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Arizona Death Row Prisoners Sue State Officials Alleging Human Experimentation in Executions

(Phoenix, Arizona, June 26, 2014) In a climate of governmental secrecy and experimentation, Arizona proposes to carry out its next execution using the same two drugs – midazolam combined with hydromorphone -- used in the problematic execution of Dennis McGuire in Ohio last January.

Today, attorneys for six death row prisoners, including Joseph Wood who is scheduled for execution on July 23, 2014, filed a civil rights lawsuit in the U.S. District Court of Arizona alleging that the secrecy surrounding the state's lethal injection protocol violates his rights under the First Amendment and that use of drugs on human subjects in an unauthorized experimental manner violates the Supremacy Clause of the U.S. Constitution.

The lawsuit names as Defendants Director of Arizona Department of Corrections Charles Ryan, Warden of ASPC-Eyman Ron Credio, Warden of ASPC-Florence Lance Hetmer and several unknown "John Does" who participate in the execution process.

A copy of the complaint can be accessed here:
https://drive.google.com/file/d/0BxR5nee8pBYQZHFvV1p3S2tzR1ZrdDlKbUk2dUxwSUlUc2F3/edit?usp=sharing

The complaint states that the Arizona Department of Corrections plans to use midazolam and hydromorphone for the first time for an execution in the state, but the Defendants have relied upon Ohio's protocol when it selected the drugs, all the while refusing to provide documentation to Mr. Wood.

On January 16, 2014, Ohio carried out the first lethal injection in the U.S. using an experimental two-drug protocol to execute Dennis McGuire: midazolam, a sedative, combined with hydromorphone, a painkiller. Witnesses to the execution observed that "McGuire started struggling and gasping loudly for air, making snorting and choking sounds which lasted for at least 10 minutes, with his chest heaving and his fist clinched. Deep, rattling sounds emanated from his mouth." Mr. McGuire's execution took longer than usual for death to occur in an execution.

Anesthesiologists had warned that the new two-drug protocol could cause a condition called "air hunger," in which the prisoner would gasp for air but be unable to absorb oxygen. Ohio's executions are temporarily on hold while a federal court reviews the state's execution protocol.

In addition to the problematic execution of Mr. McGuire, nearly one-third of the executions using midazolam have had extremely troubling problems, including Clayton Lockett in Oklahoma and William Happ in Florida. These executions went wrong in similar ways that implicate the use of midazolam: the prisoner appeared to fall asleep but then started moving again.

Mr. Wood's complaint alleges that Arizona's plan to execute him without submitting its experimental lethal-injection protocol to the federal Food and Drug Administration for review violates the Supremacy Clause of the U.S. Constitution. The FDA requires that protocols relating to experiments involving drug use on humans must be submitted to the FDA for review before the experiments are conducted.

"The Arizona Department of Corrections has repeatedly changed its lethal-injection protocol, which has apparently been developed in the absence of rigorous medical or scientific consultation. This protocol

constitutes an experiment with drugs used on humans. The protocol must be submitted to the FDA before it can be used," said Dale Baich, attorney for Mr. Wood.

Defendants have also refused Mr. Wood's request for evidence of the drug manufacturers and suppliers, that the drugs are FDA-approved, and the qualifications of the executioners.

"The Arizona Department of Corrections has stonewalled requests for basic information about its lethal injection protocol and the drugs it plans to use to end Mr. Wood's life. Overbroad government secrecy offends the First Amendment and makes it impossible for the courts to determine whether Arizona is capable of carrying out his death sentence in a lawful manner," stated Mr. Baich.

Arizona has also admitted it may switch, at the last minute, to pentobarbital if it can obtain the drug. Arizona has a history of making last minute changes to its protocol. Only two days before the scheduled execution of Robert Moorman in February 2012, the State realized one of its drugs was expired so it was forced to make a last-minute change to its lethal-injection procedure. As the Complaint states, in 2011, 18 hours before Donald Beaty was executed, "the DEA informed ADC that ADC had obtained its sodium thiopental in violation of the [Controlled Substances Act]" (p. 8). If Arizona chooses to use non-FDA pentobarbital made by a compounding pharmacy, problems could arise. When Oklahoma and South Dakota used non-FDA approved, compounded pentobarbital, there appeared to be serious problems.

For example, on January 9, 2014, Oklahoma executed Michael Wilson, presumably using compounded pentobarbital as the first drug in the three-drug formula. Prior to losing consciousness, Mr. Wilson cried out, "I feel my whole body burning." Those were his last words. The State has refused to provide any information about what might have gone wrong in Mr. Wilson's execution, but expert pharmacologist Larry D. Sasich, PharmD, MPH, FASHP, signed a sworn affidavit stating, "It is my opinion that Mr. Wilson's reaction is consistent with contaminated pentobarbital sodium injection."

In October 2012, in South Dakota, Eric Robert was executed using compounded pentobarbital. Witnesses reported that he "appeared to clear his throat and gasp heavily, at which point his skin turned a blue-purplish hue. Mr. Robert opened his eyes and they remained open until his death, and his heart continued beating for 10 minutes after he ceased to breathe."

Mr. Wood's execution cannot proceed without careful judicial review of Arizona's experimental drug protocol to ensure the safety and legality of lethal injections in the state.

For further information, please contact Dale Baich, one of Mr. Wood's attorneys, at: Dale_Baich@fd.org or 602-382-2816.

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