

Arizona execution proceeds after Supreme Court lifts stay

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Arizona death row prisoner Jeffrey Landrigan died by lethal injection late Tuesday night, shortly after the US Supreme Court lifted a stay of execution in his case. Lawyers for the condemned inmate had challenged his execution, based on questions about the origins and ingredients of one of the drugs to be used by Arizona officials in the lethal injection procedure.

Landrigan, 50, was convicted in the 1989 murder of Charles Dean Dyer, and his execution had been set for 10 a.m. Tuesday morning. But it was put on hold after a trial judge in Phoenix and a panel of the 9th US Circuit Court of Appeals in California both ordered it be delayed after state prison officials refused to disclose the source of the sodium thiopental to be used in the state killing. Arizona Governor Janet Brewer had denied Landrigan a stay of execution on Monday.

The Arizona attorney general's office revealed Tuesday that the state's supply of the drug came from England, but did not reveal the source. Landrigan's defense had argued that because the drug had not been approved by the US Food and Drug Administration it could lead to a painful execution in violation of a ban on cruel and unusual punishment by the Eighth Amendment to the US Constitution.

In its 5-4 ruling lifting the stay, the Supreme Court wrote: "There is no evidence in the record to suggest that the drug obtained from a foreign source is unsafe. The district court granted the restraining order because it was left to speculate as to the risk of harm.... There was no showing that the drug was unlawfully obtained, nor was there an offer of proof to that effect."

The high court decision was issued at about 7 p.m. Voting to lift the stay were Justice John G. Roberts, Jr., Antonin Scalia, Clarence Thomas, Samuel Alito, and Anthony M. Kennedy. Voting to uphold the lower court's stay were Ruth Bader Ginsburg, Stephen G.

Breyer, Sonia Sotomayor, and Elena Kagan.

Arizona prison officials began the lethal injection procedure at 10:14 p.m. Jeffrey Landrigan was pronounced dead at 10:26 p.m. About 27 people were present to witness the execution, the first in Arizona this year. Forty-four death row prisoners have been put to death nationwide so far in 2010.

Shortages of sodium thiopental, a barbiturate, have led to delays in executions in several states. The sole US manufacturer of the drug, Illinois-based Hospira, Inc., suspended production of the drug a year ago due to a reported shortage of raw materials, and is not expected to be producing it again until the first quarter of 2011.

The drug is the first in a lethal trio of drugs used in executions by lethal injection in the US. It is intended to put the prisoner into a comatose state of unconsciousness. The second injection contains a paralyzing agent, pancuronium bromide, which causes suffocation and renders the prisoner immobile. Finally, the third and fatal injection, potassium chloride, induces a massive heart attack.

Death penalty opponents, and critics of the lethal injection procedure, argue that if the first injection of sodium thiopental is not administered properly, the prisoner can remain conscious and suffer intense pain when the other drugs are injected. He or she would be fully cognizant when paralyzed and suffocated by the second drug, and would feel a severe burning sensation in the veins when the final drug was administered.

The Death Penalty Information Center lists 31 cases of botched executions involving lethal injection. In one such case in Florida in 2006, condemned inmate Angel Diaz continued to move—squinting, grimacing and mouthing words—after the first injection was given. An autopsy following his execution determined that the

needle administering the lethal chemical had been injected into soft tissue rather than the vein.

Critics of the method argue that the use of the first sedating drug, combined with the second paralyzing agent, serve to sanitize the procedure in front of witnesses, preventing the individual being executed from crying out or writhing in pain. The lethal injection procedure used in US executions was given up by the American Veterinary Association for euthanizing animals because it was considered unnecessarily cruel.

The Supreme Court's decision in the Arizona case follows their April 16, 2008, 7-2 ruling in *Baze v. Rees* upholding the use of lethal injection. That decision allowed the resumption of executions, which had been on hold since September 2007 pending the outcome of a challenge to the use of the procedure by two death row inmates in Kentucky, who argued that the method exposes those condemned to die to the risk of cruel and unusual punishment.

As in this week's ruling in the Arizona case, at issue in the 2008 case was not the constitutionality or cruelty of the death penalty itself, but of the particular method used to carry it out. Arguing in favor of the use of lethal injection in *Baze v. Rees*, Justice Antonin Scalia epitomized the repugnant sentiments of those segments of the US political establishment who defend capital punishment.

"Where does that come from that you must find the method of execution that causes the least pain?" Scalia asked. "We have approved electrocution, we have approved death by firing squad. I expect both of those have more possibilities of painful death than the protocol here."

In the majority decision in the 2008 case upholding lethal injection, Chief Justice John Roberts similarly wrote: "Some risk of pain is inherent in any method of execution—no matter how humane—if only from the prospect of error in following the required procedure. It is clear, then, that the Constitution does not demand the avoidance of all risk of pain in carrying out executions."

Tuesday's high court decision clears away one barrier to continuing the state-sanctioned killing machine in the US. All of the 36 states that currently uphold capital punishment designate lethal injection as the primary method of inducing death, and this ruling means that shortages of one of the lethal drugs will

hold up scheduled executions.

In some states, other methods may be selected by those condemned to die, or can be used by authorities if lethal injection is not available or ruled unconstitutional. These methods include: electrocution (Alabama, Arkansas, Florida, Illinois, Kentucky, Oklahoma, South Carolina, Tennessee, Virginia), the gas chamber (Arizona, California, Maryland, Missouri, Wyoming), hanging (New Hampshire, Washington), and the firing squad (Utah, Oklahoma).

Since the US Supreme Court reinstated the death penalty in 1976, 1,232 individuals have been put to death. These have included women, foreign nationals denied their consular rights, the mentally impaired, and those convicted of crimes committed as juveniles.



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