

California governor announces moratorium on death penalty

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Newly elected California Governor Gavin Newsom on Wednesday signed an executive order imposing a moratorium on the state's death penalty. While not abolishing the death penalty, the legal effect of Newsom's order means that none of the 737 condemned inmates on California's death row can be executed while he serves as governor.

Nationally 2,738 prisoners are on death row, with California accounting for more than 25 percent of the total.

Since the death penalty was reinstated in California in 1978, the state has carried out 13 executions, the last being in 2006. During this 40-year period, 80 of California's death row inmates have died by natural causes, and 26—twice the number executed—have died by suicide.

"Our death penalty system has been—by any measure—a failure," Newsom, a Democrat, said in a written statement. "It has provided no public safety benefit or value as a deterrent. It has wasted billions of taxpayer dollars. But most of all, the death penalty is absolute, irreversible and irreparable in the event of a human error.

"We are considering executing more people than any other state in modern history—to line up human beings, every day, for executions for two-plus years. Premeditated, state-sponsored executions ... I cannot sign off on executing hundreds and hundreds of human beings, knowing among them are people who are innocent."

Newsom made reference to the 164 people nationwide who have been freed from death row after they were found to have been wrongfully convicted, including five from California.

A court-ordered moratorium on executions has been in place in California since February 2006, when a

federal judge declared that its lethal injection protocol was unconstitutional. A new execution protocol is under review, and it is expected to be approved shortly.

Once the injection protocol is approved, the 2006 court-ordered moratorium would be rescinded. With 26 inmates having all of their appeals exhausted, it was likely that Newsom would have soon found himself presiding over multiple executions on a monthly basis.

By taking this action, Newsom, who as mayor of San Francisco in 2004 authorized the issuance of marriage licenses for same-sex couples, hopes to further elevate his "progressive" brand on a national level and at the same time avoid the gruesomeness of having to preside over regularly occurring executions.

According to public opinion polls there has been a steady nationwide decline of support for capital punishment, not only in California but nationally. 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.

In California two voter initiatives to end the death penalty have narrowly failed to gain a majority in recent years, with 48 percent support in 2012 and 47 percent support in 2016.

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, the 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.

This shift has resulted in the death penalty either being abolished or suspended as a result of moratoriums in nearly half of the states. Twenty states and the District of Columbia have abolished it outright, and four states—California, Oregon, Colorado and Pennsylvania—have imposed moratoriums.

The judicial system, representing some of the most class-conscious representatives of the ruling class, has been sensitive to this shift. In 1996 Supreme Court Justice Harry Blackmun, the then 85-year-old senior member of the court, in a lone dissent from the Court's refusal to hear an appeal from a Texas death row inmate, wrote that after his 20-year struggle with the issue of capital punishment he had concluded that "the death penalty experiment has failed" and that it was time for the Court to abandon the "delusion" that capital punishment could be consistent with the US Constitution. "From this day forward," he wrote, "I no longer shall tinker with the machinery of death."

In the last two decades a divided US 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 to the Constitution's ban on cruel and unusual punishment.

In a 2015 dissent in *Glossip v. Gross*, Supreme Court Justice Stephen Breyer joined by Justice Ruth Bader Ginsburg expressed their view that the death penalty in the United States may be unconstitutional, as it violates the prohibition on "cruel and unusual punishment."

They argued that the death penalty was cruel because of its "serious unreliability" as shown by "convincing evidence ... that innocent people have been executed" and "striking evidence" that "it has been wrongly imposed" on more than 100 innocent men and women. They also said that wrongful convictions were more likely in capital than in non-capital cases, due to public pressure to obtain conviction, anomalies in the jury selection process, flawed forensic testimony, judicial

misconduct and other factors.

The recent confirmation of Brett Kavanaugh as an associate justice on the high court has shifted the Supreme Court further to the right, so it is likely that it will continue to uphold the constitutionality of the death penalty for the foreseeable future, regardless of its growing opposition nationally.

Another source of opposition to the death penalty is from its "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 now oppose it for this reason.

Newsom addressed this "fiscal opposition" by emphasizing the \$5 billion that it has cost California taxpayers since 1978.

For his part, President Trump, a proponent of capital punishment, denounced Newsom's moratorium by tweeting: "Defying voters, the Governor of California will halt all death penalty executions of 737 stone cold killers."

Following Newsom's announcement of the moratorium, Democratic Assemblyman Marc Levine introduced a state constitutional amendment to ban the death penalty in California. If approved by two-thirds of the State Assembly and Senate, this measure would then appear on the ballot in 2020.



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