

No. _____

In the Supreme Court of the United States

DENNIS SOCHOR,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

DEATH WARRANT SIGNED
Execution Set: July 14, 2026, at 6:00 p.m.

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REPLY TO ARGUMENT

By the State's reckoning, this Court's grant of certiorari and vacatur of the Florida Supreme Court's judgement in 1992 merely kicked off a "protracted four-decades-long abuse of the system." (Brief in Opposition at 6). Mr. Sochor's next step in his "four-decades-long abuse of the system" resulted in the Florida Supreme Court finding that his "counsel's performance was *clearly deficient*" during the penalty phase. *Sochor v. State*, 883 So.2d 766, 772 (Fla. 2004) (emphasis added). Two justices dissented from that court's denial of relief, evidently willing to overlook Mr. Sochor's ongoing "abuse of the system," to find: "The majority's decision renders meaningless the Sixth Amendment guarantee of the right to counsel, and is tantamount to directing a judgement of death by concluding that having competent representation could not possibly have made a difference in the outcome." *Id.* at 791. And, 26 years into Mr. Sochor's "four-decades-long abuse of the system," the Eleventh Circuit found "[t]he Supreme Court of Florida unreasonably applied clearly established federal law when it 'either did not consider or unreasonably discounted' the relevant mental health evidence that Sochor produced in the evidentiary hearing." *Sochor v. Sec'y Dept. of Corr.*, 685 F.3d 1016, 1030 (11th Cir. 2012). The State's suggestion that these decisions merely punctuated a "four-decades-long abuse of the process" is flatly refuted by this record of substantially meritorious constitutional claims. Beyond this rhetorical flourish, three points raised in the State's brief in opposition warrant a reply.

I. IN MISREPRESENTING RELEVANT FLORIDA LAW, THE STATE ADOPTS A NOVEL THEORY OF POSTCONVICTION DISCOVERY THAT SUBVERTS BASIC PREMISES OF LEGAL REPRESENTATION.

The State argues: “Although capital collateral counsel may not utilize Chapter 119 Florida Statutes to obtain additional records for his client, there is nothing precluding the defendant from making such a request outside of postconviction litigation, as the Florida Supreme Court recognized in *Hitchcock*.” (Brief in Opposition at 9-10) (citing *Hitchcock v. State*, 431 So.3d 514, 525 (Fla. 2026)). This argument is ludicrous. Obviously, inmates on death row cannot freely access public records—especially autopsy records. Non-legal mail is processed and censored by the Florida Department of Corrections. Even appointed attorneys are limited in sending their clients on death row legal mail and in handing them documents during legal visits. The State cannot credibly claim that Mr. Sochor could reasonably discover public records from his cell, let alone autopsy records of executed inmates. Clearly, Mr. Sochor had to rely on his attorneys to obtain public records and investigate claims for him.

Beyond its practical impossibility, the State’s theory subverts the basic role of counsel. Appointed counsel acts as their client’s agent. Counsel’s acts and omissions are ascribed to their client, but the client’s acts and omissions are not ascribed to counsel. The State does not even attempt to explain how Mr. Sochor could have discovered autopsy records before they existed, as the Florida Supreme Court found he should have.

Mr. Sochor did not merely “incorrectly assume[] he could not demand autopsy reports to further support his Eighth Amendment challenge.” Brief in Opposition at

7. The law, before *Hitchcock*, was widely understood to restrict defendants’ ability to seek records through any other means.¹ This is consistent with the Rule’s stated purpose and intent. In promulgating Rule 3.852, Justice Anstead stressed that “capital defendants should utilize this rule to conduct *all* discovery, including the discovery that was previously conducted pursuant to chapter 119.” *In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod.*, 683 So. 2d 475, 477 (Fla. 1996) (Anstead, J. concurring) (emphasis in original). The

¹ The State’s attempt to distinguish its arguments in *Lowe* are disingenuous at best. The State’s understanding of Rule 3.852 and section 27.7081 was no different than Mr. Sochor’s: “Rule 3.852 and section 27.7081 were intended to supplant prior methods open to capital defendants, such as Chapter 119, for demanding public records, this Court should find *Lowe* failed to use the only sanctioned method of demanding public records in a capital postconviction case.” *Lowe* Motion for Rehearing Sept. 20, 2024, p. 9 (footnotes omitted). The State has made similar arguments countless times in litigation of public records issues in postconviction cases. The attempt to walk back their position is belied by what the State further argued in *Lowe*:

When the Florida Supreme Court promulgated Rule 3.852 it stated the new rule superseded *Hoffman v. State*, 613 So. 2d 405 (Fla. 1992) which had permitted capital litigants to seek public records under Chapter 119. *In re Amendment to Florida Rules of Criminal Procedure*, 683 So. 2d at 476. The fact that Rule 3.852 supersedes *Hoffman* and its direction for capital defendants to use Chapter 119 for public records requests in capital postconviction litigation is clear proof that **Rule 3.852 is the sole means available to a capital postconviction litigants to obtain public records.** Moreover, given that Rule 3.852 was put in place to address discovery and public records production in capital cases evinces the fact that **Rule 3.852, not some other means of public records production, is the sole mechanism permitted a capital litigant to obtain public records.**

Lowe Motion for Rehearing, Sept. 20, 2024, p. 6-7 (footnotes omitted).

rule refers not to “defendant’s counsel,” but to “defendants.” *Id.* That is how the rule is written, and how it has been interpreted by both the State and capital defendants for nearly three decades.

The fact that Mr. Sochor’s counsel received the autopsy reports from a third party does not support, let alone “prove,” Brief in Opposition at 10), that Mr. Sochor could have obtained these records on his own. Here again, this argument ignores the three decades of litigation where the State and Florida courts have held the limitations of Rule 3.852 against capital defendants. Those limitations have never applied to anyone but capital postconviction defendants. By the State’s logic, death sentenced inmates, despite being provided state-funded counsel, must either perform discovery themselves (a practical impossibility) or wait for discovery to serendipitously appear, only to be told that it appeared too late.

Mr. Sochor did not “wait[] until after the Governor signed his death warrant,” (Brief in Opposition at 12), to raise this claim. His counsel received the records that gave rise to his claim just weeks before. Indeed, after receiving the records, counsel had no time to wait and was forced to litigate these complicated matters under the exigencies of a death warrant. It strains reason to believe that Mr. Sochor or counsel would not have raised this claim sooner if he could have, without the Governor forcing his hand.

II. THE FLORIDA SUPREME COURT’S JUDGEMENT DOES NOT REST ON INDEPENDENT AND ADEQUATE STATE LAW GROUNDS.

The State avers that the Florida Supreme Court’s decision “rests on independent and adequate state law grounds.” Brief in Opposition at 8. This is simply not the case. As this Court recently reiterated,

The question whether a state procedural ruling is adequate is itself a question of federal law. Ordinarily, a violation of a state procedural rule that is “firmly established and regularly followed” will be adequate to foreclose review of a federal claim. Nevertheless, in “exceptional cases,” a “generally sound rule” may be applied in a way that “renders the state ground inadequate to stop consideration of a federal question.”

Cruz v. Arizona, 598 U.S. 17, 25-26 (2023) (citations omitted). The Florida Supreme Court’s judgement rests on the application of a novel reinterpretation of a state procedural rule that the State, defendants, and Florida Courts have interpreted differently for more than three decades. Based on the history of Florida’s postconviction discovery rule, it can hardly be said to be “firmly established and regularly followed.”

III. THE STATE ATTACKS A STRAWMAN RATHER THAN MR. SOCHOR’S ARGUMENT FOR GRANTING CERTIORARI.

The State either misapprehends or misrepresents Mr. Sochor’s argument for granting certiorari. Mr. Sochor does not argue that Florida “foreclosed an entire class of litigation.” (Brief in Opposition at 6). Rather, he argues that Florida forces capital defendants to raise federal method-of-execution claims long before they are meaningful. Resultantly, whenever a capital defendant attempts to challenge the

method that Florida might actually use to execute him, he inevitably faces procedural bars and time bars.

The State tries to distinguish *Howlett* on the grounds that it dealt with sovereign immunity and 42 U.S.C. § 1983, but these are distinctions without a difference. This Court has plainly applied *Howlett* outside of the sovereign immunity context. Recently in *Williams v. Reed*, 604 U.S. 168 (2025), this Court found that Alabama had impermissibly applied administrative exhaustion requirements with the practical effect of granting immunity from particular federal claims. Describing its holding in *Howlett*, this Court said, “§ 1983 preempted Florida's rule because the rule *in effect* afforded immunity from certain § 1983 claims.” 604 U.S. at 174 (emphasis added) (citing *Howlett*, 496 U.S. at 375–78). Focused on effect, not form, *Howlett* is not limited to the sovereign immunity context. Furthermore, *Howlett* addressed state court limitations on federal claims *otherwise cognizable under § 1983*. An Eighth Amendment method-of-execution claim is plainly cognizable under § 1983. *See Glossip*. In Florida courts, such claims are brought under Fla. R. Crim. Proc. 3.851. Having authorized Courts hearing Rule 3.851 motions to adjudicate federal method-of-execution claims, Florida cannot nullify the cause of action with non-federal procedural rules.

Respectfully submitted,

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