

## AP GOV Final: Friends of the Court Brief Requirements and Sample

Your role as an outside party to the case is to submit an amicus brief to the courts in advocacy of your vested interest in the outcome. Non-litigants traditionally submit briefs to inform the justices of legal precedent, constitutional argument, and sometimes personal anecdotes (examples) related to the subject matter of the case.

Level 2 Near Proficiency	Level 3 Proficient	Level 4 Exceeds Proficiency
Identify the constitutional issues present in the court case in question	Apply the Constitution and Bill of Rights to create and defend a legal argument that answers the questions of the Court.	Create and defend a legal argument using the Bill of Rights, the Constitution, and Judicial precedent to answer the questions of the court.

Use the template provided at [www.nydleap.weebly.com](http://www.nydleap.weebly.com) to begin your amicus brief. This is an **INDIVIDUAL** assignment.

A good amicus brief uses evidence to address **all** the questions of the court in a **clearly organized, efficient manner**.

### **Your amicus brief must meet the following requirements:**

- Address **ALL** Questions of the Court
- A minimum of 1.5-2 pages in length, no more than 3 pages (double-spaced).
- Cite and Apply **AT LEAST TWO** prior court cases as precedent
- Cite and Apply **AT LEAST TWO** pieces of evidence from the U.S. Constitution
- \* Use the Amicus Brief template on the Weebly for the formatting of your brief

### Sample Amicus Brief:

## **Michael Morales, Michael Taylor, et al.**

### **Interest of Amici**

*Amici* Michael Morales, Michael Taylor, Vernon Evans, Jr., and John Gary Hardwick, Jr., are inmates sentenced to death by the States of California, Missouri, Maryland, and Florida, respectively. *Amicus* Taylor has a petition for certiorari pending before this Court that raises the question of the proper Eighth Amendment legal standard for lethal injection challenges.

Together, *amici* comprise a representative group of death row inmates who have filed civil rights actions challenging the means and manner by which they are likely to be executed. Through discovery, *amici* have uncovered evidence of serious flaws in the lethal injection procedures in their respective jurisdictions. Because prison officials have traditionally shrouded the details of the administration of their execution procedures in secrecy, much of this information has not previously been available to the public. In addition, because many jurisdictions employ similar lethal injection protocols, *amici* have looked to jurisdictions around the country for information relevant to their respective challenges, and are aware of the evidence discovered in those jurisdictions. By virtue of their litigation, *amici* and their counsel can provide a needed perspective, one that would not otherwise be known to the Court, regarding lethal injection protocols and the various means by which departments of correction implement those protocols.

## Summary of Argument

Execution by lethal injection can be performed constitutionally. The three-drug formula employed in almost all jurisdictions can result in humane executions, but only if administered properly, with the precision and care the use of such drugs requires. Because the drugs used are so volatile, and will inflict excruciating pain and suffering on inadequately anesthetized inmates, the question is whether jurisdictions that employ lethal injection have put in place reasonable procedures to effectuate a humane execution and to deal with the foreseeable problems with this method of execution. This brief argues that many of them have not done so. Instead, they have turned a blind eye to these foreseeable problems, allowing ignorance and neglect – rather than science and deliberation – to guide the formation and implementation of lethal injection protocols. The result has been botched executions that are entirely predictable and preventable.

To fully appreciate the reality of how lethal injection has been administered, one must look at the entire landscape of lethal injection challenges and, in particular, the information revealed in discovery following the Court's rulings in *Nelson v. Campbell*, 541 U.S. 637 (2004) and *Hill v. McDonough*, 126 S. Ct. 2096 (2006). Unfortunately, compelling examples of incompetent administration are currently under protective order. Nevertheless, information that is public reveals a "pervasive lack of professionalism," *Morales v. Tilton*, 465 F. Supp. 2d 972, 980 (N.D. Cal. 2006), in the development and administration of lethal injection protocols in this country. This lack of professionalism makes it inevitable that some inmates will suffer torturous deaths.

As this Court contemplates the appropriate Eighth Amendment standard to adjudicate lethal injection challenges, it should be aware of the flawed practices documented in the records of litigation across the country. The legal standard this Court sets should take account of the multitude of problems these records reveal, and it should allow lower courts to continue what they have already been doing: adjudicating the facts of each case to determine whether the risks that the inmate will experience pain or conscious suffering are sufficient to violate the Eighth Amendment. The vast majority of these courts have applied the "unnecessary risk" standard the Petitioners urge in this case. That framework has enabled courts to evaluate the often appalling evidence revealed in discovery and to differentiate between risks that are the foreseeable result of deficient procedures, and risks that are unavoidable even in carefully constructed procedures, or too remote to be constitutionally significant.

The secrecy surrounding executions, the failure to record relevant data, and the protective orders in place in many jurisdictions make it impossible to exhaustively or reliably catalogue the problems that have occurred during lethal injections. Additionally, because each jurisdiction has chosen to paralyze inmates before injecting them with potassium chloride, the risk – and reality – of conscious pain or suffering is often not readily apparent. Yet publicly available evidence does demonstrate that executions are often conducted in a haphazard manner by unfit personnel, and that numerous failures have led to substantial uncertainty regarding whether the drugs in many executions were properly administered. Each step of the procedure can go awry, with disastrous (but often unseen) consequences, when prison officials disregard or ignore the inherent risks of the three-drug formula. In short, this brief describes what is known to have gone awry, and why.