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NORCOTT, J., dissenting. I continue to “maintain my position that the death penalty has no place in the jurisprudence of the state of Connecticut.”¹ *State v. Ross*, 269 Conn. 213, 392–93, 849 A.2d 648 (2004) (*Norcott, J.*, dissenting). Thus, I disagree with the majority’s analysis in part IX of its opinion, rejecting the arguments of the defendant, Todd Rizzo, in support of reconsideration of this court’s previous decisions² upholding the constitutionality of the death penalty under article first, §§ 8 and 9, of the Connecticut constitution. I therefore respectfully dissent from the judgment of this court affirming the judgment of the trial court sentencing the defendant to death by lethal injection.

As in my past dissenting opinions; see footnote 1 of this dissenting opinion; I do not intend to reiterate in full the reasoning behind my belief that the death penalty “per se is wrong,” “violates the state constitution’s prohibition against cruel and unusual punishment . . . [and] that our statutory scheme for the imposition of the death penalty cannot withstand constitutional scrutiny because it allows for arbitrariness and racial discrimination in the determination of who shall live or die at the hands of the state.” *State v. Cobb*, 251 Conn. 285, 543, 743 A.2d 1 (1999) (*Norcott, J.*, dissenting), cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000). Rather, I pause to reflect on my previously expressed “optimis[m] that very early in the twenty-first century we will all witness the abolition of [the death penalty] by Connecticut as a state and the United States as a country.” *State v. Webb*, 252 Conn. 128, 147, 750 A.2d 448 (*Norcott, J.*, dissenting), cert. denied, 531 U.S. 835, 121 S. Ct. 93, 148 L. Ed. 2d 53 (2000); see also *State v. Cobb*, supra, 552 (*Norcott, J.*, dissenting) (“with the alternative of life imprisonment without the possibility of parole as a penalty, the continuation of the death penalty simply makes no sense as we approach a hopefully more enlightened new millennium”). Recent history has, however, shown that my predictive abilities are no better than those of any other court. Indeed, my optimism waned significantly six years ago, when I found myself questioning, on the eve of an execution, whether “our thirst for this ultimate penalty [has] now been slaked, or do we, the people of Connecticut, continue down this increasingly lonesome road?” *State v. Ross*, 273 Conn. 684, 723, 873 A.2d 131 (2005) (*Norcott, J.*, concurring and dissenting).

Part IX of the majority’s opinion in the present case, coupled with the subsequent failures of two legislative measures that would have repealed the death penalty,³ has, to my regret, answered the rhetorical question that I asked in 2005. Although the scholarship and drafting of the majority’s opinion is beyond reproach as a technical

matter, it nevertheless leaves Connecticut in step with much of the United States,⁴ which, in 2010, trailed only China, Iran, North Korea and Yemen with respect to the number of reported executions.⁵ See Amnesty International, Report: Death Sentences and Executions 2010 (2011), p. 41, available at <http://www.amnesty.org/en/library/asset/ACT50/001/2011/en/ea1b6b25-a62a-4074-927d-ba51e88df2e9/act500012011en.pdf> (last visited November 17, 2011). Given this company;⁶ see *State v. Allen*, 289 Conn. 550, 585, 958 A.2d 1214 (2008) (international practices relevant to constitutional question of whether particular penalty constitutes cruel and unusual punishment); I therefore remain disappointed that a majority of this court continues to decline to declare the death penalty unconstitutional under the Connecticut constitution, and continue to respectfully dissent from its failure to do so.

I would reverse the judgment of the trial court sentencing the defendant to death by lethal injection, and remand the case to the trial court with direction to impose a sentence of life imprisonment without the possibility of release.

¹ See *State v. Ross*, 273 Conn. 684, 721, 873 A.2d 131 (2005) (*Norcott, J.*, concurring and dissenting); *State v. Peeler*, 271 Conn. 338, 464, 857 A.2d 808 (2004) (*Katz, J.*, with whom *Norcott, J.*, joins, dissenting), cert. denied, 546 U.S. 845, 126 S. Ct. 94, 163 L. Ed. 2d 110 (2005); *State v. Ross*, supra, 269 Conn. 392–93 (*Norcott, J.*, dissenting); *State v. Breton*, 264 Conn. 327, 446–49, 824 A.2d 778 (*Norcott, J.*, dissenting), cert. denied, 540 U.S. 1055, 124 S. Ct. 819, 157 L. Ed. 2d 708 (2003); *State v. Webb*, 252 Conn. 128, 147, 750 A.2d 448 (*Norcott, J.*, dissenting), cert. denied, 531 U.S. 835, 121 S. Ct. 93, 148 L. Ed. 2d 53 (2000); *State v. Griffin*, 251 Conn. 671, 742–48, 741 A.2d 913 (1999) (*Norcott, J.*, dissenting); *State v. Ross*, 251 Conn. 579, 597, 742 A.2d 312 (1999) (*Norcott, J.*, dissenting); *State v. Cobb*, 251 Conn. 285, 543–52, 743 A.2d 1 (1999) (*Norcott, J.*, dissenting), cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000); *State v. Webb*, 238 Conn. 389, 566–70, 680 A.2d 147 (1996) (*Norcott, J.*, dissenting); see also *State v. Ross*, 272 Conn. 577, 613, 863 A.2d 654 (2005) (*Norcott, J.*, concurring); *State v. Rizzo*, 266 Conn. 171, 313–14, 833 A.2d 363 (2003) (*Norcott, J.*, concurring); *State v. Courchesne*, 262 Conn. 537, 583–84, 816 A.2d 562 (2003) (*Norcott, J.*, concurring).

² See, e.g., *State v. Webb*, 238 Conn. 389, 405–406, 680 A.2d 147 (1996); *State v. Ross*, 230 Conn. 183, 249–52, 646 A.2d 1318 (1994), cert. denied, 513 U.S. 1165, 115 S. Ct. 1133, 130 L. Ed. 2d 1095 (1995).

³ See Senate Bill No. 1035, 2011 Sess., “An Act Revising the Penalty for Capital Felonies” (died prior to receiving floor vote); Public Acts 2009, No. 09-107 (legislation vetoed by former Governor M. Jodi Rell).

⁴ As the majority notes, thirty-four states, plus the federal government and military, have the death penalty. Connecticut and New Hampshire are the only states in the New England region with the death penalty. See generally Death Penalty Information Center, “Facts About the Death Penalty,” available at <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf> (last visited November 17, 2011).

⁵ The remainder of the top ten countries with respect to the number of reported executions in 2010 consists of Saudi Arabia, Libya, Syria, Bangladesh and Somalia. See Amnesty International, Report: Death Sentences and Executions 2010 (2011), p. 41, available at <http://www.amnesty.org/en/library/asset/ACT50/001/2011/en/ea1b6b25-a62a-4074-927d-ba51e88df2e9/act500012011en.pdf> (last visited November 17, 2011).

⁶ Cf. Aesop’s Fables, “The Ass and His Purchaser” (“[a] man is known by the company he keeps”), available at <http://etext.virginia.edu/toc/modeng/public/AesFabr.html> (last visited November 17, 2011).