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The Republican Party, Conservatives, and the Future of Capital Punishment

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CRIMINAL LAW

THE REPUBLICAN PARTY, CONSERVATIVES, AND THE FUTURE OF CAPITAL PUNISHMENT

BEN JONES*

The United States has experienced a significant decline in the death penalty during the first part of the twenty-first century, as death sentences, executions, public support, and states with capital punishment all have declined. Many recent reforms banning or placing a moratorium on executions have occurred in blue states, in line with the notion that ending the death penalty is a progressive cause. Challenging this narrative, however, is the emergence of Republican lawmakers as champions of death penalty repeal legislation in red states. This Article puts these efforts by Republican lawmakers into historical context and explains the conservative case against the death penalty: its incompatibility with limited government, fiscal responsibility, and promoting a culture of life. Understanding Republican opposition to capital punishment takes on particular importance now following setbacks to efforts against the death penalty in the 2016 election. In this environment, building support among Republicans and conservatives likely will prove critical for taking further steps toward limiting and eventually ending the death penalty in the United States.

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* Assistant Director, Rock Ethics Institute, Pennsylvania State University. I am thankful for the helpful feedback on this Article I received from participants at the Journal of Criminal Law and Criminology’s 2016 Symposium, “The Death Penalty’s Numbered Days?” In the interest of full disclosure, I previously worked for Equal Justice USA, which launched the project Conservatives Concerned about the Death Penalty.
INTRODUCTION

Coming into the November 2016 elections, the movement to end the death penalty in the United States had racked up an impressive series of victories, and key trends seemed to be in its favor. Eight states in the previous decade had ended the death penalty, while another four had placed a moratorium on executions. After peaking in the mid-1990s, executions and death sentences steadily declined and reached record lows in 2016. Public support for the death penalty also dropped by around twenty percentage points between the mid-1990s and 2016. In 2015, two Supreme Court justices in Glossip v. Gross signaled that the death penalty is cruel and unusual punishment in violation of the Eighth Amendment, due to the errors, arbitrariness, and delays in its application. As a dissent, it did nothing to

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4 The Court wrote:

Today’s administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty’s penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use . . . . [T]he death penalty, in and of itself, now likely constitutes legally prohibited ‘cruel and unusual punishment.’

change the legal status of the death penalty in the United States, but some observers nevertheless interpreted it as a signal of the Court’s openness to consider a constitutional challenge to capital punishment in the coming years.\(^5\)

All this momentum appeared to grind to a halt on November 8, 2016. The death penalty was on the ballot in three states: (1) California, where voters had a choice to end or expedite the death penalty; (2) Nebraska, where voters had a choice to reinstate the death penalty after the state legislature repealed it in 2015; and (3) Oklahoma, where voters had a choice to enshrine the death penalty in the state’s constitution. In all three states, the option to bring back or strengthen the death penalty won.\(^6\) Perhaps of greater long-term concern for the movement against the death penalty was the outcome of the presidential election. The unexpected victory of Republican candidate Donald Trump, an outspoken death penalty supporter who promised to expand it on the campaign trail, raised the likelihood that efforts against the death penalty would face new obstacles during his presidency.\(^7\) Through appointments of Supreme Court justices and cabinet posts such as Attorney General, President Trump’s actions could have lasting effects on death penalty policy that expand its use. Moreover, if the administration chooses to make expansion and more frequent use of the death penalty a priority, the issue could become seen in an increasingly partisan light, as members of the President’s party rally to support him on it.

This possibility presents a real risk of setting back efforts against the death penalty. If the death penalty were to become an increasingly partisan issue and the Republican Party were to prioritize its expansion, Republicans would likely find themselves with opportunities to do just that. In a continuation of recent trends, the 2016 election resulted in Republicans enjoying historic advantages over Democrats in legislative seats at the federal and state levels.\(^8\) Given the current environment, the string of policy changes

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\(^8\) Amber Phillips, *These 3 Maps Show Just How Dominant Republicans Are in America After Tuesday*, WASH. POST (Nov. 12, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/11/12/these-3-maps-show-just-how-dominant-republicans-are-in-america-
limiting or ending the death penalty in recent years is far from guaranteed to continue moving forward.

At the same time, it is not guaranteed that the death penalty will become a salient partisan issue. Recent legislative activity at the state level has shown splits in the Republican Party over the death penalty, as Republican lawmakers have emerged as leading champions of bills to end the death penalty. In fact, the history of the Republican Party shows its leaders often splitting over the issue. This Article reviews that history and, in particular, brings attention to recent efforts to end the death penalty by Republican lawmakers whose opposition to the practice is grounded in conservative values. The failure of death penalty policy to live up to key conservative principles—limited government, fiscal responsibility, and promoting a culture of life—have complicated the view that Republicans should automatically support the death penalty. As one GOP lawmaker put it, it was because of, not in spite of, his conservative principles that he worked to end the death penalty.⁹ Examining the role of Republicans and conservatives in efforts to end the death penalty helps us understand how, at least in some places, debates over the death penalty avoid becoming partisan. Such lessons can prove instructive for the movement to end the death penalty in light of the current challenges it faces.

The article begins in Part I by providing a brief overview of the Republican Party’s engagement on the death penalty throughout its history. Part II explains how increased interest among Republicans in criminal justice reform has created an opportunity to reframe the death penalty in a way that resonates with traditional conservative concerns. Part III outlines the conservative case for ending the death penalty. Part IV illustrates how these arguments are playing out in legislative debates by discussing the efforts of Republican lawmakers to repeal the death penalty in four red states—Montana, Kansas, Nebraska, and Utah. Part V analyzes the current challenges faced by the movement to end the death penalty in the U.S. and makes the case that key to its short- and long-term success is building support among conservatives.

I. THE REPUBLICAN PARTY AND CAPITAL PUNISHMENT: A BRIEF HISTORY

In 2016, both the Democratic and Libertarian Parties adopted new

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planks to their platforms calling for an end to the death penalty. These changes to their platforms came after two decades of declining support for the death penalty in the U.S., especially among Democrats, of whom a clear majority now opposes capital punishment. Among the four largest political parties in the U.S., the Republican Party is now the only one without a position against the death penalty (the Green Party has had an anti-death penalty position for many years).

The Republican Party distinguishes itself from the other parties not by simply avoiding an anti-death penalty position, but by explicitly supporting the practice. The Party’s 2016 platform affirms the death penalty’s constitutionality and importance in fighting crime: “The constitutionality of the death penalty is firmly settled by its explicit mention in the Fifth Amendment. With the murder rate soaring in our great cities, we condemn the Supreme Court’s erosion of the right of the people to enact capital punishment in their states.”

Given the Republican Party’s reputation for advocating tough-on-crime policies, its continued support for the death penalty hardly comes as a surprise, even if more political parties in the U.S. are actively calling for an end to capital punishment.

How the Republican Party and its leaders have engaged in debates over the death penalty throughout its history turns out to be far less straightforward than its platform today implies. For much of its history, the Republican Party has been split on the death penalty. When the death penalty abolition movement picked up strength in the late nineteenth and early twentieth centuries, and a number of states abolished the death penalty, the effort drew supporters—as well as opponents—from both the Republican and Democratic Parties. Abolition of the death penalty in Minnesota, for


\[\text{\textsuperscript{11}}\] See Jones, supra note 3; Oliphant, supra note 3.


\[\text{\textsuperscript{14}}\] See DAVID DAGAN & STEVEN TELES, PRISON BREAK: WHY CONSERVATIVES TURNED AGAINST MASS INCARCERATION 15–29 (2016).

\[\text{\textsuperscript{15}}\] See generally Orben J. Casey, Governor Lee Cruce, White Supremacy, and Capital Punishment, 1911–1915, 52 CHRON. OKLA. 456 (1974); John F. Galliher et al., Abolition and Reinstatement of Capital Punishment During the Progressive Era and Early 20th Century, 83 J. CRIM. L. & CRIMINOLOGY 538 (1992); Ellen Elizabeth Guillot, Abolition and Restoration of
instance, illustrates this point. In 1906, the Democratic Governor John Albert Johnson called on the Minnesota Legislature to abolish the death penalty.\textsuperscript{16} His successor, Republican Adolph Eberhart, also asked the legislature to pass legislation abolishing the death penalty, which it did in 1911.\textsuperscript{17} In Kansas, Republican Governor Edward Hoch signed legislation abolishing the death penalty in 1907, and in 1935, Republican Governor Alfred Landon signed legislation reinstating it.\textsuperscript{18} These examples reflect the important point that, over its first hundred years, the national Republican Party never staked out a clear-cut position on the death penalty (see Appendix: Republican Party Platform Statements on the Death Penalty). As Marie Gottschalk notes in \textit{The Prison and the Gallows}, “as late as 1971 capital punishment was not a signature issue for law-and-order conservatives.”\textsuperscript{19}

Support for the death penalty in the U.S. was low throughout the 1960s, dipping in 1966 to its lowest level of support (42\%) recorded by the Gallup poll.\textsuperscript{20} In this environment, embracing the death penalty did not provide an obvious political advantage, and the Republican Party avoided taking a position on the issue. But that changed by the early 1970s. In 1972, the Supreme Court issued its opinion in \textit{Furman v. Georgia}, which struck down the death penalty nationally.\textsuperscript{21} The decision came at a time of rising crime rates when Republican leaders, such as President Richard Nixon and then-Governor of California Ronald Reagan, were becoming increasingly vocal in advocating tough-on-crime policies. Nixon quickly condemned the \textit{Furman} decision and argued that it still left the door open for states to bring back the death penalty, which many proceeded to do.\textsuperscript{22} These efforts to reinstate the death penalty succeeded when, only four years after \textit{Furman}, the Supreme Court opened the door again to executions in the U.S. with its ruling in \textit{Gregg v. Georgia}.\textsuperscript{23}

\begin{thebibliography}{99}
\bibitem{17} Id.
\bibitem{18} \textit{Stuart Banner, The Death Penalty: An American History} 221–22 (2002).
\bibitem{20} In comparison, support for the death penalty was at nearly 70\% in the early 1950s. \textit{Death Penalty}, \textsc{Gallup}, http://www.gallup.com/poll/1606/death-penalty.aspx (last visited Oct. 25, 2017).
\bibitem{21} 408 U.S. 238 (1972).
\bibitem{22} David Garland, \textit{Peculiar Institution: America’s Death Penalty in an Age of Abolition} 244–48 (2010); Gottschalk, \textit{supra} note 19, at 218–22.
\bibitem{23} 428 U.S. 153 (1976).
\end{thebibliography}
Shortly after the *Gregg* decision, the first pro-death penalty plank in a Republican Party platform appeared in 1976. It stated: “Each state should have the power to decide whether it wishes to impose the death penalty for certain crimes.” Over the years, the Republican Party platform became more forceful in its calls for the death penalty. By 1988, the platform called for extending the death penalty to “major drug traffickers.” The same year, the infamous Willie Horton ad—which detailed an assault and rape committed by Horton while on furlough from prison in Massachusetts—ran in the 1988 presidential campaign. The ad attacked Massachusetts Governor and Democratic presidential candidate Michael Dukakis for being soft on crime and opposing the death penalty, in contrast to the Republican candidate, George H.W. Bush. Support for the death penalty continued to be a salient issue for the Republican Party in the 1990s when death penalty support reached an all-time high of 80% according to Gallup. In fact, the 1996 Republican Party platform dedicated more space to the death penalty than any other platform in the party’s history. It praised the Anti-Terrorism and Effective Death Penalty Act of 1996 passed by the Republican Congress for ending “frivoulous, costly, and unnecessarily lengthy death-row appeals,” and also called on reinstating the death penalty for the crime of rape. By the 1990s, it was clear that the Republican Party had taken significant steps in advancing its goals—articulated in the aftermath of the *Furman* decision—of restoring and expanding the death penalty.

Despite the crystallization of support for the death penalty that took place within the Republican Party during the 1970s, 1980s, and 1990s, there were some notable exceptions. In 1970, for instance, the Republican governor of Arkansas, Winthrop Rockefeller, commuted the death sentences of all fifteen individuals on the state’s death row. Similarly, another Republican governor, George Ryan, declared a moratorium on executions in 2000 and then proceeded to issue a blanket commutation for all 157 death sentences.

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27 Id.
29 *See infra* Appendix.
sentences in Illinois before leaving office in 2003. Ryan’s actions notably came on the heels of executions reaching their peak nationwide during the post-Gregg era (ninety-eight executions in 1999). In particular, concerns over wrongful convictions—there had been thirteen death row exonerations in Illinois between 1977 and 2000—prompted Ryan to declare a moratorium and empty Illinois’ death row.

The problem of wrongful convictions, which was not limited to Illinois, received increased media attention across the U.S. and dampened what had been rising support for the death penalty. This development, combined with dropping crime rates, created an environment at the start of the twenty-first century more hospitable for elected officials to question the death penalty. Also important was the emergence of a conservative criminal justice reform movement, which provided a logic and language for conservatives to support alternatives to harsher sentences. The next Part turns to this movement and how it has challenged the narrative, which emerged in the 1970s, that Republicans necessarily support harsh sentences—including the death penalty.

II. THE OPPORTUNITY PROVIDED BY CONSERVATIVE CRIMINAL JUSTICE REFORM

In a surprising shift, the emphasis on criminalizing more offenses and longer prison sentences championed by Nixon, Reagan, and congressional Republicans in the 1990s has fallen out of favor with important constituencies within the Republican Party. Nowhere was this more apparent than in Texas, one of the reddest states in the nation. In 2007, Texas faced a growing prison population and the prospect of needing to build more prisons to address this problem. Hesitant to burden the state budget with the high cost of new prisons, Republicans in the Texas Legislature opted instead for reform measures that would cut the number of parolees returning to prison because of minor offenses and stop the continual increase in the state’s

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37 DAGAN & TELES, supra note 14, at 91–93.
incarceration rate. Initially resistant to these reforms, Governor Rick Perry eventually signed off on them and went on to become a vocal advocate for criminal justice reform and lowering incarceration rates.\textsuperscript{38} During his governorship, Texas reversed a long-term trend of building new prisons and, in fact, closed some.\textsuperscript{39} Other red states have followed Texas’s lead and implemented reforms aimed at reducing the prison population, such as cutting prison time for nonviolent offenders.\textsuperscript{40}

A few decades ago, it would have been unthinkable for Republicans to rally behind such reforms. For so long, the default Republican solution to crime had been longer and harsher sentences combined with more prisons. A powerful coalition of limited-government conservatives and evangelicals, however, came together to question what had been Republican orthodoxy on crime policy. The libertarian think tank Texas Public Policy Foundation (TPPF) was a key backer of the criminal justice reforms passed in Texas that reduced the growing prison population.\textsuperscript{41} In 2010, TPPF launched the project Right on Crime with the goal of growing the conservative criminal justice reform movement nationally.\textsuperscript{42} Another important player in conservative criminal justice reform, especially with regard to mobilizing evangelicals, is Prison Fellowship. Charles Colson, a Nixon aide who went to prison for his role in Watergate, founded Prison Fellowship after his release with the goal of ministering to inmates.\textsuperscript{43} Together, Right on Crime, Prison Fellowship, and other allies are driving efforts to redefine the conservative approach to crime.

The conservative case for reform stresses that the policies that led to mass incarceration run afoul of conservative principles. Building prisons imposes an immense cost on states, often with questionable benefits, which concerns fiscal conservatives. Right on Crime explains this concern in its Statement of Principles:

Conservatives correctly insist that government services be evaluated on whether they produce the best possible results at the lowest possible cost, but too often this lens of accountability has not focused as much on public safety policies as other areas of government . . . [W]e must . . . be tough on criminal justice spending. That means demanding more cost-effective approaches that enhance public safety. A clear example is our reliance on prisons, which serve a critical role by incapacitating dangerous offenders and career criminals but are not the solution for every type of offender. And in some instances, they have the unintended consequence of hardening nonviolent, low-

\textsuperscript{38} \textit{Id.} at 88, 91–92.
\textsuperscript{39} \textit{Id.} at 92.
\textsuperscript{40} \textit{Id.} at 132–36.
\textsuperscript{41} \textit{Id.} at 97–100.
\textsuperscript{42} \textit{Id.} at 104–06.
\textsuperscript{43} \textit{Id.} at 43–46.
On this view, any government program that spends taxpayer dollars ineffectively should be reformed or cut, and criminal justice policies cannot be immune from such scrutiny.

Evangelicals within the conservative movement also have raised concerns about the human toll inflicted by criminal justice policies. Redemption is a central Christian message, yet this goal was often ignored in the push for harsher criminal penalties beginning in the 1970s. In a shift away from this trend, Prison Fellowship places the Christian message of redemption at the core of its mission:

Prison Fellowship seeks to restore those affected by crime and incarceration by introducing prisoners, victims, and their families to a new hope available through Jesus Christ . . . . We advocate for a criminal justice system that upholds restorative values, so that communities are safer, victims are respected, and those who have caused harm are transformed.

This faith-based approach provides a rationale within the Republican Party for dedicating attention and resources to rehabilitate offenders.

By appealing to key conservative constituencies—libertarians, fiscal conservatives, and evangelicals—criminal justice reform organizations like Right on Crime and Prison Fellowship have succeeded in impacting the Republican Party’s approach to crime. In addition to Republicans in red states enacting reforms to reduce incarceration rates, language on criminal justice policy has changed and softened in parts of the Republican platform. Both the 2012 and 2016 platforms champion some of the reforms pursued by Right on Crime and Prison Fellowship. The 2016 platform reads:

We applaud the Republican Governors and legislators who have been implementing criminal justice reforms like those proposed by our 2012 platform. Along with diversion of first-time, nonviolent offenders to community sentencing, accountability courts, drug courts, veterans treatment courts, and guidance by faith-based institutions with proven track records of rehabilitation, our platform emphasized restorative justice to make the victim whole and put the offender on the right path.

This statement shows the progress that the conservative criminal justice reform movement has made within the GOP.

Though groups like Right on Crime and Prison Fellowship have avoided weighing in on the death penalty, their message of reform nevertheless has implications for the debate over capital punishment. The conservative


\[46\] REPUBLICAN PARTY, supra note 13, at 39–40.
criminal justice reform movement has created an environment where more Republicans are comfortable questioning whether entrenched criminal justice policies are actually working. It is natural for some conservatives and Republicans to extend this critical approach to capital punishment. After all, many of the conservative critiques of mass incarceration—its high cost, ineffectiveness, and failure to recognize the possibility of redemption—equally apply to the death penalty. It is well documented that the death penalty imposes a significant fiscal burden on state and local governments due to the prolonged legal process associated with capital cases. From the perspective of public safety, there is little evidence that the death penalty impacts murder rates. For highly uncertain benefits, then, states are spending millions of dollars to keep the death penalty in place—sometimes despite few or no executions in recent decades. And since the death penalty can cut short the process of redemption by killing a prisoner, it is also hard to reconcile it with the Christian message that no one is beyond redemption.

Some leaders in the criminal justice reform movement have drawn attention to the death penalty’s incompatibility with their vision for reform. For instance, one leading figure in this movement, Pat Nolan—director of the American Conservative Union Foundation’s Criminal Justice Reform Project—has made clear his desire to end the death penalty and lent his assistance to state efforts toward that goal. In addition, groups like Conservatives Concerned about the Death Penalty (CCATDP) have emerged to encourage conservatives and Republicans to rethink the death penalty in light of its high costs, errors, and ineffectiveness. In short, the changing conversation on criminal justice among conservatives also has helped facilitate a new conversation on the death penalty. As a result, a number of conservative and Republican leaders are now making the case that the death

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49 See infra note 62.


penalty proves incompatible with their core values.

III. THE CONSERVATIVE CASE AGAINST THE DEATH PENALTY

The conservative case against the death penalty consists of three principal arguments: its incompatibility with (1) limited government, (2) fiscal responsibility, and (3) promoting a culture of life. This Part looks at each of these arguments and highlights prominent conservatives who are advancing them.

First, at its most basic level, the death penalty represents an expansion of government power. It is one thing to give government the power to remove dangerous individuals from society and incarcerate them. The death penalty, though, confers a distinct and additional power to government: executing an individual after he or she has been imprisoned and is no longer a threat to society. This decision over life and death places in the hands of government an incredible power—one that may be unnecessary and abused. With modern prisons, government has at its disposal nonlethal means to protect society without having to resort to executions. Moreover, the power to execute leads to abuses in the forms of executing those who were likely innocent and botched executions. In the wake of such errors, states have turned to keeping the details of executions secret, which only leads to further errors and abuse.

52 A more concise version of the arguments presented in this Part was published prior to this Article. See Jones, supra note 9.
53 Others also have noted the uneasy relation between the death penalty and conservative principles. See generally Michael Rowan, Minding our Skepticism: A Conservative Approach to Capital Punishment, 31 FLA. ST. U. L. REV. 377 (2003); Michael Silverman, Toward a Modern, Apolitical Death Penalty Abolition Movement in Georgia, 3 SAVANNAH L. REV. 251 (2016).
54 See, e.g., JAMES LIEBMAN ET AL., THE WRONG CARLOS: ANATOMY OF A WRONG EXECUTION (2014) (describing the case of Carlos DeLuna, who was executed by Texas in 1989 despite no physical evidence connecting him to the murder of which he was convicted and an alternative suspect with a violent history, Carlos Hernandez, bragging that he was the one who committed the murder); David Grann, Trial by Fire, NEW YORKER (Sept. 7, 2009), http://www.newyorker.com/magazine/2009/09/07/trial-by-fire (describing the case of Cameron Willingham, who was executed by Texas in 2004 for murdering his three children in a suspected arson fire despite leading arson experts concluding that there was no scientific evidence that the fire killing Willingham’s children was intentional).
56 See, e.g., Matt Ford, An Oklahoma Execution Done Wrong, ATLANTIC (Oct. 8, 2015), https://www.theatlantic.com/politics/archive/2015/10/an-oklahoma-execution-done-wrong/409762/; Chris McDaniel, This is the Man in India Who is Selling Illegally Imported
A number of conservative leaders have expressed concern that the death penalty runs afoul of limited government principles. Conservative columnist George Will captures the basic dilemma that the death penalty presents to those wary of government power: “Capital punishment, like the rest of the criminal justice system, is a government program, so skepticism is in order.” Elsewhere Will reiterates this criticism in sharper terms: “[T]he power to inflict death cloaks government with a majesty and pretense of infallibility discordant with conservatism.” In a similar vein, former Republican congressman and presidential candidate Ron Paul asks: “Given the long history of government failures, why should anyone, especially conservatives who claim to be the biggest skeptics of government, think it is a good idea to entrust government with the power over life and death?”

This distrust of government led the founder of the libertarian Cato Institute, Edward Crane, to oppose the death penalty. “My own view on capital punishment is that it is morally justified,” says Crane, “but that the government is often so inept and corrupt that innocent people might die as a result. Thus, I personally oppose capital punishment.” Crane’s view highlights that, even among those who support the death penalty in principle, some reject it in practice because of the dangerous power it gives government and the inevitable abuse and harm that comes from such power.

Second, the evidence continues to grow that the death penalty proves costlier for state budgets than incarcerating inmates for life, so from a fiscal perspective, the death penalty makes little sense as a law enforcement tool. The Supreme Court has made clear that death is different and therefore due process requires extra safeguards to impose and carry out a death sentence.

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61 See Lockett v. Ohio, 438 U.S. 586, 604 (1978) (stating that the “qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed”); Gregg v. Georgia, 428 U.S. 153, 188 (1976) (“[T]he penalty of death is different in kind from any other punishment imposed under our system of criminal justice.”).
The prolonged legal process that has resulted during both capital trials and appeals means that death penalty cases cost hundreds of thousands, sometimes millions, of dollars more than similar cases where the death penalty is not sought.\(^{62}\) Moreover, death sentences are more likely to be overturned than to result in an execution,\(^{63}\) so often a death penalty trial ends up being a more expensive route to a life without parole sentence. The public safety return on the millions of dollars invested in the death penalty is questionable, given the lack of strong evidence that it has any deterrent effect over and above life in prison without parole.\(^{64}\) For conservatives, then, the death penalty is not only a potentially dangerous government program, but also one that wastes taxpayer dollars.

Longtime conservative leader Richard Viguerie raises this criticism about the death penalty. Viguerie writes:

Conservatives have every reason to believe the death penalty system is no different from any politicized, costly, inefficient, bureaucratic, government-run operation, which we conservatives know are rife with injustice. But here the end result is the end of someone’s life. In other words, it’s a government system that kills people.

For Viguerie, the death penalty funnels taxpayer dollars into yet another ineffective government program.

Third, the death penalty stands in tension with the goal of promoting a culture of life. Because of errors in its application\(^ {66}\)—which have been on
display with numerous death row exonerations—the death penalty poses a real risk to innocent lives. And for cases where guilt is not in question, the death penalty still proves problematic from a pro-life perspective because it takes life unnecessarily when the nonlethal alternative of incarceration is available. Foundational to the pro-life tradition in Christian, and especially Catholic, thought is the belief that everyone is made in God’s image, which means that every life possesses inestimable worth. Regardless of what individuals do—even the commission of grave crimes—their life remains sacred. This view that every human life is sacred carries with it the implication that life deserves protection at all stages and is sometimes referred to as a consistent life ethic. By putting innocent life at risk and taking life unnecessarily, the death penalty goes against core pro-life values.

In particular, the Catholic Church has taken a leading role in tying efforts to end the death penalty with the broader goal of promoting a culture of life. Pope John Paul II’s 1995 encyclical, Evangelium Vitae (The Gospel of Life), influenced Catholic social teaching on the death penalty and raised the issue’s importance within the church. Following John Paul II, Popes Benedict XVI and Francis have also called for an end to the death penalty.

67 See Innocence List, DEATH PENALTY INFO. CTR. (December 31, 2017), http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row (noting that as of December 31 2017, 161 individuals in the U.S. have been wrongfully sentenced to death and later exonerated since 1973).


70 See, e.g., U.S. CONF. OF CATHOLIC BISHOPS, A CULTURE OF LIFE AND THE PENALTY OF DEATH 11 (2005) (“Even when people deny the dignity of others, we must still recognize that their dignity is a gift from God and not something that is earned or lost through their behavior. Respect for life applies to all, even the perpetrators of terrible acts.”)

71 See generally JOSEPH BERNARDIN, A CONSISTENT ETHIC OF LIFE (1983).

72 Pope John Paul II wrote that

[i]t is clear that, for these purposes [defending the public order, public safety, and rehabilitation of the offender] to be achieved, the nature and extent of the punishment must be carefully evaluated and decided upon, and ought not to go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent.

JOHN PAUL II, supra note 69 at § 56.

In America, the United States Conference of Catholic Bishops has reiterated this position, with local Catholic Conferences often taking an active role in state campaigns to repeal the death penalty. Prominent conservative Catholic thinkers, such as Princeton University Professor Robert George, also have weighed in on the matter. Speaking of two pieces of legislation introduced in Kansas—one to limit abortion and another to repeal the death penalty—George wrote:

I think it would be salutary if . . . Kansas would achieve this highly commendable goal [limiting abortion] while also replacing the death penalty with the punishment of life in prison for heinous murders. Together, these steps would place Kansas in the vanguard of building a culture of life.

While Catholic thinkers have led the way in linking repeal of the death penalty with pro-life efforts, some in the evangelical tradition now also are embracing opposition to capital punishment as part of a consistent life ethic. For instance, Rev. Samuel Rodriguez, president of the National Hispanic Christian Leadership Conference, announced in 2015 that his thinking on the death penalty had evolved: “I can no longer justify my support of the death penalty when I am serving as an advocate for life, when I believe that all life is beautiful, all life is sacred.” Also in 2015, the National Latino Evangelical Coalition adopted a position against the death penalty and the National Association of Evangelicals acknowledged for the first time grounds in Christian ethics for both opposing and supporting the death penalty—after 40 years of an entirely pro-death penalty position. Together

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these resolutions suggest shifts on capital punishment among evangelical leaders.

So a number of prominent conservative figures are calling on Americans to rethink the death penalty and work toward ending it. They come to this position not in spite of their conservative principles but because of them. Indeed, there is a cogent conservative case for ending the death penalty. Since Gregg, the U.S. experiment with capital punishment has consistently fallen short when judged against key conservative principles—limited government, fiscal responsibility, and promoting a culture of life. As these shortcomings have gained greater attention, there has been a modest decline in support for the death penalty among Republicans over the past two decades, though a solid majority still support it. But even as a minority position among Republicans, opposition to the death penalty has become difficult to dismiss as a view contrary to conservative values, given the respected conservative figures calling for its repeal. As national conservative leaders make the case against the death penalty, similar arguments are also appearing in state policy debates. This development has important implications for death penalty policy, as Republican state legislators have emerged as champions of legislation to repeal the death penalty. We turn next to examining these legislative efforts.

IV. RECENT REPUBLICAN SUPPORT FOR DEATH PENALTY REPEAL LEGISLATION

The bulk of death penalty policy is decided at the state level. It is there that a number of Republican state lawmakers in recent years have championed legislation to repeal the death penalty. These legislative efforts, even when they fall short, are instructive in showing the role that some Republicans are playing in advancing efforts to end the death penalty at the state level. To illustrate Republicans’ role in these efforts, this Part specifically looks at recent legislative campaigns to repeal the death penalty in four red states: Montana, Kansas, Nebraska, and Utah. None of these states carry out executions frequently, and in recent years, all have considered

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79 See Jones, supra note 3; Oliphant, supra note 3.
80 Nearly all of the over 1,400 people executed in the U.S. since 1973 were sentenced to death under state statutes. As of November 2017, the U.S. federal government had only carried out three executions since 1973. See Number of Executions by State and Region Since 1976, DEATH PENALTY INFO. CTR. (November 9, 2017), https://deathpenaltyinfo.org/number-executions-state-and-region-1976.
81 See, e.g., Marin Cogan, Meet the Red-State Conservatives Fighting to Abolish the Death Penalty, WASH. POST (June 3, 2016), https://www.washingtonpost.com/opinions/a-fight-to-abolish-the-death-penalty—led-by-conservatives/2016/06/03/1f3fd530-280e-11e6-a3c4-0724e8e24f3f_story.html?utm_term=.e38779f01a49.
legislation to repeal it. Legislative debates in these states show that, though most states to repeal the death penalty in recent years have been blue states, proposals to end capital punishment also are receiving serious attention in more conservative parts of the country.

Montana. Since Gregg, Montana has only carried out three executions, and its death row has remained small with a population in the single digits. Recent votes on bills to repeal the death penalty in Montana reveal a legislature closely divided on the issue. The Montana Senate passed bills to repeal the death penalty three legislative sessions in a row: first in 2007 under Democratic control of the Senate, and then in 2009 and 2011 under Republican control (the Montana legislature only meets during odd-numbered years). Despite Senate support for ending the death penalty those years, repeal legislation ultimately failed in the House. During these years, the House Judiciary Committee proved to be an insurmountable obstacle for death penalty opponents. That changed in 2015 when death penalty repeal legislation finally passed the House Judiciary Committee and went to a vote in the full House. There the bill died by the narrowest of margins—a 50-50 tie. The death penalty remains on the books in Montana, but a number of lawmakers are discontent with the status quo and continue to push for its repeal.


Consistent throughout these legislative efforts in Montana has been the participation of some Republican lawmakers as vocal champions and sponsors of legislation to end the death penalty. Roy Brown, who served in the Montana Senate and was the 2008 Republican gubernatorial nominee, advocated for repeal and helped found the group Montana Conservatives Concerned about the Death Penalty.\footnote{Roy Brown, \textit{Montana Should Follow Nebraska in Repeal of Death Penalty}, \textit{BILLINGS GAZETTE} (June 4, 2015), http://billingsgazette.com/news/opinion/guest/guest-opinion-montana-should-follow-nebraska-in-repeal-of-death/article_bd35866f-7944-580f-a771-7a0003d618e.html.} For Brown, it was his Catholic faith and pro-life beliefs that led him to oppose the death penalty: “I grew up supporting the death penalty, but my beliefs changed as I learned about the many problems with capital punishment. As a Catholic, I believe that all life is sacred from conception to natural death.”\footnote{Id.} Another Montana Republican supportive of repeal was Ryan Zinke, who before serving in Congress and becoming U.S. Secretary of the Interior voted to end the death penalty as a state senator in 2009 and 2011.\footnote{See Vote Tabulation: SB 236, MONT. LEG. (Feb. 17, 2009), http://laws.leg.mt.gov/legprd/LAW0211WSBLAC.VoteTabulation?P_VOTE_SEQ=S476&P_SESS=20091; Vote Tabulation: SB 185, MONT. LEG. (Feb. 15, 2011), http://laws.leg.mt.gov/legprd/LAW0211WSBLAC.VoteTabulation?P_VOTE_SEQ=S368&P_SESS=20111.} Fiscal concerns motivated Zinke’s opposition to capital punishment: “Whether you are or not with the moral issue, there is a practical issue of spending money.”\footnote{Dockery, \textit{supra} note 86.} More recently, the 2017 sponsor of death penalty repeal legislation was Republican State Representative Adam Hertz, who made the case that the death penalty is wasteful, ineffective, and unnecessary. “Central to this bill [to repeal the death penalty],” said Hertz, “is the idea that, our government, which is so often wasteful, ineffective and unjust, shouldn’t be in the business of killing criminals who can safely and effectively be incarcerated at a fraction of the cost.”\footnote{Cates-Carney, \textit{supra} note 88.} The willingness of Republicans to champion and sponsor repeal bills has ensured the bipartisan nature of legislative efforts in Montana to end the death penalty—an essential component of advancing legislation in a predominantly red state.

\textbf{Kansas.} A deep ambivalence has characterized death penalty policy in Kansas throughout its history. During the Progressive Era, Kansas was part of a flurry of states to abolish the death penalty at the beginning of the twentieth century.\footnote{See infra Table 1.} But after ending capital punishment in 1907, Kansas...
reinstated it in 1935. It stayed on the books until the Furman decision struck down all death penalty statutes in 1972. When Gregg in 1976 opened the door to states to reinstate death penalty and resume executions, Kansas initially resisted bringing it back. The death penalty’s reinstatement did not occur until almost two decades later in 1994. Since then, Kansas has shown a reluctance to use the death penalty. Kansas is one of only two states—along with New Hampshire—that have the death penalty but have not carried out an execution since Gregg. In 2010, legislation to repeal the death penalty came close to passing the Republican-controlled Kansas Senate, but ultimately fell short on a 20-20 vote. The issue has continued to come up in subsequent legislative sessions, most recently in 2017, when fifteen Kansas state representatives—including eight Republicans—sponsored legislation to repeal the death penalty.

Kansas Republicans supportive of ending the death penalty in particular have focused on its high cost and lack of tangible benefits for the state. In the Kansas Senate, Republican Senator Carolyn McGinn has led efforts to end the death penalty, calling it an ineffective deterrent and “too costly,” especially when state budgets are tight. Echoing this concern is Republican State Representative Bill Sutton, who has drawn attention to the resources Kansas has dedicated to the death penalty without ever carrying out an execution: “There are millions of dollars . . . spent on death penalty trials and the appeals process. We don’t have anything to show for it. There’s exactly zero utility for the tax dollars spent.” Sutton has partnered with Republican State Representative and former judge Steven Becker, the lead House sponsor of death penalty repeal legislation in recent years. “The death penalty is such an inefficient practice in our state,” said Becker, and its repeal “could truly save millions of dollars.”

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96 BANNER, supra note 18, at 221–22.
102 Miranda Davis, House Members Press for Repeal of Kansas Death Penalty, TOPEKA
arguments for repealing the death penalty have not prevailed yet in the legislature, they have had a noticeable impact on the Kansas Republican Party. In 2014, the Kansas Republican Party removed a long-standing pro-death penalty plank from its platform, and the following year the Kansas College Republicans adopted a resolution calling for repeal of the death penalty. Among both Republican lawmakers and party officials in Kansas, a number are actively pushing to end the death penalty.

Nebraska. Since reinstating the death penalty in 1976, Nebraska has remained reluctant in actually carrying it out. There have been only three executions in Nebraska since reinstatement, with the most recent taking place in 1997. Proposals to repeal the death penalty have gained traction in Nebraska’s unicameral legislature on several different occasions. A death penalty repeal bill passed the Nebraska Legislature in 1979, as well as a bill placing a two-year moratorium on executions in 1999, but in both cases the legislation ultimately died on a gubernatorial veto. Longtime Nebraska State Senator Ernie Chambers—an independent from Omaha known for championing progressive causes—sponsored these bills. After a brief stint out of the legislature from 2009 to 2012 due to term limits, Chambers returned and continued his push to repeal the death penalty. In 2015, a bill to repeal the death penalty made it further than ever before in Nebraska: the Republican-dominated legislature not only passed such legislation but succeeded in overriding Governor Pete Ricketts’s veto of it. It marked the first time in over forty years that a red state repealed the death penalty.

105 Jurisdictions with no recent executions, supra note 97.
107 Id.
108 Id.
109 Id.
ensured its success. The victory ultimately was short-lived, however, as Ricketts led a referendum to overturn the legislature’s action and reinstate the death penalty, which succeeded in 2016.\footnote{111}

Recent battles over the death penalty in Nebraska reveal a split over the issue in the state’s Republican Party. The Republican governor strenuously worked to retain the death penalty, citing it as necessary for public safety and as a punishment for the most heinous crimes. A number of Republican legislators disagreed, as they had grown frustrated with the costs and inefficiencies characterizing Nebraska’s death penalty since reinstatement. Chambers cited his Republican colleagues’ willingness to join him in backing legislation to repeal the death penalty as key to its success in 2015.\footnote{112} These Republicans characterized the death penalty as a government program that failed to reflect conservative values. Pro-life concerns motivated Republican State Senator Tommy Garrett to oppose the death penalty: “I believe life begins at conception and should be protected until God calls the individual home.” For the lead Republican sponsor of repeal, Senator Colby Coash, “repealing the death penalty” was about “get[ting] rid of government waste.”\footnote{113} Ultimately, these lawmakers’ efforts were rolled back, but they did demonstrate considerable Republican support in the legislature for ending the Nebraska death penalty.

\textit{Utah}. At the start of 2016, political observers had little reason to expect that Utah would be the next state where legislative efforts to repeal the death penalty would gain traction. Just the previous year, Utah had passed legislation bringing back the firing squad as a method of execution, should the state fail in obtaining the drugs necessary for lethal injection.\footnote{114} One of the lawmakers who voted to bring back the firing squad, Republican State Senator Stephen Urquhart, sponsored legislation in 2016 to repeal the death penalty.\footnote{115} Surprisingly, this bill passed out of committee in the Senate, and

\begin{footnotes}
\footnote{111}{Berman, supra note 6.}
\end{footnotes}
then passed the full Senate and out of committee in the House. The full House did not take up Urquhart’s bill in the final days of the 2016 session, which left capital punishment in place in Utah for the time being.116

Urquhart had supported the death penalty as recently as 2015, but conversations with a friend changed his mind and led him to conclude that it was costly, inefficient, and too much power for a fallible government.117 In other words, Urquhart could no longer reconcile the death penalty with conservative principles. As Urquhart worked to build support for his bill among his mostly Republican colleagues, he challenged them to subject the death penalty to the same level of scrutiny as they would other government programs. Conservatives are skeptical of the government doing many things well, let alone anything perfectly, “yet we arrogate to ourselves the power over life and death. There’s a serious disconnect there.”118 Urquhart changed a number of his Republican colleagues’ minds but ultimately fell just short of successfully getting his legislation passed into law.

As the recent legislative debates in Montana, Kansas, Nebraska, and Utah show, conservative opposition to the death penalty is bubbling up at the state level. It is important to emphasize that in all these states Republican champions of repeal joined with Democrats, and this bipartisan support was necessary to advance legislation against the death penalty.119 To be sure, these efforts against the death penalty in red states have occurred in fits and starts. Legislation to repeal the death penalty will gain momentum one year and then stall another, or sometimes a previous legislative victory ends up being reversed, as was the case in Nebraska. So far, opposition to the death penalty among some Republican lawmakers has not led to swift and dramatic changes in state laws. Still, Republican opposition to the death penalty has an important impact on state legislative debates that should not be underestimated. It helps depoliticize debates over the death penalty and create opportunities—which previously were few and far between—for red states to seriously consider ending capital punishment. Building on this

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117 Phillips, supra note 115.
nascent conservative opposition to the death penalty among state lawmakers and translating it into legislative victories will be critical for efforts against the death penalty in the coming years.

V. CONSERVATIVES’ ROLE IN DECIDING THE DEATH PENALTY’S UNCERTAIN FUTURE

After Gregg in 1976 opened the door for the death penalty’s return in America, opponents of the practice found themselves on the defensive for the rest of the twentieth century. Throughout the late 1970s, the 1980s, and the 1990s, death sentences and executions increased, while a number of states reinstated the death penalty. The tide finally shifted at the start of the twenty-first century, when death sentences, executions, and public support for the death penalty all declined. Illinois declared a moratorium on executions in 2000, which was followed by a flurry of states ending the death penalty between 2007 and 2016. This string of successes led some legal experts to become optimistic that the Supreme Court could soon strike down the practice as cruel and unusual punishment, inconsistent with the Eighth Amendment and evolving standards of decency. In their view, recent successes against the death penalty had made its demise imminent.

The 2016 elections certainly chastened these hopes. Nebraska reinstated the death penalty—the first state to reinstate the death penalty in over two decades—and Trump’s election diminished the prospects of a Supreme Court inclined to take action to strike down capital punishment in the near future. A vocal supporter of the death penalty, Trump already appointed one justice to the Supreme Court in 2017 and may have the opportunity to appoint more during his presidency. His appointment(s) in all likelihood will result in a court more favorable to the death penalty. In this political environment, the death penalty in America faces an uncertain future.

The 2016 election serves as an important reminder that ending capital punishment in the U.S. is far from inevitable. The shifts in death penalty policy during the first half of the twentieth century prove instructive on this point. In fact, there are striking similarities in the changes to state death penalty laws between the beginnings of the twentieth and twenty-first centuries. As Table 1 shows, eight states repealed the death penalty in both 1907–1917 and 2007–2016. Most of the victories against the death penalty in the early twentieth century did not last—six of the eight states to abolish the death penalty ended up bringing it back. So far, one state to repeal the

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120 See, e.g., Kevin Barry, Death Penalty & the Dignity Clauses, 102 IOWA L. REV. 383 (2017); Liptak, supra note 5.
121 See infra Table 1.
death penalty in the past decade has reinstated it (Nebraska).

<table>
<thead>
<tr>
<th>Early 20th Century</th>
<th>Year of Abolition</th>
<th>Year of Reinstatement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kansas</td>
<td>1907</td>
<td>1935</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1911</td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>1913</td>
<td>1919</td>
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<tr>
<td>Oregon</td>
<td>1914</td>
<td>1920</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1915</td>
<td></td>
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<tr>
<td>South Dakota</td>
<td>1915</td>
<td>1939</td>
</tr>
<tr>
<td>Arizona</td>
<td>1916</td>
<td>1918</td>
</tr>
<tr>
<td>Missouri</td>
<td>1917</td>
<td>1919</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Early 21st Century</th>
<th>Year of Abolition</th>
<th>Year of Reinstatement</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York</td>
<td>2007</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>2007</td>
<td></td>
</tr>
<tr>
<td>New Mexico</td>
<td>2009</td>
<td></td>
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<tr>
<td>Illinois</td>
<td>2011</td>
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<tr>
<td>Connecticut</td>
<td>2012</td>
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<tr>
<td>Maryland</td>
<td>2013</td>
<td></td>
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<tr>
<td>Nebraska</td>
<td>2015</td>
<td>2016</td>
</tr>
<tr>
<td>Delaware</td>
<td>2016</td>
<td></td>
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</tbody>
</table>

Clearly, the future of the death penalty remains up in the air. Recent state legislation ending the death penalty could be rolled back over the coming years, as occurred in the early twentieth century. Or, conversely, the recent victories could prove long lasting and perhaps even increase in the coming years. Which direction the states go in largely will determine the death penalty’s future in America.

If, during the Trump administration, the Supreme Court does not strike down the death penalty, opportunities to end the practice for the immediate future will continue to be at the state level, where most changes in death penalty policy have occurred in the past decade. Whether the emerging support among some Republicans and conservatives to end capital punishment continues to grow will be a key factor determining how state
death penalty policy develops in the coming years. Currently, Republican control of state legislative and gubernatorial seats is at historic highs.\textsuperscript{123} So even with the precipitous drop in support for the death penalty among Democrats in recent decades,\textsuperscript{124} Democratic backers alone are often insufficient to pass death penalty repeal legislation today (that is even more true when not all Democratic lawmakers support repeal, which is usually the case). In the short term, attracting the support of Republican lawmakers is in most states a necessity, rather than a luxury, to passing legislation. The cultivation of bipartisan support for ending the death penalty can open legislative opportunities, even during a period of Republican dominance in state legislatures. Recent legislative debates in Montana, Kansas, Nebraska, and Utah suggest that a compelling conservative case can be made for repealing the death penalty, which appeals to some Republican lawmakers.

Building Republican and conservative support for ending the death penalty can also have an important impact in the long term. Abolition of the death penalty already occurred once before in U.S. history, and it did not last due to Republicans quickly coalescing together in support of capital punishment after the \textit{Furman} ruling. With Republicans largely unified against \textit{Furman}, they mounted fierce opposition to the ruling and ultimately succeeded in overturning it four short years later. If in the coming years, however, Republican support for ending the death penalty grows to the point where at least a sizeable minority within the party would welcome its repeal, future victories against the death penalty will face less unified opposition and prove easier to sustain. So beyond just the short term, where Republican support is obviously needed to pass bills in GOP-dominated legislatures, such support will remain important even in periods when Republican control ebbs. The path to achieving—and, just as important, sustaining—victories against capital punishment will face less imposing obstacles if the party most supportive of the practice is divided over the issue. When that is the case, there is less vigorous opposition to measures to end the death penalty.

Europe’s experience with the death penalty in particular provides insights on the role of conservative lawmakers in abolishing it. In his study of efforts in Europe that successfully ended the death penalty, Andrew Hammel notes the importance of dwindling support for the practice among conservative European lawmakers. “Once abolition became acceptable in center-right circles—that is, once a solid minority of, say, 30–40% of conservative lawmakers became willing to vote for abolition—its success

\textsuperscript{123} Phillips, \textit{supra} note 8.

\textsuperscript{124} According to national polls, over 70% of Democrats supported the death penalty in the mid-1990s, but now only a minority still support it. \textit{See Jones, supra} note 3; Oliphant, \textit{supra} note 3.
became inevitable,” writes Hammel. If Europe’s history is any guide, once significant splits develop in the party most opposed to abolition, capital punishment’s days are likely numbered. For this reason, Republicans and conservatives have the potential to play a key role in advancing efforts to end the death penalty in the U.S.

CONCLUSION

Though it is often assumed that Republicans support the death penalty, the preceding discussion shows that has not always been the case throughout U.S. history, nor is it always the case today. For over the first 100 years of the party, there was not a clearly defined Republican position on capital punishment. In the first part of the twentieth century when a number of states ended the death penalty, one finds both Republicans and Democrats championing abolition bills. It was not until the Supreme Court struck down the death penalty nationally in 1972 that Republican support for the death penalty solidified. The Furman decision came at a time when a growing number of Republican leaders, such as Nixon and Reagan, were embracing tough-on-crime rhetoric. The Court’s decision to strike down the death penalty was an easy target for Republican leaders railing against soft-on-crime policies, which they argued were the drivers of rising crime rates. In this environment, the Republican Party in 1976 first adopted a pro-death penalty plank, a policy position that has remained a part of its platform to this day.

Despite the Republican Party’s official pro-death penalty position today, the conservative criminal justice reform movement has spurred many Republicans to rethink their approach to criminal justice. Overly punitive

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125 Andrew Hammel, Ending the Death Penalty: The European Experience in Global Perspective 168 (2010).
126 It is important to note that Hammel expresses skepticism that the U.S. will abolish the death penalty, due to the greater leeway that European lawmakers have compared to their American counterparts in going against public opinion and following expert recommendations on criminal justice policy. See id. at 189–90. Hammel raises a valid point, but recent developments suggest that it does not always prove true. Most notably, in a number of states lawmakers have voted to repeal the death penalty despite a majority of the public—albeit it a shrinking majority—supporting it. These outcomes should not necessarily come as a surprise. As death penalty support has waned and become more tepid, opportunities have arisen for passionate subconstituencies calling for its repeal to successfully impact policy debates. Indeed, political science research finds lawmakers are often responsive to organized minority groups advocating on an issue, especially when the issue is not a priority for the majority. See generally Benjamin Bishin, Tyranny of the Minority: The Subconstituency Politics Theory of Representation (2009); Khalilah Brown-Dean & Ben Jones, Building Authentic Power: A Study of the Campaign to Repeal Connecticut’s Death Penalty, 5 Pol., Groups, & Identities 321 (2017).
criminal sentences have led to high costs with often dubious gains in public safety. One important segment within the conservative movement, evangelicals, also has raised concerns that many harsh sentences fail to give individuals a chance at redemption. Though leading groups in the conservative criminal justice reform movement such as Right on Crime and Prison Fellowship have avoided taking a position on the death penalty, their arguments against many criminal justice policies apply equally to capital punishment. In fact, there is a cogent and compelling conservative argument against the death penalty: it is incompatible with limited government, fiscal responsibility, and promoting a culture of life. A number of Republican state legislators are now embracing these arguments and have had some success advancing legislation to repeal the death penalty in red states. It remains to be seen whether Republican lawmakers calling for an end to the death penalty is an aberration or part of a long-term trend. If the latter, Republican and conservative opposition will provide important opportunities—which otherwise would be absent—to advance efforts to end the death penalty in the U.S.
Republican Party Platform Statements on the Death Penalty

<table>
<thead>
<tr>
<th>Platform Year</th>
<th>Death Penalty Platform Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1856-1972</td>
<td>No mention of death penalty in Republican Party Platforms</td>
</tr>
<tr>
<td>1976</td>
<td>“Each state should have the power to decide whether it wishes to impose the death penalty for certain crimes.”</td>
</tr>
<tr>
<td>1980</td>
<td>“We believe that the death penalty serves as an effective deterrent to capital crime and should be applied by the federal government and by states which approve it as an appropriate penalty for certain major crimes.”</td>
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<tr>
<td>1984</td>
<td>“In addition, the Republican Senate has overwhelmingly passed Administration-backed legislation which would: Restore a constitutionally valid federal death penalty . . . . We concur with the American people’s approval of capital punishment where appropriate and will ensure that it is carried out humanely.”</td>
</tr>
<tr>
<td>1988</td>
<td>“We will reestablish the federal death penalty . . . . We support strong penalties, including the death penalty for major drug traffickers . . . . To enforce anti-drug policy, we pledge to . . . . impose the death penalty for drug kingpins and those who kill federal law enforcement agents.”</td>
</tr>
<tr>
<td>1992</td>
<td>“[Congressional Democrats] refuse to enact effective procedures to reinstate the death penalty for the most heinous crimes . . . . There is no excuse for the wanton destruction of human life. We therefore support the stiffest penalties, including the death penalty, for major [dr]ug traffickers.”</td>
</tr>
</tbody>
</table>
| 1996          | “After the elections of 1994, the new Republican majorities in the House and Senate fought back with legislation that ends frivolous, costly, and unnecessarily lengthy death-row appeals, requires criminals to pay restitution to their victims, speeds the removal of criminal aliens, and steps up the fight against terrorism . . . . Bill Clinton hypocritically endorsed our Victim’s Rights Amendment while naming judges who

opposed capital punishment, turned felons loose, and even excused murder as a form of social protest. Bob Dole, the next Republican president will end that nonsense and make our courts once again an instrument of justice . . . . We believe it is time to revisit the Supreme Court’s arbitrary decision of 1977 that protects even the most vicious rapists from the death penalty . . . . We continue our strong support of capital punishment for those who commit heinous federal crimes; including the kingpins of the narcotics trade.”

“Within proper federal jurisdiction, the Republican Congress has enacted legislation for an effective deterrent death penalty, restitution to victims, removal of criminal aliens, and vigilance against terrorism . . . . We renew our support for capital punishment for drug traffickers who take innocent life.”

2000

“With the murder rate soaring in our great cities, we condemn the Supreme Court’s erosion of the right of the people to enact capital punishment in their states.”