

No. _____

In the Supreme Court of the United States

STACEY IAN HUMPHREYS,
PETITIONER,

v.

GEORGIA BOARD OF PARDONS AND PAROLES, ET AL,
RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

On the same day that Stacey Ian Humphreys's death warrant was signed, the Governor appointed Kimberly McCoy to the vacant fifth seat on the Georgia Board of Pardons and Paroles ("the Board"). The Board is the only Georgia entity empowered to grant executive clemency. Ms. McCoy had just completed a 25-year career as Director of the Victim-Witness Unit for the Cobb County District Attorney's office, the very office that obtained Mr. Humphreys's death sentence. In that role, she advocated for the family members of the victims in his case and formed a "close bond" with them.

A Georgia Superior Court ruled that Ms. McCoy labored under a conflict of interest and ordered that she recuse herself from the clemency proceedings. While the lower court's order acknowledged that a favorable vote from at least three Board members was required for a death-sentenced applicant to obtain a commutation, it also held—contrary to the unbroken historical practice in Georgia and the Board's own understanding—that the Board could consider Mr. Humphreys's application with only four members. Every other Georgia capital prisoner has had the opportunity to convince three of *five* Board members to extend mercy. Mr. Humphreys must convince three of *four*.

The questions presented are: When the state departs from its own long-standing practice and procedures and arbitrarily burdens a capital clemency applicant's likelihood of success in obtaining a commutation, does it (1) deprive him of due process and (2) violate the Equal Protection Clause?

PARTIES TO THE PROCEEDINGS

Stacey Ian Humphreys is the Petitioner here and was the Petitioner-Appellant below.

The Georgia State Board of Pardons and Paroles; Joyette Holmes, Wayne V. Bennett, David J. Herring, Robert Markley, and Kimberly McCoy, in their official capacity as members of the State Board of Pardons and Paroles; Tyrone Oliver, in his official capacity as Commissioner of the Georgia Department of Corrections; and Brian Kemp in his official capacity as Governor of the State of Georgia, are the Respondents here and were the Respondents-Appellees below.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

Superior Court of Glynn County, Georgia:

The State of Georgia v. Stacey Ian Humphreys, No. 04-9-0673-05 (Sept. 30, 2007)

Superior Court of Cobb County, Georgia:

The State of Georgia v. Stacey Ian Humphreys, No. 04-9-0673-05 (Jan. 19, 2009)

Superior Court of Butts County, Georgia:

Stacey Ian Humphreys v. Bruce Chatman, Warden, Ga. Diagnostic and Classification Prison, No. 2011-V-160 (Mar. 10, 2016)

Superior Court of Fulton County:

Stacey Ian Humphreys v. State Bd. of Pardons and Paroles, Joyette Holmes, Chair, Wayne V. Bennett, David J. Herring, Robert Markley, Kimberly McCoy, Members; Tyrone Oliver, Comm'r, Ga. Dep't of Corr.; and Brian P. Kemp, Governor, No. 25-CV-017069 (Mar. 3, 2026)

Supreme Court of Georgia:

Humphreys v. The State, No. S09P1428 (Mar. 15, 2010)

Stacey Ian Humphreys v. Bruce Chatman, Warden, No. S16E1799 (Aug. 28, 2017)

Stacey Ian Humphreys v. State Bd. of Pardons and Paroles, et al., No. S26D1147 (Apr. 29, 2026)

United States District Court for the Northern District of Georgia:

Stacey Ian Humphreys v. Eric Sellers, No. 1:18-cv-02534-LMM (Sept. 16, 2020)

United States Court of Appeals for the Eleventh Circuit:

Stacey Ian Humphreys v. Warden, Ga. Diagnostic Prison, No. 21-10387 (June 11, 2024)

Supreme Court of the United States:

Stacey Ian Humphreys v. Georgia, No. 10-6322 (Nov. 15, 2010)

Stacey Ian Humphreys v. Eric Sellers, No. 17-7306 (Apr. 16, 2018)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Stacey Ian Humphreys respectfully petitions this Court for a writ of certiorari to review the order of the Supreme Court of Georgia denying his application for discretionary appeal from the final order of the Superior Court of Fulton County, Georgia.

OPINION AND ORDERS BELOW

The decision of the Superior Court of Fulton County, entered on March 2, 2026 granting in part and denying in part Mr. Humphreys's petition for a writ of mandamus in *Humphreys v. State Bd. of Pardons and Paroles, et. al.*, is reproduced in the appendix at Pet. App. C. The December 29, 2025 order of the Superior Court of Fulton County granting temporary injunctive relief during the pendency of those proceedings is reproduced at Pet. App. D. The order of the Supreme Court of Georgia denying Mr. Humphreys's application for discretionary appeal is reproduced at Pet. App. B. The order of Supreme Court of Georgia denying Mr. Humphreys's petition for rehearing of that decision is reproduced at Pet. App. A.

JURISDICTION

On April 29, 2026, the Supreme Court of Georgia entered an order denying Mr. Humphreys's application for discretionary appeal. A timely filed petition for rehearing was denied on May 19, 2026. The deadline to file this petition is August 17, 2026. Therefore this petition is timely. *See* Supreme Court Rules 13.1 and 13.3. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution states in part:

“Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

U.S. Const. amend. XIV.

Article Four of the Georgia Constitution of 1983 states:

Paragraph I. ***State Board of Pardons and Paroles.*** There shall be a State Board of Pardons and Paroles which shall consist of five members appointed by the Governor, subject to confirmation by the Senate. ...

Paragraph II. (a) Except as otherwise provided in this Paragraph, the State Board of Pardons and Paroles shall be vested with the power of executive clemency, including the powers to grant reprieves, pardons, and paroles; ...

(d) the chairman of the board, or any other member designated by the board, may suspend the execution of a sentence of death until the full board shall have an opportunity to hear the application of the convicted person for any relief within the power of the board.

Ga. Const. Art. IV, § II ¶ I and II.

Title 42 of the Georgia code states as follows:

Pursuant to Article IV, Section II, Paragraph I of the Georgia Constitution, there shall be a State Board of Pardons and Paroles, which shall consist of five members appointed by the Governor, subject to confirmation by the Senate.

O.C.G.A. § 42-9-2.

... The board by an affirmative vote of a majority of its members shall have the power to commute a sentence of death to one of life imprisonment.

O.C.G.A. § 42-9-20(a).

STATEMENT OF THE CASE

Death-sentenced prisoners in Georgia have a constitutional and statutory right to seek executive clemency from the Georgia Board of Pardons and Paroles (“the Board”). Ga. Const. Art. IV, § II; O.C.G.A. §§ 42-9-1 *et seq.*; *McLendon v. Everett*, 55 S.E.2d 119 (Ga. 1949). To obtain commutation of a death sentence to one of life imprisonment, a prisoner must secure a majority vote of the Board: three sitting members must vote to commute. O.C.G.A. § 42-9-20(a). In the modern death penalty era, no condemned prisoner has had his or her application for clemency decided by fewer than all five Board members. The Georgia courts have cleared the way for Stacey Humphreys to be the first.

A. Stacey Humphreys's Death Sentence.

In 2007, Mr. Humphreys was sentenced to death for the robbery and murders of Lori Brown and Cynthia Williams at the Cobb County model home where they worked as real estate agents. The Supreme Court of Georgia upheld the jury's verdict on direct appeal. *Humphreys v. State*, 694 S.E.2d 316 (Ga. 2010).

Mr. Humphreys's subsequent state and federal postconviction challenges centered on, *inter alia*, the fact that eleven jurors were coerced into relinquishing their votes for a life without parole sentence as a result of egregious misconduct by a fellow juror. But each of the appeals failed as a result of the juror no-impeachment rule, O.C.G.A. § 24-6-606(b), Fed. R. Evid. 606(b), which barred the courts from weighing the jurors' testimony. *Humphreys v. Chatman*, No. S16E1799 (Ga. August 28, 2017) (unpublished); *Humphreys v. Warden, Ga. Diagnostic Prison*, No. 21-10387, 2024 WL 2945070, at *13–16 (11th Cir. 2024) (unpublished). Pet. App. G34–G42. As three members of this Court observed last term, Mr. Humphreys's case “illustrates an[] ‘extreme’ situation in which the no-impeachment rule likely should have yielded because the juror's extreme misconduct threatened Humphreys's Sixth Amendment right to an impartial jury.” *Humphreys v. Emmons*, 146 S. Ct. 28, 30 (2025) (Sotomayor, J., dissenting from denial of certiorari). Pet. App. F4. Executive clemency, where the jurors' testimonies *can* be heard, now stands as Mr. Humphreys's last opportunity to vindicate his jury trial rights.

On December 1, 2025, Cobb County District Attorney Sonya Allen obtained a warrant for Mr. Humphreys's execution. Pet. App. E181. The Department of Corrections

scheduled the execution for December 17, 2025. Pet. App. E208. On December 11, Mr. Humphreys filed an application for executive clemency with the Board. The centerpieces of the application were (1) Mr. Humphreys’s profound remorse and (2) that a life imprisonment sentence would be consistent with the wishes and views of the eleven unbiased jurors who voted for life without parole, and with the intention of Georgia’s capital sentencing statute.¹

B. Georgia’s Executive Clemency Procedure.

The Georgia Constitution establishes a Board of Pardons and Paroles “consisting of five members.” Ga. Const. Art. IV, § II ¶ I. The Board holds the exclusive authority to grant clemency to a death-sentenced Georgia prisoner. *Id.* at ¶ II(a).

When an execution warrant issues, the Board, through its counsel, notifies the prisoner of the deadline for filing of his clemency application and the date and time that the Board has set aside to hear from counsel and witnesses in support of the application. The Board similarly—but separately—hears from those opposed to clemency.

Following these closed-door presentations, the Board meets in an executive session with an “opportunity to deliberate collectively” before individually casting confidential ballots. Pet. App. E-146. By law, at least three of the five Board members must vote for clemency for an applicant to obtain a commutation. O.C.G.A. § 42-9-20(a).

¹ But for the coercive misconduct, his jurors’ non-unanimity would have resulted in a life sentence under Georgia law. O.C.G.A. § 17-10-31(c).

**C. Mr. Humphreys's Efforts to Obtain a Hearing
Before a Board Free of Conflicts of Interest.**

The same day that the Cobb County District Attorney obtained the warrant for Mr. Humphreys's execution, Governor Brian Kemp appointed Kimberly McCoy to fill a vacant fifth seat on the Board. Pet. App. E184. From 1999 to 2024, Ms. McCoy served as the Director of the Cobb County District Attorney's Victim-Witness Unit. In that role, she personally advocated for the needs of victims and witnesses in all cases involving the death penalty, including Mr. Humphreys's. Pet. App. E193–E194.

When the venue for Mr. Humphreys's trial was moved from Cobb County to Glynn County in September 2007, Ms. McCoy "transferred virtually her entire operation more than 300 miles to coastal Brunswick." Pet. App. E194. During the month-long trial, Ms. McCoy assisted the attorneys prosecuting Mr. Humphreys by handling the extensive witness logistics. Pet. App. E194. Her primary task, however, was to support the victims' family members. The lower court found that "this put her in close and extended contact" with the victims' surviving relatives "leading up to and throughout the trial." Pet. App. C2. "She was in many ways their guardian throughout the proceedings," the lower court wrote, and "[i]t is plain from the record that she quite understandably formed a very close bond with both families." Pet. App. C6. Consequently, Ms. McCoy's conflict of interest with respect to deciding Mr. Humphreys's clemency application "kind of hit[s] you in the face when you read about her connection to the underlying case." Pet. App. E31.

A second Board member, Wayne Bennett, also played a role in Mr. Humphreys's trial. From 1992 to 2012, Mr.

Bennett served as Sheriff of Glynn County, Pet. App. E263, the new venue for Mr. Humphreys's trial. As sheriff, Mr. Bennett oversaw security, housing, and transportation for the sequestered jury. Pet. App. E77.

Shortly after the execution warrant was served, Mr. Humphreys's counsel wrote to the Board's counsel, La'Quandra Smith, to alert the Board to the respective roles that Ms. McCoy and Mr. Bennett played in Mr. Humphreys's prosecution. Mr. Humphreys's counsel inquired how the Board intended to proceed to ensure "five conflict-free Board members to consider his clemency application." Pet. App. E208.

Five days later, Ms. Smith replied:

A full Board of five members is required to consider the clemency request of an offender sentenced to death. A majority vote of that Board is required to render a decision. ... As it is currently constituted, the Board plans to give due consideration to any clemency request made by Mr. Humphreys.

Pet. App. E210.

On December 12, 2025, Mr. Humphreys filed the mandamus action that formed the basis of the proceedings below, along with an emergency motion for injunctive relief, in the Superior Court of Fulton County, Georgia. He asked the court to order Mr. Bennett and Ms. McCoy to satisfy their legal duty to recuse themselves; to order that the clemency proceedings be stayed while the Board had fewer than five unconflicted members; and to order that the

two conflicted members be replaced before any action was taken on the pending clemency application.

The Superior Court held an emergency hearing on December 15.² The Court took limited testimony³ from Ms. McCoy, Mr. Bennett, and the Board's legal director, Ms. Smith. As relevant here, testimony from Ms. Smith established that, during her entire 20-year tenure, the Board has never proceeded in a death penalty case with fewer than five members voting upon an application for commutation of a death sentence. Pet. App. E148. Other record evidence suggests that the same was true as of 2002. Pet. App. E214. When the evidence is read together, it establishes that in the modern death penalty era, never before has a Georgia capital clemency application been decided upon by a vote of less than five members.

D. The Rulings Below.

1. The Superior Court of Fulton County

On December 29, the Superior Court entered an order temporarily enjoining the Board from moving forward. The court halted further clemency proceedings “until such time as Petitioner can be afforded the standard, constitutionally mandated clemency hearing before the *full* Board,

² Immediately prior to the hearing, the Board Chair entered an order “suspending” the execution, but represented to the court that the suspension could be lifted at any time. The court proceeded on the petition and request for emergency injunctive relief.

³ The court circumscribed the testimony to only those matters that the court found were unresolved and not protected by privilege. Pet. App. E95–E96, E138–E139.

comprised of five members who are able to participate fully in the proceedings, including the final vote” on clemency. Pet. App. D9 (emphasis in original). The court observed that because Georgia law explicitly requires three votes to grant clemency, a “non-vote has precisely the same impact as a ‘no’ vote,” Pet. App. D7, thus putting an applicant with fewer than five members at a disadvantage. Having concluded that the Georgia Constitution requires five participating members, the lower court requested briefing solely “on the question of whether and how Member McCoy can be replaced by an interim Board member[.]” Pet. App. D9.

In its March 2, 2026 final order, the Superior Court reaffirmed its finding that Ms. McCoy labored under a conflict of interest.⁴ Pet. App. C6–C7. By joint operation of O.C.G.A. § 42-9-9 and the Board’s ethical guidelines, her full recusal was required. *Id.*

But the court revisited its prior ruling that five Board members were constitutionally required—wholly reversing course. Despite the absence of further briefing on the question, the court held that the Georgia Constitution does *not*, in fact, require a “full Board every time.” Pet. App. C3. Although the court previously correctly acknowledged that under Georgia’s scheme, a “non-vote has precisely the same impact as a ‘no’ vote,” Pet. App. D7, the court ruled that only a mere quorum was required to decide a clemency application, Pet. App. C3. According to the Superior Court, this does not offend the Constitution:

⁴ It held that Mr. Bennett “does not labor under a similarly material conflict of interest” and could participate. Pet. App. C8.

[Mr. Humphreys] will have notice of his hearing, he will be able to call witnesses (and testify himself if he so chooses), and he will enjoy the services of experienced counsel. There will be no coin-flipping. That suffices to meet the “minimal” procedural safeguards envisioned in [*Ohio Adult Parole Auth. v. Woodard*], 523 U.S. 272 (1998).]

Pet. App. C3–C4, n.6.⁵ All other decisions regarding how to proceed in Mr. Humphreys case were thus “properly vested in the broad discretion of the Board and the Governor, respectively.” Pet. App. C8.

2. The Supreme Court of Georgia

Mr. Humphreys applied to the Supreme Court of Georgia for review.⁶ He argued that a five-member Board decision was required by the Georgia Constitution and

⁵ The Superior Court resolved the federal due process question though Mr. Humphreys did not raise it. The implications of this Court’s holding in *Woodard* on the Board’s entitlement to move forward with fewer than five voting members was never briefed and argued by the parties. This ruling “departed so drastically from the principle of party presentation as to constitute an abuse of discretion.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020); *see also Margolin v. Nat’l Assoc. of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026) (“we rely on the parties to ‘frame the issues for decision’ and decide ‘only the questions presented.’”) (quoting *Sineneng-Smith*, *ibid.* at 375–76). Remand to the Georgia courts is appropriate for this reason alone.

⁶ Pursuant to Georgia’s Prison Litigation Reform Act, O.C.G.A. § 42-12-1, *et seq.*, direct appeal of a judgment in a civil suit brought by a prisoner is not permitted. Mr. Humphreys was required to apply for discretionary review. O.C.G.A. § 42-12-8.

that, in the absence of such a requirement, “the majority vote rule is arbitrary, unfair, and ultimately unconstitutional.” April 1, 2026 Application for Discretionary Review, at *25 (citing U.S. Const. amend. XIV). In its response, the Board denied that any provision, “constitutional, statutory, or otherwise,” mandated a full five-member Board. April 10, 2026 Brief in Opposition to Discretionary Appeal, at *12.

On April 29, 2026, the Supreme Court of Georgia denied the application in a single-page summary order. Pet. App. B1. A timely-filed motion for reconsideration was also denied. Pet. App. A1. This petition follows.

REASONS FOR GRANTING THE PETITION

In *Ohio Adult Parole Authority v. Woodard*, this Court found that a prisoner under a sentence of death nevertheless retains a constitutionally-protected interest in his life. 523 U.S. 272, 289 (1998) (O'Connor, J., concurring in part) (“A prisoner under a death sentence remains a living person and consequently has an interest in his life.”); *see also id.* at 291 (Stevens, J., concurring in part and dissenting in part) (“There is [] no room for legitimate debate about whether a living person has a constitutionally protected interest in life. He obviously does.”); and *id.* at 281 (Rehnquist, C.J., plurality opinion) (“We agree that respondent maintains a residual life interest, e.g., in not being summarily executed by prison guards.”). The Court fractured, however, on whether, in light of that residual life interest, the right to due process inheres in executive proceedings seeking commutation of a death sentence. Four members of the Court held that this life interest gives rise to at least some “minimal” due process protections in capital clemency proceedings, *id.* at

289 (O'Connor, J., concurring in part), while a fifth justice would have held that more robust due process protections attach, *id.* at 293–94 (Stevens, J., concurring in part and dissenting in part).

Woodard did not present an opportunity for this Court to hold that a Fourteenth Amendment right to equal protection attaches to capital clemency proceedings as well, though this Court's precedents plainly support that conclusion. *See id.* at 276, n.1 (Rehnquist, C.J., plurality opinion) ("we have no occasion to decide that question.").

This case presents an ideal vehicle to finally resolve the questions that have dogged the lower courts since *Woodard*: (1) What does "minimal" due process promise? May the state depart from its own long-standing practice and procedures and arbitrarily burden the applicant's likelihood of success in obtaining a commutation without running afoul of this guarantee? And (2) does a prisoner have the right to Equal Protection in clemency proceedings based on his continuing right to life?

A. This Court Should Grant Certiorari to Define The Right to Due Process in Clemency.

While Justice O'Connor's controlling opinion in *Woodard* established that the amount of process due in clemency is "minimal," the precise contours of "minimal due process" have never been drawn by this Court. *See, e.g., Creech v. Idaho Comm'n of Pardons and Parole*, 94 F.4th 851, 855 (9th Cir. 2024) (Applying *Woodard* and concluding "[t]he precise contours of our review of a commutation proceeding are unclear."). And the Georgia Supreme Court's decision below upends the single doctrinal thread that the lower courts largely agree can be gleaned from

Woodard: that minimal due process means—at a minimum—a state that follows its own established procedures and does not deviate arbitrarily. Under the approach condoned by the Georgia courts below, the state need not do even that.

Moreover, in the time since this Court decided *Woodard*, the role of executive clemency in capital cases has shifted materially. As the postconviction review process has become more cabined by substantive and practical limits on its power to correct error, the role of clemency in avoiding the imposition of an unjust death sentence has grown ever more central. We respectfully ask this Court to revisit the question of whether “minimal” due process is the appropriate standard.

1. The lower courts generally agree that Due Process requires, at a minimum, that a State follow its own established clemency procedures.

Woodard gave just two examples of a procedure that would violate the applicant’s due process right: “a scheme whereby a state official flipped a coin to determine whether to grant clemency,” and “a case where the State arbitrarily denied a prisoner any access to its clemency process.” *Woodard*, 523 U.S. at 289 (O’Connor, J., concurring). Because Ohio had accorded Mr. Woodard a process that included notice, an opportunity to participate, *and* a process that complied with the state’s own regulations, the requirement of minimal due process was satisfied. *Id.* at 290.

As a result, the lower courts have largely coalesced around a reading of *Woodard* that requires at least that a

State refrain from arbitrary action and follow its own established procedures for commutation applications. *See, e.g., Noel v. Norris*, 336 F.3d 648, 649 (8th Cir. 2003) (“[I]f the State actively interferes with a prisoner’s access to the very system that it has itself established for seeking clemency petitions, due process is violated.”); *Duvall v. Keating*, 162 F.3d 1058, 1061 (10th Cir. 1998) (“the minimal application of the Due Process Clause only ensures a death row prisoner that he or she will receive the clemency procedures explicitly set forth by state law, and that the procedure followed in rendering the clemency decision will not be wholly arbitrary...”); *Allen v. Hickman*, 407 F. Supp. 2d 1098, 1103–04 (N.D. Cal. 2005) (“Clemency proceedings satisfy the Due Process Clause as long as the State follows the procedures set out in State law, the State does not arbitrarily deny the prisoner all access to its clemency process, and the clemency decision is not wholly arbitrary or capricious”); *Bacon v. Lee*, 549 S.E.2d 840, 851 (N.C. 2001) (No due process violation where it was “undisputed that Bacon received notice of clemency procedures and that he has fully availed himself of these procedures”); *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010) (“This minimal application [of procedural due process] requires only that a death row prisoner receive the clemency procedures explicitly set forth by state law...”); *see also United States v. Hutchins*, 72 M.J. 294 (C.A.A.F. 2013) (Baker, C.J., dissenting) (in which the Chief Justice of the Court of Appeals for the Armed Forces notes that “civilian courts have concluded that” due process ensures “that an accused receive the clemency procedures explicitly set forth by statute”).

Never before has Georgia decided a capital clemency application by a vote from fewer than all five members of the Board of Pardons and Paroles. Until today,

commutation—the opportunity to continue living—could be achieved by convincing any three of five duly appointed Board members per black-letter Georgia law. After the lower courts’ rulings, Georgia applicants like Mr. Humphreys can be required to convince three of just four members, or even three of *three*. Pet. App. C-3. This is because, until the lower courts’ rulings, all Georgia stakeholders—including the Board itself—believed that all five members were required to decide a capital case. It is thus not surprising that there has never been a deviation from that procedure. Pet. App. D7.

But separate and apart from whether the language of the Georgia Constitution *compels* that procedure, *Woodard* makes plain that federal Due Process precludes the State from arbitrarily deviating from its own “firm tradition of ... a five-member deliberative panel,” Pet. App. C8, whatever its source. The Georgia Supreme Court’s decision here splits from the majority of lower courts by failing to direct the Board to comply with its own entrenched practice. This Court should intervene.

2. The lower courts have struggled to define the contours of *Woodard*’s “minimal” due process requirement.

The precise floor established by a “minimal” due process requirement has proven elusive. *See, e.g., Hall v. Barr*, 830 Fed.Appx. 8, 10 (D.C.Cir. 2020) (declining to “resolve the precise scope of any due process protections here”). Outside of the requirement that a state avoid arbitrary procedures, there has been little agreement on what does—and what does not—run afoul of *Woodard*’s holding. In *Gissendaner v. Comm’r, Ga. Dep’t of Corr.*, the Eleventh Circuit held that the Warden’s interference in clemency counsel’s

preparation did not violate *Woodard*'s demand of minimal due process, 794 F.3d 1327, 1333 (11th Cir. 2015), while in *Young v. Hayes*, the Eighth Circuit held that *Woodard*'s requirement was violated when state officials threatened the job of a potential clemency witness to discourage his participation. 218 F.3d 850, 853 (8th Cir. 2000). More recently, the Eighth Circuit held that "procedural irregularities" that deviated from the process normally accorded other prisoners, but "did not affect the ability of the Board to give 'due and serious consideration to each of [inmates'] applications'" did not offend *Woodard*. *Lee v. Hutchinson*, 854 F.3d 978 (8th Cir. 2017).

The circuits have likewise struggled to determine whether *Woodard* permits the federal courts to review allegations that state officials produced false evidence or committed other misconduct in the clemency proceedings. In *Workman v. Summers*, 111 Fed.Appx. 369, 371 (6th Cir. 2004) (unpublished), for example, the Sixth Circuit held that a "federal court is not authorized to review ... the quality of the evidence considered during [clemency] proceedings," while the Ninth Circuit recently reviewed allegations that false evidence was produced at the clemency hearing for harmlessness, *Creech*, 94 F.4th at 857.

So, does a procedural change that uniquely and singularly disadvantages a particular set of applicants, including Mr. Humphreys, fall below *Woodard*'s floor? After all, an applicant subject to a procedure that discriminates against him would much prefer the arbitrary one. If the Board can proceed with four members, some applicants begin the process already effectively having earned one "no" vote. And a fifth member could be decisive. As a prior Georgia Superior Court observed, the "fifth (5th)

board member ... may well be able to move others on the Board to favorably consider a reprieve.” Pet. App. E215. *Woodard* provides little guidance; the controlling opinion is but two paragraphs long. *See Pizzuto v. Valley*, 177 F.4d 1042, 1052 (9th Cir. 2026) (“Other than Justice O’Connor’s hypothetical examples, though, there is no Supreme Court guidance on what clemency procedures are required by the Due Process Clause.”). The range of authority in the courts below warrants this Court’s exercise of *certiorari*.

3. This Court should revisit *Woodard*’s core holding.

This case also presents the perfect vehicle to revisit *Woodard*’s central holding that only *minimal* due process is constitutionally required. The amount of process that is due in any given proceeding is inextricably tied to the role that the procedure plays in the criminal legal system. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956). For example, “if a State has created appellate courts as ‘an integral part of the ... system for finally adjudicating the guilt or innocence of a defendant,’ the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution.” *Evitts v. Lucey*, 469 U.S. 387, 393 (1985) (quoting *Griffin*, 351 U.S. at 18).

When *Woodard* arrived at this Court, the Sixth Circuit below—drawing from the *Evitts* line of cases—had held that “the amount of process that was due was in proportion to the degree to which the stage was an ‘integral part’ of the trial process.” *Woodard*, 523 U.S. at 278 (Rehnquist, C.J., concurring). Clemency, though an “integral part” of the process of adjudicating a capital case, was nevertheless “far removed from trial,” where the most robust procedural

protections attach, and so the process due could be “minimal.” *Id.*; *Woodard v. Ohio Adult Parole Auth.*, 107 F.3d 1178, 1187 (6th Cir 1997) (reversed) (“[D]ue process at the clemency stage will necessarily be minimal, perhaps even barely perceptible, because of the great distance from the truly fundamental process—the trial, the appeal—and the significant distance from other extremely important process—discretionary appeals and post-conviction petitions.”).

Justice O’Connor’s concurrence, though not a full-throated embrace of the Sixth Circuit approach, agreed that clemency’s role was relevant to the amount of constitutional protection—and concomitant judicial oversight—that it required. “It is clear that ‘once society has validly convicted an individual of a crime and therefore established its right to punish,’ she wrote, ‘the demands of due process are reduced accordingly.’” *Woodard*, 523 U.S. at 288 (1998) (citing *Ford v. Wainwright*, 477 U.S. 399, 429 (1986)). And so, *Woodard*’s reasoning goes, because clemency is removed from the central process of evaluating guilt and culpability, the due process that must be accorded the clemency applicant is “minimal.”

The place that clemency occupies in the process of ensuring reliability in the capital sentencing process has shifted since *Woodard*. The need for robust clemency procedures in capital cases has mushroomed as the power of postconviction litigation to correct miscarriages of justice has withered. Clemency has emerged as a central tool to “prevent miscarriages of justice where judicial process has been exhausted.” *Harbison v. Bell*, 556 U.S. 180, 192 (2009) (quoting *Herrera v. Collins*, 506 U.S. 390, 411–12 (1993)).

As numerous legal scholars have observed, “[h]abeas is broken. Badly.”⁷ Its contemporary failures have been dubbed “truly astounding.”⁸ Experts have variously described it as “an intellectual disaster area,” a “charade” and “unworkable and perverse.”⁹ This is owing both to inadequacies in state postconviction systems,¹⁰ and to the

⁷ Charles Eric Hintz, *The Plain Solution to Federal Habeas*, 2026 Utah L. Rev. 261, 263 (2026).

⁸ Jonathan Atkins, Danielle B. Rosenthal, and Joshua D. Weiss, *The Inequities of Equitable Tolling: A Misapplication of Agency Law*, 68 Stan. L. Rev. 427, 429 (2016).

⁹ Eve Brensike Primus, *A Structural Vision of Habeas Corpus*, 98 Calif. L. Rev. 1, 1 (2010) (collecting sources).

¹⁰ See, e.g., Jordan Steiker, Jim Marcus, and Thea Posel, *The Problem of “Rubber-Stamping” in State Capital Habeas Proceedings: A Harris County Case Study*, 55 Hous. L. Rev. 889 (2018) (finding that Harris County, Texas postconviction judges entered the prosecutor’s proposed findings of fact and conclusions of law *verbatim* 94% of the time); Alexander Hanna, *Post-Conviction Channeling*, 112 Va. L. Rev. 815 (2026) (finding that when the former trial judge is also assigned to hear the postconviction petition, bias and motivated reasoning infect the decision-making); Carol S. Steiker and Jordan M. Steiker, *A Tale of Two Nations: Implementation of the Death Penalty in “Execution” Versus “Symbolic” States in the United States*, 84 Tex. L. Rev. 1869, 1876–1901 (2006) (comparing the direct appeal and state post-conviction processes of Texas and California); Margery Malkin Koosed, *Abolition of the Ohio Death Penalty?--Not for Lack of Trying*, 17 Ohio St. J. Crim. L. 27, 61–74 (2019) (discussing 2014 recommendations of Ohio Supreme Court task force); Joan M. Fisher, *Expedited Review of Capital Post-Conviction Claims: Idaho’s Flawed Process*, 2 J. App. Prac. & Process 85, 98–108 (2000) (discussing constitutional or procedural flaws in the Idaho expedited appeal process); Pamela R. Goodwine, *Fighting Death: A Critique of Kentucky’s Death Penalty System*, 112 Ky. L.J. 511, 534–561 (2023) (summarizing ABA report on capital processes and including interviews with judges, prosecutors,

strictures of the 1996 Antiterrorism and Effective Death Penalty Act, which placed staunch limits on federal courts’ authority to reach and redress errors of constitutional magnitude. *See, e.g., Mays v. Hines*, 592 U.S. 385, 391 (2021) (per curiam) (to obtain federal habeas relief, a prisoner must show that in adjudicating the claim the state court “managed to blunder so badly that every fairminded jurist would disagree” with the result); *Harrington v. Richter*, 562 U.S. 86, 102 (2011) (“If this standard is difficult to meet, that is because it was meant to be.”). This Court has reminded the lower federal courts that concerns about the accuracy or reliability of a conviction do not alone justify federal habeas relief, no matter how grave the error. *See, e.g., McCarthy v. Hernandez*, 146 S. Ct. 1873, 1881 (June 22, 2026) (“The panel’s opinion [granting habeas relief] appears to reflect serious doubt about the reliability of [the inculpatory evidence], but AEDPA does not allow a federal habeas court to disturb a state-court conviction based on such an evaluation of the evidence.”). Given these limitations, clemency is now more than ever a vital “fail-safe in our criminal justice system.” *Harbison*, 556 U.S. at 192.

These changes warrant a new look at the constitutional procedural protections that clemency applicants are

and defense counsel about the report); William Redick, *Is Tennessee Going to Fix its Death Penalty?*, 45 Bar. J. 12, 13 n.5 (2009) (citing ABA report on Tennessee capital processes); Andrea Keilen and Maurie Levin, *Moving Forward: A Map for Meaningful Habeas Reform in Texas Capital Cases*, 34 Am. J. Crim. L. 207, 216–18, 228–29 (2008) (discussing Texas’ appellate process and issues with state habeas, mostly in context of deficient defense counsel).

owed.¹¹ While commutation might have been properly characterized as “a unilateral hope” at the time of the Court’s decision, *Woodard*, 523 U.S. at 282, it is now the last and best chance to correct grave errors in our administration of the death penalty. *See, e.g., Harbison*, 556 U.S. at 193 (“[T]he work of competent counsel during habeas corpus representation may provide the basis for a persuasive clemency application.”).

No case could be more illustrative than this one. Shortly after Stacey Humphreys’s death verdict, investigators discovered that his jury had been deadlocked 11-1 in favor of life without parole, but one juror “wasn’t going to let that happen[.]” *Humphreys*, 2024 WL 2945070, * at 4. Pet. App. G10. A single juror—who during voir dire, concealed her bias and lied about her prior experiences as the victim of a home invasion/sexual assault at the hands of an escaped murderer—deliberately deceived the other jurors during the sentencing deliberations. *Id.* at 3–5. She altered their notes to the trial court to conceal the intractable nature of their deadlock. *Id.* at 4. She refused to deliberate until the others relinquished their votes for life. *Id.* at 5. In short, she single-handedly changed the outcome of Mr. Humphreys’s sentencing proceeding to death, *id.* at 28 (Rosenbaum, J. concurring), and vitiated his Sixth Amendment jury trial right, *Humphreys*, 146 S. Ct. at 30 (Sotomayor, J., dissenting from denial of certiorari).

¹¹ Indeed, the entirety of Mr. Woodard’s postconviction litigation and his clemency application pre-dated the enactment of AEDPA. *See Woodard*, 523 U.S. at 277 (noting that Woodard’s clemency proceedings were scheduled for September 1994).

All reviewing courts agreed that this happened. And Georgia law is clear that Mr. Humphreys would have been sentenced to life without parole if his jury had returned a non-unanimous sentencing verdict. O.C.G.A. § 17-10-31.1(c) (repealed by Ga. L. 2009 p. 223, April 29, 2009). As one judge on the Eleventh Circuit Court of Appeals observed, this grave misconduct was “the difference between life and death” and “[the courts] should be able to correct that error. But [they] can’t.” *Humphreys*, 2024 WL 2945070, * at 28. That’s because most of what we know about what occurred comes from the sworn testimony of the jurors. *Id.* at 2. And Georgia evidence law, much like the Federal Rules of Evidence, bars juror testimony that impeaches the verdict. O.C.G.A. § 24-6-606(b). Last term, three Justices of this Court wrote that what occurred in this case was “likely a violation of Humphreys’ Sixth Amendment right to an impartial jury,” but that by the time the case arrived here, that bedrock constitutional violation had been “buried in a procedural thicket” that prevented review. *Humphreys*, 146 S. Ct. at 29 (Sotomayor, J., dissenting from denial of certiorari).

The shocking misconduct by a single juror denied the other eleven the right to vote their conscience. And it denied Mr. Humphreys the mercy to which they had decided he was entitled based on the evidence. The only adequate remedy available at any point in the process—the only place that *all* the equities of the case can be considered—is the clemency proceedings before the Board, unbound by the procedural complexities of habeas and overly formalistic evidentiary rules. The notion that only the bare minimum of Due Process should attach to those proceedings is untenable. *See, e.g., Godfrey v. Georgia*, 446 U.S. 420 (1980) (Georgia “has a constitutional responsibility to ... apply its law in a manner that avoids

the arbitrary and capricious infliction of the death penalty.”); *Ford*, 477 U.S. at 411 (“In capital proceedings generally, this Court has demanded that factfinding procedures aspire to a heightened standard of reliability”). This case presents the perfect vehicle for this Court to revisit *Woodard*’s holding.

B. The Court Should Confirm That The Right to Equal Protection Attaches In Capital Clemency Proceedings.

The Equal Protection Clause of the Fourteenth Amendment guarantees that “all persons similarly circumstanced shall be treated alike” by the State. *F.S. Royster Guano Co. v. Commonwealth of Virginia*, 253 U.S. 412, 415 (1920). Here, the State—through the Board—has implemented a procedure under which some death-sentenced prisoners will have better odds of being spared execution and living out the remainder of their natural lives than others. Some will be accorded a full slate of five members of the Board, only three of whom they must convince. Others, like Mr. Humphreys, will be accorded a Board of three or four, three of whom they must convince. Pet. App. D7 (lower court observing that if one member abstains, “then Petitioner would face a clemency hearing in which someone has already, before any presentation of evidence, debate or discussion, effectively voted no”). And under the lower courts’ rulings, henceforth all prisoners sentenced to death in Cobb County will be afforded the opportunity to convince just four members, given the nature of Ms. McCoy’s conflict of interest. This is arbitrary and flagrantly discriminatory.

Does the Equal Protection clause prohibit it? This case presents an excellent vehicle to definitively settle the question.

1. This Court's precedents establish a right to equal protection.

The Equal Protection Clause “keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). The disparate administration of processes pursuant to an otherwise neutral statute has long been held to violate the Fourteenth Amendment. *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886) (“[W]hatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws[.]”). This is especially true when the government acts punitively against its citizens. *Skinner v. State of Okl. ex rel. Williamson*, 316 U.S. 535, 541 (1942) (holding that Equal Protection is offended “[w]hen the law lays an unequal hand on those who have committed intrinsically the same quality of offense[.]”)

Even where the government has no duty to create procedures for vindicating rights and conferring benefits, once it does so, those procedures must comport with the Equal Protection clause. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (although under no duty to establish public welfare programs, a state cannot terminate individual benefits without a procedure that satisfies constitutional commands); *Morrissey v. Brewer*, 408 U.S. 471, 481–82 (1972) (though a State has vast discretion in

setting policies governing parole decisions, it must nevertheless administer those policies according to fair procedures that comply with the Constitution).

This is uniquely true where a state develops procedures integral to its criminal legal system. As this Court held in *Griffin*, 351 U.S. at 18:

It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. ... But that is not to say that a State that does grant appellate review can do so in a way that discriminates ... [A]t all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations.

(internal citations omitted). *See also Evitts*, 469 U.S. at 393 (“[I]f a State has created appellate courts as ‘an integral part of the...system for finally adjudicating the guilt or innocence of a defendant, the procedures used...must comport with the demands of the Due Process and Equal Protection Clauses[.]” (citing *Griffin*, *ibid.*, at 18)). As set forth in Section A, the role performed by executive clemency in de-selecting those death sentences that are inherently unjust or inaccurate has grown ever more “integral” to the administration of the death penalty—a fact that weighs heavily in the constitutional calculus.

The People of Georgia, in ratifying the Georgia Constitution of 1983,¹² designated capital clemency proceedings before the Board as an integral part of their capital punishment system. The entirety of Article IV, Section II of the Georgia Constitution is devoted to establishing the existence, make-up, and powers of the Board, Ga. Const. Art. IV, § II, as is Chapter 9 of Title 42 of the Georgia code, O.C.G.A. §§ 42-9-1 to 42-9-90. The provisions provide detailed procedures for, and limitations on, the exercise of the Board’s power. The Constitution specifically includes a provision that the “chairman of the board, or any other member designated by the board, may suspend the execution of a sentence of death until the full board shall have an opportunity to hear the application of the convicted person for any relief within the power of the board.” Ga. Const. Art. IV, § II, ¶ II(d). Another provision provides the Governor with a mechanism for temporarily replacing an incapacitated member. O.C.G.A. § 42-9-12. In short, the Georgia citizenry and legislature have provided for robust capital clemency proceedings, and the Equal Protection Clause applies to those proceedings.

For decades, the Board operated on the understanding that a full-five member deliberative body was required to render a capital clemency decision. *See, e.g.*, Pet. App. E148, E214. Indeed, the Board’s very first communication with Mr. Humphreys’s counsel concerning the conflicted Board members stated it plainly: “A full Board of five members is required to consider the clemency request of an

¹² “Unlike ordinary legislation, the people—not merely elected legislators—are the ‘makers’ of the Georgia Constitution.” *Olevik v. State*, 806 S.E.2d 505, 515 (2015).

offender sentenced to death.” Pet. App. E210. The fact that a Georgia court has now ruled that this is not required as a matter of state law does not alter the fact that the practice was deeply entrenched. “Usage cannot alter the law, but it is evidence of the construction given to it[.]” *United States v. Macdaniel*, 32 U.S. 1, 15 (1833).

When a state has devised and long followed a detailed procedure as an integral part of its system of administering the death penalty, does deviating from that procedure violate Equal Protection? This Court’s precedents render the conclusion inescapable: sending Mr. Humphreys into his clemency hearing already having earned a functional “no” vote is arbitrary and discriminatory. Indeed, although an Equal Protection challenge was not before the Court in *Woodard*, see 523 U.S. at 276, n.1, the controlling opinion explicitly condemned any procedure that would determine entitlement to commutation arbitrarily, as with a coin toss, or that discriminated in permitting access to the clemency process, *id.* at 289. Protection from arbitrary and discriminatory procedures is the central tenet of Equal Protection. *Yick Wo*, 118 U.S. at 373–74.

2. This case is an excellent vehicle to settle the question.

All Georgia capital clemency applicants come before the Board of Pardons and Paroles standing convicted of a capital offense. For each, a jury has found the existence of at least one statutory aggravating factor beyond a reasonable doubt. There is no principled distinction to be made within this class of applicants that would justify hampering the odds of some. See Pet. App. D7 (lower court finding that a decision by fewer Board members “dilute[s]” Mr. Humphreys’s “opportunity to be heard” in comparison

to other death-sentenced prisoners). “Central ... to our own Constitution’s guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance.” *Romer v. Evans*, 517 U.S. 620, 633 (1996).

This case also presents a vehicle to identify the appropriate level of scrutiny that must be applied to claims of discriminatory clemency procedures. When state action implicates a fundamental right, the government must implement procedures carefully crafted to prevent the arbitrary and disparate treatment of similarly-situated citizens. *See, e.g., Obergefell v. Hodges*, 576 U.S. 644 (2015) (finding an equal protection violation where fundamental right to marry was implicated), *Bush v. Gore*, 531 U.S. 98, 104 (2000) (finding a violation of equal protection where fundamental right to vote was implicated). Infringement on fundamental rights must be “closely scrutinized and carefully confined.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966).

Is the right at stake in clemency fundamental? Fundamental rights are those “rooted in the traditions and conscience of our people” and “implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotations and citations omitted). To determine whether “a particular right is deserving of strict scrutiny under the Equal Protection Clause, [this Court] looks to the Constitution to see if the right infringed has its source, explicitly or implicitly, therein.” *Plyler v. Doe*, 457 U.S. 202, 218, n.15 (1982). Fewer rights are more fundamental than the right to life, explicitly enumerated in both the Fifth and Fourteenth Amendments.

But even if the residual life interest that remains at the time of executive clemency is not alone sufficient to trigger heightened scrutiny, it seems likely that the Board's course of action cannot survive even rational basis review. *Romer*, 517 U.S. at 635. A Board free of conflicts of interest is a laudable goal—it is in fact one of the very goals that Mr. Humphreys sought in the litigation below—but that goal cannot be achieved at the expense of unequal state action that saddles Mr. Humphreys with a burden not placed upon similarly-situated clemency applicants. See *Stanley v. Illinois*, 405 U.S. 645, 652 (1972) (“[W]e are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible.”). The State of Georgia has always had multiple paths available to avoid hearing Mr. Humphreys's case before anything less than a fully-constituted Board; the plain text of the Georgia Constitution provides at least one.

Moreover, the path that the Georgia courts have blessed—a proceeding before four Board members in any case where Ms. McCoy is conflicted as a result of her prior victim advocacy—creates two classes of Georgia death-sentenced prisoners: those who were sentenced to death in Cobb County during Ms. McCoy's 25-year tenure (which is to say, all Cobb County death-sentenced prisoners), and those who were not. There can be no rational basis for treating Cobb County defendants more punitively. “The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985). Nor may it “lay[] an unequal hand on those who have committed intrinsically the same quality of offense.” *Skinner*, 316 U.S. at 541.

Finally, the newly-announced “quorum only” rule is not limited to those cases where one Board member labors under a conflict of interest. The Georgia courts have cleared the way for the Board to proceed on *any* capital clemency application with fewer than five duly-appointed members sitting to hear the application. Pet. App. C-3, n.5 (“A quorum suffices for clemency, just as it does for any other matter the Board is considering.”). As the lower court put it, if the Board is permitted to proceed with just four members, Mr. Humphreys must “bat seven fifty instead of six hundred.” Pet. App. E-153. If the Board is permitted to proceed in capital cases with a mere quorum, some applicants will have to bat a thousand. And as it stands, the State need not make any rational distinction among them. “Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.” *Sweatt v. Painter*, 339 U.S. 629, 635 (1950). This case presents an ideal vehicle to hold that the right to Equal Protection attaches to procedures used to determine entitlement to executive clemency.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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