

In support hereof, Irick states:

1. On November 6, 2010, this court directed the Chancery Court of Davidson County to "tak[e] proof and issu[e] a declaratory judgment on the issue of whether Tennessee's three-drug protocol constitutes cruel and unusual punishment because the manner in which the sodium thiopental is prepared and administered fails to produce unconsciousness or anesthesia prior to the administration of the other two drugs."

2. On November 12, 2010, Irick filed a motion to intervene as a plaintiff adopting the same claims as West, namely, that Tennessee's three drug protocol constitutes cruel and unusual punishment under state and federal constitutions. On that same day, Irick's motion was orally granted by the Chancery Court.

3. On November 19 through 20, 2010, the Chancery Court complied with this court's directive and held an evidentiary hearing in this matter.

4. After weighing the evidence presented therein and considering the arguments of counsel, the court issued a bench ruling finding and declaring that Tennessee's three-drug protocol violates the prohibition against cruel and unusual punishment contained in Article 1, section 16 of the Tennessee Constitution and the Eighth Amendment of the United States Constitution. That order is expected to be entered on November 22, 2010.

5. The State of Tennessee's current three-drug protocol does not carry out lethal injections in the manner provided by the law of Article 1, Section 16 of the Tennessee Constitution and the Eighth Amendment of the United States Constitution. Accordingly, defendants are unable to comply with this court's July 19, 2010 order. *See* July 19, 2010 order at ¶5 (directing that defendants "shall execute the sentence of death as provided by law.")

6. As this court's November 6, 2010 order recognizes, the constitutionality of any method of execution cannot be determined simply as matter of law but rather is an intensely factual question which must be resolved by a trier of fact. *See* November 6, 2010 order at 2 ("Accordingly, we have determined that both Mr. West and the State of Tennessee should be afforded an opportunity to present evidence supporting their respective positions to the Chancery Court and that the Chancery Court should be afforded an opportunity to make findings of fact and conclusions of law with regard to the issues presented by the parties.")

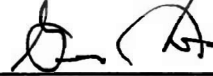
7. Less than sixteen (16) days remain between the date of this motion and Irick's scheduled execution. Should the defendants at this late date change their method of carrying out lethal injections, Irick and the defendants will have no such "opportunity to present evidence supporting their respective positions to the Chancery Court" and the Chancery Court will have no "opportunity to make findings of fact and conclusions of law with regard to the issues presented by the parties" as to any revised protocol.

8. Accordingly, this court should not consider a request by the State of Tennessee to reset Irick's execution date until such time as the courts of this State have had the opportunity to fully consider whether defendants have demonstrated that their new method of execution comports with Article 1, Section 16 of the Tennessee Constitution and the Eighth Amendment of the United States Constitution. *See, e.g., Taylor v. Crawford*, 487 F.3d 1072, 1078 (8th Cir. 2007).¹

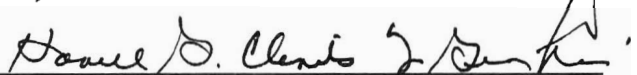
¹In *Taylor*, following the invalidation of its lethal injection protocol, the district court ordered that any lethal injection protocol not previously approved by the district court be submitted for approval. When the State of Missouri submitted an unapproved protocol, the following procedures were approved: "On July 14, 2006, the State submitted a [new] written lethal injection protocol to the district court. Taylor objected on grounds that this new protocol [was unconstitutional]. The district court correctly noted that it lacked jurisdiction to consider the new protocol because the case was on appeal to this court. On August 9, 2006, we therefore remanded the entire dispute to provide

WHEREFORE Irick respectfully request that this court vacate its order setting Irick's execution date for December 7, 2010, and that it decline to reset said date until such time as defendants have demonstrated that any new method of carrying out lethal injections comports with Article 1, Section 16 of the Tennessee Constitution and the Eighth Amendment of the United States Constitution.

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CERTIFICATE OF SERVICE

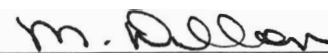
The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

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This 22nd day of Nov, 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: 

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the district court the first opportunity to consider the constitutionality of the newly propounded protocol."