No. 24-

In the Supreme Court of the United States

JEFFREY CLYDE PITTS,

Petitioner,

v.

MISSISSIPPI,

Respondent.

On Petition for a Writ of Certiorari to the Mississippi Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Confrontation Clause permits the use of a screen at trial that blocks a child witness's view of the defendant, without any individualized finding by the trial court that the screen is necessary to prevent trauma to the child.

RELATED PROCEEDINGS

Mississippi Supreme Court: *Pitts v. State*, No. 2021-CT-00740-SCT (Mar. 20, 2025)

Mississippi Court of Appeals: *Pitts v. State*, No. 2021-KA-00740-COA (Jan. 31, 2023)

Mississippi Circuit Court, Rankin County: *State v. Pitts*, No. 31177 (Feb. 11, 2021)

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PETITION FOR A WRIT OF CERTIORARI

Jeffrey Clyde Pitts respectfully petitions for a writ of certiorari to review the judgment of the Mississippi Supreme Court.

OPINIONS BELOW

The opinion of the Mississippi Supreme Court will be published at --- So. 3d --- (Miss. 2025) and is currently available at 2025 WL 867917. The opinion of the Mississippi Court of Appeals is available at 2023 WL 1425289.

JURISDICTION

The Mississippi Supreme Court entered its judgment on March 20, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him."

Section 99-43-101(2)(g) of the Mississippi Code provides:

"(2) In any proceeding in which a child testifies, a child shall have the following rights to be enforced by the court on its own motion or upon motion or notice of an attorney in the proceeding:

. . . .

"(g) To permit the use of a properly constructed screen that would permit the judge and jury in the courtroom or hearing room to see the child

but would obscure the child's view of the defendant or the public or both."

STATEMENT

Mississippi is flouting this Court's precedent.

In *Coy v. Iowa*, 487 U.S. 1012 (1988), and *Maryland v. Craig*, 497 U.S. 836 (1990), the Court established a clear rule. Before a trial court can depart from the Confrontation Clause's ordinary requirement of face-to-face confrontation between the defendant and a child witness, the court must make an individualized, case-specific finding that the departure is necessary to prevent trauma to the child.

Mississippi is not following this rule. The state legislature enacted a statute that purports to give child witnesses an absolute right to have a screen placed between them and the defendant, without any individualized finding by the trial court that the screen is necessary to protect the child from trauma. Miss. Code § 99-43-101(2)(g). In this case, the Mississippi Supreme Court followed the statute rather than *Coy* and *Craig*, largely because the statute was authorized by a very popular amendment to the state constitution called the Mississippi Crime Victim Rights Amendment.

Mississippi is the only state defying *Coy* and *Craig*. In every other jurisdiction where courts have addressed the issue, trial courts are correctly required to make an individualized, case-specific finding that a screen (or similar device) is needed to prevent trauma to a child witness. Although several other states have statutes protecting child witnesses, their laws, unlike Mississippi's, conform to *Coy* and

Craig by requiring the same individualized, case-specific finding.

The Court should grant certiorari and either summarily reverse or set this case for argument.

1. Jeffrey Pitts was charged with sexual battery for inserting his finger into his four-year-old daughter's vagina. App. 2a-3a. Pitts and his daughter provided very different accounts of what happened.

Pitts' daughter (who is referred to in this litigation as AGC) told her mother, KC, that during the previous weekend, while she was staying with Pitts, the two had taken an afternoon nap together. *Id.* at 2a. AGC said that "daddy put his finger in my vagina, in my gina and in my bootie and he made it go real fast." *Id.* at 3a. She added that "it kind of burned a little." *Id.* In a subsequent interview with a social worker, AGC said that "[w]hen I was trying to sleep he dug his finger in my vagina, [and] ... when he was done he said touch mine, touch mine." *Id.* at 3a-4a.

Pitts denied that any such incident took place. *Id.* at 51a. He and KC had separated after AGC was born, but he still played an active role in AGC's life, and he paid child support to KC without any court order requiring him to do so. *Id.* On the weekend in question, he was taking care of AGC and his other daughter, who was a few years older. *Id.* He explained that while the three of them were watching television, he noticed that AGC was scratching her vaginal region. *Id.* When he asked why, she said "my vagina itches really bad." *Id.* Pitts got a product called Butt Paste, a brand of skin cream used as a remedy for conditions like jock itch and diaper rash,

and he applied it around AGC's vagina. *Id.* When Pitts took AGC back to KC's house, he told KC about AGC's itch and suggested that KC look at the affected area. *Id.* On Pitts' telling, this was all that happened. He suspected that four-year-old AGC's version of events had been planted in her mind by KC, as part of a plan to secure the termination of Pitts' parental rights.

At trial, the state introduced no physical evidence. AGC and Pitts both testified at trial. The outcome would depend on whom the jury believed.

2. Before AGC testified, the prosecutor asked to have a screen placed in the courtroom between AGC and Pitts, so that neither could see the other. App. 5a. The state's motion was based on section 99-43-101(g)(2) of the Mississippi Code, which provides that "[i]n any proceeding in which a child testifies, a child shall have" the right "[t]o permit the use of a properly constructed screen that would permit the judge and jury in the courtroom or hearing room to see the child but would obscure the child's view of the defendant or the public or both." App. 5a.

Defense counsel objected on the ground that placing a screen between Pitts and AGC while AGC was testifying would violate Pitts' Sixth Amendment right to confront the witnesses against him. *Id.* at 6a. The prosecutor responded that Pitts' right of confrontation would not be violated because "[h]e will be able to hear the witness" and "[h]e will be in the same room as the witness." *Id.*

The prosecutor insisted that the statute made a screen mandatory and that she was not required to make any case-specific showing that a screen was

necessary. She argued: "The statute states that she shall have that right and I'm not required to put on any proof that she be scared of the defendant." *Id.* at 6a-7a.

The trial court granted the prosecutor's request for a screen. *Id.* at 7a. The court noted that "I'm looking at a statute that appears to be mandatory." *Id.* But the court acknowledged: "I'm doing it hesitantly because I'm concerned about the constitutionality of the statute." *Id.* The court arranged for a one-way Zoom video that allowed Pitts to watch AGC testifying, without allowing AGC to see Pitts. *Id.* Defense counsel objected that this setup would still violate the Confrontation Clause. *Id.* at 7a-8a. Counsel emphasized that if AGC could not see Pitts, the jury would not be aware of how much she loved her father. He explained: "I think the jury is entitled to know what the relationship between these parties are and how much both of them love each other." *Id.* at 8a. The trial court overruled defense counsel's objection. *Id.*

To prepare for AGC's testimony, a large blue opaque screen was placed around the table where Pitts and his attorneys were sitting. The screen prevented AGC from seeing Pitts and his attorneys while she testified. The screen also prevented Pitts' attorneys from seeing Pitts, and from seeing each other, whenever one of them left the defense table, including during the cross-examination of AGC.

In AGC's trial testimony, she repeated what she had said earlier. She testified that Pitts touched her "[i]n my bootie and in my vagina." *Id.* When she was asked how many times he touched her in these places, she responded, "[h]e did it, like, a few times." *Id.*

She remembered that Pitts sometimes put diaper cream "on my nosey … On my bootie … And he put some on my belly." *Id.* at 9a. When she was asked whether the time that Pitts put his finger in her vagina was a different occasion from the times when he put diaper cream on her, she said that it was. *Id.*

Pitts was convicted of sexual battery and was sentenced to a prison term of thirty years with ten years suspended. *Id.* at 44a-45a.

Between the trial and the sentencing, the trial judge was appointed to the Mississippi Court of Appeals. He recused himself from the appeal. (The Mississippi Court of Appeals hears cases as a single court, not in panels like the federal courts of appeals.)

3. A divided Mississippi Court of Appeals affirmed. App. 44a-107a.

a. The Court of Appeals recognized that the question is governed by two of this Court's cases. *Id.* at 58a-63a. One, the court noted, is *Coy v. Iowa*, 487 U.S. 1012 (1988), which held that the Confrontation Clause was violated by the placement of a screen between testifying child victims and the defendant, where there had been no individualized finding that the victims needed special protection. App. 58a-60a. The other, the court continued, is *Maryland v. Craig*, 497 U.S. 836 (1990), which held that the Confrontation Clause would *not* be violated where a child victim testified over one-way video, preventing the victim from seeing the defendant while allowing the defendant to see the victim, so long as the trial court made the necessary individualized finding that the

victim would be traumatized by the presence of the defendant. App. 60a-63a.

The Court of Appeals concluded, for a few reasons, that the use of a screen did not violate the Confrontation Clause, despite the trial court's failure to make an individualized finding that the screen was necessary to protect AGC from trauma. *Id.* at 67a-72a.

First, the Court of Appeals reasoned, the state legislature had already considered defendants' Confrontation Clause rights when it enacted the statute making a screen mandatory. "Clearly," the court observed, "the legislative intent of this statute was to balance the defendant's rights and provide a child witness with certain protective rights. The statute contemplates and incorporates the importance of confrontation rights of the defendant to ensure compliance with those constitutional rights." *Id.* at 66a-67a.

Second, the Court of Appeals determined that it was not necessary for the trial court to make an explicit finding that the screen was necessary to protect AGC. "The [trial] Court never made a specific finding of trauma to the child," the Court of Appeals acknowledged. *Id.* at 67a n.11. But "[n]othing requires the judge to recite the magic words to suddenly meet constitutional requirements if it is clear the judge made a finding of necessity." *Id.*

Third, the Court of Appeals cited "the inherent power of the trial judge to control their courtroom" as a source of the trial court's authority to use a screen despite the absence of any case-specific finding that the screen was necessary. *Id.* at 69a.

Fourth, the Court of Appeals determined that the purpose of the Confrontation Clause was satisfied despite the screen. "At all times, Pitts was permitted to hear the child's testimony live and view her by looking at the monitor," the court reasoned. *Id.* at 71a. "From a review of the record, it is obvious that the child was subject to a full and thorough cross examination." *Id.*

Finally, the Court of Appeals concluded that any Confrontation Clause error was harmless, because "there was overwhelming evidence of Pitts' guilt presented at trial. Both the child's mother and grandmother testified as to the child's consistent disclosure of the abuse." *Id.* at 73a.

b. Judge Wilson dissented, joined by Judge Westbrooks in full and by Judge McDonald in part. *Id.* at 87a-107a.

Judge Wilson explained that the Confrontation Clause, as interpreted by this Court in *Coy* and *Craig*, required the trial court to make an individualized finding that the screen was necessary to protect AGC from trauma caused by testifying in Pitts' presence. *Id.* at 88a-92a. Judge Wilson concluded that "[i]n this case, the trial judge made no such individualized findings." *Id.* at 96a. Judge Wilson continued: "The problem is not just that the judge did not 'recite the magic words,' as the majority suggests. The problem is that the judge did not—in form or substance—make any of the individualized, case-specific findings that the United States Supreme Court has held are absolutely necessary in a case such as this." *Id.* (citation omitted).

Judge Wilson also observed that "the record evidence in the case would not have supported a finding

that testifying in Pitts's presence would have traumatized A.G.C." *Id.* at 97a. This was because "A.G.C.'s mother testified that A.G.C. was still 'very adamant that she love[d] her dad, that she misse[d] her dad, *and that she want*[*ed*] *to see her dad*.'" *Id.* Judge Wilson concluded that "in addition to the lack of any actual findings regarding the potential for trauma to A.G.C., there is simply no evidence in the record that could satisfy the requirements of *Coy* and *Craig*." *Id.*

Finally, Judge Wilson noted, the error was not harmless beyond a reasonable doubt. *Id.* at 98a. He explained that under *Coy*, harmlessness must be determined based on the evidence other than the testimony of the child witness. *Id.* at 99a (quoting *Coy*, 487 U.S. at 1021-22). Without AGC's testimony, he concluded, it was impossible to say beyond a reasonable doubt that the jury would have convicted Pitts. *Id.* at 101a.

4. A divided Mississippi Supreme Court affirmed. *Id.* at 1a-43a.

a. The court began by declaring that "[t]he plain words of Mississippi Code Section 99-43-101(2)(g) (Rev. 2020) unambiguously do not require a trial judge to make a specific finding of emotional trauma before allowing the application of a screen." *Id.* at 12a. The court noted that the statute was enacted after the electorate overwhelmingly approved an amendment to the state constitution called the Mississippi Crime Victim Rights Amendment, which authorized the legislature to protect the rights of crime victims. *Id.* at 18a-19a.

The Mississippi Supreme Court then distinguished *Coy* on four grounds. *Id.* at 20a-22a.

First, the court explained, "[u]nlike the case sub judice, Iowa did not have a victims' rights provision enshrined in its state constitution when *Coy* was decided." *Id.* at 20a.

Second, "the procedure contained in the Iowa statute at issue in *Coy* was discretionary while the statutory procedure at issue in today's case is unambiguously mandatory." *Id.* at 20a-21a.

Third, "[t]he victims in *Coy* were two *thirteen-year-old* girls. AGC was four years old at the time of Pitts's trial. Accordingly, *Coy* failed to consider that the common law has always provided protections to children of an extremely young age." *Id.* at 21a-22a (citation omitted).

Finally, "[t]he victims in *Coy* were camping out and assaulted by an *unknown masked* man. Unlike today's case, in *Coy*, the identity of the perpetrator was a factual question for the jury to resolve." *Id.* at 22a (citation omitted).

The Mississippi Supreme Court then turned its attention to *Craig* and also distinguished it on several grounds. *Id.* at 22a-26a.

First, the court observed, under the statute at issue in *Craig*, the trial court could not allow testimony by one-way video unless the court first determined that testifying the normal way would cause the child victim to suffer serious emotional distress. *Id.* at 23a. But "[n]o such requirements for a four-year-old victim of sexual abuse by their parent exists in Section 99-43-101(2)(g)" of the Mississippi Code. *Id.*

Second, "[l]ike *Coy*, Maryland had no victims' rights provision enshrined in its state constitution when *Craig* was decided." *Id.*

Finally, under the procedure used in *Craig*, the judge, jury, and defendant remained in the courtroom, while the child witness, the prosecutor, and defense counsel withdrew to a separate room. *Id.* In Mississippi, by contrast, everyone remained in the courtroom. *Id.* at 23a-24a.

The Mississippi Supreme Court emphasized the importance of the policy furthered by the statute requiring a screen. The court noted that *Craig* held that "a defendant's right to confront accusatory witnesses may be satisfied *absent a physical, face-to-face confrontation at trial* only where denial of such confrontation *is necessary to further an important public policy*." *Id.* at 26a (quoting *Craig*, 497 U.S. at 850) (internal quotation marks omitted). The Mississippi Supreme Court asked: "What could be a more clear statement of public policy than a right enshrined in a state's constitution at the direction of the electorate of that state? What could be more necessary than protecting such a statement of the people?" *Id.*

The court also stressed the popularity of the constitutional amendment that authorized the statute:

> The people of this state have voiced their concern that victims of crime are thrust against their will into a complex system of justice without adequate protections. The people of this state recognized that while several provisions in the Mississippi Constitution provided protections for those accused of crimes, not one provision protected the unwilling victims of these

> crimes. The screen procedure found in Section 99-43-101(2)(g) was justified by an overwhelming majority of this state's electorate, who enshrined into the Mississippi Constitution the legislative authority to pass laws that provide certain protections for these individuals. Nothing could be more necessary to protect an important policy interest.

Id. at 27a-28a.

The court also defended the fairness of the trial:

> The screen did not prevent AGC from testifying under oath in real time, nor did the screen prevent her from being impressed upon the seriousness of telling the truth. The jury had front row seats, unobstructed to observe each and every witness, including the child testifying on direct and cross-examination by Pitts's chosen counsel, as well as each and every exhibit.

Id. at 28a.

The Mississippi Supreme Court thus concluded that the Confrontation Clause had not been violated. *Id.* at 32a.

Justice Maxwell, joined by Justices Chamberlin and Griffis, concurred in the result only. *Id.*

b. Justice King dissented. *Id.* at 32a-43a. In his view, the screen used at Pitts' trial violated the Confrontation Clause as interpreted in *Coy* and *Craig*.

Justice King explained:

> In the case before us, the trial court permitted the placement of a screen pursuant to the mandatory command of Section 99-43-101(2)(g). The court did not make a case-specific finding

> that use of the screen was necessary to prevent trauma to the individual witness, and the State did not present evidence that would support such a finding. In light of this case's similarity to *Coy* and in the absence of any individualized evidence supporting a public policy exception as outlined in *Craig*, we should find that controlling United States Supreme Court precedent requires us to reverse the defendant's conviction and remand for a new trial.

Id. at 34a.

Justice King found that none of the majority's claimed distinctions between this case and *Coy* were "relevant to *Coy*'s holding that individualized findings regarding special protection are necessary to justify infringing on Confrontation Clause rights." *Id.* at 38a.

First, he noted, the fact that Mississippi, unlike Iowa, has a victims' rights provision in its constitution could not empower Mississippi to enact a statute that violates the Confrontation Clause of the federal constitution. *Id.* at 38a-39a.

Second, he observed that *Coy* requires individualized findings irrespective of whether the state statute is discretionary or mandatory. *Id.* at 39a. Justice King noted that the mandatory nature of Mississippi's statute "renders it even more constitutionally problematic than the statute at issue in *Coy*, not less so." *Id.*

Finally, Justice King explained, the differences between *Coy* and this case in the ages of the victims and the identity of the assailant might "be important to our analysis had the trial courts in either case ac-

tually made individualized findings. But neither did so. The statute at issue in today's case applies mandatorily and equally to four year olds confronting their fathers and to thirteen year olds confronting an unknown assailant." *Id.*

Justice King pointed out that *Craig*, like *Coy*, requires trial courts to make a case-specific finding of necessity before using a procedure other than ordinary face to face testimony. *Id.* at 40a. "Under *Coy* and *Craig*," he concluded, "the State cannot invoke the mandatory language of Section 99-43-101(2)(g) to bypass presentation of case-specific evidence that the use of the screen is necessary to prevent trauma to the particular witness." *Id.* at 40a-41a.

"The true legal question on appeal," Justice King stated, "is whether this Court is bound by the controlling precedent of the Supreme Court of the United States. It should be without question that we are so bound." *Id.* at 42a.

> An exception to the protections of the Confrontation Clause cannot be created by a "legislatively imposed presumption of trauma." *Coy*, 487 U.S. at 1021, 108 S.Ct. 2798. Here, the use of a screen to block the complaining witness's view of the defendant during trial was substantially similar to the circumstances of *Coy* that constituted reversible error according to the United States Supreme Court.

Id. at 42a-43a.

REASONS FOR GRANTING THE WRIT

The decision below is egregiously wrong. It is directly contrary to *Coy* and *Craig*. Unsurprisingly, it creates a conflict with decisions from every other ju-

risdiction, where courts have followed this Court's precedents.

While summary reversal "is a rare disposition," it is appropriate for cases like this one—"situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Andrew v. White*, 145 S. Ct. 75, 93 (2025) (Thomas, J., dissenting) (quoting *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting)). At the very least, the Court should grant certiorari to decide whether the Confrontation Clause still means what the Court said it means in *Coy* and *Craig*.

I. The Mississippi Supreme Court has flouted this Court's precedent.

The decision below is wrong—not because the state supreme court misapplied a properly stated rule, but because the court deliberately applied the wrong rule, one that is the opposite of the rule this Court established in *Coy* and *Craig*. The decision below will have a profound effect on every case in Mississippi involving testimony by a child witness.

In *Coy*, the Court considered whether the Confrontation Clause allows the placement of a screen between the defendant and child witnesses that blocks the witnesses' view of the defendant. 487 U.S. 1014. "We have never doubted," the Court explained, "that the Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact." *Id.* at 1016. "[T]here is something deep in human nature that regards face-to-face confrontation between accused and accuser as essential to a fair trial in a criminal prose-

cution." *Id.* at 1017 (internal quotation marks omitted).

The Court further explained:

> The perception that confrontation is essential to fairness has persisted over the centuries because there is much truth to it. A witness "may feel quite differently when he has to repeat his story looking at the man whom he will harm greatly by distorting or mistaking the facts. He can now understand what sort of human being that man is." Z. Chafee, The Blessings of Liberty 35 (1956), quoted in *Jay v. Boyd,* 351 U.S. 345, 375–376, 76 S.Ct. 919, 935–936, 100 L.Ed. 1242 (1956) (Douglas, J., dissenting). It is always more difficult to tell a lie about a person "to his face" than "behind his back." In the former context, even if the lie is told, it will often be told less convincingly. The Confrontation Clause does not, of course, compel the witness to fix his eyes upon the defendant; he may studiously look elsewhere, but the trier of fact will draw its own conclusions. Thus the right to face-to-face confrontation serves much the same purpose as a less explicit component of the Confrontation Clause that we have had more frequent occasion to discuss—the right to cross-examine the accuser; both "ensur[e] the integrity of the fact-finding process." *Kentucky v. Stincer, supra,* 482 U.S., at 736, 107 S.Ct., at 2662. The State can hardly gainsay the profound effect upon a witness of standing in the presence of the person the witness accuses, since that is the very phenomenon it relies upon to establish the potential "trauma" that al-

> legedly justified the extraordinary procedure in the present case. That face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult. It is a truism that constitutional protections have costs.

Id. at 1019-20.

The Court noted that "[t]he screen at issue was specifically designed to enable the complaining witnesses to avoid viewing appellant as they gave their testimony, and the record indicates that it was successful in this objective." *Id.* at 1020. The Court accordingly concluded: "It is difficult to imagine a more obvious or damaging violation of the defendant's right to a face-to-face encounter." *Id.*

The Court left "for another day … the question whether any exceptions exist" to the requirement of literal face-to-face confrontation. *Id.* at 1021. If there were to be any exceptions, the Court explained, they would have to be justified by "individualized findings that these particular witnesses needed special protection," not merely "a legislatively imposed presumption of trauma." *Id.* Because there had been no individualized findings that the witnesses needed a screen to be protected from trauma, the Court reversed Coy's conviction. *Id.* at 1021-22.

In *Craig*, the Court reached the issue *Coy* left open and held that a trial court may depart from literal face-to-face confrontation only if the trial court makes an individualized, case-specific finding that departure is necessary to protect the child from trauma that would be caused by seeing the defend-

ant while testifying. *Craig*, 497 U.S. at 855-56. In *Craig*, the child witness testified by one-way video that allowed the defendant to see the child but prevented the child from seeing the defendant. *Id.* at 840-41. The Court reaffirmed the holding of *Coy* that the Confrontation Clause guarantees the defendant a literal face-to-face confrontation with the witnesses against him. *Id.* at 844.

The Court concluded in *Craig* that "a State's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court." *Id.* at 853. But the Court made clear that this weighing must be done on an individualized, witness-by-witness basis. "The requisite finding of necessity must of course be a case-specific one," the Court explained. *Id.* at 855. "The trial court must hear evidence and determine whether use of the one-way closed circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify." *Id.* The Court added that "[t]he trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant." *Id.* at 856. The Court observed:

> Denial of face-to-face confrontation is not needed to further the state interest in protecting the child witness from trauma unless it is the presence of the defendant that causes the trauma. In other words, if the state interest were merely the interest in protecting child witnesses from courtroom trauma generally, denial of face-to-face confrontation would be unnecessary because the child could be permitted to testify in

> less intimidating surroundings, albeit with the defendant present.

Id. Finally, the Court noted, "the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimis, i.e.,* more than mere nervousness or excitement or some reluctance to testify." *Id.* (internal quotation marks omitted).

The Court concluded: "So long as a trial court makes such a case-specific finding of necessity, the Confrontation Clause does not prohibit a State from using a one-way closed circuit television procedure for the receipt of testimony by a child witness in a child abuse case." *Id.* at 860.

The state courts below gave lip service to *Coy* and *Craig* but declared precisely the opposite rule—that a screen can be placed between the defendant and the child witness whenever the prosecutor asks for one, without any individualized, case-specific finding of necessity.

The error began in the trial court, where the prosecutor insisted that "[t]he statute states that [the witness] shall have that right and I'm not required to put on any proof that she be scared of the defendant." App. 6a-7a. The error continued when the trial court did not make any individualized finding of necessity on the ground that "I'm looking at a statute that appears to be mandatory." *Id.* at 7a.

The Mississippi Supreme Court attempted to distinguish *Coy* and *Craig*, *id.* at 20a-26a, but its proposed distinctions do not hold up to the slightest scrutiny.

First, the state supreme court distinguished *Coy* on the ground that "[u]nlike the case sub judice, Iowa did not have a victims' rights provision enshrined in its state constitution when *Coy* was decided." *Id.* at 20a. It hardly needs saying that a state constitutional provision cannot override the federal Constitution's Confrontation Clause.

Second, the state supreme court distinguished *Coy* on the ground that "the procedure contained in the Iowa statute at issue in *Coy* was discretionary while the statutory procedure at issue in today's case is unambiguously mandatory." *Id.* at 20a-21a. But *Coy* and *Craig* interpreted the Confrontation Clause to require individualized findings regardless of whether a statute is discretionary or mandatory. Indeed, as Justice King pointed out in his dissent, the fact that Mississippi's statute is mandatory (i.e., it *doesn't* require individualized findings) "renders it even more constitutionally problematic than the statute at issue in *Coy*, not less so." *Id.* at 39a.

Third, the state supreme court distinguished *Coy* on the ground that "[t]he victims in *Coy* were two *thirteen-year-old* girls. AGC was four years old at the time of Pitts's trial." *Id.* at 21a-22a (citation omitted). But the rule established in *Coy* and *Craig*, like the contrary rule adopted below, applies equally to all child witnesses, regardless of their age.

Finally, the state supreme court distinguished *Coy* on the ground that "[t]he victims in *Coy* were camping out and assaulted by an *unknown masked* man. Unlike today's case, in *Coy*, the identity of the perpetrator was a factual question for the jury to resolve." *Id.* at 22a (citation omitted). Again, however, the rule established in *Coy* and *Craig*, like the con-

trary rule adopted below, applies equally to all defendants regardless of whether they are personally known to the witness.

The Mississippi Supreme Court's proffered distinctions between this case and *Craig* are no more persuasive.

First, the state supreme court distinguished *Craig* on the ground that the Maryland statute at issue in *Craig* required the trial court to find that the child victim would suffer emotional distress from viewing the defendant while testifying, while the Mississippi statute includes no such requirement. *Id.* at 22a-23a. But *Craig*'s holding did not rely on the Maryland statute. It relied on the Confrontation Clause, which is as much the law in Mississippi as in every other state.

Second, the Mississippi supreme court distinguished *Craig* on the ground that "Maryland had no victims' rights provision enshrined in its state constitution when *Craig* was decided." *Id.* Again, however, a state constitutional provision cannot override the Confrontation Clause.

Finally, the state supreme court distinguished *Craig* on the ground that in *Craig*, the child witness and the lawyers were in a different room from the defendant, while in Mississippi, they are in the same room, separated by a screen. *Id.* at 23a-24a. But the Confrontation Clause requires face-to-face confrontation, not merely presence in the same room. Unless the trial court makes a case-specific, individualized finding of necessity, the witness and the defendant must be able to see each other.

The decision below thus establishes a rule in Mississippi that is directly contrary to the rule of *Coy* and *Craig*. In Mississippi, a trial court can now use a screen to block a child witness's view of the defendant whenever the prosecutor asks for one, without making the individualized finding of necessity that *Coy* and *Craig* require.

II. Mississippi is the only jurisdiction that does not follow *Coy v. Iowa* and *Maryland v. Craig*.

The Mississippi Supreme Court is an outlier. Of the federal courts of appeals and state supreme courts that have specifically addressed the question, every single one holds, following *Coy* and *Craig*, that before depriving the defendant of face-to-face confrontation with a child witness, the trial court must make an individualized, case-specific finding that blocking the child's view of the defendant is necessary to prevent trauma to the child.

In *United States v. Cotto-Flores*, 970 F.3d 17 (1st Cir. 2020), for example, the First Circuit reversed a conviction because the trial court failed to make "a 'specific finding' that the minor could not 'reasonably communicate' in the defendant's presence because of fear." *Id.* at 43 (quoting *Craig*, 497 U.S. at 856). The trial court did ask the child witness some questions, but the questions "were about 'testifying in this case' generally; they did not ask YMP [the witness] how he felt about Cotto, specifically. So the judge did not find that Cotto frightened YMP or that her presence (as opposed to the daunting courtroom setting) would make him 'unable' to testify." *Id.*

Likewise, in *People v Arredondo*, 454 P.3d 949, 958 (Cal. 2019), the California Supreme Court reversed a conviction where the trial court blocked the child witness's view of the defendant because the child was crying. The California Supreme Court held that the child's behavior "provide[d] little support for a finding that the trauma F.R. would have suffered upon testifying in defendant's presence was such that an accommodation abridging defendant's right of face-to-face confrontation was necessary." *Id.* The court concluded: "This does not appear to be what the high court in *Craig* had in mind when it cautioned that the constitutional 'face-to-face confrontation requirement' may not be 'easily ... dispensed with.'" *Id.* at 960 (quoting *Craig*, 497 U.S. at 850).

Similarly, in *State v. Welch*, 760 So. 2d 317, 321 (La. 2000), the Louisiana Supreme Court reversed a conviction because the trial court's use of a screen blocking the witness's view of the defendant "violated the defendant's right to confrontation guaranteed by the Sixth Amendment as interpreted in *Coy* and *Craig*." The error was that "the State presented no case-specific evidence to prove the necessity of protecting this child from the trauma of testifying against the defendant. The trial court ordered the 'screening' of the defendant merely on a *generalized* statement of *possible* trauma for child witnesses." *Id.*

Cases like this are legion. For other examples, *see United States v. Moses*, 137 F.3d 894, 898-99 (6th Cir. 1998) (reversing where the trial court failed to make an adequate individualized finding); *United States v. Carter*, 907 F.3d 1199, 1208 (9th Cir. 2018) (same); *United States v. Yates*, 438 F.3d 1307, 1315-16 (11th Cir. 2006) (same); *State v. Farrell-Quigle*,

477 P.3d 208, 218-20 (Idaho 2020) (same); *People v. Lofton*, 740 N.E.2d 782, 794 (Ill. 2000) (same); *State v. Rogerson*, 855 N.W.2d 495, 506-08 (Iowa 2014) (same); *C.A.R.A. v. Jackson Cty. Juvenile Office*, 637 S.W.3d 50, 63-64 (Mo. 2022) (same); *State v. Lipka*, 817 A.2d 27, 33-34 (Vt. 2002) (same).

In other cases, courts have approved departures from face-to-face confrontation, but only where the trial court has made the individualized, witness-specific finding of trauma required by *Coy* and *Craig*. *See, e.g.*, *Danner v. Motley*, 448 F.3d 372, 379-81 (6th Cir. 2006); *State v. Smith*, 730 A.2d 311, 317 (N.J. 1999); *McCumber v. State*, 690 S.W.3d 686, 691-93 (Tex. Ct. Crim. App. 2024); *State v. Widdison*, 28 P.3d 1278, 1291 (Utah 2001).

Many states, like Mississippi, have statutes allowing child witnesses to testify by means other than face-to-face confrontation to protect them from trauma. There is a similar federal statute as well. But these statutes—unlike Mississippi's—conform to *Coy* and *Craig* by requiring the trial court to make an individualized finding that the alternative method of testifying is truly necessary to protect the witness from trauma that would be caused by testifying while seeing the defendant.

The federal statute is 18 U.S.C. § 3509(b), which was enacted shortly after this Court decided *Craig*. *See Cotto-Flores*, 970 F.3d at 39. The statute repeats *Craig*'s requirement that the trial court make individualized findings that departure from face-to-face confrontation is necessary. 18 U.S.C. § 3509(b)(1)(B), (C). The Courts of Appeals have interpreted the statute to require "a case-specific finding that a child witness would suffer substantial fear or trauma and

be unable to testify or communicate reasonably because of the physical presence of the defendant." *Moses*, 137 F.3d at 898 (citing cases).

The National Conference of Commissioners on Uniform State Laws has promulgated a Uniform Child Witness Testimony by Alternative Methods Act, which has been enacted by the legislatures of Idaho, Nevada, New Mexico, and Oklahoma. Idaho Code §§ 1801–1808; Nev. Stat. §§ 50.500–50.620; N.M. Stat. §§ 38-6A-1–38-6A-9; Okla. Stat., tit. 12, §§ 2611-3–2611.12. The Uniform Act requires individualized findings. Uniform Child Witness Testimony by Alternative Methods Act, § 5. The comment to this provision explains that individualized findings are required by *Craig*. *Id.*, § 5, comment.[1]

Many other states have enacted similar statutes of their own. They too require individualized findings. *See, e.g.*, Cal. Penal Code § 1347; Conn. Stat. § 54-86g; 725 Ill. Stat. § 5/106B-5; Kans. Stat. § 22-3434; Ky. Stat. § 421.350; La. Stat. § 15:283; Mich. Laws § 600.2163a(20); Neb. Stat. § 29-1926; 42 Pa. Stat. § 5985.

We have been unable to identify any state with a statute like Mississippi's, that purports to allow trial courts to depart from face-to-face confrontation whenever a child witness testifies, without any requirement of an individualized finding that the departure is necessary to protect the child from trauma. Nor, as far as we are aware, has any court in

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[1] The Uniform Act and the comments thereto can be found at https://www.uniformlaws.org/committees/community-home?CommunityKey=fa810ffb-3194-417c-a79b-bf4100f02f2d.

any jurisdiction other than Mississippi approved of such a procedure.

III. This issue is important.

This issue is important because it will affect so many cases. The state statute purporting to require a screen between the witness and the defendant applies to every criminal case and every juvenile proceeding in Mississippi involving a witness who is younger than 18. Miss. Code § 99-43-101(1)(a), (b). In all these cases, if the decision below is allowed to stand, the prosecutor is entitled to infringe the defendant's right to face-to-face confrontation without making the showing that *Coy* and *Craig* require.

The issue could not be presented any more cleanly. The prosecutor laid her cards on the table: She insisted that she was not required to prove that the screen was necessary. App. 6a-7a. The trial court agreed with her. *Id.* at 7a. The Mississippi Supreme Court agreed as well, largely on the theory that it was more important to uphold the will of the state's voters than to comply with the Confrontation Clause. *Id.* at 26a-28a.

We expect the state to argue that the error was harmless, so we will conclude by explaining why this argument is incorrect.

To begin with, the error was certainly not harmless beyond a reasonable doubt. *See Chapman v. California*, 386 U.S. 18, 24 (1967). The Court explained in *Coy* that "[a]n assessment of harmlessness cannot include consideration of whether the witness' testimony would have been unchanged, or the jury's assessment unaltered, had there been confrontation; such an inquiry would obviously involve pure specu-

lation, and harmlessness must therefore be determined on the basis of the remaining evidence." *Coy*, 487 U.S. at 1021-22. To evaluate the harm caused by the error here, a court would thus have to discard AGC's testimony and consider only the remaining evidence. But without AGC's testimony, the prosecutor's case would have fallen apart. The trial involved two conflicting accounts of events on a single day, one offered by AGC and the other offered by Jeffrey Pitts, her father. They were the only people in the room when the events happened. AGC's testimony was by far the most important evidence supporting the jury's verdict.[2]

Had the trial court conducted the individualized inquiry that *Coy* and *Craig* require, it could not have found that the screen was necessary to prevent trauma to AGC. The evidence showed that AGC "would be excited, not traumatized, to see her father." App. 42a. Indeed, AGC testified at trial "that she loved and missed Pitts and that she would want to hold him and hug him if she could see him." *Id.* at 97a.

In any event, this consideration is no reason to deny certiorari. The Court's "normal practice" when the respondent claims an error was harmless is to resolve the question presented and then remand the

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[2] AGC's mother and grandmother offered hearsay testimony about what AGC had told them, but their testimony was admissible only because AGC testified, so removing AGC's testimony would have rendered their hearsay inadmissible. App. 99a-101a. Even if their testimony had nevertheless been admitted, one could not be confident beyond a reasonable doubt that the jury would have convicted solely on their hearsay. *Id.* at 101a.

case for the lower courts "to consider in the first instance whether the … error was harmless." *Neder v. United States*, 527 U.S. 1, 25 (1999).

CONCLUSION

"If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery." *United States v. Peters*, 9 U.S. 115, 136 (1809) (Marshall, C.J.). The Court should summarily reverse. In the alternative, the petition for a writ of certiorari should be granted and the case set for argument.

Respectfully submitted,

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