THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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.

MOTION TO LIFT ABEYANCE, DISMISS APPEAL, AND VACATE CIRCUIT COURT ORDER

Daniel C. Plyler
Austin T. Reed
SMITH | ROBINSON
2530 Devine Street
Columbia, SC 29205

Counsel for Director Stirling and SCDC

Thomas A. Limehouse, Jr.
Chief Legal Counsel
Wm. Grayson Lambert
Senior Litigation Counsel
Erica Wells Shedd
Deputy Legal Counsel
OFFICE OF THE GOVERNOR
South Carolina State House
1100 Gervais Street
Columbia, SC 29201

Counsel for Governor McMaster

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Legislative Acts

INTRODUCTION

Earlier this year, Governor McMaster signed into law 2023 S.C. Acts No. 16. Commonly known as a "shield statute," this Act amended section 24-3-580 to prohibit disclosing the identity of anyone who supplies drugs for use in lethal injection. The Act seeks to facilitate the "purchase or acquisition of drugs, medical supplies, and medical equipment necessary to execute a death sentence" by "giv[ing] 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." 2023 S.C. Acts No. 16, §§ 1(D), 1(I).

In light of the protections provided by the shield statute and after making more than 1,300 contacts over the past four months in search of lethal injection drugs, SCDC has now obtained the drugs necessary for carrying out executions by lethal injection. Director Stirling has therefore submitted an affidavit informing this Court that all three methods—lethal injection, electrocution, and the firing squad—authorized by the General Assembly are available for carrying out an execution. *See* S.C. Code Ann. § 24-3-530(A). His affidavit explains that SCDC has obtained the necessary supplies for carrying out executions by lethal injection using a one-drug protocol and that SCDC's policy has been updated to permit the use of a one-drug protocol.

Under this new protocol, SCDC will use a single dose of pentobarbital for lethal injection. This protocol is essentially identical to the protocol used by the Federal Bureau of Prisons and at least six other States. On top of this experience in other jurisdictions, the U.S. Supreme Court has observed that it "is widely conceded" that pentobarbital is "able to render a person fully insensate and does not carry the risks of pain that some have associated with other lethal injection protocols." *Barr v. Lee*, 140 S. Ct. 2590, 2591 (2020). Respondents themselves have invoked *Barr* repeatedly in this litigation, *see, e.g.*, R. p. 78; Resps.' Red Br. 8, 23, 39, 49, and they also have insisted that

a single dose of pentobarbital is "the most reliable and humane way" to carry out an execution. R. p. 113.

That courts have consistently upheld the use of pentobarbital for use in executions by lethal injection should not be a surprise. Respondents have conceded that "there is no question" that "everyone agrees" lethal injection is the most humane method to carry out an execution and that what lawsuits challenging lethal injection "all have in common" is that the condemned inmates "lost." Oral Argument Video 1:01:45–1:02:15, *Owens v. Stirling*, No. 2022-001280 (S.C.) (Blume).

At the same time, recall that Respondents are not challenging capital punishment generally or their death sentences in particular. Instead, they were challenging only how they are to be executed. Now that all three statutorily authorized methods are available to SCDC and Respondents may elect lethal injection, there is nothing left for any court to decide in this case. No declaratory judgment or injunction about electrocution, the firing squad, or Act 43 will change the fact that Respondents can elect lethal injection. In fact, Respondents admitted at oral argument that "if you had . . . lethal injection . . . then yes, most [death row inmates] are going to choose [that method] and they would then have a constitutional method of punishment," so the claims here would no longer be ripe for judicial decision. *Id.* at 1:34:53–1:35:12 (Blume). This case should accordingly be dismissed.

Because the case is moot and Respondents no longer have standing, the Court should vacate the circuit court's order and direct that court to dismiss the case. Vacatur in this situation is the "customary practice," *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 14 F.4th 322, 327 (4th Cir. 2021), as it ensures an appellant has the opportunity at a later time to obtain appellate review of the issues raised in the case, should the need arise, *Byerly v. S.C. Nat'l Bank*

Corp., 313 S.C. 385, 386–87, 438 S.E.2d 233, 233 (1993).

LEGAL STANDARDS

A. Lifting the abeyance

Abeyance is a stay, *see Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989), and the decision to lift a stay is within a court's discretion, *see, e.g.*, *Nat'l Cap. Naturists, Inc. v. Bd. of Sup'rs of Accomack Cnty., Va.*, 878 F.2d 128, 131 (4th Cir. 1989); *United States v. New-Indy Catawba, LLC*, No. 0:21-CV-02053-SAL, 2022 WL 18357257, at *1 (D.S.C. Sept. 15, 2022); *cf. Edwards v. SunCom*, 369 S.C. 91, 95, 631 S.E.2d 529, 531 (2006) (the decision to stay a case is within a court's discretion).

B. Justiciability

"Our courts will not address the merits of any case unless it presents a justiciable controversy." *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018). "Justiciability encompasses . . . mootness[] and standing." *James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010).

A case is moot whenever "a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). Courts "will not decide" such "academic questions." *Id.*

Standing requires a plaintiff to show (1) an injury-in-fact (2) that is traceable to the conduct of the defendant and (3) that will be redressed by a favorable decision. *See ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). Constitutional standing requires plaintiffs to "maintain their personal interest in the dispute at all stages of litigation." *TransUnion LLC v. Ramirez*, 141

S. Ct. 2190, 2208 (2021).

C. Vacatur

An appellate court typically vacates a lower court order when a case becomes moot on appeal for a reason beyond the appellant's control, so that the appellate court is free to consider the questions raised on appeal in the first instance in a future case. *Byerly*, 313 S.C. at 386, 438 S.E.2d at 233; *see also, e.g.*, *Beaufort Cnty. Bd. of Educ. v. Lighthouse Charter Sch. Comm.*, 353 S.C. 24, 29, 576 S.E.2d 180, 182 (2003) ("vacat[ing] the order of the circuit court and dismiss[ing] this appeal as moot"); *Seabrook v. City of Folly Beach*, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999) (vacating part of a circuit court order that became moot on appeal).

ARGUMENT

I. The abeyance should be lifted.

After remanding the issue of discovery on "the State's efforts to procure the drugs for lethal injection and the process it undertook to determine the drugs were not 'available' in South Carolina," the Court held the rest of the appeal "in abeyance pending the circuit court's resolution of the discovery issue." *Owens v. Stirling*, 438 S.C. 352, 361, 882 S.E.2d 858, 863 (2023). Now that SCDC has the benefit of the shield statute and has obtained drugs for use in lethal injections, there is no need for any discovery in circuit court about why SCDC was not able to obtain drugs in the past (not to mention that the shield statute may well preclude disclosure of this information). The previous unavailability of lethal injection drugs is irrelevant because none of Respondents' claims turns on the fact that SCDC was formerly unable to carry out executions by lethal injection. The Court should lift the abeyance so that the Court can finally dispose of this case.

II. The appeal should be dismissed.

Jurisdiction is "the authority to decide a given case one way or the other," and "[w]ithout

jurisdiction, a court cannot proceed at all in any cause." *Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013). Thus, "when [jurisdiction] ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." *Id*.

A. Respondents lack standing to continue pursuing at least two of their claims.

With SCDC having obtained lethal objection drugs, even if Respondents could somehow still show a concrete and particularized injury here, they cannot possibly show how any such injury would be redressable by a court order. The third element of the threshold standing analysis requires that "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (quoting *Lujan*, 504 U.S. at 561). This requires the Court to "consider the relationship between 'the judicial relief requested' and the 'injury' suffered." *California v. Texas*, 141 S. Ct. 2104, 2115 (2021). Here, Respondents sought declaratory and injunctive relief related to electrocution, the firing squad, and Act 43. *See* R. pp. 133–34. But lethal injection is now available, so Respondents can be executed by their preferred method of execution (with their preferred drug, no less[*]), and no declaratory judgment or injunction on other methods of execution can provide Respondents any relief from that ultimate result.

1. Respondents lack standing on their article I, section 15 claim.

Respondents' article I, section 15 claim challenged the constitutionality of electrocution and the firing squad, asserting that these methods constitute cruel, unusual, and corporal

[*] Presumably, Respondents will not reverse course and suggest that they will now elect electrocution or the firing squad, after having spent almost two years challenging the constitutionality of those methods. In any event, if they did pull that about-face and choose either electrocution or the firing squad, they would waive any challenge to the constitutionality of that method. *See Stewart v. LaGrand*, 526 U.S. 115, 119 (1999) ("By declaring his method of execution, picking lethal gas over the State's default form of execution—lethal injection—Walter LaGrand has waived any objection he might have to [lethal gas].").

punishment. *See* R. pp. 20–28, 127–31. They insisted that both methods were more painful than lethal injection, which was their preferred method of execution. *See* R. p. 113.

Now, Director Stirling has informed the Court that Respondents' preferred method is available. Respondents have "concede[d] that lethal injection is constitutional," Oral Argument Video 55:25–55:41, *Owens v. Stirling*, No. 2022-001280 (S.C.) (Blume), so they have no need or legal basis to challenge electrocution or the firing squad. Because they need not elect electrocution or the firing squad, Respondents will face neither of those methods of execution. Thus, any judgment that those two methods are unconstitutional would have no impact on Respondents: No matter what this Court might conclude about the constitutionality of electrocution or the firing squad, Respondents will still be executed by lethal injection. *See Sea Pines Ass'n for Prot. of Wildlife, Inc.*, 345 S.C. at 603, 550 S.E.2d at 292 (no redressability when the result would be the same despite a judicial decision). Respondents thus have no injury from electrocution or the firing squad for the Court to redress, which means that any decision in this case about electrocution or the firing squad would provide nothing more than "advisory guidance," which "the courts of this State have no jurisdiction to issue." *Richland Cnty. Sch. Dist. 2 v. Lucas*, 434 S.C. 299, 306, 862 S.E.2d 920, 924 (2021) (per curiam).

Federal courts have consistently refused to consider constitutional challenges to one method of execution when a condemned inmate has had an option to elect a different method. For instance, the Sixth Circuit said it "need not evaluate the constitutionality of electrocution" because the inmate was "given the option of electrocution and lethal injection." *Stanford v. Parker*, 266 F.3d 442, 462 (6th Cir. 2001). The Eleventh Circuit, in recounting litigation history in the course of deciding whether to grant an Alabama inmate a stay of execution, observed that Alabama's "addition of nitrogen hypoxia served to moot a pending challenge to the constitutionality of

Alabama's lethal-injection protocol." *Woods v. Comm'r, Ala. Dep't of Corr.*, 951 F.3d 1288, 1291 (11th Cir. 2020). And the Ninth Circuit held when death row inmates in California had not "chosen lethal gas as [their] method of execution," they did not have "standing to challenge the constitutionality of execution by lethal gas." *Fierro v. Terhune*, 147 F.3d 1158, 1160 (9th Cir. 1998).

The same principle applies here. Respondents have repeatedly expressed their preference for lethal injection (and by pentobarbital), so they now lack standing to maintain their claim, and South Carolina courts have no need (or basis) to decide the constitutionality of one method of execution when an inmate can select a different method—a method which the inmate has admitted at every juncture of this litigation is constitutional. Plus, for an inmate even to attempt to pursue such an eleventh-hour challenge would smack of the "procedural gamesmanship" that courts have repeatedly condemned, *Sansotta v. Town of Nags Head*, 724 F.3d 533, 547 (4th Cir. 2013), and would be emblematic of the "seemingly endless proceedings" that have kept the State from carrying out a death sentence over the past few years, *Baze v. Rees*, 553 U.S. 35, 69 (2008) (Alito, J., concurring).

2. Respondents lack standing on their choice-between-two-constitutional-methods claim.

Respondents face a similar redressability problem on their claim that Act 43 gives them an absolute "right to elect the manner of their execution." R. p. 131 (internal quotation marks omitted). Section 24-3-530, they contend, requires SCDC to "present a death-sentenced inmate with at least two methods of execution on which he can exercise his statutory right of election," and "for that right to be meaningful, both of the methods presented must be constitutional." R. p. 131. This was the last of Respondents' facial challenges, *see* R. p. 131, and it occupied only a single paragraph in both the circuit court's order and Respondents' merits brief in this Court, *see*

R. p. 37; Resps.' Red Br. 55–56.

For purposes of this Motion, the Court need not consider whether section 24-3-530 already provides an inmate the opportunity to elect between two constitutional methods (it does) or whether Respondents' reading of the statute is consistent with the General Assembly's intent in enacting Act 43 (it isn't). What's clear is that Respondents' choice is lethal injection. *See* R. p. 113. Respondents now may choose that method. If there were some other method they might conceivably choose over lethal injection, Respondents would have surely suggested this other "more-preferred method of execution" earlier in this litigation. *Cf. I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (a litigant cannot "keep[] an ace card up his sleeve" in hopes of using it later in the case to keep his claims alive).

At this point, any judicial decision won't change the outcome: Respondents will be executed by lethal injection. Without the ability for a judicial decision to change the outcome, Respondents cannot establish the redressability prong for constitutional standing. *See Sea Pines Ass'n for Prot. of Wildlife, Inc.*, 345 S.C. at 603, 550 S.E.2d at 292.

B. At least four of Respondents' claims are moot.

1. The ex post facto claim is moot.

The crux of Respondents' ex post facto claim is that "[e]lectrocution and firing squad are less humane than lethal injection," R. p. 80, and they were forced to choose between electrocution and the firing squad. Not any longer. With the enactment of the shield statute and SCDC's most recent efforts with the benefit of that statute, lethal injection is now available.

Respondents themselves have declared that lethal injection is constitutional. *See, e.g.*, Oral Argument Video 55:25–55:41, *Owens v. Stirling*, No. 2022-001280 (S.C.) (Blume). There is no way that they can plausibly claim this now-available method of execution "increases the

punishment" for their crimes. *Jernigan v. State*, 340 S.C. 256, 261, 531 S.E.2d 507, 509 (2000); *see also Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390 (1798) (Chase, J.).

Due to the "intervening event" of the General Assembly's passage of the shield statute, "a judgment rendered by the Court" on the ex post facto claim could not have any "practical legal effect" here because Respondents will still face execution by lethal injection, no matter what the Court might say about the ex post facto claim. *S.C. Ret. Sys. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013); *cf. Bailey v. S.C. State Election Comm'n*, 430 S.C. 268, 274, 844 S.E.2d 390, 393 (2020) (recognizing that legislation can moot claims pending in this Court). This Court thus has no need to decide whether the circuit court correctly decided that Act 43 represents an ex post facto violation or whether the circuit court had it right the first time, when it relied on "well-established law," R. p. 45, to conclude that "[n]othing has changed about" the fact that Respondents "have known for many years that they were to be punished for their crimes by the loss of their own lives," R. p. 44.

2. The vagueness claim is moot.

Respondents alleged that Act 43 is unconstitutionally vague. *See* R. pp. 81–85. Despite initially declaring that Act 43 "on its face can be clearly understood," R. p. 46, the circuit court later decided Act 43 was "so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application," R. pp. 32–33 (quoting *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 598 (2001)).

But like the other claims in this case, the Court no longer needs to reach and resolve the vagueness claim. SCDC is now able to carry out an execution by lethal injection, so no matter how the Court might define "available" in section 24-3-530, lethal injection is "available." What "available" means in this statute—whether it's "present or ready for immediate use," Appellants'

Blue Br. 44, or "accessible, obtainable," Resps.' Red. Br. 51—is merely an "academic" question, *Sloan*, 369 S.C. at 26, 630 S.E.2d at 477. Therefore, this claim is moot.

3. The nondelegation claim is moot.

Related to Respondents' vagueness claim is their nondelegation claim. Respondents complained that Act 43 makes "the Director's determination of whether any given method is available is judicially unreviewable." R. p. 126. Originally, the circuit court determined this claim was "unavailing" and Respondents' position was "lacking in support," R. p. 46, only to reverse course later and conclude the Act's "lack of standards and failure to define the term 'available' renders it an unconstitutional delegation of authority," R. p. 37.

As has become a refrain by this point, the Court does not need to decide the nondelegation claim any longer. All three methods authorized by section 24-3-530 are available. How the Director might define "available" and decide what methods to certify under section 24-3-530(B) in a future case, should SCDC then not be able to obtain lethal injection drugs is, at this stage, merely a hypothetical question. In this case, a decision on the nondelegation claim would not impact Respondents, which renders their claim moot. *See S.C. Coastal Conservation League v. Dominion Energy S.C., Inc.*, 432 S.C. 217, 223, 851 S.E.2d 699, 702 (2020) (dismissing an appeal as moot when the Court's decision "would have no effect on" the litigants but only on "a non-party to this appeal").

4. The statutory-violation claim is moot.

Respondents asserted a "statutory claim" that "whatever 'available' means," SCDC had not fulfilled its obligations under section 24-3-530. R. p. 123. The circuit court did not rule on this claim, *see* R. pp. 34–35, and Respondents did not pursue that claim in this Court, *see generally* Resps.' Br.

"Whatever" Respondents tried to do with this claim below before abandoning it on appeal, *see First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994), it's moot now. The Director has confirmed that SCDC is now able to use all three methods authorized by section 24-3-530(A) to carry out an execution. Therefore, no matter what the standard is for SCDC's "affirmative obligation to make the statutory methods 'available,'" R. p. 123, SCDC has unquestionably met that obligation here. No decision from any court on this abstract (and abandoned) claim could have any impact on Respondents. Any judicial proclamation regarding SCDC's obligations under section 24-3-530 would—like decisions on Respondents' other claims—be merely "academic." *Sloan*, 369 S.C. at 26, 630 S.E.2d at 477.

III. The circuit court's order should be vacated, and the circuit court should be directed to dismiss the case for lack of jurisdiction.

Typically, when a case "becomes moot through circumstances beyond the control of the appellant," "it is the duty of the appellate court to reverse or vacate a judgment." *Byerly*, 313 S.C. at 386, 438 S.E.2d at 233 (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)); *see also, e.g.*, *Calibogue Gardens Dev. Grp., Inc. v. Town of Hilton Head Island*, 296 S.C. 342, 342, 372 S.E.2d 590, 590 (1988) ("Because the issue on appeal is moot, we vacate the order and remand for further proceedings."). Vacating the judgment below "clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance." *Byerly*, 313 S.C. at 386, 438 S.E.2d at 233.

This case exists because SCDC had, for almost a decade, been unable to obtain lethal injection drugs and the General Assembly sought to lift the inmate-imposed moratorium on executions by passing Act 43. But now, with the passage of the shield statute, SCDC is able to obtain those drugs. The decision whether to adopt the shield statute belonged to the General Assembly. *See* S.C. Const. art. III, § 1; *ArrowPointe Fed. Credit Union v. Bailey*, 438 S.C. 573,

581, 884 S.E.2d 506, 510 (2023) (the General Assembly "has plenary authority to make policy decisions on behalf of the state"). Once SCDC had the benefit of the shield statute, SCDC was able to secure the drugs needed for carrying out an execution by lethal injection.

The fact that SCDC has secured those drugs means that Respondents' claims are now moot or that Respondents lack standing to pursue them, which leaves this Court unable to address Appellants' arguments. It would be inequitable to deny Appellants a statutory right of appeal. *See* S.C. Code Ann. §§ 14-3-320; 14-3-330; *cf.* S.C. Const. art. I, § 3 (Due Process Clause). And it would make no sense to leave on the books an order declaring two methods of execution and the State's method-of-execution statute unconstitutional in an ultimately nonjusticiable case while simultaneously foreclosing appellate review of that order, which involves weighty constitutional questions on which this Court should have the final word.

Finally, because Respondents' claims are now moot and they lack standing to assert them, the circuit court lacks jurisdiction over this case. *See Jowers*, 423 S.C. at 353, 815 S.E.2d at 451; *James*, 390 S.C. at 193, 701 S.E.2d at 732. The Court should accordingly direct the circuit court to dismiss the case.

CONCLUSION

For the foregoing reasons, the Court should lift the abeyance, dismiss this appeal as moot and for lack of standing, and vacate the circuit court's order with instructions to dismiss the case. With this case dismissed and all three methods of execution available, the Court can direct its Clerk to issue notices of execution under section 17-25-370. *Cf. Roberts v. Moore*, 332 S.C. 488, 488, 505 S.E.2d 593, 593 (1998) ("it is a ministerial duty of the Clerk of this Court to issue an execution notice").

Respectfully submitted,

s/Wm. Grayson Lambert
Thomas A. Limehouse, Jr. (S.C. Bar No. 101289)
Chief Legal Counsel
Wm. Grayson Lambert (S.C. Bar No. 101282)
Senior Litigation Counsel
Erica W. Shedd (S.C. Bar No. 104287)
Deputy Legal Counsel
OFFICE OF THE GOVERNOR
South Carolina State House
1100 Gervais Street
Columbia, South Carolina 29201
(803) 734-2100
tlimehouse@governor.sc.gov
glambert@governor.sc.gov
eshedd@governor.sc.gov

Counsel for Governor McMaster

s/ Daniel C. Plyler
Daniel C. Plyler (S.C. Bar No. 72671)
Austin T. Reed (S.C. Bar No. 102808)
SMITH | ROBINSON
2530 Devine Street
Columbia, SC 29205
(803) 254-5445
Daniel.Plyler@SmithRobinsonLaw.com
Austin.Reed@SmithRobinsonLaw.com

Counsel for Director Stirling and SCDC

September 19, 2023
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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,

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.

CERTIFICATE OF SERVICE

I certify that *Motion to Lift Abeyance, Dismiss Appeal, and Vacate Circuit Court Order* was served on counsel of record on September 19, 2023, 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.

s/Wm. Grayson Lambert
Wm. Grayson Lambert
Counsel for Governor McMaster