

U.S. Supreme Court upholds Kentucky's lethal injections

WASHINGTON – The U.S. Supreme Court in a 7-2 vote April 16 upheld Kentucky's use of lethal injection as a method of execution.

In the *Baze v. Rees* ruling the court rejected a challenge by two Kentucky death-row inmates on the constitutionality of the three-drug lethal combination used in executions.

The inmates argued that the lethal injection method violated a constitutional ban on cruel and unusual punishment, saying it inflicted needless pain and suffering. The court ruled, however, that the state has measures in place to ensure inmates will not endure significant pain.

Chief Justice John Roberts wrote the majority opinion, and was joined by Justices Samuel Alito and Anthony Kennedy. Justices Antonin Scalia, Clarence Thomas, John Paul Stevens and Stephen Breyer each wrote separate opinions in which they agreed with Roberts' final opinion but not with each of his arguments.

Justices Ruth Bader Ginsburg and David Souter dissented.

Executions around the country have been on hold since September, when the court agreed to hear arguments in the Kentucky case.

A primary argument against the three-drug combination was that if the initial anesthetic did not take hold, the other two drugs would cause excruciating pain. One of those drugs, a paralytic, could prevent the inmate from expressing discomfort.

The two Kentucky inmates said they wanted the court to order that a single drug be used for lethal injections that would not cause pain. They also argued that the state should be required to impose tighter controls on the use of the drugs to make sure they were administered properly.

During the main arguments in January, Stevens, who is generally an opponent of

capital punishment, said that if the main legal question the court faced was whether Kentucky properly followed protocols intended to avoid unnecessary pain and preserve dignity, the state would probably win.

In his written opinion, he said his conclusion about “the constitutionality of the death penalty itself” made his decision in this case “particularly difficult.”

He said the court has already “held that the death penalty is constitutional, and has established a framework for evaluating the constitutionality of particular methods of execution.” Under those conditions, he said he was persuaded that the petitioners failed to “prove that Kentucky’s lethal injection protocol violates the Eighth Amendment.”

Other justices likewise noted that they were not arguing about the death penalty overall, but the specific constitutionality of lethal injections.

Breyer wrote that there are not “sufficient grounds to believe that Kentucky’s lethal injection method creates a significant risk of unnecessary suffering.”

“Although the death penalty has serious risks,” including one that “the wrong person may be executed,” he said the “penalty’s lawfulness is not before the court,” and that the arguments did not show that “Kentucky’s execution method amounts to cruel and unusual punishment.”

Scalia wrote that he was not taking a position “on the desirability of the death penalty, except to say that its value is eminently debatable and the subject of deeply, indeed passionately, held views – which means, to me, that it is pre-eminently not a matter to be resolved here.”

Thomas called it “not a little ironic, and telling, that lethal injection, hailed just a few years ago as the humane alternative in light of which every other method of execution was deemed an unconstitutional relic of the past, is the subject of today’s challenge. It appears the Constitution is ‘evolving’ even faster than I suspected.”

In this particular case, he said the court had neither the “authority nor the expertise to micromanage the states’ administration of the death penalty in this manner.”

Lethal injection is used in 35 of the 36 states with the death penalty. Nebraska is the only state that does not use lethal injections, and executions by electrocution were recently found unconstitutional there. There are 14 states that do not have the death penalty.

The court's ruling and the possible resumption of executions comes at a time when Americans have become increasingly uneasy about the death penalty and are re-examining its use, according to the Death Penalty Information Center in Washington. Figures from the center indicate that death sentences are down 60 percent in the past seven years and executions had been dropping even before the lethal injection controversy.

Frank McNeirney, co-founder of Catholics Against Capital Punishment, told Catholic News Service in a previous interview that there was a growing movement in the United States against the death penalty. He attributed the beginning of the change in attitude in part to Pope John Paul II's message against the death penalty during his 1999 visit to St. Louis when he described capital punishment as "both cruel and unnecessary" and noted that "modern society has the means of protecting itself without definitively denying criminals the chance to reform."

The court's decision upholding Kentucky's lethal injections came during the second day of Pope Benedict XVI's first visit as pope to the United States.