

Capital Case Law

[Glossip v. Gross](#), 576 U.S. ____ (June 29, 2015). In this case, challenging Oklahoma's lethal injection protocol, the Court affirmed the denial of the prisoner's application for a preliminary injunction. The prisoners, all sentenced to death in Oklahoma, filed an action in federal court, arguing that the method of execution used by the Oklahoma violates the Eighth Amendment because it creates an unacceptable risk of severe pain. They argued that midazolam, the first drug employed in the State's three-drug protocol, fails to render a person insensate to pain. After holding an evidentiary hearing, the District Court denied the prisoner's application for a preliminary injunction, finding that they had failed to prove that midazolam is ineffective. The Tenth Circuit affirmed, as did the Supreme Court, for two independent reasons. First, the Court concluded that the prisoners failed to identify a known and available method of execution that entails a lesser risk of pain. Second, the Court concluded that the District Court did not commit clear error when it found that the prisoners failed to establish that Oklahoma's use of a massive dose of midazolam in its execution protocol entails a substantial risk of severe pain.