

No. 25-7292

IN THE
Supreme Court of the United States

DAVID KELSEY SPARRE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

THIS IS A CAPITAL CASE

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TABLE OF CONTENTS

Table of Contents..... ii

Table of Authorities.....iii

Reply Brief for Petitioner..... 1

 A. Petitioner’s Eighth Amendment rights were violated by racially
 discriminatory death qualification practices in his capital trial in Duval
 County, Florida. 1

 B. A state must not opt out of considerations required by the Eighth
Amendment.....5

Conclusion.....20

TABLE OF AUTHORITIES

Cases:

<i>Alden v. Maine</i> , 527 U.S. 706 (1999).....	10
<i>Allen v. State</i> , 322 So. 3d 589 (Fla. 2021).....	7
<i>Ark Encounter, LLC v. Parkinson</i> , 152 F.Supp.3d 880 (E.D. Ky 2016).....	11
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002).....	13
<i>Ballew v. Georgia</i> , 435 U.S. 223 (1978).....	5
<i>Barwick v. State</i> , 361 So. 3d 785 (Fla. 2023).....	7
<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986).....	1
<i>Bowles v. State</i> , 276 So. 3d 791 (Fla. 2019).....	7
<i>Brown v. State</i> , 62 N.E.3d 1232 (Ind. 2016).....	11
<i>Caldwell v. Mississippi</i> , 472 U.S. 320 (1988).....	1
<i>Coker v. Georgia</i> , 433 U.S. 584 (1977).....	4
<i>Cook v. Gralike</i> , 531 U.S. 510 (2001).....	9
<i>Covington v. State</i> , 348 So. 3d 456 (Fla. 2022).....	7
<i>Cunningham v. Florida</i> , 144 S. Ct. 1287 (2024).....	6
<i>Democratic Executive Comm. of Florida v. Lee</i> , 915 F.3d 1312 (11th Cir. 2019).....	8
<i>Downey v. State</i> , 144 So.3d 146 (Miss. 2014).....	11
<i>Enmund v. Florida</i> , 458 U.S. 782 (1982).....	4
<i>Florida v. Rigterink</i> , 559 U.S. 965 (2010).....	12
<i>GE Commercial Finance Business Property Corp. v. Heard</i> , 621 F.Supp.2d 1305 (M.D. Ga. 2009).....	11
<i>Gregg v. Georgia</i> , 428 U.S. 153 (1976).....	4, 14

<i>Hall v. Florida</i> , 572 U.S. 701 (2014).....	13
<i>Kansas v. Carr</i> , 577 U.S. 108 (2016)	15
<i>Kennedy v. Louisiana</i> , 554 U.S. 407 (2008).....	14
<i>Kreimer v. Bureau of Police for Town of Morristown</i> , 958 F.2d 1242 (3d Cir. 1992).....	12
<i>Lawrence v. State</i> , 308 So. 3d 544 (Fla. 2020).....	7
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983).....	1
<i>Minnesota v. National Tea Co.</i> , 309 U.S. 551 (1940).....	8
<i>Pitchford v. Cain</i> , 146 S.Ct. 1345 (2026).....	1
<i>Puerto Rico v. Branstad</i> , 483 U.S. 219 (1987).....	8
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	8
<i>Rice v. Cayetano</i> , 528 U.S. 495 (2000)	9
<i>Rigterink v. State</i> , 2 So. 3d 221 (Fla. 2009).....	12
<i>Ring v. Arizona</i> , 536 U.S. 584 (2002).....	4
<i>Romer v. Evans</i> , 517 U.S. 620 (1996)	9
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	8, 11, 13
<i>Smith v. Texas</i> , 311 U.S. 128 (1940).....	5
<i>State v. Baldon</i> , 829 N.W.2d 785 (Iowa 2013).....	11
<i>State v. Griffin</i> , 339 Conn. 631 (Conn. 2021).....	11
<i>State v. Purcell</i> , 331 Conn. 318 (Conn. 2019).....	11
<i>Traylor v. State</i> , 596 So. 2d 957 (Fla. 1992).....	12, 13
<i>Trop v. Dulles</i> , 356 U.S. 86 (1968).....	4

United States v. Sanders, 133 F.4th 341 (5th Cir. 2025)3

Weems v. United States, 217 U.S. 349 (1910).....14

Witherspoon v. Illinois, 391 U.S. 510 (1968).....4, 5

Woodson v. North Carolina, 428 U.S. 280 (1976).....4, 14

Zack v. State, 371 So. 3d 335.....7

Constitutional Provisions:

Eighth Amendment, United States Const..... passim

Florida Constitutional Provisions:

Art. I, § 17 7- 9, 12

Secondary Authorities:

William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*,
90 Harv. L. Rev. 489, 491 (1977).....12

REPLY BRIEF FOR PETITIONER

A. This Court should review the lower court's summary denial of Petitioner's Eighth Amendment postconviction claim.

This Court has jurisdiction to grant a writ of certiorari here. In *Michigan v. Long*, 463 U.S. 1032 (1983), the Court held that when “a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we 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.” *Id.* at 1040-41. Here, although the Florida Supreme Court's decision includes a state-law procedural bar discussion, the decision rests primarily on its view of federal constitutional law, or at least is interwoven with federal law.

A1.

“The mere existence of a basis for a state procedural bar does not deprive this Court of jurisdiction.” *Caldwell v. Mississippi*, 472 U.S. 320 (1988). *See also Pitchford v. Cain*, 146 S.Ct. 1345, 1352-53, (2026) in which this Court held that the Defendant's *Batson v. Kentucky*, 476 U.S. 79 (1986), challenges to the prosecution's exclusion of non-white prospective jurors at Pitchford's capital trial were not waived or procedurally barred by the defense despite state court findings to the contrary and reversed and remanded Pitchford's case for further consideration.

Here, the Florida Supreme Court's decision does not prevent this Court from granting a writ of certiorari and deciding the questions presented by this petition. This Court should grant review.

Dr. Jacinta M. Gau, a tenured full professor in criminal justice at the University of Central Florida, analyzed comprehensive data from jury selections in 12 Duval County capital trials over an eight-year period from 2010 to 2018, including data from Petitioner's trial in 2011. (PCR-3. 18-22, 39-50). Dr. Gau found that the operation of death qualification in Duval County disproportionately excluded nonwhite jurors, resulting in their removal at double the rate of white jurors. When combined with prosecutorial peremptory strikes, the effect was the systematic removal of a majority of qualified, willing, and available nonwhite jurors. (PCR-3. 20, 43-50).¹

Petitioner filed a successive motion for postconviction relief based upon Dr. Gau's study and Dr. Radelet's confirmation of her findings. The successive motion was summarily denied by the circuit judge without affording the opportunity for Petitioner to be heard. In its summary order, the circuit court failed to address the Eighth Amendment claim specifically raised in the motion. A3. The Florida Supreme Court dismissed Petitioner's Eighth Amendment arguments, finding that "empaneling an impartial jury is grounded in the Sixth Amendment and not the

¹ Petitioner also proffered a confirmatory report by Dr. Michael Radelet, a retired, tenured full professor of sociology at the University of Colorado, who reviewed Dr. Gau's work and concluded that the broader statistical trends she found in Duval County were present in Petitioner's specific trial, and in some instances, even stronger. (PCR-3, 21, 52-54).

Eighth Amendment,” quoting *United States v. Sanders*, 133 F.4th 341, 376 (5th Cir. 2025), *et al*, and faulting Petitioner for not offering any case authority for the implication of the Eighth Amendment. A1 at 11-12.

The Florida Supreme Court and the State misapprehended Petitioner’s Eighth Amendment claim and ignored his express arguments citing to this Court’s Eighth Amendment jurisprudence as explained below.

Petitioner’s pleadings and factual proffer show that, as a result of the skewing effect of death qualification in Duval County in a racially discriminatory manner, the judgment resulting from Petitioner’s jury trial violates the Eighth Amendment’s Cruel and Unusual Punishment Clause.

Death qualification in Duval County skewed the jury in favor of the State’s preferred outcome—a death sentence. It did so by ridding from juries, including Petitioner’s, those most willing to consider mitigation, eschewing them in favor of jurors more likely to find aggravation and want a death sentence. In doing so, through Duval County’s systematic capital jury selection practices, whole voices from the Duval County community were erased. In light of Duval County’s discriminatory practices, a judgment to execute Petitioner based on the decision making of a death-qualified jury constitutes an arbitrary outcome forbidden by the Eighth Amendment. It does not accurately reflect “contemporary community values,” which this Court has said is required for the punishment to conform with the Eighth Amendment. *Witherspoon v. Illinois*, 391 U.S. 510, 520 n.15 (1968) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1968)).

This Court has observed that “one of the most important functions any jury can perform in making [the penalty] selection is to maintain a link between contemporary community values and the penal system—a link without which the determination of punishment could hardly reflect ‘the evolving standards of decency that mark the progress of a maturing society.’” *Id.* And later, in *Woodson v. North Carolina*, 428 U.S. 280 (1976), the plurality emphasized the importance of jurors’ individual perspectives as a reason for why a mandatory death penalty scheme violated “contemporary values.” *Id.* at 295 (plur. op. of Stewart, J.). Similarly, in *Coker v. Georgia*, Justice White observed that “[t]he jury . . . is a significant and reliable objective index of contemporary values because it is so directly involved.” 433 U.S. 584, 596 (1977) (plur. op. of White, J.) (quoting *Gregg v. Georgia*, 428 U.S. 153, 181 (1976)); *see also Enmund v. Florida*, 458 U.S. 782, 788 (1982) (explaining the Court must examine Eighth Amendment decency standards using, among other factors, juries’ sentencing decisions).

In packing juries with those most favorable to the State, the capital jury selection process erased voices from the Duval County community. *See Ring v. Arizona*, 536 U.S. 584, 614 (2002) (Breyer, J., concurring) (explaining that juries represent a “community’s moral sensibility” because they “reflect more accurately the composition and experiences of the community as a whole”). Dr. Gau’s study, confirmed by Dr. Radelet, reveals that Petitioner did not have a jury that reflected “contemporary community values” due to the systemic exclusion of potential nonwhite jurors in Duval County. *Witherspoon*, 391 U.S. at 520 n. 1.; *cf. Ballew v.*

Georgia, 435 U.S. 223, 230-37 (1978) (finding five-member jury unconstitutional because, among other constitutional concerns, it fails to “provide a representative cross-section of the community” because “meaningful community participation cannot be attained with the exclusion of minorities or other identifiable groups from jury service”); and *Smith v. Texas*, 311 U.S. 128, 130 (1940) (“It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community.”).

The Supreme Court’s Eighth Amendment jurisprudence therefore shows that a jury that is demographically skewed due to death qualifications fails to adequately capture the standards of decency. The lower court failed to recognize and consider this jurisprudence.

B. A state must not opt out of considerations required by the Eighth Amendment.

In denying Mr. Sparre’s Eighth Amendment claim based on racially discriminatory death qualification practices, the Florida Supreme Court relied in part upon its prior caselaw refusing to give any consideration to Eighth Amendment claims that had not already been squarely decided by this Court. *See* App. A n.8 at 12 and Brief in Opposition at 17. In other words, the Florida Supreme Court found that Mr. Sparre’s claim had been rendered meritless by the sheer fact that this Court has not said—verbatim—that the Eighth Amendment precludes consideration of the racial skewing of juries in Duval County by operation of death qualification and the prosecution’s use of peremptory

challenges. Florida's conformity clause is a unique state constitutional amendment that prohibits Florida courts from conducting any Eighth Amendment analysis that could lead to protection of an individual not already explicitly protected by this Court's prior holdings. Left undisturbed, this abdication means that Mr. Sparre's claims will be denied (a) based on a systemic constitutional flaw in Florida's death penalty scheme, and (b) without any meaningful consideration of his allegations that racially discriminatory death qualification is pervasive in Duval County capital jury selection in violation of the evolving standards of decency under the Eighth Amendment.

Florida's use of the conformity clause effectively forecloses consideration of evolving standards of decency in Florida and bypasses critical safeguards to ensure constitutional administration of the death penalty. It rejects core federalist principles of state autonomy and individualism; and, it stands to hinder this Court's intended function by obstructing Eighth Amendment analysis of state practice and forcing this Court to act as a court of first instance for Eighth Amendment issues arising out of Florida.

"Florida does what the Constitution forbids" in the absence of this Court's intervention. *Cunningham v. Florida*, 144 S. Ct. 1287, 1288 (2024) (Gorsuch, J., dissenting from denial of certiorari).

1. Florida's Eighth Amendment Conformity Clause.

Art. I, § 17 of the Florida State Constitution, otherwise known as "the conformity clause," 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.

In ensuing years since the Eighth Amendment conformity clause—the only one of its kind—became part of the Florida constitution in 1999, the Florida courts have cited its purported restriction, and have increasingly 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); and *Lawrence v. State*, 308 So. 3d 544, 545 (Fla. 2020) (Florida Supreme Court relying on the conformity clause to eliminate Eighth Amendment proportionality review); *see also Covington v. State*, 348 So. 3d 456, 479-480 (Fla. 2022) (relying in part on conformity clause to refuse to consider whether defendant’s alleged insanity at the time of the crime rendered his death sentence cruel and unusual); *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); *Zack v. State*, 371 So. 3d 335, 350 (relying on the conformity clause to justify denying a claim involving a nonunanimous jury challenge); *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023) (relying on the conformity clause to refuse to extend the holding in *Roper v. Simmons*, 543 U.S. 551 (2005)).

2. This Court has authority to intervene in Florida’s

unconstitutional use of its conformity clause, and should exercise that authority here.

Where a state constitution conflicts with the federal constitution—including this Court’s interpretive jurisprudence—the state constitution 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.”); *see also Puerto Rico v. Branstad*, 483 U.S. 219, 228 (1987) (rejecting the 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 when state law offends federally protected rights.”).

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

[D]o 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, Florida has wholly repudiated a critical aspect of Eighth Amendment determinations: consideration of ever-evolving societal, legal, and scientific standards. 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.

Further, 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 generally, e.g., Cook v. Gralike*, 531 U.S. 510 (2001) (granting certiorari despite lack of a split of authority due to the importance of the case and summarily affirming lower courts' opinions that portions of the Missouri Constitution were unconstitutional); *Rice v. Cayetano*, 528 U.S. 495 (2000) (reversing lower court's judgment on certiorari review and finding that Hawaii's state constitutional provision violated the Fifteenth Amendment); *Romer v. Evans*, 517 U.S. 620 (1996) (holding that a Colorado state constitutional amendment adopted by statewide voter referendum violated equal protection clause of the Fourteenth Amendment); *et al.*

This Court should exercise its authority here. Without this Court's intervention, Florida's 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.

3. This issue is of great national importance.

Florida's abdication, via the conformity clause, from Eighth Amendment consideration warrants this Court's intervention because it is dispositive to whether Mr. Sparre may raise his claim of the racial skewing of death qualified juries in Duval County. But the impact of leaving this issue unaddressed would extend far beyond harm to Mr. Sparre, and even beyond the potential harm to other similarly-situated individuals in Florida. Indeed, there are many other concerns underscoring the need for this Court's certiorari review.

First, 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, e.g., Alden v. Maine*, 527 U.S. 706, 748 (1999) (referring back to “the founding generation” in declaring that “our federalism” requires states to be treated consistently “with their status 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” and stating that where “the protections of the federal and state constitutions are not co-extensive” the more protective standard must apply”); *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.”); *Downey v. State*, 144 So.3d 146, 151 (Miss. 2014) (“[Supreme Court precedent] does not require Mississippi to follow the minimum standard that the federal government has set for itself...However, we are not allowed to abrogate or diminish clearly-articulated federal rights[.]”); *State v. Baldon*, 829 N.W.2d 785, 791 & n.1 (Iowa 2013) (The United States Supreme Court’s jurisprudence “makes for an admirable floor, but it is certainly not a ceiling....The incorporation doctrine commands that we no longer use independent state grounds to sink below the federal floor.”); *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:

Federal and state bills of rights thus serve distinct but complementary purposes. The federal Bill of rights facilitates political and philosophical homogeneity among the basically heterogeneous states by securing, as a uniform minimum, the highest common denominator of freedom that can prudently be administered throughout all fifty states. The state bills of rights, on the other hand, express the ultimate breadth of the common yearnings for freedom of each insular state population within our nation.

Traylor v. State, 596 So. 2d 957, 962 (Fla. 1992).

[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)).

This Court should grant review to enforce the expectation of robust state involvement in upholding our most precious national principles, such as the Eighth Amendment proscription on cruel and unusual punishment.

Second, Florida’s practice of abdication obstructs important aspects of this Court’s judicial function as it pertains to Eighth Amendment determinations, and hinders national progress related to evolving standards of decency. 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 their 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 independently 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). This Court should grant review so that it can provide guidance for Florida to correct that ill.

Third, Florida’s continued refusal to confer any independent judgment in the Eighth Amendment context would cut against its own decree that state courts are meant to “function daily as the prime arbiters of personal rights[,]” *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992), and would require this Court to become a court of first instance in all Florida cases involving even arguably novel Eighth Amendment issues.

4. Without this Court’s intervention, Florida will continue to routinely violate the Eighth Amendment.

Florida’s self-imposed prohibition against even the slightest consideration of whether Eighth Amendment protections should be extended to an individual not already exempted from execution under this Court’s precedent violates *Trop* and its

Eighth Amendment progeny. *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”); *see also 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.”).

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. “Florida does what the Constitution forbids” absent this Court’s intervention. *Cunningham*, 144 S. Ct. at 1288 (Gorsuch, J., dissenting from denial of certiorari)

Sparre’ death sentence does not comport with evolving standards of decency, and Florida cannot both delegate itself authority to influence future Supreme Court holdings and abdicate its duty to comport with what the law is right now

6. Conclusion.

Without this Court’s intervention, Florida’s actions will “risk[] turning the Federal Constitution into a ceiling, rather than a floor, for the protection of individual liberties.” *Kansas v. Carr*, 577 U.S. 108, 132 (2016) (Sotomayor, J., dissenting). That risk will have far-reaching implications outside of Florida. And, in Florida, that risk will manifest as reality. Evolving standards of decency—the living breath of the Eighth Amendment—will be stilled.

Respectfully submitted,



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JUNE 12, 2026