The Supreme Court on Tuesday upped the ante for its upcoming term, agreeing to hear major cases concerning election law and capital punishment.

In the election arena, in a pair of cases out of Indiana, the justices decided to hear arguments on the state's controversial voter identification measure, which requires all voters to show a government-issued picture ID at polling places before voting. Several states either have in place or have considered such requirements, citing the need to prevent voter fraud.

And in a move that touches the court's continuing debate over capital punishment, the justices will determine whether the combination of chemicals used most often to execute prisoners is constitutional or whether it should be considered cruel and unusual punishment.

Both cases could have an impact on next year's races.

The Indiana law, passed in 2005, mandates that all voters present an ID card from the state's bureau of motor vehicles or a federal ID, such as a passport, before voting. That requirement makes it one of the most restrictive in the nation, critics say. The American Civil Liberties Union and the Indiana Democratic Party filed suit, saying the law placed too much of a burden on voters, especially the poor, elderly and minorities, who could have the most trouble obtaining the necessary documents for an ID. Typically, most of those voters are Democrats.

The 7th Circuit U.S. Court of Appeals in Chicago affirmed a lower court decision that upheld the law, but not without discord among the judges. The two-judge majority on the panel said that the burden on voters was insignificant considering the goal of the requirement. "The purpose of the Indiana law is to reduce voting fraud, and voting fraud impairs the right of legitimate voters to vote by diluting their votes," Judge Richard Posner said in his majority opinion.
In his dissent, Judge Terence Evans wrote, "Let's not beat around the bush. The Indiana voter photo ID law is a not-too-thinly veiled attempt to discourage Election-Day turnout by folks believed to skew Democratic."

The Supreme Court will likely hear the case in the winter and produce a decision next spring, in time to affect races across the nation. Ken Falk, the director of the ACLU’s Indiana chapter, said the court needs to provide clear guidance to states as to what makes for a valid identification requirement. "It's critical the court decides under what standards these laws are assessed," he said.

Falk said that Indiana has never offered any evidence that voter fraud has been a problem and noted that the Hoosier state's absentee ballot rules don't have any identification requirement.

Indiana Secretary of State Todd Rokita, a defendant in one of the suits, said in a statement, "A hearing by the United States Supreme Court will only add to the confidence that Indiana voters have already been given by this common sense, no-cost law that creates a level playing field for all voters."

Richard Hasen, an election law expert at Loyola Law School in Los Angeles, said a Supreme Court decision before the 2008 elections could provide some much-needed clarity to the issue. "When it comes to election administration in close partisan elections, knowing the rules of the game in advance works to everyone's benefit," Hasen said.

He acknowledged, however, that some risk was involved for Democratic activists, saying the conservative-leaning court could uphold the Indiana law, paving the way for other states to pass similar and more restrictive measures.

Along with the voter case, the court decided to return to the thorny issue of capital punishment, accepting a challenge to lethal injection procedures used in the overwhelming majority of states that still apply the death penalty, another case that is likely to be heard this winter.

Most of those states use the same three-chemical combination, which involve drugs to block pain, paralyze the respiratory system and then finally induce cardiac arrest. (The third chemical is common road salt, used to melt ice.) The issue is whether that procedure causes enough pain and suffering to constitute "cruel and unusual punishment," which is barred by the 8th Amendment.

The Supreme Court's move reflects mounting concerns among states over the specific chemicals and the procedures used for the executions. According to the Death Penalty Information Center, states such as California, New Jersey and Missouri have stayed the use of lethal injections, either because of court orders or their own review of the practice. Last week, a federal judge in Tennessee found the method violated the 8th Amendment and issued a stay on all executions in that state. But judges in other states have allowed executions to go forward.

Lawyers for the petitioners in the case—two Kentucky prisoners on Death Row—argue that alternative methods exist that would produce less suffering, specifically suggesting that the current use of a nerve-paralyzing agent to force suffocation is unnecessary and can be excruciatingly painful. The court hasn't decided whether a particular method of execution is unlawful since 1878.

There were also some legal developments away from the high court. The Senate Judiciary Committee held confirmation hearings for two judges poised to take Illinois federal judgeships. John Tinder, currently a federal judge in Indianapolis, would assume a seat on the U.S. Appeals Court in Chicago, and Robert M. Dow, currently in private practice in Chicago, would become a judge on the U.S. District Court in Chicago.

joliphant@tribune.com

Copyright © 2007, Chicago Tribune