

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

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PATRICK HENRY MURPHY,  
*Petitioner,*

v.

BRYAN COLLIER, ET AL.  
*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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**THIS IS A CAPITAL CASE**

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## Capital Case

### Questions Presented

1. When a death-sentenced inmate informs prison authorities a month in advance of his scheduled execution date of his desire to be accompanied during the execution by a religious figure of his faith, and prison authorities neither agree to the inmate's request nor inform him that his request will be denied, is that inmate equitably entitled to a stay of execution to prevent the state from depriving him of his religious liberty?
2. If a state allows a Christian chaplain to be present in the execution chamber for Christian (or other) inmates during their executions, does the Establishment Clause or the Free Exercise Clause or the RLUIPA require that prison authorities allow inmates of other faiths, including Buddhist inmates, to be accompanied by ministers of their respective faiths?
3. If a state implements a policy depriving all religious death row inmates of an opportunity to be accompanied during their executions by a religious figure of their respective faiths solely in an attempt to insulate from constitutional attack a policy denying inmates of only some particular faiths the opportunity for pastoral accompaniment during the execution, does the state's policy evince a hostility to religion forbidden by either the Free Exercise Clause or the Establishment Clause or RLUIPA?

## **List of Parties and Corporate Disclosure Statement**

Petitioner (plaintiff in the district court and plaintiff-appellant in the court of appeals) is Patrick Henry Murphy. Murphy is currently incarcerated under a sentence of death at the Polunsky Unit of the Texas Department of Criminal Justice in Livingston, Texas.

Respondents (defendants in the district court and defendants-appellees in the court of appeals) are Texas Department of Criminal Justice (TDCJ) employees Bryan Collier, Lorie Davis, and Billy Lewis.

Bryan Collier is the executive director of the Texas Department of Criminal Justice. He is being sued in his official capacity.

Lorie Davis is the director of the Correctional Institutions Division of the Texas Department of Criminal Justice. She is being sued in her official capacity. Ms. Davis is the person charged by the trial court's order to execute the judgment of death against Murphy.

Billy Lewis is the senior warden of the Huntsville Unit, the unit at which TDCJ executes inmates. He is being sued in his official capacity. As the warden of the Huntsville Unit, Mr. Lewis is the TDCJ official that supervises Texas executions.

Petitioner is not a corporate entity.

**List of All Directly Related  
Proceedings in State and Federal Courts**

*In re Murphy*, No. WR-63,549-02 (Tex. Crim. App. Mar. 25, 2019)

*Murphy v. Collier*, No. 4:19-cv-01106 (S.D. Tex. Mar. 26, 2019)

*Murphy v. Collier*, 919 F.3d 913, No. 19-70007 (5th Cir. Mar. 27, 2019)

*Murphy v. Collier*, 139 S. Ct. 1475, No. 18A985 (Mar. 28, 2019)

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**Introduction**

Petitioner Patrick Murphy was scheduled to be executed by the State of Texas on Thursday, March 28, 2019. That day, at approximately 9:15 p.m. Eastern time, this Court issued an order requiring either that prison authorities permit Murphy's Buddhist spiritual advisor to accompany Murphy in the execution chamber during the lethal injection, or that Murphy's execution be stayed pending the filing and disposition of a petition for writ of certiorari raising the issue of Murphy's entitlement to be accompanied during the execution by a religious authority from his faith. See Appendix A at a2.

The State of Texas did not execute Murphy that evening. Murphy now files a

petition for writ of certiorari addressing both the issue of whether his request to prison authorities was timely, and whether he is entitled by either the Constitution or federal statutory law to be accompanied during the execution protocol by a Buddhist minister.

### **Opinion Below**

The opinion of the United States Court of Appeals for the Fifth Circuit denying Mr. Murphy a stay of execution is published. A copy is attached as Appendix B.

### **Statement of Jurisdiction**

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### **Constitutional Provisions and Statutes Involved**

The First Amendment of the United States Constitution states, in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....”

42 U.S.C. § 2000cc et seq.: Appendix C

### **Statement of the Case**

A month prior to his scheduled execution, Murphy requested of prison authorities that his Buddhist minister be permitted to accompany him into the execution chamber. Appendix D at a 32. The general counsel for the Texas Department of Criminal Justice (“TDCJ”) responded to Murphy’s counsel’s request, indicating that only TDCJ employees are permitted in the execution chamber. Appendix E at a34. In reply, Murphy’s counsel therefore requested that, if Murphy’s

own minister (who had already been approved for visitation by TDCJ) would not be not allowed into the execution chamber, that another Buddhist minister accompany him. Appendix F at a37.

Eight days prior to Murphy's scheduled execution, prison authorities had not yet replied to Murphy's counsel's request. Accordingly, despite the fact any legal action was arguably not yet ripe, Murphy, out of an abundance of caution, sought relief in state court in order to comply with a state court rule mandating that requests for stays of execution be filed one week in advance. *See Tex. Crim. App. Misc. R. 11-003*, available at <http://www.txcourts.gov/media/208124/miscruleexecution.pdf>. (The state court interprets this one-week requirement as meaning eight days. *See In re Dow*, 460 S.W.3d 151 (Tex. Crim. App. 2015) (Alcala, J., dissenting from the denial of rehearing).)

The state court denied relief. *See Appendix G at a43*. Murphy thereafter sought relief in federal court, pursuant to 42 U.S.C. § 1983. Both the federal district court and the United States Court of Appeals for the Fifth Circuit denied Murphy a stay of execution solely on the basis his request had not been timely. *Appendix B at a27; Appendix H at a59*. Neither the district court nor the court of appeals addressed the merits of Murphy's claim.

As indicated above, this Court granted Murphy's request to be accompanied by a Buddhist minister that evening, issuing an order requiring the State to allow Murphy's Buddhist minister to accompany him in the execution chamber or,

alternatively, staying Murphy's execution pending the filing and disposition of this Petition for Writ of Certiorari. Appendix A at a2. Notably, Justice Kavanaugh's opinion expressly rejected the Fifth Circuit's conclusion that Murphy had waited too long to make his request and was therefore not entitled to equitable relief. Appendix A at a3-a4 n.\*.

The district court had not entered a final judgment on the merits of Murphy's section 1983 action. Following this Court's action on March 28, the district court concluded this Court had effectively resolved the timing question in Murphy's favor, and that court scheduled a conference to address discovery in the underlying action. At this time, discovery in connection with the 1983 suit is ongoing.

### **Reasons for Granting the Writ**

- I. This Court should grant certiorari and summarily reverse the court of appeals to make clear the State's delay in responding to an inmate's request regarding the way in which he is to be executed must be considered when determining whether he is entitled to a stay of his execution.**

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 was to be executed on March 28, instead of the Christian chaplain from TDCJ's Huntsville Unit, 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 achieve this outcome only 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).

Accordingly, on February 28, 2019 – a full month before Murphy’s scheduled execution – Counsel contacted TDCJ’s (“TDCJ”) General Counsel. Appendix D at a32. Counsel informed TDCJ’s Counsel of Murphy’s desire to have his spiritual advisor present in the execution chamber instead of the prison’s Christian chaplain. TDCJ’s Counsel replied to Murphy’s Counsel’s email on March 5. Appendix E at a34. TDCJ’s Counsel informed the undersigned that Murphy could request the Huntsville Unit’s 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 TDCJ’s Counsel on March 7. Appendix F at a37. In light of TDCJ’s policy, Counsel informed TDCJ’s Counsel that Murphy would be content to have any Buddhist priest who is a TDCJ employee in the execution chamber if such person exists. Neither TDCJ’s Counsel nor any other TDCJ official, nor any other State official, replied to Counsel’s March 7 email.

Undersigned counsel could not be certain what this silence meant. TDCJ’s decision not to reply could have meant either that TDCJ employs no Buddhist priests or that it intended to deprive Mr. Murphy of his right to be accompanied by an advisor of his own faith for some other reason. In either case, it appeared the

choice for condemned prisoners, like Murphy, was to have a TDCJ-employed chaplain present in the execution chamber, or to have no member of the clergy present.

Even though his request had yet to be denied, on March 20, 2019, Murphy sought relief in the state courts through a petition for a writ of prohibition filed in the Texas Court of Criminal Appeals (“CCA”). Counsel first filed in the state court to give the courts of Texas an opportunity to address Murphy’s claims. Counsel filed this document without having ever learned from TDCJ that it had denied Murphy’s request because under the CCA’s rules, documents which ask that court to enjoin an imminent execution must be filed eight days before the scheduled execution unless good cause exists for filing on a later date. Tex. Crim. App. Misc. R. 11-003, available at <http://www.txcourts.gov/media/208124/miscruleexecution.pdf>. Five days later, on March 25, at 10:13 pm, the CCA denied Murphy leave to file his petition for writ of prohibition. Appendix G at a43. The Court held Murphy had not shown he had a clear right to relief or that there was no other adequate remedy at law. *Id.* Four judges concurred separately. The concurring opinion indicates those four judges believe Murphy must raise his claim in a complaint pursuant to 42 U.S.C. § 1983, filed in the federal courts. *Id.* at a44-45.

Accordingly, after first attempting to give the state agency charged with carrying out the execution an opportunity to address this issue administratively and thereafter seeking relief in the state court, Murphy filed his federal Complaint pursuant to 42 U.S.C. § 1983 on March 26 – the day following the state court’s

denial of the requested relief. The Complaint alleged that TDCJ's policy violated Murphy's rights pursuant to the First Amendment's Free Exercise and Establishment Clauses and runs afoul of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Accompanying the Complaint, Murphy filed a motion asking the district court to stay his execution.

Without addressing the merits of Murphy's claims, the district court denied Murphy's motion for stay of execution. Appendix H at a59. The district court held that Murphy was not entitled to a stay because he should have known that his request would not be granted long before TDCJ's Counsel informed Counsel that only TDCJ employees can accompany condemned men in the execution chamber. *Id.* at a57. The district court held that Murphy was notified of TDCJ's policy in 2012, when Defendants published the current version of TDCJ's execution procedures. *Id.* Important to the district court's consideration was its apparent belief that Murphy had access to the TDCJ's document pertaining to execution procedures. Based on its belief that Murphy should have known he would need to file a lawsuit as early as 2012, the district court held Murphy was not entitled to a stay. *Id.*

Murphy appealed the district court's decision to the U.S. Court of Appeals for the Fifth Circuit. With respect to whether Murphy should have known as early as 2012 that his request would be denied, Counsel argued, first, that nothing in the record supported a finding that Murphy had access to the document; and second, that even if he had access to that document it was not sufficient to put Murphy on notice that his request would be denied because it suggested he could designate his

TDCJ-approved minister, i.e. Rev. Shih, to accompany him during his execution. Nevertheless, in its opinion denying Mr. Murphy a stay, the court of appeals held that Murphy should have filed sooner because it too believed he had access to Respondents' Execution Procedures document beginning in 2012 and that the document is not ambiguous. Appendix B at a26-27. The Court held that even if Murphy could did not know TDCJ's policy was that only its employees can be present in the execution chamber until March 5 (the date Respondents' General Counsel sent the email included here as Appendix E), that Murphy was dilatory in waiting until March 20 to seek relief in the state court. *Id.* In addressing the issue of timeliness, the court's opinion does not mention that Murphy responded to Respondents' March 5 email on March 7 by asking whether TDCJ employed any Buddhist priests who could accompany him (attached here as Appendix F), nor did the court below acknowledge that Respondents did not respond to Murphy's counsel's inquiry.

In *Hill v. McDonough*, 547 U.S. 573 (2006), this Court held that a court considering a stay of execution pending the disposition of a § 1983 suit must apply "a strong equitable presumption against granting relief where the claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Hill*, 547 U.S. at 584 (quoting *Nelson v. Campbell*, 541 U.S. 637 (2004)). In the wake of the *Hill* decision, federal courts have used their power to dismiss suits that they viewed as dilatory, seeking only a delay in execution. *See, e.g., Rutherford v. McDonough*, 466 F.3d 970 (11th Cir. 2006). While



courts have used *Hill's* presumption that a stay should be denied when the inmate could have acted sooner, it remains unclear what factors should be considered when considering whether a request for a stay of execution is timely.

Counsel believes the issue of inaction by the State, and its effect on the balance of equities in granting or denying a motion for a stay of execution, has never been addressed by this Court. Such dilatory inaction by the State is of central importance in this case. Murphy made his request to TDCJ a full month before he was scheduled to be executed. Two members of this Court have found this amount of time was sufficient for TDCJ to alter its procedures to accommodate Murphy's request without a stay being necessary. Appendix A at a8 ("Murphy's request was made in plenty of time for Texas to fix its discriminatory policy before Murphy's scheduled execution."). It was the State's inaction that made a stay of execution necessary.

- II. This Court should grant certiorari to determine whether when a state allows a Christian chaplain to be present in the execution chamber for Christian (or other) inmates during their executions, the Establishment Clause, the Free Exercise Clause, or the RLUIPA requires that prison authorities allow inmates of other faiths, including Buddhist inmates, to be accompanied by ministers of their respective faiths.**
  - A. Respondents' policy in force at the time Murphy filed his initial Complaint violated the First Amendment's Establishment Clause because it was not neutral between religions.<sup>1</sup>**

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<sup>1</sup> On April 2, 2019, Respondents amended their execution protocol. This amendment is addressed in Part III (as well as in the ongoing litigation in the district court). Under the new policy, no chaplains or spiritual advisors are allowed to accompany an inmate during his execution. Appendix I at a69. Under state law, however, Respondents are able to change their execution procedures without any

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 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 or more religions over others. *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 and Muslim chaplains and not religious clerics of other religions, and by making part of its execution protocol that a TDCJ-employed chaplain or no chaplain will be present during executions, TDCJ developed a procedure which demonstrates a clear preference for Christianity and Islam over other religions.

A law or policy that is not neutral between religions, like the TDCJ policy Murphy challenged, 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 survive this level of scrutiny only if it is narrowly tailored to a compelling interest. *Id.* at 247.

Respondents argued their policy of allowing only employees in the execution chamber during an execution was enacted to ensure the procedure is secure. Counsel acknowledged as much in his March 7 email to TDCJ’s Counsel. Appendix

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notice and at any time, and they therefore could, should they desire, return to their previous procedure whenever state officials so choose.

F at a37. Murphy concedes the state's interest in having a secure execution procedure is compelling. However, that Respondents have a compelling interest is not enough. Their policy must be narrowly tailored. Because of this requirement of narrow tailoring, the sole question relevant to the issue of timing in Murphy's case is whether his request was made in time for Respondents to address their interest in security and whether the TDCJ's interest in having a secure execution protocol can support its decision to grant access to the execution chamber to Christian ministers (and perhaps Muslim imams as well), but not to religious authorities of other faiths.

In Murphy's case, Counsel gave TDCJ ample time to ensure there would be no security issues presented by a Buddhist priest accompanying Murphy during the execution. Moreover, 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.

Given the opportunity to explain why one month was not ample time to protect their security interests, Respondents asserted that a person who is not a TDCJ employee

could pull the intravenous lines out of the condemned, thereby interrupting the execution. The person could taunt the victim's family and friends, causing immense emotional harm. The person could create a disruption or assault the warden or TDCJ chaplain inside the execution chamber. The person could attempt to gain access to the execution team and jeopardize exposing their identities. Any of these actions would require the opening of the execution chamber door, which is an unacceptable security risk, and the intervention of correctional staff and/or peace officer.

Counsel do not dispute Respondents have an interest in preventing all of these things from happening. Nevertheless, that TDCJ has taken steps to vet Christian ministers in order to preclude these occurrences, but not members of other faiths, reflects a partiality toward Christians, in violation of the Constitution. TDCJ cannot defend this preference for Christianity under the facts of this case, because one month was a sufficient amount of time for Respondents to screen a Buddhist priest, whether Rev. Shih or one of Respondents' choosing, so that they could be confident this person would not cause any of potential disruptions enumerated above.

In March, when Murphy initially sought relief from the district court, Respondents defended their policy by filing a conclusory affidavit asserting that their interest in preventing any of these potentially disruptive actions can be accomplished only if they are allowed to hand-pick only people who have displayed “years of devoted service” to TDCJ. The soundness of that assertion is presently an issue being litigated in the district court. It is clear, however, that a policy that nakedly prefers Christianity and the rights of Christian inmates over other faiths and the adherents of other faiths cannot be sustained on the basis of a mere assertion. *See Dunn v. Ray*, No. 139 S. Ct. 661, 662 (2019) (Kagan, J., dissenting) (“The only evidence the State has offered is a conclusory affidavit stating that its policy ‘is the least restrictive means of furthering’ its interest in safety and security. That is not enough to support a denominational preference.”). In fact, in the course of the currently ongoing proceedings in the district court, Respondents have

admitted that a person was allowed to be present in the execution chamber after being employed by TDCJ for only three and a half months. Murphy's minister, Rev. Shih, has displayed six years of devoted service to inmates inside TDCJ facilities.

**B. Respondents' policy (both the version in force at the time Murphy filed his initial Complaint as well as the current version) unjustifiably interferes with Murphy's ability to practice his religion and therefore violated 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 prohibits Murphy's ability freely to exercise his religion. Specifically, it would have prevented 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.*; see also *Masterpiece Cakeshop v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719 (2018). TDCJ’s policy is not neutral. The version of the policy in force at the time Murphy filed his initial Complaint showed a preference for Christianity over all other religions because Christian inmates were allowed to have a Christian chaplain accompany them during their executions. This version of the policy did not prohibit a Christian inmate’s ability freely to exercise his religion. The policy prohibited only non-Christian inmates from exercising their religion at the time of their execution. The new policy, which prohibits chaplains and spiritual advisors of all faiths from accompanying inmates in the execution chamber is not neutral because it is hostile toward religion generally. See *infra* Part III.

Accordingly, the policy is permissible only if it can survive strict scrutiny, which it could not, at least not in cases like Murphy’s where Respondents were given a month to take whatever measures are necessary to pre-clear a non-employee cleric.

**C. If the Court believes Respondents’ policy does not interfere with Murphy’s rights pursuant to the Free Exercise Clause, it should nonetheless find the policy violated the RLUIPA.**

If this Court believes that Respondent’s policy is now neutral between religions, it should nonetheless find that the policy violates the RLUIPA. Regardless of whether a law is neutral between religions, it violates the RLUIPA if it imposes a substantial burden on religious exercise without furthering a compelling interest. *Cutter v. Wilkinson*, 544 U.S. 709, 715 (2005). The Court need not believe Murphy’s religion compels him to chant at the time he is executed to find Respondents’ policy that prevents him from doing so violates the RLUIPA. See *Burwell v. Hobby Lobby*

*Stores*, 573 U.S. 682, 696 (2014) (quoting 42 U.S.C. § 2000cc-5(7)(A)). Accordingly, if the Court believes TDCJ's previous policy did not violate Murphy's rights pursuant to the Free Exercise Clause because Murphy's chanting with a Buddhist priest at the time of his death is not something he is compelled to do by his religion<sup>2</sup> and that the new policy does not violate the Free Exercise Clause because it is neutral, the Court should nevertheless find TDCJ's policy (both the version in force at the time Murphy filed his initial Complain and the version presently in force) violates the RLUIPA.

**III. This Court should grant certiorari to address whether a state's policy evinces a hostility to religion forbidden by either the Free Exercise Clause or the Establishment Clause or RLUIPA when that policy deprives all religious death row inmates of an opportunity to be accompanied during their executions by a religious figure of their respective faiths solely in an attempt to insulate from constitutional attack a policy denying inmates of only some particular faiths the opportunity for pastoral accompaniment during the execution.**

On April 2 (five days after this Court stayed Murphy's execution), Respondents amended the execution procedures in an attempt to insulate those execution procedures from constitutional attack. Under the amended procedures, no chaplains or spiritual advisors are permitted to accompany the inmate in the execution chamber. Appendix I at a69. Notwithstanding this change, the new policy is not neutral between religions. Specifically, under the new policy, after Mr. Murphy is transported to the Huntsville Unit (the unit in which TDCJ executes

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<sup>2</sup> Counsel believe the Court should find Murphy's religion does compel him to engage in this activity because this is what Murphy believes he needs to do to maintain the focus that is required for him to enter the Pure Land after he is executed.

inmates) on the day of his execution, Rev. Shih would only be allowed to visit him during a one-hour window from 3:00 to 4:00 pm. *Id.* The new procedures do not similarly restrict TDCJ's Christian chaplains, who are permitted to communicate with condemned men from the minute they arrive at the Huntsville Unit until the minute they enter the execution chamber. (Whether these new policies in fact achieve neutrality is an issue being litigated at this time in the district court.)

In any event, even if the new procedure were neutral among religions, it would nonetheless run afoul of the First Amendment's protections because its enactment displays a hostility toward all religion. For more than half a century, this Court has interpreted both the Free Exercise Clause and the Establishment Clause as precluding the state from acting in a manner that evinces hostility to religion, even where that hostility is directed at all, rather than merely some, religious faiths. *See, e.g., Am. Legion v. Am. Humanist Ass'n*, Nos. 17-1717 & 18-18, 2019 WL 2527471, at \*4 (U.S. June 20, 2019) (noting removal of a cross memorializing World War I veterans which has been in place for nearly a century would be viewed as "a hostility toward religion that has no place in our Establishment Clause traditions" (citing *Van Orden v. Perry*, 545 U.S. 677, 704 (2005) (Breyer, J., concurring)); *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (noting Establishment Clause forbids hostility to any religion); *Masterpiece Cakeshop*, 138 S. Ct. at 1731 (2018) (if the government "is to respect the Constitution's guarantee of free exercise, [it] cannot impose regulations that are hostile to the religious beliefs of affected citizens"); *Lukumi Babalu Aye*, 508 U.S. at 534 (1993).



## Conclusion and Prayer for Relief

Petitioner requests this Court either: (1) grant certiorari, summarily reverse the judgment of the court of appeals, and hold Murphy's application for stay of execution was timely made; or (2) hold this Petition pending the completion of the ongoing section 1983 litigation in the district court addressing the constitutional and statutory issues raised by the TDCJ's current policy.

DATE: June 25, 2019

Respectfully submitted,

/s/ David R. Dow

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