WASHINGTON — Following conflicting rulings by lower courts on whether the lethal injection for executions is truly painless, the U.S. Supreme Court agreed Tuesday to decide whether the method violates the constitutional ban on cruel and unusual punishment.

In Texas, which leads the nation in the frequency of executions, death penalty defense lawyers reacted immediately by trying to get a court order blocking Tuesday evening's previously scheduled execution of Michael Wayne Richard for a 1986 killing near Houston. But Richard was put to death by injection after about a two-hour delay during which the appeals were considered.

"Executions will continue" in Texas pending directions from the Supreme Court, said Krista Moody, spokeswoman for Gov. Rick Perry, earlier in the day. "Right now the issue only affects Kentucky."

The high court, which in recent years has outlawed executions for the mentally retarded and juveniles and has made it easier to fight lethal injection in court, will resolve the broader injection question using the case of two Kentucky inmates who claim the method inflicts unnecessary pain and suffering.

But the decision, expected by next summer, also will determine whether and how lethal injection can be used in Texas and around the country.

It is the first time the high court has addressed the constitutionality of a method of execution since it upheld the firing squad in 1879, experts said.

**Only method used in Texas**

Lethal injection has been considered more acceptable to society than electrocution or the gas chamber because it is carried out more like a medical procedure.

Texas, where lethal injection is the only capital punishment method used, has 370 inmates awaiting execution.

Jordan Steiker, a law professor and death penalty defense lawyer who co-directs the Capital Punishment Center at the University of Texas School of Law, said an early barometer of the high court's leanings could be whether the justices begin halting executions pending the outcome of the Kentucky case. They refused to do so for Richard late Tuesday. Five of the nine justices must agree in order to stop an execution.

All states that use lethal injections use the same drugs — sodium pentothal for sedation, pancuronium bromide to paralyze the muscles and finally a solution containing potassium chloride to stop the heart and breathing. But states vary in the dosages, the timing of the injections and the training of personnel who administer the drugs and supervise executions.

Texas has used the execution method since the death penalty was reinstated in 1977, and 36 of the 37 other death penalty states followed suit. It is now the preferred and most frequently used method of execution nationwide, replacing the electric chair, gas chamber, firing squad and hanging. (Nebraska requires electrocution).

In the past few years, at least 10 states have suspended lethal injections as death penalty opponents — and some medical experts — argued that the paralyzing drug can prevent an inmate from expressing that he is in excruciating pain.

Opponents of the method say the problem could be easily remedied by changing the way the
Several outcomes

Steiker said ultimately the Supreme Court could wholeheartedly endorse lethal injection as constitutional, ending numerous challenges around the country; reject lethal injection as cruel and unusual, leaving Texas and many other states with no lawful method of execution; or uphold lethal injection but demand changes in the process to ensure that the condemned don't suffer unnecessarily.

"The case does have the potential of substantially undercutting the American death penalty," he said, "although I think that far-reaching result is unlikely given the current composition of the court."

The justices have been starkly divided in death penalty cases, with conservative justices upholding the punishment in the vast majority of cases and liberal justices rejecting it.

From October through June, every death penalty case before the court resulted in a 5-4 decision. As in those cases, Steiker and others said, centrist Justice Anthony Kennedy likely holds the deciding vote on the lethal injection question.

"The court is probably weary of having each state and each federal court entering its judgments" on lethal injection, he said. "This is an effort by the court to answer the question once and for all."

Conflicting rules on appeal

While other states have halted or slowed down executions as they struggle with the lethal injection question, Texas has continued its executions — 26 so far this year — in part because the U.S. 5th Circuit Court of Appeals and Texas state courts have conflicting rules on when inmates can appeal based on the injection issue, according to David Dow, a death penalty defense lawyer at the University of Houston Law Center who worked on Richard's last-minute appeal.

"State courts in Texas have held generally that an inmate cannot challenge lethal injection until he has an execution date. The federal court says if you wait until then, you've waited too long" to have the merits of the case decided before the execution takes place, he said. "We've been waiting for some indication that the Supreme Court is interested in the merits of the issue."

Chronicle reporter Polly Ross Hughes contributed to this report from Austin.

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Comments

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LazarusLong wrote:

I'm tired of bs, you are mistaken on both points.
1) The same appeals process, with the same costs, is available to a criminal under life-plus sentence.
2) According to the state audit, it costs about $40,000 per year to house an inmate. That more than $1,000,000 over 30 years. PERIOD!

9/26/2007 6:26:34 PM

Shipwreck wrote:

If the first shot is a general anesthetic, then how is there excruciating pain sensed by the prisoner when the second shot is given? From personal experience I can vouch for the fact that proper anesthesia renders one insensitive to pain of unimaginable magnitude. There is an interesting article on the subject, which points out that the dosage stipulated in executions, given intravenously, will render anyone impervious to pain. The problem seems to be when the needle doesn't hit the vein, and, therefore doesn't reach the brain. It is not the procedure; it is the competence of the technician, and there are a number of alternatives suggestions that can eliminate even the slightest chance of the murderer feeling pain. Some states have already adopted measures to address these concerns. This idea of outrageous pain is just another "stalking horse" put forward by the anti-death penalty crowd. The first site below is the anesthesiologist's article with recommendations. The second is a dictionary.


9/26/2007 12:15:18 PM

mariacarmelo wrote:

Houman wrote: "I've been under general anesthesia several times and it's wonderful.: Right on, Houman!

9/26/2007 11:45:03 AM

BCHtown wrote:

If lethal injection is ruled cruel and unusual, I say we go back to firing squads. No need for humans to pull the trigger. Computers can do all that.

9/26/2007 11:32:36 AM

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