

No. 18-355

In the Supreme Court of the United States

PRISON LEGAL NEWS, PETITIONER

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS

*ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

**BRIEF FOR AMICI CURIAE PRISON BOOKS CLUBS
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether the Florida Department of Corrections' blanket ban of Prison Legal News violates Petitioner's First Amendment right to free speech and a free press.

II

TABLE OF CONTENTS

	Page
Interests of Amici Curiae	1
Summary of Argument	3
Argument.....	4
I. The decision of the court of appeals gives prisons nearly unfettered discretion to censor reading materials, including books.....	4
A. Prison officials have tried to censor virtually all types of books.....	5
B. The more a book appeals to prisoners, the more likely it is to be censored.....	11
C. Book clubs also face arbitrary application of logistical rules and outright bans on mailing books to prisoners.....	16
II. Prison censorship of reading material impedes prisoner education, to the detriment of both prisoners and society at large.....	19
Conclusion.....	22

TABLE OF AUTHORITIES

Cases:

<i>Couch v. Jabe</i> , 737 F. Supp. 2d 561 (W.D. Va. 2010).....	6
<i>Mason v. United States</i> , 170 A.3d 182 (D.C. 2007).....	12
<i>Munson v. Gaetz</i> , 673 F.3d 630 (7th Cir. 2012)	10
<i>Prison Legal News v. Livingston</i> , 683 F.3d 201 (5th Cir. 2012)	12
<i>Singer v. Raemisch</i> , 593 F.3d 529 (7th Cir. 2010)	7

Statutes:

20 U.S.C. 1070a(b)(6)	21
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III

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- Federal Bureau of Prisons, *Stamps, Negotiable Instrument & Other Returned to Sender* (May 8, 2017) 9
- Free Minds Book Club & Writing Workshop, *The Untold Story of the Real Me: Young Voices from Prison* (2015)..... 19

IV

Gadsden Correctional Facility, *Notice of Rejection or Impoundment of Publications* (July 26, 2017)..... 9

Daniel A. Gross, *New York Makes it Harder for Inmates To Get Books*, *New Yorker* (Jan. 9, 2018), <https://tinyurl.com/yawnbg9m>..... 17, 21, 22

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Hardee Correctional Institution, *Notice of Rejection or Impoundment of Publications* (Aug. 8, 2017)..... 13

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Lauren McGaughey, <i>Why Do Texas Prisons Ban Certain Books, Such as “Freakonomics,” but not Hitler’s “Mein Kampf”?</i> , Dallas Morning News (Nov. 27, 2017), https://tinyurl.com/y992t555 ...	5, 8, 14, 15
Samantha Melamed, <i>One Review of Pa. Prisons’ Pricey eBooks: “Books That Are Available for Free, That Nobody Wants Anyway”</i> , Phil. Inquirer (Sept. 21, 2018), https://tinyurl.com/y8jzbh99	18, 19, 22
North Carolina Dep’t of Public Safety, <i>Master List of Disapproved Publications: 5/16/2014 to 5/16/2015</i>	7, 8, 9, 10
Notice from Charles County Detention Center to Free Minds Book Club	17
PA Department of Corrections (@CorrectionsPA), Twitter (Sept. 14, 2018), https://tinyurl.com/y9d24wuh	18
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VI

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Am. J. Pub. Health 666 (2009) 10

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INTERESTS OF AMICI CURIAE

Amici provide books and other reading and educational materials to people in prison.¹

Asian American Writers' Workshop is an arts organization that develops and distributes creative writing by Asian-American authors. As part of a new project, AAWW is also publishing creative work by incarcerated and detained writers.

¹ As required by Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

Book 'em, a project of The Big Idea Bookstore and The Thomas Merton Center, is a Pittsburgh-based all-volunteer nonprofit organization that sends free educational books and quality reading materials to prisoners and prison libraries in Pennsylvania and across the country.

Books Beyond Bars, a project of the Center for Appellate Litigation, provides books and other reading materials to prisoners across New York state.

Books Through Bars is a Philadelphia-based all-volunteer organization that has operated for nearly thirty years and that sends books to people incarcerated in the Mid-Atlantic region. Every year it sends approximately 7,000 book packages.

Chicago Books to Women in Prison sends books to women in prison across the country. In 2017 alone, it sent over 12,000 books to incarcerated women.

Free Minds Book Club uses books, creative writing, job-readiness training, and community support to help District of Columbia youths and adults at the DC Jail, in federal prison, and in reentry. It offers, among other services, both new books and a weekly book club at the DC Jail, and a correspondence-based book club and writing program for people in federal prison.

NYC Books Through Bars is an all-volunteer organization that sends donated books to people who are incarcerated in state and federal facilities across the country.

Prison Book Program, based in Quincy, MA, sends books and a self-published legal primer to prisoners in forty-four states. The program was founded in 1972 and in 2017 served more than 12,000 people.

Prisoners Literature Project is an all-volunteer group, sponsored by Berkeley's Grassroots House, that sends books directly to prisoners throughout the United States. Each year, PLP sends out about 36,000 books.

Amici seek to ensure that prisoners have access to reading materials, including high-quality books that prisoners are interested in reading, to promote their education, rehabilitation, and reintegration into society. But *amici*'s efforts to do so often collide with censorship by prison officials. Accordingly, *amici* seek to ensure that prison censorship of reading materials receives appropriate scrutiny under the First Amendment.

SUMMARY OF ARGUMENT

The court of appeals offered multilevel deference to the Florida Department of Corrections, relieving it of any obligation to show actual or even likely harm, and instead adopting reasoning that could be used to justify banning virtually any publication, including nearly any book. Using this reasoning, the court of appeals upheld the censorship of *Prison Legal News*, even though “there is no evidence that ads in its magazine have ever caused a security breach.” App. 26.

As *amici* are all too aware, this approach is a censor's dream. With enough time and ingenuity, prison officials and their lawyers can usually imagine some way in which some aspect of a particular written work might conceivably have some marginal effect on prison order or security. And if courts deferred to even the most attenuated of these rationales, then virtually all prison censorship would be immune from First Amendment scrutiny.

Hyperbolic as these concerns may seem, *amici* have experienced firsthand just how aggressively prison officials will censor reading materials, including books. In fact, prisons across the country have censored an astonishing number and variety of books—fiction and nonfiction, classic and contemporary, educational books and books for entertainment, books that profile the prison system or criticize the justice system, and many, many more.

The reasoning used by the court of appeals risks protecting this censorship—including and especially censorship of books that prisoners are most likely to actually want to read—and even offers a roadmap for prison officials to justify broader, blanket bans on direct mailing of all books.

The scale and scope of such book bans offends the First Amendment in and of itself. And the resulting harms to prisoners are real and profound. For a population with low rates of education and literacy, access to compelling books can be a godsend—for both prisoners and the rest of us, who benefit when prisoners have constructive outlets and better odds of rehabilitation. Broad censorship deprives prisoners of good books and also makes it harder for *amici* and other cash-strapped prison book clubs to do their jobs efficiently and effectively. And for many prisoners, receiving books is their best and perhaps only educational opportunity: Prisoners have limited access to more formal education, and prison libraries rarely fill the gaps.

In upholding the ban on *Prison Legal News*, the court of appeals has paved the way for decisions upholding even broader censorship, including censorship of books on which prisoners depend. Such a result offends the First Amendment and disserves both prisoners and those around them.

ARGUMENT

I. The decision of the court of appeals gives prisons nearly unfettered discretion to censor reading materials, including books.

According to the court of appeals, the Florida Department of Corrections could censor *Prison Legal News* because (1) certain types or quantities of certain services *might* marginally increase the risk of problems or crime

by prisoners, and (2) certain sizes of ads about certain services *might* make prisoners marginally more likely to use those services that *might* marginally increase the risk of crime or other problems. See App. 11, 30–34, 38 & n.14. These multiple layers of deference—stitched together largely by speculation about marginal increases in the risk of potential harms—will enable prison officials to censor nearly anything, including a wide range of books sent to prisoners by book clubs.

A. Prison officials have tried to censor virtually all types of books.

Left to their own devices, prison officials can and will try to censor a wide range of books.

1. Prisons have banned a variety of novels, both classic and contemporary. With respect to the classics, for instance, Texas has banned novels by Pulitzer Prize winners Alice Walker, Robert Penn Warren, and John Updike; National Book Award winners Joyce Carol Oates and Annie Proulx; and Nobel Prize winners Pablo Neruda and Andre Gide. See Eric Dexheimer, *Banned in Texas Prisons: Books and Magazines that Many Would Consider Classics*, Austin-Am. Statesman (Sep. 1, 2012), <https://tinyurl.com/yajaql7u>. It has banned Alice Walker’s *The Color Purple*, which won the Pulitzer Prize and National Book Award. Lauren McGaughy, *Why Do Texas Prisons Ban Certain Books, Such as “Freakonomics,” but not Hitler’s “Mein Kampf”?*, Dallas Morning News (Nov. 27, 2017), <https://tinyurl.com/y992t55c>. And it has banned *Burmese Days* by George Orwell. Texas Civil Rights Project, *Banned Books in the Texas Prison System: How the Texas Department of Criminal Justice Censors Books Sent to Prisoners* 40 (2011) (“*Banned Books*”), <https://tinyurl.com/ydawtj5f>. Further, until it was blocked by a court, a prison in Virginia even banned James Joyce’s

Ulysses—widely considered to be one of the finest English-language novels ever written. See Clay Calvert & Kara Carnley Murrhee, *Big Censorship in the Big House—A Quarter-Century After Turner v. Safley: Muting Movies, Music & Books Behind Bars*, 7 Nw. J. L. & Soc. Pol’y 257, 290–292 (2012) (citing *Couch v. Jabe*, 737 F. Supp. 2d 561 (W.D. Va. 2010)).

Popular fiction often has fared no better. Virginia has banned novels by Louis L’Amour, James Patterson, John Grisham, and Walter Mosley. See Books to Prisoners, *Banned Books Lists*, <https://tinyurl.com/y7byh7tj>; Adam Serwer, *Books Behind Bars*, Am. Prospect (Apr. 4, 2011), <https://tinyurl.com/ya8nax62>. Texas has banned four novels by John Grisham, Dexheimer, *supra*, and 28 novels by Donald Goines, a prominent author of urban fiction, which is “primarily written by African American authors and touches on themes of race, culture, and poverty,” *Banned Books*, *supra*, at 19. For its part, the District of Columbia jail at one point banned mystery novels by George Pelecanos because his mystery novels, like all mystery novels, discuss crimes. See David M. Shapiro, *Lenient in Theory, Dumb in Fact: Prison, Speech, and Scrutiny*, 84 Geo. L. Rev. 972, 997 (2016).

Although typically addressing different worlds altogether, science fiction and fantasy novels have likewise attracted scrutiny from prison censors. Pennsylvania has banned Dungeons & Dragons manuals, claiming that materials for the classic fantasy game violate the ban on “writings which advocate violence, insurrection, or guerilla warfare against the government or any of its facilities or which create a danger within the context of the correctional facility.” *Banned Books Lists*, *supra*. A prison in Wisconsin also banned Dungeons & Dragons materials, insisting that the game promotes gang activity; the ban

was upheld by the Seventh Circuit. See Calvert & Murree, *supra*, at 272 (citing *Singer v. Raemisch*, 593 F.3d 529 (7th Cir. 2010)).

D&D aside, Arizona has banned *Dragonology: The Complete Book of Dragons*, see Corrina Regnier, ACLU Nat'l Prison Project, *What Do Batman and The Onion Book of Known Knowledge Have in Common? Censorship, the ACLU, and Arizona Prisons*, Speak Freely (Sept. 30, 2015), <https://tinyurl.com/yayk87dx>; North Carolina has banned the *Encyclopedia of 5,000 Spells* and the *Encyclopedia of Science Fiction*, see North Carolina Dep't of Public Safety, *Master List of Disapproved Publications: 5/16/2014 to 5/16/2015* (on file with counsel for *amici*). Classic myths are targets, too: Arizona has banned *Mythology of Greece and Rome*. See Regnier, *supra*.

2. Prisons have likewise censored books about history and politics. When *amicus* NYC Books Through Bars sent a book about the Holocaust to a prisoner in Tennessee, the prison rejected it because one page had a photo of the nude bodies of people killed by the Nazis. Texas has banned *World War II: An Illustrated History of Crisis and Courage*, by former Senator Bob Dole. Dexheimer, *supra*. And although it later reversed its decision, a federal prison in Colorado stopped a prisoner from receiving Barack Obama's *Dreams from My Father* and *The Audacity of Hope*—on the ground that President Obama's memoirs were “potentially detrimental to national security.” Shapiro, *supra*, at 997.

Prisons have also banned a wide range of nonfiction about arts and culture: high culture, low culture, and culture in between. Texas has banned books of paintings by da Vinci, Picasso, and Michelangelo. Dexheimer, *supra*. North Carolina has banned Warner Bros. *Animation Art* and Inside Beatlemania's *With the Beatles*. See *Master*

List of Disapproved Publications, supra. Gadsden Correctional Facility in Florida prohibited *amicus* Chicago Books to Women in Prison from sending books about origami. And Texas has banned a pop-up version of *A Charlie Brown Christmas*, see Myesha Braden, et al., Opinion, *Banning Literature in Prisons Perpetuates System That Ignores Inmate Humanity*, USA Today (Mar. 9, 2018), <https://tinyurl.com/yb9dour9>—as well as *Where’s Waldo? Santa Spectacular*, because it “contains stickers,” McGaughy, *supra*.

3. Remarkably, censors have invoked prison security to ban a number of religious books. In 2007, the Federal Bureau of Prisons tried to remove from its chapel libraries any book that could “incite violence.” After consulting “[u]nidentified religious experts,” Neela Banerjee, *Prisons To Restore Purged Religious Books*, N.Y. Times (Sept. 26, 2007), <https://tinyurl.com/y9twdyzl>, the Bureau assembled a banned-book list comprising “tens of thousands” of works, including essential Jewish texts by Moses Maimonides and Rabbi Harold Kushner’s *When Bad Things Happen to Good People*, see Shapiro, *supra*, at 1002. Congress had to step in. *Ibid.* Religious books have been banned elsewhere; for example, Texas has banned books about the Wiccan religion because they purportedly contained “codes.” *Banned Books Lists, supra.*

4. Prisons have banned numerous works of education, vocation, and reference. Arizona has banned educational texts ranging from *Sketching Basics*, *E=MC²: Simple Physics*, and *Arizona Wildlife Views*. See *Banned Books Lists, supra.* Ohio prisons have banned books on coding software. See Debbie Holmes, *Why Do Ohio Prisons Ban Books About Learning To Code?*, WOSU (Sept. 5, 2017), <https://tinyurl.com/y97nkc9v>. North Carolina has banned *How To Draw and Paint Birds*. See *Master List of Disapproved Publications, supra.* A prison in New York

banned a book of lunar maps—“maps of the Moon”—claiming that it would “present risks of escape.” Shapiro, *supra*, at 997. Texas banned *The Elements of Persuasion: Use Storytelling to Pitch Better, Sell Faster and Win More Business*, because it “[c]ould be used to persuade others.” Dexheimer, *supra*. Not even man’s best friend has been immune: North Carolina prisons have banned *Dog Encyclopedia* and *Encyclopedia of Dog Breeds*. See *Master List of Disapproved Publications, supra*.

Amici have met these barriers directly. NYC Books Through Bars received a rejection notice after sending a psychology textbook to a prisoner in Connecticut; the prison deemed the academic text “dangerous to the good operation of the facility.” Chicago Books to Women in Prison was unable to send to a prisoner a book about home wiring, even though the prison itself offered a class on wiring. See Letter from Inmate to Chicago Books to Women in Prison (July 7, 2018) (on file with counsel for *amici*). The same goes for cookbooks, see Federal Bureau of Prisons, *Stamps, Negotiable Instrument & Other Returned to Sender* (May 8, 2017) (on file with counsel for *amici*)—including a book entitled *Prison Ramen: Recipes and Stories from Behind Bars*, which the prison’s Literature Review Committee decided “contains subject matter that is inadmissible,” Gadsden Correctional Facility, *Notice of Rejection or Impoundment of Publications* (July 26, 2017) (on file with counsel for *amici*).

Prison censors have also and inexplicably banned dictionaries, which are commonly requested by prisoners and on which they depend when encountering unfamiliar words when reading other books. At one point, North Carolina banned all dictionaries, see *Banned Books Lists, supra*, including English-language dictionaries like *Webster’s All-In-One Dictionary & Thesaurus* and foreign-

language dictionaries such as *German Unabridged Dictionary*, see *Master List of Disapproved Publications*, *supra*.

Some prisoners, including especially vulnerable prisoners, depend on medical-reference books to improve the medical care that they receive in prison; prisoners receive healthcare of uneven quality and have higher rates of many ailments than does the general population, see generally Andrew P. Wilper et al., *The Health and Health Care of US Prisoners: Results of a Nationwide Survey*, 99 Am. J. Pub. Health 666 (2009). Yet medical-reference books have been censored. To take one example, Chicago Books to Women in Prison has been unable to send *The Pill Book* to some prisons. The book informs readers about medicines used to treat illnesses, and discusses the unique needs of senior citizens, women who are pregnant or breastfeeding, children, and other groups.

A Wisconsin prison, meanwhile, forbade a prisoner to order *Physicians' Desk Reference*. Shapiro, *supra*, at 975. The prison offered the rationale “DRUGS,” even though the same book was in the prison library. See *id.* at 990 (citing *Munson v. Gaetz*, 673 F.3d 630, 631, 637 (7th Cir. 2012)). And a prison in Arizona prevented a prisoner from receiving *Gray's Anatomy*, because the prisoner “might request more health care” after learning more about his body, and because certain diagrams of human anatomy were “sexually explicit.” *Id.* at 996–997. The prison also did not let the prisoner remove the offending diagrams, *id.* at 997, so he never received this standard medical text.

4. Banned-books lists, moreover, are often hopelessly inconsistent. Arizona prisons have accepted *Bowhunt America* but excluded *Crossbow Connection*; permitted *How To Draw Graffiti Style* but prohibited *1000 Ideas for Graffiti and Street Art*; and allowed *The Complete Guide*

to *Natural Home Remedies* but not *The Herbal Handbook*. See *Regnier, supra*. One prison banned novels by John Updike, on the ground that they were salacious, but allowed prisoners to read *Maxim* and *Playboy*. Shapiro, *supra*, at 975. Texas has banned *Guns and Ammo* but allowed *Guns Illustrated*. *Banned Books, supra*, at 3. It has also allowed prisoners to read U.S. Army manuals on counter-guerrilla and counter-insurgency tactics, as well as Che Guevara's *Guerrilla Warfare*, which informs readers how to build mortars and Molotov cocktails. *Id.* at 45.

B. The more a book appeals to prisoners, the more likely it is to be censored.

Prison book clubs seek to supply books that will actually resonate with prisoners, so that they will be motivated to start the book, keep reading the book, and pick up another book once they are done. See, *e.g.*, Daniel A. Gross, *The Book that Changed My Life . . . In Prison*, *Guardian* (Jan. 19, 2018), <https://tinyurl.com/y9u8mhkt> (describing how Piper Kerman's *Orange is the New Black: My Year in a Women's Prison* became "a hot item" among prisoners because it revealed that "someone who was in our position got out and wrote a book"); Daniel A. Gross, *The Encyclopedia Reader*, *New Yorker* (Sept. 13, 2016), <https://tinyurl.com/y8bocq46> (prisoner describes becoming interested in reading after he received *The Sicilian*, Mario Puzo's sequel to *The Godfather*). Meaningful books are especially important for prisoners who are young, lightly educated, or new to regular reading.

Yet prisons seem especially likely to censor books that are likely to interest prisoners most. Some prisons may do so out of exaggerated concern for institutional security, and others may wish to deter prisoners from reading books critical of prisons or the criminal-justice system. See, *e.g.*, Letter from A. Washington-Adduci to Chicago Books to Women in Prison (Dec. 5, 2015) (on file with

counsel for *amici*) (“*Warden Letter*”) (federal warden requesting that *amicus* send books to prison, but instructing that books must “NOT contain prison escape, racial issues, references to drugs, crime, gangs, and/or prison conditions”). In justifying the ban on *Prison Legal News*, the court of appeals noted that the publication’s ads appeared “along with articles about inmate phone scams, the role of Green Dot cards in prison gang extortion schemes, and the nationwide problem with smuggling contraband like drugs and cell phones into prisons.” App. 28. And the court of appeals approvingly cited *Prison Legal News v. Livingston*, 683 F.3d 201 (5th Cir. 2012), which upheld a prison’s decision to remove a book “describing racial tensions in the prison context—as opposed to racial tensions more generally.” App. 30.

In other words, because *Prison Legal News* writes about issues affecting prisoners, the court of appeals was more likely to allow it to be censored. This approach hamstringing prison book clubs when they try to send reading materials that prisoners will actually want to read.

For example, criticism of the criminal-justice system is robust and many critics believe that it disproportionately touches people of color. See, e.g., *Mason v. United States*, 170 A.3d 182, 187 (D.C. 2007) (McLeese, J.) (observing that “the belief that the criminal-justice system is systematically unfair to blacks is . . . neither uncommon nor irrational”). Books addressing these issues are of obvious interest to prisoners, but they are also regular targets of censors. One especially prominent critique—*The New Jim Crow* by Michelle Alexander, a lawyer who clerked for this Court—has been banned at various times by various prisons. See Jonah Engel Bromwich, *Why Are American Prisons so Afraid of this Book?*, N.Y. Times (Jan. 18, 2018), <https://tinyurl.com/y83qbodz>. Indeed,

Florida has censored the book on the ground that it has “racial overtones.” *Ibid.*

Meanwhile, prison officials in Florida prohibited *amicus* Free Minds Book Club from sending *The Cook Up*, a bestselling and critically acclaimed memoir about the redemption of a Baltimore resident who escaped the drug trade and became an educator. The book—whose author disavowed crime and promoted rehabilitation—was nonetheless excluded on the ground that it “encourages or instructs in the commission of criminal activity.” Hardee Correctional Institution, *Notice of Rejection or Impoundment of Publications* (Aug. 8, 2017) (on file with counsel for *amici*).

Censorship by prison officials in Texas—which bans over 15,000 titles, Dexheimer, *supra*—has been studied especially thoroughly. And their practices highlight how readily prison officials will censor books that are likely to interest people behind bars.

For instance, a prisoner locked up since he was a teenager was stopped from reading Nicholas Pileggi’s *Wiseguy*, the basis for the acclaimed film *Goodfellas*. Dan Slater, *Texas Prisons Banned My Book About Texas Prisoners*, Slate (Sept. 27, 2016), <https://tinyurl.com/zq2ut2x>. Texas then denied that same prisoner a copy of *Wolf Boys: Two American Teenagers and Mexico’s Most Dangerous Drug Cartel*, because one page of the book described a drug smuggler who bought pickup trucks “from which he removed panels and lights” to hide the drugs. *Ibid.* As its author explains, however, the book “reflects the experiences of thousands of kids living along the border, and scores of young inmates across the Texas prison system.” *Ibid.*

Even more attenuated concerns about institutional security have made it nearly impossible to send prisoners books that describe racism. Texas has banned

Freakonomics, a bestselling nonfiction book applying economic theory to diverse areas of public policy—claiming that a prize-winning University of Chicago economist wrote the book “solely for the purpose of communicating information designed to achieve the breakdown of prisons through offender disruption.” McGaughy, *supra*. The basis for that conclusion? The book quotes the use of a racial epithet in a chapter about the Ku Klux Klan. Dexheimer, *supra*.

For similar reasons, Texas has banned *Coming Through the Fire*, a book about racial reconciliation by a Duke University professor; poetry by Langston Hughes; a book about Jackie Robinson; and the *Narrative of Sojourner Truth*. See *ibid*. It has banned Juan Williams’s biography of Thurgood Marshall, Charles Fager’s history of the 1965 march at Selma, and a book about bringing the Ku Klux Klan to justice. *Banned Books, supra*, at 36. It has banned the prize-winning *Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age*—about the famous trial of an African-American doctor prosecuted for killing someone who attacked his home in Detroit—because the book quotes a racial epithet used by a white man to describe three African-American men that he tried to lynch. Slater, *supra*; *Banned Books, supra*, at 37. And while barring books that document racism, Texas has allowed books that affirmatively and explicitly promote white supremacy, including Hitler’s *Mein Kampf*, David Duke’s *Jewish Supremacism*, and the anti-Semitic classic *Protocols of the Elders of Zion*. See McGaughy, *supra*; *Banned Books, supra*, at 38.

Also kept from Texas prisoners: Books that describe or even refer to sexual abuse or sexual assault, which many prisoners have experienced before or during their incarceration. Texas prisons have barred *Women Behind*

Bars: The Crisis of Women, in which the author interviewed prisoners who were critical of the prison system, because the book explained that one of the inmates had been sexually abused as a child and thus purportedly encouraged “deviant sexual behavior.” Slater, *supra*. Texas also barred *Texas Tough: The Rise and Fall of America’s Prison Empire*, because one paragraph stated that one prisoner had been sexually assaulted by her uncle as a young girl. *Banned Books, supra*, at 3. It has barred Joel Dyer’s *Perpetual Prisoner Machine*, because it quotes a 1968 report by the Philadelphia District Attorney’s Office about the rates of prison rape in Philadelphia jails. *Id.* at 33. And it has barred *Stopping Rape: A Challenge for Men*, written by the founder of Men Can Stop Rape, as well as Sandra Butler’s *Conspiracy of Silence: The Trauma of Incest*—the latter because it reports statistics about incest. *Id.* at 50.

There is more. Texas has banned *Anatomica: The Complete Home Medical Reference* and *A Child is Born*—each for including nudity, Dexheimer, *supra*; National Geographic’s *Visual History of the World*, because it publishes the iconic, Pulitzer-winning photo of a naked girl running away from a napalm attack in Vietnam, *ibid.*; *How the Other Half Lives*, a classic account of poverty in New York slums, because it includes pictures of naked children, *ibid.*; and work prepared for the United States Holocaust Museum, see *Banned Books, supra*, at 47. Texas has even banned *The Sistine Chapel Coloring Book*. Dexheimer, *supra*.

And while it has censored *Shakespeare and Love Sonnets* because of its cover art, *ibid.*, Texas has allowed *100 Great Poems of Love and Lust*, McGaughy, *supra*; a calendar featuring Dallas Cowboys cheerleaders, *ibid.*; and

magazines like *Swimsuit International*, *Swimwear Illustrated*, *Bachelor's Beat*, *Bikini*, and *Bikini Girls*, see *Banned Books*, *supra*, at 49.

C. Book clubs also face arbitrary application of logistical rules and outright bans on mailing books to prisoners.

Beyond the hundreds, thousands, or tens of thousands of titles that they have censored, prisons have routinely installed procedural or logistical obstacles to sending books, and sometimes have prevented book clubs from sending any books at all. Again, the near-unfettered deference conferred by the court of appeals makes these practices more likely to persist.

Prison book clubs are no strangers to arbitrary application of logistical or procedural barriers. Over the summer, a prison refused to deliver a used copy of Strunk & White's *The Elements of Style* because the "[f]irst page has a spider carcass." Books to Prisoners (@B2PSeattle), Twitter (July 24, 2018, 8:26 PM), <https://tinyurl.com/yam6s9qm>. Books to Prisoners also recently had a shipment of books rejected by a Florida prison because of new rules requiring that all shipments be in white envelopes rather than boxes. See Books to Prisoners (@B2PSeattle), Twitter (June 20, 2018, 8:16 AM), <https://tinyurl.com/yczj82p7>. Another prison refused to deliver a book sent by *amicus* Chicago Books to Women in Prison on the ground that it could not "be inspected without damage"—because the book had tape on it. Federal Bureau of Prisons, *Stamps, Negotiable Instrument & Other Returned to Sender* (Dec. 6, 2016) (on file with counsel for *amici*).

Even worse, some prisons have banned book clubs from sending any and all books.

From 2008 until 2010, a detention center in South Carolina refused to accept any books, returning them with the

message that “books not allowed.” Shapiro, *supra*, at 999. A shipment from *amicus* Free Minds Book Club was rejected and returned by Maryland’s Charles County Detention Center, which stated: “Book Clubs are not approved for our inmates @ CCDC.” Notice from Charles County Detention Center to Free Minds Book Club (on file with counsel for *amici*). Free Minds Book Club has also been unable to deliver any books to those in custody in Prince George’s County, Montgomery County, Southwest Virginia Abingdon, Alexandria, and Baltimore.

Then, earlier this year, New York banned delivery to prisoners of all packages, including packages of books. Instead of receiving free books curated by book clubs, prisoners were required to buy books, at significant markup, from just a few prison vendors, who offered just a few hundred books. Daniel A. Gross, *New York Makes it Harder for Inmates To Get Books*, *New Yorker* (Jan. 9, 2018), <https://tinyurl.com/yawnbg9m>. After initially insisting that the book ban promoted “high security” and ensured “efficient operation,” *ibid.*, New York rescinded the policy after ten days, see Vivian Wang, *Cuomo Halts a Controversial Prison Package Policy*, *N.Y. Times* (Jan. 12, 2018), <https://tinyurl.com/y84k2op8>. Maryland recently enacted a similar policy, claiming that it was necessary to stop drug smuggling, but reversed course as well. See Ann E. Marimow, *In a Reversal, Md. Prison Officials Lift Limits on Access to Books for Inmates*, *Wash. Post* (June 11, 2018), <https://tinyurl.com/yaj26ro3>.

Also earlier this year, the federal Bureau of Prisons announced that it would ban direct delivery of books from publishers, book stores, and book clubs. Prisoners would have been forced to buy books from a prison-approved vendor, through a seven-step ordering process that required them to provide the book’s thirteen-digit ISBN number, pay thirty percent more for each book, and order

no more than five paperbacks per mailing. See Ann E. Marimow, *Federal Prisons Abruptly Cancel Policy that Made it Harder, Costlier for Inmates To Get Books*, Wash. Post (May 3, 2018), <https://tinyurl.com/ybkb2ya4>. After beginning to implement the policy in Virginia and California, the Bureau reversed itself amid outcry. *Ibid.*

Then there is the recent and near-total book ban by the Pennsylvania Department of Corrections, which claims that banning package deliveries is necessary to stop drug smuggling. See Samantha Melamed, *One Review of Pa. Prisons' Pricey eBooks: "Books That Are Available for Free, That Nobody Wants Anyway,"* Phil. Inquirer (Sept. 21, 2018), <https://tinyurl.com/y8jzbh99>. But the Department did not identify any examples of smuggled drugs that had come from prison book clubs. See Jodi Lincoln, Opinion, *Incarcerated Pennsylvanians Now Have To Pay \$150 To Read. We Should All Be Outraged.*, Wash. Post (Oct. 11, 2018), <https://tinyurl.com/y9canptf>. On social media, Pennsylvania's Department of Corrections also posted a letter from a prisoner, to his family, asking for books, and claimed that the letter "describ[ed] how to smuggle drugs through a popular book donation program." PA Department of Corrections (@CorrectionsPA), Twitter (Sept. 14, 2018), <https://tinyurl.com/y9d24wuh>. But the posted letter does not mention or allude to drugs—"just books." Prison Book Program (@prisonbookprog), Twitter (Sept. 16, 2018), <https://tinyurl.com/y9mznzfem>.

No matter. Under the new policy, prisoners have access to only 8,500 electronic books, for which prisoners—who earn as little as 19 cents per hour—must buy a \$149 tablet from an approved prison vendor. See Melamed, *supra*. The e-books themselves cost more than they do outside prison, and prisoners must pay even for books that

are otherwise free and in the public domain. *Ibid.* Standard and legal dictionaries are unavailable, and religious books are scarce. *Ibid.*

These policies reveal that while prison officials are quick to invoke institutional order and security, those invocations are often exaggerated. In deferring to similarly exaggerated claims, the court of appeals would make it far easier for prison officials to censor books—and in some cases, all books.

II. Prison censorship of reading material impedes prisoner education, to the detriment of both prisoners and society at large.

Improper censorship, bad in itself, also harms prisoners by hindering their education and rehabilitation.

A. It is difficult to overstate how important it is for prisoners to read, and thus to have access to books and other materials that they actually want to read. Compared to the overall population, prisoners are far less educated and far more illiterate. See Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1611 n.161 (2003). Almost a third of American prisoners have “extremely limited reading abilities.” Gross, *The Book that Changed My Life*, *supra*. On the other hand, prisoners who read adult-level books encounter more new words than do those who only watch television, and reading improves memory, ability to learn new skills, and resistance to aging-related effects on the brain. See *Banned Books*, *supra*, at 5.

Reading books relevant to their own experiences can also boost prisoners’ self-esteem and motivate them to become productive members of society. See, e.g., Free Minds Book Club & Writing Workshop, *The Untold Story of the Real Me: Young Voices from Prison* 116 (2015) (Free Minds Book Club alumnus explains that after reading about American racial history, “now I understand and I know I’m not inferior”). One prisoner in Arizona started

writing poetry after receiving an anthology called *The Romantic Poets*; since then, he has published dozens of books of poetry. Gross, *The Book that Changed My Life, supra*. Prisoner John J. Lennon, who is also now a published author, got started by joining a creative writing workshop at Attica; after reading periodicals sent by his mother and the book *Just Mercy* by criminal lawyer Bryan Stevenson, “[r]eading so much solid writing has helped build my own skills. I began publishing articles. I became a journalist.” John J. Lennon, Opinion, *For Prisoners Like Me, Books Are a Lifeline. Don’t Cut It*, *Guardian* (Feb. 4, 2018), <https://tinyurl.com/yb84whuh>.² Anthony Pleasant, an alumnus of *amicus* Free Minds Book Club’s prison book club program, was jailed at age 16 and could not read and write; while locked up he joined the book club and learned how to read, ultimately reading hundreds of books during his ten years in prison. Now he writes poetry for the Free Minds literary journal, is a supervisor at a furniture assembly company, and plans to start his own business.

As prison officials themselves have recognized, “reading improves literacy and enables inmates to further their education which directly helps to reduce recidivism.” *Warden Letter, supra*. Reading also helps prisoners to mitigate the boredom and stress that they experience every day while incarcerated. Books can even build rapport between prisoners and prison staff. See Gross, *The Book that Changed My Life, supra* (describing how one

² Arbitrary obstacles, however, nearly prevented Lennon from reading the book that inspired him. Attica would not allow him to receive whole books, and instead limited him to “five printed pages to arrive in each regular mail envelope.” *Ibid*. Lennon’s friend had to photocopy “300-plus pages, stuffing them into more than 30 envelopes and sending them [his] way.” *Ibid*.

prisoner recommended *A Confederacy of Dunces* to several prison guards).

B. Arbitrary book censorship, however, deters book clubs from delivering books to prisoners. Books are often rejected, sometimes by mailroom staff, and sent back without explanation. See Bromwich, *supra*. Books are also regularly added or removed from banned-books lists, sometimes even daily, and prisons do not always share these lists with book clubs, who are left flying blind. Because they are usually small and often staffed entirely by volunteers, and because it is costly to send books that do not reach prisoners, book clubs inevitably self-censor. And when prison book clubs are chilled, prisoners forgo books that might interest them and spark a lifelong habit of reading.

The loss of access to reading materials is especially harmful since most prisoners have few other outlets to read or learn. In 1994, prisoners lost access to Pell grants to pay for higher education. See 20 U.S.C. 1070a(b)(6); see also Nick Anderson, *Advocates Push To Renew Pell Grants for Prisoners, Citing Benefits of Higher Education*, Wash. Post (Dec. 3, 2013), <https://tinyurl.com/ybsxg7n6>. Since then, the U.S. prison population has doubled. See The Sentencing Project, *Fact Sheet: Trends in U.S. Corrections* 1 (June 2018), <https://tinyurl.com/y7c932wz>. Needless to say, “[c]ollege in the can is scarce.” John J. Lennon, Opinion, *From Attica Prisoners to Harvard Law Students: A Message from Behind the Wall*, Harv. L. Rec. (Oct. 18, 2016), <https://tinyurl.com/ydcp4msj>.

Those in custody also lack access to technology that most American students take for granted. Prisoners do not carry iPhones or laptops and usually cannot use the Internet. See, e.g., Gross, *New York Makes it Harder for Inmates To Get Books*, *supra* (son of prisoner at

Shawangunk Correctional Facility in New York notes, “My dad hasn’t seen a smartphone—he doesn’t have access to anything, beyond books.”).

Nor do most prison libraries reliably fill these gaps. They often stock few books and cannot meet demand. See *ibid.* (“When you go to the general library, you’re basically competing for books with a thousand other people.”). Other policies deter prisoners from using the library. Overdue fines are one thing, but one Pennsylvania prisoner was confined to his cell for forty-five days after he returned a book late; after that, he understandably stopped checking out books. See Melamed, *supra*.

For prisoners like him, and for prisoners across the country, access to a wide and diverse array of books from book clubs is irreplaceable. And in allowing prisons, on the thinnest of justifications, to censor reading material of interest to prisoners, the court of appeals has put these programs in jeopardy.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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