

Death Penalty May Be Ruled Unconstitutional In Texas

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WASHINGTON -- At a hearing scheduled for Monday, December 6, a district court in Texas will decide whether the death penalty is unconstitutional in the state based on the disproportionately high risk of wrongful convictions in Texas. This is the first time in the state's history that a court will examine the problem of innocent people being executed in a Texas capital trial.

John Edward Green, Jr., the defendant in *Texas v. Green*, is charged in the fatal shooting of a 34-year-old Houston woman during a 2008 robbery. According to legal documents obtained by HuffPost, Green's defense attorneys will be arguing on Monday that a number of factors in Texas's legal system increase the risk of wrongful executions there, including a lack of safeguards to protect against mistaken eyewitness identification, faulty forensic evidence, incompetent lawyers at the appellate level, failures to guard against false confessions and a history of racial discrimination in jury selection.

The death penalty in Texas [came under fire](#) earlier this month when a DNA test conducted on a single hair undermined the evidence that convicted a Texas man of capital murder over ten years ago. The hair had been the only piece of evidence linking Claude Jones to the crime scene, but the new test results revealed that the hair likely belonged to the murder victim instead of Jones.

Maurie Levin, a law professor at the University of Texas and an expert on capital punishment, said she would not be surprised if Judge Kevin Fine ruled the death penalty to be unconstitutional in Texas on Monday.

"I would think that Judge Fine would have substantial basis in the evidence that I'm aware of that would lead to a conclusion that the Texas death penalty is unconstitutional as applied," she told HuffPost.

Since 1976, twelve people have been exonerated from death row in Texas out of 139 nationwide, and four study commissions set up by the Texas government have formally recognized the serious risks of wrongful convictions there. Out of the 464 people that have been executed in Texas, about 70 percent have been minorities, according to the Texas Department of Criminal Justice.

Andrea Keilen, executive director of Texas Defender Service, said it is clear to her that the death penalty is handed down unfairly and erratically in Texas.

"It is my opinion and the opinion of many people close to this issue that the Texas system is wholly incapable of carrying out the death penalty in a fair and reliable way," she told HuffPost. "Texas is remarkably out of step with the rest of the country and certainly out of step with what the average Texan would expect when dealing with capital punishment. We're seeing in case after case that the system is just inherently prone to the risk of wrongful convictions and has a complete inability to correct its mistakes."

Keilen said that while the state has a [history of strong popular support](#) for capital punishment, she thinks Texans would feel differently about the practice if they knew all the facts.

"I think there is support for the idea of the death penalty among the average Texan, but that if the average Texan were to get a closeup view of how the system actually operates, that support would significantly wane," she said. "It's an abstract concept to most people, but if they saw how abysmal the quality of representation can be, how the system is biased racially, how prosecutors can not disclose evidence, or how DNA testing can be wrong, my opinion is that they as reasonable people would find it unacceptable."