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Nov 16 2020

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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Case No. 2001-021895

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RICHARD BERNARD MOORE  
*Petitioner,*

v.

STATE OF SOUTH CAROLINA,  
*Respondent.*

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MOTION FOR STAY OF EXECUTION

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Petitioner, Richard Moore, through undersigned counsel requests a stay of execution pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996). Moore’s execution is currently scheduled for **December 4, 2020**.<sup>1</sup> Exceptional circumstances warrant a stay of execution because: (1) the South Carolina Department of Corrections (SCDC) has provided no information about how it intends to carry out the statutorily authorized execution methods of lethal injection or electrocution, and, (2) litigation now-pending before this Court seeks a determination that SCDC must provide its protocols for carrying out executions in advance of the November 20, 2020 deadline for Moore to make an election between execution methods. *See* S.C. Code § 24-3-530(A). Without a stay of execution, SCDC will be allowed to operate in near-

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<sup>1</sup> A motion to stay the execution date due to the COVID-19 pandemic was filed on November 6, 2020 and remains pending before this Court. This motion raises different “exceptional circumstances warranting the issuance of [a] stay” and is filed in conjunction with Moore’s Petition for Common Law Remedial Writs of Certiorari and Mandamus and Declaratory Judgment action filed in this Court’s jurisdiction on the same day.

total secrecy as it prepares for and carries out Moore's execution in less than three weeks. In support of this motion, Moore submits the following:

On November 16, 2020, concurrently with this filing, Moore filed a Petition for Common Law Remedial Writs of Certiorari and Mandamus and a Petition for Declaratory Judgment in this Court's original jurisdiction. These pleadings set forth the facts of SCDC's repeated refusal to provide its execution protocols to Moore and the reasons why Moore is entitled to the protocols pursuant to S.C. Code § 24-3-530; Article I, sections 3 and 15 of the South Carolina Constitution; and the Eighth and Fourteenth Amendments of the United States Constitution. Moore will not repeat his arguments here, but the essence of his contentions is that he has statutory and constitutional rights to elect between the execution methods of lethal injection and electrocution and a constitutional right to be executed in a manner that is not cruel and unusual. Without, at a minimum, the ability to review and research the execution protocols that SCDC plans to use, Moore cannot make an informed decision between the two execution methods or a determination of whether execution by those protocols pose "a substantial risk of severe pain" in violation of the Eighth Amendment. *See Glossip v. Gross*, 576 U.S. 863, 877 (2015). Nor can any court review the protocol to ensure constitutional compliance.

Never before has SCDC denied a condemned inmate and his counsel access to the execution protocols in advance of an imminent execution. Indeed, no other state in the country has executed someone under such an extreme veil of secrecy.<sup>2</sup> Thus, whether a condemned inmate has a right to information regarding SCDC's plans for carrying out an execution is one of first impression. A stay of execution is necessary to allow adequate time to consider the novel and

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<sup>2</sup> *See* Affidavit of Megan McCracken, attached at Exhibit 7 to Petitioner's Petition for Common Law Remedial Writs of Certiorari and Mandamus.

critical questions presented by the current litigation, and ultimately allow Moore and his counsel to review in research the protocols.

These extreme and exigent circumstances warrant the issuance of a stay to protect Moore's statutory and constitutional rights and to ensure this most awesome State power—the power to execute one of its citizens—is carried out with adequate transparency and oversight.

Respectfully submitted,

s/ Lindsey S. Vann

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