

No. _____

In the Supreme Court of the United States

WILLIAM FRANCES SILVIA, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

DEATH WARRANT SIGNED

Execution Scheduled: August 18, 2026, at 6:00 PM ET

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CAPITAL CASE
QUESTION PRESENTED

The State of Florida is currently engaged in an unprecedented spree of death warrants. There have been 12 executions so far in 2026 alone, including a double execution on July 28, 2026. If executed on August 18, 2026, William Frances Silvia, Jr. (“Silvia”) will be the 13th in eight months. Even before the sudden acceleration of executions in 2025, Justice LaBarga of the Florida Supreme Court (“FSC”) raised concerns over the pace of executions occurring in Florida in his dissent in *Barwick v. State*, 361 So. 3d 785, 796 (Fla. 2023).

As the majority observes, “post-warrant litigation is arduous,” *see* majority op. at 7, and a death warrant by its very nature requires expedited proceedings. However, these solemn proceedings ultimately involve carrying out a sentence of death for the most aggravated and least mitigated of murders and must still ensure due process of law. I am extremely concerned by the recent pace of death warrants and the speed with which the parties and involved entities must carry out their respective duties.

Barwick has raised concerns about the accelerated timetable and argues that “[t]he death warrant proceedings in [his] case lacked any indicia of meaningfulness.” While I agree that Barwick's claims are not entitled to relief under this Court's precedent, I nonetheless caution that even in this final stage of capital proceedings, a meaningful process must be ensured.

For the first time in memory, either through negligence or intentionally, three consecutive death warrants were signed for overlapping executions periods for individuals represented by the very same group of attorneys from the Office of Capital Collateral Regional Counsel – Middle Region, Attorney Ali Shakoor, and co-counsels Debra Bell and Mahham Syed. Due to the severely truncated timeframe created by

the scheduling of these executions by the Florida Executive Office of the Governor and the Florida Department of Corrections, Silvia's attorneys were forced to investigate and present Silvia's postconviction claims while simultaneously preparing pleadings to be filed in this Court for Dominick Occhicone, and subsequently Harold Lucas, fulfilling Justice LaBarga's very valid concerns that the uptick in executions and the speed at which they are being carried out would result in the absence of meaningful due process.

- 1. Does the Florida Supreme Court Opinion in *Silvia v. State* create an impermissibly distinct standard of representation between capital defendants represented by the offices the Capital Collateral Regional Counsel and all others, thereby violating the equal protection and due process rights of the defendant and all other Capital Collateral Regional Counsel clients, guaranteed by the Sixth and Fourteenth Amendments?**

LIST OF PARTIES

All parties appear in the caption on the cover page.

RELATED CASES

Motion to Declare Florida's Death Penalty Unconstitutional

Circuit Court of the Eighteenth Judicial Circuit, Seminole County

Docket Number: 2006CF004522A

Case Caption: State of Florida v. William Frances Silvia, Jr.

Date of Entry of Judgement: Denied, January 25, 2007

State v. Silvia, No. 06-4522CFA, 2007 WL 9822714 (Fla.Cir.Ct. Apr. 26, 2007)

Trial and Sentencing

Circuit Court of the Eighteenth Judicial Circuit, Seminole County

Docket Number: 2006CF004522A

Case Caption: State of Florida v. William Frances Silvia, Jr.

Date of Entry of Judgement: Convicted, June 6, 2008;

Sentenced, January 28, 2009

State v. Silvia, No. 06-4522CFA, 2007 WL 9822714 (Fla.Cir.Ct. Apr. 26, 2007)

(Trial Court Order Granting, in Part, Defendant's Motion for Individual and Sequestered Voir Dire)

State v. Silvia, 2009 WL 10741095 (Fla.Cir.Ct. Jan. 28, 2009) (Trial Sentencing Order)

Direct Appeal

Supreme Court of Florida

Docket Number: SC2009-0200

Case Caption: Silvia v. State

Date of Entry of Judgement: Affirmed, April 7, 2011

Silvia v. State, 60 So. 3d 959 (Fla. 2011)

Motion for Postconviction Relief

Circuit Court of the Eighteenth Judicial Circuit, Seminole County

Docket Number: 2006CF004522A

Case Caption: State of Florida v. William Frances Silvia, Jr.

Date of Entry of Judgement: Dismissed, July 29, 2012, Later Amended to July 12, 2012

Unreported

Appeal from Dismissal of Motion for Postconviction Relief

Supreme Court of Florida

Docket Number: SC2012-1863
Case Caption: Silvia v. State
Date of Entry of Judgement: Denied, September 11, 2013
Silvia v. State, 123 So. 3d 1148 (Fla. 2013)(Table);
Published in Full: *Silvia v. State*, 228 So. 3d 1144 (Fla. 2013)

Successive Motion for Postconviction Relief (*Hurst* Relief)

Circuit Court of the Eighteenth Judicial Circuit, Seminole County
Docket Number: 2006CF004522A
Case Caption: State of Florida v. William Frances Silvia, Jr.
Date of Entry of Judgement: Granted, February 20, 2017
State v. Silvia, No. 06-4522CFA, 2017 WL 11575264
(Fla.Cir.Ct. Feb. 20, 2017)

State Appeal from Vacation of Death Sentence

Supreme Court of Florida
Docket Number: SC2017-0337
Case Caption: State v. Silvia
Date of Entry of Judgement: Granted, February 1, 2018
State v. Silvia, 235 So. 3d 349 (Fla. 2018)

Demand for Additional Records

Circuit Court of the Eighteenth Judicial Circuit, Seminole County
Docket Number: 2006CF004522A
Case Caption: State of Florida v. William Frances Silvia, Jr.
Date of Entry of Judgement: Dismissed, September 19, 2019
Unreported

Appeal from Dismissal of Demand for Additional Records

Supreme Court of Florida
Docket Number: SC2019-1778
Case Caption: Silvia v. State
Date of Entry of Judgement: Voluntarily Dismissed, February 25, 2020
Silvia v. State, No. SC19-1778, 2020 WL 901912 (Fla. Feb. 25, 2020)

Demand for Additional Records

Circuit Court of the Eighteenth Judicial Circuit, Seminole County
Docket Number: 2006CF004522A

Case Caption: State of Florida v. William Frances Silvia, Jr.
Date of Entry of Judgement: Resolved by receipt of Records, June 24, 2021
Unreported

Amended Motion to Appoint Federal Habeas Counsel

United States District Court for the Middle District of Florida
Tampa Division Docket Number: 8:22-cv-1365 Transferred to:
Orlando Division Docket Number: 6:22-cv-1365
Case Caption: Silvia v. Sec’y, Dep’t of Corr.
Date of Entry of Judgement: Order of Dismissal without Prejudice
March 18, 2024
Unreported

Successive Motion for Postconviction Relief (Post Warrant)

Circuit Court of the Eighteenth Judicial Circuit, Seminole County
Docket Number: 2006CF004522A
Case Caption: State of Florida v. William Frances Silvia, Jr.
Date of Entry of Judgement: Denied, July 29, 2026
Unreported

Appeal from Denial of Successive Motion for Postconviction Relief (Post Warrant)

Supreme Court of Florida
Docket Number: SC2026-1162
Case Caption: Silvia v. State
Date of Entry of Judgement: Denied, August 12, 2026
2026 WL 2333428 (Fla. Aug. 12, 2026)

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PETITION FOR WRIT OF CERTIORARI

William Frances Silvia, Jr. respectfully petitions for a writ of certiorari to review a judgment of the Supreme Court of Florida.

DECISIONS AND ORDERS BELOW

The opinion of the FSC is attached as Appendix A. The order of the Eighteenth Judicial Circuit of the State of Florida, Pasco County (warrant court), is unpublished and attached as Appendix C.

JURISDICTION

The judgment of the FSC was entered on August 12, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment of the U.S. Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense.

The Fourteenth Amendment of the U.S. Constitution provides, in relevant part:

No State shall . . . 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.

STATEMENT OF THE CASE

Silvia is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to § 922.105, Fla. Stat. A Death Warrant was signed by Governor Ron DeSantis on Friday, July 17, 2026 and filed with the Department of State at 12:33 p.m. (See Appendix D). Three weeks earlier, on June 26, 2026, a Death Warrant was signed by Governor DeSantis scheduling the execution of Dominck Occhicone (“Occhicone”) on July 26, 2026. (See Appendix E). Thirteen days later, on July 30, 2026, a Death Warrant was signed by Governor DeSantis scheduling the execution of Harold Lucas (“Lucas”) on September 1, 2026. (See Appendix F). Undersigned counsel were counsel of record for all three cases. Litigation of the first two cases overlapped for more than a third of the allotted warrant litigation time-period. The warrant litigation period of Silvia and Lucas overlapped by 18 days, almost two thirds of the allotted time period, however on August 3, 2026 Lucas decided to waive any further post warrant litigation. As such, Silvia raised the claim that it was a violation of his statutorily created right to postconviction counsel, as well as his sixth, eighth, and fourteenth amendment rights, and his corresponding rights under the Florida constitution to sign a death warrant while Silvia’s counsel was simultaneously litigating another death warrant at the state and federal appellate stage and a denial of relief would be a manifest injustice. (Silvia also raised a second claim, See Appendix B).

In its opinion dated August 12, 2026, the Florida Supreme Court (“FSC”) ruled the state statutory right to postconviction counsel for capital collateral postconviction defendants does not create a right to effective assistance of counsel in postconviction

proceedings, saying the “quality representation” described by § 27.711(12), Fla. Stat., applies only to private counsel and not to Capital Collateral Regional Counsel (“CCRC”). Additionally, they held Fla. R. Crim. P. 3.112 only requires counsel to be *competent*, not effective, therefore Silvia’s statutory right to counsel was satisfied simply by the appointment of CCRC, and as such he was afforded notice and opportunity to be heard, satisfying his right to due process, without recognizing they created two distinct and separate categories of state-mandated represented individuals. We humbly disagree. This petition follows.

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REASONS FOR GRANTING THIS PETITION

THE STATE OF FLORIDA HAS A STATUTORILY CREATED RIGHT TO POSTCONVICTION COUNSEL WHICH IT CANNOT DISCRIMINATORILY APPLY IN VIOLATION OF THE EQUAL PROTECTION AND DUE PROCESS RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT

Silvia recognizes the federal precedent that “there is no federal constitutional right to counsel in post[-]conviction proceedings,” *Sweet v. Muniz*, No. 3:22-CV-574-TJC-LLL, 2023 WL 5226624 (M.D. Fla. Aug. 15, 2023); *Pennsylvania v. Finley*, 481 U.S 551, 555 (1987); *see also Barbour v. Haley*, 471 F.3d 1222, 1227 (11th Cir. 2006). However, there is a statutorily created right to postconviction counsel in the State of Florida. In 1985, the Florida Legislature established the CCRC with the expressed intent to:

provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.

§ 27.7001, Fla. Stat. The Florida Legislature has asserted it was not creating “...any right on behalf of any person, provided counsel pursuant to any provision of this chapter, to challenge in any form or manner the adequacy of the collateral representation provided,” as well as establishing “...the sole method of assuring adequacy of representation provided shall be in accordance with the provisions of s. 27.711(12),” The Florida Legislature also enacted § 27.7002(2), Fla. Stat., which says “the sole method of assuring adequacy of representation provided shall be in accordance with the provisions of s. 27.711(12),” which does seem to be in conflict with

§ 27.7002(1), Fla. Stat. The Florida Legislature further established requirements for counsel representing capital defendants in § 27.7045, Fla. Stat., by instructing the courts to prohibit, for five years, any attorney from representing capital defendants at trial or in postconviction proceedings if they have been found to have provided deficient representation to the extent relief was granted by the court in two instances. When the FSC denied relief to Silvia, even if only partially, based on the rationale § 27.711(12), Fla. Stat., only applies to capital collateral defendants with private counsel, they created a distinction between classes of defendants in violation of the Fourteenth Amendment by providing different qualifications of attorneys based on what type of attorney represents the defendant.

a. The FSC's Ruling that Fla. R. Crim. P. 3.112 Only Requires Counsel to be Competent, Not Effective, is an Unreasonable Reading of the Statute

Following the creation of CCRC, the FSC established the minimum standards for attorneys in capital cases for an attorney to be eligible to represent capital defendants in Fla. R. Crim. P. 3.112. The committee's comments regarding the implementation of Fla. R. Crim. P. 3.112 specifically address the need for competent and effective counsel:

These standards are based on the general premise that the defense of a capital case requires specialized skill and expertise. **The Supreme Court has not only the authority, but the constitutional responsibility to ensure that indigent defendants are provided with competent counsel, especially in capital cases where the State seeks to take the life of the indigent defendant.** The Supreme Court also has exclusive jurisdiction under Article V section 15 of the Florida Constitution to “[r]egulate the admission of persons to the practice of law and the discipline of persons admitted.” Implied in this grant of authority is the power to set the minimum requirements for the admission to practice law, *see In re Florida Board of Bar Examiners*, 353

So. 2d 98 (Fla. 1977), as well as the minimum requirements for certain kinds of specialized legal work.

(Emphasis added). The FSC now contends this rule reflects only that capital postconviction counsel “must be *competent*- that is, an attorney meeting minimal requirements to competently handle capital postconviction proceedings” and not necessarily effective. (Appendix A).

To say counsel must be competent but need not be effective is not a reasonable reading of the rule. The rule states the following:

The purpose of these rules is to set minimum standards for attorneys in capital cases to help ensure that competent representation will be provided to capital defendants in all cases. Minimum standards that have been promulgated concerning representation for defendants in criminal cases generally and the level of adherence to such standards required for noncapital cases should not be adopted as sufficient for death penalty cases. **Counsel in death penalty cases should be required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has had adequate time and resources for preparation.** These minimum standards for capital cases are not intended to preclude any circuit from adopting or maintaining standards having greater requirements.

Fla. R. Crim. P. 3.112(a). (Emphasis added). While the above section of the rule ensures competent representation, the rest of the rule goes on to describe the minimum qualifications of lead trial counsel, co-counsel, and appellate counsel in capital cases. All of which include the requirement that counsel “have demonstrated the necessary proficiency and commitment which exemplify the **quality of representation** appropriate to capital cases.” Fla. R. Crim. P. 3.112(f)(6), Fla. R. Crim. P. 3.112(g)(2)(D), Fla. R. Crim. P. 3.112(h)(5). Previously, the FSC also recognized courts should consider an attorney’s caseload as an indication of whether

it “might impair the quality of legal representation provided to the defendant.” Fla. R. Crim. P. 3.112(j). It instructs “the court should consider the number of capital or other cases then being handled by the attorney and any other circumstances bearing on the attorney's readiness to provide **effective assistance of counsel** to the defendant in a timely fashion.” *Id.* The rule itself specifies caseloads should be limited to ensure the effective assistance of counsel. In its opinion, FSC cites to Fla. R. Crim. P. 3.112 generally and to Fla. R. Crim. P. 3.112(a) and Fla. R. Crim. P. 3.112(k) specifically but is silent on Fla. R. Crim. P. 3.112(j) in its analysis, where the term “effective assistance of counsel” is plainly used. (See Appendix A). It would be an unreasonable splitting of hairs to say that court should ensure that an attorney be “ready” to provide effective assistance of counsel but not actually be expected to provide it.

A holistic reading of Fla. R. Crim. P. 3.112 makes it clear that the rule uses the word “quality” to describe the effective assistance of counsel. In fact, the requirements of Fla. R. Crim. P. 3.112(f)(6), Fla. R. Crim. P. 3.112(g)(2)(D), and Fla. R. Crim. P. 3.112(h)(5) very closely align with the definition of effective assistance of counsel: “A conscientious, meaningful legal representation, whereby the defendant is advised of all rights and the lawyer performs all required tasks reasonably according to the prevailing professional standards in criminal cases. *See* Fed. R. Crim. P. 44; 18 USCA § 3006A.” *Effective Assistance of Counsel*, Black's Law Dictionary (12th ed. 2024). There is no separate legal definition of quality representation. Furthermore, the rule

does not *preclude* claims of ineffective assistance of counsel. Instead, the committee notes that,

These standards are not intended to establish any independent legal rights. For example, the failure to appoint cocounsel, standing alone, has not been recognized as a ground for relief from a conviction or sentence. *See Ferrell v. State*, 653 So. 2d 367 (Fla. 1995); *Lowe v. State*, 650 So. 2d 969 (Fla. 1994); *Armstrong v. State*, 642 So. 2d 730 (Fla. 1994). **Rather, these cases stand for the proposition that a showing of inadequacy of representation in the particular case is required.** *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). These rulings are not affected by the adoption of these standards. Any claims of ineffective assistance of counsel will be controlled by *Strickland*.

Fla. R. Crim. P. 3.112. (Emphasis added). Though they did not create an independent right to effective assistance of counsel, the committee clearly did not intend to exempt capital counsel from the requirement of effectiveness, nor apply a lower standard of competency alone. While *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) governs ineffective assistance of counsel, effective assistance of counsel is determined by objective reasonableness of counsel's performance. *Whitlow v. State*, 2008 MT 140, ¶ 12, 343 Mont. 90, 94, 183 P.3d 861, 865. This is reminiscent of the standard in Fla. R. Crim. P. 3.112, that counsel is required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation. Although the Florida Legislature may not have intended to provide for effective assistance of counsel to capital postconviction counsel, the judiciary's

added rules are designed in a way to ensure capital defendants receive, not only competent, but also effective postconviction representation.¹

b. The “Quality Representation” Described by § 27.711(12), Fla. Stat. Cannot Only Apply to Private Counsel and Not Also to Capital Collateral Regional Counsel

The FSC further erred in ruling § 27.711(12), Fla. Stat. applies only to private attorneys who have registered with the Justice Administration Commission to represent capital defendants (“Registry Counsel”). Chapter 27 of the Florida Statutes promulgates the rules for “State Attorneys; Public Defenders; Related Offices.” Part IV of Chapter 27, in which the statute in question is located, is entitled Capital Collateral Representation. The legislature specified their intent in creating part IV as follows:

It is the intent of the Legislature to create part IV of this chapter, consisting of ss. 27.7001-27.711, inclusive, to provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice. It is the further intent of the Legislature that collateral representation shall not include representation during retrials, resentencings, proceedings commenced under chapter 940, or civil litigation.

§ 27.7001, Fla. Stat. Section 27.701 of the statute creates the office of the Capital Collateral Regional Counsel. CCRC is mandated to represent persons convicted and

¹Silvia understands that there is no federal right to effective postconviction counsel. “The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254.” 28 U.S.C.A. § 2261.

sentenced to death within the region in collateral postconviction proceedings, unless a court appoints or permits other counsel to appear as counsel of record. § 27.702, Fla. Stat. Essentially, CCRC is the default counsel for all capital postconviction appellants, particularly indigent appellants who cannot otherwise afford a private lawyer. Yet, the FSC has singled out § 27.711(12), Fla. Stat. to apply only to Registry Counsel. § 27.711(12), Fla. Stat., reads as follows:

The court shall monitor the performance of assigned counsel to ensure that the capital defendant is receiving **quality representation**. The court shall also receive and evaluate allegations that are made regarding the performance of assigned counsel. The Justice Administrative Commission, the Department of Legal Affairs, or any interested person may advise the court of any circumstance that could affect the quality of representation, including, but not limited to, false or fraudulent billing, misconduct, failure to meet continuing legal education requirements, solicitation to receive compensation from the capital defendant, or failure to file appropriate motions in a timely manner.

§ 27.711(12), Fla. Stat. (Emphasis added). In its opinion on Silvia’s case, the FSC stated “the reference to quality representation in section 27.711(12) does not create a right to effective assistance of postconviction counsel.” (Appendix A). (Internal quotation marks omitted). In footnote 5 they go on to say:

Further, the requirement under section 27.711(12) **applies only to private counsel**. See § 27.710(2), Fla. Stat. (providing that private counsel seeking to become registry counsel for capital postconviction proceedings “must certify on an application provided by the executive director that he or she satisfies the minimum requirements for private counsel set forth in s. 27.704(2)”; § 27.711, Fla. Stat. (setting out duties and limitations of attorney appointed as registry counsel under subsections (2), (8), (9) and (11); addressing payment of fees to private counsel by the Justice Administrative Commission under subsections (3)-(7) and (13); and, under subsection (12), requiring the court to monitor “the performance of assigned counsel to ensure that the capital defendant is receiving quality representation” and ensure registry counsel has not engaged in fraudulent billing, attempted to solicit

further compensation from the defendant, failed to “meet continuing legal education requirements,” etc.).

(Appendix A). (Emphasis added). This is a misreading of the statute. Nothing in the plain textual reading of this statute implies it should apply only to private counsel or should exclude CCRC. It is true § 27.711(1), Fla. Stat., refers back to § 27.710, Fla. Stat., regarding the requirements for Registry Counsel; “Registry of attorneys applying to represent persons in postconviction capital collateral proceedings; certification of minimum requirements; appointment by trial court,” for its definitions of the terms “capital defendant,” “executive director,” and “postconviction capital collateral proceedings.” § 27.711(2), (4), (8), and (11), Fla. Stat., also refer back to § 27.710., Fla. Stat. § 27.711(12), Fla. Stat., does not reference § 27.710, Fla. Stat. Section 27.711, Fla. Stat., has thirteen subsections and only five of them refer back to the section regarding Registry Counsel.² The plain textual reading of this is that those five sections are specific to registry counsel, and the remaining eight sections, including section (12), are not.

A finding that the guarantee of quality representation in § 27.711(12), Fla. Stat., applies only to those represented by private counsel sets up an impermissibly discriminatory standard between otherwise similarly situated persons: capital defendants represented by Registry Counsel or private counsel versus those represented by CCRC. This is doubly disturbing if you accept as true the plain meaning of the statutes, that quality representation is equivalent to effective assistance. Furthermore, § 27.7002(2), Fla. Stat., says it is the “the sole method of

²§§ 27.711(1), (2), (4), (8), and (11)

assuring adequacy of representation provided shall be in accordance with the provisions of s. 27.711(12).” If that excludes CCRC, there would be no guarantee of adequate representation by a CCRC attorney. That would mean only defendants represented by private counsel are entitled to effective assistance of counsel which would be a fundamental violation of Silvia’s equal protection rights, as well as the equal rights of all capital defendants in the State of Florida.

c. Silvia’s Statutory Right to Counsel Cannot be Satisfied Simply by the Appointment of CCRC, Especially When the Statutes Governing Capital Collateral Postconviction Proceedings Create a Separate and Distinct Class of Individuals Represented by CCRC Compared to Those with Private Attorneys, in Violation of Silvia’s Sixth and Fourteenth Amendment Rights Under the United States Constitution

Capital defendants have a fundamental right to due process and equal protection of the laws based on the Fourteenth Amendment, as well as a Sixth Amendment right to counsel. When a state draws a distinction between those capital defendants who will receive the benefit of a constitutionally valid due process and those who will not, the state’s justification for the distinction must satisfy strict scrutiny. Distinctions in state criminal laws which impinge upon individuals’ fundamental rights must be strictly scrutinized. *See, e.g., Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964); *Eisenstadt v. Baird*, 405 U.S. 438, 447 (1972). The distinction made by the courts in Florida cannot meet such an extremely high standard. *See Dep’t of Agriculture v. Moreno*, 413 U.S. 528, 538 (1973).

This Court has said the guarantee of counsel “cannot be satisfied by mere formal appointment.” *Evitts v. Lucey*, 469 U.S. 387, 395, 105 S. Ct. 830, 835, 83 L. Ed. 2d 821 (1985)(quoting *Avery v. Alabama*, 308 U.S. 444, 446, 60 S.Ct. 321, 322, 84 L.Ed. 377 (1940)).

When a State opts to act in a field where its action has significant discretionary elements, such as where it establishes a system of appeals as of right although not required to do so, it must nonetheless act in accord with the dictates of the Constitution, and, in particular, in accord with the Due Process Clause.

Id. at 387–88. The signing of Silvia’s death warrant while his counsel was actively litigating Occhicone’s warrant, which was pending review by the FSC potentially followed by litigation before this Court, created a circumstance directly impacting the quality of representation available to Silvia pursuant to Florida’s legislatively and judicially imposed requirements. The signing of Lucas’ death warrant on undersigned counsels, immediately after the denial of Silvia’s motions is another indication of the due process violation directly caused by the actions of the State of Florida.

This Court has an extensive history of preserving, and respecting, the right to counsel and has said:

It has long been recognized that the right to counsel is the right to the *effective* assistance of counsel. See *Reece v. Georgia*, 350 U.S. 85, 90, 76 S.Ct. 167, 170, 100 L.Ed. 77 (1955); *Glasser v. United States*, 315 U.S. 60, 69—70, 62 S.Ct. 457, 464—465, 86 L.Ed. 680 (1942); *Avery v. Alabama*, 308 U.S. 444, 446, 60 S.Ct. 321, 322, 84 L.Ed. 377 (1940); *Powell v. Alabama*, 287 U.S. 45, 57, 53 S.Ct. 55, 59—60, 77 L.Ed. 158 (1932).

McMann v. Richardson, 397 U.S. 759, 771, n. 14, 90 S. Ct. 1441, 1449, n. 14, 25 L. Ed. 2d 763 (1970). (Emphasis added). More recently, in *Evitts v. Lucey*, 469 U.S. 387, 395, 105 S. Ct. 830, 835–36, 83 L. Ed. 2d 821 (1985), this Court ruled

Because the right to counsel is so fundamental to a fair trial, the Constitution cannot tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits.

Much like Alabama in *Powell v. State of Ala.*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932), where this Court held it was its duty to determine whether Alabama violated the defendants' Fourteenth Amendment due process rights by failing to appoint effective counsel as required by the Alabama state constitution, even after the state supreme court had ruled those statutory provisions had not been violated, Florida has violated Silvia's rights. In *Powell* this Court addressed the inability of the defendants to employ counsel by saying,

we are of opinion that, under the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment. Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case. To hold otherwise would be to ignore the fundamental postulate, already adverted to, 'that there are certain immutable principles of justice which inhere in the very idea of free

government which *72 no member of the Union may disregard.’ Holden v. Hardy, *supra*. In a case such as this, whatever may be the rule in other cases, the right to have counsel appointed, when necessary, is a logical corollary from the constitutional right to be heard by counsel.

Id. at 71–72.

In addition to the statutorily created requirements established in Chapter 27, Florida Statutes, regarding capital collateral postconviction representation, the FSC has also recognized the high ethical standard all attorneys are required to maintain, while also acknowledging attorneys are not fungible, in *Pub. Def., Eleventh Jud. Cir. of Fla. v. State*, 115 So. 3d 261, 271 (Fla. 2013), when it stated:

All attorneys, whether state-supplied or privately retained, are under the professional duty not to neglect any legal matters entrusted to them.” *State v. Meyer*, 430 So.2d 440, 443 (Fla.1983) (citing Rule 4–1.3, Rules Regulating Fla. Bar (Diligence) formerly Fla. Bar Code Prof. Resp. D.R. 6–101(A)(3)). **Whether an indigent defendant is represented by an elected public defender, the appointed regional counsel, or a private attorney appointed by the court, the attorney has an independent professional duty to “effectively” and “zealously” represent his or her client.** *Crist*, 978 So.2d at 147. *See also Wilson v. Wainwright*, 474 So.2d 1162, 1164 (Fla.1985) (“[T]he basic requirement of due process in our adversarial legal system is that a defendant be represented in court, at every level, by an advocate who represents his client zealously within the bounds of the law. Every attorney in Florida has taken an oath to do so and we will not lightly forgive a breach of this professional duty in any case.”).

(Emphasis added). For the FSC, along with the Florida Legislature, to now say the highest standards of representation do not apply to CCRC and only to private counsel, implies capital postconviction defendants are not entitled to the same level of representation based entirely on their financial or conflict status. This violates not

only Silvia's due process rights, but also his right to be treated the same as all similarly situated inmates as guaranteed by the equal protection clause.

In *Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585 (1956) this Court found it violated the due process and equal protection clauses for a state to deny an indigent defendant a transcript to be able to seek appellate review, finding there is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance. Although a state is not required by the United States Constitution to provide appellate courts or a right to appellate review at all (see, e.g., *McKane v. Durston*, 153 U.S. 684, 687—688, 14 S.Ct. 913, 914—915), this is not to say a state which does grant appellate review can do so in a way which discriminates against some convicted defendants on account of their poverty. Because appellate review has become an integral part of the Illinois trial system for adjudicating the guilt or innocence of a defendant, the due process and equal protection clauses protect persons like petitioners from invidious discriminations at all stages of the proceedings. *Griffin v. Illinois*, 351 U.S. 12, 18, 76 S. Ct. 585, 590 (1956).

In *Eskridge v. Washington State Bd. of Prison* 357 U.S. 214, 78 S. Ct. 1061 (1958), following the holding in *Griffin*, this Court addressed a similar system created by the State of Washington where the transcript was only provided for an indigent appellant at public expense if the trial judge found “justice [would] thereby be promoted.” *Id.* at 215. This Court explained the conclusion of the trial judge there

was no reversible error in the trial is not the same as the right to full appellate review which is available to all defendants in Washington who can afford the expense of a transcript by saying

We do not hold that a State must furnish a transcript in every case involving an indigent defendant. But [] we do hold that, '(d)estitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts.' *Griffin v. People of State of Illinois*, 351 U.S. 12, 19, 76 S.Ct. 585, 591.

Id. at 216, 1062. Like Illinois' and Washington's appellate process, Florida's postconviction process, which includes all collateral proceedings as well as appeals, has become an integral part of the functioning of Florida's death penalty system and therefore must comply with the requirements of the United States Constitution of due process and equal protection.

Implementation of the death penalty should be considered as the deprivation of the most basic liberty and should be provided the highest level of protections as well as "strict scrutiny of the classification" created by the state against inequality in the imposition of the punishment. *Skinner v. State of Oklahoma ex rel. Williamson*, 316 U.S. 535, 541, 62 S. Ct. 1110, 1113, 86 L. Ed. 1655 (1942).

[When] discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws. The guaranty of 'equal protection of the laws is a pledge of the protection of equal laws.' *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 1070, 30 L.Ed. 220. When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as an invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment. *Yick Wo v. Hopkins*, *supra*; *Gaines v. Canada*, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208

Id. at 541, 1113. The taking of someone’s life by the government must be treated, at least as cautiously, if not more so, than forced sterilization, which this Court has found is a deprivation of a basic liberty. If “separate but equal was insufficient to overcome equal protection challenges in the field of public education” because “separate educational facilities are inherently unequal,” *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 495, 74 S. Ct. 686, 692, 98 L. Ed. 873 (1954), *supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), for the State of Florida to say there are separate but equal requirements for capital collateral postconviction representation cannot stand when dealing with taking someone’s life. This is not to say there can never be classifications within legislation, but such a

classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the **562 legislation, so that all persons similarly circumstanced shall be treated alike.

F.S. Royster Guano Co. v. Commonwealth of Virginia, 253 U.S. 412, 415, 40 S. Ct. 560, 561–62, 64 L. Ed. 989 (1920). (Internal citations omitted).

As a general matter, to state a claim for relief under the Equal Protection Clause a plaintiff must first “show that the State will treat him disparately from other similarly situated persons.” *Arthur v. Thomas*, 674 F.3d 1257, 1262 (11th Cir. 2012)(quotation omitted). A plaintiff must also show such disparate treatment either burdens a fundamental right, targets a suspect class, or is not rationally related to a legitimate government interest. See *City of Cleburne, Tex. V. Cleburne Living Ctr.*,

473 US 432, 440-41 (1985). Silvia can make that showing here – first he is being treated disparately from others, second his claim is entitled to heightened scrutiny, and third, and alternatively, the disparate treatment is without any legitimate or penological interest and must fail even under rational basis review. As this Court has said, “there is a fundamental fairness interest ... in having the government abide by the rules of law it establishes to govern the circumstances under which it can deprive a person of his or her liberty or life.” *Carmell v. Texas*, 529 U.S. 513, 533, 120 S. Ct. 1620, 1633, 146 L. Ed. 2d 577 (2000).

No other Florida death row inmate has been discriminated against by having his legal team forced to simultaneously litigate multiple death warrants. Furthermore, until now there has been no distinction made between the quality of representation afforded to indigent capital appellants by the appointment of CCRC and other capital appellants who can afford private representation, or capital appellants who must be represented by registry counsel due to some conflict. “A prisoner under a death sentence remains a living person and consequently has an interest in his life.” *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 288, 118 S. Ct. 1244, 1253, 140 L. Ed. 2d 387 (1998) (O’Connor, J., concurring in part and concurring with the judgement).³ If as the FSC contends Silvia is not guaranteed counsel who meet the same qualification criteria as other death row inmates, the State of Florida has established a representation scheme which is the equivalent of

³Justice O’Conner’s concurring opinion in *Woodard* provided the holding for that case. See *Gissendaner v. Comm’r, Georgia Dep’t of Corr.*, 794 F.3d 1327, 1331 (11th Cir. 2015).

separate but equal education, which cannot withstand strict scrutiny. If indigent defendants in Illinois and Washington “must be afforded as adequate appellate review as defendants who have money enough to buy transcripts,” *Griffin v. Illinois*, 351 U.S. 12, 19, 76 S. Ct. 585, 590–91, 100 L. Ed. 891 (1956), surely indigent defendants in Florida must be provided adequate, and thereby effective, representation in capital collateral postconviction proceedings too.

CONCLUSION

This Court should grant this petition to resolve how this Court’s precedent regarding equal protection and due process rights applies to Silvia. It is this Court and this Court alone that can make such a determination and grant relief.

Respectfully submitted,

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