# Hold up on death-penalty cases or risk having them overturned

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Guest columnist

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Last month, the U.S. Supreme Court agreed to hear a Florida death-penalty case, Hurst v. Florida, that questions the constitutionality of Florida's entire death-penalty sentencing scheme. The court could very well throw out the whole thing, and it would be right to do so.

Florida is one of the last states in the country that doesn't require juries in death-penalty cases to come to a unanimous decision when sentencing someone to death. In fact, Florida has people on death row because a simple majority of jurors — only seven of 12 jurors — agreed on a death sentence. Florida also does not require the jury to be unanimous in its finding of even a single aggravating factor — for example, an additional factor such as a robbery — that makes the crime eligible for the death penalty in the first place.

I prosecuted death-penalty cases for 30 years in our state, and I can tell you that this sentencing scheme can lead to unreliable results.

When we don't require jury verdicts to be unanimous in death-penalty cases, we leave open the possibility that jurors with differing opinions will be excluded from the decision-making process. The views of as many as five jurors can be ignored. No other state permits such lenient sentencing practices — not even Texas.

And if jurors don't have to come to a unanimous decision, they don't have to spend as much time considering every aspect of the case or clarifying jury instructions that are often confusing to some jurors. Every other decision by a jury in any Florida court requires unanimity among the jurors. We do not permit this kind of simple decision-making in car-accident cases. How can we permit it in death-penalty cases?

Requiring jurors to come to a decision together means they will spend more time meaningfully deliberating — seriously discussing and thinking through the evidence together before issuing a verdict. A unanimous-jury requirement also ensures that every juror in the room is heard and that each juror engages in the process. Many jurors are denied this opportunity as a function of the current law.

More important, Floridians deserve a justice system that does not make irreversible mistakes — especially when it comes to the decision of life or death. However, we know the current system is far from perfect. Twenty-five men have been released from Florida's death row after evidence of their innocence emerged. This is more than any state in the U.S. Allowing non-unanimous jurors only exacerbates this serious problem. Non-unanimous verdicts are much more likely to be overturned by the Florida Supreme Court because of serious errors.

If our nation's highest court finds Florida's outlier practices in capital sentencing unconstitutional, any death sentences imposed during the pendency of the case will be invalid. The prudent course of action for trial courts is to stay any capital proceedings until the court has issued its decision. This will ensure that the basic system we have in place for making a life and death decision is constitutional. It will avoid the complications that will ensue if the court does throw out the statute.

For one thing, capital punishment comes with a hefty price tag that is far more costly than a life sentence. Some recent studies estimate the cost of a death-penalty trial is almost double the cost of trial where death is not being sought. If the court invalidates the Florida statute, the state will be forced to try each of these cases again. That means the taxpayer will be on the hook for funding the staggering costs of a capital trial twice.

It also means that the victims' families could be dragged through yet another painful and lengthy trial process. These cases are already difficult for and brutal on the victims' families. We should do everything we can to help them avoid the agony of two trials.

The Florida criminal-justice system invests massive amounts of time, energy and resources into administering the death penalty. While our nation's highest court deliberates, Florida has an opportunity to avoid untold and unnecessary costs. Until we know whether our death penalty is constitutional, the wisest course of action is for judges and prosecutors to put capital cases on hold in our state.

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