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Via Electronic Mail (laquandra.smith@pap.state.ga.us)

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State Board of Pardons and Parole
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RE: Clemency Hearing for Keith Leroy Tharpe

Dear Ms. Smith:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I respectfully submit this letter urging the Board to grant mercy to Keith Leroy Tharpe, who is scheduled to be executed on Tuesday for the September 1990 murder of his sister-in-law Mrs. Jaqueline Freeman.

Although Georgia law permits the death penalty in certain circumstances, the Georgia Supreme Court has stressed that it prohibits “any death penalty based on ‘passion, prejudice, or any other arbitrary factor.’” *Conner v. State*, 251 Ga. 113, 121 (1983) (quoting OCGA § 17–10–35(c)(1)). At the heart of the “‘passion’ proscribed by [Georgia] law” is “that engendered by racial prejudice.” *Id.* In other words, a defendant must not be executed if his death sentence is infected by racial prejudice.

That is precisely the situation here. Mr. Barney Gattie, one of the jurors at Mr. Tharpe’s trial, later admitted that his vote for death was influenced by Mr. Tharpe’s race. *See* Clemency Petition at 45. According to Mr. Gattie, Black people can be divided into two categories, “Black folks,” and “Ni**ers”; Mr. Gattie believed Mr. Tharpe “should get the electric chair” because he did not fall into “‘good’ black folks category.” *Id.* Mr. Gattie further stated: “After studying the Bible, I have wondered if black people even have souls.” *Id.*

An “‘individualized sentencing decision is essential in capital cases,’” *Conner*, 251 Ga. 118 (citation and alteration omitted), which means that jurors must make a



“reasoned moral response to the defendant’s background, character and crime,” *Barnes v. State*, 269 Ga. 345, 358 (1998). A juror who doubts whether Black people have souls cannot make a reasoned, moral judgment about whether a Black defendant such as Mr. Tharpe should face the ultimate sanction.

As Mr. Tharpe recognizes, Mr. Gattie’s statements do not reduce the gravity of Mr. Tharpe’s crime or his culpability for it. *See* Clemency Petition at 49. Mr. Gattie’s statements do make clear that Mr. Tharpe’s death sentence is infected by racial discrimination. As such, it is invalid under Georgia law. As the case is being litigated in court, the State has nonetheless argued that procedural bars prevent the courts from considering this fundamental issue on the merits. This Board faces no such barriers to doing justice, and the State’s position highlights why clemency is appropriate. “Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted.” *Herrera v. Collins*, 506 U.S. 390, 411-12 (1993).

We respectfully urge the Board to exercise mercy in Mr. Tharpe’s case.

Sincerely yours,

s/ Samuel Spital

Sam Spital
Director of Litigation