



Media Release

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Montana's Execution Protocol Ruled Unconstitutional

HELENA, MT — Montana's lethal injection execution protocol was ruled unconstitutional Thursday by Montana District Court Judge Jeffrey Sherlock.

Sherlock ruled the protocol violates the Montana Constitution's heightened protections from cruel and unusual punishment because it lacks sufficient safeguards to guarantee inmates will be executed in a manner that prevents pain and suffering, and that it directly conflicts with the state's execution statute, in violation of the separation of powers between the legislative and executive branches of government.

Sherlock ruled that the execution protocol was chiefly lacking in its designation of the prison warden – who has no medical training -- as the person who determines whether the inmate being executed is unconscious prior to administration of the fatal drug, and in the fact that the prison official setting up the execution is not required to have specific experience with IVs.

He also noted that the protocol, which calls for a three-drug process, differs from the statutory two-drug protocol, violating the separation of powers and increasing the "likelihood for confusion and error in the execution."

"All three of these concerns create a substantial risk of serious harm violative of the Plaintiffs' right to be protected from cruel and unusual punishment," Sherlock wrote in his order.

Sherlock's order means Montana cannot execute prisoners unless it remedies these deficiencies. This would likely require changes by both legislative and executive branches of government, given that the Montana statute governing lethal injection is outdated and does not conform with current practices.

Ron Waterman of Gough, Shanahan, Johnson and Waterman, in cooperation with the ACLU of Montana, filed the lawsuit *Smith v. Ferriter* on behalf of death row inmate Ronald Allen Smith in 2008, challenging the lethal injection procedure in Montana as a violation of cruel and unusual punishment and Montana's right of human dignity. The lawsuit now also includes Montana's only other prisoner on death row, William Gollehon.

Smith's execution was stayed in 2011 pending the outcome of this lawsuit. Smith is also awaiting a decision from Montana Gov. Brian Schweitzer on his petition for clemency.

"We are pleased that the court recognizes the insufficiencies of the state's lethal injection protocol and that those insufficiencies create a situation where executions could inflict pain and suffering," said Waterman. "If the state insists on carrying out this most extreme sentence, it has an obligation to do so in a manner that upholds the U.S. and Montana Constitutions."

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