

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. 22-7466

RICHARD EUGENE GLOSSIP,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

UNOPPOSED JOINT MOTION FOR DIVIDED ARGUMENT

Pursuant to this Court’s Rules 21 and 28.4, petitioner Richard Eugene Glossip and respondent State of Oklahoma (together, “the Parties”) respectfully move the Court for divided argument in this case. The Parties request that petitioner and respondent State of Oklahoma each be allotted 15 minutes of argument time and that the Court-appointed amicus curiae be allotted 30 minutes of argument time. The Court-appointed amicus curiae agrees with this allocation of time and consents to this request.

In this case, petitioner seeks reversal of his state criminal conviction and death sentence on the grounds that the State’s suppression of a witness’s pretrial statement to prosecutors that he was under the care of a psychiatrist and the State’s failure to correct that witness’s testimony denying his treatment violated the due process of law. *See Brady v. Maryland*, 373 U.S. 83 (1963); *Napue v. Illinois*, 360 U.S. 264 (1959); *Kyles v. Whitley*, 514 U.S. 419 (1995). Before the Oklahoma Court of Criminal

Appeals, the State agreed with petitioner that the State's failure to correct the witness's false testimony violated *Napue* and requested that the court vacate petitioner's conviction. JA973-979. The Oklahoma Court of Criminal Appeals rejected petitioner's *Brady* and *Napue* claims and denied petitioner's application for post-conviction relief. JA981-982, 989-992, 996.

Petitioner applied for a stay of execution before this Court. The State agreed that petitioner's execution should be stayed. This Court granted the application. *Glossip v. Oklahoma*, 143 S. Ct. 2453 (2023). Petitioner filed a petition for a writ of certiorari. The State acquiesced. This Court granted certiorari and directed the parties to brief the additional question "[w]hether the Oklahoma Court of Criminal Appeals' holding that the Oklahoma Post-Conviction Procedure Act precluded post-conviction relief is an adequate and independent state-law ground for the judgment." *Glossip v. Oklahoma*, 141 S. Ct. 691 (2024). On January 26, 2024, the Court appointed Christopher G. Michel to brief and argue this case as amicus curiae in support of the judgment below. *Glossip v. Oklahoma*, 141 S. Ct. 715 (2024).

Petitioner has filed a brief contending that his conviction was obtained in violation of *Brady* and *Napue*, that *Kyles* requires the entirety of suppressed evidence to be considered when assessing the materiality of *Brady* and *Napue* claims, and that there is no adequate and independent state-law ground for the judgment. The State has filed a brief agreeing with petitioner's *Brady* and *Napue* claims, arguing that the judgment below did not rest on an adequate and independent state-law ground, and that the State's confessions of error demand "especially respectful consideration when

they relate to the State’s own prosecutors’ admitted misconduct.” Resp. Br. 32. The appointed amicus curiae has filed a brief contending that petitioner’s conviction did not violate *Brady* or *Napue*, that the judgment below is supported by an adequate and independent state-law ground, and that the court below gave sufficient weight to the State’s confession of error.

Good cause exists to allow divided argument in this case. Although petitioner and the State agree on the answers to the questions presented and on the proper disposition of this case, the Parties have distinct interests and perspectives to offer this Court. In particular, while Glossip has unique interests in defending his life and liberty and his due-process rights, the State has distinct sovereign interests in this Court’s application of the standards for determining when a state-court judgment is supported by an adequate and independent state-law ground, in the degree of respect accorded to the State’s confessions of error, and in ensuring “that justice shall be done” in the State’s courts, Resp. Br. 33 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

It is the regular practice of this Court to allow divided argument in criminal cases in which the petitioner and the State agree on the proper disposition of the case and the Court has appointed an amicus to defend the judgment below. *See, e.g., Erlinger v. United States*, 144 S. Ct. 998 (2024); *Jones v. Hendrix*, 143 S. Ct. 300 (2022); *Holguin-Hernandez v. United States*, 140 S. Ct. 762 (2020); *Beckles v. United States*, 137 S. Ct. 886 (2017); *Welch v. United States*, 136 S. Ct. 1257 (2016).

The Parties thus request that petitioner and respondent State of Oklahoma each be allotted 15 minutes of argument time and that the Court-appointed amicus curiae be allotted 30 minutes of argument time. That allocation mirrors the allocation of argument time that the Court approved in *Erlinger*, which involved similar circumstances.

For the foregoing reasons, the unopposed joint motion for divided argument should be granted.

Respectfully submitted,

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