THE SUPREME COURT OF FLORIDA

CASE NO. _____

IAN DECO LIGHTBOURNE, LLOYD CHASE ALLEN, CHARLES ANDERSON, GUILLERMO O. ARBELAEZ, KAYLE BATES, LUCIOUS BOYD, MCARTHUR BREEDLOVE, MICHAEL GEORGE BRUNO, BYRON B. BRYANT, MILFORD WADE BYRD, LUIS CABALLERO, JOHN CHAMBERLAIN, JIM ERIC CHANDLER, DANIEL CONAHAN, DAVID COOK, LABRANT D. DENNIS, JOEL DIAZ, JAMES AREN DUCKETT, PAUL EVANS, KEVIN FOSTER, CARLTON FRANCIS, HENRY GARCIA, MICHAEL J. GRIFFIN, JERRY LEON HALIBURTON, PATRICK HANNON, ROBERT HENRY, JAMES EUGENE HUNTER, BRANDY BAIN JENNINGS, TERRELL M. JOHNSON, VICTOR TONY JONES, BILLY LEON KEARSE, DEAN KILGORE, RONALD KNIGHT, ANTON KRAWCZUK, CARY MICHAEL LAMBRIX, CLEO DOUGLAS LECROY, RODNEY LOWE, MATTHEW MARSHALL, MARBEL MENDOZA, SONNY BOY OATS, THOMAS OVERTON, BRUCE PACE, MANUEL PARDO, DWAYNE PARKER, NORMAN PARKER, ROBERT PATTON, ROBERT PEEDE, HARRY PHILLIPS, NORBERTO PIETRI, THOMAS DEWY POPE, ROBERT BEELER POWER, RICHARD RANDOLPH, WILLIAM REAVES, ROBERT RIMMER, MICHAEL RIVERA, RICKEY BERNARD ROBERTS, JUAN DAVID RODRIQUEZ, MANUEL RODRIGUEZ, MICHAEL SIEBERT, DENNIS SOCHOR, ROY CLIFTON SWAFFORD, DAVID THOMAS, WILLIAM THOMPSON, WAYNE L. THOMPKINS, GEORGE JAMES TREPAL, MANUEL VALLE, JASON D. WALTON, KENNETH WATSON, JOEL DALE WRIGHT, AND THOMAS WYATT,

Petitioners,

v.

CHARLES CRIST, Attorney General for the State of Florida, and JAMES MCDONOUGH, Secretary, Florida Department of Corrections,

Respondents. /

EMERGENCY PETITION SEEKING TO INVOKE THIS COURT'S ALL WRITS JURISDICTION

I. INTRODUCTION

The media report of the December 13, 2006 execution of Florida prisoner Angel Nieves Diaz was as follows:

> [Mr. Diaz] was executed by lethal injection Wednesday, **grimacing in pain** before dying **34 minutes** after receiving the first dose of chemicals.

Ron Word, "Man Executed for Miami bar slaying takes 34 minutes to die," *Gainesville Sun*, December 13, 2006 (Appendix "A").

> He appeared to move for 24 minutes after the first injection. His eyes were open, his mouth opened and closed and his chest rose and fell.

The Associated Press, "Connecticut Escapee Executed in Florida," *The Hartford Courant*, December 13, 2006 (Appendix "B").

> What happened to him next looked agonizing. Grimacing, Diaz took 34 minutes to die from the drugs pumped through him. At times he seemed to be squinting and at other times he appeared to be flexing his jaw.

Phil Long and Marc Caputo, "Lethal injection takes 34 minutes to kill inmate," *Miami Herald*, December 14, 2006 (Appendix "C").

> Angel Diaz winced, his body shuddered and he remained alive for 34 minutes, nearly three times as long as the last two executions.
>
> ***
>
> Obviously there was something very wrong here, said Neal Dupree, supervisor of the capital

> collateral regional counsel office for South Florida, which represented Diaz in his appeals.
>
> Dupree, who sat in the front row while Diaz was executed, said the procedure appeared botched, particularly when Diaz squinted his eyes and tightened his jaw as if in pain.
>
> Twenty-six minutes into the procedure, Diaz's body suddenly jolted.
>
> "It looked like Mr. Diaz was in a lot of pain," Dupree said. "He was gasping for air for 11 minutes. This is a big deal. This is a problem."
>
> Corrections officials acknowledged that 34 minutes was an unusually long time but said no records are kept that would tell if it's the longest ever in state history.
>
> They were not sure how many other times a second dose was needed.
>
> Gretl Plessinger, a DOC spokeswoman, said it's unknown at what times the first and second doses were given because those records are not kept.

"Executed Man Takes 34 Minutes to Die," *St. Petersburg Times*, Sept. 13, 2006 (Appendix "D").

Neal Dupree, Capital Collateral Regional Counsel for the Southern Region further stated in an affidavit:

> 3. The curtains to the execution chamber were opened at 6:00 p.m ... From my seat in the front row of the observation room I was located approximately six (6) to seven (7) feet from Mr. Diaz. Initially, I observed Mr. Diaz laying on a gurney covered by a white sheet. He was strapped

to the gurney, and his right arm was held in place by a leather strap. Additionally, Mr. Diaz had some type of tape or gauze holding his right hand in place, and an intravenous needle had been placed in his right arm where his elbow would bend. There appeared to be two separate lines that ran beneath the gurney hooking into the intravenous line, and those two lines traveled into a prepared space in the wall behind the gurney.

4. Mr. Diaz was asked if he had any last words, and he was permitted to give a brief speech in Spanish. Having met Mr. Diaz before, it appeared to me that he was sedated in some manner, as his speech was slower and somewhat slurred.

5. Within a few minutes, Mr. Diaz became agitated, and it appeared to me that he was speaking to the members of the Department of Corrections staff. They did not appear to respond to him and I was unable to hear his part of the conversation because the intercom between the execution chamber and the observation room had been turned off. During the time Mr. Diaz appeared to be speaking, it was my observation that he was in pain. His face was contorted, and he grimaced on several occasions. His Adam's Apple bobbed up and down continually, and his jaw was clenched.

6. I could observe some type of fluid flowing through the intravenous tube, and Mr. Diaz's head rolled to the right. A strap had been placed across his forehead, and a member of the DOC staff held the strap. I observed Mr. Diaz' right eye to close, but his left eye remained open. His mouth opened, and Mr. Diaz appeared to be gasping for air for at least 10-12 minutes. It was apparent that the complete drug cycle had been given to Mr. Diaz, however, on several occasions over the next

> twenty minutes I observed movement from Mr. Diaz, and he continued to gasp heavily for air.
>
> 7. Approximately twenty minutes into the procedure, I observed two members of the DOC staff, one large black male, and a slightly smaller white male have several conversations into two separate phones. The black male had been on one phone since the initiation of the procedure, and I observed him hand that phone to the white male two times. After speaking into the first phone, the white male picked up a second phone, and had another conversation. It was apparent that something was wrong, and it was my observation that the other DOC staff members in the room looked uncomfortable at that time.
>
> 8. After a total of 25-30 minutes, Mr. Diaz's breathing appeared to get shallower. His face became slack, and his skin had a grayish pallor. During the last 5-6 minutes, both of his eyes opened and his Adam's apple slowly stopped bobbing.
>
> 9. I next observed a person wearing a purple suit (somewhat like a beekeepers outfit) enter the room. He flashed a light into the opened eyes of Mr. Diaz, and then checked his heart rate. That person left the room, and another person similarly garbed entered the room. He also checked Mr. Diaz' eyes and his heart rate. Mr. Diaz was then pronounced deceased by DOC personnel at 6:36 p.m. The time from when Mr. Diaz finished speaking, until the time he was pronounced dead was a span of 34 minutes.

(Affidavit of Neal Dupree, Appendix "E").

In response to the horror that occurred during Mr. Diaz's execution, the Department of Corrections stated:

> He had liver disease, which required them to give him a second dose of the lethal chemicals. **It was not unanticipated.** The metabolism of the drugs to the liver is slowed.

The Associated Press, December 13, 2006 (Appendix "C").

Governor Bush affirmed the representations of the Department of Corrections:

> As announced earlier this evening by the Department, a preexisting medical condition of the inmate was the reason tonight's procedure took longer than recent procedures carried out this year.

Ron Word, "Execution of Fla. inmate takes 34 min.," *The Times-Picayune*, December 13, 2006 (Appendix "F").

Based on the Department of Corrections' representation, it expected problems to arise during Mr. Diaz's execution. Yet despite knowing that a medical issue would interfere with the lethal injection procedure, the Department obviously did not resolve the issue prior to moving forward with the execution as dictated in its protocol. Then, after witnessing Mr. Diaz continue to talk and move after the administration of the first drug (sodium thiopental), the Department proceeded to administer the next two lethal chemicals – pancuronium bromide, a paralytic, and potassium chloride,

which causes cardiac arrest. Mr. Diaz continued to move for 24 minutes, indicating a serious problem with the initial anesthesia and no doubt torturous pain from the second and third chemicals. Then, the Department started over, administering a second series of lethal chemicals. The Department's actions demonstrated a wanton, reckless disregard for Mr. Diaz's pain and suffering.

The Department of Corrections attempted to justify the administration of the second dose of lethal chemicals by asserting that Mr. Diaz had a preexisting liver condition which complicated the lethal injection. However, counsel for Mr. Diaz (as well as his family) had no knowledge that he suffered from liver disease. In fact, counsel repeatedly asked Mr. Diaz if he had any existing medical conditions or if he was taking any drugs. Mr. Diaz denied such. Counsel for Mr. Diaz requested updated medical records for Mr. Diaz from the Department of Corrections and argued to this Court that his own records were particularly relevant to the instant proceedings where he argued that errors will occur during the execution and that the designated drugs for carrying out lethal injection will not function as intended under the protocol, causing unnecessary suffering. The Department of Corrections objected to providing these records, the lower court sustained the objection and this Court affirmed. If in fact Mr. Diaz had liver disease, the

Department unconscionably withheld this information from Mr. Diaz, his counsel, and his family.

During the recent oral argument in Mr. Diaz's case, this Court questioned the State regarding ongoing concerns over the lethal injection procedure. The State responded that nothing had changed since this Court's decision in Sims, indicating that if there is newly discovered evidence of a problem, the lethal injection procedure would need to be looked at again. Unfortunately, Mr. Diaz's execution and the eyewitness accounts thereto are new evidence that the existing procedure that the State of Florida uses in executions violates the Eighth Amendment to the U.S. Constitution and the corresponding provision of the Florida Constitution, as it involves the unnecessary and wanton infliction of pain contrary to contemporary standards of decency.

The Department of Corrections and the State have repeatedly objected to public record requests and requests for evidentiary hearings in all cases in which a lethal injection challenge is pending. The Department and the State lodge objections to requests regardless of the posture of the case. Mr. Lightbourne currently has an appeal pending before this Court asserting that Florida's lethal injection statute and the existing procedure by which Florida carries out executions by lethal injection are unconstitutional under the

Florida and United States Constitutions as it constitutes cruel and unusual punishment. Likewise, all of the named petitioners have constitutional challenges to lethal injection pending in different postures throughout the State or will have such challenges filed based on the new evidence of eyewitness accounts to Mr. Diaz's execution. Thus, all of the named Petitioners here have an interest in ensuring that the State of Florida carries out its executions in a manner comporting with constitutional imperatives.

Petitioners, through undersigned counsel, petition this Court to invoke its All Writs jurisdiction and address whether the State of Florida's current lethal injection procedures, created behind closed doors by an agency making policy outside the scope of its usual business, involve the unnecessary and wanton infliction of pain contrary to contemporary standards of decency in violation of the Eighth Amendment to the U.S. Constitution and the corresponding provision of the Florida Constitution.

In order to preserve the best evidence of the unnecessary and wanton infliction of pain caused by the lethal injection procedure used by the State of Florida, Petitioners respectfully request an immediate order from this Court enjoining Respondents and their agents from conducting the autopsy of Angel Nieves Diaz. The Petitioners request that the Court order that the autopsy be conducted by an independent medical examiner and/or medical

expert. In the alternative, Petitioners request that the Court order Respondent to grant access to the autopsy by an independent expert and/or designated representative of Petitioners. Petitioner further requests that this Court order the medical examiner to produce for inspection and copying the complete autopsy file and medical examiner's records of Mr. Diaz's autopsy.

Petitioners respectfully request that the Court order the Respondents to produce for immediate inspection and copying all records previously requested by Petitioner Lightbourne. Just as Mr. Diaz had, Mr. Lightbourne sought public records pursuant to Fla. R. Crim. P. 3.852(i). On March 23, 2006, Mr. Lightbourne sent public records requests to the Florida Department of Corrections, the Office of the Attorney General, and Florida State Prison. The Department of Corrections filed written objections to Mr. Lightbourne's demands, the Office of the Attorney General orally objected to Mr. Lightbourne's demands and the lower court ultimately denied Mr. Lightbourne's requests. Based on the Department of Corrections' new protocol, Petitioner is aware that the Department maintains checklists of each execution. At the very least, Petitioner requests that the checklist for Mr. Diaz's execution be immediately produced.

Further, Petitioner requests that this Court appoint a special master to hear and receive scientifically-reliable evidence regarding the conscious pain and suffering experienced by the condemned during lethal injection. This Court has previously remanded for evidentiary hearings in similar circumstances involving an inmate's challenge to the method of execution. See Jones v. Butterworth, 691 So.2d 481 (Fla. 1997); see also Provenzano v. Moore, 744 So. 2d 413 (1999). Since Petitioner is arguing, as was done in those cases, that the State is carrying out a criminal sentence in a cruel or unusual manner, Petitioner's case should be treated the same and remanded for an evidentiary hearing.

JURISDICTION

This Court's All Writs jurisdiction has been previously recognized as a proper means of raising a challenge to a method of execution. See Jones v. Butterworth, 691 So.2d 481 (Fla. 1997). A petition to invoke this Court's All Writs jurisdiction is an original proceeding in this Court governed by Fla. R. App. P. 9.100. This Court has original jurisdiction under Fla. R. App. P. 9.030(a)(3) and Article V, § 3(b)(9), Fla. Const.

CLAIM

THE STATE OF FLORIDA'S LETHAL INJECTION STATUTE, FLA. STAT. § 922.105, AND THE EXISTING PROCEDURE THAT THE STATE OF FLORIDA UTILIZES FOR LETHAL INJECTION VIOLATE ARTICLE II, SECTION 3 AND ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION, AND THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION.

In Sims v. State, 754 So. 2d 657 (Fla. 2000), Terry Sims, who was to be the first death-sentenced inmate to be executed by lethal injection in Florida, challenged Florida's lethal injection procedure as a violation of the Eighth Amendment. This Court denied relief, finding the possibility of mishaps during the lethal injection process insufficient to support a finding of cruel and unusual punishment. This Court has repeatedly relied on Sims to deny challenges to lethal injection. See Hill v. State, 921 So. 2d 579 (Fla. 2006), Rutherford v. State, 926 So. 2d 1100 (Fla. 2006); Rolling v. State; Diaz v. State, 2006 Fla. Lexis 2810 (Fla. Dec. 8, 2006). However, this Court decided Sims more than six years ago, and it is clear from recent events that its reliance on Sims is no longer warranted. In Provenzano v. State, 739 So.2d 1150, 1156 (Fla. 1999), Justice Lewis, concurring noted, the need for "stability in legal precedent to respect the rule of law," but acknowledged, "that we must never fear confrontation with precedent when the factual underpinnings of such precedent lack validity." It is inescapable that the factual underpinnings of Sims are no longer valid.

On August 16, 2006, the Florida Department of Corrections revised its lethal injection protocols.[1] The revised lethal injection protocol calls for three drugs to be administered in succession through an IV tube attached to the inmate: 5 grams of sodium pentothal, an ultra-short acting barbituate which is used to render the inmate unconscious; 100 mg of pancuronium bromide, a paralyzing agent; and finally 240 mg of potassium chloride, which stops the heart.[2] As a backup, a second set of syringes containing the same doses of drugs is prepared in the event that "If after the complete administration of the lethal chemicals, the heart monitors do not reflect a flat line reading and/or the physician cannot pronounce the inmate dead, the executioner will begin a second flow of lethal chemicals….". (2006 Procedures, p. 8.). It has been repeatedly argued to this Court, that the use of this combination of drugs creates a risk that the inmate will experience excruciating pain if the dose of sodium pentothal is not sufficient to produce anesthesia or is not properly administered before the injection of the pancuronium bromide and the potassium chloride. Because the protocol

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[1] Despite the promulgation of these revised protocols on August 16, 2006, they were not released to the public or to CCRC until October 17, 2006.

[2] Florida's previous written lethal injection protocol, effective January 28, 2000, did not specify the types of drugs or dosages used. ("2000 Procedures"). They are described in the Florida Supreme Court opinion in Sims v. State, 754 So. 2d 657 (Fla. 2000).

provides for no means of monitoring the inmate's consciousness after administration of the sodium pentothal, there is no means of determining if Mr. Diaz is in fact awake and feeling the effects of the lethal drugs.

Both of these concerns regarding insufficient anesthesia and lack of monitoring became a stark reality during Mr. Diaz's execution. Eyewitness accounts detail that Mr. Diaz was "**grimacing in pain," "**he appeared to move for 24 minutes," "his eyes were open, his mouth opened and closed, his chest rose and fell," "he winced, his body shuddered," "he squinted his eyes and tightened his jaw as if in pain" and "he was gasping for air." An even greater concern lies in the fact that the initial sequence of drugs did not bring about death. There is no evidence in Sims that the Department of Corrections contemplated a scenario in which a second set of the lethal drugs would need to be administered.

A thorough review of the new protocol reveals it is in contrast to the protocol asserted in Sims.[3] The new protocol does not remedy any concerns

[3] The new protocol provides the warden with unfettered discretion to "select two (2) executioners who are fully capable of performing the designated functions to carry out the execution." This change causes many questions and concerns: What capabilities need an executioner possess? Does a "capable" individual possess any medical training?

The old protocol did not provide for maintenance or storage of the chemicals, while the new protocol does. This change causes many questions and concerns: How will the chemicals be stored so that they are secure?

that Petitioner will suffer undue pain and in fact, generates numerous additional questions as to the constitutionality of the protocol. The execution of Mr. Diaz is an example of the protocol failing miserably. It was clear from the execution of Mr. Diaz that the execution personnel have no training on what to do in the event that the execution goes wrong. As Mr. Dupree described:

What qualifications does the execution member have to determine whether the chemicals have surpassed their expiration dates?

The new protocol calls for the use of a checklist. The old protocol did not provide for the use of checklist. Where is the checklist from the executions of Clarence Hill, Arthur Rutherford and Danny Rolling?

The old protocol did not provide for a determination of issues that could interfere with the lethal injection procedure and for a process to resolve those issues. This change causes many questions and concerns: What type of issues could interfere with the proper administration of the lethal injection process? Will the condemned and/or his attorney be notified? What resolutions will be considered in regard to the problems?

The new protocol calls for two hours prior to the execution to "prepare the lethal injection chemicals." The old protocol did not provide for preparation of the chemicals. This change causes many questions and concerns: Does it matter that the chemicals are prepared two hours prior to the execution? Who mixes the chemicals? What is his/her training?

The new protocol calls for "A designated member of the execution team" to "explain the lethal injection procedure to the inmate and offer any medical assistance or care deemed appropriate." This change causes many questions and concerns: What type of medical assistance is contemplated? Does this individual have the required medical training and ability to administer the medical care? And, specifically in Mr. Diaz's case, did that person speak Spanish, Mr. Diaz's native language?

The new protocol calls for a central venous line to be placed with or without a venous cut-down if peropheral venous access cannot be achieved. The old protocol did not provide for a cut-down. This change causes many questions and concerns: Who will do the cut-down? How will it be done? When will it be done?

> Approximately twenty minutes into the procedure, I observed two members of the DOC staff, one large black male, and a slightly smaller white male have several conversations into two separate phones. The black male had been on one phone since the initiation of the procedure, and I observed him hand that phone to the white male two times. After speaking into the first phone, the white male picked up a second phone, and had another conversation. It was apparent that something was wrong, and it was my observation that the other DOC staff members in the room looked uncomfortable at that time.

(See Appendix "E"). It is clear that the Department of Corrections has no procedure in place to resolve medical issues which may interfere with the lethal injection process. The state should have disclosed any liver problems in advance and explained its plans for dealing with them. There is still no information that the Department of Corrections had a plan.

Based on the representations of the Department following the execution[4], they could not represent at what time the initial drug sequence was administered or when the second drug sequence began. The eyewitness accounts were more thorough and detailed than any information the Department could provide. As reported by the media:

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[4] "Gretl Plessinger, a Department of Corrections spokeswoman, said it's unknown at what times the first and second doses were given because those records are not kept." "Executed Man Takes 34 Minutes to Die," *St. Petersburg Times*, Sept. 13, 2006 (Appendix "D").

What happened in the execution chamber as Angel Diaz was put to death Wednesday night:

6:00 p.m.: The curtain opens. Angel Diaz gives a short last statement claiming he is innocent.

6:02: Diaz begins grimacing and seems to speak, though a microphone is off and none of the witnesses can hear him.

6:06: Diaz squints his eyes and juts his chin as if in pain. He continues this for several minutes.

6:12: Diaz's head slips to the right. He coughs several times and appears to shudder.

6:15: His mouth has appeared to widen and his breathing is deep.

6:18: A member of the execution team hands a phone to another member of the team. What they say on the phone is not revealed. Diaz's mouth and chin move as he breathes deeply.

6:24: Diaz's mouth and chin slowly stop moving. His eyes appear fixed.

6:26: His body suddenly jolts. His eyes appear to be opening more widely. Again, a member of the execution team gets on the phone.

6:34: A doctor wearing a blue hood that covers his face enters the execution chamber and checks Diaz's vital signs. The doctor returns a minute later, checks the vital signs again and nods to a member of the execution team.

6:36: A member of the execution team announces that the sentence of Angel Diaz has been carried out. The curtain closes.

Chris Tisch and Curtis Kreuger, "Second dose needed to kill inmate," *St. Petersburg Times*, Sept. 14, 2006 (Appendix "G"). Despite the new protocol, there simply is no accountability.

In Provenzano v. State, 739 So.2d 1150 (Fla. 1999), this Court was troubled that DOC had not followed the protocol established for the appropriate carrying out of the death penalty. As such the Court "deem[ed] it appropriate that the results of any and all tests and any other records generated relating to the operation and functioning of the electric chair be promptly submitted to this Court, the Attorney General's Office, the regional offices of the Capital Collateral Regional Counsel (CCRC), and the capital cases statewide registry of attorneys, on an ongoing basis. **By this, we contemplate an open file policy relating to any information regarding the operation and functioning of the electric chair."** Id. at 1153 (emphasis added). There can be no question that an open policy approach is necessary now. The lethal injection policies and procedures that were created in secret cannot remain in the dark.

Mr. Diaz's execution is newly discovered evidence of the pain and suffering inherent in Florida's current lethal injection procedure. Experts need to review reports of observations of previous executions by lethal injection, including autopsies and toxicology reports and reports of

complications, in order to form an opinion on the likelihood that condemned inmates in Florida have suffered painful and torturous deaths by lethal injection. Most importantly, because the Department of Corrections and the State have an interest in seeing that the execution was carried out successfully and in accordance with the vague protocol that does exist, it is imperative to have independent review of the failings of Mr. Diaz's execution, including an unbiased autopsy.

In order for this Court to discharge its power and duty to determine the constitutionality of lethal injection, this Court needs an adequate factual record. Therefore, this Court should appoint a special master to hear scientifically reliable evidence on the pain and suffering experienced by a person during lethal injection. As Justice Lewis stated:

> We must be ever vigilant to analyze and search for an understanding of the execution procedures to make certain that we walk within the boundaries of constitutional requirements. The indications that there have been variances from the established protocol suggest that the mechanism itself must be subject to question as to its continued validity in constitutional terms. Recognizing that the people of this State have enacted law for the ultimate result of death, it is troubling that the implementation of the process continues to walk the edge of constitutional propriety [].

Id. at 1157, Lewis, J., concurring.

CONCLUSION

For all of the reasons discussed herein, Petitioners respectfully urges the Court to exercise its All Writs jurisdiction, declare that the State of Florida's current lethal injection procedures violate Eighth Amendment to the U.S. Constitution and the corresponding provision of the Florida Constitution, enjoin Respondents and their agents from conducting the autopsy of Angel Nieves Diaz or in the alternative allow Petitioner's designated representative to attend the autopsy, and order the Respondents to produce for immediate inspection and copying all records previously requested by Petitioner Lightbourne.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and United States Mail to Kenneth S. Nunnelley, Assistant Attorney General, 444 Seabreeze Blvd, 5th Floor, Daytona Beach, Florida 32118, (386) 226-0457, and Charlie Crist, Attorney General, The Capitol PL-01, Tallahassee, Florida 32399-1050, (850) 410-1630, on December 14, 2006.

/s/ Suzanne Myers Keffer

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