

Federal Judge rules California death penalty law is unconstitutional

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Federal Judge Cormac Carney of the U.S. Central District Court of California ruled Wednesday in *Jones v. Chappe II* that California's death penalty is unconstitutional.

Judge Carney concluded that delays of 25 years or more in deciding appeals and carrying out occasional executions have created an arbitrary and irrational system that serves no legitimate purpose.

Ernest Dewayne Jones was sentenced to death for rape and murder in 1994. In 2009, his lawyers asked the court to review the sentence, saying the state's system was unconstitutional.

In its decision the judge pointed out that since 1978, when the current death penalty system was adopted by California voters, over 900 people have been sentenced to death for their crimes. Of them, only 13 have been executed.

"For the rest, the dysfunctional administration of California's death penalty system has resulted, and will continue to result, in an inordinate and unpredictable period of delay preceding their actual execution... As for the random few for whom execution does become a reality, they will have languished for so long on Death Row that their execution will serve no retributive or deterrent purpose and will be arbitrary.

"That is the reality of the death penalty in California today and the system that has been created to administer it to Mr. Jones and the hundreds of other individuals currently on Death Row. Allowing this system to continue to threaten Mr. Jones with the slight possibility of death, almost a generation after he was first sentenced, violates the Eighth Amendment's prohibition against cruel and unusual punishment."

The court's decision details how since 1978, 94 Death Row inmates have died from natural causes or suicide compared to 13 executions.

In other cases, courts have attributed similar long delays to the actions of defendants and upon that basis have denied relief.

In *Jones*, however, Judge Carney held the state of California to be responsible for these delays. In doing so he cited a number of other prominent sources that had previously concluded that the California death penalty system is dysfunctional, including the California Commission on the Fair Administration of Justice (2008), a study by Ninth Circuit Court of Appeals Senior Judge Arthur L. Alarcón and Paula M. Mitchell entitled "A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle" (2011), as well as a similar assessment made in 2008 from then-Chief Justice of the California Supreme Court Ronald M. George.

Relying upon these sources, the court ruled that California's underfunding of its death penalty system was a key source of the problem. The court cited how the Office of the State Public Defender's budget has been cut and its staff reduced as well as the low rate at which private appointed counsel are paid by the State, as significant factors in the decline of the pool of attorneys available to handle death penalty appeals, which in turn has greatly exacerbated these delays.

Moreover, the court pointed out, "For those that survive the extraordinary wait for their challenge to be both heard and decided by the federal courts, there is a substantial chance that their death sentence will be vacated," acknowledging that of the 81 individuals who have completed post-conviction review, 60 percent had their death sentences vacated.

Although the state's two top Democrats, Governor Jerry Brown and Attorney General Kamala Harris, both claim to oppose the death penalty, they will likely appeal this ruling to the 9th U.S. Circuit Court of

Appeals.

No executions have been carried out in California since 2006, when U.S. District Judge Jeremy Fogel ruled that the state must revise its procedures for lethal injection.

In November 2012, California voters narrowly rejected a referendum that would have abolished the death penalty and converted all death sentences to life without parole.

There are now 18 states that have abolished the death penalty, and six states—Maryland, New Jersey, New York, New Mexico, Illinois and Connecticut—have done so since 2007.

According to public opinion, polls show that there has been a steady nationwide decline of support for capital punishment since the 1990s. Public support in the mid-1990s for capital punishment was at an all-time high of 80 percent—during the Clinton administration’s promotion of a draconian “law and order” culture—with only 16 percent opposed. Support in favor of the practice has fallen to below 60 percent in the most recent polling.

A variety of factors have contributed to the dramatic decrease in support for the death penalty. Many are now opposed because of the ever-present risk of wrongful conviction, the widespread recognition of the existence of bias against low-income and minority defendants who are disproportionately charged with capital offenses, the geographic variance in its administration (rarely used in some states, routinely applied in Texas, for example), the widespread acceptance of life without parole as a preferable alternative, and the fact that most other civilized societies around the world have long ago concluded that this barbaric practice should be abolished.

Moreover, popular aversion to successive administrations carrying out endless wars, torture and massive surveillance, and a growing distrust of federal government, have also contributed to this shift.

The judicial system, representing some of the most class-conscious representatives of the ruling class, has been sensitive to this shift. In the last decade a divided U.S. Supreme Court has ruled the execution of mentally retarded individuals (*Atkins v. Virginia*, 2002) and juveniles (*Roper v. Simmons*, 2005) to be in violation of the Eighth Amendment’s ban on cruel and unusual punishment.

As mentioned earlier, executions have been halted in California since 2006 pursuant to Judge Fogel’s finding the state’s lethal injection process was so flawed as to constitute cruel and unusual punishment. Other states have continued to allow lethal injections which this year has led to horrifically botched executions in Ohio and Oklahoma.

Another source of opposition to the death penalty is from the “fiscal opponents,” who oppose it because of its exorbitant monetary cost, estimated to exceed \$300 million per execution in California. Many prosecutors and judges who previously strongly supported the death penalty—some of whom were cited in Judge Carney’s opinion—now oppose it for this reason.

It is expected that the most strident supporters of the death penalty will attempt to sponsor legislation or state voter initiatives that will call for changes to greatly expedite the execution process and thus insure a speedy execution, which they would claim to be constitutional.



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