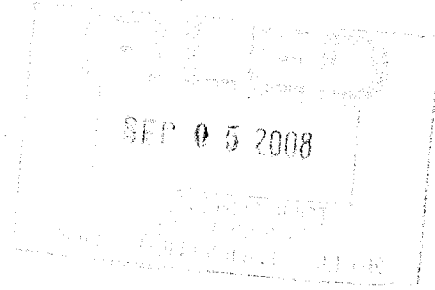


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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DAROLD R. J. STENSON,

Plaintiff,

v.

ELDON VAIL, Secretary of Washington
Department of Corrections (in his official
capacity); STEPHEN SINCLAIR,
Superintendent of the Washington State
Penitentiary (in his official capacity);
MARC STERN, Director of Health
Services (in his official capacity);
CHERYL STRANGE, Office of
Correctional Operations Deputy Secretary
(in her official capacity); WASHINGTON
DEPARTMENT OF CORRECTIONS; and
DOES 1-50,

Defendants.

08-2-02080-8

No. _____

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

Darold R. J. Stenson, by and through his undersigned attorneys for his complaint
against the above-captioned Defendants, alleges as follows:

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF – 1

Perkins Coie LLP
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I. NATURE OF ACTION

1. Plaintiff Darold R. J. Stenson brings this action for declaratory and injunctive relief for violations and threatened violations of his right, under the Washington Constitution, art. I, §§ 14 and 3 of the Washington Constitution, and the Eighth and Fourteenth Amendments to the United States Constitution to be free from cruel and unusual punishment and arbitrary and capricious action caused by the State of Washington's Department of Corrections ("DOC") protocols, procedures and/or actions.

2. Plaintiff is under a sentence of death imposed by the State of Washington. The State of Washington has elected to use lethal injection as the presumptive method of execution, and DOC has enacted a policy by which lethal injections are to be carried out in the State. A death-sentenced inmate in the State of Washington may elect death by hanging.

3. Plaintiff does not in this action challenge his underlying conviction or sentence. Rather, Plaintiff challenges the manner and means by which DOC intends to execute him under its current policy, DOC Policy Number 490.200 (dated June 21, 2007) (the "Policy"), attached hereto as Exhibit A, and any other policy, protocol, or other guideline or practice addressing the method of execution in Washington. Methods of lethal injection that would comply with the United States and Washington constitutions exist and are available for Defendants' use.

4. Lethal injection, as that method of execution is currently administered in Washington under the Policy, unnecessarily risks the infliction of torturous pain and suffering. The nature of the chemicals used by Defendants to effectuate execution by lethal injection, coupled with Defendants' failure to implement sound procedures and guarantee the use of properly-trained and qualified personnel, unnecessarily risks and creates a highly

1 foreseeable probability that Plaintiff will experience excruciating pain and suffering during
2 execution.
3

4
5 5. The alternative elective method of execution, death by hanging, is also
6 unconstitutional under the constitutions of the State of Washington and United States
7 because it unnecessarily risks and creates a highly foreseeable probability that Plaintiff will
8 experience excruciating pain and suffering during execution.
9

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12 6. Furthermore, Defendants' failure to provide a complete set of the execution
13 procedures and an opportunity for Plaintiff to review and object to those procedures violates
14 due process and fundamental fairness guaranteed by the constitutions of the State of
15 Washington and United States.
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20 7. Plaintiff seeks declaratory and injunctive relief to prevent Defendants from
21 carrying out his execution by means of lethal injection, as that method of execution is
22 currently performed in the State of Washington.
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24

25
26 8. Plaintiff seeks declaratory and injunctive relief to prevent Defendants from
27 carrying out his execution by means of hanging, as that method of execution is currently
28 performed in the State of Washington.
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32 9. Plaintiff seeks declaratory and injunctive relief to restrain DOC from carrying
33 out his execution under the Policy and procedures which currently exist.
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35

36 37 **II. JURISDICTION AND VENUE**

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39 10. This Court has jurisdiction pursuant to RCW § 7.24 *et seq.* (declaratory
40 judgments) and RCW § 7.40.010 *et seq.* (injunctive relief). This action arises under the
41 Washington Constitution, art. I, §§ 3 and 14 and the Eighth and Fourteenth Amendments to
42 the United States Constitution.
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1 participate in Plaintiff's execution by virtue of their roles in designing, implementing,
2 preparing for, and/or carrying out the lethal injection process. Plaintiff does not yet know
3 the identities of these persons, but will amend his complaint accordingly upon obtaining that
4 information.
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8
9 **IV. BACKGROUND**

10 19. Plaintiff was convicted and sentenced to death in 1994.

11 20. No execution date is set.

12 21. On April 16, 2008, the United States Supreme Court issued its decision in
13 *Baze v. Rees*, ___ U.S. ___, 128 S.Ct. 1520, 170 L.Ed. 2d 420 (2008), in which a plurality of
14 the Court held that the Eighth Amendment to the United States Constitution is violated when
15 the State subjects an individual to conditions presenting the risk of future harm that are
16 likely to cause serious illness and needless suffering and give rise to sufficiently imminent
17 dangers.
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26 22. The State of Washington's methods of execution create a substantial risk of
27 serious harm and wantonly expose death-sentenced prisoners to objectively intolerable risks
28 of harm for purposes of Article I, § 14 of the Washington Constitution and the Eighth
29 Amendment to the United States Constitution.
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34 23. Alternatives to the State's methods of execution exist that effectively address
35 the substantial risk of serious harm posed by the State's current methods and that are
36 feasible, readily implemented, and in fact significantly reduce a substantial risk of severe
37 pain. The State lacks a legitimate penological justification for adhering to its current
38 methods of execution. By refusing to adopt the available constitutionally sufficient
39 procedures, the State is violating the prohibitions on cruel and unusual punishment set forth
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1 in Article I, § 14 of the Washington Constitution and the Eighth Amendment to the United
2 States Constitution.
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5 **V. GENERAL ALLEGATIONS**

6 24. All prior allegations set forth above are re-alleged as if set forth entirely
7 herein.
8

9 **I. Lethal Injection**

10 25. The State of Washington has elected to use lethal injection as the
11 presumptive method of execution. *See* RCW § 10.95.180(1). Under state law, death
12 sentences “shall be supervised by the superintendent of the penitentiary and shall be inflicted
13 by intravenous injection of a substance or substances in a lethal quantity sufficient to cause
14 death and until the defendant is dead.” *Id.* A defendant may elect death by hanging. *Id.*
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22 26. The statute prescribes no specific drugs, dosages, drug combinations, or the
23 manner of intravenous line access to be used in the lethal injection execution process.
24

25 27. The statute fails to prescribe any certification, training, or licensure required
26 for those individuals who participate in the execution process.
27

28 28. All of the details and methods involved in the execution process are to be
29 determined at DOC’s sole discretion.
30

31 29. The Policy sets forth the protocol by which lethal injections are to be carried
32 out in the State of Washington.
33

34 30. On information and belief, DOC intends to execute Plaintiff by the lethal
35 injection procedure as set forth in the Policy. The Policy, and the manner and means by
36 which lethal injections are currently performed, violate state and federal constitutional
37 provisions that prohibit cruelty, pain, and torture.
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1 31. On information and belief, the lethal injection protocol set forth in the Policy
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3 was adopted without sufficient medical research or review to determine that an inmate
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5 would not suffer a painful death.
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7 **A. The Chemicals Chosen by DOC for Lethal Injection Create an Excessive Risk**
8 **that Plaintiff Will Suffer Excruciating Pain During Execution**
9

10 32. The Policy creates a substantial risk that Plaintiff will consciously experience
11 pain and suffering during execution. Pursuant to the Policy, an “injection team” whose
12 members, titles and qualifications are undefined by the Policy, will administer intravenously
13 a three-drug combination to Plaintiff in the following order: (1) thiopental sodium; (2)
14 pancuronium bromide; and (3) potassium chloride.
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19 **Thiopental Sodium**
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21 33. Thiopental sodium, the first drug to be administered, is an ultra-short acting
22 anesthetic intended to cause temporary unconsciousness, the effects of which wear off
23 quickly. If a sufficient dose of thiopental sodium is not administered properly, the sedative
24 effect will wear off during the execution process, creating a substantial constitutionally
25 unacceptable risk of suffocation from the administration of the subsequently-administered
26 pancuronium bromide and pain from injection of the subsequently-administered potassium
27 chloride.
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35 34. Failure to administer properly the entire dose of thiopental sodium necessary
36 to prevent unconstitutional suffering is a foreseeable consequence of the inadequacy of
37 DOC’s procedures and training as outlined in the Policy. Proper administration of
38 thiopental sodium sufficient to render an adequate depth of unconsciousness is crucial to
39 render the execution humane because the subsequently-administered drugs cause
40 excruciating pain and suffering if injected into a conscious or inadequately sedated person.
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1 If not fully anaesthetized when injected with the pancuronium bromide and the potassium
2 chloride, Plaintiff will experience both conscious paralysis and asphyxiation and an
3
4
5 excruciating burning feeling throughout his veins before dying from cardiac arrest.

6
7 35. The Policy provides that a solution of two grams of thiopental sodium will be
8
9 used in the lethal injection procedure and states that solutions for injection will be prepared
10
11 no more than thirty minutes prior to administering them in the execution. The Policy does
12
13 not outline how the drug will be prepared, or by whom, nor does it reasonably assure that the
14
15 personnel who will prepare and deliver the thiopental sodium have adequate training and
16
17 experience to perform these tasks properly and to do so within the thirty-minute time
18
19 constraint. On information and belief, other states use licensed pharmacists or physicians to
20
21 mix the drugs, including thiopental sodium, for lethal injections.

22
23 36. On information and belief, the two-gram thiopental sodium solution that the
24
25 Policy instructs shall be administered to the condemned inmate is lower than the amounts
26
27 used by many other states.

28
29 37. DOC has chosen to create a substantial and foreseeable risk that Plaintiff will
30
31 be conscious during the administration of the pancuronium bromide and potassium chloride
32
33 by electing to use thiopental sodium. Anesthesiologists typically administer thiopental for
34
35 purposes of temporarily anaesthetizing patients in order to introduce a breathing tube. Once
36
37 the breathing tube has been inserted, other longer-lasting barbiturates are administered to
38
39 maintain the patient at a surgical plane of anesthesia throughout the procedure.

40
41 38. The American Veterinary Medical Association (AVMA) recommends the use
42
43 of a long-acting barbiturate such as sodium pentobarbital in euthanasia, rather than the
44
45 thiopental sodium used in Washington executions of death-sentenced prisoners. *See*
46
47 *American Veterinary Medical Association, AVMA Guidelines on Euthanasia (Formerly*

1 *Report of the AVMA on Euthanasia* (June 2007) at 11, available at
2
3 <http://www.avma.org/issues/animal_welfare/euthanasia.pdf>, last visited August 18, 2008.
4

5 **Pancuronium Bromide**
6

7 39. After the thiopental sodium, Defendants intend to administer 100 milligrams
8
9 of pancuronium bromide. Pancuronium bromide is a neuromuscular blocking agent that
10
11 paralyzes all voluntary muscles, including the respiratory muscles, thereby causing
12
13 asphyxiation. Pancuronium bromide does not diminish cognition, consciousness, or the
14
15 ability to feel pain or suffocation. As a result, if an individual is not fully unconscious when
16
17 pancuronium bromide is administered, that person will experience the physical and
18
19 psychological agony of conscious suffocation, but because of the paralysis, the person will
20
21 be unable to communicate that suffering and the pain will not be visible to an observer.
22

23 40. Pancuronium bromide substantially increases the risk that Plaintiff will be
24
25 conscious during the injection of potassium chloride, an extremely painful drug. Once
26
27 paralyzed by pancuronium bromide, an inadequately anesthetized person will appear to be
28
29 serene and unconscious throughout the execution procedure and will be unable to speak or
30
31 move or otherwise inform the execution personnel that he is conscious and experiencing
32
33 torturous pain. Indeed, administered by itself to a conscious person, pancuronium bromide
34
35 would cause the person to suffocate to death slowly while remaining fully conscious.
36

37 41. Pancuronium bromide serves no medical purpose or legitimate function in an
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39 execution. The chemical is used to prevent the executioners and witnesses from knowing
40
41 whether the condemned inmate is adequately anesthetized. In cases in which the thiopental
42
43 sodium is not successfully delivered to the inmate's circulation and/or the condemned inmate
44
45 is not adequately anesthetized, pancuronium bromide will create the appearance of a serene
46
47 death while masking the fact that the person is experiencing conscious paralysis, suffocation,

1 and the agony of cardiac arrest from the administration of potassium chloride. The use of
2 pancuronium bromide is unnecessary to bring about death. Absent the use of pancuronium
3 bromide, a person undergoing execution would be able to indicate that he was still conscious
4 or had regained consciousness prior to the lethal dose of potassium chloride.
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9 42. On information and belief, pancuronium bromide is banned in most states for
10 use in animal euthanasia because it inhibits the ability to determine if the patient is
11 experiencing pain during the procedure. Washington's statutory and administrative
12 provisions express a strong preference for pentobarbital-based drugs. See RCW §§
13 16.52.011; 69.50.310; WAC §§ 246-886-020 & 246-886-030.
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19 43. Pancuronium bromide substantially and foreseeably increases the risk that
20 Plaintiff will be conscious during the injection of the potassium chloride that follows. Once
21 paralyzed, he will be unable to indicate to the execution personnel that he is conscious and
22 experiencing torturous pain. When pancuronium bromide is administered after an initial
23 dose of thiopental sodium, as the Policy calls for, it creates the real, gratuitous, and
24 unacceptable risk that Plaintiff will be paralyzed by the pancuronium bromide but conscious
25 and able to feel the severe pain caused by the potassium chloride. Administering the
26 combination of thiopental sodium and pancuronium bromide thus creates the
27 unconscionable possibility that Plaintiff will consciously experience the agony of
28 suffocation by the pancuronium bromide and the intense burning as the potassium chloride
29 moves through his veins, followed by cardiac arrest, without being able to indicate that he
30 was still conscious or had regained consciousness.
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43 **Potassium Chloride**

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45 44. The third and final chemical Defendants intent to administer is potassium
46 chloride, an extremely painful chemical which causes death by disrupting the heart's
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1 contractions, leading to cardiac arrest and death. As potassium chloride travels through the
2 bloodstream from the site of injection towards the heart, the chemical activates sensory nerve
3 fibers inside the veins, causing a prolonged and intense burning sensation. In the foreseeable
4 event that a person is not adequately anesthetized throughout the execution procedure, the
5 potassium chloride will cause the person to consciously experience the agonizing pain of this
6 excruciatingly painful chemical coursing through his veins and of cardiac arrest, while being
7 incapable of expressing his suffering due to the paralytic effects of the pancuronium bromide.
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15 45. The AVMA condemns the use of potassium chloride as the sole agent for
16 animal euthanasia. See AVMA Guidelines, *supra*, at 12. If potassium chloride is to be used
17 at all, the AVMA requires the practitioner administering the potassium chloride to have
18 proper training and knowledge to ensure that the euthanized animal has reached a surgical
19 plane, which is characterized by the loss of consciousness, loss of reflex muscle and loss of
20 response to noxious stimuli. The Policy lacks even these basic protections.
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27 46. The Policy states that the amount of potassium chloride to be administered
28 ranges between 1.50 to 2.70 mEq/kg based on body weight, but does not provide how the
29 actual amount to be used is determined, who makes that determination, or the qualifications,
30 credentials, training, or experience of such person or persons.
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35 47. The Policy creates a substantial risk that Plaintiff will not be fully
36 anaesthetized when the potassium chloride is administered and therefore will be conscious
37 and experience torturous pain as a result.
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1 **B. Deficiencies in the DOC's Lethal Injection Protocol Create a Substantial and**
2 **Excessive Risk that Plaintiff Will Suffer Excruciating Pain During Execution**

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4 48. On information and belief, the State of Washington does not use a lethal
5 injection procedure and/or employ safeguards substantially similar to those used by the State
6 of Kentucky. *See Baze v. Rees*, ___ U.S. ___, 128 S.Ct. 1520, 170 L.Ed. 2d 420 (2008).
7

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10 49. The Policy fails to set forth even minimum qualifications for the intravenous
11 execution team; fails to set forth training and practice sessions as required in other states; and
12 fails to set forth a back-up plan in the event of failed intravenous insertion or other errors in
13 administration of the chemicals.
14

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17 50. The lack of training and practice sessions set forth in the Policy and the fact
18 that the State has not executed anyone by lethal injection in over seven years makes it
19 foreseeable that none of the members of the injection team will have sufficiently practiced or
20 performed an execution by lethal injection.
21

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24 51. On information and belief, the State does not select or assemble the lethal
25 injection team until 60 to 90 days prior to the execution date, thereby creating the substantial
26 risk that the members of the injection team will not have adequate training to perform
27 executions in a constitutionally compliant manner.
28

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31 52. The Policy fails to set forth the procedures for establishing properly the
32 intravenous lines through which the lethal solutions will flow. This failure creates a
33 substantial, intolerable risk of serious harm that the drugs will not be properly administered,
34 specifically, that an adequate dose of thiopental sodium will not reach Plaintiff and render
35 him unconscious on a surgical plane of anesthesia, and that therefore Plaintiff will suffer
36 suffocation from the administration of the pancuronium bromide and the excruciating pain
37 akin to fire running through his veins from injection of the potassium chloride.
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1 53. The Policy does not identify who will set the intravenous lines, where and the
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3 manner in which the intravenous lines will be set, the number of lines, or the credentials,
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5 qualifications, training, or experience of such person or persons.
6

7 54. Despite the known and serious risk that improper administration of the drugs
8
9 in the three-drug protocol will result in severe pain and suffering, the Policy fails to require
10 that medical personnel establish the intravenous line, how the intravenous line will be
11 established, or the number of intravenous lines to be established.
12

13 55. The Policy does not provide a time frame during which the intravenous lines
14
15 must be established or a backup plan for vein access in the event that the initial attempt to
16 establish the intravenous lines is unsuccessful. The protocol set forth in the Policy fails to
17 identify whether the intravenous access will be attempted first through peripheral sites, such
18 as arms, hands, or legs, before more invasive measures are attempted.
19

20 56. The Policy does not prohibit the use of "cut downs" to access veins for the
21
22 intravenous lines. A cut down is a painful procedure that involves surgically exposing a
23 vein, inserting a catheter, and closing the skin with suturing, and would be performed prior
24 to the administration of the thiopental sodium.
25

26 57. The Policy does not provide for a backup line to be established in the event
27
28 that the primary intravenous line is blocked or failed, nor does it provide for persons who
29 possess sufficient expertise to insert an intravenous line properly and to be present in the
30 chamber with the inmate to watch for signs of intravenous line problems, such as blockage
31 and infiltration, and what necessary measures to take in the event of such instances.
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33 58. The Policy fails to provide for backup doses of thiopental sodium to be
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35 available in the event that the anesthetic fails to take effect and render Plaintiff sufficiently
36 unconscious.
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1 59. The Policy does not provide for a standard time for the lethal solutions to be
2 administered or how much time should elapse between administration of the solutions.
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4 60. The Policy fails to specify where the injection team and injection team leader
5 are to be located during the administration of the intravenous lethal solutions or how the
6 execution facilities are set up, thereby creating the substantial risk that there will be not be
7 adequate monitoring for purposes of assessing unconsciousness and whether intravenous
8 tubes are and remain properly inserted into veins.
9

10 61. The Policy fails to provide for any method to ensure and monitor that the
11 proper level of unconsciousness is maintained following administering of the sodium
12 thiopental to ensure that an inmate will not experience suffocation or the excruciating
13 burning pain caused by the second and third drugs, *i.e.*, whether the inmate is on the surgical
14 plane of anesthesia prior to administration of pancuronium bromide and potassium chloride;
15 which person or persons would make such an assessment; and that person's or persons'
16 credentials, qualifications, training, expertise and/or experience. In light of the known risk
17 that a person not completely and deeply unconscious will experience torturous pain and
18 suffering as a result of the last two drugs to be administered, the lack of any safeguards
19 creates a substantial intolerable risk of serious harm and wantonly exposes death-sentenced
20 prisoners to that risk.
21

22 62. The Policy does not provide how the syringes containing the lethal solutions
23 will be labeled to ensure that the injection team administers the drugs in the correct order
24 and dosage.
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26 63. The Policy does not provide where or how the lethal solutions will be stored
27 upon arrival to the Washington State Penitentiary to guarantee that the integrity of the
28 chemicals is not compromised prior to the execution.
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1 64. The Policy's inadequate procedures and lack of safeguards for establishing
2 and maintaining the IVs, administering the lethal solutions and maintaining the
3 unconsciousness of the condemned creates a substantial intolerable risk of serious harm to
4 Plaintiff.
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9 65. The Policy delegates the assignment of all staff to be involved in the
10 execution, including the administration of the medical procedures, as well as the
11 determination whether expert advice should be sought as to whether to deviate from the
12 Policy's procedures for inmate-specific physical or medical reasons, to the Superintendent
13 of the Washington State Penitentiary (Superintendent), a position that, on information and
14 belief, does not require any medical certification, training, experience, or knowledge.
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19 66. The Policy lacks any guidelines for injection team members or other
20 personnel to rely upon if they are required to exercise their discretion during the lethal
21 injection process.
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26 67. The Policy provides that briefing and rehearsals are to be conducted only "as
27 necessary" and that an undefined "on-site rehearsal" will be conducted approximately five
28 days in advance of the execution, but fails to provide what will be rehearsed, whether any
29 training will occur in advance of or addition to the rehearsal, and whether and what type of
30 follow-up will take place in the event that the rehearsal reveals deficiencies, difficulties, or
31 flaws with the personnel or procedures.
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36 68. A physical examination of the person is performed only on an "if required"
37 basis, determined by review of the person's medical file. The Policy does not state who is to
38 review the medical file the requirements for that person's credentials or qualifications. The
39 Policy provides that, based upon the medical file review and the physical examination, the
40 Superintendent "may" but need not consult with "appropriate experts" to determine whether,
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1 based on the medical file, any deviation from the policy is advisable. There is no guidance
2 as to what the credentials and qualifications of these "appropriate experts" must be, or
3 whether they must have any experience administering lethal injections. The Policy also fails
4 to provide for a physical examination within the ten-day time period leading up to the
5 execution.
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11 69. The Policy does not provide for any evaluation of the person's psychiatric
12 state.
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15 70. The Policy provides that the Director of Health Services in conjunction with
16 a Plant Manager – positions that are not defined in the Policy – are to conduct an inspection
17 of the lethal injection table to ensure that it is in working order. The current Director of
18 Health Services, Marc Stern, has publicly expressed his objection to being involved in that
19 assessment based on his ethical obligation as a member of the medical community not to
20 invoke death sentences. See Jonathan Martin, "Lethal Injection to be Examined in
21 Washington," *The Seattle Times* (Sept. 26, 2007), available at
22 <http://seattletimes.nwsourc.com/html/localnews/2003903452_lethal26m0.html> (last
23 visited September 4, 2008) (attached as Exhibit B). The Policy does not articulate an
24 alternate method for ensuring that the lethal injection table is in proper working order. In
25 light of the ethical objections by the individual who is supposed to make that confirmation,
26 the Policy creates the foreseeable substantial risk that the table will not be properly
27 functioning and safe for Plaintiff's execution.
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41 71. The Policy fails to provide for a physician to be on stand-by, and does not
42 make any provision for resuscitation in the event that a last-minute reprieve is granted once
43 the execution process has begun.
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1 **II. Hanging**

2 72. All prior allegations set forth above are re-alleged as if set forth entirely
3 herein.
4

5 73. The Policy provides that Plaintiff must choose between lethal injection and
6 hanging as his method of execution. He has not done so.
7
8

9 74. Execution by hanging as practiced in Washington is unconstitutional under the
10 United States and Washington Constitutions. Hanging creates a substantial risk that Plaintiff
11 will consciously experience pain and suffering during execution.
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16 **COUNT I:**

17 **Violation of the Right to be Free from Cruel Punishment and Arbitrary and**
18 **Capricious Procedures Pursuant to Article I, Sections 3 and 14,**
19 **of the Washington Constitution (Lethal Injection)**
20

21 75. All prior allegations set forth above are re-alleged as if set forth entirely
22 herein.
23

24 76. Defendants, acting under color of Washington law, intend to execute Plaintiff
25 in a manner and by methods that will cause unnecessary pain, that do not comport with
26 evolving standards of decency, thereby depriving Plaintiff of his rights under Article I, §§ 3
27 and 14 to the Washington State Constitution to be free from cruel punishment.
28
29

30 77. Although it is possible to conduct executions in a constitutionally compliant
31 manner, Defendants have chosen not to do so. While Defendants could select additional or
32 alternative chemicals and retain qualified medical personnel to administer its chosen
33 chemicals to ensure the constitutionality of its lethal injection procedure, Defendants have
34 acted with deliberate indifference and failed to do so. Defendants' current procedures
35 violate evolving standards of decency.
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COUNT II:

**Violation of the Right to be Free from Cruel and Unusual Punishment
Pursuant to Eighth Amendment
to the United States Constitution (Lethal Injection)**

78. All prior allegations set forth above are re-alleged as if set forth entirely herein.

79. Defendants, acting under color of Washington law, intend to execute Plaintiff in a manner and by methods that will cause unnecessary pain, that do not comport with evolving standards of decency, thereby depriving Plaintiff of his rights under the Eighth Amendment to the United States Constitution, as made applicable to the State of Washington by the Fourteenth Amendment to the United States Constitution, to be free from cruel and unusual punishment.

80. 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.

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COUNT III:

**Violation of the Right to be Free from Cruel Punishment and Arbitrary and
Capricious Procedures Pursuant to Article I, Sections 3 and 14,
of the Washington Constitution (Hanging)**

81. All prior allegations set forth above are re-alleged as if set forth entirely herein.

82. Defendants, acting under color of Washington law, intend to execute Plaintiff in a manner and by methods that will cause unnecessary pain, that do not comport with

1 evolving standards of decency, thereby depriving Plaintiff of his rights under Article I, §§ 3
2 and 14 to the Washington Constitution to be free from cruel punishment.
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4 83. Although it is possible to conduct executions in a constitutionally compliant
5 manner, Defendants have chosen not to do so. While Defendants could select additional or
6 alternative methods of execution to ensure the constitutionality of its procedure, Defendants
7 have acted with deliberate indifference and failed to do so. Defendants' current procedures
8 violate evolving standards of decency.
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15 **COUNT IV:**
16 **Violation of the Right to be Free from Cruel and Unusual Punishment**
17 **Pursuant to Eighth Amendment**
18 **to the United States Constitution (Hanging)**
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20 84. All prior allegations set forth above are re-alleged as if set forth entirely
21 herein.
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23 85. Defendants, acting under color of Washington law, intend to execute Plaintiff
24 in a manner and by methods that will cause unnecessary pain, that do not comport with
25 evolving standards of decency, thereby depriving Plaintiff of his rights under the Eighth
26 Amendment to the United States Constitution, as made applicable to the State of Washington
27 by the Fourteenth Amendment to the United States Constitution, to be free from cruel and
28 unusual punishment.
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30 86. Although it is possible to conduct executions in a constitutionally compliant
31 manner, Defendants have chosen not to do so. While Defendants could select additional or
32 alternative methods of execution to ensure the constitutionality of its procedure, Defendants
33 have acted with deliberate indifference and failed to do so. Defendants' current procedures
34 violate evolving standards of decency.
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