

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

**SUGGESTIONS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

**(EXPEDITED BRIEFING AND
RESPONSE REQUESTED)**

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INTRODUCTION

This case presents a straightforward and uncomplicated question: does Missouri law, which bars adults under 21 years of age from witnessing an execution, violate the First and Fourteenth Amendment rights of the 19-year-old adult daughter of a man scheduled for execution this month? Plaintiff Corionsa Ramey is the daughter of Kevin Johnson, Jr., whom the State of Missouri plans to execute on November 29, 2022.

Under Federal Rule of Civil Procedure 65, this Court should 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 Ramey's father, Kevin Johnson, Jr., until this Court considers and decides Plaintiff's Motion for Preliminary Injunction, after the parties have had an opportunity to present pertinent evidence and any arguments requested by the Court. The Court should also enter a preliminary injunction enjoining Defendants from enforcing the age restriction set forth in Mo. Ann. Stat. § 546.740 as applied to Plaintiff, and ordering that Defendants permit Plaintiff to witness her father's execution.

Plaintiff's Motion is based upon these Suggestions in Support; Plaintiff's Complaint for Injunctive and Declaratory Relief (Doc. 1); the Affidavit of Corionsa Ramey ("Ramey Aff."); the Declaration of Tracy Ulstad ("Ulstad Decl."); and all supporting documents filed concurrently. Plaintiff requests that in the interest of justice, the Court waive any security bond requirement. *See* Fed. R. Civ. P. 65(c).

FACTUAL BACKGROUND

Plaintiff Ramey's Abiding Interest in Witnessing Her Father's Execution

Plaintiff Corionsa Ramey is a 19-year-old adult resident of Missouri. Her father, Kevin Johnson, Jr., is her only living parent since her mother was murdered by an ex-boyfriend in front of Ms. Ramey when she was only 4 years old. Ramey Aff. ¶¶ 1-2, 5-6. Mr. Johnson has been incarcerated since Ms. Ramey was 2 years old, for a murder he committed when he was 19. Despite his incarceration they have built a close, constant, and loving relationship. *Id.* ¶¶ 3-4, 6-9. For example, when Ms. Ramey was in school, her father arranged to have an academic liaison put in

place so that he could monitor her grades and performance, and hold her accountable to graduate from high school. *Id.* ¶ 7. He offers advice on life in general and relationships, including adjusting to being a new mother, and she says “[t]here is not anyone else in my life who understands me the way that my father does.” *Id.* ¶¶ 8-9. She writes or speaks with her father several times a week, and since early childhood visited him as often as she was able to travel to the prison. *Id.* ¶ 6. She visited her father in person most recently a month ago in October 2022 with her new baby; an experience she describes as “a beautiful but bittersweet moment for me, because I realized that it might be the only time that my father would get to hold my son.” *Id.* ¶ 9.



Id. ¶ 9. Mr. Johnson is her closest living blood relative, other than her son. *Id.* ¶ 12. She states that:

If my father were dying in the hospital, I would sit by his bed holding his hand and praying for him until his death, both as a source of support for him, and as a support for me as a necessary part of my grieving process and for my peace of mind.

I have suffered so much loss in my life—first I lost my father to prison when I was 2, and then I watched my mother’s ex-boyfriend murder her when I was only 4 years old. It is excruciating to know that I am about to lose my father all over again

when the State kills him, yet I cannot be present for his death simply because of my age. The fact that I will not be able to give him comfort, and experience any sort of grief and closure for myself, for no other reason than I am 19 years old, is a new and fresh loss, and a total injustice.

The harm that I will suffer because Missouri officials bar me from attending my father's execution for no other reason than my current age is deep and cannot be fixed. There is no amount of money in the world that could ever make me whole because I was not allowed to be with my father during his death simply because of my age.

Id. ¶¶ 12-13, 15.¹

MODOC's Refusal To Allow Ms. Ramey To Witness Her Father's Execution

On November 8 and 14, 2022, Mr. Johnson submitted to prison officials a list of his requested execution witnesses, including his daughter Ms. Ramey. Doc. 1 ¶ 25; Ulstad Decl. ¶ 3. He did not receive a response, so on the afternoon of November 16, 2022, one of his capital habeas attorneys emailed Gregory Goodwin, Chief Counsel of the Public Safety Section of the Missouri Attorney General's Office, to confirm that the list had been received and to ask specifically if Ms. Ramey would be able to attend her father's execution. Doc. 1 ¶ 26, Ulstad Decl. ¶ 4, Ex. 1. On November 17, 2022, Mr. Goodwin responded, stating 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." Doc. 1 ¶ 27; Ulstad Decl. ¶ 4, Ex. 1.

LEGAL FRAMEWORK

Under Missouri state law, "no person under twenty-one years of age shall be allowed to witness [an] execution." Mo. Ann. Stat. § 546.740 (West 2022) (hereinafter "Section 546.740" or "§ 546.740").

ARGUMENT

In a motion for emergency relief, the district court considers the (1) probability that the movant will succeed on the merits; (2) threat of irreparable harm; (3) balance of equities; and (4)

¹ Plaintiff is not requesting to be in the execution chamber physically next to or touching her father. She simply asks to be in the viewing area, behind glass, with all other witnesses.

public interest. *See Grasso Enters., LLC v. Express Scripts, Inc.*, 809 F.3d 1033, 1036 n.2 (8th Cir. 2016) (citing *Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc)). In the Eighth Circuit, the same standards apply to requests for temporary restraining orders and preliminary injunction. *See S.B. McLaughlin & Co. v. Tudor Oaks Condo. Project*, 877 F.2d 707, 708 (8th Cir. 1989) (affirming the application of the *Dataphase* factors to a motion for a temporary restraining order).

In ruling on a motion for a preliminary injunction, a court may consider “evidence that is less complete than in a trial on the merits.” *Church Mut. Ins. Co. v. Sands*, No. 4:14-CV-3119, 2014 WL 3907831, at *2 (W.D. Mo. Aug. 11, 2014) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)). This includes “evidence that would ordinarily be inadmissible, such as hearsay, in support of granting a motion for a preliminary injunction.” *H&R Block Tax Servs. LLC v. Clayton*, No. 4:16-CV-00185, 2016 WL 1247205, at *1 (W.D. Mo. Mar. 24, 2016).

Plaintiff Ramey clearly satisfies the Eighth Circuit’s four-factor test for a temporary restraining order and preliminary injunction.

I. PLAINTIFF HAS DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS OF HER CLAIMS

At this stage, Ms. Ramey need not prove her case in full; she needs only to demonstrate a likelihood that she will prevail on the merits of her claim. *See PCTV Gold, Inc. v. SpeedNet, LLC*, 508 F.3d 1137, 1143 (8th Cir. 2007) (“While an injunction cannot issue if there is no chance on the merits, the Eighth Circuit has rejected a requirement as to a party seeking preliminary relief prove a greater than fifty per cent likelihood that he will prevail on the merits.”) (quotation marks and citations omitted)).² It is well established that “state laws are preempted when they conflict

² Under Circuit precedent, Ms. Ramey has standing to sue for prospective injunctive relief. In *McDaniel v. Precythe*, 897 F.3d 946, 952-53 (8th Cir. 2018), a case filed by a reporter making an as-applied challenge to Section 546.740 as violating the First and Fourteenth Amendments, the Eighth Circuit “express[ed] no view on the merits of the claim, but [] conclude[d] that a lawsuit seeking injunctive relief to bring the Director’s [execution] witness-selection process into compliance with the Constitution falls within the scope of *Ex parte Young* and may proceed in federal court.”

with federal law.” *Arizona v. United States*, 567 U.S. 387, 399 (2012). Here, Plaintiff is likely to succeed on the merits of her claim that Section 546.740, as applied to her, violates her First and Fourteenth Amendment rights.

A. Section 546.740, As Applied to Plaintiff, Violates Her Equal Protection Rights Under the Fourteenth Amendment

The Fourteenth Amendment’s Equal Protection Clause “commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws’ which is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). An equal protection claim is actionable when facts are alleged that a state actor treats a person less favorably than similarly situated people. *Bogren v. Minnesota*, 236 F.3d 399, 408 (8th Cir. 2000). Here, it is undisputed that Defendants are treating Plaintiff less favorably than similarly situated adults 21 and older who would be permitted to witness her father’s execution upon his request.

Government restrictions based upon age are analyzed using a rational basis analysis. *See Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976); *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991). State actions analyzed under this test can survive only “if the distinction it makes rationally furthers a legitimate state purpose.” *Zobel v. Williams*, 457 U.S. 55, 60 (1982).³

Defendants can offer no legitimate state purpose to bar Ms. Ramey from witnessing her father’s execution, simply because she is an adult younger than 21—because none exists. Under

³ Notably, *Murgia* and most of its progeny focus on age restrictions in the later years of life, such as mandatory retirement ages. *See, e.g., Vance v. Bradley*, 440 U.S. 93, 99 (1979) (upholding age-based retirement policy for foreign service officers); *Emory v. United Air Lines, Inc.*, 720 F.3d 915, 922-23 (D.C. Cir. 2013) (upholding mandatory retirement age for airline pilots); *Correa-Ruiz v. Fortuno*, 573 F.3d 1, 16 (1st Cir. 2009) (upholding police and firefighter mandatory retirement rule); *Gregory*, 898 F.2d at 604 (upholding Missouri mandatory retirement age for state judges); *Zielasko v. State of Ohio*, 873 F.2d 957, 961 (6th Cir. 1989) (upholding mandatory retirement age for Ohio court judges); *Lerner v. Corbette*, 972 F. Supp. 2d 676 (M.D. Pa. 2013), *aff’d*, 564 Fed. App’x. 647 (3d Cir. 2014) (upholding Pennsylvania state judge retirement law); *Bernstein v. Maryland*, 674 F. Supp. 2d 703 (D. Md. 2009), *certified question answered*, 422 Md. 36 (2011) (upholding Maryland law prohibiting persons older than 70 from holding state judicial office).

federal and Missouri law, with very few exceptions (most notably, buying alcohol), the age of majority is 18. *See* 32 C.F.R. § 66.6 (minimum age for U.S. armed services enlistment is 17); *Owens v. Owens*, 854 S.W.2d 52, 54 (Mo. Ct. App. 1993) (“[T]he term ‘infant’ means any person who has not attained the age of eighteen years. All persons of the age of eighteen years or older, not otherwise disqualified, may commence, prosecute, or defend any action in his own name as the real party in interest”) (citing Mo. Ann. Stat. § 507.110-507.220); *see also* Mo. Ann. Stat. § 431.055 (West 2022) (competent to sign legally-binding contracts at 18); *Id.* § 571.080 (persons 18 or older, unless subject to other limits, may buy or receive a gun or ammunition); *Id.* § 451.040 (age of legal marriage without parental consent is 18); *Id.* § 324.520 (tattoos are legal at 18). With regard to Missouri’s criminal justice system, children as young as 12 can be transferred from the juvenile justice system and charged as adults in criminal court. *See* Mo. Ann. Stat. § 211.071. And of course, as seen here, a person aged 18 or over at the time of committing a crime, like Plaintiff’s father, may be executed. *See Roper v. Simmons*, 543 U.S. 551, 574 (2005) (“The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.”).

Few cases have examined restrictions based solely on youthful age.⁴ In *Stiles v. Blunt*, 912 F.2d 260 (8th Cir. 1990), the Eighth Circuit analyzed a Missouri constitution provision requiring state representatives be at least 24 years old. The court noted it was “particularly appropriate to apply a deferential standard of review to age requirements affecting young people, because such requirements do not result in an absolute prohibition but merely postpone the opportunity to engage in the conduct at issue.” *Stiles*, 912 F.2d at 265. But in the case at hand, Plaintiff Ramey—unlike the 23-year-old political aspirant in *Stiles*—cannot simply “postpone the opportunity” to witness her father’s execution by allowing the passage of time. She has zero control over when the

⁴ In fact, many cases related to age restrictions for younger adults are intertwined with, and the analysis also hinges on, sex-based discrimination. *See, e.g., Craig v. Boren*, 429 U.S. 190, 197 (1976) (striking down a law allowing sale of 3.2% alcohol beer to women older than 18, but only to adult men older than 21, because the law targeted 18-to-21-year-old men on the basis of their sex, and accordingly, the intermediate scrutiny standard used for sex classifications applied).

State of Missouri chooses to execute her father, and so the execution witness age requirement—unlike the age requirement at issue in *Stiles*— does indeed “result in an absolute prohibition” of her ability to sit with the other witnesses and observe her father’s execution. *Id.* Accordingly, this age restriction as applied to Ms. Ramey violates her equal protection rights, and the Court should enjoin Defendants from barring her from her father’s execution.

B. Section 546.740, As Applied to Plaintiff, Violates Her First Amendment Right to Freedom of Association

Ms. Ramey is also likely to succeed on her claim that Section 546.740 impermissibly infringes on her freedom of association under the First Amendment. “[T]he First Amendment protects those relationships, including family relationships, that presuppose ‘deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one’s life.’” *Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 545-46 (1987) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619-20 (1984)).

Mr. Johnson has been Ms. Ramey’s only parent since she was four years old and “is the most important person in [her] life” Ramey Aff. ¶¶ 5, 6. She is his closest living blood relative, and despite his incarceration, they have regular and close contact through visits, phone calls, and written communications. *Id.* ¶¶ 7, 11, 12. Witnessing his final moments would be both “a source of support for him, and [] a necessary part of [her] grieving process.” *Id.* ¶ 12.

Nor does a carceral setting change this. “[P]rison walls” do not “‘bar free citizens from exercising their own constitutional rights by reaching out to those on the inside.’” *Hum. Rts. Def. Ctr. v. Baxter Cnty. Ark.*, 999 F.3d 1160, 1164 (8th Cir. 2021) (quoting *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989) (internal quotation marks omitted)). Even those who are incarcerated—which Ms. Ramey is not—retain a constitutional “right to maintain certain familial relationships,

including association among members of an immediate family.” *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003).⁵

C. The Age-Based Restriction on Witnessing Executions Is Not Reasonably Related to Legitimate Penological Interests and Therefore Violates the First Amendment

Under *Turner v. Safley*, “when a prison regulation impinges on inmates’ constitutional rights,” it is valid only “if it is reasonably related to legitimate penological interests. . .” 482 U.S. 78, 89 (1987). *Turner* itself invalidated a Missouri prison policy burdening the right of association between incarcerated people and those on the outside: a policy that prohibited incarcerated people from marrying, unless the prison superintendent approved the marriage for compelling reasons. *Id.* at 96, 99. The Court found “the almost complete ban on the decision to marry is not reasonably related to legitimate penological objectives,” and it was thus unconstitutional. *Id.* at 99.

Applying *Turner*, the Eighth Circuit and its district courts repeatedly have invalidated prison regulations that burden the constitutional rights of incarcerated people without reasonable justification.⁶ See, e.g., *Williams v. Brimeyer*, 116 F.3d 351, 354 (8th Cir. 1997) (mail censorship); *Quinn v. Nix*, 983 F.2d 115, 118–19 (8th Cir. 1993) (ban on certain hairstyles); *Salaam v. Lockhart*, 905 F.2d 1168, 1173-74 (8th Cir. 1990) (refusal to add religious name changes to prison records);

⁵ While *Bazzetta* held that the particular restrictions on prison visiting at issue in that case did not violate the First Amendment, the Court emphasized that “[w]e do not hold, and we do not imply, that any right to intimate association is altogether terminated by incarceration or is always irrelevant to claims made by prisoners.” 539 U.S. at 131.

Ms. Ramey’s interest in attending her father’s execution is particularly strong given that some courts recognize that even the general public enjoys a qualified right of access to executions under the First Amendment. See, e.g., *Flynt v. Lombardi*, 885 F.3d 508, 515–16 (8th Cir. 2018) (Kelly, J. concurring) (“It is difficult to envision an aspect of the criminal justice system where the benefits of public engagement, public awareness, and public confidence are more clear than where the state is attempting to enforce the ultimate penalty of death.”); see also *Cal. First Amend. Coal. v. Woodford*, 299 F.3d 868, 877 (9th Cir. 2002) (“We . . . hold that the public enjoys a First Amendment right to view executions from the moment the condemned is escorted into the execution chamber, including those ‘initial procedures’ that are inextricably intertwined with the process of putting the condemned inmate to death”). The Eighth Circuit has not yet decided this question. See *Rice v. Kempker*, 374 F.3d 675, 679 (8th Cir. 2004).

⁶ State statutes that burden prisoners’ rights are also subject to scrutiny under *Turner*. See *Waterman v. Farmer*, 183 F.3d 208, 212-20 (3d Cir. 1999).

Youngbear v. Thalacker, 174 F. Supp. 2d 902, 920 (N.D. Iowa 2001) (delay in providing a sweat lodge for religious exercise); *Weir v. Nix*, 890 F. Supp. 769, 781-82 (S.D. Iowa 1995) (censorship of publications), *aff'd on other grounds, appeal dismissed in part on other grounds*, 114 F.3d 817 (8th Cir. 1997).⁷

The *Turner* test comprises four factors:

First, “there must be a ‘valid, rational connection’ between the prison regulation and the legitimate governmental interest put forward to justify it.” 482 U.S. at 89 (quoting *Block v. Rutherford*, 468 U.S. 576, 586 (1984)). A prison regulation’s failure to satisfy this threshold requirement is fatal; “[i]f the connection between the regulation and the asserted goal is arbitrary or irrational, then the regulation fails, irrespective of whether the other factors tilt in its favor.” *Shaw v. Murphy*, 532 U.S. 223, 229–30 (2001) (quoting *Turner*, 482 U.S. at 89-90).

Prison officials must establish with evidence that the challenged policy is reasonably related to legitimate penological interests. *Davis v. Norris*, 249 F.3d 800, 801 (8th Cir. 2001) (*Turner* did not apply when prison officials failed to submit “any evidence supporting their argument”); *see also Salaam*, 905 F.2d at 1174 (prison officials may not justify their policies by “piling conjecture upon conjecture”). Officials may not defend a policy based upon penological objectives that were not the actual motivation for it. *Quinn*, 983 F.2d at 118-19. Nor may they justify policies based on larger societal interests that do not implicate prison operations. *Goodwin v. Turner*, 908 F.2d 1395, 1399 n. 7 (8th Cir. 1990) (concerns such as decreasing welfare rolls “are not legitimate *penological* interests because they ... have nothing to do with prison administration”) (emphasis in original). Finally, where the regulation is a blanket prohibition

⁷ Ms. Ramey is, of course, not incarcerated. In invalidating a restriction on witnessing executions, the Ninth Circuit observed that “[t]he Supreme Court has never applied *Turner* in a case such as this one, where the regulation promulgated by prison officials is centrally concerned with restricting the rights of outsiders rather than prisoners.” *Woodford*, 299 F.3d at 878. Because *Woodford* does not bind this Court, Plaintiff assumes for purposes of this motion that *Turner* is the appropriate standard of scrutiny for § 546.740’s prohibition as applied to the non-incarcerated Plaintiff witnessing her father’s execution.

involving no exercise of discretion, as in this case, “a closer fit between the regulation and the purpose it serves may safely be required.” *Thornburgh*, 490 U.S. at 412.

Under Section 546.740, Mr. Johnson may invite five people to be witnesses to his execution, specifically including “relatives.” The law’s unconditional prohibition on Ms. Ramey witnessing his execution bears no relationship to any legitimate penological objective. The ban on Plaintiff does not reflect any assessment of the penological interests that would be affected by her presence; it simply relies on a categorical exclusion of all persons under 21. Indeed, prison officials’ denial of Mr. Johnson’s request does not cite any penological reason, or any reason at all; it simply recites the terms of § 546.740.⁸ Ulstad Decl. Ex. 1.

It makes no difference to prison operations or security – *none* – if a witness is 19 years old, instead of 21. To the extent that Defendants may assert an interest in protecting adults between ages 18 and 21 from the trauma of witnessing an execution, those “are not legitimate *penological* interests because they . . . have nothing to do with prison administration.” *Goodwin*, 908 F.2d at 1399 n. 7 (emphasis in original). That MODOC allows visitors between the ages of 18 and 21—and indeed, visitors under 18—at all of its prisons under all other circumstances fatally undermines any claim that a minimum age of 21 to witness an execution is rationally related to legitimate penological interests.⁹ See *Griffin v. Lombardi*, 946 F.2d 604, 607-08 (8th Cir. 1991) (evidence that a rule Missouri prison officials asserted was necessary was not followed with other prisoners or at other prisons undermined their claim that the rule satisfied *Turner*).

The validity of § 546.740’s blanket prohibition on witnesses under 21 is further undermined by its status as a lonely outlier among capital punishment jurisdictions. “While not necessarily controlling, the policies followed at other well-run institutions would be relevant to a

⁸ The email erroneously cites § 546.720, but the language is actually from § 546.740.

⁹ See Mo. Dep’t of Corrs., “Visiting,” at <https://doc.mo.gov/programs/family-friends/visiting> (visited Nov. 18, 2022).

determination of the need for a particular type of restriction.” *Holt v. Hobbs*, 574 U.S. 352, 368 (2015) (quoting *Procunier v. Martinez*, 416 U.S. 396, 414 n.14 (1974)).¹⁰

The absence of any reasonable relationship between § 546.740’s prohibition as applied to Ms. Ramey and any legitimate penological interest requires that the statute be found unconstitutional in its application to her; the Court need not consider the remaining three *Turner* factors. But the statute fails those additional factors as well.

Second, under *Turner*, a court should analyze “whether there are alternative means of exercising the right that remain open . . .” 482 U.S. at 90. If Defendants are permitted to apply § 546.740’s blanket prohibition to Ms. Ramey, she will be barred from witnessing her father’s execution on November 29, 2022. Obviously, there is no “alternative means” for her to exercise her right to be in attendance that day as he dies.

Third, courts evaluate “the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally.” 482 U.S. at 90. The answer to this question is “none whatsoever.” It makes no difference to guards, other incarcerated people, or the allocation of prison resources if one of Mr. Johnson’s five witnesses is 19 years old versus 21.

¹⁰ The federal Bureau of Prisons (BOP) and the overwhelming majority of death penalty states either have no age requirement for family of the condemned person to witness an execution, or the minimum age is 18. *See, e.g.*, BOP Execution Protocol, at 156a (2019), at https://www.supremecourt.gov/DocketPDF/19/19-1348/145068/20200605210117775_2020%2006%2005%20Appendix.pdf (18); Ala. Code § 15-18-83 (no age specified for family of the condemned person); Ariz. Rev. Stat. § 13-758 (18); Ark. Code Ann. § 16-90-502 (18); Cal. Penal Code § 3605 (18); Fla. Stat. Ann. § 922.11 (no age specified); Ga. Code Ann. § 17-10-41 (no age specified); Idaho Code Ann. § 19-2716 (no age specified); Ind. Code Ann. § 35-38-6-6 (no age specified for family of the condemned person); Kan. Stat. Ann. § 22-4003 (18); Ky. Rev. Stat. Ann. § 431.250 (no age specified); La. Stat. Ann. § 15:570 (18); Miss. Code Ann. § 99-19-55 (no age specified); Mont. Code Ann. § 46-19-103 (no age specified); Neb. Rev. Stat. Ann. § 83-970 (no age specified); N.C. Gen. Stat. Ann. § 15-190 (no age specified); Ohio Rev. Code Ann. § 2949.25 (no age specified); Okla. Stat. Ann. tit. 22, § 1015 (no age specified for family of the condemned person); Or. Rev. Stat. Ann. § 137.473 (no age specified); 61 Pa. Cons. Stat. Ann. § 4305 (no age specified); S.C. Code Ann. § 24-3-550 (18 for family of the condemned person); S.D. Codified Laws § 23A-27A-36 (18); Tex. Code Crim. Proc. Ann. art. 43.20 (no age specified); Utah Code Ann. § 77-19-11 (18); Wyo. Stat. Ann. § 7-13-908 (no age specified).

Fourth, under *Turner*, “the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an ‘exaggerated response’ to prison concerns.” 482 U.S. at 90. If there is “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. Here, the alternative is indeed obvious and easy: allow Ms. Ramey to witness her father’s execution. The cost to valid penological interests is not only *de minimis*; it is nonexistent.

In sum, Plaintiff has made a clear showing that she is likely to prevail on the merits of her claims, thus meeting the first and most significant *Dataphase* prong for issuance of a temporary restraining order and preliminary injunction.

II. PLAINTIFF WILL SUFFER IRREPARABLE HARM IF SHE CANNOT ATTEND HER FATHER’S EXECUTION DUE TO HER AGE

A movant shows irreparable harm by demonstrating that irreparable injury is likely to occur to her without an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). And “[a] threat to a constitutional right is generally presumed to constitute irreparable harm.” *M.B. v. Corsi*, No. 2:17-CV-4102, 2018 WL 5504178, at *5 (W.D. Mo. Oct. 29, 2018) (collecting cases). Since Ms. Ramey is likely to prevail on her constitutional claims that the prohibition on her attendance at her father’s execution based solely upon her age violates her First and Fourteenth Amendment rights, she *de facto* faces irreparable harm.

Moreover, the evidence shows that besides the threat to Plaintiff’s constitutional rights, the actual harm she will suffer if she is unable to witness her father’s execution is real, palpable, and devastating. Ramey Aff. ¶¶ 12-13, 15. Given her longstanding and close relationship with her father, it will be a grievous and permanent injury to Ms. Ramey if Defendants bar her from being with him as he dies, solely because of her age. *Id.* ¶¶ 6-9, 12-13, 15. If the State proceeds with the execution without allowing her to witness it, there is no remedy that will compensate her for the injury Defendants are inflicting upon her. *Id.* ¶ 15 (“The harm that I will suffer because Missouri officials bar me from attending my father’s execution for no other reason than my current age is

deep and cannot be fixed. There is no amount of money in the world that could ever make me whole because I was not allowed to be with my father during his death simply because of my age.”)

Ms. Ramey has shown that Section 546.740, as applied to her, inflicts serious and irreparable harm. The second prong of the *Dataphase* analysis is met.

III. THE BALANCE OF EQUITIES DECIDEDLY FAVORS PLAINTIFF

A request for preliminary relief also involves an inquiry into “whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined.” *Dataphase*, 640 F.2d at 113. While Ms. Ramey will suffer numerous irreparable harms if the State goes forward with the execution of her father without permitting her to witness it, Defendants will suffer no injury whatsoever.

State officials have no interest in enforcing unconstitutional state laws or policies. *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678, 692 (8th Cir. 2012). And any ostensible financial burden or administrative inconvenience to Defendants as a result of an injunction ordering them to allow Ms. Ramey to attend her father’s execution does not outweigh the threat of irreparable harm to her. *See League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1006 (W.D. Mo. 2018) (holding that the harm to a movant “in the absence of injunctive relief outweigh any financial burden on Defendants, even assuming Defendants’ cost estimate relating for the full scope of relief is accurate.”); *see also Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (“Faced with a conflict between financial concerns and preventable human suffering, [the court has] little difficulty in concluding that the balance of hardships tips decidedly in plaintiffs’ favor.”) (quotation omitted).

Plaintiff Ramey meets the third prong of the *Dataphase* analysis.

IV. INJUNCTIVE RELIEF SERVES THE PUBLIC INTEREST

In the Eighth Circuit, “[t]he public is served by the preservation of constitutional rights.” *D.M. by Bao Xiong v. Minn. Shate High Sch. League*, 917 F.3d 994, 1004 (8th Cir. 2019) (quotation

omitted); *see also Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“All citizens have a stake in upholding the Constitution.”) (citation omitted). As Section 546.740 violates Ms. Ramey’s constitutional rights (*see supra* Part I), injunctive relief ordering Defendants not to enforce it as applied to her is in the public interest.

The fourth *Dataphase* prong is met.¹¹

CONCLUSION

For the foregoing reasons, Plaintiff Ramey respectfully requests that the Court (1) 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 Ramey’s father, Kevin Johnson, Jr., until this Court considers and decides Plaintiff’s Motion for Preliminary Injunction, after the parties have had an opportunity to present pertinent evidence and any arguments requested by the Court; (2) enter a preliminary injunction enjoining Defendants from enforcing the age restriction set forth in Mo. Rev. Stat. § 546.740 as applied to Plaintiff, and ordering that Defendants permit Plaintiff to witness her father’s execution; and (3) grant any other relief the Court deems just and appropriate.

Dated: November 21, 2022

Respectfully submitted,

/s/ Anthony E. Rothert

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¹¹ As Defendants are unharmed by the relief sought in this motion and face no prospect of monetary damages, the Court should use its discretion to waive any security bond required by Fed. R. Civ. P. 65(c). When “plaintiffs are serving a public interest” to protect constitutional rights, and government defendants “will not be harmed by the order,” it is “customary” not to require a bond. *Comp. Health of Planned Parenthood Great Plains v. Williams*, 263 F. Supp. 3d 729, 739 (W.D. Mo. 2017), *vacated on other grounds sub nom. Comp. Health of Planned Parenthood Great Plains v. Hawley*, 903 F.3d 750 (8th Cir. 2018); *see Richland Wilkin Jt. Powers Auth. v. U.S. Army Corps of Eng’rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (affirming district court’s waiver of bond “based on its evaluation of public interest . . .”).

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* *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 _____

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

**AFFIDAVIT OF CORIONSA
RAMEY**

AFFIDAVIT OF CORIONSA RAMEY

I, Corionsa (“Khorry”) Ramey, declare:

1. I was born on July 3, 2003, in Kirkwood, Missouri. I am over the age of 18 and a resident of Missouri. If called as a witness, I could and would testify competently to the facts stated below, all of which are within my personal knowledge.

2. My father is Kevin Johnson, Jr., and my mother was Dana Ramey.

3. In 2005, when I was two years old, my father, Kevin Johnson, Jr., was arrested and charged with capital murder for the shooting death of William McEntee.

4. My father was convicted and sentenced to death, and is currently scheduled to be executed on November 29, 2022.

5. In 2007, when I was four years old, my mother, Dana Ramey, was murdered in front of me by her ex-boyfriend.

6. My father has been my only parent for almost all of my life, and he is the most important person in my life. For as long as I can remember since his incarceration, I visited him in prison as often as family and friends were able to take me to see him, and I speak to him by phone at least once a week. I also currently correspond with him several times a week through the JPay email and tablets, as I can afford it.

7. From prison, my father arranged to have an academic liaison with my school so that the school could update him on my grades and my performance. He monitored my assignments and grades until I graduated from high school in 2020. Throughout my years in school, he encouraged me to study and complete my high school studies, and held me accountable to try my hardest in class. My father continues to encourage me to pursue my educational and career ambitions in the nursing field.

8. My father has given me advice and guidance on my personal relationships, family relationships, and life choices. There is not anyone else in my life who understands me the way that my father does.

9. I gave birth to a baby son in September 2022, and my father is my biggest source of support, advice, and love as I navigate adjusting to being a new mom. On October 18, 2022, I was able to visit my father with my baby son, Kaius, so that they could meet each other. My father was able to hold his grandson, and we were able to get a photograph taken together. It was a beautiful but bittersweet moment for me, because I realized that it might be the only time that my father would get to hold my son.



10. I recently learned that Missouri law won't let anyone under the age 21 witness an execution. I am 19 years old, and except for not being allowed to buy alcohol until I am 21, it is my understanding that I am considered an adult for all other purposes in the eyes of the law.

11. My father has listed me as a witness he wants present at his execution, and asked me to be present. As his only child, I want to be a witness to his execution.

12. I am Kevin Johnson's closest living blood relative, and he is mine, other than my baby son. If my father were dying in the hospital, I would sit by his bed holding his hand and praying for him until his death, both as a source of support for him, and as a support for me as a necessary part of my grieving process and for my peace of mind.

13. I have suffered so much loss in my life thus far—first I lost my father to prison when I was 2, and then I watched my mother's ex-boyfriend murder her when I was only 4 years old. It is excruciating to know that I am about to lose my father all over again when the State kills him, yet I cannot be present for his death simply because of my age. The fact that I will not be able to give him comfort, and experience any sort of grief and closure for myself, for no other reason than I am 19 years old, is a new and fresh loss, and a total injustice.

14. My father was 19 years old when he tragically killed another person, as I am 19 years old now. If the State of Missouri thinks that my father's actions at age 19 make him mature enough to be executed, then it makes no sense that under Missouri law, an adult who is 19 is not mature enough to be present at that person's execution.

15. The harm that I will suffer because Missouri officials bar me from attending my father's execution for no other reason than my current age is deep and cannot be fixed. There is no amount of money in the world that could ever make me whole because I was not allowed to be with my father during his death simply because of my age.

16. If the State of Missouri will not allow me to be present for my father's execution because I am 19 years old, then the only remedy would be that they be ordered to let me be present at his execution now, despite the state law. Alternatively, the execution should be delayed until I am at least 21 years of age, and under Missouri law, finally able to be a witness when he is killed.

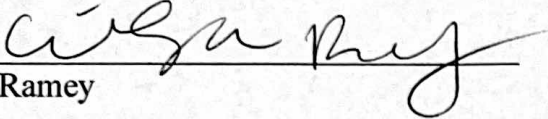
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I declare under penalty of perjury that the foregoing is true and correct.

Signed November 17, 2022, in St. Louis, Missouri.



Corionsa Ramey

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

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

Corionsa Ramey,

Plaintiff,

v.

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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

**DECLARATION OF TRACY
ULSTAD**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

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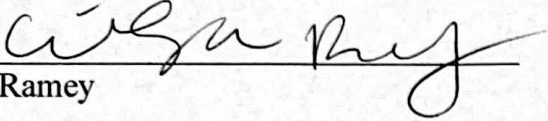
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Signed November 17, 2022, in St. Louis, Missouri.



Corionsa Ramey