

US Supreme Court upholds “excruciating” executions

Joseph Kishore
30 June 2015

The United States Supreme Court on Monday ruled that executions using the sedative midazolam can go forward, despite substantial evidence that use of the drug can cause excruciating and prolonged pain. The decision reaffirmed a position close to the heart of the American ruling class: that it should have the right to kill its citizens and do so by the method of its choosing.

The 5-4 decision in the case of *Glossip v. Gross* paves the way for the execution of the three prisoners in the state of Oklahoma who brought the case. Executions in other states that have begun using the drug will also go forward.

The prisoners’ argument that the use of midazolam violated the US Constitution’s Eighth Amendment prohibition on “cruel and unusual punishment” was substantiated by a series of horrific executions. Experts in pharmacology who supported their case noted that the drug is untested as a sedative and cannot be used to maintain adequate anesthesia. As a result, prisoners who are administered midazolam as part of a two- or three-drug cocktail can end up writhing in pain as subsequent drugs paralyze them and shut down their life functions.

This torture has been meted out repeatedly over the past 20 months. The first person to be killed using midazolam was William Happ, in October of 2013. Happ reportedly remained conscious for a prolonged period and made repeated movements before succumbing in the Florida death chamber.

Dennis McGuire (January 2014 in Ohio), Clayton Lockett (April 2014 in Oklahoma) and Joseph Wood (July 2014 in Arizona) were all killed using midazolam. Each of them choked, gasped and writhed in pain for between 25 and 90 minutes prior to death.

Most notorious was the case of Lockett, who gained consciousness as he was being executed and sought to

rise from the execution table before eventually dying of a heart attack 43 minutes after initial sedation. Another prisoner who had been part of the suit decided Monday by the Supreme Court was killed in January of this year after the high court denied a stay of execution. His last words were reportedly, “My body is on fire.”

To justify the continued use of midazolam, the Supreme Court majority employed cruel and twisted logic. Justice Samuel Alito, writing for the majority that included Chief Justice John Roberts and Justices Anthony Kennedy, Antonin Scalia and Clarence Thomas, argued that the prisoners had failed to make the case that the use of the drug entailed a substantial risk of serious pain. Moreover, Alito asserted, the prisoners had not presented a viable alternative for their own execution.

Oklahoma and a number of other states began using midazolam after manufacturers stopped selling the drug pentobarbital for use in executions. This was, in part, a response to public protests over the complicity of the company in state-sanctioned killings, itself a reflection of mounting popular opposition to the death penalty in the US.

The prisoners, Alito wrote, may not like that they will be killed using midazolam, but “they have not identified any available drug or drugs that could be used in place of those that Oklahoma is now unable to obtain.”

This standard, for all practical purposes, renders the Eighth Amendment ban on “cruel and unusual punishment” null and void. In a sophistic argument that drew its conclusion from its premise, Alito acknowledged that the method employed by Oklahoma might cause extreme pain. However, since the Supreme Court had repeatedly upheld the constitutionality of the death penalty, some method for killing people had to be

allowed, he asserted. And since the condemned had proposed no viable alternate method, the current method had to be deemed constitutional.

Justice Sonya Sotomayor, in a dissent, noted that the majority had established “a wholly unprecedented obligation on the condemned inmate to identify an available means for his or her own execution.” She added that by the logic of the majority decision, “it would not matter whether the state intended to use midazolam, or instead to have petitioners drawn and quartered, slowly tortured to death or actually burned at the stake.”

Seeking to outperform Alito in cynicism in the service of reaction, Justice Antonin Scalia filed an angry concurring opinion attacking Justices Stephen Breyer and Ruth Bader Ginsburg, who in their dissent suggested that the court again take up the question of the constitutionality of the death penalty as a whole.

Denouncing Breyer for taking on “the role of the abolitionists in this long-running drama,” Scalia turned to crude historical falsification. “The Framers of our Constitution disagreed bitterly on the matter [of the death penalty]. For that reason, they handled it the same way they handled many other controversial issues: They left it to the People to decide.”

In attempting to overturn that decision, Scalia wrote, Breyer “does not just reject the death penalty, he rejects the Enlightenment.”

The use of the term “abolitionists” has definite political implications, intended or otherwise. The same arguments for “popular sovereignty” were used to uphold the institution of slavery prior to the Civil War.

As for the slander against the Enlightenment and the founders of the American Republic who were inspired by it, Scalia might do well to read Cesare Beccaria, the great Enlightenment figure who, in his 1764 treatise *On Crimes and Punishments*, asked the question, “Is it not absurd, that the laws which detest and punish homicide, should, in order to prevent murder, publicly commit murder themselves?”

Perhaps with the likes of Scalia in mind, Beccaria added:

What must men think, when they see wise magistrates and grave ministers of justice, with indifference and tranquility, dragging a criminal

to death, and whilst a wretch trembles in agony, expecting the fatal stroke, the judge, who has condemned him, with the coldest insensibility, and perhaps with no small gratification from the exertion of his authority, quits his tribunal, to enjoy the comforts of life?

Monday’s decision on the death penalty is worth bearing in mind when considering the Supreme Court’s supposed “turn leftward,” as proclaimed by the *New York Times* following last week’s gay marriage ruling. As the WSWS noted, while the court is willing to make concessions on certain democratic questions that are of particular concern to better-off sections of the middle class, when it comes to issues that touch on basic elements of class rule—such as the ability of the state to kill—that is a different matter altogether.

The right-wing bloc on the Supreme Court, including Scalia, Roberts, Alito and Thomas, would have had no problem functioning in the courts of Nazi Germany. Similar arguments to those employed by Alito and Scalia in the death penalty ruling can and will be used to justify torture, concentration camps and all manner of police state measures. The justices who make them deserve to be locked away in either prison or an insane asylum.

Yet in their sadistic arguments, these semi-fascists are only expressing in the crudest form the antidemocratic and reactionary conceptions of the American ruling class, upheld by the entire political system, including the Obama administration and both big-business parties.



To contact the WSWS and the Socialist Equality Party visit:

[wsws.org/contact](https://www.wsws.org/contact)