No. 24-7387

In The
Supreme Court of the United States

ANTHONY FLOYD WAINWRIGHT,

Petitioner,

v.

GOVERNOR OF FLORIDA, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR JUNE 10, 2025, AT 6:00 P.M.

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CAPITAL CASE
QUESTIONS PRESENTED

Wainwright escaped from prison in 1994 and used that stolen freedom to rob, kidnap, rape, and execute a young mother. His death warrant was signed last month and his state-appointed lead postconviction counsel began litigating his post-warrant proceedings in state court. An unauthorized attorney, who intruded into his state proceedings about a week after his warrant was signed, filed a state habeas petition. The court struck the petition after authorized lead counsel refused to adopt it.

Wainwright then filed a federal suit alleging striking the habeas petition violated his rights to access the courts, due process, and equal protection. He sought to bar his execution until he was provided a new state habeas proceeding. The district court dismissed the suit, and the Eleventh Circuit denied a stay because it found most of his claims were likely barred by the *Rooker-Feldman* doctrine.

Wainwright seeks, and this Court should decline, review of four questions:

I. Does the limited due process required in postconviction proceedings require a state to accept pleadings from an unauthorized attorney that lead state postconviction counsel disapproves of?

II. Do either due process or access to courts require an override of a state's postconviction system permitting capital defendants from only changing lead postconviction counsel in limited circumstances?

III. Does a state violate equal protection by refusing to permit postconviction counsel who appeared just after a death warrant was signed usurp state-appointed lead postconviction counsel's role?

IV. Did the Eleventh Circuit correctly deny Wainwright's motion to stay based on finding most of his claims had no substantial likelihood of success under *Rooker-Feldman*?

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The Eleventh Circuit's unpublished decision petitioned for review appears as *Wainwright v. Governor of Florida, et al.*, 25-11910-P, (11th Cir. Jun. 9, 2025) (Westlaw Citation Unavailable).

JURISDICTION

This Court has jurisdiction over the Eleventh Circuit's order denying Wainwright's motion to stay his execution. 28 U.S.C. § 1254(1); 28 U.S.C. § 2101(c).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The State accepts the Petitioner's statement of the constitutional and statutory provisions involved.

FLORIDA'S CAPITAL POSTCONVICTION COUNSEL SYSTEM

Florida has established a mandatory system where all capital defendants are required to have postconviction counsel. *State v. Kilgore*, 976 So. 2d 1066, 1068 (Fla. 2007). The Florida Legislature established this system so postconviction claims could be raised "in a timely manner" and ensure "finality." § 27.7001. Fla. Stat.

Lead postconviction counsel is automatically appointed soon after the direct-appeal mandate issues and must continue to "represent the defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out." Fla. R. Crim. P. 3.851(b)(1)-(6); § 27.710(3), Fla. Stat.; § 27.711(8), Fla. Stat. Capital defendants are not permitted to represent themselves in state postconviction proceedings. Fla. R. Crim. P. 3.851(b)(6).

Under Florida's system, in "every capital postconviction case, one lawyer shall

be designated as lead counsel for the defendant. The lead counsel shall be the defendant's primary lawyer in all state court litigation." Fla. R. Crim. P. 3.851(b)(4). The "only basis for a defendant who has been sentenced to death to seek to discharge postconviction counsel in state court must be pursuant to statute due to an actual conflict of interest." Fla. R. Crim. P. 3.851(b)(6) (referring to § 27.703, Fla. Stat.); *Rogers v. State*, No. SC2025-0585, 2025 WL 1341642, at *4 (Fla. May 8, 2025). These provisions were adopted in 2014 and went into effect on "January 1, 2015." *In re Amends. to Fla. Rules of Jud. Admin.; Florida Rules of Crim. Procedure; and Fla. Rules of App. Proc.--Cap. Postconviction Rules*, 148 So. 3d 1171, 1180 (Fla. 2014).

Death-qualified, experienced registry attorneys are part of this system. § 27.710, Fla. Stat. Registry attorneys can "designate another attorney to" provide uncompensated assistance if they so choose if that attorney is qualified. § 27.710(6), Fla. Stat. Registry attorneys are not permitted "to file repetitive or frivolous pleadings that are not supported by law or by the facts of the case." § 27.711(10), Fla. Stat. Registry counsel must also generally meet standards higher than those required for federal postconviction counsel. *Compare* Fla. R. Crim. P. 3.112(k) (setting out the standards for postconviction counsel), *with* 18 U.S.C. § 3599(2)(c).

Florida's postconviction system, while providing a mandatory statutory right to counsel, does not provide any right to counsel of choice and only permits capital defendants to change counsel in limited circumstances. Fla. R. Crim. P. 3.851(b)(4)-(6); *Rogers*, 2025 WL 1341642, at *4.

STATEMENT OF THE CASE AND FACTS

Murder, Trial, and Pre-Warrant Postconviction

Anthony Wainwright and a co-perpetrator escaped from a North Carolina prison in 1994. In Florida, they carjacked, kidnapped, raped, and then executed Carmen Gayheart, a young mother of two. Both Wainwright and his co-perpetrator were arrested the next day after a shootout with a Mississippi Trooper.

Wainwright was convicted of first-degree murder, robbery, kidnapping, and sexual battery, and sentenced to death for killing Carmen Gayheart. *Wainwright v. State*, 704 So. 2d 511 (Fla. 1997), *cert. denied*, 523 U.S. 1127 (May 18, 1998). The critical trial evidence against Wainwright was his own confessions to law enforcement and DNA evidence that he left a semen stain on the rear seat of the victim's vehicle. The State also presented evidence Wainwright confessed to two inmates, one of whom (Gunter) was dying of AIDS when he testified.

Since then, this case has been litigated for over thirty years in state and federal court through nine state postconviction motions (counseled and *pro se*), an initial federal habeas petition, and a Federal Rule of Civil Procedure 60(b) motion. *Wainwright v. State*, No. SC2025-0708, 2025 WL 1561151, at *1-3 (Fla. June 3, 2025) (recounting prior litigation). Wainwright has never obtained relief, and this Court has never granted certiorari.

Death Warrant and State Post-Warrant Litigation

Florida Governor Ron DeSantis signed Wainwright's death warrant on May 9, 2025. When the warrant was signed, Wainwright was represented by state-appointed lead postconviction counsel. Lead postconviction counsel filed a postconviction motion

raising a single claim.

Hours later, unauthorized counsel filed a competing state postconviction motion raising an additional two claims and a motion to substitute counsel. The state postconviction court held a hearing, permitted unauthorized counsel to sit exclusively as second chair, reaffirmed the lead counsel was the only one with decision-making authority, and struck the postconviction motion unauthorized counsel filed. Lead counsel and unauthorized counsel later filed an amended postconviction motion raising three claims. The circuit court denied all claims and Wainwright (through both counsel) appealed to the Florida Supreme Court.

Unauthorized counsel also filed a state habeas petition raising numerous claims and inviting the Florida Supreme Court to revisit prior rulings denying Wainwright relief. Most of the State's response to the habeas petition addressed the merits of Wainwright's claims, arguing that they were meritless under settled state precedent. The State also pointed out that lead counsel had not signed the petition. The Florida Supreme Court issued an order requiring lead counsel to adopt the petition or it would be stricken. Lead counsel refused and unauthorized counsel filed a motion for rehearing, arguing violations of due process and equal protection. The State opposed rehearing and urged the court to strike the petition. The Florida Supreme Court subsequently denied the rehearing and struck the petition as unauthorized, citing Florida Rule of Criminal Procedure 3.851(b)(4)-(6).

Separately, the Florida Supreme Court also affirmed the state postconviction court's order denying postconviction relief. The court addressed a potential Eighth

Amendment exemption-from-execution claim based on newly discovered mitigation and held: "To the extent Wainwright argues this additional information makes his sentence unconstitutional under the Eighth Amendment to the United States Constitution, we reject the claim. The argument is inadequately briefed and without merit." *Wainwright v. State*, No. SC2025-0708, 2025 WL 1561151, at *7 n.16 (Fla. June 3, 2025).

42 U.S.C. § 1983 Litigation

Wainwright, represented by the Capital Habeas Unit for the Northern District of Florida (CHU-N), sued Florida's Governor, Attorney General, the Secretary of the Florida Department of Corrections, and Florida Supreme Court Chief Justice Muniz, in their official capacity under 42 U.S.C. § 1983. He alleged the decision to strike his habeas petition and reject his Eighth Amendment claim as inadequately briefed, along with circumstances attendant to his death warrant, denied him access to courts, due process, and equal protection. The crux of his complaints was that he was denied the right to have his preferred counsel conduct the state-court litigation instead of his lead state-appointed counsel. Wainwright's amended complaint alleged he had had issues with lead state counsel for eleven years and previously tried to have him removed without success. He also sought a stay to litigate these issues.

For relief, Wainwright requested: (1) a preliminary injunction barring his execution until the district court decided his case; (2) a declaration that his due process and equal protection rights were violated; and (3) a permanent injunction barring his execution until he was provided with "a postconviction proceeding that

comports with the United States Constitution."

The state officials (State) moved to dismiss and opposed the motion to stay, arguing primarily that Wainwright had neither a due-process nor equal-protection right to have his preferred counsel usurp state-appointed lead postconviction counsel's role in violation of Florida law permitting capital defendants to discharge counsel only upon a showing of actual conflict. *See* Fla. R. Crim. P. 3.851(b)(4)-(6).

The district court dismissed his complaint as legally insufficient to state a valid claim for relief. The court first ruled that Wainwright's Official-Capacity suit against Defendants as insufficient because he did not allege any policy or custom played a part in his alleged constitutional deprivations. The court also determined an individual-capacity suit would fail because the actions taken by all defendants other than Defendant Muniz did not violate due process. For Defendant Muniz, the court determined he was immune from injunctive relief and there were insufficient allegations to hold him liable in his official capacity for the same reasons as the other defendants. (Doc.25:16-17.).

The district court then addressed the due process and equal protection claims, finding neither was legally valid. (Doc.25:19-25.) For due process, the court ruled: (1) Wainwright did not have a due-process right to counsel of choice despite Florida's creation of a statutory system to provide him counsel; (2) assuming he did have such a right, he received whatever process was due because he could be heard on the counsel issue and the State had a strong interest in assuring the fair, orderly, and efficient administration of its postconviction system; (3) there was no access-to-courts

violation because Wainwright could access the courts through his lead counsel. (Doc.25:19-22 & n.6.).

For equal protection, the court ruled: (1) Wainwright had not alleged any other similarly situated individuals received more favorable treatment; (2) he had not alleged any discriminatory treatment was "based on" membership in a protected class or some other constitutionally protected interest; (3) the cases he relied on as comparators were insufficiently similar to his case to support an equal protection claim.

The court denied Wainwright's motion to stay as moot given the dismissal.

Eleventh Circuit Appeal and Stay Denial

Wainwright appealed and the Eleventh Circuit set an expedited briefing schedule. Wainwright urged reversal of the district court's dismissal and a stay pending appeal. The State argued for affirmance and opposed a stay.

The Eleventh Circuit denied Wainwright's motion for stay pending appeal. The court exclusively addressed whether Wainwright's appeal was substantially likely to succeed and determined it was not. The Eleventh Circuit determined, "without definitively deciding the matter," most of Wainwright's claims were probably barred by "the *Rooker-Feldman* doctrine." The only remaining claim—an access to courts claim based on the short warrant period and moving Wainwright to solitary confinement on death watch—was not likely to succeed either in light of the allegations in the complaint. Based on those allegations, the court determined it was lead counsel's refusal to adopt the petition, not the short warrant period or

Wainwright's movement to death watch, that ended in the striking of his habeas petition.

Wainwright timely filed his certiorari petition in this Court on the day of his scheduled execution. He seeks review of four questions presented:

1. Whether a State violates the Due Process Clause of the Fourteenth Amendment when it mandates that capital litigants have counsel during their state postconviction proceedings, yet precludes them from accessing the state created habeas process with their pro bono counsel of choice?

2. Whether a system that functionally prevents a litigant from presenting claims to the courts with choice of counsel satisfies the right to due process and access to the courts?

3. Whether a State violates the Equal Protection Clause of the Fourteenth Amendment when it precludes indigent capital litigants under a death warrant from proceeding with their qualified pro bono counsel of choice, where no prejudice to the State or administration of justice would occur and a nonindigent litigant would be entitled to such a choice?

4. Whether a court may justify denying relief by sua sponte raising the *Rooker-Feldman* doctrine, which was found to "probably" apply, to avoid addressing the merits of a § 1983 action challenging the constitutionality of a state's capital postconviction process governed by statutes and procedural rules?

This is the State's Brief in Opposition.

REASONS FOR DENYING THE WRIT

Wainwright seeks certiorari in his ultimate attempt to escape from justice on the eve of his execution for heinous crimes committed over thirty years ago. This Court should deny the petition and bring true finality to this case that has been thoroughly litigated for decades with over ten separate attempts at relief. *Wainwright v. State*, No. SC2025-0708, 2025 WL 1561151, at *1-3 (Fla. June 3, 2025). The State and victims are entitled to finality after expanding decades worth of resources defending a long-settled judgment and sentence of death. *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (explaining when initial federal review of a state judgment has run its course "and a mandate denying relief has issued, finality acquires an added moral dimension").[1]

Wainwright raises four long-deferred questions for this Court to consider the day of his execution. The State will analyze each of Wainwright's questions presented in turn. But, at the outset, it is important to address several standalone reasons this Court should deny both of them. **First**, even providing Wainwright the full relief he seeks in his underlying § 1983 suit would not provide him any substantive relief. His state habeas claims were meritless under well-settled state law. *See Gaskin v. State*,

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[1] *See also Spalding v. Aiken*, 460 U.S. 1093, 1094 (1983) (statement of Burger, C.J., respecting denial of certiorari) ("Relief on claims presented many years after conviction should be limited to cases in which the petitioner can demonstrate a miscarriage of justice or a colorable claim of innocence."); *Coleman v. Balkcom*, 451 U.S. 949, 956 (1981) (Rehnquist, J., dissenting from denial of certiorari) ("When society promises to punish by death certain criminal conduct, and then the courts fail to do so, the courts not only lessen the deterrent effect of the threat of capital punishment, they undermine the integrity of the entire criminal justice system.").

361 So. 3d 300, 309 (Fla. 2023) ("Habeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised."); *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (postconviction counsel's ineffectiveness is not cognizable). Indeed, state habeas relief has not been granted in any recent capital warrant case out of Florida.[2] This Court should not contemplate forcing the state to put off a scheduled execution with so little substantive benefit for the defendant other than mere delay. *Cf. Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955) (stating that certiorari should not be granted when the issue is only academic).

Second, Wainwright could have pursued this litigation years ago. He alleged in his amended complaint that he had made "several unsuccessful attempts to have" lead sate counsel removed over the past "eleven years" and Florida's restrictions on changing lead postconviction counsel were enacted in 2015. But Wainwright did not assert a right to replace lead counsel with his preferred counsel until after his warrant was signed. This litigation could have taken place almost a decade ago given Wainwright was able to secure counsel of his choice less than a week after his warrant was signed. The delay in pressing his supposed right is an independent reason to

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[2] Habeas relief has not been granted in any recent capital warrant case. *See Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *1 (Fla. Apr. 25, 2025) (rejecting habeas claims); *Tanzi v. State*, 2025 WL 971568, at *5-6 (Fla. Apr. 1, 2025) (rejecting habeas claims); *James v. State*, 2025 WL 798376, at *9 (Fla. Mar. 13, 2025) (rejecting habeas claims); *Dillbeck v. State*, 357 So. 3d 94, 104 (Fla. 2023) (rejecting habeas claims); *Dailey v. State*, 283 So. 3d 782, 793 (Fla. 2019) (rejecting habeas claims); *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019) (rejecting habeas claims).

refuse to the inflict "profound injury" on the State's and victims' "powerful and legitimate interest in punishing" an indisputably guilty man who raped and murdered a young mother of two back in 1994. *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

Third, the Eleventh Circuit's opinion applied the correct test for a stay and did not reach any definitive holding on the merits of either *Rooker-Feldman* or any of Wainwright's claims. The unpublished order below took great pains to repeatedly disclaim any definitive statement of law and is not binding precedent even in the Eleventh Circuit. Instead, the court followed a well-trodden path of resolving against the capital defendant seeking a stay any "doubts and uncertainties as to the sufficiency of his submission." *See Sawyer v. Whitley*, 505 U.S. 333, 341 n.7 (1992).

The decision below is of no binding precedential value and limited persuasive value in future litigation. In other words, the questions presented are "of importance only to petitioner himself and therefore" are "not suitable candidates for the exercise of" this Court's "discretionary jurisdiction." *See Coleman*, 451 U.S. at 956 (Rehnquist, J., dissenting from denial of certiorari) (arguing this Court should grant certiorari to head-off more federal delays even though the questions presented were not otherwise worthy of review).

Fourth, it is not clear even a reversal from this Court would change the ultimate outcome of the decision below. The district court dismissed Wainwright's claims for entirely different reasons and the Eleventh Circuit did not address the remaining three stay elements (irreparable harm, public interest, and harm to the

State). Under these circumstances, with an execution scheduled for today, this Court should not grant review when there is a substantial question of whether reversal would alter the underlying judgments. *See Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) (stating certiorari is the power "to correct wrong judgments, not to revise opinions," and explaining that, if the same judgment would be entered after this Court's review, review would be nothing more than an advisory opinion). This Court should not grant certiorari, and forestall an execution, on issues that may not actually change the underlying stay denial.

Fifth, only the underlying denial of stay is before this Court. Any review by this Court would therefore be limited to whether the Eleventh Circuit correctly applied the substantial-likelihood prong of the stay framework to Wainwright's appeal below. In other words, instead of issuing a broad legal pronouncement on *Rooker-Feldman*, due process, equal protection, or access to courts, this Court would be limited to determining whether it was substantially likely Wainwright would prevail on these issues. To the extent this Court desires to clarify *Rooker-Feldman* or make a pronouncement on capital postconviction counsel of choice, a case where the appellate court below addressed the question head on and outside the stay context is a far better vehicle than this one.

This Court should deny certiorari for all of these reasons without engaging with Wainwright's questions presented. But the State will briefly analyze them for the sake of completeness as well. Not one warrants this Court's review. The bottom line is this case would not be worthy of certiorari under normal circumstances, much

less on the eve of an execution. The decision below properly stated and applied all governing federal principles, does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a United States Court of Appeals, and does not conflict with any decision of this Court. Review should be denied on that basis alone. *See* Sup. Ct. R. 10, 14(g)(i).

This Court should deny certiorari and bring an end to the protracted litigation in this thirty-year-old capital case.

I.

Did Eleventh Circuit correctly deny Wainwright's motion to stay based on finding most of his claims had no substantial likelihood of success under Rooker-Feldman?

Wainwright's first question presented asks this Court to decide whether the Eleventh Circuit's stay decision misapplied the *Rooker-Feldman* doctrine. This question does not warrant this Court's review for the reasons previously explained.

Additionally, this Court should initially decline to exercise jurisdiction because Wainwright simply disagrees with the way the court below read his complaint. The Eleventh Circuit expressly determined: "Significantly, the § 1983 due process and equal protection claims did not challenge the constitutionality of Rule 3.851(b)(4)-(6), which prevented Mr. Wainwright from substituting appointed postconviction counsel at will and moving forward with his state habeas corpus petition through pro bono counsel." Wainwright disputes whether that is the case, but that just means he disagrees with a factual conclusion. That factual disagreement makes this case a poor vehicle to clarify *Rooker-Feldman's* contours given, if the Eleventh Circuit was correct, it does not appear even Wainwright disagrees with its resolution of the stay

decision below.

As discussed previously, the Eleventh Circuit did not render any definitive holding on *Rooker-Feldman*. Its stay decision is unpublished and not even binding precedent. A narrow, unpublished, fact-specific decision does not warrant this Court's review. The court is free to reconsider that decision later in a § 1983 suit brought by a postconviction capital defendant who does not delay in securing pro bono counsel until after his warrant is signed. Future capital defendants are also able to plead their claims better to ensure they fall within the exception this Court, and the Eleventh Circuit in its opinion below, explicitly recognized exists to *Rooker-Feldman*. *See Reed v. Goertz*, 598 U.S. 230, 235 (2023) (finding that a claim was not barred by *Rooker-Feldman* where it challenged the constitutionality of an underlying statute rather than the adverse state court decision applying the statute to the plaintiff).

This Court should deny review of this question presented.

II.

Did either limited due process or access to courts require override a state's postconviction system permitting capital defendants from only changing lead postconviction counsel in limited circumstances?

Wainwright's second question presented asks this Court to decide whether he was denied due process and access to courts because the state courts refused to let his unauthorized postconviction counsel usurp state-appointed lead counsel's role in direct all state postconviction litigation. This question presents no unsettled, divisive issue of federal law worthy of this Court's review. No court has held that a due process or access to courts override a State's capital postconviction rules and requires allowing an unauthorized attorney to usurp state-appointed lead postconviction

counsel's role in directing all state-court litigation after a warrant is signed.

The lack of any articulable conflict is an independent reason to deny certiorari. This Court generally waits until an issue has sufficiently developed with conflicting opinions before granting certiorari. *See California v. Carney*, 471 U.S. 386, 400 & n.11 (1985) (Stevens, J., dissenting with JJs. Brennan and Marshall). That way, this Court has the benefit of deep analysis on both sides of the issue and can bring its best, most-informed judgment to bear on the constitutional question. *See id.* at 400 ("To identify rules that will endure, we must rely on the state and lower federal courts to debate and evaluate the different approaches to difficult and unresolved questions of constitutional law.").

This issue has not percolated almost at all in the lower courts. Indeed, the only court that has addressed a right to switch counsel in postconviction head on has held the answer is no. *Hamm v. State*, 913 So. 2d 460, 467, 470-73 (Ala. Crim. App. 2002) (rejecting a counsel-of-choice argument in a capital case where the state postconviction court refused to allow substitution with pro bono counsel of choice because there is no right to counsel of choice in postconviction); *Hamm v. Allen*, No. 5:06-CV-00945-KOB, 2013 WL 1282129, at *28 (N.D. Ala. Mar. 27, 2013) (reaffirming *Hamm*'s holding and recognizing a "petitioner has no constitutional right to an attorney in state post-conviction proceedings, much less counsel of choice").

Indeed, without mentioning due process, this Court has recognized there is no right to counsel of choice at all in postconviction. *E.g.*, *Christeson v. Roper*, 574 U.S. 373, 377 (2015) (explaining Congress created a statutory right to appointment of

counsel for capital postconviction litigants in federal court, but did not confer on "capital habeas petitioners" the "right to counsel of their choice," left it "to the court to select a properly qualified attorney," and that substitution is not automatically required).

Given the due-process rule Wainwright seeks to create would affect both state and federal postconviction counsel appointment systems, this Court should wait until the issue has further percolated before considering review.

Further, the fact that the due process portion of this question comes to this Court with a threshold *Rooker-Feldman* issue makes it a poor vehicle since subject matter jurisdiction would have to be addressed first.

This Court also lacks a reasoned opinion from either the Florida Supreme Court or Eleventh Circuit addressing the due process issue. The Florida Supreme Court struck the habeas petition as unauthorized without addressing either equal protection or due process and the Eleventh Circuit found the issues likely barred by *Rooker-Feldman*. In this awkward posture, this Court would be the first appellate court to substantively address the due process issue. That makes this case a poor vehicle for this Court's review. *Cf. Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 800 (2017) (This is a Court "of final review and not first view.").

The tangled nature of Wainwright's due process and access to courts issue also counsel against review. Wainwright complains of numerous discrete due process violations instead of focusing on just whether he has a due process right to counsel of choice. The question of whether such a right exists in the first place should be

addressed first before addressing whether it is required in discrete circumstances.

In any event, this Court should not grant review because neither due process nor access to courts grant Wainwright a right to have his preferred counsel usurp state-appointed lead counsel's role after a death warrant is signed. Wainwright loses his autonomy right to direct his own case on direct appeal, where the state can force a lawyer on him against his will. *See Martinez v. Ct. of Appeal of California, Fourth App. Dist.*, 528 U.S. 152, 161 (2000); *United States v. Hopkins*, 920 F.3d 690, 703 (10th Cir. 2019) (counsel of choice stems from an autonomy right).

These considerations apply with even greater force to postconviction proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551, 555-57 (1987). It can hardly violate limited due process to place strict limits on changing postconviction counsel when limited due process does not even confer bedrock due process protections in postconviction litigation. *See Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69-70 (2009) (the state's obligation to turn over exculpatory evidence does not persist into postconviction). What's more, it is doubtful that any state limitations on successive postconviction proceedings (like post-warrant state habeas relief) could violate due process under this Court's precedent. *See Jones v. Hendrix*, 599 U.S. 465, 487 (2023) (explaining limitations on successive postconviction review cannot violate due process because due "process does not guarantee a direct appeal, let alone the opportunity to have legal issues redetermined in successive collateral attacks on a final sentence."). Given Wainwright had no right to counsel of choice, his subsidiary arguments, like having a property interest in counsel or having a due-process right

to silence the Florida Attorney General from disputing such a right exists, fail as well.

Wainwright's argument that he was denied notice and an opportunity to be heard on the counsel issue is frivolous on its face. He had the opportunity to be heard at the circuit court hearing on counsel where the circuit court emphasized state-appointed counsel's decision-making authority. He had the opportunity to appeal that decision and chose not to do so. *Cf. Merck v. State*, 216 So. 3d 1285 (Fla. 2017). And he had the opportunity to be heard on his emergency motion for rehearing of the Florida Supreme Court's order. *See Link v. Wabash R. Co.*, 370 U.S. 626, 631-32 (1962). Wainwright, through his unauthorized counsel of choice, had three opportunities to be heard and took just one of them. He can hardly cry he was not afforded an opportunity to be heard when he received three and only took one.

Wainwright's reliance on litigation in *Howell v. State*, 109 So. 3d 763, 773 (Fla. 2013) to suggest arbitrariness is totally misplaced. The lead counsel provisions the Florida Supreme Court invoked to strike Wainwright's habeas petition did not exist in 2015 and, in any event, the Florida Supreme Court, much like this Court, is always free to reconsider prior precedents if it believes them incorrect. *Fid. & Columbia Tr. Co. v. City of Louisville*, 245 U.S. 54, 59 (1917).

The access-to-courts issue is also meritless. The State did not prohibit Wainwright from seeking state habeas relief. It simply provided Wainwright with postconviction counsel and its system left all decisions about how best to seek relief up to lead counsel. That is not an access-to-courts issue; it is a dispute between lead state counsel and unauthorized counsel about which courts should be accessed and

how. That is doubly true since it is well-established Wainwright had no right to have any particular claims raised no matter how much he himself may have wanted to raise them. *See Jones v. Barnes*, 463 U.S. 745, 750-54 (1983).

This Court should deny certiorari on this question presented.

III.

Does a state violate equal protection by refusing to permit postconviction counsel who appeared just after a death warrant was signed usurp state-appointed lead postconviction counsel's role?

Wainwright's third question presented asks this Court to decide whether he was denied equal protection because he was not allowed to have his unauthorized counsel usurp state-appointed lead postconviction counsel's role. Wainwright asserts zero conflict and barely argues he presents an important or unsettled question of federal law.

This Court should initially deny certiorari review because Wainwright's equal protection arguments are not clear. Below he argued that he was being treated differently than capital litigants able to hire their own counsel and non-capital litigants. But here, he seems to argue that he is being treated differently than any civil or criminal litigant (including those not in postconviction) able to secure their own counsel. That broader question was neither raised nor addressed by any court below and should not be addressed by this Court in the first instance. *See Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 800 (2017) (reminding litigants is a Court "of final review and not first view.").

The fact that it is so easy to answer against Wainwright also counsel against delaying an execution to review. Wainwright is not a criminal defendant at trial. Nor

is he even a regular civil litigant seeking to vindicate some personal right and be heard with counsel's aid. He is a capital postconviction defendant who has been represented by state-paid counsel for decades and has challenged his judgement over ten times before in quasi-civil postconviction litigation. He is not similarly situated with criminal defendants or normal civil litigants because the Sixth Amendment does not apply to him and he has only limited rights at this juncture. *See Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69-70 (2009); *Martinez v. Ct. of Appeal of California, Fourth App. Dist.*, 528 U.S. 152, 161 (2000).

The provisions in Florida Rule of Criminal Procedure 3.851(b)(1)-(6) apply to all capital postconviction litigants. Whether appointed or hired, Florida Rule of Criminal Procedure 3.851(b)(6) precludes a defendant from discharging postconviction counsel absent an actual conflict of interest. A rule that applies equally to all capital postconviction defendants cannot violate equal protection.

Wainwright's arguments that he is being treated differently from other capital postconviction litigants based on discrete examples is a nonstarter for equal protection purposes. As this Court recognized over a century ago, equal protection claims cannot be maintained on the basis of what a litigant perceives as inconsistent court decisions. *See Fid. & Columbia Tr. Co. v. City of Louisville*, 245 U.S. 54, 60 (1917) (rejecting an "equal protection" claim because "Kentucky Court of Appeals is free to depart from precedents if on further reflection it thinks them wrong"); *Lombard v. W. Chicago Park Comm'rs*, 181 U.S. 33, 44 (1901) (holding no equal protection violation arises "wherever the losing party deemed that the reasoning by

which the state court had been led to decide adversely to his rights was inconsistent with the reasoning previously announced by the same court in former cases").

The State does not concede the string cite Wainwright provides this Court actually shows inconsistency. He has provided zero detail about any of those cases for this Court to make out even a facially valid equal protection claim. But even if those cases show inconsistency, that does not matter under this Court's controlling and well-reasoned precedent. It would unsettle the entire judicial system to suggest a court should be bound to wrong decisions rendered in the past on equal protection grounds.

This Court should deny review of this question presented as well.

CONCLUSION

This Court should deny certiorari and allow true finality for the State of Florida, the victims, and Anthony Floyd Wainwright.

Respectfully submitted,

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