

New York Office  
40 Rector Street, 5th Floor  
New York, NY 10006-1738

T 212.965.2200  
F 212.226.7592

[www.naacpldf.org](http://www.naacpldf.org)



Washington, D.C. Office  
1444 Eye Street, NW, 10th Floor  
Washington, D.C. 20005

T 202.682.1300  
F 202.682.1312

April 26, 2017

The Honorable Bob Goodlatte  
Chairman  
United States House of Representatives  
Committee on the Judiciary  
2309 Rayburn House Office Building  
Washington, DC 20515

The Honorable John Conyers, Jr.  
Ranking Member  
United States House of Representatives  
Committee on the Judiciary  
2426 Rayburn House Office Building  
Washington, DC 20515

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

Dear Chairman Goodlatte and Ranking Member Conyers:

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 attempted killing of a law enforcement officer 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.

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.<sup>1</sup> Most recently, LDF successfully challenged the racially discriminatory capital sentencing of a defendant in the United States Supreme Court.<sup>2</sup> With this background, we are well positioned to raise concerns about H.R. 115.

---

<sup>1</sup> 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).

<sup>2</sup> *Buck v. Davis*, 580 U.S. \_\_\_\_ (2017) [https://www.supremecourt.gov/opinions/16pdf/15-8049\\_f2ah.pdf](https://www.supremecourt.gov/opinions/16pdf/15-8049_f2ah.pdf).



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.<sup>3</sup> 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,<sup>4</sup> as well as officers of the U.S. courts.<sup>5</sup>

Additionally, all 50 states have laws in place that enhance penalties for crimes against peace officers, and in some instances, crimes against first responders.<sup>6</sup> 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.<sup>7</sup> 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% of death-row prisoners,<sup>8</sup> 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,<sup>9</sup> even though almost half of all homicide victims overall are African American.<sup>10</sup> Alarming, since 1976, only 20 white prisoners were executed for the murder

---

<sup>3</sup> 18 U.S.C. § 3592(c)(14) (2006).

<sup>4</sup> 18 U.S.C. § 1121(a)(1)(1996).

<sup>5</sup> 18 U.S.C. § 1503 (1996).

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

<sup>7</sup> Colo. Rev. Stat. § 18-3-107 (2014).

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

<sup>9</sup> *Id.*

<sup>10</sup> 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.

of an African-American victim, while 286 African-American prisoners have been executed for the murder of a white victim.<sup>11</sup>

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.<sup>12</sup> Regardless of the explanation, drafters of laws should study and understand the impact of these laws. Therefore, we urge Members of Congress to promote an amendment that would require the federal government and states to study and address the racial impact of the imposition of the death penalty.

### III. There is no evidence of public support for the expansion of the death penalty

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.<sup>13</sup> 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 into his veins.<sup>14</sup> And, this week, Arkansas officials delayed the execution of Marcel Williams after witnesses feared that the execution of Jack Jones, earlier that evening, was "tortuous and inhumane."<sup>15</sup>

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.<sup>16</sup> Rather than adopting law enforcement

---

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

<sup>12</sup> 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](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").

<sup>13</sup> 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/>.

<sup>14</sup> 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/>.

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

<sup>16</sup> See, e.g., U.S. Dep't of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department*, Aug. 10, 2016, <https://www.justice.gov/opa/file/883366/download>.



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,

Todd A. Cox  
Director of Policy

Monique L. Dixon  
Deputy Director of Policy