

THE CONSTITUTION PROJECT



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Recusal Required in Pennsylvania Death Penalty Case, Judges Say

WASHINGTON, D.C. -- Seven distinguished former appellate judges say the U.S. Supreme Court should determine that it is inappropriate for a district attorney who sought and obtained a death sentence against a convicted murderer to subsequently hear an appeal of the inmate's case as a judge.

Such participation "creates an unmistakable perception that petitioner (and others similarly situated) would not receive a fair hearing on their appellate claims," the former judges wrote in a [friend-of-the-court brief](#) organized by The Constitution Project and filed late yesterday in the case of *Williams v. Pennsylvania*.

The brief was signed by former Chief Justices Wallace Jefferson (Texas Supreme Court), Judith Kaye (New York Court of Appeals), and Michael Wolff (Missouri Supreme Court). It was also signed by former U.S. Court of Appeals judges Kenneth Starr (DC Circuit), Deanell Tacha (10th Circuit), Timothy Lewis (3rd Circuit), and William Webster (8th Circuit).

Terrance Williams was convicted of the 1984 murder of a Philadelphia man, Amos Norwood. Williams claims former Pennsylvania Chief Justice Ronald Castille should have recused himself from the 2014 Pennsylvania Supreme Court hearing on Williams' appeal because he had served as the local district attorney at the time of Williams' initial conviction, and had subsequently sought and won election to the court by championing his record of sending 45 people to death row, including Williams.

In 2012, a lower court vacated Williams' sentence because it found that Castille's office had violated its ethical and constitutional obligations to disclose potentially exculpatory evidence, and played "fast and loose" with the facts in order to secure Williams' first degree murder conviction and death penalty sentence. Included among the lower court's findings was that trial prosecutors under Castille's supervision had illegally suppressed evidence regarding the fact that Williams had been raped repeatedly by Norwood over a period of 5 years. The state Supreme Court, with Castille's full participation, unanimously reversed the lower court decision.

The brief from the former appeals court judges notes that, even though Castille's vote was not the deciding one, "the majority of federal and state courts that have considered this issue have found that a potentially biased judge's participation in a multimember appellate panel taints the entire proceeding and that any decision in the proceeding must be vacated, regardless of the ultimate vote distribution."

The former judges encouraged the U.S. Supreme Court to "adopt the unexceptionable proposition that all tribunals should unanimously comprise only impartial jurists, and jurists whose participation would be deemed impartial by those who come before the courts."

"Due process, fairness, and the reputation of the vaunted judicial system require nothing less," they wrote, noting that they all would have felt bound by judicial ethics to recuse themselves had they faced similar circumstances.

A separate [friend-of-the-court brief](#), also organized by The Constitution Project, from 16 former prosecutors who subsequently became judges cited a 1927 Supreme Court decision that recusal is required whenever a judge could potentially be tempted "not to hold the balance nice, clear and true between the state and the accused," either because of his relationship to the parties, or an interest in a particular outcome. Castille's participation in the Williams' appeal is "problematic for both of

these reasons," they wrote. They said as former judges with prosecutorial experience, they had "a special interest in preserving the legitimacy and integrity of both prosecutors' offices and the judiciary."

First elected in 1993, Castille has since stepped down from the state court after reaching the mandatory retirement age.

The U.S. Supreme Court will hear oral arguments in the case on February 16, 2016. The case is Terrance Williams v. Commonwealth of Pennsylvania, U.S. Supreme Court, No. 15-5040.

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[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.