No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FRANK ATHEN WALLS,

***Petitioner*,**

vs.

STATE OF FLORIDA,

Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, DECEMBER 18, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

1. Has Florida's partial retroactive treatment of *Hall v. Florida* denied intellectually disabled people the protections of *Atkins* and should procedural bars exist for categorical bars to the death penalty?

2. Does a state constitutional provision that prohibits any consideration of evolving standards of decency violate this Court's jurisprudence?

LIST OF PARTIES

All parties appear on the caption to the case on the cover page. Mr. Walls was the Appellant below. The State of Florida was the Appellee below.

RELATED CASES

TRIAL AND SENTENCING

Circuit Court of the First Judicial Circuit, Okaloosa, Florida
Docket Number: 87-CF-856
Case Caption: State of Florida v. Frank Athen Walls
Date of Entry of Judgment: Convicted, July 20, 1988; Sentence of Death, August 24, 1988.
Unreported.

DIRECT APPEAL

Florida Supreme Court
Docket Number: SC1960-73261
Case Caption: Frank Athen Walls v. State of Florida
Date of Entry of Judgment: Order entered, April 11, 1991; Rehearing Denied, June 13, 1991; Mandate issued, July 30, 1991.
Walls v. State, 580 So.2d 131 (Fla. 1991).

TRIAL AND SENTENCING

Circuit Court of the First Judicial Circuit, Okaloosa, Florida
Docket Number: 87-CF-856
Case Caption: State of Florida v. Frank Athen Walls
Date of Entry of Judgment: Convicted, June 18, 1992; Sentence of Death, July 29, 1992.
Unreported.

DIRECT APPEAL

Florida Supreme Court
Docket Number: SC1960-80364
Case Caption: Frank Athen Walls v. State of Florida
Date of Entry of Judgment: Order entered, July 7, 1994; Rehearing Denied, August 31, 1994; Mandate issued, September 30, 1994.
Walls v. State, 641 So.2d 381 (Fla. 1994).

PETITION FOR WRIT OF CERTIORARI

United States Supreme Court
Docket Number: 94-7005
Case Caption: Frank Athen Walls v. Florida
Date of Entry of Judgment: January 23, 1995.
Walls v. Florida, 115 S.Ct. 943 (1995).

POSTCONVICTION MOTION TO VACATE JUDGMENT AND SENTENCE

Circuit Court of the First Judicial Circuit, Okaloosa County, Florida

Docket Number: 87-CF-856
Case Caption: State of Florida v. Frank Athen Walls
Date of Entry of Judgment: November 20, 1997; Rehearing Denied December 3, 1997.
Unreported

APPEAL FROM DENIAL OF POSTCONVICTION MOTION TO VACATE JUDGEMENT AND SENTENCE AND CONSOLIDATED STATE HABEAS PETITION

Florida Supreme Court
Docket Number: SC2003-0633 & SC03–1955
Case Caption: Frank Athen Walls v. State of Florida
Date of Entry of Judgment: Feb. 9, 2006; Rehearing Denied April 7, 2006; Mandate Issued, April 24, 2006.
Walls v. State, 926 So.2d 1156 (Fla. 2006).

SUCCESSIVE MOTION TO VACATE DEATH

Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket Number: 87-CF-856
Case Caption: State of Florida v. Frank Walls
Date of Entry of Judgment: July 18, 2007
Unreported

APPEAL FROM SUMMARY DENIAL OF SUCCESSIVE POSTCONVICTION MOTION

Florida Supreme Court
Docket Number: SC07-2007
Case Caption: Frank A. Walls v. State of Florida
Date of Entry of Judgment: October 31, 2008
Walls v. State, 3 So.3d 1248 (Fla. 2008).
Unpublished

FEDERAL HABEAS CORPUS PETITION

United States District Court, Middle District of Florida, Tampa Division
Docket Number: 3:06cv237/MCR
Case Caption: Frank A. Walls v. Walter A. McNeil, Secretary, Fl. Dept. of Corrections
Date of Entry of Judgment: September 30, 2009
Walls v. Secretary, Dept. of Corrections, 2009 WL 3187066 (U.S. F.L.M.D. 2009).

APPEAL FROM DENIAL OF PETITION OF FEDERAL HABEAS CORPUS

United States Court of Appeals, Eleventh Circuit.
Docket Number: 09-15706-P
Case Caption: Frank A. Walls v. Walter A. McNeil, Secretary, Fl. Dept. of Corrections
Date of Entry of Judgment: September 28, 2011.

Walls v. Buss, 658 F.3d 1274 (11th Cir. 2011).

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United States Supreme Court

Docket Number: 11–8965

Case Caption: Frank A. Walls v. Kenneth S. Tucker, Secretary, Florida Department of Corrections.

Date of Entry of Judgment: April 30, 2012.

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SUCCESSIVE MOTION TO VACATE DEATH

Circuit Court of the First Judicial Circuit, Okaloosa County, Florida

Docket Number: 87-CF-856

Case Caption: State of Florida v. Frank Walls

Date of Entry of Judgment: July 10, 2015

Unreported

APPEAL FROM SUMMARY DENIAL OF SUCCESSIVE POSTCONVICTION MOTION

Florida Supreme Court

Docket Number: SC15–1449

Case Caption: Frank A. Walls v. State of Florida

Date of Entry of Judgment: Oct. 20, 2016; Rehearing denied: January 9, 2017; Mandate Issued, January 25, 2017.

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SUCCESSIVE MOTION TO VACATE DEATH

Circuit Court of the First Judicial Circuit, Okaloosa County, Florida

Docket Number: 87-CF-856

Case Caption: State of Florida v. Frank Walls

Date of Entry of Judgment: February 20, 2017; Rehearing Denied April 4, 2017.

Unreported

APPEAL FROM SUMMARY DENIAL OF SUCCESSIVE POSTCONVICTION MOTION

Florida Supreme Court

Docket Number: SC22-72

Case Caption: Frank A. Walls v. State of Florida

Date of Entry of Judgment: February 16, 2023; Rehearing denied: March 29, 2023; Mandate Issued, April 14, 2023.

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Docket Number: 22-7866
Case Caption: Walls v. Florida
Date of Entry of Judgment: October 2, 2023
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Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket Number: 87-CF-856
Case Caption: State of Florida v. Frank A. Walls.
Date of Entry of Judgment: December 5, 2025.
Unreported

APPEAL FROM SUMMARY DENIAL OF SUCCESSIVE POSTCONVICTION MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE OF DEATH AFTER DEATH WARRANT SIGNED, DEFENDANT'S MOTION FOR STAY OF EXECUTION AND DEFENDANT'S WRIT FOR HABEAS CORPUS CONSOLIDATED

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Docket Number: SC25-1915 & SC25-1917
Case Caption: Frank A. Walls v. State of Florida
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PETITION FOR WRIT OF CERTIORARI

Petitioner, Frank A. Walls, respectfully requests that this Court issue a writ of certiorari to review the judgment of the Florida Supreme Court and address the important questions of federal constitutional law presented. This case presents a fundamental question concerning the Sixth Amendment right to a jury trial, the Due Process Clause requirement of proof beyond a reasonable doubt, and the Eighth Amendment need for a reliable capital sentencing determination.

CITATION TO OPINIONS BELOW

The opinion of the Florida Supreme Court *Walls v. State*, SC25-1915 & SC25-1917 is reproduced at Appendix A. The trial court's order denying Walls' successive motion for post-conviction relief is reproduced at Appendix B.

JURISDICTION

The opinion of the Florida Supreme Court was entered on December 11, 2025. (Appendix A). This petition is timely filed. This Court has jurisdiction pursuant to 28 U.S.C. § 1257

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. VIII.

The Eighth Amendment to the Constitution of the United States

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. CONST. AMEND. XIV.

The Fourteenth Amendment to the Constitution of the United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In *Hall v. Florida*, 572 U.S. 701 (2014), this Court found the Florida Supreme Court's application of its Intellectual Disability statute unconstitutional under *Atkins v. Virginia*, 536 U.S. 304 (2002). In *Walls v. State*, 213 So. 3d 340 (2016) (*per curiam*), the Florida Supreme Court agreed that its prior statutory interpretation had unconstitutionally restricted *Atkins* claims to a smaller subgroup of individuals than recognized by the medical community and determined *Hall* to be retroactive. As a result, capital defendants who were denied under the unconstitutional pre-*Hall* framework were entitled to receive a new, "holistic" review of their *Atkins* claims. However, the Florida Supreme Court sua sponte reversed its decision in *Walls* and determined that *Hall* announced a new non-watershed rule for Eighth Amendment purposes and thus was not retroactive. *See Phillips v. State*, 299 So.3d 1013 (Fla. 2020).

Procedural History:

In 1987, 19-year-old Frank Walls, who is intellectually disabled, was arrested and charged with two counts of first degree-murder. Before his 21st birthday, a jury convicted him as charged and recommended a penalty of life imprisonment for one of the murders, and recommended the death penalty, by a vote of 7-5, on the second murder. The trial judge condemned him to death and made all of the necessary factual findings in order to support the death sentence.

On direct appeal, Mr. Walls's convictions and death sentence were vacated because, in the months following his arrest, a female jail guard, acting as an agent for the state, manipulated the intellectually disabled teen into providing incriminating information that was used against him. The Florida Supreme Court reversed his conviction and sentence finding that:

> [G]ross deception is precisely what led to the statements made by Walls while in custody. Here we find the surreptitious, admittedly illegal gathering of information later transmitted to those conducting psychiatric evaluations of the accused. In this case, a state agent befriended Walls, fraudulently encouraged him to speak freely 'in confidence' to her, failed to warn him that the information she obtained later would be used against him in court, and discouraged him from telling his attorney of her activities. Later, these illegally obtained statements formed a substantial part of the basis for expert statements on which the trial court directly relied in finding Walls competent to stand trial.

Walls v. State, 580 So. 2d 131, 134 (Fla. 1991).

Mr. Walls was convicted again after a retrial, and the jury unanimously recommended a sentence of death.[1] There was no special verdict form or any indication of what aggravators or mitigators the jury found, if any. Mr. Walls's convictions and sentence were affirmed on direct appeal. *Walls v. State*, 641 So. 2d 381 (Fla. 1994) (cert denied) (*Walls v. Florida*, 513 U.S. 1130)(1995).

[1] Double Jeopardy precluded the State from seeking death again on one murder charge since Walls's original jury returned a life recommendation on that count. After Walls was again convicted of two counts of first degree murder, the judge automatically imposed a sentence of life imprisonment for one count of first degree murder.

Mr. Walls filed state and federal post-conviction challenges which were denied. While his federal habeas proceedings were pending, Mr. Walls filed a motion to bar his execution due to intellectual disability. The circuit court denied relief and the Florida Supreme Court affirmed the denial. *Walls v. State*, 3 So. 3d 1248 (Table) (Fla. 2008). The sole basis for the decision was that "[t]here is no evidence that Walls has ever had an IQ of 70 or below." *Id.* (citing *Cherry v. State*, 959 So. 2d 702 (Fla. 2007).

After this Court rejected Florida's rigid 70 IQ cutoff score in *Hall v. Florida*, 134 S.Ct. 1986 (2014), Mr. Walls filed a successive post-conviction motion alleging that he was entitled to a new evidentiary hearing under the *Hall* guidelines. The Florida Supreme Court agreed, finding that *Hall* applied retroactively and that Mr. Walls was entitled to a new evidentiary hearing to establish that his intellectual disability bars his execution. *Walls v. State*, 213 So. 3d 340 (Fla. 2016). His claims were ultimately denied and the Florida Supreme Court, based on its decision to only partially give retroactive effect to *Hall*, denied Mr. Walls a full and complete review of his intellectual disability claims. See Appendix C.

Mr. Walls, an intellectually disabled, death-sentenced prisoner—with two qualifying IQ scores, 72 and 74, obtained 15 years apart and adaptive deficits in *thirteen* medically-recognized categories[2]—has never had the merits of his intellectual disability claim decided by the Florida Supreme Court post-*Hall*. *See Hall*

2 These categories include fine-motor skills, social interaction, language comprehension, language expression, eating and meal preparation, toileting, dressing, personal self-care, domestic skills, time and punctuality, money and value, work skills, and home/community orientation. PCR-2. 155.

v. Florida, 572 U.S. 701 (2014). Because of Mr. Walls's intellectual disability, he is of a class of individuals constitutionally prohibited from execution under the Eighth Amendment. *See Atkins v. Virginia*, 536 U.S. 304 (2002). Mr. Walls has diligently raised an *Atkins* claim at every available juncture. Yet an amalgamation of wrongly-decided state court precedent and convoluted procedural hurdles have thus far prevented a merits-determination on whether Mr. Walls is categorially prohibited from being executed.

REASONS FOR GRANTING THE WRIT

This case presents questions of great importance for this Court regarding the analysis of a State court's duty to give retroactive effect to a federal constitutional holding. This area of the law remains complicated and unclear to many lower courts and practitioners. Further, this Court has repeatedly held that a death sentence "cannot be predicated on mere 'caprice' or on 'factors that are constitutionally impermissible.'" *Johnson v. Mississippi*, 486 U.S. 578, 584–85 (1988) (quoting *Zant v. Stephens*, 462 U.S. 862, 884–885, 887 n.24 (1983)). The Florida Supreme Court's sua sponte reversal of *Walls* in *Phillips* undermines the integrity of the judicial system and results in arbitrary eligibility determinations.

1. Intellectual Disability Should Not Be Subject to Procedural Bars.

"The Eighth Amendment prohibits certain punishments as a categorical matter." *Hall v. Florida*, 572 U.S. 701, 708 (2014). Categorical bans exist to protect both the individual as well as the interests of society. *See e.g. Ford v. Wainwright*,

477 U.S. 399, 409-10 (1986) (finding Eighth Amendment based categorical exemption not only protects the death-exempt individual but also protects "the dignity of society itself from the barbarity of exacting mindless vengeance[.]". The United States Supreme Court has never suggested that the Eighth Amendment prohibition on executing an intellectually disabled person is subject to any sort of waiver or procedural bar or default. Just as it would be illegal to execute a person who was convicted of committing a murder as a fifteen-year-old and who failed to raise an Eighth Amendment challenge at the appropriate time, *see Roper*, 543 U.S. at 568-69, or to execute a person who was convicted of rape but not murder and failed to raise a challenge at the appropriate time, *see Kennedy v. Louisiana*, 554 U.S. 407 (2008), so too it would be illegal to execute an intellectually disabled person who failed to raise his claim at the appropriate procedural time. *See, e.g., State ex re. Clayton v. Griffith*, 457 S.W.3d 735, 757 (Mo. 2015) (Stith, J., dissenting) ("[I]f [petitioner] is intellectually disabled, then the Eighth Amendment makes him ineligible for execution … [I]f a 14-year-old had failed to raise his age at trial or in post-trial proceedings then [] would [it] be permissible to execute him for a crime he committed while he was a minor? Of course not. His age would make him ineligible for execution. So too, here, if [petitioner] is intellectually disabled, then he is ineligible for execution."). Notwithstanding any waiver or provision of Florida law, the Eighth Amendment requires that persons "facing that most severe sanction … have a fair opportunity to show that the Constitution prohibits their execution." *Hall*, 134 S. Ct.

at 2001; *see also Walls v. State*, 213 So. 3d 340, 348 (Fla. 2016) (Pariente, J., concurring) ("More than fundamental fairness and a clear manifest injustice, the risk of executing a person who is not constitutionally able to be executed trumps any other considerations that this Court looks to when determining if a subsequent decision of the United States Supreme Court should be applied.").

The categorical bans that are recognized under the Eighth Amendment recognize the Amendment's "protection of dignity" that reflects "the Nation we have been, the Nation we are, and the Nation we aspire to." *Hall v. Florida*, 572 U.S. 701, 708 (2014). "A claim that a punishment is excessive", such as the execution of an intellectually disabled individual, "is judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the 'Bloody Assizes' or when the Bill of Rights was adopted, but by those that currently prevail." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002). A State rule that "will frequently and predictably cause a factfinder to determine that an individual who in fact is intellectually disabled is not" manifestly does not meet the command of the Eighth Amendment.

No state-law waiver provision can stand in the way of this important constitutional function. Death-sentenced individuals "must have a fair opportunity to show that the Constitution prohibits their execution." *Hall*, 572 U.S. at 724. Just as it would unquestionably be unconstitutional for the State to invoke timeliness or res judicate as justification to execute individuals subject to other categorical exemptions or exclusions, see e.g., *Roper v. Simmons*,543 U.S. 551 (2005) (juveniles);

Kennedy v. Louisiana, 554 U.S. 407 (2008) (individuals without murder conviction), so too would it be unconstitutional to execute Mr. Walls on the grounds that he failed to raise his claim at the "appropriate" procedural time or was "right too soon" by attempting to litigate before the consensus was reached. *See Sawyer v. Whitley*, 505 U.S. 333 (1992) (courts may hear otherwise defaulted claims where petitioner can show "by clear and convincing evidence that, but for a constitutional error," he would not be eligible for the death penalty).

"Once a State has granted prisoners a liberty interest, this Court [has] held that due process protections are necessary 'to insure that the state-created right is not arbitrarily abrogated.'" *Vitek v. Jones*, 445 U.S. 480, 488-89 (1980). Determining who benefits from a substantive right must not offend the Due Process Clause. In this matter, this court had originally granted Mr. Walls a hearing on his intellectual disability claim.

Due to the Florida courts erroneous interpretation of federal law, and its insistence on placing a time bar on intellectual disability claims, the State of Florida will execute an intellectually disabled defendant, in violation of the United States Constitution. This Court should reconsider any previous precedent that would violate Mr. Walls' rights to due process and would create an unacceptable risk under the Eighth Amendment of executing an individual that falls within one of the acknowledged categorical bars to the death penalty.

Notwithstanding any waiver or provision or Florida law, the Eighth Amendment required that persons "facing the most severe sanction…have a fair opportunity to show that the Constitution prohibits their execution." *Hall*, 134 S. Ct. at 2001; see also *Walls v. State*, 213 So. 3d 340, 348 (Fla. 2016) (Pariente, J., concurring) (""More than fundamental fairness and a clear manifest injustice, the risk of executing a person who is not constitutionally able to be executed trumps any other considerations that this Court looks to when determining if a subsequent decision of the United States Supreme Court should be applied."). Although the Florida Supreme Court failed to address the trial court's assessment of the merits of Mr. Walls' disability in 2023, there is a final opportunity for Mr. Walls' claim to be heard and fully appealed now. Multiple state courts have considered an *Atkins* claim under warrant, including at least one state supreme court that has held that an intellectual disability claim only ripens when a warrant is signed. *See Lard v. State*, 595 S.W.3d 355, 357 (Ark. 2020) (explaining that the issue of "whether Lard can be executed due to an intellectual disability" ripens only once an execution date has been set).

Lard's holding inherently recognizes that any colorable *Atkins* claim must be considered before an execution is carried out because the execution of an intellectually disabled is constitutionally prohibited. Id. While not under warrant, the Mississippi Supreme Court similarly rejected the State's argument that an *Atkins* claim could not be raised on procedural grounds in *Clark v. State*, reasoning that "the

Constitution 'restrict[s]…the State's power to take the life of any intellectual disabled individual" because "[a]pplying the waiver bar to such a claim carries with it the risk that an intellectually disabled individual will be executed[.]" 418 So. 3d 1226, 1230 (Miss. 2025) (internal citations omitted). Despite *Lard*'s holding and the United States Supreme Court never suggesting claims raising intellectually disability be subject to any type of bar, procedural or otherwise, the State, in response to Mr. Walls' successive motion, argue that Mr. Walls is barred from raising intellectual disability. Similarly, and as contemplated by *Lard*, because Mr. Walls is intellectually disabled and thus categorically excluded from the class of individuals a State may constitutionally execute, the merits of his claim must be heard at this junction. As the State conceded below, Mr. Walls has not received his full appellate review on this issue.

The Florida Supreme Court's treatment of Mr. Walls's intellectual disability claim showcases why it is imperative for this Court to clarify that the Constitution's shield against the unacceptable risk of executing an intellectually disabled person extends across every stage of a defendant's case. In 2017, the Florida Supreme Court issued a final mandate granting Mr. Walls an evidentiary hearing and assurance that his intellectual disability claim would finally be adjudicated under the constitutionally compliant standards set out by *Hall*. Yet, in a sudden violation of Mr. Walls's due process rights, the Florida Supreme Court unexpectedly and unjustifiably overruled its holding on *Hall*-retroactivity while Mr. Walls's case was still on

remand—for reasons having nothing to do with his case or any intervening precedent from this Court. The effect of the Florida Supreme Court's additional incursion on Mr. Walls's constitutional rights was to reimpose on Mr. Walls, and many others, the same unconstitutional IQ-score cutoff *Hall* struck down. This imposition perpetuates the very "unacceptable risk" this Court had castigated in *Hall*. This Court's intervention is urgently needed to stop Florida's continued defiance of *Hall*.

Mr. Walls has demonstrated clear and convincing evidence that he has significantly subaverage general intellectual function. Mr. Walls has two scores on individualized, standardized intelligence testing instruments – the Weschler Adult Test Revised ("WAIS-R") and the Weschler Adult Intelligence Test – Third Edition ("WAIS-III") – that fall in the accepted range of intellectual disability. T350-351. The Full Scale IQ ("FSIQ") scores that Mr. Walls obtained on these tests – 72 and 74, respectively – meet the legal definition of significantly subaverage general intellectual functioning. Id.

There is evidence that these impairments were present from birth, but after Mr. Walls contracted meningitis in his youth, his conceptual skills diminished even further. T639. Dr. Daniel Martell testified at Mr. Walls' evidentiary hearing that the records he reviewed showed that Mr. Walls may have been hypoxic, meaning that he was deprived of oxygen, shortly after birth, experienced high fevers that required hospitalization at the age of 2, and again at the age of 3 or 4. Mr. Walls was referred for "possible mental deficient or possible minimal brain damage" at age 5. T641-42.

R4617. Mr. Walls' US Air Force Clinic Spangdahlem records indicate that Mr. Walls was "delayed in learning to walk at one and a half years, that he only began to say words at two and a half years, and that he was late to speak in complete sentences." T641-642. These are some of Mr. Walls' earliest deficits noted. Mr. Walls' father also reported that Mr. Walls was "slow to talk, hesitant, slow to answer, and could not form words." Then, he "spoke more than he understood." T642; R5738.

When Mr. Walls was 8 years old and in the 3rd grade, he was sent for an evaluation as part of an Individualized Education Plan ("IEP"), which included a Wide Range Achievement Test ("WRAT"). T644. At this time, Mr. Walls was functioning at a full grade level lower in reading, spelling, and math. Mr. Walls was scoring at a second grade level in all of these areas. Id. The reading portion of this WRAT was only testing his ability to pronounce words. Id.

After Mr. Walls suffered from his first bout of meningitis in 1979, he was tested at age 12. At this time, Mr. Walls was in the sixth grade and was tested using the WRAT. Dr. Martell testified that the records show that Mr. Walls' "spelling was at the third-grade level, his arithmetic was at the fourth-grade level, and his reading was at the fifth-grade level, so was still at least a full school year behind in each area." T645 (emphasis added).

After Mr. Walls' second bout of meningitis in 1980, his teacher, Bruce Ravan, who taught the emotionally handicapped class at Max Bruner Junior High, noted "[h]e also struggled with multistep activities and had to be reminded of the next step

and stay on task. Frank had to be constantly reminded of daily activities of the class despite how structured it was." T647. Mr. Ravan also noted "Frank was not caught up to the other students. He had a fifth grade brain when he was in seventh grade." T747. R5755. Finally, Ms. Schwenke reported in her 2019 affidavit that while he was her student in the eighth grade, "Frank was well below his peers in the domains of academics, judgement, problem solving, self-care, like hygiene and grooming." T652; R5764-68. These deficits continued well into his teens and adulthood.

The State, in response, arguing that Mr. Walls' claim of intellectual disability is meritless, misconstrues United States Supreme Court's ruling and plainly ignores evidence to Mr. Walls' intellectual disability in their efforts to execute Mr. Walls. The State points out three IQ scores that Mr. Walls received as a minor – 88, 102, and 101 – pointing out an average of 93, stating this reflects "normal intelligence." State's Ans. 3rd Succ. PC Motion at 11. The State's argument, solely relying on IQ scores, is a misinterpretation of the Supreme Court's holding in *Hall*. "Florida's rule disregards established medical practice in two interrelated ways. It takes an IQ score as final and conclusive evidence of a defendant's intellectual functioning, when experts in the field would consider other evidence. It also relied on a purportedly scientific measurement of the defendant's abilities, his IQ score, while refusing to recognize that the score is, on its own terms, imprecise." *Hall v. Florida*, 572 U.S. 701, 712

3 This issue of "whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claims" is currently pending before this Court and is currently set for oral argument on December 10, 2025. *Hamm v. Smith*, Docket No. 24-872.

(2014). In other words, the State resting wholly on IQ scores and ignoring evidence of Mr. Walls' issues with adaptive function, does not accord with Supreme Court precedent, which is to give the issue a holistic review.

The record is rich with evidence of Mr. Walls' intellectual disability. Not only does Mr. Walls have qualifying IQ scores, but there is also evidence of his subaverage functioning and issues with adaptive functioning. This Court should not ignore this evidence. Mr. Walls' Eighth Amendment *Atkins* claim cannot be impeded by state procedural barriers because it concerns categorical exemptions guaranteed by the United States Constitution. The Eighth Amendment categorically prohibits states from executing intellectually disabled persons. *Graham v. Florida*, 560 U.S. 48, 59-61 (2010). An individual who is categorically ineligible for execution because of his intellectual disability must have his *Atkins* claim heard before an execution warrant is carried out.

2. Florida's state constitution conformity clause violates the Eighth Amendment because it prohibits Florida courts from participating in the process of determining society's evolving standards of decency as mandated by this Court's jurisprudence.

Almost 50 years ago, this Court declined to "give precise content to the Eighth Amendment." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Instead, it explained that the Eighth Amendment, unique from others, "draw[s] its meaning" through active state participation as it pertains to evolving standards of decency. *Id*. Its basic concept is "nothing less than the dignity of man[,]" standing to assure that a state's "power to punish…be exercised within the limits of civilized standards." *Id.* at 100.

In accordance, Eighth Amendment principles as articulated in this Court's jurisprudence presuppose that states will actively work to bring society closer to "the Nation we aspire to be[,]" *Hall v. Florida*, 572 U.S. 701, 708 (2014), by reflecting and advancing "the evolving standards of decency to mark the progress of a maturing society." *Trop*, 356 U.S. at 101. State participation in facilitating evolving standards of decency ensures that the Eighth Amendment "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." *Weems v. United States*, 217 U.S. 349, 378 (1910). Particularly in the capital context due to "its total irrevocability[,]" *Furman v. Georgia*, 408 U.S. 238, 306 (1972) (Stewart, J., concurring)), state courts with jurisdiction over and proximity to the legal conflicts arising from everyday life have a duty to meaningfully consider Eighth Amendment challenges.

But Florida has abdicated this critical role, claiming article I, section 17 of the Florida State Constitution (the "conformity clause") prohibits it from conducting any Eighth Amendment analysis that could lead to protection not explicitly required by this Court's prior holdings. Legislation from the past year—that is in direct conflict with this Court's Eighth Amendment holdings—proves that Florida routinely flouts the conformity clause in order to enact harsher and more expansive punishments. However, the state courts still rely upon it as justification to refuse to consider meritorious Eighth Amendment claims.

Florida's selective and one-sided use of the conformity clause violates the Eighth Amendment by effectively foreclosing evolving standards of decency in Florida and bypassing critical safeguards for constitutional administration of the death penalty. It rejects core federalist principles of state autonomy and individualism; stands to hinder this Court's own function by obstructing analysis of state practice; forces this Court to act as a court of first instance for Eighth Amendment issues arising out of Florida; and underscores Florida's shameful legacy of flouting scientific and sociolegal advancements in the realm of criminal punishment. Unless this Court intervenes, "Florida [will continue to do] what the Constitution forbids[,]" *Cunningham v. Florida*, 144 S. Ct. 1287, 1288 (2024) (Gorsuch, J., dissenting from denial of certiorari), and vulnerable individuals like Mr. Walls will die based on a systemic constitutional flaw in Florida's death penalty scheme, with no meaningful consideration of any argument that they are exempt from execution.

A. Florida's Eighth Amendment Conformity Clause

Art. I, § 17 of the Florida State Constitution states:

> 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….This Section shall apply retroactively.

Legislative and judicial history illuminates its regressive purpose. Originally proposed in 1998, the amendment was overturned in 2000 after the Florida Supreme Court held the ballot misleading to voters by "imply[ing] that the amendment will

promote the rights of Florida citizens[.]" *Armstrong v. Harris*, 773 So.2d 7, 17 (Fla. 2000). The court in *Armstrong* noted that because (a) Florida's system of constitutional government was "grounded on a principle of 'robust individualism' and [its] state constitutional rights thus provide greater freedom from government intrusion into the lives of citizens than do their federal counterparts", *id*.; and (b) the amendment would "nullify a longstanding constitutional principle that applies to all criminal punishments, not just the death penalty", *id.* at 18; a citizen "could well have voted in favor of the proposed amendment thinking that he or she was protecting state constitutional rights when in fact the citizen was doing *the exact opposite*—i.e., he or she was voting to nullify those rights." *Id.*

> The ballot summary preceding the amendment's 2002 adoption was clearer:
>
> The amendment *would prevent state courts, including the Florida Supreme Court, from treating the state constitutional prohibition against cruel or unusual punishment as being more expansive than the federal constitutional prohibition against cruel and unusual punishment or United States Supreme Court interpretations thereof*. The amendment effectively nullifies rights currently allowed…which may afford greater protections for those subject to punishment for crimes than will be provided by the amendment.

Fla. HJR 951 (2001) at 2-3 (ballot summary regarding proposed amendment to FLA. CONST. art. I, § 17) (emphasis added).

Since the Eighth Amendment conformity clause—the only one of its kind in any state constitution—became part of the Florida constitution, the Florida courts have increasingly cited and relied upon it to opt out of critical Eighth Amendment analyses, including judicial determinations related to evolving standards of decency.

See, e.g., *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019) (Florida Supreme Court relying on the conformity clause to refuse any consideration of whether national death penalty trends warranted exemption from execution under the Eighth Amendment); *Barwick v. State*, 361 So. 3d 785, 795 (Fla. 2023) (relying on conformity clause to refuse merits consideration of categorical exemption argument due to defendant's intellectual disability and age at the time of the offense); *Lawrence v. State*, 308 So. 3d 544, 545 (Fla. 2020) (relying on the conformity clause to eliminate proportionality review); *Hart v. State*, 246 So. 3d 417, 420-21 (Fla. 4th DCA 201 (relying on the conformity clause in a non-capital context to refuse to consider whether a juvenile sentence violated *Graham v. Florida*, 560 U.S. 48 (2010)); *Covington v. State,* 348 So. 3d 456, 479-480 (Fla. 2022) (relying in part on conformity clause to refuse consideration of whether alleged insanity rendered defendant's death sentence cruel and unusual); *Zack v. State*, 371 So. 3d 335 (Fla. 2023) (relying on conformity clause to justify denying nonunanimous jury challenge); *Allen v. State*, 322 So. 3d 589, 602 (Fla. 2021) (seemingly implying that the conformity clause may justify limiting a mitigation presentation in certain cases involving waiver).

B. Reviewing Florida's implementation of the conformity clause is a proper and necessary exercise of this Court's authority

Where a state constitution conflicts with the federal constitution—including this Court's interpretive jurisprudence—the state must yield. *See Reynolds v. Sims*, 377 U.S. 533, 584 (1964) ("When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls."); *Puerto Rico v.*

Branstad, 483 U.S. 219, 228 (1987) (rejecting idea that states and federal government are coequal sovereigns because "[i]t has long been a settled principle that federal courts may enjoin unconstitutional action by state officials."); *Democratic Executive Comm. of Florida v. Lee*, 915 F.3d 1312, 1331 (11th Cir. 2019) ("while federalism certainly respects states' rights, it also demands the supremacy of federal law").

And, although it is "fundamental that state courts be left free and unfettered by [this Court] in interpreting their state constitutions," *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940), it is equally important that those state adjudications

> do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action.…For no other course assures that important federal issues, such as have been argued here, will reach this Court for adjudication; that state courts will not be the final arbiters of important issues under the federal constitution; and that we will not encroach on the constitutional jurisdiction of the states.

Id.

Here, there is no question that the issue at bar is of this Court's purview. Florida has—through its implementation of the conformity clause and abdication of any judgment apart from this Court's verbatim holdings—explicitly interwoven its determinations regarding cruel and unusual punishment with this Court's Eighth Amendment jurisprudence. Paradoxically, by virtue of this inflexible binding process, Florida has wholly repudiated a critical aspect of Eighth Amendment determinations: consideration of ever-evolving societal, legal, and scientific standards. *See, e.g., Hall*, 572 U.S. at 708 ("The Eighth Amendment's protection of dignity…[affirms] that the Nation's constant, unyielding purpose must be to transmit the Constitution so that

its precepts and guarantees retain their meaning and force"); *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008) ("Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule"); *Gregg v. Georgia*, 428 U.S. 153, 171 (1976) ("the [Eighth] Amendment has been interpreted in a flexible and dynamic manner"); *Woodson v. North Carolina*, 428 U.S. 280, 288 (1976) ("Central to the application of the [Eighth] Amendment is a determination of contemporary standards regarding the infliction of punishment"); *Weems v. United States*, 217 U.S. 349, 373 (1910) ("Time works changes, brings into existence new conditions and purposes. Therefore [a constitutional principle], to be vital, must be capable of wider application than the mischief which gave it birth.").

Thus, Florida does not merely treat this Court's holdings as both the "floor" and "ceiling" of protections against cruel and unusual punishment: it also falls below the "floor" established by this Court's jurisprudence by failing to adhere to this Court's minimum prescribed standards for evaluating the applicability of Eighth Amendment protections. In other words, Florida's purported "conformity" with the Eighth Amendment actually violates it. Art. I, § 17 of the Florida State Constitution must therefore yield to the U.S. Constitution and this Court's jurisprudence.

This Court's precedent illustrates its well-established authority to intervene when faced with a state constitutional provision that conflicts with federal constitutional rights. *See, e.g., Cook v. Gralike*, 531 U.S. 510 (2001) (granting certiorari despite no split of authority due to importance and affirming that portions

of Missouri Constitution were unconstitutional); *Rice v. Cayetano*, 528 U.S. 495 (2000) (Hawaii's state constitutional provision violated the Fifteenth Amendment); *Romer v. Evans*, 517 U.S. 620 (1996) (Colorado constitutional amendment adopted by statewide voter referendum violated the Fourteenth Amendment (amendment to Arkansas constitution invalid as conflicting with Article I of the federal constitution); *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994) (provision of Oregon state constitution violated the Fourteenth Amendment); *Quinn v. Millsap*, 491 U.S. 95 (1989) (holding provision of Missouri state constitution violated federal constitution, and state court's judgment upholding it reflected a significant misreading of this Court's precedent).

This Court should exercise that authority here. Florida's unchecked use of the conformity clause to ostensibly—but falsely—bind itself to this Court's mandates will result in Florida acting as a flawed "final arbiter[] of important issues under the federal constitution[.]" *National Tea Co.*, 309 U.S. at 557. This Court's intervention is necessary to prevent such an upending of federal authority, and to prevent Mr. Walls from an unconstitutional execution.

C. This case is a proper vehicle for consideration of the question presented because there is no independent or adequate state law impediment

In utilizing the conformity clause to deny Mr. Walls's Eighth Amendment claim below, the Florida Supreme Court's merits determinations were inextricably bound with federal issues and this Court's jurisprudence; thus, no independent or adequate state law bars this Court's review. In reference to Mr. Walls's argument

that he should be exempt from execution via the Eighth Amendment due to a new scientific consensus related to juvenile brain development, the Florida Supreme Court's merits determination rested on its interpretation of federal law: "[W]e lack authority, due to the conformity clause of article I, section 17 of the Florida Constitution, to extend *Roper* or *Atkins*."

App. A at 18 (citations omitted).

To the extent the state courts found a procedural impediment to Mr. Walls's entitlement to relief on these claims, those findings are incorrect. But more importantly, the lower court did not *actually* rely on any procedural or time bar because it engaged in detailed merits rulings which are wholly inextricable from the federal question. In finding it *had no authority* to extend Eighth Amendment protections due to this Court's precedent, the Florida Supreme Court necessarily found that federal law required denial of Mr. Walls's claims. *See Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016 ("[W]hether a state law determination is characterized as entirely dependent on, resting primarily on, or influenced by a question of federal law, the result is the same: the state law determination is not independent of federal law and thus poses no bar to our jurisdiction.") (cleaned up); *see also Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (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.").

D. The constitutional harm is not confined to Florida, but without this Court's intervention, Florida will not rectify the problems created by its outlier status

Florida's use of the conformity clause to abdicate all responsibility for considering and perpetuating evolving standards of decency undermines bedrock principles of federalism and state autonomy dating as far back as the Founding. *See, Alden v. Maine*, 527 U.S. 706, 748 (1999)**Error! Bookmark not defined.** (referring back to "the founding generation" in declaring that federalism requires states to be treated as "joint participants in the governance of the Nation.").

It is virtually unquestioned among states and lower circuits that precepts of federalism empower states to provide higher "ceilings" of individual rights than the "floor" provided by the U.S. Constitution. *See, e.g.*, *State v. Griffin*, 339 Conn. 631, 690 (Conn. 2021) (discussing the "settled proposition that 'the federal constitution sets the floor, not the ceiling, on individual rights'") (quoting *State v. Purcell*, 331 Conn. 318, 341 (Conn. 2019)); *Brown v. State*, 62 N.E.3d 1232, 1236-37 (Ind. 2016) (referencing the federal constitution as "the floor, not the ceiling, of individual rights"); *Ark Encounter, LLC v. Parkinson*, 152 F.Supp.3d 880, 927 (E.D. Ky 2016) ("The federal Constitution may only be a floor and not a ceiling, but it is a floor nonetheless."); *State v. Baldon*, 829 N.W.2d 785, 791 & n.1 (Iowa 2013) (United States Supreme Court's jurisprudence "makes for an admirable floor, but it is certainly not a ceiling."); *GE Commercial Finance Business Property Corp. v. Heard*, 621 F.Supp.2d 1305, 1309 (M.D. Ga. 2009) ("it is abundantly clear that states 'are free to extend

more sweeping constitutional guarantees to their citizens than does federal law as federal constitutional law constitutes the floor, not the ceiling, of constitutional protection.'") (citing *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1269 (3d Cir. 1992)).

Even Florida, in non-Eighth Amendment contexts, takes this view:

> [T]he federal Constitution sets the floor, not the ceiling, and this Court retains the ability to interpret the right against self-incrimination afforded by the Florida Constitution more broadly than that afforded by its federal counterpart. *See, e.g., In re T.W.*, 551 So. 2d 1186, 1191 (Fla. 1989) ("State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law….[W]ithout [independent state law] the full realization of our liberties cannot be guaranteed." (quoting William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977))).

Rigterink v. State, 2 So. 3d 221, 241 (Fla. 2009) (*cert. granted, judgment vacated on other grounds sub nom., Florida v. Rigterink*, 559 U.S. 965 (2010)).

And, this Court has long supported the use of state action to provide greater protection than the federal constitution. *See, e.g., Oregon v. Hass*, 420 U.S. 714, 719 (1975) ("a State is free *as a matter of its own law* to impose [greater protections] than those this Court holds to be necessary upon federal constitutional standards") (emphasis in original); *Cooper v. State of Cal.*, 386 U.S. 58, 62 (1967) (States maintain the "power to impose [greater protections] than required by the Federal Constitution"); *Brigham City v. Stuart*, 547 U.S. 398, 409 (2006) (Stevens, J.,

concurring) ("Federal interests are not offended when a single State elects to provide greater protection for its citizens than the Federal Constitution requires.").

Citing many of these cases, Justice Brennan reflected in 1977:

> [U]nder our federal system….state courts cannot rest when they have afforded the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for without it, the full realization of our liberties cannot be guaranteed.

William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977). He added that U.S. Supreme Court decisions

> are not, and should not be, dispositive of questions regarding rights guaranteed by counterpart provisions of state law….Adopting the premise that state courts can be trusted to safeguard individual rights, the Supreme Court has gone on to limit the protective role of the federal judiciary…our liberties cannot survive if the states betray the trust the Court has put in them.

Id. at 502-03; *see also id.* (stating a "confident[] conjecture that James Madison, Father of the Bill of Rights," would have agreed).

As Florida itself championed the importance of independent state judgment and the maintenance of state autonomy to more robustly champion individual rights than the federal constitution, Florida's use of the conformity clause in the Eighth Amendment context is all the more egregious. Florida is not simply declining to extend particular protections, and justifying that decision with the fact that they are not required under the federal constitution. Florida is weaponizing this Court's

judicial restraint and respect for state sovereignty by proffering them as justification to wholly ignore legitimate Eighth Amendment claims.

Further, Florida's practice obstructs important aspects of this Court's judicial function. When this Court is faced with determinations regarding whether societal standards of decency have evolved to the point of warranting additional Eighth Amendment protections, it looks to the actions of individual states, including judicial practice. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 315-16 (2002) *Roper v. Simmons*, 543 U.S. 551, 559-60, 565-66 (2005) (tallying, as part of evolving standards analysis, the number of states that have embraced or abandoned a particular death penalty practice). Thus, although the federal constitution does not *require* a state court to offer more protection in a particular case than this Court's jurisprudence has established, a state cannot *prohibit* itself wholesale from considering evolving standards of decency. By declaring itself unauthorized to engage in this independent action, Florida has abdicated its "critical role in advancing protections and providing [this] Court with information that contributes to an understanding" of how Eighth Amendment protections should be applied. *Hall v. Florida*, 572 U.S. 701, 719 (2014).

Finally, Florida's use of the conformity clause is particularly troubling in light of its history of unconstitutionality and outlier status related to death penalty and punishment in general. The State's flawed punishment system has necessitated this Court's intervention on numerous occasions. *See, e.g., Hall v. Florida*, 572 U.S. 701, 704 (2014) (this Court holding as unconstitutional Florida's "rigid rule" withholding

Eighth Amendment protection from individuals who had valid claims for categorical exemption from execution); *Hurst v. Florida*, 577 U.S. 92, 94 (2016) (this Court holding Florida's death sentencing scheme unconstitutional); *Graham v. Florida*, 560 U.S. 48, 76 (2010) (this Court discussing the "flaws in Florida's [punishment] system" in finding that Florida's imposition of life without parole was an unconstitutional sentence for juveniles who committed nonhomicide crimes). Put simply, Florida's standards of decency have long since lagged behind other states.

This is no more apparent than in Florida's own abandonment of the conformity clause in order to enact harsher and more expansive punishments than this Court allows. This year, Florida authorized the use of the death penalty for sexual battery of a child under 12, despite this Court's ruling in *Kennedy v. Louisiana*, 554 U.S. 407 (2008), that the Eighth Amendment forbids imposition of the death penalty in cases of child rape with no homicide. *Compare* Fla. Stat. § 921.1425 Fla. Stat. (2025) (authorizing death penalty for sexual battery upon a person less than 12 years of age); *see also* Fla. Stat. § 921.1427 Fla. Stat. (2025) (authorizing imposition of death penalty for human trafficking of vulnerable persons for sexual exploitation, despite no death occurring). Florida also passed a law requiring mandatory imposition of the death penalty on a defendant who is "an unauthorized alien and who is convicted of or adjudicated guilty of a capital felony" without any consideration of individualized sentencing factors. Fla. Stat. § 921.1426 (2025). Yet, there is no question that this Court has forbidden mandatory death penalty statutes. *See Woodson v. North*

*Carolin*a, 428 U.S. 280, 304-05 (1976). In fact, Florida's legislators and current governor have acknowledged that these violate this Court's constitutional holdings. *See* Death Penalty Information Center, *Florida Prosecutors Seek First Death Sentence Under New Child Sex Abuse Law*, Death Penalty Info (March 14, 2025), https://deathpenaltyinfo.org/florida-prosecutors-seek-first-death-sentence-under-new-child-sex-abuse-law.[4]

Florida's misguided—and now routinely abandoned—self-limitation forestalls "one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *Chandler v. Florida*, 449 U.S. 560, 579 (1981) (quoting *New State Ice Co. v. Leibmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)). Thus, with no state-recognized avenue to effect Eighth Amendment progress in the Florida state courts, this Court—if it does not intervene here—will be forced into the undesirable and untenable position of being a court of first instance for any Eighth Amendment issue arising out of Florida that is not factually and legally identical to this Court's prior holdings. More urgently, if this Court does not interfere, Florida will continue executions under an Eighth Amendment framework frozen in time, in violation of today's evolving standards of decency and this Court's case law.

4 During the January 28, 2005, Senate Special Session B discussion of mandatory death penalty for "unauthorized aliens," then-Senator Randy Fine explicitly stated: "In fact in this legislature, we have chosen to pass things that we knew were unconstitutional at the time that we passed them because we believed that the Supreme Court would change their mind[.]"

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

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