

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Supreme Court Allows Oklahoma to Use Flawed Execution Drug

WASHINGTON, D.C. -- Jim Petro, a Republican former Attorney General of Ohio and member of The Constitution Project Death Penalty Committee, offered the following comments on the Glossip decision issued by the U.S. Supreme Court earlier today, permitting the use of midazolam in the Oklahoma executions at issue:

"I am gravely concerned about the Court's decision today. The overwhelming evidence is that midazolam carries an extraordinary risk of imposing cruel and unusual punishment, which violates our Constitution. Any state carrying out executions must undertake that responsibility solemnly. But with the Court's decision today, Oklahoma has license to operate in a haphazard manner as they wield the greatest power our government possesses -- the power to take life."

Virginia Sloan, president of The Constitution Project, noted that this decision runs counter to the prevailing trend away from the use of death penalty in the United States:

"Only a handful of states continue to use the death penalty and many have repealed it entirely. Even in those states that do use it, executions continue to decline dramatically. Today's decision is at odds with growing sentiment in the country that the death penalty is badly broken and cannot be fixed."

TCP organized a [friend-of-the-court brief](#) signed by more than a dozen former state attorneys general from across the ideological spectrum, including former Vice President Walter Mondale, arguing 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. Several of the former attorneys general were responsible for carrying out the death penalty in their home states.

"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," the officials wrote in their brief, adding "Oklahoma failed to meet those standards here."

The Supreme Court found that the death-row inmates failed to establish a likelihood of success on the merits on their claim that the use of midazolam violates the Eighth Amendment.

The former officials' brief noted that Oklahoma used the contested drug last year 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.

In addition to Petro and Mondale, who previously served as Minnesota Attorney General, other former state attorneys general signing the brief included: William Broaddus (Va.); Robert Del Tufo (N.J.); Mark Earley (Va.); Tyrone Fahner (Ill.); Scott Harshbarger (Mass.); Robert Henry (Okla.); Peg Lautenschlager (Wisc.); 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).

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[About The Constitution Project](#)

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.