No. 19-7309

IN THE
Supreme Court of the United States

JAMES MILTON DAILEY,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

MOTION FOR LEAVE TO FILE AND BRIEF OF CONSERVATIVES CONCERNED ABOUT THE DEATH PENALTY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER

Conservatives Concerned About the Death Penalty ("CCATDP") hereby requests leave under Supreme Court Rule 37.2 to file the attached *amicus curiae* brief in support of petitioner, James Milton Dailey. Petitioner has consented to the filing of this brief. Respondent has withheld consent.

CCATDP is a network of political and social conservatives who believe that the death penalty contradicts conservative values because it is an inefficient, arbitrary, and wasteful system that devalues human life.

CCATDP has a strong interest in seeking review of the decision below. CCATDP believes that due process is essential to protecting citizens from arbitrary government action. The Court reaffirmed this foundational principle in *Chambers v. Mississippi*, 410 U.S. 284 (1973), when it recognized that evidentiary exclusions "may not be applied mechanistically" in a criminal defense "to defeat the ends of justice," *id.* at 302. The same constitutional values are at stake in claims of actual innocence; the Florida Supreme Court's decision to close its eyes to overwhelming evidence of petitioner's innocence violates this Court's instructions in *Chambers*. CCATDP is deeply concerned that the government will execute a person who did not have a meaningful opportunity to fully present evidence of his innocence.

A life is at stake. CCATDP respectfully requests leave to file an *amicus curiae* brief in his support.

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INTEREST OF *AMICUS CURIAE*

Amicus curiae CCATDP respectfully submits this brief in support of petitioner, James Milton Dailey.[1] CCATDP is a nationwide network of political and social conservatives who believe that the death penalty is a quintessential example of government overreach, contrary to numerous core conservative beliefs, including:

- **Efficient Government**. The death penalty is cumbersome, bureaucratic, politicized, and wasteful, costing millions of dollars more than its alternatives—before the filing of a single appeal.
- **Effective Government**. The death penalty does not effectively combat violence and its implementation ultimately harms the families of victims.
- **Fairness**. The government applies the death penalty arbitrarily and unfairly based on geography, race, and socioeconomic class.
- **Justice**. To date, 167 people have been publicly exonerated after being sentenced to death. At least 17 had strong claims of innocence, unheard before their executions. More are surely unknown. The death penalty system ensnares innocent persons and often fails to provide them a fair avenue to establish their innocence. This unjust-

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[1] Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part, and no person other than *amicus* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received timely notice of the intent to file this brief.

ly punishes innocent people and undermines public confidence in the judicial system.

- **The Sanctity of Life**. The death penalty contradicts the value of life, which is of utmost importance to CCATDP's supporters.

CCATDP has a strong interest in seeking review of the decision below. Every one of the values animating CCATDP's mission is compromised by the Florida Supreme Court's refusal to consider evidence of petitioner's actual innocence. Petitioner's case highlights the grim reality that without minimum due process protections, innocent people may be executed—particularly when the system in which they were sentenced has, like Florida's, a demonstrated history of unreliability.

Due process protects citizens from arbitrary government action. And as the Court recognized in *Chambers v. Mississippi*, 410 U.S. 284 (1973), it is arbitrary to exclude evidence that meets traditional standards of reliability when constitutional interests are at stake. CCATDP is deeply concerned that petitioner will be executed without a meaningful opportunity to present reliable evidence that demonstrates he is actually innocent of the crime for which he is sentenced to die. Executing a person without hearing that evidence would be an unconscionable affront to due process. CCATDP respectfully urges the Court to grant the petition and remind the Florida Supreme Court that the State cannot execute a man because it has closed its eyes to the truth.

SUMMARY OF THE ARGUMENT

A Florida court sentenced James Milton Dailey to death based on the testimony of three jailhouse informants. We know now that the men lied at trial. All three were induced by a detective to offer false testimony. The state has already identified and convicted the person who actually murdered Shelly Boggio, Jack Pearcy. Yet Florida, even as it prepares to execute Dailey, has refused to review evidence that Dailey had no role in the murder for which he is sentenced to die.

Pearcy is in prison. Over the decades and now in a sworn affidavit, Pearcy has insisted that he alone murdered Boggio. Pearcy's confession is reinforced by forensic evidence, police reports, and eyewitness testimony, as well as newly discovered evidence casting doubt on the men who falsely testified at Dailey's trial.

In denying Dailey's post-conviction claim, the Florida Supreme Court excluded Pearcy's sworn 2017 confession without considering that its reliability was established by strong corroborating evidence, including Pearcy's multiple prior confessions. *Dailey v. Florida*, 279 So. 3d 1208, 1214 (Fla. 2019), *reh'g denied*, No. SC18-557, 2019 WL 5152446 (Fla. Oct. 14, 2019). Instead, the Florida Supreme Court held that all of the evidence, including Pearcy's confessions, was inadmissible and that "no [cumulative] analysis was necessary." *Id.* at 1216. Pearcy's confessions confirm Dailey's claim of innocence.

The Florida Supreme Court violated Dailey's right to due process by rotely applying purported evidentiary bars without considering evidence

exhibiting "persuasive assurances of trustworthiness." *Chambers*, 410 U.S. at 302. The misconduct leading to Dailey's original conviction only magnifies the gravity of this constitutional error. Under *Chambers*, when fundamental constitutional rights implicating guilt or innocence—like an innocent-in-fact person's due process right not to be executed—are at stake, mechanistic application of the hearsay rule must bend to the mandates of the Due Process Clause. *Id.*

Regrettably, Dailey's case is emblematic of a larger failing in the Florida and national justice systems. Over the past 45 years, 1,513 Americans have been executed. During that same period, 167 people have been wrongly convicted, sentenced to death, and ultimately exonerated. That is one exoneration for every nine executions. Some of these exonerated individuals came within hours of undergoing execution. In Florida alone, 29 people have been exonerated from death row—more known wrongful convictions than in any other state. Many of those wrongful convictions stem from the type of official misconduct and unreliable testimony used to wrongfully convict Dailey. And in at least one of those cases, a subsequent third-party confession was central to freeing a wrongfully convicted man from death row.

Due process exists to protect the innocent from the unjust deprivation of life, liberty, or property by the State. For that reason, "executing the innocent is inconsistent with the Constitution." *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O'Connor, J., concurring). To execute a person despite his factual innocence "would be a constitutionally intolerable event." *Id.* Absent action by this Court, the State of

Florida risks doing precisely that. By failing to heed this Court's guidance in *Chambers*, Florida has abdicated its duty to protect the innocent and has disregarded the constitutional requirement of due process. The Court should grant Dailey's petition for certiorari.

ARGUMENT

Florida violated Dailey's right to due process when it relied on the hearsay rule to exclude Jack Pearcy's repeated, reliable confessions. "[T]he Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citation omitted). For that reason, "where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice." *Chambers*, 410 U.S. at 302. Here, Florida applied that rule in exactly the way *Chambers* forbids. Florida ignored corroborating testimony that Pearcy was alone with Boggio and physical evidence that a single assailant killed Boggio. Pet. 35–36. Florida disregarded the impact each confession had on corroborating the other. *Id.* at 37. And Florida declined to consider the cumulative facts supporting Dailey's innocence, including the prosecution's reliance on discredited jailhouse informants. *Id.* at 38–39. Due process requires Florida to do more than rely on the sufficiency of a decades-old trial and a conviction built on questionable evidence.

I. RULES OF EVIDENCE MUST NOT BE MECHANICALLY APPLIED TO DEFEAT DUE PROCESS RIGHTS

"No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1; *accord* amend. V. The Due Process Clause exists to safeguard the innocent from the overwhelming power of the State. And the State can wield that power no more overwhelmingly, wrongly, or irrevocably than by taking an innocent life.

For the founders, concerns about the State convicting the innocent were not theoretical. King George III exercised arbitrary power and denied due process to his subjects. In the Declaration of Independence, the founders highlighted several due process violations that had ensnared innocent Americans:

> For depriving us in many cases, of the benefits of Trial by Jury:
>
> For transporting us beyond Seas to be tried for pretended offences:
>
> For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

Declaration of Independence para. 20–22 (U.S. 1776). When the founders ratified the Bill of Rights—including the Due Process Clause—in 1791, the

Crown's abuse of power against the innocent remained fresh in their minds.

Today, the Constitution and the Due Process Clause remain a necessary bulwark against abusive practices by the State to secure wrongful convictions. Modern forensic and social sciences have exposed deficiencies in the trial process, demonstrating that states have wrongly convicted thousands of individuals in the last three decades. *See* The National Registry of Exonerations, *Exonerations by Year: DNA and Non-DNA*.[2] Frequently, these wrongful convictions stem from questionable prosecutorial conduct and unreliable jailhouse informant testimony—the very factors at play in Dailey's case.

This Court has recognized the importance of robust due process protections in ensuring that the innocent are not subject to conviction, particularly in capital cases. *Schlup v. Delo*, 513 U.S. 298, 324–25 (1995) ("The quintessential miscarriage of justice is the execution of a person who is entirely innocent."); *Herrera*, 506 U.S. at 417 (the execution of an innocent defendant is unconstitutional); *see also United States v. Garsson*, 291 F. 646, 649 (S.D.N.Y. 1923) (Hand, J.) ("Our procedure has been always haunted by the ghost of the innocent man convicted.").

Among the rights grounded in the Due Process Clause, few are "more fundamental than that of an accused to present witnesses" and evidence in his own defense. *Chambers*, 410 U.S. at 302; *Crane*, 476 U.S. at 690 ("[T]he Constitution guarantees criminal

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[2] *Available at* https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx (last visited Jan. 23, 2020).

defendants 'a meaningful opportunity to present a complete defense.'" (citation omitted)). "In the exercise of this right, the accused . . . must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Chambers*, 410 U.S. at 302. But the right to present a meaningful defense would be worthless "if the State were permitted to exclude competent, reliable evidence . . . central to the defendant's claim of innocence." *Crane*, 476 U.S. at 690.

Thus, "where constitutional rights directly affecting the ascertainment of guilt are implicated," procedural rules of evidence, including "the hearsay rule[,] may not be applied mechanistically to defeat the ends of justice." *Chambers*, 410 U.S. at 302. Courts cannot exclude competent, reliable testimony crucial to the question of innocence. *Id.*

II. FLORIDA'S REFUSAL TO CONSIDER RELIABLE EVIDENCE OF DAILEY'S INNOCENCE VIOLATES DUE PROCESS

Dailey's trial and conviction were built on prosecutorial misconduct and dubious testimony from unreliable jailhouse informants. No eyewitness or forensic evidence implicates Dailey. Pet. 3. And substantial evidence—including forensics, police reports, eyewitness testimony, and multiple confessions over the decades—indicates that Pearcy alone murdered Shelly Boggio. *Id.* at 6–11, 36. The State could not convince a jury to impose the death penalty following Pearcy's conviction for murder, however. *Id.* at 4.

One week after the State failed to obtain the death sentence for Pearcy, a detective visited the jail

where Dailey was being held and interviewed at least 15 inmates from Dailey's unit. *Id.* at 21. During those interviews, the detective displayed numerous newspaper articles about Boggio's murder. *Id.* at 20. As one inmate recalled, "there were newspaper articles [all] 'over the table.'" Pet. App. 190a, 198a. Another stated, "[H]ad I wanted to say something or fabricate something [about Dailey] all the tools were there to give them whatever they might be looking for." *Id.* at 104a. The detective's 15 interrogations yielded nothing. Pet. 21. But three other inmates, none of whom shared a unit with Dailey, later came forward to offer testimony against him. *See id.* The predictable result was questionable testimony from three jailhouse informants, all of whom knew what the detective was after and all of whom had a history of unreliable testimony. Indeed, Paul Skalnik, the prosecution's star witness, was a habitual jailhouse informant. *See* Pet. App. 154a. Even the prosecutor who tried Dailey would later come to regard Skalnik as an unreliable witness, one she did not trust and could never put on the witness stand again. *See* Pet. 18. This dubious evidence played the leading role in Dailey's original conviction.

After his conviction, Dailey uncovered new evidence of his innocence, showing that Pearcy alone committed the crime and that the jailhouse informants could not be trusted. Critically, Dailey presented evidence of four separate confessions by Pearcy asserting his own guilt and Dailey's innocence. *Id.* at 11. Those confessions were corroborated by other evidence in the case, including eyewitness testimony. *Id.* at 8–11. And, as in *Chambers*, "[t]he sheer num-

ber of independent confessions provided additional corroboration for each." *Chambers*, 410 U.S. at 300.

Yet Florida refused to admit any of Pearcy's multiple confessions or consider evidence corroborating them. *See* Pet. 23. Instead, Florida courts rigidly applied a four-factor analysis to bar this testimony as inadmissible hearsay. *Id.* That analysis also failed to consider the cumulative effect of the evidence, including the prosecutorial misconduct leading to Dailey's original conviction. *Dailey*, 279 So. 3d at 1216 (finding that because "all of Dailey's newly discovered evidence claims were either correctly rejected as untimely or based on inadmissible evidence, no such analysis was necessary"). Florida's rigid analysis contravenes the Due Process Clause of the United States Constitution and this Court's guidance in *Chambers*, particularly as applied to Dailey's case.

In *Chambers*, this Court emphasized that where testimony is "critical to [petitioner's] defense" and bears "persuasive assurances of trustworthiness," courts must admit such evidence to protect the fundamental right of the accused to present witnesses in their own defense. 410 U.S. at 302. When the fundamental question of guilt and innocence is at stake, rigid hearsay rules must bend to ensure fairness and reliability of the outcome. *Id.*

The mechanical test applied by Florida courts falls short of the standards endorsed by this Court in *Chambers* and applied in other states. *See, e.g.*, *People v. Bowel*, 488 N.E.2d 995, 999–1000 (Ill. 1986) (rejecting State's argument that all four *Chambers* factors are required for admissibility of hearsay). Courts in other states have applied a fact-specific

analysis of all relevant circumstances to admit exculpatory evidence of third-party confessions. *See Rivera v. Dir., Dep't of Corr., State of Ill.*, 915 F.2d 280, 282–83 (7th Cir. 1990); *Cudjo v. Ayers*, 698 F.3d 752, 765–66 (9th Cir. 2012). In other jurisdictions, the excluded confessions here—Pearcy's statements to fellow inmates and a voluntarily signed confession—would be admitted because they are the type the State regularly uses *against* defendants. *Lee v. McCaughtry*, 933 F.2d 536, 537 (7th Cir. 1991) (finding hearsay reliable under *Chambers* "if it is the sort of evidence that prosecutors regularly use"). Weighed against the questionable jailhouse testimony offered against Dailey, the evidence that Pearcy acted alone is indeed far more reliable.

III. ROBUST DUE PROCESS PROTECTIONS REMAIN ESSENTIAL TO PROTECT THE INNOCENT

The American legal system relies on due process to ensure fair trials and protect the innocent from conviction. The requirement that courts protect the innocent is a fundamental principle deeply rooted in our nation's history. William Blackstone opined in 1769 that "it is better that ten guilty persons escape, than that one innocent suffer." 4 William Blackstone, Commentaries on the Laws of England 352 (1769).

Blackstone's words carried great weight with the founders. Benjamin Franklin notably amplified Blackstone's ratio, stating that "it is better 100 guilty Persons should escape, than that one innocent Person should suffer." Letter from Benjamin Franklin

to Benjamin Vaughan (Mar. 14, 1785).[3] John Adams, who defended British soldiers charged with murder at the Boston Massacre when no others would, recognized that protecting the innocent was even more crucial in capital cases:

> "[I]t's of more importance to community, that innocence should be protected, than it is, that guilt should be punished; for guilt and crimes are so frequent in the world, that all of them cannot be punished . . . . But when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me, whether I behave well or ill; for virtue itself, is no security. And if such a sentiment as this, should take place in the mind of the subject, there would be an end to all security what so ever."

Rex v. Wemms Trial, *Adams's Argument for the Defense: 3-4 December 1770*.[4] Adams warned against not only the injustice of convicting and executing the innocent but also the erosion of public trust in any judicial system that deprives the innocent of life, liberty, or property.

Today, innocent men and women are convicted and sentenced to death at rates that compel the strictest adherence to due process. Studies conservatively estimate that at least 4.1% of individuals sentenced to death in the United States are innocent.

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[3] *Available at* http://franklinpapers.org/framedVolumes.jsp?vol=42&page=712.

[4] *Available at* https://founders.archives.gov/documents/Adams/05-03-02-0001-0004-0016.

See Samuel R. Gross, et al., *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 Proc. Nat'l Acad. Sci. 7230, 7230 (2014).[5] And that figure actually ***understates*** the problem: Over the past 47 years, 167 men and women sentenced to death have been exonerated, representing one exoneration for every nine executions carried out over roughly the same period. *See* Death Penalty Information Center, *Innocence By the Numbers: Death-Row Exonerations by Race and State*.[6] And while courts do not adjudicate innocence claims after death, one analysis identifies at least 17 individuals who, though likely innocent, were nevertheless executed. *See* Death Penalty Information Center, *Executed But Possibly Innocent*.[7] Even compared with these shameful nationwide figures, Florida stands out, leading the nation in death row exonerations. *See Innocence By the Numbers*, *supra* note 6. Of the 167 death row inmates exonerated nationwide since 1973, 29—or roughly one in six—were on Florida's death row. *Id.*

This unacceptably high rate of error stems from the creation of professionalized law enforcement, a concept that did not exist at the time of the nation's founding. In the 1700s, misconduct by law-enforcement officials was not a concern because those officials essentially did not exist. "[T]here were

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[5] *Available at* https://www.pnas.org/content/pnas/111/20/7230.full.pdf.

[6] *Available at* https://deathpenaltyinfo.org/policy-issues/innocence/innocence-by-the-numbers (last visited Jan. 23, 2020).

[7] *Available at* https://deathpenaltyinfo.org/policy-issues/innocence/executed-but-possibly-innocent (last visited Jan. 23, 2020).

no police agencies as we conceive of them" and likely "no public prosecutors with a dominant role in prosecuting" crimes. D. Michael Risinger & Lesley C. Risinger, *Innocence Is Different: Taking Innocence into Account in Reforming Criminal Procedure*, 56 N.Y.U. L. Rev. 869, 878 (2012).[8] Instead, complainants themselves brought witnesses to a justice of the peace. *Id.* at 878–79. Now, cases are brought by career officials—police and prosecutors—with specialized training. These officials are judged by their superiors and by voters on their ability to secure convictions, creating incentives to engage in misconduct such as withholding exculpatory evidence or even obtaining false, perjurious testimony. That pressure is especially high in murder cases, where the public demands "justice." These forces played out in Dailey's case: A detective came in search of jailhouse informant testimony against Dailey one week after Pearcy received a life sentence, rather than the death penalty prosecutors sought. Pet. 20.

These powerful incentives have predictable results. Between 2007 and 2017, misconduct by prosecutors and other officials contributed to the wrongful convictions of 82% of death row exonerees. *See* Death Penalty Information Center, *DPIC Analysis: Causes of Wrongful Convictions – The Most Common Causes of Wrongful Death Penalty Convictions: Official Misconduct and Perjury or False Accusation.*[9]

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[8] *Available at* http://www.nylslawreview.com/wp-content/uploads/sites/16/2012/02/Risinger-article.pdf.

[9] *Available at* https://deathpenaltyinfo.org/stories/dpic-analysis-causes-of-wrongful-convictions (last visited Jan. 23, 2020).

Reliance on questionable jailhouse informant testimony is a particularly troubling cause of wrongful convictions. The National Registry of Exonerations' *Snitch Watch* found that, for exonerations between 1989 and 2015, nearly one quarter of wrongful death penalty convictions—26 out of 111—involved the use of jailhouse informants.[10] The Florida Innocence Commission, convened by the Supreme Court of Florida, concluded that jailhouse informant testimony is one of the five main causes of wrongful convictions in Florida death penalty cases and contributed to 45.9% of the wrongful convictions of death row exonerees nationwide. Florida Innocence Commission, Final Report to the Supreme Court of Florida 17, 49 (2012).[11] So in convicting Dailey, Florida relied on a type of evidence that even an official state commission has found to be deeply flawed. This should cast grave doubt on his conviction.

Yet despite the numerous questions surrounding Dailey's conviction, Florida remains willing—even eager—to execute Dailey. Indeed, the Florida Supreme Court's decision to disregard Dailey's compelling evidence of innocence appears to have been a foregone conclusion, as Florida's governor signed Dailey's death warrant *before* the court even issued its order. Pet. 15 n.9.

Against this powerful syndicate of State actors, defendants must have an opportunity to present re-

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[10] *Available at* https://www.law.umich.edu/special/exoneration/Pages/Features.*Snitch*.Watch.aspx (last visited Jan. 23, 2020).

[11] *Available at* https://www.flcourts.org/content/download/218230/1975326/Innocence-Report-2012.pdf.

liable, countervailing evidence of innocence, thereby ensuring a fairer and more robust adversarial process. Dailey's case resembles that of another man who was ultimately exonerated in Florida, Juan Roberto Melendez. With no physical evidence linking him to his alleged crime, Melendez was convicted of murder based on the testimony of two witnesses: one who had a known grudge against Melendez and one who received a plea deal for his testimony. *See* The National Registry of Exonerations, *Juan Roberto Melendez: Other Florida Cases with Perjury or False Accusations* (2012).[12] Throughout the trial, Melendez maintained his innocence and argued that another man, Vernon James, committed the murder. *Id.* But when called to the stand, James refused to testify. *Id.* After Melendez was sentenced to death, the Florida Supreme Court, the Florida Clemency Board, and the United States Supreme Court all denied him relief. *See* Fla. Comm'n on Capital Cases, *Truly Innocent?: A Review of 23 Case Histories of Inmates Released from Florida's Death Row since 1973*, at 79–81 (2011)[13]; *see also* Juan Roberto Melendez, *supra*. Finally, the defense found a transcript of James's taped confession as well as evidence that the prosecution had failed to disclose incriminating statements James had made. *See* Juan Roberto Melendez, *supra*. Based on this evidence, Melendez was released from prison after nearly two decades on Florida's death row. *See id.* Like Melendez, Dailey was convicted based on the testimony of

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[12] *Available at* http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3465.

[13] *Available at* http://www.floridacapitalcases.state.fl.us/Documents/Publications/casehistory05-13-11%20Report.pdf.

unreliable witnesses. *See* Pet. 3, 16. And like Melendez, Dailey later found confessions by the person who actually committed the crime and unearthed powerful evidence that the testimony against him was fabricated. *Id.* at 11, 16. Florida's failure to review these confessions and the evidence corroborating them violates Dailey's due process rights.

Though Florida has exonerated many death row inmates, it has also executed individuals who were likely innocent, such as Leo Jones, who was put to death in Florida's electric chair in March 1998 for the murder of a police officer. Steve Mills, *Questions of Innocence*, Chi. Trib., Dec. 18, 2000.[14] Before his execution, newly discovered evidence strongly suggested that Jones was innocent. *See Jones v. Florida*, 709 So. 2d 512, 530 (Fla. 1998) (Shaw, J., dissenting). Multiple eyewitnesses saw another man running from the murder scene with a rifle. *See id.* at 532. That man later confessed to the killing. *Id.* And testimony from a retired police officer suggested that Jones's own confession was procured through violent police tactics. *Id.*

This Court must act to prevent Dailey from becoming the latest victim of Florida's broken death penalty system. Already, this Court has held that the constitutional rights of the accused to present a complete defense, including evidence of innocence, must be carefully preserved and that the mechanical application of hearsay rules should not be used to "defeat the ends of justice." *Chambers*, 410 U.S. at 302. Courts in other jurisdictions have applied

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[14] *Available at* https://www.chicagotribune.com/news/chi-001218deathp-story.html.

Chambers broadly. Florida refuses to do so. The Court should grant certiorari to ensure that Florida abides by this Court's directive, provides adequate due process, and protects innocent life.

CONCLUSION

Executing an innocent person is the definitive violation of due process. Our nation's principles of justice and conscience require courts to consider evidence that a person about to be put to death is innocent. Florida instead barred Dailey's proffer of testimony critical to proving his innocence as inadmissible hearsay and refused to consider corroborating evidence establishing its reliability. These actions directly contradict *Chambers*.

Evidence shows that the modern judicial system has an unacceptably high rate of wrongful convictions and that Florida's system is particularly prone to sentencing innocent people to death. This very case demonstrates how official misconduct and perjurious testimony can lead to wrongful convictions and how the application of evidentiary rules contrary to our common law tradition can obscure the truth, contrary to the ends of justice. Due process demands that Florida do more to protect the innocent. CCATDP respectfully asks this Court to grant Dailey's petition for certiorari.

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