

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

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### USA: Voting and the death penalty

In the 8 November 2016 elections in the USA, there were many issues on state ballots beyond the choice between candidates for US President and members of US Congress. In four ballot measures in three states – California, Nebraska and Oklahoma – questions relating to the death penalty were put to the electorate. On all four questions, the majority vote went in favour of the death penalty.

Although these outcomes are regrettable – and illustrate the need for strong principled human rights leadership against a punishment that tends to generate a measure of public support even in the face of compelling evidence of arbitrariness, discrimination and error in its application – the longer term trend in the USA is one of progress towards abolition.

In California, Proposition 62 sought abolition of the death penalty and its replacement with life imprisonment without the possibility of parole. According to the count, this measure was defeated by 53.8 to 46.2 per cent. California has the largest condemned population of any state in the USA, with around 750 prisoners on its death row.

The last execution in California was nearly 11 years ago, in January 2006. The stated purpose of California's second ballot measure, Proposition 66, written by prosecutors, is to "reform" the death penalty and to lessen the time between death sentencing and execution. This measure was approved, 50.9 per cent to 49.1 per cent. There has already been a legal challenge filed in the California Supreme Court arguing that Proposition 66 is invalid.

In Nebraska in 2015, the state legislature voted to abolish the death penalty, overriding Governor Pete Ricketts' veto. However, repeal was put on hold following a successful effort to have the issue put to the popular vote. On 8 November 2016, by a margin of 61 to 39 per cent, Nebraska voters opted in favour of Referendum 426's proposal to keep the death penalty. Governor Ricketts has responded to this: "Now that we have the will of the people on this subject", he said, he would "be working with the attorney general to get the substances to carry out the sentences". Like other states in the USA, Nebraska has faced problems obtaining drugs for lethal injections. There are currently 10 men on its death row.

Meanwhile, voters in Oklahoma approved State Question 776 to amend the state constitution to authorize any execution method not prohibited under the US Constitution and to prevent state courts from ruling the death penalty "cruel or unusual" punishment. Question 776 was approved by 66 per cent to 34 per cent.

While these outcomes were disappointing from an abolitionist perspective, they do not substantively alter the national picture of the death penalty in the USA. This picture remains one of a punishment in decline. Amnesty International considers that efforts to fix the unfixable are doomed to failure –

nothing can render this punishment compatible with basic principles of human dignity and human rights.

Eighteen states have abolished the death penalty, including five states that have abolished it since 2007.<sup>1</sup> Of the 32 states that retain it, nine (Arkansas, California, Colorado, Kansas, Nebraska, New Hampshire, Oregon, Pennsylvania and Wyoming) have not carried out an execution for at least 10 years. The governors of Colorado, Oregon, Pennsylvania and Washington states established moratoriums on executions in recent years. Federal authorities have not carried out any executions since 2003 and the military has not carried out any executions since 1961.

But it is not only where the death penalty is not carried out that we have been seeing progress. This year will see the lowest execution total in the USA for 25 years, since 1991. A handful of states continue to account for the majority of executions. The 17 executions so far in 2016 have been carried out in just five states, with 14 of the 17 (82 per cent) in Georgia and Texas, with seven each. The number of executions in Texas in 2016 is set to be the lowest recorded there in 20 years, while the number of those under sentence of death in the state was the lowest in almost 30 years.

Overall, death sentencing remains substantially down from its peaks in the 1990s. For example, there were more people sentenced to death in 1996 than were sentenced to death in the four years from 2012 to 2015 combined.

The 2016 elections also seem to show how the political climate surrounding the death penalty has changed as public knowledge about its flaws have grown. Where unbending support for the death penalty was once seen as a necessary prerequisite for high office, in many places this is no longer so. In Washington State for example, Governor Jay Inslee was elected to a second term on 8 November 2016. He had imposed a [moratorium](#) on executions in 2014. In Oregon, Kate Brown was elected Governor. She had run on a platform of extending the moratorium on executions there.

In Kansas, death penalty supporters sought to have four of the state Supreme Court's Justices ousted in judicial retention elections on 8 November 2016. This effort came in response to the role of the four in the reversal of a number of death sentences (subsequently reinstated by the US Supreme Court earlier this year). The campaign was unsuccessful – the electorate voted to retain all four of the Justices.

Amnesty International will continue to work for abolition of the death penalty in the USA and elsewhere in the world where it still exists. Today, some 141 countries are abolitionist in law or practice, and the UN General Assembly has repeatedly called for a moratorium on executions in all retentionist countries, pending abolition of the death penalty. As its Third Committee is about to consider this week the 2016 draft resolution on this topic, Amnesty International urges the US government to take a position at the voting that would appropriately reflect the reality that most of the USA has been execution-free for a number of years now.

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<sup>1</sup> Connecticut, Illinois, Maryland, New Jersey, New Mexico. The state of New York commuted its last death sentence in 2007, following a 2004 court ruling that its capital law violated the state's constitution. The District of Columbia has also abolished the death penalty.