

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

TIMOTHY JOHNSTON,	)	
	)	Case No. 4:04CV1075 DJS
Plaintiff,	)	
	)	<b>THIS IS A CAPITAL CASE</b>
vs.	)	
	)	<b>PLAINTIFF’S EXECUTION IS SET</b>
LARRY CRAWFORD, et al.,	)	<b>FOR AUGUST 31, 2005</b>
	)	
Defendants.	)	<b><i>HEARING REQUESTED</i></b>

**MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

COMES NOW plaintiff, Timothy Johnston, by and through counsel, Michael J. Gorla and Christopher E. McGraugh, and moves this Court to issue its temporary restraining order, and preliminary injunction staying plaintiff’s execution and enjoining the defendants, and any persons in privity with them, from executing plaintiff under Missouri’s existing lethal injection procedure. In support of this motion, plaintiff states as follows:

1. In the instant § 1983 action, plaintiff asserts that the defendants, acting under color of state law, will violate his Eighth Amendment rights by executing him under Missouri’s current lethal injection protocol. More specifically, plaintiff alleges that Missouri’s three chemical lethal injection procedure, and the methods employed by defendants to administer said procedure, including the use of untrained and unqualified personnel, will subject him to a painful and protracted death.

2. Plaintiff’s § 1983 suit has been active in the district court since August 16, 2004. Discovery is ongoing and the case is winding it’s way through the district court on the normal path of a Track 3 - complex case (disposition within 24 months of filing).

3. On August 1, 2005, the Missouri Supreme Court set plaintiff's execution for August 31, 2005.

4. Plaintiff seeks a temporary restraining order and preliminary injunction enjoining the defendants from executing him under Missouri's current lethal injection protocol so that the District Court can resolve the merits of the constitutional claims raised in this case.

5. As fully detailed in plaintiff's supporting memorandum filed contemporaneously with this motion, the balance of equities so favors plaintiff that justice requires the Court to intervene to preserve the status quo and give plaintiff the opportunity to litigate his compelling constitutional claim that Missouri current lethal injection protocol under which defendants intend to execute plaintiff would subject him to a painful and protracted death in violation of the Eighth Amendment.

WHEREFORE, for each and all of the foregoing reasons and the reasons contained in plaintiff's accompanying memorandum in support, plaintiff prays the Court to issue its temporary restraining order and preliminary injunction enjoining the state from executing him under Missouri's current lethal injection protocol so as to give him an opportunity to litigate the compelling constitutional claims raised in his § 1983 suit.

Respectfully submitted,

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Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2005, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following: Ms. Denise G. McElvein, Assistant Attorney General, Attorney for Defendants Crawford, Roper, and Purkett, Wainwright State Office Building, 111 N. 7<sup>th</sup> Street, Suite 934, St. Louis, Missouri 63101;

I hereby certify that on August 18, 2005, the foregoing was served via facsimile at (573) 751-5391 and by United States Postal Service to the following non-participants in Electronic Case Filing: Mr. Stephen D. Hawke, Assistant Attorney General, 1530 Rax Court, Jefferson City, Missouri 65109.

/s/Michael J. Gorla

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