

No. 19-8045

SUPREME COURT OF THE UNITED STATES

RAYMOND MATA, JR.,

Petitioner,

v.

STATE OF NEBRASKA,

Respondent.

**On Petition for Writ of Certiorari
To the Nebraska Supreme Court**

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the Petitioner's due process liberty interest was violated when the Nebraska Supreme Court decided an issue of state law by concluding that the Petitioner's existing death penalty remained in effect after Nebraska voters, by the Nebraska constitutional referendum process, repealed the state legislature's attempt to repeal the death penalty prior to the legislature's death penalty repeal act going into effect.
2. Whether this Court should consider the above first question presented when the Petitioner did not raise the question or issue below in the Nebraska Supreme Court.

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STATEMENT OF THE CASE

A. Fact Background

A jury convicted the Petitioner Raymond Mata, Jr., in January 2000, of first degree premeditated murder and kidnapping for the March 1999 murder of 3-year old Adam Gomez. As summarized by the Nebraska Supreme Court, Mata disposed of Adam's body by dismembering it with Adam's crushed skull found hidden in the ceiling of Mata's room. Mata had fed body parts to a dog. Other body parts were found packaged in a kitchen refrigerator and clogged in a sewer line. (Pet. App. A4) Mata was sentenced to death, which the Nebraska Supreme Court affirmed in *State v. Mata*, 745 N.W.2d 229 (Neb. 2008), *cert. denied*, 555 U.S. 901 (2008).

B. Procedural History

Mata's petition for certiorari seeks review of the Nebraska Supreme Court's decision denying Mata's collateral attack state court postconviction proceeding. The procedural posture of Mata's petition for a writ of certiorari comes to this Court on constitutional claims Mata never raised below in the Nebraska Supreme Court. (Pet. App. A7-8, A13-10) Mata acknowledges, at page 7 of his petition, that his claims were never raised below. Worse for Mata, the underlying foundation for the issues raised by Mata are solely matters of state law, not federal law, upon which the Nebraska Supreme Court is the final

decision maker. In sum, the procedural backdrop of Mata’s petition presents nothing for this Court to review.

ARGUMENT: REASONS FOR DENYING THE PETITION

- 1. Petitioner did not raise in the Nebraska Supreme Court the question or issues he wants this Court to decide.**

The Petitioner Mata never raised his constitutional issues below in the Nebraska Supreme Court, which Mata acknowledges in his petition. (Pet. App. A7-8, A13-10; Petition,p7) This Court will not decide federal constitutional issues raised before it for first time on review of state court decisions. See *Cardinale v. Louisiana*, 394 U.S. 437 (1969); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430 (1940) (“[I]t is only in exceptional cases, and then only in cases coming from the federal courts, that [this Court] considers questions urged by a petitioner or appellant not pressed or passed upon in the courts below”). As explained next, Mata’s issues are not exceptional federal questions. Rather, the issues are a matter of state law.

- 2. Rule 10: No federal question.**

Mata’s rests on the foundation of a matter of state law, not federal law. The Nebraska Supreme Court has the final authority to determine whether, under the Nebraska Constitution, the state legislature’s act in repealing the death penalty had been repealed itself by Nebraska citizens using the state constitutional referendum process. The Nebraska Supreme Court construed

the issue of state law and decided that the legislature's act in attempting to repeal the death penalty never went into effect because of the state voter referendum repealing the legislature's act before it become effective. (Pet. App. A13-15)

Mata's argument depends on some loose dictum from a 54-year old Nebraska Supreme Court case, *Klosterman v. Marsh*, 143 N.W.2d 744 (Neb. 1966), to argue that the Nebraska Supreme Court somehow got it wrong when construing Nebraska's constitution on voter referendums in Mata's case. Regardless of the far-fetched nature of Mata's state law argument, the matter of construing Nebraska's constitution on voter referendums in connection with the repeal of a legislative act was a matter of state law. See *Johnson v. Fankell*, 520 U.S. 911, 916 (1997). ("Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State." "This proposition, fundamental to our system of federalism, is applicable to procedural as well as substantive rules.")

3. No Rule 10 conflict

There is no Rule 10(b) conflict among the Circuit Courts nor has any "state court of last resort decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals". Mata's petition cites no such conflict. This is because

Mata's question presented and issues are based on a matter of state law decided by Nebraska's highest court under the unique language of the Nebraska state constitution.

Rule 10(c) provides for certiorari consideration when "a state court . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court." The only decision by this Court cited in Mata's petition is *Hicks v. Oklahoma*, 447 U.S. 343 (1980). The holding in *Hicks v. Oklahoma* was later explained by *Clemons v. Mississippi*, 494 U.S. 738, 746 (1990), as "[W]hen state law creates for a defendant a liberty interest in having a jury make particular findings, speculative appellate findings will not suffice to protect that entitlement for due process purposes." Mata's reliance on *Hicks* is misplaced. There is no issue of jury findings required by Nebraska state law.

CONCLUSION

The Respondent State of Nebraska requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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