

Justice Elena Kagan's first vote is against an execution

The newest member of the Supreme Court is in the minority in backing a stay of execution over questions about the safety of a drug to be used in a lethal injection. Shortly after the stay was overturned Tuesday, Arizona executed Jeffrey Landrigan.

By David G. Savage, Tribune Washington Bureau

October 27, 2010|1:45 p.m.

Washington...Justice [Elena Kagan](#) cast her first recorded vote on the Supreme Court late Tuesday, joining the liberals in dissent when the high court cleared the way for the execution of an Arizona murderer.

The 5-4 ruling overturned orders by a federal judge in [Phoenix](#) and the U.S. 9th Circuit Court of Appeals in San Francisco that had stopped the execution by lethal injection of Jeffrey Landrigan.

His lawyers, in a last-ditch appeal, had raised questions about one of the drugs used in the execution. Since the only U.S. manufacturer of sodium thiopental had suspended production, Arizona officials said they had obtained a supply of the drug from a British company.

A judge had put the execution on hold because she said she was "left to speculate" whether this drug was safe for its intended use.

But state lawyers appealed to the Supreme Court Tuesday, which lifted the judge's order.

"There is no evidence in the record to suggest that the drug obtained from a foreign source is unsafe," the justices said, and "speculation cannot substitute for evidence that the use of the drug is 'sure or very likely to cause serious illness and needless suffering'."

The high court used those words two years ago in a decision that upheld the use of lethal injections.

Tuesday's night's one-paragraph order was unsigned, but it spoke for Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, [Antonin Scalia](#), [Clarence Thomas](#) and Samuel A. Alito Jr.

Four others said they disagreed and said would have preserved the stay. They were Justices [Ruth Bader Ginsburg](#), Stephen G. Breyer, [Sonia Sotomayor](#) and Kagan.

Landrigan was convicted of murder in 1989. He was put to death by lethal injection Tuesday evening shortly after the court's order was handed down. Witnesses reported Landrigan appeared to die quietly and with no apparent sign of pain.

Last month, the high court had been asked to stop Virginia's execution of Teresa Lewis, but refused. Ginsburg and Sotomayor dissented and said they would have granted her appeal.

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