NO. 18-5763

IN THE SUPREME COURT OF THE UNITED STATES

JIMMY DON WOOTEN,
Petitioner,

v.

STATE OF ARKANSAS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Arkansas

BRIEF IN OPPOSITION FOR RESPONDENT STATE OF ARKANSAS

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment requires states to afford prisoners *coram nobis* proceedings in which to litigate claims of mental incompetence to stand trial that were forfeited at trial, on direct appeal, and in multiple state postconviction proceedings.

Whether the Due Process Clause of the Fourteenth Amendment forbids states from denying, for lack of due diligence, a mentally incompetent prisoner a *coram nobis* proceeding in which to litigate mental incompetency, where that prisoner litigated an ineffective assistance of counsel claim premised on the same mental illness in state postconviction proceedings over a decade prior.

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JURISDICTION

The judgment of the Arkansas Supreme Court was entered on May 31, 2018; the petitioner filed his petition on August 24, 2018. For the reasons elaborated upon below, this Court lacks jurisdiction under 28 U.S.C. 1257 to review that judgment. But in sum, the federal questions petitioner presents were not presented to or addressed by the Arkansas Supreme Court, and they are so frivolous that they fail to be substantial.

STATEMENT OF THE CASE

On August 5, 1994, David LaSalle, Henry Porter, and his eighteen-year-old daughter Molly Porter were hiking in the woods in Pope County, Arkansas when they encountered the petitioner, Jimmy Wooten. *See Wooten v. State ("Wooten I")*, 931 S.W.2d 408, 409 (Ark. 1996). Wooten, driving a six-wheel all-terrain vehicle, initially sped past LaSalle and the Porters through the woods. He "next stopped and talked to the group in a cordial fashion and gave them directions" to a recreation area and thereafter drove away. He then returned and sped past the group again before finally and inexplicably shooting at the group from a hidden position.[1] *Wooten v. Norris*, 578 F.3d 767, 770 (8th Cir. 2009). He killed LaSalle with a single shot to the head and shot Henry Porter several times in his shoulder,

[1] No motive for the shootings was ever determined, but on habeas review, United States District Court Judge Susan Webber Wright suggested that Wooten may have intended to sexually assault Molly and decided to kill the others to eliminate witnesses and prevent her father and LaSalle from interfering. *See Wooten v. Norris*, No. 5:03-cv-00370-SWW, slip op. at 15 (E.D. Ark. Nov. 8, 2006). This theory, she noted, could explain his apparent "'casing' [of] his victims prior to the offense," *id.* at 15, as well as his not shooting at Molly. *See id.* at 14; *see also Wooten v. Norris*, No. 5:03-cv-00370-SWW, 2006 WL 2686925, at *7 (E.D. Ark. Sept. 19, 2006) (noting that the jury found as a mitigator that "Wooten, although given the opportunity, did not take the life of Molly Porter").

forearm, and face, while Molly Porter escaped unscathed. *See id.* Finally, despite his wounds, Porter successfully chased Wooten off. *See id.*

Overwhelming physical evidence and eyewitness testimony from the survivors connected Wooten to the shooting, and on February 16, 1995, Wooten was convicted by jury of capital murder of LaSalle, attempted murder of Henry Porter, and aggravated assault. *See Wooten I*, 931 S.W.2d at 409. For LaSalle's murder, the jury sentenced Wooten to death. *See id.*

Wooten appealed his conviction to the Arkansas Supreme Court. At trial, Wooten's counsel "pursued a theory of mistaken identity," *Wooten*, 578 F.3d at 770, and on appeal, the same attorney challenged the Porters' lineup-identification of Wooten—conducted the very day of the shooting—as unduly suggestive, *see Wooten I*, 931 S.W.2d at 412–13, as well as litigating partially preserved *Batson* objections and objections to penalty-phase victim-impact testimony. *See id.* at 409–12. Wooten did not raise issues of trial incompetency, or insanity as a defense to his crimes. Wooten's conviction was affirmed in full. *Id.* at 413.

In 1997, Wooten, represented by new counsel, filed his first state petition for post-conviction relief, arguing various theories of ineffective assistance of trial counsel. *See Wooten*, 578 F.3d at 771. None of his ineffective-assistance claims concerned his mental health. *See id.* at 772. Finding Wooten failed to allege any prejudice, the state trial court summarily denied that petition. *See Wooten v. State*, 1 S.W.3d 8, 9 (Ark. 1999). But on appeal, the Arkansas Supreme Court reversed the

trial court's order for want of written findings, as required by state procedural rules on postconviction proceedings. *See id.* at 11.

In June 2000, the trial court again denied relief on remand, and Wooten's postconviction counsel chose not to file an appeal. *See Wooten v. State ("Wooten II")*, 370 S.W.3d 475, 476 (Ark. 2010). The following year, for unrelated reasons, Wooten's postconviction counsel surrendered his law license. *See id.* (citing *In re Clawson*, 49 S.W.3d 99 (Ark. 2001)); *Wooten*, 578 F.3d at 774. Wooten then filed a pro se motion for appointment of counsel and leave to file a belated appeal to the Arkansas Supreme Court in September 2001. *See id.* at 774. The Arkansas Supreme Court granted that motion. *See id.*

On his belated appeal of the trial court's second denial of postconviction relief, Wooten argued that his trial counsel was ineffective in failing to: 1) present non-mental-health-related mitigation evidence at sentencing; 2) argue that Arkansas's death penalty sentencing scheme was unconstitutional; 3) fully preserve certain aspects of his *Batson* claim; and 4) seek suppression of the Porters' *in-court* identification, in addition to their lineup identification. *See Wooten v. State*, 91 S.W.3d 63, 65–68 (Ark. 2002). The Arkansas Supreme Court found that none of these alleged deficiencies in performance were prejudicial and affirmed. *See id.*

Wooten next repaired to federal habeas. In October 2003, he filed a habeas petition in the Eastern District of Arkansas, arguing for the first time (among other grounds for relief) that his trial counsel had been ineffective in investigating his mental health. *Wooten*, 578 F.3d at 774–75. Had such an investigation been made,

he claimed, Wooten's counsel would have found that "Wooten's actions were the product of a mental disease or defect[.]" *Id.* at 775 (alteration omitted). In September 2006, Judge Susan Webber Wright denied Wooten's petition.

She first found his new claims procedurally defaulted and, writing before this Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012), held that his postconviction counsel's ineffectiveness could not excuse that default. *Wooten v. Norris*, No. 5:03-cv-00370-SWW, 2006 WL 2686925, at *4–6 (E.D. Ark. Sept. 19, 2006). But in an abundance of caution, she held that even if postconviction ineffectiveness could serve as cause to excuse Wooten's default, Wooten could not show prejudice from that ineffectiveness, because on the merits his new trial-ineffectiveness claims were losers. As to his theory of mental-health-investigation ineffectiveness, Judge Webber Wright reasoned that "there is nothing in the record demonstrating that his sanity at the time of the offense was likely to be a significant factor at trial," *id.* at *9, noting that Wooten had graduated high school, attended two years of college, held several jobs, and was at one time licensed to operate an aircraft. *See id.* at *9 n.7; *see also id.* at *7 (noting the jury's finding as mitigators that "Wooten ha[d] developed an exemplary work ethic " and multiple job skills, and that he had "adapted to incarceration and been a good prisoner" who was not "involved in any violent activity while incarcerated").

Wooten's counsel moved for reconsideration. Obtaining additional psychiatric evaluations, *see* Pet. at 1–2, *Wooten*, 578 F.3d at 775–76, Wooten submitted evidence that he suffered from post-traumatic stress disorder on account of being

abused by his father in the early 1970s. *See id.*; Petition to Reinvest Circuit Court Jurisdiction, Exhibits A and B, *Wooten v. State*, 547 S.W.3d 683 (Ark. 2018) (No. CR-95-975). Wooten also argued for the first time that the district court should hold his habeas proceedings in abeyance pending new state postconviction proceedings in which he might exhaust his unexhausted claims, including a *coram nobis* petition in which he intended to argue that, due to his post-traumatic stress disorder, he was unable to form the requisite intent for capital murder. *See Wooten v. Norris*, No. 5:03-cv-00370-SWW, slip op. at 10. (E.D. Ark. Nov. 8, 2006). The district court denied Wooten's request for a stay, finding that Wooten was unlikely to obtain *coram nobis* relief because "it [wa]s unlikely he could establish due diligence [a prerequisite to such relief under Arkansas law] for failing to raise this claim eleven years after he was convicted of LaSalle's murder," *id.* at 11, and denied his motion for reconsideration.

In March 2007, Wooten, now represented by the Federal Community Defender Office of the Eastern District of Pennsylvania, filed a motion with the Arkansas Supreme Court to recall its five-year-old mandate and reopen post-conviction proceedings. *See Wooten II*, 370 S.W.3d at 477; Motion to Recall Mandate and Reopen Post-Conviction Proceedings, *Wooten II* (No. CR-95-975). Substantively, relying on his 2006 habeas mental evaluations, Wooten argued at-length that his counsel was ineffective in failing to investigate and present evidence of his alleged mental illness at both the guilt and penalty phases of his trial,. *See id.* at 19–36. Procedurally, he briefly argued that, in addition to a remand for a

second postconviction proceeding under Arkansas Rule of Criminal Procedure 37, he "also should be allowed to [obtain] a recall of the mandate . . . pursuant to a writ of error *coram nobis*," though he acknowledged the Arkansas Supreme Court had never granted *coram nobis* relief on the ground of ineffective assistance or innocence by reason of insanity. *Id.* at 13.

In 2009, the Eighth Circuit affirmed Judge Webber Wright's denial of habeas relief because Wooten had failed to exhaust his state-court remedies. As that court explained, while Wooten's still-pending motion to recall the mandate might be deserving, mandate recall was far too extraordinary a form of relief to be deemed a proper vehicle for exhausting claims in Arkansas courts under AEDPA, and a contrary decision might discourage Arkansas from generously affording prisoners this extraordinary form of *post*-postconviction relief. *See Wooten*, 578 F.3d at 782–86. After that decision, Wooten filed a new motion to recall the mandate in December 2009, *see Wooten II*, 370 S.W.3d at 477, which abandoned his former request to file a petition for *coram nobis* relief in trial court. One year later, the Arkansas Supreme Court recalled its mandate on the narrow ground that Wooten had not verified his first petition for postconviction relief. *See id.* at 481. Justice Brown concurred separately, writing that Wooten's former postconviction counsel's "woefully deficient" performance, *id.* (Brown, J., concurring), in failing to present what Justice Brown described as serious mental-health-related ineffectiveness claims, separately justified recall.

On further postconviction proceedings in trial court, the state agreed to relief from Wooten's death sentence, and Wooten's sentence was reduced to life. *See* Pet. App. 1. Wooten did not, however, obtain relief from his conviction on his theory that he lacked the mental capacity to form the requisite intent for capital murder, and made no further appeal.

Finally, in March of this year—some twenty-three years after his conviction, twenty-one years after he initiated state postconviction proceedings, fifteen years after he began to seek relief from his conviction on the basis of his alleged post-traumatic stress disorder, and twelve years after he promised Judge Webber Wright he would litigate his insanity in state *coram nobis* proceedings—Wooten petitioned the Arkansas Supreme Court to reinvest jurisdiction in the trial court to entertain a petition for *coram nobis* relief on the ground that he was insane at trial. *See* Petition to Reinvest Circuit Court Jurisdiction at 3–4, *Wooten v. State*, 547 S.W.3d 683 (Ark. 2018) (No. CR-95-975). Attached to his petition were the 2006 psychological evaluations he presented in habeas proceedings twelve years prior. *See id.*, Exhibits A and B.

Nowhere in his petition did Wooten argue that he was entitled to an opportunity to seek *coram nobis* relief as a matter of federal law. Indeed, though Wooten cited federal law on the substantive issue of competency, *see id.* at 3–4, he only cited state law on his entitlement to *coram nobis* relief and acknowledged that such relief was "extraordinarily rare" and "known more for its denial than approval." *Id.* at 3. Nor did Wooten argue that he had been diligent in seeking such

relief, or that federal law forbade the Arkansas courts from demanding such diligence as a prerequisite to entertaining his request for that relief.

The Arkansas Supreme Court denied Wooten's petition on May 31, 2018 on two grounds. First, led astray by Wooten's uncredited "writ writer['s]" (Pet. at 5, 6) repeated references to "the blatantly incompetent, and unconstitutionally [sic] ineffectiveness of trial counsel's performance litigating th[e] issue" of sanity, Petition to Reinvest Circuit Court Jurisdiction at 2, the court reasonably misunderstood Wooten's claim as one of ineffective assistance of counsel in litigating the issue of sanity—which, under Arkansas law, is not a ground for *coram nobis* relief (though it is a ground for the less extraordinary forms of Arkansas postconviction relief Wooten previously sought). Pet. App. 3; *see also id.* at 5 (Hart, J., dissenting) (disputing the majority's characterization of Wooten's petition).

Second, and more presciently, the court reasoned that Wooten had failed to exercise due diligence—a prerequisite to *coram nobis* relief under that court's precedent—in raising insanity at trial twelve years after he obtained the predicate psychological evaluations that he previously tendered to the court in his 2007 and 2009 motions to recall the mandate. Pet. App. 4 (citing *Roberts v. State*, 425 S.W.3d 771 (Ark. 2013)). Indeed, this statement of affairs understated matters; what the Arkansas Supreme Court did not know was that Wooten began to litigate mental-illness-derivative ineffectiveness claims in federal habeas in 2003, and stated his intention in that litigation to seek mental-illness-premised *coram nobis* relief from the Arkansas courts in 2006. Alone in dissent, Justice Hart argued that there was

"simply no rationale to support such a policy" of requiring diligence as a prerequisite to extraordinary *coram nobis* relief. Pet. App. 6. Wooten did not petition the Arkansas Supreme Court for rehearing.

REASONS FOR DENYING THE WRIT

I. This Court lacks jurisdiction to entertain Wooten's due process claims because they were neither presented to nor addressed by the Arkansas Supreme Court.

"Congress has given this Court the power to review 'final judgments or decrees rendered by the highest court of a State in which a decision could be had where any right is *specially set up or claimed* under the Constitution or the treaties or statutes of the United States.'" *Howell v. Mississippi*, 543 U.S. 440, 443 (2005) (per curiam) (alterations omitted) (quoting 28 U.S.C. 1257(a)). Since nearly the Founding, this Court has interpreted the emphasized language, and its predecessor formulations, to require that a federal question be either "properly presented to the state court that rendered the decision [the Court has] been asked to review," or *sua sponte* addressed by it. *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (per curiam). A "long line of cases clearly stat[e] that the presentation requirement is jurisdictional," *Howell*, 543 U.S. at 445; "a handful of exceptions" suggest otherwise. *Id.* But whether jurisdictional or prudential, this Court has unflaggingly adhered to it on grounds of federal-state comity, and the familiar principle that this Court is a court of review, not of first view. *See Adams*, 520 U.S. at 90–91; *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 79–80 (1988); *Illinois v. Gates*, 462 U.S. 213, 221–22 (1983).

Wooten seeks this Court's review on whether the Due Process Clause affords him a right to *coram nobis* review of his competency to stand trial and whether Arkansas constitutionally may deny him a *coram nobis* audience for lack of diligence given his alleged insanity, *i.e.*, the very fact he hopes to prove in *coram nobis*. Temporarily bracketing the frivolity of these claims on their merits, *see infra*, they were never addressed by or presented to the Arkansas Supreme Court. The opinion of that court says not a word about any federal entitlement to *coram nobis* review of incompetency. Even the dissent, though arguing that Wooten had stated "a perfectly cognizable basis for error coram nobis relief," Pet. App. 5, and that there is "no rationale" for the Arkansas Supreme Court's long-settled requirement of diligence in seeking such relief, Pet. App. 6, did not claim that Wooten had a *federal* right to *coram nobis* review or to the overthrow of (or an exception from) Arkansas's diligence requirement. Rather, it proposed an overhaul of Arkansas's state-law procedural *coram nobis* rules for state-law "policy" reasons. *Id.* And what the Arkansas Supreme Court did not address, Wooten did not present; his petition to reinvest jurisdiction in the circuit court to conduct *coram nobis* proceedings stated exclusively state-law grounds for the grant of that discretionary relief, and when that relief was denied, he did not seek rehearing on the federal-law grounds he now raises in this Court.

To be sure, Wooten's novel Due Process theories suggest that he may be claiming the Arkansas Supreme Court's "decision itself . . . constitute[s] a violation of federal law[.]" *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*,

560 U.S. 702, 712 n.4 (2010). "But where the state-court decision itself is claimed to constitute a violation of federal law," this Court requires that "claim [to be] put forward in a petition for rehearing" before it will entertain the claim. *Id.*; *see also id.* at 520 (granting certiorari on a claim of judicial taking where the "[p]etitioner sought rehearing on the ground that the Florida Supreme Court's decision itself effected a taking"); *Brinkerhoff-Faris Tr. & Sav. Co. v. Hill*, 281 U.S. 673, 677–78 (1930) (granting certiorari after petitioner argued in a petition for rehearing that in applying a new interpretation of state law to petitioner without giving it an opportunity to litigate the question, a state supreme court violated the Due Process Clause).

The rationale for this rule explains its limitations. While this Court "ordinarily do[es] not consider an issue first presented to a state court in a petition for rehearing," *Stop the Beach*, 560 U.S. at 712 n.4, it will if—and only if—rehearing was "the first opportunity" to raise a federal claim.[2] *Brinkerhoff-Faris Tr. & Sav. Co.*, 281 U.S. at 678. But the petitioner must at least avail himself of that opportunity. *See* Stephen M. Shapiro, et al., *Supreme Court Practice* 195 (10th ed. 2013). As this Court has aptly explained, "[e]ven if the opinion of the Supreme Court of Arkansas had proceeded on a ground so unexpected as to make timely, by petition for rehearing, the raising of the federal questions now for the first time

[2] Moreover, while Wooten's petition may appear to state a due process attack on the Arkansas Supreme Court's decision itself, a hypothetical petition for rehearing was by no means Wooten's first opportunity to argue that due process entitled him to *coram nobis* review, Arkansas law on the rarity of *coram nobis* relief notwithstanding, or that the application of Arkansas's long-settled due-diligence requirement for *coram nobis* relief to him would violate due process. Thus, the decision-itself exception does not apply here, and Wooten's claims are best understood as attacks on preexisting Arkansas *coram nobis* procedural rules.

advanced, plaintiffs in their petition for rehearing did not suggest them." *Wilson v. Cook*, 327 U.S. 474, 485 n. (1946) (citations omitted). So too here.

II. The Questions Presented Are Frivolous.

Wooten seeks this Court's review on whether he has a due process right to a hearing on a petition for a writ of *coram nobis*—an extraordinary writ Arkansas courts sparingly issue to prisoners after their ordinary postconviction remedies are exhausted—and whether his claimed post-traumatic stress disorder entitles him under the Constitution to an exception from Arkansas's regularly applied rule that *coram nobis* petitioners must exercise due diligence in bringing their *coram nobis* claims. These claims, though undeniably federal, are frivolous.

It is an often-forgotten but long-settled constitutional truism that, though criminal defendants have a right to counsel in appeals of right, "a State is not obliged to provide any appeal at all for criminal defendants." *Ross v. Moffitt*, 417 U.S. 600, 606 (1974) (citing *McKane v. Durston*, 153 U.S. 684 (1894)). *A fortiori*, there is no due process right to state collateral proceedings; unlike appeals of right, "there is no right to counsel in state collateral proceedings" even when states provide them. *Coleman v. Thompson*, 501 U.S. 722, 755 (1991). There can, then, be no due process right to *coram nobis*, a writ this Court has described as "an extraordinary tool," *United States v. Denedo*, 556 U.S. 904, 912–13 (2009), that "may not issue when alternative remedies, such as habeas corpus, are available," *id.* at 911, and that the Arkansas Supreme Court describes as "an extraordinarily rare remedy, more known for its denial than its approval . . . [and] allowed only under

compelling circumstances to achieve justice[.]" *Thomas v. State*, 241 S.W.2d 247, 249 (Ark. 2006).

Wooten had an opportunity to litigate his competence to stand trial at trial itself, in the direct appeal that Arkansas law provides, indirectly via ineffective-assistance claims in state postconviction proceedings and federal habeas, or in a diligently pursued petition for *coram nobis* relief. He did none of these things. Instead, he forewent any litigation of his mental health at trial, direct appeal, or in his first round of state postconviction review and spent nearly a decade litigating whether his mental condition rendered him innocent of capital murder altogether through ineffective-assistance claims in federal habeas and in a second round of postconviction review. And finally, when he recognized that Arkansas law limits claims of insanity in *coram nobis* to claims of insanity at trial, Pet. App. 3, Wooten simply repackaged his serially raised claims of incapacitating post-traumatic stress as a claim of incompetence in a *coram nobis* petition filed fifteen years after he first raised the underlying condition in habeas. He has no due process right to state-court review of that belated repackaging.

As for Wooten's claim that, as a mentally handicapped person, due process requires the Arkansas courts to hold him to a lower standard of diligence in seeking *coram nobis* relief than the standard to which it would hold a less impaired person, it is equally frivolous, especially on these facts. Arkansas has regularly applied its due-diligence requirement in *coram nobis* proceedings, including those brought to litigate sanity, since at least 1921 and up to the present day. *See Cunningham v.*

State, 232 S.W. 425, 427 (Ark. 1921) ("The fact that the newly discovered evidence related to appellant's mental condition at the time of the alleged commission of the crime does not alter the rules and practices with reference to requiring diligence [in discovering that evidence]."); *Matthews v. State*, 505 S.W.3d 670, 673 (Ark. 2016) ("[T]here was no fact in Matthews's [*coram nobis*] petition with respect to . . . his impaired mental state that he could not have brought out at the time of trial to demonstrate that he was not sane . . . or incompeten[t] at the time of [trial.]"). Even assuming that there can be any federal due process challenge to a state procedural bar to collateral proceedings which themselves are not required by due process, this Court has upheld an identical bar as an independent and adequate state ground sufficient to bar federal habeas review of state collateral proceedings. *See Walker v. Martin*, 562 U.S. 307, 318 (2011) (upholding California's regularly followed rule that state habeas petitioners seek review without substantial delay, reasoning that it was "substantially similar" to the "due diligence" requirement codified in 28 U.S.C. 2255, the federal habeas statute).

Finally, even supposing that mentally incapacitated persons could mount a serious due process challenge to the application of a diligence requirement for extraordinary state collateral relief to their cases, this case is a remarkably poor vehicle for entertaining such a challenge. Wooten has been litigating his insanity in state and federal courts for fifteen years; has been relying on the same diagnoses of post-traumatic stress disorder since he obtained them in habeas proceedings twelve years ago; has been previewing a variation on his present *coram nobis* petition since

he asked a district court to stay its review of his habeas petition pending his filing of that petition in 2006; and even petitioned the Arkansas Supreme Court to recall its mandate so that *coram nobis* proceedings could go forward on a stronger insanity claim—one of legal innocence, rather than trial incompetence—in 2007. The notion that Wooten's claimed post-traumatic stress disorder has thwarted him from making his latest and weakest collateral insanity claim until today is flatly absurd.

To be sure, Wooten claims that he personally did not discover his own 2006 psychiatric evaluations until 2011, and only "discovered the[ir] significance" in late 2017 with the assistance of a "writ writer." Pet. at 5. But whenever *Wooten* personally discovered the significance of these reports of frankly dubious significance, since 2006, Wooten's Federal Public Defenders have consummately made the most of them. Their eminently sensible decision not to waste effort on a *coram nobis* claim that Wooten's post-traumatic stress was so crippling as to render him incompetent to stand trial, and instead to focus their efforts on a state habeas claim that it reduced his culpability for the murder he committed—a decision that paid off in spades when his sentence was reduced to life—was, for all purposes, Wooten's. *See Coleman*, 501 U.S. at 753–54 (holding that in collateral proceedings, a prisoner's attorney is his agent and his attorney's choices are deemed his choices).[3]

[3] Given the frivolity of his claims, this Court likewise would arguably lack jurisdiction over them even had they been presented to the Arkansas Supreme Court. *See Equitable Life Assurance Soc. v. Brown*, 187 U.S. 308, 311 (1902) (holding that this Court has no jurisdiction to review state-court decisions when the federal question presented "is so absolutely devoid of merit as to be frivolous, or has been so explicitly foreclosed by a decision or decisions of this court as to leave no room for real controversy").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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