

FLORIDA CONFERENCE OF CATHOLIC BISHOPS

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MICHAEL B. SHEEDY
EXECUTIVE DIRECTOR



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The Honorable Carlos Beruff
Chair, Constitutional Revision Commission (CRC)
The Capitol
Tallahassee, FL 32399

Re: Concerns with CRC Proposal 96 – Capital Case Appeal Provisions

Dear Carlos:

Per our discussion last week, we outline below our concerns with a provision of Proposal 96, which will be considered by the CRC as PCP 6001, requiring state level appeals for capital cases to be completed in five years.

Inconsistent with Marsy's Law language in other states

Voters in California, Illinois, Montana, North Dakota, Ohio, and South Dakota have approved similar "Marsy's Law" amendments to their state constitutions. Although each of these propositions included general language expressing the prompt conclusion of cases as a victims' right, none of these established hard deadlines by which to complete appeals.

Inconsistent with Florida precedent

The Death Penalty Reform Act of 2000 created a similar five-year standard in Florida. That same year, the Florida Supreme Court struck down this provision, among others. In the Timely Justice Act of 2013, the Florida legislature deleted the provisions of the Death Penalty Reform Act that were held unconstitutional. This included replacing the five-year deadline with "as soon as possible" for the conclusion of capital case appeals and post-conviction actions (FS 924.055).

Deadline is unrealistic

Five years for capital appeals and post-conviction is unenforceable. Just in 2016, California voters passed Proposition 66 which included a similar timeline in which the courts were required to act in capital cases. In its *Briggs v. Brown* decision, the California Supreme Court stated, "...we hold that in order to avoid serious separation of powers problems, provisions of Proposition 66 that appear to impose strict deadlines on the resolution of judicial proceedings must be deemed directive rather than mandatory."

Current proposed fallback remains problematic

We recognize that the proposal includes a clause stating that if a court is unable to meet the deadline, it shall enter an order explaining the non-compliance. Seeking this exemption would likely become the exception, not the norm, as courts will be pressured to rush through these life-and-death cases to meet the constitutionally-established deadline.

Risks the execution of innocents

Florida leads the nation in the number of persons exonerated from death row. Of the 27 people Florida has released from death row, 12 were exonerated after five years. We risk executing innocent persons by imposing strict deadlines in this most severe of sentences.

Proposed remedy

Our strongest preference would be to adopt an amendment that strikes the language from line 133 to 138 in PCP 6001. This would also remove all of the "hard" deadlines, including the two-year requirement for non-capital cases as well as the five-year requirement for capital cases.

~~*b. All state-level appeals and collateral attacks on any judgment must be complete within two years from the date of appeal in non-capital cases and five years in capital cases, unless a court enters an order with specific findings as to why the court was unable to comply with this subparagraph and the circumstances causing the delay. Each year, the chief judge of any district court of appeal or the chief justice of the supreme court shall report on a case-by-case basis to the speaker of the house of representatives and the president of the senate all cases where the court entered an order regarding inability to comply with this subparagraph. The legislature may enact legislation to implement this subparagraph.*~~

Barring such an amendment, the language establishing the five-year limit (in line 135 and highlighted above) should be stricken.

Thank you for your consideration of these concerns. We are pleased to address any questions you may have.

Sincerely,



Michael B. Sheedy

cc: Mr. Jeff Woodburn
Most Rev. Thomas G. Wenski, Archbishop of Miami & FCCB President