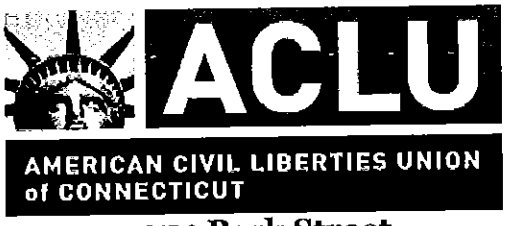

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To: Judicial Committee Members

From: Sandra J. Staub, ACLU-CT Legal Director

Written Testimony Opposing House Bill No. 5445
An Act Concerning the Death Penalty

Good afternoon Senator McDonald, Representative Lawlor and members of the Judiciary Committee. My name is Sandra Staub. As the Legal Director for the ACLU of Connecticut, I am here to oppose House Bill No. 5445, An Act Concerning the Death Penalty.

After presiding over a capital murder trial, a prominent federal trial judge wrote: "A legal regime relying on the death penalty will inevitably execute innocent people – not too often, one hopes, but undoubtedly sometimes. Mistakes will be made because it is simply not possible to do something this difficult perfectly, all the time. Any honest proponent of capital punishment must face this fact." This same point has been made by the ACLU-CT many times before this committee. Last year, a majority of your colleagues seemed to agree with this perspective and passed a law to eliminate capital punishment in Connecticut.

Because of a veto, this flawed death penalty system is still in place. The current effort in section two of House Bill No. 5445 to place time limits on the opportunity for review of mistakes in capital trials takes the already flawed capital punishment system and makes it worse.

Thomas Jefferson deemed the right of habeas corpus an "essential principle of our government." As described by Judge Fuger of the Connecticut Superior Court, in In Re: Claims of Racial Disparity v. Commissioner of Correction, Docket No. CV05-4000632S, "The writ of habeas corpus is an ancient and time-honored component of our Anglo-American jurisprudence." The claims

of racial disparity at issue in Judge Fuger's 2008 decision arose in a consolidated habeas proceeding that, according to Judge Fuger, had "been steadily evolving over the past fourteen years or more." Had the petitioners in Judge Fuger's proceeding been subject to the proposed time limits in the current bill, the petitioners may well have been executed before the courts had an opportunity to review the significant allegations that race was a determining factor in the application of the death penalty. As Judge Fuger said, "It would seem to be incontestable that the death penalty inflicted on one defendant is 'unusual' if it discriminated against him by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices."

The death penalty should be abolished in Connecticut. If the death penalty remains, we must do whatever necessary to preserve the courts' ability to review the capital trial for inevitable mistakes. To limit the periods of stay of execution and to rush toward the irreversible penalty of death is inconsistent with the Constitution and with justice. To protect the rights of the innocent, the ACLU-CT urges this committee to reject House Bill 5445.

*Opening quote taken from The Honorable Michael Ponsor, "Life, Death and Uncertainty," Boston Globe, July 8, 2001 at D2.