

<b>FAX FILED</b>	
JAN 18 2011	
ON	TENNESSEE
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CRISTI SCOTT, C&M	
DAVIDSON CO. CHANCERY CT.	

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

STEPHEN MICHAEL WEST, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 GAYLE RAY, in her official capacity as )  
 Tennessee's Commissioner of )  
 Correction, et al )  
 )  
 Defendants. )

No. 10-1675-I  
DEATH PENALTY CASE

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO AMEND FINDINGS OF FACT AND TO ALTER OR AMEND JUDGMENT**

COMES NOW the Plaintiff, Stephen Michael West, and, in opposition to Defendants' putative Motion to Amend Findings of Fact and to Alter or Amend Judgment, submits: (1) Defendants have failed to demonstrate any error in this Court's November 22, 2010, order under Rule 59.04, Tenn. R. Civ. P; (2) the record in this case demonstrates that Tennessee's new protocol provisions violate the Eighth Amendment of the United States Constitution and Article 1, § 14 of the Tennessee Constitution; and, (3) Defendants' motion and the new material attached to it, fail to create any material issue of fact regarding whether Tennessee has cured the unconstitutionality of its lethal injection protocol.

Accordingly, as further explained in the accompanying memorandum of law, Mr. West prays this Court enter an order: (1) finding that Defendants have failed to demonstrate any error in this Court's November 22, 2010, decision; (2) finding that based upon the evidence now

before the Court, no material issue of fact precludes an order declaring that Tennessee's new protocol provisions violate the Eighth Amendment of the United States Constitution and Article 1, § 14 of the Tennessee Constitution; and (3) declaring that Tennessee's new protocol provisions violate the Eighth Amendment of the United States Constitution and Article 1, § 14 of the Tennessee Constitution.

In the event that this Court determines that Defendants should be permitted a second opportunity to bring forth evidence how Tennessee's new protocol provisions cure the otherwise unconstitutional protocol, Mr. West alternatively prays this Court enter an order setting an evidentiary hearing on the remanded issue of whether the changes to Tennessee's protocol render it constitutional under the Eighth Amendment of the United States Constitution and Article 1, § 14 of the Tennessee Constitution.

Mr. West further prays for any further relief that this Court finds necessary and just.

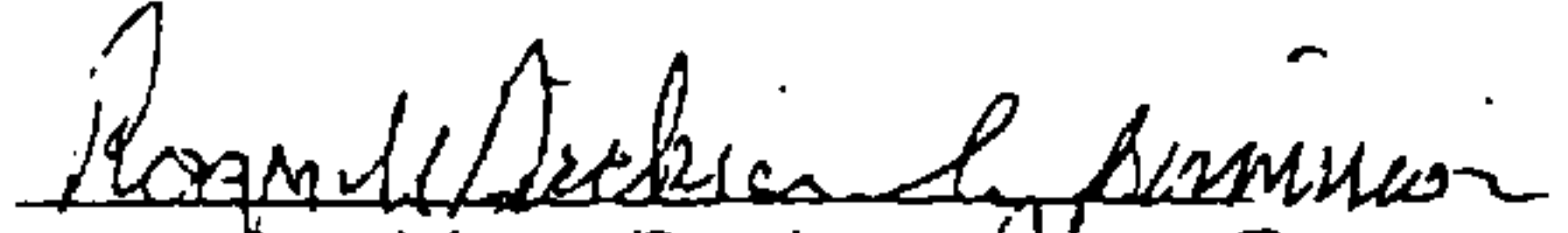
Respectfully submitted,

FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INC.

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**CERTIFICATE OF SERVICE**

I, Stephen M. Kissinger, hereby certify that a true and correct copy of the foregoing document was emailed and hand delivered to:

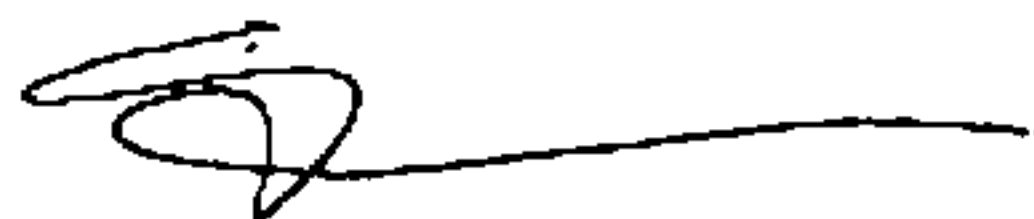
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this the 18th day of January, 2011.

  
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Stephen M. Kissinger