



February 24, 2009

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The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

Via fax 907-465-2070 and email: Rep_Jay_Ramras@legis.state.ak.us

Re: Opposition to HB 9

Dear Chairman Ramras:

On behalf of the American Civil Liberties Union (ACLU) of Alaska and our thousands of members and activists throughout the state, as well as our Board of Directors and Staff, I am writing to express our **strong opposition to House Bill 9** seeking to authorize capital punishment in the State of Alaska.

The American Civil Liberties Union of Alaska is a non-partisan organization which preserves and expands personal freedom through public advocacy. As a state affiliate of the national ACLU, we are part of the country's largest and preeminent civil liberties organization, which has been instrumental in shaping constitutional law at the state and federal levels. The ACLU of Alaska protects all Alaskans, with the mission of defending those rights guaranteed under the United States and Alaska Constitutions.

Capital Punishment Denies Civil Liberties

The death penalty is the ultimate denial of civil liberties. The ACLU opposes capital punishment as a clear violation of the United States Constitution's Eighth Amendment ban on cruel and unusual punishments. Capital punishment is routinely imposed based on wholly improper factors, such as race, class, or the quality of counsel. Its administration is fraught with error

and results in the conviction and execution of the innocent. To date, 130 death-row inmates have been exonerated in the modern death penalty era.

Unequal justice is no justice at all.

As a State, Alaska has never had the death penalty, and we don't need it now.

Capital punishment is proven to be an unreliable and expensive means of punishment. It is – quite simply – a failed government program. The State of Alaska does not need to visit these failures on our citizens. In brief, capital punishment would:

- Do nothing to protect Alaskans from crime;
- Seriously harm the survivors of homicide victims; and
- Cost Alaska far more than life imprisonment without release.

The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power. Our state does not need to take a step backwards and institute an archaic system whose time has passed.

Many Factually Innocent Persons Have Been Sentenced to Death

130 persons have been exonerated from death row in the last 35 years. These startling numbers establish the unreliability of the capital punishment process. Were Alaskans to institute the death penalty, we would essentially guarantee the wrongful imposition of the ultimate penal sanction.

A 2001 study by the Center for Wrongful Convictions at Northwestern Law School found that 86 innocent people were sentenced to death based on:

Eyewitness error - from confusion or faulty memory;

Government misconduct - by both the police and the prosecution;

Junk science - mishandled evidence or use of unqualified “experts;”

Snitch testimony - often given in exchange for a reduction in sentence;

False confessions - resulting from mental illness or retardation, as well as from police torture;
or

Other causes – such as hearsay, questionable circumstantial evidence, etc.

No legislation can create a capital punishment system immune from these shortcomings.

A Columbia Law School study published in 2002, covered 23 years of capital cases and found an overall rate of prejudicial error in the American capital punishment system of 68%.

Death penalty proponents may argue that exonerations establish that the “system works.” However, sadly, evidence shows the system has grievously failed:

Cameron Willingham was executed in Texas in 2004 for arson and the murder of his three daughters. In 2004, the *Chicago Tribune* had fire experts review the case and in 2006, the Innocence Project had a different set of fire experts review Willingham’s case. The experts for the *Tribune* and Innocence Project found that the science used is no longer valid and that the fire may have been accidental.

Texas itself has hired an investigator to also look at the evidence in Willingham’s case. Ernest Willis was exonerated from death row because the science used to convict him is no longer valid. This same science was used to convict and ultimately execute Willingham.

Carlos DeLuna was executed in 1989. The *Chicago Tribune* also investigated his case. Another man confessed to the crime and there was not sufficient evidence that pointed to DeLuna as the killer.

Numerous Studies Establish the Racial Inequities in Imposition of the Death Penalty

Like the divisions in the Jim Crow South, the death penalty – to this day – continues to divide us by race and socioeconomic status. In 1976, the Supreme Court approved modern death penalty statutes that were *supposed* to ensure that death sentences were neither arbitrary nor discriminatory.

However, evidence from the past 33 years irrefutably establishes that capital punishment remains arbitrary and improperly linked to race and socioeconomic status. Very recent blue ribbon studies in California,¹ and Maryland,² reiterate empirical research from across the country that

¹ *California Commission on the Fair Administration of Justice Report and Recommendations on the Administration of the Death Penalty in California*, June 30, 2008. “Overall, controlling for all other predictor variables, they found all those who kill African Americans, regardless of the ethnicity or race of the perpetrator, are 59.3% less likely to be sentenced to death than those who kill non-Hispanic whites.” *Id.* at 92. The report may be viewed at: <http://www.ccfaj.org/documents/reports/dp/official/FINAL%20REPORT%20DEATH%20PENALTY.pdf>.

consistently demonstrates: a defendant who kills a white person is far more likely to receive the death penalty than a defendant who kills a person of color; and the racial configuration most likely to result in a death sentence is a black-on-white crime. Similarly, this research demonstrates that defendants whose victims are high in socioeconomic status face a significantly higher risk of execution.

It is important to note, that the death penalty's racial and socioeconomic bias persists *despite the best efforts of legislators and judges to erect fair and equitable capital punishment procedures*. This bias sends the clear and morally repugnant message that society values wealthy victims more than poor and middle class victims, and white victims more than victims of color. Current statistics in the State of Alaska establish that our Alaska Native population and communities of color are disproportionately represented in the criminal justice system. This fact alone should be sufficient to establish that we must not introduce a flawed and racially inequitable capital punishment system into our State.

Finally, capital punishment is harmful to people of color and poor people for another reason: the death penalty aggressively consumes scarce state resources upon which many poor people and people of color depend. In cities across the country, prosecuting death penalty cases has left prosecutors' offices in dire financial straits. In New Orleans, for example, the prosecutor's office filed for bankruptcy after being held civilly liable for wrongfully sentencing to death an innocent man. Every dollar spent on the death penalty is one dollar unavailable for community policing and other measures to make poor or at-risk communities safer.

Maintaining a Capital Punishment System is Significantly More Expensive than Life Without the Possibility of Parole

Several states have released studies which demonstrate how expensive it is to continue capital punishment. Maryland's Commission on Capital Punishment reported that death penalty cases cost about \$1.9 million dollars more per case than non-capital cases. Studies in California, New Jersey, North Carolina, Tennessee, Texas and Washington have reached similar conclusions.

The fiscal notes to HB 9 demonstrate that Alaska would be faced with a similar unjustifiable economic burden.

² Maryland Commission on Capital Punishment, *Final Report to the General Assembly*, December 12, 2008. "Finding: Racial disparities exist in Maryland's capital sentencing system. While there is no evidence of purposeful discrimination, the statistics examined from death penalty cases from 1978 to 1999 demonstrate racial disparities when the factors of the race of the defendant and the race of the victim are combined. (Results of Commission Vote on Finding: AGREE = 20; DISAGREE = 1)." *Id.* at 10. The report may be viewed at: <http://goccp.org/capital-punishment/documents/death-penalty-commission-final-report.pdf>.

And testimony by State of Alaska agency representatives to this Committee has shown, the cost is not just for indigent defense necessary to attempt to meet constitutional mandates which have ineffectively sought to address the unfair and arbitrary nature of capital punishment. Death penalty cases exhaust the resources of *prosecutor's offices* as well. Those resources should be put to better use.

Capital Punishment Has No Deterrent Effect

Simply put: there are no studies that show conclusively that the death penalty deters murder. Testimony to this Committee has acknowledged that fact.

Since 1977 over 80% of all executions have occurred in the South, the region with the highest murder rate. The Northeast, the region with the lowest murder rate, has accounted for less than 1% of the executions. Although the issue of deterrence has been studied extensively, there is no credible evidence that capital punishment deters murder or makes us any safer.

Introducing the Death Penalty into Alaska Would Put Our State on the Wrong Side of History

Civil societies understand the inherent problems with, and moral failings of, capital punishment.

In 2007, New Jersey abolished the death penalty. The Maryland Commission on Capital Punishment recommended abolition of the death penalty.

This year abolition is being seriously discussed and may occur in New Mexico, Montana, Maryland and Colorado.

Last year, Harris County, Texas which if it were a state would be second only to Texas in executions, did not send one person to death row.

The Bureau of Justice Statistics show that in 2007, death sentences were at an all time low since the death penalty was reinstated in 1976.

According to the Death Penalty Information Center, several law enforcement officials and pro-death penalty politicians have misgivings about the use, cost and fairness of the death penalty. These officials include:

Jeanne Woodward, former Director of the California Department of Corrections and Warden of San Quentin Prison;

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James Abbott, Police Chief, West Orange, NJ, and member of the New Jersey Death Penalty Study Commission;

Donald McCartin, former Orange County, CA, Superior Court Judge, who sentenced nine men to death; and

Sen. Joseph Tydings, former U.S. Senator and prosecutor

At a time when our sister states are confronting the myriad shortcomings with capital punishment, Alaska should reject any efforts to introduce this failed system to our State.

The ACLU of Alaska urges the Committee Members to reject House Bill 9.

Please feel free to contact the undersigned if you wish additional documentation regarding any of the information provided.

Sincerely,



Jeffrey Mittman
Executive Director

cc: House Judiciary Committee

Vice Chair Dahlstrom, via email: [Representative Nancy Dahlstrom@legis.state.ak.us](mailto:Representative_Nancy_Dahlstrom@legis.state.ak.us)

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