

**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 OPPOSITION TO DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Avid Bookshop LLC (“Plaintiff” or “Avid”) submits this Brief in Opposition to Defendants’ Motion for Summary Judgment (Docs. 89 & 89-1). The Gwinnett County Sheriff’s Policy 13.A and its successor Policy JOD511 (collectively “Policies”) prohibit Avid and other bookstores from mailing books to residents of the Gwinnett County Jail (“the Jail”). Under *Turner v. Safley*, 482 U.S. 78 (1987), these Policies violate Avid’s First Amendment right to communicate with Jail residents because, as supported by the evidentiary record and affirmed by Avid’s security practices expert, they are an unreasonable, arbitrary, and exaggerated response to Defendants’ security interest in excluding contraband from the Jail. Defendants proffered no rebuttal expert. Defendants’ Motion must be denied.

## FACTUAL RESPONSE

Avid fully incorporates by reference the “Factual Background” set forth in Avid’s Brief in Support of its own Motion for Summary Judgment (Doc. 90-1 at 2-6), and the contemporaneously filed Statement of Undisputed Material Fact (Doc. 90-2). Per Defendants’ current Policy JOD511, the Jail categorically rejects books mailed from retail bookstores, only accepting books from the following sources: the “Big Five” publishing houses, Amazon.com, Barnes & Noble warehouses, and religious organizations (collectively, “Approved Sources”). (Doc. 89-5 at JOD511.5(O) & JOD511.6(C); Doc. 83 [2d Gardner Tr.] at 104:10-21)<sup>1</sup>

Defendants claim that “the number of hands” that have handled a book “is necessarily fewer” when it is mailed from one of the Jail’s Approved Sources compared to a retail bookstore, and that a bookstore presents greater risk of smuggled contraband because, Defendants’ theorize, customers or employees could have a personal connection to a Jail resident giving them a motive to insert

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<sup>1</sup> Defendants’ prior Policy 13.A stated “books will be accepted as long as they are mailed directly from the publisher or an authorized retailer.” (Doc. 81-2 at Subsect. V.I) Defendants maintain that physical bookstores like Avid could not be “authorized retailers” under Policy 13.A and that this designation was reserved exclusively for Amazon, Barnes & Noble, and Books A Million. (Doc. 90-2 ¶ 16)

contraband. (Doc. 89-1 [Defts' SJ Br.] at 1-2 & 9) There is no evidence supporting either of these arguments.

First, Defendants provide no information about how many people handle a book before it is mailed to the Jail by any of the Approved Sources. Nor do Defendants supply any evidence demonstrating lack of a personal connection between the Approved Sources' employees and any Jail resident. Defendants, in fact, admit that they have not investigated or vetted the shipping and employment practices of the "Big Five" publishers, Amazon.com, or any Barnes & Noble warehouse prior to designating them as "Approved Sources," but are only speculating them to be safe. (Doc. 90-2 ¶¶ 18, 37; *see, e.g.*, Doc. 81 [Gardner Tr.] at 52:14-53:1)

In contrast, it is established that only one -- and at most two -- Avid employees handle order fulfillment and shipping of books at any given time. (Doc. 90-2 ¶ 5) It is further established that the two Avid employees who were primarily responsible for Avid's order fulfillment and shipping of books from 2018 to 2025 had no personal experience with the Jail or connection to a resident there. (Doc. 85 [LaFave Tr.] at 10:2-3, 11:11-24, 19:18-21:19; Doc. 86 [Correa Tr.] at 13:1-8, 16:3-18, 18:9-22, 28:17-24; 31:8-20; Doc. 90-4 at Interrog. Resp. Nos. 2 & 8) Thus, the only evidence of record in this case shows that Avid involves a "small number of hands" in mailing books to the Jail and that Avid's employees have no personal connection

to Jail residents, making Avid a safe book source by Defendants' rationale. Meanwhile, the record is completely devoid of information on these two points with respect to any of Defendants' Approved Sources.

Second, Defendants have failed to produce a shred of evidence supporting their conjecture that bookstores present greater risk of smuggled contraband than Defendants' Approved Sources. Avid's book shipments were rejected by the Jail, not because they contained or were suspected of containing drugs, but because Avid was not an "authorized retailer," an undefined term under Policy 13.A. (Doc. 86-6; Doc. 86-8; Doc. 90-2 ¶¶ 4, 15) Further, Defendants have produced hundreds of pages of "returned mail" logs and contraband incident reports dating back to 2017, but have *not identified a single incident* where "strips" or other drug contraband was found smuggled inside of a book mailed to the Jail from a physical bookstore. (Doc. 90-2 ¶ 20) This is true even though for decades the Jail accepted books mailed by a local bookstore and, more recently, accepted books mailed by other entities with physical (as opposed to only online) retail operations. (*Id.* ¶ 19) If the risk of smuggled contraband from physical retailers were as significant as Defendants claim, there would be examples. But Defendants provide none. Further, *not a single one* of the research and industry publications that Defendants cite in support of their decision to ban bookstores from mailing books to the Jail identify bookstores as a

likely source of smuggled contraband or recommend that books mailed from bookstores be categorically rejected.<sup>2</sup>

Finally, Avid’s security expert Louis C. Eichenlaub has worked in the field of corrections for over 38 years, including 29 years at the federal Bureau of Prisons (“BOP”) where he rose to be second-in-command of the entire agency. Eichenlaub has served as an expert in more than 20 litigations and Department of Justice investigations involving correctional and criminal justice issues. (Doc. 90-2 ¶¶ at 32-33) Eichenlaub attests that banning books mailed to the Jail by Avid and other retail bookstores is “an unreasonable and exaggerated response to a potential security threat” of smuggled contraband, and “inconsistent with other prison and jail systems

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<sup>2</sup> Defendants cite the following publications at pages 2, n.1, n.2, 10, & n.3 of their Summary Judgment Brief (Doc. 89-1): Doc. 82-11 [M.N. Parsons, *et al.*, *Detecting and Managing Drug Contraband: An Overview of Technologies for Managing Entry of Drug Contraband and Detecting their Use in Correctional Facilities*, National Criminal Justice Reference System (Sept. 2021)] **(not a single mention in the entire publication of books mailed from bookstore(s) being a likely source of contraband or recommending that they not be accepted)**; Doc. 82-12 [J. Russo, *et al.*, *Mitigating Contraband via the Mail: An Overview of Approaches for Managing the Introduction of Drug Contraband through the Digitization of Inmate Mail*, National Criminal Justice Reference System (Sept. 2021)] **(not a single mention in the entire publication of books mailed from bookstore(s) being a likely source of contraband or recommending that they not be accepted)**; Doc. 82-13 [David Kuai, M.D., *et al.*, *Identification and Health Risks of an Emerging Means of Drug Use in Correctional Facilities*, Jama Network Open (Dec. 23, 2024)] **(not a single mention in the entire article of book(s) or bookstore(s))**; Doc. 82-14 [Caitlyn Norman, *A Global Review of Prison Drug Smuggling Routes and Trends in the Usage of Drugs in Prisons*, Wiley (Oct. 6, 2022)] at 5-6 (discussing methods of smuggling drugs through the mail and of detecting/preventing the same; **not a single mention of book(s) or bookstore(s)**).

throughout the United States.” (*Id.* ¶ 39) For example, the BOP (the largest correctional system in the country) as well as the state departments of correction in California, Georgia, Florida, and Texas all accept books mailed directly from bookstores. (*Id.* ¶¶ 26-31) Eichenlaub further evaluates JOD511 to be “arbitrary” in its selection of Approved Sources, including allowing nearby religious organizations – any of whose employees, members, or volunteers may have a personal connection to a Jail resident<sup>3</sup> – to mail books to the Jail (Doc. 90-2 ¶¶ 40-41, 44-47), while excluding Avid because of a theorized risk of personal connection. (*Id.* ¶ 39; Doc. 89-1 at 9) Defendants proffered no rebuttal expert. (Doc. 90-2 ¶¶ 34, 39)

In sum, Defendants’ contention that Avid and other retail bookstores present greater risk of smuggled contraband as compared to Defendants’ Approved Sources is entirely speculation, unsupported by any evidence of record. *See Thornburgh v. Abbott*, 490 U.S. 401, 427–28 (1989) (Stevens, J., concurring in part) (warning against upholding restrictions on First Amendment rights in the carceral context “on the basis of administrative concerns and speculation about possible security risks rather than on the basis of evidence that the restrictions are needed to further an important governmental interest”).

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<sup>3</sup> The only example of book-smuggled drugs mentioned in the various publications Defendants cite consisted of clearly visible “strips” attached to the **inside of a Bible**. The publication did not identify the source of the Bible. *See* Doc. 82-12 at 4.

## ARGUMENT

### **I. Avid Has a Protected First Amendment Interest in Communicating with Jail Residents, Independent of Recommending Books.**

Defendants mischaracterize Avid's First Amendment interest as only in recommending books, arguing that the challenged Policies do not prevent this. (Doc. 89-1 at 3, 15-16). Defendants are incorrect. Avid's primary form of communication is providing books to people from a community-based, locally owned bookstore, regardless of whether Avid specifically recommended the books. (Doc. 90-2 ¶¶ 1-2; Doc. 85 [LaFave Tr.] at 141:11-17) Defendants' Policies completely prohibit Avid from engaging in this core communication of providing Jail residents with books, which is markedly different than merely making a recommendation that puts the expense and onus of procuring the book(s) on the resident. (Doc. 90-2 ¶¶ 8-9)<sup>4</sup>

Defendants next try to argue that mailing books to Jail residents is not expressive activity, citing two unavailing non-prison-correspondence cases. (Doc. 89-1 at 16). The first case, *VoteAmerica v. Raffensperger*, 609 F. Supp. 3d 1341, 1357 (N.D. Ga. 2022), held that mailing absentee voter application packages was not

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<sup>4</sup> It is immaterial to Avid's First Amendment interest that residents' average length of stay at the Jail is 32 days. (Doc. 89-3 ¶¶ 24-25) Avid's deprivation of its ability to communicate with residents because of Defendants' Policies is continuing and not dependent on the presence of any particular Jail resident. Further, even brief periods of First Amendment deprivation are cognizable. *See Roman Catholic Diocese v. Cuomo*, 592 U.S. 14, 19 (2020) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

protected speech because the plaintiff's pro-absentee voting message was not necessarily intrinsic to the act of sending the application form itself, as evidenced by the fact that a cover letter encouraging people to register for absentee voting was necessary to include with the package in order to convey the message. Defendants also cite *Rumsfeld v. Forum for Academic and Inst'l Rights, Inc.*, 547 U.S. 47, 51 (2006), which involved a challenge to a statute that penalized schools for refusing to allow U.S. military recruiters to interview on their campuses due to the military's policy against gay people serving. The Supreme Court found that the schools' exclusion of military recruiters was not inherently expressive because an observer would not know whether the recruiters were interviewing off campus due to personal preference, lack of space, or some other innocuous reason. *Id.* at 66. The necessity of "explanatory speech" to make clear why military recruiters were absent from campus was "strong evidence" that the act of exclusion was not, by itself, "so inherently expressive" as to qualify for First Amendment protection. *Id.*

Here, in contrast, Avid's mailing books to Jail residents requires no separate explanation to communicate the intended message. The message is the conveyance of the book itself, selected specifically by or for the particular resident, and purchased and shipped from a community-based, independent bookstore, not a faceless, national publisher (the "Big Five") or conglomerate online retailer (Amazon or Barnes & Noble). (Doc. 90-2 ¶¶ 8-10) No supplemental speech is

necessary to explain or convey this message. Indeed, Defendants’ Policy JOD511 prohibits including any communication in the mailing other than the book(s) and a packing slip or gift receipt. (Doc. 85-7 [JOD511.6(C)])<sup>5</sup>

Meanwhile, the applicable line of cases, which Defendants do not address, recognizes the First Amendment interest that people and entities like Avid, outside of a correctional facility, have in communicating with those on the inside via the mail. *See Thornburg v. Abbott*, 490 U.S. 401, 407 (1989) (“Prison walls do not . . . bar free citizens from exercising their own constitutional rights by reaching out to those on the ‘inside.’”); *Prison Legal News v. Chapman*, 44 F. Supp. 3d 1289, 1301, 1302 (M.D. Ga. 2014) (holding jail’s prohibition on publications sent by mail to be unconstitutional and finding that “phone calls and in-person visits are not suitable alternatives for the educational materials [the plaintiff sought] to provide [by mailing] periodicals and books” to jail residents).<sup>6</sup>

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<sup>5</sup> For instance, the Jail rejected books mailed by Avid customer Tina Ridley (not by Avid itself) where Ms. Ridley inserted a postcard into one of the books on which she had written a supportive message. (Doc. 89-1 at 9; Doc. 81-12 at 1-8)

<sup>6</sup> *See also 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); *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”); *Hrdlicka v. Reniff*, 631 F.3d 1044, 1049 (9th Cir. 2011) (plaintiff had First Amendment interest in distributing publication to county jail residents).

Finally, Avid's First Amendment interest in communicating with Jail residents by mailing them books is not diminished because Avid has a commercial interest. (Contra Doc. 89-1 at 16-17) *See First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 777 (1978) (holding that worth of speech "does not depend upon the identity of its source, whether corporation, association, union, or individual"; striking down statute that, with some exceptions, prohibited business corporations from making contributions or expenditures "for the purpose of . . . influencing or affecting the vote on any question submitted to the voters"); *Smith v. People of the State of California*, 361 U.S. 147, 150 (1959) (declaring law used to prosecute bookseller violated free speech protections for "dissemination of books and other forms of the printed word"; noting "[i]t is of course no matter that the dissemination takes place under commercial auspices"). In short, Avid's First Amendment rights are infringed by Defendants' ban on Avid mailing books to the Jail.

## **II. There is No Alternative Way for Avid to Exercise Its Constitutional Right.**

The fact that some books Avid might send to Jail residents are available from one of Defendants' Approved Sources might be an alternative for residents, but does nothing to satisfy Avid's right to engage in its core communication of mailing books to Jail residents. A book purchased from and sent by Avid -- an independent, community-based, local bookstore -- communicates an entirely different message than if the large, multi-national corporations approved under Defendants' Policies

supply the book. (Doc. 90-2 ¶¶ 10-12; Doc. 85 [LaFave Tr.] 130:5-18) Moreover, even if Avid could arrange behind-the-scenes for an Approved Source to ship a book to the Jail, this would at best reduce Avid to communicating business-to-business with the Source, eliminating Avid's communication with the Jail resident altogether. (*Id.* ¶ 11) It would, at worst, transform Avid into a sales agent for its competitors Amazon and Barnes & Noble, which would be completely “antithetical to the entire small business shop local model that Avid prides itself on and is a large part of.” (Doc. 85 [LaFave Tr.] 127:18-20)<sup>7</sup> Finally, Defendants' e-tablets are no substitute. None of the books Avid attempted to mail to the Jail were available through these tablets. (Doc. 90-2 ¶ 13 & n.5)<sup>8</sup>

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<sup>7</sup> *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 352 (1987), cited by Defendants, has no applicability. There, the Court held that prison officials did not have to grant Muslim prisoners all of their requested religious accommodations when many of their requests were already being honored. The Court did not hold that accommodations antithetical to the prisoners' beliefs were acceptable alternatives.

<sup>8</sup> *Crime Justice & America, Inc. v. Honea*, 876 F.3d 966 (9th Cir. 2017), cited by Defendants, is distinguishable on several levels. It upheld a decision to provide a magazine in PDF format, viewable on kiosks throughout the facility, rather than permitting delivery of paper copies to residents. The kiosks provided the same magazine content as the paper version, unlike Defendants' e-tablets that could not provide the same books as Avid. The *Honea* defendants further demonstrated the kiosks were instituted to reduce residents' improper use of paper, producing evidence of 3,400 rule violations over four years involving non-personal paper products. *Id.* at 974. Defendants here offer zero documented incidents to support that books from bookstores are a source of smuggled contraband.

### III. Banning Avid from Mailing Books to Jail Residents Violates *Turner*.

Defendants acknowledge that under the Supreme Court’s *Turner* test, Jail regulations which burden First Amendment freedoms are only constitutional if they are “reasonably related to legitimate penological interests and are not an exaggerated response to such objectives.” (Doc. 89-1 at 12) Neither condition is satisfied here under *Turner*’s case-specific, fact-intensive analysis.<sup>9</sup>

#### A. Defendants’ Policies Not Reasonably Related to Preventing Contraband.

As briefed in Avid’s Motion for Summary Judgement and fully incorporated herein by reference, Defendants’ barring Avid from mailing books to Jail residents is not reasonably related to the legitimate interest in excluding contraband. (Doc. 90-1 [Avid SJ Br.] at 8-13) This is not least because Avid is as equipped as Approved Source retailers Amazon.com and Barnes & Noble warehouses to ship books that have never been accessible to the general public and have only been handled by its employees. (Doc. 90-2 ¶ 5)

Additionally, Defendants’ villainization of retail bookstores lacks even a veneer of evidence. As noted above, Defendants provide no information showing that “fewer hands” touch a book mailed from one of Defendants’ Approved Sources

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<sup>9</sup> See *Jarrard v. Moats*, No. 4:20-cv-2-MLB, 2021 WL 1192948, \*7 (N.D. Ga. Mar. 30, 2021) (noting the *Turner* test is a “fact-intensive inquiry”) (quoting *Garber v. Conway*, 2016 WL 11545539, at \*4 n.3 (N.D. Ga. Apr. 19, 2016)); *Bennett v. Langford*, No. 4:18-CV-0011-HLM-WEJ, 2018 WL 9538769, at \*2 (N.D. Ga. Jan. 22, 2018) (referencing “the fact-intensive nature of the *Turner* test”).

than a book mailed from Avid. *See* Factual Response, *supra*, at 2-4. Not a single one of the research and industry publications that Defendants cite regarding mail-smuggled contraband identify bookstores as a likely source or recommend against accepting books from bookstores. *See* n.2, *supra*. Defendants have not identified a single incident where contraband has been found inside of a book mailed to the Gwinnett County Jail from a physical bookstore. (Doc. 90-2 ¶ 20) Meanwhile, both the federal BOP as well as the three largest state correctional systems (California, Florida and Texas), plus the Georgia Department of Corrections, all accept books mailed directly from bookstores. (*Id.* ¶¶ 26-31) While correctional facilities are not required to adhere to “common denominator” security practices, the policy choice of these comparator institutions undercuts Defendants’ claim that bookstores present an unacceptable, or any bona fide risk of smuggled contraband. Further marking the unreasonableness of Defendants’ Policies, Defendants conducted no investigation or vetting of the safety and security of their Approved Source retailers Amazon and Barnes & Noble. Defendants only assume these sources are safe, despite documented instances in another state of books mailed by these retailers containing drug contraband. (*Id.* ¶¶ 18, 22, 37) Given all of the foregoing context, Avid’s securities practices expert Eichenlaub concludes that excluding Avid and other retail bookstores from mailing books to Jail residents is “an unreasonable . . . response to a potential security threat” of smuggled contraband. (*Id.* ¶ 39) Defendants put forth

no rebuttal expert. (*Id.*) See *Stouffer v. Reid*, 413 Md. 491, 511, 993 A.2d 104, 115 (Md. App. 2010) (holding that “whims . . . about prospective hypothetical situations” or “speculative and uncertain anxieties” do not satisfy the *Turner* standard of reasonableness); *Campos v. Coughlin*, 854 F. Supp. 194, 209 (S.D.N.Y. 1994) (refusing “to indulge DOCS’ whims and anxieties about prospective hypothetical situations” alleged to exacerbate gang violence).

**B. Defendants’ Policies Are Arbitrary.**

With no supporting evidence, no investigation or vetting, and no expert recommendation or guidance, Defendants have decided that out of approximately 68,372 bookstores currently operating in the United States<sup>10</sup>, Amazon.com and Barnes & Noble warehouses are the only retailers safe to accept books from, but not Avid. (*Id.* ¶ 36) This is the definition of arbitrary. 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 prisoners by mailing them plaintiff’s publication).

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<sup>10</sup> See IBISWorld, “Book Stores in the US - Market Research Report (2015-2030),” last updated April 2025, available at: <https://shorturl.at/v2Fsy>.

That Defendants accept books from religious organizations further illustrates the arbitrary nature of excluding Avid as an Approved Source. (Doc. 90-2 ¶¶ 40-41; Doc. 81-2 [Policy 13.A, Subsect. V.O]; Doc. 83-3 [Policy JOD511.5(O)])<sup>11</sup> Defendants' Policies do not require that books from religious organizations have been inaccessible to members of the general public who might have a personal connection to a Jail resident and a motive to tamper with the books before they are sent to the Jail (Doc. 90-2 ¶ 44), even though this is Defendants' proffered security reason for rejecting books from retail bookstores like Avid. (Doc. 89-1 at 9) Defendants also do not impose any geographic distance requirements on religious organizations, accepting books from houses of worship located in the same or nearby towns as the Jail. (Doc. 90-2 ¶ 47) According to Defendants, this increases the chances that the individuals sending the books might have personal ties to Jail residents and be motivated to insert contraband. (Doc. 83 [2d John Gardner Tr.] at 13:10-17) Yet Defendants will accept books from local religious organizations but not local bookstores. These contradictions highlight the "arbitrary" nature of Defendants' Policies regarding who can send books and who is verboten.

Defendants justify their Religious Organization Exception by arguing that it: (1) accommodates the First Amendment right of free exercise of religion, and (2)

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<sup>11</sup> Avid incorporates by reference herein all arguments regarding the unconstitutionality of Defendants' Religious Organization Exception set forth in Avid's Summary Judgment Brief. (Doc. 90-1 at 19-24)

rehabilitates Jail residents. (Doc. 90-2 ¶ 42) But this rationale equally supports allowing Avid to send books to Jail residents because: (1) communicating with residents via the mail is Avid's First Amendment right (*see* Section I.A, *supra*), and also a matter of free exercise if Avid is providing religious materials<sup>12</sup>; and (2) books, be they religious or not, are rehabilitative.<sup>13</sup> Based on all of the foregoing, security practices expert Eichenlaub assesses Defendants' Policies regarding who is allowed to send books and who is barred to be "arbitrary." (Doc. 90-2 ¶ 38) Defendants have offered no rebuttal expert. (*Id.* at ¶¶ 34, 39).<sup>14</sup> *See Pesci v. Budz*, 935 F.3d 1159, 1167

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<sup>12</sup> Avid provides Bibles to its customers, and has the ability to supply other religious texts. (Doc. 85 [LaFave Tr.] 156:20-158:2)

<sup>13</sup> *See* 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.

<sup>14</sup> Defendants' Rule 30(b)(6) witness, John Gardner, recanted his remaining attempts to justify why Defendants accept books from religious organizations but not retail bookstores. He tried to claim that mailroom officers are trained to only accept materials from religious organizations that are thin enough to fit through the Jail's drug scanner, even though this is not written down anywhere and is contradicted by the Jail's history of accepting books from religious organizations.

(11th Cir. 2019) (noting that under *Turner*, “[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”).

C. Defendants’ Policies Are an Exaggerated Response, and They Only Became More So During the Course of This Litigation.

Mid-litigation, Defendants amended their policy from allowing any “publisher or an authorized retailer” to mail books to Jail residents (Doc. 81-2 at 3), to allowing only five publishers and two retailers to do so, and explicitly banning bookstores. (Doc. 81-3 at 4-5) Like Defendants’ two currently approved retailers Amazon.com and Barnes & Noble warehouses, 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)<sup>15</sup> and then packaged and mailed by the one or two Avid employees who handle order fulfillment and shipping. (Doc. 90-2 ¶ 5) Avid can also readily provide written confirmation of chain of custody when shipping a book, attesting that it has never been on the store’s publicly-

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(Doc. 90-2 ¶¶ 41, 49) He later reaffirmed that the Jail does, indeed, accept books from religious organizations. (Doc. 83 [2d Gardner Tr.] at 104:10-21) Gardner also tried to claim that religious organizations are less likely to smuggle contraband than secular organizations, like Avid, because he believes the former have more to lose, reputation-wise. (Doc. 90-2 ¶ 48) But when pressed, he acknowledged the obvious – that this is only his personal opinion and he cannot speak for what either a secular or religious organization would do. (Doc. 83 at 75:22-24; 76:5-7)

<sup>15</sup> Ingram has warehouses in Pennsylvania, Indiana, Tennessee, and Oregon. It also supplies books to retailers like Amazon and Barnes & Noble. (Doc. 90-2 ¶ 5, n.3)

accessible bookshelves. (*Id.* ¶ 6) This assurance of provenance would not create any additional process burden for Jail officials, who already check each in-coming book shipment for a packing list or receipt,<sup>16</sup> and already x-ray and physically search all in-coming books for contraband – including those sent by Approved 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”); *Prison Legal News v. Cook*, 238 F.3d 1145, 1151 (9th Cir. 2001) (finding that processing mail from plaintiff would not deplete resources or add significantly to workload when “[t]he reality is that all incoming mail must be sorted”).

This easy alternative – i.e., requiring Avid to ship new 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 in preventing contraband and allows Avid to exercise its First Amendment right to communicate with Jail residents. This easy alternative, which Defendants ignore, renders the 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

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<sup>16</sup>*See, e.g.*, Doc. 89-3 at 21-33 (excerpts from Defendants’ “Returned Mail” Logs where “No receipt” is a commonly listed “Reason for Return”).

valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard”).

D. Existing Case Law Does Not Salvage Defendants’ Policies.

None of Defendants’ proffered cases (Doc. 89-1 at 13-15) address policies similar to the ones challenged here. Thus, under the fact-intensive *Turner* inquiry, these cases do not establish that Defendants’ Policies are constitutional. *See Jarrard*, 2021 WL 1192948, at \*7 (*Turner* test is a “fact-intensive inquiry”); *Bennett*, 2018 WL 9538769, at \*2 (referencing “fact-intensive nature of the *Turner* test”).

Defendants admit they cannot identify any other correctional facility with a book policy on all fours with their own, illustrating that Defendants were improperly granted qualified immunity on Avid’s damages claim. (Doc. 84 [Taylor Tr.] at 18:12-22]; Doc. 90-13 [Taylor 2d RFA Resp.], No. 8) Defendants therefore rely on cases about “publisher only” rules, which Defendants’ Policies are not: Defendants’ Policies allow retailers to also mail books to Jail residents, except they limit who is an approved retailer in an unreasonable and arbitrary manner. *See* Sections II.A & II.B, *supra*. Hence, decisions upholding “publisher only” policies have no probative value regarding the constitutionality of how Defendants are purporting to distinguish among retailers, or the constitutionality of Defendants accepting books from religious organizations but not bookstores.

Moreover, none of Defendants' cases involve the violation of a bookstore plaintiff's First Amendment rights. They instead involve challenges by prisoners, often representing themselves *pro se* with no expert testimony, and usually seeking to receive printed materials from friends or family members.<sup>17</sup> As none of Defendants' cases analyze a book seller's assertion that it has been unconstitutionally excluded by a ban on bookstores mailing books, none involve the specific *Turner* analysis that must be conducted here with respect to Avid's First Amendment rights.

This distinction is crucial because, per *Bell v. Wolfish*, 441 U.S. 520 (1979), bookstores generally fall in the same category as publishers. *See id.* at 550 ("We conclude that a prohibition against receipt of hardback books unless mailed directly from publishers, book clubs, or **bookstores** does not violate the First Amendment rights of [prison] inmates.") (emphasis added). *Accord Kines v. Day*, 754 F.2d 28,

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<sup>17</sup> *See Jones v. Salt Lake County*, 503 F.3d 1147, 1154, 1157-58 (10th Cir. 2007) (prisoner challenging policy that required books to come from the publisher, prison library, or **local Barnes & Noble bookstore**); *Thompson v. Campbell*, 81 Fed. Appx. 563, 569 (6th Cir. 2003) (prisoner challenging publishers-only policy); *Stow v. Warden*, 1994 WL 108929, at \*3 (1st Cir. Mar. 31, 1994) (prisoner challenging publishers-only policy); *Ward v. Washtenaw Cnty Sheriff's Dept*, 881 F.2d 325, 327 (6th Cir. 1989) (prisoner challenging publishers and **book clubs**-only policy); *Hurd v. Williams*, 755 F.2d 306, 307 (3d Cir. 1985) (prisoner challenging publishers-only policy); *Cotton v. Lockheart*, 620 F.2d 670, 671 (8th Cir. 1980) (prisoner challenging publishers-only policy); *Rich v. Luther*, 514 F.Supp. 481, 482 (W.D.N.C. 1981) (prisoner challenging publisher-only policy for inmates in medium, close, or maximum security; policy provided that **prisoners in minimum security custody "may receive publications from any source subject to the standard search for contraband"**) (emphasis added).

29 (1st Cir. 1985) (holding that rule providing that “[a]n inmate may receive . . . publications only from the publisher, from a book club, *from a bookstore* or news store” did not facially violate the First Amendment) (emphasis added). A blanket ban on a bookstore mailing books to residents is therefore an entirely different, and more constitutionally suspect, situation than a prohibition on friends, family members, or random vendors sending publications and packages to Jail residents.<sup>18</sup>

#### **IV. Accepting Books from Avid Creates No Appreciable Burden for Jail.**

Defendants admit “[i]t may be entirely true that Avid’s internal controls would guard against impermissible contraband or concealed communications” but claim that accepting books from Avid would open the proverbial flood gates to other bookstores wanting to send books, placing a burden on the Jail to vet other stores. (Doc. 89-1 at 21-22) This argument holds no water and shows Defendants’ Policies banning bookstores to be an even further exaggerated response. First, Defendants can identify no other bookstores lining up behind Avid to mail books. (Doc. 90-5

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<sup>18</sup> Defendants’ remaining cases involve prisoner challenges to approved-vendor policies that, unlike Defendants’ Policies at issue here, imposed no blanket ban on bookstores being approved. *See Bethel v. Jenkins*, 988 F.3d 931, 935 (6th Cir. 2021) (approval for vendors could be granted case-by-case); *Whitehead v. Mgmt. & Training Corp.*, 524 F. Supp. 3d 1155, 1176-77 & n.14 (D.N.M. 2021) (parties disputed who was on the approved vendor list, which included certain bookstores, but from July 2017 forward, facility only required that inmates purchase publications directly from a vendor or publisher); *Wilcox v. Mgmt. & Training Corp.*, 2022 WL 204615, at \*10 (D.N.M. Jan. 24, 2022) (similar).

[Taylor 1st Interrog. Resp.], No. 13) Second, this kind of speculative burden argument has been rejected by courts.<sup>19</sup> Third, the reasonable alternative proposed in Section II.C above – i.e., requiring Avid and other bookstores to ship only new books that have never been on the public bookshelves with written confirmation of same, while keeping current contraband-search procedures (x-ray and physical inspection) in place – obviates the need to individually vet physical bookstores. Their shipments would be accepted if they comply with the foregoing reasonable alternative, and rejected if they do not.<sup>20</sup> Finally, Defendants report that they individually vet through internet research and phone calls religious organizations wanting to send printed materials to Jail residents (Doc. 90-2 ¶ 43), demonstrating that this is not so burdensome if it had to be done (which it does not under Avid’s proposed reasonable alternative).

In sum, Defendants’ Policies’ prohibition on bookstores, and particularly

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<sup>19</sup> *See, e.g., Hrdlicka*, 631 F.3d at 1053 (rejecting, for lack of evidence, defendants’ “slippery slope” argument that distributing one unsolicited publication to jail residents “would set an unworkable 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 [inmates] to increase their subscriptions and lead to an unmanageable influx of subscription non-profit standard mail”). *See also Morrison v. Hall*, 261 F.3d 896, 898, 902-904 (9th Cir. 2001) (striking down postage-rate rule applied to prohibit inmates from receiving “pre-paid, for-profit, subscription publications” on ground that it was “an arbitrary means” of “volume control”).

<sup>20</sup> Defendants admit they did not individually vet their currently Approved Sources. (Doc. 90-2 ¶¶ 18, 37; *see, e.g.,* Doc. 81 [Gardner Tr.] at 52:14-53:1)

Avid, mailing books to Jail residents fails to satisfy any of *Turner*'s four factors for evaluating the constitutionality of a correctional policy. Defendants' Policies are not reasonably related to preventing contraband due to the complete lack of evidence that Avid or other physical bookstores present heightened risk of smuggled drugs or secretive communications compared to Defendants' Approved Sources. Defendants' ban on bookstores is also an arbitrary and exaggerated response to their security concern, highlighted by the fact that Avid's proposed reasonable alternative (Subsection II.C, *supra*) would both accommodate Avid's First Amendment rights and address Defendants' security concerns without creating additional burden for the Jail officials. And Avid has no alternative means of communicating its core message to Jail residents apart from mailing them books. Finally, as explained in Avid's affirmative Motion for Summary Judgment, Defendants' allowing religious organizations to mail books to Jail residents, but not Avid, is an unconstitutional form of speaker-based and content-based discrimination that violates the First Amendment. (Doc. 90-1 at 19-24) Accordingly, this Court must deny Defendants' Motion for Summary Judgment on Avid's First Amendment claims.

**V. “Authorized Retailer” Policies Violate the Fourteenth Amendment.**

Defendants' Policy 13.A stated “books will be accepted as long as they are mailed directly from the publisher or an authorized retailer.” (Doc. 81-2 at Subsect. V.I) Defendants did not define or put in writing who was an “authorized retailer,”

and admit there was no process or criteria for becoming an “authorized retailer.” (Doc. 90-2 ¶¶ 15-16) This resulted in arbitrary acceptance and rejection of books shipped from different retailers (Doc. 90-2 ¶ 19), which is the hallmark of an unconstitutionally vague policy. *See Gray v. Kohl*, No. 07-10024-CIV, 2007 WL 9702460, at \*4, 7 (S.D. Fla. June 29, 2007) (finding statute prohibiting presence in a school zone without legitimate business unconstitutionally vague where it contained no guidelines because it permitted arbitrary enforcement); *see also Babeu*, 933 F. Supp. 2d at 1202 (finding unconstitutional vagueness claim against prison’s “approved vendor” mail policy was not moot where policy lacked enforcement criteria and thus allowed “the possibility if not the likelihood that the jail is resolving such matters ‘on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.’”) (quoting *Cohen v. San Bernardino Valley Coll.*, 92 F.3d 968, 972 (9th Cir. 1996)). Defendants’ new Policy JOD511 cured the vagueness concern. But a return to an “authorized retailer” requirement without written definitions or parameters would similarly violate the Fourteenth Amendment by failing to give retailers notice of what is allowed or prohibited. *See Hum. Rts. Def. Ctr. v. Dixon*, No. 21-81391-CV, 2022 WL 4243921, at \*6 (S.D. Fla. Aug. 24, 2022) (“A prison regulation is void for vagueness if it fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously

discriminatory enforcement.”) (quoting *Torres v. Fla. Dep’t of Corr.*, 742 F. App’x 403, 408 (11th Cir. 2018)). “[T]he vagueness doctrine keeps people from having to guess what the law prohibits.” *Doe I v. Marshall*, 367 F. Supp. 3d 1310, 1333 (M.D. Ala. 2019).<sup>21</sup> An undefined “authorized retailer” standard would leave any retailer wanting to mail books to the Jail completely in the dark as to the criteria or process for becoming “authorized,” as well as ignorant of who the existing “authorized retailers” are, thereby failing to give fair notice of what is required. *See VFW John O’Connor Post #4833 v. Santa Rosa Cnty.*, 506 F. Supp. 2d 1079, 1092 (N.D. Fla. 2007) (finding a zoning ordinance unconstitutionally vague where it allowed for a waiver with a proper showing but provided no definition or guidance for making a proper showing); *Babeu*, 933 F. Supp. 2d at 1202 (finding unconstitutional vagueness claim against a prison’s “approved vendor” policy was not moot where it did not indicate which organizations were approved or the criteria for becoming approved).

## CONCLUSION

For all of the foregoing facts and reasons, Defendants’ Motion for Summary Judgement must be DENIED.

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<sup>21</sup> A vagueness challenge is separate from a *Turner* challenge. *See, e.g., Torres*, 742 F. App’x at 406-409 (citing *U.S. v. Williams*, 553 U.S. 284, 304 (2008)) (conducting separate *Turner* and vagueness analyses); *Hum. Rts. Def. Ctr. v. Inch*, No. 21-81391-CV, 2022 WL 19486385, at \*3-6 (S.D. Fla. Mar. 24, 2022) (same).

Submitted this 7th day of January, 2026.

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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 COMPLIANCE**

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 OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** 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 7th day of January, 2026.

/s/Clare Norins

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