

IN THE
Supreme Court of the United States

ANTONIO LEBARON MELTON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

CAPITAL CASE

ALICE B. COPEK
Counsel of Record
DREW A. SENA
Office of the Capital Collateral
Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Alice.Copek@ccrc-north.org
Drew.Sena@ccrc-north.org

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REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I. The Eighth Amendment issue

Regarding Mr. Melton’s claim that the Eighth Amendment prohibits the execution of someone who committed a capital crime when he was 18 years and 25 days old, Respondent first asserts that “evolving standards of decency are properly derived from legislation enacted by elected representatives, not from studies, experts’ opinions, or resolutions from professional organizations.” BIO at 8, 11. While that may be Respondent’s preference, it does not align with this Court’s Eighth Amendment precedent. The *Roper* Court drew from many sources for its holding that juveniles are categorically barred from execution, such as state legislation, *Roper*, 543 U.S. 551, 564-67 (2005); international practices, *id.* at 575-78; and the very “experts’ opinions” that Respondent now decries, *id.* at 568-74 (citing psychological and sociological research, including studies by Dr. Steinberg and the American Psychological Association).

It is entirely appropriate to look to opinions from experts—including scientists—in a particular field for guidance, and the Court regularly does so. *See, e.g.*, *New York State Rifle & Pistol Assn, Inc. v. Bruen*, 597 U.S. 1, 46 (2022) (referencing amicus brief providing historical context for the understanding of the Second Amendment at common law); *see also* Petition at 8-9 (examples where this Court has cited the APA’s amicus briefs in its opinions). It is even more appropriate here, where Mr. Melton’s claim is predicated on a newly established scientific consensus on the implications of adolescent brain development in capital sentencing.

But even by Respondent's own chosen metric, state legislatures across the country have begun passing laws to adapt to the newfound understanding of the cognitive immaturity of adolescents. *Contra BIO* at 11 ("In short, not much has changed legally since *Roper* was decided."). As the APA resolution noted, "there are currently more than 3,000 laws and government regulations restricting the behavior and actions of persons under the age of 21 years [old]," including purchasing alcohol or tobacco, getting a credit card independently, or working as an FBI agent. *See ROA* at 146. These laws reflect what the neurobiological science has shown regarding adolescent decision-making capabilities: Individuals under 21 are cognitively like adults when they are in situations where they do not have to make quick decisions under stressful conditions (e.g., voting or health care), but are more like juveniles in "highly stressful and extremely arousing circumstances"—which occur during many capital crimes, including Mr. Melton's. *ROA* at 146. This nuanced approach shows that states are beginning to "draw[] the line" at 21 "for many purposes between childhood and adulthood." *Roper*, 543 U.S. at 574.¹

¹ Furthermore, Respondent's contention that there is "no legislation, state or federal, increasing the age of eligibility for the death penalty" belies the truth. *BIO* at 8-9. The *Roper* Court counted "12 [states] that [had] **rejected the death penalty altogether** and 18 that maintain it but . . . exclude juveniles from its reach" to obtain 30 states prohibiting the juvenile death penalty. *Roper*, 543 U.S. at 564 (emphasis added). Using those same criteria, 23 states have now abolished the death penalty, and an additional six states have governor-imposed moratoria, including one state whose governor commuted all active death sentences. At most, then, there is a roughly even split on the acceptability of the late-adolescent death penalty. *See "State by State (2023)," Death Penalty Information Center, <https://deathpenaltyinfo.org/states-landing>* (last accessed Dec. 24, 2023).

Relatedly, Respondent argues that the Florida Supreme Court’s decision does not contravene the evolving-standards-of-decency test this Court outlined in *Trop v. Dulles*, 356 U.S. 86, 101 (1958). To the contrary, the state court reiterated that it has “repeatedly held that unless the United States Supreme Court determines that the age of ineligibility for the death penalty should be extended, [it] will continue to adhere to *Roper*.” App. at 7; *Melton v. State*, 367 So. 3d 1175, 1177 (Fla. 2023) (internal quotation marks omitted). Regardless of the evidence put before it, the Florida Supreme Court will never acknowledge that societal standards have evolved until this Court explicitly says so. That flies in the face of *Trop* and, even more so, of *Roper*, which looked to state practices as a gauge to determine whether a national consensus had been reached for Eighth Amendment purposes. See *Roper*, 543 U.S. at 562-567.

Respondent further says that certiorari review is not warranted because there are no conflicting decisions of either the federal appellate courts or state supreme courts: “The federal circuit courts, of course, follow the line drawn by this Court in *Roper*.” BIO at 12-13. But this is a meaningless metric because the lower federal courts must follow this Court’s precedent—and “moving the age line established in *Roper* . . . would violate [its] categorical rule.” BIO at 13 (citing *Kearse v. Sec’y, Fla. Dep’t of Corr.*, 2022 WL 3661526, at *26-*27 (11th Cir. Aug. 25, 2022)). Many federal courts faced with this issue have expressed concern over the continued propriety of *Roper*’s 18-year-old cutoff—including in Mr. Melton’s own case. See *Melton v. Sec’y, Fla. Dep’t of Corr.*, 778 F.3d 1234, 1237 (11th Cir. 2015) (Martin, J., dissenting) (“I

think Mr. Melton’s claim—that his mental and emotional age of less than eighteen prohibits his execution—satisfies the certificate of appealability standard.”); *Kearse*, 2022 WL 3661526 at *29-*30 (Wilson, J., concurring in part and dissenting in part) (finding that Kearse’s death sentence was disproportionate, in part under *Roper*’s logic); *Pike v. Gross*, 936 F.3d 372, 383-86 (6th Cir. 2019) (Stranch, J., concurring) (“[This case] presents an issue with which our society must be concerned—whether 18-year-olds should be sentenced to death.”). The federal courts are not *unwilling* to expand *Roper*, *contra* BIO at 9; rather, they are *unable* to do so without this Court’s action.²

A similar flaw mars Respondent’s argument that there is no conflict among the state supreme courts on this issue. Mr. Melton noted that several states, including Washington, Massachusetts, and Michigan, have used state constitutional principles to extend this Court’s holding in *Miller v. Alabama*, 567 U.S. 460 (2012), to apply to individuals under age 21. Petition at 13. Respondent contends that these decisions are irrelevant because “[c]ases that employ state law as a basis for a decision rather than employing the *Trop* standard cannot establish conflict [for certiorari purposes].” BIO at 13. But this ignores the fact that these courts used state law as an alternative to federal law, recognizing that this Court has not yet expanded *Miller* to protect those over age 18. *See, e.g.*, *People v. Parks*, 987 N.W. 161, 164 (Mich. 2022) (“Under

² Respondent contends that certiorari should be denied because this is not an “important question[] of federal law.” BIO at 22. The federal courts confronted with this issue would likely disagree. *See, e.g.*, *Pike*, 936 F.3d 372, 386 (Stranch, J., concurring) (“[T]he Supreme Court has not extended *Roper* to 18-year-olds. I therefore reluctantly concur [in affirming Pike’s death sentence].”).

current United States Supreme Court precedent, Parks's Eighth Amendment argument must fail."); *Matter of Monschke*, 402 P.3d 276, 279 n.6 (Wash. 2021). Following Respondent's logic would essentially freeze *Trop* and *Roper*'s Eighth Amendment process: State and lower federal courts can never use federal constitutional principles to expand *Roper* (because that would violate this Court's rule); however, when state courts resort to state law to achieve the same goal (which they cannot achieve under federal law), those decisions will not count towards establishing a national consensus of evolving standards. Respondent's circuitous argument should not stop this Court from reviewing the question.

II. The Due Process issue³

As to the due-process issue, Respondent asserts that certiorari review is not warranted because the determination of whether a successive postconviction motion was timely filed "is a matter of state law" with "no federal constitutional aspect to" it. BIO at 10, 17-18. But Respondent misidentifies the problem Mr. Melton is raising. This Court's authority to review state-law matters that necessarily implicate federal constitutional provisions (including the Due Process Clause) is uncontested and regularly invoked. *See, e.g.*, *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 (1982) (internal citations omitted) ("[T]he Fourteenth Amendment's Due Process

³ Respondent rephrases the second question presented as one about "newly discovered evidence of mitigation" and largely regurgitates the arguments raised in response to the first question. BIO at i. However, Mr. Melton did not raise such a claim before this Court. He has replied to the relevant points raised in Respondent's second question as they pertain to the questions he presented in his certiorari petition.

Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be the equivalent of denying them an opportunity to be heard upon their claimed rights.”). The Florida courts’ application of Rule 3.851(d)(2)(A)’s timeliness provision squarely presents such a situation where the imposition of state-law barriers violates federal constitutional law.

The issue is not that a one-year time-bar exists at all. *Accord* BIO at 21 (“There is nothing fundamentally unfair about a state court having time limitations on bringing postconviction claims[.]”). Rather, the constitutional problem arises from the Florida Supreme Court’s routine imposition of the time-bar to foreclose claims that present new scientific evidence and newly established scientific consensuses, as occurred here. As Mr. Melton explained, this means that Florida capital defendants will nearly always be barred from challenging their convictions or death sentences based on newly established scientific understandings that gradually shifted over years or decades. *See* Petition at 15-18 (pointing to arson science and “shaken baby syndrome” as examples of this incremental process).⁴ And that is exactly what

⁴ Respondent appears to misunderstand Mr. Melton’s purpose in citing these cases. *See generally*, BIO at 22-23. He was not arguing that *Han Tak Lee* or *Smith* were dispositive on either of his issues. Rather, he referenced them as examples of other courts recognizing that shifts in scientific understanding occur as the result of a process that occurs over decades. The Florida Supreme Court’s imposition of 3.851(d)(2)(A)’s one-year time-bar cuts this process off at the knees, leading to unreliable convictions and death sentences. *See* Petition at 14-17 (“*Han Tak Lee* and *Smith* demonstrate the problem with the Florida Supreme Court’s rigid approach to newly discovered scientific evidence.”).

happens in practice. *See* BIO at 12 (citing cases where the Florida Supreme Court has denied relief on similar claims).

While Respondent accuses Mr. Melton of “turn[ing] state law claims into federal constitutional claims merely by wrapping [them] in due process cloth,” it is Respondent who attempts to curtail this Court’s review by obscuring the federal nature of Mr. Melton’s claim. BIO at 18. This Court should reject Respondent’s efforts and review the issue.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

/s/ Alice B. Copek
ALICE B. COPEK
Counsel of Record
DREW A. SENA
Office of the Capital Collateral
Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Alice.Copek@ccrc-north.org
Drew.Sena@ccrc-north.org

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