



Capital Punishment Project  
Trone Center for Justice & Equality

WILMER CUTLER PICKERING HALE AND DORR LLP

**For Immediate Release:** April 9, 2024

**Media Contact:**

LDF Media Office: [media@naacpldf.org](mailto:media@naacpldf.org), 212-965-2200

ACLU National: [media@aclu.org](mailto:media@aclu.org)

WilmerHale LLP: Frank E. James, [frank.james@wilmerhale.com](mailto:frank.james@wilmerhale.com), 202-247-3560

**\*\*\*FOR IMMEDIATE RELEASE\*\*\***

***Renowned Civil Rights and Legal Organizations File Petition  
Challenging California Death Penalty, Highlight Evidence  
Demonstrating Racial Discrimination***

**(California)** - Today, a consortium of nationally renowned civil rights organizations, legal organizations, and a law firm [filed](#) an extraordinary writ petition in the Supreme Court of California challenging the state's death penalty statute as racially discriminatory and unconstitutional under the Equal Protection guarantees of the California Constitution. This is the first time a petition of this nature has been filed with the court.

The original petition to the Supreme Court of California was filed by the Legal Defense Fund (LDF), the American Civil Liberties Union Capital Punishment Project (ACLU CPP), the ACLU of Northern California (ACLU NorCal), WilmerHale, and the Office of the State Public Defender (OSPD). This challenge was brought on behalf of petitioners OSPD, Witness to Innocence, LatinoJustice PRLDEF, the Ella Baker Center for Human Rights, and Eva Paterson, co-founder of the Equal Justice Society.

The evidence of racial bias in California's implementation of the death penalty is pervasive and well-documented. [Numerous empirical studies](#) by [leading social science experts](#) reveal troubling disparities: Black people are about five times more likely to be sentenced to death when compared

to similarly situated non-Black defendants, while Latino people are at least three times more likely to be sentenced to death.

“The California Constitution does not permit a two-tiered system of justice where the most severe sentence the state has on its books is imposed overwhelmingly on Black and Brown people,” said **Lisa Romo, Senior Deputy State Public Defender at OSPD**. “We urge the Court to address this long-standing injustice and ensure that Black and Brown people are no longer sentenced disproportionately to death.”

“Equal protection under the laws is a fundamental guarantee of the California Constitution,” said **Seth Waxman, partner and Co-Chair of WilmerHale’s Appellate and Supreme Court Litigation Practice**, “but for decades administration of the death penalty in California has failed to meet that guarantee.” Added **Jessica Lewis, a partner in WilmerHale’s San Francisco office**: “That failure is why this petition is so critical. The empirical evidence described in the petition demonstrates that the death penalty in California has long been administered in a racially discriminatory manner, in violation of the equal protection guarantees of the California Constitution.”

California’s capital punishment scheme is not only racially discriminatory, but this form of punishment, as well as other tools of racial violence, have historically been weaponized to harm people of color.

“The persistence of racial disparities in the administration of capital punishment in California is linked to a legacy of racial violence and oppression long perpetrated against Black people and other people of color,” said **LDF Assistant Counsel Patricia Okonta**. “Capital punishment has roots in slavery, lynchings, and white vigilantism. Maintaining these violent remnants of racial subordination is unconscionable and has no place in modern society.”

Both Governor Gavin Newsom and California Attorney General Rob Bonta have acknowledged the persistent and pervasive racial disparities in the administration of the death penalty in California. In a 2021 amicus brief submitted in *People v. McDaniel*, Governor Newsom acknowledged that the “overwhelming majority of studies that have analyzed America’s death penalty have found that racial disparities are pervasive, and that the race of the defendant and the race of the victim impact whether the death penalty will be imposed.” In March of 2019 Governor Newsom signed an Executive Order instituting a moratorium on the death penalty in California stating that, “death sentences are unevenly and unfairly applied to people of color. . .”

“California’s racially biased death penalty continues to destroy Black and Brown communities,” said **Ella Baker Center for Human Rights Prison Advocacy Coordinator Morgan Zamora**. “Even after Governor Newsom’s 2019 moratorium on executions, seventeen people — 80% of whom are Black or Latiné — have been sentenced to death. Black and Brown Californians deserve for our state to live up to its values and take the necessary steps to finally end the death penalty.”

In 2021, Attorney General Bonta also notably stated that capital punishment has “long had a disparate impact on defendants of color, especially when the victim is white,” and added that “[California is] moving towards ending the death penalty.” Despite these disparities and Governor Newsom’s moratorium, California prosecutors continue to seek the death penalty and obtain sentences disproportionately against people of color.

“The Attorney General is of course correct that California's capital punishment scheme harms Black and brown people disproportionately,” **said Deputy Director of the Criminal Justice Program at ACLU NorCal Avi Frey.** “The question is what the Attorney General intends to do about this unconstitutional reality. As the State’s chief law enforcement officer, and an avowed defender of equal justice under the law, we would hope and expect that the Attorney General would take affirmative steps to dismantle this racially motivated and disparate system.”

“The body of evidence presented in this petition demonstrates what experienced death penalty practitioners in California and around the country have long known: decision-makers at every stage of capital prosecution from charging to sentencing have treated Black and Brown lives as less valuable than white lives,” said **Claudia Van Wyk, senior staff attorney with the ACLU Capital Punishment Project.** “This case gives the California Supreme Court an opportunity to implement the State’s core constitutional values and right this wrong.”

#

*Founded in 1940, the Legal Defense Fund (LDF) is the nation’s first civil rights law organization. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the Legal Defense Fund or LDF. Please note that LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights.*

*For more than 100 years, the ACLU has worked in courts, legislatures, and communities to protect the constitutional rights of all people. With a nationwide network of offices and millions of members and supporters, the ACLU takes on the toughest civil liberties fights in pursuit of liberty and justice for all.*

*The Office of the State Public Defender (OSPD), established in 1976, is a state agency charged with defending indigent people sentenced to death in California and with improving the quality of indigent defense in the state. The office has represented nearly 300 death-sentenced individuals, including over 65 people with cases currently pending before the California Supreme Court.*

*Wilmer Cutler Pickering Hale and Dorr LLP provides legal representation across a comprehensive range of practice areas that are critical to the success of its clients. The law firm’s leading Intellectual Property, Litigation/Controversy, Regulatory and Government Affairs, Securities and Financial Services, and Transactional Departments participate in some of the highest-profile legal and policy matters. With a staunch commitment to public service, WilmerHale is renowned as a leader in pro bono representation. The firm is 1,000 lawyers strong with 13 offices in the United States, Europe and Asia. For more information, please visit [wilmerhale.com](http://wilmerhale.com).*

*For over twenty-seven years, the Ella Baker Center for Human Rights has advanced people-powered campaigns for racial and economic justice – and we are winning. Named after civil rights hero Ella Baker, we shift resources away from prisons and punishment towards opportunities that make our communities safe, healthy, and strong. [ellabakercenter.org](http://ellabakercenter.org)*