

1992 WL 309566

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United States District Court, N.D. Illinois, Eastern
Division.

Isaac GREEN, Plaintiff,
and
George Peter, Jr., Intervenor–Plaintiff,
v.

Howard A. PETERS, III, individually and in his
capacity as Director of the Illinois Department of
Corrections; Joseph Cannon, individually and in
his capacity as the Warden and Chief
Administrative Officer of the Illinois State
Penitentiary, Joliet Branch; Eugene Buldak; Mary
Jurich; Warren W. Wols, Defendants.

No. 71 C 1403. | Oct. 22, 1992.

Opinion

MEMORANDUM OPINION

KOCORAS, District Judge:

*1 This Court today must answer a single question: Is an Illinois Department of Corrections rule that restricts inmates from receiving catalogs other than catalogs for books or periodicals in violation of the 1976 *Green* injunction? For the following reasons, this Court concludes that the *Green* injunction prohibits the Department of Corrections from restricting inmates' receipt of catalogs.¹

FACTUAL AND PROCEDURAL BACKGROUND

This proceeding traces its origin to a 1973 dispute between plaintiff/inmate Green and the defendants, various state prison officials. In that dispute the parties filed cross motions for summary judgment, both of which were denied. In light of the denials, the parties adopted a consent decree that prohibited the prison officials from restricting inmates' access to certain non-legal publications. In 1975, after a full trial, the defendants were held in contempt of court for violating the 1973 consent decree. As a result, Judge McGarr issued a permanent injunction ("the *Green* injunction") on January 9, 1976. *Green v. Sielaff et al.*, No. 71 C 1403 (N.D.Ill.). This injunction covered a broader range of written materials than the 1973 consent decree. Specifically, it

provided the following:

The defendants are further permanently enjoined from enforcing any other rule or regulation which prohibits or restricts the sources from which inmates of Illinois Correctional institutions may receive otherwise admissible publications. The Defendants, their successors, agents, servants, and employees henceforth shall allow and permit inmates to order, solicit, receive as gifts, or otherwise obtain publications from friends, relatives, attorneys, organizations or associations, libraries, book stores, department stores, magazine distributors, publishers, wholesale or retail establishments, or from any other source of publications or written materials.

In 1987, the defendant prison officials adopted the No Catalogs Rule. 20 Ill.Adm.Code 525.140(k). The No Catalogs Rule prohibits inmates from receiving "catalogs, except for books or periodicals."² *Id.* In an effort to obey this rule, prison mailroom employees have refused to allow an inmate to receive a college-course catalog designed for Illinois inmates.³ Moreover, prison employees have refused to open envelopes that are marked with the word "catalog."

DISCUSSION

The plaintiffs in this proceeding, inmates George Peter, Jr. and Steven Jorgensen, contend that the No Catalogs Rule violates Judge McGarr's *Green* injunction. They argue that the clear and unambiguous language of the injunction prohibits prison officials from restricting *any* admissible catalogs received by inmates. For the following reasons, this Court agrees with the plaintiffs that the language of the injunction prohibits such a restriction on otherwise admissible catalogs.⁴

DISCUSSION

After reviewing the relevant language of the *Green* injunction using standards of common sense and plain-face meaning, this Court concludes that Judge

Green v. Peters, Not Reported in F.Supp. (1992)

McGarr did intend to include catalogs within the *Green* injunction's reach. The language of the injunction speaks for itself. The first sentence of the prohibition disallows any "rule or regulation which prohibits or restricts *the sources* " from which inmates may receive "otherwise admissible *publications*." (emphasis added). The plain meaning of these words suggests that the prison officials may not promulgate a rule that restricts any source of a publication. Restricting vendors from providing inmates with catalogs seems to this Court to be restricting a significant source of many publications that circulate in our society today. In addition, in the second sentence, the injunction elaborates upon what types of sources of publications it protects.⁵ Among these sources, the injunction includes department stores and wholesale or retail establishments. These sources are commonly known to publish very little written materials for consumers other than catalogs for their merchandise. Although department stores and wholesale and retail establishments often carry books and periodicals, the number of these items is far exceeded by the number of other goods carried. If Judge McGarr had meant to confine the *Green* injunction to only catalogs for books and periodicals, he would not have included department stores or wholesale and retail establishments in his list of potential sources of publications. Thus, in light of the plain meaning of its language, we conclude that the *Green* injunction requires that prison officials cease to enforce their restriction on inmates' receipt of catalogs.

*2 The defendant prison officials, however, argue that the meaning of the *Green* injunction is not plain at all. They argue that by using the word "publications" in the first sentence of the prohibition, Judge McGarr intended an inherently restrictive meaning that did not include commercial catalogs. According to the defendant officials, Judge McGarr intended the injunction to capture in its linguistic net only "books and other written materials with greater intellectual content than simple commercial catalogs." For several reasons, this Court refuses to accept defendants' strained interpretation of the word "publications," an interpretation that places altogether too much significance on altogether too little evidence.

First, the wording of the injunction persuades us that "publications" was intended to cover a broad range of materials extending in subject matter to the outer border of admissible materials. Besides listing a widely divergent group of potential sources of materials, Judge McGarr pairs up the word "publications" with the term "written materials" in the second sentence of the prohibition. He says that prison officials shall not restrict "any other source of publications or written materials." Assuming *arguendo* that defendants are correct in defining "publications" to mean intellectual materials, this Court still would deem commercial catalogs to be covered by the injunction because such catalogs certainly can be

classified as "any other source of ... written materials." This Court further finds that Judge McGarr's combination of the terms "publications" and "written materials" illustrates that his emphasis was not on the content of the materials but on their form. In combining these terms, he intended to include all formal and informal writings originating from any source.

A second reason this Court cannot accept defendants' interpretation of "publications" is that it does not comport with the common sense understanding of the term. A "publication" is defined as any issue of any printed material offered for sale or distribution. Communication of information to the public is "publication." See, e.g. *Webster's New World Dictionary*, Third College Edition, 1988, Simon & Schuster; *The American Heritage Dictionary of the English Language*, Third Ed., 1992, Houghton Mifflin Co.; *The American Heritage Dictionary of the English Language*, Second College Ed., 1981, Houghton Mifflin Co.. Catalogs are printed materials offered for distribution; catalogs communicate information to the public. It follows that catalogs are publications. Moreover, other prison officials utilize the term "publications" to include more than merely "intellectual" materials. The Federal Bureau of Prisons ("the Bureau") issues regulations similar to the one at issue in this proceeding. The Bureau's regulations define the term "publication" to include catalogs.⁶

Finally, this Court does not think that Judge McGarr's "publications" incorporates an intellectual component because that incorporation would entail too many difficulties for the prison employees whose responsibility it is to enforce the injunction. Catalogs vary. They sometimes advertise materials of an intellectual nature that are not in book or periodical form. For example, catalogs may display for sale audiotapes that narrate books or that describe historical events. Catalogs may also advertise many types of goods in one volume, some of which are intellectually-oriented and some of which are not. For example, one may order a book on page 250 of a catalog and may order a backscratcher on page 48 of the same. This Court does not believe that Judge McGarr intended to make mailroom employees the final arbiters of what constitutes "intellectual" materials, nor did he seek to impose upon them the weighty task of analyzing each catalog to determine its intellectual contents. If employees were asked to do so, it is likely that the analysis would be as simple as reading the word "catalog" on the front of the package and quickly rejecting it. Indeed, according to plaintiffs, this has already occurred. We therefore do not think that the *Green* injunction requires materials received by inmates to contain intellectual meaning in order to be protected.

CONCLUSION

conclude that the defendant prison officials' restriction on inmates' receipt of catalogs violates the injunction.

*3 This Court rejects defendants' narrow interpretation of the term "publication" and instead relies on the plain and unambiguous meaning of the language within the *Green* injunction. Based on a literal reading of those terms, we

Footnotes

- 1 This Court's September 9, 1992 stay on the defendants' motion to clarify or modify the *Green* injunction is hereby lifted. The parties may proceed with discovery and further briefing on the defendants' motion as shall be scheduled by this Court.
- 2 20 Ill.Adm.Code 525.140(k) provides in relevant part: "Committed persons in the Adult and Juvenile Divisions shall not be permitted to receive catalogs, except catalogs for books or periodicals."
- 3 Although a memorandum recently was circulated to all Illinois prison wardens urging them to allow inmates to receive college catalogs, no express rule to that effect has been adopted by the state prison officials.
- 4 This Court is careful to note that the *Green* injunction only addresses "otherwise admissible" publications and written materials. Under Department of Corrections' regulations promulgated as a result of a court order in this litigation, publications are not "otherwise admissible" if they are either obscene or present a clear and present danger to safety and security within the institution.
- 5 The second sentence reads as follows:
The Defendants, their successors, agents, servants, and employees henceforth shall allow and permit inmates to order, solicit, receive as gifts, or otherwise obtain publications from friends, relatives, attorneys, organizations or associations, libraries, book stores, department stores, magazine distributors, publishers, wholesale or retail establishments, or from any other source of publications or written materials.
- 6 The section of the Code of Federal Regulations dealing with prison mail rules provides the following:
The term publication, as used in this rule means a book ... or a single issue of a magazine or a newspaper, plus such other materials addressed to a specific inmate as advertising brochures, flyers, and *catalogues*. (emphasis added).