IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

2010 NOV 29 PM 2:39

STATE OF TENNESSEE	*	**NO. M1987-00131-SC-DPE-DD**
	*	
v.	*	
	*	**DEATH PENALTY CASE**
BILLY RAY IRICK	*	
	*	**EXECUTION DATE:**
	*	**December 7, 2010**
	*	

MOTION TO RECONSIDER ORDER DENYING MOTION TO VACATE OR FURTHER MODIFY COURT'S ORDER SCHEDULING IRICK'S EXECUTION OR IN THE ALTERNATIVE RENEWED MOTION TO VACATE OR FURTHER MODIFY THIS COURT'S ORDER SCHEDULING IRICK'S EXECUTION

Comes Billy Ray Irick, and moves this court to reconsider its November 24, 2010, order denying his Motion to Vacate or Further Modify Court's Order scheduling his execution on the grounds that the "revised" lethal injection protocol was unlawfully promulgated according to Tennessee's Uniform Administrative Procedures Act and for the other reasons set out below. Respectfully, it is submitted that this court's order incorrectly holds:

> (1) that the check for consciousness proposed in defendants' amended protocol "addresses the basis of the trial court's conclusion that the previous protocol was unconstitutional." Instead, Irick submits that the basis of the trial court's conclusion was that Tennessee's protocol failed to render condemned inmates unconscious before suffocating them, not that it lacked a check for consciousness; and
>
> (2) that the trial court had found that defendants' revised protocol "was consistent with those found to be appropriate by the trial court." Irick submits that the court did find that other jurisdictions included a check for consciousness when Tennessee officials refused to do so, but said finding only constituted part of what was otherwise an unconstitutional protocol.

IN FURTHER SUPPORT HEREOF, Irick would show to the court as follows:

1. On November 6, 2010, this court issued an order in Case No. M2010-02275-SC-R11-CV holding that only this court had the power to alter a pending execution date, rescheduling co-

plaintiff West's then-imminent execution date for November 30, 2010, and directing the Chancery Court for 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." This Court further stated:

> Decisions involving such profoundly important and sensitive issues such as the ones involved in this case are best decided on evidence that has been presented, tested, and weighed in an adversarial hearing.
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> * * *
>
> [w]e 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.

November 6, 2010 Order at 2.

2. On November 19, 2010, the Chancery Court granted Irick's motion to intervene.

3. Within less than two weeks, the Chancery Court afforded all parties the opportunity to present evidence on November 18-19, 2010. Defendants neither objected to proceeding with that hearing, nor requested more time to secure additional evidence.

4. As instructed, the Chancery Court issued a bench ruling on the evening of Friday, November 19, 2010, answering the specific questions posed to it by this court and holding that Tennessee's three drug protocol did not render condemned inmates unconscious prior to suffocating them and accordingly, that the State would violate Article 1, section 16 of the Tennessee Constitution and the Eighth Amendment of the United States Constitution if the protocol were used to execute

plaintiffs by means of that protocol. Expedited transcripts of the proceeding were immediately ordered.

5. On the evening of Saturday, November 20, 2010, all parties were provided with a rough transcript of the court's bench ruling. By 11:00 on Monday morning, November 22, 2010, all parties were provided with a rough draft of the transcript of the hearing itself. A final transcript of the court's bench ruling was provided to all parties shortly thereafter and immediately presented to the Chancery Court along with a written order incorporating the court's bench ruling.

6. On the afternoon of Monday, November 22, 2010, the Chancery Court entered its written order incorporating its bench ruling, faxing a copy to all parties.

7. Though the Chancery Court had provided Rule 9, Tenn. R. App. P., certification, defendants took no steps on November 22, 2010, to overturn the court's decision.

8. West and Irick, however, filed motions in this court to vacate or further modify the execution dates on November 22 and 23, 2010, respectively, on the grounds that the Chancery Court had declared the method of his execution to be unconstitutional. Irick specifically asked this court to vacate his December 7, 2010, execution date and to not reset it until defendants produced a new protocol and demonstrated its constitutionality.

9. Defendants did not respond. Nor did they take any steps to appeal the Chancery Court's decision.

10. At 2:01 on the afternoon of Tuesday, November 23, 2010, this court entered an order allowing defendants until 3:00 on Wednesday, November 24, 2010, to respond to plaintiffs motions.

11. By 5:00 on the afternoon of November 23, 2010, an official transcript of the entire proceeding before the Chancery Court, including the court's bench ruling, was providedto all parties.

12. At 3:00 P.M. on November 24, 2010, at the time set by the Tennessee Supreme Court, defendants filed their response to plaintiffs' motions. Defendants announced that they had changed Tennessee's lethal injection protocol to provide a "check for consciousness" and argued that this step had rendered Tennessee's lethal injection procedure constitutional.

13. Pursuant to T.C.A. §40-23-114(c), the Department of Correction is authorized and, in fact, must promulgate the necessary rules and regulations to implement capital punishment by lethal injection in the state of Tennessee. However, the Department of Correction in allegedly modifying the lethal injection protocol on November 24, 2010 (see Exhibit A to defendants' Response in Opposition to Vacate), has failed to abide by T.C.A. § 40-23-114 because it did not "promulgate necessary rules and regulations" but instead followed an unauthorized and illegal procedure by which Gayle Ray, without notice or hearing, unilaterally revised the protocol. However, the Department of Correction, like all other departments in the state of Tennessee, must adhere to Tennessee's Uniform Administrative Procedures Act, T.C.A. §4-5-201, *et seq*, as well as implementing legislation such as T.C.A. §40-23-114. For instance, T.C.A. §4-5-202 provides that "an agency shall precede all it rule making with notice and a public hearing" unless the agency takes other action specified within that statute, which has not occurred in this case.[1] Ms. Ray's actions took place on November 24, 2010 without complying with any of the notice or public hearing requirements or following the regulations for an emergency rule. Therefore, her actions are unlawful and void. See T.C.A. §4-5-216, which provides that "any agency rule not adopted in compliance with the provisions of this chapter shall be void and of no effect and shall not be effective against person or party nor shall it be invoked by the agency for any purpose."

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[1]See also T.C.A. §§ 4-5-203 and 4-5-204.

14. Despite requesting a hearing as to any revised or new protocol, plaintiffs were not allowed to be heard in response to the material change in circumstances or to defendants' arguments.

15. This court then issued its decision without further hearing or factual findings. In doing so, it denied plaintiffs the due process they are guaranteed by the constitutions of the United States and of the State of Tennessee.

16. The Supreme Court of the United States has addressed the denial of process:

> Early in our jurisprudence, this Court voiced the doctrine that "(w)herever one is assailed in his person or his property, there he may defend," Windsor v. McVeigh, 93 U.S. 274, 277 (1876). *See* Baldwin v. Hale, 1 Wall. 223, 17 L.Ed. 531 (1864); Hovey v. Elliott, 167 U.S. 409 (1897). The theme that "due process of law signifies a right to be heard in one's defense," Hovey v. Elliott, *supra*, 417, has continually recurred in the years since Baldwin, Windsor, and Hovey.

Boddie v. Connecticut, 401 U.S. 371, 377 (1971).

17. Due process is not just a matter of fairness, it is a mechanism through which truth and justice may be found. Because due process was not afforded here, both truth and justice remain lost.

18. The Chancery Court's holding was broad:

> And as for the summary -- a very brief summary of the decision, the Court finds the current protocol for execution by lethal injection execution is cruel and usual because the plaintiff has carried its burden to show that the protocol allows suffocation -- death by suffocation while the prisoner is conscious.

T. 394, O. 10 (Bench Ruling).[2]

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[2]References to the official transcript of the proceeding below are designated "T. [page number]." For convenience, Irick's quotes from the Chancery Court's bench ruling are referenced to the pages those quotes appear in the official transcript. This is followed by reference to the corrected transcript of the Chancery Court's bench ruling as attached to the court's decision (and provided to this court as an attachment to Irick's motion to vacate or further modify court's order scheduling Irick's execution). Such references are designated as "O. [page number]. Any changes to the official transcript of the Chancery Court's bench ruling made by that court prior to entry of judgment are included in brackets in all quotations.

19. The Court goes on to explain this finding in more detail:

> In this case, the plaintiff has carried his burden to show that the first injection of 5 grams of sodium thiopental followed by rapid injection of the second drug will result in the inmate's consciousness during suffocation.

T. 397-398, O. 13 (Bench Ruling).

20. Accordingly, Tennessee's protocol is unconstitutional not because it lacks a "check for consciousness," but because it does not render the inmate unconscious.

21. The Chancery Court did not find that any particular check for consciousness was "appropriate," contrary to defendants' representation of the Chancery Court'sdecision. Defendants represented that decision thusly:

> The trial court determined from the evidence presented that "there are various ways" to check for consciousness prior to the administration of the second and third chemicals and that the State "should have adopted one of the simple ways which appears to be used in other states." (Order, Bench Ruling, pp. 37-38). The trial court instructed that "it should be done," (Order, Bench Ruling, p. 37), and so it has been done.

Defendants' Opposition at 3.

22. That, however, takes what the Chancery Court stated out of context. More importantly, it ignores the fact that the court never found any particular method for checking for unconsciousness, whether or not used in another state, was "appropriate." The court, in response to this court's remanded questions, said:

> I am going back now to the issues that the Court must decide in the case, whether the current amount and concentration of sodium thiopental mandated by Tennessee's 2007 lethal injection protocol are insufficient to ensure unconsciousness so as to create an objectively intolerable risk of severe suffering or pain during the execution.

This Court finds that the current amount and concentration of sodium thiopental are insufficient to ensure unconsciousness because the body's ability to and the body's actual use of this drug depends on so many variables, and both medical experts agree that that was the case.

And Number Two is a factual matter. The Court is to decide at what level sodium thiopental -- at what level is the sodium thiopental sufficient to ensure unconsciousness so as to negate any objectively intolerable risk of severe suffering or pain during the execution.

And I should go back to issue Number 1, and say the objectively intolerable risk of severe pain -- suffering or pain during the execution is the injection of the second drug, the paralyzing drug after the first inadequate and inefficient drug has been injected; that is, to do so so quickly and to do at all.

As a factual matter -- going on now to issue Number 2, at what level is this particular drug; that is, Number 1 -- sufficient to ensure unconsciousness. And although Dr. Li testified that 5 grams of sodium thiopental is fatal -- or should be fatal, Dr. Li also agreed with Dr. Lubarsky that the amount of sodium thiopental which will -- can be -- can provide an assurance that a particular level of this drug will be effective in the body depends on many, many variables.

And so although this Court listened very closely to the experts' opinions about this particular issue, this Court is unable to find what level of sodium thiopental is sufficient to ensure unconsciousness because I don't think there is one, given the medical proof that the Court is relying on; given the medical proof in the case.

Number 3, is there a feasible and readily available alternative procedure which could be supplied at execution to ensure unconsciousness and negate any objectively intolerable risk of severe suffering or pain? It appears to this Court that there are feasible and readily available alternative procedures which could be supplied at execution to ensure unconsciousness and negate any objectively intolerable risk of severe suffering or pain. This Court should not say or find which of those it would recommend, but I think the Court's finding of fact regarding the ways -- the various ways that unconsciousness can be checked should be left to the State.

But the proof in the Harbison [Harbison] case that was filed in this case, the -- the facts that were gleaned from Mr. Voorhies' testimony in which -- and from other state protocols in which checks for consciousness were overt and explicit and intentional indicate that there are various ways to go -- to do that andit should be done.

Number 4, did the State refuse to adopt this alternative and without justification adhere to its current method? Well, the State decided that its protocol of injecting

> sodium thiopental in the measure that its protocol requires; that is, 5 grams, did not require checking for consciousness or unconsciousness, and given the other protocols that have been filed in with the Court, given the approach taken by -- taken in Ohio as testified to by Mr. Voorhies, it does seem that the State should have figured out some way -- some simple way, should have adopted one of the simple ways which appears to be used in other states to check on, to make sure that the prisoner was unconscious, and this Court cannot find a justification for not checking on consciousness -- on unconsciousness. I just don't think there is a justification that this Court can understand.
>
> And back just for a moment to issue Number 2. I think the Court should say that it cannot state there is no level of sodium thiopental sufficient to ensure unconsciousness. This Court does not find there is no level whatsoever, but this Court does not know what it would be.

T. 420-423, O. 34-38. (Bench Ruling).

23. No evidence was presented to the Chancery Court showing that any other state's method of checking for consciousness could adequately ensure that an inmate would be so unconscious that he would not be aroused by the horrific pain caused by Tennessee's last two chemicals.

24. The Chancery Court received extensive testimony about the test for consciousness which would be required to assure that an inmate was sufficiently unconscious to avoid the unnecessary pain of Tennessee's injection of the second and third drugs. It came from the only witness with knowledge of how to check for consciousness, a witness whom the Chancery Court found, "is an ideal expert for the evaluation of consciousness and unconsciousness," (T. 398 (Bench Ruling)), Dr. David Lubarsky.

25. Dr. Lubarsky, in fact, testified at length about the type of stimuli which would have to be applied to a person in order to assess whether they were unconscious enough not to experience

the torture of suffocation and searing pain from injected potassium. The stimuli in the check for consciousness must correspond to the pain produced by the protocol:

> Q. Okay. And the same would be true for the next article which is authored by -- says Hung O-R and a number of other authors entitled Thiopental Phannacodynamics II. Do you see that?
>
> A. Yes. Uh-huh, I do.
>
> Q. Okay. And is -- I see that that was published in the -- apparently, Anesthesia. Is that the Journal of Anesthesia? Why does that --
>
> A. Yes. Anesthesiology is the highest regarded journal in the -- in our subspecialty. The most -- one of the greatest impact factors, which means that it -- it is quoted and accessed the most of all the various journals.
>
> Q. Is there reason for that? Is -- are they -- is it a -- is it considered to be that carefully reviewed, that reliable?
>
> A. Yeah. I mean, different journals have different levels of expectations in terms of the meaningfulness and of a particular study, you know, et cetera. And in -- in our field, anesthesiology probably is the most rigorous, and this article is considered a classic.

T. 88-89

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> Q. Looking at the article, Thiopental Pharmacodynamics, could you -- do you recall the nature of the study that was performed that led to the publication of this article?
>
> A. Yes. They basically were determining what the serum levels were that correlated with different responses to graded stimuli, meaning minor stimuli to major painful stimuli and when people would respond at given levels of thiopental in their blood.
>
> Q. Okay. And is this a study that's regularly relied upon by anesthesiologists when trying to make this determination about what thiopental levels need to be achieved to establish a certain level of consciousness?
>
> A. Yes, it is.

* * *

Q. In the first column of Table 1, it says, Cp50 plus or minus -- is that an SE?

A. Standard error.

Q. Okay.

A. It's a measure of the distribution of data around the central theme.

Q. Okay. It -- it defines Cp50 right underneath the table, but I'm not sure I completely understand it. Could you explain to the Court what Cp50 means?

A. Sure. It's the concentration in the plasma that -- at which 50 percent of people will not respond. On the other hand, it's also the concentration in which 50 percent of people will respond. So if you're concerned about making sure that no one will respond, these are ex -- these are not appropriate numbers. This is the -- this is 50 percent of the people respond; 50 percent of the people don't respond. That's a traditional way that we measure drug potencies and drug effects. Very common use in anesthesia. And it's a way -- allows us to kind of get an idea of what we're shooting for if we're shooting for a lot higher than the numbers in this particular table.

Q. Because if half the people aren't sufficiently unconscious --

A. Yeah, then it --

Q. -- that's -- that's not a -- that's not a good result, is it?

A. No, it would not be a good result.

Q. Okay. That -- that isn't a kind of outcome that could really be -- that's a tolerable outcome. It -- it's not in -- in your --

A. That's correct. I mean, the -- even with all of our knowledge and all of our overdosing relative to these, you know, we still have incidences of awareness that are 1 to 2000 that occur per, you know, 1 to 2 in 1,000 surgeries. Not necessarily painful awarenesses, I might add; but it still does happen. You know, there's marked individual variation in the response to any particular drug dose.

Q. Now, Doctor, do -- we -- I think we think about anesthesia -- and at least I -I do -- in kind of a very common way, which is we put them in, it goes -- as soon as

they go to sleep, they never feel anything else. On the other hand, these numbers appear to change in regard to the painfulness of the stimuli that's -- that's applied. Do you have to have a higher level of unconsciousness in order to be anesthetized against a more severe degree of pain?

A. Yes, you do. And matching the depth of anesthesia to stimulus intensity is part of what takes years of training for an anesthesiologist to know.

Q. When we look at these numbers, could you describe for the Court like what a trapezius squeeze is?

A. Sure. If you've got some -- you ever played sports, high school sports, people come up behind you, squeeze the trapezius muscle right there in the back of your neck, it's painful, and you -- I don't know if maybe your guy -- your jocks don't fool around the way they did when I was in high school. You know, they're something that, you know, makes people flinch. It's pretty painful -- pretty painful, but it's not like being punched in the face or anything. It's kind of in between that.

Q. Okay. It's -- would you say mildly, moderately painful?

A. Moderately painful, yes.

Q. Okay. Then we have a laryngoscopy. What -- what does that entail?

A. That's sticking a giant tongue depressor down your throat. You know, and -- and we do that on a lighted handle so that we can see the vocal cords. So that's what we do before we put a breathing tube in which would be the next thing, which is intubation, which is when we place a plastic breathing tube inside of your air pipe, your trachea. And that is very, very stimulating.

T. 92-95.

* * *

Q. Okay. How would you describe that experience [suffocation while paralyzed] when its happening as a painful experience?

A. Painful and extremely disturbing to the patient. The inability to get one's air is among the most intense experiences that you can possibly have. I mean, it is -- you know, it's what life is all about is -- is getting a breath of air; and if you talk to people with near drowning experiences, et cetera, you know, they can explain to you how desperately their lungs burn, their body felt on fire as they -- you know, they would -- they were -- they were driving up to the surface, you know, if possible to -- to get

a breath of air because your body is finely tuned and, you know, from ions of evolution, finely -- finely pushed to -- to get air. I mean, that's what -- that's, you know -- and it's a -- it's a primary survival mechanism.

Q. More painful than a squeeze of the muscle there by your shoulder?

A. No comparison.

Q. Not even close?

A. Not even close.

Q. How about the larng- --

A. Laryngoscopy?

Q. Laryngoscopy, yes.

A. Again, not even close.

T. 99-100.

* * *

Q. And yet the -- the numbers we're looking at in this study for a laryngoscopy -- got it that time -- are 50.7 -- and I -- it's -- I believe this is micrograms per milliliter, but it's the equivalent of 50.7 milligrams per liter of sodium thiopental?

A. That is correct. And that's for 50 percent of people to respond. Not a hundred percent of people -- that's not an adequate level for that procedure. That is the -- a -- the Cp50 is -- is basically half respond; half don't respond.

Q. So let me see if I understand this correctly. At 50.7 milligrams per liter, half of the people -- half of the people who are subjected to a stimulus much less painful than what goes on during the lethal injection, half of those people respond?

A. Correct.

Q. Now, something else happens in a -- in a lethal injection or is supposed to happen in a lethal injection besides this suffocation you've just described, and -and that is a drug called the potassium chloride is -- is administered. How painful is that in relation to our trapezius squeeze and these kind of things?

A. Again, no comparison. There are many instances where the patients have gotten some IV -- small little amounts of IV potassium chloride, and it burns like the dickens. And you inject a whole lot of IV potassium chloride and you'll have -- you know, you have people jumping off the table and hitting the roof. I mean, it is extremely caustic. It's extremely caustic. And you -- you just wouldn't do that.

Q. So -- and I -- would it be fair to say that, at the same time they're experiencing this same caustic kind of thing, they're still experiencing these other opinions as you've described before? It's just heaped on top of it?

A. That is correct.

Q. So what we're looking at is just a phenomenally painful experience that these last two drugs produce?

A. Correct.

Q. And one which is going to require a higher than -- a higher level than what we're seeing in these clinical studies with clinical kinds of stimuli?

A. Right.

T. 104 -106.

Q. Now, Dr. Lubarsky, if the pathologist who conducted this -- conducted this examination did their job, looked carefully, and determined that the catheters were still in place, there was no sign of infiltration or misplacement of the catheters, would you consider this 10.2 level to be problematic?

A. I would.

Q. And why is that?

A. Well, the key is that it's nowhere near the level that's required in the blood on -- remember, I talked about up and down -- on the upside, going to sleep, okay, it's nowhere near the level required just simply not to sit up and shake your hand when you asked someone to in terms of they're not even -- they're not even really sedated if they're responding to verbal commands at that level.

And there would be a high likelihood that they would respond to command, and -- which is why, again, you know, it's very -- it's always very important to, you know, look at the -- the data that you have. You know, it's -and, again, this is half to a third probably of what someone who's experiencing acute tolerance to a large bolus of

> thiopental would require in terms of being asleep in response to a mere verbal request to perform an activity.
>
> Totally different from being, you know, fighting for your life, needing to take a breath, feeling the excruciating pain of potassium chloride being injected. That's on top of all that. But just this level alone, just like you talking to me, and I would be responding to you.
>
> Q. And that's the kind of level that -- that was produced here, a level that would respond to a verbal command.

T. 142-144.

26. Coe's thiopental level was 10.2 mg/L. Workman's level was 18.9 mg/L. Henley's was only 8.3 mg/L. T. 141, 145-146, 151-152.

27. There is no evidence whatsoever in the record on the subject of the effectiveness of other states' procedures.

28. The evidence from the hearing below proves that brushing the inmate's eyelashes, calling his name, and even gently shaking him will not measure whether the inmate will be unconscious of the pain produced by the three-drug protocol. The evidence proves that a person can be unconscious of verbal stimuli or slight physical stimuli and yet be responsive to stronger stimuli. The evidence proves that the pain produced by the protocol requires a depth of unconsciousness not seen in Tennessee's executed inmates. The evidence proves that Robert Coe and Steve Henley would have responded to a verbal command after each were injected with 5 grams of sodium thiopental had they not been paralyzed by pancuronium bromide. The evidence proves that Phillip Workman would have responded to tetanic muscle stimulus after he was injected with 5 grams of sodium thiopental had he not been paralyzed by pancuronium bromide. These proven facts are why the Chancery Court found Tennessee's three-drug protocol unconstitutional.

29. Therefore, the amended protocol, even if authorized/legal, fails to provide adequate steps to ensure unconsciousness.

30. According to defendants, simply administering 5 more grams of sodium thiopental when an inmate is "discovered" to still be conscious is adequate to insure unconsciousness. This "contingency plan" is problematic because the consciousness check does not remotely equate to the level of pain that the protocol subsequently produces. Moreover, the Chancery Court found that no one dose of sodium thiopental was sufficient to ensure unconsciousness:

> As a factual matter -- going on now to issue Number 2, at what level is this particular drug; that is, Number 1 -- sufficient to ensure unconsciousness. And although Dr. Li testified that 5 grams of sodium thiopental is fatal -- or should be fatal, Dr. Li also agreed with Dr. Lubarsky that the amount of sodium thiopental which will -- can be -- can provide an assurance that a particular level of this drug will be effective in the body depends on many, many variables. And so although this Court listened very closely to the experts' opinions about this particular issue, this Court is unable to find what level of sodium thiopental is sufficient to ensure unconsciousness because I don't think there is one, given the medical proof that the Court is relying on; given the medical proof in the case.

T. 421-422 (Bench Ruling).

31. The denial of state and federal due process produced an order which is contrary to the law and the facts and which, if it is not reconsidered, will, as the Chancery Court found, in all likelihood result in Irick being paralyzed and suffocated through the use of pancuronium bromide and subjected to severe pain through the use of potassium chloride, while fully aware of the pain and horror.

32. The official transcript has been previously provided to this court by West.

WHEREFORE, Irick respectfully requests that this court reconsider its order denying his motion to vacate its order setting his execution date for December 7, 2010 or, in the alternative, grant

Irick's renewed motion to vacate or further modify this court's order scheduling his execution, that it afford Irick the due process guaranteed by the state and federal constitutions, that it vacate that date, that it decline to reset said date until such time as defendants have properly promulgated new regulations and/or rules in regard to lethal injections and 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 29TH day of November, 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

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