

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
No. 3:25-cv-00199-JDA

MARION BOWMAN, JR.,

Plaintiff,

v.

BRYAN P. STIRLING, in his official capacity
as the Director of the South Carolina Department
of Corrections, and;

HENRY DARGAN McMASTER, in his official
capacity as Governor of the State of South
of South Carolina,

Defendants.

CAPITAL CASE

**EXECUTION SCHEDULED
JANUARY 31, 2025**

COMPLAINT

Plaintiff Marion Bowman, Jr., through counsel, brings this action to ensure that his execution by the State of South Carolina is not carried out behind a veil of secrecy that violates constitutional rights and operates in the absence of reasonable oversight. Plaintiff also seeks sufficient information to be able to choose an execution procedure that poses the least risk of torture, a right conferred by the state legislature. South Carolina has created an unconstitutional situation by granting Plaintiff a statutory and due process right to basic facts about the lethal injection drug's creation, quality, and reliability, but denying Plaintiff Bowman access to the very facts he is entitled to know when choosing his method of execution. Defendants are denying Plaintiff Bowman critical information about the method by which he may be executed even though there is no state law prohibiting access to the information Bowman seeks.

This lawsuit's purpose is not to permanently halt Bowman's execution. His aim is only to require State officials to carry out his execution with the transparency and access to information

about critically-important government functions that state law allows and the Constitution requires.

NATURE OF THE ACTION

1. This action is brought under 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 2201 and 2202, for violations and threatened violations of Plaintiff Bowman's state and federal constitutional rights to procedural due process.

JURISDICTION AND VENUE

2. Jurisdiction is conferred by 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution and laws of the United States, by 28 U.S.C. §§ 2201 and 2202, and by 42 U.S.C. §§ 1983 and 1988, in that this is an action for declaratory judgment and equitable relief to redress deprivations of constitutional rights caused by Defendants under color of state law.

3. Venue is proper under 28 U.S.C. § 1391(b) in that Defendants reside in the District of South Carolina, and all events giving rise to this action occurred in this federal district.

PARTIES

4. Plaintiff Bowman is a citizen of the United States, currently incarcerated under a state-imposed sentence of death at Broad River Correctional Institution in Columbia, South Carolina. Plaintiff is under the control and supervision of the S.C. Department of Corrections, or SCDC.

5. Defendant Bryan Stirling is the Director of SCDC. He is charged under state law with overseeing and carrying out executions in South Carolina. S.C. Code § 24-3-510. He is a citizen and resident of South Carolina. Director Stirling is being sued in his official capacity.

6. Defendant Henry Dargan McMaster is the Governor of South Carolina. Under state law, he has “supreme executive authority of the State,” S.C. Const. art. IV, § 1, and exclusive clemency power, *id.* art. IV, § 14. Governor McMaster has intervened in other litigation addressing the legality of South Carolina’s execution procedures in order to defend the constitutionality of state laws. *See, e.g., Bixby v. Stirling*, No. 3:24-cv-05072-JDA, 2024 WL 4627451 (Docket Entry 6, Governor McMaster’s motion to intervene). He is a citizen and resident of South Carolina, and is being sued in his official capacity.

FACTUAL BACKGROUND

7. From 1995 until 2021, lethal injection was the default means of execution in South Carolina, though condemned prisoners could choose to be put to death by electrocution instead. During that time, 36 men elected to die by lethal injection. Only three men opted for electrocution.

8. The State of South Carolina did not carry out executions between May 6, 2011, and September 20, 2024. According to State officials, this period without executions was due, in part, to the reluctance of drug manufacturers and suppliers to provide drugs for executions in a manner that might publicly reveal their identities.

9. In an initial attempt to address this situation, in 2021, the South Carolina Legislature amended S.C. Code § 24-3-530, making electrocution the default method of execution, but permitting the person sentenced to death to also choose “firing squad or lethal injection, if it is available at the time of election.” Exhibits 1 and 2.

10. Also in 2021, the state supreme court enjoined executions because “only a single method of execution [was] available, and due to the statutory right of inmates to elect the manner of their execution”

11. Death-sentenced prisoners Freddie Owens, Brad Sigmon, and Richard Moore filed suit in state court, challenging electrocution, firing squad, and the amendments to S.C. Code § 24-3-530 as unconstitutional under the state constitution. They filed discovery requests seeking information on steps that SCDC had taken to procure lethal injection drugs, and Defendants sought a protective order allowing them to withhold that information, which the circuit court granted.

12. Following a trial and state circuit court ruling that the methods of execution and related statutes violated the South Carolina Constitution, the Defendants appealed. In January 2023, the South Carolina Supreme Court remanded the case, finding that the trial court abused its discretion by denying discovery regarding SCDC's attempts to obtain lethal injection drugs. *Owens v. Stirling*, 882 S.E.2d 858 (2023) (“We find the Inmates’ requests for information regarding lethal injection are relevant and necessary for the proper adjudication in this matter.”). The lower court was instructed to oversee the completion of discovery, and the remainder of the appeal was held in abeyance.

13. No additional discovery took place. Instead, Defendants requested an emergency stay of the proceedings while the Legislature considered, and ultimately passed, amendments to S.C. Code § 24-3-580. Prior to its amendment, this statute prohibited disclosure of “the identity of a current or former member of an execution team” absent a “court order under seal for the proper adjudication of pending litigation.” S.C. Code § 24-3-580 (Supp. 2022). The new and expanded version of the secrecy law extended this protection to drug suppliers and all other persons or entities associated with the “planning or administration” of an execution. It eliminated the “court order” provision and exempted the purchase of lethal injection drugs from South Carolina’s procurement rules, Department of Health and Environmental Control regulations, and

pharmacy guidelines. The statute now provides that lethal injection drugs need not be provided by a licensed pharmacist, nor is a prescription from a qualified physician required for anyone to “supply, manufacture, or compound any drug intended for use in the administration of the death penalty.”

14. As amended, S.C. Code § 24-3-580 provides, in full:

SECTION 24-3-580. Nondisclosure of identity of members of an execution team and the acquisition of drugs to administer a death sentence.

(A) As used in this section, the term:

(1) “Execution team” shall be construed broadly to include 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.**

(2) “Identifying information” shall be construed broadly to include any record or information that reveals a name, date of birth, social security number, personal identifying information, personal or business contact information, or **professional qualifications**. The term “identifying information” also includes any residential or business address; any residential, personal, or business telephone number; any residential, personal, or business facsimile number; any residential, personal, or business email address; and any residential, personal, or business social media account or username.

(3) “De-identified condition” means data, records, or information from which identifying information is omitted or has been removed.

(B) Notwithstanding any other provision of law, any identifying information of a person or entity that participates in the planning or administration of the execution of a death sentence shall be confidential. For all members of the execution team, identifying information **shall not be subject to discovery, subpoena, or any other means of legal compulsion or process for disclosure to any person or entity in any administrative, civil, or criminal proceeding in the courts, administrative agencies, boards, commissions, legislative bodies, or quasilegislative bodies of this State, or in any other similar body that exercises any part of the sovereignty of the State.**

(C) A person shall not knowingly disclose the identifying information of a current or former member of an execution team or disclose a record that would identify a

person as being a current or former member of an execution team. Any person and his immediate family, or entity whose identity is disclosed in violation of this section shall have a civil cause of action against the person who is in violation of this section and may recover actual damages and, upon a showing of a willful violation of this section, punitive damages. **A person who violates the provisions of this subsection also must be imprisoned not more than three years.**

(D) Any purchase or acquisition of drugs, medical supplies, and medical equipment necessary to execute a death sentence shall be exempt from the entirety of the South Carolina Procurement Code and all of its attendant regulations.

(E) The out-of-state acquisition of any drug intended for use by the department in the administration of the death penalty shall be exempt from all licensing processes and requirements administered by the Department of Health and Environmental Control or by any other department or agency of the State of South Carolina. Furthermore, the out-of-state acquisition of any drug intended for use by the department in the administration of the death penalty **shall be exempt from all regulations promulgated by the Board of Pharmacy.**

(F) Any pharmacy or pharmacist, whether located within or without the State, that is involved in the supplying, manufacturing, or compounding of any drug intended for use by the department in the administration of the death penalty shall be exempt from all licensing, dispensing, and possession laws, processes, regulations, and requirements of or administered by the Department of Labor, Licensing and Regulation, the Board of Pharmacy, or any other state agency or entity, found anywhere in the South Carolina Code of Laws or South Carolina Code of Regulations, only to the extent that the licensing, dispensing, and possession laws, processes, regulations, and requirements pertain to the drugs intended for use in the administration of the death penalty, and no prescription from any physician shall be required for any pharmacy or pharmacist to supply, manufacture, or compound any drug intended for use in the administration of the death penalty. This exemption shall not apply to any licensure or permitting requirements for the supply, manufacture, or compounding of any other legend drug or pharmaceutical device.

(G) Notwithstanding any other provision of law, including the South Carolina Freedom of Information Act, Section 30-4-10, et seq., no department or agency of this State, no political subdivision, and no other government or quasigovernment entity shall disclose the identifying information of any member of an execution team or any details regarding the procurement and administrative processes referenced in subsections (D) through (F).

(H) The Office of the Comptroller General and the Office of the State Treasurer shall work with the South Carolina Department of Corrections to develop a means

to ensure that the state's accounting and financial records related to any transaction for the purchase, delivery, invoicing, etc. of or for supplies, compounds, drugs, medical supplies, or medical equipment utilized in the execution of a death sentence are kept in a de-identified condition.

(I) This section shall be broadly construed by the courts of this State so as to give effect to the General Assembly's intent to ensure the absolute confidentiality of the identifying information of any person or entity directly or indirectly involved in the planning or execution of a death sentence within this State.

(J) The Department of Corrections shall comply with federal regulations regarding the importation of any execution drugs.

(K) A member of the General Assembly, a member's immediate family, or any business with which a member or the member's immediate family member has a controlling interest as an owner, director, officer or majority shareholder that has voting rights regarding the business' financial decisions must not offer nor provide drugs, medical supplies, or medical equipment necessary to execute a death sentence.

(emphasis added to pertinent portions of the statute).

15. Armed with this new secrecy law, in September 2023, Director Stirling informed the state supreme court that SCDC was able to acquire the drugs needed to carry out lethal injection executions from an unidentified source. Exhibit 3.

16. In July 2024, the South Carolina Supreme Court issued *Owens v. Stirling*, 904 S.E.2d 580 (S.C. 2024), rejecting state constitutional challenges to the methods of execution. The South Carolina Supreme Court reversed the circuit court's merits determination, holding instead that the methods of execution and their enabling statutes did not violate the state constitution.

17. The *Owens* decision also addressed death row prisoners' statutory and due process rights to choose their method of execution under § 24-3-530. Per the South Carolina Supreme Court, the statutory choice provision guarantees that "a condemned inmate in South Carolina will never be subjected to execution by a method he contends is more inhumane than another method that is available." *Id.* at 608. The state supreme court explained that the

Corrections director, as part of the duty to certify the available methods of execution, “must explain to the condemned inmate . . . the results of his efforts” to obtain execution drugs. *Id.* at 604. The director must also explain “the basis of his determination that the drugs are of sufficient potency, purity, and stability to carry out their intended purpose.” *Id.* The court clarified that the director must provide “sufficient detail that a condemned inmate and his attorneys may understand whether there is a basis for challenging the constitutionality of the impending execution.” *Id.* at 605.

18. After *Owens* was issued, on August 23, 2024, the Clerk of the South Carolina Supreme Court issued an execution notice to Director Stirling to carry out the execution of Freddie Owens.

19. On August 28, 2024, Director Stirling, pursuant to his statutory duty, served an affidavit on counsel for Owens certifying that all three approved methods of execution were available, and further certifying that lethal injection was available with a single dose of pentobarbital that was tested by the forensic laboratory of the S.C. Law Enforcement Division, or SLED. Exhibit 4.

20. In his affidavit, Director Stirling stated that the SLED forensic lab is accredited, used accepted protocols when testing the pentobarbital, and that qualified personnel conducted the tests. Stirling also stated that SLED reported to him that the pentobarbital’s concentration, purity, and stability was confirmed. The affidavit did not provide any additional details about SLED’s testing, the tests conducted or their results, or about the specific pentobarbital intended for use during Owens’ execution.

21. On August 30, 2024, the state supreme court issued an order establishing a regular interval of at least thirty-five days between the issuance of death notices, and determined that

after the issuance of Owens' death notice, the court would issue notices for inmates with exhausted appeals in the following order: (1) Richard Moore, (2) Marion Bowman, Jr., (3) Brad Sigmon, (4) Mikal Mahdi, (5) Steven Bixby. Exhibit 5.

22. On September 5, 2024, the South Carolina Supreme Court overruled objections, filed by Freddie Owens, to Director Stirling's certification and limited description of the SLED testing performed on the lethal injection drugs, and declined to require Stirling to provide any further information to Owens. Exhibit 6 (Owens' objection); Exhibit 7 (affidavit supporting objection, from pharmacy expert Dr. Michaela Almgren); Exhibit 8 (order denying objections to certification).

23. On September 13, 2024, the six death row prisoners who the state supreme court identified as eligible for execution, including Plaintiff Bowman, filed suit in this Court challenging aspects of South Carolina's secrecy law, S.C. Code § 24-3-580, and seeking information beyond what Director Stirling provided in his certification in Owens' case in state court. *See Bixby v. Stirling*, No. 3:24-cv-5072-JDA (complaint and motion for preliminary injunction filed on Sept. 13, 2024).

24. On September 18, 2024, this Court issued an order denying the request for an injunction. The Fourth Circuit denied an injunction as well, *see Owens v. Stirling*, No. 24-3, and the U.S. Supreme Court denied an application for a stay of execution, *see Owens v. Stirling*, No. 24-5603. Freddie Owens was executed on September 20, 2024, by lethal injection. The execution began at 6:35 p.m. and Mr. Owens was pronounced dead at 6:55 p.m.¹ Per Mr. Owens' wishes, based on his religious beliefs, no autopsy was conducted.

¹ SCDC Press Conference Concerning Execution of Freddie Eugene Owens, WYFF News (available at: [FULL PRESS CONFERENCE Freddie Owens Execution: 9.20.2024](#)) (last visited January 8, 2025).

25. On October 4, 2024, the state supreme court issued a notice of execution for Richard Moore, scheduling his execution for November 1, 2024. On October 8, 2024, Director Stirling filed a certification in the state supreme court describing the availability and testing of pentobarbital for Mr. Moore's execution. Exhibit 9. In the *Moore* and *Owens* cases, Stirling provided identical information about the testing conducted on the execution drugs.

26. Meanwhile, in the case before this Court seeking additional information about the execution drugs and challenging the secrecy law, *Bixby v. Stirling*, No. 3:24-cv-05072-JDA, the Court issued an opinion and order on October 30, 2024, granting the Defendants' motion to dismiss. Plaintiffs in that suit, including Bowman, did not appeal.

27. In the Court's order, it denied all claims with prejudice except one. The claim the Court denied without prejudice was the challenge to "Defendants' refusal to provide information about Owens' execution that the Shield Statute does not protect (the 'Owens Certification Challenges')." *Bixby v. Stirling*, No. 3:24-cv-05072-JDA (Docket Entry 31, p. 21). The Court explained that it lacked jurisdiction based on standing and ripeness doctrines because "[m]uch could change from one execution to the next . . . [and] of primary importance to each condemned prisoner are the facts relating to his own execution, the determinations the Director makes based on those facts, and the level of detail he provides in that prisoner's individual certification." *Id.* at 24. The Court also explained that it would "withhold[] court consideration of these claims until each of [the Plaintiffs'] execution notices is issued and the Director issues his certification as to the available execution methods . . . [T]he Court will be prepared to issue a prompt decision at the appropriate time should any of the Remaining Plaintiffs raise similar challenges once their claims ripen." *Id.* at 25, n.10.

28. On November 1, 2024, the State of South Carolina executed Richard Moore with a lethal injection of pentobarbital. The execution began at 6:01 p.m. and Mr. Moore was pronounced dead at 6:24 p.m.² An autopsy was conducted by a contractor retained by SCDC, Professional Pathology Services. “Per the Department of Corrections,” the autopsy report notes, Mr. Moore “received 2 x 2.5 g pentobarbital at 18:01 and a second round of 2 x 2.5 g at 18:12.” Exhibit 10.

29. On November 5, 2024, the remaining four men facing execution filed a Motion to Modify Schedule for Issuance of Execution Notices asking the South Carolina Supreme Court “not to issue, or to stay the issuance of, any further execution dates until Friday, January 3, 2025.” In essence, the request was to pause executions for the duration of the winter holidays. On November 14, 2024, the South Carolina Supreme Court granted the request and held “the issuance of further execution notices in abeyance until January 3, 2025.” Exhibit 11.

30. On November 22, 2024, counsel for Plaintiff Bowman sent a letter to Director Stirling in an effort to determine as soon as possible what information Stirling would provide once Bowman’s execution notice was issued. Counsel for SCDC responded in writing on December 9, 2024, reiterating their view that Director Stirling’s prior certifications were sufficient, but holding open the possibility that different information may be provided for upcoming executions: “The Department of Corrections . . . cannot anticipate at this time the specifics of an affidavit certifying available methods of execution for Marion Bowman.” Exhibits 12 and 13.

² *Witnesses speak after execution of South Carolina inmate Richard Moore*, WYFF News 4 (available at [Witnesses speak after execution of South Carolina inmate Richard Moore](#)) (last visited January 10, 2025).

31. On January 3, 2025, the state supreme court issued a notice of execution for Plaintiff Bowman, setting his execution for January 31, 2024. Exhibit 14.

32. As required by state law, *see Owens v. Stirling*, 904 S.E.2d 580 (S.C. 2024), Director Stirling filed his certification with the state supreme court on January 8, 2024, providing information nearly identical to that provided for Owens and Moore about the available methods of execution and the pentobarbital to be used for lethal injection. Exhibit 15.³

33. As directed by *Owens* and S.C. Code § 24-3-530(A) and (C), Bowman will choose his method of execution by January 17, 2024.

34. An affidavit from Dr. Michaela Almgren, Pharm.D., MS⁴—a Clinical Associate Professor in the Department of Clinical Pharmacy and Outcome Sciences at the University of South Carolina College of Pharmacy—explains why Director Stirling’s certification omits critical information about the execution drugs, including:

- a. The date on which the drugs were tested.
- b. The Beyond Use Date, after which compounded drugs should not be used.
- c. If the drugs were commercially manufactured, the expiration date.
- d. The methods and procedures used to test the pentobarbital, including documentation of test method validation and details of quality control procedures and methodology.
- e. The actual results obtained from the testing.
- f. Where the drugs will be stored prior to their use, and how the storage conditions will be monitored, including temperature and humidity controls.

³ The three affidavits differed in substance only to the extent that they each provided a different date on which the electric chair and system were tested. Exhibits 4, 9, and 15.

⁴ This is the same affidavit previously submitted to the South Carolina Supreme Court in *Owens*, and to this Court in *Bixby v. Stirling* No. 3:24-cv-05072-JDA.

35. Dr. Almgren explains that the failure to provide this information leaves Plaintiff Bowman unable to make an informed choice about which method of execution poses the least risk of harm.

36. The secrecy statute, S.C. Code § 24-3-580, on its face, does not restrict access to any of this information.

37. Dr. Almgren explains in her affidavit that serious risks are posed to the person undergoing the execution process if the pentobarbital used during an execution is expired; past its Beyond Use Date; improperly tested in a way that fails to detect problems with the drug's potency, purity, or stability; or improperly stored in a way that degrades the drug's properties. Those risks include intense pain upon injection, regaining consciousness during the execution, or sustaining organ or brain damage from oxygen deficits suffered during an attempted execution.

38. The need for sufficient information about the integrity of the lethal injection drugs is heightened because of the circumstances under which they were obtained. During the state court litigation in *Owens*, Defendants admitted they had to make over 1,300 contacts before obtaining pentobarbital. Exhibit 3 (Sept. 19, 2023, Affidavit of Defendant Stirling). The difficulty Defendants faced in obtaining the drugs from standard sources raises legitimate questions about the quality of the materials they ultimately were able to acquire.

39. The need for information about the drugs is also underscored by the absolute restrictions the secrecy statute places on disclosure of information relating to the drugs' source and the circumstances surrounding its creation, *see* § 24-3-580(A)(1), and the exemptions from licensing and regulatory requirements that the secrecy statute grants to those involved in the manufacture and procurement of the drugs, *see* § 24-3-580(D) through (H). The secrecy statute also prevents access to information about the "professional qualifications" of members of the

execution team who will set up, prepare, and administer the lethal injection process. S.C. Code. § 24-3-580(A)(2).

40. In the absence of transparency, it is essential that Defendants provide the information that the secrecy statute does allow, namely: information about testing and storage procedures to ensure the drugs are what Defendants claim they are, and also to ensure they will not degrade prior to their use in an execution. Plaintiff Bowman has no information on when the drugs⁵ were tested or whether the testing remains valid.⁶ As they have previously, Defendants will likely assert that the secrecy statute implicitly bars disclosure of this information because it could allow someone to discover other information that is protected by the secrecy law. But Defendants, to date, have not provided anything to substantiate this concern beyond bare speculation, nor have Defendants explained why a strictly-enforced protective order would be insufficient to protect their interests.

41. The need for available non-prohibited disclosure about the drugs for use in Plaintiff Bowman's execution is crystallized by two additional factors. The first of those are the troubling circumstances of Richard Moore's execution. Exhibits 10 and 16, Declaration of Dr.

⁵ "On the other hand, if the Director certified in the affidavit 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, then we doubt there could be any legitimate legal basis on which to mount a challenge." *Owens v. Stirling*, 443 S.C. 246, 293, 904 S.E.2d 580, 605 (2024), reh'g denied (Aug. 16, 2024) (emphasis added).

⁶ The purpose of the secrecy statute, S.C. Code § 24-3-580, is "to ensure any identifying information of a person or entity that participates in the planning or administration of the execution of a death sentence shall be confidential" and is not limited to information pertaining to lethal injection. The Defendants provided, in each affidavit, the dates on which the electric chair and systems were tested. Exhibits 4, 9 and 15. Inexplicably, the Defendants failed to provide similar information regarding the dates on which the lethal injection drugs were tested. Exhibits 4, 6, 9, 15, 12 and 13.

David Waisel. Upon review of information pertaining to the execution of Richard Moore, Dr. David Waisel, a practicing anesthesiologist at St. Jude Children's Research Hospital in Memphis, Tennessee, concluded "to a reasonable degree of medical certainty that South Carolina failed to administer five grams of effective pentobarbital during the execution of Richard Moore" resulting in the "substantial risk that he experienced needless and extensive suffering during his execution." Exhibit 16.

42. In light of the evidence that Richard Moore may have suffered needlessly during his execution because of undetected problems with the pentobarbital, this Court should require disclosure of information prior to Plaintiff Bowman's execution, not only to enforce Bowman's due process rights, but also as a safeguard against the infliction of suffering beyond what is necessary to complete the execution.

43. Further, there are concerns raised by Bowman's unusually large body size, which will require a different dosage than the average person to ensure the execution occurs without the problems seen in Moore's execution.⁷ As Dr. Waisel explained, because Plaintiff Bowman's body composition falls into the "severely obese" category, there is an increased danger of difficult IV access that could be compounded by an "ineffective dose of pentobarbital" leading to a potentially torturous execution process. Exhibit 16.

CLAIM FOR RELIEF

Deprivation of Procedural Due Process ***As-Applied Challenge to Refusal to Provide Necessary Information***

⁷ The Department of Corrections shows Marion Bowman's height as 6'04" and his weight as 989 lbs. (available at *Inmate Search Detail Report, Bowman, Jr., Marion*, <https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000006006>) (last visited January 10, 2025).

44. Plaintiff Bowman incorporates by reference all statements and allegations in this complaint.

45. Plaintiff is entitled to due process of law under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 3 of the S.C. Constitution.

46. The procedural protections that due process provides may be invoked when there is “[a] liberty interest [that] arise[s] from the Constitution itself . . . or it may arise from an expectation or interest created by state law or policies.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

47. As alleged above, Plaintiff has requested certain information about the potency, purity, and stability of the drugs that may be used for his execution. Defendant Stirling refused to provide that information.

48. Plaintiff Bowman has a state-created right to information about the methods of execution. *See Owens*, 904 S.E.2d at 605 (holding that S.C. Code § 24-3-530(B) “requires . . . that the Director set forth that process in sufficient detail that a condemned inmate and his attorneys may understand whether there is a basis for challenging the constitutionality of the impending execution,” and explaining “[t]here is a Due Process Clause component to [this] analysis . . .”). Similarly, Bowman has a statutory right to choose among the available methods of execution. *Id.* at 608 (explaining that under S.C. Code § 24-3-530, “the condemned inmate may elect to have the State employ the method he and his lawyers believe will cause him the least pain.”). The state supreme court guaranteed in *Owens* that “a condemned inmate in South Carolina will never be subjected to execution by a method he contends is more inhumane than another method that is available.” *Id.* at 608.

49. Defendant Stirling's refusal to provide the material requested implicates Plaintiff Bowman's state-created right to information and to choose his method of execution. In the absence of adequate information, the statutory right to elect a method of execution is functionally meaningless, and in effect, arbitrarily revoked. *See D.A. 's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68 (2009) (explaining that a "state-created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right") (internal quotations and citations omitted); *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980) (holding that "an arbitrary disregard of the petitioner's [state-created procedural] right to liberty is a denial of due process of law").

50. Because a state-created liberty interest is at stake, Plaintiff is entitled to procedural due process protections.

51. As a general matter, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotations and citation omitted). When implementing this guarantee, the question becomes: "what process is due prior to the" deprivation of the liberty interest at stake? *Id.* Because due process is not a legal rule with "fixed content," the inquiry "is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 334. The Court must balance three factors: the private interest affected by official actions; the risk of an erroneous deprivation of that interest through the procedures used and the value of additional safeguards; and third, the state interest involved and any burdens that additional procedural safeguards might impose. *Id.* at 334-35.

52. Each of these factors weighs in favor of requiring Defendants to provide the information Plaintiff Bowman seeks about the lethal injection drugs. There can be no doubt the

private interest—the right not to suffer a torturous death—carries great weight. *See Louisiana ex rel Francis v. Resweber*, 329 U.S. 459, 463 (1947) (plurality opinion) (“The traditional humanity of modern Anglo-American law forbids the infliction of unnecessary pain in the execution of the death sentence.”). Likewise, as Bowman has alleged, if the lethal injection drugs do not meet certain specifications, there is a substantial risk that his execution by lethal injection could deprive him of the right to be free from cruel and unusual punishment; and without adequate knowledge of lethal injection’s risks, Plaintiff Bowman will be deprived of his state-granted right to make an informed choice among the available execution methods. Moreover, all that Bowman seeks is information about drugs that Defendants have already obtained and already tested and that is not barred from disclosure by the express terms of any state law. As such, there is no burden imposed on the State in simply asking it to share that information. Although Defendants will likely claim there is a risk that disclosure will lead to public discovery of information protected by the secrecy law, any concern in that regard can be fully addressed through a protective order.

53. In the alternative, Plaintiff Bowman believes that many of his due process concerns would be satisfied if Defendants were directed to make the execution drugs available for testing at an independent lab that the parties agreed upon, and if Bowman were provided the full results of those tests. While additional information from the Defendants regarding the drug’s storage conditions would be still be needed in order for Plaintiff Bowman to make an informed decision about the relative risks posed by the available methods of execution, this alternative relief would allow Defendants to maintain confidentiality of sensitive State documents while simultaneously permitting Bowman access to the information he needs about the pentobarbital.

54. Accordingly, Defendants' refusal to provide the information that Plaintiff seeks about lethal injection drugs is a violation of his state and federal rights to procedural due process. To the extent Defendants claim their refusal to provide information is required by the secrecy statute, S.C. Code § 24-3-580, Defendants' interpretation of that statute also violates Plaintiff's procedural due process rights.

REQUESTS FOR RELIEF

55. In light of the constitutional violation outlined above, Plaintiff requests that the Court grant the following relief:

- a. A preliminary and ultimately permanent injunction prohibiting Defendants from carrying out Plaintiff Bowman's execution without providing the information he has requested with sufficient notice of at least 23 days ahead of his execution.⁸ As explained above, Plaintiff requests the following information about the execution drugs:
 - i. The date on which the drugs were tested.
 - ii. The Beyond Use Date, after which compounded drugs should not be used.
 - iii. If the drugs were commercially manufactured, the expiration date.
 - iv. The methods and procedures used to test the pentobarbital, including documentation of test method validation and details of quality control procedures and methodology.
 - v. The actual results obtained from the testing.

⁸ This proposed timing accounts for the fact that South Carolina law provides for a maximum of 28 days between an execution notice issuing and the actual execution date, and also requires the corrections director to certify the available methods of execution within five days of the execution notice issuing. *See Owens*, 904 S.E.2d at 604, n.23 (setting forth the timing of events relating to executions).

- vi. Where the drugs will be stored prior to their use, and how the storage conditions will be monitored, including temperature and humidity controls.
- vii. Alternatively, Plaintiff Bowman seeks an opportunity to conduct independent testing on the drugs to be used in his execution, and to have full access to the results of that testing. Should the Court grant this form of relief, counsel for Bowman will work with Defendants to identify an independent lab that all parties agree may conduct the testing. If this relief is granted, Bowman would still request information about the drug's storage conditions.
- b. Declaratory relief, pursuant to 28 U.S.C. § 2201, that Plaintiff's constitutional rights have been violated as described in this complaint.
- c. Any other relief the Court deems just and proper.

Respectfully submitted,

/s/ Gabrielle Amber Pittman

Gabrielle Amber Pittman

Deputy Chief

Capital Habeas Unit for the Fourth Circuit

G_Amber_Pittman@fd.org

David Weiss

Assistant Federal Public Defender

Capital Habeas Unit for the Fourth Circuit

David_C_Weiss@fd.org

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(704) 688-6946

/s/ Lindsey S. Vann

Lindsey S. Vann

JUSTICE 360

900 Elmwood Avenue, Suite 200

Columbia, SC 29201

Lindsey@justice360sc.org

COUNSEL FOR PLAINTIFF

January 10, 2025

The Supreme Court of South Carolina

The State, Respondent,

v.

Freddie Eugene Owens, Appellant.

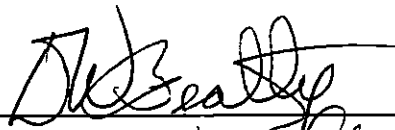
Appellate Case No. 2006-038802

ORDER

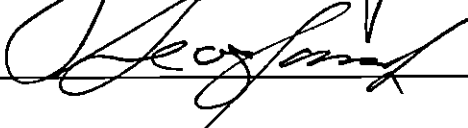
Petitioner seeks a stay of execution. The State has filed a return, and Petitioner has filed a reply. The Director of the South Carolina Department of Corrections has provided an affidavit certifying that, as of June 11, 2021, the only statutorily approved method of execution available in South Carolina is electrocution. Further, in response to an inquiry from the Clerk of the Court, the Director has provided an explanation as to why two methods of execution under S.C. Code Ann. § 24-3-530 (2021), lethal injection and firing squad, are currently unavailable.

According to the Director's response, lethal injection is unavailable due to circumstances outside of the control of the Department of Corrections, and firing squad is currently unavailable due to the Department of Corrections having yet to complete its development and implementation of necessary protocols and policies.

Under these circumstances, in which only a single method of execution is available, and due to the statutory right of inmates to elect the manner of their execution, we vacate the execution notice. *See* S.C. Code Ann. § 24-3-530 (2021). We further direct the Clerk of this Court not to issue another execution notice until the State notifies the Court that the Department of Corrections, in addition to maintaining the availability of electrocution, has developed and implemented appropriate protocols and policies to carry out executions by firing squad.


C.J.

J.

J.

J.

Kittredge, J., not participating.

Columbia, South Carolina

June 16, 2021

cc:

Donald J. Zelenka, Esquire

Bryan Peter Stirling, Esquire

Barton Jon Vincent, Esquire

Melody Jane Brown, Esquire

Daniel Clifton Plyler, Esquire

Emily C. Paavola, Esquire

Alan McCrory Wilson, Esquire

The Supreme Court of South Carolina

The State, Respondent,

v.

Brad Keith Sigmon, Appellant.

Appellate Case No. 2002-024388

and

Brad Keith Sigmon, Petitioner,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2021-000584

ORDER

Petitioner was sentenced to death following his convictions for two counts of murder and first-degree burglary. This Court affirmed Petitioner's convictions and sentences on direct appeal, and the United States Supreme Court denied Petitioner's request for a writ of certiorari. *State v. Sigmon*, 366 S.C. 552, 623 S.E.2d 648 (2005), *cert. denied*, 548 U.S. 909 (2006). Following the denial of state post-conviction relief and federal habeas corpus relief, the United States Supreme Court denied Petitioner's request for a writ of certiorari. *Sigmon v. Sterling*, No. 8:13-cv-01399-RBH, 2018 WL 4691197 (D.S.C. Sep. 30, 2018), *aff'd*, 956 F.3d 183 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1094 (2021). Petitioner's execution has been scheduled for June 18, 2021.

Petitioner now seeks a stay of execution pending review of his request for a writ of habeas corpus in this Court's original jurisdiction. In addition, Petitioner seeks a

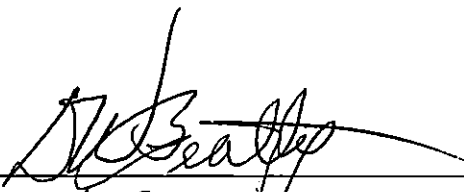
stay of execution until such time as his allegation that permitting his execution to proceed with only one authorized method of execution violates S.C. Code Ann. § 24-3-530 (2021) is determined.

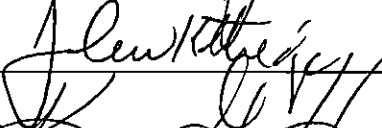
Because Petitioner has failed to show a constitutional violation constituting a denial of fundamental fairness shocking to the universal sense of justice, we deny his request for a writ of habeas corpus in our original jurisdiction. *See* Rule 245(a), SCACR (providing the Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties, unless the public interest is involved, or special grounds of emergency or other good reasons exist why the original jurisdiction of the Court should be exercised); *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (holding that to receive habeas corpus relief in this Court's original jurisdiction, a petitioner must show a constitutional "violation, which, *in the setting*, constitutes a denial of fundamental fairness shocking to the universal sense of justice" (quoting *State v. Miller*, 84 A.2d 459, 463 (N.J. Super. Ct. App. Div. 1951))). As a result, the motion for a stay of execution pending review of Petitioner's request for a writ of habeas corpus is denied.

As to Petitioner's request to stay his execution pending a determination of whether section 24-3-530 has been violated, the Director of the South Carolina Department of Corrections has provided an affidavit certifying that, as of June 3, 2021, the only statutorily approved method of execution available in South Carolina is electrocution. Further, in response to an inquiry from the Clerk of the Court, the Director has provided an explanation as to why two methods of execution under section 24-3-530, lethal injection and firing squad, are currently unavailable.

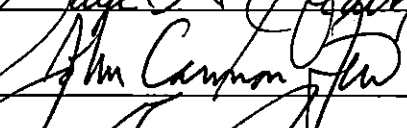
According to the Director's response, lethal injection is unavailable due to circumstances outside of the control of the Department of Corrections, and firing squad is currently unavailable due to the Department of Corrections having yet to complete its development and implementation of necessary protocols and policies.

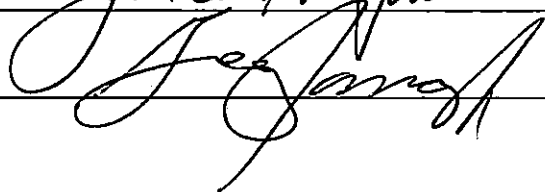
Under these circumstances, in which electrocution is the only method of execution available, and due to the statutory right of inmates to elect the manner of their execution, we vacate the execution notice. *See* S.C. Code Ann. § 24-3-530 (2021). We further direct the Clerk of this Court not to issue another execution notice until the State notifies the Court that the Department of Corrections, in addition to maintaining the availability of electrocution, has developed and implemented appropriate protocols and policies to carry out executions by firing squad.


_____ C.J.


_____ J.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina
June 16, 2021

cc:

Donald J. Zelenka, Esquire
Melody Jane Brown, Esquire
Megan Elizabeth Barnes, Esquire
Joshua Snow Kendrick, Esquire
Alan McCrory Wilson, Esquire
Bryan Peter Stirling, Esquire
Barton Jon Vincent, Esquire
Daniel Clifton Plyler, Esquire
J. C. Nicholson, Jr., Esquire

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

RECEIVED

Sep 19 2023

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

S.C. SUPREME COURT

Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2022-001280

Case No. 2021-CP-40-02306

FREDDIE EUGENE OWENS, BRAD KEITH SIGMON, GARY DUBOSE
TERRY, and RICHARD BERNARD MOORE,Respondents-Appellants,

v.

BRYAN P. STIRLING, in his official capacity as the Director
of the South Carolina Department of Corrections; SOUTH
CAROLINA DEPARTMENT OF CORRECTIONS; and HENRY
MCMASTER, in his official capacity as Governor of the State
of South Carolina,Appellants-Respondents.

AFFIDAVIT OF BRYAN P. STIRLING

PERSONALLY APPEARED BEFORE ME, BRYAN P. STIRLING, who having first been duly sworn, deposes and states as follows:

1. I am over the age of eighteen, of sound mind, and competent to give this testimony.
2. I served as the Interim Director of the South Carolina Department of Corrections (“Department”) between October 1, 2013, until I was confirmed by the Senate as the Director on February 19, 2014. I have served as the Director of the Department since my confirmation.
3. During my tenure as the Director, the Department has been consistently and diligently attempting to obtain drugs for carrying out executions by lethal injection. Such measures have included efforts to obtain lethal injection drugs from manufacturers, compounding pharmacies, and other States’ departments of corrections and to educate the General Assembly that a shield statute was needed for the Department to potentially be able to obtain lethal injection drugs. Until recently, these efforts have been universally unsuccessful. Part of what has made these efforts unsuccessful are the repeated attempts by anti-death penalty advocates to lobby manufacturers and sellers of these drugs not to provide the drugs for use in executions and to oppose enactment of a shield statute. I therefore have previously certified to this Court under S.C. Code Ann. § 24-3-530(B) that the Department did not have in its possession the drugs necessary for lethal injection to be an available method for carrying out executions after certain notices of execution had been issued.
4. While S. 120 (“Shield Statute”) was progressing through the General Assembly, the Department continued asking potential providers if they would supply drugs to the Department for carrying out executions by lethal injection if S. 120 became law. The Department determined that there were suppliers which may be willing to provide drugs to the Department for carrying out executions by lethal injection if S. 120 were signed into law.
5. On May 12, 2023, the Governor signed into law the Shield Statute, *see* 2023 S.C. Acts No. 16, which “applies to persons sentenced to death as provided by law prior to and after the effective date of this act,” *id.* § 3.
6. With the benefit of the Shield Statute, the Department continued its efforts to obtain lethal injection drugs. Since the Shield Statute went into effect, the Department has made more than 1,300 contacts in search of lethal injection drugs, including manufacturers, suppliers, compounding pharmacies, other States’ departments of corrections, and potential sources that the Department learned about from the relationships that Department employees have with other individuals in penological institutions. The Department inquired about obtaining drugs that had been used in lethal injections in South Carolina and other jurisdictions that had withstood judicial challenges. Many of these contacts immediately refused to entertain the idea of selling lethal injection drugs to the Department, and many other contacts never responded to the Department’s inquiries. Some contacts were willing to discuss selling lethal injection drugs to the Department, but for various reasons, they ultimately were unwilling or unable to supply lethal injection drugs to the Department.

7. As a result of these efforts and the Shield Statute, the Department was eventually able to secure pentobarbital for carrying out an execution by lethal injection of a one-drug protocol.

8. The Department's lethal injection policy has been revised to provide for the use of one-drug protocol. This new protocol is essentially identical to the protocol used by the Federal Bureau of Prisons and at least six other States. The Department's lethal injection policy was revised based on discussions with medical professionals and corrections officials with experience carrying out executions; the knowledge that the federal government and other States have successfully used pentobarbital to carry out executions by lethal injection; the fact that courts have upheld the use of this drug against constitutional challenges; and the Department's ability to obtain pentobarbital.

9. All three statutorily authorized methods of execution—lethal injection, electrocution, and the firing squad—are currently available for carrying out a death sentence, so a condemned inmate may elect any of these methods. *See* S.C. Code Ann. § 24-3-530.

10. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


Bryan P. Stirling

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 1st DAY OF September, 2023

 (SEAL)
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 3/12/2024

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

The State,

Respondent,

v.

Freddie Eugene Owens,

Appellant.

Appellate Case No. 1999-011364

The Honorable Alexander S. Macaulay
Greenville County
Trial Court Case No. 1998GS235218, 1998GS235220, 1998GS235222

AFFIDAVIT OF BRYAN P. STIRLING

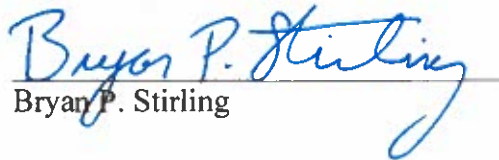
PERSONALLY APPEARED BEFORE ME, BRYAN P. STIRLING, who having first been duly sworn, deposes and states as follows:

1. I am over the age of eighteen, of sound mind, and competent to give this testimony.
2. I served as the Interim Director of the South Carolina Department of Corrections (“Department”) between October 1, 2013, and February 19, 2014, when I was confirmed by the Senate as the Director. I have served as the Director of the Department since my confirmation.
3. According to S.C. Code Ann. § 24-3-530, there are three statutorily approved methods of execution: electrocution, the firing squad, and lethal injection.
4. Pursuant to S.C. Code Ann. § 24-3-530(B), I am charged with certifying, under penalty of perjury, the available methods of execution upon receipt of a notice of execution from this Court.
5. On August 23, 2024, in accordance with S.C. Code Ann. §§ 17-25-370–380, the Department received an Execution Notice issued by the Clerk of this Court for Freddie Eugene Owens.
6. According to the Execution Notice for Freddie Eugene Owens, the Department is required “to execute the judgment and sentence of death imposed on said defendant on the fourth Friday after the service . . . or receipt of this notice,” which is September 20, 2024.
7. I hereby certify that all three statutorily approved methods of execution—electrocution, the firing squad, and lethal injection—are available for carrying out Owens’s execution.
8. I am certifying that electrocution is available because the appropriate and responsible Department staff informed me that the electric chair and system were tested on June 25, 2024, and all aspects performed as intended.
9. I am certifying that the firing squad is available because the appropriate and responsible Department staff informed me that the Department has in its possession the necessary firearms and ammunition and that members of the firing squad have completed all required training.
10. I am certifying that lethal injection is available via a single dose of pentobarbital. I have confirmed 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. The Department provided pentobarbital to the S.C. Law Enforcement Division (“SLED”) for testing by its Forensic Services Laboratory. SLED confirmed that its Forensic Services Laboratory is an internationally accredited forensic laboratory and that it used widely accepted testing protocols and methodologies in this matter. SLED reported to me that experienced, qualified, and duly authorized personnel tested two vials and confirmed the concentration of the solution provided is consistent with the vial labeling of pentobarbital, 50 milligrams per milliliter,

and acknowledged the substance's concentration in terms of its purity and stability. The appropriate and responsible Department staff reported to me that, based on a review of SLED's test results, data published by National Institutes of Health, and information regarding executions by lethal injection using pentobarbital carried out by other States and the federal government, the dosage called for by the Department's lethal injection protocol is sufficiently potent such that administration in accordance with the protocol will result in death.

11. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


Bryan P. Stirling

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 28 DAY OF August, 2024

 (SEAL)
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 04/05/2026

The Supreme Court of South Carolina

Richard Bernard Moore, Brad Keith Sigmon, Freddie
Eugene Owens, Mikal D. Mahdi, and Marion Bowman,
Jr., Petitioners,

v.

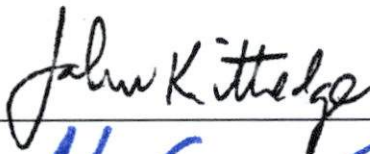
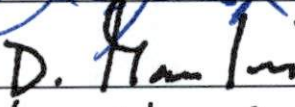
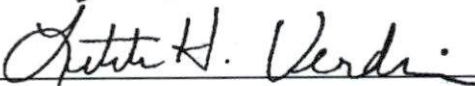
State of South Carolina, Respondent.

Appellate Case No. 2024-001373

AMENDED ORDER

Petitioners are death-sentenced inmates whose executions were stayed pending this Court's decision in *Owens v. Stirling*, Op. No. 28222 (S.C. Sup. Ct. filed July 31, 2024) (Howard Advance Sheet No. 29 at 18). Petitioners filed a motion to direct or stay the issuance of execution notices to a minimum interval of thirteen weeks between death notices. By order dated August 23, 2024, this Court stayed the issuance of execution notices for all eligible death-sentenced inmates, except Petitioner Freddie Eugene Owens for whom an execution notice has already been issued, pending resolution of this motion.

We deny Petitioners' specific request. We nevertheless recognize that a reasonable interval between the issuance of death notices is warranted. Accordingly, we direct the Clerk of this Court to issue death notices in a manner to ensure an interval of at least thirty-five days between notices, provided we may alter the thirty-five day interval should circumstances warrant. We direct that the order of future notices shall be determined in the same manner as Petitioner Owens, that is, by the oldest conviction that is not subject to a hold based on a pending collateral proceeding, a finding of incompetency, or otherwise. Based on this criteria, the following is the order in which subsequent notices shall be issued: (1) Richard Bernard Moore; (2) Marion Bowman, Jr.; (3) Brad Keith Sigmon; (4) Mikal D. Mahdi; (5) Steven V. Bixby.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
August 30, 2024

cc:

Lindsey Sterling Vann
Joshua Snow Kendrick
Gabrielle Amber Pittman
Alan McCrory Wilson
Melody Jane Brown
Donald J. Zelenka
Gerald W. King, Jr.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Sep 03 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,
Respondent,
v.

FREDDIE EUGENE OWENS,
Appellant.

Appellate Case No. 1999-011364

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

Khalil Allah, also known as Freddie Eugene Owens, objects to the sufficiency of the August 28, 2024, affidavit of Bryan P. Stirling certifying the methods of execution available for his execution on September 20, 2024, 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 et al. v. Stirling*, No. 2022-001280 (S.C. July 31, 2024) (“Op.”) at 50. In support of his objection, Mr. Owens shows as follows:

Upon receiving a notice of execution, the director of the South Carolina Department of Corrections must “determine and certify by affidavit under penalty of perjury to the Supreme Court whether the methods [of execution] provided” by the state’s capital punishment statute—electrocution, the firing squad, and lethal injection—“are available.” § 24-3-530(B). As to lethal injection, this Court held in *Owens* that the director must set forth the “process that he decides is appropriate for satisfying himself that the drugs are capable of carrying out the death sentence according to law.... in sufficient detail that a condemned inmate and his attorneys may understand

whether there is a basis for challenging the constitutionality of the impending execution.” Op. at 51. While ordering the director to comply with the shield law, this Court further held that the statute requires the director to disclose “some basic facts about the drug’s creation, quality, and reliability” and “the drugs’ potency, purity, and stability.” Op. at 50.¹ This Court illustrated this requirement with the following example:

[I]f the Director certified in the affidavit 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, then we doubt there could be any legitimate legal basis on which to mount a challenge.

Id.

Director Stirling has now submitted his affidavit. Although the affidavit hews somewhat to the example provided by the Court, it does not provide the basic facts that the statute or due process require, as it still requires a condemned prisoner to accept the good-faith word of the Director without any affirmative proof of findings on the part of SCDC or SLED. Mr. Owens has consulted with 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. *See* Affidavit of Dr. Michaela Almgren, Attachment 1. As Dr. Almgren details, the director’s affidavit 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.”

Not only does the affidavit lack “basic facts about the drug’s creation,” Op. at 50, it provides no facts whatsoever. Most critically, the affidavit provides neither “the date when the

¹ This Court noted that there is also “a Due Process Clause component to our analysis of this claim[.]”

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. That concern is amplified here because the drugs appear to be compounded. *Id.* Compounded drugs “are typically made in smaller batches and do not go through the same level of testing [as commercially manufactured drugs], so their stability over time is less certain.” *Id.* As Dr. Almgren notes, “[e]ven if a compounded drug passes all USP-required quality tests today, it is still important to know its BUD to ensure that the testing accurately reflects the drug’s properties on September 20, provided that the BUD extends beyond that date.” *Id.*²

The affidavit also provides no facts about the “quality[] and reliability” or the “potency, purity, and stability” of the drugs. *Op.* at 50. While the affidavit “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.” *Id.* at ¶ 6.³ As a result, the affidavit 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.*⁴

² The United States Pharmacopeia (“USP”) “sets standards for the identity, strength, quality, and purity of medicines, food ingredients, and dietary supplements in the United States.” *Id.* at ¶ 2, n. 1.

³ Dr. 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.

⁴ To 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.

The affidavit provides no facts about “how the storage conditions [of the drugs] will be monitored between now and September 20”—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. As Dr. Almgren notes, “simple measures can be implemented to assure that the drug quality is preserved.” *Id.* The USP clearly defines the proper storage conditions for drugs, which can be assured by a daily check that the storage location is within the established range of temperature or humidity. *Id.*

As Dr. Almgren confirms, all of these basic facts can be established through the provision of the actual testing results, along with confirmation that the drugs are not beyond their BUD and are being maintained through these well-established and straightforward measures. These are not abstract concerns. Were “the department’s drugs degraded” or “their testing . . . improperly conducted or incomplete, they would pose serious risks,” including “extensive damage to the blood vessels and surrounding tissue,” the infliction of “intense pain upon injection,” or even that the execution would fail, leaving Mr. Owens “with organ or brain damage from the oxygen deficits suffered during the attempt at execution.” *Id.* at ¶ 8.

Without the basic facts detailed above, Mr. Owens and his counsel cannot assess or “understand whether there is a basis for challenging the constitutionality of the impending execution.” *Op.* at 51. Nor can Mr. Owens or his counsel make an adequately informed election—which undermines the purpose of “the choice provisions of section § 24-3-530” to ensure that “a condemned inmate in South Carolina will *never* be subjected to execution by a method he contends is more inhumane than another method that is available.” *Op.* at 39 (emphasis added). Accordingly, the affidavit’s omission of these basic facts implicates his statutory and due process rights.

Mr. Owens accordingly objects to the adequacy of the director's affidavit and certification. As Mr. Owens's method of execution must be elected by September 6, 2024—in less than one week—he requests that this Court enter an order instructing Director Stirling to provide the actual report and results from the testing of the lethal injection drugs intended for use in Mr. Owens's execution (with the identity of the analyst redacted) and documentation of the drugs' beyond use date and storage conditions.

August 31, 2024.

Respectfully submitted,

Gerald W. King, Jr.
Chief, Capital Habeas Unit
for the Fourth Circuit
Gerald_King@fd.org

s/ Gabrielle Amber Pittman
Gabrielle Amber Pittman (No. 71771)
Deputy Chief, Capital Habeas Unit
for the Fourth Circuit
G_Amber_Pittman@fd.org

129 West Trade Street, Suite 300
Charlotte, NC 28202
(704) 688-6946
August 31, 2024

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

RECEIVED**Sep 03 2024****AFFIDAVIT OF DR. MICHAELA ALMGREN****S.C. SUPREME COURT****I. Background and Qualifications**

1. My name is Michaela Almgren, Pharm.D., M.S. I am over the age of eighteen and competent to testify to the truth of the matters contained herein. The factual statements I make here are true and correct to the best of my knowledge.

2. I am a Clinical Associate Professor in the Department of Clinical Pharmacy and Outcomes Sciences at the University of South Carolina College of Pharmacy. I teach principles of sterile compounding per United States Pharmacopeia ("USP")¹ Chapters 797 and 800, aseptic technique and pharmacy regulations applicable in sterile compounding environment² under 503a guidance and section 503b of the Drug Quality and Security Act of 2013, as well as pharmacokinetics, pharmacotherapy, pharmacy law, and biopharmaceutics courses. I specialize in sterile compounding, medication safety and pharmacy laws and regulations that relate to pharmacy compounding practices. I also provide continuing education courses for pharmacists in those topics. I received my Doctor of Pharmacy degree from the University of South Carolina College of Pharmacy in 2010. Additionally, I have a Master's Degree in Pharmaceutical Chemistry from the University of Florida.

3. In conjunction with my academic appointment, I currently maintain a practice site at a 503b³ outsourcing pharmacy where I perform duties of an outsourcing pharmacist, clinical

¹ USP sets standards for the identity, strength, quality, and purity of medicines, food ingredients, and dietary supplements in the United States. The USP publishes the United States Pharmacopeia-National Formulary (USP-NF), which contains a compendium of quality standards and specifications for a wide range of pharmaceuticals and related products. USP Chapters 797 and 800 are part of the USP-NF compendium.

² Aseptic technique in drug compounding refers to specific practices to avoid physical and microbial contamination when preparing sterile medications that are to be used for parenteral applications, such as IV infusion, injection, etc.

³ 503b Outsourcing Pharmacy is a compounding pharmacy that produces large batches of sterile products and distributes them directly to health systems pharmacies to address drug shortages, as specified in Section 503B of the FD&C Act.

advisor and pharmacy student preceptor. Previously, I worked in pharmacy operations at a large local teaching hospital as a pharmacist. I have over fifteen years of experience in sterile compounding and aseptic technique. Prior to joining the faculty at the University of South Carolina I worked for several years in pharmaceutical manufacturing where I was involved in drug formulation, quality assurance, quality control and analytical method development and validation. My professional qualifications are Doctor of Pharmacy and Master of Science in Pharmacy with focus on Pharmaceutical Chemistry. A copy of my CV is attached as Exhibit A.

4. I have been asked by attorneys who represent Khalil Allah (or Freddie Owens) whether the August 28, 2024, affidavit provided by the director of the South Carolina Department of Corrections contains adequate information to assess the quality and reliability of the lethal injection drugs the department has obtained for use in his execution, which is scheduled for September 20, 2024. In my expert scientific and pharmaceutical opinion, it does not.

5. The director's affidavit does not provide the date when the drugs were tested. The affidavit also does not include the drugs' "Beyond Use Date," or BUD. BUD refers to the date after which a compounded preparation should not be used, as it may no longer be effective or safe. You need to know these facts to know that the drugs will still be effective on September 20, when the department intends to use them. This is particularly important because the affidavit makes no reference to a Certificate of Analysis from the manufacturer, which suggests to me that the drugs were compounded, not manufactured. Manufactured drugs have a Certificate of Analysis that includes the drug's expiration date. This differs from the BUD, as the expiration date is determined by the manufacturer. The expiration date for commercially manufactured drugs is generally much longer than the BUD for a compounded drug. Commercially manufactured drugs undergo rigorous stability testing under controlled conditions to establish their expiration dates, which can extend

for years. In contrast, compounded drugs are typically made in smaller batches and do not go through the same level of testing, so their stability over time is less certain. Even if a compounded drug passes all USP-required quality tests today, it is still important to know its BUD to ensure that the testing accurately reflects the drug's properties on September 20, provided that the BUD extends beyond that date.

6. The affidavit describes reports the director received from SLED personnel concerning the testing of the drugs. The statement "...acknowledged the substance's concentration in terms of its purity and stability" lacks clarity. The affidavit does not specify the test methods used, the testing procedures followed, or the actual results obtained from those tests. This information is vital to assessing the quality and reliability of the drugs. You would need to know 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. Documentation of test method validation, calibration curves, details of quality control procedures and methodology used should all be available for review as these are all standard records produced during this type of laboratory analysis. The easiest way to address this concern would be to share the actual analytical reports from the testing of the drugs.

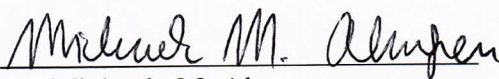
7. The affidavit does not address where the drugs will be stored and how the storage conditions will be monitored between now and September 20th. The nearly three weeks leading up to September 20 provides ample opportunity for quality issues to arise with these drugs if they are not stored correctly, as medications—especially compounded drugs—are sensitive to moisture, light, and temperature. Generally, drugs degrade more rapidly when stored outside their recommended temperature and humidity range. However, simple measures can be implemented to assure that the drug quality is preserved. According to USP Chapter 659 titled "Packaging

Temperature and Storage Requirements”, room temperature is generally defined as a range of 20°C to 25°C (68°F to 77°F). This range allows for a variability of 2°C (4°F) above or below the specified range, meaning that the temperature could be between 15°C and 30°C (59°F and 86°F) and still be considered acceptable for room temperature storage. The acceptable humidity level for a pharmacy typically falls within the range of 30% to 60% relative humidity. Pentobarbital sodium injection drug vials should be stored in the conditions described above, as defined by the USP. According to USP Chapter 1079 titled “Risks and Mitigation Strategies for the Storage and Transportation of Finished Drug Products”, storage temperature of medications should be checked daily. Without daily monitoring, temperature excursions may occur, leading to reduced potency and effectiveness of the drug. Once daily temperature measurements should be recorded to document that medications are stored under optimal conditions, safeguarding their quality and effectiveness while complying with regulatory requirements.

8. If the department’s drugs degraded, or if their testing was improperly conducted or incomplete, they would pose serious risks to Mr. Allah. As I detailed in my earlier affidavit to this Court, if the drug has an improper pH, it could cause extensive damage to the blood vessels and surrounding tissue. If the drug falls out of solution, the resulting solids, or precipitates, would cause intense pain upon injection. If the potency of the drug is insufficient, the injection could result in a prisoner regaining consciousness, perhaps with organ or brain damage from the oxygen deficits suffered during the attempt at execution.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 31st day of August, 2024.

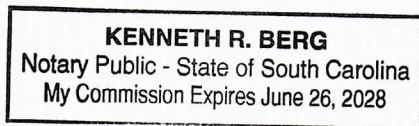

Dr. Michaela M. Almgren

Acknowledgment Notary Certificate (Only for use in AR, AZ, CO, CT, DC, DE, GA, ID, IA, IL, KS, KY, MA, MD, ME, MN, MO, MT, NH, NJ, NM, NY, NV, NC, OH, OK, OR, PA, RI, SC, TX, UT, VA, WA)

Document Name: Attestation of Dr. Michaela Almgren

STATE OF South Carolina
COUNTY OF Lexington
(County where notarization occurred)

This record was acknowledged before me on 31 day of August, 2024, by _____
(name(s) of signer(s), who personally appeared before me and
(is personally known to me or whose identity was proved on the basis of satisfactory evidence) to be the person
whose name is subscribed to in this document.



[Signature] (Signature of notary public)
Kenneth R. Berg, Notary Public
(Name of notary public)

My commission expires: 26 June 2028

Official Seal

Personally known _____ OR
Produced identification ☒ Type of identification produced: SCDL

The Supreme Court of South Carolina

The State, Respondent,

v.

Freddie Eugene Owens, Appellant.

Appellate Case No. 2024-001397

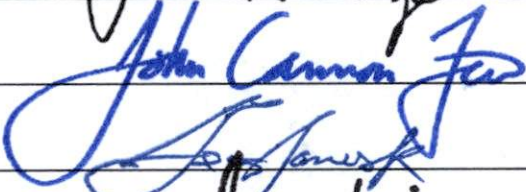
ORDER

Pursuant to section 24-3-530(B) of the South Carolina Code (Supp. 2023), Director Bryan Stirling of the South Carolina Department of Corrections (SCDC) has issued an affidavit stating electrocution, firing squad, and lethal injection are all available methods of execution from which Appellant may elect. Appellant objects to the sufficiency of the affidavit as to the availability of lethal injection, claiming it fails to provide the basic facts needed to assess the quality, reliability, potency, purity, and stability of the lethal injection drugs. He asks this Court to order Director Stirling to provide him with the actual report of the testing of the drugs and documentation of the drugs' beyond use date (BUD) and storage conditions.

The affidavit states the pentobarbital was tested by experienced, qualified, and duly authorized personnel at the Forensic Services Laboratory of the South Carolina Law Enforcement Division (SLED), which is internationally accredited, using widely accepted protocols and methodologies. That testing confirmed the concentration of the drugs and their purity and stability. A review by SCDC staff of the test results, along with data from the National Institutes of Health and information regarding lethal injection executions from other states and the federal government, revealed the dosage to be used by SCDC for lethal injection is sufficiently potent to result in death when administered in accordance with SCDC's protocol.

We deny Appellant's request to require Director Sterling to provide Appellant with SLED's testing report and documentation of the BUD and storage conditions of the drugs. The affidavit adequately explains "how [Director Stirling] determined the

drugs were of sufficient 'potency, purity, and stability' to carry out their intended purpose." *See Owens v. Stirling*, Op. No. 29222 (S.C. Sup. Ct. filed July 31, 2024) (Howard Adv. Sh. No. 29 at 18, 52). Further, the affidavit provides sufficient detail for Appellant to make an informed election of his method of execution and for Appellant and his attorneys to "understand whether there is a basis for challenging the constitutionality of the impending execution." *See id.* at 51.

	C.J.
	J.
	J.
	J.

Verdin, J., not participating

Columbia, South Carolina
September 5, 2024

cc:

Alan McCrory Wilson
Melody Jane Brown
Donald J. Zelenka
Salley Wood Elliott
Gabrielle Amber Pittman
Joshua Snow Kendrick
Emily C. Paavola
Bryan Peter Stirling
Gerald W. King, Jr.

RECEIVED**Oct 08 2024****S.C. SUPREME COURT****THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

The State,

Respondent,

v.

Richard Bernard Moore,

Appellant.

Appellate Case No. 2001-021895

The Honorable Gary E. Clary
Spartanburg CountyTrial Court Case No. 2000GS4200619, 2000GS4200617, 2001GS4202460

AFFIDAVIT OF BRYAN P. STIRLING

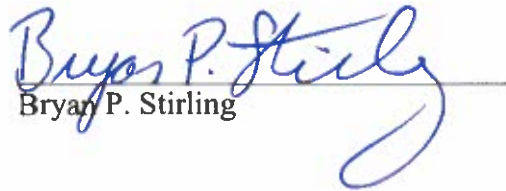
PERSONALLY APPEARED BEFORE ME, BRYAN P. STIRLING, who having first been duly sworn, deposes and states as follows:

1. I am over the age of eighteen, of sound mind, and competent to give this testimony.
2. I served as the Interim Director of the South Carolina Department of Corrections (“Department”) between October 1, 2013, and February 19, 2014, when I was confirmed by the Senate as the Director. I have served as the Director of the Department since my confirmation.
3. According to S.C. Code Ann. § 24-3-530, there are three statutorily approved methods of execution: electrocution, the firing squad, and lethal injection.
4. Pursuant to S.C. Code Ann. § 24-3-530(B), I am charged with certifying, under penalty of perjury, the available methods of execution upon receipt of a notice of execution from this Court.
5. On October 4, 2024, in accordance with S.C. Code Ann. §§ 17-25-370, -380, the Department received an Execution Notice issued by the Clerk of this Court for Richard Bernard Moore.
6. According to the Execution Notice for Richard Bernard Moore, the Department is required to “execute the judgment and sentence of death imposed on said defendant on the fourth Friday after the service . . . or receipt of this notice,” which is November 1, 2024.
7. I hereby certify that all three statutorily approved methods of execution—electrocution, the firing squad, and lethal injection—are available for carrying out Moore’s execution.
8. I am certifying that electrocution is available because the appropriate and responsible Department staff informed me that the electric chair and system were tested on September 3, 2024, and all aspects performed as intended.
9. I am certifying that the firing squad is available because the appropriate and responsible Department staff informed me that the Department has in its possession the necessary firearms and ammunition and that members of the firing squad have completed all required training.
10. I am certifying that lethal injection is available via a single dose of pentobarbital. I have confirmed 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. The Department provided pentobarbital to the S.C. Law Enforcement Division (SLED) for testing by its Forensic Services Laboratory. SLED confirmed that its Forensic Services Laboratory is an internationally accredited forensic laboratory and that it used widely accepted testing protocols and methodologies in this matter. SLED reported to me that experienced, qualified, and duly authorized personnel tested and confirmed the concentration of the solution

provided is consistent with the vial labeling of pentobarbital, 50 milligrams per milliliter, and acknowledged the substance's concentration in terms of its purity and stability. The appropriate and responsible Department staff reported to me that, based on a review of SLED's test results, data published by National Institutes of Health, and information regarding executions by lethal injection using pentobarbital carried out by the Department, other States, and the federal government, the dosage called for by the Department's lethal injection protocol is sufficiently potent such that administration in accordance with the protocol will result in death.

11. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


Bryan P. Stirling

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 8th DAY OF October, 2024

 (SEAL)

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 2/9/2034

The Supreme Court of South Carolina

Brad Keith Sigmon, Mikal D. Mahdi, and Marion
Bowman, Jr., and Steven V. Bixby, Petitioners,

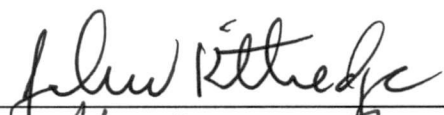
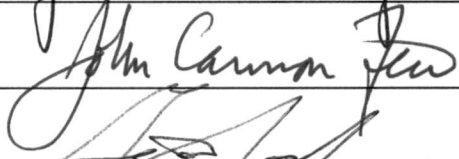
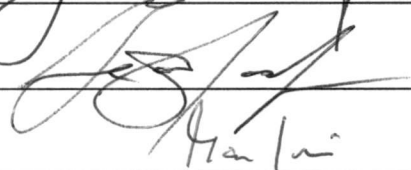
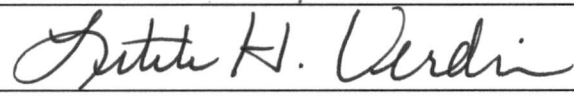
v.

State of South Carolina, Respondent.

Appellate Case No. 2024-001373

ORDER

Petitioners Sigmon, Mahdi, Bowman, and Bixby, death-sentenced inmates who are eligible for notices of execution, ask this Court to modify the schedule set forth in this Court's order dated August 30, 2024, for the issuance of execution notices. They ask that no execution notices be issued until January 3, 2025. We grant the request and hold the issuance of further execution notices in abeyance until January 3, 2025.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
November 14, 2024

cc:

Joshua Snow Kendrick

Gabrielle Amber Pittman

Alan McCrory Wilson

Melody Jane Brown

Donald J. Zelenka

William Joseph Maye

Gerald W. King, Jr.



**FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF NORTH CAROLINA
Capital Habeas Unit for the Fourth Circuit**
129 West Trade Street, Suite 300
Charlotte, NC 28202
(704) 374-0720
Fax (704) 375-2287

John G. Baker
Federal Public Defender

Megan C. Hoffman
First Assistant

Gerald "Bo" King, Jr.
CHU Chief

November 22, 2024,

Bryan P. Stirling
Director, South Carolina Department of Corrections
P.O. Box 21787
Columbia, SC 29210

Sent via email to stirling.bryan@doc.sc.gov

Re: Marion Bowman, #006006
Request for Information Regarding Execution Drugs

Director Stirling,

In advance of Marion Bowman potentially receiving an execution date in January 2025, we are writing to request that you provide information about the available lethal injection drugs so that Mr. Bowman can make an informed choice among the methods of execution.

As you are aware, pursuant to your obligation to certify the available methods of execution under S.C. Code § 24-3-530(B), you are required to "set forth [the] process" you undertook to determine "that the drugs are capable of carrying out the death sentence" and do so "in sufficient detail that a condemned inmate and his attorneys may understand whether there is a basis for challenging the constitutionality of his impending execution." *Owens v. Stirling*, 443 S.C. 246, 293, 904 S.E.2d 580, 605 (2024).

While you "must comply with the shield statute," S.C. Code § 24-3-580, when making this disclosure, *see Owens*, 293 S.C. at 293, 904 S.E.2d at 605, the law is not a blanket prohibition on disclosing execution drugs' properties. It provides only targeted protection "to give effect to the General Assembly's intent to ensure the absolute confidentiality of the identifying information of any person or entity directly or indirectly involved in the planning or execution of a death sentence within this State." S.C. Code § 24-3-580(I).

We request the following information about the presently available execution drugs, none of which relates to any person or entity's identity:

1. The dates on which the drugs were tested.
2. The Beyond Use Date, after which compounded drugs should not be used.

3. If the drugs were commercially manufactured, the expiration date.
4. The methods and procedures used to test the pentobarbital, including documentation of test method validation and details of quality control procedures and methodology.
5. The actual results obtained from the testing.
6. Where the drugs will be stored prior to their use, and how the storage conditions will be monitored, including temperature and humidity controls.

We recognize we are making this request before an execution notice has issued and prior to the triggering of your statutory obligation to certify the available methods of execution. We believe it is important, however, to submit this request as soon as possible. Pursuant to Judge Austin's decision in *Bixby v. Stirling*, No. 3:24-cv-05072-JDA, issued October 30, 2024, any legal challenge to a decision on your part to not disclose information not covered by the secrecy law will only become ripe after your position on Mr. Bowman's access to information is announced. Judge Austin dismissed claims of this type without prejudice. Mr. Bowman intends to institute a new lawsuit in the event that your certification omits the requested information.

At this preliminary juncture, you may not yet have the information in your possession. If that is the case, our alternative request is that you notify us whether you intend to provide it once it becomes available.

Even though disclosing the information listed in this letter would not violate any aspect of S.C. Code § 24-3-580 or result in the identification of any person or entity involved in executions, we acknowledge the State's interest as codified by the secrecy law. In an abundance of caution, we would agree to a consent protective order restricting our ability to disseminate the information publicly, and redaction of information related to the identity of any person or entity. Our purpose here is solely to provide our client with a sufficient basis to meaningfully exercise his statutory right to elect his method of execution.

Sincerely,



Gabrielle Amber Pittman
Deputy Chief

David Weiss
Assistant Federal Public Defender

COUNSEL FOR MARION BOWMAN

cc: Salley Elliott, elliott.salley@doc.sc.gov
Bart Vincent, vincent.barton@doc.sc.gov



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Division of Legal Counsel & Compliance

HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

December 9, 2024

Gabrielle Amber Pittman, Deputy Chief
David Weiss, Assistant Federal Defender
129 West Trade Street, Suite 300
Charlotte, N.C. 28202

RE: Request for Information

Sent via email to G_Amber_Pittman@fd.org and David_C_Weiss@fd.org

Dear Ms. Pittman and Mr. Weiss:

This is to confirm receipt of your letter dated November 22, 2024. As the Department of Corrections has stated in various filings, we believe the previous affidavits submitted by Director Stirling certifying the available methods of execution set forth what is required to adequately explain how the drugs were determined to be sufficient to carry out the intended purpose. Nevertheless, Director Stirling evaluates the information to be included in his affidavit when each notice of execution is received. The Department of Corrections therefore cannot anticipate at this time the specifics of an affidavit certifying available methods of execution for Marion Bowman.

Sincerely,

Salley W. Elliott

Deputy Director of Legal and Compliance

cc: Barton J. Vincent, General Counsel for SCDC

The Supreme Court of South Carolina

The State, Respondent,

v.

Marion Bowman, Jr., Appellant.

Appellate Case No. 2002-023546

The Honorable The Honorable Diane Schafer Goodstein
Dorchester County

Trial Court Case No. 2001GS1800348, 2001GS1800349

EXECUTION NOTICE

TO THE HONORABLE BRYAN PETER STIRLING, DIRECTOR OF THE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS:

This is to notify you that the sentence of death imposed in the above case from which an appeal has been taken has been affirmed and finally disposed of by the Supreme Court of South Carolina and the remittitur has been sent to the Clerk of the Court of General Sessions.

IT IS, THEREFORE, required of you by Section 17-25-370 of the Code of Laws of South Carolina to execute the judgment and sentence of death imposed on said defendant on the fourth Friday after the service upon you or receipt of this notice.

Let a copy of this notice be served immediately upon the defendant.



CLERK

Columbia, South Carolina
January 3, 2025

cc:

Donald J. Zelenka

Melody Jane Brown

Salley W. Elliott

Lindsey Sterling Vann

Teresa L. Norris

Alan McCrory Wilson

Gerald W. King

John G. Baker

Gabrielle Amber Pittman

IN THE SUPREME COURT

The State,

Respondent,

v.

Marion Bowman, Jr.,

Appellant.

Appellate Case No. 2002-023546

The Honorable Diane Schafer Goodstein
Dorchester County
Trial Court Case No. 2001GS1800348, 2001GS1800349

CERTIFICATE OF SERVICE

I certify that the Affidavit of Bryan P. Stirling was served on counsel of record listed below on January 8, 2025, via email under Paragraph (d)(1) of Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), Appellate Case No. 2020-000447:

Lindsey S. Vann at lindsey@justice360sc.org
S. Boyd Young at byoung@sccid.sc.gov
Teresa L. Norris at Teresa_Norris@fd.org
G. Amber Pittman at G_Amber_Pittman@fd.org; apittman@mcgowanhood.com
Gerald W. King at Gerald_King@fd.org
John G. Baker at John_Baker@fd.org
Donald J. Zelenka at dzelenka@scag.gov
Melody J. Brown at MBrown@scag.gov
Alan McCrory Wilson at agwilson@scag.gov

Respectfully Submitted,



Salley W. Elliott
S.C. Bar No. 1871
South Carolina Department of Corrections
P.O. Box 21787
Columbia, S.C. 29221-1787
(803) 896-4237
Elliott.Salley@doc.sc.gov

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787, Columbia, South Carolina 29221

The Director of the South Carolina Department of Corrections has designated Willie Davis as his duly authorized agent for the purpose of making service of the Affidavit of Bryan P. Stirling, dated January 7, 2025.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT OF PERSONAL SERVICE

On the 8th day of January 2025, I served the Affidavit of Bryan P. Stirling, dated, January 7, 2025, by delivering personally and leaving a copy of the same at Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina. Deponent is not a party to this action.

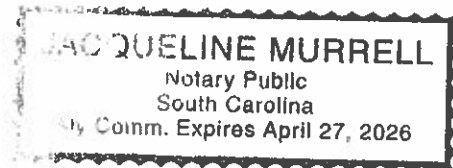
s/ Willie Davis

Willie Davis

SWORN TO AND SUBSCRIBED before
me this 8th day of January 2025

Jacqueline Murrell (L.S.)
Notary Public for South Carolina

My Commission Expires: 4.27.26



ACCEPTANCE OF SERVICE

Service of a copy of the within Affidavit of Bryan P. Stirling is accepted at Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina, this 8th day of January 2025.

s/ Marion Bowman, Jr.
Marion Bowman, Jr.

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

The State,

Respondent,

v.

Marion Bowman, Jr.,

Appellant.

Appellate Case No. 2002-023546

The Honorable Diane Schafer Goodstein
Dorchester County
Trial Court Case No. 2001GS1800348, 2001GS1800349

AFFIDAVIT OF BRYAN P. STIRLING

MS #1

PERSONALLY APPEARED BEFORE ME, BRYAN P. STIRLING, who having first been duly sworn, deposes and states as follows:

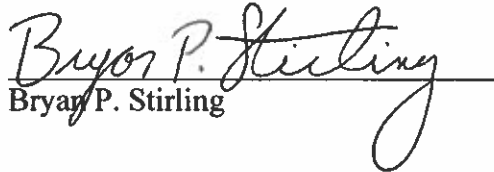
1. I am over the age of eighteen, of sound mind, and competent to give this testimony.
2. I served as the Interim Director of the South Carolina Department of Corrections ("Department") between October 1, 2013, and February 19, 2014, when I was confirmed by the Senate as the Director. I have served as the Director of the Department since my confirmation.
3. According to S.C. Code Ann. § 24-3-530, there are three statutorily approved methods of execution: electrocution, the firing squad, and lethal injection.
4. Pursuant to S.C. Code Ann. § 24-3-530(B), I am charged with certifying, under penalty of perjury, the available methods of execution upon receipt of a notice of execution from this Court.
5. On January 3, 2025, in accordance with S.C. Code Ann. §§ 17-25-370, -380, the Department received an Execution Notice issued by the Clerk of this Court for Marion Bowman, Jr.
6. According to the Execution Notice for Marion Bowman, Jr., the Department is required to "execute the judgment and sentence of death imposed on said defendant on the fourth Friday after the service . . . or receipt of this notice," which is January 31, 2025.
7. I hereby certify that all three statutorily approved methods of execution—electrocution, the firing squad, and lethal injection—are available for carrying out Bowman's execution.
8. I am certifying that electrocution is available because the appropriate and responsible Department staff informed me that the electric chair and system were tested on January 6, 2025, and all aspects performed as intended.
9. I am certifying that the firing squad is available because the appropriate and responsible Department staff informed me that the Department has in its possession the necessary firearms and ammunition and that members of the firing squad have completed all required training.
10. I am certifying that lethal injection is available via a single dose of pentobarbital. I have confirmed 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. The Department provided pentobarbital to the S.C. Law Enforcement Division (SLED) for testing by its Forensic Services Laboratory. SLED confirmed that its Forensic Services Laboratory is an internationally accredited forensic laboratory and that it used widely accepted testing protocols and methodologies in this matter. SLED reported to me that experienced, qualified, and duly authorized personnel tested and confirmed the concentration of the solution

BPS

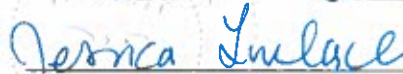
provided is consistent with the vial labeling of pentobarbital, 50 milligrams per milliliter, and acknowledged the substance's concentration in terms of its purity and stability. The appropriate and responsible Department staff reported to me that, based on a review of SLED's test results, data published by National Institutes of Health, and information regarding executions by lethal injection using pentobarbital carried out by the Department, other States, and the federal government, the dosage called for by the Department's lethal injection protocol is sufficiently potent such that administration in accordance with the protocol will result in death.

11. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


Bryan P. Stirling

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7th DAY OF January, 2025

 (SEAL)

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 4/5/2026

APS
#3

DECLARATION OF DR. DAVID B. WASEL, M.D.

I. Expert Qualifications

I, Dr. David B. Waisel, M.D., am currently a practicing anesthesiologist at St. Jude Children's Research Hospital in Memphis, Tennessee. I served as a Professor of Anesthesiology at Yale School of Medicine from September 2020 through December 2023, and an Associate Professor of Anesthesia at Harvard Medical School from July 2006 through August 2020. I have been practicing clinical anesthesiology for approximately thirty (30) years, and I have administered anesthesia to more than 20,000 patients. I am currently licensed to practice in Tennessee.

I was certified as a Diplomate by the American Board of Anesthesiology in 1994. I performed voluntary recertification in 2005 and 2016. I was also certified as a Diplomate by the American Board of Anesthesiology for Pediatric Anesthesiology in 2013 and performed voluntary recertification in 2024. My complete curriculum vitae is included with this report as an Attachment.

II. Referral Question

I have been asked by counsel for Plaintiff Marion Bowman to provide an expert medical opinion as to whether South Carolina provides him with sufficient information to assess the risks and benefits of execution by lethal injection as compared to the state's other available methods of execution.

III. Documents and Resources Considered

I have reviewed the documents provided to me in this matter, as well as other readily available reference materials. The most notable materials include:

- Autopsy report for Richard Moore
- Declaration of Dr. Michaela Almgren
- Press Conference following execution of Freddie Eugene Owens
- Press Conference following execution of Richard Moore

My opinions are based on the information available to me as of the date of this report. Should further information become known to me through additional documentation, reports, or testimony relevant to my opinions in this matter, or should I receive additional requests from Plaintiff's counsel, I may supplement this report as needed.

IV. Conclusions and Opinions

My understanding is that death-sentenced prisoners in South Carolina are offered the option of execution by lethal injection, firing squad, or electrocution. This declaration concerns lethal injection only.

Based upon the information I have now, it is my opinion to a reasonable degree of medical certainty that South Carolina failed to administer five grams of effective pentobarbital during the execution of Richard Moore. As a result, there is a substantial risk that he experienced needless and extensive suffering during his execution.

It is my opinion to a reasonable degree of medical certainty that, given the State's inadequate transparency, there is insufficient information about the lethal injection process for anyone to assess its risks and benefits as compared to execution by firing squad or electrocution.

V. Discussion and Analysis

1. I have been told that executions in South Carolina call for the administration of pentobarbital via intravenous injection. Pentobarbital is a member of a class of drugs called barbiturates. Barbiturates act on the body by depressing various organ systems, including the central nervous system. Pentobarbital is classified as "short-acting," which means that it has an initial onset of action within one arm-brain circulation time, which is usually considered to be less than 1 minute and is often more rapid.
2. Furthermore, IV drugs, including barbiturates, have a remarkably consistent drug-specific onset upon reaching a functioning intravenous circulation. I would expect to see even greater consistency of effect with higher doses. For instance, if a patient received a 350 mg/kg dose, I would expect a somewhat quicker effect in a 50 kg patient and a somewhat slower onset in heavier patients in which the per kg basis is less than 5 mg/kg (e.g. 100 kg). Larger doses, however, make such distinctions non-consequential. The larger doses mean that there should be remarkable consistency in the onset of action.
3. I have been informed that South Carolina prison officials are declining to provide death-sentenced inmates with any specific information about the potency, purity, or stability of the particular dose of pentobarbital to be used in their executions, with the sole exception of providing a general assurance that the drugs have been tested and approved by the forensic lab of the S.C. Law Enforcement Division (SLED). State prison officials are also declining to provide death-sentenced inmates with any of the SLED lab reports or results.
4. I have reviewed the affidavit of Dr. Michaela Almgren, which details the information needed to ensure that the pentobarbital South Carolina uses in execution is effective. I concur with her conclusions, and like Dr. Almgren, it is my opinion that the information she identifies is necessary for a death-sentenced inmate to be able to make a meaningfully informed decision about the relative risks of lethal injection compared to the other available execution methods.
5. The concerning circumstances surrounding the two most recent executions in South Carolina—which indicate that problems occurred—amplify the need for prisoners to be provided with information about the execution drugs going forward.
6. Records detailing the precise actions taken to carry out the executions by lethal injection of Richard Moore (November 1, 2024) and Khalil Allah (Freddie Owens) (September 20, 2024) are unavailable. This limits the ability to evaluate precisely what occurred during

those executions, which makes it difficult to assess the risks posed by this method. However, what we do know about each execution is disturbing.

7. Mr. Moore's autopsy revealed he was administered "2 x 2.5 g pentobarbital [5 grams] at 18:01" and "a second round of 2 x 2.5 g [5 grams] at 18:12." He was pronounced dead 23 minutes after the administration of the initial 5 grams of pentobarbital at 18:24. Given the extraordinarily high dose of pentobarbital administered at the outset of the execution, it is concerning that two separate five-gram doses of pentobarbital were required before Richard Moore was declared dead. A properly administered dose of five grams of effective pentobarbital should eliminate all breathing within a minute or less.
8. I believe to a high degree of medical certainty that it is physiologically and pharmacologically impossible for Mr. Moore to remain alive for ten minutes after a dose of five grams of fully-potent pentobarbital, unless that dose was not delivered completely.
9. Mr. Moore's autopsy also documents that he suffered from pulmonary edema, a complication that, in my experience, occurs in many, if not most, executions involving pentobarbital. Generally, pulmonary edema is when fluid from the bloodstream floods the lungs, making it more difficult to breathe, and causing sensations of shortness of breath similar to the experience of drowning. While pulmonary edema can have many causes, it is my belief with a reasonable degree of medical certainty that Mr. Moore's edema was caused by the obstruction of his upper airway from the sedation effects of pentobarbital, even as he continued breathing, which caused fluid to seep out of the blood vessels inside his lungs. Mr. Moore's autopsy report documents clinical features of this type of edema—called negative pressure pulmonary edema—in that he had pink froth in his airway. Its onset would occur almost immediately following the initial IV administration of pentobarbital, as the tissues in his upper airways collapsed and his vocal cords closed. If sensate, a person whose lungs filled with the fluid of pulmonary edema would suffer feelings of drowning and suffocation. In an execution setting where the administered pentobarbital is either not completely effective or is delivered ineffectively, the pentobarbital would affect the prisoner's airways and lead to pulmonary edema while simultaneously failing to sufficiently anesthetize the prisoner to these torturous sensations. It appears likely that during Mr. Moore's execution, he consciously experienced feelings of drowning and suffocation during the 23 minutes that it took to bring about his death.
10. While no autopsy was performed on Mr. Owens, I listened to a press conference given by the South Carolina Department of Corrections, which reported that his execution began at 6:35 p.m., and that he was declared dead at 6:55 p.m. Given what happened in Mr. Moore's execution, I would want to know whether Mr. Owens's twenty-minute execution also required a second dose of five grams of pentobarbital. Because a properly administered dose of effective pentobarbital should stop breathing within a minute, the fact that Mr. Owens' execution lasted 20 minutes indicates that a problem of some kind occurred.
11. The absence of drug property information is even more concerning for Marion Bowman in light of his body composition, which I am informed is 6'4", 375 lbs. This is a body mass index of 46, which is in the category of "Severely Obese." Peer-reviewed published

outcome data indicate that the prevalence of difficult IV access has been reported at 3.1 – 5.9%, depending on many characteristics including BMI.¹ Bowman’s execution process could become especially complicated, and even torturous, in the event that problems caused by an ineffective IV were compounded by an ineffective dose of pentobarbital.

12. On the basis of all the materials I have reviewed, it is my conclusion that the vast lacunae of available information makes it impossible for Mr. Bowman and his counsel to make an informed decision about his preferred execution method.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 10, 2025.

/s/ David B. Waisel
David B. Waisel, M.D.

¹ Difficult IV access can be defined as whether obtaining access on the first attempt is unsuccessful or whether access is unable to be obtained. Data typically coalesces around 3-30% of difficult IV access for patients with minimal risk factors and greater than 50% of difficult IV access for patients with significant risk factors. See Heart & Lung 2020;49:273-286; J Clin Med 2020;9:799; J Clin Nurs 2017;26:4267-75; Br J Anaesth 2018;121:358-66; BioMedical Material and Engineering 2013;23:93-108, among others.