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Emily Louise Pryor
Dickinson College

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Democrats and the Death Penalty

An Analysis of State Democratic Leaders' Death Penalty Platforms and
Public Opinion

By

Emily L. Pryor

Submitted in partial fulfillment of the Honors Requirements
for the Department of Political Science

Douglas E. Edlin, Advisor

Sarah Niebler, Reader

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I. Introduction and Research Design

On October 13, 1988, Michael Dukakis and George H.W. Bush engaged in their second presidential debate. Bernard Shaw, moderator for Cable News Network, posed the first question to Dukakis: “By agreement between the candidates, the first question goes to Governor Dukakis,” explained Shaw, “You have two minutes to respond. Governor, if Kitty Dukakis were raped and murdered, would you favor an irrevocable death penalty for the killer?” Dukakis, without missing a beat, immediately replied. “No, I don’t, Bernard. And I think you know that I’ve opposed the death penalty during all of my life. I don’t see any evidence that it’s a deterrent, and I think there are better and more effective ways to deal with violent crime.”¹

Michael Dukakis was the last presidential candidate to speak openly about an anti-capital punishment platform.² Since then, despite the onslaught of pro- and anti-capital punishment studies, cases, articles, protests, and arguments, we generally tend to relegate the issue to political spheres that exist outside of mainstream national politics. In present-day politics, capital punishment generally is discussed in terms of federalism, judicial precedent, and being tough or soft on crime. This has caused advocates of both abolition and retention to focus their efforts in state legislatures and the United States Supreme Court.

In his provocative and telling work *A Wild Justice*, Evan Mandery highlights the numerous avenues down which capital punishment could have evolved:

The death penalty war, which continues today, would prove as heartrending and byzantine as any prolonged military campaign. It would be fought *in every imaginable forum*, from the lowest tribunal in remote Alabama to the hallowed halls of the Supreme Court. It would be fought at the federal level and in almost every state. It would be fought in the streets and in the ivory tower of the academy. These scholarly battles could

¹Commission on Presidential Debates, “October 13, 1988 Debate Transcript,” accessed March 9, 2014, <http://www.debates.org/index.php?page=october-13-1988-debate-transcript>.

²Sangmin Bae, “The Death Penalty and the Peculiarity of American Political Institutions,” *Human Rights Review* 9 (2008) 238.

themselves have consumed several lifetimes, as the abolitionists sought to collect and marshal data to address the various factual issues that would shape public and judicial opinion. Did the death penalty deter? Was it cost effective? Could it be fairly applied?³

Mandery's statement presents a challenge. While our political system provides numerous different arenas in which capital punishment could be protested or discussed, within the past two decades, relatively little has been said about capital punishment in either a federal executive context or in a federal legislative context. The contemporary political reality⁴ of the United States directs capital punishment discussions into the context of either state legislatures or the United States Supreme Court. Accordingly, my paper focuses on four different states, as states are currently the most active arenas for the capital punishment discussion.⁵

In this paper, I attempt to shed light on the present reality of the capital punishment debate in American states; I do so through a series of narrow and intentional steps. It is necessary to provide historical context for the political and legal reality of capital punishment in America. For this reason, I first examine the historical precedent set both by states and by courts to place capital punishment in the unique and rare position it occupies within contemporary American politics. I next take the state capital punishment debate and consider it more narrowly by focusing only on Democratic elected leaders. This focus was on Democrats was motivated by poll data. In 2013, a Gallup poll indicated that when asked the question "Are you in favor of the death penalty for a person convicted of murder?" While 81% of Republicans were in favor and

³Evan J. Mandery, *A Wild Justice: The Death and Resurrection of Capital Punishment in America* (New York: W.W. Norton & Company, 2013), 46. Emphasis added.

⁴Capital punishment, as we will see, has long been an issue related to federalism. And, as we will also discuss, recent decades have created a much stronger tendency for it to be considered only in the judicial context when it is considered on a national level. I use the term "contemporary political reality," however, primarily to address the recent shift in public opinion on capital punishment. Recent public opinion data tell us that for the first time in decades, a minority of Democrats support capital punishment (See footnote 6). Furthermore, there is a notable dynamic between public opinion and state legislatures; this underscores this contemporary political reality and is the primary impetus for the rest of this paper.

⁵In particular, relative to the United States Supreme Court.

60% of Independents were in favor, just 47% of Democrats were in favor.⁶ According to Gallup, “Support among all three party groups has declined in the last 25 years, with the largest drop among Democrats. Democrats’ level of support is currently down 28 percentage points from its 1994 peak.”⁷ Thus, for the first time in recent history, more Democrats oppose than support capital punishment. This fact acts now as the impetus for the rest of this paper, because the capital punishment debate in America does not necessarily reflect that statistic. Capital punishment is an intricate and layered element of society, and numerous questions have already been asked about its existence and history. What we are still missing, however, is the answer to why some Democratic legislators seem to shy away from discussing capital punishment while others do not. We know that a minority of Democrats support capital punishment, but that fails to explain why Democratic politicians appear at times to be unwilling to oppose capital punishment.⁸

Thus, my research seeks to evaluate the link between public opinion and the words and actions of politicians. I chose to conduct a cross-sectional analysis of public statements and actions related to capital punishment. I next analyzed these statements and actions while considering the ways that they differ amongst states with varying levels of support for capital punishment and with varying levels of death penalty activity.⁹ My independent variable is public

⁶Gallup Politics, “U.S Death Penalty Support Lowest in More than 40 Years,” last modified October 29, 2013, <http://www.gallup.com/poll/165626/death-penalty-support-lowest-years.aspx>. This 47% helps us define our “contemporary political reality.”

⁷ *Ibid.*

⁸While this is not to suggest that there is a direct causal relationship between all public opinion and state legislative leaders’ actions, there still remains a noticeable difference between the ways that public opinion and these state Democratic leaders’ positions relate in different states. According to David Mayhew, “Reelection underlies everything else, as indeed it should if we are to expect that the relation between politicians and public will be one of accountability.” Public opinion plays an important role in the policymaking aspect of policy (see Glynn et al. 399). However, my research focuses more on the middle step between public opinion and policymaking: the actions and words of politicians (here, Democratic state level leaders). David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), 17.

⁹As we will see, certain states have similar levels of support for capital punishment, but they differ in their frequency of executions.

opinion, and my dependent variable is politicians' death penalty positions. I aim to see what relationship, if any, exists between public opinion and these state Democratic leaders' statements and actions. It is a cross-sectional in that it considers state Democratic leaders that are currently in power, and it looks at the most recent available polling data.¹⁰ According to Janet Buttolph Johnson and H.T. Reynolds, a cross-sectional design involves "measurements of the independent and dependent variables" that are "taken at approximately the same time, and the researcher does not control or manipulate the independent variable, the assignment of subject to treatment or control groups, or the conditions under which the independent variable is experienced."¹¹

I evaluate public and political support or opposition for capital punishment in two different ways. First, with respect to politicians' words and actions, I consider the different reasons, if available, that certain politicians offer in opposing the death penalty. This allows us to understand not only whether someone is opposed to capital punishment, but also the reasons that a politician may speak or vote against capital punishment. Second, with respect to general public opinion about the death penalty, I consider changes in levels of support for capital punishment in public opinion polls that ask, if available, about life without parole as an alternative to capital punishment. These changes in support when given the option of life without parole help to explain some of the less obvious dynamics between public opinion results and politicians' words and actions.

¹⁰As Robert Y. Shapiro reminds us, "State-level opinion data have not been easy to come by due to small (or non-existent) state samples within national surveys, and state-by-state polling has been done on an ad hoc basis without designs or coordination for comparisons across states." This is not to suggest that my methods are inconsistent; however, it is important to remember some of the imperfections inherent in a state-by-state comparison. Robert Y. Shapiro, "Public Opinion and American Democracy," *Public Opinion Quarterly* 75 (2011): 997.

¹¹Janet Buttolph Johnson and H.T. Reynolds, *Political Science Research Methods (7th Edition)* (Los Angeles: CQ Press, 2012), 201.

An alternative method would be a time series, or longitudinal, design, which “featur[es] multiple measurements of the dependent variable before and after experimental treatment.”¹² This would entail evaluating the ways that politicians’ words and actions change over a period of time, or how Democratic leaders in state legislatures have differed in their death penalty words and actions over time. I chose not to evaluate this subject using a time series design, however, because I am not concerned with an evolution or change in politicians’ words or actions. Rather, I am interested in evaluating the current officeholders and the extent to which their words or actions align with public opinion. My research attempts to look at current public opinion and current politicians; thus, I elected to conduct a cross-series analysis instead of a time series analysis.

My cross-sectional analysis took the form of a case study of four different states: Texas, New Mexico, New Hampshire, and Ohio. I chose four states because four is a number that is both small enough to allow for a close and consistent analysis, but it is large enough to provide a variety in type of state. I decided to evaluate Texas because it is a state that legally permits capital punishment and executes a significant number of people every year relative to every other state. New Mexico abolished capital punishment in 2009. I chose it out of a small number of other states that recently abolished capital punishment because the five years since abolition provide me with a helpful timespan to evaluate any potential debate or attempts to reinstate. I chose New Hampshire as my third state, because during the time of my research it was in the middle of a contentious abolition effort in its legislature and has had no executions since *Gregg v. Georgia*¹³ reinstated capital punishment.¹⁴ Finally, Ohio is a state that lies more in the middle

¹²*Ibid.*, 215.

¹³*Gregg v. Georgia*, 428 U.S. 153 (1976).

¹⁴ David Garland, *Peculiar Institution: America’s Death Penalty in an Age of Abolition* (Cambridge, MA: Harvard University Press, 2010), 41. Kansas is similar, as it too has had no executions since *Gregg*. However, I

of the spectrum in terms of the number of executions, and Ohio public opinion on the death penalty is split. Thus, I selected it to study due to the divisiveness of the issue in Ohio. The wide variety in both policy and public opinion related to the death penalty provides sufficient grounds for analyzing this issue further.

I began my research by becoming acquainted with the organizational structure of each state's government. Here I studied the number of members, the frequency of elections, and the leadership within each chamber. Within each state, I examined only the Democrats, and in order to narrow my sample, I chose to study only the leadership within each party. This generally applied to Majority/Minority leaders, whips, etc. The leadership criterion also effectively works for my case study, because party leadership generally exemplifies and represents greater party sentiment. According to Robert S. Erikson, Gerald C. Wright, and John P. McIver in *Statehouse Democracy*, "the ideologies represented by the state party elites are a reflection of state opinion."¹⁵ Additionally, William Minozzi and Craig Volden's analysis of party responsiveness to party leaders consists of an evaluation of context in which party leaders seek help or support from other members of their party.¹⁶ This analysis helps us understand some of the intra-party intricacies of leadership dynamics. Erikson et al. also explain that "public opinion is of major importance for the determination of state policy...we will show that party elites and two-party

selected New Hampshire over Kansas because the abolition process in New Hampshire's state legislature provided current references of debate and legislative action.

¹⁵Their study applies more broadly to "include those who are the activists (campaign volunteers, contributors, convention delegates, and party officials) and those who seek office and sometimes get elected under the banners of the parties." However, their understanding of party elites can and does include my choice to analyze only the Democratic leaders within each state. Robert S. Erikson, Gerald C. Wright, and John P. McIver, *Statehouse Democracy: Public Opinion and Policy in the American States* (New York: Cambridge University Press, 1993), 119.

¹⁶According to Minozzi and Volden, "Often, however, party leaders signal the party's preferred position and ask members to support the party if they are able to do so. Such a request, alone, may be sufficient to inform members about the issues at hand and to direct them regarding how to vote. Those best able to vote with the party are the members whose preferences most align with the party and who benefit the most from a strong, unified voice for their party." This analysis helps us understand both some of the influence that party leaders have in their groups and some of the ways that they represent the ideology of their party. William Minozzi and Craig Volden, "Who Heeds the Call of the Party in Congress?" *The Journal of Politics* 75 (2013): 799.

electoral politics, as these interact in the American states, are crucial elements in the linkage process.”¹⁷ Thus, we understand that party leadership in and of itself has a significant relationship with demonstration of the greater party ideology. In my research, I examined first whether each politician in question has said anything that has been recorded about the death penalty.¹⁸ I next assessed the message of the statements, whether they are pro, anti, or neutral towards capital punishment.¹⁹ Then, I analyzed the reasoning behind the position. Is a member speaking because of the economic issues related to capital punishment? Is the member speaking from a moral standpoint? What was the general context of the statement? These questions will help us determine whether, and for what purpose, state-level Democratic leaders discuss capital punishment.

Based on statements made, I was able to label each politician either “pro-capital punishment,” “anti-capital punishment,” or “don’t know.”²⁰ After collecting my statements, I

¹⁷*Ibid.*

¹⁸To find these, I looked mainly at news articles. For each politician that I studied, I also searched for his or her independent campaign website, because in contemporary politics, such websites are demonstrative of a both a politician’s platform and the frame with which they display a platform. Thus, I consistently mention independent websites because they give us an accurate representation of how the politician in question chooses to publicly represent him/herself.

¹⁹Gregory L. Bovitz and Jamie L. Carson examine the electoral accountability that comes with position-taking in the United States House of Representatives. While their work focuses on roll call votes (and mine focuses on roll call votes and other ways of public expression of a position), it helps us understand that the “positions that members express on prominent or salient roll call votes do yield electoral consequences at the margins.” They continue: “Our findings offer strong evidence for the contention that members behave strategically when considering how to vote on prominent roll calls and that they do indeed worry about taking the “wrong” position on a set of votes.” This is key to understand, because even if a politician does not personally support capital punishment and yet publicly does support it (although we would have no way of knowing if this was the case), it nonetheless stands in my results that some politicians diverge from public opinion. Further explanation and evaluation will help us understand why this is the case. Gregory L. Bovitz and Jamie L. Carson, “Position-Taking and Electoral Accountability in the U.S. House of Representatives,” *Political Research Quarterly* 59 (2006): 305.

²⁰Those in the “don’t know” category are politicians without a public death penalty position. As we will consider later, the ways to oppose capital punishment, or to take any political position, are numerous, and rely heavily on context. Firstly, a question about support for public opinion could be a simple one of support or opposition, or it could be more nuanced and involve an option of life without parole as an alternative to the death penalty. Secondly, there are many reasons for which a person can take a position on the death penalty. Those more detailed opinions are taken into account throughout the writing of this paper (See, for example, Wendy Davis, Dan Ramos, and Terie Norelli at pages 27-28, 34-35, and footnote 214). Additionally, I use these different reasons as a way to code different statement of capital punishment opposition. However, some of the politicians from my sample only manifest their death penalty position through their voting record. While these voting records do not provide us

then began a coding process in which I categorized the types of statements made about capital punishment. Upon assessing the types of statements made, I classified five general categories upon which a politician speaks against capital punishment. The first is an economic reason, usually meaning that the politician does not believe that capital punishment is economically beneficial to society. Second is fear of wrongful convictions; numerous arguments against capital punishment relate to DNA testing and potential execution of innocent people. Other arguments speak of capital punishment failing to deter crime; deterrence is my third category. Many other statements discuss the ethics of capital punishment, either from a religious or other moral standpoint. For this reason, the fourth category for labeling purposes is ethical opposition. Finally, I have a category for comments that fall in none of these four categories, which I have labeled “other.”

Throughout my research, I was cognizant that we are nearing a midterm election, and many of my subjects are in the midst of re-election campaigns. While I attempted to use this to my benefit, because electoral politics and dynamics add an important layer to capital punishment politics as a whole, there is one slight issue to consider when thinking of elections as they apply to my study.²¹ As Charles H. Franklin indicates, “to understand the politics of elections we must

with the reasoning behind the vote, the votes themselves are nonetheless meaningful in determining a politician’s platform on an issue. For this reason, I limited the categories into which platform a politician could be placed into the three mentioned here.

²¹While there has been significant research conducted related to the reelection motivation [see David R. Mayhew’s *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974)] and the ways that politicians are held accountable for their actions by votes of reelection (see subsequent discussions of Jones and Canes-Wrone, Brady, and Cogan on page 54), Gary E. Hollibaugh, Lawrence S. Rothenberg, and Kristen K. Rulison remind us of the importance of considering that politicians can only be “punished” relative to the popularity of their opponents. They explain: “findings when the preferences of legislators and voters are measured on the same scale do not provide support for the notion that incumbents who are out of step are always punished. Rather, black and white claims about how being out of step harms incumbents do not tell the entire story, as accountability is conditional on whether or not there is a viable challenger who ideologically meshes better with the district.” These contextual details are the exact type of considerations so important to keep in mind when evaluating my type of case studies. Gary E. Hollibaugh, Lawrence S. Rothenberg, and Kristen K. Rulison, “Does It Really Hurt to Be Out of Step?” *Political Research Quarterly* 66 (2013): 863-864.

incorporate candidate strategy into our models.”²² In other words, we must consider potential instances in which candidates act against what they necessarily believe to win reelection.²³ While we should consider this when understanding our various politicians, we must only consider it in that it is a political reality and may lead to candidates’ not expressing their true views. It does not, however, change the reality of mainstream politics.

I next analyzed the results of my case study in the light of recent public opinion polling about the death penalty. According to Erikson et al., “It may not surprise many readers to find that a reliable measure of state-level ideological preferences is related to liberal-conservative state policies in a way that is causally convincing.”²⁴ They continue, explaining, “What may surprise the reader, however, and what deserves discussion, is the strength of the estimated effect of state opinion on public policy.”²⁵ What my research demonstrates to us is that while there is indeed a relationship between public opinion and public policy,²⁶ there may indeed be additional elements that explain policymaker’s position, particularly when they do not necessarily align with public opinion. Public opinion provides my paper with a further understanding of the reasoning behind the death penalty positions of Democratic state leaders.

The public opinion discussed here has been presented to us in a series of polls.²⁷ As Herbert Asher explains in *Polling and the Public*, “Polling plays an integral role in political

²²Charles H. Franklin, “Eschewing Obfuscation? Campaigns and the Perceptions of U.S. Senate Incumbents,” *The American Political Science Review* 85 (1991): 1193.

²³As Franklin indicates, “The art of politics is finding a winning electoral strategy. For some candidates, this strategy will place great emphasis on issue positions, while others will shun specificity.” This demonstrates a crucial concept that can be applied to certain candidates, particularly those who fail to demonstrate a platform on capital punishment. *Ibid.*, 1210.

²⁴Erikson et al., *Statehouse Democracy*, 89.

²⁵*Ibid.*

²⁶I focus more on political statements and actions than I do on public policy; however, statements and actions many times are earlier steps in the public policymaking process.

²⁷See Figure B1 for complete polling results.

events at the national, state, and local levels.”²⁸ Asher analyzes the growing roll that polling plays in contemporary American politics, and he attempts to clarify some of the challenges presented by polling. He contends, “One final effect of polls on the political system merits consideration: their contribution to political discourse. Because they often are cited as evidence in support of particular positions, polls have become a central part of political discussion.”²⁹ Polling, particularly public opinion polling, is one of the clearest ways we have of understanding public sentiment about particular topics. Asher correctly identifies the role that such polls can play in discussions of political issues; in fact, they will be crucial in our eventual analysis of Democratic state-level leaders.

I began my research by assuming that public opinion and state Democratic leaders’ positions would have a consistent relationship state-to-state. However, as we will see, there are additional factors within the scope of death penalty politics that necessitate an additional level of analysis when considering politicians and their actions. Overall, there has been significant consideration of the link between public opinion and policymaking.³⁰ However, some of the mechanisms between public opinion and policy have been overlooked, namely, the actions and statements of politicians. A comparison of state-by-state results of public opinion and Democratic legislative leaders’ statements and actions shows us that support of capital punishment does not necessarily direct Democratic legislative leaders to support capital punishment, nor does public opposition drive Democratic legislative leaders to oppose it. Public opinion does not necessarily indicate whether a state Democratic leader will take a certain position; rather, an analysis of public opinion—public opinion that considers shifts when given

²⁸Herbert Asher, *Polling and the Public, What Every Citizen Should Know 6th ed.* (Washington, D.C: Congressional Quarterly, Inc., 2004), 2.

²⁹*Ibid.*, 199.

³⁰See Glynn et al. and Norrander on pages 50 and 60.

the alternative of life without parole—together with a state’s individual history and frequency of executions and state Democratic leaders’ words and actions must be considered to explain variance amongst states.

II. Historical Precedent: The States and Federalism

“The death penalty is, first and last an aspect of state power, shaped by state interests and by state officials. The distinctive development of the American state, its pluralism, its radical localism, and its popular democracy, are what have shaped the American death penalty.” – David Garland³¹

“The persistence of localism is highly pertinent to death penalty politics, having shaped America’s engagement with capital punishment from its abolition in nineteenth-century Michigan to its enthusiastic execution in twenty-first century Texas.” – David Garland³²

“In 1846, a small group of reformers in the Michigan legislature succeeded, after several attempts, in passing a law abolishing capital punishment for ordinary crimes,” writes David Garland.³³ Michigan’s early action framed the abolition of the death penalty as a states’ rights issue. As Garland explains, “Michigan’s pioneering abolitionism—soon followed by that of Wisconsin and Rhode Island—placed America, or at least its Northern states, in the vanguard of the world’s abolitionist movement.”³⁴ By beginning the abolition movement, Michigan set the precedent for states to follow its lead. Indeed, what follows is a sort of domino effect. Garland continues, “The American polity devolves a decision-making about punishment (and much else) to the local level, empowering local actors in ways that have had major consequences for the history of the death penalty... The Michigan example shows how the empowerment of local actors could produce a politics of liberal reform giving rise to a pioneering abolition.”³⁵ In this section, I will analyze the historical precedent set by state abolition, examining the ways that

³¹Garland, *Peculiar Institution*, 167.

³²*Ibid.*, 177.

³³*Ibid.*, 36.

³⁴*Ibid.*, 37.

³⁵*Ibid.*, 38.

early abolition paved the way for many political thinkers to relegate the issue of the death penalty to the states.

A committee of Michigan state legislators published a report in 1844 that discussed why capital punishment should be abolished. Accord to Garland, the report highlighted that capital punishment was “illiberal,” “bad for the wealth of the state,” “uncivilized,” and “inhumane;” additionally, it emphasized that the state cannot infallibly determine the culpability of a person.³⁶ It also stated that the people of Michigan were anti-death penalty; however, it had no evidence from surveys or polls to provide evidentiary support for this claim. Of the matter of public opinion, Garland writes, “It seems, in fact, that the 1846 abolition was the work of a small group of liberal reformers, drawn from Puritan Yankee New England backgrounds, sympathetic to the antislavery and antigallows causes, suspicious of state power, and unmoved by the arguments for retention put to them by ministers of religion who opposed abolition.”³⁷ Ostensibly, public opinion was not systematically measured or known; this lack of knowledge of public opinion on capital punishment demonstrates the potential extent to which political elites dominate the course of history, and demonstrates that although public opinion today supports the death penalty, abolition of it in the past may not necessarily have relied on public sentiment. This ignorance of public opinion will be relevant in later discussions of individual states.

When thinking about the early abolitionist states, we must not forget that the situations in those states were dramatically different than they are now. As Garland points out, “In terms of present-day levels of violent crime, urbanization, racial demographics, and sentencing severity, we would predict that Michigan would be a retentionist state. That it is not shows the importance of path dependency and of the death penalty’s place in the political history of a state, especially

³⁶*Ibid.*,36.

³⁷*Ibid.*,37.

where the state was one of the very first to repeal its capital laws and identify themselves with the abolitionist cause.”³⁸ That a state can evolve as such and still maintain its abolition suggests a notable idea about the future of abolition as a whole. While Michigan’s crime levels and poverty rates have increased since 1846, that it continues not to execute suggests a sort of timeless functionality of abolition. According to Garland, the reason Michigan fails to be retentionist and that it never seeks to reinstate revolves around the fact that the political leadership in Michigan takes pride in the fact that they were first.³⁹

The momentum from Michigan persisted, and states continued to abolish capital punishment over the next few decades. In a compelling letter from Marvin E. Bovee in 1869 to Illinois Governor Richard J. Oglesby, Bovee highlights the previous cases of abolition as successes and pleas for Oglesby to grant clemency to two Illinois men. Bovee, the chief leader of Wisconsin’s 1853 abolition, fought afterwards for abolition throughout the United States.⁴⁰ In his fervent message, Bovee writes:

The unconditional abrogation of the death penalty has taken place in several of the States of this Union, and with the most gratifying and happy results. Indeed, so highly satisfactory has the experiment proven to the people residing therein, that there is scarcely a possibility that capital punishment will ever again be revived where the modified law has been so thoroughly tested.⁴¹

Here, Bovee emphasizes the longevity and effectiveness of the varying abolition states. This offers proof of the social benefits of abolition, perpetuating the idea that abolition could be helpful rather than harmful. He next hones in on the specific abolition states. “Michigan,” he explains, “abolished the death penalty in 1846, and for *twenty* years has successfully demonstrated that the lives and property of her citizens are just as secure *with* or *without* the

³⁸*Ibid.*, 193-194.

³⁹*Ibid.*, 195.

⁴⁰Philip English Mackey, ed., *Voices Against Death: American Opposition to Capital Punishment, 1787-1975*, (New York: Burt Franklin & Co., Inc., 1976), 123.

⁴¹*Ibid.*, 126.

gibbet.⁴² He continues, “Rhode Island abolished the death penalty in 1852, and for *fourteen* years...has never shown any evidence of retrogression from the position she so nobly assumed.”⁴³ He makes a similar statement about Wisconsin and its abolition in 1953. Finally, he explains to Oglesby, “The State of Illinois, with but about twice the population of Wisconsin, has a far *greater number* of murders committed within her borders” to emphasize that capital punishment may not be a deterrent.⁴⁴

Through Bovee’s ardent account of the first states to abolish, we gain insight into the type of pattern established: as individual states sought to abolish capital punishment, other states followed. However, this sort of precedent at the state level potentially deters any sort of national effort to abolish. According to Marie Gottschalk, the state as an entity became the ultimate jurisdiction to oversee and undertake an execution around the 1890s: “Starting in earnest in the 1890s, states ‘began to require that executions be performed under state rather than local authority, usually at a state facility.’”⁴⁵ This transition from local authorities to the states intensifies the power of the states and their role within the world of execution. Frank Zimring explains that the states maintained independent power from the federal government for years: “there were no special federal restrictions on capital punishment in the United States for the first 150 years of constitutional government.”⁴⁶ So, for a century and a half, capital punishment generally existed as a state question.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006), 207. Citing William J. Bowers, Glenn L. Pierce, and John F. McDevitt, *Legal Homicide: Death as Punishment in America, 1864-1982* (Boston: Northeastern University Press, 1984), 43, 49-50.

⁴⁶ Franklin E. Zimring, *The Contradictions of American Capital Punishment* (New York: Oxford University Press, 2003), 69.

A significant parallel can be drawn between federalism and the sort of localism inherent in the Legal Defense Fund's (LDF) moratorium strategy that began in 1967.⁴⁷ The LDF began working on the capital punishment abolition cause in 1963; Mandery explains, "From 1963 on, LDF influenced every major death penalty case in the United States and was the leading voice in the abolition movement, dominating all others."⁴⁸ One of the most prominent lawyers for the LDF was Anthony Amsterdam, a former clerk for Justice Felix Frankfurter and, as Mandery labels him, the "*de facto* head of the abolition campaign."⁴⁹ The "moratorium strategy" refers to the LDF's attempt to pause executions nationwide in order to demonstrate to the Court the level of ineffectiveness allegedly inherent in the death penalty.⁵⁰

The moratorium's primary victory was the outcome of a case in Florida. After attorney Tobias Simon successfully filed a class action suit, and federal district court judge William McRae, Jr. granted a stay of execution, the LDF began work to prove the fault in the procedural elements of Florida's death row.⁵¹ As McRae decided that Florida's death row could be deemed a class, a moratorium on Florida executions was created.⁵² I acknowledge the moratorium strategy because, although it differs from the state legislature abolishing capital punishment, it nonetheless demonstrates the effect that state-by-state action can have nationwide. It also mirrors the modern day efforts to abolish the death penalty, efforts that are performed on a state-by-state level.

⁴⁷The LDF, originally part of the NAACP, was responsible for numerous successful judicial successes beginning in the 1940s; it then separated from the NAACP in 1957 and continued to work on civil rights cases. Mandery, *A Wild Justice*, 53.

⁴⁸*Ibid.*, 35.

⁴⁹*Ibid.*, 46.

⁵⁰Amsterdam explained years later in 2010 that "The reason for the moratorium strategy was that we knew there was a difference between asking a court to stop an ongoing system and one where executions were not occurring. We wanted to change the momentum so that we had inertia on our side." *Ibid.*, 54.

⁵¹According to Amsterdam's team, the inmates on Florida's death row had significantly low levels of education—on average, eight years. From this, the LDF and Simon asserted that inmates on Florida's death row had no practical chance for a fair trial. As Amsterdam explained, "They will be heard together or they will be electrocuted individually." *Ibid.*, 55-56.

⁵²*Ibid.*, 56.

This brings us back to Michigan. Michigan’s legislature effected abolition, not the Michigan judiciary. In fact, David Garland’s 2010 table⁵³ of the abolitionist states and their dates demonstrates that only two out of the then 16 abolitionist states have abolished the death penalty through means of the judiciary. This demonstrates a crucial dynamic between the judiciary and the legislature, both in a federal and a state context, one that we will discuss again later when we analyze the historical precedent of abolition, which will come up in the next section. While the constitutionality of capital punishment is a judicial issue, this has no effect on the power of a state legislature to abolish capital punishment. Nationally, the Court seems to monopolize the capital punishment debate. As we will see in the following chapter, the influence of United States Supreme Court in determining the legality of the death penalty has resulted in a precedent in American politics to think of capital punishment, when discussed on a national level, as an issue for the courts.

III. Historical Precedent: United States Supreme Court

“Naturally the question of life and death is of supreme importance, however, the issue is one for the executive and legislature, not the judiciary” – Justice William Douglas⁵⁴

“In the decades since the *Furman* and *Gregg* decisions, capital punishment cases have comprised the most frequent business of the Supreme Court. In the century prior to the *Furman* decision, the Supreme Court rarely reviewed death penalty cases.” – Marie Gottschalk⁵⁵

Beginning with *Wilkerson v. Utah*,⁵⁶ the 1879 case in which the Supreme Court decided that executing a person by use of the firing squad⁵⁷ does not violate the Eighth Amendment, the

⁵³See Appendix D. Taken from Garland, *Peculiar Institution*, 42.

⁵⁴Mandery, *A Wild Justice*, 116.

⁵⁵Gottschalk, *The Prison and the Gallows*, 207.

⁵⁶*Wilkerson v. Utah*, 99 U.S. 130 (1879).

⁵⁷Utah retains the firing squad because Mormon law highlights the importance of spilling blood in order for retribution to be true. As Utah is a heavily Mormon state, the firing squad still exists there. In fact, Nike, Inc. gets its slogan, “Just Do It,” from Gary Gilmore’s last words “Let’s do it” before being put to death by the firing squad in 1977. Now, his last words have been amended to become the slogan of one of today’s most popular brands. Peggy Fletcher Stark, “Firing Squad Sparks Talk of Mormon ‘Blood Atonement,’” *The Huffington Post*, May 24, 2010, accessed April 21, 2014, http://www.huffingtonpost.com/2010/05/24/firing-squad-sparks-talk_n_587836.html, and

highest court in the United States has decided capital punishment cases.⁵⁸ The Supreme Court, even in recent history, has had an immense impact on the status of capital punishment in the United States. In this section, I analyze the way that the death penalty has been framed nationally by the judiciary. I next juxtapose capital punishment's deep entrenchment within the judiciary to the ironic hesitation of the judiciary to adopt capital punishment as a judicial issue. Regardless of the fact that the Court has decided to tackle this issue, and regardless of the fact that *Gregg* set a precedent for it, people nonetheless dispute the role that the Court should play in the status of capital punishment nationwide.

The issue of the Court taking on capital punishment in a way conjointly relates to the precedent of states' rights. As Michael Foley phrases it in *Arbitrary and Capricious*, "From 1878 to 1972, the Supreme Court deferred consistently and willingly to states' rights concerning both criminal justice and the death penalty."⁵⁹ Foley continues to discuss the extreme challenge presented by the issue of the Court addressing the constitutionality of the death penalty, particularly through the lens of the Eight Amendment: "Specifically we will see Supreme Court Justices trying to walk a thin line between the rights of the states to define their criminal law and the Supreme Court's responsibility to assure all people their constitutional rights as guaranteed by the Bill of Rights."⁶⁰ Here lies the issue. States' rights and federalism are entrenched in American politics; however, occasionally, something trumps this. We see this with slavery, we see this with segregation, we see this with abortion, and we see this with countless other issues related to the rights of individuals as applied to the ideals of the United States Constitution.

Jeremy W. Peters, "The Birth of 'Just Do It' and Other Magic Words," *The New York Times*, August 19, 2009, accessed April 21, 2014, http://www.nytimes.com/2009/08/20/business/media/20adco.html?_r=0.

⁵⁸ *Wilkerson v. Utah* 99 U.S. 130 (1879).

⁵⁹ Michael A. Foley, *Arbitrary and Capricious: The Supreme Court, the Constitution, and the Death Penalty* (Westport, CT: Praeger Publishers, 2003), 2.

⁶⁰ *Ibid.*, 5.

Foley resumes his analysis by explaining the cases that helped shape the Court's hesitance in taking on capital punishment cases and the reasons why it originally "defer[red] to states' rights."⁶¹ He begins with *Wilkerson* and explains that states were allowed to execute as long as their punishments were not cruel and unusual.⁶² After *Wilkerson* came *In re Kemmler*.⁶³ In this case, the Court upheld the constitutionality of execution by electric chair. In his opinion, Chief Justice Fuller wrote that the "Constitution of the United States and that of the State of New York...provide against cruel and inhuman punishment...with the former we have no present concern, as the prohibition therein contained has no reference to punishment inflicted in state courts for crimes against the state, but is addressed solely to the national government, and operates as a restriction on its power."⁶⁴ Thus, *Kemmler* upholds the sovereignty of the state to make its own punishment rules, as long as they are not cruel and unusual (which, again, the United States Supreme Court argued that these were not).

Gottschalk acknowledges an important change in the oversight of capital punishment abolition fights. Before the 1960s, Gottschalk asserts, "The earlier waves of reform in the antebellum period and the Progressive era were premised primarily on moral and legislative strategies for challenging capital punishment."⁶⁵ Justice Arthur J. Goldberg is the primary Supreme Court justice responsible for the Court beginning to address more heavily a variety death penalty cases. When the Court denied certiorari in *Rudolph v. Alabama*, a rape case involving a black man and a white woman, in 1963, Goldberg published a four-paragraph dissent that highlighted why execution was an excessive punishment in the case of rape.⁶⁶

⁶¹*Ibid.*, 20.

⁶²*Ibid.*, 20.

⁶³*In re Kemmler*, 136 U.S. 436 (1890).

⁶⁴*Ibid.*

⁶⁵Gottschalk, *The Prison and the Gallows*, 206-207.

⁶⁶Mandery, *A Wild Justice*, 29.

After the dissent was published, Goldberg's former clerk Alan Dershowitz sent it out to the ACLU and the LDF.⁶⁷ From there, the battle for abolition escalated. As previously mentioned, the LDF began its battle in conjunction with the ACLU, and the Court heard myriad cases for the following decades. According to Zimring, "For most of American history, state governments had almost complete authority over criminal justice policy, including capital punishment. During the 1970s, the U.S. Supreme Court imposed federal standards⁶⁸ that governed the acts, levels of culpability, and procedures that must be established before an execution could meet the requirements of the Eighth Amendment."⁶⁹

We see a significant amount of hesitance of judges to take on capital punishment as a national issue. Mandery provides a historical account of capital punishment's judicial evolution in *Furman v. Georgia* and *Gregg v. Georgia*.⁷⁰ He repeatedly mentions the justices' reluctance to view capital punishment as a judicial question. For example, Justice Black said, "Anyway, this is only a fight to abolish capital punishment, and it is not unconstitutional. It is a matter for the legislature and not the courts."⁷¹ The Supreme Court has attempted to push the issue to the states. For those committed to the abolition movement, like Justice Goldberg and his former clerk Alan Dershowitz, "The focus of the abolition movement needed to shift to the state level and to influencing legislatures rather than courts.... State courts and legislatures, they said, should resist the temptation to 'assume that the only proper forum of judicial interpretation is the judiciary.'"⁷²

⁶⁷*Ibid.*, 30. Discusses that Goldberg said that the memo was confidential and that Dershowitz had to circulate it as his own work.

⁶⁸*Furman v. Georgia* would be an example of one of these cases. *Furman v. Georgia*, 408 U.S. 238 (1972).

⁶⁹Zimring, *The Contradictions of American Capital Punishment*, 68.

⁷⁰Since these two landmark cases, there have been a number of additional Supreme Court cases related to capital punishment. Two of the most recent are *Atkins v. Virginia* and *Roper v. Simmons*. In *Atkins*, the Court ruled 6-3 that the execution of mentally retarded individuals is unconstitutional due to the Eighth Amendment. *Atkins v. Virginia* 536 U.S. 304 (2002). In *Roper*, the Court ruled 5-4 that the execution of minors is unconstitutional due again to the Eighth Amendment. *Roper v. Simmons* 543 U.S. 551 (2005).

⁷¹Mandery, *A Wild Justice*, 65.

⁷²*Ibid.*, 113.

As I have demonstrated, both the actions of states and the attitudes of judges have caused members of Congress and Presidents to view capital punishment as someone else's issue. In other words, federalism and judicial precedent places capital punishment in the unique role of being discussed in the context of state government or, if at all federal, in the context of the federal judiciary (the Supreme Court). Instances of discussion in the national congressional context highlight the distinction between the federal death penalty and different states' death penalty policies.⁷³ As we can see, a suggestion to abolish all capital punishment nationwide would be entirely unprecedented due to the historical development of capital punishment in American politics.

We have discussed at some length the precedent set by state-by-state abolition and by the Supreme Court's initial decision to take on the death penalty as a constitutional issue. These developments are important to consider, because today the death penalty is not conceived as a federal issue. With this understanding of the unique position the death penalty holds in the contemporary American political setting, we now move towards an analysis of public opinion, state-level Democratic legislative leaders, four states, and capital punishment statements and stances.

IV. Case Study: Texas

“The state of Texas has a very thoughtful, a very clear process in place of which -- when someone commits the most heinous of crimes against our citizens, they get a fair hearing, they go through an appellate process, they go up to the Supreme Court of the United States, if that's required. But in the state

⁷³ For example, in 2003, Senator Russ Feingold (D-WI) introduced the Federal Death Penalty Act, which would have abolished the federal death penalty; however, this did not extend to abolishing executions nationwide. In his speech, he stated, “I also call on each State that authorizes the use of the death penalty to cease this practice. Let us step away from the culture of violence and restore fairness and integrity to our criminal justice system.” With Feingold, we see that despite his hatred for capital punishment, his suggestions for national elimination take the form of a federal abolition of the federal death penalty, and a state-by-state abolition of state death penalty. While this dichotomy, although potentially self-explanatory, is important to note due to its inherent inevitability and normality. Project Vote Smart, “U.S. Senator Russ Feingold on the Federal Death Penalty Abolition Act,” last updated February 13, 2003, <http://votesmart.org/public-statement/6602/us-senator-russ-feingold-on-the-federal-death-penalty-abolition-act#.UyertF7Epro>.

of Texas, if you come into our state and you kill one of our children, you kill a police officer, you're involved with another crime and you kill one of our citizens, you will face the ultimate justice in the state of Texas, and that is, you will be executed.” – Texas Governor Rick Perry⁷⁴

As of 2013, Texas had executed 503 inmates since the *Gregg* decision in 1974.⁷⁵ Virginia is second to Texas with 105 executions. According to *Evaluating Fairness and Accuracy in State Death Penalty Systems* published by the American Bar Association in 2013, “In the modern death penalty era, Texas has executed more inmates than any other capital jurisdiction in the United States and accounts for almost 40% of the executions that have taken place nationwide.”⁷⁶ Out of all of the states with capital punishment as part of their legal system, I chose to study Texas due to the high volume of executions, the amount of research seemingly attached to that number, and the more general socio-political connotation of capital punishment in Texas—the death penalty is a very real and tangible part of Texas culture. This cultural tie to capital punishment will be significant in analyzing my results, and provides an example of why political context is always important when evaluating these types of data.

Before an exploration of contemporary Texan politicians, a discussion of Texas public opinion on the death penalty is necessary to contextualize the climate in which politicians run and serve. A 2012 University of Texas and Texas Tribune poll⁷⁷ shows that 73% of Texan voters either somewhat or strongly support capital punishment, and 21% either somewhat or strongly oppose capital punishment. When given the alternative of life without parole as a punishment, 53% continue to support capital punishment, and 37% choose life without parole. Additionally,

⁷⁴Jason Linkins, “Rick Perry on Death Penalty and ‘Ultimate Justice’ in Texas: ‘I’ve Never Struggled With That,’” *Huffington Post*, last updated November 7, 2011, accessed March 10, 2014, http://www.huffingtonpost.com/2011/09/07/rick-perry-death-penalty-gop-debate_n_953214.html.

⁷⁵American Bar Association, *Evaluating Fairness and Accuracy in State Death Penalty Systems: The Texas Capital Punishment Assessment Report—An Analysis of Texas’s Death Penalty Laws, Procedures, and Practices* (American Bar Association, 2013), 1.

⁷⁶*Ibid.*

⁷⁷Ross Ramsey, “UT/TT Poll: Texas Stand Behind Death Penalty,” *The Texas Tribune*, May 24, 2012, <http://www.texastribune.org/2012/05/24/uttt-poll-life-and-death/>.

51% believe that capital punishment in Texas is administered fairly, while 28% say that it is not fairly administered and 21% say that they do not know.

The Texas state legislature has two chambers, the House of Representatives and the Senate. The House has 150 members for 150 different districts, and they are elected every two years. Within the House, each party has a caucus with a leader, as opposed to a distinct party leader in the form of a majority or minority leader. The Texas Senate, which consists of 31 members from 31 districts, also lacks designated party leadership. Thus, I began my analysis of Texas state senators by researching Senator John Whitmire⁷⁸ from Senate District 15, the Chair of the Committee on Criminal Justice. Whitmire, the “Dean of the Senate” due to being the longest serving current member, represents a district that incorporates northern Houston. This puts him in a prominent role as committee chair, as Harris County, which includes Houston, is one of the leading counties for capital case convictions.⁷⁹ Whitmire’s website presents his main issue areas as “Criminal Justice, Economic Development, Education, Fiscal Policy, Health and Human Services, Individual Rights & Protections.”⁸⁰ Furthermore, his home page presents a large block of continually changing text next to large photos. It begins by saying, “Join the Dean’s List,” then “Meet the Dean of the Texas Senate, John Whitmore,” then “Reducing the need for prisons and focusing on treatment and rehabilitation,” and finally, “Let’s keep Senator Whitmire in Austin, fighting for us!”⁸¹ Here, we see a strong commitment to criminal justice and strong emphasis on relaying that information to voters. However, his Criminal Justice page accentuates Whitmire’s work on increasing rehabilitation for prisoners as saving the state

⁷⁸Whitmire is not the leader of the Democratic caucus. However, I selected him for my case study because of his position as the Chair of the Committee on Criminal Justice.

⁷⁹In fact, as of January 1, 2013, Harris County was the county in the United States with the most executions since 1976. Death Penalty Information Center. “Executions by County.” Accessed April 22, 2014. <http://www.deathpenaltyinfo.org/executions-county>.

⁸⁰John Whitmire for State Senate, “Issues,” accessed March 22, 2014, <http://www.johnwhitmire.com/issues>.

⁸¹John Whitmire for State Senate, accessed March 22, 2014, <http://www.johnwhitmire.com/issues>.

significant amounts of money on incarcerating those who could alternatively be treated.

Therefore, I continued to research further Whitmire's history with capital punishment.

In 2008, the United States Supreme Court decided *Baze v. Rees* and upheld Kentucky's lethal injection practices as constitutional. During the case's journey through the courts, over forty stays of execution were given across the country due to the uncertain status of the constitutionality of lethal injection. According to Cal Jillson in *Texas Politics*, "Ten states declared a moratorium on the death penalty in 2006, most of the rest declared a moratorium in 2007 as the Supreme Court reviewed whether lethal injections constituted cruel and unusual punishment. Texas did not pause. From 2006 through 2010, Texas executed...just under half of the 230 persons executed in the U.S."⁸² In 2007, Whitmire called upon Governor Perry to issue a statewide moratorium on executions.⁸³ In a letter to Governor Perry, Whitmire wrote, "It's just nuts, to sum it up, that we would not hold off on executions until we go through each and every piece of evidence."⁸⁴ He made additional statements separate from the letter as well: "Perry should issue a moratorium because the Supreme Court likely will grant a stay in every Texas execution until the Kentucky case is decided."⁸⁵ In regard to Perry's effort to use his executive power to mandate that teen females get the Human Papilloma Virus vaccination, Whitmire noted, "If he can tell a state agency to vaccinate people, I think he can tell a state agency not to execute people."⁸⁶ These comments and this stance suggest a tendency to support fair procedure and reform if the existing procedure is unfair. His relatively recent legislative history tells us a

⁸² Cal Jillson, *Texas Politics: Governing the Lone Star State 3rd ed.* (New York: Routledge, 2011), 141.

⁸³ Texas Moratorium Network, "John Whitmire Calls for Moratorium on Executions," last updated September 29, 2007, <http://www.texasmoratorium.org/archives/470>.

⁸⁴ Death Penalty Information Center, "Former FBI Chief and Texas Judge Call for Halt to Texas Executions," last updated November 25, 2004, <http://www.deathpenaltyinfo.org/new-voices-law-enforcement>.

⁸⁵ Polly Ross Hughes and R.G. Ratcliffe, "Texas Executions Probably on Hold Until Next Year," *Houston Chronicle*, September 27, 2007, accessed March 22, 2014, <http://www.chron.com/news/houston-texas/article/Texas-executions-probably-on-hold-until-next-year-1800511.php>.

⁸⁶ *Ibid.*

similar story. In 2005, Governor Perry signed Senate Bill 60 into law; this was a bill that created an option of life without parole for capital cases. Senator Eddie Lucio, Jr., the author of the bill, apparently extended his thanks to Whitmire upon the signing of the bill.⁸⁷ A more explicit example of support for fairer procedure can be seen with Senate Bill 344, which Whitmire himself filed in early 2013. This bill “would establish a statute expressly allowing Texas courts to overturn convictions in cases where the forensic science that originally led to the verdict has changed.”⁸⁸ Thus, we know that Whitmire remains committed to a fair and thorough justice process.

Additional instances and actions, however, prove Whitmire’s continued support of capital punishment. One of these revolves around the issue of last meals before executions. Some of the rhetoric surrounding death row inmates’ last hours involves mention of a last meal, allowing a prisoner to order whatever he or she desires. As of 2011, Texas no longer specifically caters last meals; this is largely due to Whitmire. In 2011, Lawrence Brewer was executed for the racially motivated murder of James Byrd, Jr.⁸⁹ The night before, Brewer ordered and received a massive quantity of food⁹⁰ and ate none of it. This incensed Whitmire, and he asked the state prison agency to terminate its practice of taking specific orders for last meals; he claimed that he would pass a bill to do so if they refused. Of the event, Whitmire has said the following, “If you’re fixing to execute someone under the laws of the state because of the hideous crime that someone

⁸⁷The Senate of Texas, “Governor Signs Life Without Parole Into Law,” last updated July 7, 2005, <http://www.senate.state.tx.us/75r/senate/members/dist27/pr05/p070705a.htm>.

⁸⁸The Truth About Forensic Science, “Actual Innocence Knows No Time Bar: Texas and Senator John Whitmire and State Rep. Sylvester Turner Lead the Way,” last updated February 12, 2013, <http://www.thetruthaboutforensicscience.com/actual-innocence-knows-no-time-bar-texas-and-senator-john-whitmire-and-state-rep-sylvester-turner-lead-the-way/>.

⁸⁹Manny Fernandez, “Texas Death Row Kitchen Cooks Its Last ‘Last Meal,’” *New York Times*, September 22, 2011, accessed March 22, 2014, http://www.nytimes.com/2011/09/23/us/texas-death-row-kitchen-cooks-its-last-last-meal.html?_r=0.

⁹⁰Brewer ordered “Two chicken-fried steaks with gravy and sliced onions; a triple-patty bacon cheeseburger; a cheese omelet with ground beef, tomatoes, onions, bell peppers and jalapeños; a bowl of fried okra with ketchup; one pound of barbecued meat with half a loaf of white bread; three fajitas; a meat-lover’s pizza; one pint of Blue Bell Ice Cream; a slab of peanut-butter fudge with crushed peanuts; and three root beers.” *Ibid*.

has committed, I'm not looking to comfort him...He didn't give his victim any comfort or choice of last meal."⁹¹ Additionally, Whitmire expressed that it was "common sense" that "no death-row inmate prior to execution should be catered to."⁹² He claimed, "This old boy last night [referring to Brewer] enough is enough. We're fixing to execute the guy and maybe it makes the system feel good about what they're fixing to do. Kind of hypocritical, you reckon?" and "Mr. Byrd didn't get to choose his last meal. The whole deal is so illogical."⁹³ Through his action and statements, we gain insight into Whitmire's compassion for the innocent and his ostensible ambivalence to the death penalty's existence. While Whitmire establishes his tendencies towards assuring a fair system, he makes no pretenses of commiseration when it comes to those guilty people on death row. For all of these reasons, for purposes of labeling, I categorize Whitmire as "pro-capital punishment."

Because Rick Perry is a Republican, we have no evidence of recent Democrats in the executive role for the State of Texas. In fact, the last Democratic governor of Texas was Ann Richards, who served from 1991-1995. Thus, in the gubernatorial analysis of Texas Democrats and capital punishment, I analyze Wendy Davis, the Democratic candidate for the 2014 Texas gubernatorial election. Davis is a state senator whose rise to fame stemmed from a filibuster on the Senate floor to prevent passage of an abortion bill in 2013. On her website's issues page, sizeable text reads, "Texas deserves a leader who understands that making education a priority creates good jobs and keeps Texas on top."⁹⁴ Beneath that, her "Education" section lists her

⁹¹Daniel Nasaw, "Last Meal: What's the Point of This Death Row Ritual?" *BBC News Magazine*, September 26, 2011, accessed March 22, 2014, <http://www.bbc.com/news/magazine-15040658>.

⁹²Sylvia Wood, "Special Last Meals for Texas Death Row Inmates? Not Anymore," *Today News*, September 22, 2011, accessed March 22, 2014, http://www.today.com/id/44630342/ns/today-today_news/t/special-last-meals-texas-death-row-inmates-not-anymore/#.Uy3DCF7Epro.

⁹³Associated Press, "Texas Prisons End Special Last Meals for Inmates After 'Ridiculous' Request," *Fox News*, September 22, 2011, accessed March 22, 2014, <http://www.foxnews.com/us/2011/09/22/texas-prisons-end-inmate-last-meal-requests-before-executions/>.

⁹⁴Wendy Davis for Texas, "Issues," accessed March 22, 2014, <http://www.wendydavistexas.com/issues/>.

policy and platform for education reform in Texas. What follows are other large quotes about other large issues: “Strong Economy,” “Government Accountability,” and “Veterans.”⁹⁵ Davis’s website does not state anything potentially controversial; she is running as an underdog in an incredibly red state. However, we should continue to note lack of mention of capital punishment on campaign websites. And, more importantly, Davis has been incredibly outspoken about abortion rights, an incredibly controversial and polarizing issue, particularly in Texas. Accordingly, Davis has not necessarily avoided controversial issues; she has, however, generally avoided capital punishment.

Davis has said very little publicly about capital punishment. However, we do know that she supports it: “I support the death penalty in cases of heinous crimes,” Davis has said. “I agree with the ABA [American Bar Association] that we have to ensure fairness when it is administered. We have to be absolutely certain that an innocent person is never executed.”⁹⁶ This quote is telling in numerous ways. Primarily, it demonstrates that Davis is pro-capital punishment, which I have thus labeled her. However, it is nuanced; it emphasizes that to execute someone we should be completely sure of a person’s guilt. This stipulation suggests a hesitance to support capital punishment fully without specifying the extreme case in which it would be applied if we were truly certain about guilt and innocence. Technically speaking, we rarely have ways to be “absolutely certain” of guilt. To Davis, I would indicate that few, if any, executions would or could be administered if our system was infallible. Beyond this quote, we have no publicly recorded statement from Davis; however, this quote underscores how dangerous it is not to support capital punishment in Texas. Even if Davis were against capital punishment, which

⁹⁵*Ibid.*

⁹⁶Tod Robberson, “GOP’s New Spin on Wendy Davis Doesn’t Match the Facts,” *Dallas News Opinion*, January 27, 2014, accessed March 10, 2014, <http://dallasmorningviewsblog.dallasnews.com/2014/01/gops-new-spin-on-wendy-davis-doesnt-match-the-facts.html/>.

perhaps she may be, it would be extremely problematic for a Texan running for Governor to say so, especially given the power a governor has to issue stays of execution. What is notable about Davis's campaign is that she is outspoken on other controversial issues, like abortion. This will be discussed later, but it is important to acknowledge the distinction between being outspoken on a controversial issue and being outspoken against the death penalty. It is also important to note that Davis's reason for supporting the death penalty is not necessarily the same as Whitmire's; Davis expresses more hesitance and emphasizes the harm of wrongful convictions more than Whitmire does.

V. Case Study: New Mexico

“Legislators, death penalty activists, and other interested parties were not sure, given his previous campaign statements, if Governor Bill Richardson would sign or veto the repeal bill. In fact, the governor was unsure himself, and he set up a hotline and invited the state's citizens to share their opinions on the subject with him. On 17 March, he ‘released details of more than 9,400 calls, E-mails and walk-ins he's received on the issue,’ with 7,169 people for and 2,244 against the repeal of New Mexico's death penalty.”⁹⁷

To provide context for New Mexico's political landscape, it is helpful to understand public opinion surrounding capital punishment. In 2002, 43% of respondents to a poll favor life without parole over an execution, and 48% of respondents favored capital punishment.⁹⁸ On March 18, 2009, New Mexico Governor Bill Richardson signed a bill that made New Mexico the 15th state to abolish the death penalty.⁹⁹ In my case study of New Mexico, I looked at the current Democratic political leaders in the New Mexico legislature and their recent histories with capital punishment. A benefit of the recent legal abolition for research purposes is that the legislators

⁹⁷Larry Wayne Koch, *The Death of the American Death Penalty: States Still Leading the Way*, (Boston: Northeastern University Press, 2012), 50.

⁹⁸“The pollsters said support for death penalty appears to have diminished slightly from previous surveys, and they speculated that recent reports of judicial errors may have played a role.” Death Penalty Information Center, “State Polls and Studies,” accessed March 24, 2014, <http://www.deathpenaltyinfo.org/state-polls-and-studies?scid=23&did=210>.

⁹⁹Death Penalty Information Center, “Death Penalty Abolished in New Mexico—Governor Says Repeal Will Make the State Safer,” March 19, 2009, accessed March 24, 2014, <http://www.deathpenaltyinfo.org/death-penalty-abolished-new-mexico-governor-says-repeal-will-make-state-safer>.

whom I studied were in office during the repeal. Thus, I had a relatively large amount of material to study. New Mexico's state legislature consists of a House and a Senate.

A. New Mexico House of Representatives

The 70 members of the House of Representatives are elected every two years. Unlike Texas, the leadership in both chambers is explicit; the House has a Speaker, a majority leader, a majority whip, a minority leader, and a minority whip. Currently, the Democrats are the majority party; thus, the Speaker is a Democrat. For this reason, I studied Speaker W. Ken Martinez of New Mexico House District 69. Martinez has been in the House since 1999. He was among the eight representatives on the Judiciary Committee to vote for the House death penalty repeal bill, House Bill 576.¹⁰⁰ After its committee approval, the bill passed the House with a slim 38-31 vote.¹⁰¹ In that vote, Martinez also voted yes.¹⁰² Breaking down the votes on the bill demonstrates the party divide on the issue; five Republicans voted yes and 33 Democrats voted yes, while 23 Republicans and eight Democrats voted no.¹⁰³ On the House floor, Martinez echoed his late father and former Speaker Walter Martinez's advice to "never elevate government over individuals and never give the government more rights than the people have."¹⁰⁴ He also stated, "If we give government more rights than we have as individuals, then we have placed government above the individual, and that's a dangerous path to go down... No individual has a right to kill someone after they are no longer a threat."¹⁰⁵ Martinez, then, is anti-capital punishment, and his reasoning lies in the "other" category. Martinez does not appear to

¹⁰⁰Deborah Baker, "House Panel Approves Death Penalty Abolition," *Albuquerque Journal*, February 6, 2009, accessed March 24, 2014, <http://www.abqjournal.com/news/state/06209466162newsstate02-06-09.htm>.

¹⁰¹Deborah Baker, "House Votes to Abolish Death Penalty," *Albuquerque Journal*, February 28, 2009, accessed March 23, 2014, <http://www.abqjournal.com/news/xgr/apdeath02-28-05.htm>.

¹⁰²*Ibid.*

¹⁰³*Ibid.*

¹⁰⁴Texas Death Penalty, "Quotes from New Mexico Repeal Members," February 11, 2009, accessed March 24, 2014, <http://texasdeathpenalty.blogspot.com/2009/02/quotes-from-new-mexico-repeal-members.html>.

¹⁰⁵Heath Haussamen, "House to Debate Repeal of Death Penalty," *NewMexicoPolitics.net*, February 12, 2007, accessed March 24, 2014, <http://www.nmpolitics.net/index/2007/02/house-to-debate-repeal-of-death-penalty/>.

have an independent website; he does, however, have a Facebook page¹⁰⁶ and a Twitter Account.¹⁰⁷

House Majority Leader Rick Miera was also in office at the time of abolition, and he too voted in the affirmative on House Bill 576.¹⁰⁸ Other than his voting record, there is no further evidence of statements about capital punishment. Thus, Miera is anti-capital punishment. The House majority whip, Antonio “Moe” Maestas, does have a website. Before serving in the House of Representatives, which he began doing in 2007, Maestas was an assistant district attorney. According to his website, he “knows first hand many of the injustices in our legal system.”¹⁰⁹ Under his “State Representative” section on his site, it reads, “Rep. Maestas is at the forefront of criminal justice reform in New Mexico, pushing for alternatives to incarceration for non-violent offenders and ratcheting back the failed war on drugs.” Thus, we know that Maestas presents himself as an experienced lawyer who commits himself to reforms in the criminal justice system. He, too, serves on the Judiciary Committee, and has advised the Courts, Corrections, and Justice Committee. According to Larry Koch in *The Death of the American Death Penalty*, Maestas “argued that New Mexico needed to scrutinize its expenditures very carefully in a time of scarcity” and spoke about the economic elements involved in the death penalty debate.¹¹⁰ Thus, Maesta’s vote against capital punishment reflects that he looks at the issue of abolition from a practical, not necessarily moral, standpoint. Maesta is anti-capital punishment and his statements fall under the “economic” category.

B. New Mexico Senate

¹⁰⁶“Speaker W. Ken Martinez,” accessed April 22, 2014, <https://www.facebook.com/SpeakerWKenMartinez>.

¹⁰⁷W. Ken Martinez Twitter,” accessed April 22, 2014, <https://twitter.com/SpeakerMartinez>.

¹⁰⁸ Deborah Baker, “House Votes to Abolish Death Penalty,” *Albuquerque Journal*, February 28, 2009, accessed March 23, 2014, <http://www.abqjournal.com/news/xgr/apdeath02-28-05.htm>.

¹⁰⁹“Meet Antonio ‘Moe’ Maestas,” accessed March 23, 2014, <http://moejustice.com/>.

¹¹⁰ Koch, *The Death of the American Death Penalty*, 58.

The New Mexico State Senate is composed of 42 Senators from 42 districts. The leadership layout designates a President Pro Tempore, a majority leader, a majority whip, a minority leader, and a minority whip. Currently, the Democrats hold the majority in the Senate as well. Mary Kay Papen, retired car dealer of District 38, currently holds the position of the President Pro Tempore.¹¹¹ Papen, who has been a member of the Senate since 2001, voted in favor of the death penalty repeal bill in 2009.¹¹² Beyond her voting record, Papen has no other information online about her death penalty stance; for this, we label Papen as is anti-capital punishment but we have no information as to why.

Like Papen, Michael S. Sanchez, the majority leader from District 29, also voted to repeal the death penalty in 2009.¹¹³ He is anti-capital punishment for the “wrongful convictions” reasoning; he fears that executing innocents is impossible to avoid. Sanchez, a former defense attorney and current member of the Senate Judiciary Committee, has said that supporters of capital punishment sometimes claim that “if you get it right 90% of the time, that’s good enough. That is not good enough.”¹¹⁴ On the floor during debate of the bill of which he was a sponsor,¹¹⁵ Sanchez cited an instance of false eyewitness identification.¹¹⁶ He also “informed [his] fellow senators that a group representing family members of murder victims supported HB 285. The

¹¹¹New Mexico Legislature, “Senator Mary Kay Papen,” accessed March 24, 2014, http://www.nmlegis.gov/lcs/legislator_details.aspx?SPONCODE=SPAPE.

¹¹²“New Mexico Legislature Repeals Death Penalty,” KOAT 7 Albuquerque, March 16, 2009, accessed March 24, 2014, <http://www.koat.com/New-Mexico-Legislature-Repeals-Death-Penalty/6154204>.

¹¹³Project Vote Smart, “Michael S. Sanchez’s Political Summary on Issues,” accessed March 24, 2014, <http://votesmart.org/candidate/5819/michael-sanchez?categoryId=71#.UzBd417Epro>.

¹¹⁴Homicide Survivors, “Rebuttal of Death Penalty Comments by Senator Michael Sanchez, a Defense Attorney and Melissa Hill, Legislative Chair, NM Criminal Defense Lawyers Association,” accessed March 24, 2014, <http://homicidesurvivors.com/2009/03/12/fw-rebuttal-of-sen-michael-sanchez--melissa-hill---death-penalty.aspx>.

¹¹⁵Deborah Baker, “New Mexico Legislature Repeals Death Penalty,” *Daily Times*, March 13, 2009, access March 24, 2014, http://www.daily-times.com/ci_11910894.

¹¹⁶In North Carolina, a man spent 11 years in prison for rape until DNA evidence set him free; this had been after the victim had identified him “without a doubt.” Said Sanchez, “It turned this young lady’s life around to the point where to this day . . . this woman [and the man she accused] go around the country talking about eyewitness identifications and how they can be misleading.” Koch, *The Death of the American Death Penalty*, 60.

group had stated that the lengthy appeals process was difficult for victims' families, whereas a life sentence without parole could bring closure."¹¹⁷ Sanchez additionally referred to an execution as "the luxury of death," claiming that an execution was easier than life imprisonment without parole.¹¹⁸ Furthermore, he said, "If putting people to death were a deterrent, we would have no murders anywhere."¹¹⁹ It is also important to consider that in 2005, a similar bill went before the Senate Judiciary Committee, and the committee voted 5-4 to table the bill. Sanchez was among the four who voted against tabling.¹²⁰ So, we see that Sanchez opposes the death penalty due to his concern that, at times, the state executes innocent people and we have really no way to be guard against doing so.

Finally, we turn to Timothy M. Keller, the majority whip from Senate District 17. 2009 was actually his first year in the Senate; before joining the Senate he was involved in business.¹²¹ Unlike Martinez, Miera, Papen, and Sanchez, Keller does have an independent website. His issues on his website are "Job Creation," "Accountability and Ethics," "Education," "Safer Neighborhoods," "Immigration," "Working Families," "Healthcare," and "Government Transparency and Reform."¹²² In March 2009, Keller voted in favor of abolishing capital punishment.¹²³ However, like some of the other legislators, there is no other information about

¹¹⁷*Ibid.*

¹¹⁸Deborah Baker, "New Mexico Legislature Repeals Death Penalty In Favor of Prison," *Lubbock Avalanche-Journal*, March 14, 2009, accessed March 24, 2014, http://lubbockonline.com/stories/031409/nat_409424960.shtml.

¹¹⁹Clip Syndicate, "New Mexico Legislature Repeals Death Penalty," KOB Albuquerque, NM, March 13, 2009, accessed March 24, 2014, http://www.clipsyndicate.com/video/play/870071/new_mexico_legislature_repeals_death_penalty.

¹²⁰Kate Nash, "Death Bill Hopes Fade in Senate," *Albuquerque Journal*, March 12, 2005, accessed March 24, 2014, <http://www.albuquerquejournal.com/xgr/320521xgr03-12-05.htm>.

¹²¹Tim Keller for New Mexico, "Biography," accessed March 24, 2014, http://www.timkellerfornewmexico.com/inner.php?page_id=33&parent_page=7&page_name=Biography.

¹²²Tim Keller for New Mexico, "Issues," accessed March 24, 2014, <http://www.timkellerfornewmexico.com/issues.php>.

¹²³KOAT 7 Albuquerque, "New Mexico Legislature Repeals Death Penalty," March 16, 2009, accessed March 24, 2014, <http://www.koat.com/New-Mexico-Legislature-Repeals-Death-Penalty/6154204>.

Keller's position on the death penalty. So, Keller is anti-capital punishment, but we do not know why.

VI. Case Study: New Hampshire

"Death penalty opponents say the momentum is on their side, with New Hampshire the latest example; the House vote Wednesday was the most lopsided ever for repeal, and it was strongly bipartisan. New Hampshire is the last state in New England to have the death penalty, though it has not executed anyone since 1939."¹²⁴

"This is not Texas," said Representative Keith Murphy, a Republican who supports the death penalty. "We are not executing prisoners every week."¹²⁵

Like Texas, New Hampshire legally permits the death penalty. Unlike Texas, New Hampshire has not executed anyone in the post-*Gregg* era.¹²⁶ Additionally, New Hampshire represents a deviation from the southern capital punishment culture. I chose New Hampshire as a case study to examine a state in which capital punishment is legally permitted but politically and practically disallowed. Furthermore, and more importantly, New Hampshire was in the midst of a death penalty debate during the time of my research; on March 12, 2014, the New Hampshire House of Representatives voted 225-104 to abolish the death penalty.¹²⁷ The vote in the Senate, however, which was "expected to be close,"¹²⁸ failed on April 17, 2014 with a 12-12 vote.¹²⁹

Interestingly, public opinion in New Hampshire is generally in favor of capital punishment. A February 2014 poll conducted by the University of New Hampshire Survey

¹²⁴Katharine Q. Seelye, "New Hampshire Nears Repeal of Death Penalty," *New York Times*, March 12, 2014, accessed March 25, 2014, http://www.nytimes.com/2014/03/13/us/new-hampshire-nears-repeal-of-death-penalty.html?_r=0.

¹²⁵*Ibid.*

¹²⁶Garland, *Peculiar Institution*, 39.

¹²⁷Katharine Q. Seelye, "New Hampshire Nears Repeal of Death Penalty," *The New York Times*, March 12, 2014, accessed March 25, 2014, <http://www.nytimes.com/2014/03/13/us/new-hampshire-nears-repeal-of-death-penalty.html>.

¹²⁸Garry Rayno, "Updated: House Overwhelmingly Adopts Death Penalty Repeal," *Union Leader*, March 12, 2014, accessed March 25, 2014, <http://www.unionleader.com/article/20140312/NEWS06/140319557>.

¹²⁹Katharine Q. Seelye, "Measure to Repeal Death Penalty Fails by a Single Vote in the New Hampshire Senate," *The New York Times*, April 17, 2014, accessed April 21, 2014, http://www.nytimes.com/2014/04/18/us/in-new-hampshire-measure-to-repeal-death-penalty-fails-by-a-single-vote.html?_r=0

Center¹³⁰ tells us that 58% of New Hampshire residents support the death penalty for convicted murderers, 29% are opposed, and 14% did not know. Out of only the Democrats, 42% favor the death penalty, 15% are neutral, and 43% oppose the death penalty. Yet, when given the alternative to life in prison without parole, only 48% support the death penalty, whereas 40% chose life in prison and 12% were neutral. Finally, over the life without parole alternative, only 38% of Democrats support capital punishment, while 52% prefer life in prison and 10% remain neutral.

A. House of Representatives

The New Hampshire state legislature is organized similarly to those of Texas and New Mexico. New Hampshire's House of Representatives has a Speaker of the House, a Majority Leader, and a Minority Leader.¹³¹ The New Hampshire Senate has a President, a President Pro Tempore, a Majority Leader, and a Minority Leader.¹³² Currently, the Democrats hold the majority in the House, and the Republicans hold the majority in the Senate. I began my New Hampshire research by examining the 400 seat House of Representatives.¹³³ The Speaker of the House, Democrat Terie Norelli of District 26, is in the middle of her ninth term as a representative.¹³⁴ Norelli does not have her own independent website; however, she does have a Twitter. On the March 12, 2014, Norelli tweeted, "House repeals the death penalty 225-104."¹³⁵

¹³⁰The Survey Center University at the University of New Hampshire, "Granite Staters Favor Minimum Wage Increase, Death Penalty," February 6, 2014, <http://cola.unh.edu/survey-center/granite-staters-favor-minimum-wage-increase-death-penalty-2614>.

¹³¹State of New Hampshire House of Representatives, "New Hampshire House Leadership," accessed March 25, 2014, <http://www.gencourt.state.nh.us/house/abouthouse/leadership.htm>.

¹³²New Hampshire State Senate, "New Hampshire State Senate Leadership 2013-2014," accessed March 25, 2014, <http://www.gencourt.state.nh.us/Senate/members/leadership.aspx>.

¹³³This number makes New Hampshire's state legislature the largest state legislature in the country, which provides an added significance to my research due to the vast potential for differing views inherent in such a large parliamentary body. New Hampshire House of Representatives, "New Hampshire House Facts," accessed March 25, 2014, <http://www.gencourt.state.nh.us/house/abouthouse/housefacts.htm>.

¹³⁴New Hampshire House of Representatives, "House Roster," accessed March 25, 2014, <http://www.gencourt.state.nh.us/house/members/memberlookup.aspx>.

¹³⁵Terie Norelli Twitter, accessed March 25, 2014, <https://twitter.com/TerieNorelli>.

On the bill itself, however, Norelli did not vote, because the Speaker votes only in the case of a tie.¹³⁶ In the past, however, she has voted against the expansion of capital punishment;¹³⁷ she voted against House Bill 147 in 2011, which passed and made “the commission of certain offenses punishable under the capital murder statute.”¹³⁸ Although this tells us something about Norelli’s sentiments towards capital punishment, it does not give us enough information as to whether she is opposed to executions. Norelli has been placed in the “don’t know” category of politicians.

The Majority Leader, Steve Shurtleff, is opposed to capital punishment for both ethical and “other” reasons, and he serves on the Criminal Justice and Public Safety Committee.¹³⁹ Shurtleff also lacks his own independent website. In his Criminal Justice and Public Safety Committee,¹⁴⁰ he was among the 14 members to vote for sending House Bill 1170 to the floor; there were three no votes.¹⁴¹ In committee, Shurtleff discussed his past 30 years spent working in the law enforcement field, and he cited previously voting against repeal of capital punishment. “I would like to think with age comes wisdom...So today I will be voting for repeal,” he explained.¹⁴² He also stated, “It really is a barbaric practice and the time is now to put it aside, and I think to give somebody life imprisonment so they can think every day about what they’ve

¹³⁶State of New Hampshire House of Representatives, “New Hampshire House Leadership,” accessed March 25, 2014, <http://www.gencourt.state.nh.us/house/abouthouse/leadership.htm>.

¹³⁷Granite State Progress, “Terie Norelli,” accessed March 25, 2014, <http://granitestateprogress.org/legislator/norelli>.

¹³⁸“Docket of HB147,” New Hampshire General Court- Bill Status, accessed March 25, 2014, http://www.gencourt.state.nh.us/bill_status/bill_docket.aspx?lsr=113&sy=2011&sortoption=&txtsessionyear=2011&txtbillnumber=hb147&q=1.

¹³⁹New Hampshire House of Representatives, “House Roster,” accessed March 25, 2014, <http://www.gencourt.state.nh.us/house/members/memberlookup.aspx>.

¹⁴⁰The New Hampshire General Court website refers to this committee as the “Criminal Justice and Public Safety Committee,” whereas other references refer to it as the “Criminal Justice and Public Works Committee.” For this paper, we will refer to it as the former.

¹⁴¹“Updated: House Committee Votes to Repeal the Death Penalty,” *Union Leader*, February 11, 2014, accessed March 25, 2014, <http://www.unionleader.com/article/20140211/NEWS06/140219829/-1/news>.

¹⁴²*Ibid.*

done is more of a punishment than ending their life.”¹⁴³ This statement suggests a sense of evolved sophistication, and it also tells us that Shurtleff believes that the death penalty is anachronistic and has no place in contemporary America. Additionally, he reportedly also believes that “more and more people are starting to look and to see the death penalty isn’t the way to go.”¹⁴⁴ Here, he reveals his consideration for what many members of the death penalty debate have said. Furthermore, according to Kathleen Ronayne of the *Concord Monitor*:

Shurtleff has supported the death penalty as a means of protecting law enforcement officers in the past. But he said testimony on the repeal bill and an article by former Manchester police officer John Breckenridge – whose partner Michael Briggs was killed in the line of duty – arguing in favor of repeal resonated with him and pushed him to change his view. (This bill as written would not change the status of Briggs’s killer, Michael Addison, who is on death row.)¹⁴⁵

Of his change of heart and mind, Shurtleff explained, "I think it's a combination of information I received from those who oppose the death penalty, my own faith and other factors.”¹⁴⁶ “Other factors” could mean economic reasons, constitutional reasons, morality reasons, or numerous others. Most likely, at least some of his influence came from some sort of sentiment related the death penalty being an outdated practice. From Shurtleff’s statements, we understand both the context of his position and that not even his experience in law enforcement kept him in favor of capital punishment. Additionally, like Norelli, he also voted against House Bill 147 that

¹⁴³Kathleen Ronayne, “New Hampshire House Committee Backs Death Penalty Repeal by Large Margin,” *Concord Monitor*, February 11, 2014, accessed March 25, 2014, <http://www.concordmonitor.com/news/localstate/10650251-95/nh-house-committee-backs-death-penalty-repeal-by-large-margin>.

¹⁴⁴Kathleen Ronayne, “Shift in New Hampshire on Death Penalty Mirrors National Moves Toward Repeal,” *Concord Monitor*, March 2, 2014, accessed March 25, 2014, <http://www.concordmonitor.com/home/10922629-95/shift-in-nh-on-death-penalty-mirrors-national-moves-toward-repeal>.

¹⁴⁵ Kathleen Ronayne, “New Hampshire House Committee Backs Death Penalty Repeal by Large Margin,” *Concord Monitor*, February 11, 2014, accessed March 25, 2014, <http://www.concordmonitor.com/news/localstate/10650251-95/nh-house-committee-backs-death-penalty-repeal-by-large-margin>.

¹⁴⁶Josh McElveen, “House Committee Endorses Death Penalty Repeal,” WMUR New Hampshire, February 11, 2014, accessed March 25, 2014, <http://www.wmur.com/news/politics/house-committee-endorses-death-penalty-repeal/24418108#ixzz2x1xtdZeU>.

expanded capital punishment in 2011.¹⁴⁷ Clearly, Shurtleff can be labeled anti-capital punishment for ethical and other reasons. Thus far, out of the two Democratic leaders in the New Hampshire House, only one has spoken publicly against capital punishment; however, we must continue to consider Norelli's unique role as Speaker of the House.

B. New Hampshire State Senate

The New Hampshire State Senate has yet to vote on the bill to abolish capital punishment. The Senate consists of 24 senators who are elected every other year.¹⁴⁸ Currently, the Republicans are in the majority in the Senate; thus, the only Democratic leader in the Senate whom I could research was Sylvia Larsen of District 15. Larsen does not have her own independent website; however, on the NH Senate Democrats caucus website, Larsen's listed "legislative priorities" are "funding education, to include higher education; promoting job growth; expanding workforce housing; establishing affordable health care; safeguarding our environment; and advancing property-tax relief."¹⁴⁹ In the 2011 bill that expanded the scope of capital crimes, against which several previously mentioned NH House members voted, Larsen "said she was not convinced the bill would have prevented the Mont Vernon murder or future crimes" and also indicated "that the bill was not limited to homes, but could include businesses"¹⁵⁰ She also stated upon debating the bill that it "will not prevent the acts that we are

¹⁴⁷Granite State Progress, "Stephen Shurtleff," accessed March 25, 2014, <http://granitestateprogress.org/legislator/shurtleff>.

¹⁴⁸New Hampshire State Senate, "New Hampshire Senate 'Fast Facts,'" accessed March 25, 2014, http://www.gencourt.state.nh.us/Senate/About_Senate/fast_facts.aspx.

¹⁴⁹New Hampshire State Democratic Caucus, "Sylvia Larsen," accessed March 25, 2014, <http://nhsenatedemocrats.org/sylvia-larsen/>.

¹⁵⁰Norma Love, "New Hampshire Senate OK's Expanding State's Capital Punishment Law," *Boston.com*, June 3, 2011, accessed March 25, 2014, http://www.boston.com/news/local/new_hampshire/articles/2011/06/03/nh_senate_oks_expanding_states_capital_punishment_law/.

reacting to. I do not believe this will prevent future events such as these”¹⁵¹ and that “Obviously, the heinous crime was such a shock to all of us that there is an instant reaction to want to get retribution...I think it has to be considered very carefully.”¹⁵² Larsen’s statements suggest that her primary opposition to capital punishment is such because she does not believe capital punishment deters from crime; deterrence is one of the most prevalent and prominent arguments for capital punishment. According to Annmarie Timmins of the *Concord Monitor*, Larsen was one of the six senators who could not be reached for a statement in October of 2013 about the upcoming 2014 capital punishment debate; however, she had previously voted for a repeal.¹⁵³ Additionally, Larsen voted in favor of the repeal on April 17.¹⁵⁴

C. New Hampshire Governor

Unlike Texas and New Mexico, New Hampshire has a Democratic governor. Maggie Hassan, who came into office in 2013, is currently up for reelection, as the governors in New Hampshire are elected every other year. According to her independent website, Hassen’s issues of priority are “Economy and Jobs,” “Education,” “Veto Sales or Income Tax,” “Health Care,” “Civil Rights/Marriage Equality,” “Energy and the Environment,” “Workers’ Rights,” “Expanded Gambling,” and “Northern Pass.”¹⁵⁵ Apparently, Hassan is prepared to sign the abolition bill if it passes the Senate. During her campaign, she said that capital punishment is

¹⁵¹Tom Fahey, “Senate Passes Death Penalty Bill on Home Invasions,” *Union Leader*, June 2, 2011, accessed March 25, 2014, <http://www.unionleader.com/article/20110602/NEWS06/110609968&template=mobileart>.

¹⁵²WMUR New Hampshire, “Lawmakers Vote to Expand Death Penalty,” March 15, 2011, accessed March 25, 2014, <http://www.wmur.com/news/nh-news/Lawmakers-Vote-To-Expand-Death-Penalty/11849704#ixzz2x27nGtuv>.

¹⁵³Annmarie Timmins, “State Senate Divided on Death Penalty Repeal,” *Concord Monitor*, October 20, 2013, accessed March 25, 2014, <http://www.concordmonitor.com/news/8966367-95/state-senate-divided-on-death-penalty-repeal>.

¹⁵⁴Associated Press, “How N.H. Senators Voted on Death Penalty Repeal,” *Concord Monitor*, April 17, 2014, accessed April 21, 2014, <http://www.concordmonitor.com/news/11631806-95/how-nh-senators-voted-on-death-penalty-repeal>.

¹⁵⁵Maggie Hassan Governor, accessed March 25, 2014, <http://www.maggiehassan.com/>.

something that she is against “as a matter of personal conscience and faith.”¹⁵⁶ So, Hassan is anti-capital punishment for ethical reasons. Interestingly, the one man on New Hampshire’s death row, Michael Addison, would continue to stay on death row even if the bill had passed.¹⁵⁷ Hassan has suggested that she would not commute Addison’s sentence upon passage, explaining during a primary debate:

It was the law on our books in New Hampshire when he was convicted of his crime, and I do trust and believe in our criminal justice system and our courts system...But as a matter of personal faith and conscience, I oppose the death penalty. I do, however, support life in prison without parole for certain heinous crimes.¹⁵⁸

Hassan has also indicated that she would like to receive feedback from “other people, especially people in law enforcement about what a repeal would do and how it would impact them.”¹⁵⁹

Hassan presents an interesting juxtaposition of personal morality and professional respect for the law; by choosing not to commute a sentence and to go through with an execution while still being morally opposed to the death penalty, Hassan gives us a noteworthy conflict. What would Hassan lose by commuting a sentence? Would she appear politically to be soft on crime? It is possible that Hassan would not commute Addison’s sentence to appear tough and respectful of former courts’ decisions, while still having the political gain of signing an abolition bill into law. For Hassan, this type of opportunity is almost the best of both worlds: she gets to appear to be tough on crime, yet progressive and humanitarian in her ultimate actions.

VII. Case Study: Ohio

“It has not been established whether Mr. McGuire was conscious of pain or whether the drugs that were used were responsible for his prolonged death. But at a time when the drugs once routinely used in executions are in short

¹⁵⁶Tricia L. Nadolny, “With Hassan in Office, Death Penalty’s Days Could Be Numbered,” *Concord Monitor*, November 25, 2012, accessed March 25, 2014, <http://www.concordmonitor.com/home/2941576-95/death-penalty-repeal-addison>.

¹⁵⁷*Ibid.*

¹⁵⁸*Ibid.*

¹⁵⁹Deborah McDermott, “Governor Hassan Wants to Hear More on Death Penalty Repeal,” *Sea Coast Online*, February 19, 2014, accessed March 25, 2014. <http://www.seacoastonline.com/articles/20140219-NEWS-140219678>

supply and states are scrambling to find new formulas, the execution is stirring intense debate about the obligations of the state toward those it kills.”¹⁶⁰

Thus far, we have looked at a state with capital punishment that executes at a high rate, a state that abolished almost exactly five years ago, and a state in the middle of a legislative abolition. What we still need is a state that lies in the middle of the spectrum in its frequency of executions, yet has a relatively split public opinion and is not currently engaging on a full-scale abolition discussion.¹⁶¹ After carefully analyzing many states’ public opinion results and execution rates, I chose Ohio as my fourth case study. Optimally, a state with a very low frequency of executions and split public opinion would be ideal to study, because it would demonstrate a state that rarely executes yet continues to have contention on this issue. However, in states that execute on a relatively infrequent basis, there is limited access to public opinion polling. Additionally, the most recent public opinion polls in Ohio suggest an interesting split in death penalty support. A February 19, 2014 Quinnipiac University poll tells us that 68% of Ohioans support the death penalty and 26% oppose it; however, if given the option of life without parole in place of the death penalty, 48% of Ohioans support life without parole and just 47% choose the death penalty.¹⁶² Thus, with life without parole as an option, the issue of capital punishment is extremely contentious and controversial in Ohio. This poll demonstrates an interesting shift from a clear majority support of capital punishment to slightly higher opposition.

¹⁶⁰Erica Goode, “After a Prolonged Execution in Ohio, Questions Over ‘Cruel and Unusual,’” *The New York Times*, January 17, 2014, accessed March 31, 2014, http://www.nytimes.com/2014/01/18/us/prolonged-execution-prompts-debate-over-death-penalty-methods.html?_r=0.

¹⁶¹ Some legislation to abolish capital punishment in Ohio has been introduced, most notably by representatives Dan Ramos and Nicki J. Antonio in December of 2013. However, this legislation introduction does not place Ohio in any evolved and legitimate floor debates and votes like the ones in New Hampshire.

¹⁶²Death Penalty Information Center, “State Polls and Studies,” accessed March 31, 2014, <http://www.deathpenaltyinfo.org/state-polls-and-studies>.

This reason, combined with the fact that Ohio has executed 53¹⁶³ inmates since 1976, makes Ohio a distinctive state in the scope of American capital punishment.

A. Ohio House of Representatives

Like the previous three states, Ohio's state legislature, or the General Assembly, is composed of a House of Representatives and a Senate.¹⁶⁴ The House of Representatives consists of 99 members.¹⁶⁵ The Ohio House has a Speaker, a Speaker Pro Tempore, a Majority Floor Leader, an Assistant Majority Floor Leader, a Majority Whip, an Assistant Majority Whip,¹⁶⁶ a Minority Leader, an Assistant Minority Leader, a Minority Whip, and an Assistant Minority Whip.¹⁶⁷ Currently, the Democrats are in the minority in the House; for this reason, I studied the minority leadership team. The Minority Leader is Tracy Maxwell Heard of District 26, who has been in office for seven years.¹⁶⁸ Her biography on the government's page says that Heard is "dedicated to securing an adequate and equitable school funding formula for Ohio's children, strengthening the state's communities and local governments, and ensuring the political process is inclusive of Ohio's diverse population."¹⁶⁹ Here, we see that her primary areas of concern are education, community, and inclusivity, which are three extremely broad and universally accepted themes. However, we see a narrowing of her focus a bit further on in her biography. It reads, "Heard has made criminal sentencing and collateral sanctions reform her flagship issue, securing passage of House Bill 86 in 2011, and Senate Bill 337 in 2012. The passage of those two bills

¹⁶³Death Penalty Information Center, "Number of Executions by State and Region Since 1976," accessed March 31, 2014, <http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976>.

¹⁶⁴130th General Assembly of the State of Ohio, "Organizational Chart of Ohio's State Government," accessed March 31, 2014, <http://www.legislature.state.oh.us/organizational.cfm>.

¹⁶⁵*Ibid.*

¹⁶⁶The Ohio House of Representatives, "Majority Leadership," accessed March 31, 2014, <http://www.ohiohouse.gov/members/majority-leadership>.

¹⁶⁷The Ohio House of Representatives, "Minority Leadership," accessed March 31, 2014, <http://www.ohiohouse.gov/members/minority-leadership>.

¹⁶⁸The Ohio House of Representatives, "Tracy Maxwell Heard- House District 26," accessed March 31, 2014, <http://www.ohiohouse.gov/tracy-maxwell-heard/biography>.

¹⁶⁹*Ibid.*

made Ohio a national leader in criminal justice issues, and provided a model of bipartisan cooperation for the General Assembly and beyond.”¹⁷⁰ From this, we know that Heard not only has experience with issues of criminal justice but also emphasizes them publicly and uses them as a strength in displaying her political platform. Like some of the other politicians discussed in this paper, Heard does not have an independent website; she does have a Facebook¹⁷¹ and a Twitter.¹⁷² Additionally, Heard does not appear to have made any recent statements about capital punishment.

The Assistant Minority Leader is Debbie Phillips of the 94th District, and the Ohio House web page for her claims that during her third term she “intends to continue her focus on educational excellence in Ohio, to promote advanced energy opportunities to strengthen Ohio’s economy and to be a strong advocate for the people of the 94th District.”¹⁷³ Phillips’ campaign website lists her issues as “education,” “the economy,” “energy,” and “healthcare.”¹⁷⁴ Thus, there are no immediate references to any sort of affinity to criminal justice reform; however, again, this does not necessarily suggest that Phillips has not spoken about capital punishment. In 2008, Phillips ran for her House seat against Athens County Auditor Jill Thompson and was attacked for being anti-capital punishment via mailings sent out by the Thompson campaign.¹⁷⁵ This mail provides a fascinating example of relatively recent death penalty debate in electoral

¹⁷⁰*Ibid.*

¹⁷¹“Tracy Maxwell Heard,” accessed April 22, 2014, <https://www.facebook.com/RepTracyHeard>.

¹⁷²“Tracy Maxwell Heard Twitter,” accessed April 22, 2014, <https://twitter.com/RepTracyHeard>.

¹⁷³The Ohio House of Representatives, “Debbie Phillips- House District 94,” accessed March 31, 2014, <http://www.ohiohouse.gov/debbie-phillips/biography>.

¹⁷⁴Debbie Phillips for State Representative, “Issues,” accessed March 31, 2014, <http://friendsofdebbiephillips.wordpress.com/on-the-issues/>.

¹⁷⁵Thompson sent mailings to voters that had a mug shot of murderer Frederick Mundt and said “Frederick Mundt KILLED a little girl...and” and the inside reads, “Debbie Phillips is his ally...Debbie Phillips opposes the death penalty, so murderers like Frederick Mundt aren’t punished.” Finally, the mailer describes Mundt’s crime and reads, “Debbie Phillips may be a murderer’s ally, but she shouldn’t be our representative.” Terry Smith, “Editor’s Notes: Four Shortwinded Editorials for the Price of One Windbag,” *The Athens News*, October 9, 2008, accessed March 31, 2014, <http://www.athensnews.com/ohio/article-23556-editors-notes-four-shortwinded-editorials-for-the-price-of-one-windbag.html>.

politics, because from it we see a candidate's capital punishment platform being used against her in an election.

The Minority Whip, second-term congressman Mike Ashford, represents District 44, which lies in Toledo.¹⁷⁶ The House website for Ashford highlights Ashford's work on the Public Works Committee as City Councilman of Toledo, and explains that "Rep. Ashford serves on the House Finance Committee which deals mainly with the state's budget and serves on the Public Utilities, Local Government and Insurance Committees."¹⁷⁷ Ashford does not have his own website, but he does have a Twitter account.¹⁷⁸ Additionally, I was unable to find any record of Ashford speaking about the death penalty.

The Assistant Minority Whip, Dan Ramos of District 56, is also relatively new to office; he was elected in 2010.¹⁷⁹ According to the House website for Ramos, "He is the first Hispanic Representative of either caucus in either the House or Senate to serve in a leadership position."¹⁸⁰ It also emphasizes his work to "help pass comprehensive state pension reform" as well as to overturn *Citizens United*, improve women's access to healthcare, and expand access to funds for college.¹⁸¹ The main text on his independent website mirrors this.¹⁸² His issues listed on his website are "the economy," "education," "elections," "energy and the environment," "healthcare," and "government transparency."¹⁸³ Not only is there significant overlap with these

¹⁷⁶The Ohio House of Representatives, "Mike Ashford- House District 44," accessed March 31, 2014, <http://www.ohiohouse.gov/mike-ashford/biography>.

¹⁷⁷ *Ibid.*

¹⁷⁸ Michael Ashford Twitter, accessed March 31, 2014, <https://twitter.com/RepMikeAshford>.

¹⁷⁹The Ohio House of Representatives, "Dan Ramos- House District 56," accessed March 31, 2014, <http://www.ohiohouse.gov/dan-ramos/biography>.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸²The main text reads, "Having spent his entire life in public service, Dan is passionate about working hard to ensure that Ohio is all that it can be. He cares deeply about working with labor to encourage job growth, developing smart policies to protect our environment, and working to fix Ohio's school funding system to ensure all children have access to an exceptional and equal education." Dan Ramos: Our State Representative, accessed March 31, 2014, <http://danramos.com/>.

¹⁸³Dan Ramos: Our State Representative, "Issues," accessed March 31, 2014, <http://danramos.com/issues/>.

issues and those mentioned on Phillips's website, but very few of these have significant morality connotations.

Of all the House leaders, Ramos provides us with the most examples of death penalty rhetoric. In December of 2013, Ramos, together with Rep. Nicki J. Antonio, proposed at a press conference at the Ohio Statehouse in Columbus that the Ohio General Assembly abolish capital punishment.¹⁸⁴ They discussed their eventual plan to introduce legislation to propose life without parole in place of capital punishment. Ramos said:

The United States carries out more executions than any other liberal democracy in the world. We should be a leader on this issue but instead of leading the free world, our record is much closer to countries like Saudi Arabia, Sudan, Yemen, Iraq, and Iran... Unfortunately, despite a common belief, the death penalty does not save the taxpayer or the state any money. On average, death penalty cases can cost more than six times the number of days in court that a life without parole case requires and more than 4 years longer to complete... It is irresponsible to use taxpayer dollars, especially in these current times, to utilize this punishment if it doesn't provide justice or a deterrent from crime...¹⁸⁵

Here, we see Ramos speak openly against capital punishment on numerous grounds: he believes that the United States' use of capital punishment places us in a negative position in the international community, that it costs us additional money, and that it does not deter from crime. It is noteworthy that initially, Ramos focuses on the United States as opposed to Ohio; while he ultimately is speaking to promote the abolition of the death penalty in Ohio, he begins by speaking about it on a national scale. These three issues are common arguments against the death penalty. Ramos continues, citing a study done in Indiana to evaluate its death penalty practices.¹⁸⁶ Through this statement, we see that Ramos sees the numerous flaws with capital

¹⁸⁴Robert Higgs, "State Lawmakers Nickie J. Antonio, Dan Ramos, Propose and End to Capital Punishment," *Cleveland.com*, December 3, 2013, accessed March 31, 2014, http://www.cleveland.com/open/index.ssf/2013/12/state_lawmakers_nickie_j_anton.html.

¹⁸⁵*Ibid.*

¹⁸⁶Ramos claimed, "The same study from Indiana shows that the race of the victim continues to play a role in the capital punishment convictions. That is inexcusable.... Wrongly convicting anyone constitutes a horrible injustice, but executing the wrong person eliminates any chance of reversing that mistake. Since the 1990s DNA

punishment and suggests that it is antiquated, anachronistic, and harmful to numerous constituencies in society.

Ramos also took action recently amidst a shifting national focus on Ohio's capital punishment practice. Until January 2014, Ohio had been using a drug called pentobarbital for its lethal injections.¹⁸⁷ However, recently, the European manufacturers of this drug have stopped sales to the United States, as they disagree with the purposes for which it is used. The first time Ohio used "a combination of midazolam, an anti-anxiety drug in the same family as Valium, and hydromorphone, a powerful narcotic derived from morphine," death row inmate Dennis McGuire spent about 25 minutes before he died making choking, snorting, and gasping noises.¹⁸⁸ This event is not only representative of a nationwide discussion of the Eighth Amendment when it comes to the issue of pentobarbital shortage, but it also spurred Ohio legislators to act. Thus, Ramos and Antonio wrote a letter to Ohio Governor John Kasich, asking him to "impose a delay on further executions."¹⁸⁹ After briefly describing the McGuire incident, the letter said:

This occurrence certainly raises serious constitutional questions, and it is our hope that other states, as well as Ohio, take great pause from the outcome of Thursday's execution. Along with this instance, there is growing support from national and state leaders, organizations and Ohio citizens in ending the death penalty altogether due to the shortage of the one-drug supply, pentobarbital, as well as the ethical, moral, and economic implications of administering the death penalty.¹⁹⁰

evidence has exonerated more than 140 people awaiting execution—140 people wrongfully convicted and were almost sentenced to death before new evidence was brought forward. ... Therefore, if the practice of the death penalty is not a deterrent to criminals, provides no savings to the taxpayer, and actually cost the taxpayer more than other forms of punishment, if it inflicts pain on a family of a victim as they await closure for the death of their loved one and is applied equally [sic] and arbitrarily, it is far overdue that Ohio take action to eliminate this option under law." *Ibid.*

¹⁸⁷Goode, "After a Prolonged Execution in Ohio, Questions Over 'Cruel and Unusual,'" *The New York Times*, January 17, 2014, accessed March 31, 2014, http://www.nytimes.com/2014/01/18/us/prolonged-execution-prompts-debate-over-death-penalty-methods.html?_r=0.

¹⁸⁸*Ibid.*

¹⁸⁹Richard Payerchin, "Ohio State Representative Dan Ramos Calls for an End to Executions in Ohio," *The Morning Journal*, January 22, 2014, accessed March 31, 2014, <http://www.morningjournal.com/general-news/20140123/ohio-state-representative-dan-ramos-calls-for-an-end-to-executions-in-ohio>.

¹⁹⁰*Ibid.*

Here, we see Ramos going through means alternative to the legislative route to slow down or halt Ohio executions. They sent the letter the same day that they testified in front of the House Judiciary Committee. In this meeting, Ramos discussed those who had been wrongfully convicted and said.¹⁹¹ Ramos' statement in front of the Judiciary Committee emphasizes his aversion to the death penalty on the grounds of the frequency of wrongful convictions. This is a more narrowed focus than his initial statement, which covered a breadth of different reasons to oppose the death penalty. Here, we see more clearly some of Ramos's individual conflicts with capital punishment.

B. Ohio Senate

The Ohio Senate is organized similarly to previously mentioned state legislatures; its 33 members are elected every 4 years. The Senate has a President, a President Pro Tempore, a Majority Floor Leader, a Majority Whip,¹⁹² a Minority Leader, an Assistant Minority Leader, a Minority Whip, and an Assistant Minority Whip. Democrats are also currently in the minority in the Senate. The Minority Leader, Joe Schiavoni, was appointed to the Senate in 2008, and he represents District 33.¹⁹³ His government website accentuates his efforts to promote job creation, education, and safer neighborhoods.¹⁹⁴ Schiavoni does not have his own website; however, he does have a Twitter.¹⁹⁵ On the issue of the death penalty, in light of the botched Dennis McGuire

¹⁹¹Ramos stated, "In Ohio alone, their stories represent more than 100 years of time served in prison or on death row for crimes they did not commit. In Ohio, the average number of years between being sentenced to death and being exonerated is just over 17 years... Let me be clear, I have no empathy for those who have taken another life and fully condone their serving the remainder of their lives incarcerated and forced to live imprisoned with the burden of the atrocities that they committed. However, I cannot support a law that results in an innocent Ohio citizen being put to death or being made to live for decades trapped in a perpetual nightmare fearing an execution for a crime they did not commit." *Ibid.*

¹⁹²The Ohio Senate, "Majority Leadership," accessed March 31, 2014, <http://www.ohiosenate.gov/members/majority-leadership>.

¹⁹³The Ohio Senate, "Senator Joe Schiavoni- Senate District 33," accessed March 31, 2014, <http://www.ohiosenate.gov/schiavoni/biography>. Schiavoni was appointed to fill an empty Senate seat in 2008; in 2010, he was elected to serve a four-year term.

¹⁹⁴*Ibid.*

¹⁹⁵Joe Schiavoni Twitter, accessed March 31, 2014, <https://twitter.com/JoeSchiavoni>.

execution, Schiavoni spoke about the peace brought to victims' families through executions.¹⁹⁶ Clearly, his reasons for supporting the death penalty center around justice given to families: "When I think about the death penalty in general I think about the victims...And sometimes that's a way to give them closure, that's a way to give them justice."¹⁹⁷

The Assistant Minority Leader, Charleta B. Tavares of District 15, joined the Senate in 2010; before joining the Senate she was a City Councilwoman in Columbus, and before that she was a member of the House of Representatives.¹⁹⁸ Tavares does have her own campaign website, but it only relays a brief campaign message and does not appear to have links to any issue-oriented pages. In relation to the death penalty, Tavares was the primary sponsor of Senate Bill 183, which would "provide that a defendant cannot be executed if the defendant's race was the basis of the decision to seek or impose the death penalty."¹⁹⁹ Beyond this, I was unable to discover any public statements made by Tavares related to the death penalty. However, from her sponsoring SB183, we can determine that she at least has certain reservations about capital punishment.

Edna Brown, the Minority Whip, joined the Senate in 2010 from District 11.²⁰⁰ According to the Senate website page about her, Brown's legislative priorities are "criminal justice reform, healthcare, the wellbeing of children and families, and voting access."²⁰¹ Like

¹⁹⁶Schiavoni said, "I think that we need to keep the death penalty on the table ... at the same time making sure that we find the most-humane ways possible to deal with this issue...I think that, although there may not be evidence to show that it's a deterrent... this is something that we need to keep in our justice system for the family of the victims." Vindy.com, "State Leaders Support the Death Penalty," January 31, 2014, accessed March 31, 2014, <http://www.vindy.com/news/2014/jan/31/state-leaders-show-support-for-death-pen/?kindle>.

¹⁹⁷Sally Phillips, "Lawmakers Propose End to Death Penalty in Ohio," *WFMJ News*, accessed March 31, 2014, <http://www.wfmj.com/story/15582026/lawmakers-propose-end-to-death-penalty-in-ohio>.

¹⁹⁸The Ohio Senate, "Charleta B. Tavares- Senate District 15," accessed March 31, 2014, <http://www.ohiosenate.gov/tavares/biography>.

¹⁹⁹Laws, Acts, and Legislation, "S.B. No. 183 As Introduced," accessed March 31, 2014, http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_183.

²⁰⁰The Ohio Senate, "Senator Edna Brown- Senate District 11," accessed March 31, 2014, <http://www.ohiosenate.gov/brown/biography>.

²⁰¹ *Ibid.*

many other legislators, Brown has a Twitter account but no independent website.²⁰² In 2011, Brown announced plans to introduce a bill that would abolish Ohio's capital punishment.²⁰³ "The timing is right to end this archaic practice," said Brown. Of Joseph Murphy, a man who was recommended by the Ohio Parole Board to have life without parole instead of a death sentence, Brown stated, "his punishment should be spending the rest of his life in jail, and not by [sic] execution."²⁰⁴ Additionally, she pushed the governor for a moratorium on execution during her legislation's consideration.²⁰⁵ In 2012, Brown told the Senate Judiciary Committee, "It is my long-held belief that the possibility of putting an innocent person to death is one that a moral society should avoid... The collateral damage of such an error is one we cannot ignore. ..."²⁰⁶ She also wrote in a letter to Governor Kasich, "In a system that is clearly prone to error in our state and across the country, it is my conclusion the state of Ohio should not be able to make the grievous error of ending an innocent person's life."²⁰⁷ Additionally, following the McGuire controversy, Brown called for another moratorium.²⁰⁸ Of the debacle, she said, "This flawed execution reinforces my belief that the death penalty is an outdated method of punishment that has no place in civilized society."²⁰⁹

²⁰²Senator Edna Brown Twitter, accessed March 31, 2014, https://twitter.com/Sen_Edna_Brown.

²⁰³The Ohio Senate, "Press Release: Senator Brown to Introduce Legislation Abolishing the Death Penalty," September 27, 2011, accessed March 31, 2014, <http://www.ohiosenate.gov/brown/press/senator-brown-to-introduce-legislation-abolishing-death-penalty>.

²⁰⁴*Ibid.*

²⁰⁵*Ibid.*

²⁰⁶Jim Provance, "Sen. Brown: Abolish Ohio's Death Penalty," *Toledo Blade*, February 1, 2012, accessed March 31, 2014, <http://www.toledoblade.com/State/2012/02/01/Sen-Brown-Abolish-Ohio-s-death-penalty.html#SDw2t2C4f4QBLxeZ.99>.

²⁰⁷*Ibid.*

²⁰⁸Sam Howard, "Legislative Democrats Push Anti-Death Penalty Bills Following Controversial Execution," *Cleveland.com*, January 20, 2014, accessed March 31, 2014, http://www.cleveland.com/open/index.ssf/2014/01/bill_to_abolish_death_penalty.html.

²⁰⁹*Ibid.*

Finally, Lou Gentile is the Assistant Minority Whip and joined the Senate from District 30 in 2010. His independent website²¹⁰ and his government website²¹¹ both emphasize education, job creation, and working families. There is no public evidence of his capital punishment position.

VIII. Analysis

In total, I analyzed 20 state-level Democratic politicians. Of the 20 legislators, 60% were anti-capital punishment, 15% were pro-capital punishment,²¹² and 25% did not have enough evidence of a position to classify them.²¹³ It is essential that we do not assume that this 25% of politicians has never said anything about capital punishment, nor that we assume that they do not have an opinion on this issue. Rather, we must keep in mind that, as most of my sources were news articles due to lack of access of state archives, news covers only certain stories. Thus, we need to consider the information gathered in light of the medium through which it was received. Of the 60% who were anti-capital punishment, two-thirds (67%) gave reasons for their anti-capital punishment stances. As previously mentioned, I labeled these reasons either “economic,” “ethical,” “wrongful convictions,” “deterrence,” or “other.”

²¹⁰Lou Gentile for State Senate, accessed March 31, 2014, <http://www.gentileforohio.com/>.

²¹¹The Ohio Senate, “Senator Lou Gentile- Senate District 30,” accessed March 31, 2014, <http://www.ohiosenate.gov/gentile/biography>.

²¹²David Nice reminds us that the effectiveness of capital punishment is not always a question: “In a context of high public interest and substantial uncertainty regarding the effectiveness of a policy, officials have a strong incentive to respond to public desires. Even if the policy is *not particularly effective* in resolving the problem, officials have at least made a symbolic response.” Throughout the course of my research, the three pro-capital punishment politicians spoke mainly on the platforms of justice, and not on the platforms of economic practicality or crime deterrence. For those politicians in support of the death penalty, it appears as if the effectiveness of the death penalty for practical reasons is not as high of a concern. David C. Nice, “The States and the Death Penalty,” *The Western Political Quarterly* 45 (1992): 1037-1048. Emphasis added.

²¹³According to Mayhew, “[A] third activity congressmen engage in may be called *position taking*, defined here as the public enunciation of a judgmental statement on anything likely to be of interest to political actors. The statement may take the form of a roll call vote.” He continues, explaining how these positions are at times otherwise determined: “The ways in which positions can be registered are numerous and often imaginative. There are floor addresses ranging from weighty orations to mass-produced ‘nationality day statements.’ There are speeches before home groups, television appearances, letters, newsletters...” The statements and positions that I collected in my research come from a variety of these types of sources. Mayhew, *Congress: The Electoral Connection*, 61.

A. Texas

Public support of capital punishment has remained consistently high in the past fifteen years. Because a clear majority of Texans support capital punishment, it makes little political sense for anyone to speak negatively about capital punishment. My evidence supports this claim; although our Texas leadership sample is relatively small with only two politicians, both are pro-capital punishment elected Democrats.²¹⁴

B. New Mexico

In New Mexico, I studied six Democratic leaders. Of these six, all of whom are anti-capital punishment, 50% have spoken against the death penalty for a variety of reasons. One spoke on economic grounds, one spoke about wrongful convictions, and one spoke for an alternative reason. New Mexico shows us that during abolition, Democratic politicians can speak or act against the death penalty if public opinion on capital punishment is opposed. New Mexico does not deviate from our preconceived notions of the connection between public opinion and the actions of state legislative leaders. Glynn et al. explain this in *Public Opinion*: “Whether we conclude that the public only loosely constrains policymaking or that the public at times forcefully pushes the government to act in different ways, there is evidence that government policies are responsive to public opinion in the United States.”²¹⁵ New Mexico demonstrates what we assumed at the beginning of research: Democratic state leaders can oppose capital punishment when public opinion also opposes capital punishment.

C. New Hampshire

²¹⁴This idea especially applies to Wendy Davis due to her position as a gubernatorial candidate. While Davis is outspoken on abortion, another controversial issue, we must keep in mind the unique role a governor has in commuting capital punishment sentences. This is not to claim that Davis is “secretly” anti-capital punishment; rather, it is to suggest that even if she were, governors have too prominent a role in the actual implementation of executions to go against public sentiment. In other words, while abortion is extremely controversial in Texas, governors have a more direct role in the existence of executions.

²¹⁵Carroll J. Glynn, Susan Herbst, Garrett J. O’Keefe, Robert Y. Shapiro, Mark Lindeman, *Public Opinion* 2nd ed. (Cambridge, MA: Westview Press), 399.

New Hampshire is a bit less predictable. Out of the four Democrats analyzed, 75% were anti-capital punishment, and all three of those opposed have spoken against executions in some capacity. Two politicians spoke about the ethics of capital punishment, one spoke about it not deterring crime, and one spoke about an alternative reason for opposition. In New Hampshire, when given the option of the death penalty of life without parole, 48% of New Hampshire residents support the death penalty, while 40% prefer life without parole. This shows us that 8% more New Hampshire residents prefer the death penalty to life without parole. However, the Democratic leaders in the New Hampshire legislature are relatively united in their death penalty positions. While there is no way to be certain, it is possible that a cohesive party carries great power in promoting a legislative agenda. Three out of the four Democrats studied in New Hampshire were explicitly anti-capital punishment. However, more important is that among party leadership in the New Hampshire legislature, Democrats are a relatively united front. This is particularly notable due to the public support for the death penalty in New Hampshire. Additionally, while public support tells us that more New Hampshire residents prefer the death penalty to life without parole, capital punishment essentially does not occur in New Hampshire. This is greatly different from Texas, for example. The capital punishment support in Texas is more relevant to politicians' platforms due to the frequency of executions in Texas. In turning to an analysis of Ohio, this analysis of a unified party and public opinion in light of execution frequency helps explain the Ohio situation, because Ohio's Democratic leaders are divergent in their views and public opinion is much more contentious in Ohio.

D. Ohio

Ohio public opinion is extremely split on the death penalty, as are the Democratic politicians. Although the Quinnipiac poll tells us that 68% of Ohioans support the death penalty

and 26% oppose it, those numbers alter drastically when the option of life without parole is introduced. When given the option of life without parole, 48% favor life without parole, and 47% favor the death penalty. These extremely close percentages demonstrate that the death penalty is a tremendously controversial issue in Ohio. With the Ohioan Democratic leaders, we see something similar. Out of these eight Democrats, three have spoken openly against the death penalty; one has spoken openly in favor of the death penalty, and four display no evidence of their opinion. While it is important to keep in mind that New Hampshire and New Mexico Democrats' opinions are easier to determine due to the availability of voting records and the prior existence of bills on which to vote, the fact remains that Ohio Democrats appear to be split on the issue. If they are not as split as they appear and all four of those Democrats are in the "don't know" category, they nonetheless cease to openly discuss capital punishment. Perhaps there is a relationship, albeit nuanced, between the degree to which a party is unified and the extent to which it can contradict public opinion. Joseph Cooper and David W. Brady elaborate on the concept of a unified party in their evaluation of party leadership within the United States House of Representatives:

The higher the degree of party unity or cohesion the more power in both the formal and party systems can be concentrated in the hands of party leaders and the more leadership style will be oriented to command and task or goal attainment. The lower the degree of party unity or cohesion the more power in both the formal and party system will be dispersed and the more leadership style will be oriented to bargaining and the maintenance of good relations.²¹⁶

This suggests that in a state like New Hampshire, where the party leaders are united in their death penalty positions, the more power the leaders in that party have to perpetuate their party's goals. Simultaneously, a state like Ohio, in which the Democratic leaders are completely divergent in their death penalty positions, could show us that they have less influence on the

²¹⁶Joseph Cooper and David W. Brady, "Institutional Context and Leadership Style: The House from Cannon to Rayburn," *The American Political Science Review* 75 (1981): 424.

party's decisions and actions. While Cooper and Brady's work relates to the United States House of Representatives, the concept of their message can be applied to state level leadership.

We must also take into account the reasons for which Ohio Democrats have openly opposed the death penalty. Out of the eight Democrats studied, three openly oppose the death penalty. Out of the three dissenters, two gave reasons. By speaking to each of the five predetermined categories, Ramos cites ethical, economic, not a deterrence, wrongful convictions, and other. Senator Brown speaks about wrongful convictions. So, we cannot determine the principal reasons for opposition to capital punishment due to the context of Ramos's opposition; he was introducing a Senate bill and it is fitting all possible reasons to oppose the death penalty were raised. However, if we look at what Ramos has said outside of his introduction of the bill, he focused both on ethics and on wrongful convictions. While his overlap with Brown on the issue of wrongful convictions is not determinative, it is also not insignificant.

E. Discussion

Before delving more deeply into a discussion of the results and what they could mean, it is important to address the desire of many politicians to get reelected. Particularly because I am writing during a midterm election, a number of those members from my case study are up for reelection this upcoming fall. David R. Mayhew in *Congress: The Electoral Connection*²¹⁷ tells us of the ways that a pressure to be reelected can potentially alter the action of a politician. He writes, "The ultimate concern here is not how probable it is that legislators will lose their seats but whether there is a connection between what they do in office and their need to be reelected."²¹⁸ Mayhew reminds us of the crucial reelection motivation inherent in politics. David R. Jones also attempts to understand some of the facets of electoral accountability, contending

²¹⁷While Mayhew writes about the national legislature, we can nonetheless apply his principles to state politics.

²¹⁸Mayhew, *Congress: The Electoral Connection*, 37.

that his work is “the first study to demonstrate that evaluations of the collective performance of Congress can lead to actual electoral gains or losses by majority party incumbents.”²¹⁹ Jones’s work helps explain some of the nuances within accountability and reelection of incumbents. Brandice Canes-Wrone, David D. Brady, and John F. Cogan’s work on electoral accountability leads to a similar conclusion,²²⁰ and Benjamin J. Kassow and Charles J. Finocchiaro’s research considers some of the nuances within some of the ideological outliers of a party.²²¹

An additional point to consider before further discussion is the idea of salience in discussing political issues. As Paul Burstein reminds us, the level of salience of an issue affects

²¹⁹Jones explains the findings of his research as consisting of three parts. Firstly, “majority party members have consistently faced at least some electoral consequence for congressional performance.” Secondly, “partisan polarization has played a significant role in shaping electoral accountability for congressional performance.” Thirdly, “these electoral effects of congressional performance ratings hold true largely irrespective of a member’s individual party loyalty or seat safety.” Through Jones’s study, we see that accountability and approval of politicians’ performances do indeed have an influence on present-day politics and could potentially influence politicians’ words and actions. David R. Jones, “Partisan Polarization and Congressional Accountability in House Elections,” *American Journal of Political Science* 54 (2010): 333.

²²⁰Canes-Wrone, Brady, and Cogan explain that their work “provide[s] evidence that a typical member should believe that he is accountable to voters with regard to his roll-call decisions.” They explain this by demonstrating the following: “First, we show that, holding district ideology constant, in every election between 1956 and 1996 an incumbent’s vote share decreased the more he voted with the extreme of his party. Second, pooling across the years, we establish that the average impact of this effect is comparable to that of commonly recognized electoral determinants such as challenger quality. Third, by directly examining the probability of reelection, we demonstrate that the probability decreases significantly as an incumbent’s voting support for his party increases, with this effect holding not only for marginal but also safe incumbents.” Thus, their work shows us that politicians generally are held accountable for their votes. While voting record is only a piece of my determinative factors of death penalty position, it is nonetheless an important marker of politician action in office, particularly because voting is a direct conduit between politicians and policymaking. Brandice Canes-Wrone, David W. Brady, and John F. Cogan, “Out of Step, Out of Office: Electoral Accountability and House Members’ Voting,” *American Political Science Review* 96 (2002): 138.

²²¹Kassow and Finocchiaro study the United States Senate and consider the differences between ideological extremism and ideological divergence. They explain that considering outliers in party ideology in the context of divergence as opposed to extremism is more beneficial and takes important nuances into consideration. They explain: “From a theoretical perspective, our conceptualization has several advantages over the extant conceptualization of ideological extremity. First, it is frequently the case that in states that are relatively liberal (or conservative), senators tend to be relatively liberal (or conservative). By conceptualizing ideological “fit” based purely on ideological extremity, one incorrectly assumes that liberal senators (even in relatively liberal states) are more likely to lose compared to their moderate colleagues. Although in some states this may be the case, in others, it is more problematic.” This extremism approach, to Kassow and Finocchiaro, does not take into account some other types of divergence of party ideology. To them, the divergence model is more salient: “From a theoretical standpoint, our results show the importance of accounting directly for ideological fit rather than conceptualizing responsiveness as the uncalibrated metric of ideological extremity or relying on controls for presidential vote to tap constituent preferences.” Kassow and Finocchiaro are noteworthy due to their consideration of nuances within consideration of politicians’ divergences from the rest of their party. Benjamin J. Kassow and Charles J. Finocchiaro, “Responsiveness and Electoral Accountability in the U.S Senate,” *American Politics Research* 39 (2011): 1024,1038.

both the public and the government's response to that issue.²²² Considering some of Burstein's arguments, it is important to remember consider the salience, or lack thereof, that capital punishment has in mainstream politics.²²³ Furthermore, we must consider some of the research dedicated to looking at the direct response of political actors to public opinion polling. Elizabeth K. Brown explains to us that state legislators do not necessarily use public opinion polls as means of gauging public opinion.²²⁴ She concludes, "While polling and other forms of highly systematized public opinion assessment ... may tell political actors something about electoral contests and general trends in views, those data do not appear to be relied upon by political actors as 'effective' public opinion."²²⁵ While Brown's analysis and reasoning behind this statement are legitimate and worth mentioning, we should not discount the role of public opinion in my research.

Comparing Texas, New Hampshire, and Ohio reveals a significant pattern concerning public opinion and the actions and words of Democratic leaders. Upon doing my research, I assumed that Democratic leaders' words and actions would more directly coincide with public opinion, particularly when public opposition to the death penalty rose to 50% or above.²²⁶ Thus

²²²According to Burstein, "Policy would be kept from drifting too far from public opinion on low-salience issues mainly by elected officials' realization that their salience might increase at a future date." It could be that because capital punishment is not as much of a salient issue in mainstream politics, particularly in national politics, that public opinion drives the outcome of both lawmakers and laws themselves. This could be another explanation for New Hampshire's abolition outcome. Paul Burstein, "The Impact of Public Opinion on Public Policy: A Review and an Agenda," *Political Science Quarterly* 56 (2003): 30.

²²³Burstein continues: "When the measure of public opinion incorporates salience as well as substantive preferences—the combination of salience and substantive public opinion always has an effect and is of substantial policy importance over three-fifths of the time." This adds an entirely different dimension to the methods of interpreting public opinion. Particularly, if capital punishment is indeed not a salient policy issue, then perhaps that explains why there is a relatively large gap of respondents, or, as Asher labels it, "nonattitude." *Ibid.*, 34.

²²⁴While Brown looks only at New York, her research nonetheless is both state focused and contributes some significant ideas that can be applied to my research. Elizabeth K. Brown, "Constructing the Public Will: How Political Actors in New York State Construct, Assess, and Use Public Opinion in Penal Policy Making," *Punishment and Society* 13 (2011): 443.

²²⁵*Ibid.*

²²⁶Glynn et al. explains, "In the vast majority of cases, however, the interaction between public opinion and the formation of public policy is far more complex because communication among involved parties is so imperfect."

upon looking at New Hampshire polling, I expected that because 68 % support the death penalty and 26% oppose it, I assumed we would find New Hampshire Democratic leaders consistently in support of (or silent on) the death penalty. But as I examined the poll results more closely, certain distinctions in the questions became salient. The Texas 2012, New Hampshire 2014, and Ohio 2014 polls provide answers to two questions. One of those questions involves a simple, absolute public support of the death penalty: does a person support capital punishment, or oppose it? The other is a more contingent public support question that asks whether a person supports life without parole instead of the death penalty.²²⁷ Not only do these questions vary significantly in their political meaning, but they also allow us to see an expressive shift in respondents on a state-by-state basis. Because in each of these three states there is such a shift of support between these two questions, we now understand that there are two different levels of public opinion on capital punishment. The results of these death penalty polls lie between two different dimensions, an absolute and a conditional. The conditional support refers to support of capital punishment even given the option of life without parole as an option.

Furthermore, there lies a distinction in the extent to which public opinion is altered between the two questions. These alterations demonstrate two things. First, they show us a level of commitment to capital punishment; greater shifts from support for the death penalty to support

Glynn et al., *Public Opinion*, 7. Some of these complexities arose in my research, and not just for the reasons listed from Glynn et al.

²²⁷Worthen et al. provide an analysis of ways that nondichotomous response options in death penalty support polling can “provide us with a more nuanced understanding of capital punishment.” They contend that polling presented in the form of a support spectrum, as opposed to a dichotomous yes/no, helps us understand capital punishment more accurately. Our first question in polling data (asking if someone supports or opposes the death penalty) is an example of a dichotomous question. Additionally, our second question, to which we have been referring as the “more nuanced” question, is not as nuanced as a broader spectrum would provide us. It addresses some of the nuances within capital punishment support, but is not as nuanced some questions, such as the question discussed by Worthen et al. Accordingly, our sense of public opinion volatility could potentially stand to be even more specific and accurate. Meredith G. F. Worthen, Forrest R. Rodgers and Susan F. Sharp, “Expanding the Spectrum of Attitudes Toward the Death Penalty: How Nondichotomous Response Options Affect Our Understandings of Death Penalty Attitudes,” *Criminal Justice Review* 39 (2014): 14, 16.

for life without parole demonstrate less commitment to capital punishment. Second, these shifts leave us with a telling difference between those in support of capital punishment and those who prefer life without parole.²²⁸ These differences help us understand exactly how contentious the issue of the death penalty actually is. Before continuing this discussion, it is important to consider the lack of answers in each poll. In the Texas poll, the 37% preference of life without parole and the 53% of preference for the death penalty leaves us with 10% of respondents in neither category. In the New Hampshire poll, the 40% preference of life without parole and the 48% preference of the death penalty leaves us with 12% of respondents in neither category. Finally, in the Ohio poll, the 48% preference of life without parole and the 47% preference of the death penalty leaves us with 5% of respondents in neither category. These lacks of answers exemplify a common problem in polling. Asher discusses the “nonattitude” phenomenon, explaining the potential harm that it can cause on polling in general.²²⁹

From this, we understand better the advantages that a poll to which responses were more complete would provide us. Particularly in Texas and New Hampshire, those significant gaps in responses could have the potential to alter completely our understanding of public sentiment. However, as Asher assures us, “Although nonattitudes can be a polling problem, Americans should not disregard polls, because on many issues the general public has genuine attitudes and is willing to express them.”²³⁰ Thus, the lack of response tells us something important about the public opinion on a given issue (mainly, that that number not represented most likely is

²²⁸See Appendix B for full results.

²²⁹“Americans express opinions on many things, even when they have little information, and that the very act of polling and asking questions often creates opinions that might not otherwise be evident. The seriousness of the nonattitudes problem is partially a function of the purpose for which the polling results are being used. . . . If the poll results are being used to justify the adoption, continuation, modification, or elimination of some policy or program, then nonattitude responses are a more serious problem.” Asher, *Polling and the Public*, 45-46.

²³⁰*Ibid.*, 48.

undecided about this issue). Additionally, our polls are nonetheless demonstrative of public opinion on capital punishment.

Again, our polling results fall between two general dimensions. One, they demonstrate an alteration from a less nuanced to a more nuanced question.²³¹ Two, they demonstrate the ultimate display of contention on the death penalty in each state. Let us first consider Texas. As discussed earlier, in 2012, 21% of Texans opposed the death penalty, whereas 73% supported it. When given the option of life without parole or the death penalty, 37% of Texans chose life without parole, and 53% chose the death penalty. So, we see a 20% drop in support of the death penalty. Also important to note is the large 16% difference between Texans who chose life without parole and those who still chose the death penalty. Both Texas Democratic leaders studied are pro-capital punishment, thus demonstrating some semblance of party unity on the issue. In New Hampshire, the 2014 poll tells us that on the issue of absolute support for the death penalty, 58% support the death penalty and 29% oppose. However, when given life without parole as an alternative, 48% still choose the death penalty and 40% choose life without parole. This shows us a 10% decrease in support for the death penalty when given life without parole as an alternative. Additionally, it demonstrates less separation on the issue than in Texas' 16%; there is an 8% difference between New Hampshireers who chose life without parole and those who chose capital punishment. New Hampshire state Democratic leaders, too, are relatively united in their capital punishment positions.²³² We still have three out of four New Hampshire Democratic leaders who are anti-capital punishment.

²³¹The less nuanced question refers to the question about whether a person is anti-capital punishment or is pro-capital punishment. The more nuanced question refers to the question asking respondents whether they prefer life without parole or whether they prefer the death penalty.

²³²Norelli's role as Speaker of the House makes it difficult to determine her true position on capital punishment, because the Speaker of the House only votes in the case of a tie.

Finally, Ohio 2014 polling data demonstrate that, when given the option of support or opposition to the death penalty, 26% oppose the death penalty and 68% support it. Most significantly, however, when given the option of life without parole, 48% of Ohioans prefer life without parole and 47% prefer the death penalty. Taking into account the +/-2.7% margin of error in the Ohio poll, that 21% decrease in support for public opinion sets public opinion at statistical tie. However, Ohio state Democratic leaders are divergent in their capital punishment positions. Additionally, there is a mere 1% difference between those Ohioans who chose life without parole and those who chose capital punishment. Again, of the eight Democratic leaders studied, three are anti-capital punishment, one is pro-capital punishment, and four fall into the “don’t know” category. So, not only are Ohio Democratic leaders split in their views on capital punishment, but public opinion on capital punishment as an issue is more volatile.

The drop in public support for the death penalty when given the option of life without parole is twice as steep in Ohio and Texas than it is in New Hampshire. That New Hampshire public support in capital punishment decreased only 10% when given the option of life without parole shows more stable support for capital punishment in New Hampshire. Thus, the unification of New Hampshire Democratic leaders²³³ on the issue could be explained due to the more consistent support of capital punishment in New Hampshire. In other words, despite the public support of capital punishment in New Hampshire, the support is more consistent than it is in other states given the slight 10% decrease in support. This could potentially allow for New Hampshire Democratic leaders to speak and act in ways that contradict public opinion.

According to Glynn et al., “There is considerable evidence that although the public does not

²³³Mayhew, *Congress: The Electoral Connection*, 66. “Members who cast identical votes on a measure may give different reasons for having done so. Yet it is on roll calls that the crunch comes; there is no way for a member to avoid making a record on hundreds of issues, some of which are controversial in the home constituencies.” It is continually important to remember this when analyzing the “unified” party apparent in Texas, New Hampshire, and New Mexico.

always rule, it is often able to move—or maintain—government policies in desired directions.”²³⁴ New Hampshire supports this claim when we consider the outcome of its 2014 death penalty debate.²³⁵ While the actions and words of the Democratic political leaders in New Hampshire, did not reflect public opinion, the outcome of the public debate did, considering that the bill ultimately did not pass the Senate.

Furthermore, and as briefly mentioned earlier, I chose New Hampshire primarily due to its lack of executions. Again, New Hampshire has not executed anyone in the post-*Gregg* era.²³⁶ So, an additional component in explaining why public death penalty support does not necessarily always indicate what lawmakers say or do relates to political context. New Hampshire’s lack of executions makes it a state where it is legally allowed but also never used. Therefore, we can understand the New Hampshire situation by taking into account the unique role that the death penalty plays in the realities of New Hampshire politics. Barbara Norrander’s analysis of the different linkages between policymaking and public opinion supports this idea.²³⁷ A final potential explanation for the disconnect between public opinion and politicians’ actions can be seen with Erikson et al. They write, “While we do find that electoral elites take moderate positions more congruent with those of voters near the ideological center of their states, we also

²³⁴Glynn et al., *Public Opinion 2nd ed.*, 363.

²³⁵According to Glynn et al., “We see now a more direct and dynamic role than ever before of public opinion in politics and policymaking.” Again, while there is not a direct correlation, and there is a large disconnect between public opinion and politicians’ statements, the disconnect is lessened given the fact that the bill ultimately died in the Senate. *Ibid.*, 399.

²³⁶Garland, *Peculiar Institution*, 39.

²³⁷According to Norrander, “Political culture has an effect separate and distinct from current or past public opinion. The effects of political culture, however, are not easily separated from those of past policy.” We can connect this to the virtual nonexistence of execution in New Hampshire. In thinking of the current political culture in New Hampshire, we cannot ignore the lack of executions. In fact, that lack of executions helps us understand further the potential reason for the disconnect between New Hampshire public opinion and New Hampshire Democratic leaders. Norrander continues: “To understand the relationship between public opinion and government policies, a broader historical approach is needed. Both current policies and opinion are shaped by prior policies and opinion.” While Norrander focuses on a deeper longitude of history and policy than what we refer to when we discuss the lack of executions in New Hampshire, the principles still remain in considering some historical context when analyzing public opinion. Barbara Norrander, “The Multi-Layered Impact of Public Opinion on Capital Punishment Implementation in the American States,” *Political Research Quarterly* 53 (2000): 784-785, 786.

find a remarkably powerful effect for activists in influencing the ideological positions of state electoral elites.”²³⁸ While this does not directly apply to New Hampshire, it makes an important distinction. The New Hampshire Democrats in my study represent a deviation from public opinion, although not in the way suggested by Erikson et al. However, they recognize significant differentiation between political activists and the general public. We must not forget the important role that political activists can, at times, play in persuading politicians. Thus, the role of political activist groups potentially had sway in the words and votes of certain Democratic leaders in New Hampshire.

While New Hampshire had a 10% change in support for capital punishment when given the option of life without parole, Ohio and Texas have 21% and 20% changes in support; this shows us that public opinion on the death penalty in these two states is more volatile. In other words, a decrease in support for capital punishment when given the option of life without parole could show us that those who shift from support for capital punishment to support for life without parole are not as strongly committed to the death penalty as they might originally seem. In Ohio, this could mean that people are less tied to the issue of capital punishment. Additionally, this would show that the Democratic leaders in the Ohio state legislature can politically afford to be divergent in their views on the death penalty, or are politically driven toward divergence. In other words, it could be the case that Ohio Democratic leaders vary in what they say and do about capital punishment because public opinion is already relatively volatile on the issue. However, this is not the case in Texas. While decrease in support is 20% in Texas and almost as large as the Ohio decrease, Texas Democratic leaders are united in their support.

²³⁸Erikson et al., *Statehouse Democracy*, 109.

This could be explained for two separate, yet related, reasons. First, Texas capital punishment is a more foundational part of Texas culture as a whole. So, regardless of that decrease and ostensible volatility, I argue that that Texas public opinion is nowhere near as volatile as Ohio public opinion. Second, and more significantly, the Texas decrease in support still leaves 37% preference of life without parole and 53% preference of the death penalty. These numbers, even when taking margins of error into account, give us a clear majority and clear minority. On the other hand, the Ohio decrease in support of the death penalty leaves us with 48% preference of life without parole and 47% preference of the death penalty. Considering the +/-2.7% margin of error, these numbers are statistically the same; the decrease reveals that Ohioans' public support for the death penalty is less stable and secure than it is in Texas. So, Ohioan state Democratic leaders' variance can be understood when acknowledging both the volatility of public opinion in Ohio and the fact that life without parole represents a viable political alternative to capital punishment in that state.

IX. Conclusion

At the start of my research, I assumed there would be a relatively direct correlation between public opinion and Democratic leaders' words and actions.²³⁹ I assumed that the more a state publicly supported the death penalty, the more its Democratic leaders would support the death penalty. As we have learned, not only are there nuances within the question of death penalty support, but also there are potential explanations for instances in which politicians sometimes go against public opinion.

²³⁹As Glynn et al. tell us, "Whether we conclude that the public only loosely constrains policymaking or that the public at times forcefully pushes the government to act in different ways, there is evidence that government policies are responsive to public opinion in the United States." My research supports this claim to the extent that we can group legislators' statements and policymaking in similar categories. Glynn et al., *Public Opinion*, 399.

What Ohio, New Hampshire, Texas, and, to a certain extent, New Mexico, tell us is that the nuances of public opinion can help us to understand convergences and divergences in state legislative leaders' words and actions. Furthermore, a state's own unique relationship to capital punishment—its history of capital punishment, the issue's salience to the state's politics, and the state's frequency of executions—are crucial to consider in evaluating these convergences and divergences.²⁴⁰ As Erikson et al. indicate, “We do not assert that policy making in the states is determined by state opinion exclusively or with unerring fidelity... We assert that public opinion does have a strong influence on general patterns of state policy—the correspondence is strong, but we do not claim any one-to-one fidelity.”²⁴¹ Accordingly, given the results of our study, we understand that public opinion is not necessarily always a direct cause for politicians' actions. In Texas, public opinion supports capital punishment, as do the Democratic leaders. Even given the alteration in percentages with our two public opinion questions, and even given the 20% change in support for the death penalty, a clear majority of Texans still favor the death penalty over those that favor life without parole. In New Hampshire, public opinion is in favor of the death penalty, but the alteration in percentages between our two questions is only a 10% change. Additionally, the more nuanced question of support for life without parole versus support for the death penalty leaves us with an 8% difference. The New Hampshire legislative Democratic leaders, however, are primarily anti-capital punishment. As we have discussed, it is possible that the 10% change in responses demonstrates a more substantive support of the death penalty in New Hampshire, one against which New Hampshire Democrats can speak if and only if they are relatively united in their words and actions. Ohio is our wildcard. We see in Ohio volatile public

²⁴⁰Of the relationship between public opinion and policymaking, Shapiro explains: “The causal processes that appear to operate in these and other studies also reveal limits to democracy: Other influences and obstructions are at work, and government actions and policies fall short of what the public wants, even as they move in desired directions.” Shapiro, “Public Opinion and American Democracy,” 1003.

²⁴¹Erikson et al., *Statehouse Democracy*, 252.

opinion due to the 21% change in support for the death penalty when given the option of life without parole. As mentioned earlier, this could demonstrate that less Ohioans than New Hampshireites are committed to the death penalty. Additionally, the 1% difference in preference for life without parole or preference for the death penalty demonstrates to us that Ohio public opinion is completely split on the issue of the death penalty. With Ohio, its split public opinion mirrors the divergence in politicians' views.

While we cannot necessarily make sweeping assumptions about what our findings mean for other states, and even other issues, we can understand some important facts about public opinion, state legislative Democratic leaders, and the death penalty. For example, if a Democratic leader in a state with clear support of capital punishment wished to speak against capital punishment, our findings tell us that he or she might only be politically safe in doing so if he or she was not alone in his or her words or actions. We understand with New Hampshire that while public opinion does not necessarily dictate what state Democratic leaders say or do related to the death penalty, the outcomes of death penalty debates in a state generally do coincide with public opinion.²⁴² Overall, we can conclude certain concrete facts about capital punishment and public opinion. First, in states like Texas in which capital punishment support is high and executions occur frequently, Democratic state leaders will also support capital punishment. Conversely, in states like New Mexico in which capital punishment opposition is high, Democratic state leaders can and will also oppose capital punishment. More nuances exist in other types of states. In states like New Hampshire, in which public opinion supports capital punishment *but executions rarely, if at all, occur*, then Democratic state leaders can come out against capital punishment in a relatively united manner. Finally, in a state like Ohio in which

²⁴²We can draw this conclusion due to the failure of the 2014 abolition effort in New Hampshire and due to New Hampshire's public support of the death penalty.

public opinion is split on capital punishment and executions happen consistently, although not as frequently as in Texas and Virginia, Democratic state leaders will also be split in their stances.

Capital punishment, as we have discussed, plays in particular and unique role in contemporary politics. Historically, state-by-state abolition has led capital punishment to be discussed mainly in the context of federalism and different states' policies. When discussed on a national level, capital punishment has been an issue taken up by the Supreme Court, but usually when considering the constitutionality of individual states' practices. Because of this distinctive placement of the death penalty, I chose to analyze four states and their Democratic legislative leaders' positions on capital punishment. In doing so, and in discovering different levels of party unification on the issue, I analyzed the public opinion of those states to elucidate and evaluate the relationship between differing levels of public support for capital punishment and the public positions taken by state Democratic political leaders. In my research, I was interested in considering the interaction of a state's historic position and practice with respect to executions, changes in support for capital punishment when life without parole is offered as an alternative, and the public positions taken and reasons given by state Democratic leaders on the issue. While we can never fully be certain of the reasoning behind politicians' platforms, public opinion, or the relationship between the two, my research attempts to clarify some of the less-discussed nuances within some of those relationships. As the capital punishment debate becomes more of a mainstream political discussion (given abolition efforts in states like New Hampshire and questions of Eighth Amendment violations in states like Ohio), we can expect additional opportunities for evaluating the relationship between public opinion and politicians' positions. In the coming months and years, if questions about capital punishment continue to resurface, we can anticipate that a Democratic politician will ordinarily oppose capital punishment only given

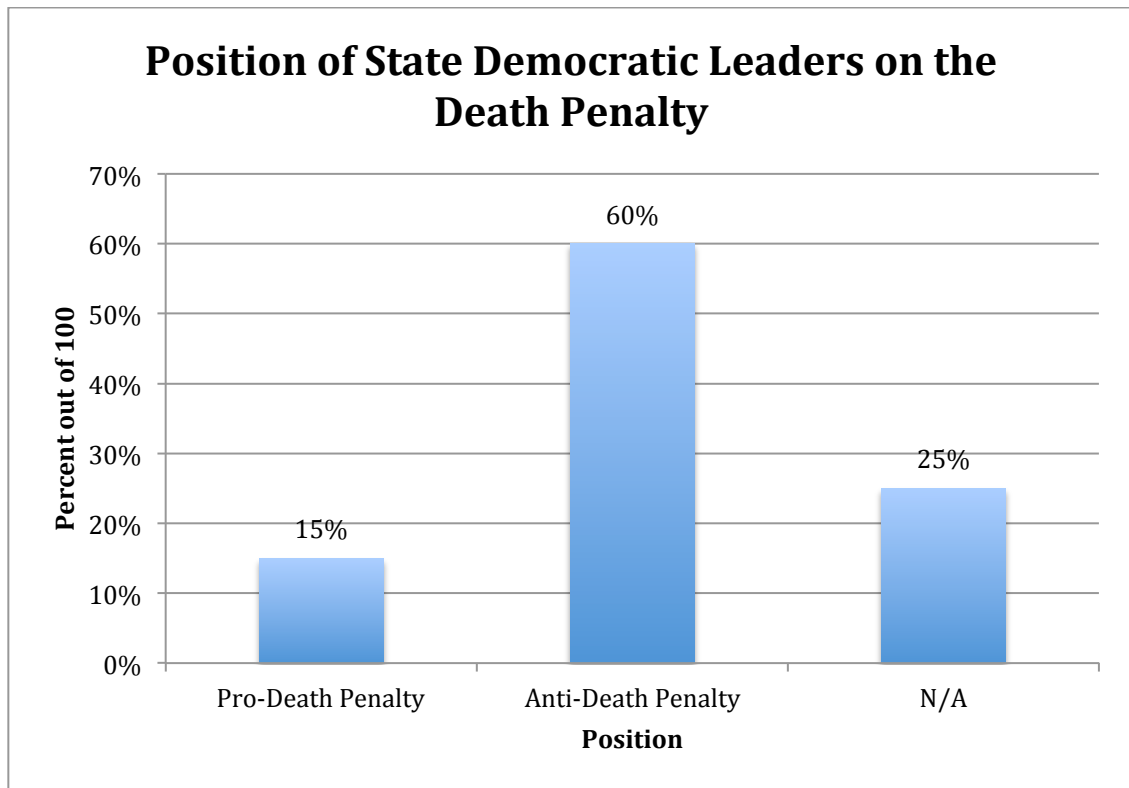
the proper political context of decreasing public support and a history of infrequent executions in a given state. My research may help scholars (and politicians) to determine what to look for in deciding when the political climate in a state provides a meaningful opportunity for Democratic leaders to challenge that state's practice of executing those convicted of capital crimes.

Appendix A: Position of Democratic State Leaders on Capital Punishment. Figure A1: Table of Case Study, Categorized by Person, Role in State Government, Position on Capital Punishment, and Reason for Opposition (if Applicable). If the “Position” column fell in the “Don’t Know” category, then I placed an immediate “n/a” in the “Reason” column. However, if a person was labeled either “Pro” or “Anti” in the “Position” column and then had a “n/a” in the “Reason” column, it was because no information about their reasoning behind their platform was available. Figure A2: Breakdown of Percentages of Death Penalty Views.

Figure A1

Who	Role	Position	Reason
John Whitmire (TX)	Chair of Committee on Criminal Justice	Pro	n/a
Wendy Davis (TX)	Gubernatorial Candidate	Pro	n/a
W. Ken Martinez (NM)	Speaker of House	Anti	Other
Rick Miera (NM)	House Majority Leader	Anti	n/a
Antonio “Moe” Maestas (NM)	House Majority Whip	Anti	Economic
Mary Kay Papen (NM)	Senate President Pro Tempore	Anti	n/a
Michael S. Sanchez (NM)	Senate Majority Leader	Anti	Wrongful convictions
Timothy M. Keller (NM)	Senate Majority Whip	Anti	n/a
Terie Norelli (NH)	Speaker of House	DK	n/a
Steve Shurtleff (NH)	Senate Majority Whip	Anti	n/a
Sylvia Larsen (NH)	Senate Minority Leader	Anti	Not a deterrence
Maggie Hassan (NH)	Governor	Anti	Ethical
Tracy Maxwell Heard (OH)	House Minority Leader	DK	n/a
Debbie Phillips (OH)	House Assistant Minority Leader	Anti	n/a
Mike Ashford (OH)	House Minority Whip	DK	n/a
Dan Ramos (OH)	House Assistant Minority Whip	Anti	Other, wrongful convictions, economic, not a deterrence, ethical
Joe Schiavoni (OH)	Senate Minority Leader	Pro	n/a
Charleta B. Tavares (OH)	Senate Assistant Minority Leader	DK	n/a
Edna Brown (OH)	Senate Minority Whip	Anti	Wrongful convictions
Lou Gentile (OH)	Senate Assistant Minority Whip	DK	n/a

Figure A2



Appendix B. Public Opinion on the Death Penalty, State-by-State. In Figure B1, “Anti” and “Pro” columns refer to the question of whether a person supports the death penalty. “Life without parole” and “death penalty” columns refer to whether a person prefers life without parole or the death penalty when given the option of life without parole. “-” signifies that no polling data for that given category was available. Figure B2 categorizes the states based on how large the decrease of support for capital punishment from the question of absolute support to the question of life without parole. Figure B3 combines Figures A1 and B1 into an alternative form of viewing public opinion (taking life without parole, or LWP, into consideration as an alternative to the death penalty) next to the Democratic leaders’ positions on capital punishment.

Figure B1.

	Year	Anti	Pro	Life Without Parole	Death Penalty
Texas					
	2012	21%	73%	37%	53% ⁺
New Mexico					
	2008	-	-	53%	37%
New Hampshire					
	2014	29%	58%	40%	48% ⁺
Ohio					
	2014	26%	68%	48%	47% ⁺

⁺Margin of error for Texas 2012 poll, New Hampshire 2014 poll, and Ohio 2014 poll: +/-3.46%, +/-4.1%, and +/-2.7%, respectively.

Figure B2.

	Majority support	Majority do not support
Large drop	Texas	Ohio
Small drop		New Hampshire

Figure B3.

State	Democratic Leader	Death Penalty Position	Public Support for Capital Punishment (Without LWP as an Option)	Public Support of Capital Punishment when LWP is an Option)	Year of Poll
TX	Whitmire	Pro	73%	53%	2012
	Davis	Pro			
NM	Martinez	Anti	-	37%	2008
	Miera	Anti			
	Maestas	Anti			
	Papen	Anti			
	Sanchez	Anti			
	Keller	Anti			
NH	Norelli	DK	58%	48%	2014
	Shurtleff	Anti			
	Larsen	Anti			
	Hassan	Anti			
OH	Heard	DK	68%	47%	2014
	Phillips	Anti			
	Ashford	DK			
	Ramos	Anti			
	Schiavoni	Pro			
	Tavares	DK			
	Brown	Anti			
	Gentile	DK			

Appendix C: Reasons for Death Penalty Opposition. Figure C1 demonstrates total percentage of death penalty opposition reasoning, and C2 demonstrates opposition reasoning on a state-by-state basis.

Figure C1

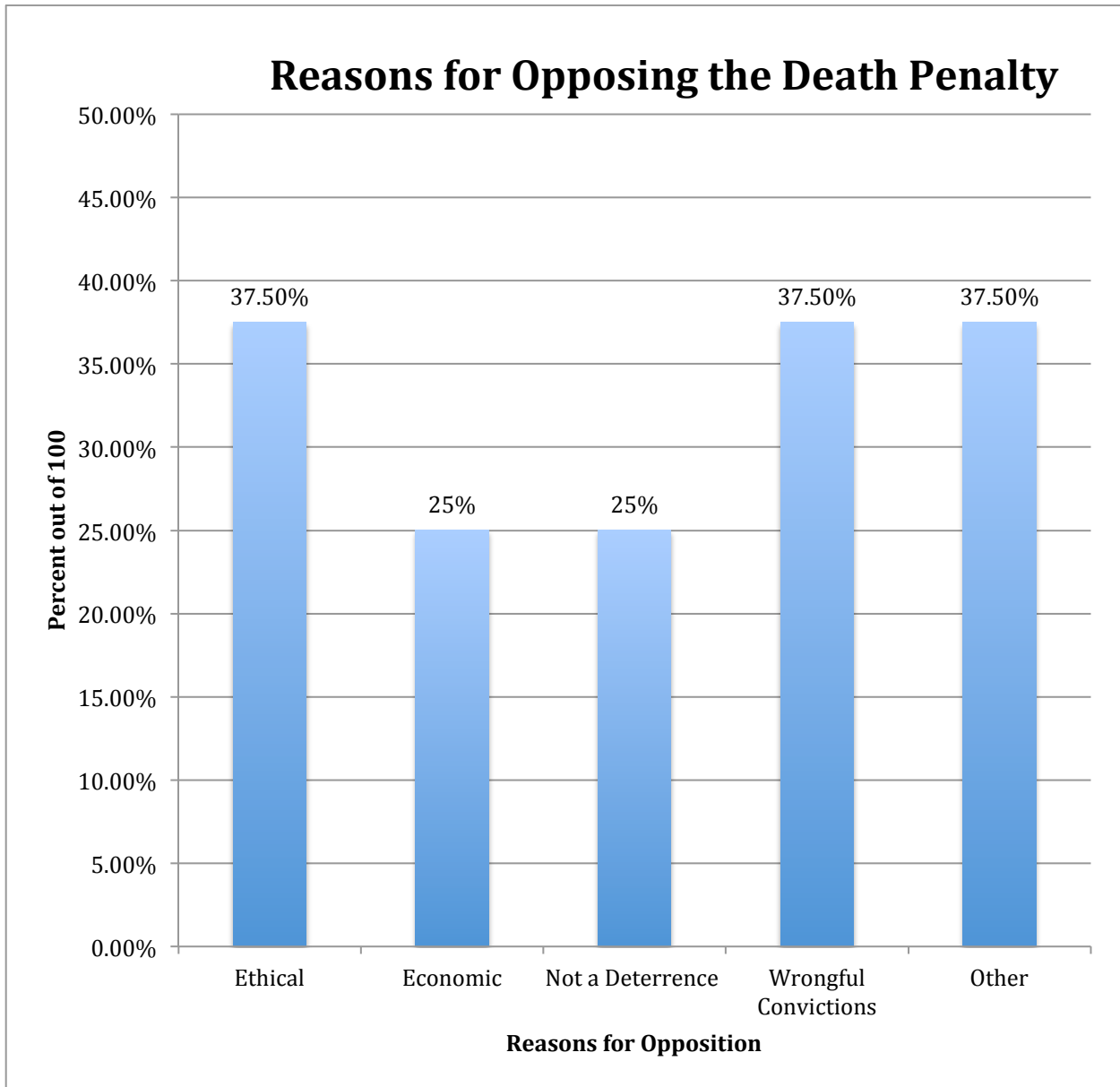
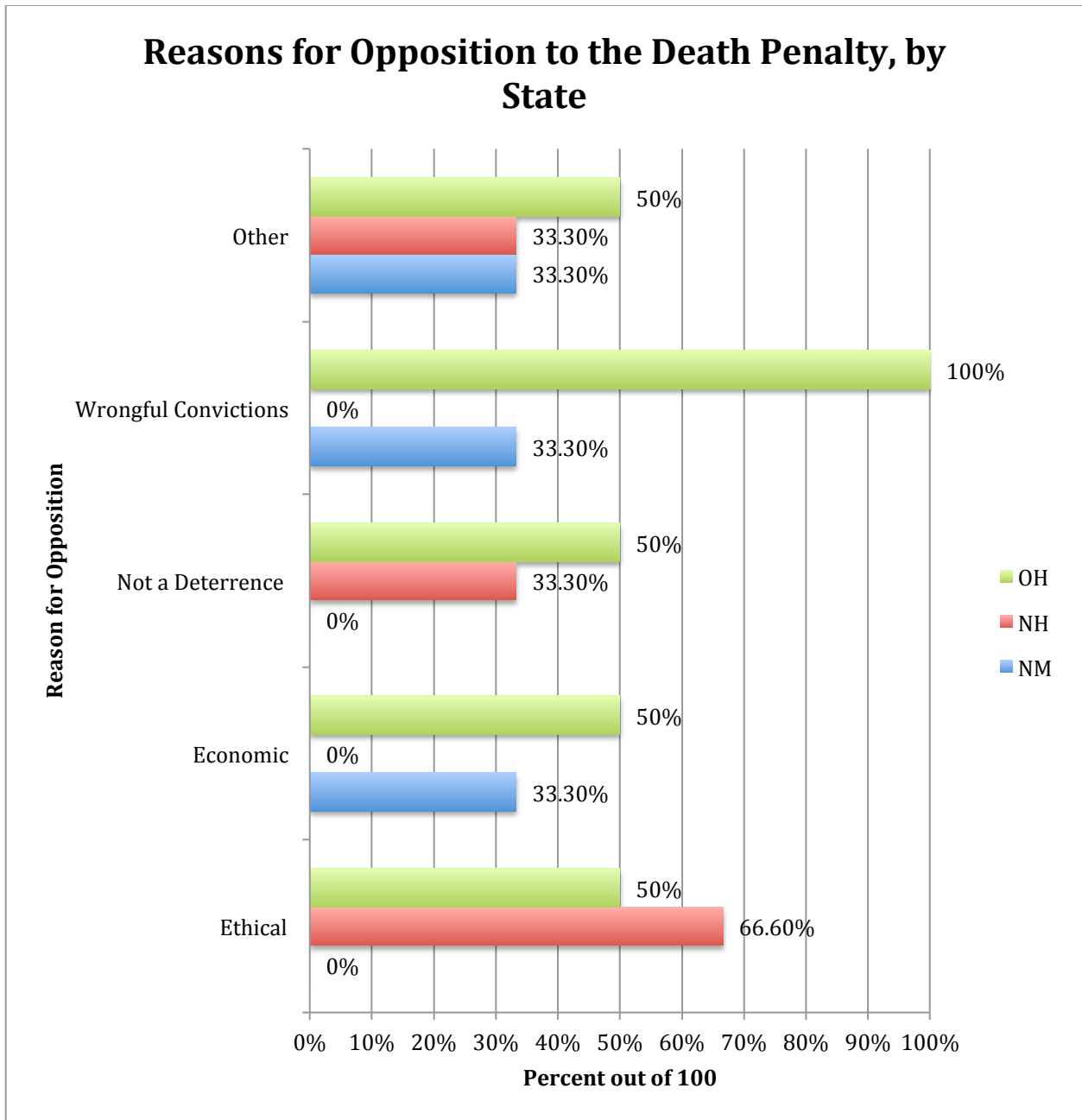


Figure C2



Appendix D: Abolitionist States (as of 2010) ²⁴³

State	Date of Abolition
<i>Northeast</i>	
Maine	1887
Massachusetts*	1984
Michigan	1846
New Jersey	2007
New York*	2004
Rhode Island	1984
Vermont	1964
<i>South</i>	
District of Columbia	1981
West Virginia	1965
<i>West</i>	
Alaska	1957
Hawaii	1957
New Mexico**	2009
<i>Midwest</i>	
Iowa	1965
Minnesota	1911
North Dakota	1973
Wisconsin	1853

*Abolished by judicial decision

**Statute effective July 1, 2009, but two people left on death row as statute not retroactive

²⁴³Garland, *Peculiar Institution*, 42.

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