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May 12, 2017

The Honorable Paul Ryan
Speaker of the House
United States House of Representatives
122 Longworth House Office Building
Washington, DC 20515

The Honorable Pete Sessions
Chairman
United States House of Representatives
Committee on Rules
2233 Rayburn House Office Building
Washington, DC 20515

The Honorable Kevin McCarthy
Majority Leader
United States House of Representatives
H-107, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
233 Cannon House Office Building
Washington, DC 20515

RE: Opposition to H.R. 115 – The Thin Blue Line Act

Dear House Speaker Ryan, Chairman Sessions, Majority Leader McCarthy, and Minority Leader Pelosi:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write to urge you to oppose H.R. 115, which would add the killing or targeting of a law enforcement officer, firefighter or first responder as an aggravating factor in determining whether a sentence of death is justified. While we support laws that ensure the safety and wellness of both law enforcement and the communities they serve, H.R. 115 - the Thin Blue Line Act - will not accomplish this goal. Instead, the bill needlessly duplicates federal laws that already enhance the sentences of persons convicted of crimes of violence against law enforcement, does nothing to address the documented and pervasive racial disparities in the imposition of the death penalty, and is being introduced at a time when public support for the death penalty is waning and victims of crime support rehabilitation over punishment.

LDF is the nation's oldest civil rights law firm. Since its founding in 1940 by Thurgood Marshall, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has served as counsel of record and amicus curiae in federal and state court



litigation challenging the arbitrary role of race in death penalty cases.¹ Most recently, LDF successfully challenged the racially discriminatory capital sentencing of a defendant in the United States Supreme Court.² With this background, we are well positioned to raise concerns about H.R. 115.

I. H.R. 115 duplicates federal and state laws that enhance sentences of persons convicted of crimes of violence against law enforcement

H.R. 115 needlessly duplicates federal and state laws that already impose heightened punishments on persons found guilty of violent crimes against law enforcement. For example, the very law that the proposed bill seeks to amend, 18 U.S.C. § 3592, already states that a crime against a high public official, including “a judge, a law enforcement officer, or an employee of a United States penal or correctional institution,” is an aggravating factor that may be considered in determining whether a death sentence should be imposed.³ Other federal laws impose a life sentence or death on persons convicted of killing state and local law enforcement officers or other employees assisting with federal investigations,⁴ as well as officers of the U.S. courts.⁵

Additionally, all 50 states have laws in place that enhance penalties for crimes against peace officers, and in some instances, crimes against first responders.⁶ For example, in Colorado, a person convicted of killing a peace officer, fire fighter or emergency medical service provider may be sentenced to life without the possibility of parole or death.⁷ Therefore, H.R. 115 is superfluous and must be rejected.

II. H.R. 115 does not address documented racial disparities in the imposition of the death penalty

Instead of adding language that already exists, we respectfully urge Members of Congress to advance amendments to 18 U.S.C. § 3592 that would address pervasive racial disparities found in the imposition of the death penalty. African Americans comprise 42%

¹ See, e.g., *McCleskey v. Kemp*, 481 U.S. 279 (1987) (holding that the statistical study McCleskey presented concluding that Black defendants who kill white victims are the most likely to receive death sentences in Georgia did not prove intentional discrimination that had a discriminatory effect on him in this case; therefore, there was no constitutional violation); *Furman v. Georgia*, 408 U.S. 238 (1972) (holding that the imposition and carrying out of the death penalty in this case was cruel and unusual punishment and therefore a violation of the Eighth and Fourteenth Amendments).

² *Buck v. Davis*, 580 U.S. ____ (2017) https://www.supremecourt.gov/opinions/16pdf/15-8049_f2ah.pdf.

³ 18 U.S.C. § 3592(c)(14) (2006).

⁴ 18 U.S.C. § 1121(a)(1)(1996).

⁵ 18 U.S.C. § 1503 (1996).

⁶ See, Anti-Defamation League, *Statutes Providing Enhanced Penalties for Crimes Against Police, Fifty States Against Hate*, Washington, D.C. (2016).

⁷ Colo. Rev. Stat. § 18-3-107 (2014).

of death-row prisoners,⁸ but only 13% of the nation's population. Between 1976 and 2016, 77% of the victims of executed prisoners were white, while only 15% of the victims were African American,⁹ even though almost half of all homicide victims overall are African American.¹⁰ Alarming, since 1976, only 20 white prisoners were executed for the murder of an African-American victim, while 286 African-American prisoners have been executed for the murder of a white victim.¹¹

These disparities should be troublesome to anyone who believes in the fair administration of the rule of law. Researchers have advanced reasons for racial disparities in the imposition of the death penalty, including a perceived link between race and dangerousness.¹² Regardless of the explanation, drafters of laws should study and understand the impact of these laws. Therefore, we urge Members of Congress to promote a bill that would require the federal government and states to study and address the racial impact of the imposition of the death penalty under 18 U.S.C. § 3592.

III. There is no evidence of public support for the expansion of the death penalty or for harsh punishment of persons who commit crimes

Finally, H.R. 115 is being considered at a time when Americans' support of the death penalty is at its lowest in over 40 years. According to the PEW Research Center, public support for the death penalty has dropped seven points, from 56% to 49%, and 42% of Americans oppose it.¹³ The botched execution of Clayton Lockett by Oklahoma officials in 2014 may have caused many to abandon support of the death penalty. Witnesses observed Mr. Lockett squirming in pain after prison officials failed to properly administer the drugs

⁸ See, Death Penalty Information Center, *National Statistics on the Death Penalty and Race* (2017), <https://deathpenaltyinfo.org/race-death-row-inmates-executed-1976?scid=5&did=184>.

⁹ *Id.*

¹⁰ See, Alexia Cooper & Erica L. Smith, *Homicide in the U.S. Known to Law Enforcement, 2011*, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ243035 (Dec. 2013) at 4 tbl.1.

¹¹ See, Death Penalty Information Center, *National Statistics on the Death Penalty and Race* (2017), <https://deathpenaltyinfo.org/race-death-row-inmates-executed-1976?scid=5&did=184>.

¹² See, e.g., Jennifer L. Eberhardt, et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital Sentencing Outcomes* 384 (Cornell L. Fac. Publ'ns 2006), available at http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1040&context=lsrp_papers (finding that after controlling for case and individual differences, "defendants whose appearance was perceived as more stereotypically Black were more likely to receive a death sentence than defendants whose appearance was perceived as less stereotypically Black").

¹³ Baxter Oliphant, *Support for Death Penalty Lowest in More than Four Decades*, Pew Research Ctr. (Sept. 29, 2016), <http://www.pewresearch.org/fact-tank/2016/09/29/support-for-death-penalty-lowest-in-more-than-four-decades/>.



into his veins.¹⁴ And, last month, Arkansas officials delayed the execution of Marcel Williams after witnesses feared that the execution of Jack Jones, was “tortuous and inhumane.”¹⁵

Additionally, a recent national survey reveals that crime victims, by a 2 to 1 margin, want a criminal justice system that focuses more on rehabilitation than punishment.¹⁶ Specifically, they prefer shorter sentences and more spending on crime prevention, such as education, jobs, and treatment. Therefore, H.R. 115 is contrary to the desires of victims of crime.

Over the years, well-documented unconstitutional policing practices in communities of color across this country has eroded trust between these communities and the law enforcement officials sworn to protect them.¹⁷ Rather than adopting law enforcement reforms aimed at helping local jurisdictions meet their obligations to ensure law enforcement is acting in a constitutional manner, this bill sows seeds of division, ultimately threatening the safety of both officers and communities.

For these reasons, we urge you to oppose H.R. 115. If the goal of the proposed bill is to protect law enforcement officers, first responders and the communities they serve, then Congress should advance laws requiring officer training on implicit-bias and de-escalation and other practices that will improve community-police relations.

Sincerely,

A handwritten signature in blue ink that reads "Todd A. Cox".

Todd A. Cox
Director of Policy

CC: Rep. Bob Goodlatte, Chair, House Judiciary Committee
Rep. John Conyers, Ranking Member, House Judiciary Committee

¹⁴ Greg Botelho and Dana Ford, *Oklahoma stops execution after botching drug delivery*, CNN (Oct. 9, 2014), <http://www.cnn.com/2014/04/29/us/oklahoma-botched-execution/>.

¹⁵ Emanuella Grinberg et al. *Arkansas executes 2 men in one night*, CNN (Apr. 25, 2017), <http://www.cnn.com/2017/04/24/us/arkansas-executions/>.

¹⁶ All. for Safety and Justice, *Crime Survivors Speak* 15 (2016), <https://www.allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

¹⁷ See, e.g., U.S. Dep’t of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department* (2016), <https://www.justice.gov/opa/file/883366/download>.



Rep. Trey Gowdy, Chair, House Judiciary Subcommittee on Crime, Terrorism,
Homeland Security and Investigations

Rep. Sheila Jackson Lee, Ranking Member, House Judiciary Subcommittee on
Crime, Terrorism, Homeland Security and Investigations

Rep. Louise M. Slaughter, Ranking Minority Member, House Committee on Rules