

November 8, 2005

**Re: Opposing the Death Penalty Provisions in House Patriot, USA Patriot and Terrorism Prevention Reauthorization Act of 2005.**

Dear Senate Conferees:

The undersigned organizations write to urge that conferees remove the capital sentencing provisions from the USA Patriot and Terrorism Prevention Reauthorization Act of 2005 (H.R. 3199), which will be considered by a Senate and House Conference Committee in the near future. Title II of H.R. 3199 would permit crimes of attempt and conspiracy to be punished by a death sentence, radically increase the number of federal crimes subject to the death penalty, and allow federal prosecutors two or more bites at the apple to ensure the jury will impose the death penalty. **We urge you to report the Patriot Act Reauthorization legislation without the death penalty provisions.**

Section 214 of the legislation would allow the government to impose the death penalty even if the defendant had no intent to kill or to act in reckless disregard of human life as required by 18 USC 3591(a)(1). This federal statute governs almost all other federal death penalty crimes and currently requires the government to prove that the defendant either intended to cause death or serious bodily injury or acted with extreme indifference to human life, etc. By eliminating the requirement that the government prove intent, this provision of H.R. 3199 likely violates the Eighth Amendment of the U.S. Constitution. *See Enmunds v. Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); *Tison v. Arizona*, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987).

Section 211 alone adds 25 death penalties and would allow the death penalty for attempting and conspiring to commit terrorism crimes. This provision also raises significant constitutional concerns: sentencing a person to death for a crime of attempt and conspiracy would also most certainly be found to violate Eighth Amendment. *See Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977).

Under current federal law, a defendant is given a life sentence if a jury of twelve of his or her peers does not unanimously agree to the death penalty. It is important to note that all capital juries are "death qualified," meaning that anyone who opposes the death penalty on moral, religious, or practical grounds is excluded. Thus, under current law, prosecutors already have a great ability to influence the jury to impose the death penalty. Under H.R. 3199, if the defendant's first sentencing jury does not reach a unanimous recommendation for death, the prosecutor can impanel a succession of new juries until he or she can convince one of them to unanimously vote for the death penalty. If prosecutors

are permitted to impanel multiple sentencing-phase juries, it could result in a person receiving a death sentence even after the majority of the jurors that sat through the trial voted for a sentence of life in prison.

The legislation would also permit a judge to reduce the size of a sentencing jury to fewer than twelve for “good cause,” with no minimum number set. This would further erode the protections of the jury system – an institution that is designed to reflect the conscience of the community and to stand between the state and the accused.

For these reasons, we urge you to oppose all efforts to include H.R. 3199 Title II provisions in the final version of the Patriot Act Reauthorization legislation, which would result in a drastic change in federal death penalty law.

Respectfully Submitted,

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American Civil Liberties Union

Mary Ellen McNish  
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American Friends Service Committee

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cc: House Judiciary Committee Members  
House Permanent Select Committee on Intelligence Members