

Death row inmates sue over who, what is going to kill them

Suit challenges Tennessee's secrecy surrounding the state's execution methods, including which drugs will be used — a contentious issue that prompted drug companies worldwide to attempt to prevent drugs for lethal injections from reaching America.

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The first of 11 death-row inmates with scheduled execution dates in Tennessee did not meet the executioner as planned on Oct. 7. The Tennessee Supreme Court ruled Sept. 25 to postpone Billy Ray Irick's execution as he and the other 10 death-row inmates with scheduled execution dates are in the middle of a complex lawsuit against the state.

In granting Irick's motion to postpone his execution, the Tennessee Supreme Court laid out strict rules concerning time limits for appeals and motions going forward in an effort to expedite court proceedings going through the Davidson County Chancery Court. Irick already once had his execution postponed in light of the pending lawsuit against the state. He was convicted of raping and murdering a 7-year-old Knoxville girl he was babysitting in 1985. As of press time, the court had not yet set another date for Irick.

The inmates scheduled for execution through 2016 are suing the state of Tennessee over a certain fundamental question: What are the identities of the execution team? What method will the state use to execute them? The lawsuit also seeks to lift a veil of secrecy surrounding the mix of drugs used in lethal injections. What drugs will be used? Who manufactures them? And, have they been adequately tested? Attorneys for the inmates also challenge the use of the state's Plan B: the electric chair. The group of inmates and their lawyers are calling both methods cruel and unusual. The electric chair, the plaintiffs maintain, is barbaric. Lethal injections leave too many questions unanswered. On Aug. 22, attorneys for the inmates changed the scope of the lawsuit because of the new Tennessee law signed in by Gov. Bill Haslam that allows the state to use the electric chair as a backup if the necessary drugs for lethal injection are unavailable. Davidson County Chancellor Claudia Bonnyman ruled Sept. 17 to allow an amendment to the lawsuit including objections to the constitutionality of using the electric chair.

Several pharmaceutical companies recently refused to sell their products, proven successful for use in executions in the past, if they were to be used in executions. Because of those refusals, Tennessee switched from using sodium thiopental — a deadly combo of three drugs to just using pentobarbital. Before the Tennessee Supreme Court ruled to postpone Irick's execution, the Tennessee Department of Corrections (TDOC) said it had enough pentobarbital on hand to carry out the execution via lethal injection.

"We are confident that we will have the necessary chemicals when needed," said Neysa Taylor, a spokesperson for TDOC.

By ushering in the return of the electric chair, Haslam made Tennessee one of only

eight states in favor of using the device. The others are Alabama, Arkansas, Florida, Kentucky, Oklahoma, South Carolina and Virginia. Of nearly 1,400 death sentences carried out in the United States since 1976, only 158 have been conducted by way of the electric chair, according to the Death Penalty Information Center (DPIC), a nonprofit organization based in Washington, D.C., that tracks death-penalty data. Tennessee has carried out six of the 1,400 executions since 1976, according to the DPIC.

"Prior to the new law, an inmate was only subject to the electric chair in Tennessee if they chose to be," said Kelley Henry, federal public defender in Nashville. "Once we reviewed all the evidence about the electric chair, we are sure it's a torture device and violates the Constitution."

Lethal injection is the primary method of execution in the 32 states that still have capital punishment, but some states allow inmates the option of electrocution, hanging, firing squad or the gas chamber.

Henry, who has remained involved in the lawsuit since its inception in November 2013, points out that with the change in law Tennessee now "stands alone as the only jurisdiction in the world to involuntarily impose the electric chair on its condemned citizens."

"On behalf of our clients who face imminent execution, we have asked the Chancery Court to allow us to challenge the electric chair as a method of execution because even when the chair works exactly as it is intended, it is a torture device," Henry said.

Henry also said that the lawsuit indicates the electric chair definitively fits the description of "cruel and unusual punishment" under the U.S. Constitution. Haslam has said the exact opposite of the chair, often noting that the U.S. Supreme Court found the electric chair not to be "cruel or inhuman punishment" in 1976.

Botched lethal injections across the country have at times left inmates conscious throughout the procedure, even sometimes gasping for air for several minutes after the procedure had been performed. Daryl Holton, who was electrocuted in Tennessee in 2007 for murdering his three sons and a stepdaughter in Shelbyville in 1997, showed signs of being conscious well after the first surge of electricity went through his body. The lawsuit unveiled in August gives a grim description brought by onlookers of how Holton died:

"A loud bang sounded, Holton's body jerked violently upward and remained there. The black shroud fluttered and witnesses may have heard Holton sigh. Holton's hands gripped the electric chair's arms tightly and turned red. After approximately 20 seconds, Holton's body slumped over," the lawsuit said. "Approximately 15 seconds later, a loud bang sounded, and Holton's body jerked higher than it jerked the first time.

U.S. EXECUTIONS SINCE 1976 BY METHOD USED

LETHAL INJECTION:
1214

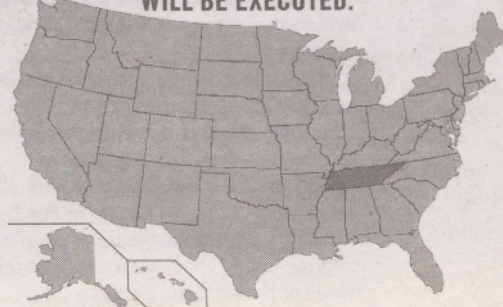
ELECTROCUTION:
158

GAS CHAMBER: 11

HANGING: 3

FIRING SQUAD: 3

TENNESSEE IS THE ONLY STATE THAT DOESN'T LET DEATH ROW INMATES CHOOSE HOW THEY WILL BE EXECUTED.



All data from the Death Penalty Information Center

Holton's hands continued to grip the electric chair, and they turned bright red. After approximately 15 seconds, Holton's body slumped."

A post-execution autopsy released with the lawsuit also found several burn marks on Holton's body. Because the method was used prior to this year's law giving the state the power to choose the execution method, Holton was given the choice of lethal injection or electrocution and chose the electric chair. The lawsuit argues that the electric chair doesn't render inmates fully unconscious, meaning they feel the effects of the electrocution. When Tennessee passed the law earlier this year to bring back the chair, Richard Dieter, executive director of the Death Penalty Information Center, said courts should anticipate some challenges as inmates got closer to their execution dates.

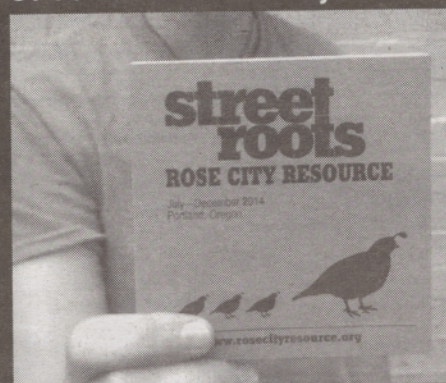
"There certainly have been some gruesome electrocutions in the past, and that would weigh on courts' minds," Dieter said.

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