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February 28, 2024

Senator Justin Wayne, Chair, and Members of the Judiciary Committee
State Capitol, Lincoln, NE

RE: LB970 (Lippincott) – Provide for carrying out the death penalty by nitrogen hypoxia

OPPOSE: *Please include this testimony from the League of Women Voters of Nebraska as part of the public hearing record for LB970.*

Dear Senator Wayne and the Members of the Judiciary Committee:

The League of Women Voters of Nebraska stands opposed to LB970, which seeks to expand inhumane methods to kill people who are incarcerated and have been sentenced to death. On its face, the League of Women Voters supports abolition of the death penalty.¹ The League of Women Voters of Nebraska especially opposes allowing nitrogen hypoxia as a method of execution, as the method is untested, dangerous and explicitly inhumane.

The death penalty is cruel, ineffective and irreversible. According to the Death Penalty Information Center, there have been 1,583 executions in the United States since 1976.² A 2019 Gallup poll found that a majority of voters support life in prison over the death penalty for those convicted of murder.³ Moreover, most Americans believe executors carry out the death penalty unfairly, further justifying the lack of need for alternative execution methods.⁴

In January 2024, the state of Alabama executed Kenneth Smith using nitrogen gas. This was the second effort to kill Mr. Smith, after hours of attempting lethal injection failed in November 2022. The American Veterinary Medical Association has deemed execution by nitrogen hypoxia as unacceptable for all mammals as it could be painful for the animal.⁵

This fact stands, and yet, Alabama deliberately made history as the first state to complete an execution of this kind. This leaves a black mark on Alabama's history – not so different from the blacked out redactions peppering the Alabama Department of Corrections execution protocol for death by nitrogen hypoxia.⁶

Alabama allows spiritual advisers in the room while execution teams kill those sentenced to death. Death by nitrogen hypoxia is so untested that Alabama's execution protocol requires spiritual advisers to sign an acknowledgement form before being allowed to be present in the execution chamber. This is not the case for death by lethal injection or electrocution.

The spiritual adviser for Kenneth Smith was required to stand at least three feet away from Mr. Smith to mitigate the risk of inhaling gas seeping out of the mask covering Mr. Smith's face.⁷

The LWVNE stands strongly opposed to LB970 and urges the Judiciary Committee to stick to the facts. The death penalty remains an outdated and ineffective method of deterrence and should be abolished. Nitrogen hypoxia is a dangerous, untested method of execution that Nebraska does not need. Please do not advance LB970 to General File.

Thank you for considering our position.

Sincerely,

Mary Kelly, Social Policy Action Team, LWVNE
Cat Henning and Krystal Fox, Co-Directors of Social Policy, LWVNE
Rachel Gibson, Vice President-Action, LWVNE
MaryLee Moulton and Janelle Stevenson, Co-Presidents, LWVNE

¹League of Women Voters of the United States. (2023, April 4). Impact on issues: A guide to public policy positions of the League of Women Voters. (2022- 2024), p. 160.

https://www.lwv.org/sites/default/files/2023-02/LWV_ImpactOnIssues2022-2024.pdf

²Death Penalty Information Center. (2024, February 14). Facts about the death penalty. <https://dpic-cdn.org/production/documents/pdf/FactSheet.pdf>

³Jones, J. M. (2019, November 25). Americans now support life in prison over death penalty. *Gallup.com*. <https://news.gallup.com/poll/268514/americans-support-life-prison-death-penalty.aspx>

⁴Death Penalty Information Center. (2023, December 1). The death penalty in 2023: Year end report. <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2023-year-end-report>

⁵American Veterinary Medical Association. (2020). AVMA guidelines for the euthanasia of animals: 2020 edition. <https://www.avma.org/sites/default/files/2020-02/Guidelines-on-Euthanasia-2020.pdf>

⁶Alabama Department of Corrections Execution Procedures. (2023, August). Lethal injection, nitrogen hypoxia, execution, pp. 14-21, 28, 30-40. https://dpic-cdn.org/production/documents/AI_Lethal_Gas_Execution_Protocol_2023_08.pdf?dm=1693938490

⁷Eisner, C., Hardyman, B., & Caldwell, N. (2024, January 25). Alabama executes man by nitrogen gas for the first time in the U.S. *NPR*. <https://www.npr.org/2024/01/25/1226936713/alabama-execution-kenneth-smith>