

SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

NUMBER _____

STATE OF LOUISIANA

VERSUS

RICKY LANGLEY

BRIEF OF *AMICUS CURIAE*
MURDER VICTIMS FAMILIES FOR RECONCILIATION

ON WRIT APPLICATION FROM THE DISTRICT COURT
PARISH OF CALCASIEU, No. 10258-02
HON. ALCIDE GRAY, PRESIDING

EXPEDITED RULING REQUESTED

**DEATH PENALTY CASE
SIMULTANEOUS FILING IN THE
SUPREME COURT OF THE STATE OF LOUISIANA
AND THE COURT OF APPEAL, THIRD CIRCUIT**

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COMES NOW AMICUS, MURDER VICTIMS' FAMILIES FOR RECONCILIATION (MVFR), by counsel, and respectfully files the following opposition, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution as well as the law of the State of Louisiana, to the State=s petition for supervisory writs concerning the lower court=s order respecting the rights of Lorilei Guillory, mother of the victim in this case and a member of Murder Victims' Families for Reconciliation, to appear and testify as any other witness requesting mercy at the penalty phase of this case.

In support of this opposition, Amicus states as follows:

I.

THE RIGHT TO EQUAL PROTECTION UNDER THE LAWS GUARANTEED BY ARTICLE I, SECTION 25 OF THE LOUISIANA STATE CONSTITUTION AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRE THAT SURVIVING FAMILY MEMBERS OF HOMICIDE VICTIMS MUST BE TREATED EQUALLY, WHETHER THOSE FAMILY MEMBERS SUPPORT OR OPPOSE CAPITAL PUNISHMENT. THE STATE CANNOT DISCRIMINATE BETWEEN SPEAKERS BASED ON THE CONTENT OF THEIR SPEECH.

Historically the rights of victims such as Ms. Guillory were ignored by the Criminal Justice System before the advent of the Victims Rights Movement.

Murder Victims' Families for Reconciliation ("MVFR") is a national organization of individuals who have lost a loved one to homicide and who oppose the death penalty. MVFR work includes the following: educating the public on the impact of violence and the needs of victims, providing support and advocating on behalf of victims, promoting programs and policies that reduce the rate of homicide, and promoting crime prevention and alternatives to violence. While there are over 10,000 entities in this country whose mission includes, in part, serving the interests of victims of crime, MVFR is unique among such groups. It is the only organization dedicated to serving and meeting the needs of the distinct group of the victim population who are both the survivors of homicide victims and abolitionists who are opposed to capital punishment. Since its founding in 1976, MVFR has worked with, and been a bridge between, the victims support community and the death penalty abolition movement. MVFR belongs to the National Center for Victims of Crime, The National Organization for Victims Assistance, and the National Coalition to Abolish the Death

Penalty. MVFR's membership includes citizens of Louisiana, including Ms. Guillory, as well as residents of other states who are the survivors of individuals who were murdered in Louisiana. The outcome of the instant case involving the treatment of the subgroup of the crime victim population who oppose capital punishment will have an impact upon present and possible future members of the organization, and other similarly situated victims, whose rights, duties, privileges and interests, will be impacted by the ruling of the Supreme Court.

By this brief, MVFR supports the efforts of Lorilei Guillory to have the Supreme Court of Louisiana uphold Ms. Guillory's right to give a victim impact statement and put an end to discrimination against surviving family members of murder victims who oppose capital punishment. MVFR aspires for a decision by the Louisiana Supreme Court that will clarify that all victims of crime, including those who support mercy for the defendant, are entitled to the full enjoyment of rights guaranteed by the Louisiana State Constitution.

MVFR members oppose the death penalty. As the courts have long held, the death penalty as a sanction for crime is different than other punishments. Louisiana, along with 37 other states and the federal government, still provides the penalty. In so doing, it creates a separate class of victims: those who, like members of MVFR, oppose for a wide variety of reasons, the use of the death penalty by the state.

A brief review of the history of the victims movement will provide some context to help understand the policies the Louisiana Victims Rights Amendment seeks to embrace. Institutionalized consciousness about the role of victims in our criminal justice system, and the system's impact on victims, is formalized in the legal concept of "victims rights" that have been incorporated into laws by all 50 states and the federal government.

In 1984, Congress passed the Victims of Crime Act (VOCA), which provided incentives to states to enact support programs for victims and created victim compensation funds. VOCA inspired the passage of victims rights legislation in the states, as well.

Today, all 50 states and the federal government have statutes recognizing and protecting victims of crime. Twenty eight states, including Louisiana, have enshrined those rights into their state constitutions. See *President's Task Force on Victims of Crime: Final Report* (Washington DC; Executive 1 New Directions from the Field: Victims Rights and Services for the 21st Century. Office for Victims of Crime, Office of Justice Programs, United States Department of Justice, Washington, D.C., 1997. 2 *Serving Crime Victims and Witnesses*, 2nd Edition, by Julie Esselman Tomz and Daniel McGillis, National Institute for Justice, US Department of Justice, Washington, D.C., 1997, page 3. Office of the President, 1982).

The Louisiana "Victim Rights Amendment" and statutes recognize that the suffering of the family members left after a homicide is tremendous. The United States Supreme Court has also acknowledged that allowing surviving victims to speak is of paramount importance. "...victim impact evidence...is designed to show...each victim's 'uniqueness as an individual human being' and is "...another form or method of informing the sentencing authority about the specific harm caused by the crime in question, evidence of a general type long considered by sentencing authorities." Payne v. Tennessee, 501 U.S. 808, 824-825 (1991). Payne outlined that the survivors of a homicide victim are also "victims" and therefore have valuable information to contribute to the determination of punishment.

MVFR wishes to emphasize the point that victims and survivors have the right to be heard, even though they may surprise the state with their desire for mercy. The widespread use of the death penalty in America is predicated upon, and reinforces, the societal presumption that everyone who has lost a loved one to murder wants and needs the death penalty for the killer of their family member. Survivors of homicide victims who don't embrace a ritual killing by the state as a necessity for their own healing cannot be treated with bias and discrimination. The States effort to bar Ms. Guillory from speaking is explicit discrimination as it is asking that other family members of the child, those who support the death penalty, be allowed to give victim impact statements.

The State's attorneys have clearly acted in a discriminatory fashion when they chose to designate only the victim's pro-execution brother as the person who would give a victim impact statement, despite the fact that Ms. Guillory had informed them of her intent to assert her right to give such a statement more than a year ago.

If the State intends to allow only a limited number of statements, they cannot do so in a manner which excludes the victim's mother who is the officially designated family member because of her position on the death penalty. They must be required to establish standards which, for example, would require accepting statements from all victim survivors who were related to the deceased, or accepting statements from the victim designee as outlined in the Louisiana statute. Notwithstanding her support of mercy for the defendant Ms. Guillory is entitled to be respected as a victim and her rights as such honored.

II.

THE EQUAL PROTECTION CLAUSES OF THE LOUISIANA STATE CONSTITUTION AND THE UNITED STATES CONSTITUTION REQUIRE THAT SURVIVING FAMILY MEMBERS OF HOMICIDE VICTIMS MUST BE TREATED EQUALLY, WHETHER THOSE FAMILY MEMBERS SUPPORT OR OPPOSE CAPITAL PUNISHMENT.

The Fourteenth Amendment prohibits the government from "deny[ing] to any person...the equal protection of the laws." U.S. Const. amend. XIV. Differential treatment by the State motivated by a desire to select victims with a pro-death penalty position should not be countenanced any more than race- or sex-based discrimination is under the Equal Protection Clause. The "Victim's Rights" Amendment to the Louisiana State Constitution requires the State to recognize and hear the survivors of homicide:

"...a status-based [governmental act] divorced from any factual context from which [the Court can] discern a relationship to legitimate state interests...is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit." *Romer v. Evans*, 517 U.S. 620, 635 (1996).

By excluding Ms. Guillory and others like her who oppose the execution of murderers, the State is creating a class of victims who are deemed less worthy of their constitutional right to be

heard. This form of status-based classification of persons is the precise evil the Fourteenth Amendment was designed to prohibit.

CONCLUSION

In a society that prescribes the killing of murderers as a balm to the pain experienced by survivors of homicide victims, it is always a struggle for those who have made the journey from burying their loved one to becoming a public opponent of the death penalty. If the Supreme Court of Louisiana upholds the right of the District attorney to exclude the voice of victims who don't want additional killings, such a decision will resonate beyond the borders of this state. A ruling upholding the silencing of Ms. Guillory will have a chilling effect upon all victim family members who wish to participate in the public debate surrounding the death penalty in this country. Victims such as Ms. Guillory have chosen to heal from the wounds of murder without the assistance of state-sponsored execution. They have a constitutional right, guaranteed by the Louisiana Constitution, to be heard. The State's attorney's cannot be allowed to pick and choose which victims express the "right" attitude.

Respectfully submitted,
Murder Victims Families for Reconciliation
Amicus Curiae

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served, by first class mail, postage prepaid, or by hand delivery upon Cindy Killingsworth, Assistant District Attorney, Calcasieu Parish District Attorney's Office, P.O. Box 3206, Lake Charles, LA 70602-3206; John Olivier, Clerk, Supreme Court of Louisiana, 220 Supreme Court Building, 301 Loyola Avenue, New Orleans, LA 70112; Kenneth J. deBlanc, Clerk, Court of Appeal, Third Circuit, P.O. Box 16577, Lake Charles, LA 70616; Hon. Alcide J. Gray, Respondent Judge, P.O. Box 3210, Lake Charles, LA 70602-3210; Clive A. Stafford Smith, representing the Defendant, 636 Baronne Street, New Orleans, LA 70113; on the 9th day of May 2003.

JAMES E. BOREN