Halt execution where race tainted judgment.

An African-American, 48-year old Duane Edward Buck, was sentenced to death for a 1995 double murder in Houston after a prosecutor made an issue of his race. He faces execution a week from now.

The case poses a test of leadership for Texas governor and Republican presidential candidate Rick Perry. Will he do the right thing and stop the execution, either through clemency or a reprieve, or will he take the politically expedient course and let a judicial miscarriage roll forward?

Buck's guilt in the shooting deaths of his ex-girlfriend and her boyfriend is not in doubt. In Texas, however, homicides resulting from crimes of passion often result in life or lengthy sentences rather than the death penalty. A key issue in such death sentence cases is the likelihood of the defendant committing future violent acts, and it is on that point that Buck's sentence is irrevocably flawed.

Buck was one of six Lone Star capital murder defendants sent to death row using testimony from former Texas jail system chief psychologist Walter Quijano that blacks and Hispanics were more likely to become repeat offenders. In Buck's case, Quijano had initially testified that he would likely not pose a future danger to society. But under aggressive cross-examination by the prosecutor, he agreed that being African-American enhanced the possibility of future violence.

After the Texas Court of Criminal Appeals ruled that there was no fundamental error in admitting race-based testimony, John Cornyn, the Texas attorney general at the time and now a U.S. senator, filed a brief with the U.S. Supreme Court on behalf of defendant Victor Hugo Saldano. Cornyn argued, "It is inappropriate to allow race to be considered as a factor in our criminal justice system." The high court agreed, and the convict and four of the other defendants received new punishment hearings. In a legal oversight, Buck did not.

His lawyers, David Dow and Katherine Black, have petitioned the state Board of Pardons and Paroles for a recommendation that Gov. Perry grant clemency, or at least allow Buck time for a new sentencing hearing.

Capital punishment is not the issue here. The problem is the lethal injection of race into the sentencing process. The other five defendants who got new hearings were resentenced to death, and one has since been executed.

At minimum, Buck deserves another day in court for a new sentencing hearing where his race cannot be raised as a reason for executing him.

As Cornyn said back in 2000, "The people of Texas want and deserve a system that affords the same fairness to everyone. " We hope Gov. Perry shares those sentiments.