

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MARYLAND**

VERNON EVANS, JR.,	*	
Plaintiff	*	
vs.	*	Civil Action No. L-06-149
MARY ANN SAAR, Secretary, Department of Public Safety and Correctional Services, <i>et al.</i>	*	
	*	
Defendants	*	

CONSENT MOTION FOR APPROPRIATE RELIEF

Now Comes Gary Maynard, Secretary, Department of Public Safety and Correctional Services, by and through his attorneys, Douglas F. Gansler, Attorney General of Maryland, and Laura Mullally and Phillip M. Pickus, Assistant Attorneys General, and request that this Court amend its order of December 7, 2006, and permit the Defendants to delay their compliance with the order for the following reasons:

1. On December 1, 2006 this Court issued an order reopening the record in the above entitled case in order to explore the potential availability of surgeons, anesthesiologists, and certified registered nurse anesthetists to assist in the execution of Vernon Evans, Jr.

2. On December 7, 2006 the Court ordered the Defendants to submit a written plan describing the parameters of a proposed search. That plan is to be filed with the Court on February 28, 2007. The Plaintiff will review the plan and register any objections. The Court will hold a hearing on March 12, 2007 to discuss the Plaintiff's objections to the plan.

3. On December 19, 2006 the Maryland Court of Appeals decided *Evans v. Saar*, No. 107, 122, 123, 124, Sept. Term 2005, 2006 WL 3716363 (Md. Dec. 19, 2006). *Evans* invalidated the Maryland execution protocols until such time as the protocols are properly adopted under the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, or exempted from that requirement by an act of the Maryland General Assembly. Until that time, the Defendants are enjoined from utilizing its current lethal injection protocol and checklist, and cannot move forward with the Plaintiff's execution.

4. On January 29, 2007 Senate Bill 239 (Attachment 1) was introduced in the Maryland General Assembly and assigned to committee. S. 239, 2007 Leg. 423rd Sess. (Md. 2007). If adopted, Senate Bill 239 would exempt death penalty protocols from the requirements of the Maryland Administrative Procedure Act. Upon passage Senate Bill 239 would take effect June 1, 2007.

5. Secretary Gary D. Maynard of the Maryland Department of Public Safety and Correctional Services¹ does not plan to submit the Maryland Execution Protocol or Lethal Injection Checklist for publication and consideration by the appropriate legislative committee, as required by the Maryland Administrative Procedure Act, until Senate Bill 239 is addressed by the General Assembly.

6. On January 29, 2007 House Bill 225 (Attachment 2) was introduced in the Maryland General Assembly and assigned to committee. H.D. 225, 2007 Leg. 423rd Sess. (Md. 2007). If adopted, House Bill 225 would repeal the death penalty in Maryland. If enacted, House Bill 225 would take effect October 1, 2007.

¹ Secretary Maynard replaced Mary Ann Saar in January, 2007.

7. Secretary Gary Maynard of the Maryland Department of Public Safety and Correctional Services does not plan to submit the Maryland Execution Protocol or Lethal Injection Checklist for publication and consideration by the appropriate legislative committee, as required by the Maryland Administrative Procedure Act, until House Bill 225 is addressed by the General Assembly.

8. On January 17, 2007 Maryland Governor Martin J. O'Malley was inaugurated. Governor O'Malley has stated that he will sign a bill which repeals the death penalty if the Maryland General Assembly adopts one. Jennifer Skalka, *Death Penalty Repeal Sought*, Balt. Sun, January 26, 2007.

9. Given the recent and rapid changes in Maryland death penalty law and state administration, and, in light of the bills introduced during the legislative session, the Defendants request that their compliance with the Court's order be suspended until the resolution of Senate Bill 239 and House Bill 225.

10. Scott D. Shellenberger, Baltimore County State's Attorney, has agreed not to seek a warrant of execution from the Baltimore County Circuit Court until after a final order is entered by the Court in the instant litigation, *Evans v. Saar*, civil action L-06-149.

11. The Plaintiff Vernon Evans Jr. agrees to the delay proposed by the Defendants through this motion.

12. The granting of this motion may prevent the needless expenditure of judicial resources.

13. Plaintiff will suffer no prejudice as a result of the granting of this motion.

WHEREFORE, the Respondents request that this Court's order of December 7, 2006 be stayed.

Respectfully submitted,

DOUGLAS F. GANSLER
ATTORNEY GENERAL OF MARYLAND

/s/

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*

Defendants

*

ORDER

Upon consideration of Defendants' Consent Motion for Appropriate Relief, and any response thereto, it is this ____ day of _____, 2007, ORDERED that the case is stayed until a date determined by the Court.

CHIEF JUDGE BENSON EVERETT LEGG