No. WR-63,549-02

IN THE
COURT OF CRIMINAL APPEALS
FOR THE STATE OF TEXAS

In re Patrick Henry Murphy, Jr.,
Relator.

PETITION FOR WRIT OF PROHIBITION

CAPITAL CASE

MR. MURPHY IS SCHEDULED TO BE EXECUTED ON MARCH 28, 2019.

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Counsel for Patrick Henry Murphy, Jr.

Identity of Parties and Counsel

So the members of this Honorable Court can determine disqualification and recusal, Relator certifies the following is a complete list of the parties and their attorneys in accordance with Texas Rule of Appellate Procedure 52.3(a).

1. Relator

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   Livingston, Texas 77351

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   Houston, Texas 77204-6060

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   University of Houston Law Center
   4604 Calhoun Road
   Houston, Texas 77204-6060

3. Respondents

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   Executive Director
   Texas Department of Criminal Justice
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   Austin, Texas 78701

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Correctional Institutions Division Director
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Huntsville, Texas 77342-0099

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Huntsville Unit Senior Warden
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Huntsville, Texas 77348

4. Counsel for Respondents

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Assistant Attorney General, Criminal Appeals Division
Office of the Attorney General
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Austin, Texas 78711-2548

5. Real Party in Interest

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6. Counsel for Real Party in Interest

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In re Patrick Henry Murphy, Jr.,
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PETITION FOR WRIT OF PROHIBITION

TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

Statement of the Case

Patrick Henry Murphy committed himself to studying and following the teachings of the Buddha almost a decade ago. For the past six years, Rev. Hui-Yong Shih, also known as Gerald Sharrock, has served as Murphy's TDCJ-approved spiritual advisor. Murphy's belief is that he needs to focus on the Buddha at the time of his death in order to be reborn in the Pure Land. The State currently intends to execute Murphy on March 28, 2019. Murphy believes the presence of his spiritual advisor (or another Buddhist priest, acceptable to TDCJ) in

the execution chamber when the State executes him will permit him to maintain this focus, which is required by his faith.

On February 28 – one full month before his scheduled execution – Murphy asked that his spiritual advisor be allowed to accompany him during his execution. On March 5, TDCJ informed Murphy's counsel that while Murphy could choose whether the Christian chaplain is present during his execution, it would not allow Rev. Shih, Murphy's spiritual advisor, to accompany Murphy during his execution. TDCJ explained that it permits only its own employees to be present during executions. Of significance, it appears that the only religious clerics employed by TDCJ are Christian chaplains. This policy favors members of the Christian faith over members of all other faiths. To the extent TDCJ disfavors members of certain religious faiths, like Murphy, the choice for a Texas death-sentenced inmate facing imminent execution who practices a religion other than Christianity is either to have the prison's Christian chaplain present or to have no religious cleric present during his execution.

Murphy's execution pursuant to this policy would clearly violate his rights under both the Free Exercise and Establishment Clauses of

the First Amendment of the Constitution of the United States. Because his claim does not challenge the constitutionality of his conviction or sentence, he has no adequate remedy at law, including no remedy through the petition for writ of habeas corpus. Accordingly, Patrick Henry Murphy respectfully requests this Court issue a writ of prohibition prohibiting TDCJ officials from executing him until they can do so in a manner that does not violate his First Amendment rights.

Statement of Jurisdiction

This Court has the authority to grant an application for writ of prohibition under Article 5, section 5 of the Texas Constitution. Because Murphy's claim does not challenge the legality of his conviction or sentence, but rather challenges the constitutionality of an aspect of the the implementation of his execution, it is properly presented in a petition for a writ of prohibition. *See Ex parte Chi*, 256 S.W.3d 702, 702-03 (Tex. Crim. App. 2008); *Ex parte Alba*, 256 S.W.3d 682, 685-87 (Tex. Crim. App. 2008).[1]

[1] While *Chi* and *Alba* were concerned with the constitutionality of the lethal injection protocol, the claims raised in these cases are similar to Murphy's claim because it does not challenge the lawfulness of his conviction or sentence (though Murphy is challenging the constitutionality of his sentence in parallel litigation).

Issues Presented

Murphy's execution pursuant to TDCJ's policy of excluding non-Christian religious clerics from the execution chamber clearly would violate his rights under both the Free Exercise and Establishment Clauses of the First Amendment of the Constitution of the United States. Because he has no adequate remedy at law, his claims are appropriately raised in this Petition.

Statement of the Facts

On February 21, 2019, Murphy made known to Counsel his desire to have his spiritual advisor, Rev. Hui-Yong Shih, also known as Gerald Sharrock, present in the execution chamber when he is executed on March 28 instead of the TDCJ Christian chaplain who is ordinarily present in the execution chamber during executions. Murphy is an adherent of the branch of Buddhism known as Pure Land Buddhism and has been for almost a decade. Accordingly, Murphy believes it is possible for him, after death, to be reborn in the Pure Land, a place where he could work towards enlightenment. Murphy explained his belief is that he can only achieve this outcome if he is able to focus on the Buddha at the time of his death and that the presence of his

spiritual advisor, who has visited him in this capacity for the past six years, would permit him to maintain the required focus by reciting an appropriate chant (akin to a prayer).[2]

On February 28, 2019 – a full month before Murphy's scheduled execution – Counsel contacted Texas Department of Criminal Justice's ("TDCJ") General Counsel, Sharon Howell. Exhibit A. Counsel informed Ms. Howell of Murphy's desire to have his spiritual advisor present in the execution chamber instead of the prison's Christian chaplain.

Ms. Howell replied to Counsel's email on March 5. Exhibit B. Ms. Howell informed Counsel that Murphy could request the Christian chaplain not be present in the execution chamber but that Rev. Shih could not be in the chamber because TDCJ's policy is that only TDCJ employees can be present in the execution chamber during an execution.

Counsel replied to Ms. Howell on March 7. Exhibit C. In light of TDCJ's policy, Counsel informed Ms. Howell that Murphy would be

[2] Murphy also explained that his religious belief is that his body should not be disturbed for seven days after he is executed and that he had discussed this with his spiritual advisor. Based on his conversation with his spiritual advisor, Relator asked Counsel to request that his body not be disturbed for seven minutes after his execution. TDCJ has agreed to this request.

content to have any Buddhist priest who is a TDCJ employee in the execution chamber if such person exists. Ms. Howell has yet to reply to Counsel's March 7 email. Counsel infers that Ms. Howell's decision not to reply to Counsel's email means either that TDCJ does not employ a Buddhist minister, or that it intends to deprive Mr. Murphy of his right to be accompanied by an advisor of his own faith for some other reason.[3] In either case, it appears the choice for condemned prisoners, like Murphy, is to have the Christian chaplain present in the execution chamber, or to have no member of the clergy present.

Argument and Authority

I. TDCJ's policy demonstrates a clear preference for one religion (Christianity) over all others. Murphy has a clear right to relief pursuant to the First Amendment's Establishment Clause.

The First Amendment of the United States Constitution commands that "Congress shall make no law respecting an establishment of religion." U.S. Const., amend. I. This command is

[3] So as not to run afoul of this Court's Rule 11-003, Counsel files this petition now rather than wait any longer for TDCJ to confirm whether any of its employees are Buddhists ministers who could accompany Murphy in the execution chamber. Should TDCJ subsequently answer Counsel's email and inform Counsel it has in its employ a Buddhist minister who it would allow to and who would agree to accompany Murphy in the execution chamber, Counsel would ask this Court to withdraw this Petition as its claim would have then been rendered moot.

similarly binding on the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The Establishment Clause of the First Amendment prohibits governmental entities from passing laws that prefer one religion over another. *Larson v. Valente*, 456 U.S. 228, 246 (1982). By creating a policy that only employees can be present in the execution chamber, by subsequently employing only Christian chaplains and not religious clerics of other religions, and by making part of its execution protocol that the Christian chaplain or no chaplain will be present during executions, TDCJ has developed a procedure which demonstrates a clear preference for Christianity over other religions.

A law or policy that grants a preference for one religion over another, as does TDCJ's policy, is inherently suspect and strict scrutiny must be applied when determining whether the policy violates the First Amendment's Establishment Clause. *Larson*, 456 U.S. at 246. The policy can only survive this level of scrutiny only if it is narrowly tailored to a compelling interest. *Id.* at 247.

Presumably, TDCJ's policy of allowing only employees in the execution chamber during an execution was enacted, at least in part, to ensure the procedure is secure. Counsel acknowledged as much in his

March 7 email to Ms. Howell. Exhibit C. In Murphy's case, Counsel gave TDCJ ample time to insure there would be no security issues presented by a Buddhist priest accompanying Murphy during the execution. Rev. Shih is not someone who is unknown to TDCJ; he was approved to visit inmates as a spiritual advisor no less than six years ago and has visited Murphy on a regular basis in that capacity since that time. One month would have been more than sufficient for TDCJ to conduct whatever additional security measures it felt necessary to ensure Rev. Shih (or some other Buddhist priest) would not pose a risk during Murphy's execution.

Had Murphy waited until the week before his execution to make this request, it is possible TDCJ's interest in security purportedly served by its policy could be sufficient to survive strict scrutiny. This would be true if TDCJ could demonstrate there was not sufficient time to perform whatever security check would be needed to pre-clear a non-employee. However, in a case where it was given a month to screen either Murphy's spiritual advisor or another Buddhist priest, TDCJ's interest in security is not fitted closely enough to its policy for the policy to survive strict scrutiny.

The United States Court of Appeals for the Eleventh Circuit was recently presented a case almost identical to Murphy's. Dominique Ray had been a committed Muslim since at least 2006. *Ray v. Commissioner*, 915 F.3d 689, 692 (11th Cir. 2019). An imam began visiting him as a spiritual advisor in 2015. *Id.* On January 23, 2019 (fifteen days before he was scheduled to be executed), Ray asked that his imam be present in the execution chamber at the time of his execution instead of the Christian chaplain. *Id.* at 693. Both the warden of the unit and the unit's Christian chaplain informed Ray his imam could not be present in the chamber and that the Christian chaplain would be present despite Ray's request. *Id.* On January 28, Ray filed in the federal district court a complaint pursuant to section 1983 alleging the prison's policy infringed on his rights pursuant to the Establishment Clause and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). *Id.* During district court proceedings, the State agreed to accommodate Ray's request that the Christian chaplain not be present but reiterated his imam could not be present. *Id.* at 694. Under Alabama's policy no one who is not an employee of the state's department of corrections can be present at executions. *Id.* Because the Christian chaplain was the

only religious cleric employed by the department, Ray's only choice was either to have the Christian chaplain present or to have no religious cleric present during his execution. Ray's counsel had argued that Alabama could pre-clear and pre-screen Ray's imam prior to his execution and that this should not be difficult as he had already been approved to serve as a spiritual advisor. *Id.* at 699. Alabama officials stated this was not possible but did not provide any explanation for that answer. *Id.* Nevertheless, the district court found Ray was not entitled to have his execution stayed because he had not shown there was a substantial likelihood he would succeed on the merits of his claims; furthermore, the district court faulted Ray for not making his request sooner. *Id.* at 694.

On appeal, the United States Court of Appeals for the Eleventh Circuit reversed the district court and stayed Ray's execution. The Court found that Alabama's policy furthered a denominational preference. *Ray*, 915 F.3d at 697. The Court acknowledged "that Alabama has a powerful interest in the secure and orderly administration of the death penalty." *Id.* at 698. However, finding Alabama's bare assertion that it could not pre-clear Ray's imam before

the execution insufficient to survive strict scrutiny, the court of appeals found there was a substantial likelihood Ray would succeed on his Establishment Clause claim and stayed his execution. *Id.* at 701, 703.

Alabama asked the Supreme Court of the United States to vacate the stay. In a 5-4 decision, the Court granted Alabama's motion, but did so only because Ray had waited until January 28 (ten days before his scheduled execution) to seek relief in the district court. *Dunn v. Ray*, 139 S. Ct. 661, 661 (2019). Ray had waited until January 23 to make his request that his imam be present, learned that day that his request was denied, and then waited an additional five days to seek redress from the courts. *Ray*, 915 F.3d at 692-93. Justice Kagan, writing for the four members of the Court who dissented from the decision to vacate the stay, wrote that Alabama's policy "goes against the Establishment Clause's core principle of denominational neutrality," and found that the State's interest in security during the election was not sufficiently compelling to survive strict scrutiny when the State refused to explain why it would not be sufficient for Ray's imam to pledge he would "not interfere with the State's ability to perform the execution." *Ray*, 139 S. Ct. at 661-62 (Kagan, J., dissenting). There is nothing in the Court's

ruling that suggests the five members who voted to vacate the stay disagreed with Justice Kagan's analysis except with respect to the issue regarding the timing of Ray's request for an accommodation.

TDCJ's policy is identical to Alabama's in all relevant aspects: the unit's Christian chaplain is present during executions unless the inmate requests otherwise; the department's policy is that only employees can be present during the execution; the department employs no religious clerics other than Christian chaplains; and the effect of these things is that the inmate must choose to have either the Christian chaplain or no spiritual advisor present during his execution.

Just as Alabama did not provide any reason why Ray's imam could not be pre-cleared ahead of his execution, TDCJ has not offered any explanation regarding why it does not believe it cannot pre-clear Rev. Shih (or some other Buddhist minister) ahead of Murphy's execution.

Murphy's case differs from Ray's in only two relevant respects. First, Murphy made his request to TDCJ an entire month before his scheduled execution. By doing so, Murphy gave TDCJ twice the amount of time Ray gave Alabama to address its interest in assuring his

execution is secure. While Ray waited until five days after Alabama confirmed it was denying his request before seeking redress from the courts, Murphy files this request while still waiting confirmation from TDCJ that his request has been denied. (As mentioned above, after being informed on March 5 the TDCJ policy is that only its employees can be present during an execution, Counsel amended his initial request and asked whether TDCJ had any employ who was a Buddhist minister, letting TDCJ know that he would accept another Buddhist priest instead of Rev. Shih. TDCJ has yet to answer this question.) Second, Murphy is filing this Petition and seeking relief because TDCJ has not yet responded to his most recent communication; in other words, although TDCJ has not yet finally denied Murphy's request for the constitutionally-required accommodation, the fact Murphy's counsel has not heard from TDCJ for two weeks has compelled Counsel, out of abundance of caution, to seek judicial relief even though the relevant administrative agency has yet to finally respond.

TDCJ's policy clearly violates the Establishment Clause. Because the principle of law is clear, Murphy's claim is appropriately presented in a petition for a writ of prohibition. *See In re Medina*, 475 S.W.3d 291,

298 (Tex. Crim. App. 2015). Because Murphy's claim cannot be raised in an application for a writ of habeas corpus, he has no adequate remedy at law. *See Chi*, 256 S.W.3d at 702-03; *Alba*, 256 S.W.3d at 685-87.

II. TDCJ's policy unjustifiably interferes with Murphy's ability to practice his religion and therefore violates his First Amendment right to the Free Exercise of religion.

The First Amendment also commands that "Congress shall make no law … prohibiting the free exercise of" religion. U.S. Const., amend. I. Like the Establishment Clause, the Free Exercise Clause's command is binding on the states. *See Cantwell*, 310 U.S. at 303.

TDCJ's policy will prohibit Murphy's ability freely to exercise his religion. Specifically, it will prevent him from chanting with his spiritual advisor at the time of execution in an attempt to stay focused on the Buddha as he believes is required if he is to enter the Pure Land after his execution. The level of scrutiny to be applied when reviewing policies that hinder an individual's ability freely to exercise his religion depends on whether the law is neutral and generally applicable. As Justice Kennedy explained in *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993), "a law that is neutral and of general applicability need not be justified by a compelling government interest

even if the law has the incidental effect of burdening a particular religious practice." *Lukumi Babalu Aye*, 508 U.S. at 531. A law that does not satisfy both of these requirements "must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Id.* TDCJ's policy is not neutral. Because Christian inmates are allowed to have a Christian chaplain accompany them during their executions, the policy does not prohibit a Christian inmate's ability freely to exercise his religion. The policy prohibits only non-Christian inmates from exercising their religion at the time of their execution. Accordingly, the policy is permissible only if it can survive being reviewed under strict scrutiny. As explained in greater detail above, the policy cannot survive strict scrutiny, at least not in cases like Murphy's where TDCJ has been given a month to take whatever measures are necessary to pre-clear a non-Christian cleric.

TDCJ's policy clearly violates the Free Exercise Clause. Because the principle of law is clear, Murphy's claim is appropriately presented in a petition for a writ of prohibition. *See Medina*, 475 S.W.3d at 298. Because Murphy's claim cannot be raised in an application for a writ of

habeas corpus, he has no adequate remedy at law. *See Chi*, 256 S.W.3d at 702-03; *Alba*, 256 S.W.3d at 685-87.

Prayer for Relief

Accordingly, Relator Patrick Henry Murphy respectfully requests that this Court issue an order prohibiting TDCJ officials from carrying out Murphy's execution until they agree to do so in a manner that will not run afoul of his rights pursuant to the First Amendment of the United States Constitution.

Respectfully submitted,

/s/ David R. Dow

David R. Dow
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4604 Calhoun Road
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/s/ Jeffrey R. Newberry

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Tel. (713) 743-6843
Fax (713) 743-2131
Email jrnewber@central.uh.edu

Certification Pursuant to TRAP 52.3(j)

I certify that I have reviewed this petition and have concluded that every factual statements in the petition, except for those detailing Counsel's conversation with Murphy (which were not recorded), is supported by competent evidence included in the appendix, which contains copies of Counsel's email correspondence with TDCJ's General Counsel.

I certify, under penalty of perjury, that the contents of this petition, including the details concerning Counsel's conversation with Murphy, are true.

/s/ Jeffrey R. Newberry

_____

Jeffrey R. Newberry

Certificate of Service

I hereby certify that on the 20th day of March, 2019, I served a true and correct copy of this pleading upon Counsel for Respondents and the Real Party in Interest, Gwen Vindell and Brian Higginbotham via an electronic filing notification sent to Gwendowlyn.Vindell2@oag.texas.gov and Brian.Higginbotham@dallascounty.org.

/s/ Jeffrey R. Newberry

_____

Jeffrey R. Newberry

Certificate of Compliance

I hereby certify that this pleading contains 3,118 words excluding the portions of it allowed to be excluded from the word count by Rule 9.4(i).

/s/ Jeffrey R. Newberry

_____

Jeffrey R. Newberry

Appendix

Exhibit A

From: **Dow, David R** DDow@Central.UH.edu
Subject: spiritual advisor for patrick murphy
Date: February 28, 2019 at 2:09 PM
To: Sharon.Howell@tdcj.texas.gov
Cc: Newberry, Jeff jrnewber@Central.UH.EDU

sharon --

you may be aware that i represent patrick murphy, who is scheduled to be executed on march 28. i am writing about the issue of a spiritual advisor.

murphy is a buddhist. his spiritual advisor is reverend hui-yong shih. murphy would like hui-yong to be present with him in the execution chamber because murphy's faith teaches that, in order to enter into what he understands to be the "pure land," he must focus on the buddha at the time of death, and reverend shih's presence in the chamber would make that possible.

murphy's religion also dictates that the body of a deceased person not be disturbed for seven days after the person has died. we realize asking this of TDCJ is a long shot (but i am nevertheless asking anyway), but, as a fallback position, reverend shih has advised murphy it would suffice to honor this tradition for his body not to be disturbed for seven minutes after he is killed. murphy's believes that the chaplain who is ordinarily present in the execution chamber during executions holds the toe of the person who is being killed until he dies. however, because being touched at the time he dies would violate his belief that his body should not be disturbed, murphy also requests that the chaplain, if present, not touch him.

i am happy to arrange a time to chat about these requests. i think they are reasonable and hope we can address them administratively rather than through litigation.

my usual thanks for your attention,

-- drd

David R. Dow
Cullen Professor, University of Houston Law Center
Rorschach Visiting Professor of History, Rice University
4604 Calhoun Rd., Houston, TX 77204-6060
713-743-2171, DDow@UH.edu
www.davidrdow.com, @drdow
assistant: Lillian A. White, LAWhite@central..uh.edu, 713-743-7674

Exhibit B

From: **Sharon Howell** Sharon.Howell@tdcj.texas.gov
Subject: RE: spiritual advisor for patrick murphy
Date: March 5, 2019 at 9:35 AM
To: Dow, David R DDow@Central.UH.edu
Cc: Newberry, Jeff jrnewber@Central.UH.EDU, Marshall, Edward Edward.Marshall@oag.texas.gov

David –

The presence of the TDCJ chaplain is entirely an inmate's choice, so your request that the chaplain not touch Mr. Murphy is fine. The chaplain does not even need to be present in the chamber if Mr. Murphy would prefer that. We also do not have a problem with the body resting for seven minutes after his death. That timing is consistent with what happens with every execution performed in Texas. We will not agree to let the body rest undisturbed for seven days after death.

We do not permit a non-TDCJ employee be present in the execution chamber during the execution, which precludes Mr. Murphy's spiritual advisor from being present. Mr. Murphy should place his spiritual advisor on his witness list, and that way the spiritual advisor can observe through the window in the witness room. If Mr. Murphy would like to visit with his spiritual advisor prior to the execution, we can provide a time beginning at 3 pm and ending no later than 4 pm on the day of the execution, as we have done for other inmates.

Please let me know if you have any questions or if you have any arrangements that you would like to make.

Sharon Felfe Howell
General Counsel
Phone: 936.437.2141

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From: Dow, David R [mailto:DDow@Central.UH.edu]
Sent: Thursday, February 28, 2019 2:09 PM
To: Sharon Howell <Sharon.Howell@tdcj.texas.gov>
Cc: Newberry, Jeff <jrnewber@Central.UH.EDU>
Subject: spiritual advisor for patrick murphy

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sharon --

you may be aware that i represent patrick murphy, who is scheduled to be executed on march 28. i am writing about the issue of a spiritual advisor.

murphy is a buddhist. his spiritual advisor is reverend hui-yong shih. murphy would like hui-yong to be present with him in the execution chamber because murphy's faith teaches that, in order to enter into what he understands to be the "pure land," he must focus on the buddha at the time of death, and reverend shih's presence in the chamber would make that possible.

murphy's religion also dictates that the body of a deceased person not be disturbed for seven days after the person has died. we realize asking this of TDCJ is a long shot (but i am nevertheless asking anyway), but, as a fallback position, reverend shih has advised murphy it would suffice to honor this tradition for his body not to be disturbed for seven minutes after he is killed. murphy's believes that the chaplain who is ordinarily present in the execution chamber during executions holds the toe of the person who is being killed until he dies. however, because being touched at the time he dies would violate his belief that his body should not be disturbed, murphy also requests that the chaplain, if present, not touch him.

i am happy to arrange a time to chat about these requests. i think they are reasonable and hope we can address them administratively rather than through litigation.

my usual thanks for your attention,

-- drd

David R. Dow
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assistant: Lillian A. White, LAWhite@central..uh.edu, 713-743-7674

Exhibit C

From: **Dow, David R** DDow@Central.UH.edu
Subject: RE: spiritual advisor for patrick murphy
Date: March 7, 2019 at 1:57 PM
To: Sharon Howell Sharon.Howell@tdcj.texas.gov
Cc: Newberry, Jeff jrnewber@Central.UH.EDU, Marshall, Edward Edward.Marshall@oag.texas.gov

sharon --

thanks for getting back to me. i am assuming from your email TDCJ, so far as you are aware, does not have a buddhist priests on its staff; however, if i am mistaken, and there is such a buddhist on the TDCJ staff, then i believe murphy would be content to have him in the chamber.

as i am sure you (and ed, who is also on this thread) are aware, the eleventh circuit faced a similar question in the dominique ray case. i am attaching its opinion to this email. of course, the supreme court ultimately vacated the ca11 case, but only because ray waited too long to raise the issue. we, on the contrary, have raised it in what i believe is ample time for TDCJ to insure there are no security issues presented by a religious figure of murphy's faith accompanying him during the execution.

i think that the current TDCJ policy, as was the case in the ca11 ray case, suggests an establishment clause violation, and as well interferes with murphy's right to the free exercise of religion. so i am hoping there is a solution to this issue short of litigation.

thanks.

-- drd

From: Sharon Howell [mailto:Sharon.Howell@tdcj.texas.gov]
Sent: Tuesday, March 5, 2019 9:35 AM
To: Dow, David R <DDow@Central.UH.edu>
Cc: Newberry, Jeff <jrnewber@Central.UH.EDU>; Marshall, Edward <Edward.Marshall@oag.texas.gov>
Subject: RE: spiritual advisor for patrick murphy

David –

The presence of the TDCJ chaplain is entirely an inmate's choice, so your request that the chaplain not touch Mr. Murphy is fine. The chaplain does not even need to be present in the chamber if Mr. Murphy would prefer that. We also do not have a problem with the body resting for seven minutes after his death. That timing is consistent with what happens with every execution performed in Texas. We will not agree to let the body rest undisturbed for seven days after death.

We do not permit a non-TDCJ employee be present in the execution chamber during the execution, which precludes Mr. Murphy's spiritual advisor from being present. Mr. Murphy should place his spiritual advisor on his witness list, and that way the spiritual advisor can observe through the window in the witness room. If Mr. Murphy would like to visit with his

observe through the window in the witness room. If Mr. Murphy would like to visit with his spiritual advisor prior to the execution, we can provide a time beginning at 3 pm and ending no later than 4 pm on the day of the execution, as we have done for other inmates.

Please let me know if you have any questions or if you have any arrangements that you would like to make.

Sharon Felfe Howell
General Counsel
Phone: 936.437.2141

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From: Dow, David R [mailto:DDow@Central.UH.edu]
Sent: Thursday, February 28, 2019 2:09 PM
To: Sharon Howell <Sharon.Howell@tdcj.texas.gov>
Cc: Newberry, Jeff <jrnewber@Central.UH.EDU>
Subject: spiritual advisor for patrick murphy

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sharon --

you may be aware that i represent patrick murphy, who is scheduled to be executed on march 28. i am writing about the issue of a spiritual advisor.

murphy is a buddhist. his spiritual advisor is reverend hui-yong shih. murphy would like hui-yong to be present with him in the execution chamber because murphy's faith teaches that, in order to enter into what he understands to be the "pure land," he must focus on the buddha at the time of death, and reverend shih's presence in the chamber would make that possible.

murphy's religion also dictates that the body of a deceased person not be disturbed for seven days after the person has died. we realize asking this of TDCJ is a long shot (but i am

nevertheless asking anyway), but, as a fallback position, reverend shih has advised murphy it would suffice to honor this tradition for his body not to be disturbed for seven minutes after he is killed. murphy's believes that the chaplain who is ordinarily present in the execution chamber during executions holds the toe of the person who is being killed until he dies. however, because being touched at the time he dies would violate his belief that his body should not be disturbed, murphy also requests that the chaplain, if present, not touch him.

i am happy to arrange a time to chat about these requests. i think they are reasonable and hope we can address them administratively rather than through litigation.

my usual thanks for your attention,

-- drd

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