

Preliminary Statement

1. For the first time in 45 years, the State of Connecticut has scheduled the execution of a man sentenced to death: at 2:00 a.m. on January 26, 2005, at the Osborn Correctional Institution in Somers, Connecticut, Michael Ross is scheduled to be executed by lethal injection. This case is about the right of the public to express their views about the death penalty in general and this execution in particular—both of which are political issues of local and national importance—in a meaningful public forum rather than being corralled in a space controlled by state agencies.

2. Plaintiffs plan to stage a peaceful protest on public land adjacent to the grounds of the prison where the execution is scheduled to occur at 2 a.m. on January 26, 2005. This protest will be a vigil and will consist in the main of song, prayer, and a moment of silence to mark the moment of execution. The meaning and message conveyed by this assembly and expression are closely tied to the location of the vigil and are consistent with similar expressive activities that have taken place outside prisons throughout the country at which executions are carried out.

3. Defendants, in a meeting with representatives of plaintiffs and counsel, proposed a plan to severely curtail plaintiffs' free speech activities. Although defendants would not provide plaintiffs with a written summary of their plan, they verbally communicated to plaintiffs' representatives and counsel that it involves the following:

a) Road Closure: Defendants plan to close the public road which runs below the entrance to Osborn Correctional Institution—which at all other times is open to public traffic—from an unspecified time on January 25, 2005 through some time after the execution takes place on the morning of January 26, 2005.

Defendants will erect barricaded “checkpoints,” allowing only personnel and vehicles authorized by the Connecticut DOC and State Police to access that road and the area outside the prison grounds. Defendants have informed plaintiffs that unauthorized individuals crossing into the blockaded area will be arrested.

b) “Protest Zones”: Any individuals or groups wishing to engage in expressive activity will be allowed to do so only in “protest zones” chosen, demarcated, and patrolled by the Department of Correction, the State Police, and the Enfield Police. These “protest zones” will be located in fields adjacent to the headquarters of Lego Systems, Inc., approximately 1.5 miles from the prison entrance, and will be divided into two camps: “anti-death penalty” and “pro-death penalty.” Media personnel will be in a “media zone” at another correctional facility on the road several hundred yards from Lego Systems and approximately 1.4 miles away from Osborn Correctional Institution, where the execution will be taking place.

c) Armed Personnel: On information and belief, defendants plan to post fully armed correctional and law enforcement personnel in “riot gear,” including face masks, body armor and plastic shields at close and regular intervals along the road and at the barricades.

4. Plaintiffs turn to this court for protection of their rights to speak freely, assembly peaceably, and petition the government for redress of grievances under the First and Fourteenth Amendments to the United States Constitution and Sections 4 and 14 of Article First of the Connecticut Constitution. Consistent with protests and vigils staged by similarly situated individuals outside prisons throughout the country during

executions, the location of the protest as near as possible to the prison where the execution is taking place is of crucial importance to the message expressed by plaintiffs. To prohibit them from accessing the public street outside the prison and instead place them in a state-selected location markedly removed from the entrance to the prison grounds and in fact in a field outside the headquarters of Lego Systems, Inc. prevents them from exercising their free speech rights when the message conveyed is connected so intimately to the location of the forum of speech.

5. Accordingly, plaintiffs bring this action under 42 U.S.C. § 1983 to enforce their rights under the First and Fourteenth Amendments to the US Constitution, as well as under the Sections 4 and 14 of Article First of the Constitution of the State of Connecticut. Plaintiffs seek a preliminary and permanent injunction prohibiting the defendants from applying these unconstitutional measures to restrict plaintiffs' protected political speech and assembly on January 25 and 26, 2005 and declaratory relief to prevent defendants from interfering with protest activity in this public forum by plaintiffs and other demonstrators in the future.

Parties

6. Plaintiff MURDER VICTIMS' FAMILIES FOR HUMAN RIGHTS (MVFHR) is a nonprofit charitable corporation incorporated in New Hampshire. It promotes international support and respect for human rights in harmony with the rights of victims, provides education about the needs of family members of murder victims who oppose capital punishment, and promotes opposition to the death penalty. All of MVFHR's members are surviving family members of murder victims. MVFHR furthers

its goals through actions such as public education, policy work, community-building, and organizing. MVFHR intends to organize its members to engage in protected free speech activity on public land outside the ground of Osborn Correctional Facility on the night of the execution.

7. Plaintiff AMNESTY INTERNATIONAL of the USA, Inc. (Amnesty International) is the US section of Amnesty International, a worldwide grassroots movement that promotes and defends human rights. Amnesty International of the USA is incorporated in the state of New York and has non-profit status under 501(c)3 of the Internal Revenue Code. Amnesty International was awarded the Nobel Peace Prize in 1977 and has 1.8 million members worldwide, over 350,000 members in the United States, and approximately 7000 members in Connecticut. Amnesty International engages in systematic monitoring of human rights around the world through education, letter-writing, vigils, petitions, protests, information-sharing with governments, and observation and monitoring missions. Amnesty International opposes torture, the death penalty, and other grave abuses of human rights, and intends to organize its members to engage in protected free speech activity on public land outside the grounds of Osborn Correctional Facility on the night of the execution.

8. Plaintiff CONNECTICUT NETWORK TO ABOLISH THE DEATH PENALTY (CNADP) is a nonprofit corporation incorporated in the state of Connecticut which works to abolish the death penalty in Connecticut. CNADP works towards its goal by preparing educational materials about the death penalty and engaging in public education, advocating on behalf of legislation, building coalitions and alliances across the state, and organizing peaceful demonstrations and protests. It is affiliated with the

National Coalition to Abolish the Death Penalty. CNADP intends to organize its members to engage in protected free speech activity on public land outside the grounds of Osborn Correctional Facility on the night of the execution.

9. Plaintiff NATIONAL COALITION TO ABOLISH THE DEATH PENALTY (NCADP) is a nonprofit corporation incorporated in the Commonwealth of Pennsylvania. It works at the national level to abolish the death penalty through public education, organizing, and citizen empowerment and mobilization. NCADP intends to organize its members to engage in protected free speech activity on public land outside the grounds of Osborn Correctional Facility on the night of the execution.

10. Plaintiff Reverend Walter EVERETT is a citizen of the United States and a resident of Hartford, Connecticut. He is the pastor of the United Methodist Church in Hartford. Reverend Everett's son was murdered in 1987 and Reverend Everett is an active member of Murder Victims' Families for Human Rights. He intends to engage in protected free speech activity on public land outside the ground of Osborn Correctional Facility on the night of the execution.

11. Plaintiff Antoinette BOSCO is a citizen of the United States and a resident of Brookfield, Connecticut. She is an author and journalist whose work includes Choosing Mercy: A Mother of Murder Victims Pleads to End the Death Penalty. Ms. Bosco's son and daughter-in-law were murdered in 1993 and she is an active member of Murder Victims' Families for Human Rights. She intends to engage in protected free speech activity on public land outside the ground of Osborn Correctional Facility on the night of the execution.

12. Plaintiff Art LAFFIN is a citizen of the United States and a resident of Washington, D.C. He was born and raised in Hartford, Connecticut, and currently works at the Dorothy Day Catholic Worker House of Hospitality in Washington, D.C. Mr. Laffin's brother was the Associate Director of Mercy Housing and Shelter in Hartford when he was murdered in Hartford, Connecticut in 1999. Mr. Laffin is active as an organizer, writer, and speaker in the faith-based movement for peace and justice. He intends to engage in protected free speech activity on public land outside the ground of Osborn Correctional Facility on the night of the execution.

13. Defendant Theresa LANTZ is, and at all times relevant was and will be, Commissioner of the Department of Correction for the State of Connecticut. As such, Commissioner Lantz is responsible for and oversees all procedures and policies carried out by the Department of Correction and its personnel. She is sued in her official capacity for purposes of obtaining declaratory and injunctive relief.

14. Defendant Leonard BOYLE is, and at all times relevant was and will be, Commissioner of the Connecticut Department of Public Safety. As such, Commissioner Boyle oversees a number of state agencies, including the Connecticut State Police. He is sued in his official capacity for purposes of obtaining declaratory and injunctive relief.

15. Defendant Colonel Edward LYNCH is, and at all times relevant was and will be, Deputy Commissioner of the Connecticut State Police. As such, he is responsible for overseeing all state law enforcement activities within the State of Connecticut. He is sued in his official capacity for purposes of obtaining declaratory and injunctive relief.

16. Defendant TOWN of ENFIELD is a town incorporated by the Commonwealth of Massachusetts in 1683 and annexed to Connecticut in 1749. The

Town of Enfield, through the Town of Enfield Police Department, is responsible for law enforcement activities with the town of Enfield, Connecticut. All Enfield Police Department employees and officials have and will be at all relevant times operating under color of state law.

17. Defendants, at all relevant times, were, are, or will be, acting in their respective official capacities with respect to all acts described herein, and acting in each instance under the color and authority of state law. Upon information and belief, unless preliminarily and permanently enjoined, the defendants intend to act in their respective official capacities and under the authority of state law in such a manner as to violate the free speech rights of plaintiffs on January 25 and 26, 2005.

Jurisdiction and Venue

18. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), as plaintiffs' claims arise under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Pursuant to 28 U.S.C. §§ 2201 and 2202 this Court has jurisdiction to declare the rights of the parties and to grant all further relief found necessary and proper.

19. This Court has supplemental jurisdiction over the state constitutional claim asserted by plaintiff pursuant to 28 U.S.C. § 1367.

20. This Court has venue under 28 U.S.C. § 1391(b)(1) in that all of the defendants are situated within the State of Connecticut and under 28 U.S.C. § 1391(b)(2) in that all of the events described herein have and will transpire within this judicial district.

Statement of Facts

21. Michael Ross is scheduled to be executed at 2:00 a.m. on January 26, 2005 at the Osborn Correctional Facility (“Osborn”) located in Somers, Connecticut. If no stay is issued, Mr. Ross will be the first person executed by the State of Connecticut in 45 years.

22. Plaintiffs MVFHR, CNADP, NCADP and Amnesty International are nonprofit organizations opposing the death penalty whose members are planning a peaceful vigil outside the grounds of Osborn on the night of Mr. Ross’s execution in an exercise of their free speech rights. This vigil will consist of protestors gathering outside the entrance to Osborn at approximately 1:00 a.m. with banners, signs, and candles and protestors plan to mark the execution with song, prayer, and a moment of silence. Surviving family members of murder victims will offer personal testimony in opposition the death penalty.

23. The location of plaintiffs directly outside the grounds of the prison where the state is inflicting the death penalty is an integral component of plaintiffs’ speech.

24. In anticipation of protests related to the planned execution, defendants have adopted a plan for restricting the activities of plaintiffs in such a way as to violate their rights under the First Amendment to speak freely, assemble peaceably, and petition the government for redress of grievances.

25. Osborn Correctional Facility is located within the town limits of Somers, Connecticut, adjacent to the town of Enfield, Connecticut. See Exhibit 1 (Map of Area). In the surrounding area, which includes parts of both Somers and Enfield, there are five

correctional facilities, including Osborn. Access to DOC property upon which the correctional facilities are located is via public roads. The public roads leading to Osborn are called Shaker Road and Bilton Roads (Shaker turns into Bilton as it gets closer to Osborn). The headquarters of Lego Systems, Inc. (“Lego Systems”) is located just east of Shaker Road, at 555 Taylor Road, approximately 1.5 miles before the entrance to Osborn. There is a field adjacent to the Lego Systems complex (“Lego field”). Carl Robinson Correctional Facility is located several hundred yards up the road towards Osborn from Lego Systems on the opposite side of Shaker Road. Carl Robinson is approximately 1.4 miles from the entrance to Osborn.

26. The public roadways that lead to Osborn, Shaker and Bilton Roads are not used solely for the purpose of gaining entrance to correctional facilities. They are also roadways for traveling between the towns of Enfield and Somers and are used by members of the public for such a purpose.

27. Upon information and belief, the standard traffic on the roads in the area surrounding Osborn Correctional Facility at 2:00 a.m. is extremely light.

28. Defendants have informed plaintiffs that the public roads leading to Osborn will be closed to the public and checkpoints and barricades erected. In addition, “protest zones” will be set up in Lego field, approximately 1.6 miles away from Osborn. There will be separate protest zones for individuals expressing anti and pro death penalty views. A separate zone for the media will be located at the Carl Robinson Correctional Facility, which is several hundred yards away.

29. Neither Osborn Correctional Facility nor the entrance to Osborn may be seen from Lego field and Carl Robinson Correctional Facility.

30. Defendants have informed plaintiffs that defendants will provide controlled access for the media to the protest zones via Department of Corrections shuttle buses. Defendants have not informed plaintiffs of any specific details of how these shuttle buses will run: for example, it has not been specified how frequently they will run, at what times they will run, who will be allowed on them, what media equipment will or will not be allowed on them, or whether armed officers will be on board.

31. With the exception of these shuttle buses between the Carl Robinson facility and the Lego field, neither protestors nor the media will be allowed to travel on the public road beyond the entrances to their respective zones.

32. Defendants have informed plaintiffs that their expressive activities in the general region relevant to this suit will be restricted to those protest zones established, maintained, and patrolled by defendants.

33. Defendants have not provided plaintiffs with specific information about how defendants will regulate activity on the ground the night of the execution, leaving plaintiffs to understand that they will be restricted to protest zones, but unclear as to what other restrictive measures may be applied at defendants' discretion that night.

34. The planned restrictions violate plaintiffs' free speech rights and are inadequate for their expression of peaceful protest against the death penalty. The location of their vigil outside the entrance to the actual facility in which the state is carrying out the execution is an integral part of plaintiffs' speech.

35. These restrictions are not based in reasonable security concerns of defendants, as is demonstrated by the locations of protests occurring outside correctional facilities at which executions are performed in other states. Protests in other states

generally take place immediately outside the entrances to the facilities in which the executions are taking place. Where defendants plan to place plaintiffs is, in fact, at a far greater distance from the correctional facility than in any other state in the country which routinely hosts protests surrounding executions. Upon information and belief, examples of these protests and vigils in twelve other states in recent years are as follows:

- A. Georgia: Georgia Diagnostic Classification Prison, July 1, 2004 – protestors stood on the main road at the facility, in front of the main guard tower;
- B. South Carolina: Broad River Correctional Institution, May 28, 2004 – protestors stood at the front entrance to the facility;
- C. Maryland: Maryland Correctional Adjustment Center, June 17, 2004 – protestors stood in front of the facility;
- D. Texas: Huntsville Unit, January 4, 2005 – protestors stood across the street from the facility;
- E. Nevada: Ely State Prison, March 24, 2004 – protestors stood across the street from the facility;
- F. Ohio: Mansfield Correctional Institution, October 13, 2004 – protestors stood in the parking lot of the prison;
- G. California: San Quentin Prison, January 29, 2002 – protestors stood within fifty feet of the gate to the prison;
- H. North Carolina: Central Prison, November 12, 2004 – protestors stood on the road in front of the driveway entrance to the prison;
- I. Tennessee: Riverbend Maximum Security Institution, April 19, 2000 – protestors stood in front of the facility;
- J. Virginia: Greensville Correctional Center – protestors generally stand on prison grounds in a field adjacent to the road leading into the prison, about 150 yards from the prison;
- K. Florida: Florida State Prison and Union Correctional Institution – protestors generally stand on prison property across a two-lane highway from the prison;
- L. Indiana (federal prison): Terre Haute, Indiana, March 19, 2003 – protestors stood in a field in sight of the prison.

36. Defendants have informed plaintiffs that any individuals who attempt to travel past the barriers erected by the defendants on the road will be arrested.

37. Upon information and belief, the barricades and checkpoints will have armed personnel in riot gear.

38. Defendants are not specifically empowered to close the public roadways for the execution by any specific act or regulation of the Connecticut legislature, but are doing so under the authority of general police powers.

39. The restriction of plaintiffs to a field outside Lego Systems, Inc. approximately 1.6 miles from the site of the execution effectively denies plaintiffs the opportunity to speak.

40. There is no history of plaintiffs engaging in violent or disruptive protests, nor do they intend to do so on this occasion.

41. There is no reasonable basis for defendants to believe that plaintiffs intend to or will engage in violent, disruptive, or unlawful acts in connection with their expressive activities on January 25 and 26, 2005.

42. Under the Constitution of the State of Connecticut, restrictions on free expression in a public forum are allowable only if the expression is incompatible with the normal uses of the forum. Moreover, under this same Constitution, a speaker's right to access is enhanced when, as here, the expression and the desired forum are symbolically related to each other.

43. Under the Constitution of the United States, standardless restrictions on expression in a public forum are impermissible. Prior restraints, flat bans on expression, and content-based restrictions on free speech in such forums are presumptively unconstitutional, subject to strict scrutiny, and may only be justified if narrowly tailored to a compelling government interest.

44. Defendants' plan will impermissibly violate the free speech rights of plaintiffs by denying them the opportunity to speak freely, assemble peaceably, and petition the government for redress of grievances on the night of the execution.

45. Upon information and belief, defendants' proposed restriction of plaintiffs' free speech activities including the placement of protestors 1.6 miles from the site of the execution deviates significantly from the practices of other states imposing the death penalty.

46. Absent relief, plaintiffs will suffer irreparable harm resulting from defendants' violation of their rights to engage in peaceful political expressive activities in a traditional public forum and plaintiffs have no adequate remedy at law.

47. Plaintiffs' expressive rights in this context are a matter of great public concern because they implicate political speech and expression, which both Connecticut and federal courts have long considered the most fundamental exercise of free speech rights.

First Count

Claims Under the United States Constitution

48. Plaintiffs incorporate and reallege paragraphs 1 – 47.

49. Plaintiffs have the right under the First and Fourteenth Amendments to the Constitution of the United States to assemble and engage in free speech in the areas which defendants' plan to close off to plaintiffs under threat of arrest.

50. Defendants' plan closes off a public forum from expressive activities without a reasonable basis for doing so.

51. Defendants' plan constitutes an invalid prior restraint on plaintiffs' speech.

52. Defendants' planned restrictions are not narrowly tailored to compelling government interests.

53. Defendants' planned restrictions effectively deny plaintiffs the opportunity to communicate their message.

54. The plan asserted by defendants gives unbridled discretion to defendants' agents on January 25 and 26, 2005 to impermissibly restrict plaintiffs' expressive activities.

55. Defendants' planned actions to restrict plaintiffs' expressive activities on January 25 and 26, 2005 in connection with the execution of Mr. Ross violate the rights of plaintiffs under the First and Fourteenth Amendments to the Constitution of the United States, for which remedies are provided by 42 U.S.C. § 1983.

Second Count

Claims Under the Connecticut Constitution

56. Plaintiffs incorporate and reallege paragraphs 1- 47.

57. Article First, Section 4 of the Constitution of the State of Connecticut provides that "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

58. Article First, Section 14 of the Constitution of the State of Connecticut provides that "The citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance."

59. The Connecticut Supreme Court has interpreted the Connecticut Constitution to be more speech-protective than the United States Constitution and applies a basic compatibility approach in determining whether or not restrictions of free speech are to be upheld.

60. Plaintiffs' proposed expressive activities in a public forum outside Osborn Correctional Facility on January 25 and 26, 2005 in connection with an execution are not incompatible with the uses of that public forum.

61. The incompatibility test is one facet of an overall fact-specific balancing analysis applied under Connecticut law that asks, *inter alia*, whether proposed expression bears a special relationship to the desired forum.

62. Plaintiffs' proposed expression bears a special symbolic relationship to the desired forum because their expression is directed towards the execution that will be taking place adjacent to and within sight of that forum.

63. Defendants' planned actions to restrict plaintiffs' expressive activities on January 25 and 26, 2005 in connection with the execution violate the rights of plaintiffs under Sections 4 and 14 of Article First of the Constitution of the State of Connecticut.

Prayer for Relief

WHEREFORE, plaintiffs request the following relief:

1. A declaratory judgment that defendants' plan to restrict the public to "protest zones" at Lego field and to bar plaintiffs from accessing the public roads and public land

leading to and adjacent to the entrance to Osborn Correctional Facility on January 25 and 26, 2005 in connection with the planned execution is unconstitutional;

2. A preliminary and permanent injunction against defendants' preventing the public from accessing public roads and public land leading to and adjacent to the entrance to Osborn Correctional Facility on January 25 and 26, 2005;

3. Attorneys' fees and costs as allowed by law; and

4. Such other relief as the Court may deem just and proper.

Dated this 12th day of January, 2004.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the ____ day of January 2005, a copy of the Complaint, and Notice of Appearance will be hand delivered to:

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