



May 16, 2019

Director Charles Ryan
Arizona Department of Corrections
1601 West Jefferson Street
Phoenix, AZ 85007

RE: Arizona Department of Corrections' Unconstitutional Ban on *Chokehold: Policing Black Men*

Dear Director Ryan:

It has come to our attention that the Arizona Department of Corrections (“ADC”) has banned Paul Butler’s acclaimed book *Chokehold: Policing Black Men* (“*Chokehold*”). This decision is fundamentally flawed and we urge ADC to reinstate access to *Chokehold* as required by the First Amendment.¹

The ban on *Chokehold* violates the First Amendment and does nothing to protect the “safe and secure operation” of correctional facilities.² Under certain circumstances, it is permissible to prevent incarcerated people from reading materials of their choosing. However, it is unconstitutional to censor a book that educates prisoners on how legal, penal, and other institutions have shaped their own lives and poses no threat to the safety and security of the facility.

In addressing prisoners’ First Amendment rights, the U.S. Supreme Court has clarified that “[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution, nor do they bar free citizens from exercising their own constitutional rights by reaching out to those on the ‘inside.’”³ Further, “the First Amendment protects the flow of information to prisoners,” including the right of publishers, friends, and other third parties to reach prisoner audiences.⁴ Because *Chokehold* addresses the criminal justice system and related social and political issues of public concern, it “occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection.”⁵

The banning of a particular book—compared, for example, to a ban on hardcovers—represents content-based censorship. Such censorship is lawful only upon a showing that the

¹ This letter is written on behalf of the ACLU and does **not** constitute an appeal under Department Order 914.06 § 6.13 on behalf of the author, publisher, or any other person.

² A.R.S. § 31-231(C)

³ *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989) (quoting *Turner v. Safley*, 482 U.S. 78, 84 (1987)).

⁴ *Crofton v. Roe*, 170 F.3d 957, 959 (9th Cir. 1999) (categorical ban on gift orders of books and other publications violated the First Amendment).

⁵ *Connick v. Myers*, 461 U.S. 138, 145 (1983) (internal quotation marks omitted).

prohibition is “reasonably related to legitimate penological interests”⁶ and that the censored material “in fact implicated legitimate security concerns.”⁷ “A regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational,”⁸ or is an “exaggerated response” to prison concerns in light of available alternatives.⁹

Chokehold explores how racial disparities plague the U.S. criminal justice system and how to address those deep inequalities and injustices. Paul Butler, a former federal prosecutor, draws on the chokehold as a metaphor to dissect how various structures exert power over Black men in particular. Building on longstanding prison reform advocacy,¹⁰ Butler expresses skepticism of the role prison can play in achieving a safe and just society. The book also recounts tactics used during historic social movements, explicitly disavowing “violence against police officers, or any other persons” as “unjustified, on moral grounds and because it would hurt the movement.”¹¹ Nothing in the book threatens to disrupt the facility’s ability to maintain security and order.¹² ADC’s position regarding *Chokehold* unsoundly asserts that educating incarcerated individuals on the penal system and their legal rights threatens the security of prison operations.

The very people who experience extreme racial disparity in incarceration cannot be prohibited from reading a book whose purpose is to examine and educate about that disparity. Improving understanding of policing, incarceration, and racial bias is especially critical given Arizona’s stark racial disparities in and overall high rates of incarceration.¹³ To prohibit prisoners from reading a book about race and the criminal legal system is not only misguided and harmful, but also violates the right to free speech under the First Amendment of the U.S. Constitution and the analogous right under Article 2, Section 6 of the Arizona Constitution.

Indeed, ADC’s policy prohibiting written and visual depictions of sex was recently held to be facially unconstitutional under the First Amendment because it was “not rationally related to its stated goals of rehabilitation, reduction of sexual harassment, and prison security.”¹⁴ It was particularly relevant that the censored material described facts essential to understanding allegations of sexual harassment and assault which occurred *in prison*.¹⁵ In the same way, *Chokehold* details provocative and important educational, political, and historical information related to prisoners’ very situation of incarceration.

In light of the foregoing, ADC cannot show that banning *Chokehold* is reasonably related to legitimate penological interests and should immediately correct its decision and restore access to Paul Butler’s important book.

⁶ *Thornburgh*, 490 U.S. at 409; *Turner*, 482 U.S. at 89.

⁷ *Hargis v. Foster*, 312 F.3d 404, 410 (9th Cir. 2002).

⁸ *Turner*, 482 U.S. at 89-90.

⁹ *Id.* at 89-91; *Thornburgh*, 490 U.S. at 414-419

¹⁰ Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. Rev. 1156 (2015)

¹¹ Paul Butler, *Chokehold: Policing Black Men* 247 (2017)

¹² See Dep’t Order 914.07 § 7.2.20; see also A.R.S. § 31-231

¹³ ACLU Arizona Smart Justice, <https://smartjusticeaz.org/about/>

¹⁴ *Prison Legal News v. Ryan*, No. CV-15-02245-PHX-ROS, 2019 WL 1099882, at *10 (D. Ariz. Mar. 8, 2019)

¹⁵ *Id.* at *13.

The ACLU requests that ADC provide written confirmation of the following:

- 1) That an uncensored copy of *Chokehold* is provided to the intended recipient and the book's exclusion is rescinded;
- 2) That *Chokehold* will be immediately removed from any lists of banned publications;
- 3) That ADC has advised administrators at each ADC facility that *Chokehold* should not be censored or otherwise rejected in practice, whether based on a preselected banned publications list or on an *ad hoc* basis; and
- 4) That ADC has or will imminently review each facility's policy and practice with respect to banned publications to ensure continued respect for the First Amendment rights of incarcerated persons and those in the outside world who wish to communicate with them.

Given the clarity of the law and particular relevance of Paul Butler's book to incarcerated individuals, we are hopeful that this matter can be quickly resolved. We ask that you advise us of ADC's position so we can determine whether any additional action is necessary. Please feel free to contact Emerson Sykes at esykes@aclu.org if you wish to discuss this matter further.

Sincerely,



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