

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Lack of Unanimous Jury Makes Florida Death Penalty Unconstitutional, TCP Says

WASHINGTON, D.C. -- State law is unconstitutional because it does not require a unanimous jury verdict to impose a death sentence, a legal watchdog group told the Florida Supreme Court on Friday, arguing that the lack of unanimity violates the Eighth Amendment of the U.S. Constitution.

"A unanimity requirement promotes careful and thorough evidence-based deliberations, prevents the exclusion or silencing of minority and opposing views in the deliberation process, and increases public confidence in the jury's sentencing decision. Unanimity is also essential to ensuring the jury's penalty determination accurately reflects the conscience of the community," The Constitution Project wrote in a [friend-of-the-court brief filed](#) late last week.

Under Florida law, all 12 members of a jury must find an accused person guilty, but then only 10 of them have to agree that the defendant should die for the crime. Earlier this year, the Florida legislature increased the majority of the jurors required to impose a death sentence from seven to 10. However, Florida remains one of only three states to permit capital punishment with a less-than-unanimous jury.

"The overwhelming majority of death penalty jurisdictions require a unanimous sentencing verdict to authorize a sentence of death. The near-uniform judgment of the nation's legislatures confirms that non-unanimity in death sentencing violates current standards of decency," the group wrote. The Constitution Project Death Penalty Committee, co-chaired by former Florida Supreme Court Chief Justice Gerald Kogan, [issued a report](#) in 2014 calling for unanimity in death penalty cases.

The case before the Florida Supreme Court is Larry Darnell Perry v. State (Docket no. SC16-547). Perry is a St. Cloud man accused of beating his 3-month-old son to death in 2013. The court is scheduled to hear his case on June 7.

Earlier this month, a [Miami-Dade circuit judge held](#) that the Constitution requires a unanimous jury to impose a death sentence, but his decision does not apply statewide.

In January, the [U.S. Supreme Court declared](#) the state's death sentencing system unconstitutional because Florida jurors only issued majority recommendations, with judges ultimately imposing the death penalty. The high court, however, did not rule on the question of unanimity.

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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.