

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WILLIE B. SMITH III,)	
)	
Plaintiff,)	
)	
v.)	No. 2:20-cv-01026-RAH
)	
JEFFERSON DUNN,)	
Commissioner, Alabama)	
Department of Corrections,)	
)	
Defendant.)	

ANSWER TO COMPLAINT

Steve Marshall
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February 25, 2021

Defendant Jefferson S. Dunn, in his official capacity as Commissioner of the Alabama Department of Corrections, for his answer to Plaintiff Willie B. Smith III's complaint,¹ states as follows:

RESPONSE TO PRELIMINARY STATEMENT

1. Admitted to the extent that Smith's execution was set for February 11, 2021, but it was stayed by action of the Eleventh Circuit Court of Appeals and the United States Supreme Court.
2. Admitted.
3. Defendant has insufficient information to admit or deny this allegation.
4. Admitted. Robert Paul Wiley was permitted to serve as Smith's spiritual advisor.
5. At the time of the complaint, this was Defendant's position, based upon security concerns. In light of the Supreme Court's decision in this matter,² however, Defendant is in the process of amending the ADOC's lethal injection protocol to permit a condemned inmate to have his spiritual advisor in the execution chamber.
6. Admitted to the extent that the ADOC's previous lethal injection execution protocols included the presence of the Holman institutional chaplain, and that this was changed in April 2019.

1. Doc. 32-1.

2. *Dunn v. Smith*, No. 20A128, 2021 WL 517473 (Feb. 11, 2021) (mem.).

7. Admitted to the extent that religious groups broadcast services to Holman inmates.

8. Admitted. It is the ADOC's policy that individuals with active execution warrants be put on "single walk" status as a security measure. However, on December 22, 2020, the ADOC consented to allow Smith to attend religious services.³

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. As noted above, Defendant is in the process of amending the ADOC's lethal injection protocol to permit a condemned inmate to have his spiritual advisor in the execution chamber, and Smith was permitted to attend religious services while on "single walk" from December 22, 2020.

3. Doc. 12-1 ¶ 6.

RESPONSE TO JURISDICTION AND VENUE

16. Admitted.
17. Admitted.

RESPONSE TO PARTIES

18. Admitted.
19. Admitted.

RESPONSE TO CASE OR CONTROVERSY

20. Admitted.
21. Denied.

RESPONSE TO EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Admitted.

RESPONSE TO FACTUAL ALLEGATIONS

23. Defendant has insufficient information to admit or deny this allegation.
Defendant does not contest Smith's claim to be a practicing Christian.
24. Admitted.
25. Defendant has insufficient information to admit or deny this allegation.
26. Admitted to the extent that in-person visitation is not currently permitted at ADOC facilities due to COVID-19. An exception to this rule was made

for Smith's scheduled execution (and for any other executions scheduled with the COVID-19 protective measures are in place).

27. Admitted to the extent that volunteer religious organizations come to Holman Correctional Facility and broadcast religious services.

28. Admitted to the extent that Smith was permitted to be outside for these services prior to the setting of his execution date. As of December 22, 2020, Smith was again allowed to be outside for these services.

29. Admitted to the extent that Smith has been the only Alabama inmate to date to have an execution set during the COVID-19 pandemic.

30. Admitted.

31. Admitted.

32. Admitted to the extent that the protocol called for the presence of the Holman institutional chaplain in the execution chamber. If the inmate did not want the chaplain to pray with him, then the chaplain would not approach the inmate and offer prayer.

33. Admitted. The ADOC protected its execution protocol due to security concerns.

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. Admitted.

39. Admitted.

40. Admitted to the extent that the inmate is moved to a holding cell in the Death Watch area prior to his execution.

41. Admitted to the extent that the holding cell is reasonably close to the execution chamber.

42. Admitted to the extent that the condemned inmate is moved from the visitation yard and returned to the holding cell on the afternoon of his execution.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted to the extent that prior to April 2019, the protocol called for the presence of the Holman institutional chaplain in the execution chamber, and if the inmate requested it, the chaplain would kneel and pray with him. Defendant denies that the viewing room windows are “partially opaque.”

47. Admitted.

48. Admitted to the extent that the ADOC amended its protocol in April 2019 following the Supreme Court’s decisions in the execution litigation of Domineque Ray and Patrick Murphy.

49. Admitted.

50. Admitted.

51. Admitted.

52. Admitted in part. The allegation that the change in the protocol was in response to Charles Burton's 42 U.S.C. § 1983 litigation is denied. While the protocol change was announced around the time that Burton filed his complaint in April 2019, the change was in the process of being made from a time shortly after the Supreme Court's grant of a stay of execution in *Murphy v. Collier*.⁴ The allegation that the ADOC has taken away with the religious freedoms of all prisoners is also denied.

53. Denied. Defendant is in the process of amending the ADOC's lethal injection protocol to permit a condemned inmate to have his spiritual advisor in the execution chamber.

54. Denied.

55. Admitted.

56. Admitted.

57. Admitted.

58. Admitted to the extent that news reports indicate that the Federal Bureau of Prisons admitted an "Appalachian pagan minister" into their execution

4. 139 S. Ct. 1475 (2019) (mem.).

chamber in July 2020.

59. Admitted to the extent that news reports indicate that the FBOP admitted a Buddhist spiritual advisor into their execution chamber in July 2020.

60. Admitted to the extent that news reports indicate that the FBOP admitted a Catholic spiritual advisor into their execution chamber in July 2020.

61. Defendant has insufficient information to admit or deny this allegation.

62. Defendant has insufficient information to admit or deny this allegation.

63. Defendant has insufficient information to admit or deny this allegation.

64. Denied as to the allegation that it is a substantial burden on Smith's religious exercise for his spiritual advisor to be barred from the execution chamber. Otherwise, Defendant has insufficient information to admit or deny this allegation.

65. Defendant has insufficient information to admit or deny this allegation.

66. Defendant has insufficient information to admit or deny this allegation.

67. Defendant is in the process of amending the ADOC's lethal injection protocol to permit a condemned inmate to have his spiritual advisor in the execution chamber.

RESPONSE TO FIRST CAUSE OF ACTION (RLUIPA)

68. Denied.

69. Admitted.

70. Admitted.

71. Admitted.

Access to Execution Chamber

72. Defendant has insufficient information to admit or deny this allegation.

73. Denied.

74. Admitted only to the extent that the previous execution protocol called for the presence of the Holman institutional chaplain in the execution chamber, and that this protocol was amended in April 2019 following the Supreme Court's decisions in the execution litigation of Domineque Ray and Patrick Murphy.

75. Denied.

76. Admitted. Defendant is in the process of amending the ADOC's lethal injection protocol to permit a condemned inmate to have his spiritual advisor in the execution chamber.

Access to Religious Services

This Court has recognized that this claim (paragraphs 77–79) is moot because of the ADOC's December 2020 agreement to allow Smith to attend services.⁵ These paragraphs are denied.

5. Doc. 32 at 2 n.2.

RESPONSE TO SECOND CAUSE OF ACTION (ARFA)

80. Denied.

81. Admitted.

Access to Execution Chamber

82. Admitted only to the extent that the previous execution protocol called for the presence of the Holman institutional chaplain in the execution chamber, and that this protocol was amended in April 2019 following the Supreme Court's decisions in the execution litigation of Domineque Ray and Patrick Murphy.

83. Denied. However, Defendant is in the process of amending the ADOC's lethal injection protocol to permit a condemned inmate to have his spiritual advisor in the execution chamber.

Access to Religious Services

This Court has recognized that this claim (paragraphs 84–85) is moot because of the ADOC's December 2020 agreement to allow Smith to attend services.⁶ These paragraphs are denied.

6. *Id.*

**RESPONSE TO THIRD CAUSE OF ACTION
(ESTABLISHMENT CLAUSE)**

This Court has dismissed this claim (paragraphs 86–93).⁷ These paragraphs are denied.

**RESPONSE TO FOURTH CAUSE OF ACTION
(FREE EXERCISE CLAUSE)**

94. Denied.
95. Admitted.
96. Admitted.
97. Admitted.
98. Admitted.
99. Denied.
100. Denied.
101. Denied.
102. Denied.
103. Denied.
104. Denied.
105. Denied. However, Defendant is in the process of amending the ADOC’s lethal injection protocol to permit a condemned inmate to have his spiritual

7. *Id.* at 35–42.

advisor in the execution chamber.

RESPONSE TO PRAYER FOR RELIEF

Defendant maintains that the ADOC policy restricting access to the execution chamber to trained, vetted, and trusted ADOC employees is not violative of RLUIPA, ARFA, or the First Amendment. However, in response to the Supreme Court's decision in this case, Defendant is in the process of amending the ADOC's lethal injection protocol to permit a condemned inmate to have his spiritual advisor in the execution chamber.

DEFENSES

- A. Smith is not entitled to the relief he seeks.
- B. Defendant denies any claim or allegation of Smith's amended complaint that is not expressly admitted above.

Respectfully submitted on this the 25th day of February 2021.

STEVE MARSHALL
ATTORNEY GENERAL OF ALABAMA
BY—

/s/ Lauren A. Simpson
Lauren A. Simpson
Alabama Assistant Attorney General
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on February 25, 2021, I served a copy of the foregoing upon counsel for the Plaintiff by filing the same via the Court's CM/ECF system, which shall cause the same to be electronically transmitted to: **Anand Agneshwar, Spencer Jay Hahn, and John Anthony Palombi.**

Respectfully submitted,

Steve Marshall
Alabama Attorney General

/s/ Lauren A. Simpson
Lauren A. Simpson
Alabama Assistant Attorney General
Counsel for Defendant

OF COUNSEL:

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