

**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.)	

MOTION TO DISMISS COMPLAINT

The plaintiff, Phillip R. Workman, is an inmate sentenced to death by execution on May 9, 2007. The plaintiff has filed a 42 U.S.C. § 1983 complaint wherein he alleges that an autopsy of his body would violate his First Amendment right to freedom of religion. The plaintiff seeks an order enjoining defendant Warden Bell from releasing Mr. Workman's body to Dr. Levy and enjoining defendant Dr. Bruce Levy from performing an autopsy.

Pursuant to Fed. R. Civ. P. Rule 12(b)(6), the defendants respectfully move the Court to dismiss the complaint for the plaintiff's failure to state a claim upon which relief may be granted. Defendant Dr. Bruce Levy has the authority, pursuant to Tenn. Code Ann. § 38-7-106(a), to order and perform an autopsy of the plaintiff's body subsequent to the execution. 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).

A memorandum of law in support accompanies this motion.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
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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. 151495