

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 29 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,
Respondent,

v.

FREDDIE EUGENE OWENS,
Appellant.

Appellate Case No. 1999-011364

REPLY TO STATE'S RETURN TO EXPEDITED PETITION
TO CONSTRUE OR CLARIFY

The need for a power of attorney here is straightforward. Mr. Owens does not wish to die by electrocution. But under South Carolina's execution statute, he can avoid electrocution only if he exercises his statutory right of election to select another method—lethal injection or the firing squad. However, Mr. Owens has a long-standing, deeply held religious conviction that physically signing the election form is taking an active role in bringing about his own death and is thus akin to suicide. Mr. Owens's Muslim faith teaches that suicide is a sin, and it is forbidden.

To resolve this dilemma, Mr. Owens asked his counsel if she would be willing to sign the election form on his behalf. Counsel agreed – not to force any particular decision upon him, but to protect his final wishes without forcing him to abandon the precepts of his faith. While the distinction between Mr. Owens signing the election form himself and having his counsel sign the form on his behalf may seem technical or subtle, it is of great importance to Mr. Owens.

Given these unusual circumstances, and the gravity of this decision, counsel felt that such a request should be memorialized in writing and witnessed by others. A power of attorney

agreement (POA) seemed the best means to record and effectuate Mr. Owens's wishes for his counsel to act as his agent, in his place and on his behalf.

The State raises a concern about the fact that the document "provides an avenue of retraction," and questions whether Mr. Owens understands that once an election has been made, he cannot revoke that election. Counsel included the revocation provision in the POA because, until the election date has passed, this decision belongs solely to Mr. Owens. If Mr. Owens concludes some time prior to the election date that he can indeed sign the form consistent with his faith, he clearly has that right. But Mr. Owens fully understands that if counsel makes his election, he may not withdraw it.

In addition, the State correctly notes that Mr. Owens previously signed an election form on June 11, 2021. At that time, the only method of execution offered by the South Carolina Department of Corrections was electrocution, and it was the State's position that Mr. Owens would be executed by electrocution whether he signed the form or not. Mr. Owens raised the same religious and personal concerns that he has today. However, after considering the advice of his counsel, Mr. Owens concluded in his own mind that his decision to sign the form in 2021 furthered his litigation goals and did not violate his religious and personal views.

Finally, the State suggests that Mr. Owens should be subject to questioning about this matter but does not specify who would do the questioning. Counsel does not believe it is appropriate or necessary to force Mr. Owens to testify about this matter. The agreement was drafted at Mr. Owens's request; he was advised about the contents and nature of the agreement by his defense team; and he signed it freely and voluntarily in the presence of witnesses. However, if this Court believes otherwise, Mr. Owens is willing to answer questions from the Court, as this matter is of the deepest personal importance to him.

Mr. Owens must make a written election by September 6, 2024—just over one week from now. Counsel requests that this Court enter an order confirming that she may sign the election form on Mr. Owens’s behalf. This request is reasonable and does not violate S.C. Code Ann. § 24-3-530 (2021). It will preserve Mr. Owens’s constitutional right to the free exercise of his religious beliefs and protect his desire not to die by electrocution.

Respectfully submitted,

s/Emily C. Paavola

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