



December 8, 2009

Dear Representative:

**RE: ACLU Urges Support for H.R. 3986, the Effective Death Penalty Appeals Act – A Valuable First Step in Reforming a Broken Death Penalty System**

On behalf of the American Civil Liberties Union, a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide, we urge you to co-sponsor and support H.R. 3986, the Effective Death Penalty Appeals Act, which was recently introduced by Representative Henry Johnson (D-GA). This timely legislation is an important first step in urgently needed habeas reform. It would ensure the availability of federal habeas corpus relief for defendants sentenced to death, but who are later able to present evidence establishing their innocence that may not have been available at the time of trial, and could have led to a different result if it had been presented.

Since 1973, there have been 139 individuals who have been released from death row through evidence of their innocence, including nine so far in 2009 alone.<sup>1</sup> The sentencing of innocent people to death continues to be a fundamental failure in our system of capital punishment. Providing federal courts with the opportunity to hear evidence of an individual's innocence, which may not have been available at the original trial, is an essential component of a fair justice system, and is particularly critical in cases where a defendant has been sentenced to death. Numerous federal laws, however, currently prohibit just such claims from ever being heard.

Federal laws like the Antiterrorism and Effective Death Penalty Act of 1996 and the USA PATRIOT Improvement and Reauthorization Act of 2005, as well as numerous Supreme Court decisions, have greatly limited the ability of federal review of state court death penalty convictions. In addition to the denial of relief to defendants who have powerful evidence of their innocence, many defendants who have suffered serious constitutional violations, such as inadequate defense counsel, racially discriminatory jury selection, and suppression of exculpatory evidence have been left without federal judicial recourse. H.R. 3986 begins to correct this failure in our death penalty system by, at a minimum, ensuring that those on death row who have exculpatory evidence will be able to make their case in the federal system. While the ACLU is fully supportive of this legislation, we also believe that a more comprehensive solution to the egregious limitations on federal habeas corpus relief in death penalty cases is needed. As just one

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<sup>1</sup> Death Penalty Information Center, available at -  
<http://www.deathpenaltyinfo.org/innocence-and-death-penalty>

example, we are concerned that the limitation on habeas appeals when a constitutional violation exists remains unresolved under this legislation.

Last year, the ACLU, along with a broad-based coalition of organizations comprising the Criminal Justice Transition Coalition, produced “Smart on Crime: Recommendations for the Next Administration and Congress.”<sup>2</sup> In it, the coalition writes –

The death penalty is one aspect of the criminal justice system that society cannot afford to be broken. There is simply no remedy for the execution of defendants who were not afforded all of their constitutional rights or, even worse, are innocent of the crime charged. Justice Kennedy recently opined that “[w]hen the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.”<sup>3</sup>

Justice Kennedy’s words resonate in the Effective Death Penalty Appeals Act, which will provide an additional layer of protection in ensuring that innocent men and women are not put to death in this country. While the ACLU ultimately favors a more robust and comprehensive solution to the denial of federal habeas corpus rights to those on death row (and recognizes that the best answer to these problems ultimately lies in the abolition of capital punishment), we also recognize the importance of embracing positive reforms.

For that reason, we encourage you to fully support and co-sponsor H.R. 3986, the Effective Death Penalty Appeals Act.

Sincerely,



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<sup>2</sup> “Smart on Crime: Recommendations for the Next Administration and Congress,” available at - <http://2009transition.org/criminaljustice/>

<sup>3</sup> *Kennedy v. Louisiana*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 2641, 2650 (2008).