

Governor Kitzhaber Statement on Capital Punishment November 22, 2011

Under Article V, section 14, of the Oregon Constitution, I am exercising my authority as Governor to issue a temporary reprieve in the case of Gary Haugen for the duration of my term in office. I want to share with Oregonians how and why I came to that decision.

Oregon has a long and turbulent history with capital punishment. Our state constitution originally had no provision for the death penalty. Enacted by statute in 1864, the death penalty was repealed by voters in 1914, restored in 1920, outlawed again by voters in 1964, re-enacted in 1978, deemed unconstitutional by the Oregon Supreme Court in 1981 and again reinstated in 1984.

It has been carried out just twice in last 49 years in Oregon. Both were during my first administration as Governor, one in 1996 and the other in 1997. I allowed those sentences to be carried out despite my personal opposition to the death penalty. I was torn between my personal convictions about the morality of capital punishment and my oath to uphold the Oregon constitution.

They were the most agonizing and difficult decisions I have made as Governor and I have revisited and questioned them over and over again during the past 14 years. I do not believe that those executions made us safer; and certainly they did not make us nobler as a society. And I simply cannot participate once again in something I believe to be morally wrong.

Let me be clear, I had no sympathy or compassion for the criminals or for anyone who commits the most heinous of acts – taking the life of another person. The families and friends of victims deserve certainty that justice will be carried out on behalf of the loved ones who have been taken from them in such a cruel fashion.

But the nature of their crimes was not different from other murderers, some of whom are sentenced to death but never executed and others who are sentenced to life in prison. What distinguished those two death row inmates during my first term was that they volunteered to die.

Oregonians have a fundamental belief in fairness and justice – in swift and certain justice. The death penalty as practiced in Oregon is neither fair nor just; and it is not swift or certain. It is not applied equally to all. It is a perversion of justice that the single best indicator of who will and will not be executed has nothing to do with the circumstances of a crime or the findings of a jury. The only factor that determines whether someone sentenced to death in Oregon is actually executed is that they volunteer. The hard truth is that in the 27 years since Oregonians reinstated the death penalty, it has only been carried out on two volunteers who waived their rights to appeal.

In the years since those executions, many judges, district attorneys, legislators, death penalty proponents and opponents, and victims and their families have agreed that Oregon's system is broken.

But we have done nothing. We have avoided the question.

And during that time, a growing number of states have reconsidered their approach to capital punishment given public concern, evidence of wrongful convictions, the unequal application of the law, the expense of the process and other issues.

Illinois banned it earlier this year, ending a legacy of faulty convictions, forced confessions, unreliable witnesses and incompetent legal representation. New Jersey abolished capital punishment after determining it had spent a quarter of a billion dollars on a system that executed no one. New Mexico recognized that the death penalty is neither an effective deterrent nor fair to victims' families burdened with lengthy trials and appeals and replaced it with a sentence of life without the possibility of parole.

Today, in Oregon, we can no longer avoid the question. Last Friday, a death warrant was signed for another death row inmate, Gary Haugen. And again he has volunteered to die.

He is just one of 37 inmates on death row today. Some have been there for over 20 years. They all have many years and appeals left before there is even a remote possibility of carrying out their death sentence. Two others have died of natural causes after more than a decade on death row. The reality is that Oregon's death row is an extremely expensive life prison term, likely several times more expensive than the life terms of others who happen to have been sentenced to life in prison without the possibility of parole -- rather than the death penalty.

And while it may be convenient to blame lengthy and expensive death penalty trials and appeals on inmates "working the system," the truth is courts (and society) continue to reinterpret when, how and under what circumstances it is acceptable for the state to kill someone. Over time, those options are narrowing. Courts are applying stricter standards and continually raising the bar for prosecuting death penalty cases. Consider that it was only six years ago that the U.S. Supreme Court reversed itself and held that it is unconstitutional to impose capital punishment on those under the age of 18. For a state intent on maintaining a death penalty, the inevitable result will be bigger questions, fewer options and higher costs.

It is time for Oregon to consider a different approach. I refuse to be a part of this compromised and inequitable system any longer; and I will not allow further executions while I am Governor.

I do not make this decision lightly.

It was the will of the voters in 1984 to reinstate the death penalty in Oregon. I respect that and, in fact, have carried out that will on two occasions. I have regretted those choices ever since -- both because of my own deep personal convictions about capital punishment and also because in practice Oregon has an expensive and unworkable system that fails to meet basic standards of justice. Twenty-seven years after voters reinstated the death penalty it is clear the system is broken.

To those who will inevitably say that my decision today compromises the will of the voters; let me point out that, in practice, it is the current system itself which compromises the will of the

voters. I do not believe for a moment that the voters intended to create a system in which those condemned to death could determine whether that sentence would be carried out.

I could have commuted Mr. Haugen's sentence – and indeed the sentences of all those on death row -- to life in prison without the possibility of parole. I did not do so because the policy of this state on capital punishment is not mine alone to decide. It is a matter for all Oregonians to decide. And it is my hope – indeed my intention – that my action today will bring about a long overdue reevaluation of our current policy and our system of capital punishment.

Personally, I favor replacing the death penalty with life in prison without the possibility of parole and will argue for that policy in any future debate over capital punishment in Oregon. Others will point to opportunities to speed appeals or change the criteria for death penalty cases. In any event we can no longer ignore the contradictions and inequities of our current system.

I am calling on the legislature to bring potential reforms before the 2013 legislative session and encourage all Oregonians to engage in the long overdue debate that this important issue deserves. I am convinced we can find a better solution that keeps society safe, supports the victims of crime and their families and reflects Oregon values.

Fourteen years ago, I struggled with the decision to allow an execution to proceed. Over the years I have thought if faced with the same set of circumstances I would make a different decision. That time has come.