

Senator Richard Blumenthal

June 21, 2017

Questions for the Record for Kevin Christopher Newsom

1. As Alabama Solicitor General, one of your job responsibilities was to defend the state's death penalty cases and practices. Alabama has been criticized because it does not give inmates facing the death penalty the right to counsel post-conviction. In 2007, you defended that practice, telling ABC News: "The idea that inmates are en masse unrepresented, and wandering through the system alone, is just not true."
 - Based on your experience as the former solicitor general and private attorney, do you believe the state should leave death penalty defense work to nonprofit organizations?

As you note, I made the comment quoted above in my official capacity as Alabama's Solicitor General, defending the state in a class-action lawsuit. The narrow legal question presented in that case was whether the inmate plaintiffs had a federal constitutional right to state-funded counsel at the post-conviction phase of litigation. The Eleventh Circuit unanimously agreed with Alabama that existing Supreme Court and circuit precedent squarely foreclosed the inmates' claim. See *Barbour v. Haley*, 471 F.3d 1222, 1227-30 (11th Cir. 2006) (citing, e.g., *Murray v. Giarratano*, 492 U.S. 1 (1989) (plurality op.), *Pennsylvania v. Finley*, 481 U.S. 551 (1987), *Ross v. Moffitt*, 417 U.S. 600 (1974), and *Arthur v. Allen*, 452 F.3d 1234, 1249 (11th Cir. 2006).

The question whether states should leave death-penalty defense work to nonprofit organizations is a political question on which I cannot opine. See Canon 5, Code of Conduct for United States Judges; cf. also Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office.").

- The application of capital punishment has been criticized as racially biased and unfair to those with mental disabilities. Do you believe that the criminal justice system would be fairer if all people facing the death penalty were guaranteed access to counsel?

As with the question immediately preceding this one, this is a political question on which I cannot opine. See Canon 5, Code of Conduct for United States Judges; cf. also Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office.").