

MONDAY OCT 15 2007
 Times Daily News Paper

State faces execution challenge

By Phillip Rawls

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Alabama has joined a growing list of death penalty states facing court challenges to lethal injection policies, and a trial tentatively scheduled for November will determine if Alabama's temporary halt of one execution will turn into longer delays like those in Tennessee and Florida.

Two convicted killers contend in lawsuits that Alabama's lethal injection procedures can subject inmates to unconstitutionally cruel pain because they are not completely unconscious when their lungs and hearts are stopped.

For death penalty opponents, the upcoming trial and Gov. Bob Riley's decision to postpone an execution

scheduled for Thursday night give new hope that there will be more public scrutiny of the way the state administers its harshest punishment.

"Even people who support the death penalty can be opposed to executions that are gratuitously inhumane and tortuous," said anti-death penalty attorney Bryan Stevenson.

The trial over Alabama's lethal injection procedures had been scheduled to start Oct. 3, but a federal judge postponed it—tentatively to the week of Nov. 26—after the governor decided to make changes in Alabama's execution procedures.

At the trial, the state attorney general's staff will argue that medical professionals carry out executions appropri-

ately, and Alabama's executions have been free of problems.

"The Department of Corrections has done a good job of carrying out the law," said Clay Crenshaw, director of the attorney general's capital litigation unit.

Lawsuits challenging lethal injection procedures are spreading throughout the 37 states that use the procedure, according to the Death Penalty Information Center, which opposes capital punishment.

"None of these suits are saying lethal injection itself is irredeemable. It's the way it's being carried out," executive director Richard Dieter said.

So far, the rulings have been mixed. But lawsuits or execution problems have caused moratoriums or delays

in 11 states, including Florida, North Carolina and Tennessee.

In Kentucky, the state Supreme Court upheld the state's procedures, but the U.S. Supreme Court agreed Tuesday to hear an appeal. The arguments, possibly in late 2007 or early 2008, will mark the first time the nation's highest court has considered whether the mix of drugs used in Kentucky and elsewhere violates the Eighth Amendment's ban on cruel and unusual punishment.

"It will have implications for this litigation all over the country," said Stevenson, director of the Equal Justice Initiative of Alabama, which is representing

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death row inmates in challenging lethal injection in Alabama.

In the Alabama case, U.S. District Judge Keith Watkins plans to hear about three days of testimony in lawsuits filed by Willie McNair and James Callahan challenging Alabama's procedures.

For McNair and Callahan, it's literally a case of life or death.

Since the suits were filed, state Attorney General Troy King asked the Alabama Supreme Court to set execution dates for the two inmates. Those dates would be set if they lose in federal court or if the U.S. Supreme Court sides with the state of Kentucky.

McNair received a death sentence for stealing Ella Foy Riley's purse and stabbing her to death in 1990. The 68-year-old widow from Abbeville had occasionally hired McNair to do yard work.

Callahan has been on death row 25 years. He was convicted of kidnapping Jacksonville State University student Rebecca Suzanne Howell from a laundry in the college town and then raping and suffocating the 26-year-old woman in 1982.

Alabama keeps its lethal injection procedures secret,

and a curtain in the execution chamber keeps witnesses from seeing the medical professionals who are involved. State officials say it's for security reasons and to prevent harassment. But that secrecy also raises suspicions.

"There is no transparency. That creates room for questions and doubts about what the state does," Stevenson said.

Last Thursday, the governor decided to temporarily postpone the execution of convicted killer Tommy Arthur to add safeguards to Alabama's lethal injection procedures. The changes, still being worked out, will include a second person, in addition to the warden, to check the condemned for signs of consciousness and possibly the use of more anesthetic, officials said.

"The decision to grant a brief stay is being made only because the state is changing its lethal injection protocol, and this will allow sufficient time for the Department of Corrections to make that change," Riley said.

When Riley decided to make the changes, state attorneys notified the federal judge, who promptly delayed the trial to give Riley time to implement his plan.