



## Judge: Ohio executions flawed but constitutional

4/21/2009, 6:16 p.m. ET

**The Associated Press**  
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(AP) — Excerpt from Tuesday's ruling by U.S. District Court Judge Gregory Frost finding Ohio's lethal injection process flawed but constitutional. The ruling paves the way for a new execution date for Kenneth Biros, condemned to die for killing and dismembering 22-year-old Tami Engstrom near Warren in 1991:

"It makes little sense to this Court that Ohio does not provide periodic substantive training to the execution team in obvious areas: the effect of the protocol drugs, what to watch for in cases of infiltration, and how to ascertain consciousness, among other key areas."

"There is no evidence here that Ohio's lethal injection procedures were designed for the deliberate infliction of pain. There is also no evidence that the procedures are implemented in such a way so as to deliberately inflict pain. And, to the extent it could be relevant, there is no evidence that the protocol inflicts more pain than hanging or the firing squad..."

"This is not to say that Biros or any of the various plaintiffs involved in this litigation are incapable of ultimately prevailing in this litigation.

"Ohio's method of execution by lethal injection is a system replete with inherent flaws that raise profound concerns and present unnecessary risks, even if it appears unlikely that Biros will demonstrate that those risks rise to the level of violating the United States Constitution.

"Thus, although the fact that the evidence at this stage of the litigation does not present a likelihood of Biros prevailing on his claim of a constitutional violation proves dispositive of his request for a continued stay of execution, it does not foreclose the possibility that additional evidence will indeed prove that the problems with Ohio's policies and practices rise to the level of constitutional error.

"Today's decision therefore neither holds that Ohio's method of execution by lethal injection is constitutional nor unconstitutional. Rather, today's decision reflects only that at this juncture, Biros has not met his burden of persuading this Court that he is substantially likely to prove unconstitutionality."

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