

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM THE ADMINISTRATIVE LAW COURT

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Ralph K. Anderson, III, Administrative Law Judge

SC Court of Appeals

Case no. 26-ALJ-04-0035-AP

Appellate Case No. 2026-001052

GREGORY PENCILLE

Appellant

V.

South Carolina Department of Corrections

Respondent

FINAL BRIEF OF APPELLANT

Gregory Pencille #312332
Evans CI F1B-118
610 Hwy 9 west
Bennettsville SC 29512
Appellant, Pro se

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STATEMENT OF ISSUE(S) ON APPEAL

- I. Whether ALC had jurisdiction to hear full briefs on policy change's application that infringed on Religious freedom rights constituting a "State-created liberty interest" being substantially burdened?
- II. Whether ALJ abused discretion for failing to recuse himself due to conflict of interest for being judge over Appellant's previous religious freedom rights and discrimination case?
- III. Whether enforcement of SCDC's unendorsed promulgation in SCDC policy PS-10.08 "Inmate Correspondence" section 9 "publications" (R. p. 28), regarding access to books by " approved vendors only " list, and applying PS-10.08.9 to SCDC policy PS-10.05 "Inmate Religion " sections 10 (R. p.30-31), 21 handbook "Wicca" # 3.4, 3.5, 6 (R. p. 33-34") restricts non-Christian Faith publications and materials not accessible through listed "approved vendors", creates a state-created liberty interest, discriminates against non-Christian Faith groups where non-Christian inmates are denied the ability to order by purchase or receive donations from outside donors religious publications and/or religious materials as allowed to Christian inmates, and whether subjected to this policy addendum places a substantial burden on the "Wiccan faith" inmate's free exercise rights guaranteed under the 1st and 14th amendments U.S.C.A, the RULIPA (42 U.S.C.A. § 2000 cc-1), and S. C. Code ann. §24-27-500, §1-32-40, and is cruel and unusual punishment violating the 8th amendment U.S.C.A, in light of SCDC's recognition and allowance of "Wiccan Faith" inmates to practice and have religious materials pursuant to SCDC policy PS-10.05 "Inmate Religion"?

STATEMENT OF THE CASE

Inmate Pencille has sincerely practiced his religious beliefs and faith "Wicca" an officially recognized religion in South Carolina and the South Carolina Department of Corrections and has acted as coordinator for approximately (16) sixteen years, (10) ten at Lee correctional and (6) six at Evans correctional institution. And can be verified by SCDC records as well as Pencille's 2023 Court of Appeals Opinion Pencille v. South Carolina Department of Corrections, No. 2023-UP-321, 2023 WL 6292550 (Nov. 1, 2023).

On September 15th, 2025 an unofficial notice (**R. p. 23**) was posted in the dorms by Evans CI property control officer, that as of October 1st, 2025 SCDC policy PS 10.08 “Inmate correspondence “ section 9 will change, replacing the “publisher only” Rule with an “approved vendor only list” rule allowing only (6) six SCDC chosen companies from which inmates may order books. This policy further grants the property control officer the immediate right to dispose of any books she deems unauthorized. On October 1st, 2025 the policy was changed on record. On October 2nd, 2025 Pencille electronically (kiosk reference # 25-04118638) (**R. p.21**) requested to have donated (by an outside religious donor) to the chapel religious texts. On 10/06/25, chaplain responded, “Ordering material is limited to approved vendor list”. Pencille filed a step (1) one grievance (**R. p. 4**) on 10/13/25, arguing that requested religious materials should be allowed to be donated by outside donors and/or inmates be able to order “religious material” from companies not biased by SCDC or by Christian religious affiliations in order to properly practice his faith, a state-created Liberty interest by state law South Carolina religious freedom restoration Act (SCRfRA) SC Code §1-32-10 et seq. and SCDC policy PS 10.05 (R. p. 36). And this new policy creates a substantial burden on, and is excessively burdensome and onerous hardship when erroneously applied to ordering of religious materials. The step (1) one grievance (**R.p.4**) was signed by the grievance coordinator on 11/18/25 and a signed response was completed on 11/21/25, received by Pencille on 11/24/25. Pencille followed on 11/26/25 by filing a step (2) two grievance (**R. p.6**), arguing that the step (1) one’s response did not at all address issues raised by Pencille. On 01/05/26 the step (2) two grievance was responded to and Pencille received on 01/13/26, again repeating the response given in the step (1) one grievance, still failing to respond to the issues at hand. Pencille filed notice to appeal (**R. p.7**) on 01/30/26 to the ALC. On 02/19/26 appeal was assigned to ALJ Ralph K. Anderson III and notice was received by Pencille on 02/24/26. SCDC filed a Motion to dismiss (**R. p.8**) on 03/18/26, received by Pencille on 03/25/26. Pencille timely filed a Reply to Respondant’s motion to dismiss (**R. p.12**) on 03/30/26. The ALJ issued an Order of Dismissal (**R. p.2**) on 04/02/26 and received by Pencille on 04/07/26. Pencille filed a Reply to Order of Dismissal (**R. p.16**) on 04/10/26. Notice of appeal (**R. p.17**) to this Court was filed on 04/20/26 and now this initial brief follows;

RELEVANT FACTS

According to SCDC, the policy change followed an investigation into a drug-laced book scheme that led to three arrests (one former corrections officer and one former inmate, yet no bookstore employees or current inmates) and involved the distribution of 666 sheets of K2-soaked paper and 241 suboxone strips from packages mailed from the Woodruff Post Office to 14 prisons across South Carolina, reaching at least 20 inmates. Yet these were intercepted by

some means of successful security procedure. A spokesperson emphasized, “The new policy allows inmates to receive books from reputable booksellers, and no one to be injured or killed by the contents... It provides a level of safety that was not there before.” *Does this mean all but the six vendors SCDC chose are not reputable? What level of security does this provide that wasn’t already there?*

Multiple sources confirm that prison staff—not visitors or inmates—are the main conduit for contraband. A 2021 investigation by The Texas Tribune and The Marshall Project found that despite banning in-person visits and restricting mail, drug seizures remained high, with staff identified by both prisoners and officers as the dominant source. However, staff smuggling is underreported due to fear of retaliation and lack of oversight.

In Georgia, 49 current and former correction officers were accused of accepting bribes to smuggle drugs and phones. In Kentucky, 14 staff were caught smuggling drugs like suboxone and meth between 2022 and 2023. These findings undermine prison policies that restrict books and mail from external sources under the guise of drug interdiction, while failing to address the primary source: corrupt or compromised staff.

JURISDICTION

South Carolina Code of Laws Section 1-23-380 grants a party aggrieved by a final decision in a contested case the right to judicial review by the South Carolina Court of Appeals, provided all administrative remedies have been exhausted. The statute establishes that the appeal is generally directed to the Court of Appeals. The Court of Appeals applies a standard of review where it may reverse or modify a decision only if it is affected by an error of law, is unsupported by substantial evidence, or is arbitrary or capricious.

Where the court cannot substitute its judgment for the agency’s on questions of fact it can reverse if findings that are **clearly erroneous** or if **substantial rights are prejudiced**.

The South Carolina Administrative Law Court (ALC) has subject matter jurisdiction over inmate grievances that **sufficiently implicate** a state-created liberty interest, including those involving religious rights and policy changes, provided the appeal is properly filed. This jurisdiction is established by the South Carolina Supreme Court’s rulings in **Al-Shabazz v. State, 338 S.C. 354 (2000)**, and **Slezak v. South Carolina Department of Corrections, 361 S.C. 327 (2004)**, which clarified that the ALC hears all inmate appeals where a liberty or property interest is implicated, rather than limiting jurisdiction solely to sentence credit calculations or major disciplinary hearings as previously suggested in McNeil. The ALC has appellate jurisdiction over any matter where the procedural prerequisites for perfecting an appeal have been met, per **Great Games, Inc. v. South Carolina Dep’t of Rev., 339 S.C. 79 (2000)**.

The statutory basis for this appellate jurisdiction is found in S.C. Code Ann. § 1-23-600(D), which grants administrative law judges the authority to preside over appeals from final decisions of contested cases, subject to specific exceptions. While the statute explicitly excludes appeals involving the loss of sentence-related credits or parole denial, it does not exclude grievances regarding religious rights or policy changes that affect an inmate's state-created liberty interest. Consequently, if an inmate's grievance alleges that a policy change infringes upon a protected religious liberty interest, the ALC has the authority to hear the case, though it may summarily dismiss the appeal if the record shows no such interest is implicated, as noted in Furtick v. South Carolina Department of Corrections, 374 S.C. 334 (2007). The ALC is not required to hold a hearing in every matter; it may summarily decide appeals that do not implicate a protected interest, but it retains jurisdiction to determine whether such an interest exists.

ARGUMENT

I. Whether ALC had jurisdiction to hear full briefs on policy change's application that infringed on Religious freedom rights constituting a "State-created liberty interest" being substantially burdened?

The ALC has jurisdiction over inmate grievances implicating a state-created liberty interest, including those under the South Carolina Religious Freedom Restoration Act (SCRFA), S.C. Code Ann. § 1-32-10 et seq. To grant summary judgment, the judge must find no genuine issue of material fact. An allegation that a prison policy substantially burdens a sincerely held religious belief—such as a grooming policy preventing dreadlocks or a **ban on religious materials**—is inherently a factual dispute. Cases like Smith v. Akeem Muhammad 578 F.3d 246 (4th Cir. 2009) require a specific, evidentiary justification from the state. By granting summary judgment without a factual record demonstrating the policy is the "least restrictive means" of furthering a "compelling interest," the judge improperly decided a contested issue of fact, violating S.C. Code Ann. § 1-23-380(5), which prohibits a court from substituting its judgment for the agency on factual matters. Freedom Bapt. Church of Del. V. Tp. Of Middletown, 204 F. Supp. 2d 857 (E.D. Pa. 2002) citing the validity of RULIPA in the cases of agency policies that over burden the practice of religion. An inmate claiming protected interest must have a legitimate claim of entitlement to it. Allen v SC dep't of Corrections., 439 SC 164, 170-71, 886 SE 2d 671, 674 (2023). Protected liberty interest can rise from two main sources: (1) the Constitution can create a liberty interest when a condition or restraint is so egregious as to implicate the due process clause itself, or (2) *state law or Department policy can establish a protectable liberty interest*. Bazzetta v McGinnis, 430 F.3d 795, 801 (6th Cir. 2005); Allen v. South Carolina Department of Corrections, 434 S.C. 114, at 118-119, 862 S.E.2d 268, at 270-271 (Ct. App. 2021). South Carolina courts, however, have emphasized that the

focus on the administrative law Court shall fall on the second category - State created Liberty or property rights. A Protected Interest still exists even when Agency's counsel intentionally omits it from their **Motion To Dismiss;** (R. p.8)

see motion, page 1, Statement of the case, line 3-5, "appellant filed a step one grievance alleging a policy concerning approved book vendors violated the first amendment."

Appellant clearly asserts more issues as shown by grievance steps (1) one (R. p. 4) and (2) two (R. p.6). Including Constitutional protections, State and Federal laws and Statutes and SCDC policy as stated herein. The SCDC intended to minimize their violations and cheapen Appellants' original grievance issues by not addressing them in grievance responses and incompetently stating them in respondents motions to dismiss. Therefore, respondents have not effectively complied with the basic principle of responding to assertions of fact, whereas the **South Carolina rules of civil procedure (SCRCP)** are applicable to administrative law court procedures pursuant to **South Carolina administrative law Court rule 68**, and **SCRCP 8(b)** clearly requires a party to "... state in short and plain terms the facts constituting his defenses to each cause of action asserted and shall admit or deny the averments upon which the adverse party relies,". Since respondents did not even comply with the aforementioned basic principle, the ALC Judge Anderson should not have preemptively granted Respondent's motion to dismiss.

If a respondent's motion to dismiss intentionally omits the appellant's legitimate claims in an attempt to mislead the court, depriving the opposing party of a fair opportunity to be heard, this conduct may constitute fraud on the court or misrepresentation by an adverse party under **Rule 60(b)(3), SCRCP**. The court may relieve a party from a judgment or order based on such misconduct. Additionally, the court has inherent authority to impose sanctions for bad-faith litigation tactics, including misleading filings. Intentional omission of claims in a motion to dismiss may constitute extrinsic fraud if it:

- Prevents the court from considering valid claims,
- Misleads the judge into believing claims were not properly asserted,
- And results in the unjust dismissal of those claims.

Under **Rule 60(b)(3), SCRCP**, a party may seek relief from a judgment based on fraud, misrepresentation, or misconduct by an adverse party. If the court finds such misconduct, it may set aside the judgment or order. Respondent's motion to dismiss clearly omits all claims Appellant raised, except a general 1st Amendment claim and Judge Anderson's premature granting of Respondent's motion proves omission was deliberate, not accidental. And that Proof of conduct prevented the opposing party from fully and fairly presenting their case.

The omitted claims generally remain viable unless explicitly dismissed by the court, and the appellant may seek correction through a motion to amend, a motion to reconsider, or an appeal.

II. Whether ALJ abused discretion for failing to recuse himself due to conflict of interest for being judge over Appellant's previous religious freedom rights and discrimination case?

ALC Judge Anderson arguably decided not to allow Pencille the fair opportunity to be heard in review of SCDC'S supposed final decision, as Judge Anderson likewise did in Pencille v. South Carolina Department of Corrections, No. 2023-UP-321, 2023 WL 6292550 (Nov. 1, 2023). The judge's prior involvement in a similar case with the same parties creates an appearance of partiality, mandating recusal. The principle fundamental is due process protected by the 14th Amendment. A judge who has previously ruled on the same legal and factual issues for the same plaintiff and defendant cannot be presumed impartial. This prior involvement constitutes a conflict that undermines the integrity of the proceeding and the appearance of justice, requiring the judge to recuse under general principles of fairness and administrative law. The failure to do so is an error of law that vitiates the final order. The South Carolina Administrative Law Court judges are governed by the Code of Judicial Conduct, specifically Canon 3, which mandates disqualification when a judge's impartiality might reasonably be questioned. Judge Anderson should have recused himself.

III. Whether enforcement of SCDC's unendorsed promulgation in SCDC policy PS-10.08 "Inmate Correspondence" section 9 "publications" (R. p. 28), regarding access to books by " approved vendors only " list, and applying PS-10.08.9 to SCDC policy PS-10.05 "Inmate Religion " sections 10 (R. p.30-31), 21 handbook "Wicca" # 3.4, 3.5, 6 (R. p.33-34) restricts non-Christian Faith publications and materials not accessible through listed "approved vendors", creates a state-created liberty interest, discriminates against non-Christian Faith groups where non-Christian inmates are denied the ability to order by purchase or receive donations from outside donors religious publications and/or religious materials as allowed to Christian inmates, and whether subjected to this policy addendum places a substantial burden on the "Wiccan faith" inmate's free exercise rights guaranteed under the 1st and 14th amendments U.S.C.A, the RULIPA (42 U.S.C.A. § 2000 cc-1), and S. C. Code ann. §24-27-500, §1-32-40, and is cruel and unusual punishment violating the 8th amendment U.S.C.A, in light of SCDC's recognition and allowance of "Wiccan Faith" inmates to practice and have religious materials pursuant to SCDC policy PS-10.05 "Inmate Religion"?

The creation of an "approved vendors only" list is not the least restrictive and does not add any additional levels of safety that are not already in place. Further, Pencille's grievance

issues were never addressed in both the step (1) one (R. p.4) and step (2) two (R. p.6) grievance responses. The agency simply stated inmate was informed of the policy change and an exception would be made for verified educational correspondence courses, in which cases the appropriate department will review and verify required materials as needed and no other exceptions will be made. Inmate Pencille specifically requested agency explanation for religious materials and about religious donor's ability to send materials. The agency's deliberate indifference and abuse of authority is paramount in this and previously argued issues and is in a sense a form of retaliation as Pencille has grieved both the religious discrimination and lack of allowance to use religious oils, Pencille v. South Carolina Department of Corrections, No. 2023-UP-321, 2023 WL 6292550 (Nov. 1, 2023), and a grievance of the agency's prohibition of hardcover books in April 2023, Gregory Pencille v SCDC Case no. 2022-000871 (2023-UP-208, 2023 WL 3614300). Inmate Pencille believes that applying this new policy PS 10.08.9 "Inmate correspondence", *publications* to policy PS 10.05.10 "Inmate religion" violates RLUIPA, SC Code §24-27-500, SC Code §1-32-40, Free Exercise Clause of the 1st Amendment, Equal protection Clause of the 14th Amendment, and the 8th Amendment protection against cruel and unusual punishment.

RLUIPA (42 U.S.C.A. § 2000 cc-1); *that any government policy substantially burdening religious exercise must serve a compelling governmental interest and be the least restrictive means to achieve that interest. If prison officials ban religious books without demonstrating a legitimate penological reason (e.g., safety or security), the policy may violate these laws.* Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971), held that the Establishment Clause requires that the "principle or primary effect [of governmental action] must be one that neither advances nor inhibits religion."

The change to policy PS 10.08.9 (R. p.32) when *misapplied* to PS 10.05.10 (R. p.35-36), and specific sections of .21 "Religious handbook" (R. p.37-38) further violates SC Code Ann. § 24-27-500, *as applied to the Religious Freedom Act regarding prison regulations in South Carolina; A state or local correctional facility's regulation is considered to be "in furtherance of a compelling state interest" if the facility demonstrates that the religious activity sought by a prisoner is either:*

1. Presumptively dangerous to the health or safety of that prisoner, or
2. Poses a direct threat to the health, safety, or security of other prisoners, correctional staff, or the public. And,
3. A regulation may not be considered the "least restrictive means" of furthering a compelling state interest if a reasonable accommodation can be made to protect the safety or security of prisoners, correctional staff, or the public.

And, SC Code Ann. § 1-32-40. Restriction on state's ability to burden exercise of religion. The State may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the State demonstrates that application of the burden to the person is:

1. In furtherance of a compelling state interest; and
2. The least restrictive means of furthering that compelling state interest.

Wicca and other non-Christian based faiths which have been recognized as official religions in this state, do **not** pose any of the above threats to health, safety, or security... and are **not** the least restrictive.

Not being allowed to order religious texts or materials from religious organizations that cater to these non-Christian religions such as **Llewellyn** (the largest Wiccan book publishing company), **Azuregreen**, and/or **13 Moons** or directly from that religion's organization or Faith's supplier discriminates against and creates substantial burdens on one's ability to practice and worship his/her faith properly. The American Library Association (ALA) asserts that incarcerated individuals have a right to access materials from outside sources. In summary, while DOCs may limit suppliers to approved vendors, such policies must comply with constitutional protections and must not suppress ideas or restrict access to information without a legitimate, evidence-based justification. Prisoners cannot be limited to only Department of Corrections (DOC)-chosen religious publication suppliers if such a restriction imposes a substantial burden on their religious exercise without a compelling justification. This book policy change serves no actual change other than to limit access to books in general and block religious freedoms. Inmates as well as legitimate book suppliers cannot be held responsible and thusly punished for the actions of some rogue outside individuals breaking laws, and by SCDC's acknowledgment caught those attempting to smuggle illegal drugs, which proves that the agency's policies and procedures are successful and this new unlawful policy is not the **least restrictive means**. **Burwell v. hobby lobby stores, inc 573 us 682, 134 S.ct 2751 (2014)** if a less restrictive means is available for the government to achieve its goals, the government must use it.

Also to note, that selecting certain book sellers over others creates unfair business practices and creates favoritism between a government agency and private companies. Federally funded programs such as SCDC, favoritism of certain book supplies over others may constitute nepotism or cronyism, which are often unlawful and violate federal regulations. Government favoritism toward certain businesses can raise significant legal and ethical concerns, particularly when it involves conflicts of interest, discrimination, or violations of public policy. Favoritism based on protected characteristics (e.g., race, gender, **religion**) can constitute illegal discrimination, even if not explicitly stated. If a pattern emerges where certain individuals are consistently favored (in this case Christian biased book suppliers over non-Christian faiths), Favoritism results in discrimination, corruption, or market distortion and is legally and ethically problematic. Antitrust and unfair competition laws apply to both private firms and government actions when they distort market competition. For instance, subsidies, regulations, or protections that disproportionately benefit specific businesses may be anti-competitive if they create unfair advantages. Due consideration was not given when creating this policy addendum and Pencille

believes the intent was *never* to apply it to the religious policy (SCDC PS 10.05) although, the SCDC *must* be ordered to properly interpret their own policies and procedures.

1st Amendment of The United States Constitution *Protects the right* of individuals to *practice their religion freely*, so long as the practice does not violate a compelling governmental interest or public morals. It prohibits the government from interfering with religious beliefs and, within limits, religious practices. This includes the right to hold religious beliefs, pray, attend religious services, wear religious clothing, and engage in religious rituals. Jenkins v Sinclair 2018 WL 4608312 (W.D. Wa 2018) certain religious materials, equipment, and feasts to accommodate religious practices upheld in Schlemm v Wall, 784 f3d. 362 (2015) materials Central to their practice. The clause also protects the right not to believe in any religion or to refrain from religious activities. Zorach v. Clauson, 343 U.S. 306, 314, 72 S. Ct. 679, 96 L. Ed. 954 (1952) holding that government may not “prefe[r] those who believe in no religion over those who do believe”. The bar to unequal treatment, the fundamental point of Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971). A compelling governmental interest in the context of restricting prison books refers to a highly significant State objective that would justify restricting constitutional rights. Nance v. Miser, 700 fed appx 629 (2017) prison officials must show reasons and demonstrate a substantial burden. In this, Courts typically apply the Turner test to these objectives of “*reasonable standard*” rather than “*strict scrutiny*”. Thornburgh v. Abbott 109 S.ct. 1874, 490 US 401(1989) established that prisons cannot bar access to all books and must examine publications for inappropriate content rather than issuing blanket bans, and prison regulations affecting the sending of publications to prisoners must be analyzed under the “reasonableness” standard. meaning the state must show only a legitimate penological interest not a compelling one provided the restriction is reasonably related to that interest Turner v safely, 482 us 78 (1987). Although, under the RLUIPA, **Religious Land use and Institutionalized Persons Act of 2000**, that protects religious groups including those practiced by prisoners so that governments cannot impose land use regulations that impose a “substantial burden” on religious exercise unless they demonstrate a “compelling governmental interest” and use the “least restrictive means” Doctrine like in, Cutter v. Wilkinson, 544U.S. 709 (2005) and Holt v. Hobbs, 574 U.S. 352 (2015), this policy fails both forms of these tests, especially when applied to **PS 10.05.10**. When religious materials are involved the Courts apply “*strict scrutiny*” when justifying restricting constitutional rights. If **not** these restrictions would violate the **8th Amendment**, being cruel and unusual punishment to restrict one's ability to practice his religious beliefs. Sutton v. Rasheed 323 F3d236 (2003), access to religious texts, other materials and worship is protected under **RLUIPA** and the **1st Amendment** unless justified under compelling interest and is least restrictive. Lighthouse institute for evangelism v. City of Long Branch 510 f3d 253 (2007) challenging RLUIPA land use regulations under terms does not need to show a substantial burden.

In Herbert Daniel Demeter v. Robert Landon, 799 F.2d 929(4th cir. 1986) the court affirmed that the Church of Wicca is a religion protected by the first amendment. The Court ruled

that prison officials must accommodate religious practice unless they pose a legitimate security threat. In this case they do not. The denial of religious texts, particularly when justified by vague or non-security-based reasons (eg. “not from original source”), fails this test. Prison policies that impose a substantial burden on an inmate’s religious exercise must be justified by a compelling governmental interest and must use the least restrictive means to achieve that interest. Denying access to sacred texts- such as the Wiccan bible-like books or other fundamental writings is likely to constitute a substantial burden especially when other faiths recognize similar accommodations. SCDC prisons currently provide similar texts for Christian beliefs such as donated Bibles, The Daily Bread, The Word Among Us, Beside the still waters, etc., all from sources not on the approved vendor list yet ban other faiths to donate as Pencille requested, this directly violates the 14th Amendment of the Constitution as similar accommodations are not made to *any* other faith group or religious activities held at Evans CI.

Courts have ruled that blanket bans on outside religious materials—such as prohibiting inmates from receiving books directly from family or approved vendors—violate the First Amendment and RLUIPA if they are not justified by security or safety concerns. As shown in the above **RELEVANT FACTS**, SCDC has been successful in their prevention of smuggling and a harsher book policy does not increase prevention and therefore cannot be ruled a “least restrictive means”. If an inmate who challenges prison regulations as a violation of constitutional rights can point to alternative regulations that would fully accommodate prisoners rights at a de minimis cost to valid penological interests, then the court may consider this as evidence that the regulation is not reasonably related to penological interest. Wolff v. McDonnell 418 us 539 (1974) there must be mutual accommodations between institutional needs and objectives and the provisions of the Constitution that are of general applications rights of sentenced inmates are measured by the standard of the 8th Amendment cruel and unusual punishment, the United States ex Rel Wolfish of the US 428 f. Supp 333 (1977), Kleindienst v. Mandel, 408 us 753 (1972), “The restriction as it is therefore allows softbound books or magazines to be received from any source and hardcover books to be received from publishers, book clubs, and book stores per Present Federal statutes and regulations.” Any further restrictions imposed by SCDC and/ or Evans would therefore be too restrictive thereby violating inmates first Amendment rights, due process and would be considered a cruel and unusual punishment by the 8th amendment. SCDC must rescind this prohibition as it violates these rights.

Bell v Wolfish 441 us 520, 547, (1979) the bureau of prisons “*publisher only*” Rule which applies to all bureau facilities permits inmates to receive books and magazine from outside the institution only if the materials were mailed directly from the publisher or book club 573 f2d, at 129- 130. Bureau of prisons later amended its “*publisher only*” Rule to permit the receipt of books and magazines from bookstores as well as publishers and book clubs 43 Fed Reg. 30576 (1978) codified in 28 CFR § 540.71, “In the Bell case a warden at a pre detaining facility stated serious security and administrative problems caused when inmates receive bound items from unidentified sources outside the facility and prison officials would have to remove the covers of

hard books the Court ruled however there is a relatively little risk that material received directly from a publisher, bookstore or book club would contain contraband the court of appeals second circuit rejected these security Administrative justifications and affirmed the district court rules severely and impermissibly restricts the reading materials available to inmates and therefore violates their first amendment and due process rights 573 f2d, 130 where the bureau regards hard cover books as a more dangerous source of risk to institutional security *unless* they are mailed directly from the publishers book clubs or bookstores.” **Thornburgh v. Abbott 109 S.ct. 1874, 490 US 401(1989)**, is a U.S. Supreme Court case that addressed the constitutionality of federal prison regulations restricting incoming publications to prisoners. The case involved a challenge by inmates and publishers against Federal Bureau of Prisons regulations that allowed wardens to reject incoming publications if they were *detrimental to institutional security* or *might facilitate criminal activity*. The regulations include requirements for **written notice of rejection** and an appeal process through the Bureau’s Administrative Remedy Procedure. SCDC regulations include similar **written notice of rejection** yet it is seldom given.

The Indiana District Court settled in 2024 a case allowing detainees to order from ***publishers*** as well as ***Amazon, Unshackled hearts v. Howard ctv. Sheriff, USDC (S.D.Ind), case no. 1:23-cv-01079. Prison Legal News v. DeWitt, 2:10-cv-02594, (D.S.C.2011) South Carolina, Berkeley county sheriff’s Office***, arguing that the policy violated the First Amendment and (RLUIPA) because it imposed a substantial burden on religious exercise without being narrowly tailored to a compelling government interest. The resulting ***consent injunction*** (January 2012) mandated that detainees **must** have access to religious materials of their respective faiths like the Bible, Quran, and equivalent materials for other faiths including ***Wiccan texts. The argument explicitly allows for religious books, pamphlets, and other expressive materials*** unless a formal determination shows they threaten security or safety. ***Drug smuggling*** is not a direct threat based on a faith. Rejection of sacred books without a receipt or clear justification [especially when the church is IRS recognized] creates constitutional violations of due process and religious freedom. In this case, As stated above the reason for denying religious texts and materials due to contraband smuggling of synthetic drugs does not intend to limit or overreach into other policies or clearly protected rights to order by purchase of religious publications and/or religious materials. In fact, the policy change was only to limit personal inmate “***books***” as cited below and not to infringe on other policy approvals or protected rights. If it actually was intent to be this over-reaching then SCDC Administrative Officials would have amended the “inmate religious” policy (***PS 10.05.10.3-4***)(R. p.32, Ln 6-19) and by applying (***PS 10.08.9***) (R. p.28, Ln 15) to policy (***PS 10.05.10***)(R. p.31-32) violates religious protections. **Blue Ribbon taxi co. V. SCDMV 380 SC 600, 670 SE2d 674(2008)**, “in pari materia” relating to the same matter. Inconsistencies In one statute may be resolved by looking at another statute on the same subject.

The Equal Protection Clause of the 14th Amendment states: “Nor shall any State... deny to any person within its jurisdiction the equal protection of the laws.” This clause ensures

that all individuals are treated equally under the law and prohibits states from discriminating against people in a way that is not justified by a legitimate government interest. It mandates that laws must treat similarly situated individuals in the same manner. The government must show a compelling interest and that the law is narrowly tailored to achieve it. Mintz v. Catholic Church of Springfield 424 f supp. 2d 309((2006) substantial or unequal burdens are violations of equal rights.

As seen below in the original and new policy PS 10.08.9 (R. p.25, Ln 26 & R. p.28, Ln 16) shows the change of the word “*publication*” to the word “*books*” gives a more specific meaning to the application and further the policy PS 10.05.10 3-4 (R. p.32, Ln 6-19) not being changed at the time of the other policy change shows the department’s staff is illegally and over-broadly applying to interfere with inmates religious rights. Blue Ribbon taxi co. V. SCDMV 380 SC 600, 670 SE2d 674(2008), Which also gives consideration to the literal meaning doctrine as in, Hodges v. Rainey, 533 S.E.2d 578, 341 S.C. 79 (S.C. 2000) “The rules of statutory interpretation are not needed and the court has no right to impose another meaning.” And, if terms are clear and unambiguous, there is no room for interpretation, and the law must be applied literally. Hinton v. SC Dept. of Probation, Parole and Pardon Services 357 SC 327, 592 SE2d 335 (2004);Murphy v. SC dept. Of Health and Environmental Control, 396 SC 633, 723 SE2d 191, 195 (2012), holding regulations are interpreted using the rules of statutory construction.

Original policy; (Current as of November 05th, 2021) (R. p.24)

9. PUBLICATIONS:

9.1 Inmates may receive single copies of publications from a publisher or publications supplier, to include bookstores, if paid for in advance by the inmate, a family member, or friend. Publications must be sent directly to the inmate from a publisher or publication supplier (to include bookstores). A legitimate invoice or receipt on business stationary / letterhead must be enclosed with this publication(s)...

Policy change; (As of October 1st, 2025) (R. p.27) *underlined words in both above and below sections of policy 9.1 also denote changes.

9. PUBLICATIONS:

9.1 inmates may receive single copies of “books”, if paid for in advance by the inmate, a family member, or friend, that are sent directly to the inmate from one of the approved vendors listed below:

Hamilton books

Books N things Warehouse

Ebooks2inmates books to inmates.com (changes in PURPLE amended by change 3, dated October 16th, 2025) sure shot books publishing, LLC Barnes & Noble (online only)

Books a million (online only)

From a publisher or publication supplier, to include bookstores, if paid for in advance by the inmate, a family member, or friend. Publications books must be sent directly to the inmate from a publisher or publication supplier, (to include bookstores) the above listed approved vendors only. Book sent to inmates from other sources or other vendors will be rejected and sent to contraband for disposal... Books from Barnes & Noble and Books-A-Million that are purchased in-store, even if they are sent directly to the inmate, will be rejected and will be sent to contraband for disposal. A legitimate invoice or receipt on business stationary / letterhead must be enclosed with publication(s) received from one of the approve vendors...

This policy change comes after an April 3rd, 2023 ban on hardcover books ordered to inmates, Which was signed by, at-the-time director, Bryan P. Stirling.

Further, the department's administrative staff is using this correspondence policy addendum to supersede (P.S. 10.05 Inmate Religion) policy (R. p.30), Complicating and/or banning the ordering of religious texts and religious items by inmates *see kiosk request # 25-04215479 (R. p.22), requested items were ordered and mailed following policy and procedures yet Pencille was denied from having them] P.S. 10.05.10 reads in part as follows;

10.3 Inmates in general population may receive, and retain single copies of religious writings for their personal use. These can include scripture books, study materials, tracts, and dictionaries related to their faith...

10.4 inmates will be allowed to have a religious necklace appropriate to their faith (medallions, crucifixes, etc.) inmates are also allowed to have prayer beads appropriate to their faith (rosaries, chanting beads, etc.). Such items may only be worn by inmates during religious services. At other times, these items will be kept in the inmates room or carried in the pocket while moving to and from a religious service. These items cannot be made of precious metals or be inset with precious stones, and their size and construction cannot be a risk to the safety of others. The Warden may prohibit possession by an inmate of any item s/he deems may pose a security or safety threat to the facility, staff, or others.

Above section 10.4 relating to religious items is included due to the fact that administrative staff is additionally prohibiting / banning ordering of all religious items to

include but not limited to the above listed items using the correspondence policy [P.S. 10.08.9.1] listed above. This policy PS 10.05 remains unchanged.

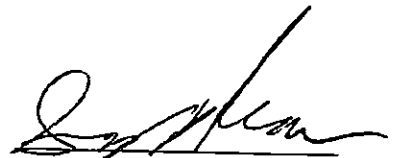
CONCLUSION

This new change creates an abuse of authority and a "substantial burden" on the process of ordering books especially when applied to religious books and religious materials. It creates specific ordering complications, creates favored companies or monopolies on who gets to profit off inmates or their families/friends paying for books they wish to order. This violates equal protection and free exercise rights. The South Carolina Department of Corrections merely copies other states policies and misapplies them cleverly bordering on corrupt while seeming incompetent yet actually deviously crossing into criminal outcomes. The department carelessly and without forethought deprives inmates of basic constitutional rights while erroneously applying safety and security excuses as reasons of these depravities. Prison book bans based on drug smuggling concerns are often applied inconsistently and disproportionately in many States, undermining constitutional protections for religious expression and free speech.

Appellant prays this Court grants Appellant's Request for Relief, declare that the ALC has jurisdiction in this case, find ALC Judge Anderson abused his discretion in not recusing himself, and declare SCDC's policy change as violating protected Religious rights and injunct the SCDC to properly interpret their policies as written, so as to stop violating protected Religious Freedoms of inmates in Pencille's position.

Appellant certifies and affirms that all enclosed is true and correct to the best of his knowledge and abilities under penalty of perjury."

October 19, 2026



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Appellant, Pro se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM THE ADMINISTRATIVE LAW COURT

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OCT 26 2026

Ralph K. Anderson, III, Administrative Law Judge SC Court of Appeals

Case no. 26-ALJ-04-0035-AP
Appellate Case No. 2026-001052

GREGORY PENCILLE

Appellant

V.

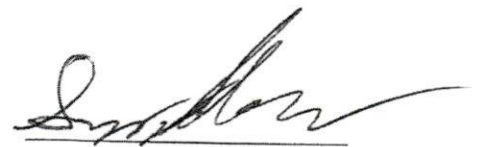
South Carolina Department of Corrections

Respondent

CERTIFICATE OF COUNSEL

The undersigned certified that this final brief complies with rule 211(b), SCACR

October 19, 2026



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