



Missouri: Lawsuit challenges execution procedures

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— The Associated Press

JEFFERSON CITY, Mo. — A group of inmates, families, clergy and lawmakers asked the state's highest court Tuesday to toss out Missouri's roughly 2-year-old execution protocols.

It's the most recent legal challenge to the state's system for carrying out the death penalty.

A federal judge in 2006 halted all executions, declaring Missouri's lethal injection process unconstitutional after the surgeon who previously oversaw the state's executions testified he was dyslexic, sometimes transposed numbers, and operated without written procedures or supervision.

Earlier this year, the same federal judge upheld written protocols that the Missouri Department of Corrections drafted and implemented after the 2006 ruling. Missouri's last execution was in October 2005.

The most recent lawsuit filed over Missouri's death penalty focuses on whether the written execution policies should have been subject to public comment and legislative oversight. The procedures include six sections dealing with the composition of the execution team, the preparation of chemicals, the use of intravenous lines, monitoring of the inmate, administration of the chemicals and documentation of the chemicals.

A state trial judge in Cole County ruled earlier this year that the Department of Corrections is allowed to implement an execution protocol without public comment or approval from a legislative oversight committee. That decision was appealed to the Missouri Supreme Court.

State departments regularly create administrative rules designed to implement laws. In those cases, the departments' proposed regulations can be reviewed by an oversight committee of lawmakers tasked with evaluating the rules' fairness and whether they abide by state law.

The Corrections Department contends that the written procedures amount to "internal management" strategies and therefore don't have to go through the same level of scrutiny as official state regulations.

Assistant Attorney General Michael Spillane said that those responsible for overseeing the state's prisons have wide latitude in setting the policies that govern the institutions. He likened execution procedures to setting meal menus or medical care for inmates.

"It's not a housekeeping issue — I don't want to trivialize it — but it's an internal management issue," Spillane said.

Joseph Luby, an attorney representing those challenging the execution procedures, contends the policy for executions amounts to an administrative rule and argued that the protocols should be invalid because they were not submitted for review.

Luby said allowing for open comments on proposed death penalty procedures could help improve them.

"It may influence reasonable people to go about devising a more humane way to go about executing people," he said during Tuesday's arguments.

One person who has already spoken up about Missouri's written execution procedures is the man who performed them until a judge said in 2006 that he could no longer do so in Missouri. Alan Doerhoff told The Associated Press in an August interview that a state guideline calling for using 10 to 15 syringes rather than the usual three is overly complicated and potentially problematic.

"It will have the same effect, the guy will die," he said. "But it may not be pretty."

The seven judges on the high court regularly interrupted the attorneys during oral arguments Tuesday, often offering comments instead of posing questions.

Judge William Ray Price, noting that administrative rules carry more legal weight than department procedures, said that turning the protocols into regulations might actually make it harder for prison inmates to challenge their executions.

"It is more solid as law, and that could be contrary to your clients' interests," Price said. "Or do you not want to worry about that? You want a rule and six months more to argue about that."

The lawsuit was filed by death row inmate John Middleton and 16 other condemned prisoners. They include Russell Bucklew, Michael Taylor, Jeffrey Ferguson, Richard Clay, Reginald Clemons, Roderick

Nunley, William Rousan, John Winfield, Dennis Skillicorn, Earl Ringo, Martin Link, Mark Christeson, Allen Nicklasson, Paul Goodwin, Vincent McFadden and Kevin Johnson.

Other plaintiffs include five spouses or relatives of the death row inmates; three clergy members; and two St. Louis Democratic lawmakers, Sen. Joan Bray and Rep. Connie Johnson.

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