

**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	Ronald A. Guzman	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	04 C 4635	<b>DATE</b>	9/1/2005
<b>CASE TITLE</b>	William Ryan vs. Roger Walker, et al.		

**DOCKET ENTRY TEXT:**

For the reasons set forth in this Order, defendants' Rule 12(b)(6) motion to dismiss [doc. no. 23] is denied.

Docketing to mail notices.

<b>Courtroom Deputy Initials:</b>	<b>LC/LM</b>
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On a Rule 12(b)(6) motion to dismiss, the Court accepts as true all well-pleaded factual allegations of the complaint, drawing all reasonable inferences in plaintiff's favor. *Forseth v. Vill. of Sussex*, 199 F.3d 363, 368 (7th Cir. 2000). No claim will be dismissed unless "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

Plaintiff publishes a newspaper entitled *Stateville Speaks*, which is comprised of inmate-authored materials. (First Am. Compl. ¶¶ 21-27.) Defendants initially denied plaintiff permission to distribute the paper to Stateville inmates, pursuant to a State regulation that permits prisons to ban publications that are detrimental to prison security. (*Id.* ¶¶ 29-37.) Ultimately, defendants allowed plaintiff to distribute the paper but only after certain articles were removed. (*Id.* ¶¶ 38-39.) Plaintiff claims that defendants' actions, and the regulation underlying them, violate his First Amendment and Fourteenth Amendment rights and his rights under state law. Defendants say that the federal claims must be dismissed because: (1) plaintiff has no First Amendment right to distribute the speech of inmates to other inmates; and (2) even if he does, that right was not clearly established in 2004, the year in which the contested events occurred.

Neither argument is persuasive. In *New York Times v. Sullivan*, 376 U.S. 254 (1964), the Supreme Court held that publishers have a First Amendment right to publish the speech of others. *Id.* at 266. Moreover, in *Thornburgh v. Abbott*, 490 U.S. 401 (1989), the Court said that "there is no question that publishers who wish to communicate with those who, through subscription, willingly seek their point of view have a legitimate First Amendment interest in access to prisoners." *Id.* at 408. Thus, since at least 1989, it has been clearly established that the First Amendment protects plaintiff's right both to publish the speech of Stateville inmates and to distribute that publication to inmates who wish to receive it. Defendants' motion to dismiss [doc. no. 23] is, therefore, denied.