

URGENT ACTION

GOVERNOR – ACT FOR JUSTICE, STOP EXECUTION

The Ohio parole board has recommended against clemency for Raymond Tibbetts despite a juror telling them that he would have voted for life if the jury had heard mitigation evidence revealed since the trial. The Governor can still grant clemency.

On 8 February 2018, five days before **Raymond Tibbetts** was due to be executed for the 1997 murder of Fred Hicks, the Ohio Governor issued an eight-month reprieve and sent the case back to the parole board after he received a letter in favour of clemency from a man who had served as a juror on the case and had since learned of the mitigation evidence not presented at the 1998 trial. The juror wrote that “[b]ased on what I know today I would not have recommended the death penalty.” In 2011, a federal judge described the trial lawyer’s “failure to engage in basic preparation” of evidence about Raymond Tibbetts’ traumatic upbringing, and wrote that evidence revealed since showed “a much more chaotic and abusive environment” in parental and foster care than the jurors heard about. These “shocking” and “utterly disturbing” details would have given jurors “compelling” reasons to vote for life. Under Ohio law, just one juror voting against the death penalty would have made resulted in life imprisonment.

The parole board, which had recommended against clemency in January 2017, reconsidered the case at a supplementary hearing on 14 June 2018. On 22 June, it again recommended against clemency, by eight votes to one. The majority said they doubted that the juror, who had told them it was an “almost absolute certainty” that he would have voted for life imprisonment without the possibility of parole if he had known what he knows now, would have made a different decision at the trial if the jury had been presented with the mitigation evidence in question. The board also heard from state and county prosecution officials and four family members of the victim who urged the board to deny clemency. The officials argued that clemency would undermine the jury process. Yet the jury process was undermined when the defence lawyer failed to present mitigating evidence for the jurors to consider.

When the mandatory death penalty was abolished in 1976, the US Supreme Court ruled that sentencing in capital cases must be individualized, so that instead of “the blind infliction of the penalty of death”, consideration could be given to “compassionate or mitigating factors stemming from the diverse frailties of humankind” before the life-or-death decision was taken. If a jury is kept in the dark about compelling mitigating evidence because of a lawyer’s failure to investigate and present it, any subsequent vote for death amounts to an ill-informed infliction of the ultimate punishment. By recommending against clemency, the parole board has not met its role as a failsafe against injustice left un-remedied by the courts. The Governor should reject its recommendation and commute the death sentence. Following the Governor’s earlier reprieve, the execution is now scheduled for 17 October 2018.

Please write immediately in English or your own language, in your own words using any of the above:

- Calling on Governor Kasich to stop the execution of Raymond Tibbetts and commute his death sentence;
- Urging him to use his clemency power, pointing out that Raymond Tibbetts would have been ineligible for the death sentence if just one of the trial jurors had voted for life, as the juror who has come forward says he would have after hearing of the available evidence about the defendant’s appalling childhood;
- Explaining that you are not seeking to minimize the seriousness of the crimes or suffering caused.

PLEASE SEND APPEALS IMMEDIATELY (Governor may make decision very soon) AND BEFORE 31 JULY:

Governor John Kasich

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Email (via website): <http://www.governor.ohio.gov/Contact/ContacttheGovernor.aspx> (Please use AI USA contact details:

5 Penn Plaza, 16th Floor, New York, NY 10001, Phone: (212) 807-8400, Fax: (212) 627-1451)

Twitter: @JohnKasich

Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY WOODY JOHNSON, U.S. Embassy London, 33 Nine Elms Lane, SW11 7US, Phone: (0)20 7499-9000 Please check with your section office if sending appeals after the above date. Further information: www.amnesty.org/en/documents/amr51/7875/2018/en/

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ADDITIONAL INFORMATION

When the board voted against clemency in January 2017, the majority acknowledged the “traumatic” childhood that Raymond Tibbetts endured, but decided it could not be reasonably confident “that the outcome of the trial would have been different had his trial attorneys presented that mitigation evidence in the manner suggested by his current attorneys as opposed to how it was presented by his trial attorneys”. The juror’s testimony showed that the outcome would have been different, because under the law, that juror’s single vote would have prevented the death penalty from being imposed. After the supplementary hearing, the majority focused instead on the facts of the crime, saying that the aggravating factors outweighed the mitigating evidence. The majority missed the wider justice implications of the trial lawyer’s failure to present available mitigating evidence, and took it upon itself to second guess how the juror who had come forward to express his concerns about the defence performance would have voted if given the full mitigation picture.

The board member who voted for clemency concluded after the 2017 hearing that “Tibbetts was raised in neglectful, abusive, chaotic, unstable, and toxic environments”, which created a “recipe for disaster” for him and his siblings, “who into their adulthood struggled with substance abuse, incarcerations, and mental illness, including the suicide of one of Tibbetts’s brothers”. She voted for clemency after the June hearing, stating that “The issue under consideration is whether the jury was sufficiently presented with full details of the mitigating circumstances, enabling them to make an informed decision in the case. The defense did not fully present the scope of the childhood abuse suffered by Tibbetts and the long-term impact of that abuse.”

According to Raymond Tibbetts’s siblings, their biological mother and father engaged in “extreme violence” towards the children, who were also often left alone without food or proper clothing. The household, his sister said, was a place of “constant violence”. Subsequently removed from the parents and placed in foster care, the children were subjected to further abuse, including kicking, beating and burning. According to Sixth Circuit Judge Karen Moore in her 2011 dissent against the death sentence, such mitigating details were crucial to arguing Raymond Tibbetts did not deserve the death penalty, but the only mitigation witness presented to the jury was a psychiatrist whose vague testimony failed to share these details. According to the parole board, the juror told them at the June 2018 hearing that he was “troubled by the prosecution’s response to the defense’s presentation and feels that it was misleading”, and that the “prosecution implied going into foster care was a good thing for Tibbetts”, even though records the defence possessed at the time showed otherwise.

In a letter to Governor Kasich in 2017, a forensic psychologist criticized the parole board’s vote against clemency, particularly in relation to substance abuse issues. He challenged the board’s failure to acknowledge that Raymond Tibbetts’s problems with drugs and alcohol began from an early age as a “maladaptive attempt to cope with his early traumas and mental health disturbances”. The letter also draws attention to a time in the 1990s when Raymond Tibbett succeeded in achieving a “period of sobriety” which ended after he was injured at work and was “(inappropriately) prescribed narcotic pain medications, spiralling him into a relapse” of addiction. Shortly before the crimes, “he was found lying on a river bank, intoxicated, homeless, depressed, anxious, hallucinating, delusional, paranoid, and suicidal. He was hospitalized again, where he attempted to hang himself.” He was “discharged upon completing brief detoxification without further treatment.”

There have been 1,477 executions in the USA since they resumed in 1977 under new capital laws approved by the Supreme Court in 1976. Ohio accounts for 55 of these executions. There have been 12 executions in the USA so far this year. Amnesty International opposes the death penalty, unconditionally. Today 142 countries are abolitionist in law or practice.

Name: Raymond Tibbetts

Gender m/f: m

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