

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

PHILLIP R. WORKMAN,	)	
Plaintiff,	)	
v.	)	No. 3:01-0296
	)	JUDGE CAMPBELL
DR. BRUCE LEVY, et al.,	)	
Defendants.	)	

**DEFENDANTS' RESPONSE IN OPPOSITION TO  
MOTION FOR PRELIMINARY INJUNCTION**

The defendants hereby respectfully object to the plaintiff's motion for a preliminary injunction to prevent the autopsy of the plaintiff's body following execution. Dr. Bruce Levy has the statutory authority under Tenn. Code Ann. § 38-7-106(a) to order and perform the autopsy. Tenn. Code Ann. § 38-7-106 is of general applicability and neutral as to religious beliefs. As a matter of law, if the statute impacts the plaintiff's sincere religious beliefs, such does not constitute a violation of the plaintiff's First Amendment right to freedom of religion and said assertion cannot interfere with the statutory authority. *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S.Ct. 1595 (1990); *Montgomery v. County of Clinton, Michigan*, 743 F.Supp. 1253 (W.D. Mich. 1990), *aff'd without opinion*, 940 F.2d 661 (6th Cir. 1991); *Kickapoo Traditional Tribe of Texas v. Chacon*, 46 F. Supp. 2d 644 (W.D. Tex. 1999); *Combs v. Corrections Corp. of America*, (W.D. La. 1997); *Yang v. Sturner*, 750 F. Supp. 558 (D. R.I. 1990).

In ruling on a motion for preliminary injunction, the Court determines whether the plaintiff has shown a strong or substantial likelihood or probability of success on the merits, whether the plaintiff has shown irreparable injury, whether the issuance of a preliminary injunction would cause substantial harm to others, and whether the public interest would be served by issuing the

preliminary injunction. *Mason County Medical Association v. Knebel*, 563 F.2d 256 (6th Cir. 1977); *North Avondale Neighborhood Association v. Cincinnati Metropolitan Housing Authority*, 464 F.2d 486 (6th Cir. 1972). Because the plaintiff, as a matter of law, does not have a strong likelihood of success on the merits, will not suffer a violation of a constitutional right and an injunction would negatively impact the public interest, this Court should vacate its Order granting the plaintiff's motion for a preliminary injunction and deny the motion or terminate the preliminary injunction. A memorandum of law in support accompanies this response.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE  
METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY  
KARL F. DEAN, #10419  
DIRECTOR OF LAW

/S/ RITA ROBERTS-TURNER #19568

Rita Roberts-Turner  
Metropolitan Attorney  
222 Third Avenue, North, Suite 501  
Nashville, TN 37201  
(615) 862-6380  
Counsel for Dr. Bruce Levy

ROBERT E. COOPER, JR. #010934  
Attorney General and Reporter

/S/ PAMELA S. LORCH #8968

Pamela S. Lorch  
Senior Counsel  
Attorney General's Office  
PO Box 20207  
Nashville, TN 37202  
(615) 532-2549  
Counsel for Dr. Bruce Levy and Warden Ricky Bell

**CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Pamela S. Lorch  
Pamela S. Lorch

doc. no. 151492