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Contact: Laura Burstein at laura.burstein@squirepb.com

Robert Roberson, an Autistic Father Wrongfully Convicted and Sentenced to Death in Texas Based on the Debunked “Shaken Baby Syndrome” Hypothesis, Applies for Clemency to Stop his October 17th Scheduled Execution

Medical and Scientific Experts, Bipartisan Texas Lawmakers, Advocates for Parental Rights, Autism Organizations, Best-Selling Novelist John Grisham, Former Lead Detective Brian Wharton, Innocence Groups, the Texas Catholic Conference of Bishops, and Dozens of Others Urge Texas Pardons Board to Recommend, and Gov. Greg Abbott to Grant, Clemency

(Austin, Texas, Tuesday, September 17, 2024) Today, 34 eminent scientists and doctors, a bipartisan group of 84 Texas legislators, 8 advocates for parental rights, 8 organizations that advocate for people with Autism and their families, faith leaders, innocence advocacy groups, former judges, 70 attorneys who have represented people wrongfully accused of child abuse, and former lead detective Brian Wharton, among others, filed letters in support of Robert Roberson's [clemency petition](#) to the Texas Board of Pardons and Paroles and Governor Greg Abbott. (Exhibits 7, 15-23.)

The clemency petition, filed today, can be accessed here: <https://tinyurl.com/53txesp9> and letters from hundreds of supporters, filed as exhibits, here: <https://tinyurl.com/4w9fph8c>.

Mr. Roberson's petition describes the new medical and scientific evidence that his jury never heard showing that no homicide occurred. Mr. Roberson's two-year-old, chronically ill daughter, Nikki, actually died of severe viral and bacterial pneumonia that medical professionals missed in 2002, not because of any abuse. Her illness progressed to sepsis and then septic shock, a process likely precipitated by the dangerous respiratory-suppressing medications she was prescribed during her last days, all of which has now been established by detailed reports from highly qualified medical specialists.

No court has been willing to consider three new expert reports showing how Nikki died of pneumonia, proof that Mr. Roberson is innocent of any crime.

The power of Mr. Roberson's innocence claim is attracting diverse and widespread support, including from best-selling novelist John Grisham, who said, “This isn't a case where the system got the wrong guy, but rather one where no crime took place at all. Something must be done to stop Robert's execution. Governor Abbott and the Board of Pardons and Paroles can prevent an irreparable injustice by granting him clemency.”

Brian Wharton, the lead detective in charge of investigating Nikki's death who directed that Mr. Roberson be arrested based on a doctor's Shaken Baby hypothesis made even before an autopsy was performed, and

who testified for the prosecution at trial, has come to believe Mr. Roberson is innocent and has filed a letter of support, urging clemency.

“I will forever be haunted by the role I played in helping the State put this innocent man on death row,” said Brian Wharton. “Robert’s case will forever be a burden on my heart and soul. But it is not too late for Texas to change course and stop his execution. I sincerely hope that Governor Abbott and the Board will step in to do so.” (See also Exhibit 7.)

Mr. Roberson is scheduled for execution on October 17, 2024, and is at risk of being the first person in the United States executed based on the discredited “Shaken Baby Syndrome” hypothesis, unless the courts or Governor Abbott intervenes.

A combination of Nikki’s undiagnosed pneumonia, medications that suppressed her breathing, an accidental fall, and the medical triage undertaken after her collapse entirely explain Nikki’s condition.

Mr. Roberson’s clemency petition states:

“Nikki’s death ... was not a crime—unless it is a crime for a parent to be unable to explain complex medical problems that even trained medical professionals failed to understand at the time. We now know that Nikki’s lungs were severely infected and straining for oxygen—for days or even weeks before her collapse. A recent reexamination of lung tissue collected during her autopsy has revealed that both a chronic interstitial viral pneumonia and a secondary acute bacterial pneumonia were ravishing her lungs, causing sepsis and then septic shock.

“In the days before her collapse, Robert repeatedly took Nikki to the local Emergency Room (ER) and to her pediatrician in rural Palestine, Texas, seeking help. But unaware of her severe pneumonia, doctors sent her home with medications that would only have made her condition worse. As an expert in medical toxicology has now explained, the medications prescribed to her—Phenergan (the brand name for promethazine) and codeine—would only have further *suppressed* Nikki’s ability to take in oxygen. Codeine is a narcotic, not recommended for anyone under age eighteen; Phenergan now has FDA “black box warnings” against prescribing it to children Nikki’s age and in her condition precisely because it can suppress breathing and result in death. These potent, respiratory-suppressing drugs certainly were not designed to treat a toddler’s severe respiratory illness, *i.e.*, pneumonia.” (Petition at pp. 4-5.)

On the night of January 30, 2002, Mr. Roberson heard a “strange cry” and woke up to find Nikki lying on the floor at the foot of the bed. Mr. Roberson comforted Nikki and wiped a small speck of blood off her mouth but did not observe anything else wrong. They eventually fell back asleep. But when he woke up a few hours later, Mr. Roberson found Nikki unconscious with blue lips. He was horrified and tried to revive her. Then he took her to the ER.

More than 30 medical and scientific experts have written to the Board of Pardons and Paroles stating:

“There was no differential diagnosis undertaken at that time because, in 2003, presuming abuse was recommended pursuant to the Shaken Baby Syndrome hypothesis, then treated as medical orthodoxy. Today, no reputable medical doctor would fail to conduct a thorough, multi-disciplined exploration of all possible causes of death because it is *now* known that many phenomena—including accidental short falls and naturally occurring disease—can cause the same intracranial conditions that ‘mimic’ inflicted head injury.” (Petition at Exhibit 15.) If Nikki died today, instead of presuming Nikki’s condition was caused by abuse, no doctor would consider Shaken Baby Syndrome as the cause of Nikki’s death because SBS is now considered a diagnosis of exclusion; Nikki’s pneumonia, the extreme levels of dangerous medications found in her system during her autopsy, and her fall from the bed explain why Nikki died.

Mr. Roberson’s Autism – which was not known to the hospital staff and was not diagnosed until 2018 – played a pivotal role in the rush to judgment in his case.

Hospital staff interpreted Mr. Roberson’s seemingly blank reaction to Nikki’s serious condition as callousness, when in fact his Autism explained his non-neurotypical response to the emergency. (Petition at Exhibit 17) (Letter of support from eight state and national advocacy groups for people with Autism and their families.)

“Robert Roberson’s Autism, which affects social and emotional processing, led to a lack of visible emotional response—a characteristic misinterpreted during his trial as a sign of guilt,” said Christopher Banks, President and CEO of the Autism Society of America. “This tragic misjudgment, combined with the absence of expert testimony on Autism, culminated in a wrongful conviction, in which we urge Governor Abbott to grant clemency.”

“The prosecution’s reliance on misjudgment and bias against Mr. Roberson's Autistic behavior suggests a rush to judgment substantially influenced by criminalizing disability,” said Jacquie Benestante, Executive Director of the Autism Society of Texas. “We are calling for justice and clemency, urging Governor Abbott and the Board of Pardons and Paroles to consider the compelling evidence and prevent a wrongful execution.”

A bipartisan group of 84 Texas lawmakers wrote the Board separately this week, urging it to recommend clemency for Mr. Roberson “out of grave concern that Texas may put him to death for a crime that did not occur.”

The lawmakers emphasized that, more than 10 years ago, the Texas House unanimously passed a law to allow challenges to convictions based on disproven or incomplete science. They have been “dismayed to learn that this law has not been applied as intended and has not been a pathway to relief – or even a new trial – for people like Mr. Roberson. In his case, significant scientific and medical evidence now shows that his daughter Nikki, who was chronically ill, died of a combination of natural and accidental causes, not the debunked shaken baby syndrome hypothesis the State used to convict Mr. Roberson.” (Exhibit 16.)

The lawmakers further emphasized that the House also passed a law in 2021 “which now ensures that parents have the right to a second expert medical opinion after allegations of child abuse. Had these

events occurred today, Mr. Roberson would have been legally entitled to an additional medical review at his request.” (Exhibit 16.)

Eight advocates for parental rights wrote to the Governor and the Board that Mr. Roberson’s case “demonstrates a shocking disregard for his parental rights.” They explained:

“Abuse was the default – and wrong – assumption before any determination was made about Nikki’s medical condition. Mr. Roberson was viewed with suspicion from the outset because of symptoms associated with his then-undiagnosed autism spectrum disorder.

“Because of these egregious factors, Mr. Roberson was denied the ability to see Nikki in the hospital, and he was arrested before an autopsy was even performed. What’s more, Mr. Roberson was not advised of any end-of-life decisions being made for Nikki despite having full custody ... Clemency is necessary to prevent the irreparable harm of executing this innocent parent.” (Exhibit 18.)

Mr. Roberson’s clemency petition includes numerous letters of support from his spiritual advisors, friends, and supporters who attest to his faithful, peaceful and loving nature.

He has completed some 60 different Bible study courses and has had a virtually pristine disciplinary record during his many years in prison. Because of his record of peacefulness, he was selected to be in the very first faith-based program on death row. In addition, he was one of only 13 men selected to participate in an experimental “group rec” program that allowed him to move freely on the pod with others determined to be no threat to anyone. (Petition at p. 38, 52.) Many people attest to his empathy and concern for others over himself. For example, his spiritual advisor, Donna Drake Farmer, has written that Mr. Roberson’s support for her while she was caring for her dying husband gave her peace and that Mr. Roberson “probably knows more of my concerns and worries than my birth children do.” (Petition at p. 56, Exhibit 23.)

An overview of Robert Roberson’s innocence case is [here](#).

A photo of Mr. Roberson can be accessed [here](#). Source: Roberson Family.

Watch *New York Times* Opinion Video showing meeting between lead detective Brian Wharton and Robert Roberson [here](#).

To speak with an attorney for Mr. Roberson please contact: Laura.Burstein@Squirepb.com.

For more information, please go to:

<https://innocenceproject.org/what-to-know-about-robert-roberon-on-texas-death-row-for-a-crime-that-never-occurred/>

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