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## R SHEET ON THE DEATH PENALTY IN ARIZONA

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### BACKGROUND

Arizona has not executed any person on death row since Joseph Wood's [contentious execution](#) in 2014. Despite this hiatus, Attorney General Brnovich has [proposed](#) that the state resume the practice. Specifically, preparations are being made to resume executions by lethal injection with an assurance that the necessary drugs have been secured. However, with the current state of the law, it is practically impossible to acquire legally the compounded drugs needed for humane executions by lethal injection.

### CURRENT DEBATE

There are three concepts central to the death penalty discussion in Arizona: (1) the rule of law, (2) public health and (3) principles of limited government.

**The rule of law.** Arizona officials plan to use compounded pentobarbital in lethal injection executions. The issue is that under federal law, compounding pharmacies need a prescription from a medical provider to make pentobarbital, the drug listed in Arizona's execution protocol.<sup>1</sup> But under Arizona law it is illegal for a medical provider to write a prescription for an execution drug, since the law binds medical providers to prescribing drugs for medicinal or therapeutic purposes.<sup>2</sup> So, the government is left with only two options, both of which require committing the crime of solicitation: (a) ask a compounding pharmacy to dispense pentobarbital without a prescription, a class 4 felony in Arizona<sup>3</sup>; or (b) ask a medical professional to write a fraudulent prescription on a prisoner's behalf. It is therefore not possible for the government to lawfully acquire the compounded drugs needed for execution by lethal injection.

**Public health.** Compounded medicines are more likely to be poor-quality because [the FDA does not review them](#) for safety, effectiveness or quality, especially when used for executions. When governments procure these drugs secretly for executions, they effectively place suppliers

### SUMMARY

- Any policy, but especially one that concerns the human life, should be carried out legally, not jeopardize public health, and conform with principles of limited, transparent government.
- As the law currently stands, it is not possible to lawfully acquire the drugs for execution by lethal injection in Arizona.
- Drugs of poor quality lead to botched and painful executions which not only pose a public health concern but also do not accomplish the purpose of execution by lethal injection.
- When the government breaks its own laws and violates ideals it seeks to uphold, it by definition is no longer a limited, transparent government.

outside the scope of any state or federal regulatory oversight, permitting those pharmacies to cut corners on safety standards and allow poor-quality medicines to proliferate and reach patients. A number of drug regulators and experts—including a former FDA Commissioner and Deputy Commissioner—have raised these concerns, noting that the lack of regulatory oversight in executions increases the possibility that poor-quality drugs bought without proper oversight may ultimately turn up in hospital pharmacies, [risking](#) a “product safety emergency” that can cause “patient injury and death.”

There has already been at least [one instance](#) when unregulated execution drugs were directly diverted into the patient market. In several instances, compounding pharmacies supplying execution drugs have been exposed for poor safety practices that have [harmed patients](#). Such actions can have tragic consequences, as was seen in 2012 after substandard compounded medicines caused a [national outbreak](#) of fungal meningitis sickening hundreds and leaving 64 people dead.

This lack of oversight has also led to botched executions that have caused prisoners immense pain. For example, in the case of Joseph Wood’s botched execution, his [reaction](#) was comparable to suffocating, drowning and burning. He writhed in pain for two hours before dying.

Some conservative governors have recognized the public health risks associated with lethal injection and have made the decision to delay executions accordingly. For example, Gov. Mike DeWine has put executions [on hold](#) in Ohio, repeatedly citing public health concerns associated with executions and the risks of harming patients nationwide.

***Principles of limited government.*** The conservative platform seeks both a transparent, limited government and respect for the sanctity of life. But as discussed above, it is currently near impossible for the government to carry out executions by lethal injection in a way that is lawful, transparent and humane. When the government breaks its own laws and violates ideals it seeks to uphold, it by definition is no longer a limited government. If executions are to be carried out at all, they should be done in a way that is as swift and painless as possible—only then can they be reconciled with a respect for the sanctity of life. In consideration of the three concepts discussed, the death penalty is not feasible in Arizona at this time because safe, quality drugs cannot be lawfully obtained.

## ACTION ITEMS

***Consider the state of the law.*** Policy makers should consider whether their actions in pursuing the death penalty truly comply with the law at every stage. Some work needs to be done to bring the process above board before considering forging ahead.

***Assess the public health consequences of sourcing unregulated drugs in secret.*** Before resuming executions, the government should take care to ensure that its procurement of medicines does not cause unintended harms for Arizona patients. Furthermore, the purpose of execution by lethal injection is to provide a swift, humane death, but unregulated drugs do not achieve that end.

***Consider whether the current procedure can be reconciled with the role of a limited government that respects the sanctity of life.*** A conservative government ideally is one of limited powers that respects the sanctity of life. When the government breaks its own rules to risk dangerous and botched executions, it does not accomplish these conservative ideals.

## CONTACT US

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## ENDNOTES

1. 21 U.S.C. § 829(a); Ariz. Rev. Stat. § 36-2525(A).
2. Ariz. Rev. Stat. § 32-1401(27)(j); 21 C.F.R. § 1306.04(a).
3. Ariz. Rev. Stat. § 36-2531.