No. 26- _____
(CAPITAL CASE)

In the Supreme Court of the United States

EDWARD LITTLETON MCCAULEY,
PETITIONER,

v.

STATE OF ARIZONA,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE QUESTION PRESENTED

Whether, consistent with the Sixth Amendment, the Due Process Clause of the Fourteenth Amendment, and *Witherspoon v. Illinois*, 391 U.S. 510 (1968) and its progeny, a trial court must inform prospective jurors in a capital case of the capital offense the criminal defendant is charged with, before asking the prospective jurors whether they would automatically impose life or death upon conviction.

PARTIES TO THE PROCEEDINGS

Petitioner is Edward Littleton McCauley, who was the appellant in the court below. Respondent, the State of Arizona, was the appellee in the court below.

RELATED PROCEEDINGS

Supreme Court of Arizona: *State v. McCauley*, 262 Ariz. 181, 589 P.3d 413 (2026) (May 15, 2026).

Maricopa County Superior Court: *State v. McCauley*, No. CR2014-155906-001 DT (Sentencing, January 10, 2020).

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PETITION FOR A WRIT OF CERTIORARI

Edward Littleton McCauley respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Arizona.

OPINION BELOW

This Petition addresses the Supreme Court of Arizona's decision in *State v. McCauley*, 262 Ariz. 181, 589 P.3d 413 (2026), also attached to Petitioner's Appendix. (Appx. A-1 – A-51).

JURISDICTION

The Supreme Court of Arizona issued its opinion on May 15, 2026. *Id*. The same court then denied Mr. McCauley's timely Motion for Reconsideration on June 23, 2026. (Appx. A-52). Justice Kagan granted Mr. McCauley's request for an extension of time until November 20, 2026. This petition is timely under Supreme Court Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATE STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed "
U.S. Const. amend. VI.

The Fourteenth Amendment provides, in pertinent part: "No state shall . . . deprive any person of life, liberty, or property without due process of law "

U.S. Const. amend. XIV, § 1.

A.R.S. § 13-1105(A)(1)–(3), attached, pursuant to Supreme Court Rules 14.1(f) & (i)(v). (Appx. A-53 – A-54).

INTRODUCTION

A defendant's right to an impartial jury in a capital sentencing proceeding is secured by the Sixth and Fourteenth Amendments. U.S. Const. amends. VI, XIV; *see also In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process.").

"[A]dequate *voir dire* to identify unqualified jurors" is necessary to effectuate this constitutional right. *Morgan v. Illinois*, 504 U.S. 719, 729 (1992) (citing *Dennis v. United States*, 339 U.S. 162, 171–172 (1950); *Morford v. United States*, 339 U.S. 258, 259 (1950)). Jurors unfit for capital sentencing proceedings are those with views that would "'prevent or substantially impair the performance of [their] duties as [jurors] in accordance with [their] instructions and [their] oath.'" *Adams v. Texas*, 448 U.S. 38, 45 (1980).

The genesis of this disqualification standard is *Witherspoon v. Illinois*, 391 U.S. 510 (1968). There, this Court rejected Illinois's liberal application of a state statute that allowed for-cause challenges of prospective jurors who "might hesitate" to return a death verdict, finding this process "produced a jury uncommonly willing to condemn

a man to die." *Id.,* at 513, 521. This Court explained that a juror subject to exclusion includes both a person who "could never vote in favor of [the death penalty]" and who "would not consider doing so in the case before him." *Id*., at 515, n.9; *see also Boulden v. Holman*, 394 U.S. 478, 483–484 (1969) ("[I]t is entirely possible that a person who has 'a fixed opinion against' or who does not 'believe in' capital punishment might nevertheless be perfectly able as a juror to abide by existing law—to follow conscientiously the instructions of a trial judge and to consider fairly the imposition of the death sentence in a particular case.")

Over twenty years later, in *Morgan v. Illinois*, 504 U.S. 719 (1992), this Court extended *Witherspoon*'s holding to defense challenges of prospective jurors who would always impose death. This Court held that jurors subject to exclusion included those jurors who believed "that death should be imposed *ipso facto* upon conviction of a capital offense." *Id.,* at 735. This Court further found that "general questions of fairness and impartiality" were constitutionally insufficient in capital *voir dire*. *Id*.

For over three decades, *Morgan* has remained a bedrock of due process in capital jury selection, assuring a criminal defendant's "ability to exercise intelligently his complementary challenge for cause against those biased persons on the venire who as jurors would unwaveringly impose death after a finding of guilt." *Id*., at 733.

In this case, the trial court denied Mr. McCauley's request to inform prospective jurors that he was charged with premeditated first-degree murder before asking them if they would impose death upon conviction. On direct appeal, the Supreme Court of Arizona affirmed the trial court's ruling and held that informing prospective jurors

in a capital case of the specific type of capital offense at issue was outside the scope of *Morgan*. *State v. McCauley*, 262 Ariz. 181, ¶ 92 (2026) (Appx. A-31). This holding is contrary to this Court's precedent because it prevents counsel from determining whether a prospective juror could vote for or against death "in the case before him." *Witherspoon*, 391 U.S., at 515, n.9.

The Supreme Court of Arizona has reinstated the "general inquiries" test this Court rejected in *Morgan*, thus calling into question the impartiality of every prospective death sentence imposed in Arizona. Accordingly, certiorari should be granted, and the death sentence should be vacated.

STATEMENT OF THE CASE

1. Factual Background

A. The trial court declines Mr. McCauley's pretrial request to inform prospective jurors that he is charged with premeditated first-degree murder.

There are three types of statutory death-eligible first-degree murders in Arizona:

1. Premeditated murder. A.R.S. § 13-1105(A)(1) (Appx. A-53).
2. Felony murder. A.R.S. § 13-1105(A)(2) (Appx. A-53).
3. Intentional or knowing killing of a law enforcement officer in the line of duty. A.R.S. § 13-1105(A)(3) (Appx. A-53).

The State of Arizona charged Mr. McCauley with one count of premeditated first-degree murder.

Before jury selection started, defense counsel asked the trial court to inform prospective jurors that Mr. McCauley was charged with premeditated first-degree murder. *McCauley*, 262 Ariz., at ¶ 89 (Appx. A-30 – A-31). The trial court denied the

request. *Id*. Prospective jurors were informed only that Mr. McCauley was charged with first-degree murder, and that "on or about November 23, 2014, [he] shot and killed his estranged wife in Glendale, Arizona." *Id*., at ¶ 88 (Appx. A-30).

B. Mr. McCauley reasserts his *voir dire* request after prospective jurors write in their jury questionnaires that their answers to the death penalty questions depend on the type of crime at issue.

Defense counsel re-urged the *voir dire* request in writing, after jurors stated in their questionnaires that their ability to be fair and impartial depended on the type of murder at issue. The trial court denied the request. Prospective jurors all answered the *Morgan*-related questions without knowing Mr. McCauley was charged with premeditated first-degree murder. *Id*., at ¶¶ 92, 94 (Appx. A-31).

C. Two of these jurors are seated on Mr. McCauley's jury.

The juror questionnaire asked prospective jurors: "What are your general feelings about the death penalty?" (Appx. A-55 – A-56).

Seated Juror 1 explained in their questionnaire that their "general feelings about the death penalty . . . [d]epends on [the] facts presented [and] type of crime!" (Appx. A-55).

Seated Juror 12 responded:

> I believe that in certain s[c]enarios the death penalty is required or should be required. I say it would depend on the level of the crime committed.

(Appx. A-56).

All seated jurors voted to impose death.

2. Procedural Background

On direct appeal, Mr. McCauley argued the trial court's refusal to inform prospective jurors that he was charged with premeditated first-degree murder resulted in constitutionally inadequate *voir dire*, which led to him being tried by a biased jury. *McCauley*, 262 Ariz., at ¶¶ 90, 94 (Appx. A-31).

The Supreme Court of Arizona rejected this argument and held that informing prospective jurors of the capital offense at issue was outside of the scope of *Morgan v. Illinois*. *Id.*, at ¶ 92 (Appx. A-31).

REASONS FOR GRANTING THE PETITION

Arizona law defines first-degree murder in three different ways. A.R.S. § 13-1105(A) (Appx. A-53). All three types of first-degree murder are punishable by death. A.R.S. §13-1105(D). In *State v. McCauley*, 262 Ariz. 181 (2026) (Appx. A-1 – A-51), the Supreme Court of Arizona held that informing prospective jurors of the specific type of capital offense at issue "is outside the scope of *Morgan*." *Id.*, at ¶ 92 (Appx. A-31). Accordingly, counsel for both sides can no longer investigate whether a juror could vote for or against death "in the case before him." *Witherspoon v. Illinois*, 391 U.S. 510, 515, n.9 (1968). As this Court recognized in *Morgan v. Illinois*, 504 U.S. 719 (1992), general inquiries in capital *voir dire* are constitutionally insufficient because "jurors could in all truth and candor respond affirmatively, personally confident that such dogmatic views are fair and impartial, while leaving the specific concern unprobed." *Id.*, at 735.

Indeed, in the case below, a prospective juror informed the trial court during *voir dire* that they believed a death sentence should be mandatory upon conviction for certain crimes. Appx. A-56. That juror's beliefs were left unprobed, and the juror was seated without knowing the capital offense at issue.

The Supreme Court of Arizona has deviated from settled principles of law. Accordingly, summary reversal is warranted. Sup. Ct. R. 16.1. Alternatively, this Court should grant review to reinforce that *voir dire* in capital cases requires prospective jurors know the capital offense at issue before they are questioned about their ability to fairly and impartially consider a life or a death sentence in the case before them. *See Morgan*, 504 U.S., at 729 ("part of the guarantee of a defendant's right to an impartial jury is an adequate *voir dire* to identify unqualified jurors").

1. The Supreme Court of Arizona's decision conflicts with *Witherspoon v. Illinois* and its progeny and subverts the impartiality of Arizona's death penalty juries.

A. *Witherspoon v. Illinois* and its progeny require trial courts to exclude prospective jurors who would automatically impose a life sentence upon conviction in a particular case.

In *Witherspoon v. Illinois*, 391 U.S. 510, 512 (1968), this Court created a test to disqualify prospective jurors who have "conscientious scruples against capital punishment[.]" This Court clarified that a juror subject to exclusion includes both a person who "could never vote in favor of [the death penalty]" and one who "would not consider doing so in the case before him." *Id.*, at 515, n.9.

Subsequently, in *Boulden v. Holman*, 394 U.S. 478, 483–484 (1969), this Court explained: "[I]t is entirely possible that a person who has 'a fixed opinion against' or

who does not 'believe in' capital punishment might nevertheless be perfectly able as a juror to abide by existing law—to follow conscientiously the instructions of a trial judge and to consider fairly the imposition of the death sentence in a particular case."

Likewise, in *Lockett v. Ohio*, 438 U.S. 586, 595–596 (1978), prospective jurors were asked, "[I]s your conviction so strong that you cannot take an oath, knowing that a possibility exists in regard to capital punishment?" Those who declined the oath were excused. *Id*. This Court found the exclusion proper since by declining the oath, those venirepersons had made it "unmistakably clear" they would not follow the "existing law." *Id.*

Two years later, this Court employed different language when applying the disqualification test, explaining that "a juror may not be challenged for cause based on his views about capital punishment unless those views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Adams v. Texas*, 448 U.S. 38, 45 (1980). Applying this version of the test, the Court vacated the death penalty because the record reflected prospective jurors were wrongfully excluded from the jury. *Id*., at 50–51. The Court emphasized that a statute that provides for the "theoretical availability" of "neutrality" in jury selection does not allow a trial court to circumvent *Witherspoon v. Illinois*. *Id.*, at 49.

This Court later confirmed its shift away from *Witherspoon*'s "automatic" language and formally adopted *Adams*' "prevent or substantially impair" standard in

Wainwright v. Witt, 469 U.S. 412 (1985).[1] Applying this test to the record, the Court held that a prospective juror who answered, "I am afraid it would," and "I think so," when asked if her beliefs against the death penalty would interfere with her sitting on a capital jury was properly excluded from the case. *Id*., at 416, 434–435.

While the language evolved, the principle behind *Witherspoon v. Illinois* remains undisturbed: "[A] jury composed exclusively of [people resolved for or against the death penalty] cannot speak for the community." *Witherspoon*, 391 U.S., at 519–520.

B. The Supreme Court of Arizona's decision conflicts with *Witherspoon v. Illinois* and its progeny.

The Supreme Court of Arizona's ban on informing prospective jurors of the capital offense at issue cannot be reconciled with *Witherspoon* and its progeny. In *Lockett v. Ohio*, 438 U.S. 586, 596 (1978), the Court focused on whether prospective jurors could follow and apply "'existing law.'" (quoting *Boulden v. Holman*, 394 U.S. 478, 484 (1969)). Inherent in this framing is that prospective jurors know what "existing law" they are asked to apply.

As explained above, there are three types of death-eligible first-degree murders in Arizona. A.R.S. § 13-1105(A)(1)–(3). (Appx. A-53 – A-54). A prospective juror's knowledge of which type of first-degree murder has been charged is critical to competently answer the *Witherspoon v. Illinois* and *Wainwright v. Witt* (and, as discussed below, *Morgan v. Illinois*) questions. A prospective juror resolved to never impose a death sentence for a felony murder may nonetheless be able to vote to

[1] Arizona uses this "more liberal" test. *State v. Jones*, 197 Ariz. 290, 302, ¶ 24 (2000).

impose death for a premeditated murder. Alternatively, a prospective juror with close ties to law enforcement may be substantially impaired in a case involving an intentional killing of a law enforcement officer yet may be able to vote for life in a felony-murder case.

Further, the Supreme Court of Arizona's complete ban on informing prospective jurors which type of capital offense the defendant is accused of prevents counsel from making any inquiry into whether a prospective juror could vote for a life sentence or death sentence "in the case before him." *Witherspoon*, 391 U.S., at 515, n.9. And it directly conflicts with this Court's recognition that a prospective juror with fixed beliefs may still be able "to follow conscientiously the instructions of a trial judge and to consider fairly the imposition of the death sentence in a particular case." *Boulden*, 394 U.S., at 483–484.

Finally, if "inform[ing] jurors that one element of [a first-degree murder] charge is premeditation is outside the scope of *Morgan*," *McCauley*, 262 Ariz., at ¶ 92 (Appx. A-31), then it logically follows that informing parties a first-degree murder charge involves the intentional killing of a law enforcement officer in the line of duty, or that it involves an unintended, unpremeditated death during the commission of a felony offense, is also outside of *Morgan*'s scope. By holding that prospective jurors in a capital case need only know the defendant has been charged with first-degree murder, the Supreme Court of Arizona has deprived both parties of the ability to investigate whether exclusion is constitutionally required.

C. The Supreme Court of Arizona's decision conflicts with the plain language of *Morgan v. Illinois*.

In *Morgan v. Illinois*, 504 U.S. 719 (1992), the Court considered *Witherspoon*'s application to those prospective jurors predisposed to impose death upon conviction. The facts of *Morgan* were simple: The trial court, in accordance with *Witherspoon*, asked the prospective jurors, "'Would you automatically vote against the death penalty no matter what the facts of the case were?'" *Id*., at 723 (citations omitted).

Seventeen prospective jurors answered affirmatively and were excused. *Id*., at 722–723. The defense then asked the trial court to inquire, "'If you found Derrick Morgan guilty, would you automatically vote to impose the death penalty no matter what the facts are?'" *Id*., at 723 (citation omitted). The trial court declined to make such an inquiry. *Id*.

On appeal, this Court returned to the "automatic" language from *Witherspoon v. Illinois* and framed the issue as follows: "[W]hether, during *voir dire* for a capital offense, a state trial court may, consistent with the Due Process Clause of the Fourteenth Amendment, refuse inquiry into whether a potential juror would automatically impose the death penalty upon conviction of the defendant." *Id*., at 721.

This Court held that a prospective juror who would impose a death sentence upon conviction alone must be excluded under the Due Process Clause's guarantee of impartiality. *Id*., at 734, 739. This Court further clarified that general questioning about whether prospective jurors can "follow the law" is constitutionally insufficient. *Id., at* 734–735. This Court expressly recognized that, faced with "general questions of fairness and impartiality, such jurors could in all truth and candor respond

affirmatively, personally confident that such dogmatic views are fair and impartial, while leaving the specific concern unprobed." *Id*., at 735.

Despite this clear guidance, the Supreme Court of Arizona held the trial court's general "follow the law" questions were sufficient "to expose bias for or against the death penalty." *McCauley*, 262 Ariz., at ¶¶ 88, 92–93 (Appx. A-30 – A-31). But these questions suffered the same fatal defect as those rejected in *Morgan v. Illinois*. A juror could honestly answer every question posed in the juror questionnaire and still believe the death penalty should be automatically imposed for a criminal defendant convicted of premeditated first-degree murder.

Indeed, Seated Juror 12 "in all truth and candor" informed the court and parties that "in certain scenarios" they would automatically impose death upon conviction, and that their answer to the *Morgan* question "depend[ed] on the level of the crime committed." (Appx. A-56). The trial court's refusal to allow defense counsel to inform prospective jurors that Mr. McCauley was charged with premeditated first-degree murder resulted in Juror 12 never being asked if "the level of crime committed" that automatically justified death included this type of capital offense. The "specific concern" was left "unprobed." *Morgan*, 504 U.S., at 735.

The Supreme Court of Arizona's decision nullifies *Morgan*. *Id*., at 734–735. ("*Witherspoon* and its succeeding cases would be in large measure superfluous were this Court convinced that such general inquiries could detect those jurors with views preventing or substantially impairing their duties in accordance with their instructions and oath."); *see also id*., at 733–734 ("Were *voir dire* not available to lay

bare the foundation of petitioner's challenge for cause against those prospective jurors who would *always* impose death following conviction, his right not to be tried by such jurors would be rendered as nugatory and meaningless as the State's right, in the absence of questioning, to strike those who would *never* do so.").

The Supreme Court of Arizona has returned Arizona to the pre-*Witherspoon* "general inquiries" test this Court rejected over fifty years ago. This Court should accept review and reject that test again.

D. The Supreme Court of Arizona's decision subverts the impartiality of Arizona's death penalty.

"A juror to be impartial must, to use the language of Lord Coke, 'be indifferent as he stands unsworn.'" *Reynolds v. United States*, 98 U.S. 145, 154 (1878) (quoting Co. Litt. 155 *b*). "This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies." *Irvin v. Dowd*, 366 U.S. 717, 722 (1961); *see also* 1 Burr's Trial 416 (1807) (observing that prospective jurors with "strong and deep impressions, which will close the mind against the testimony that may be offered in opposition to them; which will combat that testimony and resist its force," should be objected to). The Supreme Court of Arizona's decision departs from these long-established constitutional principles of fairness and impartiality.

The primary focus in *Morgan v. Illinois* was how to protect against unconstitutional death verdicts. *Morgan*, 504 U.S., at 726. The answer was "constitutionally sufficient" *voir dire*. *Id.*

This Court acknowledged that while the Constitution "does not dictate a catechism for *voir dire*, . . . part of the guarantee of a defendant's right to an impartial jury is an adequate *voir dire* to identify unqualified jurors." *Id.*, at 729. This Court then emphasized what it had recognized in the *Witherspoon v. Illinois* line of cases:

> As with any other trial situation where an adversary wishes to exclude a juror because of bias, then, it is the adversary seeking exclusion who must demonstrate, *through questioning*, that the potential juror lacks impartiality.

Id., at 733 (quoting *Wainwright v. Witt*, 469 U.S. 412, 423 (1985)).

The Supreme Court of Arizona's decision deprives counsel of the opportunity to investigate capital jurors. Social science indicates the crime itself is the single most important factor in a person's endorsement of the death penalty. *See* C. Haney, E. Zurbriggen & J. Weill, *The Continuing Unfairness of Death Qualification: Changing Death Penalty Attitudes and Capital Jury Selection*, 28 Psychol. Pub. Pol'y & L. 1, 12 (2022) (finding that "[d]eath-qualified jurors were significantly more likely to endorse the view that the only thing that needed to be considered in deciding whether to impose the death penalty was the nature of the crime itself"); *see also* E. Carpenter, *Hidden Killers and Imagined Saints: Why Courts Fail to Identify Unconstitutional Jurors in Death Penalty Cases*, 2022 Mich. St. L. Rev. 449, 484–485 (citing Joshua Dressler, *Understanding Criminal Law* 473–518 (8th ed. 2018) ("For *voir dire* to validly measure death qualification, [the] crime needs to be defined.")).

The Supreme Court of Arizona's decision removes the constitutional protection of *voir dire* by requiring that the capital offense at issue remains a secret. This will result in the empaneling of jurors who would automatically impose a death sentence

upon conviction. These jurors will never be discovered, and every death sentence imposed in Arizona moving forward will be tainted as a result.

2. The Supreme Court of Arizona applies *Morgan v. Illinois* asymmetrically—allowing the State to investigate offense-specific bias while denying the defendant the same opportunity—in violation of due process.

Due process requires that both parties be afforded an even-handed opportunity to expose disqualifying juror bias. *Morgan v. Illinois*, 504 U.S. 719, 733 (1992), itself noted the reciprocal nature of investigating bias in capital jurors. Looking to *Wainwright v. Witt*, this Court noted "'it is the adversary seeking exclusion who must demonstrate, *through questioning*, that the potential juror lacks impartiality.'" *Id.* (quoting 469 U.S., at 423). Both the State's right to a jury willing to impose death and the defendant's right to a jury willing to impose life are two halves of the same guarantee. *See Lockhart v. McCree*, 476 U.S. 162, 170, n.7 (1986) (the State must be allowed to question jurors to determine whether their opposition to the death penalty impairs impartiality); *Morgan*, 504 U.S., at 735 (the defendant must be allowed to question jurors to determine whether their support for the death penalty impairs impartiality). Arizona has now destroyed that symmetry at the expense of capital defendants' due process rights.

Twice before, the Supreme Court of Arizona approved offense-specific *voir dire* when the government sought it. In *State v. Garcia*, 224 Ariz. 1, 9, ¶ 16 (2010), the Supreme Court of Arizona affirmed the trial court's decision to ask prospective jurors if they could consider imposing a death sentence in a felony murder case in which the defendant had not actually shot the victim. And in *State v. Lynch*, 225 Ariz. 27, 36,

¶¶ 35–38 (2010), the court approved the trial court's decision to inform a prospective juror the case did not involve children after the prospective juror stated during *voir dire* that she would only impose the death penalty if the case involved children. Neither of these cases can be squared with the case below.

In *State v. Garcia*, the defendant was charged with felony murder under A.R.S. § 13-1105(A)(2) after a co-defendant shot and killed the victim during an armed robbery. 224 Ariz., at 7, ¶¶ 1–4. The trial court granted the prosecutor's request to ask prospective jurors whether they could consider a death sentence even though Garcia was not the actual shooter. *Id.*, at 8–9, ¶ 14. The Supreme Court of Arizona upheld that inquiry because, "[g]iven the nature of this case, these questions properly probed beyond abstract juror views on capital punishment."[2] *Id.*, at 9, ¶ 16.

Similarly, in *State v. Lynch*, the court approved the lower court's granting of the prosecutor's request to conduct offense-specific *voir dire*. After a prospective juror stated she could impose the death penalty only in a case involving a child victim, the trial court—on the State's motion and over the defense's objection—informed the juror that the case did not involve a child and then excused her for cause when she confirmed she could not impose death on those facts. *Id.*, at 36, ¶¶ 35–36. Citing *Wainwright v. Witt* and *Adams v. Texas*, the Supreme Court of Arizona approved,

[2] The Ninth Circuit has likewise approved of this type of case-specific questioning concerning felony murder in capital cases in the context of life-leaning jurors excused for cause pursuant to *Witherspoon v. Illinois* and *Wainwright v. Witt*. *Ochoa v. Davis*, 50 F.4th 865, 881 (9th Cir. 2022) ("The prosecutor was entitled to test whether the jurors would be willing to apply California law with respect to the felony-murder rule in this case even if they believed Ochoa did not intend to kill [the victim].").

finding the information was necessary "to determine whether the juror's views would 'prevent or substantially impair the performance of [her] duties.'" *Id.*, at 36, ¶ 38 (quoting *Witt*, 469 U.S., at 424 (quoting *Adams*, 448 U.S., at 45)).

The holdings of both *State v. Garcia* and *State v. Lynch* permit specific facts of the charged offense to be disclosed to the venire to allow the parties to identify jurors whose views on that particular crime would compromise their ability to remain impartial. In both cases, that party was the government.

The decision below reaches the opposite result on materially identical logic, and it does so to the detriment of Mr. McCauley—and all capital defendants in Arizona moving forward. Mr. McCauley requested only that prospective jurors be told he was charged with premeditated first-degree murder to glean whether any juror would impose death automatically upon conviction of that offense. The Supreme Court of Arizona held that disclosing the charged offense was "outside the scope of *Morgan*." *McCauley*, 262 Ariz., at ¶ 92 (Appx. A-31). The court brushed aside the conflict in a single footnote, asserting only that its decision "does not contradict [*Garcia*]." *Id.*, at ¶ 93, n.11 (Appx. A-50).

But the cases cannot be reconciled. For bias investigation, if the State may tell the venire that the defendant was not the shooter or that the victim was not a child, then the defense must be allowed the same opportunity. Specifically, defendants must be permitted to tell the venire the charge is *premeditated* first-degree murder to root out jurors who would impose death automatically upon conviction for that charge. The Constitution prohibits furnishing the prosecution with a tool that is withheld

from the defense. *Wardius v. Oregon*, 412 U.S. 470, 474, n.6 (1973) (finding that the Due Process Clause "speak[s] to the balance of forces between the accused and his accuser" and noting that "[t]his Court has therefore been particularly suspicious of state trial rules which provide nonreciprocal benefits to the State when the lack of reciprocity interferes with the defendant's ability to secure a fair trial.") (citations omitted).

"[T]he impartiality of the adjudicator goes to the very integrity of the legal system." *Gray v. Mississippi*, 481 U.S. 648, 668 (1987). A rule that permits the State to seat jurors who will impose death while prohibiting the defense from screening those same jurors in the same manner does not produce an impartial tribunal—it produces one "uncommonly willing to condemn a man to die." *Witherspoon*, 391 U.S., at 521.

Even if applied consistently the decision is still unconstitutional because it handicaps both sides in future cases, barring prosecutors from disclosing that a defendant was not the actual killer (A.R.S. § 13-1105(A)(2)), just as it bars the defense from disclosing that the murder was premeditated here (A.R.S. § 13-1105(A)(1)). If, however, it is not applied fairly based on footnote 11, the decision's effect will be to strip capital defendants of an investigative tool the State is free to enjoy, and to do so in the one proceeding—the selection of jurors who decide between life or death—in which even-handedness matters most.

Because the Supreme Court of Arizona's decision is in direct conflict with the prior decisions of this Court, reversal is warranted. Whether summarily or after full

briefing and argument on the merits, this Court should grant review and reaffirm the holdings of *Witherspoon* and *Morgan*.

3. The Supreme Court of Arizona's decision mandates constitutionally insufficient *voir dire* in capital cases.

A. The *voir dire* omitted constitutionally critical information.

This Court has not hesitated to reverse death sentences imposed by inadequately vetted juries. *See, e.g.*, *Witherspoon v. Illinois*, 391 U.S. 510 (1968); *Adams v. Texas*, 448 U.S. 38 (1980); *Gray v. Mississippi*, 481 U.S. 648 (1987); *Morgan v. Illinois*, 504 U.S. 719 (1992). Inadequately vetted juries include juries that are not told critical information during the *voir dire* process.

In *Aldridge v. United States*. 283 U.S. 308 (1931), this Court reversed a first-degree murder conviction because the trial court precluded the defendant from informing the prospective jurors of the victim's race. This Court did not mince words, observing that "[n]o surer way could be devised to bring the processes of justice into disrepute[,]" than a *voir dire* devoid of "inquiries designed to elicit the fact of disqualification." *Id*., at 315; *see also Turner v. Murray*, 476 U.S. 28, 35 (1986) (reversing because prospective jurors were not told the victim's race in a capital case).

In *Morford v. United States*, 339 U.S. 258 (1950) (*per curiam*) and *Dennis v. United States*, 339 U.S. 162 (1950), this Court found that the *voir dire* was constitutionally inadequate, where the trial court barred the defendants from discussing alleged Communist ties with prospective jurors.

Like *Aldridge*, *Morford*, *Dennis*, and *Turner*, Mr. McCauley's request to inform prospective jurors that he was charged with premeditated first-degree murder was

an "inquir[y] designed to elicit the fact of disqualification," *i.e.*, whether a prospective juror would automatically impose death upon a person found guilty of premeditated first-degree murder. *Aldridge*, 283 U.S., at 315.

Granting the defense *voir dire* request was not simply in agreement with the law; it was the bare minimum required to ensure due process. Instead, Mr. McCauley was sentenced to death by a jury that was empaneled without knowing the capital offense at issue, and thus not subject to exclusion for automatic imposition of the death penalty.

B. Mr. McCauley was tried by a biased jury.

The trial court deprived Mr. McCauley of his constitutional right to a fair and impartial jury when it refused to question prospective jurors about their views on the death penalty for the capital offense of premeditated first-degree murder. *See Dennis v. United States*, 339 U.S. 162, 168 (1950) (trial courts have a "serious duty to determine the question of actual bias.").

While the Supreme Court of Arizona found the jurors' responses "d[id] not indicate they would automatically impose a death sentence regardless of the jury instructions or mitigation evidence presented," *McCauley*, 262 Ariz., at ¶ 94 (Appx. A-31), this conclusion cannot be squared with the record or this Court's precedent. Further, the Supreme Court of Arizona did not consider that the trial court denied defense counsel the opportunity to investigate whether a prospective juror's response meant they were irrevocably disposed to impose death upon conviction.

Juror 12 explained that "in certain scenarios the death penalty . . . should be required." (Appx. A-56). Defense counsel was prevented from determining if premeditated first-degree murder was one of Juror 12's "certain scenarios." If it was, then Juror 12 should have been excluded pursuant to *Morgan v. Illinois* because "the belief that death should be imposed *ipso facto* upon conviction of a capital offense reflects directly on that individual's inability to follow the law." *Morgan*, 504 U.S., at 735.

Inherent in Juror 12's answer was that "in certain scenarios" they would not be able to follow existing law. That the record does not reflect *which* scenarios is because of the trial court's constitutionally inadequate *voir dire*; not for lack of effort from the defense team. *Id.*, at 733 (quoting *Lockhart v. McCree*, 476 U.S. 162, 170, n.7 (1986)).

"Without an adequate *voir dire*, the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled." *Id.*, at 729–730 (quoting *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (plurality opinion)). The Supreme Court of Arizona's decision eliminates a constitutionally mandated avenue of investigation in *voir dire*. This undermines the integrity of jury selection in every Arizona death penalty case and must not be permitted to stand. Summary reversal is appropriate to ensure Arizona's compliance with *Morgan*.

4. This case is an excellent vehicle for this Court to reinforce *Morgan*'s requirements.

This Court has never revisited *Morgan*'s substantive test. This is, in part, because the 1996 passage of the Antiterrorism and Effective Death Penalty Act (AEDPA) has allowed *Morgan v. Illinois* to evade review and subjected what few cases have arisen to deferential review. *See* E. Carpenter, *Hidden Killers and Imagined Saints: Why Courts Fail to Identify Unconstitutional Jurors in Death Penalty Cases*, 2022 Mich. St. L. Rev. 449, 484–485; *see also White v. Wheeler*, 577 U.S. 73, 76–77 (2015) (applying AEDPA's deferential review).

This case is a direct appeal in which the issue was raised below, fully briefed by both parties, and is not subject to deferential review. Further, the issue is concise: Does the *Witherspoon-Morgan* line of cases require a trial court to inform prospective jurors of the specific charge at issue before inquiring as to whether they would impose a life or a death sentence upon conviction in a particular case?

Finally, the resolution of this case is outcome-dispositive. It will determine if Mr. McCauley is executed by the government. If the jury was constitutionally insufficient because prospective jurors were not subject to bias testing and biased jurors were empaneled, his death sentence must be vacated. *Gray*, 481 U.S., at 660 (*Witherspoon v. Illinois* violations are reversible constitutional error that require a death sentence to be vacated); *Witherspoon*, 391 U.S., at 521–523 (holding that "a State may not entrust the determination of whether a man should live or die to a tribunal organized to return a verdict of death[,]" and that such a sentence "cannot be carried out" if the jury was "so selected.").

Over thirty years ago, this Court expressly held "that certain inquiries must be made to effectuate constitutional protections[.]" *Morgan v. Illinois*, 504 U.S. 719, 730 (1992) (citations omitted). In the case below, the Supreme Court of Arizona disregarded this mandate, and expressly rejected this Court's finding that general "follow the law" questions are constitutionally insufficient to vet prospective jurors in capital cases. This Court should grant review and reject Arizona's attempt to employ constitutionally deficient *voir dire* in capital cases.

5. Summary reversal is appropriate.

Mr. McCauley is not asking this Court to expand the holdings of *Witherspoon* or *Morgan*. He is merely asking this Court to ensure Arizona complies with those holdings. For that reason, summary reversal is appropriate. Sup. Ct. R. 16.1*; see, e.g., Martinez v. Illinois*, 572 U.S. 833, 843 (2014) (*per curiam*) (summarily reversing a state court's holding running "directly counter to [this Court's] precedents[.]").

Witherspoon, *Morgan*, and related decisions of this Court stand for the proposition that counsel must be able to determine whether any juror's vote for or against death would be automatic upon conviction. The decision below affirmed constitutionally insufficient *voir dire* that prevented counsel from assessing whether Jurors 1 and 12 were, in fact, impaired. Summary reversal is, therefore, warranted in this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED this 13th day of November, 2026,

By */s/ Grace M. Guisewite*
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