

**In The United States District Court
For The Southern District Of Ohio
Eastern Division**

Lawrence Reynolds,	:	Case No. 2:10-cv-00027
Plaintiff,	:	Judge Gregory L. Frost
Mark Brown,	:	Magistrate Judge Terence P. Kemp
Intervenor-Plaintiff,	:	
vs.	:	
Ted Strickland, Governor, et al.,	:	Death penalty case
Defendants.	:	Execution Date: February 4, 2010

**UNOPPOSED MOTION TO INCORPORATE THE ENTIRE
RECORD FROM COOEY V. STRICKLAND, CASE NO. 2:04-CV-1156**

Plaintiff, Mark Brown moves this Court to incorporate the entire record from Cooey v. Strickland, Case No. 2:04-CV-1156 into the present case. The reasons in support of this motion are more fully set forth in the attached Memorandum in Support which is fully incorporated herein.

Respectfully Submitted,

Office of the
Ohio Public Defender

By: /s/ Pamela Prude-Smithers
Pamela Prude-Smithers - 0062206
Chief Counsel, Death Penalty Division
Counsel of Record

By: /s/ Rachel Troutman
Rachel Troutman - 0076741
Assistant State Public Defender

By: /s/ Kimberly S. Rigby
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Counsel for Mark Brown, Plaintiff-Intervenor

MEMORANDUM IN SUPPORT

On January 8, 2010 Plaintiff Lawrence Reynolds filed a complaint in which he alleged that defendant's revised procedures for executing him would violate his constitution rights. On January 26, 2010, Plaintiff Mark Brown filed a motion with this Court requesting to intervene under Rule 24 of the Federal Rules of Civil Procedure. Defendants did not oppose Brown's motion to intervene, and this Court granted Brown's motion. Brown's intervenor complaint was filed on January 28, 2010.

Brown is scheduled to be executed on Thursday, February 4, 2010. Brown is filing, simultaneously with this motion, an emergency motion for a temporary restraining order. In his motion, Brown is requesting this Court to prevent defendants from executing him using the protocol described in Brown's Complaint.

Due to time constraints raised by Brown's impending execution date, counsel for Brown does not intend to present testimony or additional evidence for this Court's consideration. However, Brown requests that this Court incorporate the entire record from Cooey v. Strickland, Case No. 04-CV-1156 to aid in its consideration of Brown's motion. This would include the transcript of testimony and evidence submitted during Kenneth Biros' hearing held before this Court on December 4, 2009 as well depositions conducted regarding Rommell Broom's attempted execution.

Counsel for Defendant has no objection to the incorporation of Cooey's record in the present case. For all of these reasons, and in the interest of justice, Mark Brown respectfully requests that his motion be GRANTED.

Respectfully Submitted,

Office of the
Ohio Public Defender

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CERTIFICATE OF SERVICE

This is to certify that on January 30, 2010, the foregoing UNOPPOSED MOTION TO INCORPORATE THE ENTIRE RECORD FROM COOEY V. STRICKLAND, CASE NO. 2:04-CV-1156 was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: /s/ Pamela Prude-Smithers
Pamela Prude-Smithers – 0062206
Chief Counsel, Death Penalty Division

Counsel for Mark Brown, Plaintiff-Intervenor