

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION  
PROTOCOL LITIGATION,

: Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.  
Magistrate Judge Michael R. Merz

This Order relates to Plaintiffs  
Tibbetts and Otte

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**CORRECTED DECISION AND ORDER ON DEFENDANTS'  
MOTION TO MODIFY DECISION AND ORDER ON PLAINTIFFS'  
RENEWED MOTION TO PRESERVE AND PRODUCE EXECUTION  
MATERIALS**

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This case is before the Court on Defendants' Motion to Modify (ECF No. 1113) the Court's Decision and Order (ECF No. 1107) granting in part and denying in part Plaintiffs' renewed Motion to Preserve and Produce Execution Materials (ECF No. 737).

To clarify, the Order does not require Defendants to **produce** anything to anyone, but merely to **preserve** the execution materials pending further order of the Court.

To the extent the instant Motion may be read to object to photographing the execution materials at all, including the vials and boxes, the Court would direct Defendants' counsels' attention to their Memorandum in Partial Opposition (ECF No. 748) in which they said

Defendants will agree to photograph the vials, the boxes and the syringes, but reserve the right to redact any information which would identify, or reasonably lead to the identification of, the manufacturer, source or supplier of the execution drugs that may

be contained on copies of those photographs before producing them in discovery, pursuant to the Court's October 2015 Existing Protective Order, whose validity is on appeal in *Fears v. Kasich*, Sixth Cir. Case No. 16-3149. Furthermore, Defendants reserve the right to object to produce [sic] unredacted copies of these photographs as it could compel them to violate R.C. 2949.221.

*Id.* at PageID 23310. The Court now understands that Defendants believe there is a risk of violating Ohio Revised Code § 2949.221 and 2949.222 in producing redacted photographs from which in Arkansas it was reportedly possible for the Associated Press to obtain and publicly disclose information arguably protected by the statutes (ECF No. 1113, PageID 42985). To repeat the clarification from above, Defendants are not required by the Order to produce anything to anyone. However, Defendants will be held to their agreement, quoted above, “to photograph the vials, the boxes[,] and the syringes.” This will help secure the preservation of the execution materials and preserve the Court's ability to rule on further motions regarding them.

July 21, 2017.

s/ *Michael R. Merz*  
United States Magistrate Judge