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July 14, 2010

The Honorable Thomas R. Caltagirone
Chairman, House Judiciary Committee
106 Irvis Office Building
PO Box 202127
Harrisburg, PA 17120-2127

The Honorable Ron Marsico
Chairman, House Judiciary Committee
218 Ryan Office Building
PO Box 202105
Harrisburg, PA 17120-2105

Dear Chairman Caltagirone and Chairman Marsico,

Thank you for the opportunity to submit written testimony for the July 19 House Judiciary Committee hearing on House Bill 1996. This legislation would create a greater safeguard for preventing death sentences on the basis of race in the commonwealth. The American Civil Liberties Union of Pennsylvania supports HB 1996, and on behalf of the 18,000 members of the ACLU of PA, I urge you and the members of the committee to support the legislation.

Problems with race have long vexed the commonwealth's capital punishment regime. Approximately 70 percent of persons currently on death row are racial or ethnic minorities, mostly African-Americans. This is one of the highest percentages of minorities on death row in the country, among states with at least ten people awaiting execution.

Ninety percent of those sentenced to death in Philadelphia are racial or ethnic minorities, mostly African-Americans. In fact, Philadelphia has a higher per capita rate of minorities on death row than any other county in the country.

The race of the victim may play an even greater role in determining who is sentenced to death and who is not. In Pennsylvania from 1978 to 2000, the rate of death sentences for black offenders convicted of killing a white victim was 48.6 per 1,000 murders, the highest of any offender/victim racial composition. In comparison, the rate of death sentencing when the offender was white and the victim was black in that same time period was 11.1 per 1,000 murders.

Nationally, 80 percent of persons executed were convicted for homicide of a white victim. Meanwhile, approximately 50 percent of homicides involve a white victim.

The race of jurors also can have an impact on how capital punishment functions in the commonwealth. From 1981 to 1997, prospective jurors who were black in Philadelphia were struck from jury pools by prosecutors at twice the rate of prospective white jurors in capital cases. In addition, jurors who lived in integrated neighborhoods were challenged at twice the rate of jurors from white neighborhoods. The public learned of the practice of the Philadelphia District Attorney's office teaching its prosecutors how to strike these jurors without being detected when a video featuring then-prosecutor Jack McMahon was released in the heat of a contested campaign for district attorney.

Philadelphia, of course, is one of 67 counties. We do not know how many other counties have engaged in such practices, and we do know that some counties, like Allegheny County, have created processes to ensure that death is sought in only very limited circumstances. Nevertheless, Philadelphia is responsible for a majority of those on death row in Pennsylvania, and it is imperative that the legislature look at past and current practices in capital cases in Philadelphia and the role that race has played in those cases.

House Bill 1996 would not solve Pennsylvania's problems with race and the death penalty. Even if the bill becomes law, a person could certainly still be sentenced to death due to racial dynamics, be it the race of the defendant, the victim, or the jurors. The only sure way to stop people in Pennsylvania from being sentenced to death due to race is to repeal the death penalty.

But HB 1996 creates a new safeguard by allowing defendants an avenue for bringing claims of racial discrimination. If enacted, this bill decreases the likelihood that racial factors will play a role in determining who is sentenced to be executed.

The legislation also follows a recommendation of the Pennsylvania Supreme Court Committee on Racial and Gender Bias. The committee called for a Racial Justice Act in its 2003 report, which included a chapter on capital punishment. Noting several empirical studies on race and the death penalty in the commonwealth, the committee raised concerns that race played a role in determining who lives and who dies in Pennsylvania's criminal justice system. HB 1996 has also been endorsed by the American Bar Association.

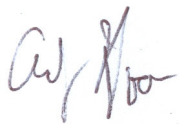
Race is one of multiple problems with the application of the death penalty in the commonwealth. We know that innocent people have been sentenced to death in our state, that there are significant questions about how the state funds indigent defense and its subsequent impact on the death penalty, and about the costs of running a system of

capital punishment that likely costs hundreds of millions of dollars for so little apparent payoff. Enacting HB 1996 into law does nothing to address these problems.

Nevertheless, this legislation addresses a major stain on Pennsylvania's criminal justice system. Race should never play a role in deciding who lives and who dies, but the evidence you will hear and read at the hearing on HB 1996 will indicate that it has and does happen in Pennsylvania. The ACLU of Pennsylvania urges you to support this legislation.

Thank you for the opportunity to share the position of the ACLU of Pennsylvania on HB 1996. As always, you are welcome to contact me with questions and comments on this and other civil liberties issues.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andy Hoover". The signature is written in a cursive, somewhat stylized font.

Andy Hoover
Legislative Director