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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MONTANA ASSOCIATION OF CRIMINAL)
DEFENSE LAWYERS; AMERICAN CIVIL)
LIBERTIES UNION OF MONTANA;)
MONTANA ASSOCIATION OF CHURCHES;)
MONTANA CATHOLIC CONFERENCE;)
GORDON BENNETT; JOHN C. SHEEHY;)
SENATORS BRENT CROMLEY, STEVE)
GALLUS, DAN HARRINGTON, DON RYAN)
AND DAN WEINBERG;)
REPRESENTATIVES NORMA BIXBY;)
PAUL CLARK, GAIL GUTSCHE, JOEY)
JAYNE, AND JEANNE WINDHAM;)
MARIETTA JAEGAR LANE; EVE MALLO)

Civil No. CV-06-35-H-DWM

COMPLAINT

Plaintiffs.)

v.)

STATE OF MONTANA; DEPARTMENT OF)
CORRECTIONS; DIRECTOR MIKE)
FERRITER; WARDEN MIKE MAHONEY;)
ATTORNEY GENERAL MIKE McGRATH;)
JOHN DOES 1-10,)

Defendants)

COME NOW Plaintiffs named above and allege and plead as follows:

I.

Plaintiffs are a collection of organizational and individual persons who either function within or are residents of the State of Montana. On July 11, 2006, Plaintiffs filed an original proceeding in the Montana Supreme Court seeking injunctive relief prohibiting the defendants named herein from executing any person under a sentence of death. (Verified Petition, Exhibit 1, attached hereto). The request for this injunction rested on the general allegation that under existing circumstances there is a high degree of probability that Montana's lethal injection protocol violates the Eighth Amendment's prohibition against cruel and unusual punishment.

II.

On July 25, 2006 the Montana Supreme Court issued an order denying the relief requested; however, before relief was denied the Montana Court issued an order requiring that all the papers in the case be forwarded to and served on Montana death row inmate David Dawson and his attorney Ed Sheehy so that they might have the opportunity to respond. Moreover, in the July 25, 2006 dismissal Order at page 4, (Order, Exhibit 2 attached) the Montana Supreme Court states that "of course, Mr. Dawson's right must be weighed into our determination of whether to exercise original jurisdiction." This reference to Mr. Dawson and his rights involves his execution by lethal injection currently scheduled for August 11, 2006 at the Montana State Prison in Deer Lodge, over which Defendant Warden Mike Mahoney and some of the other named Defendants will preside.

III.

On August 1, 2006 Plaintiffs filed a motion for reconsideration of the July 25, 2006 Order dismissing Plaintiffs' petition. The request for reconsideration centered on the Montana Supreme Court's decision to take full account of Mr. Dawson's "rights" to drop all his appeals

and demand execution. Plaintiffs contended that the Eighth Amendment problems with Montana's Lethal Injection Protocol were categorically not subject to individual waiver by Mr. Dawson or any other single defendant. Importantly, the Eighth Amendment serves as a restraint on the exercise of State power which inures both to the community at large as well as a criminal defendant.

IV.

In the Order dated August 2, 2006, the Montana Supreme Court denied Plaintiffs reconsideration request. (Order, Exhibit 3, attached). The Montana Court reinforced its July 25th decision and said that "after consideration of . . . the opinions expressed by Mr. Dawson in his response, we determined that this case was not appropriate for the exercise of original jurisdiction to entertain such issues." Plaintiffs' opportunities to obtain immediate relief from the Supreme Court of Montana has been exhausted.

V.

The parties filed competing declarations from experts knowledgeable in the field of anesthesiology with the Montana Supreme Court. Those declarations of Dr. Heath (Exhibit 4) and Dr. Dershwitz (Exhibit 5) are attached hereto. Plaintiffs allege that at any hearing on the Eighth Amendment validity of Montana's Lethal Injection Protocol, the Court would be persuaded by the amount of proof required in the circumstances. The matters outlined in the declaration, supporting Plaintiffs' position (See Dr. Heath's Declaration,) are factually correct and warrant the finding that Montana's Lethal Injection Protocol violates the Eighth and Fourteenth Amendments to the United States Constitution.

VI.

Plaintiffs allege that this Court has jurisdiction to decide this case and enter a temporary injunction prohibiting all executions until this matter is decided under 42 U.S.C. § 1983 and/or 28 U.S.C. § 2201 and/or 28 U.S.C. § 1331.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court will assume jurisdiction over this matter and enter any and all appropriate temporary and/or permanent Orders or Judgments in favor of Plaintiffs.

Respectfully submitted this 4th day of August 2006.

Gough, Shanahan, Johnson and Waterman

/s/ Ronald F. Waterman
Ronald F. Waterman, Esq.
Julie A. Johnson, Esq.

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August 2006, the foregoing with attachment was duly served upon counsel via hand-delivery:

Mike McGrath
Attorney General
Montana Attorney General's Office
P.O. Box 201401
Helena, MT 59620-1401

Diana Koch
Chief Legal Counsel
Montana Department of Corrections
P.O. Box 201301
Helena, MT 59620-1301

The foregoing with attachment was also duly served upon the following by mailing a true and correct copy, U.S. Mail, first class and postage prepaid, and addressed as follows:

David Dawson
A.O. #25284
700 Conley Lake Road
Deer Lodge, MT 59722

Edmund F. Sheehy
Cannon and Sheehy
P.O. Box 5717
Helena, MT 59604-5717

/s/ Ronald F. Waterman