

MOTION FOR LEAVE TO FILE BRIEF OF TENNESSEE ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS AND INDIVIDUAL TENNESSEE
ATTORNEYS AS AMICI CURIAE IN SUPPORT OF DEFENDANT'S
OPPOSITION TO MOVANT'S MOTION TO SET EXECUTION DATES

The Tennessee Association of Criminal Defense Lawyers and below-named individual Tennessee attorneys ("*Amici*") respectfully move this Court for leave to file an *amicus curiae* brief, which *Amici* are lodging contemporaneously herewith, in support of Defendant's Opposition to Movant's Motion to Set Execution Dates.

INTEREST OF AMICI CURIAE

Amici are the Tennessee Association of Criminal Defense Lawyers, one of the nation's oldest state criminal bar associations comprised of criminal defense attorneys, and certain individual members of the Tennessee Bar. Before the Court is the state's motion to set execution dates before the drugs to be used in its new lethal injection protocol expire. Defendant has filed an action in the Chancery Court of Davidson County, Tennessee, alleging the new protocol violates the Tennessee and United States Constitutions. The Chancery Court action is currently pending, and *Amici* seek leave to file a brief in this matter urging the Court to allow the Chancery Court action to proceed to a full trial on the merits, as required by due process.

Amici have a profound interest in upholding the rule of law and the integrity of the judiciary as the State seeks to carry out what is a somber and irrevocable task. As attorneys practicing in Tennessee, and an organization of criminal law practitioners in particular, *Amici* are engaged in “a common calling to promote justice and public good;” they are “public citizen[s] having special responsibility for the quality of justice.” Tennessee Supreme Court Rule 8, Rules of Professional Conduct, Preamble, Comment [1]. It is in furtherance of these obligations and interests that the undersigned file this Motion.

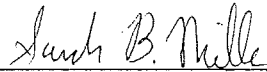
Before this Court can set execution dates, there are critically important interpretations of the Tennessee and United States Constitutions that simply must be resolved and developments in the evidence of the community’s evolving standards of decency that must be given due consideration in the appropriate tribunal. And, they must take place on a fully developed record before a trier of fact, not on a rushed basis so the State can use a new protocol before its drugs expire. The promotion of a full and fair trial on these matters is of vital importance to the administration of justice in Tennessee and, by extension, of vital interest to the undersigned.

Amici sought the consent of both parties to file an *amicus curiae* brief in this matter. Defendant consented, but Movant declined to do so.

For the reasons set forth above, *Amici* respectfully move this Court for leave to file the brief lodged contemporaneously herewith.

March 5, 2018.

Respectfully submitted,



Sarah B. Miller (#033441)
David R. Esquivel (#021459)
Jeffrey H. Gibson (#026321)
Molly K. Ruberg (#033957)
Scott D. Gallisdorfer (#036014)
Christopher J. Climo (#035082)
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-7802
smiller@bassberry.com
desquivel@bassberry.com
jgibson@bassberry.com
mruberg@bassberry.com
scott.gallisdorfer@bassberry.com

Counsel for Amici Curiae

Amici Curiae:

Michael G. Abelow
David L. Bearman
Angela L. Bergman
Payton Bradford
C. Dewey Branstetter
Kenneth M. Bryant
L. Webb Campbell II
David M. Eldridge
Claiborne Ferguson
Craig V. Gabbert
Jason M. Gichner
Daniel A. Horwitz

Stephen R. Johnson
Bill Leader
Zachary D. Miller
W. Brantley Phillips
Matthew J. Sinback
John T. Spragens
Matthew J. Sweeney III
Jonathon D. Tebbs
James G. Thomas
J. Patrick Warfield
Stephen J. Zralek

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent via U.S. Mail, first-class postage prepaid, and by email on the 5th day of March, 2018, to the following:


Herbert H. Slatery II
Andree S. Blumstein
Jennifer L. Smith
Office of Tennessee Attorney General
500 Charlotte Avenue
P.O. Box 20207
Nashville, TN 37202

Kelley J. Henry
Supervisory Asst. Federal Public Defender
Office of the Federal Public Defender
810 Broadway, Suite 200
Nashville, TN 37203

Stephen M. Kissinger, Assistant Federal Community Defender
Susanne Bales, Assistant Federal Community Defender
Stephen Ferrell, Assistant Federal Community Defender
Federal Defender Services of Eastern, Tennessee, Inc.
800 S. Gay Street, Suite 2400
Knoxville, TN 37929

Kathleen Morris
Attorney at Law
42 Rutledge Street
Nashville, TN 37210

Deborah Y. Drew
Andrew L. Harris
Office of the Post-Conviction Defender
P.O. Box 198068
Nashville, TN 37219-8068



Sarah B. Miller