

RECEIVED

Jan 04 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Honorable Jocelyn Newman, Circuit Court Judge

---

Appellate Case No. 2022-001280

Case No. 2021-CP-40-02306

---

FREDDIE EUGENE OWENS, BRAD KEITH SIGMON, GARY DUBOSE  
TERRY, and RICHARD BERNARD MOORE,..... Respondents-Appellants,

v.

BRYAN P. STIRLING, in his official capacity as the Director  
of the South Carolina Department of Corrections; SOUTH  
CAROLINA DEPARTMENT OF CORRECTIONS; and HENRY  
MCMASTER, in his official capacity as Governor of the State  
of South Carolina, ..... Appellants-Respondents.

---

RETURN TO  
MOTION TO SUPPLEMENT THE RECORD

---

Daniel C. Plyler  
Austin T. Reed  
SMITH | ROBINSON  
2530 Devine Street  
Columbia, SC 29205

*Counsel for Director Stirling  
and SCDC*

Thomas A. Limehouse, Jr.  
*Chief Legal Counsel*  
Wm. Grayson Lambert  
*Senior Litigation Counsel*  
Erica Wells Shedd  
*Deputy Legal Counsel*  
OFFICE OF THE GOVERNOR  
South Carolina State House  
1100 Gervais Street  
Columbia, SC 29201

*Counsel for Governor McMaster*

Respondents' Motion to Supplement the Record should be denied for three reasons:

1. Respondents' request violates Rule 210(c), which provides that "[t]he Record shall not . . . include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. Respondents cannot claim—and, to their credit, do not argue—that the December 27, 2023 affidavit from a previously undisclosed expert was first presented to the circuit court. *See* Mot. 3. Therefore, this Court's rules preclude Respondents from supplementing the Record at the eleventh hour with a new affidavit from a new expert in an effort to prevent SCDC from using the drug they previously claimed to prefer. The Court should not create special or novel procedures for this case, just because it involves a serious subject. Such (mis)adventures rarely work well. *Cf. Baze v. Rees*, 553 U.S. 35, 51 (2008) (plurality opinion) (warning against "transform[ing] courts into boards of inquiry charged with determining 'best practices' for executions").

2. The proposed supplement to the Record is irrelevant to this case. This case is a challenge to electrocution, the firing squad, and Act 43. *See* R. pp. 94–135 (operative complaint). This Court asked for amended briefs that addressed "the effect of the Shield Statute *on the merits*" of this case. Oct. 31, 2023 Order 2 (emphasis added). The Almgren affidavit does not address that topic. Instead, it discusses lethal injection protocols and the supposed risks of permitting SCDC to use pentobarbital that Respondents have not had the chance to inspect and test to their satisfaction.

3. The proposed supplement is speculative. Almgren says manufactured pentobarbital "is not itself necessarily a guarantee of efficacy." Almgren Aff. ¶ 7. She suggests that pentobarbital might not be compounded correctly. Almgren Aff. ¶¶ 8–12. Improperly stored or compounded pentobarbital "*can* lead to extreme pain." Almgren Aff. ¶ 11 (emphasis added). "[O]ne overseas facility" had problems with birds and insects. Almgren Aff. ¶ 13. Chemicals "may" be contaminated. Almgren Aff. ¶ 15. Older drugs "*may* no longer maintain" the same efficacy.

Almgren Aff. ¶ 18 (emphasis added). There is, she claims, a “substantial risk that the drugs that are intended to be use[d] in execution will not be of the appropriate quality or potency to cause death without significant suffering.” Almgren Aff. ¶ 21. But Almgren does not attempt to quantify that abstract assessment or argue-away the evidence of the drug’s effective utilization in other contexts. None of this speculation would be useful to the Court in deciding the questions presented in this case.

Respectfully submitted,

s/Wm. Grayson Lambert

Thomas A. Limehouse, Jr. (S.C. Bar No. 101289)

*Chief Legal Counsel*

Wm. Grayson Lambert (S.C. Bar No. 101282)

*Senior Litigation Counsel*

Erica W. Shedd (S.C. Bar No. 104287)

*Deputy Legal Counsel*

OFFICE OF THE GOVERNOR

South Carolina State House

1100 Gervais Street

Columbia, South Carolina 29201

(803) 734-2100

[tlimehouse@governor.sc.gov](mailto:tlimehouse@governor.sc.gov)

[glambert@governor.sc.gov](mailto:glambert@governor.sc.gov)

[eshedd@governor.sc.gov](mailto:eshedd@governor.sc.gov)

*Counsel for Governor McMaster*

s/ Daniel C. Plyler

Daniel C. Plyler (S.C. Bar No. 72671)

Austin T. Reed (S.C. Bar No. 102808)

SMITH | ROBINSON

2530 Devine Street

Columbia, SC 29205

(803) 254-5445

[Daniel.Plyler@SmithRobinsonLaw.com](mailto:Daniel.Plyler@SmithRobinsonLaw.com)

[Austin.Reed@SmithRobinsonLaw.com](mailto:Austin.Reed@SmithRobinsonLaw.com)

*Counsel for Director Stirling and SCDC*

January 4, 2024  
Columbia, South Carolina