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Judge's bias in Ariz. death case before justices

The Supreme Court has spent nearly six months wrestling with a dispute between an Arizona judge and the man she sentenced to death for killing a librarian.

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WASHINGTON —

The Supreme Court has spent nearly six months wrestling with a dispute between an Arizona judge and the man she sentenced to death for killing a librarian.

It's not clear why the court so far has been unable to decide what to do with the case of convicted killer Richard Hurler and his claim that Judge Ruth Hilliard was biased against him and should not have presided over his trial or sentencing. The dispute's roots are in the judge's denial of a second lawyer to help in Hurler's capital defense and her defense of that ruling in subsequent judicial proceedings.

The case is again before the justices for their scheduled meeting Friday.

A jury convicted Hurler and Hilliard sentenced him to death for killing librarian Kay Blanton in Buckeye, Ariz., just west of Phoenix, in 1992. Hurler attempted to rape Blanton, stabbed her 37 times and kicked her so hard it tore her liver, the jury found. Arizona courts and a federal trial judge upheld Hurler's death sentence.

But then a panel of federal appellate judges sided with Hurler by a 2-1 vote and ordered a lower court to evaluate whether Hilliard's actions before the trial showed she could not fairly preside in the case.

The 9th Circuit has a history of questioning death sentences, and the Supreme Court has a history of chastising the circuit for second-guessing state trial and appellate courts.

But until the justices render a decision, it is impossible to explain the delay.

Hurler's lawyers said their client "was sentenced to death, not by a neutral arbiter, but by an adversary." Hilliard's decision to deny Hurler a second court-appointed lawyer triggered legal wrangling that led to court filings in the judge's name defending her actions. She also improperly communicated with the attorney general's office, the lawyers said.

The state said the appeals court should have deferred to the prior court ruling.

Hilliard has since retired from the bench. She declined to comment on the case.

Justice Ruth Bader Ginsburg was still celebrating her 81st birthday Saturday when a prominent liberal legal scholar issued the newest call for her retirement.

Writing on the Los Angeles Times website, Erwin Chemerinsky looked at the potential for Republicans winning control of the Senate in the November elections and said only Ginsburg's prompt retirement when the court finishes its business in early summer will ensure that President Barack Obama "will be able to choose a successor who shares her views and values."

Chemerinsky, dean of the University of California at Irvine law school, said the stakes are immense and voiced fears a new Republican majority might refuse to confirm any nominee if Ginsburg waits until next year. A GOP-led Senate might prefer to take a chance on a Republican winning the presidency in 2016, he said. Ginsburg's retirement this year would give Obama time to name her replacement with Democrats running the Senate and likely to vote for confirmation, he said.

A new conservative justice in Ginsburg's place would threaten abortion rights, gay marriage and the health care law, among other issues on which the court has been split along ideological lines, Chemerinsky said.

For the same reasons, Chemerinsky said Justice Stephen Breyer, just shy of his 76th birthday, also should consider retirement.

In 2011, Harvard Law School's Randall Kennedy looked ahead to a possible Obama defeat in 2012 and said the only way to forestall disaster for liberals was for Ginsburg and Breyer to retire with enough time for Obama to appoint their successors.

The justices ignored the first plea and have given no indication they plan to heed this one.

There also are new calls to open the Supreme Court to cameras, or at least microphones.

Rep. Mike Quigley, a Chicago-area Democrat, introduced a bill last week that would require live streaming audio of arguments at the court and a study of streaming video. It also would put annual personal financial reports from all federal judges online. The legislation so far has no other sponsors.

Days earlier, a coalition of journalists, broadcasters, government watchdogs and liberal interest groups told Chief Justice John Roberts in a letter that airing the argument sessions would help "narrow the civic education gap" in knowledge of the court that has been found in one public opinion poll after another.

Roberts received the letter, but had no comment on it, a court spokeswoman said.

The advocacy follows the release of first-ever video of Supreme Court arguments, taken furtively by members of a protest group that favors tighter campaign finance limits.

In the days after the video was posted online, court police stepped up scrutiny of people entering the court to listen to arguments, including close examination of pens for signs they might contain small cameras.

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