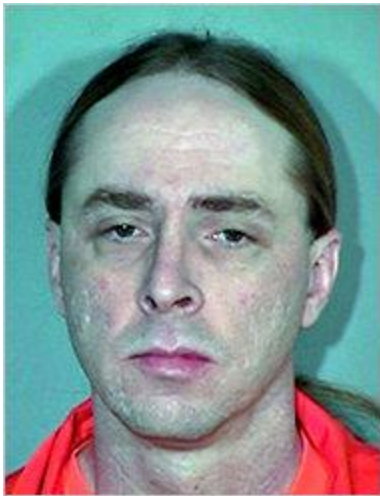


# Use of Drug Challenged in Death Penalty Case

By [JOHN SCHWARTZ](#)

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Arizona plans to execute Jeffrey Landrigan next week, but his lawyers are arguing that one of the drugs that the state intends to use to end his life may not be good enough.



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The planned execution of Mr. Landrigan, convicted of murder in 1990, coincides with a shortage of the anesthetic used in the state's execution protocol, sodium thiopental. The thiopental shortage [has already caused delays](#) in executions around the country.

Arizona officials have the drug, but defense lawyers for Mr. Landrigan are asking to stay the execution until the state reveals where it got its supply.

If Arizona obtained the drug from an overseas supplier, they argue, it may be substandard and violate [Food and Drug Administration](#) rules for importation.

Kent Scheidegger, legal director for the Criminal Justice Legal Foundation, a group that supports the death penalty, said that arguing over the safety of a drug for executions is "absurd."

"As long as it's a real drug manufacturer and not mixed up in somebody's garage, it doesn't matter where it came from," Mr. Scheidegger said. While the Food and Drug Administration is supposed to determine whether drugs are safe and effective, he said, "in this case, safe and effective are opposites."

Shelly Burgess, a spokeswoman for the F.D.A., said that imported drugs must go through an approval process before being used in the United States, but added that executions are “clearly not under our purview or authority.”

Megan McCracken, an adviser on lethal injection issues to the death penalty clinic at the [University of California, Berkeley](#) School of Law, argued that the origin of the drug used was nonetheless important under the law.

She cited the Eighth Amendment prohibition against cruel and unusual punishment, and a 2008 decision by the [Supreme Court](#). In that case, [Baze v. Rees](#), the court left room for challenges to execution methods that involve a demonstrated risk of severe pain compared with available alternatives.

To Ms. McCracken, the lack of information about the drug opens Arizona to a challenge under the Baze decision. “Its provenance matters,” she said.

“I don’t think you can say that thiopental is thiopental is thiopental.”

Judge Roslyn O. Silver of United States District Court on Thursday [asked the state to voluntarily reveal](#) where the drug had come from. She set the matter for oral argument on Monday.

The state, [in a brief filed Friday](#), declined to identify the source of the drug, citing state confidentiality laws intended to shield those involved in executions from harassment by death penalty opponents. It denied that the drug to be used was substandard, and suggested that the criticism of the drug was an “improper delay tactic.”

The state, the brief said, “takes its responsibility to carry out an execution seriously and has attempted to construct a protocol to carry out executions as humanely as possible.”

Kent E. Cattani, an Arizona assistant attorney general, said that the supply of the drug obtained by the state was effective, and noted that the protocol in place involved several methods for determining that the inmate was unconscious before administering the final drug. While an important concern with the administration of powerful anesthetics is that the patient might receive too much, Mr. Cattani explained, “it’s obviously not a consideration here.”

In fact, the amount that is given to inmates is more than 10 times the recommended dose for surgical procedures. “There’s little or no chance that he would regain consciousness,” he said.

If the judge insists on knowing the origins of the drug, he said, “we would ask that it be disclosed under seal.”

To Ms. McCracken, the state’s response was inadequate, akin to saying, “Just trust us,” she said.