

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

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February 18, 2016

The Honorable Andrew Gardiner  
President, Florida Senate  
The Capitol, Room 409  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear President Gardiner:

[The Constitution Project](#) (TCP) urges the Florida Legislature to reform the state's death penalty and pass legislation requiring a unanimous jury recommendation for a death sentence. **In particular, TCP strongly recommends the Florida Senate preserve the language in SB 7068 requiring a jury to be unanimous in recommending a death sentence.** TCP makes this recommendation based on its extensive work with a range of criminal justice stakeholders, including those with experience as judges, prosecutors, public defenders, law enforcement officers, policymakers, victim advocates and scholars.

Last month, the United States Supreme Court ruled 8-1 that Florida's capital sentencing scheme violates the Sixth Amendment to the Constitution. The decision in *Hurst v. Florida* called attention more broadly to the serious problems with Florida's administration of capital punishment. *Hurst* provides an opportunity for the Legislature to pass legislation to strengthen the legitimacy and reliability of death penalty verdicts in the state and to shield the state from costly litigation.

No matter their political perspectives or views about capital punishment, all Americans share a common interest in justice for victims of crimes and for those accused of committing crimes.

Indeed, Harry Shorstein, Former State Attorney for the Fourth Judicial District of Florida, emphasizes this common interest in fairness and reliability:

*I prosecuted death penalty cases in Florida for more than 30 years, and I know that requiring unanimity ensures more reliable verdicts in death penalty cases. Under our current sentencing laws, which do not require a unanimous jury recommendation for a death sentence, Florida leads the nation in the number of individuals wrongfully sentenced to death and later exonerated. By preserving such a low standard for sentencing someone to death, Florida is seen as an outlier on death penalty procedure. But the Florida legislature can change this by requiring unanimity of jurors when sentencing someone to death.*

Over a decade ago, TCP convened a bipartisan, blue-ribbon [Death Penalty Committee](#) comprising death penalty opponents and proponents who have issued consensus-based recommendations aimed at achieving these common objectives. The Committee is

chaired by former Florida Supreme Court Chief Justice Gerald Kogan, former Texas

Governor Mark White, and Special Prosecutor in the Oklahoma City Bombing Case, Beth Wilkinson. Committee members, such as Governor White and former Virginia Attorney General Mark Earley, have previously sent individual letters of support<sup>1</sup> to the Florida legislature in favor of unanimous juries in capital cases, as have groups of judges and prosecutors from Florida<sup>2</sup> and other states.<sup>3</sup>

Many of the Committee's members have prosecuted, defended and adjudicated capital cases that resulted in a death penalty verdict. And in all of those instances, the jury was required to be unanimous in its decision. In light of this, the Committee released a major report in 2014, *Irreversible Error*, which includes the following as a key recommendation:

*Capital punishment should not be imposed in the absence of a unanimous verdict both as to the death penalty sentence or advisory sentence and as to each aggravating circumstance used to support that sentence.*

**Florida remains the only state in the nation to violate both of these imperatives, undermining the fairness and integrity of capital verdicts in the state and subjecting the state to costly litigation.**

Accordingly, we urge the Florida legislature to pass a bill requiring a unanimous jury recommendation for death sentences.

Sincerely,



Virginia E. Sloan

cc: Members, Florida Senate Committee on Criminal Justice

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<sup>1</sup> <http://www.constitutionproject.org/wp-content/uploads/2015/03/All-3-9-2015-Earley-White.pdf>

<sup>2</sup> <http://www.constitutionproject.org/wp-content/uploads/2015/03/All-3-9-2015-FL-Letter.pdf>

<sup>3</sup> <http://www.constitutionproject.org/wp-content/uploads/2015/03/All-3-9-2015-Non-FL-letter.pdf>