72.09.530 (emphasis added). On its face, the statute does not prohibit any constitutionally protected conduct and thus cannot be overbroad.

Moreover, Stephens' overbreadth claim is based on a false premise. Stephens argues that it is overbroad for the Department to include all internet materials in the definition "third-party mail." Opening Brief at 15-16. Stephens' assertion is based on the assumption that the Department

[1] It should be noted that RCW 72.09.530 does not contain the words "third party." Stephens instead claims that the statute grants the Department authority to enact a mail policy, and the Department uses that mail policy to define "third party" as all mail originating from the internet. Opening Brief at 15.

rejected his incoming mail because it came from the internet, and further that the Department has banned all incoming mail originating from the internet. *See* Opening Brief at 1, 16. That is not the case. Stephens' mail was rejected not because it came from the internet but because it contained forwarded communications to Stephens from third-parties. CP 76. Thus, Stephens' overbreadth argument regarding the Department's claimed ban on internet materials is groundless.

E. The Communications Decency Act Does not Provide Stephens any Basis for Relief

The CDA is inapplicable to Stephens' case. The act generally insulates internet service providers from liability for online content posted by a third party. *See Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d 1169, 1170 (9th Cir. 2009). It does so in part by preventing plaintiffs from claiming that a provider is the "publisher or speaker" of the third party information. 47 U.S.C. § 230(c). Here, the Department is not attempting to hold an internet service provider responsible for content posted to its website by a third-party, nor is it claiming that an internet provider is the "publisher or speaker" of the third-party information sent to Stephens. Thus, the CDA does not apply to Stephens' claims and provides him no basis for relief.

F. Stephens Fails to Show That His Mail Rejections and Job Suspension Were in Retaliation for Protected Conduct

When an inmate alleges retaliation, he must prove: (1) a defendant took some adverse action against the inmate (2) because of (3) the inmate's protected conduct, and that this action (4) chilled the inmate's speech and (5) did not reasonably advance a legitimate penological goal. *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005). To show retaliatory motive, an inmate must show that his exercise of constitutionally protected conduct was a substantial or motivating factor behind the defendants' conduct. *See Brodheim v. Cry*, 584 F.3d 1262, 1271 (9th Cir. 2009). Timing alone cannot support a claim for retaliation; the prisoner must put forth other factual material to support the inference of retaliatory motive. *See Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995). The record does not support Stephens' claim that there is a genuine issue of material fact that the Respondents retaliated against him.

First, Stephens' retaliation claim fails because, as argued above, the rejection of third party mail reasonably furthers a legitimate penological interest. As addressed in Section (V)(A) *supra*, the Department's actions and its policy regarding rejecting third-party mail from commercial forwarding agents was rationally related to the legitimate interest of safety and security, and thus was constitutional under

Turner v. Safley. As such, Stephens' retaliation claim was properly dismissed.

Stephens fails to sufficiently identify the protected conduct which he claims he was engaged in which resulted in the retaliatory actions. In his brief he alleges he was engaged in litigation prior to the rejection of his mail and loss of job opportunities, but the amended complaint is void of any reference to his prior litigation activity or loss of job. CP 165. Rather, in the amended complaint Stephens claimed "[t]he evidence of each mail rejection speaks, ipso facto, to a deliberate effort to retaliate against Stephens." CP 165. As such, Stephens' newly raised retaliation claims resulting from litigation and job termination should not be considered by this Court. Even if they were considered, however, he still fails to demonstrate the other elements of a retaliation claim.

Stephens failed to show that any protected conduct was a motivating factor behind Respondents' conduct. He provided no evidence beyond the timing of these events to support his allegations of retaliation. CP 165. Indeed, he has not even alleged that the mailroom Respondents had any knowledge of his prior litigation history or that they would have any ability to affect his job classification. CP 165. Moreover, he has failed to demonstrate that Respondent would not have restricted his mail—consistent with their understanding of Department policy—absent his

alleged protected conduct. Without more, Stephens has not shown that his constitutionally protected conduct, i.e. filing a lawsuit, was a substantial or motivating factor behind the Department's decision to reject his mail from third-party commercial forwarding agents.

G. This Court Should Decline to Consider Stephens' Arguments Because his Brief Does Not Comport with the Rules of Appellate Procedure

Pro se litigants are bound by the same rules of procedure and substantive law as attorneys. *Holder v. City of Vancouver*, 136 Wn. App 104, 106, 147 P.3d 641 (2006). The law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws. *In re Marriage of Wherley*, 34 Wn. App. 344, 349, 661 P.2d 155 (1983) (citing *Bly v. Henry*, 28 Wn App. 469, 624 P.2d 717 (1980)).

The purpose of rules governing contents of appellate briefs is to enable efficient and expeditious review of the accuracy of factual statements. *Litho Color, Inc. v. Pacific Employers Ins. Co,* 98 Wn. App. 286, 991 P.2d 638 (1999). RAP 10.3 sets out the requirements for an appellate brief. Specifically, RAP 10.3(a)(5) requires a statement of the case with references to the record for each factual statement. Arguments must also be supported with references to the record. RAP 10.3(a)(6).

Appendixes must include only materials contained in the record on review. RAP 10.3(a)(8). Arguments in briefs not supported by the record will be disregarded by the Court. *Bryant v. Palmer Coking Coal Co.*, 86 Wn. App 204, 216, 936 P.2d 1163 (1997).

This Court should decline to consider Stephens' arguments because his brief does not contain proper cites to the record. First, his statement of the case is replete with facts unsupported by the record. *See* Opening Brief at 3-4. Many of the cites which are included cite to docket numbers in the superior court, or exhibits allegedly included in an appendix to the brief which Respondents have not received. *Id*. Stephens' arguments are similarly unsupported by references to the record. For example, he asserts that "inmates still violate prohibited contacts using U.S. Mail" without any record citation. Opening Brief at 19.

Again in his retaliation argument, Stephens makes additional assertions not supported by the record such as the timing of the mail rejections as related to the filing of a lawsuit, the outcome of the lawsuit, and the circumstances surrounding the suspension of his prison job. Opening Brief at 25. In this same section, he cites portions of the record which plainly do not support the contentions. For example the profiles and messages found on CP 31 do not show that Stephens was singled out while other inmates received internet mail, and neither CP 165 nor CP 278

make reference to prison job opportunities. Opening Brief at 25. In light of these deficiencies, this Court should disregard Stephens' arguments.

VI. CONCLUSION

For the foregoing reasons, the Department respectfully requests that Stephens' appeal be denied and that the lower court's order be affirmed.

RESPECTFULLY SUBMITTED this 28th day of September, 2015.

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CERTIFICATE OF SERVICE

On the date below I caused to be electronically filed the BRIEF OF RESPONDENT with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 28th day of September, 2015, at Olympia, WA.

s/ Tera Linford
TERA LINFORD
Legal Assistant