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April 10, 2019

John T. Wilcher
Chatham County Sheriff
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R. Jonathan Hart
County Attorney, Chatham County
124 Bull Street, Ste. 240
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VIA EMAIL & CERTIFIED MAIL

Re: New Policy Banning All Books and Publications at Chatham County Detention Center

Dear Sheriff Wilcher and County Attorney Hart:

The ACLU writes in support of the people in your custody, as well as their families and other supporters, urging you to rescind the Jail's new book and publication policy, *attached hereto as Exhibit A*. This policy bans all books and publications and limits individuals to books from a cart with extremely limited offerings. We have never before encountered a policy that so completely restricts detained persons' access to books and publications.

These new restrictions prohibit detained people's access to virtually all books and publications in existence now or in the future, and prevent those who wish to communicate with them through books from doing so. These rules clearly violate the U.S. and Georgia Constitutions and federal law. As discussed below: 1) the First Amendment encompasses the right of detained people to receive books and publications; 2) the new restrictions violate the First Amendment; and 3) the new policy violates federal law.

I. The First Amendment Encompasses the Right to Receive Books and Publications

The Supreme Court of the United States has established that people who are detained have the First Amendment right to read a wide range of books and literature in order to effectively participate in the marketplace of ideas. As noted by the Supreme Court, "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution," *Turner v. Safley*, 482 U.S. 78, 84 (1987), "nor do they bar free citizens from exercising their own constitutional rights by reaching out to those on the inside," *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989). Democracy depends upon a "free marketplace of ideas," and this is just as valid in prison or jail as in the community at large. "Freedom of speech is not merely freedom to speak; it is also freedom to read. Forbid a person to read and you shut him out of the marketplace of

ideas and opinions that it is the purpose of the free speech clause to protect.” *King v. Fed. Bureau of Prisons*, 415 F.3d 634, 637 (7th Cir. 2005) (citations omitted) (reversing dismissal of incarcerated person’s claim that he was denied a book in violation of the First Amendment). Inherent in this principle is the notion that freedom to read includes meaningful choice and access to a broad range of options. *See Grady v. Daniels*, 2017 WL 3392553, at *9 (M.D. Ala. June 20, 2017) (recognizing plaintiff’s “First Amendment right to receive and read a range of publications so that he is not shut out of the marketplace of ideas and opinions” (citations omitted)); *Spellman v. Hopper*, 95 F. Supp. 2d 1267, 1271 (M.D. Ala. 1999) (finding that detained people “have a First Amendment right to receive magazines and newspapers through the mail.”).

Moreover, the Supreme Court has recognized that the “freedom to correspond with outsiders advances . . . the goal of rehabilitation.” *Procunier v. Martinez*, 416 U.S. 396, 412–13 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989). In other words, the *Procunier* Court acknowledged:

Constructive, wholesome contact with the community is a valuable therapeutic tool in the overall correctional process Correspondence with members of an inmate’s family, close friends, associates and organizations is beneficial to the morale of all confined persons and may form the basis for good adjustment in the institution and the community.

Id. at 413 n. 13 (quoting Policy Statement 7300.1A of the Federal Bureau of Prisons and Policy Guidelines for the Association of State Correctional Administrators). Books and publications play an important role in transcending the inherent monotony and isolation of prison and jail and are frequently recognized for their transformative impact when people are separated from the outside world.

In the words of Reginald Dwayne Betts, who was once incarcerated and has since become a critically-acclaimed poet and graduate of Yale Law School:

When I got locked up, I think, books became magic. Books weren’t really magic when I was a child, they were just something that I [enjoyed] reading. I thought it was important, but when I got locked up it became magic, it became a means to an end It became the way in which I experienced the world, but more importantly, I think, it became the way in which I learned about what it means to be human, and to be flawed and to want things that you can’t have.

In 'Bastards Of The Reagan Era' A Poet Says His Generation Was 'Just Lost', NPR (Dec. 8, 2015), <https://www.npr.org/2015/12/08/458901392/in-bastards-of-the-reagan-era-a-poet-says-his-generation-was-just-lost>.

Lastly, restrictions of the sort at issue here implicate both the First Amendment rights of those who are detained as well as those of the families, friends, and organizations who wish to communicate with them, including through books and publications. Courts have expressly recognized that third parties have the First Amendment right to share books and publications

with those who are in jail, whether to educate, entertain, rehabilitate, or help individuals survive incarceration. *E.g.*, *Thornburgh*, 490 U.S. at 408 (finding “there is no question that publishers who wish to communicate with those who, through subscription, willingly seek their point of view have a legitimate First Amendment interest in access to prisoners.”); *Prison Legal News v. Chapman*, 44 F. Supp. 3d 1289, 1301–03 (M.D. Ga. 2014) (finding that the county jail’s publications ban violated the periodical publishers’ First Amendment right to communicate with detained and incarcerated people); *Montcalm Publ’g Co. v. Beck*, 80 F.3d 105, 109 (4th Cir. 1996) (publishers’ First Amendment rights are implicated where they are denied the right to direct their books to prison audiences).

II. The New Restrictions Violate the First Amendment

Although these rights may be more limited in the prison and jail context than in free society, restrictions impinging upon Constitutional rights will be upheld only if “reasonably related to legitimate penological interests.” *Turner*, 482 U.S. at 89. To determine whether a regulation satisfies this standard, a court considers: 1) whether there is a valid, rational connection between the regulation and a legitimate government interest; 2) the availability of alternate means of exercising the right; 3) the impact accommodating the right would have upon prison resources; and 4) whether there are obvious, easy alternatives that accommodate the right at *de minimis* cost to valid penological interests. *Id.* at 89–91.

Restrictions of this breadth and depth on access to books and publications cannot withstand constitutional scrutiny.

a. There is no valid, rational connection between the new policy and the Chatham County Detention Center’s ostensible safety or security interests.

There is no rational basis for prohibiting books and publications sent directly from the publisher or from a vendor like Amazon, since such transactions entail no security risk. For this reason, publication policies far less restrictive than the Jail’s new policy have been struck down on First Amendment grounds. *See, e.g.*, *Crofton v. Roe*, 170 F.3d 957, 959–62 (9th Cir. 1999) (categorical ban on gift orders of books and other publications violated the First Amendment); *Jacklovich v. Simmons*, 392 F.3d 420, 428–33 (10th Cir. 2004) (reversing grant of summary judgment in case involving categorical ban on gift publications); *Daker v. Ferrero*, 475 F. Supp. 2d 1325, 1360–61 (N.D. Ga. 2007) (acknowledging that “[c]ourts have been more willing . . . to strike down outright bans on gift publications, at least in the absence of any superior state interest” and citing *Crofton* and *Jacklovich* in support).

The Chatham County Detention Center’s new policy fails to satisfy the first *Turner* standard, as it is not reasonably related to safety or security interests; thus, no additional analysis is required. *See Freeman v. Tex. Dep’t of Criminal Justice*, 369 F.3d 854, 860 (5th Cir. 2004) (finding a court need not weigh evenly or even consider each of the four *Turner* factors, as rationality is the controlling standard); *Hrdlicka v. Reniff*, 631 F.3d 1044, 1051 (9th Cir. 2011) (“The first *Turner* factor is a *sine qua non*: If the prison fails to show that the regulation is rationally related to a legitimate penological objective, we do not consider the other factors.”)

(citation and quotations omitted). In any event, the new policy also fails *Turner's* remaining considerations.

b. There is no adequate substitute or alternate means to exercise the First Amendment right to receive books and publications.

The Jail's new policy also provides no adequate substitute or alternative means to exercise the First Amendment right to receive books and publications. Courts have been clear that "alternatives" in this context must be genuine substitutes for the content of the prohibited material. *See, e.g., Mann v. Smith*, 796 F.2d 79, 83 (5th Cir. 1986) (rejecting the jail's argument that television was an adequate substitute for newspapers and magazines, which were protected under the First Amendment). The new policy, however, eliminates access to virtually all books and publications ever written. Under the new policy, the only way people in the Jail can obtain books is by requesting access to a book cart. They are then limited to whatever titles happen to be available on the cart that day and, if a book is selected, it is theirs for only a week. The limited selections on the book cart, and the challenges detained people face in accessing what *is* available, fail to come close to compensating for the extraordinary loss of access to the broader world of books and publications.

For people detained in the Chatham County Detention Center, the new policy reduces their access to books on an extraordinary scale – from the millions of books and publications available in paperback through bookstores and publishers to the mere dozens available on a book cart. And, perhaps most critically, the new policy leaves family or community members wishing to communicate through books and publications – to send a loved one a book about grief after the passing of a family member, a self-help book to repair a relationship, a job-training manual, books on spiritual or religious enlightenment, or to share the experience of reading a novel together, or any other number of ways in which people communicate and associate through books – without any alternative at all.

c. There are easy alternatives to the Chatham County Detention Center's book and publication ban that would have minimal impact on jail resources.

Reading and staying in touch with the outside world are among the few ways individuals can occupy their time in positive and self-directed ways at virtually no cost to the Sheriff's Department. Depriving people in jail of opportunities to read and limiting their ability to do so is not only fundamentally at odds with the First Amendment, but also with the rehabilitative ideal. Education is widely recognized as one of the most powerful deterrents of institutional misconduct and recidivism, as are familial and other community connections. The Sheriff's Department is creating greater threats to institutional security each time it further isolates people in jail from the outside world.

III. The New Policy Violates Federal Law

By banning virtually all books and publications, including (but not limited to) religious books and publications, the new policy violates the Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA provides as follows:

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C.A. § 2000cc-1. Courts have found RLUIPA violations where institutional rules limit access to religious books and publications. *See, e.g., Washington v. Klem*, 497 F.3d 272, 286 (3rd Cir. 2007) (policy limiting prisoners to ten books per cell violated RLUIPA); *Jesus Christ Prison Ministry v. Cal. Dep't of Corr.*, 456 F. Supp. 2d 1188, 1203–05 (E.D. Cal. 2006) (policy that prohibited receipt of Jesus Christ Prison Ministry materials violated RLUIPA).

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The Chatham County Detention Center's new policy is inconsistent with the United States and Georgia Constitutions and with federal law, and is unnecessary to achieve its purported goals. We urge you to rescind it immediately.

Thank you for your consideration. We look forward to a response by April 30, 2019, and are happy to have additional discussions on the matter if necessary.

Sincerely,



Kosha S. Tucker
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ACLU of Georgia



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cc: Georgia Sheriffs' Association

EXHIBIT A

Book Cart Procedures

Inmates are not allowed to receive books, magazines or other publications by subscription, or directly from the publisher, a family member or any other person. Books and magazines will be available to the inmate by means of a book cart through the facility Programs staff.

Book Cart Request:

Inmates will make request for book cart services to the Unit Counselor, via the kiosk. Kiosk response to inmate will read as follows: "Inquiry received and your request is being processed, Unit (unit number) Book Cart day (day or week)". Units will have a designated day for the book cart service to be brought and distributed in the unit. Book carts will be kept in Programs, and brought to the Counselor on day scheduled for book cart service.

Book and Magazine Selection Procedure:

Inmates will select a book or magazine from the book cart, at which time the Counselor will notate in log book: date, inmate name & DIN, title of book or magazine & condition, return date and signature of inmate. Inmates are only allowed to sign out one (1) book or magazine at a time and will maintain the book or magazine for a period of one (1) week.

If the inmate desires to maintain the book for over one (1) week, the inmate will bring the book to the hub and have the Counselor inspect the book before resigning it out for an additional week. Magazines will not be signed out for over one (1) week at a time.

Relocation of Inmates with Book or Magazine:

In the event that an inmate is relocated during the period a book or magazine is signed out, the book or magazine will be collected and returned to the book cart prior to the inmate being relocated. Request for book cart services and sign out period will be maintained at the inmate's current housing unit.

Damage to Book or Magazine:

As property of the Chatham County Sheriff's Office, any damage to books and magazines will result in the signing inmate being responsible for a \$10.00 fee. Damages are constituted by: books and magazines not turned in when required, covers torn or torn off, pages torn or torn out, books and magazines with large creases in the middle, water damage, or large stains.

After two (2) occurrences of fees being applied, the inmate's book cart privileges will be revoked for the current period spent in the Detention Center.

Management of Book Cart:

Programs staff will manage the book cart. On Friday of each month Programs staff will conduct an inventory of the book carts and exchange any damaged or destroyed books and magazines with new reading material.

Each housing Unit will have an assigned book cart labeled with its corresponding Unit number. Each book cart will have a log book for book and magazine assignment information and inventory tracking. Each book and magazine will be labeled with the unit number of its corresponding book cart.

BOOK CART PROCEDURE

EFFECTIVE MONDAY, MARCH 4, 2019

Books and magazines for inmates will be available by means of a book cart.

If you wish to get a book or magazine you must make a request through the kiosk to the Unit Counselor. Kiosk response to inmate will read as follows: "Inquiry received and your request is being processed, Unit (unit number) and Book Cart day (day of week)".

One (1) book or magazine will be selected and signed out from the book cart. The book or magazine will only be held for one (1) week.

If you want to keep the book for longer than one week it must be resigned out through the counselor during the book cart process. Magazines will not be signed out for over one (1) week at a time.

If a book or magazine is damaged, (covers torn or torn off, pages torn or torn out, large creases in the middle, water damage or large stains) the inmate who signed out the property will be fined \$10.00. After two (2) occurrences of fees, the inmate's book cart privileges will be revoked for the current period spent in the Detention Center.

If you are relocated to another unit when you have a book or magazine, the book or magazine will be collected and returned to the book cart. If you desire to sign the book or magazine out again when you are housed in your new unit, you must make a request through the kiosk to the Unit Counselor. Request for book cart services and sign out period will be maintained at the inmate's current housing unit.

IMPORTANT NOTICE FOR ALL INMATES

As of **MARCH 3, 2019**, books, magazines or other publications, by subscription, or directly from the publisher, a family member or any other person will no longer be allowed in the housing unit wings. Books and magazines will be available by means of a book cart. The book cart will begin March 4, 2019.

All books, and magazines or any other publications (other than religious material approved by the Chaplains department), must be removed from all housing unit wings before March 3, 2019. Any such property remaining on March 3, 2019, will be considered as contraband and confiscated.

Approved methods of disposing of books, magazines and other publications:

- Donate property to book cart. (Fill out Donation Form and give to Unit counselor).
- Place property in the Receiving and Discharge Property room. (Fill out Property Form and give to the wing officer).
- Have someone pick-up property. (Fill out Property Release Form and give to the Unit counselor).