

No. 07-303

IN THE
Supreme Court of the United States

MICHAEL TAYLOR,
Petitioner,
v.

LARRY CRAWFORD and JAMES D. PURKETT,
Respondents.

**MOTION FOR EXPEDITED CONSIDERATION OF
PETITION FOR CERTIORARI AND CONSOLIDATION**

DONALD B. VERRILLI, JR.*
MATTHEW S. HELLMAN
GINGER D. ANDERS
CARRIE F. APFEL
JENNER & BLOCK LLP
601 13th Street N.W.
Washington, DC 20005
(202) 639-6000

September 25, 2007

**Counsel of Record*

Pursuant to Supreme Court Rules 21 and 27.3, Petitioner Michael A. Taylor respectfully moves this Court to expedite review of his Petition for Certiorari, and to grant and consolidate it with *Baze v. Rees*, 07-5439, which this Court announced it would hear today. Expedited review and consolidation is warranted because Taylor's petition presents important and complementary issues to those presented by *Baze*. Like *Baze*, the Taylor petition concerns the legal standard governing executions under the Eighth Amendment. But unlike *Baze*, the Taylor petition implicates a circuit split about whether a deliberate indifference standard governs challenges to the implementation of execution procedures. Equally important, the Taylor petition comes to this Court on the basis of a particularly complete record that includes -- for the first time in any lethal-injection challenge -- the testimony of the execution team members responsible for designing, overseeing, and carrying out a state's execution procedures. Simultaneous consideration of *Taylor* would thus afford this Court a more complete opportunity to pass on the Eighth Amendment standards that govern lethal injection in the several states.

The *Baze* petition asks this Court to review a series of questions regarding the legal standards governing challenges to a means of execution under the Eighth Amendment. The questions presented include whether the Constitution prohibits "unnecessary risk[s] of pain" as opposed to merely "substantial risk[s]" of pain in carrying out executions, and whether a risk is "unnecessary" where "readily available alternatives that pose less risk of pain and suffering could be used." *Baze v. Rees*, Petition for Writ of Certiorari (07-5439) at ii.

Taylor's petition, filed on September 5, 2007, also implicates the question of the appropriate Eighth Amendment legal standard in method of execution challenges, but presents the particular question of whether a showing of deliberate indifference is necessary to prove a violation of the Eighth Amendment. As Taylor's petition explains, there is a 2-1 split among the

circuit courts regarding this question, and the majority position -- holding that deliberate indifference is necessary -- conflicts with this Court's pronouncement in *Gregg v. Georgia* that States must avoid "unnecessary cruelty" in carrying out executions. *Taylor v. Crawford*, Petition for Writ of Certiorari (07-303) at 11-20. Review of this question would allow the Court to address an additional and important aspect of the Eighth Amendment standard that has divided the lower courts.¹

Moreover, the *Taylor* case presents a particularly complete record on which to base this Court's consideration of the appropriate Eighth Amendment standard. As described in Taylor's petition for certiorari, Taylor presented -- for the first time in any lethal-injection challenge in any State -- the testimony of the individuals responsible for designing, supervising, and implementing Missouri's execution procedures, as well as substantial evidence of the manner in which executions have been conducted in the past and problems that arose in those executions. *Id.* at 9-10, 21-22. In addition, both sides presented medical experts who analyzed the executioners' practices and opined on the dangers created by those practices. *Id.* This evidence concretized the arguments raised in *Baze* -- and many other cases -- that there is a significant risk that the States' intended dose of anesthetic will not be successfully delivered into circulation, and the subsequent administration of pancuronium and potassium will cause an excruciating death. Thus, the *Taylor* record would allow the Court to consider the questions of the necessary quantum of risk and the appropriateness of the deliberate indifference standard (or any mental state requirement), in light of real-world evidence as to how Missouri administered its lethal injection procedures and how these practices actually increased the danger of inhumane

¹ Indeed, after Taylor filed his petition for certiorari, the United States District Court for the Eastern District of Tennessee issued an opinion expressing uncertainty as to whether the deliberate indifference standard applied to a challenge to a lethal injection protocol. *Harbison v. Little*, No. 3:06-01206 (AAT), at 37-39 (E.D. Tenn. Sept. 19, 2007).

executions. *See United States v. Locke*, 529 U.S. 89, 117 (2000) (noting benefits of full record in considering legal issues).

Missouri's execution practices, moreover, are very similar to the procedures used in many other States. As evidence of States' lethal injection procedures is revealed in litigation across the country, it has become clear that the problems examined in the *Taylor* case are endemic ones: Most States employ unqualified or unfit execution personnel who administer the drugs -- which are often improperly mixed -- from a different room, with little to no monitoring of the inmate. *See, e.g., Morales v. Tilton*, 465 F. Supp. 2d 972 (2006) (describing numerous deficiencies in California's execution procedures). In sum, by considering the *Baze* and *Taylor* cases together, this Court would gain the opportunity to address the overarching legal issues surrounding lethal injection challenges with the benefit of a record that both illuminates the legal questions and is representative of the factual issues with which many lower courts are currently grappling.

Taylor therefore requests that this Court expedite consideration of Taylor's petition for a writ of certiorari; grant the petition; and consolidate the case with *Baze*.² Should the Court grant certiorari, Taylor is prepared to follow the briefing schedule that has already been set in the *Baze* case.

² The State's brief in opposition is currently due on October 9, 2007. Should the Court decide to delay consideration of Taylor's certiorari petition until after the State's brief has been filed and to expedite the conferencing of the petition, Taylor is prepared to file his reply brief within forty-eight hours of service of the State's brief, or in accordance with any schedule set by the Court.

Respectfully submitted,


DONALD B. VERRILLI, JR.*

MATTHEW S. HELLMAN

GINGER D. ANDERS

CARRIE F. APFEL

JENNER & BLOCK LLP

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