



April 30, 2014

Governor John Kasich  
Riffe Center, 30<sup>th</sup> Floor  
77 South High Street  
Columbus, OH 43215-6108

Dear Governor Kasich,

We write to you today regarding two pressing matters for Ohio's death penalty system. After over two years of robust debate and thorough research by a wide array of criminal justice experts, the Ohio Supreme Court's Taskforce to Review the Administration of the Death Penalty has released 56 recommendations to reform our capital punishment system. Even for those who support the death penalty, these critical changes will guard against unfairness and injustice. It is now time for officials to take action to implement these important reforms.

As Governor, we are asking you to use your executive authority to aide this process as it navigates the legislature and judicial rulemaking process. Specifically, we ask you to:

- Commute the sentence of Arthur Tyler, who is scheduled for execution on May 28, 2014.
- Issue reprieves for the next nine individuals scheduled for execution after Mr. Tyler, so that no executions take place in 2014 or 2015.

#### Commutation of Arthur Tyler's death sentence

Arthur Tyler's case illustrates two of the gravest concerns with the application of the death penalty: execution of an innocent man and imposition of the death penalty based on racial bias. Commutation of Mr. Tyler's death is necessary to avoid both these harms.

Mr. Tyler, an African American man, was convicted of the March 12, 1983 murder of Mr. Sander Leach, who was tragically shot dead during a robbery. Serious doubts remain about Mr. Tyler's guilt and the fairness of his sentence. There is no physical evidence linking Mr. Tyler to the crime, and he was convicted only on the word of his codefendant, Leroy Head. Mr. Tyler has maintained his innocence for over 30 years.

Leroy Head repeatedly confessed – 11 times--to the murder for which Mr. Tyler stands on death row. In his first statements to the police, Mr. Head confessed that he had shot Mr. Leach, and that Mr. Tyler had not. Mr. Head's mother, who visited her son after his arrest also confirmed that her son "did it" after speaking with him. Mr. Head's story changed only when prosecutors offered him a deal to plead to a lesser charge in exchange for testifying that Mr. Tyler was the shooter. Mr. Head took that deal, changed his story, and testified against Mr. Tyler. As a result, Mr. Tyler was sentenced to death and Mr. Head received life in prison with the possibility of parole after 20 years.

The basis for the death penalty is even less strong. Under Ohio law, if a defendant is accused of a murder that is not pre-meditated, only the actual shooter, or trigger person, can be eligible for the death penalty. Even under the prosecution's theory of events, the death of Mr. Leach was not premeditated. Only the shooter in this case could be eligible for the death penalty. If, as Mr. Head repeatedly confessed, Mr. Head was the shooter and Mr. Tyler was just an accomplice, Mr. Tyler would not be eligible for the death penalty.

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org

MEMBER OF  
SHARES



The case for Mr. Tyler's death sentence was a weak one under any standard. Even with the testimony of Mr. Head, the jury was severely split over the appropriate penalty. After deliberating for a full day, several of Mr. Tyler's jury thought he should be sentenced to life.

The jury only returned a death verdict after the trial judge ordered that they continue to deliberate and reach unanimous verdict.

Now, Mr. Tyler awaits execution while Mr. Head has been released from prison and is a free man. This gross imbalance of justice should not be allowed to stand, and we cannot risk executing a person who may be innocent.

Commutation is also necessary to avoid the risk that racial bias contributed to the execution of an innocent man. In 1999, the Ohio Commission on Racial Fairness found that race still drives who ends up on death row. The American Bar Association Assessment Team concluded in 2007 that stark racial disparities still plague Ohio's death penalty system.

The Ohio Supreme Court Taskforce on the Administration of the Death Penalty has recommended a number of reforms specifically to address racial discrimination in Ohio's capital punishment system. Mr. Tyler's case falls in the exact category of cases identified by the Ohio Taskforce as posing the greatest risk for racial bias: where death eligibility was based on an aggravated robbery. *See* Joint Task Force Recommendation 33 (recommending that the legislature remove kidnapping, rape, aggravated arson, aggravated robbery, and aggravated burglary from the statute as basis for the death penalty).

As Governor, you have wisely granted clemency four times: Shawn Hawkins, Joseph Murphy, John Eley, and Ronald Post. In each of these commutations, you noted a variety of concerns that all cast doubt on whether the death penalty was the appropriate punishment. It is clear that Arthur Tyler's case presents similar concerns that should compel you to spare his life.

For these reasons, we ask you to exercise your executive clemency on Arthur Tyler.

#### Reprieve of all scheduled executions in 2014 and 2015

As a former legislator and currently elected official, we know you appreciate how arduous and delicate the legislative process can be. Under any circumstances, creating new laws and policies can be challenging, but these taskforce recommendations may present unique challenges given the subject matter. The death penalty is a difficult issue for many elected officials and members of the public to grapple with, as evidenced by the long history of controversy in Ohio.

The public deserves a thoughtful deliberation by our elected officials to weigh the positive and negative arguments for the reforms proposed by the taskforce. It will be nearly impossible to do so with the shadow of executions taking place every other month in perpetuity. Executions in Ohio have increasingly become distractions with questionable procedures, drug shortages, and ongoing litigation. We urge your office to place a pause on executions for the next two years to ensure that legislators and the public are able to adequately debate these issues without unnecessary distractions. This pause is fair to all sides of the death penalty debate—certainly if another execution is mishandled that might benefit death penalty opponents. We believe this break from executions is paramount for fair and thoughtful discussions for all sides.

Under similar circumstances, other courts and governors have recognized that a limited moratorium on executions is necessary to allow for debate and development of humane and constitutional execution methods. For example, the Maryland Governor and the Maryland Court of Appeals both instituted a limited moratorium to develop appropriate execution protocols. The Kentucky Supreme Court imposed a similar moratorium in 2009 while Kentucky developed its protocol, and the courts reviewed them. Governor Hicklopper instituted a moratorium on executions in Colorado in 2013, and Governor Kitzhaber instituted one in Oregon in 2011. Ohio has also gone through long periods where executions have been paused to develop lethal injection protocols.

Again, this is not a request to permanently end the death penalty in Ohio, but for you to place a temporary hold on executions while the legislature, judiciary and public debate the recommendations issued by the Ohio Supreme Court Taskforce. Such a pause is imperative for thoughtful discourse around important reforms that are supported by both opponents and allies of the death penalty.

If you have any questions or need additional information, please contact us by phone at (216)472-2220 or by email at [REDACTED] or [REDACTED].

Sincerely,



Christine Link  
Executive Director  
ACLU of Ohio



Mike Brickner  
Director of Communications & Public Policy  
ACLU of Ohio