**Death Penalty Abolition**

*Portfolio Review*

US Programs – Justice Fund  
Open Society Foundations

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**I. BACKGROUND**

The death penalty has no role in a democratic society. Its use in the United States violates principles of justice, government transparency, and equality. Capital punishment can never be practiced in a way that is fair or unbiased. Time and time again, the death penalty has been proven to be racially discriminatory, used arbitrarily, error-prone and a waste of government resources. Abolishing the death penalty advances the core values of an open society and all of the principles that United States Programs (“USP”) of Open Society Foundations (“OSF”) supports. Fortunately, the use of capital punishment is on the decline in the United States and OSF has played a role. This narrative provides an overview of OSF’s grantmaking efforts aimed at abolition.

USP developed the Gideon Project in 1998 as a grantmaking effort to support death penalty abolition and indigent defense reform. The Gideon Project’s grantees engaged in work that included research, infrastructure support for national organizations, grassroots advocacy and litigation.[[1]](#footnote-1) One year later, Open Society Institute (“OSI”) helped to launch the funding collaborative Funders for Alternatives to the Death Penalty (“FADP”) to support more coordinated and strategic investments in anti-death penalty advocacy. Current FADP members include OSF, The Atlantic Philanthropies, Fund for Non Violence, Butler Family Fund, and the newly formed Themis Fund at Proteus.[[2]](#footnote-2)

In 2007, OSF increased its commitment in the death penalty abolition field. That year, OSF along with The Atlantic Philanthropies and other FADP members convened a series of meetings with leaders in the field to develop a strategic plan for a comprehensive campaign to end the death penalty. Litigators, organizers, policy experts, researchers, and communications professionals were asked to provide extensive consultation to the funders. Collectively, the group analyzed options and, in consensus, mapped out a coordinated, movement-wide strategy that became known as the Campaign to End the Death Penalty in the U.S. by 2025 (“2025 Campaign”). OSF staff played a lead role in forming the new 2025 Campaign.[[3]](#footnote-3) For purposes of this portfolio review, we evaluate OSF’s death penalty abolition funding from the time the 2025 Campaign began in 2007 until 2013.

**II. WHY A NATIONAL ABOLITION CAMPAIGN?**

The originating goal of the national 2025 Campaign was to support multi-pronged advocacy strategies leading to a Supreme Court decision that would rule capital punishment a cruel and unusual punishment, therefore banning the practice in violation of the Constitution. To make this determination, the Court would determine if there was a national consensus against the use of capital punishment based upon a history of Eighth Amendment jurisprudence.[[4]](#footnote-4)

The 2025 Campaign sought to demonstrate a national consensus against the use of capital punishment through two main strategies - legislative repeal campaigns and litigation strategies to reduce usage of the practice.[[5]](#footnote-5) These two strategies would be bolstered by complementary strategies including communications, grassroots organizing, policy advocacy, and research. The 2025 Campaign sought to impact the public’s awareness of the arbitrary, error-prone, and discriminatory nature of the death penalty, focus on issues such as innocence and wrongful convictions, and highlight the expense and futility of maintaining costly capital punishment regimes.

When the 2025 Campaign formed, the primary assumptions of USPs’ involvement were: 1) funders would have to incentivize advocates to increase coordination across sectors to make advances towards abolition; 2) USP and other funders would have to significantly increase existing investments and play an active role in the Campaign’s progress; 3) national organizations would have to work with state-based groups and the work would have to advance state repeal efforts and reduce usage; and 4) USP would prioritize funding the Campaign’s litigation efforts.

Although the 2025 Campaign came together formally in 2007, its development was the result of years of work and several culminating factors including: 1) increasing coordination among advocates since the mid-1990s, particularly after a foundation-initiated meeting with advocates in 2000 to encourage them to coordinate their work and funding requests; 2) momentum gained from a judicial decision invalidating New York’s capital punishment statute in 2004 and growing momentum for abolition in New Jersey resulting from a moratorium and study commission initiated in January 2006; 3) the entry of the JEHT Foundation and the Atlantic Philanthropies in the field of abolition grantmaking in 2003 and 2004; and 4) a shifting political environment and changes in public opinion about capital punishment resulting from growing attention to issues related to innocence and wrongful convictions, including the commutation of 167 death row inmates by Gov. Ryan of Illinois and a major study by Columbia Law School Professor James Liebman exposing serious problems and errors with the system of capital punishment.

Critical Issues That Framed the 2025 Campaign’s Development

The 2025 Campaign hired its first director in 2007 and was governed by a nine-member rotating nine-member Steering Committee of field leaders. Much of the work of the 2025 Campaign was also supported by five “Affinity Groups” (litigation, policy, communications, research and organizing), which were led by about two dozen leaders in their respective fields. The 2025 Campaign’s leadership had extensive interaction and collaboration with FADP to support the fundraising goals. Three key issues that emerged during the formation of the 2025 Campaign and later impacted the Campaign’s progress were:

* Who would have authority to make funding recommendations?
* Would participating foundations be able to meet the 2025 Campaign’s funding goals?
* Who would have authority to set and adjust the Campaign’s targets in response to changing events and trends in the field?

Section IV of this narrative provides a more comprehensive discussion of these issues.

**III. BROADER TRENDS IMPACTING THE MOVEMENT TO ABOLISH THE DEATH PENALTY**

Momentum Forward

Since 2007, six states abolished the death penalty with Maryland being the most recent state to abolish the practice in 2013. In April 2014, New Hampshire came one vote away from repeal. Currently, advocates in Delaware are doing their best to secure legislative support for repeal. Additionally, over the past few years, the Governors of Colorado, Oregon and Washington have put a halt on executions citing the arbitrary nature in which the death penalty is pursued. At the same time, usage of the death penalty has declined from a peak of 98 executions in 1999 to 39 in 2013, and from 315 new death sentences in 1994 and 1996 to 80 in 2013. Despite these measureable gains, many jurisdictions continue to use capital punishment, with 32 states still authorizing its use.

Moreover, there are pockets in the country where local officials continue to vigorously seek new death sentences and carry out executions. In 2013, all of the new death sentences came from only 2 percent of the counties in the United States. California (24) and Florida (15) represented almost half of these death sentences. In 2013, 82 percent of all executions were in the South.

Shifts in public opinion

According to a recent Gallup poll, almost 60 percent of Americans favor the death penalty for an individual convicted of murder. Sixty percent represents the lowest support for the death penalty since 1972 when support was 57 percent. A 2013 report by Pew Research Center confirms a trend of decreasing support for the death penalty. One favorable measure of progress is the increase in the percentage of Americans who favor alternatives to the death penalty. According to Gallup, Americans who favor life without parole as an alternative to capital punishment grew from 34 percent in 1985 to 46 percent in 2010. Moreover, 64 percent of Americans do not think the death penalty acts as a deterrent and only a slim majority (52 percent) believes the death penalty is applied fairly. National opinion polling conducted in 2010 revealed other key findings: fairness, cost, victims’ needs and innocence are important to voters thinking about the death penalty.

Trends Supporting a Decline in Usage and Legislative Change

There have been a variety of interrelated trends which researchers and other experts attribute to the decline in usage of the death penalty including:[[6]](#footnote-6) a lower murder rate nationally,[[7]](#footnote-7) the growing availability of life without parole,[[8]](#footnote-8) increasing exposure to stories of innocence and wrongful convictions,[[9]](#footnote-9) a softening of public opinion in favor of the death penalty, juries that are less willing to give death sentences,[[10]](#footnote-10) prosecutors who are seeking death less, and sophisticated litigation strategies which prevent new death sentences and executions.

Although it may be impossible to determine with certainty the magnitude that each of the above factors has had in decreasing usage, many experts agree the increasing public exposure to the arbitrary and error prone system[[11]](#footnote-11) of capital punishment has raised doubts about its fairness and utility. A set of other factors has contributed to successful state repeal campaigns including:

* Long-term work by advocates who have developed increasingly sophisticated strategies;
* Opportune political moments including shifts in the composition of state legislatures;
* Research and study commissions which expose problems with the death penalty;
* Integration of unlikely allies in state campaigns including law enforcement and victims’ family members; and
* Support of key allies such as faith communities, and local affiliates of national organizations such as the NAACP and the ACLU.

**IV. 2025 CAMPAIGN AND USPS’ GRANTMAKING ASSESSMENTS**

2025 Campaign

The 2025 Campaign’s successes include a more coordinated and collaborative approach to field-building and funding that has helped to achieve two important goals:

* Advance legislative repeal; and
* Support key organizations that are working to prevent new death sentences and executions.

In particular, funders made significant investments in all of the states that repealed the death penalty since 2007 and to organizations working in traditionally high-use and “hot spot” jurisdictions including states like Texas, Georgia, Alabama, and Pennsylvania. Funders made new investments in Pennsylvania and Arizona to address new death sentences in those states.

FADP made grants totaling almost $67,000,000 to support death penalty abolition from 2007 – 2013. (Please see the appendix for additional details.) Three FADP members, including OSF, also took part in the Death Penalty Mobilization Fund (“DPMF”) - a pooled grantmaking fund at the Tides Foundation designed to support state repeal campaigns. Since 2000, DPMF has made grants totally more than $3.1 million to organizations working towards legislative repeal.

*A Real Campaign?*

One of the 2025 Campaign’s main challenges has been the lack of clarity about the decision-making structure. Some vocal critics believed a true campaign should have a narrowly tailored set of strategic priorities and that funders should come into alignment and only fund organizations or strategies to achieve those priorities. The problem was – not everyone agreed about the priorities and no one was making the tough calls about what priorities should be de-emphasized and others elevated. For example, some field leaders believed that funding expensive legislative repeal campaigns in low-use states was not a strategic priority and wasted valuable resources that could have been allocated to reduce usage in high-use jurisdictions.

A subsidiary problem was a lack of complete buy-in from all sectors of the movement about the utility of the 2025 Campaign. Through numerous conversations, we learned that many litigators did not always see the Campaign’s benefit to their work unless resources were directed to their states to support driving down usage. Litigators were also consumed with defending their clients and did not always have time to take part in the Affinity Group structure on a regular basis.

These problems are partly rooted in the 2025 Campaign’s structure. At the formation of the 2025 Campaign, the Coordinator was never given authority to make decisions about where the Campaign should shift its strategic priorities to address emerging needs in the field. The Coordinator was charged with facilitating communication among the 2025 Campaign’s many stakeholders. Instead Steering Committee members were given the responsibility to develop strategic priorities. Despite this charge, many field leaders were concerned that strategic priorities were not identified clearly or narrowly enough, and, as a result, funding was not directed to where it was needed the most.

A related challenge was the 2025 Campaign’s lack of staffing capacity to carry out regular and intelligence gathering and analysis about the complex set of political, legislative and other factorings impacting capital punishment. Many advocates reported that the regular field updates from the Campaign Coordinator lacked specific direction. The 2025 Campaign’s single staff member did not have the time or resources to take on the numerous responsibilities required to lead a national campaign.

Other challenges include the lack of clarity about how funding priorities should be determined and how information about funding decisions by FADP would be shared. At the beginning of the Campaign, many advocates wanted the authority to set funding priorities and make funding recommendations but funders balked at the idea. Instead, a compromise was struck and the Steering Committee was empowered to provide funders with a list of strategic priorities. While funders wanted input and guidance, most Steering Committee members didn’t feel comfortable giving specific recommendations about what organizations or projects should be funded. However, some vocal advocates in the field wanted the Steering Committee to give funders more direct guidance. This created a conflict. In particular, Steering Committee members were concerned that even their recommendations about larger strategic priorities could have the appearance of a conflict of interest if they suggested funding be directed in a jurisdiction or state where their organization was based.

Since the competition over limited foundation dollars had created conflicts among grantees in the past, FADP members did not feel comfortable sharing their funding decisions. Many advocates and grantees criticized FADP for this lack of complete transparency. Steering Committee members also reported that the lack of transparency impeded their decision-making about setting the Campaign’s priorities. While FADP members frequently discussed and debated the issue of full disclosure, the collaborative never set a formal policy. In 2013, the group agreed to share funding data by state and sector. In the future, the funding collaborative will set a formal policy that provides full disclosure of funding decisions including funding amounts and organizational names to targeted 2025 Campaign stakeholders to facilitate the setting of priorities. It remains to be determined if FADP members will release full funding details to all grantees.

Another significant issue related to funding that will likely never be resolved is the gap between the perceived funding needs of a national death penalty abolition campaign and the amount funders have brought to the table. The original 2025 Campaign budget was approximately $28 million. During the early stages of the Campaign, it became clear that this goal was unrealistic. As a result, the Campaign’s leadership reduced the amount and determined the advocacy field would need about $14 million annually beginning in 2010. However, for several consecutive years, FADP members made grant recommendations totalling about $12 million annually. This example illustrates the contrast between what advocates desire and what can realistically be funded. As Atlantic Philanthropies exits the field, the resource gap will only increase. In response, Atlantic has created the Themis Fund, a new funding entity housed at Proteus tasked with the goal of bringing new donors to the national campaign. Currently, Themis Fund is staffed by a former program officer of the Atlantic Philanthropies. It is uncertain if Themis will ever be able to raise enough funds to replace the gap left created when Atlantic leaves. On average, Atlantic has funded slightly over $6 million per year to support abolition the past three years.

*National coordination*

Unfortunately, over the years, turf battles have emerged between the National Coalition to Abolish the Death Penalty (NCADP) and Equal Justice USA - (“EJUSA”) - two of the leading national anti-death penalty organizations that provide critical support to state-based abolition campaigns. An evaluation firm and consultant supported this observation. Their assessments revealed: 1) a lack of clearly defined roles between EJUSA and NCADP; 2) EJUSA’s competition with other national organizations in ways that hindered progress for repeal campaigns; and 3) actions by EJUSA’s which were viewed, in some cases, as usurping the role of state abolition groups in repeal states.

The leaders of both organizations have seen the assessments and have discussed them with FADP members. In some instances the organizations’ leaders agree with the observations and have attempted to resolve differences and work better together. Since both organizations have provided valuable services to state-based campaigns despite the challenges, funders have been reluctant to completely “defund” them—fearing a gap of needed services. Notably, in response to the critiques, NCADP is refining its strategy by putting in place a more communications-focused plan to fill a gap in the field, broadening the base of support for abolition by recruiting more national allies to support state efforts, beefing up board membership, and working to support its state affiliates by accessing state-of-the-art voter databases.

Restructured campaign

The 2025 Campaign’s Steering Committee, in collaboration with FADP and other leaders in anti-death penalty field, made a decision early in 2013 to restructure the 2025 Campaign to reprioritize limited resources. The 2025 Campaign’s litigation affinity group believed there needed to be a change in strategy for three reasons:

* Fewer opportunities remained to obtain repeal in “low-hanging fruit” states making it more difficult and more expensive to win repeal campaigns or ballot initiatives in additional states;
* The Atlantic Philanthropies would be making its last death penalty grant at the end of 2015, thereby substantially reducing the available resources; and
* The Supreme Court’s decision in *Graham v. Florida* provided evidence that the Court’s Eight Amendment consensus analysis would give significant weight to reduced usage of a punishment, without a majority or supermajority of states having to legislatively repeal the practice.[[12]](#footnote-12)

Atlantic Philanthropies and Themis Fund have played primary roles in the 2025 Campaign’s reorganization by funding and engaging Civitas Public Affairs to design the structure of a new national campaign (“Campaign 2.0”).[[13]](#footnote-13) The realignment process for Campaign 2.0 is winding down. After a national search, on May 6, long-time capital litigator Henderson Hill accepted the position as the new Campaign Director. Changes in the campaign structure will include four new staff positions to retain individuals with litigation, legislative and communications expertise. Civitas has recommended replacing the Steering Committee with a smaller and non-rotating advisory board and eliminating the Affinity Groups. The administrative and operational budget of the new Campaign structure is $1.4 million annually. The Atlantic Philanthropies has made a commitment to fund the first two years of Campaign 2.0.

Unfortunately, the restructuring process caused a leadership vacuum. The prior Campaign Coordinator felt pushed out and resigned in mid-2013. Additionally, as Civitas’s influence grew, its role started to overshadow the influence of the Steering Committee, which became inactive at the end of 2013. Civitas also exacerbated tensions in the field by marginalizing the participation of some long-time advocates and failing to adequately consult many leaders as it built out a new campaign structure. Finally, at least one funder who has not been pleased with Civitas’s role, or the pre-existing 2025 Campaign, has created controversy by criticizing individual funders and institutions in public ways.

Effective coordination and partnership in the death penalty abolition movement is more important than ever before. Given existing tensions in the field, the long-term success of Campaign 2.0 will depend upon the ability of the new campaign director and staff to build alliances and partnerships with leaders in the abolition movement and funders. If the Campaign 2.0 staff is viewed as a competitor instead of a collaborator, the intensity of the competition and turf battles may increase. Since EJUSA, NCADP and other organizations have not been actively involved in the new campaign's development, it remains to be seen how effectively these national organizations will coordinate with the Campaign 2.0 staff.

USPs’ Grantmaking

USPs’ investment in the 2025 Campaign has been structured around risk-taking to support new projects that advance the Campaign’s goals and investments in litigation strategies to drive down usage. When USP first took part in the 2025 Campaign, OSF agreed to prioritize a litigation-based funding strategy. This decision has been a good fit for USP given the OSF’s previous limited use of its c4 capacity and Atlantic Philanthropies’ strategic advantage of c4 capacity and significantly larger grantmaking budget to support state-repeal campaigns. Since Atlantic was investing considerably more resources in state repeal campaigns, USP could support strategies to reduce usage.

Of course, USPs’ grantmaking choices cited above have had tradeoffs. Some of the new projects have flourished while others have been less successful. Additionally, by prioritizing funding some key areas, USP has not been able to invest significantly in other strategies such as communications and research. We explore the consequences and tradeoffs of these choices below. (Please see appendix for a list of USP grants.)

*Tradeoffs*

Only eight percent of USPs’ death penalty abolition grantmaking has supported communications strategies. Although we knew that there was an important need to ramp up the 2025 Campaign’s communications infrastructure, we were reluctant increase funding in this area since it would have meant that another grantee carrying out policy or litigation strategies would have not been funded. We continue to grapple with these tough choices. Looking back, we could have made additional investments in communications.

Despite the lack of investment in this area, one successful “start-up” grantee that has played a particularly effective role is the Capital Litigation Communications Project (“CLCP”). CLCP provides critical communications support to carefully chosen death penalty cases to support litigation teams with the goal of highlighting systemic themes such as mistake, unfairness, intellectual disability, or innocence to further eroding public support for capital punishment. The project director has become the “go to” communications expert for capital litigators in the country working on more than 30 capital cases per year with at least one U.S. Supreme Court case per year. Unfortunately, the pace at which CLPC director and other staff work cannot be sustained. Fortunately, the Campaign 2.0 staffing structure calls for the hiring of a communications staff member. This additional staff capacity will ease some of the burden on CLCP but it will not alleviate it entirely.

Another tradeoff has been USP’s lack of investment in research about capital punishment. We know that research plays a critical role in documenting the flaws, racially disparate impact and arbitrary nature of the death penalty. Fortunately, the work of some of the Justice Fund’s other grantees and key allies such as the National Registry of Exonerations at the Center on Wrongful Convictions at Northwestern Law School, the Innocence Project, Prof. Sam Gross at University of Michigan Law School, Jeff Fagan and James Liebman, among others, have played influential roles in highlight what’s wrong with capital punishment. We have not yet determined if we will make new investments in research in the near future.

*Successes and new opportunities to drive down usage*

Although there are still many challenges, litigation and policy efforts by USP grantees in traditionally high-use jurisdictions like Texas, Georgia and Alabama have helped to reduce new death sentences, prevent executions and bring about reforms that have improved capital defense. For instance, the Southern Center for Human Rights helped to support the passage of the Georgia Indigent Defense Act and defeat of legislation that would have allowed for a non-unanimous jury to sentence a person to death. The Texas Defender Service has supported key policy reforms intended to improve fairness and accuracy of the criminal justice system and the development of a Regional Public Defender for Capital Cases. Attorneys for the Equal Justice Initiative in Alabama continue to win positive rulings for death penalty clients. Moreover, high-quality and intensive litigation and mitigation efforts in high-use states help to change the culture by setting a high bar for capital representation.

One of the successful start-up projects supported almost exclusively by USP has been the work of Lethal Injection Project (“Project”) at UC Berkeley. The shortage of drugs used in lethal injections has created an opening for a variety of legal challenge as states scramble to adopt new lethal injection protocols. The Project’s two attorneys are working with litigators in various states to challenge the constitutionality of new lethal injection drug protocols and state secrecy laws related to the protocols. The collective work has effectively created moratoria in five states pending litigation. The team is working with attorneys in six other states to challenge state secrecy laws there. Although not funded by USP, staff at Reprieve, an international NGO, have also coordinated and worked successfully with the Project’s attorneys. Reprieve’s complementary focus has secured European Union controls to regulate distribution channels of drugs used in lethal injections to prevent European pharmaceuticals from being used in executions. After making successive one-year commitments to the Project, we recommended a two-year grant to provide greater stability. Prior to the two-year grant, the Project’s attorneys were fearful of not being able to continue their work. Our investment in this small but impactful project that prevents executions is critical to the goal of national abolition.

Another successful start-up is the Atlantic Center for Capital Representation (“ACCR”). Based in Philadelphia, ACCR has taken the pre-trial case consulting and training model used successfully by the Texas Defender Service and transferred the model to Pennsylvania, a state that has had a high rate of capital prosecutions, poorly trained capital defense attorneys and inadequately funded capital defense. ACCR’s litigation over the outrageously low fees to capital litigators in Philadelphia has helped to change the conversation about the death penalty in the state. Again, we’ve learned that a relatively small but highly qualified team can impact policy, change the conversation about the death penalty, and improve capital defense. This model has the potential to be replicated in other jurisdictions.

As a result of some of the lessons cited above, we are now evaluating proposals to fund litigation efforts in Florida to address high usage in that state.[[14]](#footnote-14) Recently, USP supported a meeting of litigators in Florida to identify strategies that could address the post-conviction and pre-trial needs in the state. After the meeting, litigators coordinated and developed two project proposals– one for pre-trial case consulting and training and another for emergency post-conviction work. We are faced with tough choices as we make a decision about prioritizing post-conviction or pre-trial efforts.

*Less Impactful*

While the New Voices Clearinghouse managed by The Constitution Project had promise to connect unlikely allies to clemency and state repeal campaigns, the number of allies actually connected to these efforts has not been impressive. As a result, we decided to make a tie-off grant at the end of 2013. We found a similar challenge with the Defense Initiated Victims Outreach (DIVO) managed by the Institute for Restorative Justice and Dialogue at the University of Texas at Austin. The project had great promise of providing survivors of homicide victims in capital cases with support specific to the survivors’ needs led by the defense team. The notion that a victim survivor could want anything from the defendant’s attorney is a dramatic departure from traditional victim services and philosophies. Despite the innovative nature of the project, the number of cases the project has influenced after the first year has not been high. The project staff cited problems such as resistance by judges to approve funding, lack of understanding and hostility by prosecutors of the DIVO practice, and an outright attack campaign led by prosecution-oriented victims groups in Texas.

One area where we have been less impactful is helping our grantees to build their organizational capacity. Although two of our national grantees took part in a year-long financial capacity building, coaching and technical support program with the Non Profit Finance Fund, none of our other grantees had this privilege. The two grantees who took part in the NFF program found it extremely beneficial. One grantee was able to rebuild the organization’s financial health as a result of the program. Many of the state-based abolition groups operate with little infrastructure and need organizational capacity building. We would have to cease funding in another area of the grantmaking portfolio to ramp up more capacity building support.

*Ongoing challenges to USPs’ grantmaking*

Ongoing challenges to our grantmaking have included an overreliance on the 2025 Campaign Steering Committee as a source for intelligence about trends in the states. Monitoring all of the state activity is extremely time-consuming and, in the past, having the Steering Committee weigh in has provided added insights. However, that reliance comes at the cost of not always getting information directly from state partners. There is a similar benefit and cost with the regranting mechanism of the DPMF. The benefit of the regranting mechanism is the ability to vet proposals and fund multiple organizations aligned to similar goals. While the DPMF has provided needed funding to state-based abolition groups, since it serves as an intermediary, it means we are usually one step removed from the organizations receiving the funding. This distance can make it more challenging to monitor the progress of the organizations.

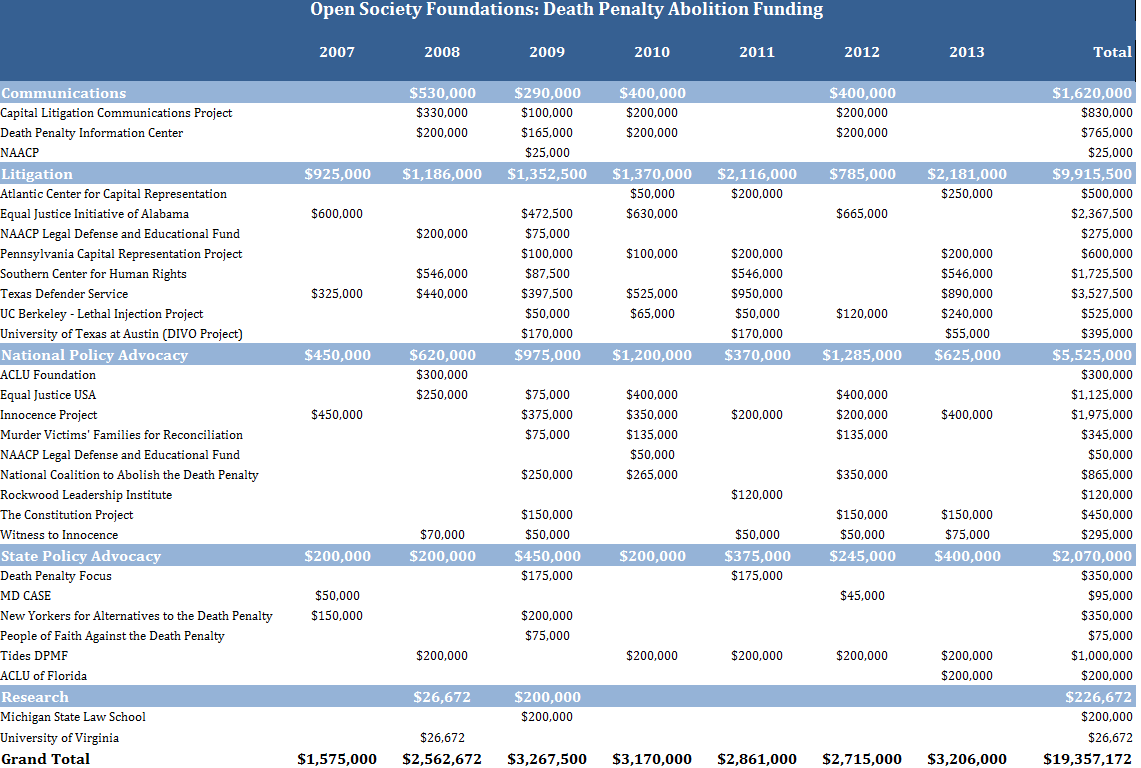
We have been concerned by the over-reliance on OSF funds by smaller grantees. In particular, many of the DPMF grantees rely on the Fund as their sole source of funding. We have encouraged our smaller grantees and the state groups receiving grants from the DPMF to seek in-state sources of funding but many have failed to do so. We have considered making a match requirement but fear it might cut some groups from receiving any support.

**V. GOING FORWARD**

Despite the considerable progress reducing usage and abolishing the death penalty in key states, there are troubling trends. For example, while lethal injection litigation has helped to create *de facto* moratoria in many states, many Departments of Correction are now resorting to implement new lethal injection protocols while invoking state secrecy laws to prevent knowledge of the drugs used. The recent botched execution in Oklahoma is but one example of a state that continues to hang on to capital punishment while cloaking it in secrecy. This trend by several states has led to a new litigation around the country to compel them to reveal the sources of the lethal injection drugs. Other challenges to death penalty abolition include conservative political environments in many jurisdictions, which resist reforms and instead work to speed up executions. Seeking repeal in low-use but conservative jurisdictions will also be more costly given the length and intensity that may be required to achieve repeal. Moreover, the long history of racial discrimination in the Deep South means that race continues to disproportionately determine who is sentenced to death. Finally, even with the most sophisticated pre-trial litigation strategies in hot spot jurisdictions, some prosecutors will continue to seek new death sentences.

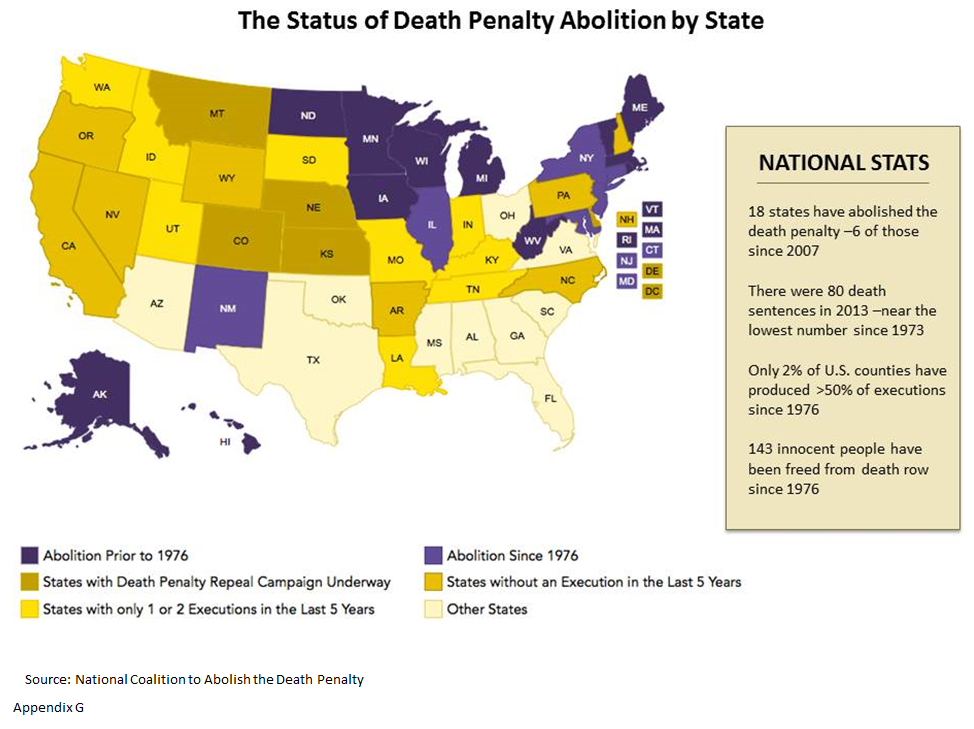
Despite these challenges, we believe abolition of the death penalty in the United States is achievable. We have come a long way from the peak period of executions and death sentences not long ago. President Obama’s recent directive to Attorney General Holder to review how the death penalty is applied in the U.S. is another indication that the death penalty is coming under increasing scrutiny – this time from the highest levels of our government.

To achieve abolition, Campaign 2.0’s leadership must be focused in setting clear priorities and helping the field to come together and resolve differences that impede progress. USPs’ grantmaking should be clearly focused on the priorities of Campaign 2.0 to reduce usage through a set of complementary strategies. While some of the new projects we have supported have been less successful, we should not be afraid of going into new jurisdictions to test proven strategies with new partners.



Appendix A

Appendix B



Appendix C

Appendix D: National Campaign Timeline

(1994 - 2014)

**1994 – 2000**

* Several national groups react to passage of Violent Crime Control and Law Enforcement Act and its impact on the expansion of the federal death penalty forming the basis for more coordinated national work on death penalty reform.

**1996**

* ACLU Capital punishment project contracts with a public opinion firm to conduct polling and focus groups about capital punishment which supports an "incremental" strategy focused on reform and moratoria.

**1998**

* Open Society Institute (OSI) makes its first grants related to death penalty reform/abolition.
* At OSI December board meeting, USP gains approval to develop the Gideon Project to fund indigent defense and death penalty reform.

**1999**

* OSI, Columbia Foundation, and Roderick MacArthur Foundation hold meeting in Chicago with strategists to learn lessons from other campaigns/movements. An outcome of the meeting is the creation of the Justice Project, which focuses on implementation of the Innocence Protection Act.
* OSI takes lead in forming funding collaborative known as Funders for Alternatives to the Death Penalty (FADP).
* Litigators develop a strategy memo focused on incremental reform as building blocks for abolition.

**2000**

* Arca Foundation hosts meeting at Musgrove conference center focused on death penalty abolition including a presentation of polling and discussion of strategy. Several funding entities and more than 50 advocates attend. Subsequently, FADP requests a collaborative proposal from seven organizations but is disappointed at the lack of coordination after receiving the proposals.
* After Musgrove, seven organizations (known as the "G7") continue to coordinate death penalty work and expand participation to include other national organizations (forming the "Ad Hoc Working Group"). FADP encourages the Working Group to improve coordination across sectors and focus on a state-based strategy for reform/abolition.
* Tides Foundation develops the Death Penalty State Strategies Mobilization Fund (DPMF) as a direct outgrowth of Musgrove conference and leadership from FADP.

**2003**

* JEHT Foundation includes death penalty among the criminal justice issues being addressed focusing initially on the juvenile death penalty and eventually expanding to state campaigns in New Jersey, New Mexico, North Carolina and Maryland.
* Eight members of the Ad Hoc Working Group produce a strategy document for a campaign to abolish the death penalty. The document does not articulate detailed, coordinated plan. Instead, it reads as a status update of the field and highlights an incremental strategy focusing on fairness and innocence.

**2003 – 2007**

* Various funder convenings seeking additional funders, roughly annually.

**2004**

* Atlantic Philanthropies begins funding death penalty work including efforts to end the death penalty for juveniles. Later, AP decides to continue funding abolition at adult level.

**2005 – 2006**

* Atlantic hires a consultant to take part in listening tour of various stakeholders to prioritize needs for death penalty abolition and reform.

**2006**

* November – funders and advocates hold a meeting at the JEHT Foundation focused on determining “What will it take to abolish the death penalty in our lifetimes?” The JEHT meeting leads to 2007 convening in Armonk, NY.

**2007**

* Atlantic contributes to Tides Foundation Death Penalty State Strategies Mobilization Fund (DPMF) - allowing for larger and multi-year grants and c4 funds for lobbying.
* May-October - Funders support process to bring field together through affinity groups to develop “corridors of action” ultimately leads to formation of a coordinated national strategy to abolish the death penalty in US by 2025 with a plan for a Steering Committee (SC), affinity groups, and full-time coordinator. Culminating meeting takes place in Armonk, NY.
* December - First campaign budget presented – annual needs are on scale of $28-32 million. Funders balk at amount, having previously said, “Tell us what it will take.” Budget later scaled down to $14 million.

**2008**

* There is considerable work between SC and FADP to increase commitments from major funders including presentations to Atlantic and OSI.
* OSI increases death penalty abolition funding from less than $1 million annually to $3 million.
* FADP forms the first common letter of intent (LOI) process, which enhances coordination of funding requests.
* December - JEHT suddenly closes leaving outstanding grant commitments. OSI and AP provide emergency funds to several death penalty abolition grantees to soften the blow.

**2009**

* Houston gathering - Campaign SC, affinity group reps, and funders check in on the developing strategy. This is first large meeting since Armonk.
* There is increased coordination of funding among FADP members including first review of LOIs in a collective manner by FADP.

**2010 – 2013**

* Campaign affinity groups and SC meet regularly to discuss and respond to events in the field, refine campaign strategy and update strategy document.
* State abolition groups convene with funding support from Atlantic Philanthropies.
* FADP continues to implement common LOI process and allocate funding.
* Tides DPMF continues to make grants to state-based abolition organizations.
* FADP members meet regularly and have calls with campaign's SC to discuss refinements to strategy and adjust funding in response to opportunities and threats in the field.

**2013**

* SC and FADP meet and agree for a more focused and "directive" campaign and need to refine campaign's strategy.
* Atlantic Philanthropies hires a consultant to do a field scan to make recommendations for changes to campaign structure.
* 2025 Campaign Coordinator resigns.
* Atlantic Philanthropies, Themis Fund and The Vital Projects Fund hire Civitas Public Affairs to "build out" a new campaign structure.
* Civitas presents plan for a new campaign structure, adopting many of the recommendations from the consultant's report.

**2014**

* Based upon recommendation from a hiring committee composed of funders and advocates, Civitas makes an offer to a new campaign director.

PROTEUS FUND

FISCAL SPONSOR

DEATH PENALTY MOBILIZATION FUND

OSF, Atlantic Philanthropies, the Anonymous Fund

Affinity Groups

STEERING COMMITTEE

CAMPAIGN COORDINATOR

FUNDERS FOR ALTERNATIVES TO THE DEATH PENALTY

OSF, Atlantic Philanthropies, Butler Family Fund, Fund for Nonviolence

FUNDER COORDINATOR

Campaign to End the Death Penalty by 2025

(October 2007 – May 2014)

Appendix E

Campaign 2.0

(As of June 2014; New Name TBD)

Proteus Fund

Fiscal Sponsor

DEATH PENALTY MOBILIZATION FUND (DPMF)

OSF, the Anonymous Fund

CAMPAIGN DIRECTOR

ADVISORY BOARD

FUNDER COLLABORATIVE

OSF, Atlantic Philanthropies, Butler Family Fund, Fund for Nonviolence

Themis Fund

Housed within Proteus

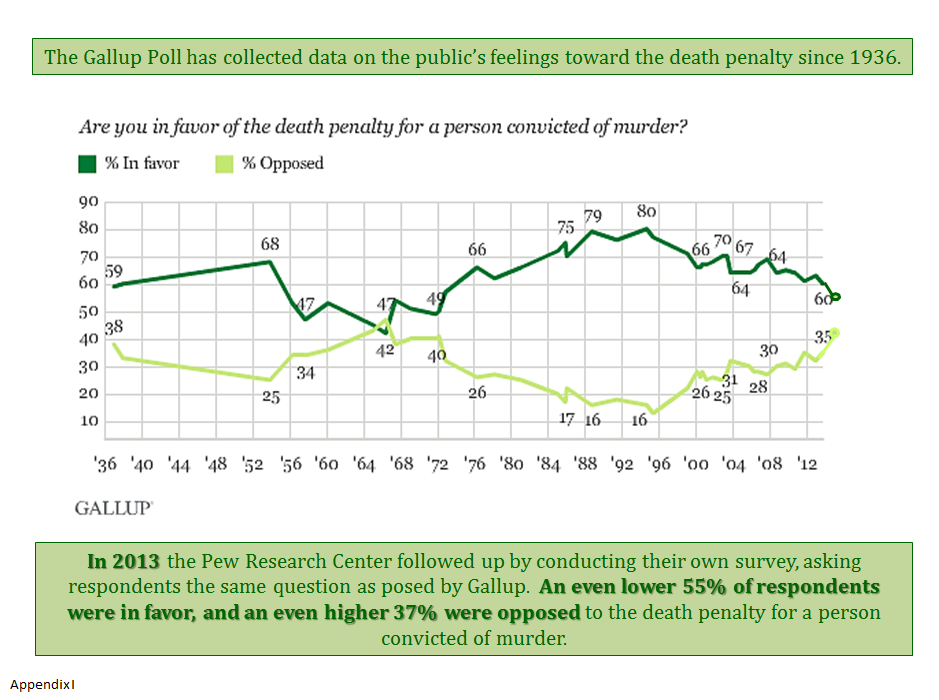
Communications Director

Policy Director

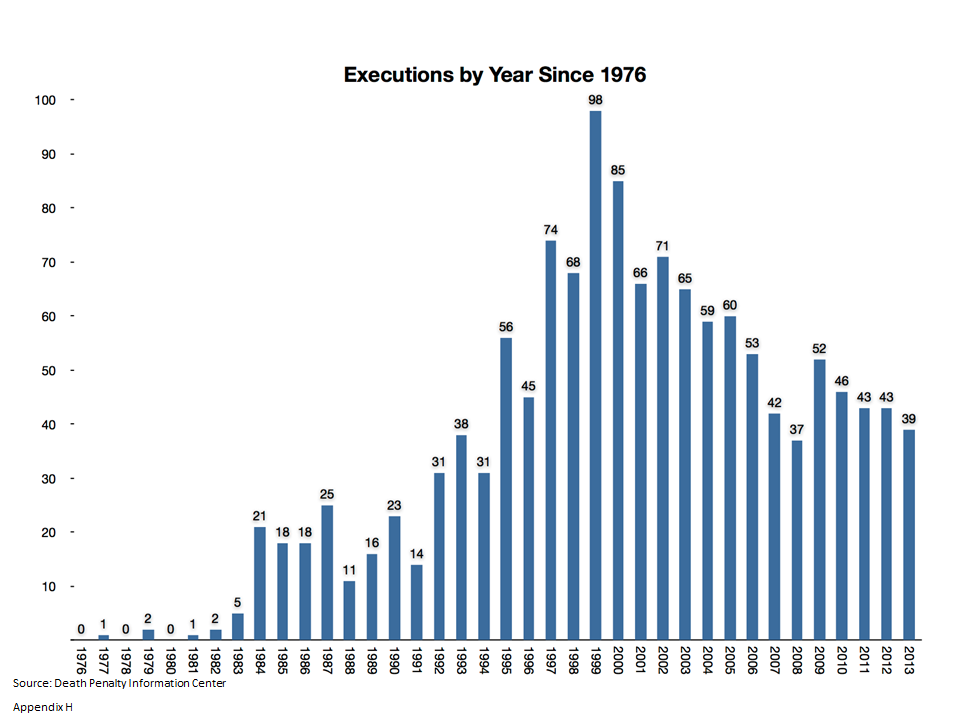
Administrative Assistant

Fourth position TBD

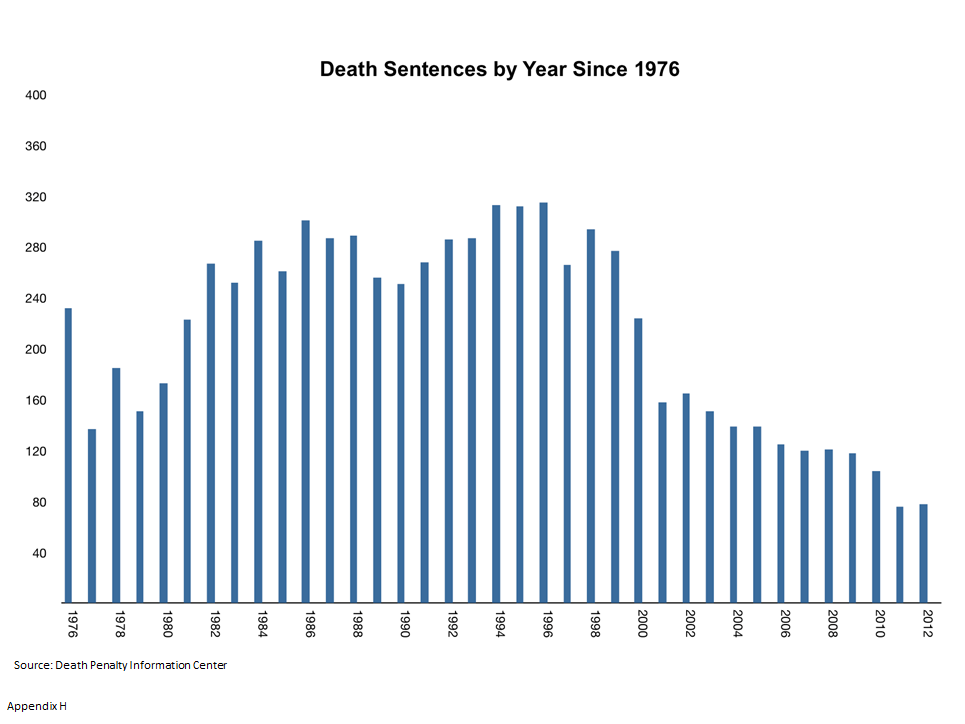
Appendix E



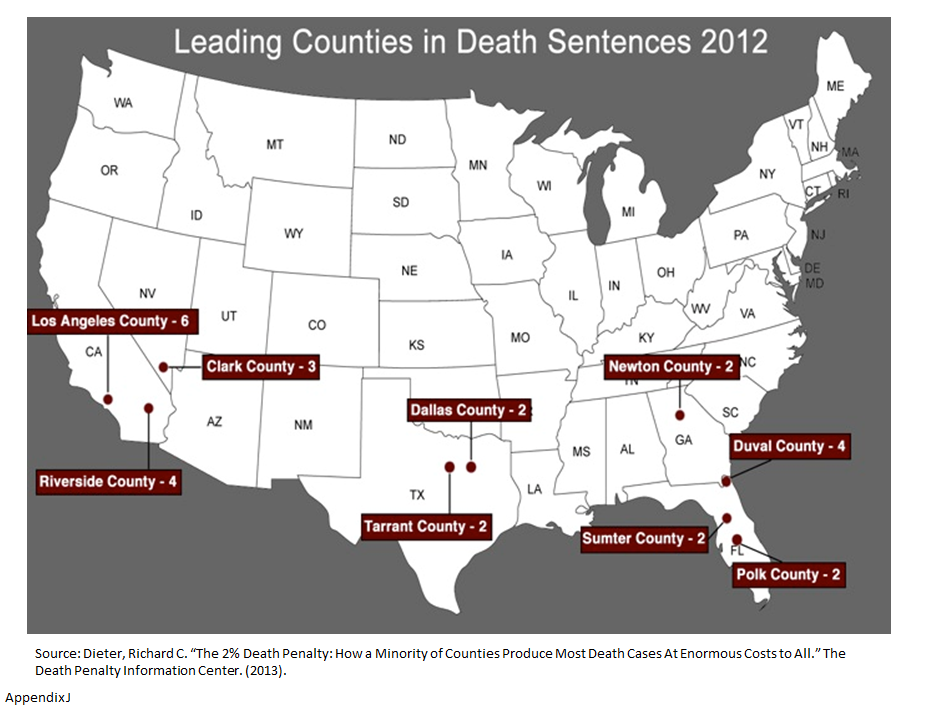
Appendix F



Appendix G



Appendix G



Appendix H

1. The Gideon Project was eventually folded into the newly formed Criminal Justice Fund (CJF) in 2008 and indigent defense became a separate portfolio. (CJF became the Justice Fund in 2103.) [↑](#footnote-ref-1)
2. Early members included - The Wallace Global Fund, The Maverick Lloyd Foundation. Before its closure, the JEHT Foundation coordinated closely with FADP but was not a member. [↑](#footnote-ref-2)
3. Jackie Baillargeon (wife of USP Director Ken Zimmerman) was a lead staff member directing OSF’s abolition grantmaking at that time, serving from 2000 – 2007. Tanya Coke led OSF’s grantmaking in this area from 1998 – 2003. Along with other funders, Ms. Baillargeon and Ms. Coke played significant roles leading to increased coordination in the field and enhanced capacity to develop a national abolition campaign. [↑](#footnote-ref-3)
4. *Furman v. Georgia*, 408 U.S. 238 (1972) (Court rules the death penalty, as it was practiced, violated the 8th Amendment and begins to lay the framework for a consensus analysis); *Gregg* *v. Georgia*, 428 U.S. 123 (1976) (Court allows the death penalty to be reintroduced with reconstituted capital sentencing guidelines that were less arbitrary). Only two Justices in the *Furman* Court agreed that the death penalty was inherently unconstitutional). [↑](#footnote-ref-4)
5. In a series of cases since *Furman*, the Court has based its consensus analysis on several factors including: number of states that legislatively abolish the practice - and the direction of legislative change; number of sentences imposed; number of executions performed; and geographic isolation in sentencing and executions. [↑](#footnote-ref-5)
6. *See* *A Matter of Life and Death: The Effect of Life-without-Parole Statutes on Capital Punishment*, Harvard Law Review, Vol. 119, No. 6 (Apr., 2006), pp. 1838-1854; *Life Goes On: The Historic Rise in Life Sentences in America*, 2013, Sentencing Project, Ashley Nellis. [↑](#footnote-ref-6)
7. The murder rate nationally decreased from 10.2 percent in 1981 to 4.7 percent in 2011. [↑](#footnote-ref-7)
8. According to The Sentencing Project, the number of individuals serving LWOP increased from 12,453 in 1992 to 49,081 in 2012. LWOP is currently available in every state except Alaska. Over the past four years, there has been a 22% rise in the LWOP population. Between 1971 – 1990 26 states enacted LWOP. Seventeen other states did so between 1991 – 2012. [↑](#footnote-ref-8)
9. As of March 2014, 144 individuals have been placed on the Death Penalty Information Center’s innocence list. They have been acquitted of all charges related to a crime placing them on death row; had all charges related to the crime that placed on death row dismissed by the prosecution; or been granted a complete pardon based on innocence. [↑](#footnote-ref-9)
10. Over the past six years in Texas, death-qualified juries have rejected the death penalty in more than 20 capital murder trials. *See Texas Death Penalty Developments in 2013: The Year in Review*, Texas Coalition to Abolish the Death Penalty. [↑](#footnote-ref-10)
11. A forthcoming study by Samuel Gross indicates 4.1% of death-sentenced defendants would be exonerated if they remained under a death sentences. *See The Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, Proceedings of the National Academy of Sciences of the USA, at http://www.pnas.org/content/early/2014/04/23/1306417111. [↑](#footnote-ref-11)
12. *Graham v. Florida*, 560 U.S. 48 (2010) (declaring the practice of life without parole unconstitutional for individuals who committed non-homicide crimes as juveniles when only six states legislatively prohibited the practice but where usage and geographic isolation demonstrated national consensus against the practice). [↑](#footnote-ref-12)
13. A new name has not been designated for the realigned campaign but it has been called Campaign 2.0. [↑](#footnote-ref-13)
14. Between 2011-13, Florida had the highest average number of new death sentences (17) per year. [↑](#footnote-ref-14)