



House subcommittee recommends House Joint Resolution **One step closer to a moratorium on the death penalty**

The proposal for a moratorium on Alabama's death penalty – long an Arise issue priority – made a small but significant step forward on April 7. After a public hearing that continued over several weeks, the House Criminal Justice Subcommittee recommended that a House Joint Resolution be offered to begin formal review of the moratorium proposal. Among those speaking in favor of the moratorium was ACPP policy analyst Stephen Stetson, who offered the following testimony:

My name is Stephen Stetson, and I'm an attorney and policy analyst at Alabama Arise. Many of you know Arise from our work on Rep. Knight's grocery tax bill. We hope that you support it. But we also do work on the death penalty and the reason why we work on two such different issues as the sales tax and the death penalty is that the common thread is that they disproportionately affect those Alabamians who don't have much money. If you're rich, you don't worry too much about how much tax you pay at the grocery store and if you're accused of capital murder, you can hire a lawyer usually at least good enough to keep the state's needle out of your arm.

I was born and raised in Alabama. I'm proud of our state in many things, from our love of history to our love of college football. But one thing I'm not proud of, and in fact am somewhat ashamed of, is our criminal justice system.

Our state has a dark history of dealing with criminals, from lynching through the embarrassing federal lawsuits we learned about in law school. But, as an eternal optimist, I find myself saying that it's not too late to change things and make our state even better.

I'll make a few brief points, and try not to clog things up with a ton of statistics or numbers:

Rep. Ward had a spirited conversation with Rep. Coleman during the Judiciary Committee's consideration of HB 280 two weeks ago. After Rep. Coleman led off by talking about people who had been exonerated from death row, Rep. Ward's contention was that that proved that "the system worked." I'm here to tell you that the system does NOT work.

The fact that a couple of people win the lottery does not make that a sound investment plan. And the fact that some people get off of death row does not mean that every innocent person avoids being killed by the executioner.

I know *The New Yorker* is not common reading material among legislators. I'm more likely to be found reading ESPN or news about football recruiting. But if there's one article you take away from this meeting, it should be the article from Sept. 7, 2009 in *The New Yorker* magazine. It's available for free on the Internet and if you send me an email, I'll send you a copy. It's about a man in Texas named Cameron Todd Willingham, who was executed by the State of Texas. And he was innocent of the crime that he was accused of.

The system does *not* work. I haven't been doing this long enough to name the name of an innocent person that has been executed by the state of Alabama. But is that what we're waiting for? Do we

need that to happen before we make some changes to add some additional safeguards? We're talking about people accused of the worst possible crimes, the least popular people in our communities, too poor to hire lawyers, the public inflamed with anger about a crime, judges who are elected in partisan elections who have the ability to ignore a jury's sentence recommendation. Is it impossible for an innocent person to be given an irreversible sentence of death? Evidence says no.

Secondly, the fact that some people get out on appeal is not evidence that the system works. It means in the game of Russian roulette that we are playing with the lives of death row inmates, we have gotten lucky -- thanks to the hard work of a lot of lawyers and advocates who have put in a lot of time to make sure that mistakes made at the trial level don't cause someone to die.

I'm reading a book by Kerry Max Cook. It's called *Chasing Justice*. He's another Texas death row prisoner who was innocent. Fortunately, he was freed before he was executed and was able to write a compelling book about his story. For someone to point to Cook's story and call it a "success story" or "proof that the system works" is a monumental misunderstanding about what the American justice system is supposed to do. Our ability to correct SOME errors is not a defense of a system that makes those kinds of errors in the first place.

And let me just say that if the argument made at committee hearing is true -- that we can find errors in the system and correct them -- then why not vote for a bill like HB 280, which would give us more time to find and correct such errors? It's very hard to fix a car while you're driving down the Interstate. And it's very hard to fix our death penalty system while we're handing out the highest number of death sentences per capita in the entire nation. This is not the thing we want to be number one in the nation in.

Finally, I want to respond to the arguments made last week at the subcommittee by the representative from the District Attorneys Association. He claimed, and Rep. Collier seemed to agree, that many appointed attorneys do a great job representing their clients charged with capital murder. They were trying to rebut the claims made by death penalty critics that Alabama's lack of a public defender system shows inadequate lawyering and risk of conviction of innocents. The evidence cited for effective representation by appointed council was that a number of lawyers have billed hundreds of thousands of dollars to the state in appointed court costs. A few points: 1) these were not all capital cases, 2) the fact that a handful of lawyers have found a way to be appointed to a lot of cases is not evidence of effective representation across the state, and 3) most importantly, the fact that a lawyer has found a way to juggle a large number of appointed cases is NOT evidence of quality lawyering and in fact may cut the *other* way. If a lawyer has racked up that amount of fees by grabbing that many appointed cases, they may well be spread too thin to effectively investigate and defend a capital case.

I'll close by saying that I think this entire debate is about THE POSSIBLE. It's about whether it is POSSIBLE that we are making mistakes that could result in the death of an innocent person. It's about whether it is POSSIBLE that we embrace the idea that life without parole is still a VERY, VERY unpleasant punishment for our society's worst criminals. And it's about whether it is POSSIBLE for elected officials to find courage to do something that right now would not be popular with some voters. But the people of Alabama are no different than the people in New Mexico or New Jersey, both states that have recently stopped using the death penalty for good. A moratorium is POSSIBLE, if not this year, then maybe next year, as we continue to have a good and fair debate about the merits of this kind of policy.

Thank you for your time.