



Franklin County Court of Common Pleas - General Division

Hon. Chris Brown
Hall of Justice

September 26, 2023

Sen. Nickie J. Antonio (Dist. 23)
Sen. Stephen A. Huffman (Dist. 5)
Sen. Louis W. Blessing III (Dist. 8)
Sen. Hearcel F. Craig (Dist. 15)
Sen. William P. DeMora (Dist. 25)
Sen. Paula Hicks-Hudson (Dist. 11)
Sen. Catherine D. Ingram (Dist. 9)
Sen. George F. Lang (Dist. 4)
Sen. Michelle Reynolds (Dist. 3)
Sen. Kristina D. Roegner (Dist. 27)
Sen. Kent Smith (Dist. 21)
Sen. Vernon Sykes (Dist. 28)
Rep. Cecil Thomas (Dist. 25)
Rep. Andrea White (Dist. 36)
VIA ELECTRONIC MAIL ONLY

Rep. Jean Schmidt (Dist. 62)
Rep. Adam C. Miller (Dist. 6)
Rep. Juanita O. Brent (Dist. 22)
Rep. Jamie Callender (Dist. 57)
Rep. Sedrick Denson (Dist. 26)
Rep. Tavia Galonski (Dist. 33)
Rep. Latyna Humphrey (Dist. 2)
Rep. Dontavius L. Jarrells (Dist. 1)
Rep. Mark Johnson (Dist. 92)
Rep. Adam Matthews (Dist. 56)
Rep. Tracy M. Richardson (Dist. 86)
Rep. Bride Rose Sweeney (Dist. 16)
Rep. Terrence Upchurch (Dist. 20)

Re: S.B. 101 and H.B. 259 "To Abolish the Death Penalty"

Senators and Representatives:

I am writing to offer my support for S.B. 101 and H.B. 259, which would abolish the death penalty in Ohio. In 2019, I presided over an Aggravated Murder trial with death penalty specifications. After hearing the evidence, the jury convicted the defendant and recommended a sentence of death. This was the first jury-recommended death sentence in Franklin County since 2003.

In weighing the aggravating circumstances against the mitigating factors presented, and based on the law *as it currently stands*, I imposed the death sentence. I signed a legal document ordering another human being be put to death. In doing so, I believe I fulfilled my oath to follow the laws of the State of Ohio. However, I think it is past time to change the laws that forced the jury - and myself - to reach that decision.

I know that these bills have not been through committee hearings as of yet. I want to offer my support for these proposed bills based on my experience as an assistant county prosecutor, criminal defense attorney, and Common Pleas judge.

If called upon, I believe I could speak with insight about the disparate impact of the death penalty based on race and gender, about the financial costs of conducting a death penalty trial, and how that financial burden impacts charging decisions for capital cases in urban versus rural Ohio counties. I am willing to speak to the grave concerns about wrongful convictions, and about the personal toll on jurors, judges, and those tasked with carrying out the ultimate penalty. I believe many of my concerns would echo those of Former Governor Robert Taft, and Former Attorneys General Lee Fisher and Jim Petro.¹

I do not wish to get into the facts of the case over which I presided. However, I do think it is appropriate for a trial court judge to comment on pending legislation that will impact this court and courts around the state. I think I can do so while complying with the Code of Judicial Conduct, specifically Rules 2.10, 3.1, and 3.2. It is not uncommon for judges and justices to speak publicly on important legislation or ballot considerations.²

For over twenty years, dating back to my college days at Ohio State, I thought there was place for the death penalty in our criminal justice system. It is easy to argue for the death penalty as an abstract concept. However, if one is unfortunate enough to experience a capital punishment case up close, it becomes clear the system is costly, ineffective, and broken beyond repair. Senate Bill 101 and House Bill 259 can further the ends of justice by eliminating this outdated form of punishment. I am happy to speak publicly in favor of this change, including offering testimony before any committee considering these proposed bills.

Please feel free to contact me by email at chris_brown@fccourts.org for any thoughts or suggestions on how I may be able to assist in your efforts to pass this important legislation. Thank you for your time and consideration.

Sincerely,



Judge Chris Brown
Franklin County Court of Common Pleas
General Division

9/26/23

¹ See Fisher, Taft, Petro, *Ohio Death Penalty Broken, Costly, and Unjust. It Must Be Repealed*, Columbus Dispatch (Mar. 9, 2021, attached).

² See C.J. O'Connor, *The Hidden Disaster of State Issue 1* (Aug. 28, 2018, attached).

The Columbus Dispatch

OPINION *This piece expresses the views of its author(s), separate from those of this publication.*

Former governor, attorneys general: Ohio death penalty broken, costly and unjust. It must be repealed.

Lee Fisher, Robert Taft and Jim Petro Guest Columnists

Published 6:13 a.m. ET March 9, 2021 | Updated 9:15 a.m. ET March 9, 2021

Forty years ago, several of us supported the crafting of Ohio's death penalty law, believing it would be a fair and just system.

Seeing it in operation has convinced us it is not.

We urge the Ohio legislature to repeal what we helped wrought.

Architects of death penalty

In 1981, we were young statehouse legislators, two of us Republicans, one of us a Democrat. For nearly three years, we had debated whether to resume capital punishment after Ohio's previous law was struck down as unconstitutional. One of us, with others, urged life imprisonment without parole would suffice; but the rest of us eventually concluded the death penalty was needed and was what Ohioans wanted.

More: Editorial: For justice, safety and the public good, end the death penalty

Joining with others, we essentially became co-architects in building a system we sincerely believed would deter violent crime, help the families of victims heal, reliably determine those deserving, be applied fairly and save tax dollars.

Over the next four decades, each of us has had an inside, and often painful, view of that creation. One of us would serve as Ohio's governor, and two as attorney general. All of us had a life-or-death decision-making role to play under this law.

After being so enmeshed in Ohio's death penalty system, we know more now than we did in 1981. Time and experience are great teachers. We now understand this system's grievous flaws and its outright failure to achieve the benefits we had intended.

More: Opinion: Severely mentally ill will not be executed in Ohio, but work remains

Death not a superior deterrent

We have learned there is no evidence the death penalty is a better deterrent than life imprisonment without parole. The National Academy of Science has reviewed all the studies, and chiefs of police agree that other less-costly measures are far more effective at reducing violent crime.

Painful for families

We have learned that the death penalty does not support the families of murder victims, but instead prolongs their pain and impairs the healing process. It also diverts funds that could and should go to true support services, including grief counselling, mental health services and financial support; and to investigative efforts that solve the crimes that damaged other victims' families.

Innocent executed

We have learned our death penalty system convicts and nearly executes the innocent. Nine death-sentenced Ohioans have been released from prison after collectively serving 210 years for crimes they did not commit. For every six Ohioans we have executed under the 1981 law, one innocent Ohioan has languished on death row.

More: Opinion: Pause Ohio's death penalty to make it more humane, fair

In 2014, a half-dozen measures to make our system more reliable and trustworthy were recommended by the Ohio Supreme Court's Joint Task Force on the Death Penalty, but seven years later they too languish, unenacted. We know the only sure way to avoid executing the innocent is to stop executing.

Racial injustice found

We have learned the death penalty is not applied fairly, that race and place play an intolerable role in deciding who lives and who dies.

People of color make up just 15% of Ohio's population, but 56% of our death row. An African American killing a white victim is 3 to 4 times more likely to receive the death sentence, and 75% of Ohio's executions thus far followed a crime involving a white victim.

Place, too, matters: geographic disparities abound with death sentence-seeking largely dependent on the personal predilections of individual prosecutors.

Financially costly

We have learned we were not saving tax dollars, but likely wasting them, because the death penalty costs far more than our other option of life imprisonment without parole.

The Ohio Legislative Service Commission has reported that the total amount expended in a capital case is between 2.5 and 5 times as much as a non-capital life without parole case, and that in some states a capital case exceeds the cost of a life imprisonment case by \$1 million to \$3 million per case. Given Ohio's budgetary challenges, like Wyoming's Governor recently stated, the death penalty may well be a luxury we can no longer afford. It surely is not the cost-savings system we thought it to be.

We believed this was what Ohioans wanted, and we were right about that then, but forty years later, we are no longer. Support for the death penalty has declined around the country, with fewer death sentences sought, fewer returned and fewer carried out. Twenty-two states now have no death penalty, and 10 states have abolished it since 2000. With Virginia adding to that list in the next few weeks, it is even more evident that the death penalty's days are numbered.

You, Ohioans, have learned along with us, and no longer want the death penalty. A strong bipartisan majority — 59% of you polled — now support replacing the death penalty with life in prison without parole.

We had the best of intentions, but in this case, we built it, and the expected benefits did not come. Instead, we have a broken and incredibly costly system that fails to protect or aid us in any way. It is time to retire Ohio's death penalty.

Robert Taft was Ohio governor from 1999 to 2007. Lee Fisher served as Ohio attorney general from 1991 to 1995 and Jim Petro served in that office from 2003 to 2007. They wrote this piece in support of Senate and House bills to repeal the death penalty.

The Supreme Court of Ohio

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CHIEF JUSTICE
MAUREEN O'CONNOR

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August 28, 2018

The Hidden Disaster of State Issue 1

Too many people in our criminal justice system are there because of substance abuse disorders. This is undeniable. We know that substance abuse disorders are a major driver in criminal justice spending. We also know that through long-term treatment and therapy, those addicted can lead law-abiding, productive lives.

Issue 1 on Ohio's November 6 ballot purports to address this problem by reducing drug possession penalties and directing the savings from reduced incarcerations to expanded drug treatment and resources for crime victims. A superficial reading of Issue 1 could lead voters to see it as a thoughtful, compassionate, and reasonable response to a difficult and intractable problem. It seems so, until you peel back its layers and see that it will have catastrophic consequences for our state. If Issue 1 passes, Ohio may have some of the most lenient drug crime laws in the nation. We could easily become a magnet for substance abuse activity because there will be, in effect, very little consequence to engaging in such behavior.

Let me put the issue in context by explaining just one of Issue 1's consequences as it relates to possession of fentanyl, a lethal opioid. According to the Ohio Department of Health (ODH), drug overdose (poisoning) deaths in Ohio increased from 3,050 in 2015 to 4,050 in 2016. This is roughly four times the number of people who die in traffic accidents in Ohio annually. The ODH reported that 58.2 percent of the overdose deaths in Ohio in 2016 involved fentanyl compared with only 4 percent in 2013. This dramatic rise is due to the fact that fentanyl is 50 times more potent than heroin. According to the U.S. Drug Enforcement Administration, it takes just 2 *milligrams* of fentanyl – an amount barely able to cover Abraham Lincoln's beard on a penny – to kill the average person. Fentanyl is addictive, lethal, and simple to manufacture. It is easy to smuggle into our country from foreign sources, even using express mail envelopes. Its potency is not just a problem for abusers. It can be absorbed through the skin, putting freight handlers and first responders at serious risk.

Issue 1 would make the possession of powdered fentanyl in amounts less than 20 grams a misdemeanor with only probation as the consequence. This means that a drug offender caught with less than 20 grams walks away with no possibility of jail time. Since the lethal dose of fentanyl is just 2 *milligrams* (one-thousandth of a gram), 19 *grams* of fentanyl is enough to kill approximately 10,000 people. So if Issue 1 passes, an offender charged with possession of 19 grams of fentanyl would automatically get probation and could only be charged with a misdemeanor. Issue 1 does this by *constitutionally* dictating that any drug possession conviction that is now a Felony 4 or Felony 5 would be reduced to a misdemeanor. The requirement of probation ties the hands of the judge when it comes to sentencing. The judge **MUST** sentence an individual to probation for these offenses under Issue 1. This is unconscionable. Drug dealers would be incentivized to distribute fentanyl in amounts less than 20 grams so those caught possessing it would avoid incarceration.

The lack of consequences for fentanyl possession is shared with possession of other lethal drugs -- cocaine, K2, meth and heroin among them. Across the range of illegal substances, many current felonies would become misdemeanors. Who wouldn't want to set up their drug distribution business in Ohio knowing that possessing 19 grams of fentanyl or lethal amounts of other drugs would result only in a first class misdemeanor with mandatory probation?

The adoption of Issue 1 would, I predict, have another devastating consequence: Severely hampering the use of our very effective drug court programs across this state. Drug courts would be impeded by taking jail time off the table. We know, through multiple studies, that drug courts are effective only when they combine the "carrot" of treatment and support with the "stick" of judicial accountability, including incarceration when needed. It is this carrot-and-stick approach that enables judges and drug court teams to use a variety of tools to help people overcome addiction. But Issue 1, while providing a lot of carrots by expanding treatment, takes away the stick.

We are not talking about possession of marijuana. We are talking about Ohio becoming, in effect, unable by its constitution to offer drug court participation and to incentivize that involvement by the "carrot" of not having a felony conviction record. Who would want to participate in a drug court program knowing that they only face probation for possession of fentanyl, cocaine, methamphetamine, K2, heroin, and so forth? I predict that we will see a severe drop-off in drug court participation at the very moment when it is needed most should voters approve Issue 1.

To make matters worse, Issue 1 would freeze our criminal drug offense laws in time. It expressly mandates that its provisions be implemented based on the laws in effect on January 1, 2018. Our General Assembly couldn't, by passing a statute, fix all that is wrong with Issue 1. Our elected leaders could not pass laws to contradict Issue 1 -- laws meant to keep us safe. Another constitutional amendment would be necessary to repeal or modify the Issue 1 constitutional amendment. This would take another statewide election.

Keep in mind that special interest groups spent more than \$4 million to put Issue 1 on the ballot. Those same special interest groups will fully fund a campaign before this November's election that will try to mislead and confuse you regarding Issue 1. Please don't be fooled. Do your homework on Issue 1.

The proponents of Issue 1 seek to address a very real problem in our criminal justice system: the impact of substance abuse on our society and our criminal justice system. But by taking a hammer to that problem, the proponents have set Ohio on a dangerous course to adopting some of the most lenient drug laws in the country. It would limit the ability of the state to confront very real dangers, now and in the future, in battling substance abuse. Issue 1 may be well-intentioned in design, but its passage would gravely endanger Ohioans. It would be devastating in effect.



Maureen O'Connor
Chief Justice
The Supreme Court of Ohio

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