

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

TEENA FOY,  
Plaintiff,

v.

Case No.: 4:24-cv-00140-MW/MAF

RICHARD D. DAVISON, in his official  
capacity, DAVID A. WYANT, in his  
official capacity and MELINDA N.  
COONROD, Chairperson and  
Commissioner, Florida Commission on  
Offender Review, in her official capacity,  
Defendants.

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**DEFENDANTS' AMENDED MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S RENEWED MOTION FOR PRELIMINARY INJUNCTION**

Defendants file this Amended Memorandum solely for the purpose of withdrawing their argument set forth in section I.A. of its June 10, 2024 Memorandum in Opposition to Plaintiff's Renewed Motion for Preliminary Injunction, ECF 42, that no right to intimate association arises under the First Amendment, and to substitute the argument set forth in section I.A. below. Defendants otherwise readopt and reallege all arguments set forth in their previously filed Memorandum docketed as ECF 51.

## ARGUMENT

### **I. Plaintiff is unlikely to succeed on the merits.**

Ms. Foy fails to state a claim for relief as to all counts in her Second Amended Complaint, or at the very least is unable to show a substantial likelihood that she will succeed on the merits. For that reason alone the Renewed Motion for Preliminary Injunction must be denied.

#### **A. First Amendment**

Having reviewed Plaintiff's Reply in Support of Renewed Motion for Preliminary Injunction, ECF 55, and the caselaw cited therein, Defendants acknowledge that a right to intimate familial association exists under the First Amendment. *See Bd. of Dirs. Of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 545 (1987); *Shahar v. Bowers*, 114 F. 3d 1097, 1102 n.9 (11th Cir. 1997); *Gaines v. Wardynski*, 871 F. 3d 1203, 1213 (11th Cir. 2017). Consequently, Defendants withdraw their argument that a right to intimate association does not arise under the First Amendment.

Nevertheless, Defendants respectfully maintain that Ms. Foy is not entitled to a preliminary injunction because she is unlikely to succeed on the merits of her constitutional claims as set forth in Sections I. B.-E. of their June 10, 2024 Memorandum in Opposition. ECF 51 at 7-23. First, the no-contact provision is personal to Mr. Graham-Foy and Ms. Foy therefore lacks standing. ECF 51 at 21-

23. Second, even if Ms. Foy has standing, the no-contact provision of Mr. Graham-Foy's release is reasonably related to the State's legitimate penological interests in reintegrating back into society "the population of offenders who...poses the greatest threat to the public safety of the groups of offenders under community supervision." § 947.1405(8), Fla. Stat.; ECF 51 at 18-21.

Lastly, in order to prevail on a claim for deprivation of her First Amendment right of intimate association, Ms. Foy must prove that Defendants imposed the no-contact condition of Mr Graham-Foy's release with the express intent of interfering with Ms. Foy's First Amendment right of intimate association with Mr. Graham-Foy. *Trujillo v. Bd. of Cnty. Com'rs of Cnty. of Santa Fe*, 768 So. 2d 1186, 1190 (10th Cir. 1985). The Second Amended Complaint alleges that "[u]pon information and belief, Defendants acted with intent to interfere with the relationship between Plaintiff and Graham-Foy..." ECF 42 at ¶ 48, but Ms. Foy has offered no proof to substantiate this allegation. Conversely, on June 18, 2024 Defendants have filed the affidavits of Commissioners Davison and Wyant demonstrating that they were not motivated by an intent to interfere with Ms. Foy's right to intimate association. Given the record currently before the Court, Ms. Foy cannot show the likelihood of succeeding on the merits of her claim for deprivation of her First Amendment right to intimate association.

Defendants hereby readopt and reallege sections I. B-E, II, III, and IV of their Memorandum in Opposition to Plaintiff's Renewed Motion for Preliminary Injunction, ECF 51 at 7-23, as if fully restated herein.

**CONCLUSION**

Based on the foregoing, Plaintiff's Renewed Motion for Preliminary Injunction should be denied.

Respectfully submitted,

ASHLEY MOODY  
ATTORNEY GENERAL  
/s/ Timothy L. Newhall  
Timothy Newhall  
Fla. Bar No. 391255  
Timothy.newhall@myfloridalegal.com  
Office of the Attorney General  
PL-01 The Capitol  
Tallahassee, FL 32399-1050

Sara Spears  
Fla. Bar No. 1054270  
Sara.spears@myfloridalegal.com  
Office of the Attorney General  
PL-01 The Capitol  
Tallahassee, FL 32399-1050

**WORD LIMIT CERTIFICATION**

The undersigned certifies that this document, including the reincorporated portion of ECF 51, complies with Local Rule 7.1(F) and contains 4,654 words.

/s/ Timothy L. Newhall

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was served via the Court's CM/ECF system, which provides notice to all parties, on this 18th day of June, 2024.

/s/ Timothy L. Newhall