

**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 Plaintiff  
Gary Otte.

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**DECISION AND ORDER GRANTING IN PART AND DENYING IN  
PART THE STATE ACTOR DEFENDANTS' MOTION TO MODIFY  
PRELIMINARY INJUNCTION HEARING SCHEDULING ORDER**

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This § 1983 capital case is before the Court on the State Actor Defendants' Motion to Modify [Preliminary Injunction Hearing<sup>1</sup>] Scheduling Order (ECF No. 1186). Plaintiff Otte has responded (ECF No. 1187).

The Preliminary Injunction Hearing Scheduling Order was created purely *sua sponte*. Although this upcoming hearing was discussed during the telephone scheduling conference on August 29, 2017, the only things said about the hearing were what time and date would be acceptable and that Plaintiff would be presenting live the nurse anesthetist who provided a declaration in support of the preliminary injunction motion. Otte's counsel indicated she might

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<sup>1</sup> Thus labeled to distinguish it from the Joint Motion to Modify a different scheduling order filed two hours later (ECF No. 1188).

present someone to speak to the training of paramedics and the Court and the Court said “I will want an identification, a cv [curriculum vitae] and a precise of the testimony.”<sup>2</sup> Ms. Werneke responded “I hope to have that by the end of the week.” The only other concern raised by defense counsel at that point was to request expedited supplementation of discovery requests served earlier on Mr. Otte which the Court ordered completed by August 31, 2017.

Although defense counsel raised no concerns on August 29, 2017, the concerns she raises in the instant Motion are well taken. Defendants are entitled to know what they must defend against. Just as federal courts generally require extensive final pretrial orders to allow appropriate preparation, so too should the Court do what can be done to make the same kind of preparation for a preliminary injunction hearing.

Accordingly, the Preliminary Injunction Hearing Scheduling Order is MODIFIED to provide that Plaintiff must file a hearing witness list not later than 5:00 p.m. on Friday, September 1, 2017, with a precis of the expected testimony and a curriculum vitae for any proposed expert witness. Not later than the same time, Plaintiff shall produce to Defendants copies of any documentary evidence proposed to be introduced in evidence at the hearing. Formal preparation of documentary evidence in the form provided at ECF No. 1185, PageID 44454, ¶ 2 can be postponed until the time and date set forth there.

August 31, 2017.

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

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<sup>2</sup> Quotations here are from a rough draft of the transcript of the conference, which has not yet been corrected and filed and is not available to counsel.

