



TO: Judiciary Committee
FROM: Tom Venzor, Executive Director
Nebraska Catholic Conference
DATE: January 31, 2025
RE: LB432 (Death Penalty & Nitrogen Hypoxia) (Oppose)

The Nebraska Catholic Conference advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public.

For both principled and practical reasons, the Nebraska Catholic Conference opposes LB970, which creates a new method of executing human beings through the use of nitrogen hypoxia.

The Bishops in Nebraska have been strongly opposed to the use of the death penalty for several decades now, and it's important to state the principles for this opposition.

The traditional teaching of the Catholic Church does not condemn the use of the death penalty in principle. The death penalty is not regarded as intrinsically immoral. Recourse to the death penalty is not excluded from the right and duty of the state to defend society from unjust aggressors. This teaching is rooted in both natural human reason and Sacred Scripture and the Tradition of the Christian faith.

Nevertheless, Catholic teaching also applies an important consideration for *using* the death penalty: if non-lethal means are sufficient to defend the innocent and preserve public order and safety, then public authority should limit itself to such means, as they are more in keeping with the common good and more in conformity with the dignity of human life.¹ As Pope St. John Paul II articulated in his 1995 encyclical, *The Gospel of Life*: Is the death penalty absolutely necessary for the protection of public safety? Are there no other means by which to defend society from an unjust aggressor?²

More recently, Pope Francis has further applied the Church's traditional teaching and reached the conclusion that "the death penalty is inadmissible because it is an attack on the inviolability and dignity of the person" and that we should "work[] with determination for its abolition worldwide."³

As a practical matter, the Nebraska Catholic Conference is concerned about the use of nitrogen hypoxia. First, the use of nitrogen hypoxia to execute human beings is a new phenomenon that raises serious concerns about its safety and humanity. Recently, Alabama was the first state to

¹ *Catechism of the Catholic Church* 2267.

² *The Gospel of Life* 56.

³ "New Revision of Number 2267 of the *Catechism of the Catholic Church* on the Death Penalty," available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20180801_catechismo-penadimorte_en.html (last accessed on January 30, 2025).

use nitrogen hypoxia to execute Kenny Eugene Smith. The Catholic Mobilizing Network, a national organization that seeks to end the use of the death penalty had the following observations about Mr. Smith's execution:

Kenny was restrained to a gurney with an industrial grade-respirator mask strapped to his face. The valve on the respirator was closed, and pure nitrogen gas was forced into the mask. Without oxygen, Kenny suffocated to death.

Alabama officials touted the method saying it would be the most 'humane' way to put someone to death. What witnesses saw was different.

For 22 minutes they reported seeing Kenny writhe, trash, and jerk against his restraints. They saw him heave within his mask and gasp for breath.⁴

Additionally, while the NCC is appreciative for Sen. Lippincott's efforts on religious liberty in other contexts, we are concerned about an unintended consequence that implicates how death row inmates may be unable to access a chaplain during their execution.

In *Ramirez v. Collier*, a 2022 U.S. Supreme Court case related to an inmates access to a chaplain at the time of execution, the Court held that "Texas's restrictions on religious touch and audible prayer in the execution chamber violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) because they burden religious exercise and are not the least restrictive means of furthering the state's compelling interest."⁵ The Court easily decided this case on an 8-1 vote.

But, in Alabama, their execution protocol questionably affects the extent to which a chaplain could be present at the time of execution. The protocol requires that "no spiritual advisor or alternate spiritual advisor shall be allowed in the execution chamber unless they review and sign the spiritual advisor nitrogen hypoxia acknowledgement form."⁶ These concerns over safety are in addition to other aspects of the protocol prohibiting staff members from entering the area of execution, unless certain conditions are met.⁷ Assuming Nebraska would adopt similar protocol if LB432 were adopted, the NCC would be seriously concerned about the religious liberty implications of death row inmates having access to their chaplain at a critical moment of their life: the point at which they will leave this life and enter into eternal life.

For the preceding reasons, the NCC respectfully requests that you indefinitely postpone LB432. Thank you for your time and consideration.

⁴ "Kenny Smith Executed by Nitrogen Hypoxia in Alabama," accessible at <https://catholicmobilizing.org/kenny-smith-executed-by-nitrogen-hypoxia-in-alabama/>.

⁵ *Oyez, Ramirez v. Collier*, accessible at <https://www.oyez.org/cases/2021/21-5592>.

⁶ 2023 version of the protocol is accessible here: https://dpic-cdn.org/production/documents/Al_Lethal_Gas_Execution_Protocol_2023_08.pdf?dm=1693938490.

⁷ Death Penalty Information Center, "Use of Nitrogen Hypoxia for Alabama Executions Could Endanger Spiritual Advisors and Prison Staff in the Execution Chambers," October 24, 2023, available at <https://deathpenaltyinfo.org/news/use-of-nitrogen-hypoxia-for-alabama-executions-could-endanger-spiritual-advisors-and-prison-staff-in-the-execution-chamber> ("The protocol holds that no staff member may enter the chamber unless the following criteria are satisfied: a wall-mounted display showing at least 19.5% oxygen in the atmosphere, a staff member observing the door outside 'from a safe distance,' and an additional staff member standing at the door to 'ensure the safety' of any staff engaging with the gas system.").