

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Case No. 2025-000187

Brad Keith Sigmon,
Movant,
v.

STATE OF SOUTH CAROLINA,
Respondent.

OBJECTION TO AFFIDAVIT AND CERTIFICATION OF BRYAN P. STIRLING,
DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Brad Sigmon objects to the sufficiency of the February 11, 2025, affidavit of Bryan P. Stirling certifying the methods of execution available for his execution on March 7, 2025, as it does not provide the “basic facts about the drug’s creation, quality, and reliability” that this Court has held South Carolina law and the Due Process Clause require. *Owens v. Stirling*, 443 S.C. 246, 298–99, 904 S.E.2d 580, 608 (2024). Mr. Sigmon respectfully submits that both the scope and timetable for the director’s certification, as set by *Owens*, have proven inadequate to protect his constitutional rights. In support of his objection, Mr. Sigmon shows as follows.

Relevant Facts

This Court has scheduled Brad Sigmon’s execution for Friday, March 7, 2025. Under § 24-3-530, he will die by electrocution unless he elects lethal injection or the firing squad—a choice he must make by February 21.

These “choice provisions” are meant to ensure that “a condemned inmate in South Carolina will never be subjected to execution by a method he contends is more

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inhumane than another method that is available.” *Owens v. Stirling*, 443 S.C. 246, 298–99, 904 S.E.2d 580, 608 (2024). Accordingly, as to lethal injection in particular, the director of the South Carolina Department of Corrections (SCDC) must “disclose some basic facts about the drug’s creation, quality, and reliability”—a requirement seated in both the text of § 24-3-530 and “the Due Process Clause.” *Owens*, 443 S.C. at 292, 904 S.E.2d at 604.

On Tuesday, February 11, 2025, SCDC served Mr. Sigmon with an affidavit from its director, Bryan P. Stirling, certifying “under penalty of perjury” that “lethal injection is available via *a single dose of pentobarbital*” because he has “confirmed that that the pentobarbital in the Department’s possession is of sufficient potency, purity, and stability to carry out an execution successfully using the Department’s lethal injection protocol.” Ex. 1 at ¶¶ 7, 10 (emphasis added).

Recent events suggest otherwise. Since September 2024, South Carolina has executed three men—Freddie Owens, Richard Moore, and Marion Bowman—by lethal injection. Director Stirling provided each man with the same certification given to Mr. Sigmon, promising a “single dose of pentobarbital...sufficiently potent such that administration in accordance with the protocol will result in death.” Ex. 1 at ¶ 10; see also Ex. 2 at ¶ 10; Ex. 3 at ¶ 10; Ex. 4 at ¶ 10.

Upon administration of that single dose, however, each man remained alive for more than twenty minutes. Moreover, Mr. Moore’s autopsy—the only one currently available—documents that he was injected with a *second dose* of pentobarbital after ten minutes had passed. (Ex. 5 at ¶ 7; Ex. 6 at 2) Even after receiving twice as much pentobarbital as Director Stirling had certified as sufficiently potent, Mr. Moore was not declared dead for another ten minutes. (Ex. 5 at ¶ 8; Ex. 6 at 2) Mr. Moore’s autopsy

also shows that his lungs were swollen with fluid—an excruciating condition known as pulmonary edema, which causes the sensation of drowning. Ex. 6 at 3.

Shortly after Mr. Bowman’s January 31 execution, which lasted 23 minutes, an SCDC spokesperson was asked how many doses of pentobarbital had been administered to him. She declined to answer, saying only, “we followed our protocol and that is not disclosed.”¹ On February 5, 2025, Mr. Sigmon moved this Court not to issue his execution notice until he had received and reviewed Mr. Bowman’s autopsy report, which he hoped would answer the questions that SCDC deflected. This Court denied his motion.

Mr. Sigmon has “previously conceded a single dose of pentobarbital is constitutional if properly administered using reliable and effective drugs.” *Owens*, 443 S.C. at 282, 904 S.E.2d at 599. But during at least one execution, and likely all three, SCDC has been required to administer a double dose before the inmate’s death. Given that a single dose should make a death as protracted as those suffered by Mr. Owens, Mr. Moore, and Mr. Bowman “physiologically and pharmacologically impossible,” Ex. 5 at ¶ 8, this raises grave concerns: 1) that during all three of SCDC’s recent executions, the drugs were not properly administered, not reliable and effective, or all of the above; and 2) that all three men suffered pulmonary edema during their prolonged deaths.

Per this Court, the purpose of requiring Director Stirling to detail how he has “satisf[ied] himself that the drugs are capable of carrying out the death sentence according to law” is so “a condemned inmate and his attorneys may understand whether

¹12:51-13:06, ABC News 4, *Execution witnesses provide startling details on death of Marion Bowman Jr.* (available at: <https://www.youtube.com/watch?si=Gx7QpGRUONCRPemx&v=QYdswxKhbc4&feature=youtu.be>) (last visited February 11, 2025).

there is a basis for challenging the constitutionality of the impending execution.” *Owens*, 443 S.C. at 293, 904 S.E.2d at 605. In light of the events surrounding South Carolina’s last three executions, it is hard to see how Director Stirling could be satisfied on that point. Certainly, Mr. Sigmon and his attorneys cannot understand what risks are reflected in these executions gone awry—much less determine which of South Carolina’s methods is the more inhumane.

This Court declined to hold the issuance of Mr. Sigmon’s death warrant until he could obtain relevant information from Mr. Bowman’s autopsy. And now the clock is ticking: Mr. Sigmon must make his election in nine days, with his execution following just two weeks after. Accordingly, Mr. Sigmon’s state statutory and Due Process rights are implicated.

**Mr. Sigmon is Entitled to Due Process as to his
State Statutory Right of Election.**

The Fourteenth Amendment prohibits any state from “depriv[ing] any person of life, liberty, or property, without due process of law.” The Supreme Court “has long recognized” the applicability of procedural Due Process protections when a “state statute, regulation, or policy” creates “a liberty interest.” *Prieto v. Clarke*, 780 F.3d 245, 248 (4th Cir. 2015) (citing *Meachum v. Fano*, 427 U.S. 215 (1976), and *Wolff v. McDonnell*, 418 U.S. 539 (1974)). Such state laws “may create enforceable liberty interests in the prison setting” when they create an “objective expectation... that an inmate could reasonably expect to enforce them against the prison officials.” *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 461, 465 (1989).

“The fundamental requisite of due process of law is the opportunity to be heard.” *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). To that end, “[a]n elementary and

fundamental requirement of due process” is “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action” implicating their liberty interests and “an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The choice provisions of Section 24-3-530 confer a liberty interest upon condemned prisoners in South Carolina, ensuring they will “never be subjected to execution by a method he contends is more inhumane than another method that is available.” *Owens*, 443 S.C. at 298–99, 904 S.E.2d at 608. In *Owens*, this Court recognized the Due Process component of the statute’s requirement of notice to death-sentenced prisoners, and created a procedure designed to provide both notice and an opportunity to protect that interest by establishing a scope and timetable for Director Stirling’s certification. In operation, however, those requirements have proven inadequate to safeguard a condemned prisoner’s Due Process rights.

1. The Scope

In *Owens*, this Court held that when Director Stirling fulfills his statutory obligation to “determine and certify by affidavit under penalty of perjury to the Supreme Court whether the methods [of execution] are available,” he must disclose, *inter alia*, “some basic facts about the [lethal injection] drug’s creation, quality, and reliability, or...the drugs’ potency, purity, and stability.” *Owens*, 443 S.C. at 292, 904 S.E.2d at 604.

This Court then “illustrate[d] the scope of this requirement” with the following example of a sufficient certification: “that scientists at the Forensic Services Lab of the South Carolina Law Enforcement Division (SLED), whose experience and qualifications were verified by the Director and the Chief of SLED, recently performed testing according to widely accepted testing protocols and found the drugs were not only stable,

but of a clearly acceptable degree of purity[.]” *Id.* at 293, 605. Although this example omits many “basic facts” essential to determining the drug’s quality and reliability, as discussed *infra*, this Court concluded that such a certification would leave no “legitimate legal basis on which to mount a challenge.” *Id.*

Director Stirling subsequently provided a certification for Mr. Owens, the first of the three men South Carolina has recently executed, that mirrored this Court’s example. Mr. Owens filed an objection with this Court, submitting the affidavit of Dr. Michaela Almgren, a Clinical Associate Professor in the Department of Clinical Pharmacy and Outcomes Sciences at the University of South Carolina College of Pharmacy. Ex. 7. As Dr. Almgren detailed, Director Stirling’s certification did not—and does not—provide the basic facts needed “to assess the qualities and reliability of the lethal injection drugs the department has obtained for use in [Mr. Owens’s] execution.” *Id.* at ¶ 4. This now-standard certification provides neither “the date when the drugs were tested” or their “‘Beyond Use Date,’ or BUD”—the basic facts needed to assess whether “the drugs will still be effective on September 20, when the department intends to use them.” *Id.* at ¶ 5. As SCDC’s drugs appear to be compounded, “their stability over time is less certain,” amplifying the importance of knowing the BUD and the testing date. *Id.* Indeed, it is unclear from Director Stirling’s certifications whether any subsequent testing of these drugs has been conducted.

The certification provides no facts about the “quality[] and reliability” or the “potency, purity, and stability” of the drugs. *Owens*, 443 S.C. at 292, 904 S.E.2d at 604. While it “describes reports the director received from SLED personnel concerning the testing of the drugs,” it “does not specify the test methods used, the testing procedures

followed, or the actual results obtained from those tests.” Ex. 6 at ¶ 6.² As a result, the certification does not establish that “the SLED laboratory followed all established steps for pharmaceutical drug quality analysis as specified in the USP compendium, which usually differ from typical forensic practice.” *Id.* The absence of these basic facts could be corrected by the provision of “the actual analytical reports from the testing of the drugs,” which are “standard records produced during this type of laboratory analysis.” *Id.*³

The certification also provides no facts about “how the storage conditions [of the drugs] will be monitored between now” and the execution—a nearly three-week timeframe that would provide “ample opportunity for quality issues to arise with these drugs if they are not stored correctly, as medications—especially compounded drugs—are sensitive to moisture, light, and temperature.” *Id.* at ¶ 7. This, too, underscores the importance of knowing the date that these drugs were tested, as Director Stirling’s certification could rely on testing that predated any problems that improper storage would cause.

As Dr. Almgren confirms, all of the “basic facts” to which a prisoner weighing the election of lethal injection is entitled can be established through the provision of the actual testing results, along with confirmation that the drugs are not beyond their BUD

²Dr. Almgren also observes that the affidavit’s language describing the testing results—such as its conclusory statement that SLED personnel “acknowledged the substance’s concentration in terms of its purity and stability”—“lacks clarity.” *Id.* at ¶ 6.

³To comply with South Carolina’s shield statute, any identifying information for the SLED analysts who conducted the testing could be readily redacted from the analytical reports.

and are being maintained through these well-established and straightforward measures.

Id. at ¶ 8.⁴

This Court overruled Mr. Owens’s objection. As discussed *supra*, though, the protracted nature of Mr. Owens’s execution and the two that followed his, along with the administration of a second dose of pentobarbital and presence of pulmonary edema in Mr. Moore’s autopsy report, call the quality and reliability of these drugs into question. Mr. Sigmon respectfully submits that neither he nor any other condemned prisoner can meaningfully exercise his statutory right of election without the information Dr. Almgren details.

Denying Mr. Sigmon the information outlined in Dr. Almgren’s affidavit is arbitrary and has no basis in law. In litigation prior to the executions of Owens, Moore, and Bowman, the State has repeatedly relied on Section 24-3-580(I) for the proposition that prison officials are authorized to broadly construe confidentiality provisions to deny access to the information Dr. Almgren outlines. Yet that information is not deemed confidential by the express terms of the statute. Further, State officials have never made any showing beyond bare speculation that the provision of information Dr. Almgren identifies could lead to disclosure of other information protected by state law. The application of state law in this manner is an arbitrary denial of due process.

⁴While South Carolina law prohibits the disclosure of identifying information of “any person or entity that participates in the planning or administration of the execution of a death sentence, including any person or entity that prescribes, compounds, tests, uses, manufactures, imports, transports, distributes, supplies, prepares, or administers the drugs, medical supplies, or medical equipment utilized in the execution of a death sentence,” S.C. Code § 24-3-580(A)(1), (B), the information Mr. Sigmon seeks does not fall within the purview of that statute. Any incidental identifying information could simply be redacted.

2. The Timetable

As this Court recognized in *Owens*, these choice provisions “create[] a potential timing problem for the filing of the Director's affidavit and the inmate's election of a method of execution,” which it “encourage[d] our General Assembly to address.” *Owens*, 443 S.C. at 292 n.23, 904 S.E.2d at 604, n.23. In the meantime, this Court determined to “(1) issue notices of execution only on Fridays, and (2) require the Director to file the subsection 24-3-530(B) affidavit within five days of the Notice of Execution,” which would afford the condemned prisoner “at least eight days in which to evaluate the affidavit and file any motion.” *Id.*

In response to this timing problem, Mr. Sigmon and other condemned prisoners filed a motion seeking a reasonable interval of no fewer than 13 weeks (or 91 days) between execution dates. The movants noted that if this Court were to issue one execution notice while another was still pending, the prisoner with the later execution date “would be required to elect their method prior to the execution of the first.” This problem was of particular concern because “South Carolina’s authorized methods of execution are either antiquated or entirely novel,” and “the question of which is the ‘more inhumane’ has yet to be informed by their actual use.” Indeed, movants argued, “[i]f a method is used and is botched, or otherwise reveals itself to be ‘more inhumane, a compressed execution schedule might subject a prisoner to execution by a method that they would never have chosen had the execution that revealed its ‘inhuman[ity]’ occurred before their election date.” *Moore et al. v. State*, Motion, Appellate Case No. 2024-001373 (Aug. 21, 2024).

This Court granted movants’ motion in part, providing a 35-day interval between executions. *Moore et al. v. State*, Order, Appellate Case No. 2024-001373 (Aug. 30,

2024). But the concern animating movants' motion remains. Mr. Sigmon does not want to be electrocuted; accordingly, he will make an election. But he is hesitant to elect lethal injection, given that: 1) all three of South Carolina's recent executions have lasted for more than twenty minutes; 2) the need for a double dose of pentobarbital in at least Mr. Moore's execution; and 3) the experience of pulmonary edema for Mr. Moore, and perhaps Mr. Owens and Mr. Bowman as well.

The autopsy report of Mr. Bowman would provide critical evidence of lethal injection's inhumanity relative to South Carolina's other methods; it could well assuage his concerns. But, as Mr. Sigmon's execution notice issued just one week after Mr. Bowman's execution—placing his own execution 35 days after Mr. Bowman's—he will have to elect his method of execution before that autopsy report is completed. The risk that Mr. Sigmon might be subjected to execution by a method that he would never have chosen, had he not been deprived of evidence showing that a more humane alternative existed, is less abstract than when he moved this Court for a reasonable interval between executions. It is no less grave.

In sum, the combination of the narrow scope of information required for the certification and the compressed timeline for election have diminished Mr. Sigmon's right of election to a guessing game. This is an arbitrary application of Mr. Sigmon's state-created right and is therefore unconstitutional.

Conclusion

In *Owens*, and when denying Mr. Owens's objection to Director Stirling's first certification, this Court recognized a condemned prisoner's Due Process right to notice as to the quality and reliability of South Carolina's lethal injection drugs. In light of the disturbing facts that the three subsequent executions have revealed about South

Carolina’s drugs—and the many questions about them that remain unanswered—this Court should revisit the scope and timetable of the procedural protections it has prescribed. Mr. Sigmon respectfully submits that the current procedure, in operation, is arbitrary and does not appropriately balance State interests with those of death-sentenced prisoners like himself. Mr. Sigmon respectfully submits that the issue is both ripe and, with his election date and execution looming, desperately urgent. Accordingly, “there are exceptional circumstances warranting the issuance of [a] stay” of his execution until these critical questions can be resolved. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996).

Mr. Sigmon accordingly asks this Court:

- 1) to stay Mr. Sigmon’s execution;
- 2) to require Director Stirling to certify and provide, with any identifying information redacted:
 - a) the beyond use or expiration dates for SCDC’s lethal injection drugs;
 - b) the testing reports for SCDC’s lethal injection drugs, including the dates, results, method validation, and quality control procedures;
 - c) the storage conditions for the drugs, including temperature and humidity; and
- 3) to extend the interval between executions to permit time for the completion and review of any autopsy reports from the most recent judicial execution.

Respectfully submitted, this, the 14th of February, 2025.

/s/ Joshua Snow Kendrick
Joshua Snow Kendrick (No. 70453)
KENDRICK & LEONARD, P.C.
P.O. Box 6938
Greenville, SC 29606

Gerald W. King, Jr.
Chief, Capital Habeas Unit
for the Fourth Circuit
Gerald_King@fd.org
129 West Trade Street, Suite 300
Charlotte, NC 28202
(704) 688-6946

Counsel for Brad Keith Sigmon