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The Honorable Bill Lee, Governor
1st Floor, State Capitol
600 Charlotte Avenue
Nashville, TN 37243

Re: Request for Moratorium on Tennessee Executions and Appointment of an Independent Commission to Study Tennessee Execution Protocol

Dear Governor Lee,

We are grateful to you for stopping last week's execution of Oscar Smith. Now, in light of ongoing irregularities with Tennessee's execution protocol, we ask that you go further. We ask that you impose an immediate moratorium on all Tennessee executions and appoint an independent commission to review the entire Tennessee execution protocol. Such action would not only be courageous but would also be the right thing to do for the residents of this state who deserve to know that the most solemn act of government is approached with the utmost care and professionalism. It would be the right thing for the condemned and their families. It would be the right thing for victims' family members.

Whatever the "oversight" that led to the necessity of a last-minute reprieve, there can be no trust in the Department of Correction to carry out an execution without first conducting an independent investigation of the execution protocol. The secrecy that shrouds the execution process in Tennessee is troubling, even more so where now one week later we still don't know what happened to cause the last-minute delay.

1. **What we DO know, as attorneys familiar with the terrible risk of the controversial three-drug protocol is there have been problems every single time the Department has used or attempted to use the protocol.** Public records establish that the execution team failed to prepare a back-up set of syringes for the Billy Irick execution. Media accounts prove

that Mr. Irick was still conscious when the paralytic took hold and pulled down the chemical veil. Public records show that some drugs used in the Don Johnson execution were left out of refrigeration in contravention of the compounding pharmacies instructions. Media accounts of Don Johnson's execution establish that like Mr. Irick, Mr. Johnson was still conscious when the paralytic took over.

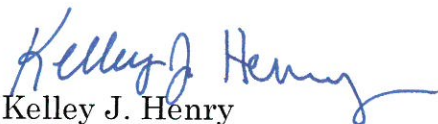
2. **What we DO know is that Tennessee is an outlier in using the risky midazolam-based lethal injection protocol.** Other states, like Ohio and Arizona, have moved away from the protocol after several very public examples of its failure to anesthetize the condemned. After careful study, Ohio Governor Mike DeWine stated that he will not authorize the use of the cocktail under his administration. After Joseph Wood writhed in pain for an hour and a half, Arizona agreed to a consent order forbidding the use of midazolam in its protocol.
3. **What we DO know is that the next two drugs in the protocol cause such a risk of torture they are forbidden from use in an animal euthanasia in our state and every other.** Vecuronium Bromide paralyzes the condemned. This paralysis causes the person to suffocate to death – described as feeling like being buried alive. At the same time, the condemned cannot communicate his terror – creating a false atmosphere of a clinical environment – shrouding from public view the private horror that the person is experiencing. The potassium chloride is the drug that causes death. No one disputes that it feels like liquid fire as it travels through the veins until finally reaching the heart.
4. **What we DO know is these problems are made exponentially worse by the use of compounded drugs.** Because of the secrecy that cloaks the drugs used in Tennessee's protocol, it is unclear how many of the three drugs are compounded; but it appears that Tennessee intended to use two compounded drugs in Mr. Smith's execution. These drugs are classified as high-risk sterile injectables. They are incredibly unstable and require scrupulous adherence to all USP requirements for safe handling. Failure to do so could cause the drugs to "fall out of solution," also called precipitation. Injecting chemicals that have fallen out of solution into a human being is torturous. It has been described as feeling as though the person is being injected with rocks.
5. **What we DO know is that many serious and important questions about how TDOC staff and the contract pharmacy produce, store, prepare, ship, and handle these high-risk sterile injectables remain unanswered.** With secrecy comes lack of accountability. With secrecy comes sloppiness. And with secrecy comes a high risk of mistakes.

Although there is ongoing litigation over the protocol, such litigation does not mean you are powerless to act. Not every problem must be solved in court. Declaring a moratorium, simply pressing pause, and conducting a fair, transparent, and independent review of the execution protocol would further public trust, ensure accountability, and be a step in the right direction toward avoiding needless suffering. If, however, you feel as though the proper forum for our concern is the courts, we urge you to issue a moratorium until the courts have finished their business.

Our office represents two of the remaining four men with execution dates this year, Byron Black and Donald Middlebrooks, but we also represent more than half of the men on Tennessee's death row. Undersigned counsel Kelley Henry has litigated issues surrounding execution protocols since 1999. She can tell you that, every time a new complaint has been filed, TDOC changed the protocol in response. Our concerns are not speculative. We have spent years educating ourselves on the process of lethal injection and our concerns about the three-drug protocol are grounded in science.

We write on behalf of all our clients. We humbly and respectfully ask for the opportunity to meet with you, present medical proof to you, and air our concerns.

Very respectfully,



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