

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GOVERNOR PHIL BREDESEN,)	
et al.,)	
)	
Defendants-Appellants,)	No. 07-5562
)	Execution Date: May 9, 1:00 a.m.
v.)	
)	
PHILIP WORKMAN,)	
)	
Plaintiff-Appellee.)	

MOTION TO THE *EN BANC* COURT
FOR A STAY OF EXECUTION

Kelley J. Henry
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Through no fault of his own, Mr. Workman was forced into an impossible timetable to litigate his newly available constitutional claims that Tennessee's brand new 2007 execution protocol, creates a foreseeable and likely risk that he will suffer a gratuitously torturous death. The District Court issued a TRO based on a solid, uncontested, evidentiary record, balancing the equities using the appropriate test. Where the District Court's TRO was extremely limited, the District Court did not abuse its discretion by any stretch of the imagination – especially where courts throughout the country have issued nearly identical orders.

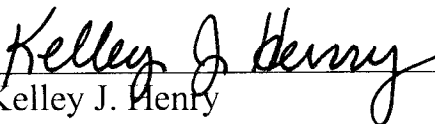
In overturning the TRO, the panel majority opinion overreaches in more than one respect: It confers upon itself appellate jurisdiction when it simply does not exist, and it resolves contested factual disputes against Philip Workman without the benefit of the very hearing the District Court intends to hold in a matter of days.

Because Workman's case presents substantial questions respecting the constitutionality of the new protocol which Appellants intend to use to cause his death, the *en banc* court must act to prevent Workman's gratuitously torturous death at the hands of Appellants. This Court should enter a stay to consider the important questions presented in Mr. Workman's suggestion for rehearing *en banc*. See Taylor v. Crawford, No. 06-1278 (8th Cir. 2006)(*en banc*)(granting Petition for Rehearing En Banc and Stay of Execution and Remanding Case to the District Court), *application to vacate stay den'd*, Crawford v. Taylor, 546 U.S. 1161 (2006).

Moreover, where the *en banc* Court in Cooley v. Strickland, 479 F.3d 412 (6th Cir. 2007) is currently considering issues regarding the timeliness of lethal injection challenges similar to those raised by the panel majority here, this Court should deny Appellants' motion to vacate the TRO without prejudice to renewal after *Cooley* is finally decided. See Biros v. Strickland, No. 06-4660 (2007)(Appendix A to Mr. Workman's Supplement to Motion to Dismiss or Deny Appeal).

This Court should grant the petition for rehearing and either vacate the panel's opinion for lack of jurisdiction or *en banc* deny the motion to vacate the TRO. This Court should grant a stay of execution.

Respectfully submitted,



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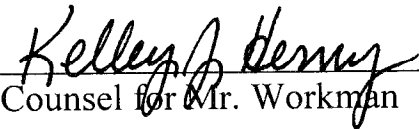
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CERTIFICATE OF SERVICE

I certify that a copy of this Motion was served via email on Mark Hudson, Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 this 8th day of May 2007.


Counsel for Mr. Workman