

2000 scientific studies that have been published since 1996. These studies confirm the earlier research results that demonstrate the strong relationship between particle pollution and illness, hospitalization, and premature death. Some of the more recent studies show the strong relationship between particle pollution and cardiovascular illnesses that trigger heart attacks and strokes. These studies also indicate a stronger relationship between short term PM exposure and health effects than was evident in 1997.

Under the Clean Air Act, EPA is required to consider the advice of an independent scientific review panel, the Clean Air Science Advisory Committee, CASAC, which must include at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies. That body exhaustively reviewed the current body of scientific evidence and concluded that EPA must revise both its short term—24 hour or daily—PM standard, and its annual PM standard. Unfortunately, EPA chose to disregard that advice and proposed to only revise the daily standard. And in making its proposal on the 24-hour standard, it chose the highest level recommended by CASAC—35 micrograms per cubic meter.

It is apparent that the level proposed by EPA was not based entirely on the latest scientific knowledge. The level of the standard proposed by EPA will leave millions of Americans unprotected. It will also require few, if any, additional controls to be put in place. EPA chose the least protective approach that it could and disregarded the advice of the CASAC by failing to revise the annual standard. Had EPA followed the recommendations of CASAC, it could have proposed options that would have prevented more than twice as many deaths. That is not even considering the Clean Air Act requirement for an "adequate margin of safety" that considers "sensitive subpopulations."

Playing politics with public health is unconscionable. When these standards were last revised in 1997, they were subject to multiyear litigation battle. Ultimately the Supreme Court unanimously upheld the 1997 standards and the scientific process that was used to develop them. The science we have available to us today is even clearer than it was then. Fine particle pollution kills people at levels below the existing standards. We need to change these standards and heed the advice of our best and brightest scientific minds. We need to let them tell us when the air is safe to breathe. When EPA makes its final decision in September regarding a new national ambient air quality standard, it must do so based on scientific, rather than political considerations. The very lives of our citizens depend on it.

CAPITAL PUNISHMENT

Mr. FEINGOLD. Mr. President, we recently passed a disturbing milestone in this country. One morning just a few weeks ago in North Carolina, Kenneth Lee Boyd was put to death by lethal injection. Mr. Boyd's was the one thousandth execution since the death penalty was reinstated in 1976. While a jury decided that his guilt was not in doubt, confidence in the extraordinary punishment he received increasingly is.

Across the Nation, people are reconsidering capital punishment. Recent polls, jury verdicts, and actions taken by all three branches of government in States across the country reflect the changing attitudes about the death penalty in this country. Americans are increasingly concerned about the use of this very final punishment.

With advances in DNA technology, numerous exonerations of people on death row, and new revelations that innocent people have actually been put to death, more and more people are questioning the accuracy and fairness of the administration of the death penalty. In addition, more and more people have qualms about the very concept of state-sponsored executions. This trend is a hopeful sign, as I believe there continue to be numerous moral, ethical and legal problems with the death penalty.

According to a series of Gallup polls, opposition to the death penalty has grown from 13 percent of Americans in 1995 to 30 percent in October of this year. Think about that. In just 10 years, we went from a vast majority of Americans supporting the death penalty, to nearly one-third now opposing it. That is the highest level of opposition since its reinstatement almost 30 years ago. And a CBS News poll from April indicates that when people were asked whether they prefer the death penalty or life without parole for individuals convicted of murder, only 39 percent supported the death penalty.

Evidence of the changing attitudes about the death penalty can be seen across America. The U.S. Conference of Catholic Bishops recently launched a campaign to end the use of the death penalty. In New York earlier this year, the State's highest court struck down the State's capital punishment statute, which had passed only 10 years earlier in 1995. The legislature then declined to reinstate the law, making New York the first state to abandon capital punishment since 1976. That is a remarkable sign of progress.

Meanwhile, just over the river in Virginia, the death penalty was a key issue in the last gubernatorial election. Tim Kaine, the current Lieutenant Governor, has long been personally opposed to the death penalty, although he pledged to enforce the law in Virginia. In the final weeks before the election, his opponent Jerry Kilgore began an ad campaign that heavily criticized Kaine's opposition to the death penalty. Kilgore strongly supports capital punishment and during

the campaign he said he would push to expand its use in Virginia. But when Kilgore went after Kaine on the death penalty, Virginians did not take the bait. Despite Kilgore's attack ads, the citizens of Virginia elected Kaine Governor, and he will become Virginia's Governor in January.

I think what happened in Virginia strongly demonstrates how far we have come. This issue can no longer be used as a political grenade. A majority of Americans may not yet oppose the death penalty, but the electorate understands what a serious issue this is, and it will not stand for capital punishment to be exploited for political purposes.

Yet another example of the seriousness with which citizens and politicians alike are treating this issue is outgoing Virginia Governor Mark Warner's recent commutation of the sentence of Robin Lovitt to life in prison. Mr. Lovitt was convicted of robbery and murder and sentenced to death, but before he had exhausted all judicial remedies, a court employee destroyed the physical evidence in his case—the very evidence that Lovitt said would exonerate him if subjected to new advanced DNA analysis. Under Virginia law, the Commonwealth must keep all physical evidence until the defendant has exhausted all posttrial remedies. Although Governor Warner is a death penalty supporter, he decided that he simply could not put a man to death when the State itself had destroyed his ability to prove his innocence. As he put it, he believed that the case "require[d] executive intervention to reaffirm public confidence in our justice system." In his almost 4 years as Governor, this was the first time Governor Warner granted a clemency petition.

On the other side of the country, we have seen a great deal of public debate as Governor Schwarzenegger considered a clemency petition for Stanley Tookie Williams. Williams was a founding member of the Crips gang and was convicted of four murders in 1981. During his years in prison, however, Williams, by all accounts, worked to turn his life around. He denounced gang violence, tried to keep kids out of gangs, and even helped broker peace deals between rival gangs. Governor Schwarzenegger denied clemency and refused to commute Mr. Williams' death sentence to life without parole. The State of California put Mr. Williams to death on December 13.

Much more is happening at the State level that has not received nearly as much attention. North Carolina and California recently created commissions to study the administration of the death penalty in their respective States, joining many other states that have already done so. Moratoriums on executions remain in place in Illinois and New Jersey, and are under consideration in other States. Many State legislatures have worked to address flaws in their systems or even rejected

efforts to reinstate the death penalty. State courts have limited or banned the death penalty, including the Kansas Supreme Court, which in 2001 ruled that State's death penalty law unconstitutional. That case, *Kansas v. Marsh*, was heard in the U.S. Supreme Court just last week. Even in Texas, the State that executes by far the most people every year, a life-without-parole sentence was recently enacted, giving juries a strong alternative to the death penalty. And Texas Governor Perry also established a Criminal Justice Advisory Council to review the State's capital punishment procedures.

These signs of progress have coincided with critical new restraints imposed by the Supreme Court, which in recent years has issued two key rulings that limited the application of the death penalty. In 2002, the Court held in *Atkins v. Virginia* that applying the death penalty to mentally retarded defendants was excessive and constituted cruel and unusual punishment in violation of the Eighth Amendment. And just this year, in *Roper v. Simmons*, the Court made the same decision with regard to individuals who commit crimes before their eighteenth birthday. Capital punishment for mentally retarded defendants and juveniles is now unconstitutional in the United States.

Mr. President, as I mentioned before, there are many reasons people are questioning the death penalty in ever-increasing numbers. A common concern is that innocent people end up on death row, and we cannot tolerate errors when the state is imposing such a final penalty. More than 120 people on death row have been exonerated and released. Think about that. Just over one thousand people have been executed in the era of the modern death penalty, while a number equaling 12 percent of those executed have been exonerated. Those are not good odds, Mr. President.

Even more horrific is the prospect that we have already executed individuals who were, in fact, innocent. It saddens me greatly to report that information has come to light strongly demonstrating that two men put to death in this country in the 1990s may well have been innocent. That sends chills down my spine, as I'm sure it must for my colleagues.

Earlier this year in Missouri, local prosecutors in St. Louis reopened the case of a 1980 murder because the evidence against the man convicted of the crime had fallen apart. That man, Larry Griffin, was sentenced to death, and he was executed by the State of Missouri more than 10 years ago. Yet now, 25 years after the crime and more than 10 years after his execution, very serious questions about his guilt are being raised. CNN recently reported that a University of Michigan law professor who researched the case found that the first police officer on the scene now claims the person who testified as an eyewitness gave false testimony. A victim of the shooting, who

was never contacted before Mr. Griffin's original trial, stated that the person claiming to be an eyewitness at the original trial was not present at the scene of the crime. Samuel Gross, the Michigan law professor who supervised the new investigation of the case that led to the St. Louis Circuit Attorney's decision, was quoted as saying with regard to this man's innocence: "There's no case that I know of where the evidence that's been produced in public is as strong as what we see here."

The second case is from Texas, where a young man named Ruben Cantu was executed in 1993. He was just seventeen at the time of the murder for which he was executed. Again, in this case, the only eyewitness to the crime has recanted his statement, and told the *Houston Chronicle* that Cantu was innocent. The *Houston Chronicle* also reported that the judge, prosecutor, head juror, and defense attorney have since realized that, as the newspaper put it, "his conviction seems to have been built on omission and lies."

The loss of one innocent life through capital punishment should be enough to force all of us to stop and reconsider this penalty. These cases illustrate the grave danger in imposing the death penalty. Whatever the new evidence that might come to light, it doesn't matter. There's no going back.

Mr. President, I know that many people in this country say that it doesn't matter what other countries do or say, that we should not look abroad for ideas. But the fact is that attitudes are changing around the world about capital punishment, and the United States is in poor company internationally on this issue. We are the only Western democracy ranked in the top ten countries in executions in 2004. And increasingly, other countries are rejecting capital punishment. Over the past 10 years, according to Amnesty International, an average of three countries per year has abolished the death penalty.

In closing, I urge my colleagues to take a long, hard look at capital punishment. Years of study have shown that the death penalty does little to deter crime, and that defendants' likelihood of being sentenced to death depends heavily on whether they are rich or poor, and what race their victims were. We have experienced again and again the risks, and realities, of innocent people being sentenced to death. I believe that is it wrong for the State to put people to death, especially when we can achieve our public safety goals by sentencing them to life without parole. It is heartening to see so many people reconsidering the death penalty, and it is my hope that in time we will end it in the United States.

I yield the floor.

IRAQ

Mr. LAUTENBERG. Mr. President, over the weekend the Senate passed my resolution, S. Res. 338, to honor the

first 2,152 troops who have died in Iraq and Afghanistan by listing their names and hometowns in the CONGRESSIONAL RECORD. They deserve this tribute for their valiant support of their military obligations.

I appreciate the support of my colleagues on this measure. It is a symbolic way for us to honor each of our fallen heroes individually.

But there is another way we can honor their memory. And that is to be honest and truthful about the war in which they fought—Iraq.

The President has taken small steps toward candor on Iraq, but the denial of reality is still apparent in his speeches.

To make matters worse, the President is still making insulting insinuations about those who criticize his Iraq policy. In his Sunday night address to the nation, President Bush said:

Some look at the challenges in Iraq and conclude that the war is lost, and not worth another dime or another day.

Does this statement suggest that those who disagree with the President would not even spend a trivial amount to protect America's international interests?

The President states that the sacrifices in Iraq are made in dimes and days. But what about lives?

What about the more than two American lives given each day so far this year in Iraq? The President didn't mention that.

I have gone to many memorial services and funerals for brave, young Americans from New Jersey who died in Iraq. Seventy-three soldiers with ties to New Jersey have died in Iraq and Afghanistan.

I have also visited Walter Reed Army Hospital here in Washington several times, and I have been struck by the incredible resilience and dedication to country of those young Americans.

While these brave men and women put their lives on the line, this administration bypasses reality.

Today we know that Iraq did not pose an imminent threat to our national security. We know that there were not weapons of mass destruction. We also learned that Iraq had nothing to do with 9/11 and actually had an adversarial relationship with al-Qaida.

There is no doubt Saddam Hussein was a maniacal dictator who killed, tortured, and suppressed his own people.

But President Bush did not call for an invasion of Iraq based on Saddam's treatment of his own people. President Bush called for war with Iraq because he argued that Saddam was a direct threat to the American people.

That turned out to be untrue, plain and simple.

Now, in the wake of the administration's mishandling of this war, much of Iraq has turned into a magnet for terrorists and extremists. President Bush continues to say that Iraq is a "central