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Seeking an End to an Execution Law They Once Championed

By **ADAM NAGOURNEY**

PLACERVILLE, Calif. — The year was 1978, and the California ballot bristled with initiatives for everything from banning gay teachers to cracking down on indoor smoking. Both lost. But one, Proposition 7, sailed through: expanding the state's death penalty law to make it among the toughest and most far-reaching in the country.

The campaign was run by Ron Briggs, today a farmer and Republican member of the El Dorado County Board of Supervisors. It was championed by his father, John V. Briggs, a state senator. And it was written by Donald J. Heller, a former prosecutor in the New York district attorney's office who had moved to Sacramento.

Thirty-four years later, another initiative is going on the California ballot, this time to repeal the death penalty and replace it with mandatory life without parole. And two of its biggest advocates are Ron Briggs and Mr. Heller, who are trying to reverse what they have come to view as one of the biggest mistakes of their lives.

Partly, they changed their minds for moral reasons. But they also have a political argument to make.

“At the time, we were of the impression that it would do swift justice, that it would get the criminals and murderers through the system quickly and apply them the death penalty,” Mr. Briggs, 54, said over tea in the kitchen at his 100-acre farm in this Gold Rush town, where he grows potatoes, peppers, melons, cherries and (unsuccessfully, so far) black Périgord truffles.

“But it's not working,” he said. “My dad always says, admit the obvious. We started with 300 on death row when we did Prop 7, and we now have over 720 — and it's cost us \$4 billion. I tell my Republican friends, ‘Close your eyes for a moment. If there was a state program that was costing \$185 million a year and only gave the money to lawyers and criminals, what would you do with it?’ ”

California is not the first state to reconsider the death penalty in an era of questions about its morality and effectiveness. And even with these unusual advocates — and a new argument, that

the death penalty has cost the state a fortune but produced only 13 executions in 34 years — the repeal faces tough going.

This is a state with a history of colorful crimes and criminals; polls here invariably find strong support for executions. Indeed, the older Mr. Briggs says that, unlike his son, his mind remains unchanged.

But Ron Briggs and Mr. Heller bring to this campaign a powerful and evocative story: a bid for personal redemption and a call for renewed consideration of the arguments they themselves once made in favor of the death sentence.

“It’s been a colossal failure,” Mr. Heller said in his Sacramento office. “The cost of our system of capital punishment is so enormous that any benefit that could be obtained from it — and now I think there’s very little or zero benefit — is so dollar-wasteful that it serves no effective purpose.”

Mr. Heller said that when the elder Mr. Briggs asked him to draft the initiative, using skills he learned working for the legendary Manhattan district attorney Frank S. Hogan, he wholeheartedly supported executions. “The fact that it was upheld every time it went to the Supreme Court shows it was well drafted,” Mr. Heller said ruefully. “I don’t take pleasure in that anymore.”

The two men add a personal element to a death penalty debate that is clearly evolving here, as opponents marshal an argument of waste in a state that is bleeding money. A [report](#) last year found that California was spending \$184 million a year on a cottage industry of lawyers, expert witnesses and supersecure prisons to deal with the death row population created by Proposition 7.

“The cost is the most politically neutral argument,” said Paula M. Mitchell, a Loyola Law School professor and one of the authors of the report. “We’ve debated the morality of the death penalty for decades. We’ve tried very hard to focus on the objective cost issue, because that’s something that people who differ on all the other issues can reach a consensus on.”

Mr. Briggs said that argument “is going to capture a lot of Tea Partiers.” He continued: “Conservative Republicans should take a real hard look at it. I’m going to do my best to make sure they do. I have very good conservative credentials.”

A [Field Poll in September](#) found a jump in the number of Californians who would favor life without parole over the death penalty for someone convicted of first-degree murder, to 48 percent last year from 37 percent in 2000. Still, over all, 68 percent said they supported the

death penalty for serious crimes. The report said that keeping inmates in prison for life would cost substantially less than executing them.

“Whenever you just ask about the death penalty in and of itself, the public continues to support it,” said Mark DiCamillo, the director of the Field Poll. So the attempt to rescind it is “going up against established opinion, which is a tall order,” he said.

Kent Scheidegger, the legal director for the [Criminal Justice Legal Foundation](#), which supports the death penalty, said cost “is probably the only argument that has any chance. The people have heard all the other arguments for years, and it has never gotten any traction.”

But he added: “Justice is what we have government for. Why forgo justice for dollars?”

Mr. Briggs and Mr. Heller are not the only high-profile names associated with the campaign to end executions. Jeanne Woodford, a former warden at San Quentin State Prison, is one of the leaders, along with Gil Garcetti, a former Los Angeles district attorney. “We’re laying off teachers, we’re laying off firefighters,” Mr. Garcetti said. “This is crazy.”

Mr. Briggs said his views began to change after he learned about the case of a woman who had been shot and sexually assaulted in 1981. The attacker — who also killed a woman in the assault — remains entangled in appeals, forcing the victim to continue to face him. “I just thought about the horror for her that we did,” he said. “He committed a crime in ’81. What a lousy system.”

The other factor? “I started going back to church,” said Mr. Briggs, a Roman Catholic.

When he wrote the initiative, Mr. Heller said, he gave no thought to its cost. “I am convinced now that it has never deterred anyone from committing a murder,” he said. “In my mind, I realized what I did was a big mistake.”

The older Mr. Briggs, who is 82, was nationally known as an advocate of conservative causes, especially an initiative, which failed to pass, requiring the dismissal of homosexuals who worked as schoolteachers. Leaning out the window of his pickup truck along a narrow road on the farm, Mr. Briggs said the other day that he was as sure of the death penalty today as he was in 1978.

“One guy said to me, ‘How do you know it works?’ ” he said. “ ‘Well,’ I said, ‘I went to see Aaron Mitchell get executed, and I never read in the paper that he ever killed anybody again.’ ” He was referring to a man executed in 1967 for killing a police officer.

“It’s the system that doesn’t work,” Mr. Briggs said. “Your car’s not working either if you can’t turn the damn key on, and they’ve turned the damn key off.”

How will he vote on his son’s initiative? “I’m going to vote no,” Mr. Briggs said with a laugh,

flipping the ignition on his truck.

Not that Ron Briggs has given up. "I have made it my mission to get his support for life without parole," he said. "That may be a high bar, but that's my mission."

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