

1998 WL 246487

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United States District Court, N.D. Illinois.

Issac GREEN, Plaintiff,
and
George PETER, Jr., Intervenor–Plaintiff
v.
Howard A. PETERS III, Joseph Cannon, Eugene
Buldak, Mary Jurich, and Warren W. Wols,
Defendants.

No. 71 C 1403. | April 27, 1998.

Opinion

MEMORANDUM OPINION AND ORDER

KOCORAS, J.

*1 Intervenor–Plaintiff has filed a motion, pursuant to Fed.R.Civ.P. 59(e), to reconsider and alter or amend part of this Court’s December 5, 1997 Opinion and Order in this case. For the following reasons, this motion is granted-in-part and denied-in-part.

DISCUSSION

This case has a long procedural history, many of the details of which are not important on the present motion. Thus, only a brief summary of the events leading up to this motion is necessary.

Plaintiff Issac Green, then an inmate at an Illinois correctional institution, originally brought this case against various state prison officials (“Defendants”) alleging that he had been denied access to various publications in violation of his First Amendment rights. Intervenor–Plaintiff George Peter, Jr. (“Intervenor–Plaintiff”) later joined in asserting these prisoner rights. Throughout the litigation, several decrees (“the Decrees”) have been issued enjoining Defendants from restricting the prisoners’ access to certain types of published materials. These Decrees remain in effect to this day.

On May 14, 1997, Defendants filed a motion, pursuant to 18 U.S.C. § 3626(b)(2), to immediately terminate the Decrees granted to the plaintiffs in this case. Section 3626(b)(2) provides the following:

Immediate termination of prospective relief.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

18 U.S.C. 3626(b)(2). Defendants thus sought to terminate the Decrees, asserting that they did not meet the strict requirements for prospective relief imposed under the statute. Intervenor–Plaintiff responded to this motion by (primarily) attacking the constitutionality of the statute on several grounds.

In an opinion dated December 5, 1997, this Court upheld the constitutionality of the statute and found that the Decrees did not comply with the requirements of section 3626(b)(2)—specifically, that they were not “narrowly drawn”, did not “extend[] no further than necessary to correct the violation of the Federal right”, and were not “the least intrusive means to correct the violation of the Federal right”. However, contemplating that Intervenor–Plaintiff might choose to appeal this ruling to the Seventh Circuit, the Court chose to stay the effect of this ruling—which would immediately terminate the Decrees—pending appeal of the constitutionality issues. Intervenor–Plaintiff has legitimately chosen to presently decline our invitation to appeal, instead opting to file the instant motion.

In his Rule 59(e) motion, Intervenor–Plaintiff asks the Court to reconsider our ruling with respect to whether some relief should be preserved as allowed under section 3626(b)(3) of the statute. Section 3626(b)(3) provides that:

*2 Limitation.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is

narrowly drawn and the least intrusive means to correct the violation.

18 U.S.C. § 3626(b)(3). Intervener–Plaintiff has proffered evidence that, he claims, establishes that the constitutional rights of Illinois prisoners are still being infringed upon. For example, Intervener–Plaintiff has supplied the Court with evidence that inmates have been denied their right to receive law books and legal publications, seemingly a violation of the prisoners’ First Amendment rights. *See Williams v. Lane*, 851 F.2d 867, 878–79 (7th Cir.1988).

The Court agrees with Intervener–Plaintiff that, based on the evidence he has provided, it would seem that a current and ongoing violation of the prisoners’ First Amendment rights can be demonstrated. In their response to the present motion, however, Defendants did not address the substance of whether their actions continue to violate the prisoners’ constitutional rights, instead attacking the motion merely on procedural grounds. Though Intervener–Plaintiff asserts that the present factual record is sufficiently developed for the Court to issue a revised injunction in this case, the Court is unprepared to enter such an injunction at this time. Defendants have neither admitted nor denied whether their actions are currently in violation of the First Amendment in any way. In addition, assuming that such current and ongoing violations can be shown, Defendants have remained silent as to what they believe the proper scope of any future injunctive relief should be. At bottom, the Court simply believes that we should hear both sides of the story before imposing any modified injunctive relief in this case.

In order to more fully develop a factual record as to whether there are “continuing and ongoing” violations of Illinois prisoners’ First Amendment rights, the Court will refer the case to the assigned Magistrate Judge for a hearing on this issue. After a more detailed record has been developed, and both parties have presented their positions as to what prospective relief remains necessary, the Magistrate Judge shall make the written findings required by Section 3626(b)(3) of the statute. Once this factual legwork has been completed, the Court will then rule upon the question of whether any prospective relief remains appropriate in this case.

Thus, the Court will grant Intervener–Plaintiff’s motion to reconsider only insofar as it seeks an evidentiary hearing on the necessity for continuing relief. The Court will continue to stay the effect of our prior decision until the Magistrate Judge has developed a record and the Court has had a chance to enter an order on these findings.

CONCLUSION

***3** For the foregoing reasons, Intervener–Plaintiff’s motion to reconsider is granted -in-part and denied-in-part. The matter is referred to the assigned Magistrate Judge for proceedings in accordance with this Opinion. The effect of the Court’s December 5, 1997 Opinion and Order is stayed pending resolution of the remaining issues.