

2. Regulation 7 was promulgated by the United States Supreme Court on June 13, 2013, two days after this Court struck down 40 U.S.C. § 6135 on constitutional grounds.

3. Under 40 U.S.C. § 6135, “[i]t is unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display in the Building and grounds a flag, banner, or device designed or adapted to bring into public notice a party, organization, or movement.

4. Regulation 7 provides:

“This regulation is issued under the authority of 40 U.S.C. § 6102 to protect the Supreme Court building and grounds, and persons and property thereon, and to maintain suitable order and decorum within the Supreme Court building and grounds. Any person who fails to comply with this regulation may be subject to a fine and/or imprisonment pursuant to 40 U.S.C. § 6137. This regulation does not apply on the perimeter sidewalks on the Supreme Court grounds. The Supreme Court may also make exceptions to this regulation for activities related to its official functions.

No person shall engage in a demonstration within the Supreme Court building and grounds. The term “demonstration” includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers. The term does not include casual use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers.”

THE PARTIES

5. Plaintiff John “Jack” M. Payden-Travers is a citizen of Virginia residing at 1711 Link Road, Lynchburg, VA 24503.

6. Plaintiff Midgelle R. Potts is a citizen of Missouri 5179 N. Farm Rd. 125, Springfield, MO 65803.

7. Defendant Pamela Talkin is the Marshal of the Supreme Court of the United States. Marshal Talkin is the statutory officer charged and empowered under 28

U.S.C. § 672 to take charge of all property used by the Supreme Court of the United States and to oversee the Supreme Court Police. Marshal Talkin also is empowered by federal law, 40 U.S.C. § 6121, to police the United States Supreme Court Building and grounds. Marshal Talkin is sued in her official capacity.

8. Defendant Channing D. Phillips is the United States Attorney for the District of Columbia. United States Attorney Phillips is charged, pursuant to 40 U.S.C. § 6137(b), with prosecuting violations of regulations prescribed under 40 U.S.C. § 6102. United States Attorney Phillips is sued in his official capacity.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the parties and subject matter pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 2000bb-1(c).

10. The Court may grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Rules 57 and 65 of the Federal Rules of Civil Procedure, and its own inherent authority to restrain unlawful government actions.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because the defendants are officers or employees of the United States acting in their official capacity and a substantial part of the events giving rise to the claim occurred within the District of Columbia.

FACTUAL ALLEGATIONS

Prayer at The Supreme Court Plaza

12. The plaza area outside of the Supreme Court is oval in shape and approximately 252 feet in length. It is separated from the sidewalk between First Street, N.E., and the Supreme Court building grounds by a few small steps which lead up about 3 feet to the plaza.

13. In January 1988, Robert Pearson and approximately 30 other individuals entered the Supreme Court plaza and knelt down in prayer. The group was arrested and charged with, inter alia, violating 40 U.S.C. § 6135. *Pearson v. United States*, 581 A.2d 347, 349-50 (D.C. 1990). They were convicted in the Superior Court for the District of Columbia, and the D.C. Court of Appeals upheld the conviction.

14. At trial in *United States v. Justine Mark, et al.*, a criminal case against a group of Occupy protesters for violating 40 U.S.C. § 6135, the prosecutor took the position that simply keeling down and praying on the Supreme Court plaza is illegal. (“And again, I think if you look at *Pearson*, all of the – the only thing that those individuals did was they went on to Court grounds and they knelt down in prayer. They knelt down in prayer. And they were convicted under the strictures of this exact statute and they were found guilty All they did was go up on the steps and kneel down in prayer. That’s all they did. They didn’t even use any words. They knelt down in prayer.”)

15. On April 25, 2000, Reverend Patrick J. Mahoney was arrested pursuant to an alleged violation of Regulation Six, which prohibits, inter alia, the carrying of signs on the Supreme Court grounds. After the charges were dismissed against Reverend Mahoney, he and the Christian Defense Coalition filed a motion for temporary restraining order and for preliminary injunction in this Court on June 8, 2000, alleging that Regulation Six is an unconstitutional infringement of his First Amendment liberties and

that he will be irreparably harmed by this Regulation because it interferes with his ability to participate in his planned prayer vigil on the grounds and sidewalks of the Supreme Court. *Mahoney v. Lewis*, Case No. 1:00-cv-1325 (TFH), 2000 U.S. Dist. LEXIS 10348 (D.D.C. June 23, 2000).

16. Reverend Mahoney also sought relief pursuant to RFRA. This Court held that the “plaintiffs have adequately alleged facts that demonstrate that a sincerely held religious belief is at stake,” but concluded that Regulation Six does not substantially burden their religious beliefs because, *inter alia*, the plaintiffs were “still able to conduct prayer vigils and protests on the sidewalks of the Supreme Court.” This Court did not specifically address the issue of whether Mahoney could conduct a prayer vigil on the plaza, leaving it unclear whether such a vigil would be permissible there.

17. On May 5, Maureen Rigo, a teacher at Wickenburg Christian Academy in Arizona, was on an educational tour of the Supreme Court complex with her students and a few adults.² At the oval plaza in front of the building, they stood off to the side of the bottom of the court steps, bowed their heads and prayed quietly.

18. A Supreme Court police officer approached the group and told them to stop praying in the area immediately.

19. The Alliance Defense Fund (ADF), a nonprofit organization, wrote a letter to court officials stating, “There is no reason to silence Mrs. Rigo’s activities since these

² See “Breakup of prayer group outside Supreme Court prompts legal complaint, investigation,” <http://www.catholicnewsagency.com/news/breakup-of-prayer-group-outside-supreme-court-prompts-legal-complaint-investigation/> (July 20, 2010); “Police say prayer illegal on U.S. Supreme Court grounds,” <http://www.adfmedia.org/news/prdetail/4120> (July 15, 2010).

activities do not attract attention, create a crowd, or give off the appearance of impartiality[.]”

20. Patricia Estrada, deputy public information officer for the Supreme Court, e-mailed a media outlet, CNA / EWTN News, stating that, “The Marshal of the Court will look into the events as described in the letter,” and explained that while “The Court does not have a policy prohibiting prayer,” it is unlawful “to parade, stand or move in processions or assemblages in the building and grounds, including the plaza and steps, but not including the perimeter sidewalks.”

21. In *Hodge v. Talkin*, Plaintiff cited this group prayer incident in support of his argument that the statute is vague. In their reply brief, the defendants argued that the example of group prayer does not make the statute vague, but conceded that it requires “non-obvious factual determinations” about the applicability of 40 U.S.C. § 6135. [ECF dkt: 17 at 17.]

Plaintiffs Payden-Travers’ Previous and Planned Activities

22. Plaintiff Payden-Travers is a post-denominational Christian, and former Executive Director of the National Campaign for a Peace Tax Fund.

23. The National Campaign for a Peace Tax Fund (NCPTF), based in Washington, D.C., is a not-for-profit 501(c)(4) organization which advocates for passage of the Religious Freedom Peace Tax Fund Act.

24. The Religious Freedom Peace Tax Fund is intended to avoid coerced participation in military activity, in violation of the inalienable right of people to live according to their religious conscience and ethical beliefs. NCPTF promotes legislation

that is structured to acknowledge and accommodate this basic individual right. Just as our citizens, on the basis of religious conscience, may choose to do non-military service in lieu of military service when a military draft is in effect, NCPTF advocates for statutes that establish a means by which the income tax payments of designated conscientious objectors can be directed to non-military purposes.

25. Mr. Payden-Travers frequently speaks at houses of worship to promote peace.

26. Mr. Payden-Travers and his wife, Rev. Christine Payden-Travers, oppose the use of tax dollars paying for war and executions.

27. Mr. Payden-Travers' main religious objection to the death penalty is that capital punishment is a remnant of history, one that Jesus has caused him to question and work to change.

28. Mr. Payden-Travers is a conscientious objector to war and militarism, who refused induction into the U.S. Army in 1970, an action motivated by his Christian beliefs. He views killing as part of the same continuum.

29. Mr. Payden-Travers seeks to avoid complicity with war and the death penalty. Accordingly, Mr. Payden-Travers' deeply held beliefs led him to demonstrate in January 2007 on the plaza of the US Supreme Court on the 30th anniversary of the execution of Gary Gilmore, the first man to die in the modern era of the death penalty.

30. On the morning of January 17, 2007, Mr. Payden-Travers and four other individuals were standing with a group of people in front of the Supreme Court, waiting in line to be admitted to the building to hear oral arguments.

31. At 10:46 a.m., Officer Timothy Quigley of the Supreme Court Police saw Mr. Payden-Travers and five other individuals step out of line on the plaza and unfurl a large banner that read “STOP EXECUTIONS.”

32. Mr. Payden-Travers and the other five individuals stood behind the banner and joined in a chant, saying, “What do we want? Abolition. When do we want it? Now.”

33. On January 17, 2012, Mr. Payden-Travers was on the steps of the Supreme Court again holding a banner that read “STOP EXECUTIONS.”

34. Mr. Payden-Travers’ faith compels him to speak out against war and the death penalty in order to publicly distance himself from the commission of these acts by the government in the name of the American public.

35. Mr. Payden-Travers desires to engage in the following activities at the Supreme Court’s plaza: holding a non-violent, peaceful candlelight vigil on the plaza of the Supreme Court on nights when executions are taking place; and verbally expressing his view that the practice of executing individuals should be halted and that capital punishment should be abolished.

36. A candlelight vigil on the sidewalk adjacent to the Supreme Court would not be sufficient to demonstrate to passersby that Mr. Payden-Travers is acting a conscientious objector to the Supreme Court’s allowance of the immoral death penalty to continue.

Plaintiff Potts’ Previous and Planned Activity

37. Plaintiff Midgelle Potts is a Unity Christian and a member of Unity Spiritual Center in Springfield, MO.

38. One of the five basic tenets of Unity is that knowledge of these spiritual principles is not enough; spirituality must be lived.

39. Ms. Potts' faith compels her to pray for an end to torture, war, and the death penalty. However, Ms. Potts' faith also compels her to live her beliefs by speaking out against torture, war, and the death penalty.

40. Ms. Potts engages in the religious practice of bearing nonviolent "public witness."

41. Bearing "public witness" is an intentional act of offering one's perspective to the wider community. An example of bearing public witness is participating in a public prayer vigil or peace walk.

42. Ms. Potts engages in the practice of bearing public witness in order to make clear that she does not endorse the use of her tax dollars to fund torture, war, and executions.

43. As an example of how Ms. Potts has acted to bear public witness in the past, Ms. Potts was at the Supreme Court on February 9, 2005, as part of a small group protesting the mistreatment of prisoners at the Abu Ghraib and Guantanamo Bay prisons and the appointment of Alberto Gonzales as Attorney General.

44. To dramatize the cause, Ms. Potts was wearing a black hood.

45. In the course of the protest, Ms. Potts and the other protesters ascended several steps from the sidewalk to the plaza in front of the Supreme Court building. Supreme Court Police repeatedly asked them to return to the sidewalk and arrested them when they refused to do so.

46. Consistent with her religious beliefs, Ms. Potts seeks to hold prayer vigils on the plaza of the Supreme Court as an exercise of her religion. Such prayer vigils would be held with other individuals, and would include prayer this is both aloud and silent.

47. A prayer vigil on the sidewalk adjacent to the Supreme Court building would not be a sufficient exercise of Ms. Potts' religious teachings because the Supreme Court Plaza is a distinct enclave, and the public would not sufficiently identify her actions with the Court if the prayer vigil were conducted on the sidewalk.

COUNT I: RELIGIOUS FREEDOM RESTORATION ACT

48. Plaintiffs incorporate by reference the allegations contained in each of the preceding paragraphs.

49. Plaintiffs Mr. Payden-Travers and Ms. Potts challenge Regulation 7 and 40 U.S.C. § 6135, as applied to their proposed activities, as a violation of the Religious Freedom Restoration Act. Both Regulation 7 and 40 U.S.C. § 6135 place a substantial burden on the exercise of their religion that is neither justified by a compelling government interest nor the least-restrictive means of accomplishing the government's objective.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor as follows:

- 1) Declaring Regulation 7 an unlawful violation of the Religious Freedom Restoration Act as applied to Plaintiff Payden-Travers' and Potts' desired conduct;
- 2) Declaring 40 U.S.C. § 6135 an unlawful violation of the Religious Freedom Restoration Act as applied to Plaintiff Payden-Travers' and Potts' desired conduct;
- 3) Permanently enjoining Defendants from arresting or criminally prosecuting Plaintiffs for engaging in the conduct described in this Complaint;
- 4) Awarding Plaintiffs their costs and attorney fees pursuant to 28 U.S.C. § 2412; and
- 5) Granting such other and further relief as the Court may deem just and proper.

_____/s/ Jeffrey L. Light

Jeffrey L. Light
D.C. Bar #485360
1712 Eye St., NW
Suite 915
Washington, DC 20006
(202)277-6213
Jeffrey@LawOfficeOfJeffreyLight.com

*Counsel for Plaintiffs and
Participating Attorney for
The Rutherford Institute*