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Court to Consider Lethal Injection Case

By [MARK SHERMAN](#)
Associated Press Writer

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WASHINGTON (AP) -- The Supreme Court agreed Tuesday to take a hard look at the method of lethal injection most states use to put inmates to death in a case that could further slow the pace of executions.

The high court will hear a challenge early next year from two inmates on death row in Kentucky - Ralph Baze and Thomas Clyde Bowling Jr. - who claim that lethal injection as practiced by the state amounts to cruel and unusual punishment, in violation of the Eighth Amendment.

The last time the court considered a challenge to a method of execution was in 1879, when it upheld the use of a firing squad in Utah.

Lethal injections, devised as a humane alternative to electrocution and the gas chamber, have come under attack in recent years amid reports that the three-drug cocktail doesn't always work as quickly as intended and that inmates are subjected to excruciating pain before they die.

The Supreme Court has previously made it easier for death row inmates to contest the lethal injections used across the country for executions.

But until Tuesday, the justices had passed up cases that posed the question of whether the mix of drugs and the way they are administered in three dozen states violate the Constitution. The court will hear arguments in the case on Jan. 7, said David Barron, the prisoners' lawyer.

The inmates' appeal was among 17 new cases the court accepted for its term that begins Monday.

The other high-profile appeal granted Tuesday is a challenge to the constitutionality of a voter photo identification law in Indiana, a partisan issue with ramifications for the 2008 elections. Democrats and civil rights groups say the law unfairly keeps the poor and minorities from voting, while its backers contend it is intended to reduce voter fraud.

Courts have upheld voter ID laws in Arizona, Georgia and Michigan and struck one down in Missouri.

There have been 1,099 executions, 928



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by lethal injection, since the Supreme Court halted executions in 1972 and allowed them to resume in 1976. The annual number of executions peaked at 98 in 1999 and fell to 53 last year. So far in 2007, 42 people have been executed.

No state other than Texas has put to death more than three people this year. Texas has executed 26 inmates by lethal injection.

Undeterred by the Supreme Court review, Texas on Tuesday night executed 49-year-old Michael Richard, convicted of a 1986 shooting. The high court had rejected Richard's request for a stay until it ruled on the Kentucky case. Another execution was scheduled in the state for Thursday.

Death penalty opponents said they were hopeful that states and courts would call a temporary halt to executions at least until the high court decides the case, probably by June.

"My position would be that a judicious court would want to receive direction from the Supreme Court," said Elizabeth Semel, a law professor at the University of California at Berkeley.

The court could go in several directions, ruling broadly that the mix of drugs used in Kentucky and most other states creates too much risk of excessive pain or more narrowly in providing states and judges a roadmap to carrying out executions.

Indeed, it is unclear whether justices inclined to block executions or those who tend to want them to proceed were behind Tuesday's action. The court typically does not say how the justices voted at this stage of a case.

Kentucky Gov. Ernie Fletcher said the case could finally put an end to multiple appeals filed around the country questioning the legality of lethal injection.

"I think it will be good to get a final answer on that," Fletcher told The Associated Press.

Fletcher, a doctor, said other courts have generally upheld the use of lethal injection and he's hopeful the U.S. Supreme Court will follow suit.

"That's been the prevailing belief," Fletcher said. "I don't think there's any indication of the way the court believes about this case."

Richard Dieter, executive director of the anti-capital punishment Death Penalty Information Center, said he expects the court will lay out a uniform standard courts must follow in determining whether a method of execution is constitutional.



[The Death Penalty](#)



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"We've seen different rulings in different states, even from different courts on virtually the same question. It's not proper that some are executed and some are not without one standard of review," Dieter said. "No one's death sentence will be overturned because of this case."

At least 10 states have suspended use of the three-drug method after opponents alleged it was ineffective and cruel, according to the Death Penalty Information Center.

The three consist of an anesthetic, a muscle paralyzer, and a substance to stop the heart. Death penalty foes have argued that if the condemned prisoner is not given enough anesthetic, he can suffer excruciating pain without being able to cry out.

U.S. District Judge Aleta Trauger ruled last week that Tennessee's method of lethal injection is unconstitutional and ordered the state not to execute a death row inmate using that method. The state is still deciding whether to appeal the judge's ruling, but agreed to stop a pending execution.

A ruling from California in the case of convicted killer Michael Morales resulted in the statewide suspension of executions. The state has proposed resuming executions, but a federal judge has yet to rule.

Baze and Bowling, the condemned Kentucky prisoners, sued the state in 2004 and a trial was held the following spring. A state judge upheld the use of lethal injection and the Kentucky Supreme Court affirmed that decision. The appeal taken up Tuesday stems from that decision.

Baze, 52, had been scheduled to die Tuesday until the state high court halted the proceedings earlier this month. He has been on death row for 14 years, after being sentenced for the 1992 shooting deaths of Powell County Sheriff Steve Bennett and Deputy Arthur Briscoe.

Bennett and Briscoe were serving warrants on Baze when he shot them. Baze has said the shootings were the result of a family dispute that got out of hand and resulted in the sheriff being called.

Bowling was sentenced to death for killing Edward and Tina Earley and shooting their 2-year-old son outside the couple's Lexington, Ky., dry-cleaning business in 1990. Bowling was scheduled to die in November 2004, but a judge stopped it after Bowling and Baze sued.

The case is Baze v. Rees, 07-5439.

Associated Press writer Brett Barrouquere reported from Louisville.

On the Net:

Supreme Court: <http://www.supremecourtus.gov/>

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