

ALABAMA'S DEATH ROW

Appeal attempts to give inmates more legal help

By **STANDIEL**
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Alabama's Death Row inmates need a lawyer to prove they need a lawyer, says an appeal filed to the U.S. Supreme Court this week.

In a filing made with the high court Monday, the nonprofit Equal Justice Initiative said Alabama is the only state in the nation that doesn't give Death Row inmates lawyers or other legal help after their first round

of appeals.

Alabama law requires the state to provide an indigent Death Row inmate with a lawyer for later appeals — called “post-conviction” or “collateral” appeals — only if the inmate convinces a judge his argument is good enough to not be summarily dismissed, and that a lawyer is necessary for him to protect his rights.

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But indigent Death Row inmates can't possibly prove to the court that they need a lawyer unless the court gives them a lawyer to make the argument, the filing says.

“You've got to do all these things (to make your case) that no Death Row prisoner can do, locked down 23 hours a day,” said Bryan Stevenson, executive director of the Equal Justice Initiative of Alabama.

The filing, which is a request that the Supreme Court hear the case, appeals a 2002 decision reached by the 11th Circuit U.S. Court of Appeals. In that ruling, the court found that Alabama's Death Row inmates weren't guaranteed legal aid for later appeals under federal law.

In its opinion at the time, the 11th Circuit Court cited as precedent a case in which a federal court ruled that indigent Death Row inmates in Virginia were not entitled to increased legal assistance for their later appeals. But, the filing to the Supreme Court points out, prisoners on Virginia's Death Row were never denied counsel.

The appeal to the high court, Stevenson said, hinges on the argument that Alabama violates the Sixth and Eighth Amendments to the U.S. Constitution because it's impossible for inmates to do work necessary on their appeals — and to prove they need a lawyer — without a lawyer, or at least some form of legal aid.

Plaintiffs in the suit, which seeks class-action status, include six current Death Row inmates. Defendants include Richard Allen, commissioner of the Department of Corrections, and Gov. Bob Riley.

A spokesman for the DOC said the agency is not responsible for inmates' legal representation, and referred questions to the governor and the office of Alabama Attorney General Troy King.

Kevin Newsom, Alabama solicitor general, said it was premature for him to characterize the state's position, and that a response will be filed within 30 days.

“The state certainly intends to respond,” he said. “The state fully believes that the 11th Circuit Court was right.”

At stake, the Equal Justice Initiative's Stevenson said, are the lives of innocent inmates. Stevenson, who also is lead counsel for the plaintiffs, said that in the past 20 years, 1,100 people have been executed in the United States. During the same period, 127 Death Row inmates were exonerated, mostly in later appeals that are nearly impossible for indigent Alabama inmates to get.

“That's one in eight,” Stevenson said Wednesday. “If you say you want the death penalty, you ought to want it to be fair.”

At the time the suit was filed in 2001, there were 40 inmates on Alabama's Death Row who lacked legal representation.

Stevenson said the Supreme Court likely will decide within several months whether to hear the case.

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