

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

****CAPITAL RELATED CASE****
EXECUTION SCHEDULED NOV. 29, 2022

Corionsa Ramey,

Plaintiff,

v.

Michael L. Parson, *in his official capacity as
Governor of Missouri,*

Eric Schmitt, *in his official capacity as Attorney
General of Missouri,*

Anne L. Precythe, *in her official capacity as
Director of the Missouri Department of
Corrections,*

Defendants.

No. 2:22-cv-4171

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

**(EXPEDITED RESPONSE
REQUESTED)**

**(MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
FILED CONCURRENTLY)**

INTRODUCTION

1. This is an as-applied challenge to a Missouri law, Mo. Ann. Stat. § 546.740 (hereinafter “§ 546.740” or “Section 546.740”), which bars adults under the age of 21 from being present to witness executions conducted by the Missouri Department of Corrections (“MODOC”).¹

¹ Section 546.740 reads in full (emphasis added):

The chief administrative officer of the correctional center, or his duly appointed representative shall be present at the execution and the director of the department of corrections shall invite the presence of the attorney general of the state, and at least eight reputable citizens, to be selected by him; and he shall at the request of the defendant, permit such clergy or religious leaders, not exceeding two, as the defendant may name, and any person, other than another incarcerated offender, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution; *but no person under twenty-one years of age shall be allowed to witness the execution.*

2. Plaintiff Corionsa Ramey is the 19-year-old adult daughter of Kevin Johnson, Jr., a man in MODOC custody who is currently scheduled to be executed by the State of Missouri on November 29, 2022, for a crime that he committed when he was 19 years old.

3. Under Section 546.740's plain language, Mr. Johnson may select five people to be present at his execution. On November 8 and 14, 2022, he notified prison officials that he selected his daughter, Ms. Ramey, to be present to witness his execution. Ms. Ramey also wants to be present to witness her father's execution.

4. On November 17, 2022, MODOC officials, through their attorneys, rejected Mr. Johnson's request on the sole basis that Ms. Ramey is 19 years old, and § 546.740 prohibits her from attending and witnessing her father's execution because she will not yet be 21 years of age.

5. Plaintiff Ramey seeks a declaratory judgment that Section 546.740 as applied to her in these circumstances violates her constitutional rights, as well as an injunction preliminarily and permanently enjoining enforcement of Section 546.740's age requirement against her with respect to her attendance. Ms. Ramey also seeks a Temporary Restraining Order staying Mr. Johnson's execution until the Court adjudicates the instant claim.

6. By singling out adults younger than 21 such as Ms. Ramey, without any rational relationship to a legitimate governmental or penological interest, Section 546.740 violates the U.S. Constitution's guarantee of equal protection of the laws under the Fourteenth Amendment, and the right of freedom of association under the First Amendment.

PARTIES

7. **Plaintiff Corionsa Ramey** is a 19-year-old adult who resides in Missouri. Ms. Ramey is the daughter of Kevin Johnson, Jr., who is incarcerated at MODOC's Potosi Correctional Center and is scheduled for execution by the State of Missouri later this month (currently scheduled for Nov. 29, 2022).

8. **Defendant Michael L. Parson** is Governor of Missouri. Under Article IV, Section 1 of the Missouri Constitution, the executive power of the State is vested in him in his capacity as Governor. Article IV, Section 2 of the state constitution states that in his official capacity as

Governor, he “shall take care that the laws are distributed and faithfully executed[.]” Defendant Parson maintains his office in Cole County, Missouri. He is sued in his official capacity.

9. **Defendant Eric Schmitt** is Attorney General of Missouri. Pursuant to Mo. Ann. Stat. § 27.060, it is his duty to enforce the laws of the State of Missouri, and he may also appear to defend the state’s interests in any proceeding or tribunal. Defendant Schmitt maintains an office in Cole County, Missouri. He is sued in his official capacity.

10. **Defendant Anne L. Precythe** is Director of the Missouri Department of Corrections (“MODOC”). Under Section 546.740, she is responsible for permitting or prohibiting witnesses to attend an execution. Defendant Precythe’s and MODOC’s offices are in Cole County, Missouri. She is sued in her official capacity.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. Plaintiff Ramey seeks injunctive and declaratory relief under 28 U.S.C. §§ 2201 and 2202.

12. Venue lies in Western District of Missouri under 28 U.S.C. § 1391(b) because one or more Defendants reside in the District.

13. Pursuant to Local Rule 3.2(b)(2), divisional venue is in the Central Division because one or more Defendants resides in Cole County.

FACTUAL ALLEGATIONS

14. Ms. Ramey was born on July 3, 2003.

15. She is a 19-year-old adult who lives in the State of Missouri.

16. Ms. Ramey’s father, Kevin Johnson, Jr., is scheduled for execution by the State of Missouri on November 29, 2022, for a crime committed when he was 19 years old.

17. Mr. Johnson has been incarcerated since Ms. Ramey was 2 years old.

18. When Ms. Ramey was 4 years old, she witnessed the murder of her mother by an ex-boyfriend of her mother.

19. Mr. Johnson is Ms. Ramey’s only living parent.

20. Ms. Ramey and Mr. Johnson have a very close relationship that they have developed and cultivated since her early childhood, despite his incarceration for the past 17 years.

21. Ms. Ramey has an abiding interest in witnessing her father's execution.

22. Ms. Ramey is currently the same age that Mr. Johnson was at the time he committed the crime for which he is to be executed later this month.

23. Section 546.740 entitles Mr. Johnson to select five people to be present at his execution, but limits his selection to people 21 years of age or older.

24. Section 546.740 offers no explanation as to why adults younger than 21 cannot be witnesses to an execution.

25. On November 8 and 14, 2022, Mr. Johnson submitted a list of his selected execution witnesses, including Ms. Ramey, in writing to prison officials.

26. On Wednesday, November 16, 2022, Mr. Johnson's capital habeas attorney contacted Gregory Goodwin, Chief Counsel of the Public Safety Section of the Missouri Attorney General's Office, to confirm that Mr. Johnson's list had been received, and asked if Plaintiff Ramey would be permitted to attend her father's execution.

27. On Thursday, November 17, 2022, Mr. Goodwin notified Mr. Johnson's habeas attorney that "[t]he department has denied Mr. Johnson's request for his daughter to attend because she is 19 years old. The statute and Missouri case law prohibits the Department from allowing any person under the age of 21 to witness an execution."

28. Other than reference to this law and its age restriction, no state interest or penological purpose was offered by MODOC explaining why Ms. Ramey could not witness her father's execution.

29. That Missouri executes people, like Mr. Johnson, for crimes committed as adults but before their 21st birthday illustrates the irrationality of the statute's requirement that execution witnesses not only be adults but also at least 21 years old.

CLAIMS FOR RELIEF
COUNT I
Deprivation of Equal Protection
U.S. Const. Amend. XIV

30. The Fourteenth Amendment to the U.S. Constitution, enforceable by 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. XIV, § 1.

31. Section 546.740’s requirement that adults who are selected to attend and witness an execution be at least 21 years old discriminates against adults between the ages of 18 and 21 because of their age.

32. Section 546.740 treats adults younger than 21 who have been selected as an execution witness less favorably than similarly situated adults older than 21, by categorically depriving them of the opportunity to attend and witness an execution.

33. As applied to Ms. Ramey, Section 546.740 discriminates against her because she is prohibited from witnessing her father’s execution for no other reason than her age.

34. Under Missouri and federal law, a 19-year-old is presumptively competent and can vote, marry, enter a binding legal contract, purchase firearms, or enlist in the military.

35. As applied to Ms. Ramey, Section 546.740’s age requirement is not rationally related to any legitimate state or penological interest.

36. Application of Section 546.740’s age requirement to prohibit Ms. Ramey from witnessing her father’s execution does not promote any state or public interest.

37. Application of Section 546.740’s age requirement to prohibit Ms. Ramey from witnessing her father’s execution does not promote the safety or security of the MODOC prison system, or serve any other legitimate penological purpose.

38. Application of Section 546.740’s age requirement to prohibit Ms. Ramey from witnessing her father’s execution denies her the equal protection of the laws, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

COUNT II
Deprivation of Freedom of Association
U.S. Const. Amend. I

39. The foregoing allegations are incorporated herein by reference..

40. The First Amendment to the U.S. Constitution, enforceable by 42 U.S.C. § 1983, protects the freedom of association, including association with family members, from unjustified government interference.

41. Application of Section 546.740's age requirement to prohibit Ms. Ramey from witnessing her father's execution deprives her of her right to association under the First Amendment.

42. Application of Section 546.740's age requirement to prohibit Ms. Ramey from witnessing her father's execution interferes directly and substantially with her right of association with her father.

43. Ms. Ramey's interest in association with her father is particularly important to her because he has been her sole parental figure for most of her life and they share a close bond.

44. Application of Section 546.740's age requirement to prohibit Ms. Ramey from witnessing her father's execution deprives her of association and companionship with her father during his last moments solely because she is 19 years old.

45. Application of Section 546.740's age requirement to prohibit Ms. Ramey from witnessing her father's execution is not rationally related to any legitimate penological interest.

46. Application of Section 546.740's age requirement to prohibit Ms. Ramey from witnessing her father's execution does not promote the safety or security of the MODOC prison system, or serve any other legitimate penological purpose.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor and that the Court:

A. Enter a Temporary Restraining Order that prohibits Defendants, their officers, employees, or agents, and those acting on their behalf or in concert with them from

- taking any action to execute Plaintiff Corionsa Ramey's father, Kevin Johnson, Jr., until this Court considers and rules upon Plaintiff's Motion for Preliminary Injunction, after the parties have had an opportunity to present pertinent evidence and any argument requested by the Court;
- B. Declare that the provisions of and enforcement by Defendants of § 546.740's age requirement to prohibit Plaintiff Ramey from witnessing her father's execution violates Plaintiff Ramey's rights under the U.S. Constitution's First Amendment and the Equal Protection Clause of the Fourteenth Amendment, and is not justified by a legitimate governmental or penological interest;
- C. Preliminarily and permanently enjoin enforcement by Defendants of § 546.740 as applied to Plaintiff Ramey, and order that Defendants permit her to witness her father's execution;
- D. Award Plaintiff her attorneys' fees and costs; and
- E. Grant such other and further relief as the Court deems equitable and just.

Dated: November 21, 2022

Respectfully submitted,

/s/ Anthony E. Rothert

Anthony E. Rothert, #44827MO
ACLU of Missouri Foundation
906 Olive St., Ste. 1130
St. Louis, MO 63101
(314) 652-3114
trothert@aclu-mo.org

Gillian R. Wilcox, #61278MO
ACLU of Missouri Foundation
406 W. 34th St., Ste. 420
Kansas City, MO 64111
(816) 470-9938
gwilcox@aclu-mo.org

Corene T. Kendrick (Cal. 226642)*
ACLU Foundation
39 Drumm St.
San Francisco, CA 94111
(202) 393-4930; (415) 606-3171
ckendrick@aclu.org

Scout Katovich (N.Y. 5588314)*
ACLU Foundation
125 Broad St.
New York, NY 10004
(212) 549-2500
skatovich@aclu.org

David C. Fathi (Wash. 24893)**
ACLU Foundation

915 15th St., N.W.
Washington, DC 20005
(202) 548-6603
dfathi@aclu.org

* *pro hac vice* motion forthcoming
** *pro hac vice* motion forthcoming; not
admitted in D.C.; practice limited to federal
courts.

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2022, a true and correct copy of the foregoing document was electronically filed using the Court's CM/ECF online case filing system, where it will appear to all counsel of record, that it was emailed to Gregory Goodwin, Chief Counsel of the Public Safety Section of the Missouri Attorney General's Office, and that it will be physically served on all named Defendants contemporaneously with the Complaint and Motion filed this day.

/s/ Anthony E. Rothert _____

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

Corionsa Ramey ;

County of Residence: Outside This District**Defendant(s):****First Listed Defendant:**

Governor of Missouri Michael Parson ;

County of Residence: Cole County**Additional Defendants(s):**

Attorney General of Missouri Eric Schmitt ;

Director of the Missouri Department of Corrections Anne L Precythe ;

County Where Claim For Relief Arose: Cole County

Plaintiff's Attorney(s):

Corene T. Kendrick (Corionsa Ramey)

ACLU National Prison Project

39 Drumm St.

San Francisco, California 94111

Phone: 2023934930**Fax:****Email:** ckendrick@aclu.org**Defendant's Attorney(s):**

Gregory Goodwin (Michael Parson)

Missouri Attorney General's Office

221 West High St.

Jefferson City, Missouri 65101

Phone: 573-751-7017**Fax:****Email:** Gregory.Goodwin@ago.mo.gov

David C Fathi (Corionsa Ramey)

ACLU National Prison Project

915 15th St NW, 7th Floor

Washington, DC 20005

Phone: 2023934930**Fax:****Email:** dfathi@aclu.org

Anthony E Rothert (Corionsa Ramey)

ACLU of Missouri

906 Olive St., Ste. 1130

St. Louis, Missouri 63101

Phone: 314-652-3114**Fax:****Email:** trothert@aclu-mo.org

Gillian R Wilcox (Corionsa Ramey)

ACLU of Missouri

406 W. 34th St., Ste. 420

Kansas City, Missouri 64111

Phone: 816-470-9938

Fax:**Email:** gwilcox@aclu-mo.org

Scout Katovich (Corionsa Ramey)

ACLU Foundation

125 Broad Street

New York, New York 10004

Phone: 212-549-2500**Fax:****Email:** skatovich@aclu.org**Basis of Jurisdiction:** 3. Federal Question (U.S. not a party)**Citizenship of Principal Parties (Diversity Cases Only)****Plaintiff:** N/A**Defendant:** N/A**Origin:** 1. Original Proceeding**Nature of Suit:** 440 All Other Civil Rights**Cause of Action:** 42 U.S.C. 1983 (First and Fourteenth Amendments)**Requested in Complaint****Class Action:** Not filed as a Class Action**Monetary Demand (in Thousands):****Jury Demand:** No**Related Cases:** Is NOT a refiling of a previously dismissed action

Signature: /s/ Anthony E. Rothert**Date:** 11/21/22

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