No. 19A615

In the Supreme Court of the United States

IN THE MATTER OF THE FEDERAL BUREAU
OF PRISONS' EXECUTION PROTOCOL CASES

WILLIAM BARR, ET AL.,

Applicants,

v.

JAMES H. ROANE, JR., ET AL.,

Respondents.

On Application for Stay Pending Appeal to the United States Court of Appeals for the District of Columbia

MOTION FOR LEAVE TO FILE AND BRIEF FOR THE STATES OF ARIZONA, ALABAMA, ARKANSAS, GEORGIA, IDAHO, INDIANA, KANSAS, LOUISIANA, MISSOURI, NEBRASKA, OHIO, SOUTH CAROLINA, TEXAS, AND UTAH AS AMICI CURIAE IN SUPPORT OF APPLICANTS

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MOTION FOR LEAVE TO FILE

The States of Arizona, Alabama, Arkansas, Georgia, Idaho, Indiana, Kansas, Louisiana, Missouri, Nebraska, Ohio, South Carolina, Texas, and Utah ("Amici States") move for leave to file a brief as amici curiae in support of the Application for a Stay or Vacatur of the Injunction Issued by the United States District Court for the District of Columbia; to file the enclosed brief without 10 days' advance notice to the parties of amici's intent to file; and to file in unbound format on 8½-by-11-inch paper. *See* Sup. Ct. R. 37.2(a).

1. *Statement of Movants' Interest.* On July 25, 2019, the Federal Bureau of Prisons adopted a revised lethal injection protocol that replaced the former three-drug procedure with the use of a single drug, pentobarbital, as the lethal agent (the "2019 Protocol"). In a decision affirmed by the court of appeals, a District of Columbia federal district court concluded that the 2019 Protocol likely exceeds statutory authority and entered a preliminary injunction staying the executions of five individuals scheduled between December 9, 2019 and January 15, 2020. As states in which capital punishment is authorized, Amici States have a unique perspective on the 2019 Protocol. Among the Amici States, the States of Arizona, Georgia, Idaho, Missouri, and Texas have used pentobarbital by itself to implement death sentences just as is set forth in the 2019 Protocol. Further, three of the capital offenses at issue occurred in the states of Arkansas, Missouri, and Texas. Amici States also share the federal government's interest in finality, especially since nearly every federal capital conviction involves a crime that occurred within a state. Indefinitely extending the execution of lawful sentences undermines the rule

of law and compounds the harms victims have already suffered. Amici States' perspective on the 2019 Protocol may, therefore, "be of considerable help to the Court." Sup. Ct. R. 37.1.

2. *Statement Regarding Brief Form and Timing.* Given the expedited consideration of this matter of significant national interest, Amici States respectfully request leave to file the enclosed brief without 10 days' advance notice to the parties of intent to file and to file in unbound format on 8½-by-11-inch paper. The court of appeals denied the federal government's emergency motion for a stay on December 2, 2019, and the application to this Court for a stay or vacatur of the injunction was filed on December 2, 2019, with a response anticipated shortly thereafter. This accelerated timing justifies the request to file the enclosed amicus brief without 10 days' advance notice to the parties of intent to file and in unbound format.

CONCLUSION

Amici States respectfully request that the Court grant leave to file the enclosed brief in support of the emergency application to stay.

December 3, 2019

Respectfully submitted.

/s/ Rusty D. Crandell

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BRIEF FOR THE STATES OF ARIZONA, ALABAMA, ARKANSAS, GEORGIA IDAHO, INDIANA, KANSAS, LOUISIANA, MISSOURI, NEBRASKA, OHIO, SOUTH CAROLINA, TEXAS, AND UTAH AS AMICI CURIAE IN SUPPORT OF APPLICANTS

INTEREST OF AMICI CURIAE

Amici curiae, the States of Arizona, Alabama, Arkansas, Georgia, Idaho, Indiana, Kansas, Louisiana, Missouri, Nebraska, Ohio, South Carolina, Texas, and Utah ("Amici States") file this brief in support of the Application for a Stay or Vacatur of the Injunction Issued by the United States District Court for the District

of Columbia.[1] On July 25, 2019, the Federal Bureau of Prisons adopted a revised lethal injection protocol that replaced the former three-drug procedure with the use of a single drug, pentobarbital, as the lethal agent (the "2019 Protocol"). As states in which capital punishment is authorized, Amici States have a unique perspective on the 2019 Protocol. Among the Amici States, the States of Arizona, Georgia, Idaho, Missouri, and Texas have used pentobarbital by itself to implement death sentences just as is set forth in the 2019 Protocol. Further, three of the capital offenses at issue occurred in the states of Arkansas, Missouri, and Texas. Amici States also share the federal government's interest in finality, especially since nearly every federal capital conviction involves a crime that occurred within a state. Indefinitely extending the execution of lawful sentences undermines the rule of law and compounds the harms victims have already suffered. The 2019 Protocol should not have been enjoined.

SUMMARY OF ARGUMENTS

Pentobarbital is a fast-acting barbiturate that can reliably induce and maintain a comalike state that renders a person insensate to pain. States have used pentobarbital as single drug lethal agent in executions, and this use has survived multiple Eighth Amendment challenges, including in this Court. *See, e.g.*, *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019). Amici States' experience and this Court's previous approval of the use of pentobarbital support the federal government's adoption of the 2019 Protocol.

[1] Amici States were unable to give ten days' advance notice of intent to file this brief, as noted in the accompanying motion for leave to file. *See* Sup. Ct. R. 37.2(a).

Allowing the injunction of the 2019 Protocol to stand undermines States' interest in the finality of lawful capital sentences. Finality in criminal sentences is essential to promote the rule of law and to protect victims of capital offenses from further harm. The injunction would allow an excessive delay that undermines these legitimate interests and should not be allowed to stand. Further, making federal executions contingent on the use of state processes consumes limited state resources and puts at risk the confidentiality of state suppliers.

ARGUMENT

I. States Have Already Effectively Implemented A One-Drug Execution Protocol With Pentobarbital

"The Constitution allows capital punishment." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1122 (2019). The Government here seeks to execute a group of inmates using a tried-and-true protocol that does not threaten substantial pain and does not generate an Eighth Amendment concern. The district court, however, stayed the inmates' executions merely because, in its view, the Department of Justice had erred procedurally by adopting a universal federal protocol. But because the inmates themselves face no constitutional harm, the balance of equities favors allowing Respondents' executions to proceed as scheduled.

This Court is well-aware of the difficulties states have encountered in conducting lethal-injection executions, having decided three major method-of-execution cases in the past 11 years. *See Bucklew*, 139 S. Ct. at 1134; *Glossip v. Gross*, 135 S. Ct. 2726 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). For years, lethal-injection executions were generally accomplished through sequential administration

of three separate drugs: sodium thiopental (a fast-acting barbiturate), pancuronium bromide (a paralytic), and potassium chloride (a drug that induces cardiac arrest). *Baze*, 553 U.S. at 44. But anti-death penalty advocates successfully pressured the only domestic manufacturer of sodium thiopental to stop selling that drug for use in lethal injections. *Glossip*, 135 S. Ct. at 2733. As a result, states turned to pentobarbital—another fast-acting barbiturate that can "reliably induce and maintain a comalike state that renders a person insensate to pain"—as the first drug in the three-drug combination. *Id.* (quotations omitted); *see also Beaty v. Brewer*, 791 F. Supp. 2d 678, 683 (D. Ariz. 2011). Eventually, several states moved toward single-drug protocols involving administration of a fatal dose of pentobarbital. *See Bucklew*, 139 S. Ct. at 1120. In addition to the federal Government, nine states, including Arizona, authorize executions to be carried out using this protocol. *See State by State Lethal Injection Protocols,* Death Penalty Info. Ctr. https://deathpenaltyinfo.org/executions/lethal-injection/state-by-state-lethal-injection-protocols (last visited Dec. 2, 2019).

There is little room to dispute pentobarbital's efficacy. In fact, just last term, this Court affirmed the grant of summary judgment against an inmate challenging, on Eighth Amendment grounds, his planned single-drug pentobarbital execution. *See Bucklew*, 139 S. Ct. at 1134. Other courts have likewise observed the success of using pentobarbital as a single execution drug. *See Wood v. Collier*, 836 F.3d 534, 540 & n.25 (5th Cir. 2016) (discussing historical success of one-drug protocol involving pentobarbital).

Perhaps more tellingly, death-row inmates across the country have identified a single-drug pentobarbital protocol as preferable to other methods. *See Glossip*, 135 S. Ct. at 2737 (proposing use of single-drug protocol using pentobarbital instead of three-drug protocol involving midazolam); *Baze*, 553 U.S. at 56–58 (proposing that Kentucky adopt one-drug protocol rather than three-drug protocol); *Jackson v. Danberg*, 656 F.3d 157, 165 & n.9 (3d Cir. 2011) (arguing that one-drug protocol carries less comparative risk than three-drug protocol); *Grayson v. Dunn*, 218 F. Supp. 3d 1321, 1325–26 (M.D. Ala. 2016) (proposing one-drug protocol involving pentobarbital as alternative to three-drug protocol involving midazolam); *West v. Schofield*, 519 S.W.3d 550, 562 (Tenn. 2017) (noting agreement between testifying experts that single-drug protocol using 5g of pentobarbital "will likely cause death with minimal pain and with quick loss of consciousness"); *see also First Amendment Coal., et. al v. Ryan*, 188 F. Supp. 3d 940, 950–51 (D. Ariz. 2016) (plaintiffs proposed using pentobarbital as alternative to midazolam).

Arizona's lethal-injection protocol (hereinafter "Department Order 710"), authorizes two single-drug protocols: one using pentobarbital (which is the preferred choice), and one using sodium thiopental (which may be used if pentobarbital cannot be acquired). *See* Arizona Department of Corrections, Department Order 710, Attachment D, 2, https://corrections.az.gov/sites/default/files/policies/700/0710_032519.pdf (last visited Nov. 26, 2019). Between February 2012 and October 2013, Arizona executed eight inmates using pentobarbital as a single drug. *See State by State Lethal*

Injection Protocols, https://deathpenaltyinfo.org/executions/lethal-injection/state-by-state-lethal-injection-protocols. With the exception of one execution, the facts of which are disputed, the one-drug pentobarbital executions proceeded uneventfully, with the inmates suffering no apparent ill effects from the drug itself. *See Wood et al v. Ryan*, No. 2:14CV01447, Dkt. # 97, 30 ¶91 (D. Ariz. Jan. 29, 2016) (chart prepared by inmate and media plaintiffs summarizing Arizona injections with one-drug protocol).

For example, Edward Schad, executed for killing Lorimer Grove in Prescott in 1978, died only 9 minutes after the injection began. *Id.* One media outlet reported that Schad "lay quietly and looked at the ceiling" as the drug flowed. *Arizona Executes 71-Year-Old Edward Schad, Its Oldest Death Row Inmate*, Guardian (Oct. 9, 2013, 5:15 PM), https://www.theguardian.com/world/2013/oct/09/arizona-executes-schad-oldest-person-death-row. Likewise, Robert Jones, executed for killing six Tucson residents during an armed-robbery spree, "appeared to fall peacefully asleep" after the pentobarbital was injected. Patrick McNamara, *Robert Jones Executed for Six Murders*, Tucson.com (Oct. 24, 2013), https://tucson.com/news/local/robert-jones-executed-for-six-murders/article_f80ecfe9-a033-514a-bd24-2612e93c18cb.html. Arizona's experience is not unique. *See Wood*, 836 F.3d at 540 & n.25 ("[A]t least thirty-two executions in Texas have utilized the single-drug compounded pentobarbital protocol without incident.").

The experience of Amici States in implementing the death penalty in the face of limited resources also demonstrates another point. It is not reasonable to interpret federal law as requiring states to share limited resources to effectuate the federal death penalty. Each state employs unique processes for obtaining lethal agents and in implementing the death penalty. Yet, the district court's decision drags states into assisting with the implementation of the federal death penalty. Such an interpretation is as unreasonable as it is impractical.

Thus, the prior experience of states demonstrates that the one-drug execution protocol using pentobarbital set forth in the 2019 Protocol has been and can be used effectively as a lethal agent. The 2019 Protocol builds on the experience of states in effectively using pentobarbital as a lethal agent without requiring the federal government to commandeer scarce state resources.

II. The Important Interest of "Finality" Favors Granting The Application

"Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew*, 139 S. Ct. at 1133 (2019) (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). This Court has declared that the people of the state in which a crime occurred, the victims of that crime, "and others like them deserve better" than the "excessive" "delays that now typically occur between the time an offender is sentenced to death and his execution." *Id.* at 1134, 1144 (quotations omitted). The challenges brought in this matter are no different—attempts to delay *ad inifitum* the lawful sentence chosen twice by the people, first

through enactment as law by their representatives and second by the jury in each death row convict's case.

A. Delay Compounds Harm To Victims

Congress codified the right of crime victims to "proceedings free from unreasonable delay" and to "be treated … with respect for [their] dignity" in the federal Crime Victims' Rights Act, 18 U.S.C. § 3771. And where the victim is deceased, "the crime victim's estate [or] family members … may assume the crime victim's rights"—recognizing that, as here, surviving family members are also victims of the murderer. 18 U.S.C. § 3771(e). The rights of victims have also been recognized in states across the country. *See, e.g.*, Ariz. Const. art. II, § 2.1(victims' bill of rights). These rights are assaulted each time proceedings are delayed or the finality of judgments is jeopardized, leading to secondary victimization that exacerbates the wounds of the initial criminal act. Ulirich Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Soc. Just. Res. 313, 321 (2002) (secondary victimization can be more harmful than the crime itself).

The murder of a loved one can cause post-traumatic stress disorder (PTSD) for the survivor at up to twice the rate for that of victims of other types of trauma. Heidi M. Zinzow, et al., *Examining Posttraumatic Stress Symptoms in a National Sample of Homicide Survivors: Prevalence and Comparison to Other Violence Victims*, 24 J. Trauma. Stress 743, 744 (Dec. 2011). Healing can be prevented and PTSD or other pain aggravated by a victim's experience with the criminal justice system, especially where delays and other difficulties in achieving finality give victims the perception that the offender is going unpunished. Dr. Joel H. Hammer,

The Effect of Offender Punishment on Crime Victim's Recovery and Perceived Fairness (Equity) and Process Control, University Microfilms International 87, Ann Arbor, MI (1989) (victim recovery generally improves with the perception of punishment of the offender). Repeated appeals and delays that jeopardize the finality and completion of the sentence in a death penalty case have devastating effects on the surviving family members, who must relive the murder of their loved one with each new proceeding. Dan S. Levy, *Balancing the Scales of Justice*, 89 Judicature 289, 290 (2006).

The harms inflicted on victims through delay has been repeatedly recognized in the law. "Only with an assurance of real finality can the State execute its moral judgment and can victims of crime move forward knowing the moral judgment will be carried out." *Calderon v. Thompson*, 523 U.S. 538, 539 (1998). "Unsettling these expectations inflicts a profound injury to the 'powerful and legitimate interest in punishing the guilty,' … an interest shared by the State and crime victims alike." *Id.* (quoting *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring)). The lengthening of these federal proceedings and delay in the final implementation of the sentence creates recognizable pain in victims and postpones their own ability to heal their wounds—closure for victims being inextricably linked with finality in sentencing and judgment. *Id.* at 556.

Thus finality is critical for victims' own wellbeing and impacts the rights crime victims have under federal and state law.

B. Delay Undermines States' Interests In Enforcing The Law

States have an interest in carrying out lawful sentences, which foster respect for the rule of law and help protect the well-being of citizens who have been victimized by criminal offenders. The majority of States have adopted a crime victims' rights act or amendment to their respective constitutions, underscoring their commitment to and important interest in ensuring victims' rights to timeliness in the completion of proceedings, including enforcement of the sentence.[2] These protections add to the independent, compelling interest States have in the finality of their judgments as sovereign entities. This interest in finality is put in jeopardy through cases, such as the underlying case, in which never-ending appeals are allowed to thwart lawfully imposed and final judgments.

States have expressed their commitment to victims' rights and worked to guard the finality of sentences through their constitutions, laws, and court decisions. For example, "Arizona courts are especially concerned with the finality of criminal cases because the Arizona Constitution requires courts to protect the rights of victims of crime by ensuring a 'prompt and final conclusion of the case after the conviction and sentence.'" *State v. Towery*, 204 Ariz. 386, 391, ¶ 14 (2003) (quoting Ariz. Const. art. II, § 2.1(A)(10)). Further, the Arizona Constitution

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[2] Amici States have adopted constitutional amendments or laws protecting crime victims' rights, most including an express right to timely resolution of the case. *See, e.g.*, Ariz. Const. art. II, § 2.1 ("prompt and final conclusion of the case after the conviction and sentence"); Ala. Const. amend. 557; Ark. Code § 16-90-1101, *et. seq.*; Idaho Const. art. I, § 22 ("timely disposition of the case"); La. Const. art. I, § 25 ("reasonably prompt conclusion of the case."); Mo. Const. art. I, § 32 ("speedy disposition and appellate review"); Neb. Const. art. I, § 28; Tex. Const. art. I, § 30; Utah Const. art. I, § 28.

requires that "all rules governing criminal procedure . . . in all criminal proceedings protect victims' rights" and the legislature is empowered to ensure this goal is met. *Id.* at § 2.1(A)(11). These provisions are mandatory. See *id.* at § 32. And Arizona courts recognize the State's independent interest in finality. *See, e.g.*, *City of Phoenix v. Geyler*, 144 Ariz. 323, 328 (1985) ("there is a 'compelling interest in the finality of judgments' which should not lightly be disregarded") (citation omitted); *State v. Granados*, 172 Ariz. 405, 407 (Ct. App. 1991) ("finality, as a general matter, is desirable in criminal prosecutions"); *State v. Waldrip*, 111 Ariz. 516, 518 (1975) (the "function of courts is to put an end to litigation").

Indeed, the carrying out of criminal sentences is a cornerstone of the justice system upon which States rely. This Court has recently reiterated its commitment to finality with its admonishment that "[t]he proper role of courts is to ensure that method-of-execution challenges to lawfully issued sentences are resolved fairly and expeditiously. Courts should police carefully against attempts to use such challenges as tools to interpose unjustified delay." *Bucklew*, 139 S. Ct. at 1134. This is nothing new. In *Teague v. Lane*, this Court expressed its agreement with Justice Harlan's previous assessment on habeas review, quoting his statement that "[t]he interest in leaving concluded litigation in a state of repose … may quite legitimately be found … to outweigh in some, many, or most instances the competing interest in readjudicating convictions according to all legal standards in effect …." *Teague v. Lane*, 489 U.S. 288, 306 (1989) (quoting *Mackey v. United States*, 401 U.S. 667, 682–83 (1971)).

As the majority of violent federal crimes occur within one or more states, the States and their citizens have a direct interest in seeing that the deterrence function of the criminal law is given effect, and this necessarily means that criminals must believe in the reality of their punishment. The compelling interest each state has in carrying out its own criminal sentences is undermined in the arena of capital crimes where challenges to execution protocols teamed with extrajudicial efforts to make approved lethal injection drugs unavailable make executions a near legal impossibility. This leads to disrespect for the rule of law, which may in turn lead to an increase in violence in response to the diminishing potential for fitting punishment. "Numerous studies published over the past few years, using panel data sets and sophisticated social science techniques, are demonstrating that the death penalty saves lives," including an Emory University study finding "that each execution, on average, results in 18 fewer murders." Dr. David B. Muhlhausen, Testimony Before the Senate Judiciary Committee (June 27, 2007); Hashem Dezhbakhsh, Paul H. Rubin, & Joanna M. Shepherd, *Does Capital Punishment Have a Deterrent Effect? New Evidence from Postmoratorium Panel Data*, 5 Am. L. & Econ. Rev. 344-376 (2003). But this deterrent effect requires that would-be murderers believe their execution would actually be carried out.

The injunction issued below undermines the government's interest in finality and promotes litigation aimed at ensuring that lawful death sentences are never actually carried out. Death row inmates should not be allowed to hijack court processes to undermine finality through "never-ending litigation" over the

adequacy—or any other technical complaint they may come up with— "of [state or federal] execution procedures." *Baze*, 553 U.S. at 105 (Thomas, J., concurring). The impact of such actions is not limited to the jurisdiction in which they arise but, rather, of nationwide importance. The States' interests in enforcing their own sentences, protecting their citizens, and maintaining confidence in the integrity of the legal system—and its consequences—support the United States' position and must not fall victim to Respondents' litigation filibuster.

C. The 2019 Protocol Helps Protect Confidential State Information

The district court's decision also undermines Amici States' interest in finality in another way. While lethal-injection drugs were once easy for states to obtain, they are now scarce, as suppliers have succumbed to economic pressure and harassment from anti-death penalty activists. *See Glossip*, 135 S. Ct. at 2733–34. Without the assurance of confidentiality, "there is a significant risk that persons and entities necessary to the execution would become unwilling to participate." *Owens v. Hill*, 758 S.E.2d 794, 805 (Ga. 2014). This is the very goal of condemned inmates who seek to compel disclosure of this information. *See Zink v. Lombardi*, 783 F.3d 1089, 1106 (8th Cir. 2015) ("In this capital litigation, it should be remembered that one stated objective of the prisoners' lawsuit is to pressure the State's suppliers and agents to discontinue providing the drugs and other assistance necessary to carry out lawful capital sentences."). Put simply, public disclosure of lethal-injection suppliers chills others from participating and facilitates the escalating "guerilla war against the death penalty." Transcript of Oral Argument at

14:20–25, *Glossip v. Gross*, 135 S. Ct. 2726 (2015) (No. 14–7955) (question of Alito, J.).

Amici States are all all-too-familiar with the need for confidentiality. For example, the Arizona Department of Corrections (ADC) has successfully resisted two First-Amendment-based media challenges to Arizona's confidentiality statute, A.R.S. § 13–757(C). *See First Amendment Coal. v. Ryan*, 938 F.3d 1069, 1080 (9th Cir. 2019); *Guardian News & Media LLC v. Ryan*, No. CV-14-02363-PHX-GMS, 2017 WL 4180324, at *7–8 (D. Ariz. Sept. 21, 2017). One of these cases, *Guardian News*, proceeded to trial, at which ADC presented evidence that it has been unable to acquire lethal-injection drugs in recent years, in large part because suppliers perceive the risk of disclosure—and the retaliation that comes with it—to be unacceptable. The district court made the following factual findings:

> It has become increasingly difficult for the state to purchase lethal injection drugs. During the last ten years in which Carson McWilliams, the ADC Director in charge of prison operations, has been tasked with procuring lethal injection drugs, he has found fewer and fewer producers willing to sell such drugs to the state. He believes that this is due to campaigns to discourage manufacturers from selling such drugs. He has, however, spoken with at least one potential drug supplier that was willing to provide lethal injection drugs to Arizona so long as its identity was kept confidential. He believes it will become much more difficult to obtain lethal injection drugs if the identity of the supplier becomes known, and currently he knows of no one in the United States who will sell lethal injection drugs to the state.
>
> He has also been provided by at least one compounding pharmacy what appeared to be a mass-produced letter threatening the future viability of the

> pharmacy if it was discovered that the pharmacy provided lethal injection drugs to the state of Arizona.

Guardian News & Media LLC, No. CV-14-02363-PHX-GMS, 2017 WL 4180324, at *7–8. Ruling in ADC's favor, the court concluded that disclosing the identities of drug suppliers would hinder the State's ability to carry out lethal injection:

> Capital punishment is not unconstitutional. The legislature of Arizona has chosen to authorize it in the form of lethal injection. The State presented evidence that the opposition to capital punishment by a substantial portion of the public presents risks not only to those involved in the process, but to the State's ability to carry it out entirely. Carson McWilliams testified that no manufacturing sources will now sell execution drugs to the state, and he further testified of being shown an anonymous threat to a potential compounding pharmacy, threatening to ruin that pharmacy's business if the pharmacy did business with ADC. The phenomenon of opponents of capital punishment using threats of boycotts to discourage drug producers to provide capital punishment drugs has been widely noted. Such activism is, of course, itself entitled to First Amendment protection. Nevertheless, it negatively affects the functioning of the execution process. Indeed, the process of capital punishment—a constitutional punishment that the State has chosen to impose—might not function at all if anti-death penalty activists are successful in discouraging suppliers from providing drugs to the State.

Id. at *12 (citations omitted).

Accordingly, disclosure of a supplier's identity affects not only the particular supplier at issue, but also the death penalty's very functioning. Because of the demonstrable harm disclosure brings to States in which capital punishment is legal, rare and valuable lethal-injection suppliers should be protected at all costs. Federal law should not be interpreted to require states to put this information at risk.

CONCLUSION

The Court should grant Applicants' application for stay or vacatur of the injunction.

December 3, 2019

Respectfully submitted.

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