No. _____

IN THE

Supreme Court of the United States

CHARLES GROVER BRANT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

DEATH PENALTY CASE

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CAPITAL CASE

QUESTION PRESENTED

Whether a waiver to an advisory, non-unanimous jury verdict lacking in any fact finding requirement under a death penalty scheme later determined to be unconstitutional by this Court in *Hurst v. Florida*, 136 S. Ct. 616 (2016) because the scheme denied a capital defendant the right to jury fact-finding, and subsequent statutory law added the requirement of a unanimous jury verdict, can be knowing and voluntary?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page. Petitioner, Charles Grover Brant, a death-sentenced Florida prisoner, was the appellant in the Florida Supreme Court. Respondent, the State of Florida, was the appellee in the Florida Supreme Court.

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PETITION FOR A WRIT OF CERTIORARI

Charles Brant respectfully petitions for a writ of certiorari to review the judgment of the Florida Supreme Court.

OPINIONS BELOW

This is a petition regarding the errors of the Florida Supreme Court in denying Mr. Brant's claim that he could not have knowingly waived his right to unanimous fact-finding by a penalty phase jury when the Florida death penalty scheme was unconstitutional as decided by this court in *Hurst v. Florida*, 136 S. Ct. 616 (2016). The opinion at issue is reproduced at *Appendix A* and is reported at *Brant v. State*, 284 So. 3d 398 (Fla. 2019). The unpublished order denying Mr. Brant's successive motion to vacate death sentence issued by the Thirteenth Judicial Circuit Court in and for Hillsborough County Florida is reproduced at *Appendix B*.

JURISDICTION

The opinion of the Florida Supreme Court was entered on November 7, 2019. *See Appendix A*. No motion for rehearing was filed. On February 19, 2020, the Honorable Justice Clarence Thomas extended the time for filing to April 5, 2020.[1] (Application No. 19A902). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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[1] April 5, 2020 falls on a Sunday.

The Eighth Amendment provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 921.141, Florida Statutes (2000), entitled "Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—" provides, in relevant part:

> (2) ***ADVISORY SENTENCE*** BY THE JURY.—After hearing all the evidence, the jury shall deliberate and ***render an advisory sentence to the court***, based upon the following matters:
> (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
> (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
> (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.
>
> (3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the ***recommendation of a majority of the jury***, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but ***if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based*** as to the facts:
> (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
> (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

Fla. Stat. § 921.141 (2000) (emphasis added).

STATEMENT OF THE CASE

I. Introduction

Petitioner, Charles Brant, waived his right to a non-unanimous, advisory jury recommendation as delineated by a death penalty scheme that this Court determined violated the

United States Constitution for the reasons described in *Hurst v. Florida*, 136 S. Ct. 616 (2016). The Florida Supreme Court held that *Hurst* should apply retroactively to death sentences which became final after June 24, 2002, the date this Court decided *Ring v. Arizona,* 536 U.S. 584 (2002). Mr. Brant falls within that group; his death sentence having become final in 2009. The Florida Supreme Court, however, decided that Brant waived any claim to *Hurst* relief because in 2007, Brant waived his right to a non-unanimous, advisory jury recommendation. The Florida supreme Court's determination that *Hurst* cannot apply to post-*Ring* capital defendants who waived only a right to a non-unanimous, advisory jury recommendation, cannot pass muster under the Sixth, Eighth, or Fourteenth Amendments.

In *Furman v. Georgia*, 408 U.S. 238 (1972), and *Godfrey v. Georgia*, 446 U.S. 420 (1980), this Court described the now-familiar idea that "if a State wishes to authorize capital punishment it has a constitutional responsibility to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty." *Godfrey*, 446 U.S. at 428. This Court's Eighth Amendment decisions have "insist[ed] upon general rules that ensure consistency in determining who receives a death sentence." *Kennedy v. Louisiana*, 554 U.S. 407, 436 (2008).

The Eighth Amendment prohibition against arbitrariness and capriciousness in capital cases refined this Court's Fourteenth Amendment precedents holding that equal protection is denied "[w]hen the law lays an unequal hand on those who have committed intrinsically the same quality of offense and . . . [subjects] one and not the other" to a harsh form of punishment. *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942). A state does not have unfettered discretion to create different classes of condemned prisoners.

This Petition arises from the Florida Supreme Court's arbitrary decision to institute this partial application and deny *Hurst* relief to prisoners who waived their right to a non-unanimous

jury recommendation, even when the defendant's waiver was not knowing and voluntary. These death row prisoners whose death sentences became final post-*Ring*, such as Mr. Brant, were not given and thus could have not waived their constitutional right to a unanimous jury determination of their death sentence. Whereas other Florida death row prisoners, whose sentences also became final post-*Ring* and who elected to endure the unconstitutional process of receiving an advisory jury recommendation, were granted a constitutional resentencing or given a life sentence in light of *Hurst*. The Florida Supreme Court's arbitrary application of *Hurst* prohibits a class of Florida prisoners from obtaining jury fact-finding and determination of their death sentences and makes a sweeping determination that a capital defendant's waiver to a flimsy, unconstitutional jury right acts as a broad waiver to a meaningful, constitutional jury determination. This determination is inconsistent with the Eighth Amendment's prohibition against the arbitrary and capricious imposition of the death penalty and the Fourteenth Amendment's guarantee of equal protection and due process when waiving a constitutional right. This Court should resolve the constitutional infirmities with the Florida Supreme Court's application of *Hurst*. As Mr. Brant challenged the unconstitutionality of Florida's death penalty statute and had his challenges repeatedly denied, his case, like so many others, evinces ongoing inequities and injustice of Florida's widely criticized, outlier death penalty scheme. This cases presents a clear path for this Court to address Florida's arbitrary and unjust decisions denying relief to capital defendants who waived a toothless right to a nonunanimous advisory jury recommendation.

II. Factual and Procedural Background

A. Trial and Direct Appeal

Charles Grover Brant was charged by Indictment on July 14, 2004 with one count of first degree premeditated murder, sexual battery, kidnapping, grand theft auto and burglary of a

dwelling with assault and/or battery. Prior to his trial, Mr. Brant filed multiple motions challenging the constitutionality of Florida's death penalty scheme. Notably, Mr. Brant moved to declare Section 921.141 of the Florida Statutes unconstitutional due to only a bare majority of jurors being required to recommend a death sentence and the lack of a jury being required to find sentencing factors. The trial court denied the motions. On May 25, 2007, upon advice of counsel, Mr. Brant pled guilty as charged to all crimes. He received no negotiated benefit for his guilty plea and continued to face the death penalty.

Jury selection for the penalty phase began on August 20, 2007. TR V. 17, p. 1651. (Supp). Upon being informed that Brant had been found guilty, Juror Brenda Ricci stated, "He's guilty, he's guilty and I'm really tired of the system being wasted, to be honest with you." TR V. 18, p. 1816-17. Ms. Ricci continued, "Yes, I was upset just hearing what the judge described ... and the five guilty verdicts that were already decided. I mean, this was three years ago. I don't understand due process to me. (sic). " Id. at 1817-18. Upon request by counsel, the trial judge inquired of the Panel if anyone else agreed with Juror Ricci. Id. at 1820. Approximately 19 potential jurors agreed with Ms. Ricci. *Id.* at 1828, 1830-1832.

As jury selection continued, some of the potential jurors continued to express similar views. Juror Parker stood up and told the prosecutor, "Seriously. I mean, I totally agree. We all know, I mean, I'm on your side. I will put him to death." *Id.* at 1952, 1954. The prosecutor thanked the juror. *Id.* at 1952.

Defense counsel renewed his motion to strike noting that the jurors had laughed after Juror Parker's comment. The trial judge agreed: "Then there was laughter, yes." *Id.* at 1954. The court "reluctantly" granted the defense motion over the State's objection, determining that the jurors "starting with Ms. Ricci," created an "atmosphere" that warranted striking the panel. *Id.* at 1964-

1966.

The very next day, Brant waived a non-unanimous, penalty phase jury "recommendation." TR V. 7, p. 1- 16. (The transcript of Brant's waiver is reproduced at Appendix E). Brant told the court he had stopped taking his anti-depression medication about two months prior to waiving the jury. *Id.* at 11-12. The next day, the State put on the record that in a recorded jail phone call made by Mr. Brant the night before, Mr. Brant told a friend that, "pleading guilty was a big mistake." TR V. 8, p. 244. Trial counsel described jury selection as a "debacle." TR (Supp.) V. 18, p. 1958.

The trial court alone made the findings of fact required to impose a death sentence under Florida law and, after finding and weighing the aggravators and mitigators, the trial court sentenced Mr. Brant to death. *See Brant,* 21 So. 2d 1276 (Fla. 2009); *see also* Fla. Stat. § 921.141(3) (2000), *invalidated by Hurst*, 136 S. Ct. at 624.

Brant appealed, his appellate counsel raising only a single issue, that his death sentence was disproportionate. *Brant,* 21 So. 2d at 1283-84. The Florida Supreme Court affirmed. *Id.* Brant's appellate counsel failed to file a petition for certiorari review with this Court.

B. Postconviction

In Mr. Brant's initial motion for postconviction relief pursuant to Fla. R. Crim. P. 3.851, he raised an ineffective assistance of counsel claim pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984) asserting that trial counsel's failure to investigate his case rendering the advice he gave him to plead guilty as charged for no benefit fell below prevailing norms, and further counsel's deficient performance during jury selection rendered Brant's waiver of a penalty phase jury unknowing and involuntary. The lower court denied the motion after an evidentiary hearing and the Florida supreme Court affirmed on appeal. *Brant v. State*, 197 So. 3d 1051 (Fla. 2016). The court also denied Brant's Sixth Amendment *Ring/Hurst* claim. *Id.* at 1079.

C. *Hurst* Litigation and Decision Below

On January 12, 2016, this Court issued its opinion in *Hurst v. Florida,* striking down Florida's longstanding capital-sentencing procedures[2] because the statute authorized a judge, rather than a jury, to make the factual findings necessary to impose a death sentence. On remand, the Florida Supreme Court held that a verdict for death could not be rendered without unanimous jury findings of at least one aggravating circumstance and a unanimous finding that the aggravation is sufficient to outweigh any mitigating circumstances and to warrant death. *See Hurst v. State,* 202 So. 3d 40 (2016), *overruled in relevant part by Poole v. State.* – So. 3d --, 2020 Westlaw 370302 (Fla. 2020). *Hurst* followed *Ring* in subjecting the capital sentencing process to *Apprendi*'s Sixth Amendment requirement that all facts necessary for criminal sentencing enhancement must be found by a jury. The Florida Supreme Court then addressed the question of the retroactive application of the federal constitutional rule of *Hurst* to Florida's approximately 380 condemned inmates. Applying Florida's retroactivity doctrines, the Florida Supreme Court held in *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016) that inmates whose death sentences were not yet final on June 24, 2002 (the date *Ring* was decided) were entitled to resentencing under *Hurst.* However, the Florida Supreme Court determined that defendants whose cases were final after *Ring* but who waived their right to a non-unanimous advisory jury did not qualify for *Hurst* relief.

On December 21, 2017, Brant filed a successive motion to vacate his death sentence in the circuit court based on *Hurst v. Florida*, 136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), arguing that the Eighth Amendment right to a unanimous sentencing jury verdict rendered his sentence of death unconstitutional. (The motion is reproduced at Appendix G). The

[2] Florida's capital sentencing procedure outlined in Fla. Stat. § 921.141 which had been in effect (with minor changes, irrelevant to this question presented) since 1972.

State filed a response and the court conducted a case management hearing, after which the lower court denied relief. (The Order denying relief is reproduced at Appendix B). Brant filed a timely motion for rehearing on April 24, 2018, which was denied on May 2, 2018. (The motion for rehearing is reproduced at Appendix C; the Order denying is reproduced at Appendix D).

Mr. Brant timely appealed the denial of his successive motion to vacate his sentence of death to the Florida Supreme Court. The Florida Supreme Court issued an order directing Mr. Brant to file a brief addressing why the lower court's order should not be affirmed based on the Florida Supreme Court's precedent in *Mullens v. State,* 197 So 3d 16 (Fla. 2016). *See Appendix F.*

On November 7, 2019, the Florida Supreme Court affirmed the denial of Mr. Brant's successive motion. *See Brant*, 284 So. 3d 398 (Fla. 2019); *see also Appendix A.* In affirming the lower court's denial, the Florida Supreme Court held that the lower court properly denied relief:

> We conclude that the circuit court properly denied relief. Brant's claim is procedurally barred to the extent it was raised in his earlier postconviction appeal, *see Brant*, 197 So. 3d at 1079, and additionally fails on the merits. In *Mullens*, we held that a defendant's waiver of his right to a penalty phase jury was not rendered invalid by the subsequent changes in the law wrought by *Hurst v. Florida* and *Hurst v. State*. *Mullens*, 197 So. 3d at 38-40. Since issuing *Mullens*, we have consistently reaffirmed the principle that a defendant who waives his or her right to a penalty phase jury is not entitled to relief under the *Hurst* decisions. *See, e.g.*, *Lynch v. State*, 254 So. 3d 312, 322 (Fla. 2018), *cert. denied*, 139 S. Ct. 1266 (2019); *Hutchinson v. State*, 243 So. 3d 880, 883 (Fla.), *cert. denied*, 139 S. Ct. 261 (2018); *Rodgers v. State*, 242 So. 3d 276, 276-77 (Fla.), *cert. denied*, 139 S. Ct. 592 (2018); *Allred v. State*, 230 So. 3d 412, 413 (Fla. 2017); *Dessaure v. State*, 230 So. 3d 411, 412 (Fla. 2017). Brant is among those defendants who validly waived the right to a penalty phase jury, *see Brant*, 197 So. 3d at 1076, and his arguments do not compel departing from our precedent.

Brant, 284 at 399. This ruling is before this Court for review.

REASONS FOR GRANTING THE WRIT

I. Mr. Brant's waiver of his right to a penalty phase jury could not have been knowing and voluntary as Florida's death penalty scheme of seating an "advisory" jury but requiring the judge not the jury to make the factual findings necessary for the imposition of death was unconstitutional and violated Brant's

rights under the Eighth and Fourteenth Amendments.

Mr. Brant's death sentence is unconstitutional under *Hurst* and the Eighth, and Fourteenth Amendments because Brant could not knowingly have waived his right to a unanimous jury verdict.

This Court should grant Brant's Petition because Brant could not waive an Eighth Amendment right to unanimous jury sentencing which had not yet been recognized by the courts. *Halbert v. Michigan*, 545 U.S. 605, 623 (2005); *see also Management Health Systems, Inc. v. Access Therapies, Inc.*, No. 10-61792-CIV, 2010 WL 5572832 (S.D. Fla. Dec. 8, 2010) ("It is axiomatic that a party cannot waive a right that it does not yet have.") *Cruz v. Lowe's Home Centers, Inc.*, No. 8:09-cv-1030-T-30MAP, 2009 WL 2180489, at *3 (M.D. Fla. Jul. 21, 2009) (same); *cf. Menna v. New York*, 423 U.S. 61 (1975) (guilty pleas do not "inevitably waive all antecedent constitutional violations" and a defendant can still raise claims that "stand in the way of conviction [even] if factual guilt is validly established").

In *Halbert*, this Court held that where the appellate court considers the merits of the claim in ruling a motion for leave to appeal, a defendant has a constitutional right to appointed counsel in filing the motion for leave to appeal. 545 U.S. at 618-19. Michigan argued that even if the defendant had a constitutional right to appointed counsel he had waived that right when he pled *nolo contendere*. *Id.* at 623. The Supreme Court found, however, that the defendant did not waive his right to counsel because he "had no recognized right to appointed appellate counsel he could elect to forgo." *Id.*

The Florida Supreme Court's holding in *Mullens* is contrary to *Halbert*. *Mullens* holds that there is no *Hurst* error where the defendant waived a jury recommendation at sentencing. *Mullens*, 197 So. 3d at 39. Prior to *Hurst*, however, a Florida defendant could not have waived *Hurst*-

required jury factfinding and unanimity because that right was not yet recognized by the courts. The pre-*Hurst* defendant could only waive the right to a jury recommendation of life or death. At the time of Defendant's death sentencing, before *Hurst*, Florida's unconstitutional capital-sentencing scheme permitted only the judge, not the jury, to find facts that would expose a defendant to a death sentence and allowed a jury advisory recommendation of death on a simple majority verdict. Defendant, therefore, waived only the right to a jury recommendation, not to his then-unrecognized constitutional right to jury factfinding and unanimity that could result in his exposure to a death sentence. Under *Halbert*, Defendant could not have waived his right to jury factfinding.

Even if this Court concludes that a pre-*Hurst* defendant could waive *Hurst* relief, Defendant's waiver was not knowing, voluntary, and intelligent, *Mullens*, 197 So. 3d at 39(waiver of jury sentencing must be "knowingly, voluntarily, and intelligently made"); *Trease v. State*, 41 So. 3d 119, 123 (Fla. 2010) (waiver of post-conviction counsel and post-conviction proceedings must be "knowing, intelligent, and voluntary"), because it did not consider the possibility that Florida's death-sentencing scheme would be found unconstitutional, *see Rodgers v. Jones*, 3:15-cv-507-RH, ECF No. 15 (N.D. Fla. Aug. 24, 2016) (federal district court order noting Defendant's waiver was pre-*Hurst* and did not address "the possibility that the entire Florida sentencing scheme would be held unconstitutional").

Whether Mr. Brant waived his constitutional rights as defined in *Hurst* is a question of federal law. "The question of a waiver of a federally guaranteed constitutional right is, of course, a federal question controlled by federal law." *Brookhart v. Janis*, 384 U.S. 1, 4 (1966). "There is a presumption against the waiver of constitutional rights" and "it must be clearly established that there was 'an intentional relinquishment or abandonment of a known right or privilege'" for a

waiver to be proper. *Id.* (citations omitted). However, if an ***appropriate*** waiver is procured, a defendant may waive his Sixth Amendment fundamental right to a jury trial and consent to judicial fact-finding. *See Blakely v. Washington*, 542 U.S. 296, 310 (2004). A defendant's relinquishment of a constitutional right must be clear and unequivocal. *See Faretta v. California*, 422 U.S. 806, 835 (1975). Further,

> [a]n appropriate oral colloquy will focus a defendant's attention on the value of a jury trial and should make a defendant aware of the likely consequences of the waiver. If the defendant has been advised by counsel about the advantages and disadvantages of a jury trial, then the colloquy will serve to verify the defendant's understanding of the waiver.

Tucker v. State, 559 So. 2d 218, 220 (Fla. 1990), *approved sub nom. Johnson v. State*, 994 So. 2d 960 (Fla. 2008). Accordingly, "an oral waiver, which is preceded by a proper colloquy during which the trial judge focuses on the value of a jury trial and provides a full explanation of the consequences of a waiver is necessary to constitute a sufficient waiver." *Johnson*, 994 So. 2d at 963 (citation omitted).

Mr. Brant's colloquy was inadequate because the trial judge only briefly questioned Mr. Brant regarding his waiver of an advisory jury for his penalty phase and did not focus on the value of a penalty phase jury trial. *See Appendix E.* The trial judge also did not fully explain the consequences to Mr. Brant or verify his understanding of the advantages and disadvantages to waiving a jury. Further, the waiver was expressly that of an advisory jury verdict and there was no discussion of the right to a unanimous determination for death. *See Appendix E.* Consequently, Mr. Brant's jury waiver is invalid.

Notwithstanding the insufficient colloquy, Mr. Brant cannot waive a constitutional right that was wrongfully not afforded to him. A defendant cannot waive a right not yet recognized by the courts. *Halbert v. Michigan*, 545 U.S. 605, 623 (2005); *see also Mgmt. Health Sys., Inc. v.*

Access Therapies, Inc., 10-61792-CIV, 2010 WL 5572832 (S.D. Fla. Dec. 8, 2010), *report and recommendation adopted*, 10-61792-CIV, 2011 WL 98320 (S.D. Fla. Jan. 12, 2011) ("It is axiomatic that a party cannot waive a right that it does not yet have."). At the time of Mr. Brant's sentencing, Florida's unconstitutional capital sentencing scheme permitted only the judge, not the jury, to find facts determining whether a defendant would be sentenced to death. Unanimous jury fact-finding was a right not yet recognized by Florida courts; therefore, Mr. Brant could only waive the right to bare majority jury recommendation of life or death.

As Mr. Brant only waived an advisory jury recommendation, his waiver was not knowing, voluntary, and intelligent. Thus, Mr. Brant's colloquy and waiver cannot be considered appropriate or unequivocal.

As evidenced by Mr. Brant's *Ring*-like motions to declare Florida's death penalty sentencing scheme unconstitutional, Brant ***never*** waived the protections and rights provided for post-*Ring* capital defendants under *Hurst*.

Further, the Eighth Amendment requires narrowing the class of murderers subject to capital punishment and juror unanimity serves that function. A Florida capital defendant's life no longer lies in the hands of a judge or a bare majority; it lies in the hands of twelve individuals. Now a defendant can only receive a death sentence if the jury unanimously concludes the defendant should be sentenced to death. Fla. Stat. 921.141 (2018). As a result, Florida capital defendants who have had one or more jurors vote in favor of a life sentence are no longer eligible to receive a death sentence and cannot be executed under the Eighth Amendment. *Id.*

The jury's role in determining death-eligibility in Florida is no longer advisory and as contemplated in *Caldwell v. Mississippi*, the jury now properly makes the ultimate decision of whether the defendant's life will be spared. *See* 472 U.S. 320, 328–29, 341 (1985). Now that a

unanimous jury is required to sentence a defendant to death, the conversations and assessments between trial counsel and defendants change dramatically. The new constitutional sentencing scheme enacted by the Florida Legislature after *Hurst* also changes the harmlessness analysis because the landscape of *voir dire* and death qualification, pretrial motions, opening and closing arguments, investigation and presentation of evidence in mitigation of a death sentence, challenging and arguing against evidence in aggravation, and jury instructions have changed to afford a constitutional trial. Each juror will now be instructed that they individually carry the immense responsibility of whether a death sentence was authorized or a life sentence was mandated. These are all important details to consider when making a decision to waive a jury or to advise a client to waive. Based on evolving standards of decency and the use of post-*Hurst* interrogatory verdict forms that lead the jury through the deliberation process step-by-step, it is even less likely Brant would receive a unanimous verdict if resentenced. *See* FL ST CR JURY INST 3.12(e).

In light of *Hurst*, Mr. Brant's death sentences stand in violation of the Eighth, and Fourteenth Amendments. Thus, the *Hurst* error in Brant's case warrants relief.

CONCLUSION

For all of these reasons, the Court should grant the petition for a writ of certiorari and order further briefing or vacate and remand this case to the Florida Supreme Court.

Respectfully submitted,

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