

States hold off on executions

WASHINGTON - It may only continue for a matter of months, but an effective moratorium on executions has spread across the United States while the Supreme Court considers whether the most commonly used combination of drugs for lethal injections constitutes cruel and unusual punishment.

More than a dozen states have formally or informally stopped the process of executions until after the Supreme Court rules on the constitutionality of lethal injection in a case from Kentucky, *Baze v. Rees*. Oral arguments in the case will be heard after the first of the year and a ruling should come before summer.

Uncertainty about the constitutionality of the procedure used by most of the 38 states that have the death penalty has led judges or other authorities in 20 states and the federal government to put executions on hold pending the ruling. As of Nov. 16, there had been no executions since the court announced Sept. 25 that it would hear the case.

On Nov. 15 the Supreme Court stayed Mark Dean Schwab's execution by the state of Florida just four hours before he was scheduled for lethal injection. State courts and the 11th Circuit Court of Appeals had said it could proceed.

If the trend continues, 2007 could see the fewest executions in a year since 1994, when there were 31. As of Sept. 25, 42 men had been executed by nine states. In 2006, there were 53 executions nationwide.

Ralph Baze and Thomas Bowling, convicted of unrelated double murders, argue in their petition to the Supreme Court that the three-drug combination used in Kentucky and all but one other state can cause an excruciatingly painful death.

They say the first drug administered paralyzes the inmate, making him unable to react to the next drugs. A subsequent drug is intended to cause cardiac arrest but is extraordinarily painful to someone who is conscious though paralyzed, their petition says.

Such an execution method violates the Eighth Amendment ban on cruel and unusual

punishment, the petition argues. It also notes it has been more than 100 years since the court addressed the constitutionality of a method of execution or the legal standard for determining what constitutes a violation of the Eighth Amendment.

As a result, “the law applied by lower courts is a haphazard flux ranging from requiring ‘wanton infliction of pain,’ ‘excessive pain,’ ‘unnecessary pain,’ ‘substantial risk,’ ‘unnecessary risk,’ ‘substantial risk of wanton and unnecessary pain,’ and numerous other ways of describing when a method of execution is cruel and unusual,” the petition said.

Apart from the lethal injection-related holds, capital punishment in Nebraska is suspended while the state Supreme Court considers an Eighth Amendment challenge to its electrocution method. Illinois and New Jersey are under formal moratoriums because of general concerns about the system, and legislative efforts to fix perceived problems in those states’ laws have failed several times.

In New York, where the capital punishment law was declared unconstitutional in 2004, the Capital Defender Office is preparing to close, the New York Law Journal reported Oct. 29. The last pending death sentence in the state was vacated Oct. 23 by the state Court of Appeals. The New York Legislature also has found little support for measures to create a new capital punishment law.

Meanwhile, the American Bar Association late in October ramped up pressure for a moratorium, with a report detailing problems in how eight states administer capital punishment. Since 1997 the ABA has urged a moratorium in each state that has a capital punishment law until the state conducts a thorough study of whether it meets legal standards for fairness and due process.

The Human Rights Committee of the United Nations voted 99-52 Nov. 15 to approve a resolution calling for a worldwide suspension of the death penalty. The General Assembly could vote on the measure in December. Only 25 countries carried out executions in 2006, and 130 nations have banned the death penalty.

On Nov. 8 the World Coalition Against the Death Penalty presented to U.N. General Assembly President Srgjan Kerim 5 million signatures on a petition calling for a worldwide moratorium on capital executions.

A U.S. resolution would have no binding significance, but is thought to be an important step toward pressuring countries that use capital punishment to move toward abolition.

The group that went to Kerim included members of the lay Catholic Sant'Egidio Community and Sister Helen Prejean, a member of the Sisters of St. Joseph of Medaille and author of the book "Dead Man Walking" about her experiences as a counselor to death-row inmates.

Their presentation of signatures followed a week after Cardinal Renato Martino, president of the Pontifical Council for Justice and Peace, called all Christians to work for the abolition of the death penalty and all forms of torture.

"These practices are grave crimes against the human person created in the image of God and a scandal for the human family in the 21st century," said Cardinal Martino.

Conducted over three years, the ABA study of the death penalty systems in eight states takes a more pragmatic view.

Using data gathered by in-state prosecutors, defense attorneys, judges and law professors, the study weighed considerations such as racial disparities; fraud or mistakes by crime labs; funding of defense counsel; appeal procedures and timelines; access to DNA evidence and technology; jury instructions; and equity in who is subject to capital prosecution.

"The death penalty system is rife with irregularity," said Stephen F. Hanlon, chairman of the ABA Death Penalty Moratorium Implementation Project at an Oct. 29 press conference on the report. It covered Alabama, Arizona, Florida, Georgia, Indiana, Ohio, Pennsylvania and Tennessee.

"After three and a half years of study, the ABA has no confidence that fairness and accuracy can be guaranteed," he said.