

1-drug method may end Ohio death penalty suit

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COLUMBUS, Ohio – The state’s decision to replace a three-drug lethal injection with a powerful dose of one anesthetic is raising the possibility of what may have seemed unthinkable not so long ago: a truce in the long-running legal challenges to death penalty injection across the country.

Ohio Attorney General Richard Cordray put it bluntly: A one-drug method would “render moot” his state’s current injection lawsuit, which raises some issues found in other states regarding the potential for pain and suffering.

The state on Friday announced its plans to put a one-drug method in place by Nov. 30, in time to carry out an execution on Dec. 8. Inmate Kenneth Biros’ execution has been on hold since a botched execution of another inmate on Sept. 15 temporarily stopped capital punishment in Ohio.

At issue are the other two drugs used in Ohio and 35 other states – one drug that paralyzes inmates and another that stops their hearts. Inmates have long argued that the combination of the other two drugs could cause pain that would not be detected.

Ohio, injection experts and defense attorneys challenging injection say a single dose of an anesthetic, similar to how veterinarians put down pets, would eliminate the potential for pain.

Opponents of the three-drug system aren’t ready to concede the end of lawsuits anytime soon. But they’re applauding Ohio for taking a step that other states have considered but not undertaken.

“If tomorrow every death penalty state got rid of the second two drugs in their protocols, certainly the Eighth Amendment concerns would be significantly alleviated,” said Ty Alper, associate director of the Death Penalty Clinic at the Berkeley School of Law.

The Eighth Amendment prohibits cruel and unusual punishments.

Tennessee considered the one-drug approach but rejected it in favor of keeping the three-drug system. California also considered scaling back to one drug but concluded it might cause prisoners to go into convulsions “with unpredictable consequences.”

Several states besides Ohio also have faced constitutional challenges to their three-drug execution procedures, but Ohio is the first to drop that approach in favor of a one-drug method.

The U.S. Supreme Court upheld the constitutionality of lethal injection last year, but Ohio's new system would be substantially different from the three-drug process the court examined.

Ohio public defender Tim Young, whose office represents some inmates involved in the state lawsuit, supports the single anesthetic.

"There was a lot of pressure on a lot of the states for none of them to break ranks and move away from the three-drug cocktail they all used over the years, and it takes great leadership on the part of Ohio to move away from that," Young said.