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Federal Court Asked to Prevent
Ohio's Secrecy Law from Taking Effect

Death Row Prisoners Seek Preliminary Injunction of New Statute which Silences Speech for One Side of Lethal Injection Debate

(Cleveland, Ohio; January 19, 2015) Citing the "brazenly broad" suppression of free speech, attorneys for four Ohio death row prisoners filed a Motion for Preliminary Injunction in federal district court today seeking to prevent provisions of the state's new lethal injection secrecy law, HB 663, from going into effect on or about March 23, 2015.

Plaintiffs argue that "at this point in Ohio and U.S. history, interest in the death penalty as an issue of public debate has never been greater." (Memo in Support of Motion p. 1); however, four provisions of the new law "greatly decrease the transparency of the State's implementation of capital punishment by lethal injection and significantly obstruct the public's right to be knowledgeable about and engage in informed debate concerning this increasingly controversial issue of public policy." (Motion p. 1)

"Ohio's new secrecy law is specifically designed to foreclose only one side of this debate, which is a clear violation of the public's First Amendment rights," stated Cleveland attorney, Timothy F. Sweeney, one of the lawyers for the death row prisoners. "Constitutional protections are most needed precisely when the government begins to limit the ability of its citizens to question, speak, or inquire freely into its workings, and that is certainly the case here."

The Motion for Preliminary Injunction can be accessed here: http://bit.ly/15qB6QR

Speech in opposition to capital punishment and lethal injection has grown in recent years, and has been heightened most recently due to a number of botched executions around the country. Such use of speech has been effective, and, as a result, U.S. death-penalty states, including Ohio, have been unable to obtain their preferred execution drugs from reputable drug companies. States have turned to non-traditional sources – compounding pharmacies – in an effort to secure drugs to continue executions by lethal injection. These loosely regulated compounding pharmacies will participate only if their identities are shielded from the public and the media. Under the new Ohio law, disclosure of identifying information of these participants carries the threat of "potentially ruinous" civil penalties.

Plaintiffs assert that Ohio does not have a right under the First Amendment to prohibit and punish such a disclosure, especially given that "[p]rior to 2013, all of Ohio's execution drugs… were manufactured by large, reputable, mainstream pharmaceutical companies… and distributed by nationally-known companies…It was never a secret that these manufacturers and distributors

… were the suppliers of execution drugs…Ohio did not keep such information secret, nor had it ever sought in its history to keep those supplier identities secret." (Memo in Support of Motion, pp. 1-2)

While the State has argued that HB 663 is needed to protect manufacturers, today's filing highlights the total absence of evidence of any threats to compounders and others who voluntarily participate in the execution process. Arguing that "there is no evidence that, after some 53 executions in Ohio from 1999 to 2014, any drug maker, manufacturer, doctor or pharmacist or any other person or entity providing drugs or professional services in Ohio executions has ever been subjected to 'threats,' 'attacks,' 'harassment,' or 'physical harm.'" (Memo in Support of Motion, pp. 22 - 23)

The Plaintiffs argue that "The government has no power to now silence its citizens because it does not like their message and the result of their protected speech upon a government policy. Citizens acting in a lawful manner to influence public policy in a way which comports with their personal beliefs is the very essence of democracy." (Motion p. 3)

After Governor John Kasich signed House Bill 663 into law on December 19, 2014, the four death row prisoners promptly filed their lawsuit, claiming that several provisions of the secrecy law were "an intentional effort by the State to censor and silence a specific message." (Motion, p. 1) The specific provisions challenged in the suit are: "(1) compelled secrecy; (2) disciplinary and licensure immunity for licensed professionals involved in lethal injection; (3) sealing of court records and a system of 'private hearings'; and (4) civil sanctions for disclosure." (Motion p.1)

Today's Motion for a Preliminary Injunction and the December lawsuit challenging the secrecy statute were filed by Ohio death row prisoners: Ronald Phillips, Raymond Tibbetts, Robert Van Hook, and Grady Brinkley, against Mike DeWine, Ohio Attorney General; John Kasich, Governor of Ohio; Gary Mohr, Director of the Ohio Department of Rehabilitation and Corrections; and Donald Morgan, Warden of the Southern Ohio Correctional Facility.

"The timing of this deeply troubling new law could not be clearer. When Ohio was able to get reputable drugs from respected sources, there was no effort made to hide the manufacturers," said Timothy F. Sweeney. "Rather than accept that lethal injection as a method of execution has run its course, the State seeks by extraordinary measures, and at great sacrifice of every citizen's constitutional rights, to artificially prop up their favored, but fading, policy."

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For more information about today's filing please contact counsel for Plaintiff Ron Phillips: Timothy Sweeney tim@timsweeneylaw.com and Lisa Lagos lisa.lagos@opd.ohio.gov.