



July 20, 2009

RE: ACLU Urges “NO” Vote on SA 1615 - Sessions Death Penalty Amendment to Hate Crimes Amendment in Defense Authorization Bill (S. 1390); Sessions Amendment is Unconstitutional

Dear Senator:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless activists and supporters, and fifty-three affiliates nationwide, we write to urge you to oppose Senate Amendment 1615, being offered by Senator Jeff Sessions (R-AL) to the National Defense Authorization Act (S. 1390). This unconstitutional and misguided amendment seeks to expand the reach of the federal death penalty, including to non-homicide crimes, by adding it to a hate crimes provision that the Senate adopted by unanimous consent on Thursday night.

Capital punishment has been proven to be an unreliable and expensive means of punishment and Congress should oppose any effort to expand its scope and reach. According to the Death Penalty Information Center, 135 innocent people have been exonerated from death row since 1973, including five so far in 2009 alone. Such a high error rate illustrates the fallibility of our nation’s death penalty system. Indeed, chronic problems, including inadequate defense counsel and racial disparities, have always plagued the death penalty system in the United States. In a 2003 report entitled “*Death by Discrimination – The Continuing Role of Race in Capital Cases*,” Amnesty International found that even though blacks and whites are murder victims in nearly equal numbers of crimes, 80 percent of people executed since the death penalty was reinstated have been executed for murders involving white victims. More than 20 percent of black defendants who have been executed were convicted by all-white juries. Even if one supports the death penalty in theory, there is no justifiable reason to expand our system of capital punishment while such discriminatory impacts continue to exist.

A troubling record of the death penalty being imposed on defendants who were later found to be innocent, along with a long history of racial and geographic disparities in its use, have spurred states to move away from its use. In 2007 and 2008, New Jersey and New Mexico, respectively, abolished the death penalty, bringing to 15 the number of states (including the District of Columbia) that currently have no death penalty. In addition, in recent years, the number of death sentences returned by juries has declined precipitously – from around 300 a year in the 1990s to approximately 120 in the past few years.

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The ACLU is also concerned that the Sessions Amendment would unconstitutionally expand the reach of the federal death penalty to include certain non-homicide crimes. The United States Supreme Court has already held that the death sentence is an unconstitutional penalty for kidnapping (see *Eberheart v. Georgia*); sexual abuse (see *Coker v. Georgia* and *Kennedy v. Louisiana*); and attempted murder (see *Enmund v. Florida* and *Tison v. Arizona*), all crimes included in the scope of the Session amendment. To now expand the reach of the federal death penalty to these non-homicide crimes would be clearly unconstitutional, under recent Supreme Court precedent.

The ACLU has a long history of supporting civil rights legislation, including legislation responding to criminal civil rights violations. While we did not support the underlying hate crimes provision in the defense authorization bill because of First Amendment weaknesses, an expansion of the federal death penalty stands in stark contrast to furthering the cause of civil rights in the United States.

The ACLU urges you to oppose the Sessions Amendment (S.A. 1615) to the defense authorization bill and to vote "NO" when it comes to the floor. The ACLU will score this vote.

Sincerely,



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