

IN THE SUPREME COURT OF DIXIE
PETITION FOR WRIT OF CERTIORARI

In Re: Dixie Department of Justice Directive 18-007

On December 4, 2018, the Attorney General of Dixie released a [directive](#) announcing that Dixie would begin using hanging and other methods to execute death row inmates under the authority of [Dixie Statute 922.105\(3\)](#). That statute provides:

“If electrocution or lethal injection is held to be unconstitutional by the Florida Supreme Court under the State Constitution, or held to be unconstitutional by the United States Supreme Court under the United States Constitution, or if the United States Supreme Court declines to review any judgment holding a method of execution to be unconstitutional under the United States Constitution made by the Florida Supreme Court or the United States Court of Appeals that has jurisdiction over Florida, all persons sentenced to death for a capital crime shall be executed by any constitutional method of execution.”

That is, Dixie may use non-enumerated methods of execution if *and only if* other methods are constitutionally impermissible by virtue of a statutorily specified judicial finding. These conditions are not met: the enumerated methods were legislatively repealed, not struck down by a court as unconstitutional. Dixie seems to be reading the statute to say “if the other methods are unavailable, alternative methods can be used.” That is not what the statute says. If the legislature wanted that, they could have said that. The statute is a protection against a finding by the judicial branch, not a law passed by legislative branch.

That is the plain and ordinary meaning of the statute, and “when a statute is clear, courts will not look behind the statute’s plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute’s plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.” *State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004), quoting *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002). The most reasonable interpretation here is that the legislature meant to allow for execution in the event of an adverse judicial ruling, but not against their own judgment in the future. Even if their intent is ambiguous, a reading that they were protecting from judicial, rather than legislative, changes to

the death penalty methods, is far from “unreasonable” to the extent required to ignore the plain language of the statute.

Even if Dixie could proceed with executions under 922.105(3), they could not do so on an expedited basis and with no procedures in place. Doing so would be a violation of the Eighth Amendment. A method of execution is “cruel” under that Amendment when it involves “lingering death.” *In re Kemmler*, 136 U.S. 436, at 447 (1890). Proceeding with an execution under conditions “sure or very likely to cause . . . needless suffering” is likewise unconstitutional. *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

Any claim that Dixie is able to proceed with executions meeting these criteria is not credible. The Dixie state government has not hanged a man [since 1927](#). It is implausible that it has reliable and t have tested equipment, or procedures, in place to carry out those hangings in a constitutional manner. By contrast, the state has procedures for [lethal injection](#) and [electrocution](#).

The inmates set for execution can easily making the necessary showing of a “substantial risk of serious harm” that prevents officials from claiming they were “subjectively blameless for purposes of the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. 825 (1994). Here, there are no procedures to carry out an execution, let alone ensure it comports with constitutional requirements. The complete lack of procedures and the rush to carry out the executions regardless creates a *per se* substantial risk of serious harm.

To be clear, at this stage we take no position on whether or not the method of hanging is unconstitutional in and of itself. We just argue that it is unconstitutional when a state has no procedures whatsoever to protect against botched executions and unnecessary suffering.

Petitioner therefore asks this honorable court for review of the following questions, which the Court has jurisdiction over under Part II, § 2 of the rules of the court.

Can Dixie use any method to inflict death upon a death row inmate other than lethal injection or electrocution under Dixie Stat. 922.105(3) if a court has not found those methods unconstitutional?

Is Dixie’s rush to execute inmates using a new, untested execution method with no procedural safeguards in place a violation of the Eighth Amendment?

REQUEST FOR TEMPORARY INJUNCTION

Additionally, Petitioner asks for a temporary injunction in the form of a moratorium on all executions until the conclusion of this case. “In order to obtain a temporary injunction, the party seeking the injunction ‘must satisfy a four-part test under [Dixie] law: ‘a substantial likelihood of success on the merits; lack of an adequate remedy at law; irreparable harm absent the entry of an injunction; and that injunctive relief will serve the public interest’” *Gainesville Woman Care, LLC v. State of Florida*, SC16-381 (Fla. 2017), quoting *Liberty Counsel v. Florida Bar Bd. of Governors*, 12 So. 3d 183, 186 n.7 (Fla. 2009).

In the instant case, the plain text of the clause being litigated indicates a likelihood of success on the merits. *See supra*. The nature of the case precludes an adequate remedy at law. Harm can not be more irreparable than death, which will be carried out absent an injunction as per the directive of the Dixie Attorney General. Finally, an injunction would serve the public interest because the citizens of Dixie have an interest in ensuring that capital punishment is not carried out in a way that violates constitutional and state law.

For the reasons above, Petitioner requests that a temporary injunction be issued, and that this writ of certiorari be granted.