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Former State AGs Ask Supreme Court to Block Oklahoma's Execution Drug Cocktail

WASHINGTON, D.C. -- More than a dozen former state attorneys general from across the ideological spectrum have asked the US Supreme Court to determine that Oklahoma's continued use of the three-drug cocktail that resulted in last April's botched execution of Clayton Lockett violates the constitutional rights of three death row inmates slated for execution in that state.

In a [friend-of-the-court brief](#) organized by The Constitution Project, a bipartisan legal watchdog group, the former state officials, including former Vice President Walter Mondale, argued that Oklahoma's use of midazolam as a part of its lethal injection protocol does not properly induce unconsciousness and could therefore result in an extremely painful death, contravening the constitutional ban on cruel and unusual punishment.

"With execution dates looming," the officials wrote in their brief, Oklahoma "rushed to judgment, quickly selecting midazolam to serve as the crucial first drug in a three-drug protocol, even though it is not medically equivalent to drugs used for that purpose." In selecting this new method of execution, Oklahoma's lawyers "failed to consult medical or correctional experts" and instead "relied on their own internet research and conversations with officials in other States," which, the brief argues, violates the State's "most solemn duty to carry out lawful punishments."

"The selection and implementation of the means of executing prisoners condemned to death ... demands serious contemplation, consideration of scientific, medical, and technical evidence, and collaboration with experts," they wrote, adding "Oklahoma failed to meet those standards here."

The brief notes that Oklahoma used the contested drug last April in the execution of Clayton Lockett, who seemed to writhe in pain for 43 minutes after the injection of midazolam, before eventually succumbing to a heart attack after the execution process had been stopped. The chemical was also used in problematic executions in Ohio and Arizona.

The officials also disputed Oklahoma's claim that the state has no alternative but to use the drug.

"States carry out lawful executions by lethal injection on a regular basis without using midazolam," they wrote, noting that three other states have carried out a total of 18 death sentences since Lockett's botched execution without it.

On April 29, the Supreme Court will hear the case of the inmates -- Richard E. Glossip, John M. Grant, and Benjamin R. Cole Sr., all three sentenced to death for their involvement in separate crimes. On January 28, the court blocked the state from using midazolam until it can decide the case.

In addition to Mondale, who previously served as Minnesota Attorney General, other former state attorneys general signing the brief include: William Broaddus (Va.); Robert Del Tufo (N.J.); Mark Earley (Va.); Tyrone Fahner (Ill.); Scott Harshbarger (Mass.); Robert Henry (Okla.); Peg Lautenschlager (Wisc.); Jim Petro (Ohio); Deborah Poritz (N.J.); Ernie Preate (Penn.); Mark Shurtleff (Utah); and John Van de Kamp (Calif.). Some support the death penalty; others oppose it.

The case is *Glossip v. Gross* (14-7955). The brief, which was drafted with the pro bono assistance of Jenner & Block in Washington, D.C., is [available online](#).

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Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.

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