No. 24-227

IN THE

Supreme Court of the United States

JOHN KEVIN WOODWARD,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE CALIFORNIA COURT OF APPEAL, SIXTH DISTRICT

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Petitioner John Woodward was charged in 1992 with the murder of his roommate's girlfriend. Pet. App. 4a. The evidence against Mr. Woodward amounted to, essentially, "fingerprints found on the victim's car" (the outside, but not the inside) and his "apparent inconsistent statements." Pet. App. 74a-75a. Over the course of two trials, the government was "given full and fair opportunity to convict" Mr. Woodward based on that evidence. Pet. App. 74a. Despite those two opportunities, the prosecution was "unable to prove the defendant guilty beyond a reasonable doubt." *Id.* In both trials, "the majority of jurors vot[ed] for acquittal." *Id.*

But the case did not end with that uncertainty. Rather, in 1996, the trial court determined that the case should be dismissed "pursuant to Penal Code Section 1385 based on insufficient evidence." Pet. App. 71a. As the trial court explained in a written order, it "had the opportunity to view the witnesses and hear the conflicting testimony," and concluded "[t]he evidence presented by the prosecution lacks the sufficiency needed to find the defendant guilty." Pet. App. 73a-74a. Despite "over 300 pieces of evidence … and over 30 witnesses" at each trial, "the prosecution was not able to utilize the evidence to prove the defendant guilty beyond a reasonable doubt." Pet. App. 74a. In short, "[t]he substantive quality of the evidence did not lend itself to proving the prosecution's contentions." *Id.* "There is simply a lack of evidence on which to convict the defendant." Pet. App. 76a.

For 25 years following the order of dismissal, Mr. Woodward moved on with his life, believing himself protected by the Fifth Amendment's prohibition against being "twice put in jeopardy" for the same offense. U.S. Const. amend. V. Because the trial court had dismissed the case "based on insufficient evidence," Mr. Woodward should have been constitutionally protected from being prosecuted again. *See, e.g.*, *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572-73 (1977).

Yet when California came back for Mr. Woodward in 2022, it relied on a peculiarity of California law and the California Supreme Court's decision in *People v. Hatch*, 22 Cal. 4th 260 (2000) to deny Mr. Woodward constitutional protection. According to the court of appeal, "the trial court [in 1996] articulated 'insufficient evidence' as the primary basis for its dismissal." Pet. App. 31a. But because there was "no clear indication in the record that the trial court viewed the evidence in the light most favorable to the prosecution and concluded that no rational trier of fact could have found the defendant guilty beyond a reasonable doubt," Pet. App. 40a, the court's dismissal had no constitutional effect. Mr. Woodward now finds himself subjected to the very "embarrassment, expense and ordeal and … continuing state of anxiety and insecurity" the Double Jeopardy Clause should protect against. *Green v. United States*, 355 U.S. 184, 187 (1957).

This Court's review is required to remedy California's perversion of the Fifth Amendment and this Court's precedents.

I. *Hatch*'s Definition Of Acquittal Is Inconsistent With This Court's Precedents And The Fifth Amendment's Double Jeopardy Protections.

California's *Hatch* rule conflicts with this Court's authorities and contravenes the protections of the Double Jeopardy Clause. Pet. 5-11. California asks this Court to ignore that conflict because the Petition "does not allege that the decision below implicates any conflict of authority among lower courts." BIO 8. But the only reason there is no such conflict is that California is an outlier: No other State has adopted a rule like California's. The relevant conflict is between the Fifth Amendment's double jeopardy right, as encapsulated by this Court's well-settled, broad definition of "acquittal," and the restrictive definition adopted in *Hatch*. There is no dispute that "whether an acquittal has occurred for purposes of the Double Jeopardy Clause is a question of federal, not state, law." *McElrath v. Georgia*, 601 U.S. 87, 96 (2024). California cannot adopt its own, narrowed interpretation of the Fifth Amendment or deflect attention from that conflict based on its own outlier status.

California criticizes Petitioner for finding a conflict by "pars[ing]" this Court's precedents "as though we were dealing with language of a statute." BIO 13 (citation omitted). This Court's precedents need not be "parsed" to determine their meaning. They squarely hold that a trial court's "determination that the State had failed to prove its case" is an "acquittal." *Evans v. Michigan*, 568 U.S. 313, 320 (2013).

In *Evans*, a near-unanimous Court reiterated that it "define[s] an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." *Id.* at 318-19 (citations omitted). *Evans* explicitly stated that an acquittal under the Double Jeopardy Clause includes (1) "'a ruling by the court that the evidence is insufficient to convict,'" (2) "a 'factual finding [that] necessarily establish[es] the criminal defendant's lack of criminal culpability,'" and (3) "any other 'rulin[g] which relate[s] to the ultimate question of guilt or innocence.'" *Id.* at 319 (alterations in original) (quoting *United States v. Scott*, 437 U.S. 82, 91, 98 & n.11 (1978)). This Court reaffirmed this point last term in *McElrath*, defining "acquittal" by "look[ing] to whether the ruling's substance 'relate[s] to the ultimate question of guilt or innocence.'" 601 U.S. at 94 (citation omitted).

California urges this Court to focus on the "circumstances" of *Evans* and *McElrath*. BIO 12. According to California, because "neither decision had any occasion to explore the line between dismissals based on a judge's view about the weight of the evidence and those based on a determination that the evidence is legally insufficient," they could not conflict with *Hatch*. *Id.* That this Court has not yet answered the precise question presented by this case, however, only underscores the importance of this Court's review to ensure that double jeopardy principles are applied consistently throughout the United States.

California next defends *Hatch* by referring to its "methodology," as if it does not set forth a substan-

tive rule. BIO 14. But the *Hatch* rule is a substantive one that limits the reach of a constitutional right under federal law: It "bar[s] retrial *only* when a trial court clearly makes a finding of legal insufficiency." *Hatch*, 22 Cal. 4th at 274 (emphasis added). Through that framework, *Hatch* jettisons two of the three circumstances this Court identified as "acquittals" in *Evans*. As a result, the trial court's 1996 dismissal is an "acquittal" under this Court's definition, but not under California's.

California asks this Court to ignore its recent elucidations as to what qualifies as an "acquittal," and to focus on *Tibbs v. Florida*, 457 U.S. 31 (1982). BIO 10-15, 17-20. *Tibbs* cannot bear the weight California puts on it. *Tibbs* predates *Evans* and *McElrath* and is inapposite here. *Tibbs* concerns "the understanding that a defendant who successfully *appeals a conviction* is subject to retrial." 457 U.S. at 40 (emphasis added). This procedural posture is crucial to *Tibbs*'s logic and is distinct from this case's posture in two fundamental ways.

First, *Tibbs* acknowledged the permissibility of retrial following a weight-of-the-evidence reversal, allowing retrial only after the state "presented sufficient evidence to support conviction." *Id.* at 42-43. *Tibbs* would not make retrial permissible here because the dismissal was an acquittal under this Court's precedents, not a simple weight-of-the-evidence reversal. Pet. 13-14; *infra* 11-13.

Second, in a *Tibbs* scenario, retrial can occur only after the state has "persuaded the jury to convict." 457 U.S. at 42-43. But California has never persuad-

ed a jury to convict Mr. Woodward. Rather, in the 1990s, California twice tried, and twice failed, to do so. *See* Pet. App. 4a. It did not even come close to succeeding; the first jury trial resulted in an 8 to 4 vote in favor of acquittal, and the second resulted in a 7 to 5 vote, again in favor of acquittal. *Id.*

California's reliance on *Smith v. United States*, 599 U.S. 236 (2023), BIO 13-14, is misplaced for the same reason. Like *Tibbs*, *Smith* concerns the distinct strand of double jeopardy jurisprudence addressing retrial after the state has persuaded a jury to convict, circumstances not present here. Neither *Tibbs* nor *Smith* offers California any help as it attempts to convict Mr. Woodward for a third time. Pet. 2.

California then turns to other jurisdictions' pre-*Evans* precedents, BIO 19-20, again ignoring this Court's recent clarifications as to what counts as an "acquittal." These cases provide no meaningful support for California's defense of the *Hatch* rule. They do not establish the absence of a conflict between *Hatch* and the ironclad constitutional commitments of the Fifth Amendment as pronounced by this Court.

II. *Hatch* Also Conflicts With This Court's Precedents By Creating A Presumption Against Double Jeopardy.

California does not, and cannot, dispute that *Hatch* creates a presumption against applying double jeopardy to bar retrial, although it does attempt to rebrand that presumption as simple "instructions" or "methodology." BIO 14, 17. *Hatch* demands that

reviewing courts "assume the [trial] court did *not* intend to dismiss for legal insufficiency." 22 Cal. 4th at 273. A defendant cannot overcome this presumption without "clear evidence" the trial court intended the dismissal to be an acquittal and "viewed the evidence in the light most favorable to the prosecution." *Id.* at 271, 273.

This Court's precedents contain no similar presumption. That disparity alone requires this Court's review. Through *Hatch*, California has impermissibly engrafted a substantive hurdle to the double jeopardy retrial bar, which narrows the Constitution's Fifth Amendment right as expounded by this Court. But "State courts … are *not* free from the final authority of this Court" when interpreting the United States Constitution. *Arizona v. Evans*, 514 U.S. 1, 8-9 (1995); *Elmendorf v. Taylor*, 23 U.S. (10 Wheat.) 152, 160 (1825) (same). That is especially so where, as here, the state's rule imposes a greater burden than this Court's precedents allow. *Benton v. Maryland*, 395 U.S. 784, 794, 796 (1969) (disallowing "'watered-down'" state interpretations of double jeopardy right and requiring retrial permissibility "be judged … under this Court's interpretations" (quoting *Malloy v. Hogan*, 378 U.S. 1, 10 (1964))).

Nevertheless, California contends that the *Hatch* presumption is permissible under this Court's principle that an acquittal remains so for the purposes of double jeopardy even if it was based on a legal error. BIO 17-18. But *Hatch* is flatly inconsistent with that principle, which bars retrial even where an "acquittal is 'based upon an egregiously erroneous foundation.'" *Evans*, 568 U.S. at 318 (quoting *Fong Foo v.

United States, 369 U.S. 141, 143 (1962) (per curiam)). *Hatch* transparently exempts one form of error from this bar, requiring a trial court to have used magic words for double jeopardy to apply. If a trial court issues an acquittal but fails to make a "clear enough" record for a reviewing court to not just conclude, but "confidently conclude" that the trial court "viewed the evidence in the light most favorable to the prosecution," then under *Hatch*, no acquittal has occurred. 22 Cal. 4th at 273. This flies in the face of this Court's precedents allowing a judge to "acquit" after making *precisely this error*. *United States v. Sisson*, 399 U.S. 267, 278 (1970) (affirming that a decision based on the defendant's "demeanor on the stand [which] convinced the court of his sincerity" was an "acquittal" barring retrial). Although California attempts to distinguish *Sisson* as "pre-*Tibbs*," BIO 16, the principle that "egregious[]" errors, even of this type, do not prevent an acquittal from barring retrial is alive and well as evinced by *Evans*'s reaffirmance of *Fong Foo*, *see* 568 U.S. at 318 (quoting 369 U.S. at 143).

Finally, California tries to reframe the issue presented as "an ambiguous prior reversal" controlled by state law. BIO 17-18. But the issue presented is whether California's definition of acquittal conflicts with this Court's definition, Pet. i, and whether an acquittal occurred is unambiguously a question of federal law that only this Court can, and must, address. *McElrath*, 601 U.S. at 96.

III. This Case Is An Excellent Vehicle.

There are no factual complications or preservation issues that would impede this Court's review of the question presented, the resolution of which is critical to the uniform and fair application of the Double Jeopardy Clause. The 1996 dismissal order expressly cites "insufficient evidence" as a reason warranting dismissal, Pet. App. 71a, 77a; in 2022, California renewed its prosecution of Mr. Woodward for the same charge that the court dismissed in 1996, Pet. App. 2a-3a, 8a; and Mr. Woodward preserved his argument that the Double Jeopardy Clause bars retrial in the California superior court, the California Court of Appeal, and the California Supreme Court, Pet. App. 8a, 24a-25a, 83a-102a. The question presented therefore is properly poised for this Court's review.

California nonetheless contends that this case is a "poor vehicle" because Mr. Woodward did not raise the issues presented in his Petition before the lower courts. Specifically, California asserts that Mr. Woodward "did not contest that *Tibbs*' analytical framework applied to the 1996 dismissal order," that *Evans* and *McElrath* "established new standards" for determining whether a dismissal constitutes an acquittal, or that *Hatch*'s "methodology" for interpreting Penal Code § 1385 orders is unconstitutional. BIO 20.

But Mr. Woodward did not need to present those specific arguments in the lower courts to preserve them for this Court's review. What matters is that Mr. Woodward's core argument—that the 1996 dis-

missal order operates as an acquittal under the Double Jeopardy Clause—was preserved at every level. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 330-31 (2010) (holding that petitioner's request that First Amendment precedent be overturned was "not a new claim," even though he did not it raise below, because he consistently asserted a First Amendment violation (citation omitted)); *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) ("Our traditional rule is that '[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments that they made below.'" (citation omitted and alteration in original)); Pet. 12. Mr. Woodward did not ask the California superior court to overturn *Hatch* because that would have been futile. Instead, he presented that argument to the California Supreme Court and this Court, the only courts with authority to act on it. Such refinement is permissible elaboration on the core issues presented and does not amount to an assertion of "new" claims.

Moreover, California's mistaken arguments regarding preservation do nothing to detract from the fundamental importance of the question presented. A decision from this Court would resolve whether California is undermining the federal protections of the Double Jeopardy Clause through restrictive state law. That is a critical issue not just for Mr. Woodward, but for any defendant in California whose case is dismissed without the magic words prescribed by *Hatch*. Only this Court can intervene to correct California's error and safeguard Californians' federal rights.

IV. The Decision Below Was Wrong.

Under this Court's precedents, the court of appeal's decision was wrong. Judge Terry's 1996 dismissal constitutes an acquittal because the substance of the dismissal "relate[s] to the ultimate question of guilt or innocence." *See McElrath*, 601 U.S. at 94 (citation omitted and alteration in original); Pet. 12-13.

California maintains that the 1996 dismissal is not an acquittal because it was based "on the weight of [the prosecution's] evidence." BIO 11. California premises its argument not on the substance of the dismissal—which, as the California Superior Court observed, "does not expressly mention the weight of the evidence, only its sufficiency," Pet. App. 63a—but on particularities of California law, which California contends should be decisive in interpreting the federal constitution. According to California, because its Penal Code creates two types of dismissals, an order must explicitly cite "legally insufficient evidence" as a reason for a dismissal to qualify as an "acquittal" under federal law. As discussed above and in the Petition (at 5-9), that reasoning is flawed. This Court has never required magic words to qualify a dismissal as an acquittal. Indeed, the state "label[]" accompanying a dismissal order "do[es] not control [the] analysis in this context." *McElrath*, 601 U.S. at 96 (quoting *Evans*, 568 U.S. at 322); *see also Martin Linen Supply*, 430 U.S. at 571 (recognizing that "what constitutes an 'acquittal' is not to be controlled by the form of the judge's action").

California provides no meaningful response to Mr. Woodward's argument that the substance of the 1996 dismissal relates to the ultimate question of guilt or innocence, which all parties agree is the ultimate touchstone of an acquittal for double jeopardy purposes. California simply accuses Mr. Woodward of "ignor[ing] the trial court's written explanation" of the minute order dismissing the case. BIO 10. But California is mistaken. Judge Terry's explanation, which the Petition repeatedly quotes, underscores that his order "relate[d] to the ultimate question of guilt or innocence." *See McElrath*, 601 U.S. at 94. The written order recognized that "the prosecution ha[d] been given two opportunities to convict," and both trials "resulted in hung juries, with the majority of jurors voting for acquittal." Pet. App. 74a. Judge Terry examined the records of both trials, noting that the prosecution "presented no new evidence pointing to the defendant's guilt" in the second trial. *Id.* He highlighted the "300 pieces of evidence [made] available at both trials," the testimony of "30 witnesses," and that the prosecution's theory of motive was "not a credible one." Pet. App. 74a-76a. He then unequivocally concluded that "a jury will never be able to reach a unanimous verdict of guilty," Pet. App. 77a, because "[t]he evidence presented by the prosecution lacks the sufficiency needed to find the defendant guilty," Pet. App. 74a. That conclusion is necessarily a "substantive ruling[]" that bears on "the ultimate question of guilt or innocence." *See Evans*, 568 U.S. at 319.

In sum, the trial court's 1996 dismissal operates as an acquittal under *McElrath* and *Evans*. In holding otherwise, the court of appeal violated Mr.

Woodward's federal constitutional right against double jeopardy.

CONCLUSION

For the foregoing reasons and those set forth in the Petition, the Petition should be granted.

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