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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2024-CP-01-00375
Appellate Case No. 2025-002075

Steven Bixby, *Petitioner,*

v.

State of South Carolina, *Respondent.*

MOTION TO HOLD THE ISSUANCE OF AN EXECUTION NOTICE IN ABEYANCE

Petitioner Steven Bixby requests that the Court direct the Clerk of this Court to temporarily refrain from issuing a notice of execution in order to avoid the pendency of his warrant throughout the winter holidays, to ensure that all parties can best fulfill their constitutional responsibilities, and to permit the resolution of his impending certiorari proceedings in the Supreme Court of the United States. Such an abeyance would be in keeping with this Court's order of November 14, 2024, which stayed the issuance of a notice of execution for, inter alia, Marion Bowman, whose execution date would otherwise have fallen on a Friday identically situated to the Thanksgiving and Christmas holidays as Mr. Bixby's, were his execution notice to issue this Friday. *Sigmon et al. v. State*, No. 2024-001373 (November 14, 2024).

Mr. Bixby was convicted in 2007 of two counts of murder and multiple related charges. The trial court, following the recommendation of the jury, sentenced Mr. Bixby to death. This Court affirmed on direct appeal, with two justices dissenting, *see State v. Bixby*, 388 S.C. 528, 698 S.E.2d 572 (2010), and the United States Supreme Court denied certiorari. Mr. Bixby was denied state post-conviction relief, as well as federal habeas relief. *See Bixby v. Stirling*, 143 S. Ct. 2468 (May 15, 2023) (denying certiorari review of initial federal habeas proceedings); *Bixby v. Stirling*, 145 S. Ct. 224 (2024) (denying certiorari review of post-judgment motion to re-open federal habeas litigation).

This Court, in an order issued June 8, 2023, stayed Mr. Bixby's execution in light of then-ongoing litigation concerning the constitutionality of South Carolina's execution methods. Following the resolution of that litigation, on May 3, 2025, the Court issued a stay of execution and appointed The Honorable R. Scott Sprouse to hear Mr. Bixby's PCR claim contending he is incompetent to be executed. The hearing on Mr. Bixby's competency was conducted in August 2025. Judge Sprouse found Mr. Bixby competent. Mr. Bixby sought certiorari review to this Court, which the Court denied on September 16, 2026. The Court denied Mr. Bixby's petition for rehearing on November 4, 2026.

Pursuant to Rule 221(b), SCACR, the next step in this proceeding is that the Clerk of this Court will issue the remittitur, and the Clerk "shall issue an execution notice when the remittitur is sent to the circuit court." *In re Stays of Execution in Cap. Cases*, 321 S.C. 544, 546–47, 471 S.E.2d 140, 141 (1996). Given the rehearing denial date, and this Court's practice of issuing execution notices on Fridays, Mr. Bixby's execution notice could issue as soon as this Friday, November 6, which would yield an execution date of December 4, 2026. *See* S.C. Code § 17-25-370 (execution to be carried out on the fourth Friday after the execution notice issues).

However, this Court is empowered to direct the Clerk to refrain from issuing an execution notice pursuant to the Court's inherent authority to manage its own docket and judicial resources efficiently. *See Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (recognizing South Carolina courts' "inherent power to control the order of its business to safeguard the rights of litigants."); *see also In re Stays*, 321 S.C. at 548, 471 S.E.2d at 142 (the Court may stay an execution on a showing of "exceptional circumstances warranting the issuance of the stay").

For several reasons, Mr. Bixby respectfully requests that the Court issue such an abeyance. First, an abeyance will allow important legal issues to be fully reviewed prior to Mr. Bixby's execution. The Court has just today denied rehearing on Mr. Bixby's claim that its failure to hold a *Singleton* colloquy violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Respectfully, the Court's disposition presents a substantial federal question and, as outlined in the rehearing petition, raises reasonable constitutional concerns. Ordering a finite pause on the issuance of the execution notice will allow Mr. Bixby to request certiorari review of these issues in the U.S. Supreme Court, which is currently in session and will be able to review Mr. Bixby's petition promptly.

Similarly, on September 18, 2026, counsel for Mr. Bixby served on the S.C. Department of Corrections a Petition for Declaratory Ruling that portions of its execution protocols are administrative rules not subject to exemption under the S.C. Administrative Procedure Act and therefore must be promulgated through the rulemaking process before they can be validly implemented. SCDC has issued a declaratory ruling denying the Petition and asserting that the execution protocols and procedures are not regulations subject to APA rulemaking requirements. On October 20, 2026, in the Richland County Court of Common Pleas, Mr. Bixby filed a

complaint for declaratory and injunctive relief, seeking a declaration on the APA's applicability to the execution protocols and procedures. Defendants' answer is currently due by November 20, 2026. *See Bixby and Dickerson v. S.C. Dep't of Corrections*, No. 2026-CP-4007625.

This APA issue has never been addressed in South Carolina, though appellate courts in Kentucky, Maryland, and California, and a trial court in Arkansas, have reviewed execution protocols under their state APAs and held that rulemaking was required.[1] Permitting an abeyance would allow the parties and South Carolina courts to carefully consider this issue outside of the truncated litigation schedule imposed by an impending execution date.[2]

Mr. Bixby is not requesting a lengthy, open-ended stay. He would normally be allowed up to 150 days to file a petition for review in the U.S. Supreme Court. *See* Supreme Court Rule 13 (allowing 90 days to seek certiorari review, and no more than 60 additional days pursuant to a motion for extension of time). Mr. Bixby suggests that this Court balance the interests of finality, timeliness, and thorough review of colorable issues by requiring him to seek review in the U.S. Supreme Court no later than 45 days from the date of this Court's order. *See* 28 U.S.C. § 2101(f)

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[1] *See Bowling v. Kentucky Dept. of Corrections*, 301 S.W.3d 478 (Ky. 2009); *Evans v. State*, 396 Md. 256, 349–50, 914 A.2d 25, 80 (2006); *Morales v. California Dep't of Corr. & Rehab.*, 168 Cal. App. 4th 729, 732, 85 Cal. Rptr. 3d 724, 726 (2008); *see also Arkansas Dept. of Correction v. Williams*, 357 S.W.3d 867 (2009) (circuit court judge held execution protocol invalid until compliance with the APA; ruling became moot when the statute was amended pending appeal).

[2] Mr. Bixby submitted his APA petition on a timely basis, two weeks after this Court clarified the scope of South Carolina's statute shielding execution information from public disclosure. This Court held that the statute is not so restrictive that it prevents disclosure of "publicly available or nonconfidential information" and clarified that statutory confidential information is "known only to the small circle of people that the South Carolina Department of Corrections (SCDC) has deemed entitled to possess it, or has otherwise been kept private by SCDC or the execution team member." *ACLU of South Carolina v. Wilson*, No. 2025-002469 (answering, on September 2, 2026, certified questions from the federal district court regarding statutory interpretation of S.C. Code § 24-3-580). This recent decision supports an argument that a public rulemaking process is not inherently inconsistent with the shield statute.

("In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment . . . .").

Finally, if Mr. Bixby's execution notice were to issue on Friday, his counsel, the State, and the courts will be engaged in end-stage litigation, court proceedings, and—unless his execution is stayed—both the preparations for and the carrying out of his execution throughout the winter holidays. The preparation for and carrying out of an execution during a time of year that is so important to families will take a substantial toll on all involved. In its multi-defendant abeyance order issued on November 14, 2024, the Court previously granted this same relief by holding the issuance of execution notices slated to occur during the 2024 holiday season until January 3, 2025. Notably, the execution notice for one such prisoner, Marion Bowman, would have issued on Friday, November 8, 2024, yielding an execution date of December 6, 2024. That warrant period—which would have straddled the Thanksgiving holiday—parallels almost exactly the one that would be imposed for Mr. Bixby if his execution notice were to issue this Friday.

In light of the foregoing, Mr. Bixby respectfully requests that the Court direct the Clerk to hold the issuance of an execution notice in abeyance until the Supreme Court of the United States disposes of his timely petition for a writ of certiorari seeking review of this Court's judgment, subject to the following conditions: Mr. Bixby shall file his petition for a writ of certiorari no later than 45 days from the date of this Court's order and shall not seek an extension of that deadline; Mr. Bixby shall immediately notify this Court in writing upon filing his petition and upon the U.S. Supreme Court's disposition of it.

In the alternative, Mr. Bixby requests that the Court direct the Clerk to hold the issuance of an execution notice in abeyance until January 8, 2027, consistent with this Court's prior abeyance order of November 14, 2024.

Respectfully submitted on November 4, 2026.

/s/ David Weiss
David Weiss
Capital Habeas Unit for
the Fourth Circuit
129 W. Trade Street, Suite 300
Charlotte, NC 28202
(980) 378-5105
David_C_Weiss@fd.org

Gretchen Swift
Capital Habeas Unit for
the Fourth Circuit
129 West Trade Street, Suite 300
Charlotte, NC 28202
(980) 378-5105
Gretchen_Swift@fd.org

Joshua Snow Kendrick (No. 70453)
Kendrick & Leonard, P.C.
P.O. Box 6938
Greenville SC 29606
(864) 760-4000
Josh@KendrickLeonard.com

Counsel for Petitioner
(Swift and Weiss admitted pro hac vice)