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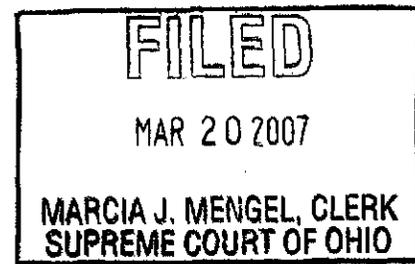
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March 20, 2007

VIA FAX: 614-387-9019

The Honorable Chief Justice Thomas J. Moyer
The Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431

RE: **State of Ohio v. Kenneth Biros**
Case No. 96-423, Ohio Supreme Court



Dear Mr. Chief Justice Moyer:

On November 30, 2006, this Court issued a death warrant for the execution of Kenneth Biros, setting the execution for January 23, 2007. On January 19, 2007, the Governor issued a reprieve until today, March 20, 2007. In the Warrant of Reprieve, it states that "the [Ohio Department of Rehabilitation and Correction ("DRC")] should carry out [Biros's] sentence[] on the last date of [his] reprieve[] at a time established on that date by the Department." (Copy attached).

DRC has established that Biros's execution is to be carried out on March 20, at 10:00 a.m. It has issued a press release to that effect. (Copy attached).

On December 21, 2006, the U.S. District Court in Columbus entered an order enjoining Biros's execution. Yesterday, a panel of the Sixth Circuit unanimously denied the State's motion to vacate that injunction. (Copy attached).

Also yesterday, the State asked the en banc Sixth Circuit to vacate the injunction and allow the execution to proceed as scheduled at 10:00 a.m. In its filings with the en banc Sixth Circuit, the State represented that the execution was scheduled for March 20, 2007, at **10:00 a.m.** (Copy attached).

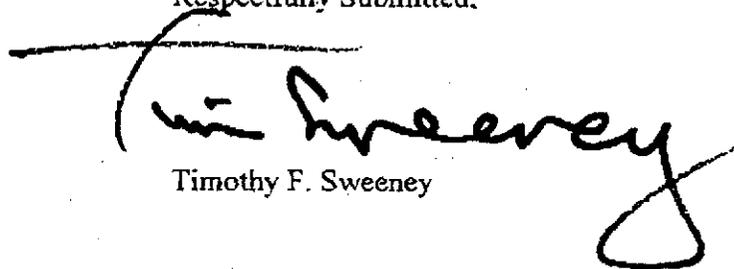
The Honorable Chief Justice Thomas J. Moyer
March 20, 2007
Page 2

It is now more than 90 minutes after the time set by DRC for the scheduled execution, and the federal injunction remains in place. The death warrant has thus expired by its terms and/or by force of law. Moreover, because the time set by DRC for the scheduled execution has long passed, there is no reason to believe that the en banc Sixth Circuit or any other court will take the rather extraordinary step of vacating the injunction.

In these circumstances, we believe the Warden and his designees who are continuing their preparations to carry out the execution today are in violation of the federal injunction and that they should immediately cease all activities in preparation for Mr. Biros's execution. Mr. Biros's state and federal constitutional rights to not be subjected to cruel and unusual punishment are also being violated by the actions of these state actors in continuing to subject him to preparation for an execution after his execution has been enjoined and after that injunction has been upheld long beyond the time set by DRC for the execution to occur.

We hereby respectfully request that this Court direct DRC to immediately cease all activities connected with the death warrant issued by this Court for the execution of Kenneth Biros and to promptly return Mr. Biros to his cell at the Ohio State Penitentiary.

Respectfully Submitted.

A handwritten signature in black ink, appearing to read "Timothy F. Sweeney". The signature is written in a cursive style and is positioned below the typed name. A horizontal line is drawn across the top of the signature.

Timothy F. Sweeney

cc: Marcia J. Mengel, Clerk (VIA FAX: 614-387-9549)
Edward Voorhies, Warden (VIA FAX: 740-259-2882)
Heather Gosselin, Esq. (VIA FAX: 614-728-8600)
Dennis Watkins, Esq. (VIA FAX: 330-675-2431)
Kent Markus, Esq. (VIA FAX: 614-466-9354)

DEATH WARRANT

THE STATE OF OHIO

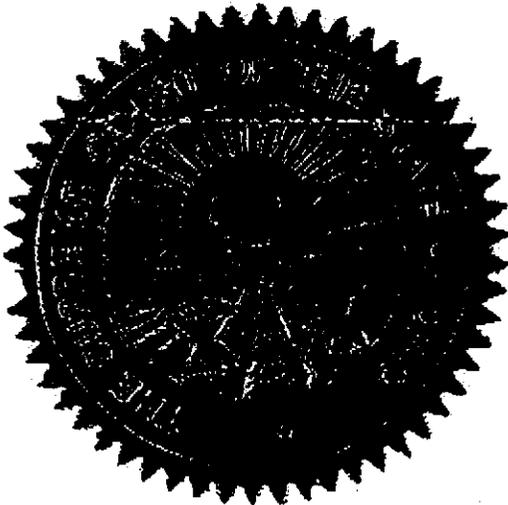
IN THE SUPREME COURT

CITY OF COLUMBUS

TO THE WARDEN OF THE SOUTHERN OHIO CORRECTIONAL FACILITY:

The Supreme Court of Ohio, having affirmed the judgment and sentence of the Court of Appeals for Trumbull County, in the case of The State of Ohio vs. Kenneth Biros, and Kenneth Biros, having been indicted and convicted of the crime of aggravated murder with specification(s) in the Court of Common Pleas, you are hereby commanded to proceed on Tuesday, the 23rd day of January, 2007 (the day fixed by the Supreme Court of Ohio), to carry into execution the sentence of death pronounced on Kenneth Biros, by the Court of Common Pleas for Trumbull County, in the manner directed by the statute in such case made and provided, and make due return thereof to the Clerk of the Court of Common Pleas of Trumbull County.

Given under my hand and the Seal of the
Supreme Court, at Columbus, this 30th
day of November, 2006.





Clerk of the Supreme Court

B

01/19/07 15:54 [X] :02/02 NO:011



State of Ohio
Office of the Governor

Warrants of Reprieve

1. Kenneth Birco is currently in the custody of the Ohio Department of Rehabilitation and Correction, has been sentenced to death, and is scheduled to be executed on January 23, 2007.
2. James J. Filiaggi is currently in the custody of the Ohio Department of Rehabilitation and Correction, has been sentenced to death, and is scheduled to be executed on February 13, 2007.
3. Christopher J. Newton is currently in the custody of the Ohio Department of Rehabilitation and Correction, has been sentenced to death, and is scheduled to be executed on February 27, 2007.
4. During my tenure as Governor, before I allow an execution to proceed, my staff and I will have conducted a comprehensive, thorough and searching review of the case to determine if any exercise of executive clemency is appropriate. The brief time I have been Governor has not allowed me sufficient time to conduct that type of review and there is not sufficient time before these scheduled executions to complete that type of review.
5. Accordingly, I direct that the sentences of death in the three cases listed above be reprieved as follows:
 - a. Kenneth Birco until Tuesday, March 20, 2007.
 - b. James J. Filiaggi until Tuesday, April 24, 2007.
 - c. Christopher J. Newton until Thursday, May 24, 2007.
6. Mr. Birco, Mr. Filiaggi and Mr. Newton should remain incarcerated in the custody of the Ohio Department of Rehabilitation and Correction. The Department should carry out their sentences on the last date of their respective reprieves at a time established on that day by the Department.
7. I signed these Warrants of Reprieve on January 19, 2007 in Columbus, Ohio.

Ted Strickland, Governor

Ohio Department of Rehabilitation and Correction

NEWS RELEASE

MEDIA ADVISORY
FOR IMMEDIATE RELEASE

MARCH 12, 2007

Execution of Inmate Kenneth Biros

(Columbus) - The Ohio Department of Rehabilitation and Correction has confirmed that inmate Kenneth Biros is scheduled for execution on Tuesday, March 20, 2007 at 10:00 a.m. at the Southern Ohio Correctional Facility in Lucasville, Ohio. The Ohio Revised Code mandates lethal injection as the manner of execution.

Biros was convicted and sentenced to death for the February 7, 1991 Aggravated Murder of Tammy Engstrom, Trumbull County.

Background Facts:

Name:	Kenneth Biros
Race:	Caucasian
DOB:	6/24/58
Crimes:	Aggravated Murder, Attempted Rape, Abuse of a Corpse, Aggravated Robbery & Felonious Sexual Penetration
Sentence:	Death
County:	Trumbull

For further information please contact the DRC Public Information Office at 614-752-1150.

FILED

MAR 19 2007

NO. 06-4660
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LEONARD GREEN, Clerk

RICHARD COOEY, KENNETH BIROS
(Intervenor),

Plaintiff-Appellee,

v.

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF OHIO

TED STRICKLAND, Governor,
REGINALD WILKINSON, Director,
TERRY COLLINS, Director, EDWARD
VOORHIES, Warden, JAMES HAVILAND,
Warden,

ORDER

Defendants-Appellees.

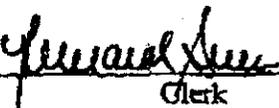
BEFORE: SUHRHEINRICH, SILER, and GILMAN, Circuit Judges.

Ohio inmate Kenneth Biros is scheduled to be executed on Tuesday, March 20, 2007. On December 21, 2006, the district court granted Biros a preliminary injunction barring the State of Ohio or its agents "from implementing an order for the execution of Kenneth Biros issued by any court of the State of Ohio until further Order from this Court." The State has filed a motion to vacate that injunction in this Court. However, as Biros is also an intervenor in the district court in the matter appealed as No. 05-4047, *Cooey v. Strickland*, decided by this Court on March 2, 2007, and has joined in the petition for rehearing with suggestion for rehearing *En Banc*, currently pending before this Court, see *Cooey v. Strickland*, No. 05-4057, - F.3d -, (6th Cir. March 2, 2006), petition

for reh'g filed March 13, 2007, this Court **DENIES** the State's motion without prejudice. The State can renew its motion, if appropriate, upon resolution of that petition.

SO ORDERED.

ENTERED BY ORDER OF THE COURT


Clerk

06-4660

**DEATH PENALTY CASE – Execution Set for March 20, 2007 at 10:00 a.m.
(but currently stayed)**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

**RICHARD COOEY, KENNETH BIROS (Intervenor),
Plaintiff-Appellant**

v.

**TED STRICKLAND, Governor, TERRY COLLINS, Director,
and EDWIN VOORHIES, Warden, Defendants-Appellees**

**On Appeal from the United States District Court
for the Southern District of Ohio, Eastern Division (Columbus)
Case No. 2:04-cv-01156**

**DEFENDANTS-APPELLEES' PETITION
FOR REHEARING EN BANC**

Respectfully submitted,

MARC DANN
Attorney General for Ohio

MICHAEL L. COLLYER * (0061719)
Principal Assistant Attorney General
**Lead Counsel*
Capital Crimes Section
615 W. Superior Ave., 11th Floor
Cleveland, Ohio 44113-1899
(216) 787-3030; (216) 787-3480 (fax)

HEATHER L. GOSSELIN (0072467)

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March 20, 2007

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<p>TO: Chief Justice Thomas J. Moyer Ohio Supreme Court</p> <p>CC: Marcia J. Mengel, Clerk Edward Voorhies, Warden Heather Gosselin, Esq. Dennis Watkins, Esq. Kent Markus, Esq.</p> <p>FROM: Timothy F. Sweeney, Esq.</p> <p>RE: <u>State v. Kenneth Biros</u> Case No. 96-0423</p>	<p>FAX NUMBER: 614-387-9019</p> <p>FAX NUMBERS: 614-387-9549 740-259-2882 614-728-8600 330-675-2431 614-466-9354</p>
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NUMBER OF PAGES TO FOLLOW: 8

MESSAGE:

[Please see attached letter]

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