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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PRISON LEGAL NEWS, a
project of the HUMAN RIGHTS
DEFENSE CENTER,

Plaintiff,

v.

SPOKANE COUNTY,
SPOKANE COUNTY SHERIFF'S
OFFICE, OZZIE KNEZOVICH,
individually and in his capacity as

Spokane County Sheriff, JOANNE
LAKE, in her official and individual
capacity, LYNETTE BROWN, in
her official and individual capacity,

Defendants.

No. CV-11-029-RHW

BRIEF OF AMICUS CURIAE
AMERICAN CIVIL
LIBERTIES UNION OF
WASHINGTON SUPPORTING
PLAINTIFF'S PARTIAL
SUMMARY JUDGMENT MOT.

HEARING DATE: JUNE 16, 2011
HEARING TIME: 9:00 AM
HEARING PLACE: THOMAS
FOLEY U.S. DISTRICT COURT,
7TH FLOOR

The American Civil Liberties Union of Washington ("ACLU") submits this amicus curiae brief in support of Plaintiff's motion for declaratory relief, partial summary judgment and permanent injunction. For the following reasons, this Court should grant Plaintiff PLN's motion for a declaration that the original

1 and revised postcard policies are unconstitutional, for partial summary
2 judgment, and for a permanent injunction.
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4 **I. INTEREST OF AMICUS**

5 This case involves a significant violation of the First Amendment rights of
6 anyone wishing to engage in written mail correspondence with a Spokane
7 County Jail inmate. Because of the impact on fundamental rights of numerous
8 individuals, and the fact that other Washington State jails, including some within
9 the Eastern District of Washington, are implementing such policies, the issue
10 raised by this case is of great public interest. The far-reaching consequences of
11 this case warrant the Court’s exercise of discretion to accept this amicus brief.
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14 **II. FACTUAL BACKGROUND**

15 The pleadings filed in this case indicate that on September 1, 2010,
16 Defendants Spokane County, Spokane County Sheriff’s Office, Sheriff Ozzie
17 Knezovich, Lieutenant Joanne Lake, and Office Manager Lynette Brown began
18 implementing a new policy at the Spokane County Jail that governs all prisoner
19 mail. This policy, in the form originally adopted by defendants, required that all
20 of prisoners’ incoming and outgoing mail, with the exception of legal and
21 “official” mail, be in postcard form—written on a pre-franked, non-glossy
22 postcard, with dimensions not exceeding 5.5 inches by 8.5 inches. Moreover,
23 any correspondence with “... crayon markings, colored pencil markings,
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1 **drawings ...**” was considered a violation of the policy (emphasis added). The
2 original policy, limiting almost all mail to postcards, contained a “philosophy”
3 section that is still part of the defendants’ mail policy, claiming it was consistent
4 with respecting inmates’ and their correspondents’ constitutional right of
5 expression and privacy.
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8 Only when faced with this lawsuit, and an imminent deadline for filing
9 defendants’ brief responding to plaintiff’s motion for a preliminary injunction,
10 did defendants suddenly change their mail policy to remove the postcard
11 restriction as to all outgoing mail and as to incoming “business” mail. Despite
12 defendants’ claims that the original postcard policy was essential to the security
13 of the jail, they dropped most of it without even attempting to defend its
14 constitutionality. Cursory research would have shown that it was likely
15 unconstitutional, but that did not stop defendants from adopting the postcard
16 policy. They left the unconstitutional postcard policy in place for 5 ½ months,
17 from September 1, 2010, to mid-February 2011. Defendants are persisting in
18 retaining the parts of the original postcard-only policy that force the use of
19 postcards for all incoming mail from non-businesses – family members,
20 children, friends, and anyone without a return address of a verifiable business or
21 non-profit organization. The total ban on drawings in incoming and outgoing
22 mail is also retained.
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1 In order for the Court to properly evaluate defendants' claims that they
2 will respect inmates and their correspondents' constitutional rights without an
3 injunction, the severely harmful effects of the remaining postcard policy must be
4 considered. Postcards expose the content of the correspondence to anyone who
5 might handle the mail at any point in its journey and severely reduce the writing
6 space that was previously available in letters, making a detailed exchange of
7 ideas impossible. The revised postcard policy causes an obvious chilling effect
8 on discussion of sensitive family, relationship or health issues in incoming non-
9 business written correspondence. Such topics as AIDS, pregnancy, sexually
10 transmitted diseases, disabilities, mental health conditions, abuse, sexual
11 orientation, ending or starting relationships, confidential employment or
12 business matters, a child's behavior and an inmate's considering cooperating
13 with the police all are effectively censored by the revised postcard policy given
14 the risk of exposure to unknown strangers. The revised postcard policy does
15 nothing to ameliorate these problems; indeed, it may exacerbate it by making
16 written communication a one-way street, since sensitive topics may be
17 addressed in outgoing letters from inmates, but the person trying to respond
18 must risk exposure on a postcard.

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25 Another likely effect of the revised postcard policy is that spiritual
26 guidance and support from clergy on sensitive matters, Bible study

1 correspondence courses, communication with various health providers and
2 working the steps of a 12-step addiction program remain virtually impossible as
3 a result of the policy limiting incoming non-business correspondence to
4 postcards. Many counselors, such as AA sponsors, will not meet the policy's
5 requirements for incoming "business" mail. It is common knowledge that
6 persons in jail often are in crisis dealing with pressures, strong emotions, fears
7 and loneliness. This makes written correspondence with parents, children,
8 spouses, domestic partners, support groups, counselors, sponsors or friends their
9 only lifeline to the outside world.
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13 Many people are not able to make in-person visits to the jail and cannot
14 afford the exorbitant cost of collect phone calls. For example, *Amicus* heard
15 from an inmate's mother who is over 80 years old and lives out of state. Her
16 arthritis makes it physically impossible to write in cramped handwriting on a
17 small postcard, but she is able to correspond by handwriting in multi-page
18 letters, which allow for large handwriting. E-mail and cell phones are not
19 permitted forms of communication with inmates. For these reasons, the harmful
20 effects of the new policy's limits on incoming letters are evident.
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24 The revised postcard policy also prohibits prisoners from engaging in
25 entire forms of written communications, such as expressive or artistic drawings.
26 Family members and friends may not send an inmate a greeting card to mark

1 important occasions. These restrictions are significant in that some inmates and
2 their correspondents (particularly young children) lack the ability to read but can
3 understand communication in the form of a drawing or card with a picture on it.
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5 Amicus is aware of two other county jails within the Eastern District of
6 Washington which have adopted a postcard-only policy similar to the original
7 Spokane Jail postcard-only policy. Washington has 39 counties and by far the
8 majority has not found a postcard-only policy necessary to maintain safety or
9 security at their jails.
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11 III. ARGUMENT

12 13 **A. Both the Original and Revised Postcard Only Mail Policies Violate** 14 **the First Amendment Right to Send and Receive Mail. They Violate** 15 **the Rights of All Who Wish to Correspond with Inmates, in Addition** 16 **to the Rights of the Inmates.**

17 The right to receive and send mail is unquestionably protected by the First
18 Amendment. Blount v. Rizzi, 400 U.S. 410 (1971). The law is also clear that
19 jail inmates generally retain the First Amendment right to send and receive mail.
20 See, e.g., Thornburgh v. Abbott, 490 U.S. 401, 407 (1989); Procurier v.
21 Martinez, 416 U.S. 396 (1974), overruled in part on other grounds, Thornburgh
22 (noting that correspondence between a prisoner and an outsider implicates the
23 First and Fourteenth Amendments); Witherow v. Paff, 52 F.3d 264, 265 (9th
24 Cir. 1995). The Procurier case sets forth the requirements for a constitutional
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1 policy on outgoing jail mail, while the requirements of Turner v. Safley, 482
2 U.S. 78 (1987), are used to evaluate the constitutionality of a jail mail policy
3 regarding incoming mail.
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5 It is not only inmate rights, but the First Amendment rights of the many
6 people who correspond with them (described above) that are at stake here.
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8 “Correspondence between a prisoner and an outsider implicates the guarantee of
9 freedom of speech under the First Amendment and a qualified liberty interest
10 under the Fourteenth Amendment.” Treff v. Galetka, 74 F.3d 191, 194 (10th
11 Cir. 1996). Because the postcard-only policy significantly limits written
12 correspondence from anyone wishing to correspond with jail inmates, and
13 entirely prevents receiving drawings or other similar expressive materials that
14 are not on a postcard, it unnecessarily and impermissibly violates the First
15 Amendment rights of both the inmates and non-prisoners.
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18 Written correspondence is a two-way street, as the United States Supreme
19 Court has recognized:
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21 Communication by letter is not accomplished by the act of writing words
22 on paper. Rather, it is effected only when the letter is read by the
23 addressee. Both parties to the correspondence have an interest in securing
24 that result, and censorship of communication between them necessarily
25 impinges on the interest of each. . . . The wife of a prison inmate who is
26 not permitted to read all that her husband wanted to say to her has
suffered an abridgment of her interest in communicating with him as plain
as that which results from censorship of her letter to him. In either event,

1 censorship of prisoner mail works a consequential restriction on the First
2 and Fourteenth Amendments rights of those who are not prisoners.

3 Procunier v. Martinez, *supra*, 416 U.S. at 408-09.

4 The defendants do not argue that the original postcard only policy
5 applicable to outgoing mail satisfied the test set forth in Procunier v. Martinez.

6 Under the Martinez standard, 416 U.S. at 413, as clarified in Thornburgh v.
7 Abbott, 490 U.S. at 411-414, the test for the constitutional validity of a
8 regulation affecting a prisoner's outgoing mail is:
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11 First, the regulation or practice in question must further an important or
12 substantial governmental interest unrelated to the suppression of
13 expression. Prison officials may not censor inmate correspondence simply
14 to eliminate unflattering or unwelcome opinions or factually inaccurate
15 statements. Rather, they must show that a regulation authorizing mail
16 censorship furthers one or more of the substantial governmental interests
17 of security, order, and rehabilitation. Second, the limitation of First
18 Amendment freedoms must be no greater than is necessary or essential to
19 the protection of the particular governmental interest involved.

20 By failing to defend the original postcard only policy and adopting the revised
21 policy, defendants in effect conceded that restricting prisoners' outgoing mail to
22 postcards is simply not necessary to serve the government's interest in
23 preserving order and security within the jail or crime prevention and, therefore,
24 cannot satisfy the second prong of the Martinez standard. They realized that the
25 original policy was unnecessary, because it is settled law that jail officials may
26 inspect outgoing letters and require that they be submitted to jail staff in

1 unsealed envelopes to facilitate inspection. Beville v. Ednie, 74 F.3d 210, 213-
2 14 (10th Cir. 1996); Stow v. Grimaldi, 993 F.2d 1002, 1004 (1st Cir. 1993).

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4 Indeed, until September 2010, the Spokane County Jail satisfied its
5 security interests in both outgoing and incoming mail by allowing prisoners to
6 send and receive letters in envelopes with appropriate less restrictive safety
7 precautions. This fact, combined with the jail’s swift abandonment of the policy
8 restricting outgoing mail to postcards, argues powerfully against a finding that a
9 postcard policy is necessary to protect the government’s interest in security of
10 the jail and crime prevention.
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13 It has also been suggested that the postcard-only policy, in its original
14 form, is a cost-saving measure because it speeds up the process of sorting mail
15 and, thereby, frees up staff. However, defendants have not offered proof of how
16 much money, if any, the revised policy would save. See Beerheide v. Suthers,
17 286 F.3d 1179, 1189 (10th Cir. 2002) (“[i]n order to warrant deference, prison
18 officials *must present credible evidence* to support their stated penological
19 goals”) (emphasis in original). Since the jail now permits outgoing letters, and
20 incoming business letters, presumably it is inspecting those items as it did before
21 the original postcard only policy was adopted. It is not clear that the revised
22 policy provides any cost savings. In any event, a mere desire to cut down on
23 costs—an interest that is not unique to the correctional setting—does not and
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1 cannot satisfy the Martinez standard for outgoing mail. 416 U.S. at 413 (setting
2 forth an exhaustive list of governmental interests that can justify restrictions on
3 prisoners' outgoing mail and excluding cost). See also, Battle v. Anderson, 376
4 F. Supp. 402, 425 (E.D. Okla. 1974), aff'd in part and rev'd in part, 993 F.2d
5 1551 (10th Cir. 1993) (outgoing mail restrictions not justified when imposed
6 "solely to serve the administrative convenience of the defendants, without
7 furthering any demonstrated interest in the orderly operation of the institution or
8 the rehabilitation of its inmates").
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12 The unconstitutionality of postcard only policies has been recognized by
13 the courts recently. In February 2011, Honorable Richard W. Story, United
14 States District Judge for the Northern District of Georgia, ruled that a jail inmate
15 stated a viable claim challenging a jail's policy restricting inmates' outgoing
16 mail to postcards, explaining that censorship was a plausible purpose of the
17 policy:
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20 -outgoing personal correspondence from prisoners-did not, by its very
21 nature, pose a serious threat to prison order and security. ... [Johnson's]
22 allegations state a plausible claim that the Jail's policy violates the test. It
23 is plausible, if not likely, that the alleged postcard policy exists for
24 security reasons. It also is plausible, however, that the policy exists to
25 facilitate improper censorship of outgoing mail. In either case, Plaintiff
26 may argue that Jail officials could address their concerns by the less
restrictive measure of requiring that general outgoing mail be placed in
unsealed envelopes-as they allegedly do for attorney mail-instead of
altogether limiting the type and size of the medium used for such mail.

1 See Thornburgh, 490 U.S. at 412 (observing that “the implications for
2 security are far more predictable” with outgoing mail). ”

3 Johnson v. Smith, 2011 WL 344085 (N.D. Ga. 2011) (Slip Opin. 2/1/11) (citing
4 Thornburgh, 490 U.S. at 411). Similarly, Honorable Wiley Y. Daniel, Chief
5 United States District Judge for the District of Colorado, in December 2010
6 granted a preliminary injunction against a jail’s postcard only policy, on the
7 grounds that a likelihood of success on the merits had been shown. See Order
8 attached hereto in Exhibit A.
9

11 The compelling reasoning of these courts demonstrates that both the
12 original and revised versions of the Spokane County Jail’s postcard only policy
13 are unconstitutional. There is no evidence that restricting to postcards all
14 incoming mail from family, friends, religious counselors, AA sponsors and the
15 like is “rationally related to a legitimate and neutral governmental objective”
16 (Turner Factor 1, 482 U.S. at 89-90). Indeed, as discussed above and below, the
17 new policy fails to promote safety and security by increasing the inmates’ stress
18 levels, fails to provide cost savings, and undermines the governmental objective
19 of reducing recidivism. A jail policy that does nothing but harm governmental
20 interests at the same time as it violates significant constitutional rights of
21 inmates and all who wish to correspond with them is hardly “rational.”
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1 Second, Turner Factor 2 considers whether alternative means of
2 exercising the impinged right remain open. Turner, 482 U.S. at 90. For all the
3 reasons discussed above, the revised policy’s restrictions on incoming mail do
4 not provide adequate alternative means of communication. Many topics can
5 only reasonably be discussed in closed letter correspondence, and many people
6 needing to communicate with inmates are unable to use phone calls or in-person
7 visits.
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10 The third Turner factor, 482 U.S. at 90, considers whether the right at
11 issue “can be exercised only at the cost of significantly less liberty and safety for
12 everyone else, guards and other prisoners alike.” There is no evidence that there
13 would be significant costs to returning to the policy permitting incoming non-
14 business letters, subject to inspection for contraband and other criminal activity.
15
16 This was the policy in place at the Spokane Jail for many years prior to
17 September 2010, and remains the policy that most other jails in Washington, all
18 facing difficult budget times, consider reasonable. The vast majority of jails and
19 other incarceration facilities likely experience incidents with contraband or
20 prohibited items in the mail on some occasions, but that justifies improved
21 security procedures rather than the immensely overbroad restrictions on written
22 correspondence that the defendants have adopted here. See Martinez, 416 U.S.
23 at 414 n. 14 (“While not necessarily controlling, the policies followed at other
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1 well-run institutions would be relevant to a determination of the need for a
2 particular type of restriction”).
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4 The fourth Turner factor, 482 U.S. at 90-91, considers whether “obvious,
5 easy alternatives” to the challenged regulation exist. This factor is easily
6 satisfied because the jail can resume the constitutional policy it had for years
7 prior to September 2010, a policy most other Washington jails follow to this
8 day. All four Turner factors lead to the conclusion that the current policy is
9 unconstitutional. Enjoining it is warranted, because curtailing constitutionally
10 protected speech never advances the public interest. ACLU v. Reno, 217 F.3d
11 162, 180 (3d Cir.2000), vacated on other grounds sub nom., Ashcroft v. ACLU,
12 533 U.S. 973 (2001).
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16 **B. The Postcard Only Mail Policy Harms Other Compelling Interests**
17 **Including the Fundamental Right to Maintain Parent-Child**
18 **Relationships and Legally Protected Confidential Relationships Such**
19 **as Those Between Inmates and Clergy, Spouses, and Counselors.**

20 The right to maintain family relationships is a fundamental right protected
21 by the First and Fourteenth Amendments. Troxel v. Granville, 530 U.S. 57
22 (2000); Moore v. East Cleveland, 431 U.S. 494 (1977); Meyer v. Nebraska, 262
23 U.S. 390 (1923); P.O.P.S. v. Gardner, 998 F.2d 764, 767 (9th Cir. 1993) (citing
24 Stanley v. Illinois, 405 U.S. 645, 651 (1972) (“The rights to conceive and raise
25 one’s children have been deemed ‘essential,’ ‘basic civil rights of man’”)).
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1 Certain other personal relationships are also constitutionally protected, including
2 relationships with others in political, social and civic groups, whether or not the
3 group has a verifiable business or non-profit organization's address. Roberts v.
4 U.S. Jaycees, 468 U.S. 609 (1984). "[T]he constitutional shelter afforded such
5 relationships reflects the realization that individuals draw much of their
6 emotional enrichment from close ties with others." Roberts, 468 U.S. at 619.
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8 The current postcard only policy detrimentally affects these constitutionally
9 protected relationships.
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12 It is already difficult for prisoners to maintain relationships with their
13 children while incarcerated. The revised postcard policy poses a devastating
14 threat to this relationship. It drastically reduces the amount of written
15 communication prisoners can have with their children and disallows prisoners
16 from receiving photographs of their children. It also makes communication with
17 children who are too young to read extremely difficult, since sending or
18 receiving handmade drawings that serve to express thoughts and feelings
19 without words are banned. The policy entirely precludes children from mailing
20 their school drawings or other work to a jailed parent. Further, because of the
21 public nature of a postcard's contents, the revised postcard policy also renders it
22 impossible for spouses, partners or other caregivers to write to inmates about
23 intimate aspects of their children's development, discipline, or education since
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1 they must risk exposure to the public on a postcard.

2 Additionally, the revised postcard policy forces prisoners either to cease
3 receiving written communication with the outside world or to expose to public
4 view information for which Washington State law has accorded heightened
5 privacy protections, such as information exchanged with spouses and religious
6 or spiritual counselors. WASH. REV. CODE § 5.60.060(1), (3) (2008). For
7 incarcerated persons, many of these otherwise privileged communications
8 necessarily occur by way of written correspondence and, as a result of the
9 postcard policy, are exposed to anyone who handles, processes, or views the
10 postcards. A few examples of harm the policy might cause are the following
11 situations. An incarcerated AIDS patient who has relied on private, written
12 communications with members of an AIDS-patient support group to improve his
13 emotional health now feels isolated and experiences a concomitant decrease in
14 physical and emotional wellbeing. A depressed spouse and father who can no
15 longer receive letters from his wife about the realities of life in jail, household
16 financial matters and his precarious emotional state feels scared, alone, and cut-
17 off from his family.
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24 These examples illustrate how the original and revised postcard policies
25 mean prisoners have been forced to either stop discussing sensitive (e.g.,
26 medical, spiritual, intimate, financial) information with those close to them, or

1 risk divulging confidential, sensitive information to unknown third parties who
2 can easily intercept these messages, such as postal workers, office secretaries,
3 and persons who handle the postcards in the mail.
4

5 **C. A Postcard Only Mail Policy Harms Rehabilitation and Successful**
6 **Reintegration into Society.**

7 It is well known that prisoners’ maintenance of social connections with
8 their family, life partners, friends, employers, education and housing programs,
9 and religious comfort and sobriety support networks, among others, are essential
10 to prisoners’ rehabilitation and successful reintegration into society upon their
11 release. See Terry Kupers, M.D., *Prison Madness: The Mental Health Crisis*
12 *Behind Bars and What We Must Do About It* (1999) 157 (“Research shows that
13 continuous contact with family members throughout a prison term makes it
14 much less likely that a prisoner will be re-arrested and reimprisoned in the years
15 following his release”). Maintaining these ties is particularly significant for jail
16 inmates who may be incarcerated for a short time awaiting release pending trial
17 or serving a short sentence. Letters are often the only form of hope and uplift
18 inmates have in their lives; one religious organization which mentors inmates
19 through written correspondence refers to letters as “paper sunshine.” It is a
20 devastating blow for the revised postcard policy to take them away. What the
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1 Second Circuit said about the importance of outgoing mail, citing Martinez, is
2 just as apt regarding the importance of incoming mail:
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4 In the close and restrictive atmosphere of a prison, ... [t]he simple
5 opportunity to read a book or write a letter, whether it expresses political
6 views or absent affections, supplies a vital link between the inmate and
7 the outside world, and nourishes the prisoner's mind despite the blankness
8 and bleakness of his environment.

9 Wolfish v. Levi, 573 F.2d 118 (2nd Cir. 1978), reversed by Bell v. Wolfish, 441
10 U.S. 520 (1979) (but specifically noting, 441 U.S. at 528 n.9, that the prison
11 officials did not challenge that portion of the Second Circuit decision enjoining
12 the reading and inspection of inmate outgoing and incoming mail).

13 Because the revised postcard policy results in the weakening and
14 disruption of so many significant relationships for inmates, it is in effect a policy
15 that isolates prisoners from their family and friends and other community ties at
16 a time when they are most in need of that support. Full and open
17 communication with family, employers and counselors can help show inmates
18 the way to a productive crime-free life upon their release. Additionally, the
19 revised postcard policy likely serves to increase stress and boredom among
20 prisoners and, therefore, increases the risk of violence in the jail, with the result
21 that the policy's implementation may actually result in both a loss of security
22 inside the institution and a greater threat to the community's safety upon
23 prisoners' release. Far from satisfying the Turner test by "furthering"
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1 rehabilitation or safety, the Postcard Only Policy has exactly the opposite effect.
2 For that reason as well, it should be ruled unconstitutional.
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4 **IV. CONCLUSION**

5 For the foregoing reasons, this Court should declare that the
6 Postcard Only Mail Policy, both in its original and revised forms, is
7 unconstitutional. It should also grant Plaintiff's requested permanent injunction
8 because the injunction is necessary to serve the public interest. This is the first
9 court in Washington to deal with a postcard-only policy. A permanent
10 injunction serves the public interest because it will provide guidance to other jail
11 facilities around the state as to what constitutes a constitutional jail mail policy.
12 Indeed, while there are 37 county jails and 20 city jails in Washington, the
13 majority of these facilities have not found a postcard-only policy necessary to
14 maintain safety or security at their jails. Nevertheless, within the Eastern
15 District of Washington, Amicus is aware of two county jails that adopted a
16 postcard-only policy similar to the original Spokane Jail postcard-only policy
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1 shortly after Spokane did. The public interest thus requires a permanent
2 injunction.
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4 DATED this 16th day of May, 2011.
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6 Respectfully submitted,

7 ACLU OF WASHINGTON FOUNDATION
8

9 By: /s/ Sarah A. Dunne

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12 Lindsey Soffes*, WSBA No. 41506
* Not admitted in Eastern District of
Washington
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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2011, I sent a copy via email of the foregoing document to the parties listed below; and on May 17, 2011, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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