

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JOHN FAUTENBERRY,**

**Petitioner,**

**v.**

**BETTY MITCHELL, Warden,**

**Respondent.**

**Case No. 1:00-cv-332**

**JUDGE JAMES L. GRAHAM**

**Magistrate Judge Terence P. Kemp**

**ORDER**

Final judgment dismissing Petitioner's death penalty habeas corpus action was entered on April 11, 2005. (Doc. # 104.) The United States Court of Appeals for the Sixth Circuit affirmed this Court's decision on January 25, 2008, (Doc. # 113), and on October 14, 2008, the United States Supreme Court denied the petition for *certiorari* (Doc. # 117). Petitioner is scheduled to be executed on July 14, 2009. This matter is before the Court upon Petitioner's motion for leave to file under seal his motion for a stay of execution (Doc. # 132) and Respondent's memorandum in opposition (Doc. # 135).

On June 1, 2009, this Court granted Petitioner's request to file *ex parte* and under seal a motion for funds to employ an expert. (Doc. # 123.) Petitioner filed that motion on June 2, 2009. (Doc. # 126.) On June 4, 2009, this Court issued an order confirming appointed counsel's continued representation of Petitioner. (Doc. # 128.) On June 17, 2009, Petitioner submitted *ex parte* and under seal a proposed clemency budget. (Doc. # 129.) On June 23, 2009, this Court issued *ex parte* and under seal an order denying Petitioner's motion for funds. (Doc. # 130.) Subsequently, on June 25, 2009, this Court issued *ex parte* and under seal an order approving Petitioner's proposed clemency budget as modified by the Court. (Doc. # 131.)

Petitioner intends to appeal to the Sixth Circuit this Court's decision denying his motion for funds and filed a notice of appeal on July 1, 2009. (Doc. # 133.) Petitioner has indicated that he will seek a stay of execution from this Court, and from the Sixth Circuit if necessary, as he pursues his appeal. To that end, Petitioner seeks a "protective order to allow him to file under seal his motion for a stay of execution." (Doc. # 132, at 1.) Petitioner reasons that his motion for a stay of execution will present arguments which will necessarily entail addressing the merits of the motion for funds that he filed and the order that this Court issued denying it. Petitioner also explains the need for confidentiality still exists because although his clemency hearing has already been conducted, he still intends to file an application for clemency directly to the Governor. Finally, Petitioner argues that the State will not be prejudiced, as evidenced by the fact that when Petitioner requested the Ohio Supreme Court to grant him a stay of execution based upon his need for funding, the state prosecutor filed a lengthy pleading in opposition despite not knowing the nature of the funding request.

Respondent opposes Petitioner's motion, arguing that although Petitioner was granted permission to file his motion for funds under seal, the motion for a stay of execution that Petitioner now seeks to file is far more severe. (Doc. # 135, at 2.) Respondent also moves this Court to unseal Petitioner's motion for funds, as well as this Court's order denying the motion for funds, for purposes of Petitioner's appeal to the Sixth Circuit.

Petitioner's motion for leave to file his motion for a stay of execution under seal must be denied. Placing court pleadings under seal is generally disfavored, in view of the long tradition valuing public access to court proceedings. *See, e.g., Proctor & Gamble Co. v. Banker's Trust Company*, 78 F.3d 219, 227 (6<sup>th</sup> Cir. 1996). Notwithstanding the fact that Petitioner's motion for

funds and this Court's order denying the motion were placed under seal pursuant to 18 U.S.C. § 3599(f), Petitioner has not cited and this Court is not aware of any similar authority that would allow for the filing of Petitioner's motion for a stay of execution under seal.

As for Respondent's request that this Court unseal Petitioner's motion for funds and the Court's order denying the motion so that Respondent may file a response to Petitioner's appeal, this Court is of the view that Respondent's request is better addressed to the Sixth Circuit.

For the foregoing reasons, Petitioner's motion for leave to file under seal his motion for a stay of execution (Doc. # 132) is **DENIED**.

**IT IS SO ORDERED.**

s/ James L. Graham \_\_\_\_\_  
**JAMES L. GRAHAM**  
**United States District Judge**

DATE: July 6, 2009