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**Title:** Resolution commending the New York State Court of Appeals for ruling that the state's death penalty sentencing procedures are unconstitutional and calling upon the Governor and the State Legislature to uphold and support this decision.

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Res. No. 472

Resolution commending the New York State Court of Appeals for ruling that the state's death penalty sentencing procedures are unconstitutional and calling upon the Governor and the State Legislature to uphold and support this decision.

By Council Member Lopez

Whereas, The death penalty was reinstated in 1995 as a result of legislation passed by the New York State Legislature; and

Whereas, A provision of this 1995 law states that a judge must instruct jurors in capital cases that if they deadlock, it is the judge's duty to impose a sentence that would leave the defendant eligible for parole after serving 20 to 25 years; and

Whereas, On June 24, 2004, the New York State Court of Appeals ruled, in a 4-3 decision, that such instruction represented improper coercion of jurors to vote for execution, as jurors may vote to put a defendant to death rather than risk a deadlock; and

Whereas, In writing the majority opinion, Judge George Bundy Smith stated, "The deadlock instruction gives rise to an unconstitutionally palpable risk that one or more jurors who cannot bear the thought that a defendant may walk the streets again ... will join jurors favoring death in order to avoid the deadlock sentence"; and

Whereas, The high court's decision spares the life of four men on death row; and

Whereas, This decision also removes the possibility of the death penalty for nine defendants who were facing the death penalty if convicted; and

Whereas, However, despite the merits of this decision, Governor Pataki characterized this recent ruling as a “disappointing decision”; and

Whereas, State Senate Majority Leader Joseph Bruno has also publicly commented that he will consult with Governor Pataki to craft legislation which would satisfy the objections to the death penalty law the court raised; and

Whereas, It is critical, however, that the Governor and State Legislature reflect upon the immutable impact of the death penalty and the necessity for its demise; and

Whereas, The authorized methods of execution are inhumane, and include lethal injection in 37 states, electrocution in 10 states, the gas chamber in 11 states, hanging in three states, and a firing squad in 2 states; and

Whereas, In 2002, 71 persons in 13 States were executed -- 33 in Texas; 7 in Oklahoma, 6 in Missouri; 4 each in Georgia and Virginia, 3 each in Florida, South Carolina, and Ohio; 2 each in Alabama, Mississippi, and North Carolina; and 1 each in Louisiana and California; and

Whereas, Many persons in the United States have been wrongfully convicted and have been sentenced to death for crimes that they did not commit; and

Whereas, Since 1973, over 100 people have been released from death rows throughout the country after evidence of their wrongful convictions emerged, including 13 of whom were exonerated by DNA evidence; and

Whereas, Advocacy groups have cited several factors that have led to wrongful convictions such as inadequate legal representation, police and prosecutorial misconduct, perjured testimony and mistaken eyewitness testimony, racial prejudice, tainted jailhouse "snitch" testimony, suppression of mitigating evidence and misinterpretation of evidence, and community pressure; and

Whereas, For example, in September 1999, Charles Munsey won a new trial after being imprisoned for six years and sentenced to death for a crime to which another man confessed; and

Whereas, In 2002, Nicholas Yarris, convicted of murder, rape and abduction, was sentenced to death and was imprisoned for 17 years until DNA testing exonerated him for these crimes; and

Whereas, Around the nation, lawmakers are proposing and enacting changes to the death penalty; and

Whereas, For example, the state Supreme Court of Kansas overturned all death sentences in 2002 stating fundamental fairness flaws in the state legislation; and

Whereas, In 2000, the state of Illinois halted executions after the 13<sup>th</sup> death row prisoner, Steve Manning, was exonerated for a murder for which he had been convicted; and

Whereas, In 2002, Maryland Governor Parris Glendening followed, and announced the nation's first state-wide death penalty moratorium citing concerns regarding the issue of racial bias in Maryland's death penalty system; and

Whereas, In Maryland, 67% of the people on death row are African-American, the highest percentage of any state death row, and according to the Uniform Crime Report, in 1998, 81% of the state's homicide victims were African-American, yet 84% of death sentences resulted from cases involving white victims; and

Whereas, According to Amnesty International, since 1977, the majority of death row defendants, over 80%, have been executed for killing white victims, although African-Americans make up about 50% percent of all homicide victims; and

Whereas, The U.S. General Accounting Office, in a 1990 study, also found a “pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty”; and

Whereas, This U.S. General Accounting Office study concluded that a defendant was several times more likely to be sentenced to death if the murder victim was white, in fact, holding all other factors constant, the single most reliable predictor, the study found, of whether someone will be sentenced to death is the race of the victim; and

Whereas, The state of New York should not embrace the death penalty as a means of restitution, as studies and case law have proven the death penalty to be an unjust punishment; now, therefore, be it

Resolved, That the Council of the City of New York commend the New York State Court of Appeals for ruling that the state’s death penalty sentencing procedures are unconstitutional, and call upon the Governor of the state of New York, George Pataki, and the New York State Legislature to uphold and support this decision.

MK  
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