IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

THOMAS D. ARTHUR, Plaintiff, v. RICHARD ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, in his official capacity, GRANTT CULLIVER, WARDEN, HOLMAN CORRECTIONAL FACILITY, in his official capacity, and OTHER UNKNOWN EMPLOYEES AND AGENTS, ALABAMA DEPARTMENT OF CORRECTIONS, in their official capacities, Defendants.	CIVIL ACTION NO. CV. 07-772

COMPLAINT

Thomas D. Arthur brings this civil rights action under 42 U.S.C. § 1983 seeking to prevent violations and threatened violations of his right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. Mr. Arthur, an Alabama prisoner under sentence of death, seeks injunctive and declaratory relief to prohibit the Defendants from using the lethal injection procedures as recently modified by the State of Alabama to execute him.

Mr. Arthur brings this lawsuit shortly following Governor Riley's announcement of his decision to change Alabama's lethal injection protocol and before any

execution date has been set. The day before Mr. Arthur's scheduled execution date of September 27, 2007, a representative from Governor Riley's office contacted Mr. Arthur's counsel and stated that Alabama would be instituting certain changes to its lethal injection protocol in connection with a lethal injection case pending in the United States District Court for the Middle District of Alabama. Although Governor Riley initially refused to delay Mr. Arthur's execution until these changes were put into effect, on the morning of his scheduled execution, Governor Riley granted Mr. Arthur a 45-day reprieve to ensure that any changes would be implemented prior to Mr. Arthur's execution. The State's execution of Mr. Arthur using Alabama's lethal injection protocol, in spite of any modifications, constitutes cruel and unusual punishment.

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 1983, 28 U.S.C. §§ 1331, 1343 and 28 U.S.C. §§ 2201, 2202.

2. The relief requested is injunctive in nature. Mr. Arthur disclaims any attempt to challenge his conviction and sentence of death with this lawsuit or the constitutionality of lethal injection as a method of execution *per se*, and instead challenges only the unconstitutionality of the particular lethal injection protocol currently being used by the State of Alabama.

VENUE

3. Venue is appropriate in the Southern District of Alabama under 28 U.S.C. § 1391(b). Holman Correctional Facility, which is where Mr. Arthur is incarcerated and where the execution will take place, is located in the Southern District of Alabama. All of the Defendants maintain their principal places of business within the State of Alabama.

THE PARTIES

4. Mr. Arthur is presently incarcerated under a sentence of death at the Holman Correctional Facility in Atmore, Alabama.

5. Defendant Richard Allen is the Commissioner of the Alabama Department of Corrections.

6. Defendant Grantt Culliver is the Warden of the Holman Correctional Facility in Atmore, Alabama.

7. Other Unknown Employees and Agents of the Alabama Department of Corrections are involved in the development and administration of lethal injections. Plaintiff does not yet know the identity of these persons.

8. All of the Defendants are being sued in their official capacities.

BACKGROUND

9. On May 14, 2007, Mr. Arthur filed a complaint pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Alabama's lethal injection protocol in effect at the time. The State of Alabama moved to dismiss the complaint on various grounds. On August 10, 2007, Judge Steele dismissed Mr. Arthur's complaint on the basis of laches. On September 17, 2007, the Eleventh Circuit issued an opinion, over a strongly worded dissent, affirming the district court's dismissal. On September 21, 2007, Mr. Arthur submitted his petition for a writ of certiorari in the United States Supreme Court, which is pending. Mr. Arthur also moved to stay his execution, which had been scheduled for September 27..

10. On September 25, 2007, the United States Supreme Court granted a writ of certiorari to the Kentucky Supreme Court in *Baze* v. *Rees*, 07-5439, to address important constitutional questions, including among others, the proper standard for determining whether

a method of execution violates the Eighth Amendment to the United States Constitution. Alabama apparently uses the same three-drug "cocktail" in its lethal injections as Kentucky does. Although the Kentucky Supreme Court held that Kentucky's lethal injection procedure passes muster under the Eighth Amendment, the Supreme Court's clarification of the appropriate standard of review could alter that holding. Indeed, the Supreme Court's upcoming ruling could drastically change the lethal injection procedures by which death-sentenced inmates are executed in the 37 states that currently use this method.

11. In light of *Baze*, on September 25, 2007, Mr. Arthur filed a supplemental brief with the Supreme Court in further support of his petition and motion seeking a stay of execution.

12. On September 26, 2007, Mr. Arthur's counsel received a telephone call from Scott Rouse, deputy legal advisor to Governor Riley. Mr. Rouse informed counsel that in connection with *McNair* v. *Allen*, 2:06-cv-00695 (M.D. Ala. 2007),[1] a lethal injection case currently pending in the United States District Court for the Middle District of Alabama, the State of Alabama has decided to make changes to its lethal injection protocol. The Governor, however, refused to stay Mr. Arthur's execution pending implementation of any changes and planned to proceed with Mr. Arthur's execution on September 27 pursuant to Alabama's current lethal injection protocol. In light of this development, Mr. Arthur filed a second supplemental brief with the Supreme Court in further support of his petition and motion seeking a stay of execution.

[1] *McNair* was consolidated with *Callahan* v. *Allen*, 2:06-cv-00919 (M.D. Ala. 2007) on November 28, 2006.

13. On September 27, 2007, before the Supreme Court ruled on Mr. Arthur's motion for a stay, the Governor of Alabama granted Mr. Arthur a 45-day reprieve from his execution scheduled for that day "to allow the Department of Corrections sufficient time to make modifications to its lethal injection protocol." (*See* Letter from Riley to Richard Allen, dated Sept. 27, 2007, attached hereto as Exhibit A.)

14. According to Jeff Emerson, communications director for Governor Riley, the Governor's decision to change Alabama's protocol came on the heels of a recent ruling by a federal judge that Tennessee's lethal injection protocol is unconstitutional. *See* Stan Diel, *Riley Delays Arthur's* Execution, Birmingham News, Sept. 28, 2007. After a bench trial, Judge Trauger of the United States District Court for the Middle District of Tennessee held that Tennessee's revised lethal injection protocol violates the Eighth Amendment. *See Harbison* v. *Little*, No 3:06-01206, 2007 U.S. Dist. LEXIS 72410 (M.D. Tenn. Sept. 19, 2007). As acknowledged by Jeff Emerson, "[Tennessee's] protocol is very similar to what Alabama does." Phillip Rawls, *Alabama Changing Lethal Injection Procedure*, Jacksonville News, Sept. 26, 2007.

15. On September 28, 2007, the district court in *McNair* v. *Allen* issued an order tentatively scheduling trial for the week of November 26, 2007. In light of Alabama's plans to change its lethal injection protocol, the trial, originally scheduled for October 3, was postponed. During this trial in the Middle District of Alabama, the parties will present evidence, including testimony by experts, and a federal court will examine the constitutionality of Alabama's lethal injection protocol and any subsequent revisions implemented by the State.

16. On September 28, 2007, the State of Alabama moved the Supreme Court of Alabama to set an execution date of November 15, 2007 for Mr. Arthur. The State of Alabama seeks to execute Mr. Arthur before the Supreme Court issues a decision in *Baze* and before the *McNair* trial commences.

17. On October 2, 2007, Mr. Arthur opposed the State's motion to set an execution date. Mr. Arthur argued that no execution date should be set until after the Supreme Court decides the important issues presented in *Baze*. Indeed, after granting certiorari in *Baze*, on September 27, 2007, the Supreme Court granted a stay of execution to Carlton Turner, Jr., a Texas inmate who had been scheduled to be executed that same day. (*See Turner* v. *Texas*, 07A272, Order dated Sept. 27, 2007, attached hereto as Exhibit B.) Like Mr. Arthur, Mr. Turner has challenged the constitutionality of his state's lethal injection protocol. The Supreme Court granted Mr. Turner the full period to file his petition for a writ of certiorari, and the stay will be in effect until the Supreme Court decides his petition.

18. Consistent with the Supreme Court's approach, other courts have also deferred scheduling execution dates. For example, the Texas Court of Criminal Appeals stayed the execution of Heliberto Chi, originally set for October 3, 2007. *See* Ralph Blumenthal, *Texas Ruling Signals Halt to Executions Indefinitely*, N.Y. Times, Oct. 2, 2007 ("Tuesday's ruling by the Texas court was seen as a sign that judges in the nation's leading death penalty state were taking guidance from the Supreme Court and putting off imminent executions."). Furthermore, citing judicial prudence, Oklahoma Attorney General W.A. Drew Edmondson asked the Oklahoma Court of Criminal Appeals to refrain from scheduling executions in Oklahoma until the Supreme Court defines what constitutes cruel and unusual punishment

with respect to lethal injection procedures. *See Oklahoma Attorney General Asks Hold on Executions*, Reuters, Oct. 3, 2007.

JUSTICIABLE CASE OR CONTROVERSY

19. There exists a real and justiciable case or controversy between the parties.

20. On April 17, 2007, the State of Alabama moved the Alabama Supreme Court to set an execution date for Mr. Arthur.

21. On June 22, 2007, the Alabama Supreme Court granted the State of Alabama's motion and set Mr. Arthur's execution date for September 27, 2007.

22. On September 27, 2007, Governor Riley granted Mr. Arthur a 45-day reprieve. On September 28, 2007, the State of Alabama moved the Alabama Supreme Court to set November 15, 2007 as a new execution date for Mr. Arthur.

23. The Alabama Supreme Court has not yet ruled on the State's motion, and it is not clear whether the Alabama Supreme Court will set a date before *Baze* is decided.

24. Nevertheless, Mr. Arthur will be executed—in a cruel and unusual manner in violation of the Eighth and Fourteenth Amendments—without ever having received *any* state or federal collateral review of his trial and death sentence.

25. Mr. Arthur will be executed pursuant to Alabama's lethal injection procedures as they exist at the time of his execution. There is thus a justiciable case or controversy regarding the constitutionality of Alabama's lethal injection procedures.

MR. ARTHUR'S TRIAL, CONVICTION AND SENTENCE

26. In 1991, Mr. Arthur was convicted of murdering Troy Wicker at his home in Muscle Shoals, Alabama. No physical evidence linked Mr. Arthur to the crime. Instead, his conviction was based almost exclusively on the testimony of the victim's wife, Judy Wicker.

At the time she testified against Mr. Arthur, Judy Wicker was serving a life sentence for the same crime. In exchange for her testimony against Mr. Arthur, the state prosecutor—who had previously represented her in connection with her parole proceedings—offered the ultimate deal: assist in the prosecution of Mr. Arthur and obtain early parole. Although Judy Wicker had testified under oath at her own trial that Mr. Arthur was not involved in her husband's murder, she changed her story when she testified against Mr. Arthur and secured her freedom.

27. Mr. Arthur was convicted of capital murder on December 5, 1991. The penalty phase that followed lasted less than an hour and a half. Mr. Arthur's counsel offered no mitigation testimony and introduced only a handful of exhibits relating to Mr. Arthur's good behavior in prison prior to 1981, which he had obtained from the record on appeal from one of Mr. Arthur's previous trials. After the jury recommended a sentence of death by a vote of 11-1, on January 24, 1992, the trial court sentenced Mr. Arthur to death by electrocution.

28. That Mr. Arthur could be convicted and sentenced to death on paltry and unreliable evidence is attributable largely to the fact that he was denied effective assistance of counsel. Consequently, alibi witnesses did not testify before the jury because defense counsel had failed to conduct minimal fact investigation. Indeed, prior to trial, Mr. Arthur's appointed counsel conducted virtually no independent investigation into either the underlying crime or potential mitigating evidence, and they were wholly unprepared to defend this capital case.

THE STATE OF ALABAMA'S CURENT LETHAL INJECTION PROCEDURES

29. Under Alabama law, the Alabama Department of Corrections ("ADOC") is responsible for carrying out executions, all of which take place at the Holman Correctional Facility. Ala. Code § 15-18-82, 82.1. Alabama law does not prescribe specific drugs, dosages, drug combinations, sequences, or manner of administering lethal chemicals to carry

out executions; nor does it prescribe any certification, training, or licensing required of those who participate in either the anesthesia process or the execution.

30. Upon information and belief, the ADOC has adopted a written and confidential protocol for administering capital punishment by lethal injection.

31. Upon information and belief, Alabama's execution procedures are deemed confidential, and the Defendants generally will not publicly disclose any details about the procedures involved in carrying out executions in Alabama.

32. Mr. Arthur asserts upon information and belief that the State of Alabama uses drugs to achieve first anesthesia, then paralysis, and finally execution by cardiac arrest. The drugs used include sodium pentothal, pancuronium bromide, and potassium chloride. This combination will likely subject Mr. Arthur to an excruciatingly painful death.

33. Upon information and belief, Alabama currently uses the following protocol in its lethal injections:

(a) sodium thiopental (100 cc 2.5% solution, delivered in two 50 cc syringes)
(b) 60 cc saline
(c) 50 cc pancuronium bromide (also referred to as Pavulon)
(d) 60 cc saline
(e) 60 cc potassium chloride
(f) 60 cc saline

34. The first drug, sodium pentothal (also known as Thiopental), is an ultra-short-acting barbiturate that depresses the central nervous system to produce unconsciousness and anesthesia. Thiopental is useful in some medical contexts because of its rapid onset and rapid redistribution through the body at surgical doses. Typically, Thiopental is used in the induction phase of anesthesia to temporarily anesthetize patients for sufficient time to, for example, intubate the trachea.

35. If it is necessary to maintain anesthesia for longer than just a few minutes, physicians typically use drugs other than Thiopental. If Thiopental is used not only to induce, but also to maintain, a surgical plane of anesthesia, a qualified person must be present to monitor continually the patient to ensure that the Thiopental has been correctly administered and that the patient remains in a state of unconsciousness.

36. Upon information and belief, Defendants next administer pancuronium bromide, also referred to as Pavulon, which paralyzes voluntary muscles, including the diaphragm. Pavulon does not affect consciousness or the perception of pain. To the extent that the first chemical, Thiopental, is improperly administered and fails to establish and maintain a sufficient plane of anesthesia, Pavulon serves only to mask the pain and suffering that would attend a paralyzed diaphragm. That is, Pavulon conceals the tell-tale physical signs that would signal to a properly trained observer whether a prisoner has been sufficiently anesthetized.

37. Finally, the drug that is used to kill the prisoner is potassium chloride. Potassium chloride disrupts the normal electrical activity of the heart and stops it from pumping blood, causing cardiac arrest. As it travels in the bloodstream from the site of injection towards the heart, potassium chloride activates all the nerve fibers inside the vein, causing a burning sensation as it runs through the body and ravages the internal organs.

38. Injection of potassium chloride causes agonizing pain to a recipient who has not been properly anesthetized. Because of this risk of pain, the use of potassium chloride requires an appropriate anesthesia protocol prior to its administration to ensure an adequate depth of anesthetic plane. However, anesthetic depth cannot be reliably determined during Alabama executions because of the use of the Pavulon, which blocks an accurate assessment

by paralyzing all of the muscles that would otherwise move in response to excruciating pain. Because no one can reliably assess anesthetic depth (and make appropriate adjustments) using this process, the procedures the Defendants use can cause a prisoner to experience extreme terror and suffering of suffocation while fully conscious.

39. Upon information and belief, the reason that a saline wash is conducted after the injection of potassium chloride is to clear out the IV lines to ensure that the person charged with removing them is not burned by the potassium chloride.

40. The American Veterinary Medical Association (AVMA) states that the use of neuromuscular paralyzing drugs, including pancuronium bromide, solely or in conjunction with other drugs, is unacceptable as a method of euthanasia. The AVMA further states that the use of potassium chloride in a euthanasia protocol requires a surgical plane of anesthesia, which is characterized by loss of consciousness, loss of reflex muscle response, and loss of response to noxious stimuli. The AVMA recommends the use of a longer lasting barbiturate for animal euthanasia than the Thiopental which is used in Alabama executions of death-sentenced prisoners.

41. Upon information and belief, Defendants do not conduct lethal injections that comport with the appropriate standards of practice for inducing and monitoring anesthesia as a precursor to execution. Nor do Defendants take effective measures to ensure that a prisoner will not suffer a conscious and painful death under the current anesthesia procedures.

42. Upon information and belief, Defendants' anesthesia procedures lack medically necessary safeguards, and therefore substantially increase the risk that an inmate such as Mr. Arthur will suffer unnecessary pain during the course of his execution. There is no standardized time to administer each of the three chemicals. There are no procedures for

ensuring that the anesthetic agent is properly flowing into the prisoner, and no procedures for ensuring that the prisoner is properly sedated prior to the administration of other chemicals, as would be required in any medical or veterinary procedure before the administration of a neuromuscular blocking agent (such as pancuronium bromide) or the administration of a painful potassium chloride overdose.

43. Upon information and belief, Defendants' existing procedures do not require any minimum qualifications or expertise required of the personnel who perform the tasks in the anesthesia and execution processes. Defendants do not adequately ensure that the individuals responsible for inducing and maintaining unconsciousness are credentialed, licensed, and proficient in the knowledge, skills, and procedures necessary to establish an appropriate plane of anesthesia throughout the lethal injection process, notwithstanding the fact that it is a complex medical procedure requiring expertise and precision.

44. The absence of medical personnel credentialed, licensed, and proficient in the field of anesthesiology and the lack of adequate procedures greatly increase the risk that a prisoner will not receive the necessary amount of anesthetic prior to being paralyzed by the pancuronium bromide, thereby causing a prisoner to experience the painful internal burn of the potassium chloride.

45. The lack of adequate standards for administration of chemicals, the lack of qualifications of the personnel involved in the process, and the combination of the drugs the Defendants use as a precursor to an execution as well as for the execution create a grave and substantial risk that Mr. Arthur will be conscious throughout the execution process and, as a result, will experience an excruciatingly painful and protracted death.

46. Upon information and belief, Defendants' existing procedures do not include any provisions for proper record-keeping. The absence of record-keeping requirements makes it more difficult for Defendants to learn from each execution, to improve their efficiency and precision and to ensure that any mishaps are not repeated.

47. Upon information and belief, Defendants' existing procedures do not include any provisions for screening potential execution team members. There is currently no way to ensure that executioners have the training, skills, competence and mental and emotional stability necessary to undertake life-and-death responsibilities in a high-pressure environment.

PROPOSED CHANGES TO ALABAMA'S LETHAL INJECTION PROCEDURES

48. On September 19, 2007, Judge Trauger of the United States District Court for the Middle District of Tennessee issued an opinion holding that Tennessee's revised lethal injection protocol was unconstitutional. *See Harbison* v. *Little*, No 3:06-012016, 2007 U.S. Dist. LEXIS 72410 (M.D. Tenn. Sept. 19, 2007).

49. Judge Trauger held that "the most glaring omission in the new protocol is the failure to check for consciousness before the pancuronium bromide is administered." *Harbison*, 2007 U.S. Dist. LEXIS 72410, at *32.

50. Judge Trauger noted that "Tennessee's decision not to check for consciousness is compounded by Tennessee's choice of individuals to mix and inject the drugs and monitor the IV lines during executions." *Id.* at *39. She held that "the failure to utilize adequately trained executioners increases the plaintiff's risk of unnecessary pain." *Id.* at *54.

51. Judge Trauger also noted that "in light of the lack of training provided to the executioners, the court finds that relying solely on monitoring of the IV lines increases the plaintiff's risk of unnecessary pain." *Id.* at *58.

52. This finding by the Tennessee court prompted the State of Alabama to review its lethal injection procedures. According to Jeff Emerson, communications director for Governor Riley, "[Tennessee's] protocol is very similar to what Alabama does." Phillip Rawls, *Alabama Changing Lethal Injection Procedure*, Jacksonville News, Sept. 26, 2007. Mr. Emerson further stated that the Governor's legal adviser began to review Alabama's procedures after a federal judge ruled that Tennessee's procedures are unconstitutionally cruel. *See id*. Thus, the State of Alabama's decision to change its lethal injection protocol amounts to a concession that its current protocol is unconstitutional.

53. In particular, the State of Alabama plans to conduct "an assessment of consciousness" after administration of the first drug of a three-drug cocktail but has not yet decided who will conduct the "assessment"—Department of Correction officers, the Warden or emergency medical technicians. According to Mr. Rouse, the State of Alabama is also considering other changes to its protocol. Any such changes, however, will not be disclosed publicly.

54. According to Anne Adams, Special Counsel to the Commissioner for the Alabama Department of Corrections, "the Warden at all times during the execution is assessing consciousness, to the extent he is watching the inmate, looking for any indication the inmate may be conscious. The additional safeguard we plan to add will simply take that assessment one step further by having someone in the chamber with the condemned to assess consciousness." Affidavit of Anne C. Adams, ¶ 11, Exhibit A to Respondent's Reply to

Petitioner's Second Supplemental Brief, *Arthur* v. *Allen*, No. 07-395, Application No. 07A 252, United States Supreme Court, Sept. 26, 2007.

55. Ms. Adams, however, did not identify what, if any, training the Warden has received to assess consciousness or the criteria for such assessment. Nor did Ms. Adams identify the profession or training of the person who will be in the room with the condemned inmate to assess consciousness or the criteria for such assessment. Indeed, upon information and belief, the State of Alabama does not plan to utilize an individual with appropriate medical training to conduct such assessment.

56. Upon information and belief, in light of the deficiencies in Tennessee's protocol and the State of Alabama's admission that its protocol is "very similar" to that of Tennessee, any changes adopted by the State of Alabama would be substantial. Nevertheless, these changes will do little if anything to mitigate the substantial risk of cruel and unusual pain.

57. Upon information and belief, Defendants do not intend to institute a consistent and reliable screening process to ensure that members of the execution team are certified, competent and mentally and emotionally stable.

58. Upon information and belief, Defendants do not intend to implement meaningful training sessions designed to train execution team members on how to react when the standard protocol is interrupted or changed, including training for executioners on how to proceed if a vein cannot be located, if an IV becomes dislodged, if the inmate does not lose consciousness or if various other foreseeable contingencies occur.

59. Upon information and belief, Defendants do not intend to implement proper record-keeping practices.

60. Upon information and belief, Defendants do not intend to hold "debriefings" for execution team members in order to assess each execution and learn from any mistakes.

61. Upon information and belief, Defendants do not intend to ensure that the execution chamber is properly lit and that execution team members have enough room to perform their tasks.

62. Upon information and belief, Defendants' lethal injection protocol, even if performed properly and without negligence, still creates an unacceptable and unconstitutional risk of pain and suffering.

63. Upon information and belief, the proposed changes to Alabama's protocol do not mitigate the substantial risk of pain and suffering imposed by such protocol.

CAUSE OF ACTION

Violation of the Right to Be Free from Cruel and Unusual Punishment Pursuant to the Eighth and Fourteenth Amendments to the United States Constitution

64. Mr. Arthur repeats and re-alleges paragraphs 1 through 63 as though fully set forth herein.

65. Commissioner Allen, Warden Culliver, and other Unknown Employees and Agents of the Alabama Department of Corrections are acting under color of Alabama law in undertaking to execute Mr. Arthur by lethal injection using an insufficient, improperly designed and improperly administered procedures for inducing and maintaining anesthesia prior to execution, and by using chemicals that cause severe pain in the process of causing death. Consequently, Mr. Arthur faces the probability of needlessly suffering an excruciating death in violation of his right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution.

66. Although it is possible to conduct executions in a constitutionally compliant manner, Defendants have chosen not to do so. While Defendants could select additional or alternative chemicals and retain qualified medical personnel to administer its chosen chemicals to ensure the constitutionality of its lethal injection procedure, Defendants have acted with deliberate indifference and failed to do so. Defendants' current procedures violate evolving standards of decency, and the proposed changes to the current procedures do nothing to cure the violation. *See Estelle* v. *Gamble*, 429 U.S. 97, 102 (1976) (Eighth Amendment requires courts to assess "evolving standards of decency that mark the progress of a maturing society"); *Gregg* v. *Georgia* 428 U.S. 153, 173 (1976) (Eighth Amendment prohibits infliction of unnecessary and wanton pain); *Trop* v. *Dulles*, 356 U.S. 86, 101 (1958) (same); *Harbison*, 2007 U.S. Dist. LEXIS 72410, at *91-92 (Tennessee's new lethal injection protocol violates the Eighth Amendment to the United States Constitution).

PRAYER FOR RELIEF

For these reasons, Mr. Arthur respectfully requests this Court to:

A. Enjoin Defendants from executing Mr. Arthur with inadequate anesthesia and execution procedures that violate the Eighth Amendment prohibition against cruel and unusual punishment;

B. Enter a declaratory judgment that Defendants' inadequate anesthesia and execution procedures violate the Eighth Amendment prohibition against cruel and unusual punishment; and

C. Grant any further relief as it deems just and proper.

Dated: October 9, 2007

s/ Suhana S. Han

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EXHIBIT A

OFFICE OF THE GOVERNOR

BOB RILEY
GOVERNOR

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STATE OF ALABAMA

September 27, 2007

Mr. Richard F. Allen, Commissioner
Alabama Department of Corrections
AL Criminal Justice Complex
301 South Ripley Street
Montgomery, Alabama 36130

Dear Commissioner Allen:

By my authority under Amendment 38 to the Alabama Constitution, I hereby grant a reprieve of 45 days to Thomas D. Arthur, who is scheduled for execution on this date. The sole purpose of this reprieve is to allow the Alabama Department of Corrections sufficient time to make modifications to its lethal injection protocol. It is my desire that the Alabama Attorney General will make a motion for, and that the Alabama Supreme Court will promptly set, a new date of execution at the expiration of this 45-day period.

Sincerely,

Bob Riley
Governor

BR/rdg

cc: United States Supreme Court
Alabama Supreme Court
Alabama Attorney General Troy King
Suhana S. Han, Esquire

EXHIBIT B

(ORDER LIST: 551 U.S.)

THURSDAY, SEPTEMBER 27, 2007

ORDER IN PENDING CASE

07A272 TURNER, CARLTON A. V. TEXAS

The application for stay of execution of sentence of death presented to Justice Scalia and by him referred to the Court is granted pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.