



State of Connecticut

SENATOR LEONARD A. FASANO

SENATE MINORITY LEADER

34TH DISTRICT

SUITE 3400
LEGISLATIVE OFFICE BUILDING
HARTFORD, CONNECTICUT 06106-1591
www.SenatorFasano.com

HARTFORD: (860) 240-8800
TOLL FREE: (800) 842-1421
FAX: (860) 240-8306
Len.Fasano@cga.ct.gov

August 17, 2015

Governor Dannel P. Malloy
Office of the Governor
210 Capitol Avenue
Hartford, Connecticut 06106

Dear Governor Malloy:

I hope your summer is going well. I am writing to you for your attention and direct input regarding the state Supreme Court's recent decision declaring the death penalty unconstitutional under the state constitution.

Based upon the Connecticut Supreme Court ruling made by an activist court banning the death penalty, despite the clear intent of the legislature to maintain the death penalty for those currently on death row, including the Cheshire killers, and based on the strong dissent which clearly explains how the majority of the court overstepped the boundaries of our Constitution and purposely hijacked the role of policymakers, I would like to better understand how you came to your conclusion in 2012 that this very situation would not happen.

In 2012, you emphatically guaranteed that the death penalty repeal bill would in no way be retroactive. At one point you stated, "What I've said is any legislation that I would sign would be prospective, it would be out into the future...I've guaranteed that it would be drafted in such a way as to guarantee that these two individuals -- if we ever had a workable death penalty -- would be put to death, if that's the sentence of the jury."

When you made this statement, and similar statements, it was clear that many lawmakers relied upon your words in making their tough decision regarding their votes on the repeal bill. I know they drew comfort and support from your statements assuring them that those already sentenced to death would see their sentences carried out. I also know the families of victims shared in that sense of comfort and reassurance. Without your guarantees, it is clear that you would not have had the support to advance any death penalty repeal legislation.

But at the time, Republicans and Democrats alike doubted your guarantees. Even Chief State's Attorney Kevin Kane warned that such guarantees would not hold up to a constitutional review. I would like to know how and why you reached an alternate conclusion regarding the constitutionality of a prospective only repeal.

Governor Dannel P. Malloy
August 17, 2015
Page 2

When you made these assurances to legislators, victims and the public regarding such a serious subject, I am sure you and your staff had done the necessary research to support your position. I would also assume that before signing such a significant piece of legislation, you would get an opinion of counsel regarding its constitutionality.

Therefore, can you please provide me answers to the following questions on how you reached an alternate conclusion regarding the constitutionality of a prospective-only repeal:

- **What information did you analyze?**
- **What communications and/or legal opinions did you rely upon to reach your conclusion?**

As a direct result of your emphatic guarantee as stated above, I know that I speak for many Connecticut residents who are also curious about the advice you and your office received regarding this bill.

While legal advice and opinions are generally privileged, I am sure you agree that on a matter of such significance and public concern, the interests of the public and the need for transparency outweighs any interest in maintaining secrecy.

I know your personal mindset was against the death penalty in all forms. But your underlying desires could not influence the legal assurances you shared with the public.

I also take note that before an election this highly emotional topic was handled delicately. Therefore, I am sure you have ample evidence to back up the unequivocal guarantees you made to victims' families, to lawmakers, and to the public that this legislation would never allow a retroactive death penalty repeal.

I look forward to reviewing the administration's legal explanation.

Sincerely,



Len Fasano
Senate Minority Leader