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March 29, 2016

The Honorable Terence R. McAuliffe
Office of the Governor
State Capitol
Third Floor
Richmond, VA 23219

Dear Governor McAuliffe,

I write on behalf of the National Association of Criminal Defense Lawyers (NACDL) to express our vehement opposition to HB 815, which would, if enacted into law, make the electric chair the default method of execution if lethal injection drugs are not available in the Commonwealth of Virginia. We urge you to recognize that this legislation, expanding the use of the electric chair in Virginia, is a step backwards in this country's efforts to maintain its leadership status in the struggle for better human rights in the world.

NACDL is the preeminent organization advancing the mission of the nation's criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. Founded in 1958, NACDL not only represents approximately 9,000 direct members in the United States, but also in twenty eight countries. NACDL also is directly affiliated with ninety state, provincial and local organizations totaling up to 40,000 attorneys, which include private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges, all committed to preserving fairness and promoting a rational and humane criminal justice system.

NACDL's position on the death penalty is unequivocal. We are against it for myriad reasons. Leading criminologists overwhelmingly agree that there is no evidence that capital punishment deters violent crimes.

Reinstatement of executions by electric chair would be an embarrassing step backward and would taint Virginia's reputation by providing for a mode of punishment that is widely rejected in the United States and throughout the world today. Although electrocution was once a common method of execution in the United States, every state in the nation has

shifted away from the use of the electric chair in favor of lethal injection, reflecting a broad consensus that electrocution now violates the Eighth Amendment's prohibition against cruel and unusual punishments. The evidence is indisputable that electrocution is highly likely to result in a cruel and torturously painful death. The supreme courts of Georgia and Nebraska have ruled that death by electrocution violates their state constitutional prohibitions against cruel and unusual punishment.¹ Several justices of the United States Supreme Court have questioned the constitutionality of electrocution "in light of modern knowledge" and experience with it.²

Moreover, executions by electrocution are an exceptionally and increasingly uncommon occurrence in the "modern era" of the death penalty in the United States, further demonstrating that this practice is inconsistent with the "evolving standards of decency that mark the progress of a maturing society" and therefore unconstitutional under the Eighth Amendment. Of the 748 executions carried out in the United States over the past 15 years, only 9 (1.2%) were carried out by electrocution. Thus, execution by electrocution "is exceedingly rare and 'it is fair to say that a national consensus has developed against it.'"³

The Commonwealth of Virginia has had a history of botched executions using the electric chair. For example, during the 1982 electrocution of Frank Coppola, his flesh reportedly burned until his head and leg caught on fire; in 1990 Wilbert Lee Evans reportedly had blood spew from his face, causing blood to sizzle and for him to moan as he died; and in 1991 Derick Lynn Peterson required another jolt of electricity after a doctor learned that he did not expire from the first.

Virginia would be returning to this very cruel and barbaric practice if you sign this legislation. For these reasons, NACDL urges you to veto HB 815.

Respectfully,



Gerry Morris
President, NACDL

¹ See *Dawson v. State*, 554 S.E.2d 137, 137-44 (Ga. 2001) (death by electrocution violates Georgia's prohibition against cruel and unusual punishment); *State v. Mata*, 745 N.W.2d 229, 255-80 (Neb. 2008) (death by electrocution violates Nebraska's prohibition against cruel and unusual punishment).

² See *Poyner v. Murray*, 508 U.S. 931, 933 (1993) (opinion of Justices Souter, Blackmun, and Stevens respecting denial of certiorari).

³ *Roper v. Simmons*, 560 U.S. 48, 67 (2010) (quoting *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)).