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Lawsuit Seeks Disclosure of Executioner Qualifications

Public has a right to know the lethal injection training given executioners

HELENA, MT — Attorneys, in cooperation with the American Civil Liberties Union of Montana, filed a motion for summary judgment today representing death row inmate Ronald Allen Smith under the state's right to know provision for the release of information related to the selection of Montana executioners, their qualifications and training.

The suit, filed in Montana First Judicial District Court, asks the court to declare Section 46-19-103(5), MCA, prohibiting the release of information about those employed by the state to execute people, as unconstitutional on its face because it violates the public's right to know how the state is choosing people to administer lethal injections and if those executioners are qualified to do so.

"Montana's Constitution guarantees transparency by assuring the public has the right to know all of the details of government operations, including how the State proceeds to execute people," said attorney Ron Waterman. "The State cannot hide critical facts absent a showing of individual privacy concerns, totally absent from this statute."

Under state law the warden has sole discretion to choose who executes prisoners. Executioners need not even be trained physicians or nurses. That means a warden could select anyone — even someone with no medical training whatsoever — to conduct the complicated three-drug lethal injection protocol. A recent execution in Tennessee exposed witnesses to an execution death which lasted over 20 minutes as an inmate suffocated due to misapplication of a lethal injection procedure.

The consequences if that protocol is improperly administered are grave. Should the fast-acting barbiturate be improperly prepared or administered, a prisoner could be fully conscious and in excruciating pain when the paralytic agent is injected. Such a situation clearly violates the Constitutional right to be free from cruel or unusual punishment.

The suit filed today does not seek the identities of Montana executioners, only how they are selected, their qualifications and the training they receive to administer lethal injections.

A bill to abolish the death penalty and replace it with life in prison without the possibility of parole passed in the Montana Senate but was tabled in the Montana House Judiciary Committee. If Montana continues to participate in state-endorsed executions, it is incumbent upon the State to open that process to public scrutiny. Two prisoners are currently on Montana's death row.