COURT OF APPEALS
DECISION
DATED AND FILED

June 8, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-1886

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

KEVIN KIRSCH, JERRY SAENZ, WILLIAM LEDFORD, WILLIAM MEDINA, MARK THIEME, DENNIS LEE MARSH, VANCES SMITH, CHARLES D. YODER, DELBERT MANKE, DEVIN HOLMES, AND JEFF DENNY,

PLAINTIFFS-RESPONDENTS,

V.

WISCONSIN DEPARTMENT OF CORRECTIONS, MICHAEL SULLIVAN, KEN SONDALLE, GARY R. MCCAUGHTRY, AND CAPTAIN SCHALLER,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Dane County: MORIA KRUEGER, Judge. *Reversed and cause remanded with directions.*

Before Dykman, P.J., Eich and Vergeront, JJ.

¶1 VERGERONT, J. The Wisconsin Department of Corrections (DOC) and several DOC officials[1] appeal a judgment holding that DOC's policy concerning the possession of books in the adjustment center at Waupun Correctional Institution (WCI) violates the rights of the named plaintiffs[2] under the First Amendment to the United States Constitution. The trial court entered a permanent injunction directing that each of the plaintiffs, when held in the adjustment center or the health and segregation center at WCI,[3] may possess in his cell a total of four books of his own choosing, one of which may be a hardback, from either the inmate's personal property or the adjustment center supply of paperback books. The court also awarded each plaintiff the stipulated sum of $250 in money damages.

¶2 DOC contends its policy, whereby an inmate in the adjustment center may possess three state-issued paperbacks and, in addition, a "Bible, Koran or equivalent religious book," is reasonably related to legitimate penological interests and therefore does not violate the First Amendment.[4] We conclude the

[1] The individual appellants are Michael Sullivan, Ken Sondalle, Gary McCaughtry and Captain Schaller.

[2] The individual named plaintiffs are Kevin Kirsch, Jerry Saenz, William Ledford, William Medina, Mark Thieme, Dennis Lee Marsh, Vances Smith, Charles D. Yoder, Delbert Manke, Devin Holmes and Jeff Denny. They were all inmates at WCI when the action was filed.

[3] During the proceedings in the trial court, the adjustment center was closed and a new segregation building, called the health and segregation center, was opened. The same rules apply in the latter as applied in the former. We will refer to the adjustment center in our decision, since most of the documents in the record do so.

[4] The Adjustment Center Handbook provides:

(continued)

requirement that the three paperbacks be from the adjustment center supply rather than from the inmate's personal property is reasonably related to legitimate penological interests, and the plaintiffs have not shown that the restriction on the content of the fourth book has violated their right to the free exercise of their respective religions. We therefore reverse.

BACKGROUND

¶3 WCI is a maximum security institution housing approximately 1,175 inmates. Each of the named plaintiffs has at one time been housed in the adjustment center (AC) at WCI for violating disciplinary rules while in the general population or for disruptive behavior while housed in the AC. The AC houses inmates who are serving an adjustment segregation or program segregation disposition, who have been found to be dangerous, or who have been placed in temporary lock-up pending an investigation of a disciplinary rule violation.

BOOKS

A maximum of 3 paperback books is allowed (State-issue ONLY). A supply of paperback books will be available upon request. With the exception of one religious book, books are NOT ALLOWED IN Adjustment, Control or Observation status…

PROPERTY

The following is a list of property allowed in the Adjustment Center according to each assigned status:…

PERSONAL PROPERTY

a. One (1) pair prescription eye glasses
b. Writing material:
   Two (2) pens
   Two (2) pencils
   Stamps
   Envelopes
   Paper
c. Denture or partial plate
d. Legal material (8,000 Cubic Inches)
e. First Class Mail – Limit 15 personal letters
f. One (1) Bible, Koran or equivalent religious book
g. Address book

Generally, the AC houses sixty-five inmates at all times. Inmates who are serving an adjustment segregation disposition or a program segregation disposition are typically in the AC for less than thirty days because of a "step program" based on good behavior; but the length of time originally imposed in adjustment segregation or program segregation may also be lengthened for violation of disciplinary rules in the AC. Two of the named plaintiffs—Kevin Kirsch and Vances Smith—have been in the AC much longer than the typical thirty days: Kirsch from 12/5/93 to 11/23/94 and Smith from 12/9/93 to 7/14/94.

¶4 When an inmate is sent to the AC, all of his personal property is sent to the mail/property room. Property officers search the inmate's personal property for the items allowed in the AC, pull the allowable personal property out and send it to the AC and store the remaining unallowed property in the mail/property room. Inmates housed in the AC may exchange the three paperbacks they are allowed from the AC supply for other paperbacks from that supply, but they may not have religious materials such as interpretative or study books (other than the Bible, Koran or equivalent religious book authorized from their personal property), unless one of the books from the AC supply is religious. The AC supply of paperback books are obtained by the WCI librarian at used book sales. Every two months the librarian puts together a collection of 100 to 150 paperbacks, which are distributed by the AC staff. These paperbacks are generally fiction, although when religious books are available at the sales, the librarian does purchase them.

¶5 In addition to the AC paperback collection, there is a full and complete starter library legal collection in the AC for the inmates housed there, and inmates may request up to five legal books at any one time from the WCI library, which they are given after the evening meal and must place on their cell bars for pick-up by six o'clock the following morning (or by six o'clock Monday morning if given the book

Friday evening). Inmates in the AC may not borrow books from the chapel library or the general library, except for legal materials.

¶6 AC inmates who do not own a Bible, Koran or equivalent religious book may obtain one of these by requesting one in writing from the chaplain. The Bible, Koran or equivalent religious book may be a hardback book.

¶7 Only first class mail is allowed in the AC. Second class mail (newspapers and magazines), third, fourth and bulk rate mail are withheld from distribution to the inmate while in the AC and are delivered when the inmate is transferred to another unit.

¶8 The affidavits of Peter Huibrogste, WCI security director; Gary McCaughtry, the warden of WCI; and Larry Fuchs, supervisor of the AC, present the following justifications for the limitations on the property allowed in the AC. The purpose is to limit the need for staff to search and access an inmate's stored property and property in the AC cell, limit the amount of combustibles (specifically paper) and reduce the occasion for contraband (which can include weapons and matches) into the secured segregation sections, while taking into account the need to accommodate the requirement for legal materials in the AC. Personal property including books is a primary place where contraband is concealed. The rules regarding inmate property in the AC cells and in the general population were both revised in 1992 to address these concerns, and the amount of allowable property was decreased at that time.

¶9 Inmates in the AC are there because they have committed major offenses, thus presenting a security risk to the institution, and, since the inmates who remain in the AC for longer than thirty days do so because they continue to violate prison rules while in segregation, they present an even greater risk; the

need to limit their access to combustibles and contraband is increased. Despite the staff members' best efforts to search AC inmates and their property, inmates have in the past been able to obtain fire-producing materials and have managed to start fires and otherwise create disturbances. In the six months preceding the signing of his affidavit, Fuchs was aware of three fires started by inmates in the AC because inmates had concealed a match in the binding of one of the books allowed in the AC. A strict limit on the number of times an inmate's stored personal property is introduced into the AC is essential to the security of the institutions: it prevents concealing of contraband and makes searching property for contraband easier. Receipt of property from other areas of the institution, beyond the allowable personal property, is prohibited due to the opportunity to bring in and conceal contraband. The reason books may not be borrowed from the general library or the chapel library is to prevent both the passing of contraband and the destruction of books, since books allowed in the AC are often destroyed by AC inmates.

¶10 The complaint alleged that WCI policies of not delivering books, magazines, political publications, religious literature and photographs to AC inmates, and not allowing AC inmates to possess religious literature from their personal property violated the plaintiffs' First Amendment rights of free speech, association, petition and free exercise of religion.[5] On cross-motions for summary judgment, the circuit court applied the factors established in ***Turner v. Safley***, 482

[5] The complaint also alleged the practice of not providing a notice of non-delivery when books, magazines, political publications and religious literature arrived in the mail but were not delivered violated the plaintiff's First Amendment right to petition, but the circuit court ruled against them on the cross-motions for summary judgment, and the plaintiffs have not cross-appealed that ruling. In addition, the complaint asserted claims under state law, which were dismissed without prejudice by the trial court, and claims under the Religious Freedom Restoration Act, which plaintiffs did not pursue after the United States Supreme Court held that act unconstitutional in ***City of Boerne v. P.F. Flores***, 521 U.S. 507 (1997).

U.S. 78 (1987), to determine whether these policies had a logical connection to legitimate penological interests, in which case the interference with an inmate's First Amendment rights is permissible. The court concluded the limitations on the type and total amount of property allowed in the AC were content-neutral and logically advanced the goals of institutional safety and security—namely, protecting against risk of fire and clogged plumbing and risk to security from blocked windows. The court decided the plaintiffs had alternative means of exercising their First Amendment rights based on their access to first class mail and the four books they are allowed, and they had not advanced any ready alternatives to these general property limitation policies that would address the institutional concerns of safety and security.

¶11 However, although the court decided that WCI could constitutionally limit AC inmates to four books, it concluded that the requirement that three of these could not be from the inmate's personal property, and the only one that could be had to be a Bible, Koran or equivalent religious book, was not rationally related to the institutional concern of protecting against contraband. The court stated there were no submissions suggesting that the small increased cost in searching the books when the inmate enters the AC, which is already done with the religious book and the other allowed property items, would greatly impact the allocation of prison resources.

¶12 Based on its decision, the court entered an order declaring that the alternative of allowing each AC inmate to possess four books, whether personal or from the AC supply, meets security concerns and is not administratively onerous. Plaintiffs moved for a permanent injunction to implement the declaratory relief. After both parties had the opportunity to comment on the details of injunctive

relief, the court entered findings of fact, conclusions of law and an order for permanent injunctive relief as follows:

> Each of the named plaintiffs held in the Adjustment Center or the Health and Segregation Center at the Waupun Correctional Institution may possess in his cell a total of four books of his own choosing. These books may come from either the inmate's personal property or from the supply of prison issued paperback books. Of the four books, one may be a hardback. If the inmate chooses to have books from his personal property, he must choose those books at the time he is placed in segregation. WCI officials need not exchange the inmate's personal books for other personal books from his property while the inmate is in segregation. However, the inmate may send his personal books to his property storage and receive an equivalent number of prison issued paperback books from the segregation book cart. The books from the inmate's personal property need not be religious in nature; they may be either religious or secular.

DISCUSSION

¶13 Since the plaintiffs have not appealed that portion of the summary judgment granted against them, we are concerned on appeal only with that portion of the summary judgment decided against DOC, and the related injunctive relief. More specifically, since plaintiffs have not appealed the court's ruling that the limitation to four books is valid, the issues are: (1) Does the requirement that three of the four allowed books must be paperbacks provided from the prison's AC supply violate the plaintiffs' First Amendment rights to free speech or the free exercise of religion? (2) Does the requirement that the fourth book—the only one that may be from an inmate's personal property—must be a Bible, Koran or an equivalent religious book as defined by WCI violate the plaintiffs' right to free exercise of religion?

¶14 When we review a summary judgment we apply the same methodology as the trial court, and we consider the issues de novo. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). The remedy is appropriate in cases where there is no genuine dispute of material fact and only one reasonable inference from the undisputed facts, and one party is entitled to judgment as a matter of law. *See* ***Grams v. Boss***, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980). Whether the undisputed facts show a constitutional violation is a question of law, which we review de novo. *See* ***State v. Adams***, 221 Wis. 2d 1, 6, 584 N.W.2d 695 (Ct. App. 1998).

¶15 As the trial court correctly held, inmates in state prisons enjoy freedom of speech and free exercise of religion under the First and Fourteenth Amendments, but these rights are subject to restrictions and limitations. *See* ***Bell v. Wolfish***, 441 U.S. 520, 545-46 (1979). Freedom of speech includes the receipt of published materials in prison. *See* ***id.*** at 549-52; *see* ***Thornburgh v. Abbott,*** 490 U.S. 401, 407-08 (1989). The trial court was also correct in holding that ***Turner***, 482 U.S. at 89, establishes the standard applicable when a prison regulation burdens or impinges upon an inmate's constitutional rights: the regulation is valid if it is reasonably related to legitimate penological interests. The Court in ***Turner*** decided upon this standard because it takes into account both the need to protect the constitutional rights of inmates, and the need to allow prison administrators, rather than the courts, to make the difficult judgments concerning prison operations. ***Id.*** at 85, 89. The factors relevant to determining whether a regulation meets this standard are: (1) whether there is a "valid, rational connection" between the regulation and the governmental interest justifying it; (2) whether there are alternative means of exercising the right that remain open to inmates; (3) whether accommodation of the asserted right will have a significant impact on

guards and other inmates and prison operations generally; and (4) whether ready alternatives to the regulation exist. ***Id.*** at 89-90.

¶16 We first apply these standards to the requirement that three of the four books allowed in the AC must be from the prison-provided AC supply and may not be from the inmate's personal property. The State does not argue that this requirement does not implicate the right of free speech and the right of free exercise; rather, the State's position is that this is a valid requirement under ***Turner***. Although we have found the trial court's thoughtful and detailed analysis on this issue to be helpful, we reach a different result. We agree with the State and conclude that, applying the four factors, this requirement is reasonably related to legitimate penological interests.

¶17 The first factor—a valid and rational connection between the prison regulation and the legitimate government interest put forward to justify it—is further defined in ***Turner***, 482 Wis. 2d at 89-90, to mean that the connection cannot be so remote as to render the regulation arbitrary or irrational, and the objective must be legitimate and neutral. The State's submissions show that the purpose of limiting the number of books from the inmate's personal property to one book is to prevent the introduction of contraband such as weapons and matches into the AC.[6] Certainly this purpose is a legitimate governmental interest,

[6] The State also argues that avoiding fires is another purpose, but we agree with the plaintiffs that, since they are not on this appeal challenging the overall number of books allowed in an inmate's AC cell, the source and content of the books allowed is not rationally connected to the limitations at issue on this appeal. We also agree with the plaintiffs that no factual submissions show that this limitation serves the purpose of keeping books with objectionable content out of the AC. The State's brief cites to the regulation permitting the DOC to regulate the content of the materials that all WCI inmates may possess, but cites to no affidavit that shows a connection between the need to regulate the content of reading material in the AC and the restriction on books from an AC inmate's personal property. The justification for restrictions on First Amendment rights in the prison context must be based on some evidence. *See* ***Shimer v. Washington,*** 100 F.3d 506, 509-10 (7th Cir. 1996).

and plaintiffs concede that it is; it is also a neutral objective. However, the trial court reasoned that there is no rational connection between this governmental interest and the restriction on the source of three of the four books, because the fourth book, which may be from an inmate's personal property, is already a potential vehicle for introducing contraband and must already be searched for contraband before it is allowed in the AC. This is the crux of our disagreement with the trial court. In our view, the existing allowance of one book from the inmate's personal property does not vitiate the connection between the number of books from the inmate's personal property and the number of opportunities for introducing contraband into the AC: increasing the number of books from an inmate's personal property from one to four increases the opportunity for the introduction of contraband.

¶18 The plaintiffs argue that as long as the number of books allowed remains the same, the opportunity for hiding contraband in the AC cell is unchanged by the source of the books. However this argument overlooks the concern with introducing contraband into the AC in the first instance. The paperback books that are circulated by the prison in the AC have not been in the possession of inmates outside the AC, their circulation is limited to AC inmates, and they therefore do not present the same opportunity to introduce contraband into the AC as do books from an inmate's personal property.

¶19 We conclude there is a valid and logical connection between protecting against the introduction of contraband into the AC and limiting the number of books an inmate may have from his personal property while housed in the AC.

¶20 The second factor inquires whether alternative means of exercising the right to freedom of speech and to freedom of religion remain open to the inmates if three of the four books allowed must come from the AC prison supply rather than the inmate's personal property. "Where 'other avenues' remain available for the exercise of the asserted right, courts should be particularly conscious of the 'measure of judicial deference owed to the corrections officials … in gauging the validity of the regulation.'" ***Turner***, 482 U.S. at 90 (citations omitted).

¶21 The "right" in question "must be viewed sensibly and expansively." ***Thornburgh***, 490 U.S. at 417. With respect to the right to receive published materials of a non-religious nature, this means the alternatives need not provide the same type or amount of published materials as the inmates would have if they could choose the three books from their personal property. The alternative sources of published materials available to the inmates are the paperback books from the AC supply, the "starter" AC collection of legal materials, and the five legal books that inmates in the AC may request and receive at one time from the WCI library. The trial court considered the AC paperback supply to constitute "incredibly restricted access to the world of ideas, [which] must be well justified," stating that, over a two month period, it provides only 100 to 150 titles to be shared among sixty-five inmates.[7] It is true the alternative of the AC supply is a very limited one—in part for reasons that are not the doing of the WCI administration. (Nevin Webster, the WCI librarian, averred that the bi-monthly supply of paperbacks is quickly depleted because inmates frequently accumulate them and/or take them

[7] We understand the trial court's discussion on the restrictive nature of the AC supply to be addressing alternative avenues for the exercise of the right to receive published materials, although in the decision this discussion comes under the heading of the first ***Turner*** factor.

with them when they are transferred out of the AC on the step program to another segregation unit, and a number of the paperbacks are destroyed by AC inmates.) However, the AC paperback supply does provide some access to some published materials, and the AC inmates have, in addition, access to published legal materials.

¶22 With respect to the free exercise of religion, although the AC paperback supply contains mostly fiction and is therefore not a reliable source of religious material, an inmate may have a copy of the major book of his religion—from his own personal property or from the chaplain. The trial court concluded that this did provide a means to exercise religious faith through study of reading material and we agree.

¶23 The third factor is the impact that accommodation of the asserted right will have on other inmates and the staff and the allocation of prison resources generally. As the ***Turner*** court explained:

> In the necessarily closed environment of the correctional institution, few changes will have no ramifications on the liberty of others or on the use of the prison's limited resources for preserving institutional order. When accommodation of an asserted right will have a significant 'ripple effect' on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials.

Turner, 482 U.S. at 90. The trial court concluded there would be little impact in allowing three paperback books from the inmate's personal property rather than the AC supply because the danger of contraband being introduced could be addressed by searching the inmate's three books when he first goes to the AC, at the time when his property is inventoried and when the personal property now allowed in the AC is searched. In addition, the court pointed out, there are only sixty-five inmates housed

in the AC at all times and regular searches of the books in inmates' cells are already conducted. And, since the total number of books is not affected, the number of places in which to hide contraband remains the same. The court concluded there would therefore be little increase in the administrative demands.

¶24 We reach a different result on this factor than did the trial court because we do not agree that the record supports the court's implicit assumption that the danger of contraband being introduced into the AC is removed as a result of the searches. Logically the searches diminish the risk, but the undisputed testimony of Fuchs is that, even with the existing limitations on the source of the paperbacks and with the searches of personal property at the time inmates enter the AC and while they are there, matches were smuggled into the AC on three occasions in a six-month period. This indicates that searches by the staff cannot entirely control the risk of contraband being introduced into the AC. Although there are only sixty-five inmates at any one time in the AC, since most of them stay for thirty days or less, there are, each month, significant numbers of inmates arriving in the AC, each creating the risk of contraband being introduced into the AC.[8] The impact of allowing more personal property into the AC is more than the additional time needed to search that property when inmates are admitted to the AC, which may be a minimal administrative burden: the greater impact is the risk that, in spite of the searches, contraband as small as a match may be missed, thus presenting a danger to other inmates and the staff. Since inmates housed in the AC have already violated prison rules, the risk

[8] The plaintiffs point out that the injunction concerns only these seven plaintiffs. However, even though this is not a class action, it is nevertheless appropriate to take into account the effects of a change in the policy for similarly situated inmates. *See* ***Salaam v. Lockhart,*** 905 F.2d. 1168, 1173 (8th Cir. 1990).

that they will further disregard rules by bringing contraband into the AC is a significant one.[9]

¶25 The fourth factor looks at alternatives to the challenged regulation because, as the ***Turner*** court explained, the absence of ready alternatives is evidence of the reasonableness of a regulation, while the existence of easy and obvious alternatives may be evidence that the regulation is not reasonable but is an "exaggerated response" to prison concerns. ***Turner***, 482 U.S. at 90. However, as the ***Turner*** court emphasizes:

> This is not a "least restrictive alternative" test: prison officials do not have to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint. But if an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard.

Id. at 91 (citation omitted).

¶26 In this case, analysis of the fourth factor is closely related to the third and, accordingly, our conclusion again differs from that of the trial court. The alternative of permitting the three paperbacks to be from an inmate's personal collection with some additional staff time to search for contraband, assumes this is a

[9] We agree with the plaintiffs that the estimated forty additional staff hours per week that Huibrigeste avers would be required to accommodate the plaintiffs' position does not address the terms of the injunction actually imposed. That estimate assumes that inmates, while in the AC, could continually ask to have one book from their personal property replaced by another stored in the property room. However, the court's order very carefully addresses that concern by providing that inmates may not continually exchange the three paperback books from their personal property initially brought to the AC for others in their personal property, but may receive only an AC paperback for each book returned to the property room.

de minimis cost to the penological interest of preventing contraband in the AC. However, as we have explained above, the record supports DOC's concern that, even with searching of personal property, increased personal property in the AC increases the risk of the introduction of contraband. DOC has considered those risks, and the need to allow certain personal property items—such as legal materials, a religious book, writing materials, a dictionary—and has determined that the three paperback books allowed should be supplied by the prison to reduce the risk of contraband.[10] We do not agree that an alternative that increases the risk of the introduction of contraband into the AC is an easy and obvious alternative.

¶27 Considering all the ***Turner*** factors, we conclude the requirement that the three paperbacks allowed must be from the AC supply rather than from the inmate's personal property is reasonably related to a legitimate penological interest. It is a significant restriction on the plaintiffs' access to published material while in the AC, and we recognize that the trial court has attempted to alleviate the restriction while still taking into account the interests asserted by the State. However, the question of precisely how much published material from personal property should be allowed into the AC, representing as it does a balance of a number of competing factors, seems to us precisely the type of judgment on which courts are to defer to the prison officials, so long as it is reasonable, and we are persuaded this requirement is.

¶28 We now turn to the policy that permits one book in an AC cell from an inmate's personal property only if it is a Bible, Koran or "equivalent religious book"; if an inmate does not have such a book in his personal property, he may request one

[10] We do not understand the plaintiffs to be arguing that the rights they wish to assert can be accommodated if the prison supply of paperbacks were greater in number or more varied in content. Therefore, we do not address this issue.

from the WCI chaplain. In the trial court the focus of the plaintiffs' First Amendment freedom of religion challenge was on the restriction of one book from their personal property, rather than on how DOC defined the "equivalent religious book" that was allowed from their personal property, and that was also the focus of the trial court's decision.[11] However, the trial court did consider the restriction on the content of this fourth book in its memorandum decision. It concluded, when applying the first ***Turner*** factor, that this restriction was not content neutral because, "While no specific texts are banned, administrators of this policy have left the determination of 'equivalency' to themselves without articulating what they mean."[12] In its conclusions of law supporting the permanent injunction, the court stated that one of the harms is the infringement on the First Amendment rights of AC inmates who are "non-Christians and non-Muslims … to determine what religious texts are 'equivalent' to the Bible and Koran," and that allowing AC inmates to choose their own books, as the injunction does, corrects this harm. Although the parties on appeal do not separately address this content-based restriction and the trial court's ruling on it, they do refer to it in their arguments. We therefore address it.

¶29 We conclude that the plaintiffs' submissions do not show that the restriction of the fourth book to a Bible, Koran or equivalent religious book affects

[11] We observe that the plaintiffs did not contend in the trial court, nor do they on appeal, that allowing a fourth book only if it is a religious book violates a constitutional right for those who do not adhere to any religion, and we therefore confine our analysis of this restriction to whether it impermissibly restricts the rights of plaintiffs to the free exercise of religion.

[12] The affidavit of the WCI chaplain avers: "An equivalent religious book is the major book of a religion that contains the tenets of a religious faith (i.e. Bible for Christians, Koran for Muslims, Sutura for Jews, etc.). Supplements, commentaries, or "helps" are not considered the major books of a religion, and therefore, are not provided by the chapel as the one religious book for adjustment center inmates…. Generally, every religion has a particular book which contains the doctrine of the religion. If there is no major book for a religion, the equivalent book will be determined and provided to the adjustment center inmate."

their right to the free exercise of their religion. There are affidavits of eight of the eleven named plaintiffs containing averments concerning published materials related to religion in their personal property that they were not permitted to have in the AC because of the limitation on the items from personal property, but none aver that an inmate has not been permitted one religious book of his choice.[13] The plaintiffs' affidavits show they have been adversely affected by the restriction to one religious book from their personal property or the chaplain, but do not show they have been adversely affected by the requirement that the one religious book must be a Bible, Koran or equivalent religious book.

¶30 In summary, we conclude the requirement that the three paperbacks allowed to inmates in AC be from the AC supply rather than from the inmate's personal property does not violate the rights of the plaintiffs to free speech or free exercise of religion. We further conclude the requirement that the one religious book allowed (in addition to the three paperback books) be a Bible, Koran or equivalent religious book does not violate their right to the free exercise of religion. We therefore reverse the declaratory judgment in the plaintiffs' favor, reverse the

[13] The eight affiants and their respective religions are: Kevin Kirsch, Israelite Identity; Jerry Saenz, Catholic; William Ledford, Lutheran; William Medina, Christian; Dennis Marsh, Odinist/WICCAN; Vances Smith, Islam; Devin Holmes, Islam; Jeff Denny, Oneida Native American. Charles Yoder, identified as an atheist in the stipulation of facts, also submitted an affidavit, but it contains no averments showing that his First Amendment right to the free exercise of religion was affected by the DOC regulations.

The stipulation of facts actually phrases the religions of the plaintiffs as the religion each plaintiff "alleged" he adheres to, rather than as fact. Some, but not all of the affidavits we refer to above aver the religion of the affiant. However, we do not understand the State to be contesting the fact of adherence to a particular religion for any plaintiff and we therefore treat the allegations of religious adherence as fact.

permanent injunction and the stipulated money judgment,[14] and remand with directions to dismiss the complaint.

By the Court.—Judgment reversed and cause remanded with directions.

Not recommended for publication in the official reports.

[14] The parties have stipulated to $250 in damages for each plaintiff. From our reading of the record, a judgment in that amount has been entered and stayed, pending appeal.