

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

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Stacey Ian Humphreys,  
*Petitioner,*  
v.

Georgia Board of Pardons and Paroles, et al.,  
*Respondents.*

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On Petition for Writ of Certiorari to the  
Supreme Court of Georgia

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**BRIEF IN OPPOSITION**

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## **QUESTIONS PRESENTED**

1. A Georgia court held, as a matter of state law, that a conflict of interest prevents one member of the Georgia Board of Pardons and Paroles from considering Petitioner Stacey Ian Humphreys's clemency application. The same court held, also as a matter of state law, that the Georgia Constitution and statutes authorize the Board to act through a quorum. Petitioner does not dispute any of these state-law rulings but alleges that the Board has a "practice" of overlooking the quorum statute. Would the Board's alleged departure from that purported "practice" here violate the Due Process Clause of the Fourteenth Amendment?
2. Does a quorum rule codified in state law violate the Equal Protection Clause?

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## INTRODUCTION

One would not know it from his petition, but Stacey Humphreys asks this Court to review lower-court proceedings that were exclusively about state law. Humphreys originally asked a state trial court to rule that state law barred the Georgia Board of Pardons and Paroles from acting pursuant to a codified quorum rule when one of its members had a conflict of interest in relation to Humphreys’s clemency application. After the state trial court ruled that the Board complied with state law, Humphreys asked the Georgia Supreme Court to review three enumerated errors—all about state law. It denied review. In Humphreys’s own words, he “did not raise” the federal issues he now asks this Court to address, nor were those issues “[e]ver briefed and argued by the parties.” Pet.10 n.5. That’s enough to deny his petition.

Undeterred, Humphreys seizes on a single footnote of dicta in the state trial court’s order, in which the court noted that its state-law ruling would not transgress the “*minimal* procedural safeguards” discussed in *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 289 (1998) (O’Connor, J., concurring). What little explanation the court offered is not even implicated by the questions Humphreys now presents. And although Humphreys criticizes the court for violating party-presentation principles—an odd critique considering that could only *benefit* Humphreys—the unprompted nature of the state court’s footnote is a reason to deny review. A lower court’s improper grant of relief based on unraised issues is reason to summarily reverse, *see Clark v. Sweeney*, 607 U.S. 7, 9 (2025); its mere acknowledgement of such an issue cannot be reason for this Court to take it up. Plus, because the Georgia Supreme Court denied review, the only thing for this Court to review is a single superior court judge’s riff on an unraised issue.

The defects in Humphreys's petition only get worse from there. He cannot accuse the Board of deviating from state law because, as he admits, the state court ruled the Board acted properly "as a matter of state law." Pet.27. So he cobbles together a theory that a State violates the Due Process Clause when it deviates not from state *law*, but from "historical practice" (whatever that means). Pet.ii. Humphreys offers no support from any court for that theory, never mind a division of authority worthy of this Court's attention. And his contention is borderline frivolous: It would mean the Due Process Clause traps a State into a singular "practice" for all time, even when its statutes authorize other options. And here, a Georgia *statute* provides that the Board "shall" operate by a majority quorum. O.C.G.A. § 42-9-7.

Humphreys can't even prove his own "practice" premise. He says the Board has "never" acted with a quorum before (by "never" he apparently means "since 2002") but does not show that the Board has ever *needed* to invoke the quorum statute due to a conflict. A historical coincidence is not a "practice," much less grounds for judicial repeal of a duly enacted statute. In any event, not even a deviation from state law (let alone "practice") is automatically a federal due process problem. *See, e.g., Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 794 F.3d 1327, 1333 (11th Cir. 2015).

Humphreys separately raises an equal-protection claim, but he does not even pretend that anyone (party or court) raised or addressed it below. Nor, for that matter, does he offer any hint that any court *anywhere* has. And on the merits, Humphreys's equal-protection argument is at least as flawed as his due-process one. He claims the Board's neutral and generally applicable quorum rule creates an irrational classification. That contention fails in every way, not least because Humphreys is not even challenging a legislative

classification. In any event, Humphreys is challenging a *quorum rule*—something that is part of the Constitution, *see* U.S. Const. art. I, § 5, this Court’s rules, 28 U.S.C. § 1, and those of countless other legislative and judicial bodies. In fact, this Court has *decided a capital case* with fewer than nine Justices—that is to say, under a quorum rule. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988). But Humphreys would have this Court deem the Board’s quorum rule *irrational*. It should not follow him into absurdity.

This Court should deny Humphreys’s transparently dilatory petition.

## STATEMENT

### A. Legal Background

States’ clemency procedures are “rarely, if ever, appropriate ... for judicial review.” *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981). Not only are they “not part of the trial or even the adjudicatory process,” they also don’t “determine the guilt or innocence of the defendant” nor do they “enhance the reliability of the trial process.” *Woodard*, 523 U.S. at 284 (Op. of Rehnquist, C.J.). Moreover, States aren’t constitutionally required “to enact a clemency mechanism” at all. *Herrera v. Collins*, 506 U.S. 390, 414 (1993). Thus, clemency isn’t “an integral part of the system for finally adjudicating the guilt or innocence of a defendant.” *Woodard*, 523 U.S. at 285 (Op. of Rehnquist, C.J.) (citation modified). Instead, clemency is “a matter of grace.” *Id.* at 281–82. It permits consideration of “a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations,” *id.* at 281, including “objective factfinding” and “purely subjective evaluations and ... predictions of future behavior,” *Dumschat*, 452 U.S. at 464.

The Court addressed the Due Process Clause’s application to clemency in *Woodard*. Chief Justice Rehnquist and three other Justices concluded that federal due process is satisfied when clemency procedures merely “confirm that the clemency and pardon powers are committed ... to the authority of the executive.” *Woodard*, 523 U.S. at 276 (Op. of Rehnquist, C.J.). Importing federal due process standards beyond that would transform “the executive’s clemency authority” from “a matter of grace” into the “more structured and limited scope of judicial proceedings.” *Id.* at 284–85. In a concurrence, Justice O’Connor and three other Justices went further—but only marginally. They opined that “some *minimal* procedural safeguards” should apply. *Id.* at 289 (O’Connor, J., concurring). Those “minimal” guardrails prevent extreme cases—for example, if a State “flipped a coin to determine whether to grant clemency, or ... arbitrarily denied a prisoner any access to its clemency process.” *Id.*

Georgia’s Constitution establishes an executive clemency process by creating a Board of Pardons and Paroles consisting of five members appointed by the Governor and confirmed by the Senate. Ga. Const. art. IV, § 2, para. 1; *see also* O.C.G.A. § 42-9-2. The Board follows various procedures to review clemency applications. *See* O.C.G.A. §§ 42-9-1, *et seq.* It must consider a wide range of materials, including inmate-specific information such as “efforts made to improve his or her social attitude,” the results of physical and mental examinations, and education level. *Id.* § 42-9-43(a). After hearing testimony, the Board members meet for “an opportunity to deliberate collectively” before individually casting confidential ballots. Pet.App.E145–46. Only a “majority vote of the [B]oard” results in clemency or a commutation of a death sentence. O.C.G.A. § 49-9-42(a); *see also id.* § 42-

9-20(a). Generally, a “majority of the board shall constitute a quorum for the transaction of all business except as otherwise provided.” *Id.* § 42-9-7.

## **B. Factual and Procedural Background**

Humphreys was convicted and sentenced to death in 2007 for murdering Cindy Williams and Lori Brown. *See Humphreys v. State*, 694 S.E.2d 316, 322 n.1 (Ga. 2010). Just after noon on November 3, 2003, Humphreys (a convicted felon on parole at the time) entered a model home in Cobb County, where he found Williams working alone. *Id.* at 322. He “used a stolen handgun to force her to undress and to reveal” information about her ATM card. *Id.* “After calling Ms. Williams’s bank to learn the amount of her current balance, Humphreys tied her underwear so tightly around her neck that, when her body was discovered, her neck bore a prominent ligature mark and her tongue was protruding from her mouth, which had turned purple.” *Id.* Humphreys choked Williams and forced her onto her knees behind a desk, where he “placed his handgun at Ms. Williams back and positioned a bag of balloons between the gun and her body to muffle the sound of gunshots.” *Id.* Humphreys “fired a shot into her back that went through her lung and heart, fired a second shot through her head, and left her face-down on her hands and knees under the desk.” *Id.*

Brown arrived during or shortly after that. *Id.* Humphreys either choked her “in a headlock-type grip” or by striking her “in the throat.” *Id.* He then “forced Ms. Brown to undress and to reveal her PIN, called her bank to obtain her balance, and made her kneel with her head facing the floor.” *Id.* While “standing over Ms. Brown, Humphreys fired one gunshot through her head, this time using both a bag of balloons and Ms. Brown’s folded blouse to muffle the sound.” *Id.*

After Humphreys skipped a parole meeting and “eluded police officers who had him under surveillance,” he “was apprehended in Wisconsin the following day.” *Id.* at 323. The murder weapon was in a rental vehicle Humphreys was driving, Williams’s DNA was on the weapon, and a “stain on the driver-side floormat of Humphreys’s Durango was determined to be blood containing Ms. Brown’s DNA.” *Id.* Humphreys “claimed in a statement to the police that he did not remember his actions at the time of the crimes,” but “when asked why he fled, he said: ‘I know I did it. I know it just as well as I know my own name.’” *Id.*

The Georgia Supreme Court upheld Humphreys’s death sentence on direct appeal, *see id.* at 336, and Humphreys’s state and federal postconviction challenges failed, *see* Pet.App.F, G.

On December 1, 2025, the Cobb County District Attorney obtained an execution warrant for Humphreys. Pet.App.E181. That same day, the Governor of Georgia appointed Kimberly McCoy to fill a vacant Board seat. Pet.App.E184. McCoy had been the Director of the Cobb County District Attorney’s Victim-Witness Unit during Humphreys’s trial and had advocated for his victims. Pet.App.E193–94. Humphreys wrote to the Board asserting that McCoy had a conflict requiring her to recuse from considering his clemency application. Pet.App.E208.

Humphreys then filed a mandamus action in the Fulton County Superior Court. He claimed that state law required McCoy and a second Board member to recuse, and that state law further required the Board to refrain from acting on Humphreys’s clemency application until it had five unconflicted members. *See* Pet.App.D3. The state court issued a temporary injunction staying the Board’s action. Pet.App.D9. Its decision relied largely

on equitable grounds given the emergency posture. The court thought it important to maintain “the status quo while the litigants take the time needed to work through the apparently novel issue of what should happen when a Board member” has a conflict of interest. Pet.App.D5. Given the finality of execution, the court chose to “press[] ‘pause’ on the execution machinery until we answer the non-frivolous question raised by [Humphreys] concerning the proper composition of the Board for his clemency hearing.” Pet.App.D6.

The court issued a final order on March 6, 2026. See Pet.App.C. It ordered McCoy to recuse but concluded the other challenged Board member could participate. Pet.App.C8. And the court addressed the state-law question it had only tentatively considered at the stay stage: whether the Board can act under a quorum or must have five voting members. On that issue, the trial court ruled that the Georgia Constitution “does not mandate” a full five-member Board make clemency decisions, and that Georgia statutes do not either. Pet.App.C3–5. In a footnote—despite the issue not having been raised—the court opined that the Board’s action under a quorum rule would not violate Justice O’Connor’s *Woodard* concurrence. Pet.App.C3 n.6. A clemency hearing “with four members instead of five” would involve “no coin-flipping” or other “truly outlandish” circumstances, and Georgia’s procedures favorably compared to the ones upheld in *Woodard* itself. *Id.*

Humphreys applied to the Georgia Supreme Court for discretionary review. He enumerated three errors, all about state law. See Supp.App.9a. He told that court the question was whether “the Georgia Constitution” or statutes “command[] that the full five-member” Board hear clemency

applications, and claimed the case was vital to “guard the rights bestowed by the Georgia Constitution.” Supp.App.4a.

Humphreys’s application included a single sentence stating: “In the absence of a full Board requirement, the majority vote rule is arbitrary, unfair, and ultimately, unconstitutional.” Supp.App.25a. This sentence cited the Fourteenth Amendment, the Georgia Constitution’s Equal Protection Clause, and a Georgia Supreme Court case about that Clause. Humphreys did not cite *Woodard*, raised no challenge to the trial court’s footnote, and offered this single sentence under a section header about the Georgia Constitution. Supp.App.21a. This sentence also was not enough to preserve any issue under the Georgia Supreme Court’s rules. *See, e.g., Byrd v. State*, 913 S.E.2d 667, 671 (Ga. 2025). As such, the Board’s opposition did not discuss federal law.

The Georgia Supreme Court denied review, Pet.App.B, and it later denied a motion for reconsideration, Pet.App.A.

### **REASONS FOR DENYING THE PETITION**

Humphreys’s petition is defective in every conceivable way. It is devoid of *any* applicable division of authority—or even any caselaw that supports Humphreys’s legal theories. This case is also a terrible vehicle. Humphreys admits he never even raised a *Woodard* issue to the state trial court (he certainly raised no equal-protection claim). That’s not surprising; the *entire* case below was *exclusively* about state law. True, a state superior court judge reached beyond the presented issues to comment on *Woodard*, but that judge’s footnote offers nothing meaningful for this Court to review. Proving

the point, Humphreys does not challenge anything the state court said and his questions presented do not even implicate its reasoning.

Setting everything else aside, Humphreys’s merits arguments are not colorable. Apart from the myriad specific failures of both his due-process and equal-protection theories, it’s worth keeping in mind that Humphreys invites this Court to hold that a quorum rule is unconstitutional. Considering the ubiquity of quorum rules in our legal system, including in the Constitution itself, it should be apparent that Humphreys’s attack is meritless. Which probably explains why he never argued (until his petition here) that a quorum rule *itself* is unconstitutional—just that state law blocked the Board from using one. The state court disagreed, and that is the end of the matter.

This Court should deny Humphreys’s petition.

**I. There is no split of authority or any other reason to address the questions presented.**

**A. Humphreys identifies no applicable split.**

Humphreys claims that “lower courts have largely coalesced around a reading of *Woodard*” that requires states to follow their “own established procedures for commutation applications.” Pet.13–14. That is simply wrong, *see, e.g., Lee v. Hutchinson*, 854 F.3d 978, 982 (8th Cir. 2017); *Gissendaner*, 794 F.3d at 1333, but it’s also irrelevant to Humphreys’s case. Humphreys cites decisions about deviations from state *law*, but those are inapplicable here because all agree that the Board complied with state *law*. *See* Pet.27.

Humphreys thus frames his claim as one about a State’s deviation from its past “practice.” Pet.12. But that puts Humphreys far from any division of authority—or indeed, any supporting precedent. Humphreys cites decisions saying, for example, that once States establish clemency proceedings, “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.” *Duvall v. Keating*, 162 F.3d 1058, 1061 (10th Cir. 1998) (emphasis added); *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010) (same). But explicit provisions of state law are not matters of mere “historical practice.” Pet.ii. Humphreys’s theory is the opposite of the one endorsed in these cases: He never argues that Board had to *follow* explicit state law (here, the quorum statute), but that the federal Constitution required it *not* to. And Humphreys does not even try to identify a split of authority on that issue.

Humphreys’s equal-protection claim also presents no division of authority—and he does not even pretend otherwise. *See* Pet.23–30. In fact, Humphreys supports that theory with zero applicable precedent. None of this merits an outlay of this Court’s limited certiorari resources.

**B. This Court’s involvement is not otherwise called for.**

Humphreys suggests that the *Woodard* concurrence’s “minimal” due process standard has proven too difficult for lower courts to decipher, requiring this Court to clear things up. *See* Pet.15–17. But he never backs up that claim. Ultimately, Humphreys admits that he’s not really interested in that project anyway: He just wants this Court to constitutionalize clemency procedures to make up for what he sees as the policy shortcomings of federal habeas procedures. That is improper many times over, but most importantly for present purposes it is no basis for granting certiorari.

To support the notion that *Woodard* is somehow hard to understand, Humphreys suggests a two-court split on a sub-issue not even presented. *See* Pet.16. He claims the Eleventh and Eighth Circuits have disagreed on what *Woodard* has to say about whether state officials can interfere with clemency

witnesses. *Id.* at 15–16 (citing *Gissendaner*, 794 F.3d at 1333; *Young v. Hayes*, 218 F.3d 850, 853 (8th Cir. 2000)). But that’s irrelevant: Answering whether a state can deviate from its past “practice”—Humphreys’s sole due-process claim here—has nothing to do with witness interference. Regardless, a mere two Circuits falling on different sides of a single, discrete application of *Woodard* does not establish that *Woodard* is somehow so unworkable that this Court needs to rewrite it.

Humphreys also claims “circuits” have “struggled” with whether federal courts can review allegations that state officials produced false evidence in clemency proceedings. Pet.16. But he identifies only the Sixth and Ninth Circuits—and the former’s opinion was unpublished. *See Creech v. Idaho Comm’n of Pardons & Parole*, 94 F.4th 851, 857 (9th Cir. 2024); *Workman v. Summers*, 111 F. App’x. 369, 371 (6th Cir. 2004). Nor do those decisions conflict: The Sixth Circuit disclaimed review of false-evidence allegations, *see Workman*, 111 F. App’x at 371, while the Ninth Circuit only *assumed* its ability to do so, then held that any due-process violation was harmless beyond a reasonable doubt, *see Creech*, 94 F.4th at 855–57.

In short, while Humphreys says *Woodard* has left courts confounded, he never *shows* it. But that’s not surprising, because Humphreys eventually makes clear that he is not interested in circuit splits or clarifying *Woodard*, but in legislative reform to a habeas system he says is too harsh on state convicts. Because reforming habeas is not possible in this case, Humphreys says this Court should “revisit” *Woodard* to ensure clemency picks up habeas’ slack. *See* Pet.17–21. Because Congress has chosen to limit habeas relief (and because he failed to secure it), *see* Pet.20, he says the “only adequate remedy available at any point in the process ... is the clemency proceedings

before the Board, *unbound by the procedural complexities of habeas and overly formalistic evidentiary rules*,” Pet.22 (emphasis added).

That’s a remarkable position. Whether “habeas is broken,” Pet.19 (quotation omitted), is a policy question for Congress. At most, it’s an issue *for a habeas case*. But habeas and clemency are different, and purported deficiencies in one don’t support judicially rewriting the other, much less abusing the Due Process Clause to do so. Humphreys claims that something in habeas law—it’s unclear what—has changed since *Woodard* and rendered Justice O’Connor’s concurrence obsolete. *See* Pet.20. That’s a dubious premise: AEDPA was enacted in 1996; *Woodard* was decided in 1998. And if federal habeas litigation has become difficult for state prisoners, that’s because “it was meant to be.” *Harrington v. Richter*, 562 U.S. 86, 102 (2011). Nor can Humphreys support his bare assertion that commutation can no longer be “properly characterized as ‘a unilateral hope,’” as it was in *Woodard*. Pet.21 (quoting *Woodard*, 523 U.S. at 282 (Op. of Rehnquist, C.J.)). Of course it is. Now as then, whether a State must have clemency *at all* remains a matter of discretion. *See, e.g., Herrera*, 506 U.S. at 414.

But at bottom, the reasons for limiting (or, more correctly, rejecting) a broad application of the Due Process Clause to clemency cannot depend on how Congress has happened to shape federal habeas review. Neither Justice O’Connor’s nor Chief Justice Rehnquist’s reasoning in *Woodard* was premised on habeas. Clemency, unlike the framework for postconviction litigation, resides in the executive branch of the various States “as a matter of grace.” *Woodard*, 523 U.S. at 282 (Op. of Rehnquist, C.J.). Allowing trends in postconviction litigation to alter state executive authority violates the separation of powers as well as basic principles of comity and federalism.

The federal judiciary cannot insert itself into a state *executive* function to remedy a perceived shortcoming in a federal *legislative* one. And, if Congress or state legislatures *expand* avenues to habeas relief, what then? On Humphreys’s logic, must state clemency procedures tighten in response, as a matter of federal due process? If not, why is this a one-way ratchet? Humphreys’s proposed hydraulic relationship between habeas and clemency procedures is perhaps fodder for a letter to Congress or a clemency board. It is not a hook for this Court’s review.

## **II. This case is an exceptionally poor vehicle.**

Humphreys urges this Court to address due-process and equal-protection issues that he admits he never raised to the state court. The state court did not address equal protection at all, and it addressed federal due process only in a passing footnote of dicta that Humphreys never directly challenges. All of this is reason enough to deny certiorari.

This Court generally does “not decide issues that were not resolved below.” *A. J. T. by & through A. T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 350 (2025) (quotations omitted); *see also* S. Shapiro, et al., *Supreme Court Practice* § 6.37(i) (11th ed. 2019) (“questions that were not decided by the court below because they were not raised ... is ordinarily fatal to” a cert petition). Humphreys admits that he “did not raise” the “federal due process question” and that it “was never briefed and argued by the parties.” Pet.10 n.5. Unsurprisingly, the state court only tersely addressed it, and not in anything approaching a holding. The court simply reached a *state-law* conclusion (the only thing Humphreys had asked for) and opined in a brief footnote that there was no *Woodard* problem. *See* Pet.App.C3 n.6. The court’s unsolicited analysis merely noted that *Woodard* requires “truly

outlandish” circumstances for due process to be violated, that nothing about the quorum rule is comparable to “coin-flipping,” and that Georgia’s procedures favorably compared to those in *Woodard*. *Id.* But Humphreys does not even challenge the court’s reasoning—instead, he presents a wholly unrelated theory. He frames his federal question presented as revolving around “[w]hen the state departs from its own long-standing practice and procedures.” Pet.ii. But the state court’s footnote is not about that.

Oddly, Humphreys attacks the state court for supposedly violating party presentation rules, claiming that separately requires remand. Pet.10 n.5. It’s passing strange for Humphreys to fault the state court for proactively noticing an unraised possible claim *to his benefit*, even if only to reject it. Even assuming error, the error would be the state court acting to *help* Humphreys “on a claim that [he] never asserted and that the State never had the chance to address.” *Clark*, 607 U.S. at 9. That might violate party-presentation principles—but not in any kind of two-wrongs-makes-a-right way that can aid Humphreys now. When a court simply notes that its ruling doesn’t violate some separate unraised rule, that should never be parlayed into a second bite at the apple, much less this Court’s certiorari review.

The vehicle problems are even starker for Humphreys’s equal-protection claim. For good reason, Humphreys doesn’t even pretend he raised the issue below or that the state court decided it. But he still brazenly asserts that the case is an “excellent vehicle” because he now (belatedly) has concluded that the underlying facts present it. Pet.27–30. Of course, excellent vehicles are usually noticed long before a last-ditch certiorari petition. But Humphreys is shooting at the wrong target anyway. If the test for whether a case is a good vehicle were simply whether a legal issue is relevant, there would be little

need for lower courts at all. But this Court is one “of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

Finally, it’s worth noting that Humphreys asked the Georgia Supreme Court to review his case listing only state-law enumerations of error and raising none of his newfound contentions. *See, e.g.*, Supp.App.9a. Because that court denied his requests, the only thing for this Court to review is a single, non-precedential footnote of dicta from a single state superior court judge. That’s not the stuff of certiorari, even if the footnote had said anything relevant.

### **III. Humphreys’s contentions are meritless.**

There’s no error for this Court to correct because there is no federal law holding to review. But even if there were, Humphreys’s legal theories are meritless. A deviation from past clemency “practice” has never been a federal due-process problem. And there is no equal-protection problem because the Board’s quorum rule draws no classifications and is plainly rational to boot.

#### **A. Following the state-law quorum rule does not violate the federal Due Process Clause.**

There is no dispute that Georgia’s statutory clemency procedures satisfy the Due Process Clause. Humphreys never argues that a quorum rule *itself* would violate due process—nor could he advance that absurd position considering how commonplace quorum rules are. Humphreys instead concocts a narrative in which the State *deviated* from its reasonable procedures by *using* a statutory quorum rule despite having never done so before—and claims *that* purported deviation is the due-process violation. *See* Pet.ii, 14–15. The problems with that argument are legion.

Start at the start: This case involves no deviation from state *law*. Georgia statutes provide that a “majority of the board shall constitute a quorum for the transaction of all business.” O.C.G.A. § 42-9-7. As Humphreys concedes, the whole point of this litigation was to determine whether, “as a matter of state law,” the Board could apply that quorum statute here. Pet.27. Humphreys lost on that state-law issue—and, of course, the Board could not have deviated from state law by following it. Humphreys thus carefully frames his question presented as being about a deviation from the Board’s “historical practice,” Pet.ii, “long-standing practice,” Pet.12, “entrenched practice,” Pet.15, “tradition,” *id.*, and an “understanding,” Pet.26, “whatever its source,” Pet.15. But again, that theory finds no precedential support. *See* Part I.A, *supra*.

Indeed, absent consideration of actual state *law*, there is not even a legitimate way to define what “practice” means in this context. Is “practice” about the number of applications? How much time has elapsed? What about the problem of coincidence, where an option has never been used simply because the need has never arisen? That surely cannot be a “practice” that handcuffs the State as matter of federal constitutional law. Countless other variables make the inquiry irredeemably amorphous. Humphreys has no answer other than to affix meaningless adjectives like “entrenched” and “long-standing” to the equally elusive noun “practice.” But these empty labels are no substitute for legal reasoning.

Besides, Humphreys flunks even his own rubric. He claims that the Board has “[n]ever before” acted on a vote of “fewer than all five members.” Pet.14. But that’s not the right inquiry. The apples-to-apples question is whether the Board has ever *needed* to invoke the quorum statute due to a

conflict of interest. Are there past examples in which a Board member was conflicted and, rather than using the codified quorum rule, the Board did something else? Why? How often did that happen? Enough to matter?

Humphreys offers no answers to these questions.<sup>1</sup> That the Board has not previously needed to respond to a conflict of interest by acting through a quorum is not evidence of an “entrenched practice” *against* using quorums in that scenario (much less a constitutional violation). And Humphreys’s concept of “never” is a curious one; a closer look shows that his review of history goes back only 20 years or, at most, *possibly* to 2002. *See* Pet.8; *see also* Pet.App.C3 n.5. But to be clear: None of this matters. Even if the Board had always chosen against acting through a quorum in identical situations, the Due Process Clause would not effectively repeal the quorum statute by forcing the Board to continue making that choice *forever*.

Humphreys’s approach is bankrupt at an even more basic level because state procedures do not dictate the scope of federal due-process requirements to begin with. “Nothing in Justice O’Connor’s concurring opinion suggests that a clemency board’s compliance with state laws or procedures is part of the *minimal* procedural safeguards protected by the Due Process Clause.” *Gissendaner*, 794 F.3d at 1333 (quotation omitted). A contrary approach “would conflict with a long line of Supreme Court decisions holding that a violation of state procedural law does not itself give rise to a due process claim.” *Id.* (collecting cases). In short, Humphreys could not even use state

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<sup>1</sup> At most, Humphreys might claim the Board once chose not to act when it had a *vacancy*. *See* Pet.App.E220. But that’s a distinct situation, likely explained by distinct state-law considerations, and it says nothing about what the Fourteenth Amendment requires here.

*law* to support his due-process theory—he certainly cannot rely solely on informal “practice.”

**B. Georgia’s quorum rule does not violate the Equal Protection Clause.**

**1. Humphreys received equal treatment.**

Humphreys’s equal-protection theory fails because the quorum rule does not treat him (or any other clemency applicant) differently from others. The rule applies neutrally across the board. *See* O.C.G.A. § 42-9-7. It would apply identically to *any* applicant who claims a conflict, or any other basis requiring a quorum. There is no “classification drawn by the statute.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

Humphreys seems to think the quorum rule must cause unequal treatment because Board members do not always have conflicts, meaning the rule will not always be used. But that distinction between individual cases is the product of individual applicants’ requests to disqualify individual Board members—not a statutory classification. Indeed, quorum rules are endemic to the American legal system (and its history). Nobody has ever thought those rules draw classifications challengeable on equal-protection grounds simply because such rules only apply ... when they apply. After all, no law applies 100% of the time to 100% of the people, but that does not mean *every* law draws challengeable classifications. *See, e.g., N. Y. City Transit Auth. v. Beazer*, 440 U.S. 568, 592 (1979).

Searching for a different classification, Humphreys argues that all prisoners “sentenced to death in Cobb County during Ms. McCoy’s 25-year tenure” will be treated differently than “those who were not.” Pet.29. But even Humphreys apparently does not believe that speculative assertion is

worth supporting. Although McCoy was a victim's advocate in Cobb County for 25 years, Humphreys makes no proffer that McCoy worked on *every* death-penalty offense in Cobb County during her tenure—much less to the degree she did on Humphreys's case—or that her work creates a categorical conflict as a matter of Georgia law. In any event, Humphreys's reliance on the coincidence of a single Board member's biography just proves that his claim does not challenge a *statutory* classification.

**2. There is no fundamental right to consideration of a clemency application by all Board members.**

Even assuming Humphreys could invoke the Equal Protection Clause, he cannot invoke heightened scrutiny. Fundamental rights are those “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). “Our Nation’s history, legal traditions, and practices ... provide the crucial guideposts for responsible decisionmaking.” *Id.* (citation modified). Under that standard, there is not even a fundamental right to consideration of clemency applications. But Humphreys would go even further, claiming a fundamental right to a specific *kind* of clemency review (a multi-member body barred from using a quorum rule). That is absurd. States aren’t constitutionally required to provide clemency at all. *See Herrera*, 506 U.S. at 414. A discretionary act of grace cannot form the basis for a fundamental right, much less judicial micromanagement of procedural parameters.

Humphreys asserts that “the residual life interest that remains at the time of executive clemency” is fundamental. Pet.29. But he offers no legal authority supporting the assertion, and his framing is all wrong. Whatever abstract “right to life,” Pet.28, may exist does not translate into a right to

*clemency*, much less particular clemency *procedures*. In any event, a prisoner’s “valid conviction ... constitutionally deprive[s] [him] of his liberty” such that any “residual” life interest has been “extinguished.” *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979) (citations omitted).

### **3. The quorum rule plainly survives rational-basis review.**

Unequal treatment based on a non-suspect classification “cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.” *Heller v. Doe*, 509 U.S. 312, 320 (1993). And because “[t]he problems of government are practical ones,” *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69 (1913), such classifications are “accorded a strong presumption of validity,” *Heller*, 509 U.S. at 319.

This dispute implicates obvious and powerful state interests in finality, justice for victims, and retribution. “Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) (quotation omitted). The government’s interest in “the finality of convictions” is “essential to both the retributive and the deterrent functions of criminal law.” *Calderon v. Thompson*, 523 U.S. 538, 555 (1998) (citation modified). States also have a “powerful and legitimate interest in punishing the guilty.” *Herrera*, 506 U.S. at 421 (O’Connor, J., concurring). Absent a final conviction and execution of lawful punishment, States can’t enforce their “moral judgment” nor can “victims of crime move forward.” *Calderon*, 523 U.S. at 556.

Assuming some “classification” exists, the quorum rule plainly furthers those interests. It has been almost 20 years since Humphreys senselessly murdered two women. *See Humphreys*, 694 S.E.2d at 322–23. After a lawful jury verdict and two decades of postconviction litigation, Humphreys appeared before the Board seeking clemency. Faced with a conflict, the Board can act under its statutory quorum rule (the state court recognized as much, on grounds Humphreys does not contest). And attempting to replace McCoy with a temporary appointment would further delay consideration of Humphreys’s application—and possibly significantly so, if that new member requires gubernatorial vetting and appointment. *See Ga. Const.*, art. IV, § 2, para. 1. In the meantime, Humphreys’s sentence would remain in limbo, and his victims’ families would remain frustrated in their decades-long quest for justice. A “classification” that allows a quorum rule to function is rationally related to finality and avoiding delay.

Humphreys has no persuasive counterargument. He claims the Board must avoid conflicts of interest, but that doing so “cannot be achieved at the expense of unequal state action.” Pet.29. But because *all* state action invariably “works to the disadvantage of a particular group,” *Romer v. Evans*, 517 U.S. 620, 632 (1996), the Equal Protection Clause prohibits only *irrational* unequal treatment. Humphreys does not—and cannot—explain what is irrational about applying a quorum rule. He instead claims the State “had multiple paths” other than using a quorum rule. Pet.29. But having other options does not make a legislature’s chosen option irrational (unless rational-basis review is to collapse into heightened scrutiny). And neither Humphreys nor this Court may “sit as a superlegislature to judge the wisdom or desirability” of the General Assembly’s choice to legislate an express

quorum rule for the Board’s clemency proceedings. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

Besides, it is Humphreys who seeks an irrational situation. Humphreys insists on both a conflict-free Board and a Board barred from using a statutorily authorized quorum rule. The dilatory strategy is transparent—and the negative incentives overwhelming. Applicants can always articulate *some* theory of conflict; Humphreys himself tried, and failed, to disqualify a second Board member on the thinnest of grounds. *See* Pet.App.C4 n.7. So, in Humphreys’s world, the Board would be forced to perpetually litigate alleged conflicts without recourse to a quorum rule. The Board would then be forced to seek replacement members and (inevitably) to litigate those, too. Yet more delay. One can only imagine what other sand would be thrown into the gears by a defense bar willing to file certiorari petitions as implausible as this one. Death-row inmates and their lawyers would use *all* of these “challenges as tools to interpose unjustified delay,” *Bucklew*, 587 U.S. at 150, and the State’s interests in finality and justice would remain frustrated and unrealized. The “people of [Georgia], the surviving victims of [Humphreys’s] crimes, and others like them deserve better” than that. *Id.* at 149.

## CONCLUSION

For the reasons set out above, this Court should deny the petition.

Respectfully submitted.

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