



July 5, 2011

Washoe County District Attorney
Richard Gammick
P.O. Box 30083
Reno, NV 89520-3083

Re: Washoe County Jail Mail Policy

Dear Mr. Gammick:

We are writing because Washoe County Jail has a policy prohibiting enclosed letters. While we recognize the need to ensure safety within jails, this policy raises serious constitutional concerns. Requiring that incoming and outgoing mail be on postcards violates the First Amendment rights of inmates, and of those on the outside who wish to correspond with them. We request that your facility change this policy immediately.

The postcard-only policy has a chilling effect on the speech of both inmates and their correspondents. People are aware that non-legal prison mail may be opened, and even read, by correctional staff to search for contraband or evidence of illegal activity. However, requiring that correspondence be on open postcards drastically increases the number of people—guards, other inmates, postal employees, and anyone who lives at the home of the inmate’s addressee—who may view what an inmate has written (or what someone has written to him or her). Because of this, an inmate (and any of his or her loved ones) are deterred from discussing a variety of sensitive topics, including medical issues, financial matters, complaints about prison conditions, and marital or relationship concerns.¹ The need for inmates and those on the outside to censor themselves is strong evidence that the postcard-only policy violates the First Amendment. As the Supreme Court has stated, “[t]he wife of a prison inmate who is not permitted to read all that her husband wanted to say to her has suffered an abridgment of her interest in communicating with him,” and has had her own constitutional rights violated as much as the inmate. Procurier v. Martinez, 416 U.S. 396, 409 (1974).

In determining whether a jail’s restriction on a constitutional right is legal, courts consider whether there are practical alternative methods for inmates to exercise the right at issue. Crofton v. Roe, 170 F.3d 957, 959 (9th Cir. 1999) (citing Turner v. Safley, 482 U.S. 78, 90 (1987)). There are no such methods when inmates and their loved ones are prohibited from writing letters. For one thing, other forms

¹ Legal mail is not the only type of correspondence that might require confidential information, so a legal mail-exception to the postcard-only policy is insufficient.

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of communication—visiting the jail, talking by phone, sending multiple postcards—are much more expensive than letter-writing. Inmates and their families are disproportionately impoverished, and the Ninth Circuit has struck down as unconstitutional prison mail restrictions that “ignore[] the practical financial realities that many prisoners face.” Morrison v. Hall, 261 F.3d 896, 904 n.6. That is exactly what the postcard-only policy does.²

Yet another indication that the postcard-only policy is unconstitutional is that countless other jails in both Nevada and the United States—including Clark County’s jail and all Nevada Department of Corrections facilities—are safe and well-run without such a restriction. The Supreme Court has recognized that “the policies followed at other well-run institutions [are] relevant to a determination of the need for a particular type of restriction.” Procunier, 416 U.S. at 414 n.14. The fact that Washoe County Jail only recently adopted the postcard-only policy, and the absence of a similar policy at other well-run institutions, demonstrates that it is unnecessary and, therefore, unconstitutional.

Whatever reasoning prompted the Washoe County Jail to prohibit letters, it does not allow an overbroad measure that violates the civil rights of inmates and their families. We request that Washoe County amend its policies immediately to allow inmates to send and receive enclosed letters. The ACLU of Nevada would be happy to help you devise mail policies that ensure safety without infringing upon the constitutional rights of inmates and those who wish to communicate with them. If you would like to discuss this issue further, please feel free to contact Allen Lichtenstein, General Counsel of the ACLU of Nevada, at (702) 433-2666 or at allenaclunv@lvcoxmail.com. Thank you for your time and attention to this matter.

Sincerely,



Rahul K. Sharma
Legal Fellow

² Additionally, visits and phone calls are not available to inmates as frequently as pens and paper, and do not allow them or their loved ones to share any reading material.