

No. 17-9129

IN THE
Supreme Court of the United States

KAUNDA LOPAZ MAGEE,
PETITIONER,
V.
STATE OF LOUISIANA,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

SUPPLEMENTAL BRIEF TO
PETITION FOR CERTIORARI

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SUPPLEMENTAL BRIEF

Pursuant to Rule 15.8, Petitioner Kaunda Lopaz Mageee files this short Supplemental Brief, addressing the relevance of this Court's grant of certiorari in *Tyson Timbs v. Indiana*, 84 N.E.3d. 1179 (Ind. 2017), *cert. granted*, 2018 WL 706832, U.S.Ind. (U.S. June 18, 2018) (No. 17-1091).

Petitioner's case is set for conference on June 21, 2018. The Court granted certiorari in *Timbs v. Indiana*, today, June 18, 2018. *Id.*

The question presented in *Timbs* is, "Whether the Eighth Amendment's Excessive Fines Clause is incorporated against the States under the Fourteenth Amendment." Petition for Writ of Certiorari, *Timbs v. Indiana*, 17-1091 (6/18/2018 cert granted) at i.

Timbs gives rise to a question regarding how this Court treats the incorporation doctrine. While historically speaking, the Court engaged in a step-by-step process of incorporation, this debate led to fractured and ultimately unsupportable jurisprudence that has almost altogether been abandoned.

Significantly, the question of whether the Fourteenth Amendment fully incorporates the Sixth Amendment is the question presented in Mr. Magee's case. There is a strong argument that, given the original purpose of the Fourteenth Amendment, it should be fully incorporated. As one of the *amici* in *Timbs* observed:

The Framers wrote the Fourteenth Amendment against the backdrop of a long history of state abridgement of fundamental rights. As Rep. Jehu Baker put it, the Amendment was "a wholesome and needed check upon the great abuse of liberty which several of the

States have practiced, and which they manifest too much purpose to continue.”

. . . The original meaning of the Fourteenth Amendment was thus to “restrain the power of the States and compel them at all times to respect these great fundamental guarantees.”

Brief for Constitutional Accountability Center as Amicus Curiae Supporting Petitioners, *Tyson Timbs v. Indiana*, 84 N.E.3d. 1179 (Ind. 2017), *cert. granted*, 2018 WL 706832, U.S.Ind. (U.S. June 18, 2018) (No. 17-1091) at 2-3. *See id.* at 2 (“Central to that task was ensuring state adherence to the full range of individual rights enshrined in America’s founding documents, including the liberties enumerated in the Constitution and Bill of Rights.”).

Petitioner suggests that this case presents an even stronger basis for this Court to consider incorporation, as even modern proponents of the majority verdict scheme acknowledge that it was codified by the Louisiana Constitutional Convention of 1898 with racist intent. In recent debates in the Louisiana Legislature, John DeRosier, District Attorney in Calcasieu Parish, told the panel that the law’s roots in white supremacy, although true, are not sufficient to change the historically racist provision: “I’ve hear a lot about this system being adopted as a vestige of slavery. I have no reason to doubt that. I’m not proud of that, that that’s the way it started, but it is what it is...” Associated Press, Bid to strike Louisiana's Jim Crow-era jury law advances in State House, NOLA.com (2018), http://www.nola.com/crime/index.ssf/2018/04/bid_to_strike_louisianas_jim_c.html (last visited May 23, 2018).

As such, Petitioner respectfully asks this Court to either consider the two questions in tandem, or at least hold *Magee*, pending a decision in *Timbs*.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted, or held, pending a decision in *Timbs*.

Respectfully Submitted,



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Dated: June 18, 2018

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 18th day of June, 2018, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying supplemental brief was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

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