

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

First Amendment Coalition of Arizona, Inc. v. Ryan

188 F. Supp. 3d 940 (D. Ariz. 2016) · No. Not stated in source · Decided May 18, 2016

SUMMARY

The court considers defendants' motion to dismiss a challenge to Arizona's lethal-injection procedures. The plaintiffs allege that the use of midazolam followed by a paralytic creates an unconstitutional risk of severe pain and that the Department's discretion and history of deviating from execution protocols violate the Eighth Amendment and procedural due process. The court concludes that the Eighth Amendment claims concerning the drug protocol and significant deviations from execution procedures are plausibly pleaded.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Neil Y. Wake
JURISDICTION	Arizona
DECIDED	May 18, 2016
DOCKET	Not stated in source
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the plaintiffs' second amended complaint, which asserted eight claims under 42 U.S.C. § 1983 challenging Arizona's lethal-injection procedures.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the legal sufficiency of the pleadings, accepts material factual allegations as true, construes them in the plaintiffs' favor, disregards legal conclusions and conclusory factual allegations, and asks whether the complaint states a facially plausible claim for relief.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive rather than binding outside the case and not binding on the Ninth Circuit.
PARTIES	Seven Arizona death row inmates, First Amendment Coalition of Arizona, Inc. v. Director of the Arizona Department of Corrections, Two Arizona prison wardens

TOPICS

cruel and unusual punishment

procedural due process

first amendment

motions to dismiss

section 1983

PRACTICE AREAS

constitutional law

civil rights

civil procedure

capital punishment

prisoners' rights

QUESTIONS PRESENTED

1. Whether the complaint plausibly alleged that Protocol C's use of midazolam followed by a paralytic presented a substantial risk of serious pain in violation of the Eighth Amendment.
2. Whether the alleged pattern of substantial deviations from Arizona's execution protocols plausibly stated an Eighth Amendment claim.
3. Whether Arizona's broad discretion to change critical execution procedures and its alleged failure to provide notice of material changes plausibly stated a procedural due process claim.
4. Whether the First Amendment gives inmates or the press a right to observe or obtain detailed information concerning the drugs, drug sources, execution personnel, and effects of Arizona's lethal-injection procedures.
5. Whether use of a paralytic during execution violated substantive due process by arbitrarily invading bodily integrity or shocking the conscience.
6. Whether the alleged disparate treatment of death row inmates stated a class-of-one equal protection claim.
7. Whether the plaintiffs stated an access-to-courts or right-to-petition claim based on alleged concealment of execution information.

HOLDINGS

1. The inmates plausibly stated an Eighth Amendment method-of-execution claim by alleging that midazolam may fail to maintain unconsciousness, that the subsequent paralytic and potassium chloride would then create a substantial risk of severe pain, and that removing the paralytic or using an available alternative drug would significantly reduce that risk.
2. The inmates plausibly stated an Eighth Amendment claim based on Arizona's alleged pattern of substantial deviations from critical aspects of its announced execution procedures and the Director's asserted authority to make unlimited major deviations.
3. The inmates plausibly stated a procedural due process claim based on allegations that Arizona could make fundamental, last-minute changes to the execution method without meaningful notice or an opportunity to raise Eighth Amendment challenges.
4. The plaintiffs failed to state a First Amendment claim for access to detailed information about execution drugs, drug provenance, drug quantities and effects, execution personnel, protocol development, or other information preceding or surrounding the execution beyond the qualified right to view the execution proceeding recognized by Ninth Circuit precedent.

5. The inmates failed to state a substantive due process claim because use of a paralytic in a lethal-injection protocol was not so arbitrary as to shock the conscience, and the liberty interest in avoiding unwanted medical treatment did not extend to drugs used to carry out a capital sentence.
6. The inmates failed to state a class-of-one equal protection claim because they alleged that Arizona treated inmates generally inconsistently, not that any particular inmate was intentionally treated differently from similarly situated persons without a rational basis.

KEY QUOTATIONS

“The inmates have stated an Eighth Amendment claim that is plausible on its face.” (950)

“A death row inmate has a due process interest in notice of critical changes to his method of execution in time to raise applicable Eighth Amendment challenges.” (953)

“Under the inmates’ theory, no one is treated appropriately. This is not a cognizable violation of the Equal Protection Clause.” (960)

FACTUAL BACKGROUND

Arizona required lethal injection for specified capital offenses and authorized the Department of Corrections to use several drug protocols. Protocol C used midazolam followed by a paralytic and potassium chloride, while Department Order 710 allowed the Director to deviate from the written procedures whenever deemed necessary. The plaintiffs alleged that Arizona officials had repeatedly made substantial, sometimes last-minute deviations from execution protocols, including failures to conduct consciousness checks, changes in drugs and dosages, and problems with intravenous access. They further alleged that the paralytic could mask consciousness and pain and that Arizona's execution procedures concealed information and prevented meaningful pre-execution challenges.

PROCEDURAL HISTORY

The inmates initially challenged Arizona's execution procedures, and the First Amendment Coalition later joined the action. The case was stayed while Arizona revised Department Order 710. After the stay was lifted and the second amended complaint was filed, defendants moved to dismiss. The court granted the motion in part, denied it in part, dismissed the Coalition with prejudice, and allowed the remaining claims to proceed.

DISPOSITION

other

CASES CITED

- *Balistreri v. Pacifica Police Department*, 901 F.2d 696 (9th Cir. 1990)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)
- *Cousins v. Lockyer*, 568 F.3d 1063 (9th Cir. 2009)
- *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)
- *Glossip v. Gross*, 135 S. Ct. 2726 (2015)

- Baze v. Rees, 553 U.S. 35 (2008)
- Arthur v. Thomas, 674 F.3d 1257 (11th Cir. 2012)
- Cooley v. Kasich, 801 F. Supp. 2d 623 (S.D. Ohio 2011)
- Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123 (1951)
- Lopez v. Brewer, 680 F.3d 1084 (9th Cir. 2012)
- Jones v. Commissioner, Georgia Department of Corrections, 811 F.3d 1288 (11th Cir. 2016)
- Trottie v. Livingston, 766 F.3d 450 (5th Cir. 2014)
- California First Amendment Coalition v. Woodford, 299 F.3d 868 (9th Cir. 2002)
- Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986)
- Associated Press v. Otter, 682 F.3d 821 (9th Cir. 2012)
- Wood v. Ryan, 759 F.3d 1076 (9th Cir. 2014), vacated, 135 S. Ct. 21 (2014)
- Wellons v. Commissioner, Georgia Department of Corrections, 754 F.3d 1260 (11th Cir. 2014)
- Zink v. Lombardi, 783 F.3d 1089 (8th Cir. 2015)
- Oklahoma Observer v. Patton, 73 F. Supp. 3d 1318 (W.D. Okla. 2014)
- Phillips v. DeWine, 92 F. Supp. 3d 702 (S.D. Ohio 2015)
- Schad v. Brewer, No. CV-13-2001-PHX-ROS, 2013 WL 5551668 (D. Ariz. Oct. 7, 2013)
- Lewis v. Casey, 518 U.S. 343 (1996)
- County of Sacramento v. Lewis, 523 U.S. 833 (1998)
- Collins v. Harker Heights, 503 U.S. 115 (1992)
- Washington v. Harper, 494 U.S. 210 (1990)
- Johnson v. Meltzer, 134 F.3d 1393 (9th Cir. 1998)
- Riggins v. Nevada, 504 U.S. 127 (1992)
- Chavez v. Florida SP Warden, 742 F.3d 1267 (11th Cir. 2014)
- Howell v. State, 133 So. 3d 511 (Fla. 2014)
- Village of Willowbrook v. Olech, 528 U.S. 562 (2000)
- Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580 (9th Cir. 2008)
- Engquist v. Oregon Department of Agriculture, 553 U.S. 591 (2008)
- Lopez v. Brewer, 680 F.3d 1068 (9th Cir. 2012)