No. 18-5518

IN THE

Supreme Court of the United States

NORMAN M. GRIM,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

REPLY BRIEF FOR PETITIONER

THIS IS A CAPITAL CASE

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I. Respondent Does Not Explain How the Vote of an Advisory Jury Can Serve as the Linchpin of a Constitutional Harmless Error Analysis in a Case Where the Advisory Jury Heard None of the Defendant's Significant Mitigation

Respondent recognizes that, in deciding whether violations of *Hurst v. Florida*, 136 S. Ct. 616 (2016), are harmless beyond a reasonable doubt, the linchpin of the Florida Supreme Court's harmless error analysis is always the vote of the defendant's pre-*Hurst* "advisory" jury. As Respondent acknowledges, the Florida Supreme Court has ruled *Hurst* errors harmless in every case in which the advisory jury recommended death by a unanimous vote, and *not* harmless in every case in which the advisory jury recommended death by a non-unanimous vote. *See* Brief in Opposition ("BIO") at 5, 12-15, 17 & nn. 7, 8. However, while generally defending the Florida Supreme Court's "state harmlessness test" for *Hurst* claims, *id.* at 17, Respondent does not address the central question presented in this case.

Respondent fails to explain how the unanimous vote of Petitioner's advisory jury can be the dispositive factor in a constitutional harmless error analysis in light of the fact that the advisory jury heard none of his significant mitigation, which was presented to the trial judge alone. *See* Pet. at i,, 15-21. That was not only the first question presented by the petition, but also the basis for Justice Pariente's dissent below. *See Grim v. State*, 244 So. 3d 147, 148, 152 (Fla. 2018) (Paritene, J., dissenting) (concluding that "the jury's unanimous recommendation for death in Grim's case is unreliable and cannot support the conclusion that the *Hurst* error is harmless beyond a reasonable doubt," because "the jury was not presented with any

evidence of the significant mitigation . . . which the trial judge subsequently heard, before making its recommendation.").

Respondent does not address whether, as the petition and Justice Pariente argued, the Florida Supreme Court's reliance on the vote of an advisory jury that heard no mitigation contravenes this Court's holdings in cases like *Porter v. McCollum*, 558 U.S. 30, 42 (2009), that capital sentencers must hear, consider, and give full effect to mitigating evidence. *See* Pet. at 16; *Grim*, 244 So. 3d at 151. Respondent also does not address the Florida Supreme Court's test in the context of this Court's explanation that jury decisions rendered without consideration of mitigating evidence do not meet Eighth and Fourteenth Amendment standards of reliability. *See* Pet. at 17. As the petition explained, these issues are a central reason for granting a writ of certiorari in this case, and Respondent's failure to even address them at the certiorari stage supports granting review and briefing on the merits.

II. Respondent Also Does Not Explain How the Florida Supreme Court's Refusal to Consider Petitioner's Evidentiary Proffer and Request for a Hearing Did Not Impermissibly Shift the Burden of Proof

Respondent also does not explain how the Florida Supreme Court's failure to consider the significant harmless-error evidence that Petitioner proffered with his *Hurst* motion, or his request for a hearing on that evidence, did not impermissibly shift the burden of proof. As the petition explained, Petitioner submitted newly-obtained declarations from multiple sources, including from attorneys who had represented him in prior felony cases that were used as aggravation at his capital trial, from a psychological expert who had evaluated his mental health, and from

several other witnesses, which Petitioner explained could rebut any attempt by the State to meet its burden of showing that the *Hurst* error that infected his trial was harmless beyond a reasonable doubt. *See* Pet. at 30-31; App. 119a-153a.

By applying its per se rule and ignoring Petitioner's uncontested evidentiary proffer, the Florida Supreme Court impermissibly shifted the burden of proof and flouted this Court's admonitions that harmless-error review cannot be "automatic or mechanical," *Barclay v. Florida*, 463 U.S. 939, 958 (1983), must consider the whole record, *see Rose v. Clark*, 478 U.S. 570, 583 (1986), and must be followed by "a detailed explanation based on the record," *Clemons v. Mississippi*, 494 U.S. 738, 740 (1990).

Without discussing the specific content of Petitioner's proffer, Respondent broadly implies that *no* evidence could establish that Petitioner's penalty phase would have unfolded differently without the *Hurst* error, and therefore the Florida Supreme Court's decision to ignore the proffer was correct. *See* BIO at 18-19. However, as the Petition explained, the evidentiary proffer raised a host of doubts about the harmlessness of the *Hurst* error in this case that should have at least warranted a hearing. *See* Pet. at 30-32. By maintaining that no evidence can *ever* be presented to rebut an assertion of harmless error in a *Hurst* case, Respondent only supports the petition's point that the Florida Supreme Court's per se rule effectively shifts the harmless-error burden of proof from the State to capital defendants. This impermissible shifting further supports the case for granting a writ of certiorari here.

III. Respondent Overlooks a Deepening Split Among State Courts by Failing to Recognize that the Prior Statutory Right to Present Mitigation to an Advisory Jury, and the Constitutional Right to Present Mitigation to a Fact-Finding Jury, are Not the Same Rights for Purposes of Waiver Analysis

While not specifically addressing the important issues discussed above, Respondent broadly relies on Petitioner's decision not to present mitigation to the advisory jury in defending the Florida Supreme Court's denial of *Hurst* relief on harmless error grounds. *See* BIO at 14, 18-19. However, Respondent fails to recognize that the prior statutory right to present mitigation to an advisory jury, and the constitutional right to present mitigation to a fact-finding jury, are not the same rights for purposes of waiver analysis. As the petition explained, even assuming that Petitioner validly waived his right to present mitigation to his pre-*Hurst* advisory jury—a jury that would not have been able to make any findings of fact regarding the mitigation—he could not have knowingly, intelligently, and voluntarily waived a right to present mitigation to a fact-finding jury, because the right to jury fact finding at capital sentencing was neither known to Petitioner nor recognized by Florida's courts at the time of his trial. This rule derives from this Court's decision in *Halbert v. Michigan*, 545 U.S. 605, 623 (2005), which reaffirmed that a defendant cannot voluntarily, knowingly, and intelligently waive a federal constitutional right that was not recognized by the state courts at the time of the purported waiver.

Respondent's brief fails to cite *Halbert* or address its impact on the Florida Supreme Court's brief waiver analysis in this case, despite the fact that a deepening split has developed among state courts regarding whether not-yet-recognized Sixth

Amendment rights stemming from *Apprendi v. New Jersey*, 530 U.S. 466 (2000), can be prospectively waived. This split is described in detail in the amicus brief recently filed by this Court in support of the pending certiorari petition in *Rodgers v. Florida*, a case that presents similar *Hurst*-related "waiver" questions as Petitioner's case. *See* Brief of Amicus Curiae of Florida Association of Criminal Defense Lawyers and Florida Center for Capital Representation at Florida International University College of Law, *Rodgers v. Florida*, No. 18-113, at 13-25 (filed Aug. 24, 2018) (counsel of record Caitlin Halligan of Gibson, Dunn & Crutcher LLP).

As recounted by the amicus brief in *Rodgers*, Florida has joined a long-standing state court split on whether newly recognized rights stemming from *Apprendi*—like the right to present mitigation to a fact-finding jury at issue here—could be waived *before* they were recognized. A majority of state courts have held—correctly—that a defendant cannot prospectively waive an *Apprendi*-related right before it has been recognized by this Court. *See, e.g.*, *State v. Dettman*, 719 N.W.2d 644, 654 (Minn. 2006) (holding that if a defendant "was sentenced before *Blakely [v. Washington*, 542 U.S. 296 (2004)] was decided, he could not have known that he had a right to a jury determination of the facts used to enhance his sentence," and therefore any factual admissions he made at a prior hearing or trial "did not knowingly waive that right."); *see also State v. Franklin*, 878 A.2d 757, 771 (N.J. 2005) ("In the pre-*Apprendi* days," a defendant who admitted to aggravating facts could not have "knowingly" waived unrecognized right to require a jury to find such facts); *State v. Curtis*, 108 P.3d 1233, 1236 (Wash. App. 2005) ("Curtis allocated before *Blakely* was decided. . . . Thus, he

could not knowingly, voluntarily, and intelligently waive his *Blakely* rights."); *State v. Meynardie*, 616 S.E. 21, 24 (N.C. App. 2005) ("Since neither *Blakely* nor [North Carolina's decision applying *Blakely*] had been decided at the time of the defendant's sentencing hearing, defendant was not aware of his right to have a jury determine the existence of the aggravating factor. Therefore, defendant's stipulation to the factual basis for his plea was not a "knowing and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences.") (alterations adopted) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970))), *aff'd & remanded*, 646 S.E.2d 530 (N.C. 2007).

Other courts have similarly concluded that a defendant did not waive *Apprendi*-based rights by pleading guilty—even if he or she pleaded guilty before *Blakely v. Washington*, when states treated such a plea as an automatic waiver of *Apprendi* rights. *See, e.g.*, *People v. Montour*, 157 P.3d 489, 492 (Colo. 2007) ("[A]lthough Montour understood that he was waiving his right to a jury trial on sentencing facts by entering a guilty plea, his waiver of his Sixth Amendment right was infected with the same constitutional infirmity as [Colorado's pre-*Blakely* scheme]—the waiver of his Sixth Amendment right was inextricably linked to his guilty plea."); *People v. Isaacks*, 133 P.3d 1190, 1191, 1196 (Colo. 2006) (holding that even a defendant who "expressly waive[d] [the] right to trial by jury on all issues . . . could not possibly have knowingly, voluntarily, and intelligently waived his *Blakely* rights" a "full year before the Supreme Court handed down *Blakely*"); *State v. King*, 168 P.3d 1123, 1127 (N.M. 2007) ("Defendant's plea hearing was held before *Blakely*

was decided . . . . and therefore neither Defendant nor the State was aware of Defendant's right to a jury determination of aggravating factors."); *State v. Foster*, 845 N.E.2d 470, 483 (Ohio 2006) ("Foster could not have relinquished his sentencing objections as a known right when no one could have predicted that *Blakely* would extend the *Apprendi* doctrine to redefine the 'statutory maximum'"); *State v. Schofield*, 895 A.2d 927, 931 (Me. 2005) (finding no waiver "[b]ecause Schofield, prior to *Blakely*, did not know that she had a right to have a jury determine, beyond a reasonable doubt, any facts necessary to increase her sentence"); *State v. Williams*, 104 P.3d 1151, 1152–53 (Or. App. 2005) (refusing to assume that a defendant who waived his jury rights under a pre-*Blakely* scheme necessarily waived the right after *Blakely*); *State v. Ward*, 118 P.3d 1122, 1127–28 (Ariz. Ct. App. 2005) (rejecting cases finding a defendant could have "knowingly waived his jury right pursuant to *Blakely* when he was unaware of the right" at the time of plea).

The Florida Supreme Court's conclusory waiver footnote in this case represents the opposite position. Agreeing with a minority of other state courts, the Florida Supreme Court has held that a defendant who waived their prior statutory right to present mitigation evidence to an advisory jury thereby necessarily waived the later-recognized constitutional right to present mitigation to a jury that was empowered to find all of the facts necessary for the imposition of death. Florida has joined four other state courts which hold that any waiver of any aspect of jury sentencing—even under a sentencing scheme later found unconstitutional—necessarily waives a later-recognized Sixth Amendment right stemming from *Apprendi*. *See State ex rel. Taylor*

v. Steele, 341 S.W.3d 634, 647–48 & n.10 (Mo. 2011) (waiving jury right under unconstitutional sentencing scheme waived newly recognized constitutional right, "no matter under what statute or constitutional provision a right to jury sentencing existed" at the time of the waiver); *State v. Piper*, 709 N.W.2d 783, 807-08 (S.D. 2006) (same); *State v. Downs*, 604 S.E.2d 377, 380 (S.C. 2004) (same); *Colwell v. State*, 59 P.3d 463, 474 (Nev. 2002) (same).

Petitioner is not the only defendant who has been or may be subject to the Florida Supreme Court's rules regarding pre-*Hurst* waivers. The Florida Supreme Court has consistently held that waiving the right to present mitigation to an advisory jury, or waiver of an advisory jury itself, presents a complete bar to *Hurst* relief. Several petitions for certiorari raising similar issues are currently pending before this Court *See, e.g.*, *Rodgers*, No. 18-113; *Hutchinson v. Florida*, No. 18-5377.

This Court should grant a writ of certiorari in this case to resolve the split and reject the flawed reasoning of the Florida Supreme Court and the minority of other state courts. The Court should ultimately side with those courts that correctly hold that a defendant cannot waive an unrecognized Sixth Amendment right, and reverse.

IV. Respondent's General Defenses of the Florida Supreme Court's Per Se *Hurst* Harmless Error Rule Highlight the Certiorari-Worthiness of the Questions Presented

As explained above, while not clearly addressing the issues central to Petitioner's case, Respondent generally defends the Florida Supreme Court's per se *Hurst* harmless error rule as presenting no issue worthy of certiorari. Specifically, Respondent argues that (1) this Court lacks the both the authority and jurisdiction

to review the Florida Supreme Court's state-law harmless error test for *Hurst* claims; (2) there is no "per se" rule at all, because the Florida Supreme Court considers factors other than the advisory jury vote in the course of its *Hurst* harmlessness rulings; (3) harmless error analysis by the Florida Supreme Court is superfluous in federal court because *Hurst* is not retroactive under federal law; and (4) no *Hurst* error occurred in cases with prior-conviction aggravators. These arguments are each flawed.

First, Respondent is wrong that this Court cannot exercise jurisdiction because the Florida Supreme Court's rule is a purely state-law matter. *See* BIO at 1, 12, 16-17. From Respondent's perspective, when state courts articulate harmless-error rules as a matter of state law, there is no federal question for this Court to review, even if the state harmless-error rule is used to deny a federal constitutional claim. Under that faulty theory, states could evade this Court's precedents by deeming federal constitutional errors harmless for any reason at all. This Court has jurisdiction to protect against such end-runs around federal constitutional rights, and has a special duty to do so in capital cases. As the petition explained, whether a state court has exceeded constitutional boundaries in the denial of a federal claim on harmless-error grounds "is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they guarantee, and whether they have been denied." *Chapman v. California*, 386 U.S. 18, 21 (1967).[1]

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[1] Respondent's position is based on a confused reading of this Court's adequate-and-independent-state-ground precedent. While "[t]his Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is *independent of the federal question* and adequate to support the judgment," *Coleman v. Thompson*, 501 U.S. 722 (1991) (emphasis added), this

Second, Respondent's contention that the Florida Supreme Court does not have a "per se" harmlessness test for *Hurst* claims based on the advisory jury vote is belied by the consistent results in the dozens of *Hurst* cases the court has reviewed. In every case in which there was a unanimous jury recommendation, the Florida Supreme Court considered jury unanimity dispositive of the harmless-error inquiry. There have been no exceptions. The Florida Supreme Court has found *Hurst* errors harmless in all of the more than three-dozen unanimous-jury-recommendation cases it has reviewed, and declined to find harmless error in any case in which the jury was not unanimous. *See* App. 154a-163a. Respondent fails to identify a single case, out of a total of nearly 200, in which the Florida Supreme Court either (1) declined to apply the harmless-error doctrine and granted *Hurst* relief where there was a unanimous jury recommendation, or (2) applied the harmless-error doctrine and denied *Hurst* relief where there was a non-unanimous jury recommendation. That is because no such case exists. The Florida Supreme Court has applied its per se harmless-error rule to deny *Hurst* relief in more than three-dozen unanimous-recommendation cases, while declining to find harmless error in more than 150 non-

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does not mean that all state court rulings that invoke a state-law basis are immune from this Court's federal constitutional review. A state court ruling is deemed "independent" only when it has a state-law basis for the denial of a federal constitutional claim that is separate from the merits of the federal claim. *Foster v. Chapman*, 136 S. Ct. 1737 (2016). Even Respondent acknowledges that a state court's application of a harmless-error rule is a purely state-law question only "where it involves *only errors of state procedure or state law*." BIO at 16 (emphasis added) (citing *Chapman*, 386 U.S. at 21). Here, the Florida Supreme Court's per se harmless-error rule for *Hurst* claims plainly involves the federal constitutional violation described in *Hurst*, not a violation of state procedure or law.

unanimous-recommendation cases. Respondent asks this Court to draw an unreasonable inference from these consistent results. *Cf. Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

In Petitioner's case specifically, the Florida Supreme Court's dispositive reliance on the advisory jury vote is clear from the opinion's text:

> In *Davis*, this Court held that a jury's unanimous recommendation of death is "precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death" because a "jury unanimously f[inds] all of the necessary facts for the imposition of [a] death sentence[ ] by virtue of its unanimous recommendation[ ]." *Davis*, 207 So.3d at 175. This Court has consistently relied on *Davis* to deny *Hurst* relief to defendants that have received a unanimous jury recommendation of death. Grim is among those defendants who received a unanimous jury recommendation of death, and his arguments do not compel departing from our precedent.

Grim, 244 So. 3d 147 (internal string citation omitted). The Florida Supreme Court discussed no other factors in holding the *Hurst* error in Petitioner's case harmless.

Third, Respondent is wrong to attempt to inject an unnecessary retroactivity issue into this case. *See* BIO at 7-8. There has never been a serious dispute that *Hurst* applies retroactively to Petitioner as a matter of state retroactivity law, *see Mosley v. State*, 209 So. 3d 1248 (Fla. 2016), or that the Florida Supreme Court's retroactive application of *Hurst* to cases in Petitioner's posture is permissible under *Danforth v. Minnesota*, 552 U.S. 264, 280-81 (2008). The only issue for this Court is whether the Florida Supreme Court, having permissibly found that *Hurst* applies retroactively to Petitioner under state law, then violated the United States Constitution by applying its per se harmless-error rule to deny relief. If this Court grants certiorari review, holds that the Florida Supreme Court's harmless-error

analysis was unconstitutional, and remands for a proper harmlessness analysis, the Florida Supreme Court's state retroactivity ruling will remain sound on remand.[2]

Fourth, Respondent is wrong that "the requirements of *Hurst v. Florida* were satisfied" in Petitioner's case because among the aggravators found by the trial court were those based on prior convictions. BIO at 9-10. There has never been a serious dispute in this case that Petitioner was sentenced to death in violation of *Hurst*. Respondent's own brief acknowledges that a judge, not a jury, conducted the fact-finding necessary for imposition of death. *See* BIO at 3-4. In *Hurst*, this Court held that "[t]he Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." 136 S. Ct. at 619. Petitioner's death sentence therefore violates *Hurst*, regardless of additional concerns the Florida Supreme Court discussed on remand in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). *See* BIO at 9-11.

Although the aggravating circumstances found by Petitioner's judge included those based on prior convictions, this Court held in *Hurst* that the Sixth Amendment requires jury fact-finding as to *each and every* element of a Florida death sentence:

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[2] *Schriro v. Summerlin*, 542 U.S. 348, 364 (2004), does not suggest that this Court should substitute the Florida Supreme Court's state-law retroactivity ruling with a federal retroactivity analysis under *Teague v. Lane*, 489 U.S. 288 (1989). *Summerlin* was a federal habeas corpus case and, unlike in this case, there had been no prior retroactivity ruling regarding *Ring* in the petitioner's favor by the state supreme court. Also, *Lambrix v. Secretary*, 872 F.3d 1170 (11th Cir. 2017), does not suggest that the Florida Supreme Court's retroactivity ruling needs reconsideration here. In *Lambrix*, the Eleventh Circuit declined to apply *Hurst* retroactively under federal law only after the Florida Supreme Court had held that *Hurst* was *not* retroactive as a matter of state law. *Id.* at 1175. Here, the Florida Supreme Court properly found that *Hurst was* retroactive to Petitioner under state law.

(1) the aggravating circumstances that were proven beyond a reasonable doubt; (2) whether the aggravating circumstances were together "sufficient" to justify the death penalty beyond a reasonable doubt; and (3) whether the aggravating circumstances outweighed the mitigation beyond a reasonable doubt. *See* 136 S. Ct. at 620-22. Unlike the Arizona capital sentencing scheme at issue in *Ring*, Florida's scheme required fact-finding not just as to the aggravators, but also as to *their sufficiency to warrant the death penalty*. As a result, the fact that prior convictions formed the basis for some aggravators is not enough to satisfy *Hurst*. Rather, *Hurst* entitles Petitioner to jury fact-finding on the other elements of a death sentence as well. Even the Florida Supreme Court has rejected the notion *Hurst* errors do not occur where there are prior conviction aggravators. *See, e.g.*, *Franklin v. State*, 209 So. 3d 1241, 1248 (Fla. 2016) (rejecting the State's contention that prior convictions for other violent felonies "insulate Franklin's death sentence from *Ring* and *Hurst v. Florida*.").

V. Respondent's Arguments Under the Florida Supreme Court's Recent Plurality Decision in *Reynolds* Underscore the Need for this Court's *Caldwell* Scrutiny

Respondent's dismissal of Petitioner's *Caldwell* arguments as "absurd" relies in part on the Florida Supreme Court's deeply flawed recent decision in *Reynolds v. State*, No. SC17-793, 2018 WL 1633075 (Fla. Apr. 5, 2018). BIO at 7. Respondent's *Reynolds* arguments only underscore the need for this Court to grant certiorari to review whether the Florida Supreme Court's per se *Hurst* harmless-error rule contravenes *Caldwell*, as several Justices of this Court have already called for the Court to do. *See, e.g.*, *Kaczmar v. Florida*, 138 S. Ct. 1973, 1973-74 (2018) (Sotomayor,

J., dissenting from the denial of certiorari); *Guardado v. Jones*, 138 S. Ct. 1131 (2018) (Sotomayor, J., dissenting from the denial of certiorari); *Middleton v. Florida*, 138 S. Ct. 829 (2018) (Ginsburg, Breyer, and Sotomayor, JJ., dissenting from the denial of certiorari); *Truehill v. Florida*, 138 S. Ct. 3 (2017) (Ginsburg, Breyer, and Sotomayor, JJ., dissenting from the denial of certiorari).

Justice Sotomayor observed in a recent dissent from the denial of certiorari, in *Kaczmar v. Florida*, that *Reynolds* "gathered the support only of a plurality," and therefore the issue of whether the Florida Supreme Court's *Hurst* harmless-error rule contravenes *Caldwell* "remains without definitive resolution by the Florida Supreme Court." *Kaczmar*, 138 S. Ct. at 1973. Respondent's brief ignores Justice Sotomayor's dissent in *Kaczmar* and instead erroneously suggests that *Reynolds* is a majority opinion of the Florida Supreme Court. *See* BIO at 7. Justice Sotomayor was nonetheless correct that the Florida Supreme Court has still not sufficiently analyzed in a definitive majority opinion how a defendant's pre-*Hurst* advisory jury recommendation can serve as the keystone for a proper *Hurst* harmless-error analysis when the advisory jury's sense of responsibility for a death sentence was systematically diminished by the design and operation of Florida's prior scheme.

The plurality's reasoning in *Reynolds* provides little hope that the Florida Supreme Court will ever sufficiently address the *Caldwell* matter unless this Court steps in. In *Reynolds*, the plurality refused to revisit its pre-*Hurst* decisions summarily rejecting the applicability of *Caldwell* to Florida's capital sentencing scheme, but for the first time attempted to provide an explanation. The Florida

Supreme Court wrongly held in *Reynolds* that, under *Romano v. Oklahoma*, 512 U.S. 1 (1994), *Hurst* has no bearing on whether *Caldwell* was violated in any case because Florida's pre-*Hurst* jury instructions accurately described Florida's capital sentencing scheme at the time. *Reynolds*, 2018 WL 1633075, at *10-12. The critical flaw in the Florida Supreme Court's *Reynolds* analysis is that Florida's prior scheme was unconstitutional even before *Hurst*, making *Romano* inapplicable.

Rather than addressing the concerns of Justice Sotomayor and the other dissenting Justices of this Court, the Florida Supreme Court's decision in *Reynolds* represents an attempt to rebuke those concerns. Mr. Reynolds's petition for a writ of certiorari seeking review of the Florida Supreme Court's opinion in his case is pending in this Court. *See Reynolds v. Florida*, No. 18-5181. The pending petition in *Reynolds*, combined with Respondent's reliance on *Reynolds* in this case, provide additional justification for this Court to grant certiorari review.

VI. Conclusion

For the reasons above and in the petition, the Court should grant a writ of certiorari and review the decision of the Florida Supreme Court.

Respectfully submitted,

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