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## ACLU challenges lethal injection in Montana, citing state constitution

**By Susan Gallagher**

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HELENA, Mont. — The ACLU sued the state of Montana on Thursday over lethal injection, saying its procedure does not ensure that inmates are anesthetized properly before the deadly drugs begin to flow.

The lawsuit by the American Civil Liberties Union of Montana makes arguments similar to those in a case being considered by the U.S. Supreme Court. But this case focuses on issues particular to the Montana Constitution.

The state affords human dignity stronger protection than does the U.S. Constitution, the ACLU says. In addition, government secrecy surrounding lethal injection violates right-to-know provisions in the state document, the organization argues.

The ACLU sued on behalf of condemned inmate Ronald Smith, sentenced for the 1982 deaths of two Montana men. The sentence is under appeal, and no execution date has been set for him or Montana's other death row inmate, William Gollehon.

"As it stands today, there are more safeguards to ensure that an inmate getting his wisdom teeth pulled receives proper anesthesia, so that he does not feel pain during the procedure, than an inmate who is going to be executed," lawyer Julie Johnson told reporters after the suit was filed in state District Court.

The lawsuit contends that death by lethal injection is unconstitutionally cruel and unusual punishment. The lawsuit names the state, the Montana Department of Corrections, Corrections Director Mike Ferriter and Montana State Prison Warden Mike Mahoney.

Spokesmen for the Corrections Department and for Attorney General Mike McGrath said only that they are awaiting a U.S. Supreme Court opinion on challenges to lethal injection, a method used in most states that have the death penalty. The Supreme Court heard arguments in January.

A spokeswoman for Gov. Brian Schweitzer said he does not comment on pending litigation.

Johnson, one of Smith's lawyers, said at an ACLU news conference Thursday that Montana's procedures for administering lethal injections do not ensure that an inmate is anesthetized properly before he receives a drug that paralyzes all body movement and another that stops his heart.

"If an inmate is not sufficiently under, he may be fully aware of the sensation of being suffocated as his lungs are paralyzed," Johnson said.

Witnesses at two executions in Montana reported that as the lethal injections were given, the condemned men released sounds similar to snoring, according to the lawsuit.

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