IN THE SUPREME COURT OF FLORIDA

No. 92,475

LARRY HELM SPALDING, Capital Collateral Representative; NORMAN PARKER, JR; DAN EDWARD ROUTLY; ERNESTO SUAREZ; DANIEL KARR JOHNSON and ROBERT PEEDE,

Petitioners,

v.

RICHARD L. DUGGER, Secretary, Department of Corrections, State of Florida; THE HONORABLE FREDRICKA G. SMITH, Judge, Eleventh Judicial Circuit in and for Dade County; THE HONORABLE CARVEN ANGEL, Judge, Fifth Judicial Circuit, in and for Marion County; THE HONORABLE HUGH D. HAYES, Judge, Twentieth Judicial Circuit, in and for Collier County; THE HONORABLE GILES P. LEWIS, Judge, Fourth Judicial Circuit, in and for Clay County; and THE HONORABLE MICHAEL CYCMANICK, Judge, Ninth Judicial Circuit, in and for Orange County,

Respondents.

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PETITION FOR EXTRAORDINARY RELIEF,
FOR A WRIT OF PROHIBITION,
AND FOR A WRIT OF MANDAMUS

LARRY HELM SPALDING
Capital Collateral Representative

OFFICE OF THE CAPITAL COLLATERAL
REPRESENTATIVE
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I. INTRODUCTION

Petitioner Larry Helm Spalding is the Florida Capital Collateral Representative, charged with the responsibility of "represent[ing] . . . any person convicted and sentenced to death in the state who is without counsel . . . due to his indigency . . ." Petitioners Norman Parker, Dan Routly, Ernesto Suarez, Daniel Johnson, and Robert Peede are all individuals incarcerated at the Florida State Prison and under sentence of death against whom death warrants have been signed. It is Petitioner Spalding's duty to assist in providing, and Petitioners' Parker's, Routly's, Suarez's, Johnson's, and Peede's right to receive a full, fair, and adequate opportunity to seek to vindicate their constitutional rights pursuant to the post-conviction process established under Article V, sec. 3(b)(9), Fla. Const., Fla. R. App. P. 9.030(a)(3), and Fla. R. Crim. P. 3.850. See, e.g., Holland v. State, 503 So. 2d 1250 (Fla. 1987). Florida's constitution and laws, Holland, supra; Fla. R. Crim. P. 3.850; Article V, sec. 3(b)(9), Fla. Const.; Fla. R. App. P. 9.030(a)(3), as well as the federal constitution guarantee Petitioners Parker, Routly, Suarez, Johnson, and Peede that opportunity. See Michael v. Louisiana, 350 U.S. 91, 93 (1955)(Due Process Clause guarantees defendant "a reasonable opportunity to have the issue as to the claimed right heard and determined by the state court."), quoting Parker v. Illinois, 333 U.S. 571, 574 (1948); Case v. Nebraska, 381 U.S. 336, 337 (1965)(Clark, J., concurring) (federal constitution guarantees defendant "adequate corrective [state-court] process for the hearing and determination of [his] claims of violation of federal constitutional guarantees); see also id. at 340-47 and nn.5-6 (Brennan, J., concurring)(same).

The right to such an "adequate opportunity" and "adequate corrective process" is what the petitioners seek pursuant to the post-conviction process established by the above cited rules and

standards. As it is, however, although their lives hang in the balance, and although they are undeniably entitled to the opportunity to seek to vindicate their rights pursuant to that post-conviction process, it will be the issuance of their death warrants which will define the type of justice they receive. The unprecedent signing of nine (9) death warrants, all applicable during the same period of time, has made it absolutely impossible for these Petitioners to receive even a semblance of the post-conviction due process to which they are entitled. No policy countenances such a result; due process and equal protection of law do not countenance such an outcome.

Florida's Governor's stated "policy" is to issue death warrants as soon and as frequently as possible in order to "keep the pressure on" capital defense attorneys. Under the "policy" any inmate who is denied relief at any "step" in the post-conviction process may, without warning, receive a death warrant. Such a "policy" would be onerous enough -- one would think rational people would not want to see a capital criminal justice system operated in the pressure-cooker atmosphere created by such a policy. Even under the stated "policy," however, there should have been no death warrants issued against three of the five Petitioners: Mr. Parker, Mr. Routly and Mr. Johnson were already litigating their post-conviction actions before the appropriate circuit courts.

The five executions discussed herein, along with four (4) additional executions, were all set, without warning, during a fifteen-day period commencing April 21, 1988. The setting of nine (9) executions, all applicable during the same time period, has made it impossible for any of the Petitioners represented by Petitioner Spalding to receive the representation to which they are entitled. Simply put, the post-conviction process will fail in these cases -- unless the relief sought herein is granted. The instant extraordinary request is being made because, due to

the unprecedent number of executions now scheduled during this same period of time, the Office of the Capital Collateral Representative ("CCR") cannot properly represent any of the Petitioners: CCR's budget has been completely depleted, and the agency does not now even have the funds with which to send attorneys to the applicable circuit courts; the scheduling of five (5) evidentiary hearings in the under warrant cases during the next four (4) weeks, and two (2) additional evidentiary hearings in other circuit courts and an oral argument in this Court set in non-warrant cases all during the same four week period, make it absolutely impossible for counsel for these Petitioners to even appear at hearings, much less to properly represent the Petitioners during the pendency of their death warrants.

The Governor has now made clear that he will ignore even his own stated "policy" and that his authority to issue death warrants will be exercised through sheer whim. Notwithstanding his stated "policy," his actions have now made it clear that Florida's capital post-conviction criminal justice system will be governed by no policy at all; rather, the system will be operated precisely by the irrationality, arbitrariness, and capriciousness which the courts have long condemned. See Gregg v. Georgia, 428 U.S. 153, 188 (1976); see also Davis v. Dugger, 829 F.2d 1513 (11th Cir. 1987). Florida's capital post-conviction criminal justice system is now controlled by an individual who has been provided with death warrant signing authority but who follows no policy in the exercise of that authority other than what can only be characterized as the random and wanton "str[iking of] lightning." Gregg, 428 U.S. at 188. The Petitioners have no recourse but to request that this Court take corrective action; each Petitioners' right to full and fair post-conviction adjudication shall be lost if the Petitioners are to be forced to litigate their cases during the pending death warrants.

Petitioners have been "struck by lightning." They are five (5) of the eight (8) individuals against whom death warrants are presently outstanding. Nine (9) death warrants were outstanding last week, a record number. Other death warrants were outstanding even during the two weeks when those now pending were signed. Of the last twenty-one (21) death warrants signed this year by this Governor, ten (10) involved individuals who, like Mr. Parker, Mr. Routly, and Mr. Johnson were litigating their cases before a court at the time the death warrant was signed; five (5) involved individuals, like Mr. Suarez and Mr. Peede, whose two-year time limitation period under Rule 3.850 had not yet expired.

As will be discussed below, however, the timing of the litigation of these cases should be directed by the Judiciary, not by the Governor's death warrants. In short, this Court is authorized to and should stay these arbitrarily directed executions, see, e.g., State v. Crews, 477 So. 2d 984, 985 (Fla. 1985); State v. Schaeffer, 467 So. 2d 698, 699 (Fla. 1985), and should issue writs prohibiting circuit courts from forcing counsel into evidentiary hearings which simply cannot be conducted under the onerous schedule with which the Petitioners must now deal.

The law allows the mechanism pursuant to which Messrs. Parker, Routly, Suarez, Johnson, and Peede may seek to vindicate their rights. See Fla. R. Crim. P. 3.850. The Legislature has provided counsel, see Fla. Stat. sec. 27.701, et. seq. (1985), and thus promised Messrs. Parker, Routly, Suarez, Johnson and Peede the assistance of an advocate in that process. It should all work. However, the process will fail in Petitioners' cases, unless this Court exercises its lawful authority to stay these executions, and to permit Petitioners to properly present their claims. Due process, equal protection, the sixth amendment, and the eighth amendment's "need for reliability in the determination

that death is the appropriate punishment," Woodson v. North Carolina, 428 U.S. 280, 304 (1976), countenance no less. This Court should not allow human beings to be put to death before they have had full, fair, and proper opportunities to be adequately heard. Messrs. Parker, Routly, Johnson, Suarez, and Peede, because of circumstances entirely beyond their control, will be denied that opportunity should they be forced to litigate their post-conviction actions during the pendency of the current death warrants for the Governor's actions have now denied Messrs. Parker, Routly, Johnson, and Peede any reasonable opportunity to seek to vindicate his rights. This Court's duty to assure that justice is done in the criminal justice process cannot be squared with such a result.

Pursuant to Rules 9.030(a)(3) and 9.100 of the Florida Rules of Appellate Procedure, therefore, Petitioners, Spalding, et al., therefore herein respectfully urge that this Court: 1) issue stays of execution and order Respondents not to proceed on evidentiary hearings involving Petitioners until after July, 1988, when the new fiscal year begins and the Office of the Capital Collateral Representative is re-funded; 2) direct the Respondent courts to enter stays of execution and order the Respondents not to proceed on evidentiary hearings involving the Petitioners until after July, 1988, when the new fiscal year begins and the Office of the Capital Collateral Representative is re-funded; or 3) order the Respondent courts to enter stays of execution unless the appropriate Boards of County Commissioners agree to pay the expenses incurred by the Office of the Capital Collateral Representative in the course of representing Petitioners, and provide the needed funds forthwith in order for CCR to be able to meet travel and other costs associated with the litigation of these cases.

II. JURISDICTION

This is an original action under Rule 9.100(a) of the Florida Rules of Appellate Procedure. This Court has original jurisdiction pursuant to 9.030(a)(3) thereof and Article V, sec. 3(b)(8) of the Florida Constitution.

III. STATUS OF PETITIONERS

Larry Helm Spalding is the Florida Capital Collateral Representative, appointed by the Governor of Florida pursuant to Fla. Stat. sec. 27.701 (1985). As required by legislative mandate, the Capital Collateral Representative is responsible for representing Florida death-sentenced inmates who are indigent and whose direct appeal proceedings have terminated. Sec. 27.702, Fla. Stat. (1985).

Norman Parker filed a Rule 3.850 motion challenging his conviction and sentence of death in the Eleventh Judicial Circuit. Following the signing of a death warrant in his case on April 21, 1988, which set his execution for June 22, 1988, Mr. Parker filed in circuit court an Emergency Application for Stay of Execution, and Consolidated Request of Evidentiary Hearing, etc., on May 23, 1988. He also filed in this Court on May 23, 1988, his Petition for Extraordinary Relief, For a Writ of Habeas Corpus, Request for Stay of Execution, and Application for Stay of Execution Pending Disposition of Petition for Writ of Certiorari.

Dan Edward Routly filed his Rule 3.850 motion challenging his conviction and sentence of death in the Circuit Court of the Fifth Judicial Circuit. Following the signing of a death warrant on April 21, 1988, and the scheduling of his execution for June 29, 1988, Mr. Routly filed an Emergency Application for Stay of Execution and Consolidated Request for Evidentiary Hearing, etc., in the Circuit Court on May 19, 1988. On May 23, 1988, Mr.

Routly filed a Second Amendment Supplementing Motion to Vacate Judgment and Sentence in the Circuit Court.

Ernesto Suarez, under Rule 3.850, had until June 9, 1988, to file a Motion to Vacate Judgment and Sentence. On April 21, 1988, the Governor signed a death warrant setting Mr. Suarez's execution for June 22, 1988. On May 23, 1988, Mr. Suarez challenged his conviction and sentence of death by filing in the Twentieth Judicial Circuit an Emergency Motion to Vacate Judgment and Sentence, and Consolidated Emergency Application for Stay of Execution and Special Request for Leave to Amend. He also filed in this Court, on May 23, 1988, a Petition for Extraordinary Relief, for a Writ of Habeas Corpus, Request for Stay of Execution, and Application for Stay of Execution Pending Disposition of Petition for Writ of Certiorari.

Daniel Karr Johnson filed his Rule 3.850 motion challenging his conviction and death sentence in the Circuit Court of the Fourth Judicial Circuit. Mr. Johnson's death warrant was signed April 27, 1988, and his execution is scheduled for July 7, 1988. Pursuant to Fla. R. Crim. P. 3.851, Mr. Johnson must file all pleadings in this Court and the Circuit Court by this Friday, May 27, 1988.

Robert Ira Peede's Rule 3.850 motion challenging his conviction and death sentence was due to be filed on June 23, 1988. Following the signing of his death warrant on May 6, 1988, and the scheduling of his execution for July 8, 1988, Mr. Peede's Rule 3.850 motion and any other state court pleadings to be filed in this Court or the Circuit Court became due on June 6, 1988.[1]

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[1]In addition to these Petitioners, three other death warrants are currently outstanding. CCR's responsibilities include assisting volunteer counsel in the litigation of those cases. Moreover, as indicated, two evidentiary hearings in circuit courts, an oral argument before this Court, and approximately twenty extensive briefs and pleadings in non-warrant cases are all due for filing during this same period of time.

IV. REASONS FOR GRANTING PETITION

The Florida Supreme Court has recognized that Rule 3.850 proceedings are governed by due process principles. See Holland v. State, 503 So. 2d 1250 (Fla. 1987). The timing of the litigation of Petitioners' post-conviction actions, however, has now been dictated by the Governor, a non-judicial officer and a party opponent, through the arbitrary signing of unprecedent numbers of death warrants. Due process and equal protection do not countenance such a result. As stated in the introduction to this pleading, this Court should not allow Petitioners' party-opponent to dictate the timing of the litigation of this action. Moreover, given the unprecedented number of death warrants signed, CCR cannot be expected to provide adequate representation to any of the Petitioners under these circumstances. As stated, two additional lengthy evidentiary hearings in non-warrant cases and an oral argument before this Court in yet another case are all scheduled during this same period of time. This list does not include the numerous pleadings and briefs which also need to be prepared during this same time period in the five Petitioners' and various other cases.

Undersigned counsel's office has frequently informed the courts of the hardships required to meet its statutory responsibilities and to comply with the stringent timing rules governing capital cases, both under and not under death warrant. The unprecedented signing of warrant upon warrant by this Governor has made CCR's task even more onerous. Above and beyond CCR's sole responsibility for death warrants, CCR is now required to file, with ever-increasing frequency, the numerous non-warrant Rule 3.850 motions which become due on a regular basis under the time limitation provisions of Rule 3.850. In all of these cases investigation and research is required, in addition to the requirement that an attorney review and become familiar with extensive records.

These extraordinary conditions comprise the context in which CCR attempts to keep up with the relatively "normal" scheduling of motions, briefs, and hearings, in dozens of state and federal courts. For obvious reasons, the unnecessary acceleration of an unprecedent number of cases by the signing of death warrants makes any professional and effective level of representation almost impossible. No warning was provided that any of these warrants would be signed -- the warrants simply struck like lightning. This flatly is unfair.

The Governor's actions have resulted in an additional dilemma compromising the Petitioners' rights to full, fair and adequate resolution of their post-conviction claims: the ever increasing pace at which death warrants have been signed has forced CCR to deplete its already minimal budget in order to meet unprecedented and accelerated travel and evidentiary hearing costs throughout the state. CCR's budget is now fully depleted -- there is no money for further litigation:

> I, LARRY HELM SPALDING, being duly sworn, hereby depose and say:
>
> 1. I am the Capital Collateral Representative for the State of Florida.
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> 2. My statutory responsibilities are set forth in Part III, Chapter 27, Florida Statutes (1987).
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> 3. The statute sets forth the legislative intent for the creation of the Office of the Capital Collateral Representative (CCR). It provides:
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> > 27.001 Legislative intent. -- It is the intent of the Legislature to create Part III of Chapter 27, consisting of ss. 27.001-27.708, inclusive, to provide for the representation of any person convicted and sentenced to death in this state who is unable to secure counsel due to indigency, so that collateral legal proceedings to challenge such conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.

3. Section 27.702 defines the duties of the Capital Collateral Representative:

> The capital collateral representative represents indigents in collateral actions who have been convicted and sentenced to death and who are unable to secure counsel. The capital collateral representative represents the indigent in both the state and federal courts.

4. The CCR Administrative Services Director has advised me that in her professional opinion CCR cannot continue to operate within its appropriation unless all available dollars from all categories (Salaries, Other Personal Services, Expenses and Operating Capital Outlay) are utilized to pay operational expenses. I have reviewed the budget situation with the Administrative Services Director and fully concur with her findings. (See affidavit of Faith Blake.)

5. In my opinion, one of the primary flaws of the CCR enabling statute is the absence of a safety valve to deal with an excessive caseload. Unlike the public defenders or state attorneys, CCR cannot refuse to litigate certain cases. Indeed, CCR is a highly specialized agency which represents only death-sentenced inmates in post-conviction proceedings.

6. The CCR enabling statute does not permit CCR to withdraw from any case because of case load conflict. Even if withdrawal because of conflict were interpreted in its broadest sense under the statute, the legislature has failed or refused to appropriate funds, as it has for the State's 20 public defender offices, to pay appointed counsel. Thus, withdrawal is not an option because it is not only not authorized by statute, but also there are no funds from which to pay substitute counsel.

7. This circumstance has resulted primarily from four (4) factors:

a. CCR as of December 1, 1987, has relocated from 225 West Jefferson Street to 1533 South Monroe Street in Tallahassee. Our appropriation for rent in FY 1987-88 was based upon a highly favorable full service lease requiring a payment of approximately $3,000 a month. Our current lease, excluding utilities and janitorial services, is approximately $8,500 a month. The legislative appropriations staff assumed incorrectly, however, that this projected deficiency could be paid from lapse dollars from the Salaries account. (See affidavit of Faith Blake.)

b. The Supreme Court adopted temporary Rule 3.851 of the Florida Rules of Criminal Procedure which provides in applicable part that if the Governor of the State of Florida signs a death warrant with an execution date 60 or more days after rendition, then all state pleadings must be filed within 30 days of rendition. The practical effect of this rule has been a dramatic increase in the number of evidentiary hearings held by the state circuit courts under active death warrant. Because of time constraints and logistical problems, the costs of conducting an evidentiary hearing under warrant are approximately 1/3 greater than conducting a hearing out of warrant.

c. On August 13, 1987, six weeks into the current fiscal year, Governor Martinez announced a change in the procedure that he intended to follow in signing death warrants. The crux of his announcement was an increased number of warrants to be signed at each stage of the litigation. This policy was analogous to proposed Senate Bill 66 (1987 Legislative Session) which mandated a continuing death warrant. Again, this policy has had a substantial fiscal impact upon CCR without the benefit of an additional appropriation. (See "Fiscal Effects of Proposed Senate Bill 66 on the Office of the Capital Collateral Representative," prepared by The Spangenberg Group and sponsored by the American Bar Association Standing Committee on Legal Aid and Indigent Defendants, Bar Information Program [April 1987]).

d. Six (6) CCR employees have terminated their employment during the current fiscal year requiring the payment of accrued annual leave.

8. Prior to the 1987 legislative session, the Spangenberg Group prepared "A Caseload/Workload Formula for Florida's Office of the Capital Collateral Representative." This document recommended that CCR, based upon the pattern of signing death warrants by former Governor Graham, receive an appropriation of approximately $3.2 million with 52 full-time employees. The FY 1987-88 CCR appropriation is approximately $1.4 million or less than 50% of that recommended.

9. Consequently, CCR has been able to operate at full litigation capacity for only ten months of the current fiscal year. The difference clearly is the impact of the foregoing unexpected factors.

10. Governor Martinez as of this date has signed nine (9) active death warrants. Under former Governor Graham, the maximum number of death warrants at any one time upon

which our appropriation was based was four (4). These nine (9) death warrants represent the most active death warrants ever under the current capital sentencing statute.

11. A secondary problem, even assuming sufficient funds were available to litigate each of these warrants, is the available personnel to represent each inmate effectively. CCR has been authorized 12 attorney positions (two (2) of which are vacant) and six (6) investigator positions. These are divided into litigation teams consisting of two (2) attorneys and one (1) investigator. The litigation teams are assigned cases out of warrant. Under warrant an inmate is assigned two litigation teams which constitute a unit (four [4] attorneys and two [2] investigators). Again, this becomes necessary because of time constraints and the amount of work which must be performed for various courts within a matter of weeks or days. Unfortunately, under the current number of death warrants CCR cannot assign even one (1) full investigator to one (1) death warrant. Likewise, not all CCR staff attorneys are of equal ability. Some are obviously more experienced and capable of litigating matters with limited support staff, while others simply do not have the experience or the expertise to be assigned a case under warrant as lead counsel.

12. I am genuinely concerned that the current number of death warrants and the degree of participation required of CCR staff raises serious questions about our ability to render effective assistance of counsel to our clients. CCR personnel from secretaries to lawyers have often worked 60-80 hours a week in situations in which we were confronted with four (4) or five (5) active death warrants. Individuals can only be expected to labor effectively at our current pace for a finite period of time. It is not reasonable to expect employees to extend their work week another 10 to 20 hours as they must to meet the demands of nine (9) death warrants. This type of work schedule may, in part, explain the high number of terminations during the current fiscal year.

13. Fiscally, however, my position is clear. I cannot lawfully contract with any expert thereby obligating State funds for the remainder of the current fiscal year. I cannot authorize extensive travel by either lawyers or investigators for the remainder of the current fiscal year. I cannot authorize any expenditures other than those for normal operating expenses for the remainder of the current fiscal year.

14. With respect to the representation of this defendant, I believe there are only two options. They are:

a. The trial court must authorize a sum certain ($10,000) to be paid by the Board of County Commissioners for necessary investigation, expert, travel and other services required to litigate the Rule 3.850 motion under warrant in this proceeding.

b. The trial court must enter a stay of execution, grant CCR leave to amend the Rule 3.850 motion, and schedule an evidentiary hearing, if appropriate, after July 1, 1988.

(Affidavit of Larry Helm Spalding, Florida Capital Collateral Representative)(emphasis supplied)(appended hereto).

As is more than obvious, the Governor's actions have had a direct effect on the litigation of these actions -- the agency charged with representing these Petitioners has been left with no funds, re-funding shall not take effect until after July, 1988, when the new fiscal year shall allow for the disbursement of additional funding. At this time, however, there is no money -- CCR's attorneys do not even have the funds necessary to travel to the relevant courts. As CCR's Administrative Services Director explains:

I, FAITH BLAKE, having been duly sworn, hereby depose and say:

1. I am the Administrative Services Director for the Office of the Capital Collateral Representative (CCR).

2. As the agency's chief fiscal officer, my duties include, but are not limited to, directing the budgetary operations and accounting functions at CCR necessary to comply with all State of Florida rules, regulations and laws.

3. Among other things, the Capital Collateral Representative has delegated to me the initial responsibility to approve and to monitor all contracts for investigation, experts, and other services.

4. As a result of a recent internal audit conducted by me for the purpose of allocating funds for the balance of this fiscal year, it has become evident to me that <u>any</u> future expenditures by CCR for other than normal operational costs will be in violation of section 216.311, Florida Statutes, and subject to the penalties provided therein.

5. While it is my responsibility to insure accountability and to budget for the entire fiscal year, I have been confronted with several factors over which the agency had no control and which could not be factored into a reasonable formula for projecting expenditures. These were:

a. The fiscal impact of Rule 3.851 of the Florida Rules of Criminal Procedure.

b. The number of evidentiary hearings required to be held in the state circuit courts and the federal district courts.

c. The change in procedure for signing death warrants adopted by Governor Martinez.

d. The number of cases litigated by volunteer attorneys which were to become the responsibility of CCR because volunteer counsel declined to continue to represent the death-sentenced inmate in the next stage of the post-conviction process.

e. The City of Tallahassee instituting condemnation proceedings against the owner of the real property in which the CCR offices were located. This situation required CCR to relocate at a substantially increased rent.

f. The termination of employment by six CCR employees necessitating the payment of unused annual leave from the salaries account.

6. The CCR budget is divided into four (4) categories. The FY 1987-88 budget was appropriated as follows:

Salaries	30.00 FTE	$ 951,053
Other Personal Services		$ 101,084
Expenses		$ 371,732
Operating Capital Outlay		$ 21,879

7. The Salaries account is self-explanatory. It is, however, the category from which the leave upon termination is paid (see paragraph 5f). As part of the legislative appropriation process, the Salaries account is lapsed (cut) for all agencies, assuming an agency will not have a full complement of staff for the entire fiscal year. Leave liability is an expenditure the legislature expects an agency to absorb. For agencies such as the Department of Health and Rehabilitative Services (HRS) which may at any one time have as many as 1,000 positions vacant, this

policy does not pose a problem. In fact, it may generate additional revenue which provides budgetary flexibility. In contrast, for small agencies such as CCR, this policy can have catastrophic results. For example, the legislative appropriations staff did not budget in FY 1987-88 for the CCR relocation even though they were aware that relocation would be required sometime during the fiscal year. Rather they assumed that CCR would generate enough additional revenue through lapse to absorb the anticipated increase in rent, i.e., legislative staff believed CCR could transfer sufficient lapse dollars from the Salaries account to the Expense account, with the approval of the Governor and the Cabinet, to pay the increased rent and utilities. In practice, however, the employee terminations which required annual leave payments meant there were only minimal lapse dollars in the Salaries account.

8. The Other Personal Services (OPS) account is the account from which we contract with experts and part-time staff assistance. CCR regularly retains experts in the preparation of Rule 3.850 motions to vacate judgment of conviction and sentence of death to be filed in the state circuit courts and in the preparation of federal habeas corpus petitions filed pursuant to 18 U.S.C. section 2254 in federal district courts. Experts are utilized primarily to examine mental health and legal issues. CCR also occasionally must hire local investigators to assist with the case. Funds in this category have been completely exhausted.

9. The Expense account is the category from which all operational costs are paid. Unlike public defenders, state attorneys or the Department of Legal Affairs, CCR is required to litigate in all 67 counties from one location in Tallahassee, e.g., public defenders and state attorneys do not litigate outside of their circuits, and the Department of Legal Affairs has five appellate offices throughout the state, one in each jurisdiction established by the Supreme Court of Florida for the district courts of appeal. Consequently, travel is a major expenditure item. In my opinion, the legislature has never adequately addressed the travel issue for CCR. Our clients are located at the Florida State Prison in Starke, which is a round trip of 342 miles from Tallahassee. The overwhelming majority of our cases are litigated in the Middle and Southern District Courts (federal), not the Northern District Court.

10. An itemization of the major costs expended by CCR through April 30 is:

Travel	$ 110,686.64
Maintenance of Equipment	18,547.44
Rent, Electric, Garbage, Janitorial House Supplies	48,893.55
Office Supplies	45,799.72
Postage and Freight	39,130.61
Telephone	31,795.48
Copies of Documents	28,198.20
Miscellaneous, Unemployment, General Liability, Etc.	18,302.26
TOTAL	$341,353.90

For the period of April 30, 1988, through June 30, 1988, I have encumbered the following:

Rent, Janitorial, Electric	$ 19,064.32
Supplies	1,961.30
Expenditures from May 1, 1988, through May 17, 1988	29,565.80
Pending Invoices	40,867.62
TOTAL	$ 108,559.04
GRAND TOTAL	$449,902.94

The approrpiated sum for the Expense category is $371,732 compared to obligations in the Expense category of 449,902.94.

11. The Operating Capital Outlay (OCO) account is the category from which all furniture in excess of $250 and hardbound library books are purchased. CCR is fiscally unable to participate in any of the research technology available to most law firms such as Westlaw or LEXIS. Our library is comprised of a very few basic volumes, including Federal Reporter, Supreme Court Reporter and Southern Reporter. CCR does not have Digests or Shephard's Citations. Some research may only be conducted at Florida State University College of Law Library.

12. In my professional opinion, CCR can continue to operate within its appropriation only if all available dollars from all categories are utilized to pay operational expenses, including in-house litigation. I

> define in-house litigation as matters in the appellate process in either the state or federal court, i.e., it excludes preparation of a Rule 3.850 motion, preparation of a section 2254 petition, evidentiary hearings, investigations, and any other activity other than preparation of appellate briefs in Tallahassee.
>
> 13. In conclusion, CCR cannot expend funds to investigate, for travel, for experts, or for other services directly related to any of the nine (9) cases under active death warrant, without violating Chapter 216, Florida Statutes (1987), and subjecting the Capital Collateral Representative to the penalties provided in sections 775.082, 775.083, or 775.084, as applicable.

(Affidavit of Faith Blake, CCR Administrative Services Director) (emphasis supplied)(appended hereto).

Messrs. Parker, Routly, Suarez, Johnson, and Peede are indigent. Their counsel have been left with no funds. Even incurring the expenses associated with requiring CCR attorneys to travel from the office in Tallahassee to Miami, Ocala, Naples, Jacksonville, and Orlando (where Petitioners' cases will be litigated) involves expenses which are beyond CCR's present fiscal capabilities.[2]

An additional dilemma is caused by the fact that CCR cannot assure the presence of counsel for evidentiary hearings in the various courts in which hearings have and will be scheduled, in warrant and non-warrant cases, all during the same period of time. This predicament is a direct result of the untenable scheduling dilemma discussed herein. No petitioner can be adequately represented under these circumstances.

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[2]After July, when additional state funds will be released for CCR's use, the dilemma discussed herein should dissipate. Of course, the dilemma caused by the Governor's issuance of absurd numbers of death warrants is a matter beyond CCR's control.

Rule 3.851 has created an additional difficulty. As the Court is aware, the Rule has resulted in an ever accelerating number evidentiary hearings under death warrant. Costs approximately one-third (1/3) higher than normal are associated with such under-warrant hearings. This has caused an additional strain on CCR's budget, a strain unanticipated by the Legislature -- or, presumably, by this Court when it enacted the Rule.

Moreover, the Florida Supreme Court through the creation and implementation of Rule 3.851 could not have intended that the State receive a windfall benefit, or that the inmate suffer a significant detriment -- i.e., that the parameters under which Rule 3.850 actions are to be litigated should be set by the State's chief law enforcement officer and that capital inmates such as these petitioners should suffer the detriment of being forced to litigate their claims for relief under impossible circumstances. No rule of criminal procedure could possibly be interpreted as an attempt by the Court to provide a strategic advantage to one of a controversy's litigants. Indeed, the Court's rationale was that Rule 3.851 "[was] necessary to provide more meaningful and orderly access to the courts when death warrants are signed." In re Florida Rules of Criminal Procedure, Rule 3.851, 503 So. 2d 320, 321 (Fla. 1987)(emphasis added). The Governor's arbitrary warrant-signing actions, however, have now denied the Petitioners that very right to "orderly access to the courts," and disrupted precisely the order sought by the Florida Supreme Court. Cf. Davis v. Dugger, 829 F.2d 1513, 1521 (11th Cir. 1987)(Dismissal of habeas petition reversed and case remanded, because "[i]t was . . . the scheduling of petitioner's execution . . ." that caused the procedural predicament on the basis of which the district court dismissed the petition)(emphasis in original); see also id. at 1520 ("[I]t would be anomalous to hold that pursuit of collateral relief within the two-year statutory limitations period in Florida might

nevertheless constitute unreasonable delay . . ."). Three of the five Petitioners were properly pursuing post-conviction relief under the applicable rules. See Rule 3.850; see also Davis, supra, 829 F.2d at 1522 (Hill, J., concurring). This Court should not reward the State's chief executive's efforts to interfere with the Petitioners' rights to reasonable access to the Courts, Davis, supra, or to render death sentenced inmate's counsels' efforts impossible.

V. DUE PROCESS, EQUAL PROTECTION, AND THE EIGHTH AMENDMENT COUNSEL THAT THE RELIEF SOUGHT HEREIN BE GRANTED

Common sense dictates that the relief sought herein be granted: an individual should not be forced to litigate an action involving stakes such as those involved in these cases under the present circumstances. The Constitution dictates the same result: if this Court were to allow the State's chief executive officer (a party-opponent) to so arbitrarily dictate the timing of the litigation of these actions, and to make the role of counsel for the Petitioners impossible, it would unconstitutionally "confer[] upon a state officer outside the judicial system [the] power to take from an indigent." Lane v. Brown, 372 U.S. 477, 485 (1963). In Lane the state officer was the public defender, not a party opponent. Even this, however, was not enough -- the Court struck down the statute. Certainly, should the Court deny the relief herein requested it would give to the Governor the power to impede open and equal access to the courts; exactly what has been held time and again to be improper. Lane v. Brown, supra; accord. Rinaldi v. Yeager, 384 U.S. 305 (1966); Griffin v. Illinois, 351 U.S. 12 (1956); Bounds v. Smith, 430 U.S. 817 (1977).

Moreover, due process and equal protection cannot be squared with the denial of a stay of execution in this case: the denial of a stay would permit the executive to arbitrarily deny the Petitioners their state-created "liberty interest" in the full,

fair, adequate, and judicious consideration of his post-conviction claims. Cf. Hicks v. Oklahoma, 447 U.S. 343 (1980); Vitek v. Jones, 445 U.S. 480, 488-89 (1980). The dictates of Evitts v. Lucey thus apply to these cases and make plain the Petitioners' entitlement to the relief sought herein:

> [W]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the constitution -- and, in particular, in accord with the Due Process Clause.

469 U.S. 387, 401 (1985); see also Johnson v. Avery, 393 U.S. 483, 488 (1969); Smith v. Bennett, 305 U.S. 708, 713 (1961). The Governor's arbitrary actions have violated the very test of due process which the United States Supreme Court has made mandatory in such instances -- i.e., as the discussion presented herein demonstrates, unless this Court grants the relief sought, the Petitioners will be deprived of "a reasonable opportunity" to have their claims fairly presented to, heard, and judiciously determined by the state courts. See Michael v. Louisiana, 350 U.S. 91, 93 (1953); Reece v. Georgia, 350 U.S. 85 (1955). Finally, due process is violated because these cases involve classic examples of "interference by [State] officials" -- i.e., the Governor -- impeding and making illusory these Petitioners' rights to full and fair access to courts. Cf. Brown v. Allen, 344 U.S. 443, 486 (1953), quoted in Murray v. Carrier, 106 S. Ct. 2639, 2646 (1986).

VI. THE NEED FOR AN EXPEDITED ORDER TO SHOW CAUSE AND EXPEDITED HEARING ON THIS PETITION

This Petition for extraordinary relief is made on an emergency basis. It sets forth sufficient grounds to require the issuance of an Order to Show Cause. However, given the exigencies at issue, the harm which this Petition seeks to cure will come about unless this Petition is expeditiously decided.

Consequently, given the emergency which this Petition seeks to address, Petitioners urge that the Court issue an expedited Order to Show Cause, conduct an emergency oral argument on the issues raised in this Petition, and render an expedited decision on this action.

VII. REQUEST FOR ORAL ARGUMENT

Petitioners respectfully submit that an emergecny oral argument is necessary for the full and proper airing of the issues presented herein and for the Court to fully understand the untenable dilemma that these Petitioners face. Accordingly, Petitioners respectfully request that the Court schedule an expedited oral argument in this matter.

VIII. CONCLUSION AND RELIEF SOUGHT

WHEREFORE, Petitioners respectfully urge that the Court issue an expedited Order to Show Cause, schedule an expedited oral argument, and thereafter, pursuant to Rules 9.030(a)(3) and 9.100 of the Florida Rules of Appellate Procedure: 1) enter stays of execution and order Respondents not to proceed on evidentiary hearings involving Petitioners until after July, 1988, when the new fiscal year begins and the Office of the Capital Collateral Representative is re-funded; 2) order the Respondent courts to enter stays of execution and order the Respondents not to proceed on evidentiary hearings involving the Petitioners until after July, 1988, when the new fiscal year begins and the Office of the Capital Collateral Representative is re-funded; or 3) order the Respondent courts to enter stays of execution unless the appropriate Boards of County Commissioners agree to pay the expenses incurred by the Office of the Capital Collateral Representative in the course of representing Petitioners, and provide the funds forthwith in order for CCR to

be able to meet travel and other costs associated with the litigation of these cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by (U.S.MAIL)(HAND DELIVERY) to Robert A. Buutterworth, Attorney General; Ralph Barreira, Assistant Attorney General, Department of Legal Affairs, Ruth Rhode Building, 401 Northwest Second Avenue, Suite 820, Miami, Florida 33128; Richard B. Martell, Assistant Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014; Robert Krauss, Assistant Attorney General, Park Trammel Building, 1313 Tampa Street, Tampa, Florida 33602; Carolyn M. Snurkowski, Assistant Attorney General, Department of Legal Affairs, Magnolia Park Courtyard, 111-29 North Magnolia Street, Tallahassee, Florida 32301; Sean Daly, Assistant Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014; The Honorable Fredericka G. Smith, Dade County Courthouse, 73 W. Flagler Street, Miami, Florida, 33130; The Honorable Carven D. Angel, Post Office Box 2075, Ocala, Florida 32678; The Honorable Hugh D. Hayes, Collier County Courthouse, Naples, Florida 33962; The Honorable Gile P. Lewis, Duval County Courthouse, 330 East Bay Street, Jacksonville, Florida 32202; The Honorable Michael F. Cycmanick, Orange County Courthouse,

Orlando, Florida 32801; The Honorable Gerald T. Wetherington, Chief Judge, Dade County Courthouse, 73 W. Flagler Street, Miami, Florida 33130; The Honorable Ernest C. Aulls, Jr., Chief Judge, 315 W. Main Street, Tavares, Florida 32778; The Honorable Robert T. Shafer, Jr., Chief Judge, 1700 Monroe Street, Ft. Meyers, Florida 33901; The Honorable John F. Santora, Jr., Chief Judge, Duval County Courthouse, 330 East Bay Street, Jacksonville, Florida 32202; and The Honorable William C. Gridley, Chief Judge, Orange County Courthouse, Orlando, Florida 32801, this 25 day of May, 1988.

Attorney