

### Declaration of Jesse Hernandez

I, Jesse Hernandez, under penalty of perjury, state the following to be true and accurate to the best of my personal knowledge:

1. I served as Chairman and Director of the Arizona Board of Executive Clemency (the "Board") from April 19, 2012, until my resignation on August 16, 2013. I was appointed by Governor Brewer on April 3, 2012, and I swore my loyalty oath of office and was confirmed by the State Senate on April 19, 2012.

2. I was appointed to the Board by Governor Brewer at the same time that Melvin Thomas and Brian Livingston were appointed to the Board. We were appointed to succeed three outgoing members: Chairman Duane Belcher, Member Marilyn Wilkens, and Member Ellen Stensen.

3. The person who initially approached me about a position on the Board was Governor Brewer's Deputy Chief of Staff, Scott Smith. I interviewed with the Executive Clemency Nominating Committee at the end of March 2012, and was informed that I had been chosen by the Governor to serve as Chairman.

4. Soon after I took office, I learned that the Board is not independent from the Governor. Not long after I was sworn in, I was called to the first of several "come to Jesus" meetings with Scott Smith or other individuals representing Governor Brewer. Some of these meetings took place at the Governor's offices. Others took place at various non-office locations, including Starbucks. At this first meeting, Mr. Smith lectured me about Governor Brewer's policy to be tough on crime. He said, "We don't want another Macumber or Flibotte." I immediately understood this to mean that Governor Brewer was directing me not to recommend clemency in high-profile cases.

5. When Mr. Smith made this statement, I was well aware that "Macumber" referred to the high-profile case of Bill Macumber, who had served more than 30 years for a murder many people believed he did not commit. Previous boards voted twice to recommend that he receive clemency, and Governor Brewer twice denied his application. I was aware that the Governor received negative press as a result of her decisions and that Mr. Macumber's brother had complained so vocally at a television news conference that the Governor had been forced to shut it down. I was also aware that "Flibotte" referred to another case in which the previous Board had voted to commute a portion of a sentence of 90 years for offenses of downloading pornography. It was crystal-clear to me that Mr. Smith was telling me that, as the new

Chairman, I was expected to ensure that the Board not recommend clemency in particular kinds of cases, rather than voting according to our consciences.

6. I was also called to several more of these “come to Jesus” meetings with Smith or others from the Governor’s office over the next several months. The meetings coincided with high-profile cases that the Board was scheduled to decide. One involved the Tim Casner case, and another involved Betty Smithey. Again, Smith or the other member of the Governor’s staff would tell me the Governor’s philosophy that she must be tough on crime. I was also told that it was important to stay in line with these views “for the sake of the administration.” The clear implication was that we were not to vote for clemency in the upcoming case.

7. Another reason that the Governor’s message to me was so clear was that the rest of the Board and I were well aware that the three members of the previous Board had been ousted as a result of their pro-clemency votes in the Macumber or other cases. During my time on the Board, the other members understood clearly that they risked losing their jobs if they voted contrary to the Governor’s wishes and forced her to decide a case that she did not want to decide. For instance, I once mentioned to Ellen Kirschbaum that I noticed that she was “always a no” vote. She agreed and stated that the reason was that she would imagine, “What would the Governor think?”

8. Because the Board is not independent from the Governor and members are aware that their jobs are at stake, the Board will *never* vote for commutation of a death sentence. There is not even the tiniest sliver of hope that any death-row prisoner will ever get a majority vote recommendation for clemency. In December of 2012, death row prisoner Richard Stokley was scheduled to be executed. Mr. Stokley wrote the Board a letter stating that he declined to apply for clemency. He explained that he believed that a commutation hearing would be a waste of time because he knew that his application would automatically be turned down. Mr. Stokley had it right: it would be a waste of time for any death-sentenced prisoner to ask this Board for clemency.

9. A couple of months ago, Brian Livingston sent the Board an email to update us that death-row prisoner Edward Schad had received a stay of execution. I overheard members Kirschbaum, Thomas, and Livingston discussing Mr. Schad’s case in the break room. They all agreed that they would not be voting for clemency in his case. Ms. Kirschbaum said something similar to what she had told me before: “I could not put my name on that. What would the Governor think?”

Signed this 23 day of September, 2013, in Maricopa County, Phoenix, Arizona.

  
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Jesse Hernandez

