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S.C. SUPREME COURT

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The Honorable Daniel E. Shearouse
Clerk of Court for South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

RE: Brad Keith Sigmon, SK # 6008
Freddie Eugene Owens, SK# 5065

Dear Mr. Shearouse,

Today, counsel for the South Carolina Department of Corrections (SCDC) sent this Court a letter in regards to Mr. Sigmon, Mr. Owens, and Richard Bernard Moore which “alert[s]” this Court that “due to the recent amendment to S.C. Code Ann. Section 24-3-530, the Department is now able to carry out executions by electrocution.”

This Court should maintain the stays of execution currently in place for both Mr. Sigmon and Mr. Owens. This Court issued a stay of execution for Mr. Sigmon until SCDC informs this Court that it “has the ability to carry out the execution by lethal injection, that the petitioner has made an election to be electrocuted, or that there has been some change in the law which will allow the execution to take place,” Order, *State v. Sigmon*, No. 2002-024388 (Feb. 4, 2021); and issued a stay of execution for Mr. Owens until “SCDC advises the Court it has the ability to perform the execution as required by law,” Order, *State v. Owens*, No. 2006-038802 (May 4, 2021). Neither the Court’s stay orders nor *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996), indicate that SCDC’s letter requires this Court to issue an execution notice in either case.

The revised version of S.C. Code Ann. § 24-3-530 permits an inmate to choose between lethal injection, firing squad, or electrocution. It is clear from Mr. Plyler’s letter that SCDC does not currently have the ability to carry out an execution via lethal injection or firing squad. SCDC has publicly stated that it is currently developing plans to carry out an execution by firing squad, but these plans are not yet final.¹ Therefore, only one of the methods the General Assembly expressly intended to provide is currently available, and SCDC does not “have the ability to perform the execution as required by law.”

¹ See Chris Lavender, *Spartanburg man's death penalty case under review by South Carolina Supreme Court*, Herald-Journal (May 7, 2021) (available at <https://www.goupstate.com/story/news/2021/05/07/sc-supreme-court-reviewing-richard-moores-death-penalty-case-spartanburg-firing-squad-electric-chair/4986179001/>).

Additionally, Mr. Sigmon and Mr. Owens filed a complaint and request for preliminary injunction in the Richland County Court of Common Pleas on Monday, May 17, 2021, seeking a judicial determination regarding the constitutionality of the revised statute, which will be taken up by Judge Newman in due course.²

While SCDC develops additional protocols under the revised statute and the courts consider the legality of the amended statute, this Court should maintain the stay orders issued in Mr. Sigmon and Mr. Owens's case.

Respectfully,

s/Emily Paavola

Emily Paavola, *counsel for Freddie Owens*
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044

s/Megan Barnes

Megan Barnes, *counsel for Brad Sigmon*
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044

² The complaint alleges that the revised statute violates the Due Process Clauses of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution; the prohibitions on ex post facto punishment in Article I, Section 9, Clause 3 of the United States Constitution and Article I, Section 4 of the South Carolina Constitution; and the non-delegation doctrine implicit in Article I, section 8 of the South Carolina Constitution.