



Equal Justice Initiative ([www.eji.org](http://www.eji.org))

## Court is Right: Juries Should Make Decision

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EDITORIAL

Surely, Monday's U.S. Supreme Court ruling, in which the justices said that judges alone should not impose the death penalty, didn't come as a surprise to Alabama legislators. Legal experts and other concerned observers, including the Register's editorial board, have for years urged state leaders to change the law.

Regrettably, legislators didn't act, even though both common sense and moral sense dictate that no single man or woman -- regardless of how wise he or she might be -- should have the power to sentence a person to death.

Now, Alabama is among several states that apparently will have to reconsider dozens of death-penalty cases -- and all because it has clung to a law that allows circuit judges to overrule a jury's recommendation for life-without-parole, and instead order death.

The Supreme Court's ruling immediately affects 150 killers in five states where the judge sentences inmates instead of the jury. Experts quickly predicted it would also affect four other states, including Alabama, where the jury makes a sentencing recommendation but the final decision is made by the judge.

State Rep. Marcel Black, a Tuscumbia Democrat who is chairman of the House Judiciary Committee, said legislators have considered eliminating the practice, known as "judicial override," but the change has never made it "through the process." Now, as they wait for the legal dust to settle around the Supreme Court's ruling, state lawmakers can begin readying legislation that will bring Alabama into compliance.

Then the state will be more closely following the Western ideal that life-and-death judicial decisions should be based on communal consensus, as represented by a unanimous jury. For a judge to overrule the jury is to interfere with the defendant's constitutional guarantee of judgment by his or her peers.

Indeed, judicial override is unfair to the defendant, the jury and the judge. Think about what nearly happened in the 1990s to Monroeville resident Walter McMillian, who was convicted of murder.

The jury recommended life imprisonment without parole, but the judge upped the sentence to death. Before the sentence could be carried out, evidence surfaced that showed Mr. McMillian wasn't guilty of the crime. Had he been executed, the judge would have been solely responsible for the death of an innocent man.

Death penalty supporters -- whose numbers, according to pollsters, include most Alabamians -- need not fear that Monday's ruling will undermine the constitutionality of capital punishment itself, just as they need not fear last week's Supreme Court decision exempting mentally retarded people from execution. The court did not speak to that issue in either ruling.

Nor have current members of the court shown any indication that they want to overrule the laws of the 38 states that permit execution. What they are doing with their latest decisions is clarifying the circumstances under which capital punishment can be administered.

And that's wholly appropriate.

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