

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

THE ASSOCIATED PRESS, STATES
NEWSROOM d/b/a The Indiana Capital
Chronicle, GANNETT CO., INC., CIRCLE
CITY BROADCASTING I, LLC, and TEGNA
INC.,

Plaintiffs,

v.

RON NEAL, *in his official capacity as the
Superintendent of Indiana State Prison*, and
LLOYD ARNOLD, *in his official capacity as
the Commissioner of the Indiana Department
of Corrections*,

Defendants.

Case No. 1:25-cv-872-MPB-MJD

UNCONTESTED MOTION TO STAY

Plaintiffs, The Associated Press, States Newsroom d/b/a The Indiana Capital Chronicle, Gannett Co., Inc., Circle City Broadcasting I, LLC, and TEGNA INC., respectfully submit this motion to stay this case pending resolution of Plaintiffs' appeal from the Court's May 16, 2025 order denying Plaintiffs' motion for a preliminary injunction. *See* ECF 42 (Plaintiffs' notice of appeal). Defendants do not oppose a stay.

In support of this motion, Plaintiffs state as follows:

1. The Court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "Courts in this circuit generally consider three factors when deciding whether a stay pending appeal is appropriate: '(1) whether a stay will unduly prejudice or tactically disadvantage the non-moving party, (2) whether a stay will simplify the issues in question and streamline the trial, and (3) whether a stay will

reduce the burden of litigation on the parties and on the court.” *GoodCat, LLC v. Cook*, No. 16-cv-01514, 2016 WL 10490470, at *1 (S.D. Ind. Nov. 21, 2016) (quoting *Se-Kure Controls, Inc. v. Sennco Sols., Inc.*, 675 F. Supp. 2d 877, 879 (N.D. Ill. 2009)). Here, the Court should exercise its discretion to grant the relief sought through this motion.

I. A stay will simplify the issues before the Court and promote judicial efficiency.

2. The constitutional questions at the heart of this case—the press and public’s right of access to execution proceedings in Indiana—has not previously been litigated in the Seventh Circuit. Indeed, the Court’s order denying Plaintiffs’ motion for a preliminary injunction noted the gap in appellate authority. *E.g.* ECF 36 at 7, 9.

3. The Court’s decision rested on its analysis of that constitutional question, as opposed to other preliminary injunction factors. ECF 36 at 5 (“The Court begins and ends its analysis with the likelihood of success on the merits. That analysis is determinative of both claims.”). Accordingly, Plaintiffs’ appeal from the Court’s order will involve questions of law that are potentially dispositive of this case.

4. As such, staying all further proceedings in this case to await the Seventh Circuit’s decision will “simplify the issues in question and streamline the trial,” *Se-Kure Controls, Inc.*, 675 F. Supp. 2d at 879. This factor thus weighs in favor of granting a stay.

II. A stay will reduce the burden on the parties and the Court.

5. Plaintiffs intend to develop the fact record in this case through discovery. In addition to discovery Plaintiffs will seek from Defendants, Plaintiffs also anticipate that they will gather and introduce their own fact evidence in support of an eventual dispositive proceeding.

6. For example, Plaintiffs anticipate that they will gather and introduce evidence regarding the “two complimentary considerations” that courts use to determine whether a right of access attaches to executions conducted in Indiana. *See Press-Enterprise Co. v. Superior Court*,

478 U.S. 1, 8–9 (1986) (“*Press-Enterprise II*”). Plaintiffs expect to demonstrate, in part through this evidence, that “the place and process [of executions] have historically been open to the press and general public,” *Press-Enterprise II*, 478 U.S. at 8, throughout the United States, *see El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147, 150 (1993); *cf.* ECF 36 at 10–11.

7. Similarly, Plaintiffs expect to demonstrate, in part through evidence gathered during the discovery process, that “public access plays a significant positive role in the functioning” of executions. *See Press-Enterprise II*, 478 U.S. at 9; *cf.* ECF 36 at 11–12. In particular, Plaintiffs anticipate discovery directed toward demonstrating that permitting disinterested members of the press and public to attend executions illuminates issues with the execution process, contributes to an informed public debate about the death penalty, and permits the public to see justice done, “providing an outlet for community concern, hostility, and emotion.” *Richmond Newspapers*, 449 U.S. 555 at 571 (1980).

8. Moreover, Plaintiffs will need to engage in any discovery necessary to test Defendants’ theories of the case, which are not yet fully known as Defendants have not submitted a responsive pleading. *See* ECF 41 (Defendants’ notice of extension of time to file a response to Plaintiffs’ complaint).

9. Given this Court’s decision that Plaintiffs are not likely to succeed on the merits of their complaint, the above-listed discovery—as well as any discovery required by Defendants—alongside any dispositive motions the parties may wish to brief and argue, and any trial, will be “time consuming and expensive for the parties, and the [C]ourt will have to devote resources to resolving any disputes. Some or all of that work may be rendered a waste by the Seventh Circuit, meaning that significant resources will have been squandered.” *GoodCat, LLC*, 2016 WL 10490470, at *2; *see Turner v. Mercedes-Benz USA, LLC*, No. 19-cv-04141-JRS-MPB, 2020 WL

12739433, at *2 (S.D. Ind. June 3, 2020) (granting stay and holding that “ordering discovery to proceed may unnecessarily impose costly and time-consuming discovery”). The Court should grant a stay in this case to avoid what might be an unnecessary expenditure of time and resources prior to guidance from the Seventh Circuit in the central constitutional questions at issue in Plaintiffs’ case.

III. Defendants will not be prejudiced by a stay.

10. A stay will not change or affect in any way the Court’s decision denying the preliminary relief sought by Plaintiffs. During the period in which the Seventh Circuit considers Plaintiffs’ appeal, Defendants can continue to enforce the statute and policy that prohibit members of the press from attending executions unless invited to attend by the condemned inmate. *See* Ind. Code 35-38-6-6(a); Indiana State Prison Facility Directive ISP 06-26: Execution of Death Sentence, Sec. C (June 17, 2024).

11. Defendants have no pending motions. As noted above, they sought an extension of time to file responsive pleadings pursuant to Local Rule 6-1, ECF 41, and accordingly they have not yet submitted a responsive pleading in this case.

12. The stay sought by Plaintiffs will also stay Defendants’ responsive pleading. Thus, Defendants will suffer no prejudice or tactical disadvantage from a temporary pause on further proceedings.

* * *

For the foregoing reasons, the Court should stay this case pending resolution of Plaintiffs’ appeal.

Dated: June 19, 2025

/s/ Kristopher L. Cundiff
Kristopher L. Cundiff

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[PROPOSED] ORDER

On June 19, 2025, Plaintiffs submitted an unopposed motion requesting that all proceedings in this case be stayed pending resolution of their appeal from the Court's May 16, 2025 order denying Plaintiffs' motion for a preliminary injunction. Upon consideration, the Court finds that the motion should be **GRANTED**.

IT IS SO ORDERED that all proceedings in this case are stayed pending resolution of Plaintiffs' appeal, No. 2025-25 (7th Cir. Jun. 16, 2025).

Dated: June ____, 2025

Matthew P. Bookman, Judge
United States District Court
Southern District of Indiana

Served electronically on all ECF-registered counsel of record.