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Supreme Court to Examine Lethal Injection, Voter Identification

Justices grant 17 new cases, perhaps in response to concerns about shrinking docket

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The Supreme Court on Tuesday set the stage for a full-scale examination of whether execution by lethal injection violates the Eighth Amendment's bar against "cruel and unusual" punishment.

The Court's grant of review in the appeals by Kentucky death row inmates Ralph Baze and Thomas Bowling could trigger a moratorium in lethal-injection executions nationwide until the Supreme Court rules, which could be as late as next June. Lethal injection is the required or optional method of execution in 37 states, though some have suspended its use recently in the face of objections that it can cause excruciating pain before death.

The Court also announced it will referee a sharply partisan dispute over an Indiana law that requires prospective voters to present government-issued photo identification at the polling place.

In the Indiana case, the 7th U.S. Court of Appeals upheld the voter identification law in January, even while acknowledging, in an opinion by Judge Richard Posner, that most people without such identification are poor and "more likely to vote for Democratic than Republican candidates."

The Indiana dispute was presented in consolidated cases *Crawford v. Marion County Election Board* and *Indiana Democratic Party v. Rokita*. The Kentucky capital punishment case is captioned *Baze v. Rees*.

The disputes were two of the 17 cases or groups of cases the Court agreed to hear at its so-called "long conference" Monday, a meeting where the Court reviews petitions that have piled up through the summer.

It also gave the justices a chance to beef up their argument calendar. Before Tuesday, the Court was heading into the fall term, which begins Monday, with only 26 hours of oral argument scheduled for the fall. Now the Court will have 17 more hours.

At the same long conference last year, the Court added only nine cases, and the year before the number was 11. The higher number of cases granted Tuesday may stand as the Court's answer to a summer's worth of questioning and commentary about its shrinking docket.

Soon after the conference, Chief Justice John Roberts Jr., Justice Stephen Breyer, and retired Justice Sandra Day O'Connor headed to Canada for a visit with the Canadian Supreme Court and McGill University law students.

In recent years, the Court has said inmates may challenge their methods of execution, but until Tuesday had not taken on the issue directly.

The Kentucky cases appear to be uncluttered by claims of innocence or of flawed trials. The trial on the issue of the constitutionality of the injection method included extensive testimony from scientists. Both the trial court and the Kentucky Supreme Court upheld use of the method. But lawyers for Baze and Bowling say the method should be assessed under a standard that asks whether it poses "unnecessary risk" of pain and suffering.

The cases will mark another milestone in the Court's handling of capital punishment since it banned it in 1972 and reinstated it in 1977. After mostly upholding capital punishment and trying to streamline its procedures, the Court has begun to view it more skeptically in recent years, amid instances where DNA evidence showed the innocence of numerous death row inmates. In 2002, the

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Court ruled that execution was unconstitutional for the mentally retarded, and in 2005 struck it down for those who were under 18 at the time of the crime.

Also on Tuesday, the Court rejected a motion to dismiss a closely watched business case, *LaRue v. DeWolff, Boberg & Associates*. The dispute asks whether under federal law, 401(k) plan participants have a right to sue the plan administrator for poor management. After discovering that James LaRue, the plaintiff in the case, had withdrawn his funds from the account at issue, the employer asked the Court to pull the case from the docket.

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