

No. 26-5211

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*

REPLY IN SUPPORT OF CERTIORARI

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REPLY BRIEF FOR PETITIONER

No matter how “borderline frivolous” or “absurd” Respondents claim Mr. Humphreys’s contentions to be, Brief in Opposition (“BIO”) at 8, 21, such hyperbole cuts against reality. Respondents selected a member of Mr. Humphreys’s prosecution team to determine whether he lives or dies. Now, because of that decision, Mr. Humphreys needs three of four votes instead of three of five—“to bat seven fifty instead of six hundred”¹—to attain a commutation of his death-sentence, a first in Georgia’s history. *See* Pet. App. E153. And that unprecedented disparate treatment, in this matter of life and death, plainly violates the Constitution.

The Superior Court of Fulton County, Georgia held that Mr. Humphreys was not entitled to a full clemency board of five members. Pet. App. C3. In so holding, the court declared that Mr. Humphreys had no federal due process right to a full board. Pet. App. C3–C4 n.6. Mr. Humphreys sought review of the entirety of the Superior Court’s decision. *See* Apr. 1, 2026, Application for Discretionary Rev. at *25; May 8, 2026, Mot. to Recons. at *4–5). The Supreme Court of Georgia denied discretionary review. Pet. App. A1, B1. Mr. Humphreys’s Petition for Certiorari presents a simple question arising from the lower court’s decision: Are the constitutional guarantees of due process and equal protection violated when the State of Georgia departs from its long-standing clemency procedures in a

¹ Pet. App. E153.

way that substantially impairs an applicant's likelihood of success?

Respondents' chief complaint is that the State of Georgia's compliance with its quorum rule necessarily renders its actions compliant with due process and equal protection. BIO at 7–9, 15, 21–28. This oversimplification ignores the history and purpose of due process under the Fourteenth Amendment, “to secure the individual from the arbitrary exercise of the powers of government[.]” *Daniels v. Williams*, 474 U.S. 327, 331 (1986); *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (“The touchstone of due process is protection of the individual against arbitrary action of government.”). Respondents have singled out Mr. Humphreys for a diminished clemency proceeding, in violation of his rights to due process and equal protection.

Respondents further argue that this case is a poor vehicle for the question presented, emphasizing the absence of a circuit split on this question. In doing so, they ignore the clear, repeated difficulties that lower courts across the country have faced when assessing a state's deviation from its established clemency practice. The instant, unprecedented deviation of Georgia's executive clemency procedure for Mr. Humphreys presents a prime vehicle to garner much needed clarity. *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 Court should grant the petition.

ARGUMENT IN SUPPORT OF THE PETITION

A. The Lower Court’s “Unprompted” Ruling on an Unraised Claim Presents a “Reason to Summarily Reverse[.]”²

There is no dispute that Mr. Humphreys did not raise the federal claim at issue here in his mandamus petition. *See* BIO at 7. Nor is there any dispute that the state court included an “unprompted” resolution of Mr. Humphreys’s rights under *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998). BIO at 7. Nor even is there disagreement that a court’s *sua sponte* ruling on an unraised claim provides this Court a “reason to summarily reverse.” *Id.* (citing *Clark v. Sweeney*, 607 U.S. 7, 9 (2025)).

Respondents nevertheless posit that *this* ruling on an unraised issue does not warrant such reversal because the lower court’s ruling “could only *benefit* [Mr.] Humphreys[.]” *Id.* (emphasis in original). But that assertion is difficult to square with common sense. The lower court’s foreclosure of Mr. Humphreys’s federal due process rights, without affording him any opportunity to brief or even argue the issue did not “benefit” him under any definition of that word. Such a departure from longstanding party presentation principles provides a basis for this Court to grant certiorari and remand to the Georgia courts. *See, e.g., Wood v. Milyard*, 566 U.S. 463, 472–74 (2012) (reversing the denial of a federal habeas petition on timeliness grounds that were advanced *sua sponte* by the lower appellate court and not initiated by the state); *Clark*, 607

² BIO at 7.

U.S. at 9; *United States v. Sineneng-Smith*, 590 U.S. 371, 375–76 (2020); *Greenlaw v. United States*, 554 U.S. 237, 244–45, 254 (2008).

B. The Unprecedented Deviation in Mr. Humphreys’s Clemency Proceedings Constitutes a Violation of Due Process and Equal Protection Under the Fourteenth Amendment.

There is nothing “irredeemably amorphous,” BIO at 22, about this litigation. It is, quite simply, the difference between four versus five. For the first time in Georgia’s history, a death-sentenced clemency applicant has been provided only four votes instead of five, while still requiring three total votes for a commutation. Unlike every other applicant before him, Mr. Humphreys will receive a “nay” vote before his application is even considered,³ arbitrarily altering the clemency application review process to his detriment. *See* Pet. App. E215 (“[A] fifth (5th) board member ... may well be able to move others on the Board to favorably consider a reprieve.”).

Respondents take issue with Mr. Humphreys’s reference to this deviation from “historical practice.” *See* BIO at 8, 16, 22; Pet. ii. But their consternation cannot be taken seriously. All parties and the lower court were

³ A Board member’s abstention equates to a vote of “nay” for the purposes of clemency. Pet. App. E147 (“Q. ... a vote to abstain is effectively the same exact thing as a vote to deny, from Mr. Humphreys’ perspective, correct? A. Correct.”)

initially in agreement that the law was consistent with the Board’s historical practice of requiring a full five-member board. *See* Pet. App. E210 (“A full Board of five members is required to consider the clemency request of an offender sentenced to death.”); Pet. App. D9 (“[Mr. Humphreys] can be afforded the standard, constitutionally mandated clemency hearing before the full Board, comprised of five members who are able to participate fully in the proceedings.”). And above all, the “historical practice” of the Board’s application of its clemency procedures is relevant to the instant constitutional inquiry. *See City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 770 n.11 (1988) (“[W]hen ... a well-understood and uniformly applied practice has developed that has virtually the force of a judicial construction, the state law is read in light of those limits.”); *see also Medina v. California*, 505 U.S. 437, 445–48 (1992) (evaluating “historical practice” at common law to determine whether a state’s procedural rule violated due process); *Chiafalo v. Washington*, 591 U.S. 578, 592–93 (2020) (“‘Long settled and established practice’ may have ‘great weight in a proper interpretation of constitutional provisions.’” (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929))); *McGirt v. Oklahoma*, 591 U.S. 894, 914 (2020) (explaining that early practice can shed light on an ambiguity).

Respondents also argue that in following state law, the “quorum rule” outlined in O.C.G.A. § 42-9-7,⁴ they cannot

⁴ “A majority of the board shall constitute a quorum for the transaction of all business except as otherwise provided in this chapter.” O.C.G.A. § 42-9-7.

be said to have violated Mr. Humphreys’s rights to due process. BIO at 21–24. This too is unavailing.

By the will of its citizens, Georgia has established a robust and detailed system for executive clemency. *See* BIO at 10; Pet. 26. Even if clemency has been deemed not to constitute “an integral part of the system for finally adjudicating the *guilt or innocence* of a defendant[.]” BIO at 9 (quoting *Woodard*, 523 U.S. at 285) (emphasis added), it is undeniably “the historic remedy for preventing miscarriages of justice where judicial process has been exhausted.” *Herrera v. Collins*, 506 U.S. 390, 412 (1993).

This all-important process is now hampered, reducing the number of available votes in support of clemency from five to four. Respondents insist that this is proper because clemency is not constitutionally required, and the instant procedures comply with the “quorum rule.” BIO at 18, 25. But Mr. Humphreys’s “constitutional challenge cannot be answered by an argument” that clemency is “a ‘privilege’ and not a ‘right.’” *Cf. Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (holding that before non-constitutionally guaranteed welfare was discontinued, due process required providing recipients a meaningful opportunity to be heard).

Application of the quorum rule does not erode equal protection concerns either.⁵ Following the lower court’s

⁵ Respondents state that “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.” BIO at 25. This is inaccurate. *E.g.*, Pet. App. D246 (“McCoy heads the

ruling, every death sentenced prisoner in Georgia could be left with as few as “three” members to consider their clemency application. Pet. App. C3. Giving Respondents carte blanche to pick and choose which applicants receive a full board and which do not removes neutrality from this process. The quorum rule then serves only to authorize the Respondents’ arbitrary limitation of its clemency procedures for certain applicants. “Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.” *Sweatt v. Painter*, 339 U.S. 629, 635 (1950). Mr. Humphreys is entitled to the same clemency procedures that every other death-sentenced applicant in Georgia has been afforded before now.

C. Certiorari Will Provide Much Needed Clarity.

Constitutional questions concerning clemency procedures almost by definition arise in an emergency, last-minute posture. Yet Mr. Humphreys’s petition for writ of certiorari was different: it presented this Court with a clean, unharried opportunity to clarify the reach of *Woodard*. This Court should not countenance the State’s attempt to force this petition onto the emergency track, and should, instead, grant the petition to resolve the confusion that continues to plague the lower courts.

Victim Witness Unit for Cobb’s district attorney. She oversees all cases covered by Georgia’s 1995 Crime Victims Bill of Rights, but she personally handles cases involving the death penalty.”).

Numerous courts, for instance, have interpreted *Woodard* to require states to follow their own established procedures for clemency. *See, e.g., Gardner v. Garner*, 383 F. App'x 722, 726 (10th Cir. 2010) (unpublished) (“We must focus solely on the Board's compliance with its own rules and its avoidance of wholly arbitrary or capricious action.”); *Aruanno v. Corzine*, 413 F. App'x 494, 497 (3d Cir. 2011) (unpublished) (“[Appellant] has failed ... to demonstrate that ... defendants failed to comply with the State procedures for requesting clemency.”); *Tamayo v. Perry*, 553 Fed.Appx. 395, 402 (unpublished) (5th Cir. 2014) (“We conclude that he has failed to show a substantial likelihood that he could demonstrate the Board violated its policies.”); *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...”); *Com. v. Michael*, 618 Pa. 353, 361 (Pa. 2012) (“Here, there is no colorable allegation that the executive branch has not followed—and is not following—[clemency] procedures set out in state law.”); *Allen v. Hickman*, 407 F. Supp. 2d 1098, 1103–04 (N.D. Cal. 2005); *Bacon v. Lee*, 549 S.E.2d 840, 851 (N.C. 2001); *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010); *see also United States v. Hutchins*, 72 M.J. 294 (C.A.A.F. 2013) (Baker, C.J., dissenting).

Other courts explicitly reject this view. *See, e.g., Lee v. Hutchinson*, 854 F.3d 978, 981–82 (8th Cir. 2017) (“[E]ven if the inmates are correct that the Board failed to comply

with Arkansas law, regulations, and policy[during the clemency process], this in and of itself is insufficient to demonstrate a significant possibility of success on the merits.... [D]espite the procedural shortcomings in the clemency process, the inmates received the minimal due process guaranteed by the Fourteenth Amendment.”); *Gissendaner v. Comm’r, Georgia Dep’t of Corr.*, 794 F.3d 1327, 1333 (11th Cir. 2015) (“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.”). This petition presents the ideal vehicle for this court to provide much needed clarity to the lower courts.

CONCLUSION

For the foregoing reasons and those stated in Mr. Humphreys's petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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September 11, 2026