No. _____

IN THE

Supreme Court of the United States

EDWARD JAMES ZAKRZEWSKI, II,

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, JULY 31, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTION PRESENTED

Petitioner received two sentences of death due to a bare majority jury recommendation of 7-5. On the third count, the jury recommended a life sentence without the possibility of parole. However, the trial judge decided to override the jury's vote and sentence Petitioner to death on the third count as well. Out of approximately 267 total death row inmates in Florida, Petitioner appears to be one of only 17 inmates whose death sentence results from a 7-5 bare majority jury vote, and/or a judicial override of a life sentence.

The following question is presented:

> Given that it is illegal to sentence an individual to death as the result of a bare majority jury vote or judicial override of a life sentence anywhere in this country, is it unconstitutional to execute Petitioner when his death sentences stem from jury votes of 7-5 and 6-6?

PARTIES TO THE PROCEEDING

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

LIST OF DIRECTLY RELATED PROCEEDINGS

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

Underlying Criminal Trial
First Judicial Circuit Court, Okaloosa County, Florida
State of Florida v. Edward J. Zakrzewski, II Case No. 1994 CF 1283
Judgment Entered: April 19, 1996

Direct Appeal
Supreme Court of Florida (Case No. SC60-88367)
Zakrzewski v. State, 717 So. 2d 488 (Fla. 1998)
Judgment Entered: June 11, 1998 (affirming convictions and sentences)
Rehearing Denied: September 9, 1998

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 98-7183)
Zakrzewski v. Florida, 525 U.S. 1126 (1999)
Judgment Entered: January 25, 1999

Initial State Postconviction Review
First Judicial Circuit Court, Okaloosa County, Florida
State v. Zakrzewski, Case No. 1994 CF 1283
Judgment Entered: June 17, 2002 (denying motion for postconviction relief)

Supreme Court of Florida (Case No. SC02-1734)
Zakrzewski v. State, 866 So. 2d 688 (Fla. 2003)
Judgment Entered: November 13, 2003 (affirming denial of postconviction relief)
Rehearing Denied: February 4, 2004

Initial Federal Habeas Proceedings

District Court for the Northern District of Florida (Case No. 04-00066-CV-3-RV)
Zakrzewski v. Crosby, *et. al.*, 3:04-cv-00066 (N.D. Fla. Feb. 23, 2004)
Judgment Entered: September 30, 2004 (denying petition)

Eleventh Circuit Court of Appeals (Case No. 04-15685)
Zakrzewski v. McDonough, 455 F.3d 1254 (11th Cir. 2006)
Judgment Entered: July 13, 2006 (affirming denial of federal habeas)
Rehearing Denied: November 1, 2006

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 06-9453)
Zakrzewski v. McDonough, 549 U.S. 1349 (2007)
Judgment Entered: April 16, 2007

Fed. R. Civ. P. 60(b) Proceedings

District Court for the Northern District of Florida (Case No. 3:04CV66/RV/EMT)
Zakrzewski v. Crosby, *et. al.*, 3:04-cv-00066 (Jan. 15, 2006)
Judgment Entered: March 6, 2006 (dismissing Rule 60(b) motion as successive habeas petition)

District Court for the Northern District of Florida (Case No. 3:04CV66/RV/EMT)
Zakrzewski v. McDonough, 2006 WL 1835024 (N.D. Fla. June 28, 2006)
Judgment Entered: June 28, 2006 (granting COA)

Eleventh Circuit Court of Appeals (Case No. 06-12804)
Zakrzewski v. McDonough, 490 F.3d 1264 (11th Cir. 2007)
Judgment entered: July 3, 2007 (remanding Rule 60(b) for consideration on the merits)

District Court for the Northern District of Florida (Case No. 3:04CV66/RV)
Zakrzewski v. McDonough, 2007 WL 2827735 (Sept. 26, 2007)
Judgment Entered: Sept. 26, 2007 (denying Rule 60(b) motion)

District Court for the Northern District of Florida (Case No. 3:04CV66/RV)
Zakrzewski v. McDonough, 2008 WL 150050 (N.D. Fla. Jan. 14, 2008)
Judgment Entered: Jan. 14, 2008 (granting COA)

Eleventh Circuit Court of Appeals (Case No. 07-15930)
Zakrzewski v. McNeil, 573 F.3d 1210 (11th Cir. 2009)
Judgment entered: July 9, 2009 (affirming denial of Rule 60(b) motion)

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 09-10036)
Zakrzewski v. McNeil, 560 U.S. 956 (2010)
Judgment Entered: June 7, 2010

First Successive Postconviction Motion
First Judicial Circuit Court, Okaloosa County, Florida
State v. Zakrzewski, Case No. 1994 CF 1283
Judgment Entered: July 18, 2007 (denying postconviction motion)

Supreme Court of Florida (Case No. SC08-0059)
Zakrzewski v. State, 13 So. 3d 1057 (Fla. 2009)
Judgment Entered: February 17, 2009 (affirming postconviction denial)
Rehearing Denied: June 30, 2009

Second Successive Postconviction Motion
First Judicial Circuit Court, Okaloosa County, Florida
State v. Zakrzewski, Case No. 1994 CF 1283
Judgment Entered: June 10, 2011 (denying postconviction motion)

Supreme Court of Florida (Case No. SC11-1896)
Zakrzewski v. State, 115 So. 3d 1004 (Fla. 2012)
Judgment Entered: November 9, 2012 (affirming postconviction denial)
Rehearing Denied: April 3, 2013

Third Successive Postconviction Motion
First Judicial Circuit Court, Okaloosa County, Florida
State v. Zakrzewski, Case No. 1994 CF 1283
Judgment Entered: August 19, 2013 (denying postconviction motion)

Supreme Court of Florida (Case No. SC13-1825)
Zakrzewski v. State, 147 So. 3d 531 (Fla. 2014)
Judgment Entered: June 20, 2014 (affirming postconviction denial)

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 14-7985)
Zakrzewski v. Florida, 575 U.S. 918 (2015)
Judgment Entered: March 23, 2015

State Habeas Petition
Supreme Court of Florida (Case No. SC16-0729)
Zakrzewski v. Jones, 221 So. 3d 1159 (Fla. 2017)
Judgment Entered: May 25, 2017 (denying state habeas petition)
Rehearing Denied: July 18, 2017

Fourth Successive Postconviction Motion
First Judicial Circuit Court, Okaloosa County, Florida
State v. Zakrzewski, Case No. 1994 CF 1283
Judgment Entered: February 16, 2018 (denying postconviction motion)

Supreme Court of Florida (Case No. SC18-0646)
Zakrzewski v. State, 254 So. 3d 324 (Fla. 2018)
Judgment Entered: September 20, 2018 (affirming postconviction denial)

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 18-8090)
Zakrzewski v. Florida, 587 U.S. 988 (2019)
Judgment Entered: May 13, 2019

Fifth Successive Postconviction Proceedings (under warrant)
First Judicial Circuit Court, Okaloosa County, Florida
State v. Zakrzewski, Case No. 1998 CF 1382
Judgment Entered: July 14, 2025 (denying postconviction motion)

Supreme Court of Florida (Case No. SC25-1009)
Zakrzewski v. State, 2025 WL 2047404 (Fla. July 22, 2025)
Judgment Entered: July 22, 2025 (affirming postconviction denial)

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OTHER AUTHORITIES

Petitioner Edward James Zakrzewski, II, respectfully urges this Honorable Court to issue a writ of certiorari to review the decision of the Florida Supreme Court.

DECISION BELOW

The decision of the Florida Supreme Court summarily denying Mr. Zakrzewski's motion for postconviction relief appears as *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404 (Fla. July 22, 2025), and is reproduced in the Appendix at A1. The circuit court's unpublished Order Denying Defendant's Successive Motion to Vacate Judgment and Death Sentences and Motion for Stay of Execution, is reproduced at A2.

JURISDICTION

The judgment of the Florida Supreme Court was entered on July 22, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part:

> No person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law . . .

The Eighth Amendment provides:

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

The Fourteenth Amendment provides in relevant part:

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

STATEMENT OF THE CASE[1]

I. Introduction

Petitioner, Edward James Zakrzewski, II, is under an active death warrant based upon three death sentences that stand in violation of the United States Constitution.

Mr. Zakrzewski's death sentences are unconstitutional in every state that still retains the death penalty in this nation. Following his penalty phase trial, the jury votes were 7-5, 7-5, and 6-6. In all but two states that retain the death penalty, the jury vote must be unanimous to impose a sentence of death. Of the two states that do not require a unanimous verdict, Florida has the lowest threshold, requiring only eight votes to impose a death sentence. *See* § 921.141(2)(c), Fla. Stat. (2023), ("If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole.") Yet, Mr. Zakrzewski's death sentences were all imposed with fewer than eight jurors voting for death.

Due to Florida's arbitrary decision to deny *Hurst*[2] relief to defendants whose

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[1] Citations shall be as follows: The abbreviation "R." refers to the first three volumes of the record on direct appeal to the Florida Supreme Court (SC60-88367). "T." refers to the penalty phase trial transcript in volumes four through ten of the record on appeal. "PC." refers to the record on appeal from this appeal (SC25-1009). All other references will be self-explanatory or otherwise explained herein.

[2] *Hurst v. Florida*, 577 U.S. 92 (2016).

death sentences were finalized prior to June 24, 2002, Mr. Zakrzewski's unconstitutional death sentences were never vacated nor was he afforded the benefit of a resentencing hearing unlike approximately 145 other individuals with nonunanimous jury recommendations.[3] The Florida Supreme Court's arbitrary denial of Mr. Zakrzewski's serious constitutional claims is inconsistent and erroneous.

Moreover, finality does not require the State of Florida to execute Mr. Zakrzewski. *See Sanders v. United States*, 373 U.S. 1, 8 (1963) (holding "[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged"). The interests of finality and justice would still be achieved if this Court found his death sentences unconstitutional and remanded for the Florida Courts to impose life sentences without the possibility of parole.

For the sake of preventing an unconstitutional execution, this Court's intervention is necessary.

II. Statement of Proceedings

Mr. Zakrzewski, pled guilty to three counts of first-degree murder on March 19, 1996. R. 241-42; T. 442-51. After conducting a penalty phase trial, the jury voted 7-5, 7-5, and 6-6 on counts 1-3 respectively. R. 263-64; T. 1274-80. Although the jury

[3] *See Resentencing Status of Florida Prisoners Sentenced to Die by Non-Unanimous Juries*, DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/stories/florida-prisoners-sentenced-to-death-after-non-unanimous-jury-recommendations-whose-convictions-became-final-after-ring (last visited July 24, 2025).

voted for life imprisonment without possibility of parole on the third count, on April 19, 1996, the trial court overrode the jury's vote for life, and sentenced Mr. Zakrzewski to death on all three counts. R. 1028-51; 1274-80. The Florida Supreme Court affirmed on direct appeal. *Zakrzewski v. State*, 717 So. 2d 488 (1998), *cert denied*, *Zakrzewski v. Florida*, 525 U.S. 1126 (1999).

Mr. Zakrzewski filed an initial motion for state postconviction relief which was denied after an evidentiary hearing. *Zakrzewski v. State*, 866 So. 2d 688, 689 (Fla. 2003). On appeal, he raised four issues, including that his death sentence was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466, 482 (2000) and *Ring v. Arizona*, 536 U.S. 584, 584 (2002). *Id*. The Florida Supreme Court affirmed. *Id*. at 697.

In February 2004, Mr. Zakrzewski filed a petition for a writ of habeas corpus, which was denied and affirmed on appeal by the Eleventh Circuit Court of Appeals. *Zakrzewski v. McDonough*, 455 F.3d 1254 (11th Cir. 2006).

Mr. Zakrzewski filed a Federal Rule of Civil Procedure 60(b) motion to reopen proceedings on his habeas petition. The motion was denied as a successive habeas petition and he appealed. The Eleventh Circuit Court of Appeals reversed and remanded, instructing the district court to consider the merits of the motion. *Zakrzewski v. McDonough*, 490 F.3d 1264 (11th Cir. 2007). On remand, the district court denied the 60(b) motion, *Zakrzewski v. McDonough*, 2007 WL 2827735 (N.D. Fla. Sept. 26, 2007), and the Eleventh Circuit affirmed. *Zakrzewski v. McNeil*, 573 F.3d 1210 (11th Cir. 2009), *cert denied*, *Zakrzewski v. McNeil*, 560 U.S. 956 (2010).

In 2009, Mr. Zakrzewski filed a successive motion in state court, which was summarily denied, and affirmed on appeal. *Zakrzewski v. State*, 13 So. 3d 1057 (Fla. 2009) (unpublished). Another in 2010, which was also summarily denied and affirmed on appeal. *Zakrzewski v. State*, 115 So. 3d 1004 (Fla. 2012) (unpublished). In March 2013, Mr. Zakrzewski filed a third successive postconviction motion. The trial court summarily denied his claims and the Florida Supreme Court affirmed. *Zakrzewski v. State*, 147 So. 3d 531 (Fla. 2014) (unpublished), *cert denied, Zakrzewski v. Florida*, 575 U.S. 918 (2015).

On May 2, 2016, Mr. Zakrzewski filed a state petition for writ of habeas corpus seeking relief under *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The petition was denied. *Zakrzewski v. Jones, etc.,* 221 So. 3d 1159 (Fla. 2017).

In January 2017, Mr. Zakrzewski filed a fourth successive postconviction motion based on *Hurst*, which was summarily denied. On appeal, the Florida Supreme Court affirmed summary denial of the motion, concluding that their prior denial of his habeas petition raising similar claims served as a procedural bar. *Zakrzewski v. State*, 254 So. 3d 324 (Fla. 2018), *cert denied, Zakrzewski v. Florida*, 587 U.S. 988 (2019).

Immediately prior to the four-day weekend for Independence Day, Governor Ron DeSantis signed a death warrant for Mr. Zakrzewski on July 1, 2025. PC. 37-66. His execution is scheduled for July 31, 2025 at 6:00 p.m. On July 9, 2025, Mr. Zakrzewski filed a successive motion under Fla. R. Crim. P. 3.851 after death warrant

signed. PC. 352-98. The State filed an answer on July 10, 2025. PC. 465-88. The circuit court held a case management conference on July 10, 2025 (PC. 502-19) and denied Mr. Zakrzewski's successive motion on July 14, 2025. App. A2.

Mr. Zakrzewski appealed to the Florida Supreme Court and filed his initial brief on July 16, 2025. The State filed its Answer Brief on July 17, 2025, and Mr. Zakrzewski replied on July 18, 2025. On July 22, 2025, the Florida Supreme Court affirmed. App. A1. The Florida Supreme Court "agree[d] with the circuit court that [Mr.] Zakrzewski's claim is untimely, procedurally barred, and meritless." App. A1 at 9.

As to timeliness, the Florida Supreme Court reasoned that "these claims were not contingent on the signing of [Mr.] Zakrzewski's death warrant." App. A1 at 10.

As to the procedural bar, the Florida Supreme Court held that the jury override claim was raised and rejected on direct appeal. App. A1 at 13-14. Further, the Florida Supreme Court held it had twice denied Mr. Zakrzewski's claim regarding the simple majority jury vote. App. A1 at 12.

As to the merits of Mr. Zakrzewski's claim, the Florida Supreme Court ruled that the trial court's override of the jury recommendation was proper, thus the claim is meritless. App. A1 at 13-14.

III. Additional Relevant Facts

Mr. Zakrzewski was remorseful and took responsibility for the crime by pleading guilty to three counts of first-degree murder on March 19, 1996. R. 241-42; T. 442-51. Following the penalty phase trial, the jury voted 7-5 for a death sentence

on the first two counts, and on the third count, the jury voted for life imprisonment without possibility of parole. R. 263-64; T. 1274-80. Notably, prior to Mr. Zakrzewski's 1996 trial, he raised and preserved the argument that a bare majority vote for a death sentence was unconstitutional. R. 195-96.

An extensive amount of mitigation was found in Mr. Zakrzewski's case, including two weighty statutory mitigators: 1) no significant prior criminal history, and 2) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. *Zakrzewski*, 717 So. 2d at 497. Weight was also given to fourteen nonstatutory mitigating factors. *Id.* at 494. The nonstatutory mitigation found by the trial court included factors that related to Mr. Zakrzewski taking responsibility, such as he turned himself in; pled guilty; and showed severe grief and remorse. *Id.* at 491.

Additional mitigation found by the trial court supported the fact that the offense was completely out of character for Mr. Zakrzewski, such as: he served in an exemplary manner in the United States Air Force; he was under great stress due to work, college, child care, housework, and lack of sleep; he was a loving husband and father until the offense; was on the Dean's List in his third year of college; he is a patient and humble man; and he is an exceptionally hard worker. *Id.* Other mitigating circumstances included that Mr. Zakrzewski: was raised without his natural father in his home; had a lack of prior domestic relationships; received little religious upbringing, but has embraced faith since the offense. *Id.* Conversely, a minimal number of aggravators were found. *Id.* at 494.

Nonetheless, although the jury voted for life imprisonment without the possibility of parole on the third count, on April 19, 1996, the trial court overrode the jury's vote for life, and sentenced Mr. Zakrzewski to death on all three counts. R. 1028-51; 1274-80.

Petitioner went on to raise nine claims on his direct appeal:

> (1) the trial court erred by finding HAC; (2) the trial court erred by finding CCP; (3) the death sentence is not proportionately warranted in this case; (4) the trial court erred in overriding the jury's recommendation of life for Anna; (5) the trial court allowed prejudicial photographs of the victims to be admitted into evidence; (6) the trial court permitted State's mental health expert to testify about Nietzsche and his views on Christianity; (7) the trial court permitted the State's mental health expert to testify, when the testimony did not rebut the testimony of Zakrzewski's mental health expert; (8) the trial court failed to instruct the jury that Zakrzewski's ability to understand his conduct was substantially impaired; and (9) the trial court failed to instruct the jury on each of Zakrzewski's nonstatutory mitigating factors.

Zakrzewski, 717 So. 2d at 492. Although the Florida Supreme Court affirmed on direct appeal, three Justices noted the issues with upholding the jury override. *Id.* at 496-98.

> The majority has not considered the facts in a light most favorable to the recommendation of the jury, as we are required to do, or acknowledged the unchallenged reasonable basis in the record supporting the jury's vote as to Anna's death. Further, the majority has ignored not only the evidence and inferences therefrom that would support the jury's recommendation, but has also ignored the fact that ***even the jury vote recommending death was by a slim seven to five margin, one vote away from a life recommendation*** for the appellant. Hence, the majority, in direct violation of the law and our decision in *Tedder* has substituted its subjective analysis of the facts for the views of the sworn and death-qualified jurors, who not only could have had reasonable but differing views as to whether death was appropriate, but *did* have those views and openly expressed them. The majority has apparently concluded that because its members would not

> have extended mercy, the views of the twelve citizens sitting on this jury extending mercy will be ignored.

Zakrzewski, 717 So. 2d at 497 (Anstead, J., concurring in part and dissenting in part with an opinion, in which Kogan, C.J., and Shaw, J., concur) (first emphasis added).

Petitioner has been diligent in continuously challenging the constitutionality of Florida's death penalty scheme. On appeal from the denial of his initial motion for state postconviction relief, he raised four issues, including that his death sentence was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466, 482 (2000) and *Ring v. Arizona*, 536 U.S. 584, 584 (2002). *Zakrzewski v. State*, 866 So. 2d at 689. The Florida Supreme Court affirmed. *Id*. at 697.

Next, in 2016, Petitioner sought habeas relief under *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), but the petition was denied. *Zakrzewski,* 221 So. 3d 1159. In 2017, Petitioner's successive postconviction motion based on *Hurst* was summarily denied. On appeal, the Florida Supreme Court affirmed and held that Petitioner was procedurally barred. *Zakrzewski*, 254 So. 3d at 324.

Most recently, while under active warrant, the circuit court erred in finding that Petitioner's constitutional claims were untimely, procedurally barred, and meritless. App. A2 at 4-7. The Florida Supreme Court agreed. App. A1 at 9-14.

REASONS FOR GRANTING THE WRIT

I. This Court should enforce the protections of the United States Constitution and prevent Petitioner from an execution based on an arbitrary and unequal imposition of the death penalty.

The Eighth Amendment applies with special force in capital cases. *See Roper v. Simmons*, 543 U.S. 551, 568 (2005) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring in judgment)). This Court "insists upon confining the instances in which the punishment can be imposed," *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008); otherwise, the law "risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." *Id.* Thus, states must administer the death penalty "in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not." *Spaziano v. Florida*, 468 U.S. 447, 460 (1984) (overruled on other grounds by *Hurst*, 577 U.S. at 101); *see also Godfrey v. Georgia*, 446 U.S. 420, 428, 433 (1980) (setting death sentence aside in order to avoid "arbitrary and capricious infliction of the death penalty").

One clear concern of the Justices *in Furman v. Georgia*, 408 U.S. 238 (1972), was the possible discriminatory application of the death penalty. Justice Douglas concluded that the capital statutes before him were "pregnant with discrimination," *id.* at 257, and thus ran directly counter to "the desire for equality . . . reflected in the ban against 'cruel and unusual punishments' contained in the Eighth Amendment." *Id.* at 255. These observations illuminate the holding of *Furman*, reaffirmed by this Court in *Gregg* and subsequent cases, that the death penalty may "not be imposed

under sentencing procedures that create [ ] a substantial risk that it [will] . . . be inflicted in an arbitrary and capricious manner." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976); *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980); *Zant v. Stephens*, 456 U.S. 410, 413 (1982) (per curiam).

The "qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed." *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). However, the litany of issues associated with Petitioner's death sentences highlight that the death penalty has not been fairly and equally applied to his case.

A. Evolving standards of decency mandate that Petitioner's death sentences violate the Eighth Amendment.

The Court has repeatedly held, "the Eighth Amendment 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'" *Furman v. Georgia*, 408 U.S. 238, 242 (1972) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). The justifications cited for the death penalty no longer support the existence of capital punishment, because "capital punishment is excessive when . . . it does not fulfill two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes." *See, e.g., Kennedy v. Louisiana*, 554 U.S. 407, 441 (2008) (noting decision was consistent with justifications); *Gregg*, 428 U.S. at 173, 183, 187 (joint opinion of Stewart, Powell, and Stevens, JJ.). There is no meaningful evidence that the death penalty deters violent crime when compared with life imprisonment without parole.

In addition, based upon the number of jurisdictions that have abolished the

death penalty or placed more restrictions on its imposition, the standards of decency in this country have clearly evolved over the years. Currently, 23 states and the District of Columbia do not utilize the death penalty. *State by State*, DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/state-and-federal-info/state-by-state (last visited July 24, 2025). Out of the 27 states that retain the death penalty, four of those states have a gubernatorial hold on executions. *Id*. Of the 23 remaining states where the death penalty is active, all but two of the states require a unanimous jury vote before imposition of a death sentence: Florida and Alabama. Even Alabama requires at least 10 jurors to vote for a death sentence before it is imposed. *See* Ala. Code § 13A-5-46(f) ("The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors"); *see also* § 921.141, Fla. Stat. (2023) (requiring at least eight jurors to vote for a death sentence). Notably, not a single state in this nation allows an individual to be sentenced to death as the result of a bare majority vote or lower, which corroborates that the standards of decency in this country have evolved.

B. This Court must intervene to prohibit Florida from continuing to execute individuals as a result of its unconstitutional capital sentencing schemes.

This Court has a duty to intervene and determine whether Petitioner's death sentences and execution are imposed in violation of the Eighth Amendment. "Although the judgments of legislatures, juries, and prosecutors weigh heavily in the balance, it is for us ultimately to judge whether the Eighth Amendment" is violated by a challenged practice." *Spaziano v. Florida*, 468 U.S. 447, 463-64 (1984), *overruled*

by Hurst v. Florida, 577 U.S. 92 (2016) (quoting *Enmund v. Florida*, 458 U.S. 782, 797 (1982)).

Amongst all the other states, as far as capital punishment is concerned, Florida has consistently and continuously been the outlier. Just to provide a few examples, in 2002, "[o]f the 38 States with capital punishment, 29 generally commit[ted] sentencing decisions to juries." *Ring v. Arizona*, 536 U.S. 584, 608 n. 6 (2002). At that time, there were only five states who "commit[ted] both capital sentencing factfinding and the ultimate sentencing decision entirely to judges." *Id*. In addition, Florida was one of four states with a hybrid system where "the jury render[ed] an advisory verdict but the judge ma[de] the ultimate sentencing determination[ ]." *Id*.

Later in 2005, the *Steele* court recognized Florida's status as an outlier and requested at length for the Florida Legislature to take action regarding Florida's capital sentencing scheme. The Florida Supreme Court noted that "Florida is now the only state in the country that allows a jury to decide that aggravators exist *and* to recommend a sentence of death by a mere majority vote." *State v. Steele*, 921 So. 2d 538, 548 (Fla. 2005), *as revised on denial of reh'g* (Feb. 2, 2006), *abrogated by Hurst v. Florida*, 577 U.S. 92 (2016) (emphasis in original).

As for the outdated unconstitutional practice of jury override, even in 1984, nearly all of the "jurisdictions with a capital sentencing statute g[a]ve the life-or-death decision to the jury, with only 3 of the remaining 7 allowing a judge to override a jury's recommendation of life." *Spaziano v. Florida*, 468 U.S. 447, 463-64 (1984), *overruled by Hurst v. Florida*, 577 U.S. 92 (2016).

As noted above, capital punishment is currently only active in 23 states. "It is not so much the number of these States that is significant, but the consistency of the direction of change." *Atkins v. Virginia*, 536 U.S. 304, 315 (2002). This number has decreased over the years and is now substantially lower than what the *Ring* Court noted in 2002. A clear pattern of evolving standards of decency exists here.

II. Florida's denial of the relief given to other similarly situated defendants violates the Equal Protection Clause.

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe,* 457 U.S. 202, 216 (1982)). Conversely, the Florida courts hide behind an arbitrary date when deciding whether to give a capital defendant relief. If Petitioner's sentences became final after the arbitrary date of June 24, 2002, he would have received a new penalty phase trial where no trial judge could override any jury recommendation of a life sentence or impose the death penalty for a 7-5 vote.

Petitioner's rights under the Equal Protection Clause have clearly been violated. Not only did approximately 145 similarly situated individuals receive relief, but over 120 inmates who received relief received ***worse*** jury recommendations than Petitioner.[4] Over 25 inmates on Florida's death received relief who were only one vote

[4] *See Florida Death-Penalty Appeals Decided in Light of Hurst*, DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/stories/florida-death-penalty-appeals-decided-in-light-of-hurst (last visited July 24, 2025) (similarly situated

away from a unanimous recommendation for death, instead of like Petitioner, being one vote away from a life recommendation. Another approximately 40 death row inmates received relief despite their 10-2 recommendations for death. As well as about 30 others who had received a 9-3 recommendation.

Worse yet, Petitioner is also being treated differently than present day capital defendants. If Petitioner's trial commenced now, even in Florida, who has the lowest jury vote margin in the country of 8-4, if Petitioner received the same jury votes he previously received in 1996, he would not be sentenced to death. When so many other individuals on Florida's death row either received relief for their nonunanimous sentence or were never sentenced to death based on a bare majority vote and a jury override, it would be wholly unjust to let Petitioner's unconstitutional death sentences stand.

III. Petitioner's case is the proper vehicle for considering this issue because his death sentences are the product of bare majority jury votes, as well as, the trial judge's override of a jury's recommendation of a life sentence.

As most of the individuals who received *Hurst* relief are no longer sentenced to death, currently there are approximately 267 inmates on Florida's death row. *Death Row Roster*, https://pubapps.fdc.myflorida.com/OffenderSearch/deathrowroster.aspx (last visited July 24, 2025). Out of all those inmates, only 15 are sentenced to death as a result of a pre-*Ring* bare majority 7-5 jury recommendation. *See Florida Death-Penalty Appeals Decided in Light of Hurst*, *supra.* note 4, at 14-15. Including

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individuals in Florida received relief under *Hurst* for worse jury recommendations ranging from 11-1, 10-2, 9-3, 8-4)

Petitioner, only three individuals are on Florida's death row with at least one death sentence that resulted from a judge overriding a jury's recommendation for life. *See Zakrzewski*, 221 So. 3d at 1162.

Unlike some more far-reaching decisions, whether this concept "merely recognizes what the correct rule has been for many years" or involves a "new rule" that qualifies as a "watershed rule", is of no import. *See Ramos v. Louisiana*, 590 U.S. 83, 160 (2020) (dissenting Alito, J., in which Roberts, C.J. and Kagan, J. joined) (citing *Teague v. Lane*, 489 U.S. 288 (1989)). As Justice Gorsuch noted in *Ramos*, other decisions have been made in which the judgment of the Court affected ***hundreds*** of convictions. *See* 590 U.S. at 108. Petitioner's case involves far less reliance interests. Accordingly, if the Court held that both Florida's bare majority jury vote for death and judicial override of a life sentence was unconstitutional, regardless of when the sentence became final, only approximately 17 individuals, including Petitioner, would be affected.

IV. Without this Court's intervention, Florida will continue to unjustly foreclose any meaningful opportunity for an individual to challenge the constitutionality of his sentence and execution.

A. Florida's application of an inadequate procedural bar will persist unless this Court intercedes.

The Eighth Amendment prohibits cruel and unusual punishment as a categorical imperative. *See, e.g.*, *Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (Eighth Amendment-based exemptions from execution not only protect death-sentenced individuals but also protect "the dignity of society itself from the barbarity of exacting mindless vengeance[.]"). Thus, no state-law waiver provision may trump

this Court's mandate that death-sentenced individuals "must have a fair opportunity to show that the Constitution prohibits their execution[,]" *Hall v. Florida*, 572 U.S. 701, 724 (2014). Just as it would be unconstitutional for Florida to invoke timeliness or res judicata as justification to execute individuals subject to categorical exemptions or exclusions, so too would it be unconstitutional to execute Petitioner on the grounds that he raised his claim too soon, before the standards of decency fully evolved.

Petitioner is being punished for his diligence in attempting to show that Florida's application of a bare majority jury vote, as well as a judicial override, were unconstitutional. Second, Petitioner is also facing the issue that his death sentence became final too early. Remarkably, Florida's capital sentencing scheme was such an outlier over the years, that even prior to his 1996 trial, Petitioner raised and preserved the argument that a bare majority vote for a death sentence was unconstitutional. R. 195-96. After being sentenced, Petitioner also timely raised and preserved similar arguments under *Apprendi* and *Ring*. Justice Lewis opined that "those defendants who challenged Florida's unconstitutional sentencing scheme based on the substantive matters addressed in *Hurst* are entitled to consideration of that constitutional challenge." *Asay v. State*, 210 So. 3d 1, 31 (Fla. 2016) (Lewis, J., concurring). Further, Justice Pariente also recognized that "pre-*Ring* defendants whose sentences were the product of the ***clearly unconstitutional judicial override***" still "warrant relief under *Hurst*". *Zakrzewski v. Jones*, 221 So. 3d 1159, 1162 (Fla. 2017) (Pariente, J., concurring) (emphasis added). Despite raising and preserving these arguments and multiple Florida Supreme Court Justices opining

that his claim warranted consideration, Petitioner was barred from receiving a new penalty phase trial solely because his sentence became final in 1999, merely years prior to the 2002 date where the Florida Supreme Court decided to arbitrarily draw the line.

Although Petitioner contends that the courts have previously decided his case wrong, he has timely raised claims and challenged Florida's unconstitutional capital sentencing scheme at every chance. Therefore, he has fully preserved the issues in his case related to the unconstitutional death sentences. Accordingly, Petitioner asserts that Florida continues to be blind to its constitutional violations, and his sentences of death should not stand.

B. Florida's continued abandonment of its responsibilities under the Eighth Amendment necessitates this Court's intervention.

The Court must intervene due to Florida's continued practice of refusing to analyze Eighth Amendment violations. In its opinion upholding the lower court's denial of relief, the Florida Supreme Court yet again failed to address the Eighth Amendment argument or analyze Petitioner's evolving standard of decency arguments, and instead solely focused on the court's precedent regarding the retroactivity of *Hurst*. App. A1 at 12-13. The Florida Supreme Court continued on by choosing to focus more on the standard at the time of Petitioner's trial regarding a trial court's ability to override a jury's recommendation for life. App. A1 at 13-14. Completely sidestepping and ignoring the issue at hand, that Petitioner's death sentences currently would be ineligible for the death penalty in every state in this country.

Although not made explicitly clear in its opinion, based on its prior decisions, it is likely that Florida is relying upon its unique conformity clause, which declares that Florida will construe the Eighth Amendment "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." Fla. Const. art. I, § 17. Indeed, the Florida Supreme Court has explicitly stated that the conformity clause "means that the [United States] Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida[.]" *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023).[5] Increasingly over the past several years, Florida has cited its self-imposed restriction and relied upon it to opt out of critical Eighth Amendment analyses, including judicial determinations of evolving standards of decency,[6] even as

[5] As the Florida Supreme Court is specifically relying on this Court's explicit Eighth Amendment holdings, that makes these issues a federal question. *See Foster v. Chatman*, 578 U.S. 488, 499 n. 4 (2016); *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.").

[6] *See, e.g.*, *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *6 (Fla. June 17, 2025) (Florida Supreme Court relying on the conformity clause to refuse to consider extending *Atkins* or *Roper*, and also finding claim that the conformity clause is unconstitutional was procedurally barred and meritless), *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

it enacts legislation that is clearly out of conformity with this Court's Eighth Amendment precedent.[7]

Moreover, by declaring itself unauthorized to engage in any independent consideration of evolving standards of decency, Florida actually obstructs important aspects of this Court's judicial function pertaining to Eighth Amendment determinations. *See, e.g.*, *Atkins*, 536 U.S. at 315-16 (looking to individual state practice in determining whether additional Eighth Amendment protections are warranted); *Roper*, 543 U.S. at 559-60, 565-66 (same). 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 making independent Eighth Amendment considerations on a case-by-case basis. By doing so, Florida has abdicated its "critical role in advancing protections and providing [this] Court with information that contributes to an

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Graham v. Florida, 560 U.S. 48 (2010)); *see also Covington v. State,* 348 So. 3d 456, 479-80 (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 335, 350 (Fla. 2023) (relying on conformity clause to refuse to consider extending *Atkins* protection to an individual diagnosed with intellectual disability with IQ scores over 70); *Barwick*, 361 So. 3d at 794 (relying on the conformity clause to refuse to consider whether individual's low mental age and other deficits warranted protection under *Roper*).

[7] In fact, the statute even includes a provision in which the Legislature finds that this Court's holding in *Kennedy v. Louisiana* "was wrongly decided and an egregious infringement of the states' power to punish the most heinous of crimes." *See* Fla. Stat. § 921.1425 (2023) (authorizing death penalty for sexual battery not involving death where victim is less than 12 years of age).

understanding" of how Eighth Amendment protections should be applied. *Hall*, 572 U.S. at 719.

Florida's continued refusal to engage in any Eighth Amendment determinations not expressly required by this Court is all the more reason for certiorari review in Petitioner's case. It undermines bedrock principles of federalism 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" recognizes states as "joint participants in the governance of the Nation"). Without this Court's intervention, Florida will continue to flout the protections of the United States Constitution and will execute Petitioner without any independent process related to his Eighth Amendment claim.

CONCLUSION

Based on the foregoing, this Court should grant a writ of certiorari to review the decision of the Florida Supreme Court in this case.

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