

21-439 NANCE V. WARD

DECISION BELOW: 981 F.3d 1201

LOWER COURT CASE NUMBER: 20-11393

QUESTION PRESENTED:

In *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), "all nine Justices" agreed that a person challenging a State's method of execution could allege an alternative "not ... authorized under current state law" and that there was therefore "little likelihood that an inmate facing a serious risk of pain will be unable to identify an available alternative." *Id.* at 1136 (Kavanaugh, J., concurring).

In the proceedings below, Petitioner filed a § 1983 suit bringing an as-applied challenge to Georgia's sole statutorily authorized method of execution, lethal injection. Petitioner alleged the use of a firing squad as an alternative method. A divided panel held that Petitioner's challenge could not be heard. The panel ruled that Petitioner must bring his challenge in habeas rather than via § 1983 because he had alleged an alternative method not currently authorized under Georgia law. It further held that Petitioner's claim would be an impermissible successive petition notwithstanding that the claim would not have been ripe at the time of Petitioner's first petition.

The questions presented are:

1. Whether an inmate's as-applied method-of-execution challenge must be raised in a habeas petition instead of through a § 1983 action if the inmate pleads an alternative method of execution not currently authorized by state law.
2. Whether, if such a challenge must be raised in habeas, it constitutes a successive petition where the challenge would not have been ripe at the time of the inmate's first habeas petition.

CERT. GRANTED 1/14/2022