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Supreme Court to consider use of lethal injection

Decision to take up Kentucky case doesn't stop Texas from executing man

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By Mark Sherman
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WASHINGTON — Twenty-five years ago, states began using lethal injections as a more humane way to kill death row inmates without sparks or gas, bullets or rope.

Now, amid reports that people could suffer excruciating pain and linger before death, the Supreme Court will consider whether the most common method of lethal injection — the use of three drugs to sedate, relax and kill — violates the Constitution's ban on cruel and unusual punishment.

The justices agreed Tuesday to hear a challenge to the practice from two inmates on Kentucky's death row — Ralph Baze and Thomas Clyde Bowling Jr.

The case could slow the pace of executions around the country — but not in Texas, which Tuesday evening executed its 26th inmate of 2007, administering the lethal combination of drugs to Michael Richard after a late flurry of appeals.

Richard's execution was delayed more than two hours as his lawyers sought a reprieve, citing the court's review of lethal injections. The justices denied the request, and Richards was executed in the 1986 rape and murder of a Harris County mother of seven.

Texas will continue to schedule and administer the death penalty "until the court rules or gives us direction," said Krista Moody, spokeswoman for Gov. Rick Perry.

With another execution set for Thursday, Texas has surpassed last year's execution total of 24, and two more executions are scheduled by January. No other state has executed more than three inmates this year.

Death penalty opponents had asked the Supreme Court to bar all executions while considering the case. Those opponents say they hope states and lower courts will 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 U.S. Supreme Court had previously made it easier for death row inmates to contest the lethal injections used 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, including Texas, violates the Constitution. The court will hear arguments in the case on Jan. 7, said David Barron, the inmates' lawyer.

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.

Questions about the effectiveness of lethal injection prompted 10 states to suspend using the three-drug regimen, according to the Death Penalty Information Center.

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

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 road map to carrying out executions.

Jordan Steiker, co-director of the Capital Punishment Center at the University of Texas School of Law, said a narrow ruling could accelerate the pace of executions nationwide by removing legal challenges to lethal injection.

"The lethal injection issue has been the dominant legal issue over the past several years in dictating whether executions will go forward," Steiker said.

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 said.

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

Richard Dieter, executive director of the anti-capital punishment Death Penalty Information Center, said he expects the court will set out a uniform standard for judges determining whether a method of execution is constitutional.

"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."

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.

The officers 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.

Bowling was sentenced to death for killing Edward and Tina Earley and shooting their 2-year-old son in 1990. Bowling was scheduled to die in November 2004, but a judge stopped it after Bowling and Baze sued.

Staff writer Chuck Lindell contributed to this report.

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