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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

BRAD KEITH SIGMON,
Petitioner,

v.

STATE OF SOUTH CAROLINA,
Respondent.

Case No. 2002-024388

REPLY IN SUPPORT OF
MOTION FOR A STAY OF EXECUTION

Petitioners Owens and Sigmon have asked this Court to decline to issue an execution notice, or to stay any execution dates issued by the Clerk, due to three exceptional circumstances: (1) the pendency of litigation raising, among other things, never-before-decided questions of South Carolina constitutional law regarding the electric chair and the firing squad – the very two methods of execution SCDC says it is prepared to use on Petitioners; (2) the fact that SCDC has apparently made no effort to purchase lethal injection drugs in order to make lethal injection an "available" method of execution; and, (3) the certainty that the issues in the pending litigation will reoccur in the future and should therefore be decided now, rather than after Petitioners are executed. *See In re Stays of Execution in Capital Cases*, 321 S.C. 544, 741 S.E.2d 140 (1996) (permitting this Court to stay an execution when "there are exceptional circumstances warranting the issuance of a stay."). In response, Respondent asserts that this Court has no authority to grant the relief requested and mischaracterizes the state court litigation below. This Court should reject those arguments.

Contrary to Respondent's suggestion, this Court certainly has the power to stay the issuance of an execution date; its earlier orders vacating execution dates for these Petitioners demonstrate as much. *See, e.g.*, Order of 06/16/2021, *Sigmon v. State*, 2002-023388 & 2021-000584 ("direct[ing] the Clerk of this Court *not to issue* another execution notice" (emphasis added)). And this Court certainly has the power to stay an execution when "exceptional circumstances" so warrant. *See In re Stays*, supra. Respondent's arguments that the Court is powerless to prevent the issuance of dates, even in the face of circumstances as compelling as these, are unavailing.

Respondent also premises its opposition on an inaccurate description of the underlying litigation. In brief, as soon as the bill amending S.C. Code § 24-3-530 was passed, Petitioners filed suit against the South Carolina Department of Corrections ("SCDC") and its Director on May 17, 2021, in the Richland County Court of Common Pleas. (Case No. 2021-CP-40-2306) (hereafter, "*Owens I*"). Chief among the procedural challenges raised was that the new statute is unconstitutionally vague and violates the non-delegation doctrine because it gives the Director unbridled discretion to determine which methods of execution are "available" but offers no statutory guidance on what "available" means, provides no guidance on what, if anything, SCDC must do to make a particular method available, and appears to make the Director's decision unreviewable in any judicial forum. SCDC argued that "available" has only one logical meaning, which is whether SCDC is capable of using a particular method on a specific date, regardless of whether it had expended any effort to make the other two statutory options available. Applying that interpretation, SCDC asserted that Petitioners had no right to elect a method of execution and, because only electrocution was available at that time, the statute permitted them to force Petitioners to die in the electric chair.

While the circuit court denied Petitioners' motion for a preliminary injunction on June 8, 2021, this Court subsequently rejected SCDC's negation of Petitioners' election rights. Order, *State v. Owens*, No. 2006-038802 (June 16, 2021); *Order, State v. Sigmon & Sigmon v. State*, Nos. 2002-024388, 2021-000584 (June 16, 2021) (hereafter, "June Orders") ("Under these circumstances, in which electrocution is the only method of execution available, and *due to the statutory right of inmates to elect the manner of their execution*, we vacate the execution notice.") (emphasis added). Petitioners then amended *Owens I* to reflect the change in circumstances precipitated by the June Orders. In addition, Petitioners filed a second lawsuit ("*Owens II*") alleging that the firing squad and the electric chair are unconstitutional methods of execution. (Case No. 2021-CP-40-04851). Shortly thereafter, the defendants attempted to remove both actions to federal court, which resulted in four months of litigation over the proper forum for Petitioners' claims. Early this year, however, the federal court remanded the majority of Petitioners' claims to the state court below on the ground that those claims raise novel and complex issues of State law that have never been addressed by this State's courts – a fact that defendants "do not dispute." See Remand Order at p.7, Case No. 3:21-cv-03564-JD, attached as Exhibit B to Motion to Stay.

Upon return to state court, the parties agreed – for the explicit purpose of *expediting* the underlying litigation – to consolidate *Owens I* and *Owens II* into a single action (under Case No. 2021-CP-40-2306) on an expedited schedule. A consolidated complaint was filed on February 7, 2022; Defendants moved to dismiss, Petitioners responded and Defendants replied. The motion to dismiss is therefore fully briefed and remains pending. Despite the parties' numerous requests for an order adopting the proposed schedule, the circuit court has not ruled on this motion, but it has now scheduled a status conference for April 11, 2022.

Given this background, this Court should reject Respondents' insinuation that Petitioners have failed to prosecute these claims in a timely manner; on the contrary, they have made every effort to obtain a speedy decision on these questions of South Carolina statutory and constitutional law, which are of supreme importance. And this Court should reject Respondents' invitation to prematurely and presumptively adjudicate the merits of the underlying lawsuit, particularly as dispositive motions are now fully briefed for the court below. This Court should allow for the fair adjudication of these novel questions of state law.

Respondent also argues that "[n]othing in the statue places a burden on the Director or the Department to make any showing about why a method of execution is not available." Response in Opposition at p.4, n.5. This Court's demand that Director Stirling "provide an explanation as to why two methods of execution under the statute, lethal injection and firing squad, are currently unavailable" strongly suggests otherwise. *See* June 4, 2021 Letter to Bryan Stirling, attached as Exhibit A. As Petitioners explained in the Motion to Stay, SCDC has not made a good faith effort to obtain lethal objection drugs. The question of what SCDC is required to show will recur whenever an execution date is set. The Court should delay issuance of execution orders, or stay any execution dates that are set, so that the issues in the underlying litigation can be resolved – now and for all death-sentenced inmates in the future.

CONCLUSION

For the reasons stated above, this Court should enter a stay of execution or instruct the Clerk not to issue execution notices at this time.

Respectfully submitted,

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