



LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS UNDER LAW

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September 24, 1990

Hand Delivered

Members of the United States  
House of Representatives  
Washington, D.C. 20515-0904

Re: Racial Justice Act, H.R. 4618

Dear Representative:

I am writing to express the support of the Lawyers' Committee for Civil Rights Under Law for the Racial Justice Act H.R. 4618, now under consideration by the House of Representatives. We are aware of the extensive evidence demonstrating that, in some areas of the nation, black defendants receive the death penalty much more frequently than white defendants in similar situations, and that those whose victims are black receive the death penalty much less often than those in similar situations whose victims are white. The Lawyers' Committee strongly believes that such racial discrimination should not be tolerated in the imposition of the death penalty in this country, and that the Racial Justice Act is a step in the direction of eliminating racial discrimination in capital sentencing.

By using statistical evidence to determine whether the death sentence in a particular case is part of a larger pattern of racial discrimination, the Racial Justice Act conforms to other areas of civil rights law where statistics are employed to detect instances of unlawful discrimination. See e.g., Thornburg v. Gingles, 478 U.S. 30, 51-58 (1986) (statistical evidence of racial voting patterns plays a central role in determining violations of the Voting Rights Act); Castaneda v. Partida, 430 U.S. 482 (1977) (statistical evidence makes out a prima facie case of racial discrimination in the selection of grand juries); Teamsters v. United States, 431 U.S. 324 (1977) (statistical evidence can establish intentional and unlawful racial discrimination in employment cases). Thus, the approach of the Racial Justice Act is hardly novel, but instead is in keeping with time-tested evidentiary methods for uprooting unlawful discrimination.

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It is important to note that the Racial Justice Act would not eliminate the individual discretion of the judge and jury in capital cases. It would merely require that this discretion be exercised in a manner free of racial discrimination. This is nothing more than what is accomplished through other civil rights statutes. For instance, the Voting Rights Act does not eliminate the discretion afforded local governments to design their own redistricting, but only ensures that the discretion be consistent with racial fairness. Similarly, Title VII is not designed to take away the discretion of employers in matters of hiring and promotion and discharge, but instead to prevent discrimination in the use of that discretion.

Given the awesome magnitude of a sentence of death, and the powerful evidence that racial discrimination infects capital sentencing in some areas of the nation, it is entirely appropriate to adopt evidentiary tools that are commonplace in the law as a means of prohibiting discrimination in the imposition of capital punishment. Accordingly, we urge that you support the Racial Justice Act.

Sincerely,



Barbara R. Arnwine  
Executive Director