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Guest Column: Perdue must veto Racial Justice Act repeal By FRANK R. BAUMGARTNER

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The past few weeks have seen a remarkable effort of lobbying by the N.C. Conference of District Attorneys, culminating in the vote by the legislature to repeal the Racial Justice Act (RJA), a law that the DAs do not like and do not want to see enforced. And, indeed, the law creates a fundamental new right, though only for an extremely small set of petitioners, those 157 individuals who currently sit on death row. The RJA allows their lawyers to present evidence of statistical patterns of racial bias across the state or in any particular jurisdiction. They need not demonstrate a discriminatory intent in their individual case, and this is the element that is the subject of appeal. (The only relief, if we can call it that, available to inmates who demonstrate bias is that a death sentence will be replaced with a penalty of life without the possibility of parole. Opponents to the RJA have attempted to raise doubts on this issue, but those should be considered scare tactics, as the law is clear: No one will go free.)

The RJA is a truly innovative and important piece of legislation in that it specifically allows the statistical arguments that the repeal now eliminates.

A large state-wide study suggests that, controlling for other factors, those with white victims are more than twice as likely to receive a death sentence compared to those who kill minorities. Further and perhaps more shocking, African-American citizens otherwise qualified to serve on capital juries are rejected at much higher rates than whites; many of those on death row were sentenced by juries with no minorities, whereas our population is more than 20 percent African-American. In January 2012, hearings are scheduled in Cumberland County to address these issues. In contrast to claims that the law will clog the court system with needless claims, a single case is going forward. If it is found to be baseless, a judge will so decide. If the evidence is convincing to the court, then we should all be concerned.

In any case, the repeal sits now on the desk of Gov. Bev Perdue. If our state has a pattern of unequal application of the death penalty, biased by race, she should veto the repeal. If the RJA created a frivolous and unneeded right that will only be exploited by condemned murderers grasping at straws, then she should sign the legislation. Here I can add some new information based on a simple study, and it strongly suggests that, like it or not, race continues to matter in the application of capital punishment.

Our state has executed 43 individuals since the death penalty was reinstated in 1976. The Department of Correction website lists all 43, along with the race and gender of their victims.

There are 56 victims: 24 white females, 20 white males, 8 black females, 2 black males, and 2 American Indian males. In percentage terms those numbers translate into 79 percent white victims.

From 1976 to 2008, according to official statistics, North Carolina had more than 19,500 victims of homicide. Not all these murders were of course "death-eligible" crimes. But it is instructive to compare who are the victims of murder, and then which murders ultimately lead to an execution. Here the numbers are shocking: Among all victims of homicide, 42 percent are black males; 29 percent white males; 13 percent white females; 10 percent black females; and 5 percent other or unknown. While 79 percent of the victims of those executed are white, just 42 percent of victims overall are white. Blacks are 52 percent of the victims overall, but only 18 percent of the victims of those who are later executed. Only one inmate in our state has been executed for the crime of killing a single black male victim, and yet black males are by far the most common victims of homicide. These deaths, apparently, do not merit the death penalty.

We can debate whether the RJA is a well-designed law. We can debate whether we can ever expect our criminal justice to operate in a way that is truly neutral with respect to race. But it is hard to argue that the state should execute any individual if there is a pattern of racial bias in these decisions. Courts regularly consider statistical evidence when they look at violations of the Voting Rights Act, in housing discrimination and in employment-discrimination cases. Rather than amend the RJA by eliminating the analysis of these patterns, the courts should be allowed to rule on whether we do indeed have such a pattern of discrimination, and if they find that we do, then we should all applaud the decision to take corrective action.

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<http://www.unc.edu/~fbaum/Innocence/NC/Racial-discrepancies-NC-homicides-executions.pdf>

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