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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS *v.* BANKS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 04–1739. Argued March 27, 2006—Decided June 28, 2006

Pennsylvania houses its 40 most dangerous and recalcitrant inmates in a Long Term Segregation Unit (LTSU). Inmates begin in level 2, which has the most severe restrictions, but may graduate to the less restrictive level 1. Plaintiff-respondent Banks, a level 2 inmate, filed this federal-court action against defendant-petitioner, the Secretary of the Department of Corrections, alleging that a level 2 policy (Policy) forbidding inmates any access to newspapers, magazines, and photographs violates the First Amendment. During discovery, Banks deposed Deputy Prison Superintendent Dickson and the parties introduced prison policy manuals and related documents into the record. The Secretary then filed a summary judgment motion, along with a statement of undisputed facts and the deposition. Rather than filing an opposition to the motion, Banks filed a cross-motion for summary judgment, relying on the undisputed facts, including those in the deposition. Based on this record, the District Court granted the Secretary's motion and denied Banks'. Reversing the Secretary's summary judgment award, the Third Circuit held that the prison regulation could not be supported as a matter of law.

Held: The judgment is reversed, and the case is remanded.

399 F. 3d 134, reversed and remanded.

JUSTICE BREYER, joined by THE CHIEF JUSTICE, JUSTICE KENNEDY, and JUSTICE SOUTER, concluded that, based on the record before this Court, prison officials have set forth adequate legal support for the Policy, and Banks has failed to show specific facts that could warrant a determination in his favor. Pp. 5–13.

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(a) *Turner* v. *Safley,* 482 U. S. 78, and *Overton* v. *Bazzetta,* 539 U. S. 126, contain the basic substantive legal standards covering this case. While imprisonment does not automatically deprive a prisoner of constitutional protections, *Turner,* 482 U. S., at 93, the Constitution sometimes permits greater restriction of such rights in a prison than it would allow elsewhere, *id.,* at 84–85. As *Overton, supra,* at 132, pointed out, courts also owe "substantial deference to the professional judgment of prison administrators." Under *Turner,* restrictive prison regulations are permissible if they are "reasonably related to legitimate penological interests." 482 U. S., at 89. Because this case is here on the Secretary's summary judgment motion, the Court examines the record to determine whether he has demonstrated "the absence of a genuine issue of material fact" and his entitlement to judgment as a matter of law. See, *e.g.,* Fed . Rule Civ. Proc. 56. If he has, the Court determines whether Banks has "by affidavits or as otherwise provided" in Rule 56, "set forth specific facts showing . . . a genuine issue for trial," Rule 56(e). Inferences about disputed facts must be drawn in Banks' favor, but deference must be accorded prison authorities' views with respect to matters of professional judgment. Pp. 5–6.

(b) The Secretary rested his motion primarily on the undisputed facts statement and Dickson's affidavit. The first of his justifications for the Policy—the need to motivate better behavior on the part of particularly difficult prisoners—sufficiently satisfies *Turner*'s requirements. The statement and affidavit set forth a "'valid, rational connection '" between the Policy and "'legitimate penological interests,'" 482 U. S., at 89, 95. Dickson noted that prison authorities are limited in what they can and cannot deny or give a level 2 inmate, who has already been deprived of most privileges, and that the officials believe that the specified items are legitimate as incentives for inmate growth. The undisputed facts statement added that the Policy encourages progress and discourages backsliding by level 1 inmates. These statements point to evidence that the regulations serve the function identified. The articulated connections between newspapers and magazines, the deprivation of virtually the last privilege left to an inmate, and a significant incentive to improve behavior, are logical ones. Thus, this factor supports the Policy's "reasonableness." The second, third, and fourth *Turner* factors—whether there are "alternative means of exercising the right that remain open to prison inmates," *id*., at 90; the "impact" that accommodating "the asserted constitutional right [will] have on guards and other inmates, and on the allocation of prison resources," *ibid*.; and whether there are "ready alternatives" for furthering the governmental interest, *ibid*.—add little to the first factor's logical rationale here. That two of these

three factors seem to favor the Policy therefore does not help the Secretary. The real task in this case is not balancing the *Turner* factors but determining whether the Secretary's summary judgment material shows not just a logical relation but a *reasonable* relation. Given the deference courts must show to prison officials' professional judgment, the material presented here is sufficient. *Overton* provides significant support for this conclusion. In both cases, the deprivations (family visits in *Overton* and access to newspapers, magazines, and photographs here) have an important constitutional dimension; prison officials have imposed the deprivation only upon those with serious prison-behavior problems; and those officials, relying on their professional judgment, reached an experience-based conclusion that the policies help to further legitimate prison objectives. Unless there is more, the Secretary's supporting material brings the Policy within *Turner*'s scope. Pp. 6–10.

(c) Although summary judgment rules gave Banks an opportunity to respond to these materials, he did not do so in the manner the rules provide. Instead, he filed a cross-motion for summary judgment, arguing that the Policy fell of its own weight. Neither the cases he cites nor the statistics he notes support his argument. In reaching a contrary conclusion, the Third Circuit placed too high an evidentiary burden on the Secretary and offered too little deference to the prison officials' judgment. Such deference does not make it impossible for those attacking prison policies to succeed. A prisoner may be able to marshal substantial evidence, for example through depositions, that a policy is not reasonable or that there is a genuine issue of material fact for trial. And, as *Overton* noted, if faced with a *de facto* permanent ban involving a severe restriction, this Court might reach a different conclusion. Pp. 10–13.

JUSTICE THOMAS, joined by JUSTICE SCALIA, concluded that, using the framework set forth in JUSTICE THOMAS' concurrence in *Overton* v. *Bazzetta,* 539 U. S. 126, 138, Pennsylvania's prison regulations are permissible. That framework provides the least perilous approach for resolving challenges to prison regulations and is the approach most faithful to the Constitution. "Sentencing a criminal to a term of imprisonment may . . . carry with it the implied delegation to prison officials to discipline and otherwise supervise the criminal while he is incarcerated." *Id.,* at 140, n. A term of imprisonment in Pennsylvania includes such an implied delegation. Inmates are subject to Department of Corrections rules and disciplinary rulings, and the challenged regulations fall with the Department's discretion. This conclusion is supported by the plurality's *Turner* v. *Safley,* 482 U. S. 78, analysis. The "history of incarceration as punishment [also] supports the view that the sentenc[e] . . . terminated" respondent's unfet-

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tered right to magazines, newspapers, and photographs. *Overton,* 539 U. S., at 142. While Pennsylvania "is free to alter its definition of incarceration to include the retention" of unfettered access to such materials, it appears that the Commonwealth instead sentenced respondent against the backdrop of its traditional conception of imprisonment, which affords no such privileges. *Id.,* at 144–145. Pp. 1–7.

BREYER, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and KENNEDY and SOUTER, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined. GINSBURG, J., filed a dissenting opinion. ALITO, J., took no part in the consideration or decision of the case.