No. 24-6709

In the

Supreme Court of the United States

BRAD KEITH SIGMON,

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

Execution of Appellant Sigmon Scheduled for March 7, 2025, 6:00 p.m

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

Comes now Petitioner, Brad Sigmon, and states the following in reply to Respondent's Brief in Opposition, filed March 7, 2025 (hereinafter "BIO"):

ARGUMENT

Nothing about Respondent's Brief in Opposition ("BIO") changes the following facts. The South Carolina Department of Corrections ("SCDC") has sworn on four separate occasions to the state supreme court that "lethal injection via a single dose of pentobarbital" was an available method of execution. Once that was disproven by the autopsies of Richard Moore and Marion Bowman, Respondent—who had previously refused to answer whether their single dose was in fact insufficient—was forced to admit that it has always needed twice that single dose to carry out a lethal injection. Respondent now argues that this double dose was their plan all along. This suggestion is belied by their sworn certifications. And the notion that the protocol provides the "basic facts" about the lethal injection drugs that Mr. Sigmon has requested is simply incorrect.

Respondent's claim that Mr. Sigmon lacks standing and has waived his objection because he was forced to make an election two weeks ago or be executed by a method that he "certainly contends is more inhumane," the firing squad, is unavailing. If this Court grants a stay, Mr. Sigmon will not avoid execution but be afforded another election—one that, if he prevails, will be informed by an accurate and complete certification from SCDC. The point of Mr. Sigmon's action is that the state's existing process of certification, objection, and election is inadequate to ensure his state-created right "never" to be put in the very position in which he found himself two weeks ago. In response to the impossible choice that this arbitrary and inadequate process has forced upon Mr. Sigmon, Respondent asks, "What's it to you?" BIO at 11. The answer is *everything*. It is hard to imagine a more compelling injury than an execution that is needlessly more inhumane.

Respondent's suggestion that Mr. Sigmon has delayed in bringing this petition "until the

eve of his execution" is risible, and only underscores why the existing timetable for election is too arbitrary to comply with due process. Mr. Sigmon promptly filed an objection to SCDC's certification in the state supreme court. Mr. Sigmon then sought reconsideration from that court upon receiving the new evidence from Mr. Bowman's autopsy: that the state's single dose of pentobarbital had proven inadequate, which was information SCDC has affirmatively refused to reveal[1]; and that he suffered pulmonary edema. Had Mr. Sigmon not presented this new evidence to the state court, it seems certain Respondent would now be arguing that it is not properly before *this* Court. Moreover, the fact that Mr. Sigmon is forced to seek certiorari and a stay only days before his execution reflects the pell-mell rush forced by the overly compressed, two-week timetable of certification, objection, and election that the state's current process requires.[2]

Respondent's narration of the scope of certification and timetable for election does not engage with the specific events that Mr. Sigmon has identified to show that both have proven arbitrary and inadequate. Instead, Respondent asserts merely that this "process" of objecting to SCDC's certification "was available, and the process worked." BIO at 8. All evidence from three executions is to the contrary. Yes, Mr. Sigmon and those men executed before him have objected to SCDC's certification. They have argued, with evidence that increased with every execution, that Respondent's lethal injection drugs have never worked as SCDC has repeatedly sworn they would. They have argued that the certifications do not provide "the basic facts about the drugs' creation,

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[1] 12:51-13:06, ABC News 4, *Execution witnesses provide startling details on death of Marion Bowman Jr.* (available at: https://www.youtube.com/watch?si=Gx7QpGRUONCRPemx&v=QYdswxKhbc4&feature=youtu.be) (last visited February 25, 2025).

[2] Respondent claims, oddly, that there is inconsistency in arguing that this compressed time frame is inadequate while also requesting information on how the lethal injection drugs are stored because compounded drugs are less stable and effective over time. It is unclear if Respondent is conceding that SCDC's drugs are compounded, or if that are stored improperly, or if they are improperly compounded. Regardless, if Respondent is arguing that a longer time frame for certification, objection, and election would further threaten the viability of SCDC's drugs, that is a significant concession indeed.

quality and reliability" that *Owens* acknowledged the statute and Due Process require. *Owens v. Stirling*, 443 S.C. 246, 298–99, 904 S.E.2d 580, 608 (2024). Despite its recognition of those requirements, however, the state supreme court has not enforced them by obliging SCDC to show that the drugs are not expired, sub-potent, or spoiled. Respondent's assertion that SCDC is complying with the parameters the state supreme court has established is beside the point. The issue is that those parameters are insufficient to protect the purpose of Mr. Sigmon's right of election, thus depriving him of the procedural due process that he is due. Respondent's attempts to recast Mr. Sigmon's claim as one of substantive due process or a right to information are red herrings.

Respondent's reliance on the fact that Mr. Sigmon has been provided the protocol under a protective order is another red herring. BIO at 18. The protocol does not provide the basic facts about the lethal injection drugs—their expiration or beyond-use date, their testing results, and their storage conditions—that he needs to meaningfully exercise his right to elect his method of execution. Nor does the protocol qualify or overwrite SCDC's repeated sworn certifications to the Supreme Court of South Carolina about how its drugs will work.

SCDC has repeatedly claimed that it possesses a "single dose of pentobarbital…of sufficient potency, purity, and stability to carry out an execution successfully using the Department's lethal injection protocol," only to admit just last week that this has not once been true. And information critical to determining whether the second series was needed to bring about death—the "basic facts about the [lethal injection] drug's creation, quality, and reliability, or...the drugs' potency, purity, and stability," *Owens*, 443 S.C. at 292, 904 S.E.2d at 604—is precisely what Mr. Sigmon has repeatedly requested, and what SCDC has been permitted to hide.

This matters. Mr. Sigmon previously "conceded…that execution by lethal injection using a *single* dose of pentobarbital is constitutional if properly administered using reliable and effective

drugs"—a "limited concession" that this Court cited as rendering any further analysis of "the constitutionality of lethal injection…unnecessary." *Owens*, 443 S.C. at 282, 904 S.E.2d at 594 (emphasis added). He has made no such concession concerning lethal injection drugs that are so seemingly unreliable and ineffective that two doses and twenty minutes are required.

Respondent's heavy reliance on the testimony of its expert to assert that there is no significance to lethal injection operating differently than SCDC has repeatedly sworn it would changes the subject. The testimony of one expert saying that a twenty-minute execution involving twice the single dose of pentobarbital and resulting in pulmonary edema is par for the course and even what Respondent intended, invites the question of why Respondent has certified something so very different. Moreover, Respondent's expert is contradicted: Mr. Sigmon has presented expert testimony saying that what Respondent argues is normal is, in fact, physically and pharmacologically impossible. Respondent's insistence that they both be allowed to withhold the basic facts about the quality and reliability of their lethal injection drugs and to dismiss any evidence demonstrating the inadequacy of their certification on the basis of contested facts that go to the heart of whether lethal injection in South Carolina is "more inhumane" than other methods would render Mr. Sigmon's right to elect a nullity.

Finally, Respondent devotes many pages to detailing Mr. Sigmon's crime. Mr. Sigmon admitted his guilt and expressed his deep remorse at his trial. This action would not prevent his execution for this crime. The issue it places before this Court is whether the state's inaccurate and incomplete sworn statements about its execution drugs deprived him of due process as to his statutory right to elect how that execution will be carried out. It is not surprising or outrageous that this right would protect ""a condemned inmate"; this right was created precisely and exclusively for prisoners sentenced to death, to ensure that when that sentence is carried out, they "will *never* be subjected to execution by a method he contends is more inhumane than another method that is

available." *Owens*, 443 S.C. at 298–99, 904 S.E.2d at 608 (emphasis added). Implicit in Respondent's argument is that this right is no right at all, and that due process can be dispensed of when inconvenient. That is an insult to the Constitution that this Court should not countenance.

CONCLUSION

For the reasons stated above and in Mr. Sigmon's petition for writ of certiorari, Mr. Sigmon moves this Court to stay his execution, grant his petition, and remand to the state courts for the provision of procedures for the certification of available methods of execution that, in scope and timetable, ensure the protections of Due Process for Mr. Sigmon's statutory right to elect.

Respectfully submitted,

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