

A flimsy reason to deny the right to free exercise of religion

By Arash Hashemi

“Security” is a flimsy reason to deny a U.S. citizen the cherished American right to free exercise of religion. Yet that is exactly what happened in the case of Domineque Ray, decided by the U.S. Supreme Court and part of a recent string of cases all dealing with the religious rights of the condemned.

Ray, a prisoner in Alabama executed Feb. 7, claimed his religious rights were violated when his request to have a Muslim imam accompany him in the execution chamber was denied. The prison does not have an imam on staff, and officials said because of security reasons, only employees may access the execution chamber. The prison’s Christian chaplain was the best they could offer Ray during his final moments on earth.

While Elena Kagan and liberal justices argued in their dissent that Ray’s claim of a constitutional violation was “powerful,” the majority allowed the execution to proceed, over-

turning the 11th U.S. Circuit Court of Appeals’ grant of a stay. The majority ruled that Ray’s request, made less than two weeks before his execution

ees-only policy in his prison, which employs Christian and Muslim spiritual counselors, but had no Buddhist advisors on staff.

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date, was not timely.

In their decision, the justices seemed to use questions of religion as a proxy battle for their differences of opinion on the death penalty, with opinions splitting along typical conservative versus liberal lines. But the fact that Ray was denied religious counsel from the faith of his choosing at the culminating moment of his life should trouble conservatives and liberals alike.

The justices’ opposite conclusion in a nearly identical case seems to point to an internal court strife. In late March, inmate Patrick Henry Murphy argued that the state of Texas was violating his freedom of religion because of a similar employ-

In Murphy’s case, the Supreme Court granted a stay of execution, with Kavanaugh writing that the difference was only that Murphy’s request had been more timely than Ray’s.

The justices’ arguments over the Ray case bled over into another unrelated case, months after Ray’s execution. Though the circumstances and arguments were different in the case of Missouri inmate Russell Bucklew, Justice Neil Gorsuch referred to the Ray matter in his written opinion for the majority. Bucklew’s argument did not touch on religion, but claimed he would undergo severe suffering from lethal injection because of an existing disease.

In his opinion, Gorsuch asserted that liberal dissenters were trying to “relitigate” the Ray case by arguing that his appeal had been timely and said that “last minute stays should be the extreme exception.” But Gorsuch did not shed any light on the question of why the majority came to opposite conclusions in two highly similar cases involving inmates’ requests for non-staff spiritual counsel in the execution chamber.

The death penalty is, and will likely always remain, a contentious topic among American citizens. But freedom of religion is far less controversial, and remains a central and cherished American value. That’s why the court’s debate is surprising — not the debate about whether or not a condemned man’s request for a stay of execution was or was not timely, but whether it is the duty of prisons to make a spiritual counselor of a condemned man’s chosen faith available to him.

Though the institution has faltered for the foreseeable future in California since Gov. Gavin Newsom’s de-

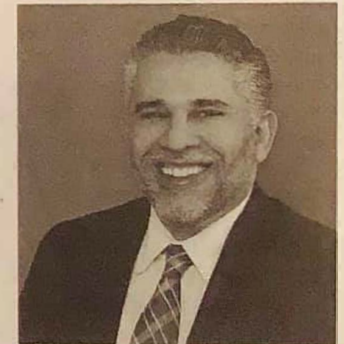
cision to suspend executions in the state, in other parts of the country, executions go on. Both proponents and opponents of capital punishment have been heard critiquing the lengthy inefficiencies of the capital appeals process, but that long process — which now averages more than two decades — only underscores the fact that prison officials do in fact have more than ample time to inquire about an inmate’s faith and make certain that a representative of that faith is available to provide counsel at the time of execution. If such a representative is not available as a staff member, they could be secured on an on-call basis. The upside to the years-long appeals process is that it allows plenty of time to find, vet, and conduct security checks on any requested religious counselor.

Once prisons have made such counselors available, it will not only give spiritual comfort to those facing execution, but also prevent the occurrence of last-ditch attempts to stall execution based on religious rights arguments.

If freedom of religion is a core American value, that value should extend to every corner of our citizenry, from the highest to the lowest. Even criminals condemned to death should not be considered beyond the reach of powers far higher than the U.S. Government.

We seek humane methods of execution, but that search should extend not only to the body, but the spirit.

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