

## LWV Ohio Statehouse Day – March 19, 2013

### LWVO Lobbyist Report

#### Abolition of the Death Penalty

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#### **Background**

LWVO adopted a position in 2005 calling for 1) the abolition of the death penalty, and 2) a moratorium on the use of the death penalty. (See the study committee's report at [www.lwvohio.org](http://www.lwvohio.org)). In 2007, LWVUS adopted a national position calling for the abolition of the death penalty with LWVO as a co-sponsor of the proposed position. According to studies of the death penalty:

The death penalty is inherently flawed, and no amount of reform can make it an appropriate sentencing option.

Due process of the accused is often violated.

Capital punishment is systematically biased against minorities.

Over 100 persons on various state death rows have been wrongfully convicted and subsequently exonerated—including six in Ohio.

#### **Recent History**

Ohio Supreme Court Justice William O'Neill voted to strike down the death penalty, when he dissented in an order setting an execution date for Jeffrey Wogenstahl in January 2013. Justice O'Neill wrote, "I would hold that capital punishment violates the Eighth Amendment to the Constitution of the United States and Article I, Section 9 of the Ohio Constitution. The death penalty is inherently both cruel and unusual and therefore is unconstitutional.....To date, 17 states and the District of Columbia have eliminated the death penalty altogether. It is clear that the death penalty is becoming increasingly rare both around the world and in America. By definition it is unusual." He concluded, "The time to end this outdated form of punishment in Ohio has arrived."

On December 18, 2012, Death Penalty Information Center released "**The Death Penalty in 2012: Year End Report**," highlighting significant developments in capital punishment this year. The report noted the number of new death sentences in 2012 was the second lowest since the death penalty was reinstated in 1976, representing a nearly 75% decline since 1996, when there were 315 new death sentences. Only nine states carried out executions in 2012, equaling the fewest number of states to do so in 20 years. In 2012, use of the death penalty was clustered in a few states. Most executions continue to occur in the South. Just four states (Texas, Oklahoma, Mississippi, and Arizona) were responsible for over three-quarters of the executions nationwide in 2012. Connecticut was added to the list of states abolishing the death penalty in 2012.

On January 23, 2012, Joe D'Ambrosio was exonerated. He was wrongfully convicted of the 1989 murder of Anthony Klann in Cleveland. Cuyahoga County prosecutors withheld 10 pieces of evidence that would have exonerated D'Ambrosio at his trial and implicated another suspect in the crime.

January 2011, Ohio Supreme Court Justice Paul Pfeifer, who as a member of the General Assembly that reinstated the death penalty in 1981, has now stated that the system is so flawed that the death penalty needs to be abolished. Judge Pfeifer offered proponent testimony in a hearing of the House Criminal Justice Committee in December 2011. Terry Collins, former Director of the Ohio Department of Rehabilitation and Corrections, supported Judge Pfeifer's statement, further stating the death penalty is expensive, inefficient, and time-consuming and

did not put the worst offenders on death row. The Chief Justice of the Ohio Supreme Court, Maureen O'Connor, has initiated a review of the state's death penalty to determine if changes should be made and asking, "Is the system we have the best we can do?" To conduct the study, Justice O'Connor called for a 20-person committee of judges, prosecuting attorneys, criminal defense lawyers, lawmakers and academic experts convened by the state's Supreme Court and the Ohio State Bar Association. The group continues to meet.

A botched attempt in September 2009, during which prison guards spent two hours trying to find an inmate's vein suitable for his lethal injection, raised numerous constitutional questions, including whether a second attempt would constitute "cruel and unusual punishment" prohibited by the 8<sup>th</sup> Amendment. The brief moratorium ended that December when Ohio began using one lethal drug for executions rather than the mix of three used previously. Then, in January 2011, the Ohio Department of Rehabilitation and Correction (DRC) announced it will substitute Pentobarbital for Sodium Thiopental for the purposes of carrying out lethal injections in Ohio. The protocol change results from a national shortage of Sodium Thiopental and the manufacturer's announced discontinuation of production. There are 5 scheduled for execution in 2013, 5 for 2014 and 2 for 2015. Clemency was granted Ronald Post in Dec. 2012. In June 2012 the Ohio Supreme Court indefinitely postponed execution of Abdul Awkal due to mental illness. Both Gov. John Kasich and Attorney General Mike DeWine continue to support the death penalty.

A 2010 poll by Lake Research Partners found that a clear majority of voters (61%) would choose a punishment other than the death penalty for murder, including life with no possibility of parole with restitution to the victim's family (39%), life with no possibility of parole (13%), or life with the possibility of parole (9%).

**Legislative Activity:** Legislation has been stalled. On March 15, 2011 Representatives Ted Celeste and Nickie Antonio introduced HB 160 to abolish the death penalty. It has been referred to the House Criminal Justice Committee. It has 14 co-sponsors, two of which are Republican. In January, SB270 was introduced by Senator Edna Brown with cosponsors Senators Kearney and Tavares. Sponsor testimony was heard on January 31 and proponent testimony in February.

**Message:** LWVO urges continuing advocacy in support of the abolition of the death penalty.