

NO. 15-14586

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CORY R. MAPLES,
Petitioner-Appellant,

v.

**JEFFERSON S. DUNN, COMMISSIONER OF THE
ALABAMA DEPARTMENT OF CORRECTIONS,**
Respondent-Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
Case No. 5:03-cv-02399-SLB-MHH**

**BRIEF *AMICUS CURIAE* OF THE CONSTITUTION PROJECT
IN SUPPORT OF PETITIONER CORY R. MAPLES**

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CERTIFICATE OF INTERESTED PERSONS

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STATEMENT OF INTEREST

The Constitution Project (“TCP”) is a national nonpartisan organization that seeks solutions to contemporary constitutional issues through scholarship and public education. TCP’s essential mission is to promote and defend constitutional safeguards. TCP’s work is driven by bipartisan, blue-ribbon committees whose members are former government officials, judges, law enforcement officials, scholars, and other prominent citizens. These committees reach across ideological and partisan lines to craft consensus recommendations for policy reforms, which include accuracy, fairness, and due process in our justice system.

TCP is deeply concerned with the preservation of our fundamental constitutional guarantees and ensuring that those guarantees are respected and enforced by all three branches of government. TCP regularly files *amicus* briefs in cases, like this one, that implicate its bipartisan positions on constitutional issues, in order to better apprise courts of the importance and broad consequences of those issues.

In 2000, TCP convened a Death Penalty Committee (“Committee”), which includes supporters and opponents of the death penalty, Democrats and Republicans, former judges, prosecutors, law enforcement officers, clergy, defense lawyers, victim advocates, scholars and others with extensive and varied experience in the criminal justice system. The Committee’s membership is listed

in the Addendum to this brief. Although the Committee does not take a position on whether the death penalty is an acceptable form of punishment, its members have grave concerns that, as currently administered, the death penalty lacks adequate procedural safeguards and other assurances of fundamental fairness that increase the risk of wrongful convictions and executions.

In 2014, the Committee issued a lengthy report, titled *Irreversible Error*, recommending reforms for preventing and correcting errors in the administration of capital punishment. See The Constitution Project, *Irreversible Error: Recommended Reforms for Preventing and Correcting Errors in the Administration of Capital Punishment* (2014), available at http://www.constitutionproject.org/wp-content/uploads/2014/06/Irreversible-Error_FINAL.pdf (“*Irreversible Error*”).

Since its publication, federal and state courts have cited to *Irreversible Error* as an authoritative resource on death penalty issues. See *Price v. Dunn*, 2015 U.S. Dist. LEXIS 152656 at *14 (S.D. Al. October 20, 2015); *Owens v. Hill*, 758 S.E.2d 794, 807 n.16 (Ga. 2014) (Benham, J. dissenting). The report has also prompted discussion on death penalty issues in major news outlets across the country. See, e.g., Erick Eckholm, *Panel Urges One-Drug Lethal Injections*, N.Y. Times, May 7, 2014 (http://www.nytimes.com/2014/05/07/us/panel-urges-one-drug-lethal-injections.html?_r=0); Sari Horwitz, *States should use one drug for executions*,

justice experts say, Washington Post, May 7, 2014

(https://www.washingtonpost.com/world/national-security/states-should-use-a-single-drug-for-executions-criminal-justice-experts-say/2014/05/06/d1facbe8-d514-11e3-95d3-3bcd77cd4e11_story.html); The Oklahoman Editorial Board, *Oklahoma officials should study report from Constitution Project's Death Penalty Committee*, The Oklahoman, May 11, 2014 (<http://newsok.com/article/4748006>); Timothy Phelps, *Study of death penalty in U.S. calls for overhaul*, L.A. Times, May 6, 2014 (<http://www.latimes.com/nation/la-na-death-penalty-20140507-story.html>); Evan Perez, *Panel suggests fixes for death penalty in U.S.*, CNN Politics, May 6, 2014 (<http://www.cnn.com/2014/05/07/politics/death-penalty-recommendations/>).

Notably for this case, in the report “the Committee continue[d] to emphasize that the lawyers provided to those charged with capital crimes *must* be adequately compensated, appropriately experienced and have sufficient resources to adequately and expertly represent their clients.” *Irreversible Error* at xvii. “Ineffective assistance of counsel continues to be a major reason for wrongful convictions and death sentences, and too many states continue to resist the reforms that must be made to ensure competent counsel in capital cases.” *Id.*

To address these shortcomings, in its recommendations, the Committee specifically called for (1) the appointment of defense counsel with adequate

experience in capital cases; (2) adequate funding for the defense of capital cases including reasonable fees for attorneys who are appointed to handle the defense as well as sufficient funds for investigation at all stages of the proceedings (including post-conviction); and (3) the creation of central, independent authorities to appoint, monitor, and train appointed counsel in capital cases. *See id.* at 85-95 (Chapter 7—“Ensuring Effective Counsel”).

TCP files this brief *amicus curiae* pursuant to Fed. R. App. P. 29(a) out of concern that Alabama’s failure to provide Mr. Maples with experienced, properly compensated counsel at the trial stage of this case resulted in preventable errors that prejudiced Mr. Maples and violated his constitutional rights. TCP respectfully seeks to provide the Court with a detailed description of the inadequate Alabama indigent defense system that furnished the deficient (and ultimately ineffective) legal defense that failed Mr. Maples.

All parties to this case have consented to the filing of this brief *amicus curiae*.¹

¹ No counsel to a party authored this brief in whole or in part, and no party or party’s counsel contributed money that was intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief.

STATEMENT OF THE ISSUE

Whether the inadequacies in Alabama's system for providing counsel to indigent capital murder defendants resulted in a violation of Cory Maples' constitutional right to effective assistance of counsel.

SUMMARY OF ARGUMENT

When Mr. Maples stood trial in October 1997, the Alabama indigent defense system was poorly regulated and woefully underfunded. Alabama (1) set only minimal eligibility requirements for defense counsel appointed to represent indigent capital murder defendants; (2) paid court-appointed defense attorneys in capital murder cases the lowest fees in the country; and (3) was one of the few jurisdictions without a uniform, statewide indigent defense system.

In fact, the Supreme Court of the United States—in a prior appeal *in this very case*—recognized these problems with Alabama’s system:

Alabama sets low eligibility requirements for lawyers appointed to represent indigent capital defendants at trial. Appointed counsel need only be a member of the Alabama bar and have “five years’ prior experience in the active practice of criminal law.” Ala. Code § 13A-5-54 (2006). Experience with capital cases is not required. Nor does the State provide, or require appointed counsel to gain, any capital-case-specific professional education or training. Appointed counsel in death penalty cases are also undercompensated. Until 1999, the State paid appointed capital defense attorneys just “\$40.00 per hour for time expended in court and \$20.00 per hour for time reasonably expended out of court in the preparation of [the defendant’s] case.” Although death penalty litigation is plainly time intensive, the State capped at \$1,000 fees recoverable by capital defense attorneys for out-of-court work. Even today, court-appointed attorneys receive only \$70 per hour.

Maples v. Thomas, 132 S. Ct. 912, 917-18 (2012) (internal citations omitted).

Yet, as one long-time capital litigator has observed, “the quality of capital defense counsel seems to be the most important factor in predicting who is sentenced to die – far more important than the nature of the crime or the character

of the accused.” *Irreversible Error* at 86. And there is no doubt that a connection exists between a lawyer’s effective representation of a client, and the compensation received by the lawyer. *Id.* at 91 (“A major cause of inadequacy of capital representation is the lack of adequate compensation for those taking on [capital cases].”).

Given this backdrop, it is no surprise that Mr. Maples’ court-appointed attorneys, who had virtually no previous experience defending capital murder cases and were severely undercompensated by the Alabama system, seriously mishandled his defense at both the guilt and penalty stages. By the system’s very design, Mr. Maples’ attorneys were set up to fail. As a result, the imposition of the death penalty was almost certainly caused by the very system that should have provided Mr. Maples an adequate defense as guaranteed by the United States Constitution.

As set forth below, the egregious errors of omission and commission by Mr. Maples’ counsel in the investigation, trial, and penalty phase were largely a by-product of inexperience, under-compensation, and lack of supervision, all of which flowed inevitably from the systemic defects of the Alabama indigent defense system. These concerns with the Alabama system are gravely important given that Alabama issues more death sentences per capita than any other state in the country.

See Death Penalty Information Center statistics, *available at*
<http://www.deathpenaltyinfo.org/death-sentences-capita-state>.

ARGUMENT

I. Alabama’s Indigent Defense System Imposed No Meaningful Eligibility or Training Requirements on Court-Appointed Capital Defense Attorneys.

As this Circuit has stated: “No court should appoint an inexperienced lawyer to represent the defendant in a death penalty case. The risks to defendant, counsel, the judicial system and the community at large are too great.” *Tyler v. Kemp*, 755 F.2d 741, 746 (11th Cir. 1985), overruled in part on other grounds by *Peek v. Kemp*, 784 F.2d 1479, 1494 n.15 (11th Cir. 1986). Yet, that is precisely what happened to Mr. Maples, as his attorneys clearly, even admittedly, lacked the specialized training and experience necessary to represent Mr. Maples in this capital case.

Capital murder cases are complex, fact-intensive, time consuming matters governed by a labyrinth of ever-changing state and federal case law. As the American Bar Association has explained:

Effective capital case representation requires substantial specialized training and some experience in the complex laws and procedures that govern a capital case in a given jurisdiction, as well as the resources to conduct a complete and independent investigation in a timely way.²

² American Bar Association, *Evaluating Fairness and Accuracy in State Death Penalty Systems: The Alabama Death Penalty Assessment Report*, at 97 (2006), *available at*

Issued in 2003, the ABA's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases ("ABA Guidelines") provide insight on the numerous, complex demands placed on counsel in mounting a capital murder defense, including but not limited to:

- Conducting a full investigation of relevant facts for what are effectively two different trials – the guilt phase and the penalty phase;
- Hiring a professional investigator, mitigation specialist, and others with professional expertise relevant to the case;
- Establishing a special rapport with the client to enable a productive professional relationship;
- Assessing and negotiating a plea that will allow the defendant to serve a lesser sentence;
- Identifying and interviewing prosecution witnesses and examining their backgrounds;
- Identifying and interviewing other potential witnesses to challenge the prosecution's version of events;
- Subjecting forensic evidence to independent scrutiny;
- Investigating the defendant's personal history, including criminal history, in order to deny or rebut allegations made by the prosecution in support of the death penalty;
- Investigating affirmative defenses, including self-defense, insanity, and partial defenses, such as lesser-included offenses;

<http://www.americanbar.org/content/dam/aba/migrated/moratorium/assessmentproject/alabama/report.authcheckdam.pdf>.

- Coordinating and integrating the “presentation during the guilt phase of the trial with the projected strategy for seeking a non-death sentence at the penalty phase”;
- Presenting every legal claim that could possibly be meritorious in order to preserve them for post-conviction review;
- Applying sophisticated jury selection techniques;
- Utilizing expert witness services and evidence; and
- Challenging the prosecution’s evidence and experts through effective cross-examination.

ABA Guidelines § 1.1at 5-10 (2003)³; *see also Pruet v. State*, 574 So. 2d 1342, 1346 (Miss. 1990) (quoting numerous cases and observing that “[c]ounsel must have particular skills for competent representation in a capital case because these cases involve ‘extraordinary circumstances and unusual representation’”). The demands set forth in the ABA Guidelines are also intended to ensure that there is parity of resources between the prosecution and the defense.

Despite all of these demands, Alabama has no system in place to ensure that court-appointed capital defense attorneys have the requisite ability and experience to handle the job. Aside from being licensed to practice law in Alabama, the *only*

³ The ABA Guidelines are available at http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sc_laid/deathpenaltyguidelines2003.authcheckdam.pdf. The Supreme Court has “long . . . referred [to the ABA Guidelines] as ‘guides to determining what is reasonable.’” *Rompilla v. Beard*, 545 U.S. 374, 387 (2005) (quoting *Wiggins v. Smith*, 539 U.S. 510, 524 (2003)).

qualification required of court-appointed capital defense attorneys is to have “no less than five years’ prior experience in the active practice of criminal law.” Ala. Code § 13A-5-54 (1995). Notably, Alabama does not distinguish among the kinds of criminal law practiced or the frequency of criminal cases handled. Rather, as one report explained, “[a]n attorney who spen[t] five years representing defendants facing minor criminal charges such as shoplifting or trespassing [would] satisfy Alabama’s capital counsel requirement.”⁴

Given the lack of standards, defense attorneys like the ones appointed to represent Mr. Maples are not required to focus their practice on criminal defense work, much less on complex capital murder proceedings. Indeed, the two attorneys appointed to represent Mr. Maples had scant experience representing capital defendants. One of the attorneys had no capital defense experience whatsoever and the other had only participated in a single, prior capital case. (Maples Br. at 7-8.) Moreover, neither attorney had ever participated in the

⁴ American Civil Liberties Union, *Broken Justice: The Death Penalty in Alabama*, at 5 (2005) (“*ACLU Report*”), available at http://www.aclualabama.org/WhatWeDo/BrokenJustice_report.pdf; see also Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 Yale L.J. 1835, 1871 n.209 (1994) (“Standards for the appointment of counsel, which are defined in terms of number of years in practice and number of trials, do very little to improve the quality of representation since many of the worst lawyers are those who have long taken criminal appointments and would meet the qualifications.”).

penalty phase of a capital murder trial, which as the Supreme Court, Eleventh Circuit, and the ABA have all stressed, must be coordinated with the guilt phase. *See, e.g., Florida v. Nixon*, 543 U.S. 175, 192 (2004) (“To summarize, in a capital case, counsel must consider in conjunction both the guilt and penalty-phases in determining how best to proceed”); *Magill v. Dugger*, 824 F.2d 879, 888 (11th Cir. 1987) (“Although the guilt and penalty phases are considered ‘separate’ proceedings, we cannot ignore the effect of events occurring during the former upon the jury’s decision in the latter”); ABA Guidelines, § 1.1 at 6; § 10.10.1 at 99 (“[I]t is critical that, well before trial, counsel formulate an integrated defense theory that will be reinforced by its presentation at both the guilt and mitigation stages.”).

Mr. Maples’ attorneys did not try to hide their lack of experience. They even “confess[ed]” their inexperience to the jury, on the record, at the outset of the penalty phase of Mr. Maples’ trial:

Now, I will confess to you as I stand before you in this part of the proceedings that while I’ve been in capital cases before, I’ve never been at this part, nor has my client So we may appear to be stumbling around in the dark as we’re proceeding as we attempt to put forth to you a case justifying a life sentence.

(R. at 3080-82.)

As is readily evident, Mr. Maples’ attorneys lacked the specialized training and experience necessary for providing an effective capital murder defense,

particularly during the sentencing phase. Mr. Maples' brief details the many errors committed by his court-appointed counsel, almost certainly due, in part, to their inexperience, including:

- Offering contradictory theories during the guilt and penalty phases of the trial;
- Failing to investigate and present a clear intoxication defense during the guilt and penalty phases, despite knowing the defendant was using alcohol and drugs for nearly *ten hours* the day of the shooting; and
- Failing to investigate and present other mitigating evidence to persuade the jury not to issue a death sentence, including Mr. Maples' highly troubled history of parental abuse and abandonment, record of suicidal depression, brain trauma, and post-arrest behavior, including providing information that led to the arrest of a local drug dealer.

(*See* Maples Br. at 24-34.) Indeed, it appears that counsel performed almost no investigation whatsoever into mitigating evidence—normally the centerpiece of any defense at sentencing—despite having been provided with sources of evidence and names of potential witnesses.

The errors of counsel in failing to investigate, develop, and present any meaningful mitigation case at sentencing are particularly egregious and violate Mr. Maples' right to effective assistance of counsel. Had this evidence been presented, it is almost certain that at least one more juror would have joined the two who voted against the death penalty, sparing Mr. Maples' life.⁵

⁵ During the sentencing phase of Mr. Maples' trial, the jury recommended death by a 10-2 vote—the minimum required under Alabama law. *See* Ala. Code

II. Alabama's Indigent Defense System Under-Compensated Court-Appointed Capital Defense Attorneys.

Exacerbating the lack of eligibility thresholds was the shockingly low level of compensation afforded to court-appointed counsel in capital cases in Alabama in 1997, the time of Mr. Maples' trial. *See Irreversible Error* at xxviii (Alabama "often compensate[s] capital defense counsel at such low levels as to make effective representation nearly impossible."). At that time, Alabama's statutory compensation rate for capital cases was the lowest in the nation: \$20 per hour for out-of-court work, and \$40 per hour for in-court advocacy. Ala. Code § 15-12-21 (1995); *EJI Report* at 2, 8. Significantly, Alabama further imposed an overall statutory fee cap of \$1,000 for all out-of-court work, including in capital murder cases. Ala. Code § 15-12-21 (1995); *EJI Report* at 2.

In a tacit admission that Alabama's compensation system for appointed counsel was insufficient, the Alabama legislature rewrote § 15-12-21 on compensation of appointed counsel in felony cases in 1999. The new statute raised

§ 13A-5-46(f) (1994). Alabama is one of only three states that permits a jury to sentence a defendant to death by less than a unanimous vote. Death Penalty Information Center, *Delaware Supreme Court Hears Oral Argument on Constitutionality of Its Death Penalty Statute* (2016), available at www.deathpenaltyinfo.org/node/6483. The Committee has recommended that "[c]apital punishment should not be imposed in the absence of a unanimous verdict both as to the death penalty sentence or advisory sentence and as to each aggravating circumstance used to support that sentence." *See Irreversible Error* at 98-100.

the rate to \$70 per hour for time both in and out of court. The fee cap limit was completely removed for capital offenses or those carrying a potential sentence of life without parole. The cap is now separated out by class of case and extends from \$4,000 for a Class A felony to \$1,500 for non-felony or juvenile cases. The new section also includes a more extensive description of reimbursement requirements, mandating that expenses in excess of \$300 be pre-approved by the trial court as well as fees and expenses of experts, investigators, and others assisting in indigent defense cases. The previous section only allowed for reimbursement of counsel for “expenses reasonably incurred in such a defense.”

At the paltry rate of \$20/hour at the time of Mr. Maples trial, without any time allotted for trial or other court proceedings, court-appointed defense counsel were effectively limited to no more than *50 hours* of fully compensated time to thoroughly investigate the facts of the case (including the facts surrounding Mr. Maples’ state of intoxication on the evening of the shootings); to interview witnesses; to retain and work with experts (including an expert on intoxication and an expert on the impact of a troubled upbringing); to identify and investigate mitigating factors (including Mr. Maples’ serious childhood difficulties); and to prepare for a multi-phase jury trial on a true life-or-death matter.

By contrast, during the same time period, Alabama paid private outside counsel regular hourly fees of \$85 for representing the State and State employees

in civil litigation and ethics matters, with some fees reaching as high as \$160 per hour for attorneys with specialized knowledge. *EJI Report* at 4-5. Likewise, attorneys appointed by federal courts in capital cases were paid a minimum rate of \$75 per hour in Alabama. *Id.* at 10.

Many courts have observed the link between attorney compensation and quality of representation. *See, e.g., White v. Bd. of Cnty. Comm'rs of Pinellas Cnty.*, 537 So. 2d 1376, 1380 (Fla. 1989) (“The relationship between an attorney’s compensation and the quality of his or her representation cannot be ignored.”); *Bailey v. State*, 424 S.E.2d 503, 508 (S.C. 1992) (“The link between compensation and the quality of representation remains too clear.”). Others have observed that the amount of time an attorney spends on a court-appointed representation is a self-evident by-product of his or her pay rate. *See, e.g., White*, 537 So. 2d at 1380 (“[T]here is a risk that the attorney may spend fewer hours than required representing the defendant or may prematurely accept a negotiated plea that is not in the best interests of the defendant.”); *Jewell v. Maynard*, 383 S.E.2d 536, 544 (W. Va. 1989) (“Inevitably, economic pressure must adversely affect the manner in which at least some cases are conducted.”); *Madden v. Twp. of Delran*, 601 A.2d 211, 219 (N.J. 1992) (“[F]inancial pressures on unpaid counsel can affect their performance.”); *see also EJI Report* at 7 (“An attorney’s rate of compensation and the quality of his or her work cannot be easily separated.”).

Alabama's statutory compensation rates and fee cap were grossly inadequate in light of the rigorous time demands of a capital murder defense. Indeed, as the Committee found, "a capital case may take from 500 to 1,200 hours at the trial level alone, and an additional 700 to 1,000 hours for direct appeal of a death sentence, with hundreds of additional hours required at each successive stage." *Irreversible Error* at 91. Another study of capital murder trials during the relevant period found that "defense attorneys spent an average of 1,480 out-of-court hours preparing a defendant's case,"⁶ and yet another study found that a minimum of 500 hours were required to prepare for *each phase* of a capital murder trial.⁷ Applying these estimates, a court-appointed attorney in Alabama at the time of Mr. Maples' trial would have received the equivalent of \$0.68 per hour (for 1,480 out-of-court hours) or \$1.00 per hour (for 1,000 out-of-court hours) if he or she devoted the time necessary to prepare adequately for a capital murder defense. By either measure, Alabama's hourly rates and fee cap were "vastly insufficient for the

⁶ *Maples*, 132 S. Ct. at 917 n.1 (citing Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation*, at 15 (May 1998)).

⁷ *EJI Report* at 2 (citing *Panel Discussion: The Death of Fairness? Counsel Competency and Due Process in Death Penalty Cases*, 31 Hous. L. Rev. 1105, 1108 (1994)).

amount of work required to properly represent an inmate's rights." *ACLU Report* at 5.

As a result, Alabama attorneys appointed to represent capital murder defendants in 1997 were left with only two options: cut corners or work for free. Most court-appointed attorneys were undoubtedly ill-equipped to bear the financial strain of defending a capital murder case essentially *pro bono*:

It would be foolish to ignore the very real possibility that a lawyer may not be capable of properly balancing the obligation to expend the proper amount of time in an appointed criminal matter where the fees involved are nominal, with his personal concerns to earn a decent living by devoting his time to matters wherein he will be reasonably compensated. The indigent client, of course, will be the one to suffer the consequences if the balancing job is not tilted in his favor.

Bailey, 424 S.E.2d at 506 (emphasis and citation omitted). Indeed, at Alabama's rates, it would have been almost impossible for any attorney, including Mr. Maples' counsel, to sustain the level of work required to mount an adequate capital murder defense while still maintaining a separate practice to earn a cost of living.

As such, at the time of Mr. Maples' trial, the Alabama capital defense system had a "built-in disincentive for thorough representation," as the Alabama Equal Justice Initiative observed:

It is a fiction that private attorneys can afford to devote hundreds of uncompensated hours to capital murder cases. . . . Of course many of these attorneys give as much attention to these cases as they can afford. But the reality is that the system of compensation guarantees that errors will be made or go unrecognized at capital trials as long as defense

attorneys are forced to subsidize the defense of persons accused of capital offenses.

EJI Report at 3. Even the Alabama Court of Criminal Appeals, three years before Mr. Maples' trial, acknowledged that the \$1,000 cap for trial work was outdated and "unreasonable." *See May v. State*, 672 So. 2d 1307, 1309 (Ala. Cir. App. 1993) ("We urge the Supreme Court to grant certiorari review in this case and reconsider the constitutionality of the 'cap' as now set by law.").

Given this background, it is not surprising that some courts have found similar compensation systems unconstitutional. *See State v. Campbell*, 851 S.W.2d 434, 436 (Ark. 1993) ("We hold that the fee cap statute . . . is unconstitutional on its face"); *Smith v. State*, 394 A.2d 834, 838 (N.H. 1998) (finding a fee cap of \$500 unconstitutional because that was no longer reasonable compensation for an attorney); *State v. Lynch*, 796 P.2d 1150, 1153 (Okla. 1990) ("While we recognize the responsibility of members of the Oklahoma bar to assist in the provision of legal representation to indigent defendants, we find that in some instances the arbitrary and unreasonable statutory scheme contravenes [the Oklahoma Constitution]."); *Recorder's Court Bar Ass'n v. Wayne Circuit Court*, 503 N.W. 2d 885, 897 (Mich. 1993) (striking down Michigan's fixed-fee system for compensation of assigned counsel because it was no longer reasonable); *Commonwealth v. McGarrell*, 2012 Pa. LEXIS 2854 at *27 (Pa. Feb. 21, 2012) (holding that the present fee system for capital cases was a "disaster waiting to

happen” and “the primary cause of a significant reduction in the number of qualified lawyers willing to accept capital homicide appointments”); *Jewel v. Maynard*, 383 S.E.2d 536, 547 (W. Va. 1989) (calling for the \$1,000 cap on criminal cases generally to be raised to \$3,000 or eliminated). Similarly here, the Alabama indigent defense system almost certainly “ha[d] a chilling effect on the right to counsel by providing a disincentive for attorneys to perform work beyond the \$1,000 [50 hour] level, resulting in a conflict of interest between the attorney and client.” *Justice Denied* at 64.

Although no evidentiary hearing has ever been held to explore the degree to which Alabama’s low attorneys’ fees and cap hampered Mr. Maples’ legal defense, there can be no doubt that Mr. Maples’ inexperienced attorneys were financially prevented from dedicating the time necessary to fully investigate and prepare the defense of his case. Indeed, as Mr. Maples’ brief explains, Mr. Maples’ attorneys failed to interview a number of key witnesses, failed to obtain readily-available pertinent records, failed to present a coherent strategy at trial or to prepare the few witnesses they put on the stand, and even failed to thoroughly interview their own client about critical facts—tasks that would have taken much longer than 50 hours to properly complete. (*See* Maples Br. at 24-38.)

As a result, Mr. Maples’ attorneys did not investigate or present at sentencing evidence of Mr. Maples’ intoxication on the night of the shootings or

other basic mitigating factors, each of which could have prevented his death sentence, including physical and mental abuse by his birth mother; a history of depression and suicide attempts; past severe head injuries that diminished his mental capacity; and the good behavior demonstrated by assisting police with the arrest of a local drug dealer. (*See id.*) It is reasonable (even likely) that if this evidence was presented to the jury, at least one juror would have voted against the death penalty which would have been enough to spare Mr. Maples' life.

III. Alabama's Indigent Defense System Maintained No State-Wide Agency to Facilitate Court-Appointed Capital Defense Attorneys.

Like most Alabama circuit courts in 1997, the Circuit Court of Morgan County, where Mr. Maples was tried, employed a court-appointed counsel system. As such, Mr. Maples' legal fortunes lay at the mercy of two benefactors: (1) the Circuit Court, to identify and select counsel with sufficient skill and experience to properly defend a capital murder trial; and (2) the selected counsel, to accept and thoroughly defend capital murder cases despite the low statutory pay rate and lack of resources.

Too often under this system, attorneys with the necessary skill and experience to properly defend capital murder cases refused to do so because of the unsustainable wages, leaving inexperienced attorneys to accept cases they were ill-

equipped and unable to defend, which is precisely what happened in this case. *EJI Report* at 7-8.

With no statewide support system, inexperienced attorneys like the ones appointed to represent Mr. Maples had nowhere to turn for guidance. This invariably compounded the effects of inexperience and low compensation, which resulted in a failure to investigate and prepare, and thus mount a meaningful and constitutionally effective defense. The Constitution demands that criminal defendants receive the effective assistance of counsel, not two attorneys “stumbling around in the dark.” Lack of competent counsel is particularly unacceptable in a capital trial when the defendant may pay for counsel’s errors with his life.

CONCLUSION

For the reasons set forth above, *amicus curiae* The Constitution Project respectfully requests that the Court grant the Petition of Cory R. Maples.

Dated: July 7, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4818 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word with size 14 Times New Roman font.

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I HEREBY CERTIFY that on this 7th day of July, 2016, a copy of The Constitution Project's foregoing Appellate Brief was filed via the Court's CM/ECF and served by electronic means, via the Court's CM/ECF system, on all counsel registered to receive electronic notices.

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ADDENDUM

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