

DISTRICT OFFICES:

4434 AMBOY RD., 2ND FLOOR
STATEN ISLAND, NY 10312
(718) 356-8400
(718) 356-1928 (FAX)

9818 FOURTH AVENUE
BROOKLYN, NY 11209
(718) 630-5277
(718) 630-5388 (FAX)

Congress of the United States
House of Representatives
Vito Fossella
13th District, New York

CAPITOL OFFICE:

1239 LONGWORTH BUILDING
WASHINGTON, DC 20515-3213
(202) 225-3371
(202) 226-1272 (FAX)

E-MAIL ADDRESS:
vito.fossella@mail.house.gov

June 25, 2004

The Honorable Sheldon R. Silver
Speaker
New York State Assembly
932 Legislative Office Building
Albany, NY 12248

By Facsimile and Regular Mail

Dear Speaker Silver:

In 1965, New York State abolished capital punishment. In the following decades, crime rates soared and the public sought its reimposition. In 1995, following years of gubernatorial vetoes, the Senate and Assembly passed and the Governor signed legislation reinstating capital punishment. Since that time, New York State and City have witnessed record declines in crime.

Yesterday, the New York State Court of Appeals issued its decision in the case of **The People of the State of New York v. LaValle**, and declared New York's capital punishment law unconstitutional under the New York State Constitution. The majority of the court stated that the law's requirement to inform the jury of the consequences of a deadlock during the penalty phase violated the State Constitutional requirements banning coercive verdicts.

While we could debate the merits of this opinion, the LaValle decision may have immediate adverse consequences upon our ability to fight crime and deter terrorism unless quick action is taken.

It is my understanding that there are currently 9 capital punishment cases pending in New York State. One of those cases involves the brutal murder of two undercover police officers on Staten Island. On March 10, 2003, Ronell Wilson is alleged to have shot Detectives Rodney Andrews and James Nemorin in the back of the head during a sting operation. The Richmond County District Attorney's office has sought the death penalty in this case. The murder of these two fine Detectives deserves the appropriate punishment.

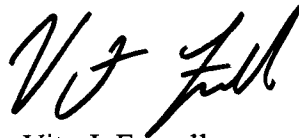
Under federal law, certain acts are considered capital crimes and the death penalty may be imposed. However, under Title 18, Section 3596 of the United States Code, a State which does not provide for the implementation of a death sentence may force the trial court to designate another State, which does provide for the implementation of the death sentence, to be the location under which the sentence may be carried out.

Needless to say, this may cause undue confusion among the Courts and provide further grounds for what sometimes seems to be an endless appeals process. In practical terms, the consequences are more startling. As we are only too well aware, the terrorist attacks of September 11, 2001, resulted in the largest mass murder in New York and United States history. If Osama bin Laden was to be captured, tried and prosecuted by the United States Attorney for the Southern District of New York and convicted of capital crimes, he could not be executed in New York State. For New York, the ultimate justice would be denied.

Accordingly, I would respectfully request that the New York State Senate and Assembly reconvene to address the concerns of the New York State Court of Appeals and pass capital punishment legislation that will pass muster under the New York State and United States Constitutions. This will provide New York State residents with the level of protection that they have come to expect and deserve.

Thank you for your consideration in this matter and I hope to hear from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "V J Fossella". The signature is written in a cursive, flowing style.

Vito J. Fossella
Member of Congress