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Oppose S. 200 and H. 3755 - The Electric Chair Has No Place in 21st Century South Carolina

Bill Summary: S. 200 and H. 3755 would make the electric chair the default method of execution in South Carolina if the director of SCDC certifies lethal injection is not available. Under current law, the person facing execution may choose between lethal injection and electrocution as the method of execution and lethal injection is the default method if the person does not choose between the two methods. S. 200 would also add the firing squad as a method of execution.

S. 200 and H. 3755 miss the underlying problem. South Carolina has a capital punishment system that is racist, arbitrary, and error-prone. It is unconscionable that legislators are focused on the method of execution when entire death penalty system is racist, arbitrary, and error-prone.

- **South Carolina's criminal justice system makes mistakes.** Yet, capital punishment is irreversible. Since 1973, [174](#) people who were sentenced to death have been exonerated.ⁱ When talking about the power of the state to kill, one error is unacceptable - 174 errors should shock the conscience of all. And, South Carolina's death penalty system is not immune from error. South Carolina courts have convicted and [sent at least two innocent people to its death row](#).ⁱⁱ To say that these wrongful convictions were "mistakes" is charitable. [Three of these wrongful convictions involved official misconduct by the government](#),ⁱⁱⁱ including law enforcement [hiding evidence of innocence](#).^{iv} In addition, [South Carolina courts have wrongly convicted at least nine additional people since 1989 alone, including five for murder](#).^v
- **Capital punishment is applied arbitrarily in South Carolina.** Contrary to popular belief, capital punishment is not reserved for the "worst of the worst." In reality, the likelihood of receiving a death sentence in South Carolina is not primarily based on the facts in your case, but rather on the [race](#)^{vi} and [gender](#)^{vii} of the victim, the [location of the offense](#),^{viii} and the [Solicitor in office at the time of the offense](#).^{ix} When the outcome of a capital case is driven by these arbitrary factors, equal justice under law, the cornerstone of our legal system, becomes a meaningless phrase.
- **South Carolina's capital punishment system is a racist system.** Capital punishment evolved from lynchings and racial terror, and South Carolina has failed to divorce its modern capital punishment system from this racist history. Today in South Carolina, Black people make up [more than half](#) of South Carolina's death row despite being only 27% of the state's population.^x This staggering disparity becomes clear when you look at the role race plays in capital sentencing. People convicted of a capital offense are substantially more likely to receive a death sentence if the victim was white rather than Black. For example, a Black male is [18 times more likely](#) to receive a death sentence if the victim was white versus Black.^{xi} This disparity against Black people exists across all categories of capital sentencing. The death penalty is modern-day lynching.

Capital punishment wastes money and misuses law enforcement resources. Cost studies consistently find that the death penalty system costs taxpayers at least 2 to 3 times more than a system of life without parole, with the majority of that cost being incurred at the initial trial level, whether or not the defendant is sentenced to death. As a recent study conducted for the Oklahoma Death Penalty Review Commission found, ["it is a simple fact that seeking the death penalty is more expensive. There is not one credible study, to our knowledge, that presents evidence to the contrary."](#)^{xii} To make our communities safer, South Carolina should invest the resources saved by ending capital punishment into data-driven public safety solutions, like expanding substance abuse and mental health treatment programs.

Capital punishment does not make South Carolinians safer. There is no evidence to show that the death penalty is a deterrent to murder - in our communities or in our prisons and jails. In fact, murder rates are substantially lower in non-death penalty states. [Between 2010 and 2018 the murder rate was 20% lower in non-death penalty states compared to death penalty states.](#)^{xiii} In addition, during the height of the “tough on crime era” [a national poll of police chiefs found that the death penalty ranked as the least effective tool for reducing violent crime.](#)^{xiv} Finally, despite [leading the nation in the number of new death sentences](#) (per capita),^{xv} [Alabama also leads the nation in prison homicides](#) (per capita).^{xvi} The death penalty does not deter murder.

Instead of continuing to tinker with a death penalty system that is broken beyond repair, South Carolina legislators should repeal the death penalty.

ⁱ Death Penalty Information Center, Innocence Database, available at <https://deathpenaltyinfo.org/policy-issues/innocence-database> (last visited Feb. 2, 2021).

ⁱⁱ Death Penalty Information Center, Innocence Database, South Carolina, available at <https://deathpenaltyinfo.org/policy-issues/innocence-database?filters%5Bstate%5D=South%20Carolina> (last visited Feb. 2, 2021).

ⁱⁱⁱ The National Registry of Exonerations, Exonerations by State, South Carolina, <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>.

^{iv} The National Registry of Exonerations, Gary Bennett, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5862>.

^v The National Registry of Exonerations, South Carolina, available at <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (last visited Feb. 2, 2021).

^{vi} John H. Blume & Lindsey S. Vann, *Forty Years of Death: The Past, Present, and Future of the Death Penalty in South Carolina (Still Arbitrarily After All These Years)*, Duke Journal of Constitutional Law & Public Policy, at 201-203. (“For a black male defendant convicted of killing a white victim, the death sentencing rate is 8.56 per 100 murders as opposed to only 0.46 for black victims. White males are also sentenced to death at a higher rate for the killing of white victims (5.26 death sentences per 100 murders) compared to black victims (3.17 death sentences per 100 murders).”).

^{vii} *Id.*, at 204. (“Though only 22% of all South Carolina murders involved a female victim, 53% of the death sentences imposed, and 58% of the executions carried out, were female victim cases. ... Considering both race and gender of the defendant and victim demonstrates that the most likely (by far) combination to result in a death sentence is a black male convicted of killing a white female, which results in a breath-taking death sentencing rate of 15.02 per 100 murders, a rate that is statistically significant by any measure.”).

^{viii} *Id.*, at 205-206. (“Ten of South Carolina’s forty-six (22%) counties have never produced a death sentence. ... By contrast, one quarter of all death sentences imposed in South Carolina arose from just two of the state’s forty-six counties. Fifty-eight of the 233 death sentences came from either Lexington or Horry County.”).

^{ix} *Id.*, at 206-207. (“Four solicitors since 1976 have been responsible for obtaining more than one-third of all modern era death sentences in South Carolina.”).

^x South Carolina Department of Corrections, Death Row List, <http://www.doc.sc.gov/news/death-row-report.pdf>.

^{xi} Blume and Vann, *Supra* note 6, at 202.

^{xii} The Report of the Oklahoma Death Penalty Review Commission, The Constitution Project, Mar. 2017, p. 226-227, available at <https://bloximages.newyork1.vip.townnews.com/tulsaworld.com/content/tncms/assets/v3/editorial/6/b5/6b5c1d58-edf1-5123-a6b4-9b4a4682a6cd/58ffb73677776.pdf.pdf>.

^{xiii} Death Penalty Information Center, Deterrence: States Without the Death Penalty Have Had Consistently Lower Murder Rates, available at <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states> (last visited Feb. 2, 2021).

^{xiv} Richard C. Dieter, Death Penalty Information Center, On the Front Line: Law Enforcement Views on the Death Penalty, Feb. 1995, available at <https://deathpenaltyinfo.org/front-line-law-enforcement-views-death-penalty> (last visited Feb. 2, 2021).

^{xv} Death Penalty Information Center, Death Sentences Per Capita by State, available at <https://deathpenaltyinfo.org/facts-and-research/sentencing-data/death-sentencing-rates> (last visited Feb. 2, 2021).

^{xvi} Report: Alabama prison homicide rate highest in nation, Associated Press, Dec. 10, 2018, available at <https://apnews.com/article/6e559d673a8843e1aff79c697bd399d8> (last visited Feb. 2, 2021).