

Florida may face changes to lethal injection

A case that goes before the Supreme Court on Monday could determine whether the state once again must change the way it executes Death Row inmates.

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TALLAHASSEE --

The U.S. Supreme Court will hear a Kentucky death-penalty case Monday that could determine how Florida lethally injects convicted killers and whether they should die more like dogs.

Right now, animal-cruelty laws in Florida -- and most of the other 35 lethal-injection states, including Kentucky -- prohibit and severely restrict the use of painful drugs that paralyze and stop the hearts of dogs and cats when they are euthanized by trained veterinarians and animal-shelter workers.

The animals are simply overdosed with a barbiturate.

Condemned killers are not. They are first given a barbiturate to knock them out so they feel no pain. Then they are soon injected with a paralyzing drug and, finally, a heart-stopper.

But sometimes mistakes happen, as it did Dec. 13, 2006, when Florida executioners improperly inserted the needles into the arms of Miami killer Angel Diaz. He took 34 minutes to die -- twice as long as usual.

Citing Diaz's and other cases, lawyers for Kentucky killer Ralph Baze successfully brought their challenge before the high court. Until it rules, perhaps as late as June, the court has essentially imposed an unofficial nationwide moratorium on lethal injections because the states use similar drugs and procedures.

Death Row opponents, critics and reformers say inmates like Diaz, who grimaced during the long death, would have felt unconstitutionally cruel and unusual punishment if the barbiturate had worn off and, paralyzed, he felt the searing burn of the heart stopper as he asphyxiated.

Prison officials always stress that inmates die a humane death in a clinical-like setting. Diaz, for instance, probably didn't feel much pain because he was injected with so much of the barbiturate, officials say.

After Diaz's controversial execution, Florida officials overhauled injection procedures to better-ensure that inmates are unconscious before they are injected with the other two drugs. Death penalty critics, though, say the procedures are still about as flawed as they are in Kentucky.

"There's still a real risk of people needlessly suffering an inhumane death," said Elizabeth Semel, director of the Death Penalty Clinic at the University of California law school in Berkeley, which has intervened in the case. She said medically trained staff and a one-drug barbiturate overdose death would settle those constitutional concerns.

The case before the high court, *Baze vs. Kentucky*, focuses on three questions:

- Does the Constitution's Eighth Amendment prohibit execution methods that create an "unnecessary risk" of pain and suffering as opposed to only a "substantial risk" of the wanton infliction of pain?
- Are these lethal-injection procedures unconstitutional if an alternative poses less risk of pain and suffering?
- Does the continued use of the barbiturate sodium thiopental, the paralytic pancuronium bromide, and the heart-stopping potassium chloride, individually or together, constitute cruel and unusual punishment when there are other chemicals that pose less risk of pain?

After the Diaz execution, then-Gov. Jeb Bush appointed a committee that issued 37 recommendations calling for better staff training, monitoring and testing.

One reason for resistance to change: There are no guarantees it will stop any future challenge. Death-penalty advocates note that opponents often demand changes and then demand even more once their demands have been met, which happened in Florida when the state instituted lethal injection after inmate caught fire or bled during electrocutions.

Said Professor Semel: "Even though people feel . . . on a visceral level -- that someone who harmed a father or a sister should suffer the same way for it -- these cases are about laws and what this country stands for: the Constitution. And it should be followed."