

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

AVID BOOKSHOP LLC,

Plaintiff,

v.

KEYBO TAYLOR, et al.,

Defendants.

Civil Action File No.:
1:24-cv-1135-TRJ

**PLAINTIFF’S BRIEF IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT ON FIRST AMENDMENT CHALLENGE**

Plaintiff Avid Bookshop LLC (“Plaintiff” or “Avid”) submits this Brief in Support of its Motion for Summary Judgment on its First Amendment challenge to Gwinnett County Sheriff’s Policy 13.A and its successor Gwinnett County Sheriff’s Policy JOD511 which prohibit Avid and other bookstores from mailing books to residents of the Gwinnett County Jail (“the Jail”). The material facts underlying this challenge are not in dispute.¹ Avid requests that this Court declare Policy JOD511 unconstitutional and order that Avid be allowed to communicate with Jail residents by mailing them books.²

¹ Plaintiff’s Statement of Undisputed Material Facts in Support of Summary Judgment (“SUMF”), including Exhibits A-N, is filed contemporaneously herewith.

² Damages claims have been dismissed. (Doc. 28 at 27) Qualified immunity is not available as to Avid’s remaining declaratory and injunctive-relief claims. *See Pearson v. Callahan*, 555 U.S. 223, 243 (2009).

FACTUAL BACKGROUND

Avid is a community-based, independent bookstore in Athens, Georgia, dedicated to “standing up for human rights, equality, and the freedom to read,” (SUMF ¶ 1). Avid’s core and primary form of communication is providing books to people, either through its store or through the mail. (*Id.* ¶ 2) Three times, Avid attempted to mail books to a Jail resident. (*Id.* ¶ 4) All three packages were returned on the grounds that Avid was not an “authorized retailer.” (*Id.*) At the time, the Jail’s Policy 13.A stated that books would be accepted if “mailed directly from the publisher or authorized retailer.” (*Id.* ¶ 14) But the Jail had no definition of “publisher,” and no definition, written list, criteria, or process for designating who was an “authorized retailer.” (*Id.* ¶¶ 15-16)

When Avid appealed the rejection of its mailings, it was told that bookstores open to the public could not be “authorized” because associates of Jail residents might enter the bookstore and dip the book pages in drugs, or otherwise insert contraband or secretive communications, before the books were mailed. (*Id.* ¶ 16) Defendants Gwinnett County Sheriff Keybo Taylor and Gwinnett County Jail Administrator Benjamin Haynes (collectively “Defendants”) continue to maintain that this is why Policy 13.A, and its successor Policy JOD511, prohibit Avid and other bookstores from mailing books to Jail residents. (*Id.* ¶¶ 16, n.4 & 35)

Defendants maintain that under Policy 13.A, Amazon, Barnes & Noble, and Books A Million were the only “authorized retailers” allowed to mail books to the Jail, although this was not written down anywhere (*id.* ¶ 16), all three of these retailers had bookstores open to the public during the pendency of Policy 13.A (*id.* ¶ 17), and as recently as January 2025 through May 2025 the Jail was accepting books mailed by other retailers and vendors. (*Id.* ¶ 19) Defendants have no knowledge of how Amazon, Barnes & Noble, and Books A Million came to be designated as “authorized retailers” under Policy 13.A or whether the security of these three retailers’ packing, shipping, and employment practices was ever investigated or vetted before they were “authorized.” (*Id.* ¶ 18) Defendants were unable to identify a witness who could answer these questions. (*Id.*)

After Avid challenged the constitutionality of Policy 13.A, Defendants replaced it with the even more restrictive Policy JOD511. (*Id.* ¶¶ 35-36) This Policy provides that Amazon.com and Barnes & Noble warehouses are the only retailers allowed to mail books to the Jail, along with five large publishing houses (“the Big Five”), and specifically states that books mailed by bookstores will be rejected. (*Id.* ¶ 36)³ No investigation or vetting was done of Amazon.com or Barnes & Noble warehouses before designating them as the exclusive retailers allowed to mail books

³ Books A Million is no longer approved to mail books – not because of any contraband incident – but only because Defendants believe it may have been using third-party distributors to ship books. (SUMF at n.10).

to Jail residents. (*Id.* ¶ 37) Meanwhile, the Policy, like its predecessor Policy 13.A, allows “religious organizations” (an undefined term) to mail “religious printed material” to the Jail, including books. (*Id.* ¶¶ 40-41, n.11)

Since this Court denied Defendants’ motion to dismiss Avid’s First Amendment challenge (Doc. 28 at 9-11), and despite producing “returned mail” logs dating back to 2017 and hundreds of pages of contraband incident reports spanning from 2018 to 2025, Defendants have not identified a single incident where contraband or secret communications were found smuggled inside of a book mailed to the Gwinnett County Jail from a physical bookstore. (*Id.* ¶ 20) Defendants have produced no authority that identifies physical bookstores as a likely source of smuggled contraband, or that recommends prohibiting books mailed by bookstores. (*Id.* ¶ 21) And Defendants have identified no other carceral facility with the same policy as JOD511 regarding who can mail books to Jail residents. (*Id.* ¶ 38) In contrast, the federal Bureau of Prisons (“BOP”) -- the largest carceral system in the country -- accepts books mailed by bookstores at all of its facilities. (*Id.* ¶ 26) So do the nation’s three largest state correctional systems: California, Florida and Texas. (*Id.* ¶¶ 27-30) The Georgia Department of Corrections also accepts books mailed to inmates “direct from an established retailer” or from a “dealer.” Avid is both within the plain meaning of these rules. (*Id.* ¶ 31)

Avid's securities practice expert, Louis C. Eichenlaub, has worked in the field of corrections for over 38 years, including 29 years at the BOP. (*Id.* ¶ 32) He rose from the rank of Warden, to Regional Director, to Deputy Director where he was second-in-command of the entire agency, directing the operations of 120 federal facilities, six regional offices, and approximately 200,000 prisoners. (*Id.*) As Regional Director and Deputy Director, he was a member of the Executive Staff, which is the BOP's highest decision-making body that directs implementation of all BOP policies. (*Id.*) Since his retirement from the BOP in 2016, he has worked in corporate prison health care, auditing federal detention operations, and criminal justice consulting. (*Id.*)⁴

Based on Eichenlaub's decades of knowledge and experience working in both jail and prison correctional facilities, where security is of utmost importance, he evaluated Defendants' exclusion of Avid and other physical bookstores from mailing books to Jail residents to be "an unreasonable reaction to the risk that contraband or secretive communications will be smuggled into the Jail." (*Id.* ¶ 34) He specifically evaluated Policy JOD511.6(C)'s exclusion of Avid and other bookstores to be "an unreasonable and exaggerated response to a potential security threat" of smuggled

⁴ From 2018 to the present, Eichenlaub has served as an expert witness in more than twenty (20) litigations and Department of Justice investigations involving correctional and criminal justice issues. (SUMF ¶ 33)

contraband,” and “inconsistent with other prison and jail systems throughout the United States.” (*Id.* ¶ 39) He further evaluated JOD511’s selection of approved book sources, including religious organizations but not Avid, to be “arbitrary.” (*Id.*)

Defendants proffered no rebuttal expert. (*Id.* ¶¶ 34, 39)

SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Hardigree v. Lofton*, 992 F.3d 1216, 1223 (11th Cir. 2021) (quoting Fed. R. Civ. P. 56(a)). On summary judgment, the court views the evidence in the light most favorable to the non-moving party. *Id.*

ARGUMENT

I. Policy JOD511 Violates the First Amendment.

Policy JOD511 designates Amazon.com and Barnes & Noble warehouses as the only retailers approved to mail books to the Jail while stating that books sent from retail bookstores will be rejected. (SUMF ¶ 36) Policy JOD511 thus bars Avid from exercising its First Amendment right to communicate with Jail residents by mailing them books, which is Avid’s primary form of communication. (*Id.* ¶ 2)⁵

⁵ “Section 1983 provides a federal cause of action for the deprivation, under color of law, of a citizen’s ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994) (*quoting Maine v. Thiboutot*, 448 U.S. 1, 4 (1980)). There is no dispute that Defendants implement Policy JOD511 under color of law.

The constitutionality of carceral regulations that restrict First Amendment rights are evaluated using the fact-intensive, four-factor test set forth in *Turner v. Safely*, 482 U.S. 78 (1987). Those factors are: (1) whether there is a valid, rational connection between the regulation and a legitimate penological interest; (2) whether there are alternative means of exercising the right at issue; (3) the impact that accommodation of the asserted right will have on prison officials, inmates, and the allocation of prison resources; and (4) the existence of obvious, easy alternatives which indicate that the regulation is an exaggerated response to prison concerns. *See Turner*, 482 U.S. at 89-90; *Perry v. Sec’y Fla. Dep’t of Corr.*, 664 F.3d 1359, 1364-65 (11th Cir. 2011). Under these factors, Policy JOD511 is unconstitutional as applied to Avid and other physical bookstores.

A. Avid Has a First Amendment Interest in Communicating with Jail Residents by Sending Them Books.

Avid’s primary form of communication is providing books to people either through its store or through the mail. (SUMF ¶ 2) Avid’s First Amendment interest in such communication includes mailing books to Jail residents: “Prison walls do not form a barrier separating prison inmates from the protections of the Constitution, nor do they bar free citizens from exercising their own constitutional rights by reaching out to those on the ‘inside.’” *Thornburg v. Abbott*, 490 U.S. 401, 407 (1989). Avid’s First Amendment right to communicate with Jail residents exists

separate and apart from the residents’ own right to send and receive mail.⁶

B. Exclusion of Avid is Not Reasonably Related to the Legitimate Penological Interest of Excluding Contraband.

“[W]hen a prison regulation impinges on . . . constitutional rights, the regulation is valid [only] if it is reasonably related to legitimate penological interests.” *Turner*, 482 U.S. at 89. Under the first *Turner* factor, “[i]f the connection between the [prison] regulation and the asserted [penological] goal is arbitrary or irrational, then the regulation fails, irrespective of whether the other factors tilt in its favor.” *Pesci v. Budz*, 935 F.3d 1159, 1167 (11th Cir. 2019) (internal citations omitted). Under the fourth *Turner* factor, “the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable but is an exaggerated response to prison concerns.” *Turner*, 482 U.S. at 89-90. Policy JOD511 is unconstitutional under both of these factors.

⁶ See *Procunier v. Martinez*, 416 U.S. 396, 408 (1974) (“Whatever the status of a prisoner’s claim to uncensored correspondence with an outsider, it is plain that the latter’s interest is grounded in the First Amendment guarantee of freedom of speech.”) (overruled on other grounds); *Montcalm Publ. Corp. v. Beck*, 80 F.3d 105, 109 (4th Cir. 1996) (“The Supreme Court has clearly recognized a First Amendment interest in those who wish to communicate with prison inmates...”); *Guajardo v. Estelle*, 580 F.2d 748, 754 (5th Cir. 1978) (“general correspondence rules touch not only the rights of the prisoners to receive mail but the rights of persons not incarcerated to send mail to the prison”). See also *Jarrard v. Sheriff of Polk Cnty.*, 115 F.4th 1306, 1317 (11th Cir. 2024) (reversing grant of summary judgment to sheriff in claim that “providing religious instruction and pastoral care to inmates” was not protected).

1. Excluding Avid is Unreasonable and Arbitrary.

Defendants want to prevent someone with a personal connection to a Jail resident from inserting contraband or secretive communications into a book before it is mailed to the Jail. (SUMF ¶ 16) This goal is legitimate. However, for the following number of reasons, excluding Avid from mailing books to Jail residents is an unreasonable and arbitrary means of furthering that goal -- not least because Avid is as equipped as Amazon.com and Barnes & Noble warehouses to mail books that have never been accessible to the general public and have only been handled by Avid employees. (*Id.* ¶ 5)

First, the Jail has not infrequently accepted books from bookstores and other sources with physical locations accessible to members of the public. (*Id.* ¶¶ 19, 41, 45-47, n.13) Yet Defendants have not identified a single incident where contraband or secret communications were found smuggled inside of a book mailed to the Gwinnett County Jail from a physical bookstore. (*Id.* ¶ 20) Meanwhile, books shipped by the Jail's authorized retailers Amazon and Barnes & Noble are not without risk of smuggled contraband, as evidenced by anecdotal incidents in another state and the fact that the Jail itself has rejected books from Amazon on suspicion of contraband, while admitting to having trouble with Barnes & Noble. (*Id.* ¶ 22) Yet with no investigation into their security practices (*id.* ¶¶ 18, 37), Amazon and Barnes & Noble remain Defendants' only approved book retailers (albeit with more explicit

requirements about direct, online origin). (*Id.* ¶¶ 36, n.9) Meanwhile, Avid – who has never shipped a book that contained or was suspected of containing contraband – is barred. (*Id.* ¶¶ 16, 20, 36) Hence, Defendants’ line drawing about who can mail books to the Jail is arbitrary, if not also irrational.

Second, none of the research studies and security reports proffered by Defendants that discuss the presence of contraband in correctional facilities, including via the mail, and how to address it identify physical bookstores as likely sources of contraband, including as compared to online book retailers. Nor do any of these materials recommend that jails not accept books from bookstores. (*Id.* ¶ 21) Quite the opposite, the Federal Bureau of Prisons, which is the nation’s largest correctional system, accepts publications mailed directly from bookstores at all of its facilities, even high security. (*Id.* ¶ 26) The California, Florida, and Texas Departments of Corrections, the three largest state correctional systems in the country, also permit books mailed directly from bookstores. (*Id.* ¶¶ 27-30) So, too, does the Georgia Department of Corrections. (*Id.* ¶ 31) Indeed, Defendants cannot identify any other prison or jail in the United States that, like Defendants’ current Policy JOD511.6(C), grants only Amazon.com, Barnes & Noble warehouses, and the “Big Five” publishers the right to mail books to Jail residents. (*Id.* ¶ 38)

Third, Defendants reached their unique decision to designate Amazon.com and Barnes & Noble warehouses as the only two approved book retailers without

even minimal research or investigation. (*Id.* ¶¶ 18, 37) Defendants were unable to answer why or how Amazon and Barnes & Noble had been singled out for preferential status under the prior Policy 13.A, or to identify any witness who could. (*Id.* ¶ 18) Defendants also admit they conducted no vetting of these two retailers before exclusively re-approving them under Policy JOD511. (*Id.* ¶ 37) Instead, Defendants concede they are only speculating they may be safe. (*Id.* ¶ 18 citing Doc. 81 (Gardner Tr.) 52:14-53:1 (“[T]hat would be my speculation. I have not been to Amazon to see their actual shipping”)).

In sum, with no supporting evidence, no investigation or vetting, and no expert recommendation or guidance, Defendants have decided that with approximately 68,372 bookstores currently operating in the United States,⁷ Amazon.com and Barnes & Noble warehouses are the only retailers safe to accept books from, but not Avid. (*Id.* ¶ 36) Securities practices expert Louis C. Eichenlaub evaluates Policy JOD511.6(C)’s exclusion of Avid and similar bookstores to be “an unreasonable . . . response to a potential security threat” of smuggled contraband that is “inconsistent with other prison and jail systems throughout the United States.” (*Id.* ¶ 39) Eichenlaub further evaluates Policy 511’s selection of approved book sources, including religious organizations (more on this below) but not Avid, to be

⁷ See IBISWorld, “Book Stores in the US - Market Research Report (2015-2030),” last updated April 2025, available at: <https://shorturl.at/v2Fsy>.

“arbitrary.” (*Id.*) See, e.g., *Prison Legal News v. Babeu*, 933 F. Supp. 2d 1188, 1200-01 (D. Ariz. 2013) (finding that where jail interpreted its policy to only allow books from Amazon, Borders, Barnes & Noble, and Waldenbooks, “[s]uch an arbitrary limitation is unconstitutional” and violated the plaintiff’s First Amendment Right to communicate with Jail residents by mailing them plaintiff’s publication).

2. Excluding Avid is an Exaggerated Response

Even crediting, *arguendo*, Defendants’ speculation – unsupported by evidence, investigation, or expert guidance – that books sent from physical bookstores present greater risk of smuggled contraband than online book retailers, categorically banning a bookstore such as Avid from mailing books to the Jail is an exaggerated response. (SUMF ¶¶ 34, 39) Indeed, over the course of this litigation, the magnitude of exaggeration has only increased. While Policy 13.A permitted designation of an uncapped number of “authorized retailers” and Defendants designated three, new Policy JOD511.6(C) narrows the approved retailers to only two and explicitly bans bookstores. However, just like the two approved retailers, Avid can readily ship new books that have never been on its publicly-accessible shelves but instead have been ordered directly from the publisher or Ingram (Avid’s distributor)⁸ and then packaged and mailed by the one or two Avid employees who

⁸ Ingram has warehouses in Pennsylvania, Indiana, Tennessee, and Oregon, and also supplies books to large retailers like Amazon and Barnes & Noble. (SUMF ¶ 5, n.3)

do order fulfillment and shipping. (SUMF ¶ 5) Avid can also readily provide written confirmation of chain of custody when shipping a book that has never been on the store's publicly-accessible bookshelves. (*Id.* ¶ 6) This assurance of provenance would not create any additional process burden for the Jail which, in any event, x-rays and physically searches all in-coming books for contraband – including those sent by the currently approved book sources – before they are delivered to Jail residents. (*Id.* ¶ 23) *See Cruz v. Hauck*, 475 F.2d 475, 477 (5th Cir. 1973) (noting that security concern about in-coming books “is seemingly answered. . . by a careful examination to detect contraband”).

This easy alternative – i.e., requiring Avid to ship books that have never been on the public bookshelves with written confirmation of same, while keeping current book-search procedures in place – both accommodates Defendants' security interest and allows Avid to exercise its First Amendment right to communicate with Jail residents. This alternative thus renders Defendants' ban on books mailed by Avid unreasonable and thus unconstitutional under *Turner*. *See* 482 U.S. at 91 (“if [a] claimant can point to an alternative that fully accommodates the [constitutional] right[] at de minimis cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard”).

C. Avid Has No Alternative Means of Expressing Its Core Message.

That Policy JOD511 fails the first and fourth *Turner* factors is sufficient to declare it unconstitutional. *See Pesci*, 935 F.3d at 1167. But the Policy fails no better under the remaining *Turner* factors. The second factor asks “whether there are alternative means of [Avid] exercising the right” at issue. 482 U.S. at 90. Alternatives “need not be ideal,” *Overton v. Bazzetta*, 539 U.S. 126, 135 (2003), but they also cannot be “illusory, impractical, or otherwise unavailable” as would effectively nullify the asserted right. *Human Rights Def. Ctr. v. Baxter Cty. Ark.*, 999 F.3d 1160, 1165 (8th Cir. 2021).

Here, Policy JOD511.6(C) categorically bars Avid from engaging in its core communication with Jail residents of providing books from a community-based, locally owned bookstore. (SUMF ¶¶ 1-2, 36) This leaves Avid no alternative means for expressing its primary message to Jail residents. Avid’s providing a physical book to a Jail resident that they can immediately possess and start reading is an entirely different communication than Avid’s merely recommending that same book, which would require the resident to go to the effort and expense of procuring it for themselves -- which that person might never do. (*Id.* ¶ 8) Avid’s providing a Jail resident with a specific physical book that was individually selected for and sent to them is also a different, far more personal communication than Avid’s sending that same resident an Avid newsletter with generalized information distributed to

approximately 7,000 people. (*Id.* ¶ 9) Further, Avid’s providing a Jail resident with a book from Avid – an independently-owned, community-based, local bookstore – communicates an entirely different message than if a large publishing house or national corporate retailer like Amazon or Barnes & Noble were to ship the person that same book, either at the request of an Avid employee or someone else. (*Id.* ¶¶ 10-12) This would also eliminate Avid’s communication with Jail residents altogether as Avid would, at best, only be communicating business-to-business with the publisher (SUMF ¶ 11)⁹, or at worst, acting as a sales agent for its competitors Amazon and Barnes & Noble, which would be “antithetical to the entire small business shop local model that Avid prides itself on and is a large part of.” (*Id.* ¶ 12 quoting Doc. 85 (LaFave Tr.) 127:18-20) In sum, there is a tangibility, immediacy, thoughtfulness, and warmth inherent in providing a physical book from an independent bookstore – not the impersonal corporations approved in Policy JOD511.6(C) – where the book was selected and purchased with the particular resident in mind. This communication is lost under any of the foregoing hypotheticals. (SUMF ¶¶ 8-10 citing Doc. 85 (LaFave Tr.) 130:5-18) *See, e.g., Human Rights Def. Ctr. v. Sw. Va. Reg’l Jail Auth.*, 396 F. Supp. 3d 607, 621 (W.D. Va. 2019) (“While in theory [a sender] could call an inmate on the phone to convey

⁹ Avid would also have no ability to screen for whether the publisher sent the wrong book or a damaged copy. (SUMF ¶ 11)

information contained in the books or mail copies of book pages in an envelope with a letter, I find that these are not adequate alternatives. . . .”); *Prison Legal News v. Chapman*, 44 F. Supp. 3d 1289, 1302 (M.D. Ga. 2014) (“Traditional forms of in-jail communication such as phone calls and in-person visits are not suitable alternatives for the educational materials [a publisher] seeks to provide through its periodicals and books.”).¹⁰

D. No Significant Impact on Jail Operations.

The last *Turner* factor examines “the impact [that] accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of resources generally.” *Turner*, 482 U.S. at 90. Permitting Avid to mail books to the Jail would not have any material “ripple effect,” *id.*, on Jail operations. The Jail already x-rays and physically inspects all incoming books for contraband, including those sent from approved sources. (*Id.* ¶ 23) Occasionally having to inspect books shipped from Avid would not significantly add to this work. (*Id.* ¶ 24) *See, e.g., Prison Legal News v. Cook*, 238 F.3d 1145, 1151 (9th Cir. 2001) (finding that processing subscription non-profit organization standard mail would not deplete prison resources or add significantly to staff workload when “[t]he reality is that all

¹⁰ None of the books that Avid attempted to mail to the Jail were available via the Securus e-tablets that charge residents to read eBooks. (SUMF ¶ 13). E-tablets are also only available to Jail residents from 8:30 a.m. to 11 p.m. versus a book that residents can keep in their cell and have access to 24 hours a day. (*Id.* at n.5)

incoming mail must be sorted,” and given “the relatively insignificant amount of incoming non-profit organization standard mail received at the Department’s several facilities”).

Defendants protest that approving Avid to send books would deluge the Jail’s mailroom. (Doc. 84 (Taylor Tr.) 122: 3–9). But this is pure speculation that is exceedingly unlikely to be accurate. *See Stouffer v. Reid*, 413 Md. 491, 993 A.2d 104 (2010) (holding that “whims . . . about prospective hypothetical situations” or “speculative and uncertain anxieties” do not satisfy the *Turner* standard of reasonableness). Avid has historically tried to send books to incarcerated individuals only a few times a year. (SUMF ¶ 24) And Defendants have not identified other physical bookstores that have expressed interest in doing so. (SUMF ¶ 7)¹¹ Moreover, since Jail residents are not limited in the number of books they can receive by mail, approving Avid would diversify the source of books, but not necessarily significantly increase the volume to the extent the same books could be sent by an already-approved source. (SUMF ¶ 24) Defendants’ “flood-gate” concern is therefore not persuasive. *See, e.g., Hrdlicka v. Reniff*, 631 F.3d 1044, 1053 (9th Cir. 2011) (rejecting, for lack of evidence, defendants’ “slippery slope” argument that distributing one unsolicited publication to jail residents “would set an unworkable

¹¹Avid identified only two – Liberty Books in Lawrenceville, GA (Doc. 84-2) and Charis Books in Decatur, GA. (Doc. 86 (Correa Tr.) 54:24-55:20).

precedent [that] could obligate the Jail to accept any other publications that appeared on the doorstep”); *Cook*, 238 F.3d at 1151 (rejecting concern that allowing *Prison Legal News* to be delivered to inmates “would encourage [them] to increase their subscriptions and lead to an unmanageable influx of subscription non-profit standard mail”). Finally, approving Avid would not significantly burden Defendants as demonstrated by the fact that the federal Bureau of Prisons, as well as the three largest state departments of corrections in the country (California, Florida and Texas), all accept books from bookstores, as does the Georgia Department of Corrections. (*Id.* ¶¶ 26-31)

In sum, Policy JOD511’s prohibition on bookstores, and particularly Avid, mailing books to the Jail fails to satisfy any of *Turner*’s four factors for evaluating the constitutionality of a correctional policy. It is not reasonably related to preventing smuggled contraband due to being an arbitrary and exaggerated response to this security concern. Avid has no alternative means of expressing its core message to Jail residents apart from mailing them books. And accepting books from Avid will not appreciably impact Jail operations. Accordingly, this Court should declare Policy JOD511 unconstitutional as applied to Avid and order that Avid be allowed to communicate with Jail residents by mailing them books.

II. Defendants’ Religious Organization Exception Violates the First Amendment and Further Highlights the Arbitrary Nature of Defendants’ Exclusion of Avid and Other Bookstores.

Defendants’ Policy JOD511.5(O) (“Religious Organization Exception” or “the Exception”) is an unconstitutional speaker- and content-based restriction that fails constitutional scrutiny under *Turner*, and further illustrates the arbitrary and irrational nature of excluding Avid as an approved book source.

The Exception, which also appeared in Defendants’ predecessor Policy 13.A, states: “Religious printed material (pamphlets, booklets, etc.) addressed to an inmate from a religious organization will be accepted.” (SUMF ¶ 40)¹² Under this Exception, the Jail accepts books that are mailed or otherwise sent or donated to Jail residents by religious organizations. (*Id.* ¶ 41) This Exception does not require that “religious printed material” have been inaccessible to members of the general public before it is mailed to the Jail (*Id.* ¶ 44), even though this is Defendants’ proffered security reason for rejecting books from physical bookstores like Avid. (*Id.* ¶ 16) Instead, Defendants vet religious organizations on a case-by-case basis and either reject or approve them to send “religious printed material” based on online research, phone inquiries, and, if necessary, decisions made up through the chain of command. (*Id.* ¶ 43) Hence, the Religious Organization Exception quite clearly creates both a

¹² Neither JOD511.00, nor Policy 13.A, defines or sets forth any guidelines for determining what constitutes a “religious organization.” (SUMF at n.11)

speaker-based (“religious organization”) and content-based (“religious printed material”) exception to the general rule that only the approved sources identified in JOD511.6(C) can send books to the Jail.

The First Amendment generally prohibits “restrictions distinguishing among different speakers, allowing speech by some but not others.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010), especially when the distinction favors a particular type of content, which in this case is religious material. *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 658 (1994) (“laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference”). In the more deferential context of a jail, speaker- and content-based preferences or distinctions are constitutional only if they “further an important or substantial governmental interest unrelated to the suppression of expression.” *Pesci*, 935 F.3d at 1173.

Defendants represent that the Religious Organization Exception furthers the important penological interests of: (1) accommodating free exercise of religion, which is a First Amendment right, and (2) rehabilitating Jail residents. (SUMF ¶ 42) But this rationale equally supports allowing Avid to send books because: (1) communicating with Jail residents is a First Amendment right (*see* Section I.A, *supra*), and potentially a matter of free exercise if Avid is providing a religious

book¹³; and (2) books, be they religious or not, are rehabilitative.¹⁴ Defendants therefore fail to identify a penological interest that is furthered by their distinction between religious organizations sending “religious printed material” which includes books (allowed) and Avid sending religious or non-religious books (not allowed). Whether sent by a religious organization or by Avid, providing books is protected by the First Amendment as expressive communication and/or a matter of free exercise, and providing books serves a rehabilitative purpose.

¹³ Avid provides Bibles to customers, and has the ability to also supply other religious books. (Doc. 85 (LaFave Tr.) 156:20-158:2).

¹⁴ See G. Roger Jarjoura and Susan T. Krumholz, *Combining Bibliotherapy and Positive Role Modeling as an Alternative to Incarceration*, Journal of Offender Rehabilitation, Vol. 28 (1/2), 1998 (finding that probationers who participated in Changing Lives Through Literature program had an 18.75% reconviction rate compared with 45% rate in comparator group), available at <https://shorturl.at/ExQf8>; Chris Wilson, *Books helped me get through a life sentence. Exploitative fees rob others of benefit*, USA Today (Feb. 3, 2020), available at <https://shorturl.at/ZSLtF>:

The great resource in prison is time: the time to think and improve. The best way for prisoners to fill that time is to read. Reading opens up access to instruction across any subject. It teaches job skills. It reminds those left behind that a world exists beyond the cage. . . For two years, I was depressed and hopeless, with no purpose or goals. Then a fellow lifer introduced me to books. I started reading every day: history, self-help, newspapers, textbooks, biographies. Reading taught me not only *could I* make the world a better place, but *how* to make it a better place: by getting others to read, too.

Id.

Defendants' attempts to justify allowing religious organizations to send books to Jail residents but not Avid only further highlights the unreasonable and arbitrary nature of Policy 511.6(C)'s exclusion of Avid. To start, Defendants primary claim is that religious organizations pose less risk of smuggled contraband than Avid due to their geographic distance from the Jail.¹⁵ There are two issues with that. One, it is not true. The Jail's primary source of Bibles is Prison Alliance, which has one office in Raleigh, North Carolina, and another in Gwinnett County, located a mere ten miles from the Jail. (SUMF ¶ 47) Second, the Religious Organization Exception contains no requirement of geographic distance from the Jail. (*Id.*) Indeed, the Jail has accepted books from religious organizations in the same or nearby towns of Georgia. (*Id.*) Moreover, if physical distance were the determining factor, then bookstores located far from the Jail should be as equally permitted as far-away religious organizations to send books to the Jail. Yet JOD511.6C categorically states that books from retail bookstores "will be rejected." (Doc. 83-3).

John Gardner, Defendants' Rule 30(b)(6) witness for the Religious Organization Exception (SUMF at n.12), attempted to claim that mailroom officers

¹⁵Doc. 83 (2d Gardner Tr.) 13:10-17 ("Those organizations are not local. Their affiliations are outside of the state . . . Those locations create [a] divide, or distance, between the individual who is incarcerated and the civilian population, which would include their family members. That distance of connection increases my [sic] safety and security of items being smuggled into the jail."); *id.* at 13:21-22 ("[T]hey don't have a direct tie to the community of Gwinnett County.").

are trained to understand that the phrase “pamphlets, booklets, etc.” contained in the Exemption means the Jail will only accept “religious printed materials” thin enough to fit through the Jail’s drug-detection scanner and that this excludes books. (*Id.* ¶ 49) However, this interpretation is not written down anywhere (*id.*), is contradicted by the Jail’s history of accepting books from religious organizations (*id.* ¶ 41), and Gardner subsequently reaffirmed that the Jail does, indeed, accept books from religious organizations regardless of what JOD511.5(O) says about it. (*Id.* ¶ 49).

Finally, Gardner tries to justify the Exception by claiming that religious organizations are less likely to smuggle contraband than are secular organizations, like Avid, because he believes they have more to lose, reputation-wise. (SUMF ¶ 48)¹⁶ When pressed, Gardner acknowledged the obvious – that this is only his personal opinion and that he cannot actually speak for what either a secular or religious organization would do. (*Id.*)¹⁷

¹⁶ Doc. 85 (2d Gardner Tr.) 76:9-12 (“My opinion is that a religious leader with ties to the community, or ties nationwide, or is worldwide known or is nationwide known, has greater to lose.”).

¹⁷ Gardner’s self-contradictions in trying to justify Defendants’ preferential treatment of religious organizations underscore the arbitrary nature of their line-drawing about who can send books. If religious organizations pose reduced risk of contraband relative to secular organizations like Avid (which they do not), then why would the Jail limit publications from religious organizations to those small enough to fit through the drug-detection scanner (which it does not), particularly when books from other approved sources are only x-rayed and physically inspected -- not scanned -- and Defendants are confident that this is reasonably sufficient to detect any secretive communication or contraband. (SUMF ¶ 23)

Finally, that Defendants vet religious organizations on a case-by-case basis before approving them to send “religious printed material” (*id.* ¶ 43) illustrates that Jail resources would not be overly burdened by, if they believed it necessary, making basic inquiries of Avid – or other bookstores wanting to send books – to ascertain they are legitimate and not a security risk. That Defendants will individually vet religious organizations but not bookstores is further evidence of their speaker- and content-based preference. *See Turner*, 482 U.S. at 89-90 (where First Amendment rights are restricted, “[w]e have found it important to inquire whether prison regulations . . . operated in a neutral fashion, without regard to the content of the expression”). Defendants’ preference for religious speakers and content is not justified as furthering a penological interest because accepting books from Avid advances the same interests: In both cases, sending books is protected by the First Amendment as expressive communication and/or a matter of free exercise, and is rehabilitative. Hence, Defendants’ Religious Organization Exemption is an unconstitutional distinction that serves only to further highlight Defendants’ unreasonable, arbitrary choice to prohibit Avid from mailing books.

CONCLUSION

Defendants’ Policy JOD511 fails to satisfy any of the four *Turner* factors. It unreasonably and arbitrarily approves Barnes & Noble warehouses, Amazon.com, and religious organizations to mail books to the Jail while banning Avid, even

though there is no evidence that physical bookstores in general, or Avid in particular, present any greater security risk. Like the two approved retailers, Avid can ship books that have never been accessible to the public, demonstrating that Defendants' ban on Avid is an exaggerated response. Avid has no alternative for expressing its core message to Jail residents apart from mailing them books. And accepting books from Avid will not significantly impact Jail operations. *Compare with Bell v. Wolfish*, 441 U.S. 520, 549-552 (1979) (finding BOP's requirement that hardback books be sent from "publishers, book clubs, or **bookstores**" appropriately balanced First Amendment interests, security concerns regarding smuggled contraband, and staff resources for physically inspecting incoming books) (emphasis added).

For all of these reasons, Avid's securities practices expert evaluates Policy JOD511.6(C)'s exclusion of Avid and similar bookstores from mailing books to the Jail to be "an unreasonable and exaggerated response to a potential security threat" of smuggled contraband, "inconsistent with other prison and jail systems throughout the United States," and "arbitrary" in its selection of approved book sources, including religious organizations under JOD511.5(O) but not Avid. (SUMF ¶ 39) Defendants have offered no rebuttal expert.

Accordingly, there being no material facts in dispute, this Court should declare Policy JOD511.00 unconstitutional as applied to Avid and order that Avid be allowed to communicate with Jail residents by mailing them books.

Submitted this 3rd day of December, 2025.

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

AVID BOOKSHOP LLC,

Plaintiff,

v.

KEYBO TAYLOR, et al.,

Defendants.

Civil Action File No.:
1:24-cv-1135-TRJ

CERTIFICATE OF SERVICE AND COMPLAINT

The undersigned hereby certifies that:

Pursuant to Local Rule 7.1(D), I hereby certify that the within and foregoing has been prepared in compliance with Local Rule 5.1(B) in 14-point Times New Roman type face.

A true and correct copy of the foregoing **PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDMENT CLAIM** was served on all counsel of record by filing it using the Electronic Court Filing (ECF) system for the United States District Court for the Northern District of Georgia.

Submitted this 3rd day of December, 2025.

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