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SUPREME COURT OF ARIZONA

STATE OF ARIZONA,

Appellee,

vs.

DANIEL WAYNE COOK,

Appellant.

Arizona Supreme Court
No. CR88-0301-SP

Mohave County Superior Court
No. CR-9358

MOTION TO STAY EXECUTION

**Execution Scheduled for
August 8, 2012, at 10:00 a.m.**

Daniel Wayne Cook, a death-row prisoner, is scheduled to be executed on August 8, 2012. Mr. Cook has filed simultaneously with this motion a Petition for Review, in which he and the other appellants in that matter ask this Court to review *Cook v. State*, 2012 WL 3055981 (Ariz. Ct. App. July 26, 2012), alleging that the Legislature unconstitutionally delegated all policy-making authority to the Arizona Department of Corrections (“ADC”) through the lethal-injection statute, A.R.S. § 13-757(A).

In the Petition for Review, appellants argue that the Court of Appeals erred in finding an implied guidance in the Eighth Amendment of the U.S. Constitution, and in finding that implication is sufficient to overcome the state constitution's prohibition against one department exercising a power properly delegated to another department.¹ A mere implication of a constitutional principle fails to provide the "reasonably definite standards which govern the exercise of the power" as required by this Court.²

Additionally, appellants argue there that A.R.S. § 13-757(A) creates a vacuum of accountability that allows ADC to evade judicial review of its execution protocols. A statute that provides no guidance gives the courts nothing to review. The result is a neutering of the judiciary with regard to being an actual check on the exercise of power by an executive agency. Although the Court of Appeals correctly recognized this concern, executions that have occurred since this question was before the lower court provide an additional factual basis for a more complete consideration of the issue.

¹Ariz. Const., art. 3.

²*Schechter v. Killingsworth*, 93 Ariz. 273, 285, 380 P.2d 136, 144 (1963).

The legitimacy of the death penalty is dependent upon it being carried out in accordance with constitutional principles. The Court of Appeals recognized that the case raised serious concerns for the separation of powers guaranteed by the Arizona Constitution. It also voiced concern that by its practice of constantly shifting execution protocols on very short notice, the Arizona Department of Corrections created a significant threat to the guarantee of the separation of powers. Such a moving-target tactic by the Department makes realistic, careful judicial review of its protocols all but impossible. But the Court of Appeals affirmed.

This Court's review of what even the Court of Appeals decision rejecting Appellants' challenges concedes raise significant issues will determine whether Mr. Cook's execution may properly proceed, or whether complete power over executions has been impermissibly delegated to ADC, with no judicial ability to check its unconstitutional exercise of authority. It is particularly appropriate for this Court to stay Cook's execution and review this case, because the issue and the concern will likely re-occur in subsequent last-minute circumstances. These are not issues which can be confidently resolved in haste.

In order to litigate this claim prior to his execution, Mr. Cook requires a stay of execution to permit review and decision. Therefore, Mr. Cook respectfully

asks this Court to stay his pending execution.

Respectfully submitted this 6th day of August, 2012.

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/s/ Michael J. Meehan