No. 24-6875

IN THE
UNITED STATES SUPREME COURT

KAYLE B. BATES, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

CARLA SUZANNE BECHARD
Associate Deputy Attorney General
Counsel of Record

Charmaine M. Millsaps
Senior Assistant Attorney General

Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607
CarlaSuzanne.Bechard@myfloridalegal.com
(813) 287-7900

COUNSEL FOR RESPONDENT

Capital Case

QUESTION PRESENTED

Whether this Court should grant review of a decision of the Florida Supreme Court holding the defendant failed to show good cause for the forty-year delay in filing the motion to interview a juror, as a matter of state law?

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The Florida Supreme Court's opinion is published at *Bates v. State*, 398 So. 3d 406 (Fla. 2024).

STATEMENT OF JURISDICTION

On October 24, 2024, the Florida Supreme Court affirmed the state postconviction court's denial of the motion to interview a guilt-phase juror. On November 25, 2024, the Florida Supreme Court denied the motion for rehearing. *Bates v. Florida*, 2024 WL 4879705 (Fla. Nov. 25, 2024).

On February 4, 2025, Bates, represented by Capital Collateral Regional Counsel – South (CCRC-S), filed a motion for extension of time to file a petition for a writ of certiorari in this Court, which this Court granted. On March 25, 2025, Bates filed the petition. The petition is timely. See Sup. Ct. R. 13.3; 28 U.S.C. § 2101(d). Jurisdiction exists pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution, which provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution, which 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 defense.

U.S. Const. amend. VI.

The Fourteenth Amendment to the United States Constitution, section one, which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE AND FACTS

The litigation in this case spans over 40 years.

Facts of the crime

On the afternoon of June 14, 1982, Janet White, a State Farm Insurance clerk, returned from lunch around 1:00 p.m. As she came into the office, she answered the phone. Unknown to her, she was not alone. She knew that Kayle Barrington Bates had stopped by the office earlier that day, talked with her, and left. She did not know that having seen that she was alone in the office, Bates had returned to the area and parked his truck in the woods some distance behind the building where it could not be seen and waited. She did not know that while she was out at lunch he had broken into the office and was there waiting for her to return. When Bates surprised White she let out a "bone-chilling scream" and fought for her life. He overpowered her and forcibly took her from the office building to the woods where he savagely beat, strangled, and attempted to rape her, leaving approximately 30 contusions, abrasions, and lacerations on various parts of her face and body. He stole her diamond ring "by tearing it from her left ring finger" severely injuring her in the process. He then stabbed her to death. *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1283 (11th Cir. 2014); *see also Bates v. State*, 465 So. 2d 490, 491 (Fla. 1985) ("Bates abducted a woman from her office, took her into some woods behind the building, attempted to rape her, stabbed her to death, and tore a diamond ring from one of her fingers."). The Florida Supreme Court detailed the evidence against Bates, including his confessions to law enforcement and his wife. *Bates v. State*, 3 So. 3d 1091, 1097

(Fla. 2009).

Procedural history

In January of 1983, the jury convicted Bates of first-degree murder, kidnapping, armed robbery, and the lesser-included offense of attempted sexual battery. *Bates*, 768 F.3d at 1285; *Bates*, 465 So. 2d at 491. The first penalty phase jury recommended a death sentence by a vote of eleven to one.

In postconviction proceedings, however, the state postconviction court granted relief on a claim of ineffectiveness of trial counsel for failing to investigate background mitigation which the Florida Supreme Court affirmed. *Bates v. Dugger*, 604 So. 2d 457, 459 (Fla. 1992). In 1995, a resentencing was conducted. *Bates v. State*, 750 So. 2d 6, 9 (Fla. 1999). The second penalty phase jury recommended death by a vote of nine to three. *State v. Bates*, 1995 WL 17974217 (Fla. Cir. Ct.). The Florida Supreme Court affirmed the death sentence. *Bates v. State*, 750 So. 2d 6 (Fla. 1999). This Court denied review on October 2, 2000. *Bates v. Florida*, 531 U.S. 835 (2000). Bates' death sentence became final the next day on Tuesday, October 3, 2000.[1]

Current motion to interview a juror

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[1] Prior to the juror relatedness claim at issue here, Bates unsuccessfully sought postconviction relief in state court. *See Bates v. State*, 3 So. 3d 1091, 1097 (Fla. 2009) and *Bates v. State*, 238 So. 3d 98, 99 (Fla. 2018), *cert. denied*, *Bates v. Florida*, 586 U.S. 845 (2018). Bates also unsuccessfully sought federal relief in the Northern District of Florida. The Eleventh Circuit affirmed the denial of habeas relief. *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1287 (11th Cir. 2014). The majority opinion observed that the "evidence of guilt presented against Bates during the three-day trial was overwhelming." *Bates*, 768 F.3d at 1284. This Court denied review. *Bates v. Jones*, 577 U.S. 839 (2015).

On May 31, 2023, Bates, represented by Capital Collateral Regional Counsel - South (CCRC-S), filed a motion to interview Juror Hubert Donald Gilmore who served as a guilt-phase juror at the January 1983 trial. The motion to interview noted that Juror Gilmore stated during voir dire that he did not know the victim and that he also stated that neither he nor any relative of his "had ever been the victim of a crime." The motion cryptically referred to a conversation Bates had in prison, on an unknown date, with an unidentified inmate, who told Bates that one of the jurors on a Bay County capital jury was related to the victim. But the motion also acknowledged that an investigator with the Capital Habeas Unit of the Federal Public Defender of the Northern District of Florida (CHU-N) had performed genealogical research of the juror's family tree using the Florida Marriage Index. The investigator had discovered that the juror's second cousin was married to the victim's sister.

On June 2, 2023, the State filed a response to the motion to interview the juror. The State argued that the motion was untimely under Florida Rule of Criminal Procedure 3.575, which requires any motion to interview a juror be filed within ten days absent good cause. The State asserted that there was no good cause for the decades-long delay in performing the genealogical research and therefore, the motion to interview the juror was untimely. The State also asserted that claims of implied bias regarding a juror should not be permitted to be raised at the postconviction stage, much less in successive postconviction litigation. The State asserted that the only

claims that should be entertained in the postconviction context are claims of racial or ethnic bias on the part of the juror.

On November 6, 2023, the state trial court denied the motion to interview the juror, ruling the motion was untimely under Florida Rule of Criminal Procedure 3.575. The lower court noted that the motion "was filed approximately 40 years" after the trial and more than one year after Bates learned of the "distant" family relationship between the juror and the victim which would render any claim of newly discovered evidence regarding the juror untimely as well. The lower court concluded there was no evidence that the juror was dishonest in his answers during voir dire to the question of whether he or a relative had ever been the victim of a crime, noting the ambiguity of the word "relative" and how far distant a family connection the term was meant to encompass. The postconviction court also ruled, in the alternative, that the juror's answer, even if mistaken, did not rise to the "level of dishonesty" that entitled a defendant to relief. The postconviction court also found "no evidence of actual bias" on the part of the juror from the distant family connection. The lower court also expressed concern about juror harassment and upsetting verdicts, noting the "strong public policy" against permitting juror interviews which "would sow the seeds for the destruction" of the jury system. The jury system would be "undermined by a barrage of post-verdict scrutiny of juror conduct" that would "seriously disrupt" finality quoting *Tanner v. United States*, 483 U.S. 107, 119-21 (1987),

The Florida Supreme Court affirmed the lower court's denial of the motion to

interview the juror holding the motion to interview was untimely. *Bates v. State*, 398 So. 3d 406 (Fla. 2024).

On March 25, 2025, Bates, represented by CCRC-S, filed a petition for a writ of certiorari in this Court from the Florida Supreme Court's opinion affirming the denial of the motion to interview the juror, raising one question regarding the constitutionality of Florida limiting post-verdict contact between jurors and attorneys without a court order.

REASONS FOR DENYING THE PETITION

> Whether this Court should grant review of a decision of the Florida Supreme Court holding the defendant failed to show good cause for the forty-year delay in filing the motion to interview a juror, as a matter of state law?

Petitioner Bates seeks review of the Florida Supreme Court's decision affirming the postconviction court's denial of a motion to interview a juror as untimely. Pet. at 13. Bates filed a motion to interview a juror, who served as a juror in the guilt phase over forty years ago, asserting a claim of implied bias based on the juror's second cousin being married to the victim's sister. The Florida Supreme Court held that the motion to interview the juror was untimely, relying on the state rule of court governing such motions. The issue of the timeliness of a motion to interview a juror, filed in state court, pursuant to a state rule of court, is solely a matter of state law. This Court does not review matters of state law. Alternatively, there is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case declining to permit a capital defendant to interview a juror about a distant

relationship by marriage, four decades after the juror's service. This Court has expressed doubt that the jury system could "survive" post-verdict investigations in juror's background, raised for the "first time days, weeks, or months after the verdict," "seriously" disrupting "the finality of the process." *Tanner v. United States*, 483 U.S. 107, 120 (1987). There is also no conflict with either the federal circuit courts or the state courts of last resort regarding the timeliness of a motion to interview a juror filed forty years after their service and the Florida Supreme Court's decision in this case. Because the issue is a matter of state law and because there is no conflict with this Court or between other appellate courts and the Florida Supreme Court, this Court should deny review of the question.

The Florida Supreme Court's decision

The Florida Supreme Court was reviewing a motion to interview a juror, regarding a distant family connection to the victim, over 40 years after the juror's service at the 1983 trial. The motion was filed as a precursor to raising a successive postconviction claim of implied juror bias.

In *Bates v. State*, 398 So. 3d 406 (Fla. 2024), the Florida Supreme Court held the motion to interview the juror was "time-barred." *Id.* at 406. The Florida Supreme Court reviewed the motion under both Florida Rule of Criminal Procedure 3.575, which governs motions to interview jurors, and, under Florida Rule of Criminal Procedure 3.851, which governs postconviction motions in capital cases. *Bates*, 398 So. 3d at 406, n.1, 407-08. The Florida Supreme Court concluded that the motion to interview was "40 years late." *Id.* at 407. The state supreme court explained that

without a showing of good cause for the lengthy delay, any such claim was time-barred under Rule 3.575. The Court observed that Rule 3.575 requires that a motion to interview a juror "be filed within 10 days after the rendition of the verdict, unless good cause is shown for the failure to make the motion within that time." *Id.* The Court suggested that "the best time for a rule 3.575 motion is on the heels of trial, and thus in connection with a direct appeal, when memories are fresh and facts more readily ascertained," not in postconviction litigation.

The Florida Supreme Court observed that Bates did not declare in the motion to interview when he discovered the family relationship between the juror and the victim, which was "the end of the matter" because it was his "burden to establish good cause to excuse the long delay." *Bates*, 398 So. 3d at 407. Because Bates failed "to carry his burden of showing good cause for the 40-year delay," the Florida Supreme Court affirmed the trial court's denial of the motion to interview the juror. *Id.* at 408.

Matter of state law

The timeliness of a motion to interview a juror, filed in state court, pursuant to a state rule of court, is solely a matter of state law. The Florida Supreme Court's decision was based on its reading of Florida Rule of Criminal Procedure 3.575, which is an "adequate and independent state law ground," precluding this Court's review. This Court has explained that if "the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). This Court's jurisdiction "fails" if the

non-federal ground is independent and adequate to support the judgment. *Long*, 463 U.S. at 1038, n.4 (quoting *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935)). A decision "is independent only when it does not depend on a federal holding" and "is not intertwined with questions of federal law." *Glossip v. Oklahoma,* 145 S.Ct 612, 624 (Feb. 25, 2025). "In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Id.* at 624 (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). There is no federal question presented in the petition and therefore, this Court lacks jurisdiction.

Bates seems to be arguing that the denial of his motion to interview the juror is a denial of due process, and therefore, the issue automatically becomes a federal constitutional matter. Pet. at 16. Not so. This Court has long disagreed with such an expansive view of the Fourteenth Amendment's due process clause, explaining that "we cannot treat a mere error of state law" as being "a denial of due process; otherwise, every erroneous decision by a state court on state law would come here as a federal constitutional question." *Gryger v. Burke*, 334 U.S. 728, 731 (1948); see also *Rivera v. Illinois*, 556 U.S. 148, 160 (2009) (explaining that "errors of state law do not automatically become violations of due process"); *Swarthout v. Cooke*, 562 U.S. 216, 222 (2011) ("we have long recognized that a mere error of state law is not a denial of due process" citing *Engle v. Isaac*, 456 U.S. 107, 121, n. 21 (1982)). Bates may not turn a state law matter into a federal constitutional claim by simply wrapping it in

due process cloth. The issue remains solely a matter of state law, regardless of the due process cloak.

The prohibition of interviewing jurors

There was a prohibition on interviewing jurors regarding their verdicts in English common law. *Vaise v. Delaval*, 1 T.R. 11, 99 Eng. Rep. 944 (K.B. 1785). The common-law prohibition is referred to as Lord Mansfield's Rule. American common-law also followed Lord Mansfield's Rule. *McDonald v. Pless*, 238 U.S. 264 (1915). The policies supporting the no-impeachment rule of verdicts include: (1) discouraging harassment of jurors by losing parties; (2) encouraging free and open deliberations among jurors; (3) reducing incentives for jury tampering; (4) promoting finality; and (5) maintaining the viability of the jury as a decision-making body. *See e.g.*, *Sullivan v. Fogg*, 613 F.2d 465, 467 (2d Cir. 1980); *Gov't of Virgin Islands v. Nicholas*, 759 F.2d 1073, 1078 (3d Cir. 1985); *Shillcutt v. Gagnon*, 827 F.2d 1155, 1158 (7th Cir. 1987); *United States v. Wilson*, 534 F.2d 375, 378 (D.C. Cir. 1976); *see also Tanner v. United States*, 483 U.S. 107, 120-21 (1987) (observing that allowing juror inquiries would jeopardize full and frank discussions in the jury room, undermine jurors' willingness to return an unpopular verdict and the community's trust in the jury system).

The no-impeachment rule was codified in the Federal Rules of Evidence in 1975 and many states have an equivalent rule. Fed. R. Evid.606(b); Colo. R. Evid. 606(b); Indeed, every state has some version of the no-impeachment rule. *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 209 (2017). Florida has a statutory prohibition on jurors testifying to impeach the verdict. § 90.607(2)(b), Fla. Stat. (2024) (providing

upon "an inquiry into the validity of a verdict or indictment, a juror is not competent to testify as to any matter which essentially inheres in the verdict or indictment"). This Court has held that the no-impeachment rule also prohibits inquiries into a juror's responses to voir dire questions during jury selection. *Warger v. Shauers*, 574 U.S. 40 (2014).

This Court, in *Warger*, in a unanimous opinion, held that the no-impeachment rule prohibited using one juror's testimony regarding another juror's statements during jury deliberation to establish a juror's non-disclosure during voir dire. *Warger*, 574 U.S. at 42, 44, 51. This Court noted that part of the reason for Lord Mansfield's Rule was to promote the finality of verdicts. *Id.* at 45 (citing *McDonald v. Pless*, 238 U.S. 264, 267-68 (1915)). The *Warger* Court noted that permitting such evidence "would open the door to the most pernicious arts and tampering with jurors." *Id.* at 47 (quoting *McDonald*, 238 U.S. at 268). This Court noted that Congress enacted Federal Rule of Evidence 606(b), to prevent "the harassment of former jurors" and to protect the finality of verdicts. *Id.* at 50. In addition to the rule of evidence, this Court applied the logic of *Tanner v. United States*, 483 U.S. 107 (1987), to jury nondisclosure claims. *Id.* at 52-53.

The *Warger* Court, however, added a caveat in a footnote about "extreme" cases of juror nondisclosure where "almost by definition," the right to an impartial jury was denied, but concluded Warger was not such a case. *Warger*, 574 U.S. at 51,n.3. A few years later, this Court addressed just such an extreme case involving a juror's

statements of ethnic bias made against a criminal defendant during jury deliberations in *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017). This Court, due to the particular damage racial and ethnic prejudice does to the criminal justice system, held that the no-impeachment rule did not apply to such allegations. This Court noted the "imperative to purge racial prejudice from the administration of justice" explaining that racial discrimination "posed a particular threat" both to the promise of the Amendment and to "the integrity of the jury trial." *Id.* at 221. Discrimination on the basis of race, "odious in all aspects, is especially pernicious in the administration of justice." *Id.* at 223. Racial bias "implicates unique historical, constitutional, and institutional concerns" that other types of jury misconduct claims do not. *Id.* at 224. For those reasons, this Court held that "where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way." *Id.* at 225. But the Court observed that not "every offhand comment" indicating racial bias or hostility will justify setting aside the no-impeachment bar to allow further judicial inquiry. *Id.*

Pena-Rodriguez, however, was a direct appeal case where the juror's comment was discovered the same day as the verdict. *Pena-Rodriguez*, 580 U.S. at 212-13 (noting, after the jury was discharged, defendant's counsel "entered the jury room to discuss the trial with the jurors" and spoke to two jurors who disclosed another juror's anti-Mexican comments). In contrast, here the juror's distant family relationship by

marriage was discovered many years after the 1983 verdict. Moreover, this Court has never expanded the exception to the no-impeachment rule regarding racial bias or ethnic bias of *Pena-Rodriguez* into the postconviction context. But this motion to interview the juror was filed four decades after the juror's service, nearly 23 years after Bates' death sentence became final, as a precursor to successive postconviction litigation.

But even applying *Pena-Rodriguez* in the postconviction context, there was no allegation in the motion that Juror Gilmore expressed any racial bias against Bates, as occurred in *Pena-Rodriguez*. Rather, the motion to interview simply alleged that the juror was related to the victim by the marriage of his second cousin. But such an allegation of implied bias does not fall into the *Pena-Rodriguez* exception. Under *Pena-Rodriguez*, even a much closer family connection would not be sufficient to pierce the no-impeachment rule because the allegation was not one of racial or ethnic bias. So, the constitutional exception to the no-impeachment rule does not apply. *Warger*, not *Pena-Rodriguez*, controls.

There was no violation of the Sixth Amendment right to an impartial jury from following the no-impeachment rule and denying the motion to interview Juror Gilmore.

No conflict with this Court's jurisprudence

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case. Sup. Ct. R. 10(c) (listing conflict with this Court as a consideration in the decision to grant review).

In *Tanner v. United States,* 483 U.S. 107, 120 (1987), this Court expressed doubt that the jury system could "survive" post-verdict investigations in juror misconduct, observing that inquiries into juror misconduct, incompetency, or inattentiveness, raised for the first time days, weeks, or months after the verdict, "seriously disrupt the finality of the process." *Tanner* involved a claim of juror misconduct raised a few months after the verdict, unlike this claim of juror nondisclosure that was raised four decades after the verdict. The state trial court expressed many of the same concerns that this Court did in *Tanner*. Indeed, the state trial court quoted the *Tanner* opinion. The state trial court noted that permitting juror interviews about distant family connections, decades after the verdict, "would sow the seeds for the destruction" of the jury system. The state trial court was also concerned about juror harassment, finding it would be "unreasonable to interrupt the life of Juror Gilmore" to question him about the jury service that "he performed over forty years ago" and would amount to "needless prying and harassment." Underlying the trial court's denial of the motion to interview the juror are the same concerns expressed by this Court over the past century in *McDonald v. Pless*, *Tanner*, and *Warger*. This Court also has historically taken a dim view of harassing jurors, much less doing so four decades after their service.

In the pleadings filed in state court, the State pointed out the incentives created to harass jurors for decades after their service and the resulting damage to the jury system, if a party can conduct genealogical research, many years after the

verdict, during the successive postconviction stage of a capital case, to challenge a conviction that is final. It would encourage the capital defense bar to conduct extensive background investigations, including into the social media posts, of all capital jurors. *United States v. Nucera*, 67 F.4th 146, 163 (3d Cir. 2023) (denying a motion for new trial based on a juror's social media post, made years after the jury selection, attempting to show the jurors' answer during voir dire were false), *cert. denied*, 144 S. Ct. 366 (2023). It would certainly discourage citizens from serving as jurors if their backgrounds would be investigated and their social media activities would be scrutinized for many years to come. In response to these observations, opposing counsel, in the reply brief filed in the Florida Supreme Court, openly spoke of their intention to investigate all capital juries, including by conducting genealogical research of all capital jurors. RB at 18. Not placing strict limitations, including strict time limitations, on motions to interview jurors would result in such motions being filed routinely and long after the conviction and sentence were final, especially in capital cases. The Florida Supreme Court enforcing a time limitation on such motions completely comports with this Court's views of the no-impeachment rule.

Bates relies on *Smith v. Phillips*, 455 U.S. 209, 215 (1982), in an attempt to establish conflict with this Court's Sixth Amendment right-to-an-impartial jury jurisprudence. Pet. at 14-15. Specifically, he relies on Justice O'Connor's concurring opinion in *Phillips* discussing the "use of a conclusive presumption of implied bias"

on the part of a juror and giving as an example a juror who "is a close relative of one of the participants in the trial or the criminal transaction." *Phillips*, 455 U.S. at 221-23 (O'Connor, J., concurring). Pet. at 15.

But Justice O'Connor's concurring opinion in *Phillips* which was more expansive than the majority opinion, was not necessary to the holding of the five-justice majority. *Marks v. United States*, 430 U.S. 188, 193 (1977) (explaining that when no single rationale is supported by five Justices, the holding of the Court is the position taken by the concurring opinion on the "narrowest grounds"). *Phillips* was not a plurality opinion. *Marks* does not apply and therefore, Justice O'Connor's concurring opinion does not establish any conflict with this Court. Furthermore, *Phillips* was decided many years before this Court's more recent and more relevant holdings in *Warger v. Shauers*, 574 U.S. 40 (2014), and *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017), enforcing the no-impeachment rule, except in cases of racial or ethnic bias.

Bates also relies on this Court's decision in *Wellons v. Hall*, 558 U.S. 220, 220-21 (2010), in an attempt to establish conflict with this Court. Pet. at 16-21. He argues that he was in the same sort of "procedural morass" as *Wellons*, because he could not file the motion to interview the juror within 10 days of the verdict, as required by Rule 3.575, because the juror's distant relationship by marriage was not discovered until many years after the verdict. Pet at 20. He additionally asserts he was diligent

in filing the motion itself because he filed the motion to interview within one year of discovering the juror's relationship by marriage to the victim. Pet at 19.

But *Wellons* does not establish any conflict. Ultimately, this Court denied review of the Eleventh Circuit's later decision holding that the jurors' conduct of giving judge and bailiff joke gifts, following an evidentiary hearing, did not deprive petitioner of his right to an impartial jury. *Wellons v. Warden, Ga. Diagnostic & Classification Prison*, 695 F.3d 1202 (11th Cir. 2012), *cert denied, Wellons v. Humphrey*, 571 U.S. 869 (2013). *Wellons* did not involve a motion to interview a juror based on a claim of implied bias due to a distant relationship by marriage to the victim, much less a motion to interview a juror filed decades after the convictions were final, based on conducting genealogical research into the juror's family tree. Additionally, *Wellons* was a section 2254 proceeding, not a state successive postconviction proceeding. And *Wellons* certainly does not control over this Court's more recent and more relevant holdings in *Warger v. Shauers*, and *Pena-Rodriguez*.

Nor was Bates caught in any procedural morass. The State never argued that he should have filed the motion within 10 days of the verdict in 1983 and the Florida Supreme Court certainly never held the motion to interview the juror was untimely because it was not filed in January of 1983. To the contrary, the reason that the Florida Supreme Court found the motion was untimely was because Bates never disclosed the name of the inmate who told him about the rumor regarding a juror on a Bay County capital jury being related to the victim or the date that conversation

occurred in his motion to interview. He did not disclose that information, despite invoking Rule 3.575, which requires a showing of good cause for any delay in filing the motion to interview a juror. The Florida Supreme Court concluded that Bates failed to establish good cause for the delay by omitting critical information in the motion. *Bates*, 398 So. 3d at 407 ("Bates does not say when he discovered the alleged family relationship between the juror and the victim" which "is the end of the matter, for it is Bates's burden to establish good cause to excuse the long delay—which he is hard-pressed to do without explaining the timing of all this."). Bates had the burden of establishing good cause under the language of Rule 3.575 but he did not meet that burden. The Florida Supreme Court's decision was based on the lack of good cause, not on the 10-day time limit in the Rule. There is no morass.

And no, Bates was not diligent in filing the motion itself. Far from it — he waited nearly a year to file the motion to interview the juror after completing his genealogical research of this juror, despite the state rule of court requiring such motions to be filed within 10 days. The State argued that the "good cause" provision of Rule 3.575 should be read to mean that any good cause that is established simply restarts the 10-day clock to timely file a motion to interview a juror. So, even timing the motion from the date the genealogical research was completed, the motion to interview should have been filed no more than 10 days later. Instead, Bates waited nearly a year after having all the information necessary to file the motion before filing

the motion, for no reason whatsoever.[2] That is not a defendant being caught in a procedural morass; rather, it is a capital defendant engaging in intentional delay. Such a situation is hardly equivalent to the defendant's situation in *Wellons*. There is no conflict with *Wellons*.[3]

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision finding a motion to interview a juror to be untimely.

No conflict with the federal or the state supreme courts

There is also no conflict with either the federal circuit courts or the state courts of last resort and the Florida Supreme Court's decision. As this Court has observed, a principal purpose for certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of

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[2] The exact date the genealogical research was completed is also unknown because Bates did not disclose that date either in the motion to interview the juror.

[3] The fact that Bates raised a constitutional challenge to Rule 4-3.5(d)(4) of the Rules Regulating the Florida Bar is irrelevant to any proper analysis of whether there is conflict with this Court, just as it was irrelevant to any finding of good cause in state court under Rule 3.575. Pet. at 17-19. The claim raised by Bates in the postconviction appeal in the Florida Supreme Court was a general Eighth Amendment challenge to a different rule urging the Florida Supreme Court to allow him "unfettered discretion" to interview all 24 of the jurors involved in his conviction and resentencing. *Bates v. State*, 3 So. 3d 1091, 1105 & n.13 (Fla. 2009). But that was a constitutional challenge to a different rule that did not involve this specific claim of implied bias regarding Juror Gilmore's family tree raised under Rule 3.575. A capital defendant raising a constitutional challenge to a vaguely related rule years earlier does not establish good cause or his diligence in filing a motion to interview a particular juror, in any manner.

federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991); see also Sup. Ct. R. 10(b) (listing conflict among federal appellate courts and state supreme courts as a consideration in the decision to grant review).

There is no identified conflict between the Florida Supreme Court's decision in this case and any decision of any federal circuit court of appeal. Bates cites no decision from any federal circuit court even addressing a similar issue, much less a decision holding that denying a motion to interview a juror as untimely violates either the Sixth Amendment's right-to-an-impartial jury provision or due process. There is no conflict between federal circuit courts and the Florida Supreme Court's decision finding the motion to interview to be untimely.

There is also no identified conflict between any decision of any other state court of last resort and the Florida Supreme Court's decision. Bates cites no decision from any state supreme court even addressing a similar issue, much less a decision holding that denying a motion to interview a juror as untimely violates either the Sixth Amendment's right-to-an-impartial jury provision or due process. There is no conflict between the other state supreme courts and the Florida Supreme Court's decision finding the motion to interview to be untimely.

There is also no conflict between the other state courts of last resort and the Florida Supreme Court's decision finding the motion to be untimely.

Because the issue of the timeliness of the motion is a matter of state law and alternatively, because there is no conflict with this Court's jurisprudence or among the appellate courts, review of this question should be denied.

Accordingly, this Court should deny the petition.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

Christina Z. Pacheco #305209
for CARLA SUZANNE BECHARD
Associate Deputy Attorney General
Florida Bar No. 147745
Counsel of Record

Charmaine M. Millsaps
Senior Assistant Attorney General

Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607
CarlaSuzanne.Bechard@myfloridalegal.com
capapp@myfloridalegal.com
(813) 287-7900

COUNSEL FOR RESPONDENT