

ANOTHER VIEWPOINT

Keep unanimous juries for death penalty cases

Death by execution is the most extreme example of finality. Gov. Ron DeSantis, a prospective presidential candidate, in a barrage of recent public proposals now says core aspects of the death penalty process aren't as definitive. He is advocating for changes to the state's current death penalty statutory scheme, including diluting the requirement that all 12 jurors in a capital case agree that death is the appropriate punishment. He also is proposing to add non-homicide offenses, including aggravated sexual assault of a child, to the list of death penalty eligible crimes.

The juror unanimity requirement was enacted by the Florida Legislature after the U.S. Supreme Court struck down as unconstitutional the state's death penalty statute and the Florida Supreme Court also ruled the statute invalid. Further, numerous crimes in Florida, while technically classified as capital crimes, are not eligible for the death penalty because the U.S. Supreme Court removed non-homicides from the list in 2008. Notably, all non-homicide crimes once having the death penalty as a punishment in Florida now carry life imprisonment without parole.

The proposals have little to do with the merits of the death penalty; they represent a political calculation of the moment. Indeed, DeSantis' pronouncements reflect an almost cavalier approach to one of the most difficult issues in the American legal system.

The governor is betting that stoking fear about violent crime will result in little scrutiny of the proposals. His epiphany regarding death

penalty procedures matches his emerging political ambitions. His attempts to foment distrust in the courts include highlighting selective sentences such as the one in the Parkland school shooting case.

However, when cries for systemic change arise from perceived wrongs in an individual case, that's the very time to pause. This is why.

The Parkland case played out in public with no hidden agendas. The state pursued the death penalty even as the defendant pled guilty to 17 counts of first-degree murder. The state fully argued its case for the death penalty. The defense likewise presented its evidence and arguments about the appropriate punishment. In the end, three jurors (who were death qualified — that is, they had agreed during jury selection that they could potentially vote for the death penalty) voted for life imprisonment instead of death.

The real source of the Parkland case criticism is not the standards or procedures used in the case, but disappointment — even outrage — over the outcome. One must separate the legal process that applies to all death penalty cases with the outcome in a particular matter. DeSantis is doing the opposite; he is appropriating an emotionally charged individual case to make changes to an entire constitutionally based process.

Further, the governor's approach seems out of sync with the Supreme Court's modern death penalty decisions. Over decades, the Supreme Court has narrowed the crimes that are eligible for the death penalty to only certain homicides. It has limited the types of defendants who can receive the death penalty. It also has required more stringent court procedures and more demanding standards for decision-making in death penalty cases.

The U.S. Supreme Court's mandate that a jury unanimously find one or more aggravators beyond a reasonable doubt is one of the fundamental modern standards in death penalty cases. Legally and logically, that unanimity also must include the jury's determination of the appropriate sentence. Only Alabama allows a judge to overrule a jury's determination in a death penalty case. Alabama is not the model to follow.

The death penalty has long occupied a central place in the debates about criminal justice because state-sanctioned killing is unique and irreversible. Notably, Florida has the horrible distinction of having the most exonerations of death row prisoners in the nation. The current proposals ignore both realities.

Florida's ill-advised attempts to reverse basic standards and criteria in death penalty cases ignore the simple truth that any residual legitimacy — if it exists — of the death penalty in America depends on the more rigorous procedures and standards being safeguarded, not eroded.

That all jurors have to agree on a sentence of death is neither a sign of inadequacy nor should it be optional.

Michael McAuliffe is a former federal prosecutor. He also served as the elected state attorney for Palm Beach County, with responsibility for prosecuting death penalty cases. Currently, he is a practicing lawyer, an adjunct professor at the College of William & Mary's Law School and a senior lecturing fellow at Duke University's School of Law.