

No. 26-____

IN THE
Supreme Court of the United States

MICHAEL H. HUNT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED

Under a Florida law enacted in 2023, a judge may impose the death penalty only if the jury first “determine[s] that the defendant should be sentenced to death.” Fla. Stat. § 921.141(2)(c). The questions presented are:

1. Whether the Sixth or Eighth Amendment requires that jury determination to be unanimous, or whether it suffices—as provided in the statute—for only eight of the twelve jurors to vote for death.

2. Whether the Ex Post Facto Clause forbids applying Florida’s nonunanimity rule retroactively to individuals whose crimes were committed when state law required such jury determinations to be unanimous.

PARTIES TO THE PROCEEDINGS

The petitioner is Michael H. Hunt. He was the defendant below.

The respondent is the State of Florida. It was the plaintiff below.

RELATED PROCEEDINGS

State v. Hunt, No. 19-2281-CFMA (Fla. 14th Cir.
Ct. 2024)

Hunt v. State, 428 So. 3d 43 (Fla. 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael H. Hunt respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida.

OPINIONS BELOW

The opinion of the Supreme Court of Florida (Pet. App. 1a-30a) is reported at 428 So. 3d 43. The relevant order of the trial court is unpublished.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on December 18, 2025. Pet. App. 1a. A timely petition for rehearing was denied on March 5, 2026. *Id.* 31a. On May 5, 2026, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including July 6, 2026. *See* No. 25A1210. On June 17, 2026, Justice Thomas further extended the time in which to file a petition to and including July 21, 2026. *Id.* This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Ex Post Facto Clause, U.S. Const. art. I, § 10, cl. 1, provides: “No State shall . . . pass any . . . ex post facto Law.”

The Sixth Amendment provides in relevant part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.”

The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The statute at issue, Fla. Stat. § 921.141, is reproduced in relevant part at Pet. App. 32a-36a.

INTRODUCTION

This is the second of two petitions for certiorari challenging Florida’s statute, enacted in 2023, that allows courts to impose the death penalty based on nonunanimous jury determinations that the defendant should be sentenced to death. The petition in the other case, *Jackson v. Florida*, No. 26-____, explains why this Court should grant review to determine whether the new state law violates the Sixth and Eighth Amendments. This petition raises that issue too, but it focuses on another question not presented in *Jackson*: Whether the Ex Post Facto Clause forbids applying the new statute to persons whose crimes were committed during the six years while Florida required such jury determinations to be unanimous.

That question is certworthy as well. The Florida Supreme Court’s decision holding that the Ex Post Facto Clause permits a state to move from unanimity to a nonunanimity rule and apply the new rule retroactively is unprecedented. It also conflicts with decisions from other state high courts. On top of that, the decision is wrong. The Ex Post Facto Clause forbids applying new laws governing criminal punishment retroactively when they create a significant risk of more severe sentences. Florida’s new nonunanimity rule, by design and actual operation, meets that test. Finally, this case is an

excellent vehicle for resolving this important question. It is procedurally clean and at the leading edge of other capital cases raising the issue in Florida's system. Granting certiorari here would thus enable this Court to bring certainty to this matter before other cases start becoming final and the State relies on its new statute to procure additional, constitutionally dubious death sentences.

STATEMENT OF THE CASE

A. Legal background

1. Florida enacted its first modern death penalty statute in 1972. Under that statute, a jury that found a defendant guilty of a capital offense was asked (as relevant here) whether it believed any aggravating circumstances were present and, if so, whether the defendant should be sentenced to death. Those findings, however, were merely “advisory.” Fla. Stat. § 921.141(2) (1972). It was the judge, not the jury, that decided whether an aggravating factor existed and, if so, whether death was the appropriate sentence. *Id.* § 921.141(3).

2. In 2017—in the wake of court decisions detailed in the petition for certiorari in *Jackson*—the Florida Legislature amended the State's capital punishment regime. Under the amended system, a defendant could be sentenced to death only if *the jury* unanimously found (i) at least one aggravating factor; and (ii) that the defendant should be sentenced to death. Fla. Stat. § 921.141(2)(b)2, (2)(c) (2017). If the jury did not unanimously agree that the defendant should be sentenced to death, the maximum sentence the judge could impose was life imprisonment. *Id.* § 921.141(3)(a)1.

3. In 2023, following a divided jury verdict in a high-profile capital prosecution dictating a life sentence, the Florida Legislature enacted the new scheme at issue here. That scheme continues to require the jury at the penalty phase of a capital case to make two determinations before a court may sentence the defendant to death: (i) that “at least one aggravating factor” exists; and (ii) that, in light of those factors and any mitigating factors found to exist, “the defendant should be sentenced to death.” Fla. Stat. § 921.141(2)(b). The first determination also still “must be unanimous.” *Id.* But as to the second determination, it now suffices if eight of the twelve jurors agree. *Id.* § 921.141(2)(c). Supporters of this change explained that it is designed to prevent “a small handful of jurors [from] derail[ing] the true administration of justice” by declining to vote for death sentences. *Hearing on HB 555 Before the H. Crim. Just. Subcomm.*, 2023 Leg., Reg. Sess. 16 (Fla. 2023) (statement of Rep. Berny Jacques, Member, H. Crim. Just. Subcomm.).

The new regime has produced its intended effect. A study of over 100 capital sentencing proceedings—roughly half occurring between 2017 and 2023, and the other half occurring from 2023 onward—shows that “[t]he proportion of death sentences [under the new nonunanimity regime] has doubled.” Death Penalty Information Center, *Marking a Decade Since Hurst v. Florida*, <https://perma.cc/B2YY-93RH>.

B. Factual and procedural background

1. According to the State, one day in 2019, petitioner Michael H. Hunt and an accomplice set out to murder sixteen-year-old P.O. Pet. App. 6a. The two men entered P.O.’s home, where P.O. lived with her

boyfriend Gabe, his parents Jenna and Danny, his sister Lexie, and two friends, Brentley and Izac. *Id.* 1a. Mr. Hunt's accomplice shot Lexie, Izac, and Brentley, killing Lexie. *Id.* 2a-3a. Mr. Hunt shot Danny, who was seriously injured but survived. *Id.* 2a-3a.

2. The State charged Mr. Hunt with first-degree murder (under theories of accomplice liability and felony murder), attempted murder, and other crimes. Pet. App. 27a-29a. The jury found Mr. Hunt guilty of all charges. *Id.* 10a.

The State then sought a sentence of death on the murder charge. The State also moved to proceed at the sentencing phase under the new statute—enacted four years *after* the crimes at issue—providing that a vote of eight of the twelve jurors is enough to determine the defendant should be sentenced to death. Pet. App. 8a. Mr. Hunt objected, arguing that the Sixth and Eighth Amendments prohibit imposing a death sentence pursuant to a nonunanimous jury verdict. *Id.* Mr. Hunt also contended that applying the nonunanimity rule against him would violate the Ex Post Facto Clause because, when the crime here occurred, Florida law required a jury determination that the defendant should be sentenced to death to be unanimous. The trial court rejected those objections. *Id.* 9a.

At the sentencing hearing, the jury unanimously found several aggravating factors. Pet. App. 11a. It then voted 10-2 that Mr. Hunt should be sentenced to death—a sufficient tally under the 2023 law, but one that would have required a life sentence under the regime in effect when the crime was committed. *Id.* 12a. The trial judge then imposed a death sentence. *Id.*

3. Deciding this case in conjunction with *Jackson v. State*, 430 So. 3d 64 (Fla. 2025), *pet. for cert. filed*

(No. 26-___), the Florida Supreme Court affirmed. Pet. App. 1a. As elaborated in the *Jackson* petition, the court first held that Florida’s new nonunanimity rule comports with the Sixth and Eighth Amendments. Pet. App. 19a-21a; *see Jackson* Pet. 10-11.

The Florida Supreme Court then turned to Mr. Hunt’s ex post facto claim. It recognized that “to determine whether there is an ex post facto violation” when the prosecution seeks to apply a new law governing criminal punishment, “the relevant inquiry is ‘whether [the] given change in law presents a “sufficient risk of increasing the measure of punishment attached to the covered crimes.”’” Pet. App. 25a (quoting *Peugh v. United States*, 569 U.S. 530, 539 (2013) (quoting *Garner v. Jones*, 529 U.S. 244, 250 (2000))). The Florida Supreme Court then observed that, “in *Peugh*, the ‘detrimental change [in law] virtually guarantee[d] an increase in the measure of punishment.’” *Id.* 25a-26a (citation omitted). The court then declared that “[t]he change to the statute here does not have a similar guarantee.” *Id.* 26a.

Having purported to distinguish this Court’s “risk analysis” jurisprudence, the Florida Supreme Court concluded that *Dobbert v. Florida*, 432 U.S. 282 (1977), “guid[ed its] analysis.” Pet. App. 24a-25a. In *Dobbert*, this Court held that various changes to Florida’s death penalty system did not trigger the Ex Post Facto Clause because they “merely altered the methods used to determine the applicability of a death sentence rather than the ‘quantum of punishment’ attached to the crime.” Pet. App. 23a (quoting *Dobbert*, 432 U.S. at 293-94). The Florida Supreme Court asserted that the same is true here: “The penalty remains death regardless of how many jurors are required to make

the recommendation.” *Id.* 26a. Accordingly, the Florida Supreme Court held that applying the 2023 statute to Mr. Hunt “does not constitute an ex post facto law.” *Id.* 27a.

Justice Labarga concurred only in the result. Pointing to his separate opinion in *Jackson*, he maintained the Sixth and Eighth Amendments prohibit imposing death sentences based on nonunanimous jury verdicts. Pet. App. 29a-30a; *see also Jackson* Pet. App. 53a.¹ But he believed that the Florida Supreme Court’s decision in *State v. Poole*, 297 So. 3d 487 (Fla. 2020), foreclosed such a holding. Pet. App. 29a. Justice Labarga also lamented that “the statutory amendment requiring only an 8-4 jury to recommend that a defendant be sentenced to death renders Florida’s requirement the least demanding nationally.” *Id.*

ARGUMENT

I. **This Court should resolve whether Florida’s nonunanimity rule violates the Sixth and Eighth Amendments.**

For all of the reasons stated in the petition for certiorari in *Jackson v. Florida*, which is being filed simultaneously with this petition, the Court should grant certiorari to decide whether Florida’s new nonunanimity rule comports with the Sixth and Eighth Amendments. In summary, about one of every

¹ Mr. Hunt is filing this petition on the same day Mr. Jackson is filing his petition for certiorari. Because the Florida Supreme Court decided the two cases together and this Court will presumably consider them in tandem, this petition cites directly to the petition appendix in *Jackson* instead of the reported version of the decision.

three death sentences in this country is now imposed based on nonunanimous jury verdicts (all from either Florida or Alabama). The Florida Supreme Court's holding that imposing death sentences based on nonunanimous verdicts comports with the Sixth and Eighth Amendments conflicts with decisions from two other state high courts. Furthermore, the Florida Supreme Court's decision upholding the State's new nonunanimity rule contravenes history and tradition, as well as multiple lines of this Court's precedent. *See Jackson* Pet. 11-32.

Because these arguments are thoroughly elaborated in Mr. Jackson's petition, Mr. Hunt will not repeat them here. He will instead focus on his distinct ex post facto claim.²

II. This Court should resolve whether applying Florida's new rule to individuals whose crimes were committed while unanimity was required violates the Ex Post Facto Clause.

Even if Florida's nonunanimity rule comported with the Sixth and Eighth Amendments, it would still raise a serious ex post facto question as applied to individuals whose crimes were committed between 2017 and 2023, when Florida precluded the death penalty unless the jury voted unanimously that the defendant should be sentenced to death. State courts of last resort are divided over whether changes in the percentage of votes required to enable heightened

² Likewise, if the Court grants certiorari in both Mr. Jackson's case and this case, Mr. Hunt's merits brief—unless the Court directs otherwise—will focus on his ex post facto claim. That would allow the Court to have thorough, nonduplicative briefing on both of the questions presented here.

criminal punishment violate the Ex Post Facto Clause. Furthermore, the Florida Supreme Court's holding that there is no ex post facto problem under these circumstances is incorrect. And this case is an ideal vehicle for resolving the issue.

A. State courts of last resort are divided over whether changing the percentage of votes needed to impose criminal punishment triggers the Ex Post Facto Clause.

On two levels, the Florida Supreme Court's holding that retroactively applying the State's new nonunanimity rule does not violate the Ex Post Facto Clause conflicts with precedent from other states.

1. Florida is only the third state in American history to have gone from requiring unanimous jury verdicts in criminal cases to a system in which nonunanimity suffices. As this Court will recall from *Ramos v. Louisiana*, 590 U.S. 83 (2020), Louisiana abandoned its requirement of unanimity to convict in noncapital cases in 1898, while Oregon did the same in 1934. *Id.* at 87-88. The Louisiana Supreme Court held that the Ex Post Facto Clause prohibited applying its new nonunanimity rule "to offenses committed prior to [the rule's] adoption." *State v. Ardoin*, 24 So. 802, 803 (La. 1899). Oregon proactively made its nonunanimity rule inapplicable in "prosecutions for crimes committed before [the rule took] effect." Or. Const. art. I, § 11 (1934).

The Florida Supreme Court's decision here breaks from both of those antecedents. Granted, the Louisiana Supreme Court applied a "substantial right" approach to the Ex Post Facto Clause that this Court has since abandoned. *Compare Ardoin*, 24 So. at 803, with *Carmell v. Texas*, 529 U.S. 513, 539 (2000).

And the Oregon antecedent is legislative rather than judicial. But the fact remains that in the only two other instances in which a state abandoned a unanimity requirement for criminal punishment, the state did not allow that change to apply retroactively. The Florida Supreme Court's holding here conflicts with that judgment.³

2. If one widens the lens from juries to other actors whose votes determine the severity of a defendant's punishment, the conflict deepens.

Recent legislative enactments in South Carolina and Massachusetts changed state law from requiring a majority vote to grant parole to requiring a supermajority vote. *See Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 745 S.E.2d 110, 112 (S.C. 2013); *Clay v. Mass. Parole Bd.*, 56 N.E.3d 145, 147-48 (Mass. 2016). The high courts in both states then held that the Ex Post Facto Clause prohibited applying these changes to defendants who committed their crimes before the new laws were enacted. *See Barton*, 745 S.E.2d at 114, 119-20; *Clay*, 56 N.E.3d at 152-53.

Start with South Carolina. The South Carolina Supreme Court explained that the Ex Post Facto Clause applies to changes to the availability of parole because the Clause applies to laws governing the length of imprisonment, and "the nature of parole is early release from imprisonment." *Barton*, 745 S.E.2d

³ Alabama also currently allows courts to impose the death penalty based on nonunanimous jury determinations that the defendant should be sentenced to death. *See Ex parte Bohannon*, 222 So. 3d 525, 532 (Ala. 2016) (upholding this law). Unlike Florida, however, Alabama did not previously require unanimous jury determinations to impose such sentences. So the ex post facto question here does not arise in that State.

at 120 n.8. The court then explained that when it comes to laws governing the length of imprisonment, “[t]he relevant inquiry . . . is whether a legislative amendment ‘produces a sufficient risk of increasing the measure of punishment attached to the covered crimes.’” *Id.* at 114 (quoting *Cal. Dep’t of Corr. v. Morales*, 514 U.S. 499, 509 (1995)). Applying that test, the court held that the new supermajority rule created a sufficient risk of increased punishment because “[i]t is clearly more difficult to convince a two-thirds majority of the Parole Board to grant parole, than a simple majority.” *Id.* at 120.

The Massachusetts Supreme Judicial Court likewise held that a change from a majority to a supermajority requirement for parole violated the Ex Post Facto Clause as applied to a defendant who committed his crime before the new law’s enactment. Applying the same ex post facto framework as the South Carolina Supreme Court, the Massachusetts court explained the Commonwealth’s new rule actually caused the defendant to suffer greater punishment. *Clay*, 56 N.E.3d at 149, 152. Under the old law, the parole board’s simple majority vote would have resulted in the defendant’s term of imprisonment being cut short, but the new law required him to “remain[] in prison.” *Id.* at 152.

The Florida Supreme Court’s ex post facto holding here cannot be squared with these decisions. As in the South Carolina and Massachusetts cases, Florida’s 2023 nonunanimity rule increased the percentage of votes required to avoid a harsher punishment. When the crime in Mr. Hunt’s case occurred, a capital defendant needed to convince only one of twelve jurors to vote for a life sentence to avoid a sentence of death.

But under the 2023 law, a minimum of five votes are needed—making a death sentence much more likely. The Florida Supreme Court nonetheless held that the new statute did not trigger the Ex Post Facto Clause, reasoning that the statute did not “virtually guarantee[]” that Mr. Hunt would receive a more severe sentence. Pet. App. 25a. And the Florida Supreme Court stuck to this reasoning even though in Mr. Hunt’s own case, the change in state law was unquestionably outcome-determinative: Before the new enactment, the 10-2 jury vote here could not have exposed him to a death sentence.

To be sure, this case involves a jury voting at a sentencing proceeding, not a board voting for parole. But as the Florida Supreme Court itself recognized, this Court’s “risk analysis” jurisprudence applies in both settings, and the “relevant inquiry” is the same. Pet. App. 25a (discussing *Peugh v. United States*, 569 U.S. 530, 539 (2013)); *see also Morales*, 514 U.S. at 509. The Florida Supreme Court’s disagreement with the high courts in South Carolina and Massachusetts thus turns solely on whether changes in the percentage of votes required to enable heightened punishment create a “sufficient risk” of such punishment under *Peugh* and prior cases—and, more generally, on whether the touchstone for that inquiry is a “significant risk” or a “virtual guarantee” of increased punishment. Only this Court can resolve that disagreement.

B. The Florida Supreme Court’s decision is incorrect.

Certiorari is also warranted because the Florida Supreme Court’s decision contravenes this Court’s precedent.

1. The Ex Post Facto Clause, U.S. Const. art. I, § 10, cl. 1, guarantees “perhaps greater securities to liberty and republicanism than any [the Constitution] contains.” The Federalist No. 84, at 511 (Hamilton) (Clinton Rossiter ed., 1961). Specifically, the Clause guards against applying penal statutes enacted after a crime occurred that “disadvantage the offender affected by them.” *Collins v. Youngblood*, 497 U.S. 37, 41 (1990). This prohibition ensures that individuals have fair notice of criminal law and that the government cannot change the rules after the fact to “make it easier” to convict or impose punishment. *Carmell v. Texas*, 529 U.S. 513, 546 (2000).

Applying these general principles, this Court has held that a new rule governing criminal punishment triggers the Ex Post Facto Clause when the change in law “presents a sufficient risk of increasing the measure of punishment.” *Peugh v. United States*, 569 U.S. 530, 539 (2013) (internal quotation marks omitted). To meet this standard, the defendant must show that the change creates more than a “speculative and attenuated possibility of producing the prohibited effect of increasing the measure of punishment.” *Cal. Dep’t of Corr. v. Morales*, 514 U.S. 499, 509 (1995); see *Garner v. Jones*, 529 U.S. 244, 250-51 (2000). The new law must instead “creat[e] a ‘significant risk’ of a higher sentence.” *Peugh*, 569 U.S. at 550 (quoting *Garner*, 529 U.S. at 251); *id.* at 541 n.4.

The Court has applied this test in a number of different settings. It has held that increases in the recommended or presumptive levels of punishment under sentencing guidelines created a significant risk of heightened punishment. See *Peugh*, 569 U.S. at 550; see also *id.* at 541; *id.* at 541 n.4 (discussing *Miller v.*

Florida, 482 U.S. 423 (1987)). The Court has reached the same conclusion regarding rules governing the calculation of provisional “good time” credits and making a permissible sentence mandatory. *See Peugh*, 569 U.S. at 546 (discussing *Lindsey v. Washington*, 301 U.S. 397 (1937)); *Lynce v. Mathis*, 519 U.S. 433 (1997). On the other hand, the Court has held that laws changing the rules for trying co-defendants jointly and the frequency of parole hearings for certain inmates did not pose a sufficient risk of heightened punishment to trigger ex post facto concerns. *See Beazell v. Ohio*, 269 U.S. 167 (1925); *Morales*, 514 U.S. 499 (1995); *Garner*, 529 U.S. 244.

To determine whether a new law poses a significant risk of increased punishment, this Court looks to its “purpose” and “effect.” *Lynce*, 519 U.S. at 444. The effect of the law can be gleaned from its “own terms” or “evidence drawn from the rule’s practical implementation.” *Garner*, 529 U.S. at 255. And the law’s practical implementation can be shown through general “empirical evidence,” *see Peugh*, 569 U.S. at 543, or “the actual course of events” in the defendant’s particular case, *Lynce*, 519 U.S. at 446.

2. Florida’s new nonunanimity rule has both the purpose and effect of creating a significant risk of greater punishment.

As to purpose, the Florida Supreme Court did not dispute that the goal of the State’s nonunanimity rule is to make it easier to sentence people to death. Nor could it. The bill’s sponsor explained that the rule is designed to “hinder the practice of activist jurors”—meaning jurors who vote for life instead of death when others believe a death sentence was appropriate. *Tr. of Senate Floor Debate on SB 450*, 2023 Leg., Reg. Sess.

2 (Fla. Mar. 29, 2023) (statement of Sen. Blaise Ingoglia). Other supporters likewise argued that removing the State’s unanimity requirement was necessary to prevent “a small handful of jurors [from] derail[ing] the true administration of justice” by declining to impose death. *Hearing on HB 555 Before the H. Crim. Just. Subcomm.*, 2023 Leg., Reg. Sess. 16 (Fla. 2023) (statement of Rep. Berny Jacques, Member, H. Crim. Just. Subcomm.). Some legislators even singled out particular capital defendants that they believed deserved the death penalty and urged colleagues to vote for the amendment to make that more likely. *See id.*

It thus comes as no surprise that Florida’s 2023 shift to a nonunanimity system, in fact, increased the likelihood that capital defendants receive death sentences. On the new statute’s own terms, it is much easier for the prosecution to obtain death sentences. That is because a Florida court may impose the death penalty only if the jury determines that the defendant should be sentenced to death. And it is much easier to persuade eight of twelve jurors to vote for death than all twelve.

Statistics confirm that reality. Records of sentences imposed on over one hundred capital defendants before and after the 2023 law’s implementation show that individuals sentenced under Florida’s new nonunanimity rule are twice as likely as before to receive a death sentence. Death Penalty Information Center, *Marking a Decade Since Hurst v. Florida*, <https://perma.cc/B2YY-93RH>. Making heightened punishment twice as likely plainly poses a “significant risk” of that punishment.

Finally, “the actual course of events” in this very case, *Lynce*, 519 U.S. at 446, demonstrates that Florida’s nonunanimity rule increased Mr. Hunt’s punishment. His jury voted 10-2 in favor of death. Under the old regime, that vote would have required a sentence of life imprisonment. But under the new law, that nonunanimous vote enabled a death sentence, which is what the court imposed. The 2023 amendment thus increased Mr. Hunt’s actual punishment. *See id.*; *Clay*, 56 N.E.3d at 152.

3. The Florida Supreme Court advanced three reasons for rejecting this straightforward analysis. None has merit.

a. The Florida Supreme Court asserted that the “sufficient risk” test this Court applied most recently in *Peugh* is not met unless the change in law “virtually guarantee[s]” increased punishment. Pet. App. 25a-26a (quoting *State v. Lobato*, 394 So. 3d 1219, 1226 (Fla. 6th DCA 2024)). Those words, however, appear nowhere in *Peugh*, and that is not the applicable standard. The constitutional question, as this Court reiterated over and over in *Peugh*, is whether the new law “create[s] a ‘significant risk’ of a higher sentence.” *Peugh*, 569 U.S. at 550 (citation omitted); *see also id.* (“significant risk”); *id.* at 541 n.4 (“The relevant question is whether the change in law creates a ‘sufficient’ or ‘significant’ risk of increasing the punishment for a given crime.”) (citation omitted); *id.* at 541 (“significant risk”).

To be sure, some of the Court’s analysis in *Peugh* suggested that the particular change to the guidelines system at issue there might have created even more than a significant risk of higher punishment. But that just meant that the change met the governing

standard by a considerable margin. The Court did not modify the constitutional standard itself.

Nor did *Peugh* circumscribe prior precedent finding ex post facto violations in other cases where there was no virtual guarantee of increased punishment. For example, in *Weaver v. Graham*, 450 U.S. 24 (1981), there was nothing close to a guarantee that defendants' punishments would increase under the changes at issue to rules for calculating good time credits. *Id.* at 37-38 (Rehnquist, J., concurring in the judgment). But this Court still found that the changes triggered the Ex Post Facto Clause because they "constrict[ed] [an] inmate's *opportunity* to earn early release." *Id.* at 35-36 (emphasis added). *Lindsey* is similar. The new law there made a sentence mandatory that was already permissible—and thus presumably regularly given. *Lindsey*, 301 U.S. at 401. But retroactively applying the new rule still violated the Ex Post Facto Clause because it removed "the possibility" of a shorter sentence. *Id.*⁴

b. The Florida Supreme Court also maintained that *Dobbert v. Florida*, 432 U.S. 282 (1977), insulates the State's new nonunanimity rule from ex post facto infirmity. Pet. App. 24a. But *Dobbert* offers no refuge.

⁴ The dissenters in *Peugh* would have held that changes to the federal sentencing guidelines do not satisfy the "sufficient risk" test because they have "no legal effect on a defendant's sentence." 569 U.S. at 551 (Thomas, J., dissenting). Even if such an effect were required to trigger the Ex Post Facto Clause, the Florida Supreme Court's decision would still be wrong. A jury determination in Florida that the defendant should be sentenced to death *has* a legal effect (indeed, a very important one): It makes an otherwise off-limits sentence permissible. *See* Fla. Stat. § 921.141(2)(c), (3)(a)(1).

In *Dobbert*, the Court held that various changes to Florida's capital sentencing procedures did not trigger the Ex Post Facto Clause. The Court stressed that the totality of the changes were "ameliorative," making it *less* likely than before that defendants would be sentenced to death. *Id.* at 294; *see also Miller*, 482 U.S. at 431-32.

No aspect of the new law here is ameliorative. Instead, it creates a significant risk that defendants who would otherwise have received life sentences will now be sentenced to death. *See supra* at 14-16.

The *Dobbert* opinion also noted the changes at issue there were "clearly procedural." That is, they "altered the methods" used to determine the defendant's sentence, not the "quantum of punishment" allowed for the crime itself. *Dobbert*, 432 U.S. at 293-94. But since *Dobbert*, the Court has made clear that "a law can run afoul of the [Ex Post Facto] Clause even if it does not alter the statutory maximum punishment attached to a crime." *Peugh*, 569 U.S. at 546; *see Miller*, 482 U.S. at 432 ("[O]ne is not barred from challenging a change in the penal code on *ex post facto* grounds simply because the sentence he received under the new law was not more onerous than that which he might have received under the old.") (citation omitted). Consequently, the question is not whether the new rule is "procedural"; it is whether the new law "creates a 'significant risk' of a higher sentence" that the defendant otherwise would have received. *Peugh*, 569 U.S. at 550. And that test is met here.

This Court's decision in *Carmell* underscores the Florida Supreme Court's error in relying on *Dobbert*. In *Carmell*, the Court confirmed that it has "eliminated [the] doctrinal hitch that had developed in

[*Dobbert* and other] cases, which purported to define the scope of the Clause along an axis distinguishing between laws involving ‘substantial protections’ and those that are merely ‘procedural.’” *Carmell*, 529 U.S. at 539 (discussing *Collins*, 497 U.S. 37). Procedural changes that increase the risk of punishment can violate the Ex Post Facto Clause just as laws directly requiring higher sentences can.

Carmell also makes clear that, even when a new law does not increase the defendant’s punishment, it triggers the Ex Post Facto Clause if it “lower[s] the burden of proof.” 529 U.S. at 532. Unlike procedural changes that might sometimes help the prosecution and other times help defendants, laws that “mak[e] it easier to meet” the burden of proof implicate ex post facto concerns because they “always run in the prosecution’s favor.” *Id.* at 532, 546.

Florida’s new nonunanimity rule is just like a law lessening the prosecution’s burden of proof. The prosecution no longer needs to convince all of the jurors to vote for death; it is now sufficient to persuade eight of the twelve to do so. As such, the new rule reduces the prosecution’s degree of persuasion necessary to obtain death sentences—and accordingly violates the Ex Post Facto Clause when applied retroactively.

c. Lastly, the Florida Supreme Court relied on a passage from this Court’s opinion in *Collins v. Youngblood* explaining that a law reducing the number of jurors from twelve to eight did not implicate the Ex Post Facto Clause. *See* Pet. App. 25a (discussing *Collins*, 497 U.S. at 51). The Florida Supreme Court reasoned that if “reducing the number of jurors needed to *convict* a defendant does not violate

the Ex Post Facto Clause,” then “surely reducing the number of votes needed to provide a ‘recommendation’ of death” does not. Pet. App. 25a. That protestation goes nowhere either.

Under the new law this Court referenced in *Collins*, the eight-member jury still had to be unanimous. That being so, the new law did not necessarily make it easier for the prosecution to carry its burden. *See Williams v. Florida*, 399 U.S. 78, 100 n.46 (1970). Seven jurors, for example, might sometimes have a harder time convincing a single holdout to vote to convict than a supermajority of eleven jurors typically does. *See id.* at 101 n.49. By contrast, jury unanimity “insur[es] that the Government bear the heavier burden of proof.” *Id.* at 100 n.46; *see also Hibdon v. United States*, 204 F.2d 834, 839 (6th Cir. 1953) (describing the “far lighter burden of persuasion in convincing a majority of the jury than in persuading all of its members”). Florida’s change to its nonunanimity rule therefore decreased the prosecution’s burden and created a significant risk of higher punishment.⁵

Insofar as the Florida Supreme Court also meant to suggest by its comparison to *Collins* that the Ex Post Facto Clause should not apply to mere jury recommendations, that also provides no reason for rejecting Mr. Hunt’s ex post facto claim. The determination at issue here is not simply a

⁵ In its brief in opposition in *Kian v. Florida*, No. 25-6623, *cert. granted* (June 15, 2026), the State itself distinguished laws reducing jury size from those dispensing with unanimity, emphasizing that “the requirement of unanimity” is “a device for insuring that the Government bear the heavier burden of proof.” Br. at 11 (citation omitted); *see also id.* at 14-17.

recommendation; it has the legal consequence of enabling the death penalty to be imposed. Fla. Stat. §§ 921.141(2)(c), (3)(a)(1).

Granted, even when the jury determines that the defendant should be sentenced to death, the trial judge can still “opt for a life sentence.” Pet. App. 26a. But this Court has “ma[d]e clear that the presence of [sentencing] discretion does not displace the protections of the *Ex Post Facto* Clause.” *Peugh*, 569 U.S. at 546 (internal quotation marks omitted). In *Peugh* itself, judges could still impose lesser sentences under the new laws if they offered certain explanations. *Id.* at 543-44. So too in *Miller*. 482 U.S. at 432-33. But the Ex Post Facto Clause prohibited the changes in both cases from applying retroactively. The same is true here. *See* Fla. Stat. § 921.141(4).

C. The Court should resolve this important question here and now.

For three reasons, this Court should use this case to resolve the ex post facto question presented.

1. The prohibition against ex post facto laws is among the most important constitutional protections against governmental overreach. That is because the prohibition ensures that the “government abide[s] 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 (2000). Indeed, the prohibition against ex post facto laws is especially critical where, as here, the new law in question is being used to make it easier to deprive someone of their life.

2. The legality of numerous current and potentially future death sentences in Florida depends on the question presented. The ex post facto question

here applies to every defendant on death row in Florida who (i) committed the charged offense between 2017 and the 2023 enactment of the nonunanimity law at issue; and (ii) whose jury determined by a nonunanimous vote of between 8-4 and 11-1 that he should be sentenced to death. So far, that set includes about a dozen defendants. Moreover, unless this Court weighs in soon, that number will continue to grow. Capital charges are currently pending against about four dozen other defendants who allegedly committed their crimes between 2017 and 2023. And since Florida has no statute of limitations on capital murder, future charges could also be brought against still others for committing crimes during this window of time. If the State's new nonunanimity rule remains in effect, these future prosecutions will almost certainly produce more death sentences raising the same *ex post facto* issue that Mr. Hunt is asking the Court to resolve here.

3. This case is an excellent vehicle for resolving the question presented. Mr. Hunt raised, and the Florida Supreme Court squarely resolved, the issue. *See* Pet. App. 21a-27a. This case is on direct review, so the Court can address the question presented free from legal complications that sometimes arise on collateral review. And unlike many capital cases, this case is not coming to the Court on an expedited emergency application to stop a pending execution. *Cf. Crawford v. Mississippi*, 146 S. Ct. 33, 39 (2025) (Sotomayor, J., dissenting from the denial of application for stay and denial of certiorari). This Court can accordingly decide the weighty issue here with the benefit of full briefing and oral argument.

Finally, this case tees up the *ex post facto* question presented alongside the Sixth and Eighth Amendment

questions presented here and in *Jackson*. When new legislation raises several difficult legal issues, this Court has often granted multiple petitions to enable it to consider the constellation of issues together. Just last Term, for instance, the Court granted two petitions to review distinct legal questions raised by a provision of the First Step Act. *See Fernandez v. United States*, 146 S. Ct. 1292 (2026); *Rutherford v. United States*, 146 S. Ct. 1320 (2026). Similarly, in *Birchfield v. North Dakota*, 579 U.S. 438 (2016), this Court granted three petitions to consider distinct Fourth Amendment issues raised by state laws involving blood and breath tests.

Mr. Hunt respectfully suggests that this Court should grant certiorari both in *Jackson* and this case to best enable it to consider all of the serious constitutional issues that Florida's new nonunanimity rule raises. But even if this Court does not wish for some reason to consider whether the new rule violates the Sixth and Eighth Amendments, certiorari is still warranted—for all of the reasons described above—to consider the ex post facto question presented here.

CONCLUSION

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

Respectfully submitted,

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