

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1.) The Oklahoma Observer, (2.)
Arnold Hamilton, (3.) Guardian US, (4.)
Katie Fretland,

Plaintiffs,

-v-

(1.) Robert Patton in his capacity as
Director, Oklahoma Department of
Corrections; (2.) Anita Trammell, in her
capacity as Warden of the Oklahoma
State Penitentiary,

Defendants.

Civil Case No. CIV-14-905-HE

**PLAINTIFFS' MOTION TO
SCHEDULE ORAL
ARGUMENT AND
MEMORANDUM IN
SUPPORT**

**MOTION TO SCHEDULE ORAL ARGUMENT ON PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure and Local Rule 7.1,
Plaintiffs file this Motion to Schedule Oral Argument in the above case.

The grounds for this Motion, set forth more fully below, are that Plaintiffs and
others similarly situated will be irreparably harmed without an order from this Court
before the State of Oklahoma's next execution currently scheduled for November 13,
2014. Plaintiffs believe that the Court will be assisted by hearing argument in this case.
This Motion is based on the pleadings on file in the case, Plaintiffs' Motion for
Preliminary Injunction filed October 7, 2014, the Declarations on file in support of that
Motion, the Memorandum below, and any other evidence the Court hears in this case.

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
TO SCHEDULE ORAL ARGUMENT

At Oklahoma's most recent execution of Clayton Lockett, the assembled members of the press were prevented from exercising their right of access to the State's lethal injection proceeding. Plaintiff Katie Fretland was among the journalists who gathered to observe the execution of Lockett from the witness chamber on April 29. *See* Declaration of Katie Fretland, attached to Plaintiffs' Memorandum in Support of their Motion for Preliminary Injunction (Oct. 7, 2014) ("Fretland Decl."), ¶¶ 1-2. When the witness shade was raised, Fretland saw Lockett already on a gurney inside the chamber. *Id.* ¶ 13. After raising the shade, the State began administering intravenous drugs to Lockett. *Id.* ¶ 15. Fretland then saw and heard Lockett writhing, groaning, and mumbling following the administration of drugs, and until the viewing shade was again shut. *Id.* ¶¶ 17-18. Because it was lowered, Fretland was prevented from observing Lockett's death. *Id.* ¶¶ 18-20. Fretland later learned from the State that it took over 40 minutes for Lockett to die. *Id.* ¶ 21. She will attend the next scheduled Oklahoma execution, enter the witness lottery, and report on the event for Plaintiffs *The Oklahoma Observer* and *Guardian US*, *Id.* ¶ 29, who have taken pains to secure firsthand reporting of Oklahoma executions.

As a result of Lockett's botched execution, the Oklahoma Department of Corrections issued a revised execution protocol on September 30, 2014 that dramatically increases the level of secrecy surrounding the execution process. *See* Execution Procedures from Okla. Dep't of Corrs., (Sept. 30, 2014) ["Revised Protocol"], attached as Ex. 4 to Plaintiffs' Memorandum in Support of their Motion for Preliminary Injunction

(Oct. 7, 2014). The procedures limit the number of media witnesses allowed to view executions to five persons. *Id.* at 13. The new protocol mandates that after the condemned speaks his last words, all audio access to the execution room will be turned off. Revised Protocol at 28. The new rules state that if the condemned remains conscious for five minutes after injection of lethal chemicals, “[t]he director may order the curtains to the witness viewing room be closed, and if necessary, for witnesses to be removed from the facility.” Revised Protocol at Att. D, 8-9. The Revised Protocol states that the Director of DOC may deviate from the procedures at any time. *Id.* at 2.

In short, Defendants have formalized—and exacerbated—the policies that caused irreparable harm to Plaintiffs’ First Amendment rights at the Lockett execution, and now plan to do so again on November 13th. Without an injunction from this Court, Plaintiffs’ constitutional rights will be irredeemably lost at Oklahoma’s next execution. Given the recent policy developments by Defendants, and the fact that this case presents a matter of first impression within this Circuit, Plaintiffs believe that oral argument may assist the Court in ruling on Plaintiffs’ Motion for Preliminary Injunction. Plaintiffs therefore respectfully request that this Court enter a schedule for oral argument that will permit the Court to rule on Plaintiffs’ Motion by November 13, 2014.

Respectfully submitted,

____/s/ *Lee Rowland*_____

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2014, I did serve the above Motion for Oral Argument through the Court's ECF filing system pursuant to Fed. R. Civ. Proc. 5(b)(2)(E) to the following counsel for all Defendants:

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Dated this 7th of October, 2014,

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