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Access to the Courts

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Sincerely,

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The landmark case in the area of a prisoner's right of access to the courts is *Bounds v. Smith,* 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

> In Bounds, the Supreme Court noted that prisoners must be afforded meaningful access in their criminal trials, on their appeals as of right, and in their habeas and civil rights actions. In holding that the right to affirmative assistance applies in these contexts, the Supreme Court explained ”we are concerned in large part with original actions seeking new trials, release from confinement, or vindication of fundamental civil rights.... Habeas corpus and civil rights actions are of 'fundamental importance ... in our constitutional scheme' because they directly protect our most valued rights.”

Phifer v. Tennessee Bd. of Parole, 2002 WL 31443204, *10 (Tenn. Ct. App. 2002).

However, since the United States Supreme Court decided *Bounds*, the scope of the right of access to the courts “has been the subject of further litigation which has served to limit and define the types of litigation to which the [right] applies.” *Id*. The Sixth Circuit Court of Appeals has held that it would be "an unwarranted extension of the right of access" to require states to affirmatively assist prisoners “on civil matters arising under state law." *John L. v. Adams*, 969 F.2d 228, 235-236 (6th Cir. 1992). And, in *Knop v. Johnson,* 977 F .2d 996, 1009 (6th Cir. 1992), the court held that the right of access to the courts requires affirmative assistance for inmates "only in the preparation of legal papers in cases involving constitutional rights and other civil rights actions related to their incarceration."

> This view was subsequently adopted by the United States Supreme Court: Bounds does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration. Lewis v. Casey, 518 U.S. 343, 355, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996).

*Reinholtz v. Campbell,*64 F.Supp.2d 721, 730 (W.D. Tenn. 1999). *See Courtemanche v. Gregels*, 79 Fed.Appx. 115, 117 (6th Cir. 2003) (“However, a prisoner's right of access to the courts is limited to direct criminal appeals, habeas corpus applications, and civil rights claims challenging the conditions of confinement.”).

> The Court in Lewis also found that Bounds did not create any independent right of access to legal materials. The Court specifically found that Bounds did not establish a right to a law library or to legal assistance, but that "[t]he right that Bounds acknowledged was the (already well-established) right to access to the courts." 518 U.S. at 350, 116 S.Ct. at 2179. Meaningful access to the courts is the touchstone. It is the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts that is protected, not "the capability of turning pages in a law library." 518 U.S. at 356-57, 116 S.Ct. 2182.

Phifer v. Tennessee Bd. of Parole, 2002 WL 31443204, *11 (Tenn. Ct. App. 2002) (footnote omitted). *See also Benjamin v. Kerik*, 102 F.Supp.2d 157, 162 (S.D. N.Y. 2000) (“The *Lewis* Court repudiated the expansive understanding of its prior decision in *Bounds v. Smith*, and held that prisoners do not have a freestanding right to law libraries or legal assistance.”) (citations omitted).

“Although prisoners maintain a right of access to the courts, they do not have the right of access to a law library.” *Jackson v. Wiley*, 352 F.Supp.2d 666, 679 (E.D. Va. 2004) *citing Strickler v. Waters*, 989 F.2d 1375, 1385 (4th Cir. 1993). An inmate is not denied his right of access to the courts simply because a jail’s law library is inadequate or because an inmate’s access to that library has been restricted in some way. *Id*. Access to a jail's law library may be restricted during lockdown where inmates have access to other forms of legal advice. *Id*. at 680, *citing Johnson v. Williams*, 768 F.Supp. 1161 (E.D. Va. 1991). “States have a duty to provide inmates with *either* an attorney or access to law libraries to prepare for trial. States need not provide both law libraries and advisors.” *Id*.

“There is no constitutional right to any particular number of hours in the law library.” *Thomas v. Campbell*, 12 Fed.Appx. 295, 297 (6th Cir. 2001), *citing Walker v. Mintzes*, 771 F.2d 920, 932 (6th Cir. 1985). *See*

also Davidson v. Edwards, 816 F.2d 679, 679 (6th Cir. 1987) (Table) ("Restricted access to the library is not a per se denial of access to the courts. Rather, access to the library need only be reasonable and adequate.").

The Tenth Circuit Court of Appeals has held that the "availability of law libraries is only one of many constitutionally acceptable methods of assuring meaningful access to the courts, and pretrial detainees are not entitled to law library usage if other available means of access to court exist." *United States v. Cooper*, 375 F.3d 1041, 1051 (10th Cir. 2004). "It is well established that provision of legal counsel is a constitutionally acceptable alternative to a prisoner's demand to access a law library." *Id*. at 1051-1052. The choice among various methods of guaranteeing access to the courts lies with prison administrators, not inmates or the courts. *Ishaaq v. Compton,* 900 F.Supp. 935, 941 (W.D. Tenn. 1995).

An inmate who has court-appointed counsel on direct appeal has no constitutional right of access to a law library in preparing his defense. *Caraballo v. Federal Bureau of Prisons*, 124 Fed.Appx. 284, 285 (5th Cir. 2005) (citation omitted). *See also United States v. Manthey*, 92 Fed.Appx. 291, 297 (6th Cir. 2004) (same). Moreover, "many federal circuit courts have held that a prisoner who knowingly and voluntarily waives appointed representation by counsel in a criminal proceeding is not entitled to access to a law library." *Degrate v. Godwin,*84 F.3d 768, 768-69 (5th Cir. 1996) (citing cases).

An inmate's right of access to the courts is not violated merely because his attorney refuses to accept collect phone calls. *United States v. Manthey*, 92 Fed.Appx. 291, 297 (6th Cir. 2004).

A prisoner's right of access to the courts includes the right to receive legal advice from other prisoners only when it is a necessary "means for ensuring a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." *Pendleton v. Mills*, 73 S.W.3d 115, 124 n. 10 (Tenn. Ct. App. 2001), *citing Shaw v. Murphy*, 532 U.S. 223, 231 n. 3, 121 S.Ct. 1475, 1480 n. 3, 149 L.Ed.2d 420 (2001); *Bounds v. Smith,* 430 U.S. 817, 825, 97 S.Ct. 1491, 1496, 52 L.Ed.2d 72 (1977). However, "an inmate does not have an independent legal right to help other prisoners with their legal claims." *Thaddeus-X v. Blatter*, 175 F.3d 378, 395 (6th Cir. 1999) (citations omitted). "Rather, a 'jailhouse lawyer's' right to assist another prisoner is wholly derivative of that prisoner's right of access to the courts; prison officials may prohibit or limit jailhouse lawyering unless doing so interferes with an inmate's ability to present his grievances to a court." *Id*. *See also King v. Zamiara*, 150 Fed.Appx. 485, 492 (6th Cir. 2005) ("[A]n inmate engages in protected activity by providing legal assistance when his assistance is *necessary* to provide another inmate with constitutionally-protected access to the courts.").

An inmate's right of access to the courts "does not encompass a requirement that prison officials provide a prisoner with free, unlimited access to photocopies." *Logue v. Chatham County Detention Center*, 152 Fed.Appx. 781, 784 (11th Cir. 2005). In *Logue*, the inmate alleged that jail officials violated his right to access to the courts based on the denial of his requests for multiple photocopies of supporting exhibits, including lengthy transcripts, for his use in an unrelated habeas corpus proceeding. The Eleventh Circuit Court of Appeals upheld the district court's dismissal of Logue's claim because Logue failed to allege an *actual injury* by showing that the denial of the photocopies actually impeded a nonfrivolous claim. The court stated: "Here, Logue did not assert that the California court rejected his habeas petition because of the missing attachments and, thus, we discern no actual injury giving rise to a violation of his access to the courts." *Id*. *See also Miller v. Donald*, 132 Fed.Appx. 270, 272 (11th Cir. 2005) (finding prison officials did not deny inmate his right to access the courts by refusing his request that they provide him with free photocopies of legal documents he was required to serve on defendants in a civil rights action before a California federal court where the inmate failed to allege that the California federal court would not accept service of, or that he was unable to produce, hand-copied duplicates).

Likewise, in *Courtemanche v. Gregels*, 79 Fed.Appx. 115, 117 (6th Cir. 2003), the Sixth Circuit Court of Appeals recognized that "the right of access does not include a per se right to photocopies in whatever amount a prisoner requests." "[T]he right of access to the courts is not unrestricted and does not mean that an inmate must be afforded unlimited litigation resources." *Thomas v. Rochell*, 47 Fed.Appx. 315, 317 (6th Cir. 2002). *See also Negron v. Golder*, 111 P.3d 538, 544 (Colo. App. 2004) ("There is no constitutional right to photocopy services."); *Walters v. Thompson*, 615 F.Supp. 330, 340 (N.D. Ill. 1985) (Inmates are not entitled to unlimited free photocopying as a matter of right.); *Jones v. Franzen*, 697 F.2d 801, 803 (7th Cir. 1983) ("broad as the constitutional concept of liberty is, it does not include the right to Xerox").

Inmates shall have unrestricted and confidential access to the courts. Inmates shall have the right to present any issue before a court of law or governmental agency. The facility shall establish reasonable hours during which attorneys may visit and/or telephonically communicate. Inmates shall have access to legal materials. Rules of the Tennessee Corrections Institute, Rule 1400-1-.12(8).

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