

The Bill of Rights in Action: Landmark Supreme Court Cases
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Baze and Bowling v. Rees



Facts of the Case

Two Kentucky inmates challenged the state's four-drug lethal injection protocol. The lethal injection method calls for the administration of four drugs: Valium, which relaxes the convict, Sodium Pentathol, which knocks the convict unconscious, Pavulon, which stops his breathing, and potassium chloride, which essentially puts the convict into cardiac arrest and ultimately causes death. The Kentucky Supreme Court held that the death penalty system did not amount to unconstitutional cruel and unusual punishment.

Question

Is the use of a four-drug lethal injection process to carry out death sentences a violation of the Eighth Amendment ban on cruel and unusual punishment?

Conclusion

In a 7-2 decision with four concurrences and a dissent, the Court held that Kentucky's lethal injection scheme did not violate the Eighth Amendment. Noting that the inmates had conceded the "humane nature" of the procedure when performed correctly, the divided Court inmates had failed to prove that incorrect administration of the drugs would amount to cruel and unusual punishment. However, the Court also suggested that a state may violate the ban on cruel and unusual punishment if it continues to use a method without sufficient justification in the face of superior alternative procedures. Chief Justice John G. Roberts, Jr. announced the judgment and issued an opinion joined by Justices Anthony Kennedy and Samuel A. Alito. Justice John Paul Stevens wrote a separate concurring opinion supporting the judgment but for the first time stated his opposition to the death penalty. Justice Antonin Scalia, joined by Justice Clarence Thomas, wrote a separate concurring opinion in support of the judgment. Justice Alito also issued a separate concurring opinion. Justice Ruth Bader Ginsburg, joined by Justice David Souter, dissented.

Source: The Oyez Project, *Baze and Bowling v. Rees*, 553 U.S. ____ (2008), available at: http://www.oyez.org/cases/2000-2009/2007/2007_07_5439/

Syllabus

SUPREME COURT OF THE UNITED STATES

BAZE ET AL. v. REES, COMMISSIONER, KENTUCKY DEPARTMENT OF CORRECTIONS, et al.

CERTIORARI TO THE SUPREME COURT OF KENTUCKY

Argued January 7, 2008—Decided April 16, No. 07–5439. 2008

Lethal injection is used for capital punishment by the Federal Government and 36 States, at least 30 of which (including Kentucky) use the same combination of three drugs: The first, sodium thiopental, induces unconsciousness when given in the specified amounts and thereby ensures that the prisoner does not experience any pain associated with the paralysis and cardiac arrest caused by the second and third drugs, pancuronium bromide and potassium chloride. Among other things, Kentucky's lethal injection protocol reserves to qualified personnel having at least one year's professional experience the responsibility for inserting the intravenous (IV) catheters into the prisoner, leaving it to others to mix the drugs and load them into syringes; specifies that the warden and deputy warden will remain in the execution chamber to observe the prisoner and watch for any IV problems while the execution team administers the drugs from another room; and mandates that if, as determined by the warden and deputy, the prisoner is not unconscious within 60 seconds after the sodium thiopental's delivery, a new dose will be given at a secondary injection site before the second and third drugs are administered.

Petitioners, convicted murderers sentenced to death in Kentucky state court, filed suit asserting that the Commonwealth's lethal injection protocol violates the Eighth Amendment's ban on "cruel and unusual punishments." The state trial court held extensive hearings and entered detailed factfindings and conclusions of law, ruling that there was minimal risk of various of petitioners' claims of improper administration of the protocol, and upholding it as constitutional. The Kentucky Supreme Court affirmed, holding that the protocol does not violate the Eighth Amendment because it does not create a substantial risk of wanton and unnecessary infliction of pain, torture, or lingering death.

Held: The judgment is affirmed.

CHIEF JUSTICE ROBERTS, joined by JUSTICE KENNEDY and JUSTICE ALITO, concluded that Kentucky's lethal injection protocol satisfies the Eighth Amendment. Pp. 8-24.

1. To constitute cruel and unusual punishment, an execution method must present a "substantial" or "objectively intolerable" risk of serious harm. . . . Pp. 8-14.

(a) This Court has upheld capital punishment as constitutional. . . . Because some risk of pain is inherent in even the most humane execution method, if only from the prospect of error in following the required procedure, the Constitution does not demand the avoidance of all risk of pain. . . . Pp. 8-9.

(b) This Court has held that the Eighth Amendment forbids "punishments of torture and all others in the same line of unnecessary cruelty. . . . such as disemboweling, beheading, quartering, dissecting, and burning alive, all of which share the deliberate infliction of pain for the sake of pain. . . . Pp. 9-10.

(c) Although conceding that an execution under Kentucky's procedures would be humane and constitutional if performed properly, petitioners claim that there is a significant risk that the procedures will *not* be properly followed—particularly, that the sodium thiopental will not be properly administered to achieve its intended effect—resulting in severe pain when the other chemicals are administered. . . . the Court has held that an isolated mishap alone does not violate the Eighth Amendment . . . because such an event, while regrettable, does not suggest cruelty or a "substantial risk of serious harm." Pp. 10-12.

(d) Petitioners' primary contention is that the risks they have identified can be eliminated by adopting certain alternative procedures. Because allowing a condemned prisoner to challenge a State's execution method merely by showing a slightly or marginally safer alternative finds no support in this Court's cases, would embroil the courts in ongoing scientific controversies beyond their expertise, and would substantially intrude on the role of state legislatures in implementing execution procedures, petitioners' proposed "unnecessary risk" standard is rejected. . . . Pp. 12-14.

2. Petitioners have not carried their burden of showing that the risk of pain from maladministration of a concededly humane lethal injection protocol, and the failure to adopt untried and untested alternatives, constitute cruel and unusual punishment. Pp. 14-23.

(a) It is uncontested that failing a proper dose of sodium thiopental to render the prisoner unconscious, there is a substantial, constitutionally unacceptable risk of suffocation from the administration of pancuronium bromide and of pain from potassium chloride. It is, however, difficult to regard a practice as "objectively intolerable" when it is in fact widely tolerated. Probative but not conclusive in this regard is the consensus among the Federal Government and the States that have adopted lethal injection and the specific three-drug combination Kentucky uses. Pp. 14-15.

(b) In light of the safeguards Kentucky's protocol puts in place, the risks of administering an inadequate sodium thiopental dose identified by petitioners are not so substantial or imminent as to amount to an Eighth Amendment violation. . . . Pp. 15-17.

(c) Nor does Kentucky's failure to adopt petitioners' proposed alternatives demonstrate that the state execution procedure is cruel and unusual. . . . Pp. 17-23.

Source: 217 S. W. 3d 207, affirmed.