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The Honorable Richard Perry
Governor of Texas
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428

Dear Governor Perry:

The American Bar Association is greatly concerned that Texas is poised to execute Scott Panetti, a man who has suffered from severe and incurable mental illness for over 30 years, before he is given a meaningful evaluation of his current competency for execution. This lack of constitutionally required due process should loom large in your consideration of Mr. Panetti's clemency application.

While the American Bar Association takes no position on the death penalty *per se*, we have a strong interest in ensuring a fair and accurate justice system generally, and in this case we have specific concerns about the lack of meaningful consideration of Mr. Panetti's current mental health. I thus write today to ask you to utilize your executive power to stay Mr. Panetti's execution – not as a determination of his guilt or innocence or as a reflection of your position on the death penalty, but simply to allow for a substantive and complete consideration of his mental health status and to create a judicial record of whether he has a mental disorder that impairs his ability to have a rational understanding of the reasons for his punishment.

Your decision to grant a stay for further review would be well-supported, as there is ample evidence of Mr. Panetti's long and troubled mental health history in the court records and documents offered by Mr. Panetti's attorneys in this clemency petition. Indeed, Mr. Panetti's illness has been a significant and debilitating factor in virtually every stage of his adult life, including in the very crime he was convicted of committing and in the circus-like proceedings in his capital case.

At his trial in 1995, Mr. Panetti insisted on defending himself in a costume and without the assistance of counsel and attempted to subpoena the Pope, John F. Kennedy, and Jesus Christ. Medical records demonstrate his belief that his execution is being orchestrated by Satan in order to prevent him from preaching the Gospel of Christ to the condemned. Federal district courts have twice made findings of fact that Mr. Panetti is mentally ill and suffers from paranoid delusions. In 2007 the ABA submitted an *amicus curiae* brief in *Panetti v. Quarterman* supporting Mr. Panetti's challenge to Texas's competency for execution standard, writing:

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Where, as here, a death row inmate attributes his impending execution to reasons that only someone suffering from a significant mental disability could espouse—such as a delusion that he is to be executed because of his faith in God—he cannot be said to have the capacity to accept responsibility for his crimes. If the offender simply cannot understand the true reason a capital sentence is to be carried out against him, his execution would be inconsistent with the [Constitution].

In its ruling, the U.S. Supreme Court found that the procedure for determining a prisoner's competency for execution must comport with due process under the Eighth and Fourteenth Amendments and remanded Mr. Panetti's case back to lower courts for further evidentiary findings. However, the state of Texas now seeks to proceed with the execution of Mr. Panetti, even though it has been more than seven years since the last hearing to evaluate his competency. Mr. Panetti has not received mental health treatment during this seven-year period, and older assessments may not accurately reflect his current mental state and competency to be executed.

Because of these overarching concerns and an interest in protecting the rights of our most vulnerable citizens, the American Bar Association has established policies in our Criminal Justice Mental Health Standards that might be helpful in guiding Texas's consideration of Mr. Panetti's claims. ABA Standard 7-5.7(a) says that "[w]henever a correctional official, *other state official*, the prosecution, or counsel for the convict have reason to believe that a convict who has been sentenced to death may be currently incompetent, such person should petition the court for an order requiring an evaluation of the convict's current mental condition." (Emphasis added). Additionally, the ABA's House of Delegates passed a policy in 2006 that calls for an evaluation of whether a death-sentenced prisoner "has a mental disorder or disability that significantly impairs his or her capacity to understand the nature and purpose of the punishment, or to appreciate the reason for its imposition in the prisoner's own case." Given Mr. Panetti's long history of mental illness and the lack of information about his present mental state, there is ample reason to believe that Mr. Panetti may be currently incompetent and should, at the very least, have the opportunity for a court to consider evidence of his capacity to understand his punishment.

We believe that justice requires that Mr. Panetti's execution be stayed until complete and current information about his mental health has been thoroughly considered by a judge to determine whether Mr. Panetti is competent to be executed. This is the only course of action that can ensure that Mr. Panetti receives due process and protection of his rights under the Constitution. We thus request that you grant a stay to prevent the possibility of a miscarriage of justice—one that can never be undone.

Respectfully,



William C. Hubbard