



August 27, 2015

**VIA Facsimile and U.S. Mail**

Commissioner Derrick D. Schofield  
Tennessee Department of Correction  
Rachel Jackson Building, Sixth Floor  
320 Sixth Avenue North  
Nashville, Tennessee 37243-0465

Re: Free Speech Rights of Correctional Officers

Dear Commissioner Schofield:

The ACLU of Tennessee (ACLU-TN) has received alarming reports that Tennessee Department of Correction (TDOC) administrators have warned correctional officers that they will be disciplined or terminated if they continue to exercise their protected right to free speech. We write to urge you to investigate this conduct and make it clear to correctional officers that they will not be retaliated against for speaking out on matters of public concern.

The Tennessee Department of Correction is clearly in a state of crisis. The recent 28-day schedule change has brought many problems—including dangerous working conditions, overworked and exhausted employees, understaffing, compensation issues, inconsistencies in data collection, and the resulting harm of all of these factors to public safety—into the spotlight. However, these problems clearly have deep roots and have existed much longer than the public realized, which speaks to a larger issue undergirding all of these problems: a complete and utter lack of transparency.

In recent weeks, correctional officers have taken steps to bring many of these issues to light, questioning TDOC's move to the 28-day work schedule, TDOC's reporting of assaults of correctional officers, and TDOC's insistence that the state's prisons are not dangerously understaffed. ACLU-TN echoes the officers' concerns. The safety of TDOC staff and inmates, as well as the public, are all endangered by an environment that places overworked officers in understaffed facilities.

Correctional guards and other TDOC employees have the right to share their concerns publicly and petition their government for redress because these policies and practices are of great public and community concern. Indeed, the voices of those working in the TDOC prisons and observing their day-to-day operations are essential to ensuring not only accountability, but legislative and executive review and action.

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Yet we understand that TDOC employees are being verbally reprimanded by their superiors for participating in rallies and speaking to state legislators about their concerns. Officers have been warned by their superiors to remain silent or they will suffer consequences “once the dust settles.” Others were told that “internal affairs” officers would attend any protests or rallies to take photographs and record the names of those who participate. Such threats have a chilling effect on all TDOC employees’ exercise of their right to free speech.

The First Amendment of the U.S. Constitution and Article I § 19 of the Tennessee Constitution protect the right to freedom of speech. Individuals do not relinquish their constitutional rights when they accept employment with the government. Pickering v. Board of Education, 391 U.S. 563, (1968). Public employees have the right to speak out as private individuals on matters of public concern. Id. A “matter of public concern involves a matter of political, social, or other concern to the community.” Jackson v. City of Columbus, 194 F.3d 737, 746 (6<sup>th</sup> Cir. 1999).

The correctional officers’ speech described, without a doubt, matters of political, economic and public safety concern. While TDOC may have a legitimate governmental interest in restricting its employees’ speech on matters concerning specific security measures in prisons, none of the issues being discussed implicate those concerns. The officers are exercising their fundamental right to air their grievances at the legislature and to engage their elected representatives. In fact, TDOC officers’ voices are crucial when considering the consequences of TDOC policies.

TDOC staff are also being warned not to speak or they will face future retribution. Public employees may not be retaliated against for speaking out on matters of public concern. Retaliatory conduct need not take the form of a single serious, adverse employment action, such as discharge, demotion or a cut in pay. It may be a collection of small, even ridiculous, actions which, in gross, create a substantial chilling effect on speech. See Bart v. Telford, 677 F.2d 622, 625 (6<sup>th</sup> Cir. 1982). Because “there is no justification for harassing people for exercising their constitutional rights,” the effect of harassing conduct need not be great “to be actionable.” Id.

ACLU-TN urges TDOC to remedy this situation now, before such actions cause permanent harm and deprive correctional officers of their constitutional right to free speech. Beyond protecting individual TDOC employees’ right to free speech, protecting TDOC employees’ ability to speak publicly is also important to ensuring a full assessment of the facts—one that includes not only data provided by the state and reports by independent analysts, but the voices of those working daily in our state’s prisons.

We ask that TDOC issue a statement clearly affirming that no employee will be threatened or retaliated against for speaking out on these matters of public concern, including discussing these issues with the media or elected officials, and participating in protests or rallies pertaining to these issues. Failure to take swift and decisive action will perpetuate the unconstitutional chilling effect of these threats of discipline and could lead to allegations of retaliation from correctional officers. ACLU-TN will continue to closely monitor this situation.

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Please notify us of your intent to issue the necessary statement. If you have any questions or wish to discuss this matter further, please contact us.

Sincerely,

  
Hedy Weinberg  
Executive Director