

**In the
Indiana Supreme Court**

No. 25S-SD-00167

Roy Lee Ward,)
Appellant,)
v.)
State of Indiana,)
Appellee.)

This is a Capital Case

**Corrected Reply in Support of Successive
Petition for Post-Conviction Relief**

The crux of all Ward’s claims is whether the State of Indiana can constitutionally carry out his execution. The State repeatedly claims that Ward is merely seeking public documents so he can “possibly later challenge the method of execution.” Opposition at 18, 28. Ward is not looking for *later* litigation—his successor is challenging Indiana’s *current* execution practice. That is the core of the Successive Petition for Post-Conviction Relief.

This Court has previously held that methods of execution claims are available under Indiana law immediately preceding the issuance of an execution warrant. *Isom v. State*, 170 N.E.3d 623 (Ind. 2021). As noted in *Isom*, “The post-conviction court denied Isom’s request based on the *State’s objection* that it had no execution date set for Isom and did not know which substances or method would be used to execute him.” *Id.* at 653 (emphasis added).

Additionally, this Court recognized the availability of other remedies in *Corcoran v. State*, 240 N.E.3d 701, 702 (Ind. 2024). Now, with the satisfaction of the basis of the State’s position in *Isom*, and consistent with *Corcoran*, Ward properly and timely avails himself of an available remedy.

The State seeks to create a false narrative—a false narrative premised upon an inconsistent position taken in another capital case. The State insists Ward has fully “exhausted” the remedies this Court has held are available to him. This ignores *Isom*. The State fails to address and distinguish *Isom*’s unambiguous principle and promise of eventual ripeness. Indeed, the State **never** cited *Isom* because even attempting to do so would demonstrate that just four years ago, they argued one position, but now they argue the exact opposite. Such changing of positions itself implicates Due Process under the federal and Indiana constitutions.

The State incorrectly asserts that Ward has failed to provide an alternative means of execution. Opposition at 34. This makes no sense when Ward has challenged one method in a protocol with **two separate methods**.¹ See Exhibit A at 13-14 (Method 1), 14-15 (Method 2). And even as to the second method, the straight pentobarbital method that Ward deduces the State used to execute Mr. Corcoran and Mr. Ritchie and assumes the State plans to

¹ Ward does not take the State’s discussion of no alternative (*see* Opposition at 35) to mean the State is conceding that Method of Execution 1 of Indiana’s protocol is unconstitutional under the Eighth Amendment.

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use in his execution, Ward necessarily has offered an alternative of using sterile, stable, and correct potency drugs—drugs that are formulated in a way that they work as the State intends in an execution. Ward simply asserts that the current Method-2 of Indiana’s execution protocol as currently applied does not constitutionally work and needlessly leads to the infliction of pain as demonstrated by the recent troubling execution.

The pentobarbital did not work as designed during Mr. Ritchie’s execution, **a fact that the State does not contest**. There simply should be no movement that late in an execution if the pentobarbital was working as the State desired in an execution. Such sudden and violent movement demonstrates the obvious pain Mr. Ritchie felt as what must have been defective pentobarbital coursed through his veins. To permit Ward’s execution to proceed under the same conditions would create “a substantial risk of serious harm” and an “objectively intolerable risk of harm” that would prevent prison officials from pleading that they were “subjectively blameless for purposes of the Eighth Amendment.” *Baze v. Rees*, 553 U.S. 35, 50 (2008). Indeed, given what is known regarding Mr. Ritchie’s problematic execution, the State would be intentionally causing needless and excessive pain.

The State, without reasonable explanation, refuses to comply with its public records disclosure obligations, even as the shreds of information that *are* public heavily imply that the State has engaged in unconventional dealings to procure overpriced drugs. The State omits that in every fashion, as the Attorney

General, they make every effort to delay disclosure of any information related to the surreptitious acquisition of scheduled narcotics. They are paying, at least, a quarter of a million more for the drugs than they should. Stated numerically, \$250,000 more than its real value. Exhibit Q at ¶ 65-66(Affidavit of Dr. Almgren attached to this pleading) (“[T] the state spent \$1.175 million on four doses of execution drugs. This means that the state overpaid by a factor of over 130 times the typical market price.”). They refuse to comply with any Indiana laws related to the bidding process. They simply declare it will lead to the identity of the supplier without any proof of this alleged fear being anything more than paranoia. Yet they simultaneously release heavily redacted records that have led to nothing—disproving their point altogether.

In conclusion, Ward asks this Court to follow *Corcoran* and *Isom*, where new evidence exists and additional legal proceedings should precede the setting of a date. Thus, this Court should recall the tentative date and permit the previously unavailable second post-conviction proceeding to occur in the regular course of proceedings.

**A. The State Conducts the Execution and They Must Do So
Consistent with the Constitution.**

The State asks this Court to deny the opportunity to pursue the claim they said was proper but unripe in *Isom*, because the State is not a party to an execution. The State illogically argues if they cannot use lethal injection with this questionable pentobarbital, there is no way to remedy it because there is no

available party, as IDOC or the Warden is not the State.² It is absurd to suggest that IDOC and/or the Warden are not state actors. This Court has previously addressed these constitutional claims and recognized the proper party is the State. The Attorney General represents IDOC and the Warden in legal complaints. The State’s argument in this regard is just plain wrong.

Setting aside the absurdity of such contention,³ this ignores the troubling execution that recently occurred. It is an attempt to deflect from a disturbing and problematic execution. The State of Indiana failed to offer any proof that Ward’s execution will proceed in a manner consistent with the Constitutions. That should be the beginning and end point of this Court’s analysis; there would be the intentional infliction of excessive pain.

Further, it is telling that the State could not produce a single witness to say everything went as planned or that the pentobarbital worked as designed. Nothing in the record refutes the allegations of Constitutional error. The State accuses Ward of relying on “raw speculation” (Opposition at 10), despite the 5 affidavits and multiple records supporting Ward’s allegations. The State offers nothing but—unsupported rhetoric to counter Ward’s evidence. There were

² The Attorney General omits that federal proceedings properly name the party as the Warden, the respondent, in a federal challenge to a State conviction.

³ The Attorney General trots out this shell-game when it says it has no ability to control Indiana Department of Correction while simultaneously requesting extensions in order not to respond in cases involving the IDOC as their client.

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multiple accounts that something went very wrong, but the State insists, unsupported by any evidence to the contrary, that everything was fine.

The State falsely argues that Ward seeks injunctive relief. Opposition at 10, 11, 14. He made no such request. Ward simply requests he not be executed in an unconstitutional manner. The State ignores the reality that the State could use Method One of their protocol, assuming they have been using Method Two. The State could also pass legislation implementing a new Constitutional execution method Alternatively, the State could offer transparency and assurances that the drugs being used are sterile, stable, and the correct potency to the satisfaction of Eighth Amendment requirements. The answer is not, as the State suggests, to simply ignore information they do not like and proceed to execute Ward unconstitutionally. The answer is the death sentence can be imposed with an alternative method already contained in the protocol or using chemically appropriate drugs that can lead to a constitutional execution under the second method.

Mr. Ritchie's execution was flawed. After the drug began to flow, he sat up “violently” and strained against the restraints. The **five** uncontested affidavits paint a horrifying moment:

- “Ben suddenly and strongly raised his torso up from the gurney and was held back by the restraints. Ben seemed to me to be trying to jerk out of the gurney. This was about 2 or 3 minutes after the blinds were opened. When he raised up, I hit Mark's arm and grabbed him. I thought Ben was lifted for 5-6 seconds. It was sudden and scared me because I did not expect for something like that to happen. I then

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said to Mark, ‘I don’t think I can do this. I can’t do this.’
Exhibit K ¶ 14;

- “[H]e violently lurched forward and up as if to sit up, but he was restrained. It appeared almost like a spasm that lasted between 3 to 5 seconds.” Exhibit L ¶ 9;
- “Ben seemed to shoot up. It seemed like he was doing a crunch because his head and shoulders lifted sharply from the gurney. It was so startling Amanda grabbed my arm. Ben lifted for about 3 to 5 seconds.” Exhibit M ¶ 9;
- “Then, his upper body jerked up. He was restrained but his head and shoulders came up. It was so violent and so unexpected Amanda punched Mark’s arm. Ben lifted for about 2 to 3 seconds and then laid back down. I saw Ben’s Spiritual Advisor [] startled and pushed back into the chair he was in.” Exhibit N ¶ 9; and,
- “He recalled that after the execution began. Mr. Ritchie lifted several inches off the gurney and against the restraints. This startled Mr.- causing him to move back in his chair as Mr. Ritchie lifted against the restraints. Mr. -informed me Mr. Ritchie’s action was sudden and lasted about 2 seconds. After Mr. Ritchie laid back down. Mr.- believes it was about 5 seconds later when Mr. Ritchie was ‘gone’.” Exhibit O ¶ 6.

Something happened, and that something never should have happened if the pentobarbital acted in the manner it should have.

After accusing Ward of “raw speculation” (even though his “speculation” is based on the affidavits of five witnesses), the State then engages in some speculation of their own. The State speculates against medical science and logic that Mr. Ritchie might have voluntarily struggled against his

restraints. Opposition at 37.⁴ Setting this unsupported assertion aside, all eyewitnesses indicated that the movement appeared to be a relatively long period of time after the shades opened. Exhibit K ¶ 14; Exhibit L ¶ 9; Exhibit M ¶ 9; Exhibit N ¶ 9; Exhibit O ¶ 6. Indeed, the timing of the movement was long after the drugs were due to be administered. The State does not square corners with the Coroner’s opinion that death occurred in mere “seconds.” Exhibit S (County Coroner Death Certificate).

Further, if pentobarbital is working as designed, there is no way to move voluntarily or involuntarily. As immediately noted in news articles after the execution, a professor emeritus from the Ohio State University College of Medicine said, “It should be really, really effective – really fast. No one should move . . . It’s just lights out, go to sleep, no reaction, no coughing, no nothing. They just don’t move.” See Casey Smith, “*‘Violent’ moment during Indiana execution draws scrutiny; DOC official deny ‘botched’ process,*” INDIANA CAPITAL CHRONICLE (May 22, 2005),

<https://indianacapitalchronicle.com/2025/05/22/violent-moment-during-indiana-execution-draws-scrutiny-doc-officials-deny-botched-process/>.

In further support, Ward offers Dr. Almgren who indicated such movement is impossible when pentobarbital is working: “Due to its rapid distribution and

⁴ Ward objects to this apparent testimony from the Attorney General not supported by any evidence in the record. To the extent it is based upon conversations had with others, Ward objects to hearsay being considered by the Court. Finally, it is wholly speculative.

predictable pharmacologic profile, the drug should act quickly and evenly . . . ensuring the person simply falls asleep and remains unconscious without experiencing distress or abnormal reactions.” Exhibit Q at ¶ 78. However, this dispute, while seemingly a scientific impossibility, does merit further consideration before a factfinder. *Casey v. Uddeholm Corp.*, 32 F.3d 1094, 1099 (7th Cir. 1994) (“[T]he appropriate proceedings for such fact-finding is a bench trial and not the disposition of a summary judgment motion.”); *The Analysis and Decision of Summary Judgment Motions*, 139 F.R.D. 441, 474 (1992) (“When evidentiary facts are in dispute, when the credibility of witnesses may be in issue, when conflicting evidence must be weighed, a full trial is clearly necessary regardless of whether it is a bench or jury trial.”).

It’s much more likely Mr. Ritchie’s reaction was due to a problem with the drug being administered. *See* Exhibit Q at ¶ 74-79. Dr. Almgren reviewed the witnesses’ accounts and notes the reactions they observed and reported were not consistent with what is expected if the drug was not compromised in some way. *Id.* at ¶ 76-78. Specifically, Dr. Almgren stated, “Overall, the witnesses’ accounts were highly consistent in describing Mr. Ritchie’s intense and forceful movements, raising concerns about both the drug’s effect and potential gaps in the execution protocol.” *Id.* at ¶ 77. The Doctor concluded, “The unexpected reaction raises questions about the quality and effectiveness of the pentobarbital used, as it did not produce the expected effect. Concerns include the drug’s potency, purity, overall quality, pH and stability, as well as the possibility that it

may have precipitated or undergone oxidation over time, potentially reducing its strength and effectiveness.” *Id.* at ¶ 79.

In addition, Dr. Almgren points out there are concerns with the Indiana State Prison’s execution protocols. *Id.* at ¶ 80 – 86. Her review of the protocols revealed numerous gaps and deficiencies throughout the process that are troublesome. One area of concerns is “[t]he staff selected for the Execution Team are not licensed to perform medical procedures or to compound and prepare drugs.” *Id.* at ¶ 81. Although proficiency in placing IVs requires extensive training and practice, the protocols do not specify whether the selected individuals on the execution team are so qualified. *Id.* at ¶ 82.

The concerns with the protocol do not stop with the training of the staff. Dr. Almgren points out that the protocols do not mention how the drug will be handled. Specifically, there appears to be no chain of custody requirements which leaves “significant risk that the drug could be manipulated, contaminated, or otherwise compromised at any point before use.” *Id.* at ¶ 85. Additionally, storing pentobarbital properly is essential for potency and stability. *Id.* at ¶ 84. “Storage environments should be continuously monitored for temperature and humidity to ensure the drug remains uncompromised, with all measurements carefully recorded. However, the current execution procedure makes no mention of such monitoring or documentation, raising significant concerns about the integrity and quality of the drug used in lethal injections.” *Id.*

In short, the State seeks summary judgment without presenting any contrary evidence because the claim is not cognizable. Summary judgment is not appropriate because the facts are not disputed and convincingly support that the previous execution was flawed. Given the authority from this Court that this claim is cognizable, this Court should deny this as a basis as well.

Ward does not challenge the conditions of his confinement, nor does he seek to open the door to those challenges for others. He simply states that the method of execution is an available constitutional challenge and **as the State argued successfully in *Isom* it is only now available**. The slippery slope the State now argues exists simply is not an accurate recitation of the claims raised here.

Indeed, the State relegates to a footnote this Court's long-standing precedent recognizing these claims as cognizable in post-conviction and direct appeal proceedings. Opposition at 14 n.1 (citing *Bieghler v. State*, 839 N.E.2d 691 (Ind. 2005); *Johnson v. State*, 827 N.E.2d 547 (Ind. 2005); *Moore v. State*, 771 N.E.2d 46 (Ind. 2002)). This Court did nothing wrong in those cases and this Court should not reconsider those rulings.⁵ Furthermore, the State cannot reconcile this Court's reliance in *Isom* that was "based on the State's objection

⁵ *Stare decisis* is a "maxim of judicial restraint supported by compelling policy reasons of predictability." *Snyder v. King*, 958 N.E.2d 764, 776 (Ind. 2011). Under the doctrine, a court will overturn a rule established by precedent only when there are "urgent reasons and a clear manifestation of error." *Clifton v. McCammack*, 43 N.E.3d 213, 220 (Ind. 2015) (quoting *Snyder*, 958 N.E.2d at 776). The State makes no attempt to overcome the doctrine of *stare decisis* employed by this Court.

that it had no execution date set for Isom and did not know which substances or method would be used to execute him.” *Id.* at 653.

The State repeatedly asserts Ward “inexplicably” raised his claims in the wrong forum and should pursue a federal §1983 action instead of a state post-conviction proceeding, noting (wrongly) a “paucity of precedent allowing such challenges.” Opposition at 12-13. The State’s assertion is incorrect. To the contrary, this Court has ample precedent where this Court allows lethal injection claims to be raised in Indiana courts. Ward does not dispute that there may be other remedies—but this Court has recognized the validity of *this* remedy.

This Court has addressed lethal injection claims several times. In one instance, the claim was raised and this Court addressed it on direct appeal. *Moore*, 771 N.E.2d at 55-56. This Court has addressed the same claim in the successor context. *Johnson*, 827 N.E.2d at 552-53; *Biegler*, 839 N.E.2d 691. Tragically, another time the claim was raised and addressed by this Court in a capital defendant’s first post-conviction petition was *Ritchie v. State*, 809 N.E.2d 258, 262 (Ind. 2004). As this Court noted in *Ritchie*, 809 N.E. 2d at 263, the claim was cognizable before this Court concluded: “We conclude that the Court sees no merit in the contention that lethal injection is a per se violation of the Eighth Amendment.”

Contrary to the State’s assertion, there is precedent from varied procedural presentations where this Court recognized the cognizable nature of

the Eighth Amendment claim. Ward points to specific circumstances creating an unusual risk in his case where lethal injection may inflict excessive pain. In sum, Ward has unquestionably raised his Eighth Amendment challenge in a manner consistent with the precedent of this Court all the State's rhetorical protestations to the contrary.

Ward's Successive Petition for Post-Conviction claims are ripe, asserted in the correct forum and must be litigated to ensure he is not executed in violation of the state and federal constitutions. The State offers no reason to depart from this Court's long-standing precedent recognizing these claims as being cognizable in Indiana and specifically in post-conviction proceedings. This Court should respect the rule of law, apply that law, recall the tentative date, and permit the successor to proceed.

B. The State's Lack of Transparency is Relevant and States a Claim, But Enough is Known to Support the Need for Further Proceedings.

An execution, the state-sanctioned taking of the life of one of Indiana's own should be a solemn and dignified event, regardless of who the condemned may be. The State's lackadaisical and dismissive tone as they refuse to answer questions from the people of Indiana about the execution, which is carried out in the name of the people of Indiana, insultingly detracts from what should be a serious process. The people of Indiana and this Court deserve more.

The State accuses Ward of maliciousness. Opposition at 33. By no means is Ward acting maliciously, he simply points to a pattern of non-disclosures and

silence when a human life hangs in the balance. But some facts can be inferred or discerned by what has been stated publicly.

Indiana is likely using compounded pentobarbital in executions. This can be ascertained from Governor Braun’s comments to the media about the drugs purchased expiring, *See* Tim Spears, “*Indiana allowed some lethal injection drugs to expire,*” WISHTV.COM (June 4, 2025), <https://www.wishtv.com/news/i-team-8/indiana-allowed-some-lethal-injection-drugs-to-expire/>, and his reluctance to purchase more drugs with a 90 day shelf life, *See* Casey Smith, “*Braun says Indiana is out of execution drugs, signals willingness to debate capital punishment,*” INDIANA CAPITAL CHRONICLE (June 4, 2025), <https://indianacapitalchronicle.com/2025/06/04/braun-says-indiana-is-out-of-execution-drugs-signals-willingness-to-debate-capital-punishment/>.

Manufactured drugs have a shelf life of two to three years. Exhibit Q at ¶ 35. Compounded drugs have a much shorter shelf life. *Id.* at ¶ 36. The reasonable conclusion based on Gov. Braun’s comments is that Indiana purchased compounded drugs. *Id.* at ¶ 37

The difference between manufactured and compounded drugs is not just their longevity. Compounded drugs are less stable, and errors are common. *Id.* at ¶ 40, 67-69. Compounded pentobarbital must be dissolved in a liquid and precipitates and suspensions can form which can cause extreme pain and suffering from severe tissue injury, thromboembolism, suffocation or other respiratory distress. *Id.* at ¶ 50-57. These can all lead to an excruciatingly painful

death. *Id.* at ¶ 57 (“leading to a slow and excruciatingly painful death . . . effects causing a prolonged death where the prisoner experiences suffocation, drowning or other severe respiratory distress.”). Only pharmacies with extensive experience should prepare injectable pentobarbital and it should be done on special equipment. *Id.* at ¶ 58. Instead, Indiana allows execution drugs to be produced by unregulated entities that are not even considered pharmacies.

Compounding pharmacies are unregulated. They are not monitored by the FDA. *Id.* at ¶ 39-40. Indiana law specifically exempts entities making drugs for executions from regulation. I.C. 35-38-6-1(e) states compounding of lethal chemicals for execution (1) does not constitute the practice of pharmacy, and (2) is not subject to the jurisdiction of the Indiana board of pharmacy, the medical licensing board of Indiana, the Indiana department of health, or the Indiana professional licensing agency. This language was slipped into the biennial budget on the last day of the 2017 legislative session at 2:00 a.m. without a public hearing or comment. Exhibit R. To Ward’s knowledge, this subsection of the statute has never been constitutionally tested, and certainly, its manner of introduction avoided public scrutiny.

The instability of compounded pentobarbital and the resulting potential pain it can cause is the reason Ward needs access to the public records he requested months ago. Injectable pentobarbital must be:

- Made precisely. Exhibit Q at ¶ 51-55;

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- Transported correctly. *Id.* at ¶ 68 (“Transportation conditions can significantly impact the quality and stability of compounded drugs. Factors such as exposure to extreme temperatures, excessive humidity, and direct light can accelerate chemical degradation, reduce potency, or promote microbial growth. Timing is also critical, as prolonged transit or delays can allow these environmental factors to compromise the product.”); and,
- Stored properly. *Id.* at ¶ 69 (“Storage conditions play a critical role in maintaining the quality of compounded drugs. Improper temperature, humidity, or light exposure can lead to chemical degradation, reduced potency, or microbial contamination.”)

If the drug has precipitate out of the solution, the potency is lower and can lead to a slow, excruciating death. *Id.* at ¶ 56-57. Much can go wrong in the making, transporting, storing and administration of the lethal injection drugs. It seems that in Indiana’s last execution, something did—a physical response to what was likely excruciating pain.

Similarly, the State tries to distance Ward from his public records requests. Opposition at 17, 32-33.⁶ The requests were filed by Ward’s attorney on his behalf and this Court long ago noted the existence of agency theory. *Chase v. Chase*, 163 Ind. 178 (1904). While the box indicating the requests were made on behalf of another person was not checked, Attorney Volk requested

⁶ The State claims the statute informs the person making the request that the request is deemed denied within a certain amount of time citing I.C. § 5-14-3-9(c). Opposition at 32-33. However, that subsection of the statute applies to records requests made by mail or fax. Ward submitted his request through the Public Records Portal. I.C. 5-14-3-9 prescribes the way requests will be deemed denied if those requests were made in person, I.C. 5-14-3-9(b), by mail or fax, I.C. 5-14-3-9(c), or orally in person or by phone, I.C. 5-14-3-9(d). The statute does not address request made through the portal.

the records in her capacity as Ward’s lawyer. She indicated the request was made from the Office of the Public Defender with her work email and address

The State asserts that assuming there are records, and they can be disclosed, there is no undue interference with Ward’s ability to seek redress. Opposition at 20. It is hard to accept this as true given the Attorney General asked for an extension of time in *McLachlan v. Indiana Department of Correction*,⁷ Case #49D06-2505-PL-022086, after Mr. Ritchie was already executed. This is a litigation strategy which has the effect of depriving Ward of his rights to seek redress of his methods claim. This demonstrates the fallacy in the State’s argument that Ward should pursue a public records lawsuit. Opposition at 23. Instead Ward properly seeks records through a request to file a successive post-conviction petition.

The State’s position is extreme. For example, Ward has asked how the drugs are shipped to and stored and maintained by IDOC. It is unfathomable to believe that an individual could extrapolate from that information who the supplier was. Ward and the public are entitled to know what steps the State, IDOC, is taking to ensure the quality of something on which they are spending \$1.2 million over their actual value. And as noted by Dr. Almgren, adequate safeguards in shipping and storing are critical to the drug’s use effectiveness. Exhibit Q at ¶¶ 68-69; *see also* ¶ 84 (“[P]entobarbital[’s] chemical composition

⁷ This lawsuit was filed by the Ritchie’s federal habeas attorneys on his behalf.

makes it particularly vulnerable to degradation under improper conditions.

Storage environments should be continuously monitored for temperature and humidity to ensure the drug remains uncompromised, with all measurements carefully recorded. However, the current execution procedure makes no mention of such monitoring or documentation, raising significant concerns about the integrity and quality of the drug used in lethal injections.”)

Ward claims no right to raise a particular claim or succeed on the merits of a particular argument. But he is not engaged in a fishing expedition given the uncontested description of 5 affiants (*see* Exhibits K-O) regarding the problems at the recent execution and the medical science regarding pentobarbital. *See* Exhibit Q. Based on the evidence as it currently exists, there is a substantial risk of future harm because IDOC intends to use the same flawed drugs previously used. *See Baze*, 553 U.S. at 49. Ward is not seeking these records so he can try to think up a claim from what he finds—the IDOC’s refusal to hand over records they are required to produce under statute prevents him from fully detailing a viable methods claim⁸.

⁸ Ward’s rights protected by *Brady v. Maryland*, 373 U.S. 83 (1963), *Kyles v. Whitley*, 514 U.S. 419 (1995), *Strickler v. Greene*, 527 U.S. 263 (1999) and *Banks v. Dretke*, 540 U.S. 668 (2004)), are implicated. The obligation to disclose exculpatory evidence includes information possessed not only by the prosecutor’s office but also by State actors. *Kyles*, 514 U.S. at 437-438. A state statute cannot supersede the State’s *Brady* obligation. Rather, there is no “public records exception” to the *Brady* obligation. *Anderson v. South Carolina*, 709 F.2d 887, 888 (4th Cir. 1983). At minimum, to balance all competing interests, the State should deliver materials to a court for an *in camera* inspection. *See State v. Barrett*, 952 N.W.2d 308 (Iowa 2020).

C. Ward’s Reply to Various State Arguments.

The State argues Ward is not being denied his First Amendment right to petition for redress of grievances because he has access to courts if he would only make the effort. Opposition at 21-23. Ward is doing just that—he filed the successor request. IDOC through their attorney agents, the Attorney General, refuse to answer any public records request. Thus, Ward is seeking to litigate this claim in post-conviction. He will seek redress through discovery as shown by Exhibit P filed with his Successive Petition for Post-Conviction Relief. Those requests are reasonably calculated to develop evidence to further support his constitutional claims raised here.

Ward has a constitutionally protected interest in not suffering cruel and unusual punishment during his execution. That is the constitutional right that underlies his due process claim. In his Successive Post-Conviction Petition, Ward identified his liberty interest as his right to use state law to obtain public records to ensure compliance with the Eighth Amendment’s and Article One, Section 16’s ban on cruel and unusual punishment. The meaning of the records and what they may demonstrate, *see supra*, is tangible.

The State argues Ward should file a lawsuit to challenge the denial of his right to access public records in accordance with I.C. § 5-14-3-9(e). Opposition at 28, 33. First, the IDOC has not yet denied Ward’s requests for public records.

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It just has not responded at all.⁹ Second, filing a lawsuit seeking public records would not prevent Ward from being unconstitutionally executed. Mr. Ritchie’s attorneys filed such a lawsuit before his execution. He was executed regardless without gaining *any* information from IDOC. To this day, IDOC, represented by the Attorney General, has still refused to disclose any public records to his counsel even after requesting an extension. *See McLachlan v. Indiana Department of Correction*, Cause No. #49D06-2505-PL-022086.

While the United States Supreme Court has “never invalidated a State’s chosen procedure for carrying out a sentence of death,” people tasked with reviewing lethal injection procedures have found it extremely problematic. On January 5, 2025, Former Attorney General Merrick Garland determined: “Having assessed the risk of pain and suffering associated with the use of pentobarbital, the review concluded that there is significant uncertainty about whether the use of pentobarbital as a single-drug lethal injection for execution treats individuals humanely and avoids unnecessary pain and suffering.” Exhibit J at 2.

In Arizona, the Governor hired a retired federal magistrate to review execution procedures after several botched executions. He concluded lethal

⁹ Prior to Corcoran’s execution, his legal team sought public records. In response, they received some heavily redacted records and a letter explaining most of the records were withheld. Setting aside the paucity of IDOC’s response, at least it was something. There is no explanation as to why this request is receiving less than the previous request.

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injection was not a “viable method of execution in actual practice.” However, the Governor dismissed the magistrate prior to his report being finalized and released. See Emily Holshouser, “*Death penalty foes want Hobbs to publish the independent report she spiked*,” AZ MIRROR (December 12, 2024),

<https://azmirror.com/2024/12/12/death-penalty-foes-want-hobbs-to-publish-the-independent-report-she-spiked/>.

This month, Tennessee carried out a lethal injection using pentobarbital which resulted in a scene like Mr. Ritchie’s execution. The prisoner, Mr. Byron Black, lifted his head off the gurney several times and, because the witnesses can hear what is happening inside the execution chamber, said “oh, it’s hurting so bad” as the drugs flowed. See Jonathan Mattise, “Attorney says heart device did not shock Tennessee man in execution who said he was ‘hurting so bad’”, AP (August 8, 2025), https://apnews.com/article/tennessee-execution-defibrillator-beb6d03ec645080f4e26d67b0bd61a41?user_email=e26d88715de7c2cc4ded7dcbd3cde741ce674ea5baf7aacc4b2bfeabba952e5b&utm_medium=AfternoonWire&utm_source=Sailthru_AP&utm_campaign=AfternoonWire_Fri_Aug8_2025&utm_term=Afternoon%20Wire.

Indiana “has its own constitutional provision against cruel and unusual punishment” which “affords even greater protection than its federal counterpart.” *Corcoran v. State*, 774 N.E.2d 495, 503 (Ind. 2002) (Rucker, J.,

dissenting). This Court should permit factual development consistent with *Isom* and *Corcoran* when:

Given the unknown origin of the drug, uncertainty about whether it was manufactured, or compounded in an appropriate environment by qualified personnel, an unclear chain of custody, and unknown storage conditions, along with the absence of documented drug quality reports, there are serious questions about the integrity and safety of the substances used in lethal injections. When these factors are combined with the documented gaps in the lethal injection protocol—such as lack of procedures to verify potency, purity, and expiration, limited training of personnel, and no standardized monitoring for complications—they raise significant concerns regarding both the safety and reliability of future executions. These deficiencies create a substantial risk of ineffective administration, adverse reactions, or other complications that could result in unnecessary pain and suffering, highlighting the urgent need for comprehensive review and reform before any further executions are carried out

Exhibit Q at ¶ 87.

If Ward’s execution is needlessly and intentionally painful, it will violate the Eighth Amendment and Article One, Section 16. Disclosure of the records he has requested under the APRA is one step in preventing a violation of the Constitutions.

The State claims Ward has not identified a fundamental right from the “select list” of unenumerated fundamental rights. Opposition at 31 (citing *Dobbs v. Jackson’s Women’s Health Organization*, 597 U.S. 215, 237 (2022)). The Court discusses this “select list of rights that are not mentioned anywhere in the Constitution,” but the first category of fundamental rights includes the “rights guaranteed by the first eight Amendments.” *Id.* Thus the right to be free from

cruel and unusual punishment is a fundamental right. There is no need to look deeper to ascertain whether it is right “rooted in history or tradition or essential to ordered liberty.” Opposition at 31.

The State tries to distance itself from the execution it seeks. It claims Ward is proceeding against the wrong party because it is the Warden of the Indiana State Prison who will carry out the execution. Opposition at 15. But the Warden will carry out the execution at the State’s request. The State is the State regardless of what entity it takes. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995) (the government’s obligation to disclose evidence extends to police and other agencies).

The State cavalierly responds to Ward’s suggestions that it is cruel and unusual to deprive him of the ability to receive support from his witnesses as he ends his corporal existence. No execution is “pleasant,” and Ward is not suggesting an execution as “pleasant as possible”—it is undignified to respond in the manner the State has. Ward simply asserts that once the witnesses are approved, he should have the ability to see them and receive their support pursuant to his Eighth Amendment right to not be subjected to cruel and unusual punishment.

Presumably, at least part of the reason witnesses are allowed is to provide such support. The State’s meandering discourse about Ward maybe not choosing witnesses or witnesses having the choice not to attend is a red herring. The State omits that Ward absolutely has the right to have at least one witness

present—or at least they should, since they quickly settled a spiritual advisor suit just prior to the execution of Mr. Corcoran.

However, this demonstrates the State’s and IDOC’s disregard for condemned’s ability to see and be comforted by his witnesses, which is cruel and unusual and out of step with the governmental interest in “maintaining the solemnity and decorum in the execution chamber.” *Ramirez v. Collier*, 595 U.S. 411, 430 (2022). During executions, it has never been intended for the condemned to die alone. It is cruel and unusual to prevent Ward from seeing his witnesses.

And according to the State, nor should the condemned be heard. Opposition at 42. Given what occurred in Mr. Ritchie’s execution, this leads to the destruction of evidence. As noted in the recent Tennessee execution, the ability to speak provides evidence that something was going wrong.

Ward claims his own First Amendment right to be heard from the chamber, so he absolutely does have standing. Ward does not claim he has a right to have people listen to or take in what he’s saying—it’s that he can physically be heard if they want to listen.

Lastly, throughout its pleading, the State argues Ward has waived certain claims due to lack of argument. Opposition at 16, 23, 29, 34, 38, 42. This is not a brief. It is a Successive Petition for Post-Conviction Relief. Petitions for Post-Conviction Relief are notice pleadings with liberal amendment procedures.

“Post-conviction proceedings are governed by rules and statutes applicable to

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civil proceedings.” *Jackson v. State*, 676 N.E.2d 745, 749 (Ind. Ct. App. 1997); Ind. Post-Conviction Rule 1(5). The post-conviction rules have a more liberal amendment procedure than the trial rules. *Jackson*, at 750. Indiana Trial Rule 8(A) requires “only ‘short and plain statement of the claim showing that the pleader is entitled to relief.’” *Trail v. Boys and Girls Club of Northwest Indiana*, 845 N.E. 2d 130, 135 (Ind. 2006). Recently this Court determined “the Post-Conviction Rules empower post-conviction courts to permit amendments to successive petitions.” *Kelly v. State*, 257 N.E.3d 782, 794 (Ind. 2025).

There is no requirement of pleading specificity requiring a party to argue all legal claims with precision raised in a successor post-conviction petition. In fact, the Form for Successive Post-Conviction Relief provide in the Appendix to the post-conviction rule tells petitioners “citation of authorities should be avoided and is only appropriate if there is a change in the law since the judgment you were attacking was entered.” Ind. P-C 1, App. Ward has not waived any claims presented.

D. Conclusion.

It has not been refuted that something unusual happened when the State used Method 2 to execute Mr. Ritchie. What is known is the State exorbitantly and wastefully overpaid by \$1.1 million for drugs that did not work as intended. Medical science dictates working drugs means no movement—but here there was abrupt and violent movement a likely response to extreme pain. The State refuses to answer public records responses and otherwise deprives Ward access

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to the information—when they fully intend to use the same type overpriced,
non-working drugs on him.

Ward asks this Court to faithfully hew to its precedent. New evidence exists and additional legal proceedings may be pursued without setting a date as this Court recently concluded in *Corcoran*, 240 N.E.3d at 702. In conjunction with this Court’s *Isom* authority, this Court should recall the tentative date and permit the previously unavailable second post-conviction proceeding to occur in the regular course of proceedings. This Court has identified a legally cognizable claim and process in *Isom* that Ward has now initiated, and this Court should respect its own precedent.

Respectfully submitted,

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Verification of Word Count

Roy Lee Ward, by counsel, files this verified certification that the total amount of words in the Reply in Support of Successive Petition for Post-Conviction Relief has not exceeded 6,600 words.

/s/ Laura L. Volk
Laura L. Volk
Deputy Public Defender

Certificate of Service

I certify that on August 21, 2025, the foregoing **Corrected Reply in Support of Successive Petition for Post-Conviction Relief** was served upon the Tyler Banks, Supervising Deputy Attorney General, via the e-filing system with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court.

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