

Lawyers race to save seven Arkansas death row inmates from “execution by assembly line”

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Lawyers representing seven death row inmates scheduled to be executed over 11 days beginning next week are entering the final stage of their legal battle to stop the most concentrated bout of executions in modern US history.

If the attorneys should fail, prisoners Don Davis and Bruce Ward will be put to death by lethal injection on April 17. They will be followed by Stacey Johnson and Ledell Lee, who are set to die on April 20. The following week, on April 24, Marcel Williams and Jack Jones will be put to death, followed by Kenneth Williams on April 27.

The Arkansas Parole Board voted 6-1 on April 5 to recommend clemency for an eighth inmate, Jason McGehee. The board heard testimony that McGehee’s lawyer at trial barely investigated the case, and that the jury never heard that he was diagnosed with bipolar disorder and that he had experienced severe abuse as a child, leading him to use drugs and alcohol at a young age.

Arkansas Governor Asa Hutchinson, a Republican, has final say on McGehee’s case and he could still be put to death April 27. He also has final word on the fates of the other seven prisoners as well, and takes the parole board’s recommendations as advisory only. Hutchinson has not commented on McGehee’s case and has indicated he has no intention of stopping the other seven executions.

Arkansas is rushing to kill the inmates before its supply of the drug midazolam expires at the end of this month. Major drug manufacturers, including Pfizer and Teva, have stopped selling drugs for use in lethal injections, forcing states to turn to other sources, such as compounding pharmacies, which are loosely

regulated.

Lawyers for nine death row inmates, including those scheduled to die before the end of April, argued in U.S. District Court in Little Rock, Arkansas, that the state’s accelerated execution schedule will violate their constitutional rights, including their right not to be subjected to cruel and unusual punishment.

Judge Kristine Baker is considering a preliminary injunction to stay the executions. Attorneys for the condemned inmates have denounced the planned lethal injections as “execution by assembly line,” arguing, “Our country does not participate in mass executions.”

The prisoners’ complaint points out that the last time a double execution was carried out in the US, it led to a gruesome catastrophe. In 2014, Oklahoma’s plan to carry out a double state killing was halted after the lethal injection of the first inmate, Clayton Lockett, in which he writhed and groaned for 43 minutes. After prison authorities called off the execution, the prisoner finally succumbed later of an apparent heart attack.

An investigation into Lockett’s execution found that the prison team tasked with his execution had been under huge stress over the double-execution plan, playing a major part in the mistakes made.

In addition to the horrific end for Lockett, midazolam has played a role in the executions in 2014 of Dennis McGuire, in Ohio, and Joseph Wood, in Arizona. Most recently, on December 8, 2016, Ronald Smith Jr. was witnessed struggling to breathe and coughing for 13 minutes during his lethal injection in Alabama.

The three-drug protocol planned for the upcoming executions is to inject each inmate first with the sedative midazolam, then with the paralytic vecuronium bromide, and finally with potassium

chloride to induce cardiac arrest. On Monday, Dr. Joel Zivot, a professor at Emory University and a doctor specializing in anesthesiology and critical care medicine, testified in federal court that this process would be “extremely painful” for the inmates.

Craig Stevens, a professor of pharmacology at the University of Oklahoma, testified Tuesday that midazolam, a benzodiazepine, is not strong enough to render a person unconscious and unable to feel pain. He said that the state’s plan to inject the inmates with two doses of 250 mg each would not render them unconscious as the drug reaches a “ceiling effect,” or maximum level of effectiveness, at 228 mg.

John Williams, an attorney for the inmates, asked Stevens, “Did you reach a conclusion as to whether you think that the protocol will lead to serious pain and suffering?” Stevens replied, “I do, because of the nature of midazolam.”

Arkansas has not put anyone to death since 2005, due to legal challenges and the difficulty in obtaining execution drugs. In an article in the *Arkansas Law Review*, Julie Vandiver noted that the state has had its share of executions gone wrong between 1990 and 2005.

In one, the inmate started to cough three minutes into his execution, and turned blue. Another inmate’s execution took 69 minutes—the execution team spent 50 minutes to find a suitable vein to administer the lethal drugs. A third inmate appeared to have a seizure and a fourth was talking when the drugs should have rendered her unconscious.

With this month’s execution dates fast approaching, opposition to the state killings is growing. About 200 religious leaders signed a letter asking Hutchinson to commute the inmates’ sentences to life in prison without parole.

Sister Helen Prejean, a long-time death penalty opponent, is campaigning to stop the executions, tweeting the phone number of the Arkansas governor and Attorney General Leslie Rutledge.

Author John Grisham, a native of Arkansas, wrote in *USA Today* that the assembly-line killings would result in a “spectacular legal train wreck.” He added, “It risks the specter of botched executions, which would haunt everyone involved and take an incredible emotional toll on the innocent staff. The plan simply risks too much.”

A few dozen people have kept a regular vigil outside

Governor Hutchinson’s mansion for weeks. The Arkansas Coalition to Abolish the Death Penalty is planning a protest today at the state Capitol, hoping to draw hundreds. Scheduled to speak is Damien Echols, who spent nearly 18 years on Arkansas’ death row before he and two other men were freed in 2011 as part of plea deal, in which the three maintained their innocence.



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