

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ASHLEY K. EVE, ABRAHAM J. BONOWITZ,)
BILL PELKE, KAREN BURKHART,)
REV. BILL BREEDEN, DEATH PENALTY)
ACTION, INDIANA ABOLITION)
COALITION, SISTERS OF PROVIDENCE)
OF SAINT-MARY-OF-THE-WOODS,)
INDIANA,)

Plaintiffs,)

v.)

No. 1:20-cv-2036

SUPERINTENDENT, INDIANA STATE)
POLICE, in his official capacity,)

Defendant.)

Complaint for Injunctive and Declaratory Relief

Introduction

1. Plaintiffs are organizations whose members oppose the death penalty as well as individuals who are also opponents of capital punishment. The organizational plaintiffs have sought to advance their message of opposition by having their members and others hold vigils at the time of executions immediately outside the gates of the federal prison in Terre Haute Indiana, which houses the execution chamber of the United States Bureau of Prisons and where three men were executed in July of 2020 and one is scheduled for execution on August 26, 2020 to be followed by another on August 28, 2020 and two more scheduled for September 22 and 24. The individual plaintiffs similarly seek to express

their opposition to the death penalty in this manner. However, they have been thwarted from engaging in their desired expressive behavior by the actions of the Indiana State Police that, for the July executions, set up roadblocks designed to keep the death penalty opponents more than one and one-half miles from the entrance of the prison. This restriction is set to be in effect for the August 26 and August 28, 2020 executions and, presumably, for future executions. There is no basis for this restriction and the restriction violates the First Amendment. Appropriate injunctive and declaratory relief should be entered so that plaintiffs and their members may exercise the most fundamental of rights, political speech.

Jurisdiction, venue, and cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2202 and by Rule 57 of the Federal Rules of Civil Procedure.
5. Plaintiffs bring their cause of action pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

Parties

6. Ashley K. Eve is an adult resident of Indiana and is an anti-death penalty activist.
7. Abraham J. Bonowitz is an adult resident of Ohio and is an anti-death penalty activist.

8. Bill Pelke is an adult resident of the State of Alaska and is an anti-death penalty activist.

9. Karen Burkhart is an adult resident of the State of Indiana and is an anti-death penalty activist.

10. Rev. Bill Breeden is an adult resident of Indiana and is a long-time opponent to the death penalty and has served as a spiritual advisor to a man on death row at the federal prison in Terre Haute.

11. Death Penalty Action is a nonprofit organization working to end executions in the United States.

12. Indiana Abolition Coalition is a non-profit organization whose mission is to build consensus to end the death penalty.

13. The Sisters of Providence of Saint Mary-of-the-Woods, Indiana, are a congregation of Roman Catholic women (sisters) who minister throughout the United States and Taiwan and believe that the death penalty is unacceptable as it offends the dignity of human life. The Sisters have been present to vigil in prayer and protest prior to every federal execution in the modern era.

14. The Superintendent of the Indiana State Police is the duly appointed head of the agency. He is sued in his official capacity.

Factual allegations

15. The Federal Correctional Complex-Terre Haute is a prison complex operated by

the United States Bureau of Prisons that houses FCI Terre Haute, a medium-security federal prison with a minimum-security satellite camp and USP Terre Haute, a maximum-security penitentiary.

16. USP Terre Haute also houses a special confinement unit for males who have been sentenced to death and contains an execution chamber. It is the sole execution chamber in the Bureau of Prisons and all federal executions in the United States therefore take place at USP Terre Haute.

17. In July of 2020, three men were executed at USP Terre Haute after a lengthy period of time when there were no executions in the federal prison system.

18. Executions have now been scheduled for August 24 and 26 and September 24 and 26, 2020, with more anticipated in future months.

19. The plaintiffs are organizations and individuals that oppose the death penalty.

20. To demonstrate their opposition, members of the organizations and the individual plaintiffs determined to publicly demonstrate near USP Terre Haute on the days of the executions in July of 2020.

21. They desired to be able to get as close to the institution as possible so that they could stand vigil to observe the area where the sentence was to be carried out.

22. The Federal Correctional Complex-Terre Haute occupies a large piece of land in Terre Haute, Indiana.

23. The east side of the prison, where its main entrance is located, is bounded by

Prairieton Road, Indiana State Road 63.

24. West Springhill Drive intersects Prairieton Road and leads directly into the main entrance of the prison.

25. Traveling east on Springhill Drive for 1.8 miles leads to U.S. Highway 41, which is a major north-south United States highway that leads to Interstate 70, a short distance north of the Springhill Road intersection.

26. On the southeast corner formed by the intersection of Prairieton Road and Springhill Drive there is a Dollar General store as well as a public right of way. This is directly opposite the main entrance to the Federal Correctional Complex-Terre Haute, but, because of the size of the grounds of the prison complex, is far from USP Terre Haute and the death chamber.

27. However, USP Terre Haute is clearly visible from this site.

28. On the days of the executions, the individual plaintiffs and the members of the plaintiff organizations had desired to utilize this right of way on which to demonstrate their opposition to the death penalty.

29. There was no objection from the management of the Dollar General store to the use of the edge of the store parking lot by the protesters if that was necessary.

30. The members of the organizations and the other plaintiffs wished to demonstrate across from the main entrance to the prison so they could be in sight of the prison while the death sentence was carried out. This is where they desired to make their protest vigil.

31. However, a number of hours before the scheduled times of the executions in July, the Indiana State Police set up roadblocks that prevented persons from getting anywhere close to the prison to engage in protest activities.

32. Specifically, the Indiana State Police set up a roadblock where West Springhill Drive intersects with 1st Street, just west of where West Springhill Drive intersects with State Road 41. The roadblocks were approximately 1.6 miles from the entrance to the prison.

33. The individual plaintiffs and the members of the organizational plaintiffs were not allowed to cross the roadblock.

34. The group ended up standing in the right of way near a car dealership on U.S Highway 41 and also on the car dealership's property, far removed from the prison.

35. There were approximately 24 persons who demonstrated in opposition to the three executions.

36. Plaintiffs believe that future vigils will attract a similar number of opponents to the upcoming executions.

37. Protesting in the car lot on U.S. Highway 41 was not a satisfactory alternative as the protesters were not able to see the death chamber or even be close to the prison where they could stand in solemn vigil when the execution occurred.

38. Additionally, there is no guarantee that they will be able to return to the private property of the car dealership. Otherwise they will have to stand on the right of way by

the side of a busy highway.

39. The Bureau of Prisons offered to allow the protesters to be bussed into a fenced-in area on prison grounds that was far removed from the death chamber and where they would have to be placed many hours prior to the scheduled execution, with little shelter, until the execution occurred and with only a portable toilet and hand sanitizer and drinking water available during extreme summer heat. Bureau of Prison rules prohibit those being bussed in from having cameras, cell phones, food, and even many types of signs.

40. The fenced in area is particularly problematic as there is no certainty as to when an execution will occur as executions are frequently delayed at the last minute due to appeals and other circumstances, which means that those placed in the shelters would be there for an unknown duration. They would not be free to leave unless the Bureau of Prisons was willing to bus them out. Many of those who would be present in the fenced in areas are elderly and cannot be in the heat for an extended time.

41. The plaintiffs rejected this option as it would impose extremely burdensome conditions upon them.

42. The individual plaintiffs and the members of the organizational plaintiffs wish to hold a vigil on the date of the next execution, August 26, 2020 and at all subsequent executions.

43. They wish to protest on the public space next to the Dollar General across from the

main entrance to the prison.

44. On information and belief, the Indiana State Police will again erect barricades hours prior to the next and future executions that will keep the plaintiffs and the members of the organizational plaintiffs more than a mile from the main entrance of the facility.

45. There is absolutely no justification for keeping plaintiffs' members and the individual plaintiffs this far from the entrance to the institution and doing so severely compromises their ability to express themselves and to express their opposition to the death penalty while in sight of the prison.

46. The actions of the defendant and his employees are violating the First Amendment rights of the plaintiffs.

47. At all times defendant has acted under color of state law.

48. Plaintiffs are being caused irreparable harm for which there is no adequate remedy at law.

Legal claim

49. Failing to allow the members of the organizational plaintiffs and the individual plaintiffs to demonstrate outside the main entrance of the Federal Correctional Complex-Terre Haute violates the First Amendment to the United States Constitution.

WHEREFORE, plaintiffs request that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare that plaintiffs' constitutional rights have been violated for the

reasons noted above.

3. Enter a preliminary injunction, later to be made permanent, allowing the individual plaintiffs and the members of the organizational plaintiffs to engage in their protest activities immediately outside of the main entrance to the Federal Correctional Complex-Terre Haute.
4. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

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