

Attachment 2

to

REQUEST FOR ASSUMPTION OF JURISDICTION OF
UNDECIDED CASE PURSUANT TO RULE 48,
RULES OF THE SUPREME COURT OF THE
STATE OF TENNESSEE

**Motion for Temporary Injunction
Filed October 25, 2010**

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

FILED

2010 OCT 25 AM 11:07

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

STEPHEN MICHAEL WEST,)
)
 Plaintiff)
)
)
)
 v.)
)
 GAYLE RAY, in her official capacity as)
 Tennessee's Commissioner of)
 Correction,)
)
 RICKY BELL, in his official capacity as)
 Warden of Riverbend Maximum)
 Security Institution,)
)
 DAVID MILLS, in his official capacity as)
 Deputy Commission of Tennessee)
 Department of Correction,)
)
 REUBEN HODGE, in his official capacity)
 as Assistant Commissioner of)
 Operations,)
)
 JOHN DOE EXECUTIONERS 1-100,)
)
 JOHN DOES 1-100)
)
 Defendants)

No. 10-1675-I _____ D.C. & M.

DEATH PENALTY CASE

EXECUTION SCHEDULED:

November 9, 2010

MOTION FOR TEMPORARY INJUNCTION¹

Comes the Plaintiff, Stephen Michael West, and moves this Court as follows;

1. To issue a temporary mandatory injunction mandating that Defendants and their employees, agents, successors and assigns, and other persons in active concert or participation

¹Plaintiff withdrew an earlier request for extraordinary relief when Defendants voluntarily provided a portion of the relief sought and thereby mooted the remainder of relief sought.

with the Defendants who receive actual notice of this Temporary Injunction to carry out the July 15, 2010, order of the Tennessee Supreme Court setting Mr. West's execution for November 9, 2010, only in a manner which does not constitute cruel or unusual punishment under the Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16, as does the Current Protocol (Plaintiff's Exhibit 4).²

2. To issue a temporary injunction enjoining the Defendants and their employees, agents, successors and assigns, and other persons in active concert or participation with the Defendants who receive actual notice of this Temporary Injunction, from carrying out the July 15, 2010, order of the Tennessee Supreme Court setting Mr. West's execution for November 9, 2010, in a manner which constitutes cruel or unusual punishment under the Eighth and Fourteenth Amendments of the United States Constitution and Tennessee Constitution Article 1, § 16, as does the Current Protocol (Plaintiff's Exhibit 4).

3. To issue a temporary mandatory injunction that Defendants and their employees, agents, successors and assigns, and other persons in active concert or participation with the Defendants who receive actual notice of this Temporary Injunction, shall carry out the July 15, 2010, order of the Tennessee Supreme Court setting Mr. West's execution for November 9, 2010, only upon complying with TENN.CODE ANN. § 40-23-114(c) and the rules and regulations promulgated under that grant of authority in the form of the Current Protocol, to wit:

a. The requirement set forth at numbered paragraph 2 on Page 12 of Plaintiff's

²Mr. West has already submitted all exhibits to this motion as exhibits to his Complaint for Declaratory Judgment and Injunctive Relief. Because these exhibits are voluminous, they will not be submitted again as attachments to this motion. In addition, for the sake of clarity, they are designated by the same exhibit number used in his Complaint for Declaratory Judgment and Injunctive Relief.

Exhibit 4 to his Complaint for Declaratory Judgment and Injunctive Relief, among the “Duties” of the Warden, to wit, “To assure condemned inmates sentenced prior to January 1, 1999 are given the opportunity to select electrocution or lethal injection as a legal means of execution at least 30 days before the execution;” and,

- b. Presenting to Mr. West, in the manner specified by the requirement described herein at Paragraph 3(a) and without any alteration whatsoever, that “Affidavit Concerning Method of Execution” set forth at Page 88 of Plaintiff’s Exhibit 4 to his Complaint for Declaratory Judgment and Injunctive Relief.

4. To issue a temporary injunction enjoining the Defendants and their employees, agents, successors and assigns, and other persons in active concert or participation with the Defendants who receive actual notice of this Temporary Injunction, from carrying out the July 15, 2010, order of the Tennessee Supreme Court setting Mr. West’s execution for November 9, 2010, without complying with TENN.CODE ANN. § 40-23-114(c) and the rules and regulations promulgated under that grant of authority in the form of the Current Protocol, to wit:

- a. The requirement set forth at numbered paragraph 2 on Page 12 of Plaintiff’s Exhibit 4 to his Complaint for Declaratory Judgment and Injunctive Relief, among the “Duties” of the Warden, to wit, “To assure condemned inmates sentenced prior to January 1, 1999 are given the opportunity to select electrocution or lethal injection as a legal means of execution at least 30 days before the execution;” and,
- b. Presenting to Mr. West, in the manner specified by the requirement described herein at Paragraph 3(a) and without any alteration whatsoever, that “Affidavit Concerning Method of Execution” set forth at Page 88 of Plaintiff’s Exhibit 4 to

his Complaint for Declaratory Judgment and Injunctive Relief.

This Court should grant Plaintiff's motion because, as explained in Mr. West's attached memorandum in support, it clearly has the authority and jurisdiction to order Defendants to comply with the requirements of the constitutions of the United States and the State of Tennessee and applicable Tennessee rules and regulation, particularly where such compliance is consistent with the July 15, 2010, order of the Tennessee Supreme Court setting Mr. West's execution for November 9, 2010.

Furthermore, as explained in Mr. West's memorandum, the equities in this matter lie squarely with Mr. West. Regardless of Defendants' interest in seeing Mr. West's sentence of death being carried out, it has no interest in seeing it carried out in violation of its own constitution, laws, rules, and regulations, or in violation of the constitution and laws of the United States. Any delay in carrying out the Tennessee Supreme Court's July 15, 2010, order is solely attributable to Defendants' refusal to honor the State of Tennessee's constitution, laws, rules, and regulations, the constitution and laws of the United States, and, at very least, the express directions of the Tennessee Supreme Court.

Still further, as explained in Mr. West's attached memorandum in support, the public interest can only benefit from an order of this Court requiring Defendants to comply with the laws of this country and this state. We are a nation of laws and not men and no man is above the law. When governments flaunt the law, only tyranny remains. An order requiring Tennessee officials to obey the laws of this state will revitalize the public trust damaged by Defendants' arbitrary behaviors.

THIS IS THE PLAINTIFF'S FIRST REQUEST FOR EXTRAORDINARY RELIEF IN THIS ACTION.

THIS MOTION IS EXPECTED TO BE HEARD ON _____, 2010.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

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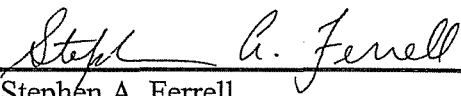
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CERTIFICATE OF SERVICE

I, Stephen A. Ferrell, hereby certify that a true and correct copy of the foregoing document was hand delivered to:

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this the 25th day of October, 2010.



Stephen A. Ferrell