

## WilmerHale Joins Groups Challenging California's Death Penalty for Racial Disparities

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Today, a consortium of nationally renowned civil rights organizations, legal organizations, and a law firm [filed](#) an extraordinary writ petition in the Supreme Court of California challenging the state's death penalty statute as racially discriminatory and unconstitutional under the Equal Protection guarantees of the California Constitution. This is the first time a petition of this nature has been filed with the court.

The original petition to the Supreme Court of California was filed by the Legal Defense Fund (LDF), the American Civil Liberties Union Capital Punishment Project (ACLU CPP), the ACLU of Northern California (ACLU NorCal), WilmerHale, and the Office of the State Public Defender (OSPD). This challenge was brought on behalf of petitioners OSPD, Witness to Innocence, LatinoJustice PRLDEF, the Ella Baker Center for Human Rights, and Eva Paterson, co-founder of the Equal Justice Society. The WilmerHale team consists of [Seth Waxman](#), [Jessica Lewis](#), [Kathryn Zalewski](#) and [Angela Boettcher](#).

The evidence of racial bias in California's implementation of the death penalty is pervasive and well-documented. [Numerous empirical studies](#) by [leading social science experts](#) reveal troubling disparities: Black people are about five times more likely to be sentenced to death when compared to similarly situated non-Black defendants, while Latino people are at least three times more likely to be sentenced to death.

"The California Constitution does not permit a two-tiered system of justice where the most severe sentence the state has on its books is imposed overwhelmingly on Black and Brown people," said **Lisa Romo, Senior Deputy State Public Defender at OSPD**. "We urge the Court to address this long-standing injustice and ensure that Black and Brown people are no longer sentenced disproportionately to death."

"Equal protection under the laws is a fundamental guarantee of the California Constitution," said **Seth Waxman, partner and Co-Chair of WilmerHale's Appellate and Supreme Court Litigation**

**Practice**, “but for decades administration of the death penalty in California has failed to meet that guarantee.” Added **Jessica Lewis, a partner in WilmerHale’s San Francisco office**: “That failure is why this petition is so critical. The empirical evidence described in the petition demonstrates that the death penalty in California has long been administered in a racially discriminatory manner, in violation of the equal protection guarantees of the California Constitution.”

California’s capital punishment scheme is not only racially discriminatory, but this form of punishment, as well as other tools of racial violence, have historically been weaponized to harm people of color.

“The persistence of racial disparities in the administration of capital punishment in California is linked to a legacy of racial violence and oppression long perpetrated against Black people and other people of color,” said **LDF Assistant Counsel Patricia Okonta**. “Capital punishment has roots in slavery, lynchings, and white vigilantism. Maintaining these violent remnants of racial subordination is unconscionable and has no place in modern society.”

Both Governor Gavin Newsom and California Attorney General Rob Bonta have acknowledged the persistent and pervasive racial disparities in the administration of the death penalty in California. In a 2021 amicus brief submitted in *People v. McDaniel*, Governor Newsom acknowledged that the “overwhelming majority of studies that have analyzed America’s death penalty have found that racial disparities are pervasive, and that the race of the defendant and the race of the victim impact whether the death penalty will be imposed.” In March of 2019 Governor Newsom signed an Executive Order instituting a moratorium on the death penalty in California stating that, “death sentences are unevenly and unfairly applied to people of color. . . .”

“California’s racially biased death penalty continues to destroy Black and Brown communities,” said **Ella Baker Center for Human Rights Prison Advocacy Coordinator Morgan Zamora**. “Even after Governor Newsom’s 2019 moratorium on executions, seventeen people — 80% of whom are Black or Latiné — have been sentenced to death. Black and Brown Californians deserve for our state to live up to its values and take the necessary steps to finally end the death penalty.”

In 2021, Attorney General Bonta also notably stated that capital punishment has “long had a disparate impact on defendants of color, especially when the victim is white,” and added that “[California is] moving towards ending the death penalty.” Despite these disparities and Governor Newsom’s moratorium, California prosecutors continue to seek the death penalty and obtain sentences disproportionately against people of color.

“The Attorney General is of course correct that California’s capital punishment scheme harms Black and brown people disproportionately,” said **Deputy Director of the Criminal Justice Program at ACLU NorCal Avi Frey**. “The question is what the Attorney General intends to do about this unconstitutional reality. As the State’s chief law enforcement officer, and an avowed defender of equal justice under the law, we would hope and expect that the Attorney General would take affirmative steps to dismantle this racially motivated and disparate system.”

“The body of evidence presented in this petition demonstrates what experienced death penalty practitioners in California and around the country have long known: decision-makers at every stage

of capital prosecution from charging to sentencing have treated Black and Brown lives as less valuable than white lives,” said **Claudia Van Wyk, senior staff attorney with the ACLU Capital Punishment Project**. “This case gives the California Supreme Court an opportunity to implement the State’s core constitutional values and right this wrong.”

*The names of members of the firm’s legal team were added to the WilmerHale website version of the original news release.*