

RODNEY REED ) No. 8701  
 )  
 vs. ) IN THE DISTRICT COURT  
 )  
 STATE OF TEXAS ) 21<sup>st</sup> JUDICIAL DISTRICT  
 )  
 ) OF BASTROP COUNTY, TEXAS

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**Motion to Dismiss State’s Motion Requesting Execution Date Pursuant to Chapter 27 of the Tex. Civ. Prac. & Rem. Code and Motion to Strike and For Sanctions**

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To the Honorable District Court Judge:

Rodney Reed files this motion to dismiss and/or strike the State’s Motion Requesting Execution Date because that request (1) appears to have been filed in retaliation for the Reed family’s legitimate exercise of their 1<sup>st</sup> Amendment rights and (2) falsely implies that an execution date will not interfere with litigation in the case. This Motion is brought under Chapter 27 of the Texas Civil Practice and Remedies Code and Rule of Civil Procedure 13.

**A. Evidence Indicating That the State Filed Its Motion Requesting Execution Date In Response to Mr. Reed and his Family’s Exercise of Their First Amendment Rights.**

Mr. Reed has consistently and diligently asserted his innocence and challenged his conviction and death sentence arising out of the 1996 murder of Stacey Stites. In early 2015, an execution date requested by the State over Mr. Reed’s objection was stayed by

the Texas Court of Criminal Appeals (“CCA”) to allow consideration of Mr. Reed’s substantial claims of innocence and constitutional violations. On June 26, 2019, the CCA issued an order denying Mr. Reed’s claims. Media reports from that day reflected Mr. Reed’s intent to pursue federal review of this decision. See Exhibit 1 (Chuck Lindell, *Court Rejects Latest Appeals from Death Row Inmate Rodney Reed* (Austin American Statesman, June 26, 2019)).

On July 11, 2019, the Bastrop Advertiser (the local daily paper in Bastrop) published the front-page article depicted below that discusses advocacy on behalf of Mr. Reed by his family who pledged that Mr. Reed’s fight “is nowhere near over”:

# The Bastrop Advertiser

Thursday, July 11, 2019 An edition of the Austin American-Statesman | 51

**CALENDAR**  
July 11

**Bastrop County Democratic Party community meeting:** 7 p.m. at First National Bank, 312 Main St., Smithville. Attendees can meet Democrat neighbors and find out about things happening in Bastrop County in preparation for the 2020 election.

July 12

**Ryan Paul Davis:** 7:30 p.m. at Neighbor's Kitchen and Yard, 601 Chestnut St., Bastrop. No cover.

**McDade Street Dance:** 8 p.m. on Main Street between Waco and Bastrop streets in downtown McDade. The event will include live music from Kenny Ditz & Last Chance, food and beverages. For information, visit [mcdade-texas.com](http://mcdade-texas.com).

July 12-27

**"Newsies: The Broadway Musical":** 7:30 p.m. July 12-13, 19-20 and 26-27 and 2:30 p.m. July 21 at the Bastrop Opera House, 711 Spring St. Tickets are \$15 for adults, \$12 for seniors and veterans, \$10 for students and \$8 for ages 14 and younger. Tickets, visit [bastropoperahouse.com](http://bastropoperahouse.com).

July 13

**McDade Watermelon Festival:** 8 a.m. to 2 p.m. at the Watermelon Festival grounds, 143 Bastrop St., McDade. The festival will include watermelon, a car show at 8 a.m. with awards at 2 p.m., the Watermelon Queens Revue and a parade at 10:30 a.m. along Main Street. An auction will be at 5 p.m. Other activities



**Rodrick Reed Jr., 2, the nephew of death row inmate Rodney Reed, stands before the U.S. Supreme Court building protesting his uncle's conviction with his family. (PHOTO COURTESY OF REED JUSTICE INITIATIVE)**

## Supporters: Reed's fight is 'nowhere near over'

**Advocates protest at U.S. Supreme Court building**

By Brandon Mulder  
[bmulder@statesman.com](mailto:bmulder@statesman.com)

Rodrick Reed stood on the steps of the Supreme Court building in Washington last week, joining capital punishment abolitionists from across the nation one day after Texas' highest criminal court denied his brother Rodney Reed's latest appeal for a new trial.

Reed, who was convicted in 1996 for the Bastrop County murder of Stacey Stites and placed on death row, has argued for a new trial after his defense attorneys claimed his conviction was based on false scientific evidence and that new evidence called into question testimony provided by Stites' fiancé, Jimmy Fennell.

But the Texas Court of Criminal Appeals rejected those appeals in a unanimous ruling last Wednesday after reviewing the merits of their argument. It was Reed's latest loss after the Supreme Court rejected his attorneys' request to test DNA evidence one year ago.

"When something like that happens, it kind of knocks the wind out of us a little bit, but we take a deep breath and we keep moving forward," Rodrick Reed said from Washington. "We move forward in faith and belief that justice will be done, because my brother is truly innocent and all the evidence proves that."

**See REED, A7**

### State bestows film designation on county

**Pape: 'it will bring dividends economically for our county for decades'**

By Brandon Mulder  
[bmulder@statesman.com](mailto:bmulder@statesman.com)

It's official: Bastrop County — the home of classics like "Hope Floats" and "Tree of Life" — is now the Film Hospitality Capital of Texas.

On Monday, the county was presented with the honor after HCR 131, which was authored by Rep. John Cyrier, was passed by the state Legislature and signed by the governor in May.

"It is a big deal for Bastrop County," said County Judge Paul Pape. "It will bring dividends economically for our county for decades to come, and we're grateful for it and honored by it."

Since 2007, more than 52 film, television and commercial projects have been based in the county, bringing in \$220 million to local economies. And more are in the works. According to director of the county's Tourism and Economic Development Department, Adena Lewis, she was coordinating with a production crew looking to move a \$40 million project from Georgia to Texas in response to the Legislature adding \$50 million of film incentives into the Texas Moving Image Industry Incentive Program.

"The only reason they're considering coming to Texas is because of the actions of the Legislature in this last session, and that's really important for

Exhibit 2 (Brandon Mulder, *Supporters: Fight over Innocence “Nowhere Near Over”*, Bastrop Advertiser, July 11, 2019). The article also indicated that counsel for Reed is anticipating filings in the United States Supreme Court and Fifth Circuit Court of Appeals. *See id.*

On July 12, 2019—the day after the front-page article in the Bastrop Advertiser was published—the State filed its Motion Requesting Execution Date. A copy of this motion is attached as Exhibit 3. Despite the public statements above, and the obvious avenues for federal review well known to the State, the State falsely implied in its motion that an execution date would not interfere with Mr. Reed’s litigation. *See* Exhibit 3 (Referencing CCA denial and claiming “[t]his litigation therefore presents no impediment to setting an execution date.”). The timing of the State’s Motion Requesting Execution Date, filed on the day following the frontpage Bastrop Advertiser article depicting legitimate First Amendment advocacy on Mr. Reed’s behalf, creates a strong inference that the execution date was sought for the improper purpose of responding to Mr. Reed and his family’s exercise of their First Amendment rights. That inference is made even stronger by the false impression conveyed in that motion that an execution date would not interfere with the litigation.

**B. Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code and Request for Hearing and Discovery.**

Mr. Reed asks this Court to dismiss the State’s Motion Requesting Execution Date pursuant to Section 27.003 of the Texas Civil Practice and Remedies Code (“TCPRC”) because the State’s motion was filed in response to his and his family’s exercise of their

First Amendment rights. Chapter 27 of the Texas Civil Practice and Remedies Code (“TCP RC”) creates a remedy to dismiss legal filings like the State’s Motion Requesting Execution Date that are filed for the improper purpose of responding to a “party’s exercise of the right of free speech, right to petition, or right of association”. TCP RC § 27.003. As discussed above, the timing of the State’s Motion Requesting Execution Date and the misimpression that a date would not interfere with Mr. Reed’s litigation constitutes strong circumstantial evidence of an improper intent in seeking Mr. Reed’s execution at this time. *See In re Lipsky*, 460 S.W.3d 570, 588-89 (Tex. 2015) (elements of Chapter 27 proceeding may be proven by inferences from circumstantial evidence); *Texas Dep’t of Family & Protective Servs. v. Whitman*, 530 S.W.3d 703, 715 (Tex. App. 2016) (close timing between protected activity and an adverse action may provide “causal connection” required to make out a prima facie case of retaliation).<sup>1</sup>

Mr. Reed hereby requests a hearing on his Motion to Dismiss pursuant to Section 27.004 of the TCP RC. Mr. Reed further requests limited discovery pursuant to Section 27.006(b) to establish additional evidence of the State’s improper motive in seeking an execution date on Friday, July 12<sup>th</sup>—the day after an article appeared in the newspaper

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<sup>1</sup> Section 27.010(a) exempts certain “enforcement actions” by a district attorney from the Motion to Dismiss procedure. However, the Supreme Court made clear that this provision does not exempt all filings by the named state actors. *See Best v. Harper*, 562 S.W.3d 1, 12 (Tex. 2018). “Enforcement actions” are defined by the Supreme Court as “a governmental attempt to enforce a substantive legal prohibition against unlawful conduct.” *Harper*, 562 S.W.3d at 12. And while Mr. Reed’s case arises out of an “enforcement action” brought by the State to enforce the legal prohibition against capital murder, Mr. Reed does not seek to dismiss the capital murder case. Instead, his motion is directed at the State’s request for an order executing the judgment already obtained, which does not fall within the Supreme Court’s definition of an “enforcement action.”

indicating that additional litigation by Mr. Reed was anticipated. Such discovery should include disclosure of all communications between counsel for the State relating to the filing of the Motion Requesting Execution Date and depositions of those persons involved in making the decision to file the motion.

### **C. Motion for Rule 13 Sanctions**

For essentially the same reasons supporting the Chapter 27 dismissal requested above, Mr. Reed further requests that the Court (after affording proper notice and a hearing) impose sanctions on the State for the filing of its Motion Requesting Execution Date for an improper purpose. As described above, the timing of the filing alone presents strong circumstantial evidence that the motion was filed in response to Mr. Reed and his family's exercise of first amendment rights, and not in a legitimate effort to enforce the judgment in this case. *See Whitman*, 530 S.W.3d at 715. The request for an execution date is also improper because its intent is to foreclose regular federal review of Mr. Reed's claims, and not merely to enforce the Court's judgement. In this way, the State seeks to deprive Mr. Reed of his constitutional rights to access to the courts and due process of law. Mr. Reed respectfully requests that proper sanctions for this improper filing include a prohibition on seeking an execution date until after federal review of Mr. Reed's recently dismissed claims for relief is complete.

## Conclusion and Prayer

District attorneys are entrusted to perform their duties in a manner that protects the rights of the citizens who elected them. But in this case, the evidence shows that the State's request to set an execution date was not made in a legitimate effort to enforce a judgment, but in response to Mr. Reed and his family's public assertion of Mr. Reed's innocence and vow to fight that judgment in the federal courts. Because the State's request appears directed to the improper purpose of chilling Mr. Reed's First Amendment and Due Process rights, this Court should dismiss the motion pursuant to Chapter 27 of the TCPRC or strike the State's pleading as a sanction under Rule 13.

Respectfully submitted,

Dated: July 15, 2019

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*Attorneys for the Defendant*

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a true and correct copy of the foregoing document was served on this 15th day of July, 2019 by Electronic Mail and United States Postal Service on the following:

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/s/ Bryce Benjet \_\_\_\_\_  
Bryce Benjet