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# Justices Open Door to Lethal Injection Challenges

By [DAVID STOUT](#)

WASHINGTON, June 12 — The Supreme Court ruled unanimously today that condemned prisoners can challenge the humaneness of the lethal blend of chemicals that are to be used to execute them.

The ruling, written by Justice [Anthony M. Kennedy](#), continues the life-and-death drama involving Clarence E. Hill, who was strapped to a gurney on Florida's death row when Justice Kennedy granted a stay of execution on Jan. 25.

Today's ruling had been eagerly awaited, not just by Mr. Hill and the Florida Department of Corrections but also by corrections officials in the many other states in which lethal injection has supplanted the electric chair, gas chamber and noose. Twenty-four other states had filed briefs in Florida's behalf.

The result in *Hill v. McDonough*, No. 05-8794, does not mean that Mr. Hill will escape execution for killing a police officer in 1983 after robbing a bank in Pensacola. In fact, as Justice Kennedy noted, Mr. Hill concedes that "other methods of lethal injection the department could choose to use would be constitutional."

Still, the victory for Mr. Hill does further delay his execution, and buys time for his lawyers. It also opens the door for challenges by thousands of other death row inmates across the country, if not to the very constitutionality of capital punishment then at least to the particular chemicals used to carry it out.

"You can expect that every state will now have to defend its protocol," Eric M. Freedman, a law professor at [Hofstra University](#) and a death penalty expert, said today. But Mr. Freedman said the Hill case will not provide any "springboard" for an attack on the death penalty in general.

Mr. Hill's lawyers argued before the court on April 26 that the three chemicals used in Florida executions place inmates at the risk of "wanton" pain in violation of the Eighth Amendment ban against cruel and unusual punishment. The three are sodium pentothal, pancuronium bromide and potassium chloride, to anesthetize the inmate, paralyze his muscles and stop his heart.

As for the chemicals used in executions in other states, Ty Alper, a visiting professor at the Boalt Hall Death Penalty Clinic at the [University of California](#) at Berkeley said he believed "the vast majority" used a blend quite similar to that in Florida.

The Supreme Court upheld the constitutionality of capital punishment 30 years ago this summer, in a case from Georgia. Since then, the court has rejected challenges to the death penalty based on contentions that it is imposed in a racially discriminatory manner. But the court has barred the execution of mentally retarded prisoners and those who were juveniles at the time they committed murder.

In prevailing today, Mr. Hill's lawyers triumphed on a technical but crucial point. The justices agreed that his lawyers could proceed under a Reconstruction-era civil rights law, known as Section 1983, that permits suits for constitutional violations. That finding was important, because Mr. Hill had seemingly exhausted his chances to proceed under a writ of habeas corpus, the usual avenue for a state inmate to get to federal court to challenge his conviction or sentence.

Four days before his scheduled execution, Mr. Hill's lawyers filed their challenge to the lethal-injection procedure in Federal District Court. He lost in that court, then lost in the United States Court of Appeals for the 11th Circuit on the day he was to be put to death. Only Justice Kennedy's last-minute stay spared Mr. Hill's life.

The lethal-injection procedure to which Mr. Hill objects came about because of problems with Florida's electric chair. In 1990 and 1997, inmates caught fire in the chair as they were being put to death. And in 1999, a 300-pound murderer bucked grotesquely against the straps, bled profusely from his nose and appeared to be breathing for several seconds after the power was turned off.

Photographs of the execution, posted on the Internet by the Florida Supreme Court, caused such revulsion that the days of Florida's electric chair were numbered.

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- [N.Y. / Region](#)
- [Business](#)
- [Technology](#)
- [Science](#)
- [Health](#)
- [Sports](#)
- [Opinion](#)
- [Arts](#)

- [Style](#)
- [Travel](#)
- [Jobs](#)
- [Real Estate](#)
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