No. 25-5194

IN THE

Supreme Court of the United States

EDWARD JAMES ZAKRZEWSKI, II,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, JULY 31, 2025, AT 6:00 PM

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Petitioner, Edward James Zakrzewski, II, respectfully petitions that a writ of certiorari issue to review the judgment of the Supreme Court of Florida. Mr. Zakrzewski replies to the Respondent's Brief in Opposition ("BIO") as follows:

I. Respondent improperly asserts that the Florida Supreme Court's decision rests upon independent and adequate state law grounds

Respondent asserts that "this Court lacks jurisdiction of the question presented by Mr. Zakrzewski because the Florida Supreme Court's decision at issue rests upon independent and adequate state law grounds." BIO at 1; *see also* BIO at 13-14. However, Respondent's characterization of the case is misleading. Any analysis and ruling from the Florida Supreme Court regarding Petitioner's Eighth Amendment arguments, necessitated an interpretation of this Court's precedent based upon Florida's conformity clause of article I, section 17 of the Florida Constitution.

Accordingly, the Florida Supreme Court's holding that Petitioner's claim was "meritless", mandates that the claim was "construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution." Fla. Const. art. I, § 17; *see also* Pet. App. A1 at 9, 13. The conformity clause is inextricable from federal law, because it treats this Court's "interpretation of the Eighth Amendment [as] both the floor and the ceiling for protection from cruel and unusual punishment in Florida". *Barwick v. State*, 361 So. 3d 785, 794 (Fla.

2023). Thus, the alleged "state law determination is…dependent on, resting primarily on, or influenced by a question of federal law…[which means] it is not independent of federal law and thus poses no bar to [this Court's] jurisdiction." *Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016) (cleaned up). Notably, even when adequacy and independence of possible state law grounds are not clear from the opinion, "this Court will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983); *see also Glossip v. Oklahoma*, 145 S. Ct. 612, 624-25 (2025). As a result, the question presented by Petitioner is constitutional in nature. Furthermore, as Petitioner explained in his petition, any findings by the Florida Supreme Court that the claim was untimely or procedurally barred were also erroneous. Petition at 16-18.

On a similar note, Respondent seems to suggest that since there are no conflicting decisions present, Petitioner's case does not warrant certiorari. BIO at 19-20. However, the Court also indicates that one such compelling reason for the Court to grant review on a writ of certiorari is when "a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court." U.S. Sup. Ct. R. 10(c). Petitioner submits that determining the constitutionality of his death sentences falls under that category.

II. Respondent incorrectly argues that Petitioner's Equal Protection Clause argument is outside of the question presented and violative of Rule 14.1(a)

Respondent is incorrect in its assertion that Petitioner's arguments regarding the Equal Protection Clause are outside of the question presented and violate Rule 14.1(a). BIO at 18-19 n. 5. The question presented by Petitioner is as follows: "Given that it is illegal to sentence an individual to death as the result of a bare majority jury vote or judicial override of a life sentence anywhere in this country, ***is it unconstitutional to execute Petitioner*** when his death sentences stem from jury votes of 7-5 and 6-6?" Petition at i (emphasis added). Respondent erroneously restated its question presented to solely include the Eighth Amendment. BIO at i. Petitioner did not narrow his question in such way.

In relevant part, Rule 14.1(a) states: "The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court." U.S. Sup. Ct. R. 14. However, if the Court should find that interpretation of the Fourteenth Amendment and Equal Protection Clause are not "fairly included" in the definition of "unconstitutional" then Petitioner would point to the fact that Rule 14.1(a) is a prudential rule. It "does not limit [the Court's] power to decide important questions not raised by the parties." *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 32 (1993) (quoting *Blonder–Tongue Laboratories, Inc. v. University of Ill. Foundation,* 402 U.S. 313, 320, n. 6 (1971)).

III. Respondent's assertion that Petitioner did not raise an attack on the Equal Protection Clause in state court is patently false

Respondent also claims that Petitioner "did not raise an Equal Protection attack on the judicial override or simple majority recommendation in the Florida Supreme Court." BIO at 19 n. 5. This assertion is wholly incorrect. To give a few examples other than the argument Respondent cited from page 30 of Petitioner's Initial Brief, the brief also made clear that "Appellant submits that the trial court erred in denying his claim that his death sentences are unconstitutional. His death sentences are arbitrarily and capriciously imposed ***and in violation of the Fifth, Eighth, and Fourteenth Amendments*** to the United States Constitution and the corresponding provisions of the Florida Constitution." *See Zakrzewski v. State* (SC25-1009) Initial Brief at 13-14 (emphasis added) (hereinafter "IB"). Petitioner went on to say: "However, the litany of issues associated with Appellant's death sentences highlight that the death penalty has not been fairly and equally applied to his case." IB at 15. Petitioner further argued to the Florida Supreme Court that: "Appellant asserts that his case was decided wrong previously and manifest injustice would result from letting his unconstitutional death sentences stand when so many other individuals on Florida's death row either received Hurst relief or were never sentenced to death based on a bare majority vote and a jury override." IB at 16. Finally, as Respondent pointed out, Petitioner concluded by asserting "[i]t is clear that Appellant is being deprived of the rights he is entitled to under the Equal Protection Clause and the Fifth, Eighth, and Fourteenth Amendments." IB at 30.

In addition, it was evident Petitioner was appealing from the circuit court's

denial of Claim 1 of Petitioner's successive motion for postconviction relief. In its order, the circuit court summarized the claim as follows: "Defendant claims he is being deprived of rights under the Equal Protection Clause and the Fifth, Eighth, and Fourteenth Amendments". Pet. App. A2 at 4-5. As Petitioner raised his Equal Protection Clause argument in both of the lower Florida courts, this is not a case where Petitioner raised the argument for the first time on appeal. Contrary to Respondent's opinion, Petitioner is seeking this Court's ***review*** of the Florida Courts' findings that Petitioner's death sentences were not in violation of the United States Constitution. *See* BIO at 19 n. 5 (citing *Cutter v. Wilkinson*, 544 U.S. 709, 719 n. 7 (2005)).

IV. Respondent inappropriately seeks to contort Petitioner's argument into a Sixth Amendment issue

Respondent misconstrues Petitioner's arguments that his death sentences are unconstitutional in light of the Fifth, Eighth, and Fourteenth Amendments, and incorrectly claims that the Sixth Amendment governs. BIO at 14. Respondent also insinuates that "this Court's decision in *McKinney v. Arizona*, 589 U.S. 139 (2020) controls and forecloses Zakrzewski's arguments". BIO at 15. Respondent further remarks that Petitioner did not invoke the Sixth Amendment or *McKinney v. Arizona.* BIO at 14-17. Respondent is correct in that statement. Petitioner was remorseful, accepted responsibility for the crime, and pled guilty to the three contemporaneous counts. Respondent continues to point to his guilty pleas making him "death eligible," while missing Petitioner's actual argument, that Petitioner is scheduled to be executed Thursday for jury votes that if received today would not constitutionally

allow him to be sentenced to death.

There is a difference between being "death eligible" and actually receiving a death sentence. The former does not always lead to the latter. Today, even in Florida, Petitioner's guilty pleas would lead to a penalty phase trial where a jury would hear aggravating and mitigating circumstances. The distinction is that if Petitioner received jury votes of 7-5, 7-5, and 6-6 today, he would have received a life sentence without the possibility of parole instead of a death sentence. Therefore, even though he would have been "death eligible," the jury votes would make him ineligible to be sentenced to death.

In addition to Petitioner's arguments establishing that the evolving standards of decency require review of the constitutionality of Petitioner's death sentences under the Eighth Amendment to the United States Constitution, it is also arguable that "jury sentencing in capital cases is mandated by the Eighth Amendment." *Ring v. Arizona*, 536 U.S. 584, 614 (2002) (Breyer, J., concurring). Justice Breyer has opined that "the Eighth Amendment requires that a jury, not a judge, make the decision to sentence a defendant to death." *Hurst v. Florida*, 577 U.S. 92, 103 (2016) (Breyer, J., concurring) (quoting *Ring*, 536 U.S. at 614 (Breyer, J., concurring)). "[T]he danger of unwarranted imposition of the [death] penalty cannot be avoided unless 'the decision to impose the death penalty is made by a jury rather than by a single government official'" *Ring*, 536 U.S. at 618-19 (Breyer, J., concurring) (quoting *Spaziano v. Florida,* 468 U.S. 447, 469 (1984) (Stevens, J., concurring in part and dissenting in part)).

Finally, Petitioner also discussed *Hurst v. Florida* not for any Sixth Amendment issue, but because approximately 145 similarly situated individuals on Florida's death row received relief due to *Hurst v. Florida* and *Hurst v. State*.[1] *See* Petition at 14-16. Petitioner is one of seventeen individuals who did not receive the same benefit. Yet, over 120 death row inmates with worse jury recommendations (which would be legal jury votes if received today in Florida because they were 8-4 and higher) received relief. These statistics support Petitioner's argument that his death sentences violate the Fourteenth Amendment.

[1] *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), stemming from this Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002) which led to the Florida Supreme Court's discriminatory decision to set the date for retroactive relief to capital cases that only became final after June 24, 2002.

CONCLUSION

For all of these reasons above, along with the reasons detailed in Mr. Zakrzewski's petition, the Court should grant the petition for a writ of certiorari and order further briefing, or vacate and remand this case to the Supreme Court of Florida.

Respectfully submitted,

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