

IN THE
SUPREME COURT OF THE UNITED STATES

SAMUEL LEE SMITHERS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR OCTOBER 14, AT 6:00 P.M.

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CAPITAL CASE

QUESTION PRESENTED

Whether this Court should exercise its certiorari jurisdiction to review a claim that the elderly are exempt from execution based on society's "evolving standards of decency" under the Eighth Amendment of the United States Constitution when the Florida Supreme Court passed on the question below because the claim failed on independent and adequate state law grounds?

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OPINION BELOW

The decision below from the Florida Supreme Court appears as *Smithers v. State*, No. SC2025-1507, 2025 WL 2837399 (Fla. Oct 7, 2025).

JURISDICTION

Smithers asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257. The State of Florida agrees that this statute sets out the scope of this Court's certiorari jurisdiction. Because the issue raised was resolved on independent and adequate state law grounds, however, this case is inappropriate for the exercise of this Court's discretionary jurisdiction. Nor does the Florida Supreme Court's opinion conflict with any decision by this Court, another state court of last resort, or a United States court of appeals. *See* Sup. Ct. R. 10(b)-(c)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The State accepts Smithers' recitation of the constitutional provisions involved in this matter.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Samuel Lee Smithers was indicted on two counts of first-degree murder for the murders of Cristy Cowan and Denise Roach. The jury trial resulted in guilty verdicts on December 18, 1998. Following the penalty phase, the jury returned a unanimous death recommendation on both counts. The trial court sentenced Smithers to death for the murders of the two victims on June 25, 1999.

I. Facts of the Crimes

Beginning in 1995, Smithers arranged with the owner of a multi-acre property in Plant City to mow the lot's lawn. *Smithers v. State*, 826 So. 2d 916, 918 (Fla. 2002). The property also had a vacant house and multiple ponds. *Id.* On May 28, 1996, deputies visited the property after the property owner reported Smithers' suspicious behavior. *Id.* at 919. The deputies eventually found the dead body of Cristy Cowan floating in one of the ponds on the property. *Id.* Later, a dive team also discovered the body of Denise Roach in the same pond. *Id.*

The medical examiner established that Cowan had sustained injuries to her eye, lip, and jaw. *Id.* at 920. She also sustained chop wounds on the top of her head and behind her ear. *Id.* The wounds on the top of Cowan's head penetrated her brain. *Id.* She also had several wounds consistent with manual strangulation. *Id.* Cowan's cause of death was strangulation combined with various chop wounds. *Id.* The medical examiner noted Roach's body had been submerged anywhere between seven and ten days. *Id.* Roach had sustained multiple injuries including blunt force impact to her face causing bone fractures, sixteen small puncture wounds in her skull, and injuries consistent with manual strangulation. *Id.* Roach's cause of death was a combination of the blunt force impact, stab wounds, and strangulation. *Id.*

Smithers initially told law enforcement he was not involved, but eventually he confessed that he murdered both women. *Id.* at 919. Smithers alleged he drove Cowan to the property, but they got into a dispute that escalated to violence and eventually he killed her. *Id.* at 919–20. Smithers also recounted he took steps to conceal her body in the pond before and after the owner arrived on the property. *Id.* Smithers claimed

that Roach also died after a verbal dispute turned violent. *Id.* at 919. Smithers admitted taking steps to conceal Roach's body in the pond and clean up the murder scene. *Id.* After this confession, Smithers was arrested. *Id.*

II. Prior Court Proceedings

During the guilt-phase trial, Smithers completely changed his story. Now Smithers suggested he had been blackmailed by an unnamed mystery man into using the property for drug transactions. *Id.* at 920–21. Smithers claimed that this mystery man was responsible for killing the victims. *Id.* at 921. Smithers merely cleaned up the murder scenes. *Id.* After both sides rested their case, the jury returned a guilty verdict. *Id.*

During the penalty phase, Smithers' counsel presented testimony from multiple witnesses. *Id.* at 921. After hearing the testimony of multiple witnesses, the jury unanimously recommended a death sentence on both murders. *Id.* at 922. On June 25, 1999, the trial court published its sentencing order and found, for both murders, the aggravators¹ substantially outweighed the mitigators so the court sentenced Smithers to death. DAR:259–60.²

¹ The trial court found three aggravators for Cowan's murder: (1) previous violent felony (contemporaneous murder), (2) the murder was especially heinous, atrocious, or cruel (HAC), and (3) the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (CCP); and two aggravators for Roach's murder: (1) previous violent felony (contemporaneous murder) and (2) HAC. DAR:246–253.

² The State will use the following to identify the respective state appellate records: the direct appeal (SC1960-96690, *Smithers v. State*, 826 So. 2d 916 (Fla. 2002)) will be cited as DAR:[Page Number] for Records. The proceedings under a death warrant (SC2025-1507) would be Smithers' third postconviction proceedings and will be cited

Smithers then unsuccessfully sought appellate relief in both state and federal courts. *See Smithers*, 826 So. 2d at 918–22 (affirming conviction on direct appeal); *Smithers v. State*, 18 So. 3d 460, 473 (Fla. 2009) (affirming denial of initial postconviction claims); *Smithers v. Sec’y, Dep’t of Corr.*, 2011 WL 2446576 (M.D. Fla. June 15, 2011) (denying federal habeas relief); *Smithers v. Sec’y, Fla. Dep’t of Corr.*, 501 F. App’x 906 (11th Cir. 2012) (affirming district court’s denial of federal habeas relief); *Smithers v. State*, 244 So. 3d 152 (Fla. 2018) (affirming denial of successive postconviction claims). During these postconviction proceedings, Smithers never raised any claims about his advanced age. Smithers attained the age of sixty-five on January 30, 2018.

III. Warrant Litigation

On September 12, 2025, Governor Ron DeSantis signed Smithers’ death warrant. Smithers filed his Successive Motion to Vacate Judgment of Conviction and Sentence arguing that the Eighth Amendment of the Constitution of the United States categorically bars his execution because he is older than sixty-five years. 3PCR:174–75; 183; 188. The trial court summarily denied Smithers’ successive motion and Smithers appealed. 3PCR: 247–48, 253–69.

On October 7, 2025, the Florida Supreme Court affirmed the summary denial of Smithers second successive postconviction motion. *Smithers v. State*, No. SC2025-1507, slip op. at 15 (Fla. Oct. 7, 2025). The Florida Supreme Court found that his claim was both untimely and procedurally barred under the Florida Rules of Criminal

as 3PCR:[Page Number].

Procedure. *Id.* at 11–12. Furthermore, the Florida Supreme Court determined that, even if his claim was not barred by state procedural rules, Smithers’ claim was foreclosed by the Florida Constitution’s conformity clause, which requires all Florida courts to treat United States Supreme Court precedent as both the floor and ceiling for any protections against cruel and unusual punishment. *Id.* at 13–14. Given these limitations, the Florida Supreme Court declined to address Smithers’ argument about whether there was a national consensus against executing the elderly.

REASONS FOR DENYING THE WRIT

This Court should decline certiorari review of the Florida Supreme Court decision because the lower court declined to entertain the claim that the elderly are exempt from execution because the claim failed on state law grounds, the lower court’s decision does not present any conflict, and this case would be a poor vehicle for review.

As a threshold consideration, this Court lacks jurisdiction to consider this petition because the Florida Supreme Court’s decision rested on two independent and adequate state law grounds. Even if the decision did not, Smithers cites no court which conflicts with the Florida Supreme Court’s decision. While the Florida Supreme Court passed on analyzing the merits of his claim, Smithers’ case would be an incredibly poor vehicle for considering any important questions of federal law because he failed to demonstrate there is anything approaching a national consensus against the practice of executing the elderly or that his execution would be contrary to the penological purpose of the death penalty. On all fronts, Smithers fails to present a persuasive justification for why this Court should, on the eve of his execution, take up his petition.

I. This Court Lacks Jurisdiction.

When both state and federal questions are involved in a state court proceeding, this Court has no jurisdiction to review the case if the state court judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the state court's decision. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016). Here, the Florida Supreme Court's decision rested solely on independent and adequate state grounds. The Florida Supreme Court rejected Smithers' claim because: (1) Smithers' claim was untimely and procedurally barred under the state rules of criminal procedure; and (2) Article 1, Section 17 of the Florida Constitution, "Excessive punishment," contains a clause which requires all protections against cruel and unusual punishment be construed "in conformity with decisions of the United States Supreme Court" interpreting the Eighth Amendment to the United States Constitution ("conformity clause"). Art. I, § 17, Fla. Const. The Florida Supreme Court never even addressed the merits of Smithers' claim because both independent and adequate state grounds were sufficient to defeat his claim. Thus, this Court lacks jurisdiction over Smithers' petition.

A. The Lower Court's Decision Rested on State Procedural Grounds.

This Court has recognized that when a state court relies on time or procedural bars, those decisions rest on independent and adequate state law grounds. *See Walker v. Martin*, 562 U.S. 307, 316–17 (2011) (finding California's time bar qualified as an adequate state procedural ground); *Coleman v. Thompson*, 501 U.S. 722, 730 (1991) (noting that independent and adequate state grounds exist where a state court finds

“the petitioner had failed to meet a state procedural requirement”). Here, the Florida Supreme Court found that Smithers’ claim was both untimely and procedurally barred under state procedural rules for bringing postconviction claims. For the timeliness requirements, the Florida Supreme Court relied on the Florida Rule of Criminal Procedure 3.851(d)(2). *Smithers*, No. SC2025-1507, at 11–12. Tellingly, Smithers ignores the lower courts’ procedural grounds for rejecting his claim. Because the state procedural rules are independent and adequate state law grounds sufficient to deprive this Court of jurisdiction, Smithers’ omission is fatal to his petition and this Court should decline his petition on these grounds alone.

B. To Reach the Question Presented, this Court Would Have to Override the Florida Supreme Court’s Interpretation of Florida’s Conformity Clause.

In the decision below, the Florida Supreme Court noted that Article 1, Section 17 of the Florida Constitution contains a conformity clause which limits the scope of what is considered cruel and unusual punishment in Florida. *Smithers*, No. SC2025-1507, at 13–15.³ The Florida Supreme Court has consistently interpreted this provision of the Florida Constitution to mean that Florida courts must treat this Court’s jurisprudence as both the floor and the ceiling of any protection the Florida Constitution provides against cruel and unusual punishment. *Id.*; *see also Gudinas*

³ The conformity clause reads as follows: “The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be 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.” Art. I, § 17, Fla. Const.

v. State, 412 So. 3d 701, 713 (Fla. 2025) (describing Florida’s conformity clause as precluding any interpretation of cruel and unusual punishment that is “more expansive . . . than the Supreme Court has interpreted the federal prohibition”); *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023) (noting that the conformity clause means this Court’s “interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida”); *Lawrence v. State*, 308 So. 3d 544, 551 (Fla. 2020) (holding that “the conformity clause expressly forecloses this Court’s imposition of a comparative proportionality review requirement”); *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019) (holding that the conformity clause prohibited the court from considering whether “national trends” warranted reviewing whether imposing the death penalty constituted cruel and unusual punishment); *Correll v. State*, 184 So. 3d 478, 489 (Fla. 2015) (citing the conformity clause in declining to criticize the constitutional soundness of federal precedent for proving a lethal injection challenge). Unless and until this Court recognizes a certain class as exempt from execution, the Florida Supreme Court’s understanding of the Florida Constitution is that it will not venture beyond what this Court has already decided. Therefore, to reach the constitutional question presented in Smithers’ petition, this Court would first have to consider whether Florida was misinterpreting its own state constitution.

This Court has long held that it lacks jurisdiction to review matters of state law. *See Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). If a state court’s decision is separately based on state law, this Court “will not undertake to review the decision.”

Florida v. Powell, 559 U.S. 50, 57 (2010). Smithers' petition is nothing but an invitation to second-guess the Florida Supreme Court's interpretation of its own state constitution. His suggestion is inconsistent with this Court's long-held precedents limiting its jurisdiction. Therefore, his petition should be denied.

II. The Decision Below Does Not Conflict with Any Other Court.

This Court has noted that cases which have not divided the federal or state courts do not warrant review in this Court. *Rockford Life Ins. Co. v. Illinois Dept. of Revenue*, 482 U.S. 182, 184 n.3 (1987). This limitation is fatal to Smithers' petition in two respects: (1) he has not identified a single court in any jurisdiction within the United States which has held that the elderly should be categorically exempt from execution, and (2) even if another federal or state court had found the elderly should be categorically exempt from execution, Smithers cannot establish that it conflicts with the Florida Supreme Court's decision because of Florida's unique conformity clause.

A. Smithers Has Identified No Court Which Supports His Position on the Question Presented.

Throughout the proceedings below, and in his petition to this Court, Smithers has failed to cite a single court which has adopted the position that the elderly should be exempt from execution. While Smithers certainly argues that this Court's precedent *could* be expanded to include the elderly within the meaning of cruel and unusual punishment, he cannot claim that this Court's jurisprudence directly conflicts with the decision of the Florida Supreme Court. As to any federal court of appeals, the Ninth Circuit appears to be the only federal appellate court that has

squarely addressed this question.⁴ In *Allen v. Ornoski*, 435 F.3d 946 (9th Cir. 2006), the defendant argued that it would be cruel and unusual punishment to execute him due to his “old age and physical infirmities.” *Id.* at 951. The district court rejected this claim, and the Ninth Circuit refused to even issue a certificate of appealability on the question because (1) the logic of this Court’s “evolving standards of decency” jurisprudence did not justify applying it to the elderly, and (2) there were no objective indicia that any national consensus had formed against the practice of executing the elderly. *Id.* at 952–55. Here, Smithers cannot even point to a physical infirmity that he suffers. He offers no reason why the Ninth Circuit’s analysis is flawed and certainly has not presented any conflicting decision from another federal court of appeals. Similarly, Smithers has failed to identify any state court of last resort which has held that executing the elderly would constitute cruel and unusual punishment. He cannot claim that the Florida Supreme Court’s decision conflicts with any court within these United States and his petition does not merit this Court’s attention.

⁴ In *Hubbard v. Campbell*, 379 F.3d 1245 (11th Cir. 2004), the defendant raised a claim that his elderly status and dementia should bar his execution, but the Eleventh Circuit dismissed the claim, never addressing the merits of his claim. *Id.* at 1247. There are only a handful of federal district courts which have considered similar questions, and none of them support Smithers’ position. *Carpenter v. Martel*, No. C 00-3706 MMC, 2011 WL 5444165, at *8 (N.D. Cal. Nov. 9, 2011) (denying a claim wherein the defendant argued “executing a person of advanced age will not serve any legitimate penological interest, in particular, deterrence or retribution”); *Holliday v. New York*, No. 10-CV-0193 MAT, 2011 WL 2669615, at *4 (W.D.N.Y. July 7, 2011) (rejecting a claim, in a non-capital case, that it would be cruel and unusual punishment to incarcerate an individual for fifteen years because of “his age and the fact that he suffers from a constellation of debilitating illnesses”); *Allen v. Ornoski*, No. CIVS0664FCDDAD, 2006 WL 83384, at *4–6 (E.D. Cal. Jan. 12, 2006) (find no fault with the state court’s rejection of the defendant’s claim that the defendant’s status as an elderly and infirm inmate exempted him from execution).

B. Smithers Has Identified No Court Which Conflicts with the Florida Constitution's Conformity Clause.

Even if Smithers could identify a court which held that the elderly should be exempt from execution, he would still be hard-pressed to establish that this decision conflicted with the Florida Supreme Court's decision because the Florida Supreme Court passed on the question Smithers now presents to this Court. Instead, the Florida Supreme Court simply found the state law precluded it from expanding the meaning of cruel and unusual punishment beyond what has already been recognized by this Court. *Smithers*, No. SC2025-1507, slip op. at 13–15. Thus, to establish a true conflict with the Florida Supreme Court's decision, Smithers would need to point to other courts that have found that the Eighth Amendment compels states to develop protections beyond what has already been recognized by this Court.

This Court has noted that “state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution.” *Arizona v. Evans*, 514 U.S. 1, 8 (1995). Yet nothing in the United States Constitution *compels* states to provide protection beyond what this Court has determined the Eighth Amendment requires. The fact that the people of the State of Florida have amended their State Constitution to limit certain rights to what this Court has already decided is entirely consistent with this Court's interest in comity and the rule of law. Smithers identifies no court which has held that a state must extend the protection against cruel and unusual punishment beyond what this Court. Thus, Smithers cannot point to any court which truly conflicts with the Florida Supreme Court's decision.

III. This Case Would Be a Poor Vehicle for Deciding Any Important Questions of Federal Law.

This case would be a poor vehicle for resolving any important questions of federal law because the Florida Supreme Court never even reached the question presented, choosing instead to rest its decision on state law grounds. Had the Florida Supreme Court reached the question presented, it would have discovered that Smithers failed to establish that there is anything approaching objective indicia of a national consensus against executing the elderly. Smithers certainly references some legislation which concerns the elderly but provides no indication that any state legislature has limited its state's ability to execute the elderly. Smithers also did not adequately explain why executing the elderly is inconsistent with the penological purposes of the death penalty. The elderly are not less culpable as a class; thus, it is entirely consistent with the penological purpose of the death penalty to carry out their sentence. Since Smithers has failed to prove his case, his petition would be a poor vehicle for this Court to consider any important questions of federal law.

A. Smithers Cannot Demonstrate There is Anything Approaching a National Consensus Against Executing the Elderly.

Whenever this Court employs the evolving standards of decency rationale to analyze the Eighth Amendment, it looks to “objective indicia” from “legislative enactments and state practice with respect to executions” to assess whether there is a national consensus against the practice. *Roper v. Simmons*, 543 U.S. 551, 563 (2005) (examining the number of states with legislative prohibitions against executing individuals under the age of eighteen and the frequencies of such executions where there was no formal legislative prohibition); *see also Atkins v. Virginia*, 536 U.S. 304,

316 (2002) (considering the same for intellectually disabled individuals); *Thompson v. Oklahoma*, 487 U.S. 815, 822 (1988) (stating that this Court determines what the evolving standards of decency are by evaluating the “work product of state legislatures and sentencing juries”); *Woodson v. North Carolina*, 428 U.S. 280, 293 (1976) (saying that “two crucial indicators of evolving standards of decency respecting the imposition of punishment in our society” are “jury determinations and legislative enactments”). Legislative enactments, unlike jury decisions or state practices, are “[t]he clearest and most reliable objective evidence of contemporary values.” *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989) (overturned on other grounds).

Here, Smithers points to no state legislature which has determined that a person is exempt from execution merely because he has reached age sixty-five.⁵ Instead, Smithers resorts to a handful of Florida legislative enactments and one federal statute (with a vague, unsupported reference to “states across this country”) to argue states “give special considerations to the elderly.” Pet at 6–7. Perhaps Smithers simply misunderstands this Court’s jurisprudence. Generalized reference to legislation related to a certain class of individuals is insufficient to establish there

⁵ The fact that there are some states which have abolished the death penalty does little to support Smithers’ argument that a specific national consensus has developed against executing the elderly. See, e.g., *Thompson v. Oklahoma*, 487 U.S. 815, 829 (1988) (limiting analysis of a national consensus only to the states “that have expressly established a minimum age in their death-penalty statutes”); see also *Roper v. Simmons*, 543 U.S. 551, 610–11 (2005) (Scalia, J., dissenting) (pointing out the “nomological desperation” of referencing states who have eliminated the death penalty to support the contention that there is a national consensus against executing juveniles). Even if it had any significance, Smithers’ position would still be in the minority.

is a national consensus against subjecting that class to a specific punishment. Rather, when evaluating whether there is a national consensus against executing a certain group, this Court looks to “legislative enactments . . . *with respect to executions.*” *Roper*, 543 U.S. at 563 (emphasis added). Smithers’ failure to cite a single state legislature which has forbidden the practice of executing the elderly is fatal to his argument.

Having failed to come up with a single state which has forbidden the practice, Smithers argues that the relative infrequency of executions involving the elderly must be proof that there is a national consensus against the practice. Pet at 8–10. But this argument rests on a flawed assumption that the rarity of the event must be *because* those individuals are elderly. There is a plethora of confounding variables that Smithers must first consider before his assertion carries any weight. *See Allen*, 435 F.3d at 954 (finding a similar argument about the infrequency of executions involving the elderly unpersuasive because “[i]t may very well be that other societal forces account for the paucity of elderly persons executed”). The relative infrequency of executions could simply be a statistical artifact because most offenders were relatively young when they committed their crimes and they were executed before they become elderly; it could be because decisionmakers have elected to prioritize the execution of individuals who have committed far more heinous crimes; it could be because death penalty appeals are lengthy and many offenders died before their appeals were exhausted; or it could be any other reason that has no connection to any national aversion to executing those who happen to be elderly.

Smithers does not attempt to account for any confounding variables. Instead, he asserts his approach is consistent with *Roper* and *Atkins*. Pet. at 10. But without the antecedent legislative enactments, Smithers' numerical argument is founded on supposition and speculation. Since Smithers has not established anything approaching a national consensus exists against executing the elderly, this Court does not need to entertain Smithers' arguments about the penological purpose of the death penalty before it can comfortably reject his petition. *See Atkins*, 536 U.S. at 312–13 (establishing that a defendant first has the burden of establishing there is a national consensus against the practice before the court will consider whether there is a penological rationale for agreeing or disagreeing with the national consensus).

B. Smithers Did Not Establish That His Execution Would Be Inconsistent with the Penological Purpose of the Death Penalty.

Smithers asserts, with minimal argument, that his execution would serve no deterrent or retributive purpose because he is elderly. Pet at 11–14. The central theme of this Court's jurisprudence exempting certain classes of individuals from capital punishment is that those individuals, due to some developmental or cognitive capabilities, are less culpable of the crimes they committed. *See, e.g., Roper*, 543 U.S. at 571 (finding juveniles are less culpable for their criminal conduct); *Atkins*, 536 U.S. at 319 (finding the intellectually disabled are less culpable for their criminal conduct); *Gregg v. Georgia*, 428 U.S. 153, 183 (1976) (explaining the penological purpose of the death penalty is linked to the culpability of the individual for their criminal conduct). The elderly, by contrast, do not have diminished culpability as a class. While the elderly may have a greater *risk* of developing cognitive issues which diminish their

culpability, they are not, as a class, similar in any respect to juveniles or the intellectually disabled.

Smithers ignores the rationale employed by this Court and instead asserts that this Court must look to the defendant's age at the time he is scheduled to be executed. Pet at 12. But, to support this argument, he offers only a series of unsubstantiated assertions attempting to analogize his argument to a *Ford* competency-to-be-executed claim. Pet at 12–13. *Ford* claims are premised on the rationale that there is little retributive value in “executing a person who has no comprehension” of why he is being punished. *Ford v. Wainwright*, 477 U.S. 399, 409 (1986). As this Court recognized in *Madison v. Alabama*, 586 U.S. 265, 277 (2019), claims about a defendant's competency to be executed cannot be categorically expanded. Rather, this Court preferred a more tailored approach, saying the relevant test, regardless of the defendant's physical or mental condition, is whether the defendant “may still be able to form a rational understanding of the reasons for his death sentence.” *Id.* at 267. Smithers identifies no persuasive reason to depart from *Madison*'s tailored approach. Because Smithers has not shown how his execution would be inconsistent with the penological purpose of the death penalty, his petition would be a poor vehicle for settling any important, unsettled questions of federal law.

CONCLUSION

Smithers' petition for a writ of certiorari should be denied.

Respectfully submitted,

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