No. _____

IN THE

Supreme Court of the United States

EDWARD THOMAS JAMES,

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

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, MARCH 20, 2025, AT 6:00 PM

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CAPITAL CASE

QUESTIONS PRESENTED

Petitioner Edward Thomas James is scheduled to be executed by the State of Florida on March 20, 2025, based on a non-unanimous jury sentencing verdict. In denying Mr. James' claim that such an execution would violate the Eighth Amendment, the Florida Supreme Court implicitly relied upon a unique state constitutional provision precluding it from recognizing any protection against cruel and unusual punishment that has not been mandated verbatim by this Court. *James v. State*, -- So. 3d – (Fla. Mar. 13, 2025) (App. A).

Mr. James' death sentences are the byproduct of fundamental constitutional errors. Florida allowed Mr. James to languish without counsel for over a decade and arbitrarily refused to reinstate his appeals despite allowing reinstatement for similarly situated individuals, which permanently frustrated Mr. James' ability to obtain substantive review of his constitutional claims and violated his right to due process.

Mr. James raises the following issues in this petition:

1. Whether a state law that prohibits Florida courts from considering evolving standards of decency may preclude Mr. James from raising a claim that his execution would violate the Eighth Amendment because his death sentences were non-unanimous?

2. Whether the Florida Courts' failure to reconsider Mr. James' timeliness rulings and the competency of his 2003 waiver treated Mr. James differently from

other similar individuals and denied him his rights under the Sixth, Eighth, and Fourteenth Amendments?

LIST OF PARTIES

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

LIST OF RELATED CASES

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Underlying Trial:
Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida
State of Florida v. Edward Thomas James, Case No. 1993-CF-3237
Judgment Entered: August 18, 1995

Direct Appeal:
Supreme Court of Florida (Case No. 86834)
James v. State, 695 So. 2d 1229 (Fla. 1997) (affirming)
Judgment Entered: April 24, 1997, *reh'g denied* June 20, 1997

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 97-6104)
James v. Florida, 522 U.S. 1000 (1997)
Judgment Entered: December 1, 1997

Initial Postconviction Proceedings:
Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida
State of Florida v. Edward Thomas James, Case No. 1993-CF-3237
Judgment Entered: April 18, 2011 (dismissing proceedings)

Appeal of Denial of Postconviction Motion:
Supreme Court of Florida (Case No. SC06-426)
James v. State, 974 So.2d 365 (Fla. 2008) (affirming)
Judgment Entered: January 24, 2008, *reh'g denied* October 21, 2008

Second Postconviction Proceedings:
Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida
State of Florida v. Edward Thomas James, Case No. 1993-CF-3237
Judgment Entered: Initial Denial: March 17, 2020; Motion for Rehearing granted April 13, 2020; Final Denial: June 8, 2020

Appeal of Denial of Postconviction Motion:
Supreme Court of Florida (Case No. SC20-1036)
James v. State, 323 So.3d 158 (Fla. 2021) (affirming)
Judgment Entered: July 8, 2021, *reh'g denied* August 30, 2021

Petition for Writ of Certiorari Denied:
Supreme Court of the United States
James v. Florida, 142 S. Ct. 1678 (2022); Case Number: 21-7015
Judgment entered: April 18, 2022; *cert. denied*.

Federal Habeas Petition:
United States District Court, Middle District. Florida, Orlando Division.
James v. Sec'y for Dep't of Corr., No. 6:18-cv-00993-WWB-RMN (M.D. Fla. September 6, 2024) (*unpublished*); Case number: 6:18-cv-00993-WWB-RMN
Judgment signed: September 6, 2024; Judgment entered: September 9, 2024; Certificate of Appealability denied.

Appeal From the Denial of Federal Habeas Petition:
United States Court of Appeals, Eleventh Circuit.
James v. Sec'y for Dep't of Corr., No. 24-14162 (11th Cir. 2025) (*unpublished*); Case Number: 24–14162
Judgment entered: February 3, 2025; Rehearing denied: February 27, 2025.

Emergency Motion for Certificate of Appealability
United States Court of Appeals, Eleventh Circuit.
James v. Sec'y for Dep't of Corr.; Case Number: 25-10683
Filed: March 6, 2025; Judgment: March 13, 2025.

Third Postconviction Proceedings:
Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida
State of Florida v. Edward Thomas James, Case No. 1993-CF-3237
Judgment Entered: February 26, 2025

Appeal of Denial of Postconviction Motion:
Supreme Court of Florida (Case No. SC2025-0280)
James v. State, --- So. 3d --- (Fla. 2025) (affirming)
Judgment Entered: March 13, 2025

Denial of State Habeas:
Supreme Court of Florida (Case No. SC2025-0281)
James v. Dixon, --- So. 3d --- (Fla. 2025)
Judgment Entered: March 13, 2025

TABLE OF CONTENTS

CONTENTS **PAGE**

QUESTIONS PRESENTED i

LIST OF PARTIES ii

LIST OF RELATED CASES ii

TABLE OF CONTENTS v

INDEX TO APPENDICES vii

TABLE OF AUTHORITIES viii

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 6

I. THE EIGHTH AMENDMENT PROHIBITS THE EXECUTION OF THOSE NOT SENTENCED TO DEATH BY A UNANIMOUS JURY 6

A. Mr. James' death sentences violate evolving standards of decency as reflected by overwhelming state practice and consistent with the Framers' intent 7

1. There is an overwhelming national consensus in favor of unanimous capital jury sentencing 7

2. This Court's decision in *Ramos* also contributes to the societal consensus against non-unanimous juries 8

3. It is widely understood that a unanimous jury vote was required to execute a defendant at the time of the founding 9

4. This Court should reconsider what remains of *Spaziano* and *Harris*..... 11

5. This case is a proper vehicle to decide the question.....13

B. A state must not opt out of considerations required by the Eighth Amendment.....14

1. Florida's Eighth Amendment Conformity Clause..... 16

2. This Court has authority to intervene in Florida's unconstitutional use of its conformity clause, and should exercise that authority here.....18

3. This case is a proper vehicle for consideration of the question presented.....21

4. This issue is of great national importance.....23

5. Without this Court's intervention, Florida will continue to routinely violate the Eighth Amendment and maintain a constitutionally impermissible outlier status with regard to evolving standards of decency and death penalty jurisprudence 29

6. Conclusion..... 32

II. THE EXECUTION OF A DEFENDANT WHO WAIVED HIS POSTCONVICTION PROCEEDINGS WHILE INCOMPETENT VIOLATES THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.....32

CONCLUSION..... 40

INDEX TO APPENDICES
[IN SEPARATE VOLUME]

Appendix A	*James v. State* & *James v. Dixon*, Nos. SC2025-0280, SC2025-0281, (Fla. March 13, 2025).
Appendix B	The Eighteenth Judicial Circuit, In and For Seminole County, Florida, Order Denying Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence, dated February 26, 2025

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Alden v. Maine, 527 U.S. 706 (1999) 24

Allen v. State, 322 So. 3d 589 (Fla. 2021) 18

Ark Encounter, LLC v. Parkinson, 152 F. Supp. 3d 880 (E.D. Ky 2016) 24

Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000) 16

Atkins v. Virginia, 536 U.S. 304 (2002) 7, 8, 27

Barwick v. State, 361 So. 3d 785 (Fla. 2023) 18, 22

Battle v. United States, 419 F. 3d 1292 (11th Cir. 2005) 34, 38

Beck v. Alabama, 447 U.S. 625 (1980) 10

Bowles v. State, 276 So. 3d 791 (Fla. 2019) 17

Boykin v. Alabama, 395 U.S. 238 (1969) 32

Brigham City v. Stuart, 547 U.S. 398 (2006) 26

Brown v. State, 62 N.E. 3d 1232 (Ind. 2016) 24

Bucklew v. Precythe, 139 S. Ct. 1112 (2019) 7, 10

Burket v. Angelone, 208 F. 3d 172 (4th Cir. 2000) 39

Bush v. Wainwright, 505 So. 2d 409 (Fla. 1987) 33

Chandler v. Florida, 449 U.S. 560 (1981) 28

Cheff v. Schnackenberg, 384 U.S. 373 (1966) 9

City of Cleburne, Tex. V. Cleburne Living Ctr., 473 U.S. 432 (1985) 8

Cook v. Gralike, 531 U.S. 510 (2001) 20

Cooper v. State of Cal., 386 U.S. 58 (1967) 26

Covington v. State, 348 So. 3d 456 (Fla. 2022) 18

Cunningham v. Florida, 144 S. Ct. 1287 (2024)..... 16, 30

Democratic Executive Comm. Of Florida v. Lee, 915 F. 3d 1312 (11th Cir. 2019).... 19

Dillbeck v. State, 357 So. 3d 94 (Fla. 2023) 12

Dist. Attorney's Office v. Osborne, 557 U.S. 52 (2009)..... 34, 35

Downey v. State, 144 So. 3d 146 (Miss. 2014)..... 24

Drope v. Missouri, 420 U.S. 162 (1975)..... 32, 33, 37, 39

Durocher v. Singletary, 623 So. 2d 482 (Fla. 1993) 3

Dusky v. United States, 362 U.S. 402 (1960) 33

Evitts v. Lucey, 469 U.S. 387 (1985)..... 35

Florida v. Rigterink, 559 U.S. 965 (2010) 26

Foster v. Chatman, 578 U.S. 488 (2016) 23

Furman v. Georgia, 408 U.S. 238 (1972) 14

GE Commercial Finance Business Property Corp. v. Heard, 621 F. Supp. 2d 1305 (M.D. Ga 2009)..... 25

Graham v. Florida, 560 U.S. 48 (2010)..... 18, 30

Gregg v. Georgia, 428 U.S. 153 (1976) 29

Hall v. Florida, 572 U.S. 701 (2014) 28, 29, 30

Harris v. Alabama, 513 U.S. 504 (1995)..... 11, 12

Hart v. State, 246 So. 3d 417 (Fla. 4th DCA 2018)..... 18

Honda Motor Co. v. Oberg, 512 U.S. 415 (1994)..... 20

Huff v. State, 622 So. 2d 982 (Fla. 1993) 5

Hurst v. Florida, 577 U.S. 92 (2016) 12, 30

In re T.W., 551 So. 2d 1186 (Fla. 1989) 25

Jackson v. State, 29 So. 3d 1161 (Fla. 1st DCA 2010) 33

James v. State, 489 So. 2d 737 (Fla. 1986) 33

James v. State, 695 So. 2d 1229 (Fla. 1997) 2

James v. State, 974 So. 2d 365 (Fla. 2008) 3

James v. State, 323 So. 3d 158 (Fla. 2021) 2, 5

James v. Florida, 522 U.S. 1000 (1997) 2

James v. Florida, 142 S. Ct. 1678 (2022) 5

James v. Sec'y, Dep't of Corrs., Case No. 6:18-cv-993-PGB-KRS 4

James v. Singletary, 957 F. 2d 1562 (11th Cir. 1992) 34

Jones v. State, 478 So. 2d 346 (Fla. 1985) 33

Jones v. State, 174 So. 3d 902 (Miss. Ct. App. 2015) 39

Kansas v. Carr, 577 U.S. 108 (2016) 32

Kennedy v. Louisiana, 554 U.S. 407 (2008) 14, 29

Kreimer v. Bureau of Police for Town of Morristown, 958 F. 2d 1242 (3d Cir. 1992) 25

Lawrence v. State, 308 So. 3d 544 (Fla. 2020) 18

Lawrence v. Sec'y, Fla. Dep't of Corr., 700 F. 3d 464 (11th Cir. 2012) 34, 38

Martinez-Villareal v. Lewis, 80 F. 3d 1301 (9th Cir. 1996) 39

Medina v. Singletary, 59 F. 3d 1095 (11th Cir. 1995) 34, 38

Michigan v. Long, 463 U.S. 1032 (1983) 23

Minnesota v. National Tea Co., 309 U.S. 551 (1940) 19, 21

Nelson v. State, 43 So. 3d 20 (Fla. 2010) 33, 34, 38

New State Ice Co. v. Leibmann, 285 U.S. 262 (1932) 28

Nguyen v. Reynolds, 131 F. 3d 1340 (10th Cir. 1997) 38

Oregon v. Hass, 420 U.S. 714 (1975) 26

Pardo v. Sec'y, Fla. Dep't of Corr., 587 F. 3d 1093 (11th Cir. 2009) 34, 38

Pate v. Robinson, 383 U.S. 375 (1966) 32, 37

Pennsylvania v. Finley, 481 U.S. 551 (1987) 35

Proffitt v. Florida, 428 U.S. 242 (1976) 13

Puerto Rico v. Branstad, 483 U.S. 219 (1987) 18

Quinn v. Millsap, 491 U.S. 95 (1989) 20

Raheem v. GDCP Warden, 995 F. 3d 895 (11th Cir. 2021) 34, 38

Ramos v. Louisiana, 140 S. Ct. 1390 (2020) 9, 11

Reynolds v. Florida, 139 S. Ct. 27 (2018) 12

Reynolds v. Sims, 377 U.S. 533 (1964) 18

Rice v. Cayetano, 528 U.S. 495 (2000) 20

Rigterink v. State, 2 So. 3d 221 (Fla. 2009) 26

Ring v. Arizona, 536 U.S. 584 (2002) 12

Rogers v. Gibson, 173 F. 3d 1278 (10th Cir. 1999) 38

Romer v. Evans, 517 U.S. 620 (1996) 20

Roper v. Simmons, 543 U.S. 551 (2005) 18, 27

Smith v. State, 149 So. 3d 1027 (Miss. 2014) 39, 40

Spaziano v. Florida, 468 U.S. 447 (1984) 11, 12

State v. Baldon, 829 N.W. 2d 785 (Iowa 2013) 25

State v. Griffin, 339 Conn. 631 (Conn. 2021) 24

State v. Poole, 297 So. 3d 487 (Fla. 2020) 12

State v. Purcell, 331 Conn. 318 (Conn. 2019) 24

Thompson v. State, 3 So. 3d 1237 (Fla. 2009) 33

Thompson v. State, 88 So. 3d 312 (Fla. 4th DCA 2012) 33

Traylor v. State, 596 So. 2d 957 (Fla. 1992) 25, 28

Trop v. Dulles, 356 U.S. 86 (1958) 29

United States v. Haymond, 139 S. Ct. 2369 (2019) 9

U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995) 20

Vogt v. United States, 88 F. 3d 587 (8th Cir. 1996) 39

Weekley v. Jones, 56 F. 3d 889 (8th Cir. 1995) 39

Weekley v. Jones, 73 F. 3d 763 (8th Cir. 1995) 39

Weekley v. Jones, 76 F. 3d 1459 (8th Cir. 1996) 39

Weems v. United States, 217 U.S. 349 (1910) 29

Witherspoon v. Illinois, 391 U.S. 510 (1968) 6

Woodson v. North Carolina, 428 U.S. 280 (1976) 10, 22, 29

Woodward v. Alabama, 571 U.S. 1045 (2013) 12

Wright v. Sec'y, Dep't of Corr., 278 F. 3d 1245 (11th Cir. 2002) 34, 38

Zack v. State, 371 So. 3d 335 (Fla. 2023) 14, 18, 21

CONSTITUTIONAL PROVISIONS **PAGE(S)**

U.S. CONST. amend. VI 1, 32

U.S. CONST. amend. VIII .....*passim*

U.S. CONST. amend. XIV..... 2, 5, 20, 32, 34

Art. I, § 17, Florida Constitution..... 16, 17, 20

STATUTES AND RULES **PAGE(S)**

28 U.S.C. § 1257..... 1

28 U.S.C. § 2254..... 4

Fla. Stat. § 921.141..... 22, 31

Fla. Stat. § 921.1425..... 22

Fla. R. Crim. P. 3.850 3

Fla. R. Crim. P. 3.851 ..... 4, 5

OTHER AUTHORITIES **PAGE(S)**

Richa Bijlani, *More than Just a Factfinder: The Right to Unanimous Jury Sentencing in Capital Cases*, 120 Mich. L. R. 1499 (2022)..... 11

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Janet C. Hoeffel, *Death Beyond a Reasonable Doubt*, 70 Ark. L. Rev. 267, 271 (2017) 10, 11

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Edward Thomas James respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida.

OPINIONS BELOW

This is a petition regarding the errors of the Supreme Court of Florida in affirming the Circuit Court of The Eighteenth Judicial Circuit, In and For Seminole County, Florida's ("circuit court") Order Denying Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence. The opinion at issue is unreported and reproduced at App. A. The circuit court's unpublished Order Denying Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence is reproduced at App. B.

JURISDICTION

The opinion of the Supreme Court of Florida was entered on March 13, 2025. Jurisdiction of this Court is invoked under 28 U.S.C. §1257.

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.

U.S. Const. amend. VI.

The Eighth Amendment provides, in relevant part:

> Excessive bail shall not be required…nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

The Fourteenth Amendment provides, in relevant part:

> No State shall . . . 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.

U.S. Const. amend. XIV.

STATEMENT OF THE CASE

Petitioner Edward James suffers from a nearly lifelong history of substance abuse, clear signs of mental illness, and memory impairment including indicators of early-onset dementia. Nevertheless, in 1995, he pleaded guilty to two counts of murder and related offenses, despite a glaring lack of memory of the crimes. *James v. State*, 695 So. 2d 1229 (Fla. 1997). Despite the fact that Mr. James' plea agreement contained no sentencing agreement or other benefit, no psychological competency evaluation was performed prior to entry of the plea and commencement of a capital penalty phase. An advisory jury recommended death on both murder counts by a vote of 11-1 (T. 1076),[1] after which the trial court made findings of fact and imposed a death sentence. *James*, 695 So. 2d at 1233. The Florida Supreme Court affirmed the death sentence, *id.* at 1238, and this Court denied a writ of certiorari, *James v. Florida*, 522 U.S. 1000 (1997).

[1] Citations to non-appendix material from the record below are as follows: R. – record from original trial; T – transcript of original trial; PCR – record from postconviction proceeding from *James v. State*, 323 So. 3d 158 (Fla. 2021); PCR-W – record from successive postconviction motion giving rise to the instant petition.

Mr. James was appointed state postconviction counsel, who filed and twice amended a motion for state postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. *See James v. State*, 974 So. 2d 365, 366 (Fla. 2008).[2] In March 2003, prior to an evidentiary hearing, Mr. James filed a pro se notice of voluntary dismissal of his postconviction proceedings. *Id*. The trial court held a hearing pursuant to *Durocher v. Singletary*, 623 So. 2d 482, 485 (Fla. 1993), purportedly to determine whether Mr. James was competent to waive postconviction litigation and discharge his counsel. At this hearing, Mr. James expressed a desire for the State to "go ahead" and execute him. *James*, 974 So. 2d at 367-78. Again, no comprehensive psychological evaluation was performed to determine whether Mr. James was competent to end his litigation. In April 2003, the trial court entered an order allowing Mr. James to withdraw his postconviction motion, cancelling the evidentiary hearing, and discharging counsel. *James*, 974 So. 2d at 366. Although Florida law permitted an appeal, and the trial court's order advised of this fact, neither Mr. James nor his counsel filed an appeal.

In November 2003, Mr. James contacted his former counsel asking for assistance with reinstating his postconviction proceedings, but the trial court denied that request in January 2006. *James*, 974 So. 2d at 366. The Florida Supreme Court reappointed counsel for the sole purpose of representing Mr. James on appeal, but affirmed the trial court's order of denial in January 2008. *Id*. at 367-68. The Florida Supreme Court concluded that Mr. James had not attacked the validity of the original waiver hearing

[2] The motion was filed in May 1998, and amended in November 2001 and September 2002.

but had "simply changed his mind," which was an invalid basis for setting aside a waiver. *Id*. at 368. Mr. James was without counsel for the next decade.

On December 18, 2018, the Capital Habeas Unit ("CHU") of the Federal Public Defender's Office, Northern District of Florida, filed a habeas corpus petition in the Middle District of Florida on behalf of Mr. James pursuant to 28 U.S.C. § 2254, which included allegations that Mr. James was not competent to plead guilty or face a capital sentencing proceeding, and that he received ineffective assistance of counsel at trial and on state postconviction review based on the failure to reasonably investigate and raise the competency issue.. *James v. Sec'y, Dep't of Corrs.*, Case No. 6:18-cv-993-PGB-KRS, ECF No. 23. The district court ordered a stay of federal proceedings pending exhaustion of the issues in state court. *Id*., ECF No. 25. Capital Collateral Regional Counsel – North ("CCRC-N") was appointed as Mr. James' state counsel on February 11, 2019 (PCR 276). At that time, Mr. James had not been meaningfully represented by counsel in state court since 2003.

On November 14, 2019, Mr. James, through CCRC-N, filed a successive motion for postconviction relief under Fla. R. Crim. P. 3.851, raising claims that: (1) trial counsel was ineffective with regard to Mr. James' pleas and penalty phase; (2) Mr. James was incompetent at the time of his pleas, various waivers, penalty phase, and sentencing; (3) Mr. James was incompetent at the time he waived his collateral proceedings; (4) Mr. James' death sentences violated Hurst; and (5) the combination of procedural and substantive errors prevented Mr. James from receiving fundamentally fair trial proceedings. (PCR 279-414).

The trial court summarily dismissed Mr. James' motion as untimely, without holding the case management hearing required by Florida law (PCR 482-515). After Mr. James filed an unopposed motion for rehearing, the trial court heard argument from counsel (PCR 663-709), but again entered an order summarily dismissing Mr. James' motion, finding that his incompetency claims were time-barred. The Florida Supreme Court affirmed. *James v. State*, 323 So. 3d 158 (Fla. 2021), *cert. denied*, 142 S. Ct. 1678 (2022).

On February 18, 2025, the Governor of Florida signed a death warrant for Mr. James. The execution is scheduled for March 20, 2025 at 6:00 p.m. On February 23, 2025, Mr. James filed a motion for postconviction relief pursuant to Fla. R. Crim. P. 3.851, raising claims that: (1) based on the totality of circumstances, executing Mr. James after thirty years in solitary confinement on death row violates the Eighth Amendment's prohibition against cruel and unusual punishment; (2) results of the 2023 brain scans, which were not previously available to Mr. James, demonstrate that his execution would violate the Eighth and Fourteenth Amendments; and (3) Mr. James' execution would violate the Eighth Amendment because one juror voted to spare his life. (PCR-W 508-844).

Following a *Huff* hearing on February 24, 2025, the circuit court summarily denied these claims from the bench, finding that they could be resolved without an evidentiary hearing. The circuit court also denied Mr. James' motion for a stay of execution, as well as his motion for further brain scans. (PCR-W 885-1029).

Also, on February 24, 2025, Mr. James filed a motion for reconsideration and motion for an emergency stay in the Eleventh Circuit, as well as an emergency motion to amend the habeas petition, or alternatively, for relief from judgment pursuant to Rule 60(b) in federal district court. All motions were denied on February 27, 2025. Mr. James then filed an Emergency Motion for Certificate of Appealability, as well as another motion to stay his execution in the Eleventh Circuit on March 6, 2025. Both motions were denied.

The circuit court issued its orders denying Mr. James' claims and his accompanying motions on February 26, 2025. Mr. James appealed and the lower court's order was affirmed by the Supreme Court of Florida on March 13, 2025. *See* App. A. Mr. James also filed a state habeas petition asking the Supreme Court of Florida to reconsider its timeliness ruling relating to the 2021 affirmance. It was denied in the same opinion. *Id*.

REASONS FOR GRANTING THE PETITION

I. THE EIGHTH AMENDMENT PROHIBITS THE EXECUTION OF THOSE NOT SENTENCED TO DEATH BY A UNANIMOUS JURY.

Although this Court has noted that the decision by a jury to sentence a defendant to death maintains the "link between contemporary community values and the penal system—a link without which the determination of punishment would hardly reflect the evolving standards of decency that mark the progress of a maturing society," *Witherspoon v. Illinois*, 391 U.S. 510, 520 n.15 (1968), this Court's jurisprudence still permits a judge or non-unanimous jury to sentence a defendant to death. This Court should grant certiorari to determine whether Mr. James is in the

class of offenders culpable enough to face execution in light of the fact that, when faced with this question, one juror determined he was not.

This Court has looked to two alternative tests when determining whether a death-penalty procedure passes muster under the Eighth Amendment: (1) "the evolving standards of decency of that mark the progress of a maturing society," *Atkins v. Virginia*, 536 U.S. 304, 311-12 (2002) (internal quotation omitted), and (2) whether the modern procedure would have violated the general public understanding at the time of the founding, *Bucklew v. Precythe*, 139 S. Ct. 1112, 1122 (2019).

Under both tests, Mr. James' execution would violate the Eighth Amendment. First, in light of the evolving standards of decency—including (1) the consensus in statutes, sentencing, and executions in favor of unanimous jury death sentences and (2) this Court's recognition that a jury vote must be unanimous to convict a defendant of a "serious offense" — Mr. James is not in the class of offenders culpable enough to deserve a sentence of death, because his sentencing jury was non-unanimous. Second, allowing a defendant to be executed despite a non-unanimous jury vote violates the common understanding at the time of the founding that sentences of death must be based upon a unanimous jury. Mr. James' case offers this Court the opportunity to address capital jury sentencing and ensure that it conforms with both the evolving standards of decency and original public understanding.

A. Mr. James' death sentences violate evolving standards of decency as reflected by overwhelming state practice and consistent with the Framers' intent.

1. There is an overwhelming national consensus in favor of unanimous capital jury sentencing.

Death penalty procedures that have been found to have been repudiated by the "evolving standards of decency that mark the progress of a maturing society" violate the Eighth Amendment. *Atkins*, 536 U.S. at 312. Under this inquiry, this Court has traditionally reviewed the current understanding and administration of the procedure in question. When the procedure used by a state is out of touch with the contemporary consensus, the procedure fails this test and has been rendered unconstitutional.

Since *Hurst*, only four states have executed a defendant who was sentenced after the jury was not unanimous during this time — Alabama, Florida, Missouri, and Nebraska — not including defendants who waived a jury. The practice is thus "truly unusual." *Id.* at 316 (calling the practice of executing the intellectually disabled "truly unusual" after noting that among the states that regularly execute and had no prohibition against the practice, only five states had actually executed a defendant with an IQ less than 70 since other states began prohibiting the practice). In fact, because only five states carried out such executions, this Court declared in *Atkins* there was a "national consensus" against executing the intellectually disabled. *Id*. In that regard there is a stronger consensus here.

2. This Court's decision in *Ramos* also contributes to the societal consensus against non-unanimous juries.

Also relevant to the consensus is this Court's recent decision recognizing that a unanimous jury vote is required to convict a defendant of a "serious offense" under

the Sixth Amendment. *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020).[3] As this Court noted, a unanimous jury has been required to convict a defendant of a serious offense essentially uniformly throughout common law and currently in all but two states. *Id*. at 1394-97. The right to a jury is "fundamental to the American scheme of justice." *Id*. at 1397.

This Court's recent recognition that a unanimous jury is required to convict a defendant of a serious crime — i.e., that a unanimous jury vote is required to subject a defendant to the mere possibility of facing more than six months in prison — is clearly relevant to the current standards of decency. If it is unacceptable to subject a defendant to the possibility of facing over six months in prison based on a less-than unanimous jury vote, clearly society has now recognized it is unacceptable to subject him to execution when one or more jurors have determined that the prosecution has not proven the defendant is worthy of the ultimate punishment. This Court should grant certiorari review to consider the discrepancy between the recognition of the unanimous jury right in *Ramos* and this Court's outdated precedents allowing capital non-unanimous jury or judge sentencing.

3. It was widely understood that a unanimous jury vote was required to execute a defendant at the time of the founding.

Capital sentencing was understood to require a unanimous jury verdict at the time of the Founding. "[T]he Constitution's guarantees cannot mean less today than they did the day they were adopted." *United States v. Haymond*, 139 S. Ct. 2369, 2376

[3] "Serious offenses" are defined as those with a minimum potential punishment of more than six months in prison. *See Cheff v. Schnackenberg*, 384 U.S. 373 (1966).

(2019). In addition to the evolving standards of decency, this Court has also looked to the original understanding as an additional guide to the proper scope of the Eighth Amendment. *See, e.g., Beck v. Alabama*, 447 U.S. 625, 635 (1980); *Woodson*, 428 U.S. at 289. This is because, at the Founding, the Constitution permitted the death penalty only "so long as proper procedures [were] followed." *Bucklew*, 139 S. Ct. at 1122.

At common law, the determination of whether a defendant should be sentenced to death belonged to the jury. It was understood that "no man should be called to answer to the king for any capital crime, unless . . . the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals."[4] By the time the Bill of Rights was adopted, the jury's right to determine whether a defendant should face the death penalty "was unquestioned."[5]

Given the number of crimes that mandated capital punishment, the determination of whether to find the defendant guilty and whether to spare his life was frequently the same. In such cases, it was widely understood that the jury had nullification power if the jury believed a death sentence would be too harsh. *See Woodson*, 428 U.S. at 289-90. Although "under this capital punishment scheme, there was no bifurcation between guilt and sentencing," "common law juries necessarily engaged in 'de facto sentencing' when deciding whether the defendant was guilty as

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[4] Janet C. Hoeffel, Death Beyond a Reasonable Doubt, 70 Ark. L. Rev. 267, 271 (2017) (quoting 4 William Blackstone, Commentaries on the Law of England 343 (4th ed., Oxford, Clarendon Press 1770)).

[5] Welsh S. White, Fact-Finding and the Death Penalty: The Scope of a Capital Defendant's Right to Jury Trial, 65 Notre Dame L. Rev. 1, 10-11 (1989).

well as the degree of guilt."[6]

Fundamental to the jury's determination that a defendant should be sentenced to death were the corresponding protections that the jury's verdict should be unanimous and beyond a reasonable doubt. *See Hoeffel*, supra, at 275-79 (noting the creation of the beyond a reasonable doubt standard was based on the "morality of punishment" in capital cases, rather than fact finding); *Ramos*, 140 S. Ct. at 1395-97 (cataloging the centuries long history of jury unanimity when defendants were charged with "serious" crimes). This was compared to less serious crimes for which judges could determine sentences and were not bound to make findings beyond a reasonable doubt.[7] This Court should grant certiorari to re-examine capital jury sentencing in light of the original public understanding.

4. This Court should reconsider what remains of *Spaziano* and *Harris*.

This case presents this Court with the opportunity to revisit *Spaziano v. Florida*, 468 U.S. 447, 457-65 (1984) and, by extension, *Harris v. Alabama*, 513 U.S. 504 (1995). The Florida Supreme Court has recently used *Spaziano* to deny relief on this very question, stating that this Court

> "rejected th[e] exact argument . . . that the Eighth Amendment requires a unanimous jury recommendation of death" in *Spaziano v. Florida*, 468

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[6] Richa Bijlani, More than Just a Factfinder: The Right to Unanimous Jury Sentencing in Capital Cases, 120 Mich. L. R. 1499, 1523-25 ("the question of 'appropriate punishment' was not only at issue in those unified proceedings but was often the principal issue faced by the jury").

[7] *See* John G. Douglass, Confronting Death: Sixth Amendment Rights at Capital Sentencing, 105 Colum. L. Rev. 1967 (2005) ("judges exercised sentencing discretion in choosing among [non-capital] punishments and in fixing terms of imprisonment, and . . . they exercised that discretion in sentencing proceedings that lacked the formality of jury trials").

> U.S. 447, 465 (1984). *Poole*, 297 So. 3d at 504. To the extent that our prior decision rejecting Dillbeck's Eighth Amendment challenges to his death sentence does not foreclose relief, *Spaziano* is still good law and requires denying Dillbeck's claim.

Dillbeck v. State, 357 So. 3d 94, 104 (Fla. 2023).

Spaziano has already been overruled in part by this Court. *Hurst*, 577 U.S. at 101. In light of the evolving standards of decency and the original public understanding regarding unanimous capital jury sentencing, *Spaziano*'s already crumbling foundation cannot bear the weight the Florida Supreme Court has placed upon it.

Spaziano and *Harris* are the subject of "grave concern" over capital judge sentencing, and Justices of this Court have called for the Court to revisit these precedents allowing a judge, rather than a unanimous jury, to sentence a defendant to death. *Woodward v. Alabama*, 571 U.S. 1045 (2013) (Sotomayor, J., dissenting from denial of certiorari); *see also Reynolds v. Florida*, 139 S. Ct. 27 (2018) (Breyer, J., respecting the denial of certiorari). And in *Ring*, where the question was not before the Court, Justices debated this exact issue. Compare *Ring v. Arizona*, 536 U.S. 584, 610-13 (2002) (Scalia, J., concurring) with *id*. at 613-20 (Breyer, J., concurring in judgment).

The calls to revisit these holdings are not without reason. The *Spaziano* decision is almost four decades old, and key premises underlying the judge versus jury sentencing portion of the opinion have eroded over time. Once such premise that has eroded is reliability. In *Spaziano*, this Court rejected the petitioner's argument that juries would be more reliable in determining which cases truly warrant the death

penalty compared to a judge. 468 U.S. at 461; *see also Proffitt*, 428 U.S. at 252 ("[I]t would appear that judicial sentencing should lead, if anything, to even greater consistency in the imposition at the trial court level of capital punishment, since a trial judge is more experienced in sentencing than a jury, and therefore is better able to impose sentences similar to those imposed in analogous cases.").

Evidence has accumulated over time casting doubt on this assumption. For example, a study of death-row exonerations across three states that permitted a judge to sentence a defendant to death over the non-unanimous vote of a jury — Alabama, Delaware, and Florida — found that "[i]n 28 of the 30 cases for which the jury vote is known . . . at least one juror had voted for life."[8]

5. This case is a proper vehicle to decide the question.

Further, this case presents an excellent opportunity for this Court to decide the question because this Court's jurisdiction to hear the case is not affected by an independent or adequate state law ground. The Florida Supreme Court's rejection of Mr. James' Eighth Amendment challenge to his death sentence, including for lack of juror unanimity as to the recommended sentence, the decision below does not rest on that fact.

Evolving standards of decency prevent Mr. James' execution under the Eighth Amendment because he was denied a unanimous death recommendation. Mr. James'

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[8] Death Penalty Information Center, DPIC Analysis: Exoneration Data Suggests Non-Unanimous Death-Sentencing Statutes Heighten Risk of Wrongful Convictions (March 13, 2020) (noting that the 1974 jury vote could not be found for one exoneration and the other involved the waiver of a sentencing jury). Available at: https://deathpenaltyinfo.org/news/dpic-analysis-exoneration-data-suggests-non-unanimous-death-sentencing-statutes-heighten-risk-of-wrongful-convictions

date finality on direct appeal has no relationship to the nature of his crime or his character and to whether he belongs to the class of defendants who are subject to the death penalty. Mr. James' case was also not narrowed to the most aggravated and least mitigated because of the failure of the jury to hear and the courts to consider his mitigation. Mr. James' case was arbitrarily narrowed by caprice. A state death penalty rule, even if it is clear and easily administered, is unconstitutional unless it is calibrated to culpability and "ensure[s] consistency in determining who receives a death sentence." *Kennedy v. Louisiana*, 554 U.S. 407, 436 (2008).

Evolving standards of decency, or any standards of decency for that matter, cannot allow Mr. James to be executed based on nothing more than a perverse lottery. His execution would be "cruel and unusual in the same way that being struck by lightning is cruel and unusual." *Furman v. Georgia*, 408 U.S. 238, 309 (1972) (Stewart, J. concurring). This Court should grant the writ.

B. A state must not opt out of considerations required by the Eighth Amendment.

In denying Mr. James' Eighth Amendment claim based on his non-unanimous jury sentencing, the Florida Supreme Court relied upon its prior caselaw refusing to give any consideration to Eighth Amendment claims that had not already been squarely decided by this Court. *See* App. A at 21 ("Because the Supreme Court's Eighth Amendment precedent to which we are bound does not require a unanimous jury recommendation for death during the penalty phase, the postconviction court properly found this claim to be meritless." *Zack v. State*, 371 So. 3d 335, 350 (Fla. 2023)). In other words, the Florida Supreme Court found

that Mr. James' claim had been rendered meritless by the sheer fact that this Court has not said—verbatim—that the Eighth Amendment precludes executing those with nonunanimous death sentences. This ruling could only have been rendered through reliance on Florida's conformity clause, a unique state constitutional amendment that prohibits Florida courts from conducting any Eighth Amendment analysis that could lead to protection of an individual not already explicitly protected by this Court's prior holdings. Left undisturbed, this abdication means that Mr. James will die (a) based on a systemic constitutional flaw in Florida's death penalty scheme, and (b) without any meaningful consideration of his allegation that evolving standards of decency (viewed in tandem with an Originalist understanding of the role of unanimous jury verdicts) warrant his exemption from execution.

Although the harm to Mr. James is pronounced and itself warrants this Court's intervention, the harm does not stop with him. Florida's use of the conformity clause effectively forecloses consideration of evolving standards of decency in Florida and bypasses critical safeguards to ensure constitutional administration of the death penalty. It rejects core federalist principles of state autonomy and individualism. And, it stands to hinder this Court's intended function by obstructing Eighth Amendment analysis of state practice and forcing this Court to act as a court of first instance for Eighth Amendment issues arising out of Florida.

"Florida does what the Constitution forbids" in the absence of this Court's

intervention. *Cunningham v. Florida*, 144 S. Ct. 1287, 1288 (2024) (Gorsuch, J., dissenting from denial of certiorari). Now, in the context of unanimous jury verdicts, this Court should take up the issue of Florida's constitutionally impermissible conformity clause.

1. Florida's Eighth Amendment Conformity Clause.

Art. I, § 17 of the Florida State Constitution, otherwise known as "the conformity clause," states:

> The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution.…This Section shall apply retroactively.

Although innocuously worded, a brief foray into the provision's legislative and judicial history sheds light on its regressive purpose. The amendment was originally proposed in 1998 but was overturned in 2000, after the Florida Supreme Court held that the ballot had been misleading to voters:

> The ballot title and summary are misleading because the latter portion of the title ("UNITED STATES SUPREME COURT INTERPRETATION OF CRUEL AND UNUSUAL PUNISHMENT") and the second sentence in the summary ("Requires construction of the prohibition against cruel and/or unusual punishment to conform to United States Supreme Court interpretation of the Eighth Amendment.") imply that the amendment will promote the rights of Florida citizens through the rulings of the United States Supreme Court.

Armstrong v. Harris, 773 So.2d 7, 17 (Fla. 2000). The court in *Armstrong* noted that because (a) Florida's system of constitutional government was "grounded on a principle of 'robust individualism' and [its] state constitutional rights thus provide

greater freedom from government intrusion into the lives of citizens than do their federal counterparts", *id.*; and (b) the amendment would "nullify a longstanding constitutional principle that applies to all criminal punishments, not just the death penalty", *id.* at 18; a citizen "could well have voted in favor of the proposed amendment thinking that he or she was protecting state constitutional rights when in fact the citizen was doing *the exact opposite*—i.e., he or she was voting to nullify those rights." *Id*.

The ballot summary preceding the amendment's 2002 adoption was clearer:

> The amendment *would prevent state courts, including the Florida Supreme Court, from treating the state constitutional prohibition against cruel or unusual punishment as being more expansive than the federal constitutional prohibition against cruel and unusual punishment or United States Supreme Court interpretations thereof*. The amendment effectively nullifies rights currently allowed…which may afford greater protections for those subject to punishment for crimes than will be provided by the amendment. Under the amendment, the protections afforded those subject to punishment…will be the same as the minimum protections provided under the "cruel and unusual" punishments clause of the Eighth Amendment to the United States Constitution.

Fla. HJR 951 (2001) at 2-3 (ballot summary regarding proposed amendment to art. I, § 17, Fla. Const.) (emphasis added).

In ensuing years since the Eighth Amendment conformity clause—the only one of its kind—became part of the Florida constitution, the Florida courts have cited its purported restriction, and have increasingly relied upon it to opt out of critical Eighth Amendment analyses, including judicial determinations related to evolving standards of decency. *See, e.g.*, *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019) (Florida Supreme Court relying on the conformity clause to refuse any consideration

of whether national death penalty trends warranted exemption from execution under the Eighth Amendment); *Lawrence v. State*, 308 So. 3d 544, 545 (Fla. 2020) (Florida Supreme Court relying on the conformity clause to eliminate Eighth Amendment proportionality review); *Hart v. State*, 246 So. 3d 417, 420-21 (Fla. 4th DCA 2018) (Florida appellate court relying on the conformity clause in a non-capital context to refuse to consider whether a juvenile sentence violated *Graham v. Florida*, 560 U.S. 48 (2010)); *see also Covington v. State,* 348 So. 3d 456, 479-480 (Fla. 2022) (relying in part on conformity clause to refuse to consider whether defendant's alleged insanity at the time of the crime rendered his death sentence cruel and unusual); *Allen v. State*, 322 So. 3d 589, 602 (Fla. 2021) (seemingly implying that the conformity clause may justify limiting a mitigation presentation in certain cases involving waiver); *Zack v. State*, 371 So. 3d at 350 (relying on the conformity clause to justify denying a claim involving a nonunanimous jury challenge); *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023) (relying on the conformity clause to refuse to extend *Roper*).

2. This Court has authority to intervene in Florida's unconstitutional use of its conformity clause, and should exercise that authority here.

Where a state constitution conflicts with the federal constitution—including this Court's interpretive jurisprudence—the state constitution must yield. *See Reynolds v. Sims*, 377 U.S. 533, 584 (1964) ("When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls."); *see also Puerto Rico v. Branstad*, 483 U.S. 219, 228 (1987) (rejecting the idea that states and federal government are coequal sovereigns because "[i]t has long

been a settled principle that federal courts may enjoin unconstitutional action by state officials."); *Democratic Executive Comm. of Florida v. Lee*, 915 F.3d 1312, 1331 (11th Cir. 2019) ("while federalism certainly respects states' rights, it also demands the supremacy of federal law when state law offends federally protected rights.").

And, although it is "fundamental that state courts be left free and unfettered by [this Court] in interpreting their state constitutions," *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940), it is equally important that those state adjudications

> do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action.…For no other course assures that important federal issues, such as have been argued here, will reach this Court for adjudication; that state courts will not be the final arbiters of important issues under the federal constitution; and that we will not encroach on the constitutional jurisdiction of the states.

Id.

Here, there is no question that the issue at bar is of this Court's purview. Florida has—through its implementation of the conformity clause and abdication of any judgment apart from this Court's verbatim holdings—explicitly interwoven its determinations regarding cruel and unusual punishment with this Court's Eighth Amendment jurisprudence. Paradoxically, by virtue of this inflexible binding process, Florida has wholly repudiated a critical aspect of Eighth Amendment determinations: consideration of ever-evolving societal, legal, and scientific standards. Thus, Florida does not merely treat this Court's holdings as both the "floor" and "ceiling" of protections against cruel and unusual punishment: it also falls below the "floor" established by this Court's jurisprudence by failing to adhere to this Court's minimum prescribed standards for evaluating the applicability of Eighth

Amendment protections. In other words, Florida's purported "conformity" with the Eighth Amendment actually violates it. Art. I, § 17 of the Florida State Constitution must therefore yield to the U.S. Constitution and this Court's jurisprudence.

Further, this Court's precedent illustrates its well-established authority to intervene when faced with a state constitutional provision that conflicts with federal constitutional rights. *See generally, e.g., Cook v. Gralike*, 531 U.S. 510 (2001) (granting certiorari despite lack of a split of authority due to the importance of the case and summarily affirming lower courts' opinions that portions of the Missouri Constitution were unconstitutional); *Rice v. Cayetano*, 528 U.S. 495 (2000) (reversing lower court's judgment on certiorari review and finding that Hawaii's state constitutional provision violated the Fifteenth Amendment); *Romer v. Evans*, 517 U.S. 620 (1996) (holding that a Colorado state constitutional amendment adopted by statewide voter referendum violated equal protection clause of the Fourteenth Amendment); *U.S. Term Limits, Inc., v. Thornton*, 514 U.S. 779 (1995) (holding amendment to Arkansas state constitution invalid as conflicting with Article I of the federal constitution); *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994) (holding provision of Oregon state constitution violated due process clause of the Fourteenth Amendment); *Quinn v. Millsap*, 491 U.S. 95 (1989) (holding provision of Missouri state constitution violated federal constitution, and finding that Missouri Supreme Court's judgment upholding the provision reflected a significant misreading of this Court's precedent).

This Court should exercise its authority here. Without this Court's

intervention, Florida's use of the conformity clause to ostensibly—but falsely—bind itself to this Court's mandates will result in Florida acting as a flawed "final arbiter[] of important issues under the federal constitution[.]" *National Tea Co.*, 309 U.S. at 557. This Court's intervention is necessary to prevent such an upending of federal authority, and to prevent Mr. James from being executed due to Florida's systematically defective implementation of this Court's Eighth Amendment jurisprudence.

3. This case is a proper vehicle for consideration of the question presented.

This case provides an excellent opportunity for this Court to determine the constitutional question presented, because this Court's jurisdiction to hear the case is not impeded by an independent or adequate state law ground.

First, the Florida Supreme Court found that Mr. James' Eighth Amendment claim regarding his non-unanimous jury sentencing was meritless precisely because "the Supreme Court's Eighth Amendment precedent **to which we are bound does not require** a unanimous jury recommendation for death[.]" *Zack*, 371 So. 3d at 350. Had the Florida courts denied relief based on a state-law ground that was adequate and independent of federal law, the courts would have simply have declined to extend this Court's articulated Eighth Amendment protections; they would not have stated that because this Court has not **required** something, there was no basis for any further consideration to the matter. Indeed, Florida's precedent has made quite clear that where this Court has not demanded the provision of a particular right:

> The conformity clause of article I, section 17 of the Florida Constitution…means that the Supreme Court's interpretation of the

> Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida, and this Court cannot interpret Florida's prohibition against cruel and unusual punishment to provide protection that the Supreme Court has decided is not afforded by the Eighth Amendment.

Barwick v. State, 361 So. 3d 785, 794 (Fla. 2023). This means that the merits determination of Mr. James' jury unanimity claim below were inextricably bound with federal issues and this Court's determinations.

Second, there is no adequate and independent justification for nonintervention related to Florida's restrictive use of its conformity clause, because the State of Florida itself is not even following its own conformity clause. For instance, during its January 28, 2025, Senate Special Session B discussion on the Senate floor, Senator Randy Fine stated, when he was challenged on the constitutionality of SB 2-B which makes the death penalty mandatory for capital offenses committed by "unauthorized aliens":

> "I'm not a judge and I'm not an attorney and **I'm fully certain that someone will challenge this** but I did read [*Woodson v. North Carolina*, 428 U.S. 280 (Fla. 1976)]….Who knows, and by the way this case was done in 1976, it's almost fifty years later, it would be fifty years by this time this gets to the Supreme Court. The Supreme Court changes its mind on things as we have seen in the time that many of us have been in the legislature. **In fact in this legislature, we have chosen to pass things that we knew were unconstitutional at the time that we passed them because we believed that the Supreme Court would change their mind and actually in both instances that I can recall, they did.**"[9]

[9] The only two laws enacted in recent time that categorically fail to pass constitutional muster, and thus Fine must be referencing, are Fla. Stat. § 921.1425 (2023), which authorized the death penalty for sexual battery committed on a person less than 12 years of age, and Fla. Stat. § 921.141 (2023) which lowered the requisite juror threshold for a death sentence from 12-0 to 8-4.

https://thefloridachannel.org/videos/1-28-25-senate-special-session-b/ (34:06-34:48). This unconstitutional provision was later passed and signed into law on February 14, 2025. Chapter No. 2025-2.

To the extent that the lower court found a procedural impediment to Mr. James' entitlement to relief on this claim, these findings are incorrect. But more importantly, the lower court did not actually rely on any adequate or independent state ground (such as a procedural or time bar) because it engaged in a specific merits ruling that is wholly inextricable from the federal question. *See Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016) ("[W]hether a state law determination is characterized as entirely dependent on, resting primarily on, or influenced by a question of federal law, the result is the same: the state law determination is not independent of federal law and thus poses no bar to our jurisdiction.") (cleaned up); *see also Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (even when adequacy and independence of possible state law grounds are not clear from the opinion, "this Court will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.").

4. This issue is of great national importance.

Florida's abdication, via the conformity clause, from Eighth Amendment consideration warrants this Court's intervention because it is dispositive to whether Mr. James lives or dies. But the impact of leaving this issue unaddressed would extend far beyond harm to Mr. James, and even beyond the potential harm to other

similarly-situated individuals in Florida. Indeed, there are many other concerns underscoring the need for this Court's certiorari review.

First, Florida's use of the conformity clause to abdicate all responsibility for considering and perpetuating evolving standards of decency undermines bedrock principles of federalism and state autonomy dating as far back as the Founding. *See, e.g., Alden v. Maine*, 527 U.S. 706, 748 (1999) (referring back to "the founding generation" in declaring that "our federalism" requires states to be treated consistently "with their status as…joint participants in the governance of the Nation.").

It is virtually unquestioned among states and lower circuits that precepts of federalism empower states to provide higher "ceilings" of individual rights than the "floor" provided by the U.S. Constitution. *See, e.g.*, *State v. Griffin*, 339 Conn. 631, 690 (Conn. 2021) (discussing the "settled proposition that 'the federal constitution sets the floor, not the ceiling, on individual rights'") (quoting *State v. Purcell*, 331 Conn. 318, 341 (Conn. 2019)); *Brown v. State*, 62 N.E.3d 1232, 1236-37 (Ind. 2016) (referencing the federal constitution as "the floor, not the ceiling, of individual rights" and stating that where "the protections of the federal and state constitutions are not co-extensive" the more protective standard must apply"); *Ark Encounter, LLC v. Parkinson*, 152 F.Supp.3d 880, 927 (E.D. Ky 2016) ("The federal Constitution may only be a floor and not a ceiling, but it is a floor nonetheless."); *Downey v. State*, 144 So.3d 146, 151 (Miss. 2014) ("[Supreme Court precedent] does not require Mississippi to follow the minimum standard that the federal government has set for

itself…However, we are not allowed to abrogate or diminish clearly-articulated federal rights[.]"); *State v. Baldon*, 829 N.W.2d 785, 791 & n.1 (Iowa 2013) (The United States Supreme Court's jurisprudence "makes for an admirable floor, but it is certainly not a ceiling….The incorporation doctrine commands that we no longer use independent state grounds to sink below the federal floor."); *GE Commercial Finance Business Property Corp. v. Heard*, 621 F.Supp.2d 1305, 1309 (M.D. Ga. 2009) ("it is abundantly clear that states 'are free to extend more sweeping constitutional guarantees to their citizens than does federal law as federal constitutional law constitutes the floor, not the ceiling, of constitutional protection.'" (citing *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1269 (3d Cir. 1992)));

Even Florida, in non-Eighth Amendment contexts, takes this view:

> Federal and state bills of rights thus serve distinct but complementary purposes. The federal Bill of rights facilitates political and philosophical homogeneity among the basically heterogenous states by securing, as a uniform minimum, the highest common denominator of freedom that can prudently be administered throughout all fifty states. The state bills of rights, on the other hand, express the ultimate breadth of the common yearnings for freedom of each insular state population within our nation.
>
> *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992).
>
> [T]he federal Constitution sets the floor, not the ceiling, and this Court retains the ability to interpret the right against self-incrimination afforded by the Florida Constitution more broadly than that afforded by its federal counterpart. *See, e.g., In re T.W.*, 551 So. 2d 1186, 1191 (Fla. 1989) ("State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law….[W]ithout [independent state law] the full realization of our liberties cannot be guaranteed." (quoting William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977))).

Rigterink v. State, 2 So. 3d 221, 241 (Fla. 2009) (*cert. granted, judgment vacated on other grounds sub nom., Florida v. Rigterink*, 559 U.S. 965 (2010)).

And, this Court has long supported the use of state action to provide greater protection than the federal constitution. *See, e.g., Oregon v. Hass*, 420 U.S. 714, 719 (1975) ("a State is free *as a matter of its own law* to impose [greater protections for individual citizens] than those this Court holds to be necessary upon federal constitutional standards") (emphasis in original); *Cooper v. State of Cal.*, 386 U.S. 58, 62 (1967) ("Our holding, of course, does not affect the State's power to impose [greater protections on individual rights] than required by the Federal Constitution if it chooses to do so"); *Brigham City v. Stuart*, 547 U.S. 398, 409 (2006) (Stevens, J., concurring) ("Federal interests are not offended when a single State elects to provide greater protection for its citizens than the Federal Constitution requires.").

Citing many of these cases, Justice Brennan reflected in 1977:

> [I]t is both necessary and desirable under our federal system – state courts no less than federal are and ought to be guardians of our liberties. But the point I want to stress here is that state courts cannot rest when they have afforded the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for without it, the full realization of our liberties cannot be guaranteed.

William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977). He continued:

> [D]ecisions of the [United States Supreme] Court are not, and should not be, dispositive of questions regarding rights guaranteed by counterpart provisions of state law. Accordingly, such decisions are not

> mechanically applicable to state law issues, and state court judges and members of the bar seriously err if they so treat them.
>
> * * *
>
> Adopting the premise that state courts can be trusted to safeguard individual rights, the Supreme Court has gone on to limit the protective role of the federal judiciary…our liberties cannot survive if the states betray the trust the Court has put in them.

Id. at 502-03; *see also id.* (stating a "confident[] conjecture that James Madison, Father of the Bill of Rights," would have agreed). This Court should grant review to enforce the expectation of robust state involvement in upholding our most precious national principles, such as the Eighth Amendment proscription on cruel and unusual punishment.

Second, Florida's practice of abdication obstructs important aspects of this Court's judicial function as it pertains to Eighth Amendment determinations, and hinders national progress related to evolving standards of decency. When this Court is faced with determinations regarding whether societal standards of decency have evolved to the point of warranting additional Eighth Amendment protections, it looks to the actions of individual states, including their judicial practice. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 315-16 (2002); *Roper v. Simmons*, 543 U.S. 551, 559-60, 565-66 (2005) (tallying, as part of evolving standards analysis, the number of states that have embraced or abandoned a particular death penalty practice). Thus, although the federal constitution does not *require* a state court to offer more protection in a particular case than this Court's jurisprudence has established, a state cannot *prohibit* itself wholesale from independently considering evolving standards of decency. By declaring itself unauthorized to engage in this independent action,

Florida has abdicated its "critical role in advancing protections and providing [this] Court with information that contributes to an understanding" of how Eighth Amendment protections should be applied. *Hall v. Florida*, 572 U.S. 701, 719 (2014). This Court should grant review so that it can provide guidance for Florida to correct that ill.

Third, Florida's continued refusal to confer any independent judgment in the Eighth Amendment context would cut against its own decree that state courts are meant to "function daily as the prime arbiters of personal rights[,]" *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992), and would require this Court to become a court of first instance in all Florida cases involving even arguably novel Eighth Amendment issues. Tellingly, Florida has made abundantly clear—through its legislative history and judicial decisions related to the conformity clause—that nothing, save for this Court's intervention, will compel it to engage in the aforementioned considerations. Florida's misguided self-limitation forestalls "one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *Chandler v. Florida*, 449 U.S. 560, 579 (1981) (quoting *New State Ice Co. v. Leibmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

Thus, with no state-recognized avenue to effect Eighth Amendment progress in the Florida state courts, this Court—if it does not intervene here—will be forced into the undesirable and untenable position of being a court of first instance for any

Eighth Amendment issue arising out of Florida that is not factually and legally identical to this Court's prior holdings.

5. Without this Court's intervention, Florida will continue to routinely violate the Eighth Amendment and maintain a constitutionally impermissible outlier status with regard to evolving standards of decency and death penalty jurisprudence.

Florida's self-imposed prohibition against even the slightest consideration of whether Eighth Amendment protections should be extended to an individual not already exempted from execution under this Court's precedent violates *Trop* and its Eighth Amendment progeny. *See, e.g., Hall*, 572 U.S. at 708 ("The Eighth Amendment's protection of dignity…[affirms] that the Nation's constant, unyielding purpose must be to transmit the Constitution so that its precepts and guarantees retain their meaning and force"); *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008) ("Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule"); *Gregg v. Georgia*, 428 U.S. 153, 171 (1976) ("the [Eighth] Amendment has been interpreted in a flexible and dynamic manner"); *Woodson v. North Carolina*, 428 U.S. 280, 288 (1976) ("Central to the application of the [Eighth] Amendment is a determination of contemporary standards regarding the infliction of punishment"); *see also Weems v. United States*, 217 U.S. 349, 373 (1910) ("Time works changes, brings into existence new conditions and purposes. Therefore [a constitutional principle], to be vital, must be capable of wider application than the mischief which gave it birth.").

As Florida itself championed the importance of independent state judgment and the maintenance of state autonomy to more robustly champion individual rights than the federal constitution (should the state so choose), Florida's use of the conformity clause in the Eighth Amendment context is all the more egregious. Florida is not simply declining to extend particular protections, and justifying that decision with the fact that they are not required under the federal constitution. Florida is weaponizing this Court's judicial restraint and respect for state sovereignty by proffering them as justification to wholly ignore legitimate Eighth Amendment claims. "Florida does what the Constitution forbids" absent this Court's intervention. *Cunningham*, 144 S. Ct. at 1288 (Gorsuch, J., dissenting from denial of certiorari)

Although this is shocking to the conscience, it is not altogether surprising. Florida has a demonstrated history of unconstitutionality and outlier status related to its implementation of the death penalty and punishment in general, and its standards of decency have long since lagged behind other states. Florida's flawed punishment system has necessitated this Court's intervention on numerous occasions. *See, e.g., Hall v. Florida*, 572 U.S. 701, 704 (2014) (this Court holding as unconstitutional Florida's "rigid rule" withholding Eighth Amendment protection from individuals who had valid claims for categorical exemption from execution); *Hurst v. Florida*, 577 U.S. 92, 94 (2016) (this Court holding Florida's death sentencing scheme unconstitutional); *Graham v. Florida*, 560 U.S. 48, 76 (2010) (this Court discussing the "flaws in Florida's [punishment] system" in finding that Florida's

imposition of life without parole was an unconstitutional sentence for juveniles who committed nonhomicide crimes).

Even in the wake of this Court's instruction, Florida continues to defy the intent of the Framers, the Supreme Court's historical understanding of unanimity, and societal consensus rejecting nonunanimous death sentences. In fact, since James' unconstitutional death sentences were imposed, Florida has designated itself as an even greater outlier from the rest of the country by receding from the unanimity requirement enacted in 2017 and lowering the necessary threshold to secure a death sentence to a mere 8-4 majority vote. *See* Fla. Stat. § 921.141 (2023). And the Florida legislature has expressed its desire to remain an outlier by acknowledging that statutes it has recently enacted, like the 8-4 law, are categorically unconstitutional, but that it is enacting them specifically to influence Supreme Court precedent. *See, supra* at 22.

This is an express abdication of Florida's role in evolving standards of decency and demonstrates its unwillingness to consider blatantly unconstitutional challenges—no matter how meritorious and reflective of current societal mores—unless the Supreme Court expressly indicates its unwillingness to budge on precedent. James' death sentences do not comport with evolving standards of decency, and Florida cannot both delegate itself authority to influence future Supreme Court holdings and abdicate its duty to comport with what the law is right now. The Eighth Amendment precludes Mr. James' non-unanimous death sentences.

Put simply, Florida's past and present state action demonstrates that if it is allowed to maintain its current practice of blindly freezing any and all Eighth Amendment determinations in restrictive lockstep with this Court's explicit holdings, Florida will remain an arbitrary and capricious outlier and will not progress in a maturing society.

6. Conclusion.

Without this Court's intervention, Florida's actions will "risk[] turning the Federal Constitution into a ceiling, rather than a floor, for the protection of individual liberties." *Kansas v. Carr*, 577 U.S. 108, 132 (2016) (Sotomayor, J., dissenting). That risk will have far-reaching implications outside of Florida. And, in Florida, that risk will manifest as reality. Evolving standards of decency—the living breath of the Eighth Amendment—will be stilled.

II. THE EXECUTION OF A DEFENDANT WHO WAIVED HIS POSTCONVICTION PROCEEDINGS WHILE INCOMPETENT VIOLATES THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

As this Court has made clear, a waiver of constitutional rights that is not competently made is void and violates due process. *Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969). Similarly, the criminal trial of an incompetent defendant violates due process. *Drope v. Missouri*, 420 U.S. 162, 171 (1975). This is a due process right that cannot be waived. *Pate v. Robinson*, 383 U.S. 375, 384 (1966). As this Court explained,

> [A] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be

> subjected to a trial. . . . [T]he prohibition is fundamental to an adversary system of justice.

Drope, 420 U.S. at 171-72. A defendant is competent if he "has sufficient present ability to consult with his lawyers with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960).

Florida state law recognizes that "[a]n important distinction exists between procedural and substantive incompetency claims." *Thompson v. State*, 88 So. 3d 312, 316 (Fla. 4th DCA 2012). Although Florida purports to only allow substantive incompetency claims to be raised on direct appeal and not in postconviction, it recognizes an exception for claims of ineffective assistance of counsel for failure to raise a defendant's incompetency, as Mr. James presented in his postconviction motion. *Id*. (citing *Jackson v. State*, 29 So.3d 1161, 1162 (Fla. 1st DCA 2010)). Additionally, the Florida Supreme Court appears to suggest that substantive incompetency claims are viable in postconviction if the circumstances strongly suggest actual incompetency. *See Thompson*, 88 So. 3d at 317 n. 1 (citing *Jones v. State*, 478 So. 2d 346, 347 (Fla. 1985); *Bush v. Wainwright*, 505 So. 2d 409, 410-11 (Fla. 1987); *James v. State*, 489 So. 2d 737, 739 (Fla. 1986)). And, *Thompson* explicitly says capital postconviction proceedings are different. *Thompson*, 88 So.3d at 319 n. 2 (citing *Thompson v. State*, 3 So.3d 1237 (Fla. 2009)).

Additionally, in *Nelson v. State*, 43 So. 3d 20 (Fla. 2010), the Florida Supreme Court, while acknowledging the substantive competency claim would be barred for not having been raised on direct appeal, still reached the merits of the claim. *Id.* at

33. In doing so, the Florida Supreme Court relied on federal law from the Eleventh Circuit. *Id.* at 33 (citing *James v. Singletary*, 957 F.2d 1562, 1571 (11th Cir. 1992)). Thus, it is appropriate to look to such case law for guidance.

Federal case law in the Eleventh Circuit has explained that although procedural competency claims can be defaulted, a "substantive [competency] claim, however, is not subject to procedural default and must be considered on the merits." *Medina v. Singletary*, 59 F.3d 1095, 1111 (11th Cir. 1995); *see also Wright v. Sec'y Dep't of Corr.*, 278 F.3d 1245, 1258-59 (11th Cir. 2002) (finding of default as to substantive due process mental competency claim is contrary to law of the circuit); *Lawrence v. Sec'y, Fla. Dep't. of Corr.*, 700 F.3d 464, 481 (11th Cir. 2012) (substantive incompetency claims not subject to procedural default); *Battle v. U.S.*, 419 F.3d 1292, 1298 (11th Cir. 2005) (same); *Pardo v. Sec'y, Fla. Dep't of Corr.*, 587 F.3d 1093, 1101 n.3 (11th Cir. 2009) (reiterating this standard); *Raheem v. GDCP Warden*, 995 F.3d 895 (11th Cir. 2021) (same).

To the extent that Florida state law allows such a claim to be barred, it contravenes the spirit of this Court's precedent. This Court should intervene and clarify that a state court may not bar a capital defendant from receiving at least one round of merits review for a substantive incompetency claim.

Where a state provides for capital postconviction review, the Due Process Clause of the Fourteenth Amendment, which ensures fundamental fairness in litigation, applies to those proceedings. *See Dist. Attorney's Office v. Osborne*, 557 U.S. 52, 69 (2009). Although "due process does not 'dictat[e] the exact form such assistance

must assume[,]" *id*. (quoting *Pennsylvania v. Finley*, 481 U.S. 551, 559 (1987)), postconviction relief procedures must "compor[t] with fundamental fairness[.]" *Finley*, 481 U.S. at 556; *see also Evitts v. Lucey*, 469 U.S. 387, 400-01 (1985) (where, as in providing postconviction review, "a State opts to act in a field where its action has significant discretionary elements," it must "act in accord with the dictates of the Constitution – and, in particular, in accord with the Due Process Clause").

On January 11, 2023, Mr. James suffered near fatal cardiac arrest while incarcerated at Union Correctional Institution. He was found unresponsive in his cell and blue in color *See* App. B at 9. It is unknown how long he had been unconscious and without oxygen before he was found. *Id*. He required several rounds of resuscitation in the prison before being transferred to UF Health Gainesville, including multiple rounds of shocks delivered via an automated external defibrillator and followed by compressions for more than twenty minutes, as well as intubation in the field. *Id*. The compressions resulted in multiple rib fractures. Upon Mr. James' hospitalization, additional lifesaving measures were taken, including continued intubation, therapeutic hypothermia, and the placement of a cardiac stent. *Id*. at 9-10. His lack of consciousness resulted in a loss of oxygen-saturated blood to his brain causing an acute encephalopathy, or brain injury. *Id*. In addition to the loss of oxygen to his brain, medical staff noted that the comatose Mr. James had obtained an acute head injury. *Id*. Mr. James remained in a profound coma, with no immediate signs of neurological recovery, for two days before showing initial improvement. *Id*. at 13. During this time, a CT scan of his head and cervical spine was obtained to gauge the

extent of Mr. James' altered mental state and encephalopathy, and to determine whether they resulted from presumably striking the back of his head when he fell during the cardiac event. Had Mr. James not suffered from a near-fatal medical catastrophe, he would never have been able to obtain such neuroimaging.

After *two years* of his counsel's diligent efforts to obtain the scans, they were disclosed four days before the signing of Mr. James' execution warrant. *Id*. at 14-16. Subsequent review by Dr. Erin Bigler, Ph.D., indicated evidence of "cerebral atrophy" in the frontoparietal realm, including significant space in which brain tissue should be present, but there is only cerebrospinal fluid. *See, e.g., id*. at 11. At the time Mr. James' imaging was conducted—the day of his cardiac arrest—cerebral atrophy due to anoxic brain injury (i.e., the deprivation of oxygen Mr. James suffered before resuscitation) would not yet have shown up on a CT scan. *Id*. Thus, although the scans were responsive to Mr. James' cardiac arrest and subsequent head injury, the brain atrophy reflected "predated [his] cardiac arrest, possibly by many years" and reflects a "chronic brain condition" wherein the structural brain changes may have begun during his juvenile period. *Id*. at 11 (emphasis added); *see also id*. at 13. This new information sheds critical light on the state courts' prior rulings, including the timeliness rulings that precluded substantive review of the competency claims and multiple ineffective assistance of counsel claims related to Mr. James' mental state and plea/waiver actions. As has been discovered in the years since Mr. James' last appeal to this Court, he suffers from a neurodegenerative disorder—inherently a progressive, dementing condition. *See id*. at 8, 14. And when this is taken into account

with what was already known about Mr. James' substance abuse, life history, and mental health, it changes the picture of his case such that this Court's reconsideration is necessary. (PCR-W 445-844; 880-84; 1030-36). Any of Mr. James' previously known vulnerabilities "alone can increase the risk of developing dementia later in life...but their combined presence significantly strengthens the correlation, suggesting a more substantial contribution to his cognitive decline." (PCR-W 780). A useful analogy to describe Mr. James' brain would be "a rusted engine that is suddenly pushed to his limits. The underlying structural weaknesses, previously stable but compromised, are now far more susceptible to rapid deterioration, causing the engine to fail much sooner than it otherwise would have." (PCR-W 780).

The new evidence demonstrates the extent of Mr. James' cognitive dysfunction—which is much greater than any court has recognized—and indicates that the degenerative/dementing process may have begun to take root close to 50 years ago.

Although this Court has made clear that the criminal trial of an incompetent defendant violates due process, *Drope v. Missouri*, 420 U.S. 162, 171 (1975), and that this due process right cannot be waived, *Pate v. Robinson*, 383 U.S. 375, 384 (1966), courts have struggled with implementation of these principles. There is a present lack of consensus in state and federal courts alike regarding whether a substantive claim of a defendant's mental incompetency can be subject to a time or procedural bar. This jurisprudential split has significant consequences for some of the most

vulnerable criminal defendants—those who are incompetent—and calls for intervention by this Court.

As discussed above, Florida state law purports to apply a procedural bar to substantive competency claims, but is inconsistent in its application of such a bar to consideration of a freestanding substantive competency claim. *See Nelson v. State*, 43 So.3d 20 (Fla. 2010). In addressing substantive competency on the merits despite finding it barred, the Florida Supreme Court in *Nelson* cited with approval and utilized federal case law from the Eleventh Circuit.

Federal circuit courts have split over whether a substantive mental competency claim can be procedurally defaulted. As discussed, Eleventh Circuit precedent is clear that a substantive competency claim is not subject to procedural bar. *See, e.g., Medina v. Singletary*, 59 F.3d 1095, 1111 (11th Cir. 1995); *Wright v. Sec'y Dep't of Corr.*, 278 F.3d 1245, 1258-59 (11th Cir. 2002); *Lawrence v. Sec'y, Fla. Dep't. of Corr.*, 700 F.3d 464, 481 (11th Cir. 2012); *Battle v. U.S.*, 419 F.3d 1292, 1298 (11th Cir. 2005); *Pardo v. Sec'y, Fla. Dep't of Corr.*, 587 F.3d 1093, 1101 n.3 (11th Cir. 2009); *Raheem v. GDCP Warden*, 995 F.3d 895 (11th Cir. 2021) (same).

Likewise, the Tenth Circuit has found that substantive mental competency claims cannot be defaulted. *See, e.g., Rogers v. Gibson*, 173 F.3d 1278, 1289 (10th Cir. 1999) (although procedural competency claim may be barred, substantive competency claim may not); *Nguyen v. Reynolds*, 131 F.3d 1340, 1346 (10th Cir. 1997) (general rules of default do not apply to substantive mental competency claims).

Other circuits, however, allow a procedural bar of substantive competency claims. *See, e.g., Martinez-Villareal v. Lewis*, 80 F.3d 1301, 1306-07 (9th Cir. 1996) (expressly disagreeing with the Eleventh Circuit and finding substantive incompetence claim to be procedurally defaulted); *Burket v. Angelone*, 208 F.3d 172, 191 (4th Cir. 2000) (accepting state court procedural bar as adequate and independent ground). The Eighth Circuit has internally conflicting case law. In *Vogt v. U.S.*, it ruled that substantive competency claims cannot be procedurally defaulted. 88 F.3d 587, 590-91 (8th Cir. 1996). An earlier panel, however, found that such claims could be barred. *Weekley v. Jones*, 56 F.3d 889, 894-95 (8th Cir. 1995), *reh'g granted and opinion vacated on other grounds*, 73 F.3d 763 (8th Cir. 1995) *and on reh'g*, 76 F.3d 1459 (8th Cir. 1996). The Eighth Circuit, en banc, ultimately adopted a portion of the *Weekley* panel decision allowing a procedural bar. *Weekley v. Jones*, 76 F.3d 1459, 1461 (8th Cir. 1996) (en banc). Nevertheless, *Vogt* remains ostensibly good law.

Burket v. Angelone indicates that Virginia state courts allow substantive competency claims to be barred. 208 F.3d at 191. Mississippi, however, "has held unequivocally that 'errors affecting fundamental constitutional rights are excepted from [a procedural bar]." *Smith v. State*, 149 So. 3d 1027, 1031 (Miss. 2014) (overruled on other grounds); *see also Jones v. State*, 174 So.3d 902, 907 (Miss. Ct. App. 2015) (citing *Smith* and nothing that "claims regarding mental competency are not subject to procedural bars"). In support of these decisions, the Mississippi Supreme Court specifically referenced *Drope*'s language that the prohibition against trying an

incompetent defendant is fundamental to an adversarial system of justice. *Smith*, 149 So. 3d at 131.

This Court should review this case in order to resolve the confusion among state and federal authorities. This issue is important because it implicates who can and cannot obtain relief of convictions and sentences obtained when they were incompetent. This Court should grant review to address the question Mr. James presents, which is closely related to the central divergence among the above state and federal courts.

CONCLUSION

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

Respectfully submitted,

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March 17, 2025
Dated