



Posted on Thu, Oct. 20, 2005

LEGISLATION

Death penalty may require unanimous jury

Florida's current rules on execution require only a majority of the jury, which some worry may harm its constitutionality.

BY MARC CAPUTO
mcaputo@herald.com

TALLAHASSEE - Two South Florida lawmakers, responding to an urgent state Supreme Court request, want to fix the state's death-sentence laws by requiring juries to recommend executions unanimously, rather than by a simple majority.

CHANGE NEEDED

Sen. Alex Villalobos, a Miami Republican, and Rep. Jack Seiler, a Wilton Manors Democrat, say the change is needed to make sure Florida's death penalty isn't ruled unconstitutional in the future.

"We need to make this as foolproof as possible," said Villalobos, who along with Seiler has asked legislative staffers to draft a proposed bill.

"The Supreme Court asked us to do this, and this is the morally right thing to do," Villalobos said. "If we're going to impose the death sentence, everyone should agree that the person being executed deserves the punishment."

Florida Supreme Court Justice Raoul Cantero issued the opinion in question last Wednesday, underscoring the need for action in noting that Florida's sentencing laws are unique when compared to the 38 other death-penalty states.

"The bottom line is that Florida is now the *only* state in the country that allows the death penalty to be imposed" by simple majority vote, Cantero wrote. "Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state."

DEADLY UNCERTAINTY

The request was part of a ruling in the case of Alfredie Steele Jr., accused of the June 1, 2003, sniper-murder of a Pasco County sheriff's lieutenant. Steele's trial has been delayed as the courts have mulled the effects of a 2002 U.S. Supreme Court case, *Ring v. Arizona*, which held that juries must approve death sentences, not just judges.

Cantero noted that Florida's high court has yet to agree on the scope of the *Ring* ruling, and that "uncertainty has left trial judges groping for answers. This case is an example."

The Pasco County judge overseeing the case used two innovative rulings to make sure that, if tried and sentenced to death, Steele wouldn't go free under a favorable high court ruling.

First, the judge required prosecutors to tell Steele's lawyers before trial what aggravating factors -- such as whether the crime was heinous, against a law enforcement officer, etc. -- they planned to pursue to persuade the jury to recommend death. The state Supreme Court upheld that requirement.

Secondly, the judge invented a special verdict form to specify each aggravating factor that jurors found, and she required a majority of jurors to agree on each aggravating factor.

Florida now requires a majority of jurors to find that aggravating factors existed to justify a death sentence, even if they vote for different aggravators.

With Justice Harry Lee Anstead and Chief Justice Barbara Pariente dissenting in part, the court forbade the judge's special verdict form, pointing out that it was "an ad hoc approach" that could lead to "disparities" in different proceedings in different courts "contrary to the Eighth Amendment's ban on cruel and unusual punishments."

POLITICAL SUPPORT

For Rep. Seiler, a self-described "pro-death penalty Democrat," Justice Cantero's ruling should attract conservatives, who often kvetch

about judges ``legislating from the bench."

"He's a brilliant legal mind and he sees a problem with our death penalty we should fix. So we should fix it. It's pretty simple," Seiler said.

Still, there may be opposition from Seiler's chief, House Speaker Allan Bense.

"I'm not inclined to back off on the death penalty. The judges ultimately decide the sentence anyway," said Bense, who nevertheless promised a fair hearing on the issue.

The bill should move faster in the Senate, where Villalobos is the Republican leader and is part of President Tom Lee's leadership team.

Lee said he supports the measure.

"I believe the death penalty should be carried out swiftly and with certainty," Lee said. ``For those interested in retaining capital punishment in Florida, this issue is worth considering. Particularly if a unanimous jury recommendation protects the integrity and constitutionality of the death penalty in Florida. The fact that the Supreme Court justices are making this argument is significant."

© 2005 Herald.com and wire service sources. All Rights Reserved.
<http://www.miami.com>