

**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 VACATE ORDERS GRANTING PRELIMINARY INJUNCTION  
AND CLOSING CASE AND/OR MOTION TO TERMINATE PRELIMINARY  
INJUNCTION ORDER**

The defendants, Dr. Bruce Levy and Warden Ricky Bell, respectfully move the Court to reopen this case to litigate the issues presented in the plaintiff's motion for preliminary injunction and complaint and/or terminate the preliminary injunction order. The pertinent case history is as follows:

On March 29, 2001, the plaintiff, Phillip R. Workman, a condemned inmate, filed a complaint seeking a permanent injunction enjoining Warden Bell from releasing Mr. Workman's body to Dr. Levy and enjoining Dr. Levy from performing an autopsy on Mr. Workman's body after execution. (Docket No. 1) Further, the plaintiff filed a motion for preliminary injunction seeking a Court Order enjoining Dr. Levy from performing an autopsy. (Docket No.3). On March 29, 2001 at 4:00 p.m., the Court granted the preliminary injunction. (Docket No.8). The execution was set for 1 a.m., March 30, 2001. On March 30, 2001, shortly after midnight, the Tennessee Supreme Court stayed Mr. Workman's execution. *Workman v. State*, 41 S.W.3d 100 (Tenn. 2001). Thereafter, on March 30, 2001, this Court issued an Order directing the Clerk to close the file. (Docket No. 9). The defendants did not have the opportunity to respond to the motion for preliminary injunction or the complaint prior to the Court's Orders granting the preliminary injunction and closing the file.

The Tennessee Supreme Court has issued a new date for Mr. Workman's execution: May 9, 2007. Defendants respectfully move the Court to terminate or vacate its Order granting the motion for preliminary injunction and vacate its Order closing the case so that the defendants may litigate the merits of the preliminary injunction and complaint. This case has not proceeded to final judgment:

The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.. . [T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits. In light of these considerations, it is generally inappropriate for a federal court at the preliminary-injunction state to give a final judgment on the merits.

*University of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 1834 (1981).<sup>1</sup>

Contemporaneously herewith, the defendants submit a Response in Opposition to Motion for Preliminary Injunction, and Memorandum in Support and a Motion to Dismiss the Complaint and Memorandum in Support.

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<sup>1</sup> In the alternative, if the Court deems its Preliminary Injunction Order final, the defendants respectfully move the Court to issue relief from the Order, pursuant to Fed.R.Civ.P. Rule 60(b)(6).

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. 151487