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LDF Files Amicus Brief in South Carolina Supreme Court Urging Expansion of Cases it Considers in Conducting Comparative Proportionality Review

Today, the NAACP Legal Defense and Educational Fund, Inc. (LDF) and co-counsel Mark C. McLawhorn submitted an amicus brief in support of Richard Moore, a Black man currently on death row in South Carolina, who challenges his death sentence as unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution.

The South Carolina Supreme Court is required by statute to review every case in which a sentence of death is imposed to confirm that the sentence is not excessive or disproportionate to the penalty imposed in similar cases. But the Court only reviews other “similar” cases that resulted in a death penalty and effectively ignores the dozens and sometimes hundreds of cases with more similar fact patterns and aggravating circumstances that did not result in a death sentence. LDF’s amicus brief argues that the Court should consider similar cases that did not result in a death sentence to ensure that racial discrimination and other unconstitutionally arbitrary factors do not play a role in determining when someone is sentenced to death.

“The South Carolina Supreme Court must expand the pool of cases it considers on proportionality review for the review to be meaningful,” said LDF Director of Litigation Samuel Spital. “Numerous studies show that a person is more likely to be sentenced to death in cases involving white victims. To ensure such discrimination does not infect the administration of the death penalty, the South Carolina Supreme Court must consider a broad range of similar cases—including cases where death was not imposed—as part of its proportionality review.”

Mr. Moore was convicted of murdering a convenience store clerk during the commission of a robbery. But despite the evidence that Mr. Moore did not plan to kill anyone and did not enter the convenience store with a weapon, and despite the many other armed robbery homicides with similar or more aggravated fact patterns for which the state did not seek the death penalty, the State pursued the death penalty against Mr. Moore.

“Mr. Moore’s case is a striking example of why it is important to consider cases in which death was not imposed on proportionality review,” said Mahogane Reed, LDF’s John Payton Supreme Court Appellate & Supreme Court Advocacy Fellow. “Mr. Moore is a Black man convicted of killing a white victim in an armed robbery. In concluding that his death sentence was proportionate on direct appeal, this South Carolina Supreme Court identified four other armed robbery homicides where the defendant received the death sentence. Each of those involved white victims, and three involved Black defendants. By failing to consider cases where death was not imposed, the South Carolina Supreme Court’s proportionality review cannot determine whether this pattern indicates that race has an unconstitutional impact on whether defendants convicted of armed robbery homicides receive a death sentence in South Carolina.”

Read LDF's amicus brief [here](#).

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization. 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. 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 NAACP Legal Defense Fund or LDF. Follow LDF on [Twitter](#), [Instagram](#) and [Facebook](#).