UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TEENA FOY,

Plaintiff, Case No. 4:24-cv-00140-MW-MAF

v.

FLORIDA COMMISSION ON OFFENDER REVIEW, and MELINDA N. COONROD, Chairperson and Commissioner, Florida Commission on Offender Review, in her Official Capacity,

Defendants.

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PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

1.0 ARGUMENT

1.1 Sovereign Immunity is Inapplicable

Defendants assert that sovereign immunity bars this action. Response, 6. However, this case fits comfortably into the exception created by *Ex parte Young*, 209 U. S. 123 (1908).

Ex Parte Young allows for for injunctive or declaratory relief against state officials. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) ("[A] state official in [her] official capacity, when sued for injunctive relief, would be a person under §1983 because official-capacity actions for prospective relief are

not treated as actions against the State.") Since Foy seeks prospective injunctive relief, "invocation of the State's sovereign immunity fails because the *Ex parte Young* doctrine allows suits like [Foy's] for declaratory or injunctive relief against state officers in their official capacities." *Reed v. Goertz*, 143 S.Ct. 955, 960 (2023).

This Court previously rejected an identical argument raised by the head of the Florida Parole Commission, and it should reject that argument here. *Rivers v. Pate*, 4:12-CV-508-GRJ, 2013 WL 5745703, at *2 (N.D. Fla. Oct. 22, 2013). There, the Court concluded that, "under the *Ex Parte Young* doctrine, 'official capacity suits for prospective relief to enjoin state officials from enforcing unconstitutional acts are not deemed to be suits against the state and thus are not barred by the Eleventh Amendment.'" *Id.*, quoting *Scott v. Taylor*, 405 F.3d 1251, 1255 (11th Cir. 2005).

Defendants claim that the State is the "real, substantial party in interest," but this is neither relevant nor is it so. Foy seeks nothing from the State; she only wants to enjoin Melinda Coonrod, as head of the Commission, from enforcing a condition that violates Plaintiff's rights. The *Ex parte Young* exception applies.

To avoid this conclusion, Defendants employ a variant of three-card monte, claiming that two subordinate commissioners are truly responsible. Response at 7. However, since Foy seeks prospective injunctive relief, the individuals who Coonrod may now blame are irrelevant, since an "official-capacity suit for injunctive relief is properly brought against persons who 'would be responsible for implementing any

injunctive relief.'" *R.W. v. Columbia Basin Coll.*, 77 F.4th 1214, 1222 (9th Cir. 2023), quoting *Pouncil v. Tilton*, 704 F.3d 568, 576 (9th Cir. 2012).

Foy sued Coonrod, who heads the agency, and the agency itself, and Defendants offer no evidence that she lacks the authority to remove the challenged condition or control its enforcement. Nor do Defendants offer authority for the proposition that a suit brought under *Ex parte Young* requires the plaintiff to sue subordinate decision-makers, as opposed to the head of the agency. Coonrod is the Chair, Richard Davison is the Vice Chair, and David Wyant is the Secretary. It strains logic to claim that a chair of a committee is the wrong party, but that two subordinates are the true parties in interest. However, even if the authority to confer relief were transferred to Davidson and Wyant, this Court can remedy this without requiring amendment or rescheduling this hearing. *See R.W.*, 77 F.4th at 1222.

Federal Rule of Civil Procedure 25(c) provides that "[i]f an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party." Under this Rule, the Court has discretion to substitute Commissioners Davidson and Wyant for Coonrod if it found that the agency head transferred her authority to them.[1] *See R.W.*, 77 F.4th at 1222-23. In any case, "any

[1] In deciding whether to exercise its discretion, the Court should consider that this dispute could have been avoided. As discussed *infra*, Plaintiff's counsel

misnomer not affecting the parties' substantial rights must be disregarded," Fed. R. Civ. P. 25(d), and the Court should not delay resolving motion for preliminary injunctive relief due to a "manipulation of names." *Echevarria-Gonzalez v. Gonzalez-Chapel*, 849 F.2d 24, 31 (1st Cir. 1988) ("manipulation of names is merely a technicality that should not interfere with substantial rights") (citations omitted).

In a three-person commission, the Chair of the Commission is the proper party, not two subordinates. However, to whatever extent the Court finds that the other two Commissioners are necessary, the Court should substitute the other Commissioners for the Commission or Coonrod, or otherwise simply enjoin Coonrod while the subordinates are joined.[2]

1.2 Plaintiff has Standing

Foy has standing to sue under Article III. To satisfy Article III's standing requirement, a plaintiff must demonstrate: (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct and that is (3) likely to be redressed by the requested relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

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explicitly asked Defendants' counsel if Defendants would argue that Plaintiff sued the wrong party. Defendants refused to discuss the issue, apparently seeing more advantage in raising it at this point, so that all the parties could delay and re-file everything, all over again, if the Court declines to exercise its discretion.

[2] Any arguments which could be raised by the other Commissioners have already been raised and addressed here, so the preliminary injunction can extend to the other commissioners without delay.

Defendants claim that Foy has not suffered an injury-in-fact because her "allegations involve restrictions on a person other than herself." Response at 8. This is incorrect.

Defendants' condition deprives Foy of the ability to associate with her son and have him care for her, *Moore v. East Cleveland*, 431 U. S. 494, 503-504 (1977) (describing the "venerable" tradition of cohabitation with relatives, which enjoys "constitutional recognition"), and would cause her economic injury by forcing her to employ someone else to assist her. *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972) ("[P]alpable economic injuries have long been recognized as sufficient to lay the basis for standing"). Moreover, Foy is the only party with standing to seek a declaratory judgment that she can shed her nonconsensual and government-imposed status as a "victim," the status that is causing her the harm at the center of this case. Further, she is the only party that could seek redress for the deprivation of *her* substantive and procedural due process rights.

These injuries burden Foy's protected interests, forcing her to relinquish her constitutional right to free association. Were she to unilaterally disavow her status as a "victim" and reach out to her son for comfort and association, she risks punishment in the form of her loved one returning to government custody. This confers her standing. *See*, *e.g.*, *FEC v. Akins*, 524 U.S. 11, 24-25 (1998) (informational injury); *Lujan*, 504 U.S. at 562-63 (aesthetic injury); *Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (stigmatic injury).

The primary authority cited by the Defendants is *Zargarpur v. Townsend*, 18 F. Supp. 3d 734 (E.D. Va. 2013), a district court case that held a 15-year-old student who had an illegal relationship with a teacher lacked standing to challenge the constitutionality of a condition of his probation prohibiting the two from having any contact. The facts are far afield from this case. In that case, the plaintiff was asserting her teacher's – not her own – rights were being violated. That relationship was not entitled to constitutional protection because the crime for which the defendant was punished was the illegal relationship itself. Protected relationships generally include "those that attend the creation and sustenance of a family—marriage, childbirth, the raising and education of children, and cohabitation with one's relatives." *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984). An illegal student-teacher statutory rape relationship does not fit the bill.

Defendants also rely on *Drollinger v. Milligan*, 552 F. 2d 1220 (7th Cir. 1977). In that case, a father-in-law claimed that the conditions of probation imposed on his daughter-in-law infringed on his right to associate with her and his granddaughter. *Id.* at 1225. The Seventh Circuit found that the father-in-law suffered an injury-in-fact that conferred Article III standing insofar as the probation limited his contact with his granddaughter. *Id.* at 1226. However, it noted in a footnote that the terms of probation did not confer standing for an in-law.

This case is different. Foy is Graham-Foy's mother, is of advanced age, and requires the care of her son, who is her only living relative. There was no indication that the father-in-law in *Drollinger* had those same needs, nor did involve the unduly restrictive conditions at issue here—Foy cannot have *any* communication with her son, direct or indirect, and so the deprivation is more acute. Notwithstanding the dicta in *Drollinger*, Foy has suffered a cognizable injury-in-fact. Moreover, unlike *Drollinger*, Foy has raised procedural and due process arguments. Those claims, which are personal to Foy, also confer standing under Article III.

Finally, Foy's injury is redressable by this Court. Foy sued the agency head, in typical *Ex parte Young* fashion, and there is no evidence suggesting Defendant Coonrod cannot remove the condition at issue in this case or prevent its enforcement. Even if that were not the case, the Court could substitute or add the other commissioners for Coonrod and then enter the injunction.

1.3 The Claims Are Valid

Defendants devote significant space to trying to refute some of Foy's claims but waive argument against others. Foy has shown a substantial likelihood of success as to all her claims, and at a minimum, the waived claims.

1.3.1 Foy's Speech Rights

Foy has demonstrated a likelihood of success on her First Amendment speech claim. Defendants argue that Foy cannot challenge a punitive condition imposed on

another individual. Response at 10-13. However, the other individual is her son, and locking him up would also punish Foy by incarcerating her only remaining relative. Such a harsh punishment to her son would be felt in equal or greater measure by Foy herself.

Defendants argue that Foy is free to speak to her son through one-sided communication.[3] Response at 13. This is as reasonable as the Defendants' suggestion, seriously presented by Attorney Lamia, that Mr. Graham-Foy simply go back to prison, thus creating a way that Ms. Foy could visit with him any time she wanted. How, exactly, would this function? Ms. Foy could yell to her son through an open window? She could write letters, that could never be replied to?

1.3.2 Foy's Religious Rights

Defendants argue that the no-contact condition does not prevent Foy from forgiving her son, and thus Defendants have not violated her right to be free to practice her religion without government interference. This argument misses the point. Forgiveness is not merely a state of mind nor the sum of the words, "I forgive you." Instead, forgiveness is an act to be practiced. Foy believes that forgiveness is practiced through reconciliation, by inviting her son physically back into her life and

[3] They also seem to think that "freedom of association" can be exercised as a solo act.

allowing him to care for her, and vice versa. These elements, grounded in her faith, extend beyond mere "thoughts and prayers."

1.3.3 Foy's Associational Rights

Defendants argue that the no-contact condition meets strict scrutiny because it is narrowly tailored to serve a compelling government interest. What interest is that? The Government argues that it is to protect the public. This makes no sense.

Although Foy was the victim of his crime, she is now Graham-Foy's staunchest supporter, and welcomes his contact. She is confident in his rehabilitation, and wishes to associate with him. While such a prohibition is reasonable where the victim *does not want contact*, there is no such tailoring here. Moreover, the condition is not tailored as to its terms; as the Circuit Court agreed, any governmental interest could be satisfied by preventing *non-violent* contact. Under that condition, Foy could usher Graham-Foy back to prison if he so much as touches her. And, Foy would be free to eject Graham-Foy from her presence if he is so much as impolite to her. Meanwhile, if Graham-Foy is such a danger to his mother, what in the prohibition prevents him from going to her house *today* to do her harm? That is already illegal. The only thing the condition prevents is the mother-son associational relationship.

Defendants fail to identify any government interest served by the condition. Although they attempt to paint Graham-Foy as a man primed to relapse at any

moment, they saw fit to allow him unrestricted contact with the public. The one person Graham-Foy may not contact is his own mother. Defendants identify no reason for treating Foy differently than any other member of the public, except that he attacked her once, over a decade ago. While Defendants argue that this condition is a measure of "doing all [Defendants] can to [e]nsure that Mr. Graham-Foy's past does not become prologue," short of providing Foy with 24-hour security, the State provides no safety to Foy, and its position serves only to punish Foy herself.

1.3.4 Due Process and Declaratory Relief

Foy has been named "victim" by the State. That involuntary status confers many rights under FLA. CONST. Art. I, §16. If it only bestowed privileges, then no due process would be required. However, in this case, the State has flipped "victim" status from a protected class to a punitive category. Foy has a procedural due process right to be heard before she is given a label that subjects her to such a now-punitive status. If her victim status prevents her from seeing her son, she should be able to discharge that status. Naturally, this may mean shedding victim benefits as well, but Foy has the agency and competence to decline victim benefits as well as victim punishments. Further, the Substantive Due Process violation is clear – Foy is being deprived of the most intimate familial relationship for no rational reason, in violation of the United States and Florida Constitutions.

Defendants' response failed to address these claims. This waives those arguments in Foy's favor. The Court should grant injunctive relief on at least these grounds, as the State has not objected to them. From a policy perspective, it makes no sense that a victim who cooperates by being a witness in the state's prosecution of an offender is stripped of rights.

1.3.5 Balance of Equities and Irreparable Harm

Defendants claim that the condition is justified by its duty to "protect the public." However, any member of the public, apart from Foy, can have unrestricted contact with Graham-Foy. Defendants' "public safety" rationale is faulty, and the balance of equities favors Foy. Beyond the fact that she is likely to succeed on her First Amendment claims, which themselves constitute irreparable harm, *Elrod v. Burns*, 427 U.S. 347, 373 (1976), that Defendants "exercised [their] broad discretion" (Response at 14) in choosing to violate Foy's rights should not weigh into the Court's analysis. That the Government used its "discretion" to impose a Substantive and Procedural Due Process and First Amendment violation should be given no deference. The government does not get discretion to punish Ms. Foy.

1.4 Burford Doctrine Does Not Apply

The *Burford* doctrine permits dismissal only in extraordinary circumstances and does not apply. *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 361 (1989); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 726-727

(1996). Under this doctrine, a court may dismiss a case only if it presents "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar," or if its adjudication in a federal forum "would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Id.* "While *Burford* is concerned with protecting complex state administrative processes from undue federal interference, it does not require abstention whenever there exists such a process, or even in all cases where there is a 'potential for conflict' with state regulatory law or policy." *New Orleans Pub. Serv.*, 491 U.S. at 362, citing *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 815-816 (1976).

Burford does not apply. First, there is no state-law remedy. If he were the plaintiff, Graham-Foy might face this doctrine. Foy does not, because she has no state remedy. Second, there is no "difficult question of state law." The question of state law is simple: the Florida Constitution provides the victim certain rights which are easily interpreted. Those rights were violated.

There is no policy problem of substantial public import here; this is a problem that is likely quite *sui generis*. There are few cases where a parent is attacked by her drug addict son, but then pleads to be with him after he has been rehabilitated. Thus, there is no transcendence here.

The "disruptive of state efforts" prong is equally absent. There is no "coherent policy" at issue here. The Florida Victim's Bill of Rights required Foy's input and required her wishes to be considered. Instead, Defendants ignored this requirement and acted incoherently. Accordingly, the *Burford* doctrine does not apply.

1.5 Defendants' Bad Faith

On April 2, 2024, the Court ordered the parties to meet and confer to try and narrow the issues for the hearing. ECF 10. The Court made it clear that this hearing was on an exigent basis, and at great inconvenience to the Court itself. However, at every step thereafter, despite repeated requests, counsel for the government refused to cooperate. Plaintiff asked, point blank, if the Defendants would take the position that the wrong agency or party had been sued.[4] In response, Defendants' counsel merely insisted that she had no obligation to disclose her arguments or strategy before filing their brief, and that *if Foy had a problem with that, her son could simply go back to prison, where Foy would be free to visit with him whenever she liked*.

Defendants should not be rewarded for this bad faith strategy with delay. Even if the argument of "blame downward" were valid, the Court could still impose an order enjoining the Chair and "anyone acting in concert" with her, as there are no arguments Coonrod's subordinates could raise which have not already been briefed

[4] While Plaintiff's counsel believed the parties to be correct, government defendants frequently make this argument to cause delay, so it was anticipated that it might be raised. It was not anticipated that a superior would blame subordinates.

and addressed here. The Court could substitute her subordinates as parties under Fed. R. Civ. P. 25(c), or the Court could enjoin Coonrod and, after subordinates are joined and served, amend the preliminary injunction to cover those subordinates. If the ultimate result is that the Defendants get what they seem to want, however, a delay and a second hearing, then Defendants should be made to pay the fees and costs for this hearing and briefing, as such a waste of resources would have been avoided but for their bad faith.

2.0 Conclusion

Plaintiff Teena Foy asks this Court to grant her request for preliminary injunctive relief and allow her to have contact with her son.

Dated: April 30, 2024. Respectfully submitted,

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WORD LIMIT CERTIFICATION

The undersigned certifies that this document complies with word limits set forth in Local Rule 7.1(F) because the memorandum contains 3,166 words which includes the headings, footnotes, and quotations, but does not include the case style, signature block, or Certificates of Word Limit and Service.

/s/ Marc J. Randazza
MARC J. RANDAZZA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 30, 2024, a true and correct copy of the foregoing document was filed electronically with the Clerk of Court and has been served on all parties of record through the CM/ECF system.

/s/ Marc J. Randazza
MARC J. RANDAZZA