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*2006 U.S. Dist. LEXIS 51008, **

Michael Taylor, Plaintiff, vs. Larry Crawford, et al., Defendants.

No. 05-4173-CV-C-FJG

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, CENTRAL
DIVISION

2006 U.S. Dist. LEXIS 51008

July 25, 2006, Decided

SUBSEQUENT HISTORY: Remanded by Taylor v. Crawford, 2006 U.S. App. LEXIS 20445 (8th Cir., Aug. 9, 2006)

PRIOR HISTORY: Taylor v. Crawford, 2006 U.S. Dist. LEXIS 42949 (W.D. Mo., June 26, 2006)

CORE TERMS: protocol, inmates, lethal injection, anesthetic, monitoring, condemned, revised

COUNSEL: [*1] For Michael Taylor, Plaintiff: Donald B Verrilli, Washington, DC US; Eric Berger, Ginger Anders, Matthew S. Hellman, Jenner & Block LLP, Washington, DC US; John William Simon, John William Simon, J.D., Ph.D., St. Louis, MO.

For Larry Crawford, Director, MO Dept. of Corrections, James D Purkett, Superintendent, Eastern Reception Diagnostic & Correctional Center, Defendants: Michael Pritchett, Missouri Attorney General, Jefferson City, MO.

JUDGES: Fernando J. Gaitan, Jr., United States District Judge.

OPINION BY: Fernando J. Gaitan, Jr.

OPINION: ORDER

On July 24, 2006, plaintiff's counsel filed a response (Doc. # 202) to defendants' submission of a proposed protocol (Doc. #198-1), filed July 14, 2006. Defendants' submission was in compliance with this Court's order of June 26, 2006 (Doc. #195).

Plaintiff is opposed to the proposed protocol submitted by the State because he believes that the protocol still fails to comply with many aspects of this Court's June 26, 2006 Order and also because the protocol perpetuates the unnecessary risk of causing excruciating pain during the lethal injection process.

In the June 26, 2006 Order, this Court amended its Order of January 31, 2006 and certified [*2] this case to the Eighth Circuit for their review and consideration. Additionally,

on July 24, 2006, the State filed a Notice of Appeal with the Eighth Circuit. Accordingly, jurisdiction over this matter no longer rests with this Court.

This Court's order of June 26, 2006, was never intended to unreasonably delay Missouri's execution of death row inmates. Instead, the goal of this Court was to guarantee that those executions were conducted in a constitutional manner. Missouri's current lethal injection procedure subjects condemned inmates to an unnecessary risk of unconstitutional pain and suffering. Without appropriate monitoring of the anesthesia, there is a strong argument that these executions might even be torturous. The evidence presented by plaintiff's counsel supported that argument.

Missouri's revised proposal is an improvement over the current procedure. However, there continue to be inadequacies with the personnel required to monitor and oversee the use of the anesthetic thiopental. While the use of a **board certified anesthesiologist** may not be possible, the alternative proposed by the State falls short of ensuring the protection required.

If the proposed three drug approach [***3**] is to be used, it is crucial that someone with the appropriate training and experience in monitoring anesthetic depth must be present to ensure that Missouri's executions of its condemned inmates are carried out humanely.

As this case is now before the Eighth Circuit, the Court is confident that the parties will present their positions on the revised protocol to that Court.

/s/ Fernando J. Gaitan, Jr.

United States District Judge

Dated: July 25, 2006
Kansas City, Missouri

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