

1 EXPEDITE

2 No Hearing Set

3 Hearing is Set

4 Date: November 20, 2008

5 Time: 9:00 a.m.

6 The Honorable Chris Wickham

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 DAROLD R.J. STENSON,

10 Plaintiff,

11 v.

12 ELDON VAIL; STEPHEN SINCLAIR;
13 MARC STERN; CHERYL STRANGE;
14 WASHINGTON STATE
15 DEPARTMENT OF CORRECTIONS,
and DOES 1-50

16 Defendants.

NO. 08-2-02080-8

DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN RESPONSE TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

17 The Defendants, by and through their attorneys, ROBERT M. MCKENNA,
18 Attorney General, and SARA J. OLSON and JOHN J. SAMSON, Assistant Attorneys
19 General, hereby submit this supplemental memorandum in support of their response to
20 Plaintiff's motion for preliminary injunction. Defendants offer this supplemental
21 memorandum to apprise the Court of recent events in the Washington State Supreme Court.

22 **I. ARGUMENT**

23 On September 30, 2008, Stenson filed an original action, for a writ of prohibition
24 and/or mandamus, in the Washington State Supreme Court. See Stenson v. Vail, et al., WSSC
25 No. 82197-6. In this action, Stenson challenged the automatic re-setting of the execution date,
26 under RCW 10.95.160(2), upon the lifting of the federal court stay. In addition to the motion
for writ, Stenson also filed a motion to stay the execution. On November 7, 2008, an order was

1 entered denying the original action for writ of prohibition and/or mandamus and denying the
2 motion to stay. Exhibit 1, Order, Stenson v. Vail, et al., WSSC No. 82197-6. In light of the
3 Washington Supreme Court's denial of a stay and jurisprudence establishing that a stay
4 "severely prejudices" the State's interests¹ and the interests of the victims², equity requires that
5 Stenson's motion for preliminary injunctive relief in this Court similarly be denied.

6 DATED this 17th day of November, 2008.

7 ROBERT M. MCKENNA
8 Attorney General

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10 SARA J. OLSON, WSBA #33003
11 JOHN J. SAMSON, WSBA #22187
12 Assistant Attorneys General

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24 ¹ In re Blodgett, 502 U.S. 236, 112 S. Ct. 674, 116 L. Ed. 2d 669 (1992)

25 ² Hill v. McDonough, 547 U.S. 573, 584, 126 S. Ct. 2096, 165 L. Ed. 2d 44 (2006) (citing Calderon v.
26 Thompson, 523 U.S. 538, 555, 118 S. Ct. 1489, 140 L. Ed.2d 728 [1998] (State has a compelling interest in the
enforcement of a criminal judgment)).

1 CERTIFICATE OF SERVICE

2 I certify that I served a copy of the foregoing document on all parties or their counsel of
3 record as follows:

- 4 US Mail Postage Prepaid
5 United Parcel Service, Next Day Air
6 ABC/Legal Messenger
 State Campus Delivery
 Hand delivered by

7 TO:

8 SHERILYN PETERSON
9 ELIZABETH D. GAUKROGER
10 PERKINS COIE, LLP
1201 THIRD AVE, SUITE 4800
SEATTLE, WA 98101-3099

11 EXECUTED this 17th day of November, 2008, at Olympia, Washington.

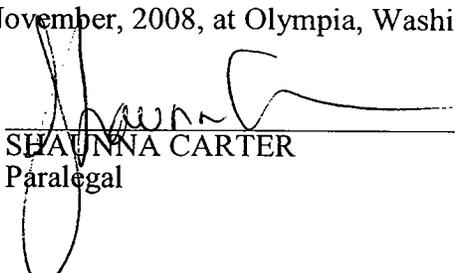
12 
13 _____
14 SHAUNNA CARTER
15 Paralegal
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EXHIBIT 1

THE SUPREME COURT OF WASHINGTON

DAROLD R.J. STENSON,

Petitioner,

v.

ELDON VAIL, et al.,

Respondents.

ORDER

Supreme Court No.
82197-6

FILED
SUPREME COURT
STATE OF WASHINGTON
2008 NOV - 11 A 10 13
BY RONALD R. CARPENTER
CLERK

This matter came before the Court on its November 6, 2008, En Banc Conference and a majority of the Court [Justice Owens recused] having determined that the following order should be entered:

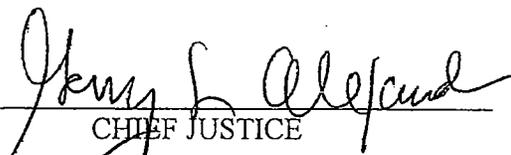
Now, therefore, it is hereby

ORDERED:

That the Original Action Against State Officers for Writ of Prohibition and/or Mandamus, the Motion for Oral Argument, and the Motion for Stay are all denied.

DATED at Olympia, Washington this 17th day of November, 2008.

For the Court,


CHIEF JUSTICE

545/176

EXHIBIT 1