

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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**JAMES E. HITCHCOCK,**  
*Petitioner,*  
v.  
**STATE OF FLORIDA,**  
*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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**CAPITAL CASE**  
**DEATH WARRANT SIGNED**  
**Execution Scheduled: April 30, 2026, at 6:00 PM ET**

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FL. BAR NO. 651443

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**CAPITAL CASE**  
**QUESTIONS PRESENTED**

Whether a state's death penalty scheme is unconstitutional if the state prevents capital postconviction defendants from raising a *Baze-Glossip* challenge in violation of the defendant's right to due process and equal protections of the laws by systematically preventing capital postconviction defendants from obtaining records created in accordance with the execution process and protocol.

Whether a state's execution of an innocent man, without consideration of his compelling case of innocence, violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

**LIST OF PARTIES**

James E. Hitchcock

State of Florida

## **RELATED CASES**

Per Supreme Court Rule 14.1(b)(iii), these are the related cases:

### **Trial & Sentencing**

Circuit Court of Orange County, Florida

Docket Number 76-1942 DIV. D

*State of Florida v. James Ernest Hitchcock*

Judgment Entered: Conviction - January 21, 1977; Death Sentence - February 11, 1977.

### **Direct Appeal**

Supreme Court of Florida

Docket Number: SC60-51108

*James Ernest Hitchcock v. State of Florida*

Judgment Entered: February 25, 1982; Mandate November 18, 1982

*Hitchcock v. State*, 413 So.2d 741 (Fla. 1982).

### **Petition for Writ of Certiorari**

United States Supreme Court

Docket Number: No. 82-5305

*James Ernest Hitchcock v. Florida*

Judgment Entered October 18, 1982.

*Hitchcock v. Florida*, 459 U.S. 960 (1982).

### **First Postconviction Motion & Proceedings**

Circuit Court of Orange County, Florida

Docket Number 1976-CF-1942

*State of Florida v. James Ernest Hitchcock*

Judgment Entered: May 10, 1983

### **Appeal from Denial of First Postconviction Motion**

Supreme Court of Florida

Docket Number: SC60-63667

*James Ernest Hitchcock v. State of Florida*

Judgment Entered: May 17, 1983

*Hitchcock v. State*, 432 So.2d 42 (Fla. 1983).

### **Federal Habeas Petition**

United States District Court, Middle District of Florida, Orlando Division

Docket Number 83-357-CIV-Orl-11

*James Hitchcock v. Secretary, Department of Corrections, et al.*  
Judgment Entered: September 22, 1983.

**Appeal from Denial of Petition of Federal Habeas**

United States Court of Appeal, Eleventh Circuit

Docket No. 83-3578

*Hitchcock v. Wainwright*

Judgment Entered: October 18, 1984;

*Hitchcock v. Wainwright*, 745 F.2d 1332 (11th Cir. 1984).

Rehearing En Banc August 28, 1985;

*Hitchcock v. Wainwright*, 770 F.2d 1514 (11th Cir. 1985).

Rehearing November 19, 1985;

*Hitchcock v. Wainwright*, 777 F.2d 628 (11th Cir. 1985).

On Remand October. 26, 1987;

*Hitchcock v. Dugger*, 832 F.2d 1140 (11th Cir. 1980).

**Petition for Writ of Certiorari**

United States Supreme Court

Docket Number: No. 85-6756;

*Hitchcock v. Wainwright* and *Hitchcock v. Dugger*

Judgement Entered: Cert. Granted in Part: June 9, 1986;

*Hitchcock v. Wainwright*, 476 U.S. 1168 (1986).

Reversed April 22, 1987;

*Hitchcock v. Dugger*, 481 U.S. 393 (1987).

**First Resentencing**

Circuit Court of Orange County, Florida

Docket Number 1976-CF-1942

*State of Florida v. James Ernest Hitchcock*

Judgment Entered: Conviction January 21, 1977; Death Sentence March 17, 1988.

**Direct Appeal of First Resentencing**

Supreme Court of Florida

Docket Number: SC60-72200

*James Ernest Hitchcock vs. State of Florida*

Judgment Entered: December 20, 1990; Rehearing Denied May 16, 1991;

*Hitchcock v. State*, 578 So.2d 685 (Fla. 1990).

On Remand January 28, 1993;

*Hitchcock v. State*, 614 So.2d 483 (1993)

**Petition for Writ of Certiorari**

United States Supreme Court

Docket Number: 91-5450

*James Ernest Hitchcock v. Florida*

Judgment Entered: Denied October 15, 1991;

*Hitchcock v. Florida*, 502 U.S. 912 (1991).

Rehearing granted June 29, 1992;

*Hitchcock v. Florida*, 505 U.S. 1215 (1992).

Rehearing Denied September 4, 1992;

*Hitchcock v. Florida*, 505 U.S. 1244 (1992).

### **Second Resentencing**

Circuit Court of Orange County, Florida

Docket Number 1976-CF-1942

*State of Florida v. James Ernest Hitchcock*

Judgment Entered: Conviction - January 21, 1977; Death Sentence - August 30, 1993.

### **Direct Appeal of Second Resentencing**

Supreme Court of Florida

Docket Number: SC60-82350

*James Ernest Hitchcock vs. State of Florida*

Judgment Entered: March 21, 1996; Rehearing Denied May 15, 1996;

*Hitchcock v. State*, 673 So.2d 859 (Fla. 1996).

### **Third Resentencing**

Circuit Court of Orange County, Florida

Docket Number 1976-CF-1942

*State of Florida v. James Ernest Hitchcock*

Judgment Entered: Conviction January 21, 1977; Death Sentence October 10, 1996;

Order Denying Relief on Newly Discovered Evidence March 18, 1998.

### **Direct Appeal of Third Resentencing**

Supreme Court of Florida

Docket Number: SC60-92717

*James Ernest Hitchcock vs. State of Florida*

Judgment Entered: March 23, 2000; Rehearing Denied May 3, 2000;

*Hitchcock v. State*, 755 So. 2d 638 (Fla. 2000).

### **Petition for Writ of Certiorari**

United States Supreme Court

Docket Number: 00-6447

*James Ernest Hitchcock v. Florida*

Judgment Entered December 4, 2000;  
*Hitchcock v. Florida*, 531 U.S. 1040 (2000).

**Motion for Postconviction DNA Testing**

Circuit Court of Orange County, Florida (DNA Motion)  
Docket Number 1976-CF-1942  
*State of Florida v. James Ernest Hitchcock*  
Judgment Entered: June 24, 2002.

**Appeal from Denial of Motion for Postconviction DNA Testing**

Supreme Court of Florida  
Docket Number: SC02-2037.  
*James Hitchcock vs. State of Florida*  
Judgment Entered: January 15, 2004;  
*Hitchcock v. State*, 866 So.2d 23 (Fla. 2004).

**Second Postconviction Motion & Proceedings**

Circuit Court of Orange County, Florida  
Docket Number 1976-CF-1942  
*State of Florida v. James Ernest Hitchcock*  
Judgment Entered: October 27, 2003; Order Following Remand March 29, 2006.

**Appeal Following Second Postconviction Motion & Proceedings**

Supreme Court of Florida  
Docket Number: SC03-2203  
*James Hitchcock vs. State of Florida*  
Judgment Entered: May 22, 2008; Rehearing Denied September 17, 2008;  
*Hitchcock v. State*, 991 So.2d 337 (Fla. 2008).

**State Petition for Writ of Habeas Corpus**

Supreme Court of Florida  
Docket Number: SC03-2203  
*James E. Hitchcock vs. Walter A. McNeil, Etc.*  
Judgment Entered: May 22, 2008; Rehearing Denied September 17, 2008.

**Application for Leave to File a Second or Successive Habeas Corpus Petition**

United States Court of Appeal, Eleventh Circuit  
Docket No. 08-15867  
*In Re James E. Hitchcock*  
Judgment Entered: November 5, 2008; Rehearing Denied December 15, 2008.

**Federal Petition for Writ of Habeas Corpus**

United States District Court, Middle District of Florida

Docket Number: No. 6:08-cv-1719-Orl-31KRS

*James Hitchcock v. Secretary, Department of Corrections, et al.*

Judgment Entered: September 20, 2012; Rehearing Denied October 31, 2012;

*Hitchcock v. Secretary, Dept. of Corrections*, No. 6:08-CV-1719-ORL-31, 2012 WL 4339573 (M.D. Fla. Sept. 20, 2012).

**Appeal from Denial of Federal Petition for Writ of Habeas Corpus**

United States Court of Appeal, Eleventh Circuit

Docket No. 12-16158-P

*James Hitchcock, Petitioner, v. Secretary, Florida Department of Corrections, et al*

Judgment Entered: March 12, 2014; Rehearing Denied May 5, 2014;

*Hitchcock v. Secretary, Florida Dept. of Corrections*, 745 F.3d 476 (11th Cir. 2014).

**Petition for Writ of Certiorari**

United States Supreme Court

Docket Number: 14-5645

*James Hitchcock v. Crews*

Judgment Entered; October 14, 2014;

*Hitchcock v. Crews*, 574 U.S. 939 (2014).

Rehearing Denied December 8, 2014;

*Hitchcock v. Crews*, 574 U.S. 1056 (2014).

**Successive Postconviction Motion & Proceedings**

Circuit Court of Orange County, Florida (DNA Motion)

Docket Number 1976-CF-1942

*State of Florida v. James Ernest Hitchcock*

Judgment Entered: February 17, 2017.

**Appeal from Denial of Successive Postconviction Motion & Proceedings**

Supreme Court of Florida

Docket Number: SC17-445

*James Ernest Hitchcock vs. State of Florida*

Judgment Entered: August 10, 2017;

*Hitchcock v. State*, 226 So.3d 216 (Fla. 2017).

Rehearing denied September 18, 2017;

*Hitchcock v. State*, No. SC17-445, 2017 WL 4118830 (Fla. Sept. 18, 2017), unreported.

**Petition for Writ of Certiorari**

United States Supreme Court

Docket Number: 17-6180

*James Ernest Hitchcock v. Florida*

Judgment Entered: December 4, 2017;

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**Petition for an Extraordinary Writ of Habeas Corpus**

United States Supreme Court

Docket Number: 22-6252

*In re James E. Hitchcock, Petitioner*

Judgment Entered: March 20, 1993;

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**Successive Postconviction Motion & Proceedings**

Circuit Court of Orange County, Florida

Docket Number 1976-CF-1942

*State of Florida v. James Ernest Hitchcock*

Judgment Entered: April 13, 2026.

**Appeal from Denial of Successive Postconviction Motion & Proceedings**

Supreme Court of Florida

Docket Number 2026-0574

*Hitchcock v. State of Florida*

Judgment Entered: April 23, 2026

*Hitchcock v. State*, No. SC2026-0574, 2026 WL 1101539 (Fla. Apr. 23, 2026).

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## **PETITION FOR WRIT OF CERTIORARI**

James E. Hitchcock respectfully petitions for a writ of certiorari to review a judgment of the Florida Supreme Court.

### **DECISIONS AND ORDERS BELOW**

The opinion of the Florida Supreme Court is attached as Appendix A. The relevant orders of the Ninth Judicial Circuit of the State of Florida, Orange County, (warrant court) are unpublished and attached as Appendix B, C and D.

### **JURISDICTION**

The judgment of the Florida Supreme Court was entered on April 23, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

### **CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED**

The Fifth Amendment of the U.S. Constitution provides, in relevant part: No person shall... be deprived of life, liberty, or property, without due process of law...

The Eighth Amendment of the U.S. Constitution provides: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment of the U.S. Constitution provides, in relevant part: No State shall . . . 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.

Article I, § 24(a) of the Florida Constitution provides: Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Florida Statute § 27.708(3) provides that: Except as provided in s. 27.7081, the capital collateral regional counsel or contracted private counsel shall not make any public records request on behalf of his or her client.

Florida Statute § 27.7081(8)(c)3. provides that: The additional public records sought are relevant to the subject matter of a postconviction proceeding under Rule 3.851, Florida Rules of Criminal Procedure, or appear reasonably calculated to lead to the discovery of admissible evidence.

Florida Rule of Criminal Procedure, Rule 3.851(b)(6) provides that: A defendant who has been sentenced to death may not represent himself or herself in a capital postconviction proceeding in state court. The only basis for a defendant who has been sentenced to death to seek to discharge postconviction counsel in state court must be pursuant to statute due to an actual conflict of interest. On a determination of an actual conflict of interest, conflict-free counsel must be appointed pursuant to statute.

Florida Rules of Criminal Procedure, Rule 3.852(i) provides that:

(1) In order to obtain public records in addition to those provided ..., collateral counsel shall file an affidavit in the trial court which:

(A) attests that collateral counsel has made a timely and diligent search of the records repository; and

(B) identifies with specificity those public records not at the records repository; and

(C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and

(D) shall be served in accord with subdivision (c)(1) of this rule.

Florida Rules of Criminal Procedure, Rule 3.852(j) provides that:

(j) Authority of the Court. In proceedings under this rule the trial court may:

(1) compel or deny disclosure of records;

(2) conduct an in-camera inspection;

- (3) extend the times in this rule upon a showing of good cause;
- (4) require representatives from government agencies to appear at status conferences to address public records issues;
- (5) impose sanctions upon any party, person, or agency affected by this rule including initiating contempt proceedings, taxing expenses, extending time, ordering facts to be established, and granting other relief; and
- (6) resolve any dispute arising under this rule unless jurisdiction is in an appellate court.

Florida Rules of Criminal Procedure, Rule 3.853(b) provides that:

The motion for postconviction DNA testing must be under oath and must include the following:

- (1) a statement of the facts relied on in support of the motion, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it originally was obtained;
- (2) a statement that the evidence was not previously tested for DNA, or a statement that the results of previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime;
- (3) a statement that the movant is innocent and how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced, or a statement how the DNA testing will mitigate the sentence received by the movant for that crime;
- (4) a statement that identification of the movant is a genuinely disputed issue in the case and why it is an issue or an explanation of how the

DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received;

(5) a statement of any other facts relevant to the motion; and

(6) a certificate that a copy of the motion has been served on the prosecuting authority.

### **STATEMENT OF THE CASE**

James E. Hitchcock was last sentenced to death in October of 1996, and the Florida Supreme Court affirmed his sentence in March of 2000. *Hitchcock v. State*, 755 So. 2d 638 (Fla. 2000), *cert. denied*, 531 U.S. 1040 (2000). Subsequently, Hitchcock unsuccessfully sought postconviction relief multiple times in state and federal courts. Florida's governor signed Hitchcock's death warrant on March 30, 2026, with an execution date of April 30, 2026. The questions presented to this Court stem from Hitchcock's post-warrant litigation demands for public records filed on April 1, 2026; the successive postconviction motion that was filed on April 7, 2026; and the Florida Supreme Court's opinion denying Mr. Hitchcock meaningful postconviction review, access to the courts, and equal protection of the law in violation of his constitutional rights under the U.S. Constitution.

On April 1, 2026, Mr. Hitchcock filed a Demand for Additional Public Records from the Florida Department of Corrections<sup>1</sup> and the Florida Department of Law Enforcement<sup>2</sup> seeking public records held by FDOC and FDLE in accordance with the

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<sup>1</sup> Hereinafter, "FDOC."

<sup>2</sup> Hereinafter, "FDLE."

official lethal injection protocols. See, Apps. B; C. FDOC and FDLE objected to Hitchcock's demand for public records on multiple grounds, arguing that: Hitchcock failed to identify a colorable claim; FDOC is entitled to a presumption that the agencies are following the protocol; the requested records were overly broad and unduly burdensome; that Hitchcock lacked good cause for failing to make the demand prior to the warrant-signing; and the records are exempt pursuant to Florida Statute § 945.10. See, Apps. E; F; P.

On April 2, 2026, the warrant court heard argument from the agencies and Hitchcock. Hitchcock argued that the records he sought related to a colorable claim for relief and that the FDOC logs filed in the Frank Walls case ("Walls records") provided support for his position that FDOC is not following the approved, written lethal injection protocol. See *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025) (App. R). The content of the Walls records clearly indicates that between January through September, 2025, FDOC executed numerous men in violation of Florida's approved lethal injection execution protocol. App. Q. FDOC and the State of Florida claim that Hitchcock is misinterpreting a series of dates and drug measurements; yet neither FDOC, nor the State of Florida, has offered a "correct" interpretation or even attempted to offer a reasonable explanation.

Hitchcock's requested records are necessary to determine whether FDOC's systematic protocol violations and noncompliance would subject Hitchcock to cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. Had the agencies provided the additional requested records, a defense

expert would have reviewed the records to ascertain whether FDOC's noncompliance with the protocol would subject Hitchcock to an increased risk of cruelty or suffering. Hitchcock also argued that the agencies' other objections did not apply. Despite the agencies' reliance on Florida Statute § 945.10, Hitchcock posited that the statutory exemption is inapplicable, because the language of the statute explicitly and narrowly confines the exemption to information specifically related to the identities of individuals involved in the actual execution and the sourcing of the drugs. Additionally, Hitchcock maintained that the requested records fell within the definition of public records and as such, would be more easily obtained by members of the general public, creating a disparate level of access between Mr. Hitchcock – a capital postconviction defendant – and members of the general public.

Hitchcock moved the warrant court to conduct an in-camera inspection and review the records before the warrant court made its determination about disclosure or redactions of the records demanded. Although the decision to conduct an in-camera inspection was within the discretion of the court, pursuant to Florida Rule of Criminal Procedure 3.852(j), the warrant court declined to verify if the records demanded should in fact be exempt from disclosure. Instead, the warrant court chose to rely on the agencies' objections and claimed exemptions; denied Mr. Hitchcock's demands for public records from FDOC and FDLE; and sustained the agencies' objections.

Following the denial of Hitchcock's demands for public records, he filed a successive postconviction motion under Florida Rules of Criminal Procedure Rule 3.851 on April 7, 2026. On April 8, 2026, the Attorney General's Office filed a response

to Hitchcock's successive postconviction motion. On April 9, 2026, the trial court held a Case Management Conference for oral arguments to determine whether to grant an evidentiary hearing to allow further factual development of Hitchcock's claims. Hitchcock requested an evidentiary hearing to present the testimony of Dr. Daniel Buffington, Wanda Green, and Judy Stevens (f/k/a Judy Gamble and Judy Hitchcock). In the alternative, Hitchcock requested the ability to proffer the testimony of the witnesses on April 10, 2026, the date scheduled for a potential evidentiary hearing. Following the Case Management Conference, the trial court issued an order denying Mr. Hitchcock an evidentiary hearing and the ability to proffer testimony.

Hitchcock sought intervention from the Florida Supreme Court on April 13, 2026, by filing a Notice of Appeal regarding the warrant court's post-warrant litigation rulings. On April 15, 2026, Hitchcock filed his Initial Brief in support of his appeal, along with a request for a stay of his execution. On April 16, 2026, the Attorney General's Office filed an Answer Brief in response to Hitchcock's Initial Brief. On April 17, 2026, Hitchcock filed a Reply to the Attorney General's Answer Brief. On April 23, 2026, the Florida Supreme Court affirmed the warrant court's denial of relief. See, App. A.

Hitchcock's case exemplifies the extent to which Florida's rules, statutes, and Florida Supreme Court rulings violate Mr. Hitchcock's right due process, equal protection of the law, and the right to be free from cruel and unusual punishment.

## REASONS PETITION SHOULD BE GRANTED

### I. **FLORIDA EFFECTIVELY AND SYSTEMATICALLY PRECLUDES CAPITAL POSTCONVICTION INMATES FROM OBTAINING LETHAL INJECTION EXECUTION PROTOCOL RECORDS AND MAKING AN EIGHTH AMENDMENT CHALLENGE OF MALADMINISTRATION UNDER THE *BAZE-GLOSSIP* TEST<sup>3</sup> IN VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW.**

The Fourteenth Amendment to the U.S. Constitution requires states to implement standards to ensure fundamental fairness in judicial proceedings. *Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 33 (1981); See, *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citing, *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

*a. Florida's procedure for capital postconviction defendants to obtain lethal injection records violates due process.*

Florida Rule of Criminal Procedure, Rule 3.852(i) and Florida Statute § 27.7081 govern postproduction requests for additional records such as those requested in this case. Both the rule and statute require postconviction counsel for the defendant to “establish that the additional public records are *either* relevant to the subject matter of the postconviction proceeding *or* are reasonably calculated to lead to the discovery of admissible evidence.” Fla. R. Crim. P. 3.852(i)(1)(C) (emphasis added). Despite satisfying those burdens, Mr. Hitchcock has been precluded from inspecting and copying specific public records in contravention with Florida

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<sup>3</sup> *Baze v. Rees*, 553 U.S. 35 (2008); *Glossip v. Gross*, 576 U.S. 863 (2015)

Constitution Article I, § 24; Chapter 119, “Public Record Laws;” Fla. Stat. § 27.7081; and the Fla. R. Crim. P. 3.852.

The Florida courts denied Mr. Hitchcock access to the records he requested based on the position that he failed to put forth a “colorable claim.” The “colorable claim” language is judicially manufactured language that has added an additional requirement - beyond what is required by the statutes and rules - for a capital postconviction inmate to meet. Following the warrant court’s denial, Hitchcock filed a successive postconviction motion, which included a claim stemming from the violation of constitutional rights that occurred when the warrant court denied Mr. Hitchcock access to the requested records. Hitchcock sought an evidentiary hearing so Dr. Buffington, an expert retained by Hitchcock, could testify in support of Hitchcock’s public records demands and provide testimony regarding his review of the Walls records specifically regarding the drug dosages, expirations dates, and concerns regarding the storage of the lethal drugs. Hitchcock sought to present, or proffer, testimony how deviation from the protocol could lead to a risk of unnecessary pain and suffering.

The warrant court denied Mr. Hitchcock’s request for an evidentiary hearing, continued to deny access to the records, and refused to allow Mr. Hitchcock to proffer Dr. Buffington’s testimony during the time already allotted for an evidentiary hearing on April 10, 2026, per the warrant court’s scheduling order. As such, Mr. Hitchcock was denied due process, access to the courts, and fundamental fairness.

Postconviction proceedings are not immune to due process principles of fundamental fairness.

A person's rights under the Due Process and Equal Protection Clauses do not end when the trial stage of a criminal proceeding concludes. When appellate review is an integral part of a trial system, Due Process and Equal Protection Clauses are required at all stages. *Griffin v. IL*, 351 U.S. 12, 17 (1956). This requires that inmates and defendants are given and provided with the tools needed to attack sentences directly or collaterally. *Lewis v. Casey*, 518 U.S. 343, 355 (1996) (citing *Bounds v. Smith*, 430 U.S. 817 (1977)). Meaningful access to the judicial process necessarily includes the disclosure of public records which are relevant to the postconviction proceedings or reasonably calculated to lead to the discovery of admissible evidence.

Confidence in the postconviction proceeding is undermined when postconviction capital defendants are precluded from access to evidence and information held exclusively by the State of Florida and, more narrowly, the Department of Corrections. "By continuing to shroud ... executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations." *Trotter v. Florida*, 607 U.S. \_\_\_ (2026) (Statement of Sotomayor, J. respecting denial of cert. petition).

b. *Baze-Glossip, Maladministration, Due Process, and Access to the Courts.*

In their denial, the Florida Supreme Court found Mr. Hitchcock is not entitled to discovery or to “litigate effectively in court” as a matter of due process or equal protection. *Hitchcock v. State*, --- So. 3d. ---, 2026 WL 1101539, at \*6 (Fla. Apr. 23, 2026). The Florida Supreme Court cited to *Lewis v. Casey*, 518 U.S. 343, 354 (1996) to support its conclusion. *Lewis*, taken as a whole, supports Mr. Hitchcock’s position because the “tools” that *Bounds v. Smith*, 430 U.S. 817 (1977) requires to be provided “are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement.” *Lewis*, 518 U.S. at 355. Mr. Hitchcock is trying to collaterally challenge the execution of his sentence, and the State of Florida and Florida Supreme Court are denying him and all other capital postconviction inmates the “tools” (lethal injection records) needed to make a *Baze-Glossip* challenge.

The Florida Supreme Court’s notion that the states do not have an obligation to ensure prisoners “litigate effectively once in court” is inapplicable to Mr. Hitchcock’s case because he is not even able to get into court initially on an Eighth Amendment/*Baze-Glossip* challenge. The tools he needs to formulate a good faith claim are being held in secrecy and locked away. When this Court sets out a test such as the one articulated in *Baze-Glossip*, due process mandates that an individual has a due process right to pursue a viable challenge through that framework. Florida is effectively, entirely preventing *Baze-Glossip* challenges through the guise of court proceedings which inevitably and predictably will lead to denial of the tools (records)

necessary to form a good faith *Baze-Glossip* challenge. Florida's "access" to public record litigation has continuously demonstrated that its system is a faulty façade to mask the deprivation of due process.

The Florida Supreme Court also relied on multiple cases where inmates made Eighth Amendment challenges to their imminent execution and were denied access to lethal injection protocols. Conversely, Mr. Hitchcock is not claiming that he is currently able to prove an Eighth Amendment challenge, but rather that Florida is systematically preventing him from doing so by using its legal system to mimic due process while failing to provide a legitimate consideration of his requests. Additionally, Mr. Hitchcock already has Florida's lethal injection protocol; what he seeks is vastly different than the materials sought in the cases relied on by the Florida Supreme Court.

For example, in *Trottie v. Livingston*, 766 F.3d 450, 452 (5th Cir. 2014), Trottie sought records concerning lethal injection records based on mere speculation that recent executions in *other* states and secrecy surrounding the origins of the lethal injection drugs, created an unacceptable risk of severe pain. Trottie, unlike Mr. Hitchcock, was provided information that the drugs used for his execution would not be expired because the state provided Trottie with the expiration dates of the drugs to be used in his execution. Ultimately, the Fifth Circuit found that Trottie was not entitled to relief, holding that "...uncertainty as to the method of execution is not a cognizable liberty interest. A death row inmate is entitled to an injunction if he points to *some* hypothetical situation, based on science and fact, showing a likelihood

of severe pain. “[M]ere speculation is not enough.” *Id.* at 452 (internal citations omitted). Considering the fact that the Walls records evince violations of the protocol, the disclosure of the requested records would be necessary to confirm whether Florida is truly using non-expired drugs in their execution of Mr. Hitchcock. The records that Trottie sought included information that Mr. Hitchcock does not need and has not requested – identifying information about those involved with the sourcing and supply of the lethal injection drugs and those who were responsible for confirming the drugs were contaminant free and potent.

As the Fifth Circuit reasoned in *Trottie*, [a] death row inmate is entitled to an injunction if he points to some hypothetical situation, based on science and fact, showing a likelihood of severe pain. Mr. Hitchcock has put forth some hypothetical situation, that Florida will maladminister lethal injection drugs, based on the contents of the Walls records, and the recent revelation of the Walls records provides facts to support the situation put forth. However, Hitchcock was denied records regarding FDOC’s ability to carry out lethal injection executions (i.e. the facts) and was denied by the Florida courts the ability to present the testimony of Dr. Buffington (i.e. the science).

Unlike the cases relied on by the Florida Supreme Court where the defendants merely had a speculative, generalized concern of “unknowns” concerning their lethal injection drugs, Mr. Hitchcock’s records request is based on recent FDOC records tending to prove that the department is not following their lethal injection protocols. Until Florida can institute and adhere to necessary levels of transparency, the

presumption exists that Florida is not following its own protocol. Mr. Hitchcock's request, unlike what has been made in other states, is based on actual records that go beyond mere speculation, to conclusively demonstrate FDOC has acted negligently or deliberately in the performance of its obligations related to execution by lethal injection.

This Court provided an avenue for capital postconviction inmates to challenge their execution method through its findings in *Baze* and *Glossip*. However, Florida is blocking capital postconviction inmates from pursuing viable challenges under the avenue that this Court provided to those facing execution. In effect, Florida's prevention of access to a constitutional challenge that this Court provides to capital postconviction inmates is an act of defiance against this Court's power. As this Court has held, in order to challenge his method of execution via lethal injection, Mr. Hitchcock would have to satisfy the following requirements: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain.

However, Mr. Hitchcock's challenge is different from a traditional *Baze-Glossip* challenge, because he is alleging that Florida is preventing him from proving the challenge on its merits. The arguments Mr. Hitchcock makes are different than the previous arguments made by capital postconviction defendants who relied on the Walls records. If Mr. Hitchcock was arguing that he could prove the merits of a *Baze-*

*Glossip* challenge, the claim would be regarding the maladministration of the drugs and the alternative method of execution would be for Florida to comply with their own protocols. The Florida Supreme Court's claim that Mr. Hitchcock has not raised an alternative method is incorrect. Mr. Hitchcock consistently argued throughout his warrant litigation, including in his briefs to the Florida Supreme Court, that the alternative method would be for Florida's compliance with the official lethal injection protocol. Despite the State of Florida's attempts to reframe his claim, Mr. Hitchcock has never argued that he could prove a *Baze-Glossip* challenge on its merits without the evidence he has requested. Instead, Mr. Hitchcock submits that the State of Florida is blocking his access to information that would be necessary to establish a *Baze-Glossip* challenge in violation of the Fifth, Eighth, and Fourteenth Amendments under the U.S. Constitution. Simply allowing Mr. Hitchcock to file a demand for public records does not remedy the issue, when the State of Florida and FDOC continuously and actively block capital postconviction defendants from access to records that are relevant to whether their executions are being conducted constitutionally.

After being denied access to similar records, other capital postconviction defendants have argued that the Walls records prove that their executions would violate the Eighth Amendment, and the Florida courts have denied the claims for insufficient evidence. Mr. Hitchcock does not make this same claim, and in fact recognizes, unlike past defendants, that he is **currently** unable to prove a *Baze-Glossip* claim without the requested records. There is evidence within the Walls

records that should prompt further disclosure, but the State of Florida is suspiciously and actively preventing access to the evidence.

When a capital postconviction defendant requests these types of records, the agencies and the state take the position that they have not supported the demand with a “colorable claim,” which leads to a swift denial of access. Florida has created an endless cycle of denying access to records that would establish FDOC’s ongoing maladministration of their own protocols. Mr. Hitchcock presented a colorable claim, based on recorded evidence, related to the maladministration of the lethal injection protocols violating the Eighth Amendment. Still, the Florida courts continue to deny the existence of a colorable claim, based on the requirement of proof on the merits, contrary to the definition of a colorable claim.

When this Court laid out the *Baze-Glossip* test, it reasonably follows that the states would allow capital postconviction defendants to raise meaningful challenges under the framework set. Overall, this Court should find Florida’s death penalty scheme to be unconstitutional, because Florida’s death penalty scheme effectively and systematically prevents capital postconviction defendants from obtaining records necessary for a *Baze-Glossip* challenge. Thus, shutting down *any* Eighth Amendment challenges their execution.

- c. Mr. Hitchcock and all other capital postconviction defendants are denied equal protection of the law under Florida's public records scheme for capital postconviction defendants.*

Despite the absence of the phrase “colorable claim,” from the Florida statutes and rules of criminal procedure related to the requirements for obtaining public requirements, the Florida Supreme Court continuously holds capital postconviction defendants to a judicially legislated requirement that capital postconviction defendants identify a “colorable claim.” The statutes and rules only require that Mr. Hitchcock show that the additional records are “relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.” Fla. Stat. § 27.7081; Fla. R. Crim. P. R. 3.852.

Mr. Hitchcock has satisfied the burdens, despite the fact that no other record-seeking person or organization are faced with the additional burdens Mr. Hitchcock and other capital postconviction defendants are required to overcome. Mr. Hitchcock's demand for public records should not require him to prove a claim on its merits in order to establish that he's identified a colorable claim. This is contrary to the definition of “colorable claim” under Black's Law Dictionary. A colorable claim is a “plausible claim that may reasonably be asserted, given the facts presented and the current law (or a reasonable and logical extension or modification of the current law).” CLAIM, Black's Law Dictionary (12th ed. 2024).

Contrary to the definition of a colorable claim, the Florida Supreme Court requires a capital postconviction inmate to allege they can currently prove a claim and that the records would support their presently provable claim, as evidenced by

the Florida Supreme Court's misinterpretation of Mr. Hitchcock's constitutional claims and finding that he has not established the requirements of a *Baze-Glossip* challenge in his identification of a colorable claim. See also, *Willacy v. State*, --- So. 3d ---, 2026 WL 1101539 (Fla. Apr. 23, 2026).

While capital postconviction defendants have to jump through the hoops listed above, no other person or organization is required to provide any reason for seeking certain records. By preventing Mr. Hitchcock from accessing records which would reasonably be disclosed to the public, the state of Florida and the Florida courts violate Mr. Hitchcock's Florida Constitutional rights to access public records under Florida Const. Art. I § 24. In addition, the deprivation of records violates Mr. Hitchcock's Fifth Amendment due process rights. Furthermore, based on Mr. Hitchcock's status as a capital postconviction defendant, the law treats him differently than any other member of the public by imposing additional requirements on his ability to access public records. Florida's disparate treatment lacks a rational basis or legitimate reason, and therefore a violation of Mr. Hitchcock's Fourteenth Amendment equal protection rights.

In response to Mr. Hitchcock's equal protection violation, the Florida Supreme Court found that he was not being treated differently than other members of the public because Florida Rule of Criminal Procedure 3.852 provides a streamlined discovery process, and that Mr. Hitchcock may still file his public records requests under Chapter 119 of the Florida Statutes, like any other member of the public without the streamlined process. The state court's reasoning is contrary to logic and

Florida's own laws. The combined purpose of Florida Statutes § 27.708(3), § 27.7081, and Florida Rule of Criminal Procedure 3.852, was to take capital postconviction public records demands out of Chapter 119. The Florida Supreme Court's holding that capital postconviction defendants may seek public records pursuant to Chapter 119 requests, is directly contrary to Florida Statute which explicitly states that capital postconviction defendants are *precluded* from seeking records under Chapter 119. Fla. Stat. § 27.708(3).

Florida Rule of Criminal Procedure 3.851(b)(6) requires that Mr. Hitchcock be represented for his postconviction matters. The pursuit of records related to his execution by lethal injection is clearly related to his sentence and postconviction matters. Florida Statute § 27.708(3) prevents Mr. Hitchcock's counsel from being able to make public records requests under Chapter 119 and instead requires the requests be filed under Florida Statute § 27.7081 and Florida Rule of Criminal Procedure 3.852. In attempting to explain away the violation of Mr. Hitchcock's equal protection rights, the Florida Supreme Court quite literally created another Catch-22 related to record production.

Regardless of the Florida Supreme Court's illogical, Catch-22 justification of Mr. Hitchcock's different treatment, it is clear that Florida is violating the equal protections of the law. Florida created a constitutional right for members of the public to inspect and copy public records. As a part of this right, members of the public do not have to provide any reasons for seeking specific records. Mr. Hitchcock is a member of the public, but he is not given the same treatment. Instead, Mr. Hitchcock

and other similarly-situated defendants must overcome additional obstacles in imposter court proceedings. This Court's intervention is necessary to protect Mr. Hitchcock's and other capital postconviction inmates' access to records, to compel the disclosure of records, and to prevent Florida's ongoing violation of the equal protection of the law under the Fourteenth Amendment.

**II. MR. HITCHCOCK IS ACTUALLY INNOCENT, AND HIS EXECUTION WOULD VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.**

The execution of an innocent man violates the Eighth Amendment to the U.S. Constitution's protection against cruel and unusual punishment.

There could be no greater manifest injustice in the law than the execution of an innocent man, at the hands of the government.

Mr. Hitchcock is an innocent man, who is facing imminent execution, and only this Court has the power to stop the execution and prevent an injustice. Without this Court's intervention, Mr. Hitchcock will be executed on April 30, 2026, despite not being responsible for Cynthia Driggers' death.

*a. A procedural bar that precludes consideration of actual innocence is a manifest injustice.*

The Constitution "must be capable of wider application than the mischief which gave it birth." *Weems v. United States*, 217 US 349, 373 (1910). "[T]he words of the [Eighth] Amendment are not precise and their scope is not static." *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958). "The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Id.*

Analysis of the evolving standards of decency provides the framework for the analysis of the Eighth Amendment’s prohibition against cruel and unusual punishment. *Roper v. Simmons*, 543 U.S. 551, 560-561 (2005) (citing, *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958)). The evolving standards dictate when a punishment has become cruel and unusual. *Id.* The analysis is not confined to the method in which a death sentence is ultimately carried out but rather the contemporary values. *Ford v. Wainwright*, 477 U.S. 399, 406 (1986). Contemporary values determine “whether a particular punishment comports with the fundamental human dignity that the [Eighth] Amendment protects.” *Id.* Review of the evolving standards ensures that “the State’s power to punish is exercised *within the limits of civilized standards.*” *Hurst v. State*, 202 So. 3d 40, 61 (Fla. 2016) (quoting, *Woodson v. North Carolina*, 428 U.S. 280, 288 (1976) (quoting *Trop*, 356 U.S. at 100, 78 S. Ct. 590)) (emphasis added).

Analysis of the Eighth Amendment’s prohibition against cruel and unusual punishment begins with “evolving standards of decency” analysis consistent with this Court’s interpretation of the Eighth Amendment of the U.S. Constitution. “By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons.” *Roper*, 543 U.S. at 560.

This Court has recognized that the death penalty serves two purposes: retribution and deterrence. *Lackey v. Texas*, 514 U.S. 1045, 1421 (1995). The execution of Mr. Hitchcock serves no retributive or deterrent purpose since he did not commit the murder that the State of Florida seeks to execute him for. As it stands,

Mr. Hitchcock has already faced 50 years of punishment through incarceration despite having not even committed the crime. The state of Florida now executing him will be his second form of unlawful punishment for the crime he never committed.

*b. Cumulative review of Mr. Hitchcock's case reveals a compelling case of actual innocence that renders his execution unconstitutional.*

In *Herrera v. Collins*, this Court considered an actual innocence claim made by Herrera, who submitted affidavits tending to show that his then-dead brother, rather than himself, committed the murder. 506 U.S. 390, 393 (1993). This Court found Herrera's affidavits to have probative value but identified numerous inconsistencies and expressed suspicion over the lack of available cross-examination testimony. *Id.* at 417-18. The case against Herrera also included two eyewitness identifications, circumstantial evidence, and a handwritten letter containing an apology for the murders and an offer to surrender. Similar to the claim in *Herrera*, Mr. Hitchcock's constitutional claim is based on his showing of actual innocence and therefore "must be evaluated in the light of the previous proceedings in this case." *Id.* In contrast to the affidavits that this Court considered in *Hererra*, Mr. Hitchcock's witnesses testified under oath in 2003, and this Court should consider their statements, regardless of Mr. Hitchcock's inability to present the witnesses' information as part of a newly discovered evidence claim. A cumulative review of Mr. Hitchcock's case demonstrates a compelling case of innocence. The refusal to allow Mr. Hitchcock to present a claim of actual innocence or to consider evidence offered in support of his innocence is a violation of his Fifth, Eighth, and Fourteenth Amendment rights – a violation that cannot be remedied once he has been executed.

Then, in 1995, this Court again evaluated a claim of actual innocence in *Schlup v. Delo*, 513 U.S. 298, (1995). In distinguishing the two cases, this Court noted that, “[i]n *Herrera*, the petitioner’s claim was evaluated on the assumption that the trial that resulted in his conviction had been error free.” *Id.*, at 315. In *Schlup*, because the defendant also raised claims related to *Strickland*<sup>4</sup> and *Brady*<sup>5</sup>, this Court set a lower burden for Schlup’s evidence of innocence. *Id.* For the defendant in *Herrera*, “the evidence of innocence would have had to be strong enough to make the execution ‘constitutionally intolerable’ even if the conviction was the product of a fair trial.” *Id.* at 298.

In Schlup’s case, this Court held that “the evidence must establish sufficient doubt about his guilt to justify the conclusion that his execution would be a miscarriage of justice unless his conviction was the product of a fair trial.” *Id.* at 316. Mr. Hitchcock’s evidence of innocence, while not newly-presented in this claim, was newly discovered evidence when it was uncovered – approximately 20 years after a jury first convicted Mr. Hitchcock and recommended a sentence of death. Unlike the defendant in *Herrera*, Mr. Hitchcock does not allege that his trial was free of error, but rather that his conviction resulted from a jury that never heard compelling evidence of his actual innocence from additional witnesses. Thus, because Mr. Hitchcock’s case of innocence is compelling and, his execution would be

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<sup>4</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>5</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

constitutionally intolerable, he meets both the standards stated in *Herrera* and the standard described in *Schlup*.

Mr. Hitchcock is presently asserting a freestanding claim of actual innocence and asking this Court to determine that his execution would violate the Constitution, because he is innocent of the murder for which he was convicted and sentenced to death. The Florida Supreme Court stated that they specifically will not consider an independent claim of actual innocence in postconviction proceedings. Instead, Florida, which has the highest number of death row exonerations of any state since 1973 – 30 exonerations – would prefer to shut down any avenue for due process and consideration of a person’s innocence before he is executed.<sup>6</sup>

*c. Richard Hitchcock confessed to the murder and had a history of violence and sexual abuse towards the women in the family.*

Since Mr. Hitchcock’s conviction, it has been revealed that Richard Hitchcock, Mr. Hitchcock’s brother who was present with Cynthia Driggers on the day of her murder, had a history of violence and being sexually possessive over women and female children in the family. M.G. and B.R. testified at Mr. Hitchcock’s trial and at his evidentiary hearing in 2003.<sup>7</sup> M.G. was Mr. Hitchcock’s sister. At the evidentiary hearing in 2003, both M.G. and B.R. testified regarding Richard’s sexual possessiveness of the women and girls in the family as well as his habit of choking

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<sup>6</sup> See, “Death Penalty Information Center,” The 200<sup>th</sup> Exoneration Underscores Critical Flaws in the U.S. Criminal Legal System; Other Innocent Prisoners Remain on Death Row, posted Jul. 2, 2024, updated on Mar. 14, 2025. <https://deathpenaltyinfo.org/the-200th-exoneration-underscores-critical-flaws-in-the-u-s-criminal-legal-system-other-innocent-prisoners-remain-on-death-row> (last accessed Apr. 25, 2026).

<sup>7</sup> Petitioner refers to the witnesses by initial only out of respect for them as victims of violence and rape.

the women and girls, just as he did to Cynthia Driggers. Mr. Hitchcock was prevented from eliciting testimony of the sort during his 1977 trial because his trial attorney failed to argue why he wished to present the similar fact-evidence related to Richard. Mr. Hitchcock's trial attorney never demonstrated to the court why the information was relevant, and it was not until 2003, when the evidentiary hearing revealed the significance of the similar fact testimony.

Richard saw the women and girls in his family as sexual possessions and would grow upset at the perception that they had interest in another male. Richard would choke them when he was angry. M.G. testified about a number of sexual attacks Richard committed against her from around the age of eight to seventeen. (PC 90). M.G. recalled a time when Richard threw one of their sisters through a window for trying to keep Richard away from her. (PC 90). Resisting Richard's sexual advances led to bruises around her throat and her body. (PC 92). M.G.'s testimony demonstrated Richard's propensity for choking, simply for telling him, "No." (PC 93). Richard became violent when he suspected M.G. may be interested in boys her own age at the time. (PC 93). M.G. described the last time that Richard raped her, including almost choking her to death. (PC 103). B.R. also testified that Richard was violent as he would attempt to sexually abuse her. (PC 126).

W.G.<sup>8</sup>, the sister of Mr. Hitchcock and Richard, testified at Mr. Hitchcock's evidentiary hearing in 2003 that:

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<sup>8</sup> Petitioner refers to the witness by initial only out of respect for them as a victim of violence and rape.

Richard was very abusive after my dad died. I was eleven years old. And he always tried to put his hands on me. Always but I would fight back so he couldn't do me that way. He only he can only do the ones that way that were, I'm not going to say - - well, younger. He couldn't handle me like that. (PC. 133).

Q: And how did Richard view the younger females in the family?

A: I had two sisters right (sic raped) by him

Q: Would it be fair to say that he was possessive of them sexually

A: Yes, he was.

(PC. 133). W.G. described how Richard would react when she resisted his advances:

A: Richard he would slam me against the wall and almost choke me to death. At one point, one point I passed out and he thought he had choked me to death.

Q: Okay. What brought on that choking?

A: Rage.

Q: And what would set the man off?

A: Anything that he couldn't control. He wanted to control everybody. When my dad died he thought he was boss and my mother let him get with it.

Q: Can you tell us anything, any other specific times when Richard Choked you.

A: Yes. One time I came in I guess I was sixteen and I didn't know that [M.G.] and [B.R.] was at home by their self with him. As I walked through the door he was trying to rape [M.G.] and I caught him and I did. Carl [Richard] grabbed me around the neck and was choking me and he slammed me through the front door which was a plate glass door, the top part. And when he did the glass fell and cut. my leg open on the side of my leg which I still got a scar about that long. And he like, he almost killed me then. He liked to choke me then. He ran my head through the window then.

Q: Okay. Did Richard Carl Hitchcock ever react to you being interested in another boy or possibly being interested as young girls often are at that age.

A: Yes.

Q: How old are (sic were) you?

A: Thirteen

Q: Could you tell us what happened with that?

A: At fifteen years old, and this was a date that Carl [Richard] had arranged himself, he decided I could go. My cousin Patricia and her

boyfriend picked me and this other guy up and it was one of Carl. [Richard]'s friends. And he let us go riding around. I was supposed to be home eleven o'clock. We had a flat. We didn't get there until eleven fifteen. When I walk through the door he grabbed me around the neck and almost choke me to death and beat me with a broom stick.

Q: Did he say anything to you?

A: Yes. He called me all sorts of whores and everything else and he just continually done that and my mother stood there and let him do this. And then finally, when he quit I was black and blue. So the next morning he gets up and he tells my mother, he says you have a choice. Either she can stay here and I will leave or she can leave and I'll stay here And my mother sent me away.

Q: How many times would you say Richard, he choked you over the years.

A: Oh, Lord. I would say about twenty times

(PC 133-36). One day, while sitting with Richard Hitchcock at her mother's table, Richard revealed his guilt for the murder in this case. W.G. previously testified to the following:

We were sitting at the kitchen table talking ... I'd told him that it's going to be rough on my mama when they execute Erney [the defendant]. And he said they're not going to execute Erney. I said yeah, they'll execute him for the murder. And he said they're not going to execute him because he didn't do that murder.

He said - - I said no, they're going to execute him for the murder. And he said that they ain't going to execute him for rape. And in other word he told me that he was kneeling right there, that Erney only raped. I told him I was going to have to tell somebody and he informed me he knew that I was going to.

Q: Do you think you were - - last time you came to court for Erney do you think that you were coming to do that when he - -

A: That's exactly what I was coming to do. All they wanted to know was if Erney chopped cotton or picked or had a rough life.

(PC 140-41).

Rossi Bell Meacham (“Ms. Meacham”) was an acquaintance of Richard and knew some of the rest of the family from Arkansas. (PC. 106). Ms. Meacham lived in Manila, Arkansas. Ms. Meacham was an important witness, because Richard also admitted to her that he committed the murder of Cynthia Driggers. Although Ms. Meacham knew Richard, she never met Mr. Hitchcock. Ms. Meacham met Richard in the early 1990s, before Richard died and while Mr. Hitchcock was incarcerated for the murder of Cynthia Driggers. Ms. Meacham recounted Richard’s admission to the murder as the following:

We was all sitting around the kitchen table, me and him and his mother who was in and out. It was after the yard sale. I stayed around to talk to him a few minutes and he was getting - - getting he was drinking a little. He was getting a little belligerent. He said yeah, you wouldn't know things about me that I can tell you. And I said like what things. And he said I murdered that girl in Florida and blamed it on my brother Emey because he said his reason being was he was crippled and Emey was a young person. He can serve time better. But he blamed it on Erney.

(PC 108). Ms. Meacham had never met Mr. Hitchcock (“Erny”),<sup>9</sup> and therefore had no reason to fabricate this information, which was corroborated by Richard’s actions and admission to others - including his admission made in the form of a threat to J.S.<sup>10</sup> at the age of twelve or thirteen:

My parents were out of town. They went on a job for Richard and Ruby and Jerry were in the room asleep. I was on the couch sleeping in the living room and Richard come in there and was trying to mess with me and I kept asking him to leave me alone. He kept saying, he told me that if I didn't shut up the same thing would happen to me that happened to Cindy. I got scared. He was trying to pull my

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<sup>9</sup> Ms. Meacham has since passed away and is unavailable.

<sup>10</sup> Petitioner refers to the witness by initial only out of respect for them as a victim of violence and rape.

clothes off and I started fighting him back and I got up. I got him off of me and I got my sister and we just I went back to my house and told my parents about it. ... He was messing with my breast and my lower parts of my body.

(PC 147-48). Richard has repeatedly admitted to the murder for which Mr. Hitchcock is currently set to be executed on Thursday April 30, 2026. Richard's sexual domination over the women and little girls in the family show Richard's motive upon discovering Cynthia with Mr. Hitchcock. Richard's violent reaction to choke the women and children that he is angry with shows Richard's modus operandi since Cynthia was strangled to death. And finally, and most importantly, Richard has admitted numerous times through conversation and by threat that he, not Mr. Hitchcock, murdered Cynthia.

Were Mr. Hitchcock tried today for this case, scientific advancement would render portions of the State's case (hair comparison) irrelevant/unsuitable for expert testimony. Additionally, he would be able to request DNA testing, should the evidence not have been destroyed, that would corroborate his innocence. Mr. Hitchcock has requested DNA testing of the collected samples, but Florida has continuously prevented him access and testing. The only evidence that the State would have been able to point to in terms of Mr. Hitchcock's guilt would be his own recanted confession that occurred after days of being held in isolation. In addition, Mr. Hitchcock would be able to present the testimony of witnesses who can and have testified that Mr. Hitchcock's brother, Richard, confessed to murdering Cynthia. Mr. Hitchcock previously raised and re-raised a request for testing in his successive postconviction motion. However, the issue regarding the prior denials of DNA testing was not

addressed by any Florida state court during the post-warrant litigation. The DNA results including Richard as a contributor would corroborate Mr. Hitchcock's testimony and the admissions made by Richard to numerous witnesses.

*d. In 1977, Mr. Hitchcock testified that he did not commit the murder and that he saw his brother, Richard Hitchcock, kill Cynthia Driggers.*

Unfortunately, the only testimony the jury heard about Mr. Hitchcock's innocence was his own testimony at trial. The jury never heard the testimony discussed above.

The day following the murder, Mr. Hitchcock went to the Winter Haven Police Station and asked if he was wanted for questioning. (1977 R. 770). Detectives questioned Mr. Hitchcock, and he denied involvement. (1977 R. 771). A few days after being taken into custody, Mr. Hitchcock provided a false confession to the murder of Cynthia. (1977 R. 771). Mr. Hitchcock stated that his false confession was made after he was kept in isolation for about four days. (1977 R. 772). After he made the false confession, he was moved to general population with the rest of the inmates. (1977 R. 777-78). Mr. Hitchcock explained that he made the false confession on behalf of his brother because he was depressed with what had become of his own life and was suicidal. (1977 R. 772). He also wanted to protect his brother from harm in prison, where he did not expect Richard to fare well. (1977 R. 777).

Despite his false confession to law enforcement, at his initial trial in 1977, Mr. Hitchcock waived his right to remain silent and, under oath, told the jury what actually happened on the night of the murder. Mr. Hitchcock's testimony served as the only evidence of his innocence the jury determining guilt ever heard. Mr.

Hitchcock testified about his whereabouts the night that Driggers was murdered. He ultimately was locked out of the house when he returned home. Mr. Hitchcock went to a separate door that provided lead to Cynthia Driggers' bedroom, where Cynthia opened the door for Mr. Hitchcock. (1977 R. 760-62). Mr. Hitchcock admitted to sexually battering Cynthia who was 13-years old at the time. (1977 R. 762).

As Mr. Hitchcock was putting his pants on, Richard entered the room around 3:00 am, saw Mr. Hitchcock and Cynthia together, and Richard began attacking Cynthia. (1977 R. 764). Richard grabbed Cynthia by the arm and pulled her through the door and outside the house. (1977 R. 764-65). Mr. Hitchcock followed outside and saw Richard with his hands still around Cynthia's throat, who was then dead at Richard's hands. (1977 R. 765). Richard went back into the house, and out of concern for his brother, Mr. Hitchcock took Cynthia's body and put it in the bushes a short distance away from the house. (1977 R. 766-67). Mr. Hitchcock then made it look as though someone entered into the house through a screened window, then took a shower, and he fell asleep. (1977 R. 767). The next morning, while speaking with Richard, Mr. Hitchcock agreed to take the blame for Richard killing Cynthia. (1977 R. 768).

Mr. Hitchcock's testimony is the only evidence of his innocence the convicting jury heard.

## CONCLUSION

This Court should grant this petition to resolve the questions presented. Mr. Hitchcock and other capital postconviction defendants in Florida are in Catch-22 which renders them unable to effectively raise a *Baze-Glossip* challenge as laid out by this Court. Mr. Hitchcock requested records based on evidence of Florida's repeated violations of its own lethal injection protocols. Until the records are provided, there can be no confidence in Florida's lethal injection system, and this Court should find Florida's death penalty scheme unconstitutional as a result. "By continuing to shroud ... executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations." *Trotter v. Florida*, 607 U.S. \_\_\_ (2026) (Statement of Sotomayor, J. respecting denial of cert. petition).

Mr. Hitchcock has a due process right to pursue challenges established by this Court. Without this Court's intervention, Florida will continue to ignore valid concerns regarding transparency and will continue to effectively and systematically block capital postconviction defendants from pursuing Eighth Amendment challenges under the standards set by this Court in *Baze-Glossip*.

Historically, executions were public. In the State of Florida, executions were carried out as public hangings until 1924. Fla. Stat. Ch. 9169 § 6124 (1924). Even after executions were removed from public viewing, executions were "in the presence of a jury of twelve respectable citizens who shall be requested to be present." Fla. Stat. Ch. 9169 § 6125 (1924). With the development of lethal injection execution, the

process is invisible, occurring within the veins and underneath the skin, rather than around the neck. In Florida, the executioner is hidden behind a wall, and curtain injects drugs into IV's which were inserted outside the presence of the public. Witnesses sit unaware if or what lethal drugs are being administered, for the executioner is hidden behind a wall. Florida's deliberate and systematic obstruction of access to lethal injections which offer evidence the State is failing to follow the official protocol and creating a risk of needless suffering and pain, cast a suspicious pall over the insistence over maintaining the utmost level of secrecy surrounding executions. The substance of what is actually occurring would reasonably be discovered through records kept in compliance with the state's protocol – not just through drug logs but also in the notes taken by the FDLE witnesses.

The issue of secrecy shrouding Florida's lethal injection effects is magnified by Mr. Hitchcock's actual innocence and should not be executed through any method. Florida declined to consider Mr. Hitchcock's actual innocence on its merits and would rather execute an innocent man than afford him due process. Florida's position that they will not consider standalone actual innocence claims is unconstitutional and violates Mr. Hitchcock's right to due process. Since he is innocent, Mr. Hitchcock's execution would be cruel and unusual in violation of the Eighth of the U.S. Constitution.

Without this Court's intervention, Florida will continue to execute individuals under a veil of secrecy by continuing to systematically prevent capital postconviction inmates from effectively pursuing *Baze-Glossip* challenges. Without this Court's

intervention, the State of Florida will execute an innocent man and will continue to ignore actual claims of innocence.

Respectfully submitted,

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