

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

THOMAS PERRY WELLS, JR,

Plaintiff,

v.

CASE NO. 4:10cv441-MP-WCS

**KENNETH S. TUCKER, Secretary,
Florida Department of Corrections,**

Defendant.

_____ /

ORDER

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated February 15, 2012 (doc. 35). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a *de novo* determination of any timely filed objections.

Having considered the Report and Recommendation, and any objections thereto timely filed, I have determined that the Report and Recommendation should be adopted in part and rejected in part. Specifically, the court finds that the Report and Recommendation should be adopted with respect to the plaintiff's Equal Protection claim and rejected with respect to the plaintiff's First Amendment claim.¹

Accordingly, it is now ORDERED as follows:

1. The magistrate judge's Report and Recommendation with respect to the plaintiff's Equal Protection claim is adopted and incorporated by reference in this order.
2. The magistrate Judge's Report and Recommendation with respect to the plaintiff's First Amendment claim is rejected.

¹ The undersigned finds a genuine issue of material fact with regard to the availability of less restrictive alternatives to the policy at issue, as evidenced by the fact that the Florida Department of Corrections has proposed a rule allowing inmates to make collect calls to pre-approved, personal cell phones under certain circumstances. If the proposed rule has already been implemented, however, the plaintiff's First Amendment claim likely will be moot, in which the case the defendant shall so advise the court within ten (10) days of the date of this order.

3. The Defendant's motion for summary judgment (doc. 29) is **GRANTED** with respect to the plaintiff's Equal Protection claim and **DENIED** with respect to the plaintiff's First Amendment claim.

DONE and ORDERED this 2nd day of May, 2012.

s/ M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE