No. 24-6510

In the

Supreme Court of the United States

JAMES DENNIS FORD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR FEBRUARY 13, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

Question I: Whether this Court should grant certiorari to review Petitioner's federal constitutional challenge to Florida's conformity clause contained in its state constitution when the issue was not first presented to the Florida Supreme Court, nor was the issue addressed in the court's opinion.

Question II: Whether this Court should grant certiorari to review the Florida Supreme Court's rejection of Petitioner's *Roper*[1] claim that was based on an independent and adequate state time bar, and when the alternative merits decision does not conflict with any decision from this Court or any other federal or state supreme court.

[1] *Roper v. Simmons*, 543 U.S. 551 (2005).

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OPINION BELOW

The decision below of the Florida Supreme Court appears as *Ford v. State*, No. SC2025-0110, 2025 WL 428394 (Fla. Feb. 7, 2025).

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this Court based upon 28 U.S.C. § 1257. Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction. However, Respondent submits that because the issue relating to the first question before this Court was never presented to the state court below, and because the Florida Supreme Court's resolution of the second issue was based on an independent and adequate state-law ground, this Court's jurisdiction fails. Even if this Court has jurisdiction over the federal questions presented in Petitioner's petition, this would be an inappropriate case for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

Article 6 of the Constitution mandates that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . .shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. art. 6.

STATEMENT OF THE CASE AND FACTS

Ford and Gregory Malnory were coworkers at the South Florida Fishing and Sod Farm in Charlotte County, Florida. *See Ford v. State*, 802 So. 2d 1121, 1125-26 (Fla. 2001). On the morning of Sunday, April 6, 1997, Ford made plans to go fishing with Greg and his wife Kimberly at the sod farm. The Malnorys brought their 22-month-old daughter, Maranda, along with them for the fishing trip—and that was the last time the family of three was ever together. *Id.* at 1125.

While on the remote farm, Ford attacked and murdered Greg. Ford first shot Greg in the head from behind with a .22 caliber rifle while Greg was near his family's pickup truck. Greg survived and staggered away from Ford into the middle of a field. Ford followed Greg and "savagely killed him by beating him to death and slitting his throat." *Id.* Ford inflicted at least seven blunt force injuries to Greg's head and face with an object consistent with an axe. Ford slit Greg's throat so deeply that the underlying muscle tissue was exposed, and the slit extended nearly from ear to ear. *Id.* Ford similarly inflicted numerous blunt force injuries to Kim's head, one of which fractured and penetrated her skull. Defensive wounds were found on the back of her arms, indicating that she put up a struggle. Two oval discolorations on the tissues inside her thighs were suggestive of thumb prints and would have been made by Ford while she was still alive. The bathing suit Kim had been wearing was "sliced clean through the crotch as if with a sharp knife." *Id.* Ford's semen was inside Kim and on her shirt. Ford ultimately executed Kim by reloading the same .22 caliber rifle he used to execute her husband, sticking the end of the barrel inside Kim's mouth, and

pulling the trigger. *Id.* at 1125-26.

The Malnorys' bodies were discovered on the farm the next day. Their baby, Maranda, was still at the scene of her parents' murder strapped into her car seat in the family truck. She "had been strapped inside the vehicle for well over 18 hours with the doors wide open, exposed to the elements overnight and for much of the next day." *Id.* at 1126. The child was "dehydrated, flushed with heat, and covered with insect bites," and her mother's blood was on the front and back of her clothing and on her shoe. *Id.* at 1126, 1131.

During the guilt phase of Ford's trial, the State presented the following evidence tying Ford to the murders: Ford was seen with the Malnorys in the area of the crime just before the killings; Ford was seen that evening in a distracted state with blood on his face, hands, and clothes; Ford was seen the next day, Monday, with scratches on his body; and the rifle stock of a .22 caliber, single-shot Remington rifle that belonged to Ford was found in a drainage ditch in the area where Ford's truck ran out of gas on Sunday evening. *Id.* at 1126. In addition, the State presented various forms of DNA evidence, specifically: DNA from human debris found inside a folding knife recovered from Ford's bedroom matched Greg Malnory's DNA type; DNA from a stain on a shoe in Ford's truck matched Kim Malnory's type; DNA from a stain on the seat cover in Ford's truck matched Kim's type; DNA from semen found on the shirt Kim was wearing when murdered matched Ford's type; and DNA from vaginal swabs taken from Kim matched Ford's type. *Id.* In total, "[a]n abundance of physical evidence, including multiple DNA matches and the murder weapons, as well as

eyewitness testimony, provided overwhelming proof that Ford was responsible for the murders and the rape." *Ford v. State,* No. SC2025-0110, 2025 WL 428394, at *1 (Fla. Feb. 7, 2025).

At the end of the guilt phase, the jury found Ford guilty of one count of sexual battery with a firearm, one count of child abuse, and two counts of first-degree murder. *Ford*, 802 So. 2d at 1126. The jury recommended death on each murder count by an 11-to-1 vote, and the trial court followed the jury's recommendations. *Id.* at 1126-27. The Florida Supreme Court affirmed Ford's convictions and death sentences on direct appeal. *Id.* at 1127-36. Ford then filed a petition for writ of certiorari with this Court, which was denied. *See Ford v. Florida*, 535 U.S. 1103 (2002).

In 2003, Ford filed his first state-court motion for postconviction relief under Florida Rule of Criminal Procedure 3.851. The postconviction court denied the motion after an evidentiary hearing, and the Florida Supreme Court affirmed that decision on appeal. *See Ford v. State*, 955 So. 2d 550 (Fla. 2007).

In 2007, Ford filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The district court dismissed the petition as untimely. *See Ford v. Sec'y, Dep't of Corr.*, No. 2:07-cv-333, 2009 WL 3028886 (M.D. Fla. Sept. 17, 2009). After the Eleventh Circuit denied Ford's request for a certificate of appealability, this Court granted certiorari review, vacated the judgment, and remanded the case for further consideration in light of *Holland v. Florida*, 560 U.S. 631 (2010). *See Ford v. McNeil*, 561 U.S. 1002 (2010). On remand, the district court again determined that Ford's federal habeas petition was untimely. *See Ford v. Sec'y, Dep't of Corr.*, No. 2:07-cv-

333, 2012 WL 113523 (M.D. Fla. Jan. 13, 2012). Ford again sought a certificate of appealability from the Eleventh Circuit, which was denied. *See Ford v. Sec'y, Dep't of Corr.*, No. 09-14820, slip op. (11th Cir. Mar. 14, 2012).

In 2013 and 2017, Ford filed his first and second successive motions for postconviction relief in state court. Both motions were summarily denied by the postconviction court, and the denials were affirmed on appeal by the Florida Supreme Court. *See Ford v. State*, 168 So. 3d 224 (Fla. 2015), *cert. denied*, *Ford v. Florida*, 577 U.S. 1010 (2015); *Ford v. State*, 237 So. 3d 904 (Fla. 2018).

In 2025, after Governor DeSantis signed Ford's death warrant, Ford filed a third successive motion for postconviction relief, raising two claims: (1) his death sentences are unconstitutional under *Roper* and the Eighth and Fourteenth Amendments because he has a mental and developmental age below 18 years old; and (2) his execution would violate the Fifth, Sixth, Eighth, and Fourteenth Amendments because the jury's death recommendations at his penalty phase were not unanimous. The postconviction court summarily denied relief, finding that both of Ford's claims were untimely, procedurally barred, and meritless.

Regarding Ford's first claim, the postconviction court initially observed that Ford—who was 36 years old when he committed the murders for which he was sentenced to death—was not claiming that he was entitled to relief under *Roper* itself, which applies only to persons who committed their capital crimes when they were under 18 years old. Instead, Ford was arguing that the "class of offenders subject to the death penalty should be narrowed again to preclude the execution of individuals

with a mental and developmental age less than 18." Ford further argued that his claim did not become ripe until the signing of his death warrant, which had prompted him to obtain a new expert evaluation that occurred on January 16, 2025. The postconviction court disagreed and ruled that Ford's claim was untimely. It pointed out that one of the defense's experts, Dr. Mosman, had testified during Ford's penalty phase that Ford has a mental and developmental age of 14 years old. "In fact, the trial court agreed and explicitly found in its Sentencing Order rendered June 3, 1999, that it was proven that [Ford]'s developmental age was fourteen (14) years old." Consequently, the postconviction court found that Ford had presented no new facts that could be considered "newly discovered" evidence.

Ford appealed to the Florida Supreme Court, raising his *Roper*-extension claim, his recycled *Hurst*[2] claim, and a new claim that Florida Rule of Criminal Procedure 3.851(d)(2), which limits the circumstances in which successive postconviction motions can be filed, is unconstitutional when a death warrant has been signed.

The Florida Supreme Court affirmed the postconviction court's summary denial of relief. *Ford v. State*, No. SC2025-0110, 2025 WL 428394 (Fla. Feb. 7, 2025). The court specifically found that Ford's *Roper*-extension claim was properly denied as untimely because it was filed "nearly twenty-three years after his convictions and sentences became final. And even assuming that Ford could not have raised the legal basis of this claim until *Roper* was issued in 2005, his claim is still nearly two decades

[2] *Hurst v. State*, 202 So. 3d 40 (Fla. 2016).

too late." *Id.* The court further found that "because Ford was thirty-six at the time of the murders, it is impossible for him to demonstrate that he falls within the ages of exemption, rendering his claim facially insufficient and therefore properly summarily denied." *Id.* Lastly, the court determined that the claim lacked merit because the court does not have authority to extend *Roper* beyond this Court's Eighth Amendment interpretation when Florida's Constitution has a conformity clause requiring Florida courts to construe Florida's prohibition against cruel and unusual punishment in conformity with this Court's decisions interpreting the Eighth Amendment. Therefore, the Florida Supreme Court cannot interpret Florida's prohibition against cruel and unusual punishment to provide protection that this Court has decided is not afforded under the Eighth Amendment. *Id.*

Ford now seeks this Court's certiorari review as well as a stay of his execution. Ford raises a new claim challenging the constitutionality of Florida's conformity clause and he challenges the Florida Supreme Court's rejection of his *Roper* claim.

REASONS FOR DENYING THE PETITION

I. Petitioner's Federal Constitutional Challenge to Florida's Conformity Clause Within the State's Constitution Was Not Presented Below and Does Not Warrant This Court's Review.

Ford's first question presented to this Court involves whether Florida's conformity clause in its constitution—requiring its interpretation of cruel and unusual punishment to conform to this Court's Eighth Amendment jurisprudence—is a violation of Ford's rights under the Eighth and Fourteenth Amendments. Ford never presented this claim below. Instead, Ford presented a *Roper* claim. The State cited Florida's conformity clause in its answer brief, and Ford's reply brief

acknowledged Florida Supreme Court precedent that relied on the conformity clause to decline to extend the scope of *Roper*. The brief then argued that the court "would not violate Florida's conformity clause by extending the scope of *Roper*[.]" Reply Brief at 11. Ford *never* argued that reliance on the conformity clause was unconstitutional.

A. This Issue Has Not Been Presented in State Court.

This Court's jurisdiction to review a case from a state court of last resort is premised on the state court *deciding* an important federal question. Sup. Ct. R. 10(b)(c). If a federal question has not first been presented to a state court, this Court has "no power to consider it." *Street v. New York*, 394 U.S. 576, 581–82 (1969); *see also Hill v. California,* 401 U.S. 797, 805 (1971) (finding an issue was not properly before this Court when it was never raised, briefed, or argued in the state appellate court).

Here, Ford never raised a constitutional challenge to Florida's conformity clause, and the Florida Supreme Court did not consider or resolve the issue. This Court has recognized that when "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street*, 394 U.S. at 582.

Ford's petition merely references the Florida Supreme Court's reliance on the conformity clause in rejecting his *Roper* claim. Ford is silent on the Florida Supreme Court not addressing his constitutional challenge to the use of the state's conformity clause. Indeed, Ford has made no effort to show that *this* federal issue was properly

raised, nor does Ford show that the Florida Supreme Court's failure to consider it was for a reason other than lack of presentation. Ford failed to raise this federal question in state court challenging Florida's conformity clause. This Court therefore lacks jurisdiction to review the question, and certiorari must be denied.

B. This Case is a Poor Vehicle to Decide the Question Presented.

In addition to this issue not being passed upon by the Florida Supreme Court, it likewise involves no conflict. Sup. Ct. R. 10(b). Because the Florida Supreme Court did not decide this issue, it certainly does not conflict with the decision of another state court of last resort, United States court of appeals, or this Court.

It is this Court's general practice to wait until an issue has sufficiently developed with conflicting opinions before granting certiorari. *See California v. Carney*, 471 U.S. 386, 400 & n.11 (1985) (Stevens, J., dissenting). That way, this Court has the benefit of deep analysis on both sides of the issue and can bring its best, most-informed judgment to bear on the constitutional question. *See id.* at 400 ("To identify rules that will endure, we must rely on the state and lower federal courts to debate and evaluate the different approaches to difficult and unresolved questions of constitutional law."). Ford has not identified any conflict or opinion supporting his position, and the Florida Supreme Court did not engage in analysis of this issue. This Court should not depart from its normal practice to review this issue now without the benefit of any conflict or lower-court analysis, particularly on the eve of an execution.

In addition, Ford fails to show how the Florida Supreme Court's reliance on the state's conformity clause violates his federal constitutional rights. Nothing in the

Eighth Amendment forces state courts to expand this Court's Eighth Amendment jurisprudence into areas where this Court has not. Ford does not establish how the state court's adoption of this Court's Eighth Amendment jurisprudence violates his rights in any way.

What is more, lower courts are required to follow this Court's precedents. The United States Constitution mandates that the "the Laws of the United State . . . shall be the supreme Law of the Land" that judges in every state are bound by. *See* U.S. Const. art. 6. Likewise, this Court has long acknowledged that lower courts are bound to adhere to its precedent. *See, e.g., Hohn v. United States*, 524 U.S. 236, 252–53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."); *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) ("[I]t is this Court's prerogative alone to overrule one of its precedents."); *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983) ("Needless to say, only this Court may overrule one of its precedents."); *see also Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[U]nless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts.").

It is absurd to suggest that any lower court bound to this Court's interpretation of the Eighth Amendment could overrule *Roper* and extend the age of death-eligibility. It simply cannot violate the Eighth Amendment to refuse to expand this Court's Eighth Amendment exemption-from-execution category outlined in *Roper*. This question is altogether not worthy of this Court's attention.

II. Petitioner's *Roper*-Extension Claim Does Not Warrant Review.

Petitioner next seeks this Court's review of the Florida Supreme Court's denial of a *Roper* claim that was deemed untimely and meritless. The Florida Supreme Court specifically affirmed the postconviction court's summary denial of Petitioner's *Roper* claim that was raised in his third successive motion for postconviction relief filed after Governor DeSantis signed a warrant for Petitioner's execution. Petitioner urges this Court to review his case because he "had a mental and developmental age of no more than fourteen years old at the time of the homicides for which he was convicted and sentenced to death." Petition at 6. But this was known by Ford at the time of his trial in 1999. *See Ford*, 802 So. 2d at 1135 (affirming the trial court's determination that Ford's learning disability and developmental age of fourteen were not mitigating under the facts of the case given "extensive testimony" showing that Ford functions well as a mature adult). Ford's failure to raise this claim until 2025 was dilatory and properly deemed untimely by the postconviction court as well as the Florida Supreme Court.

A. This Court Lacks Jurisdiction.

This Court lacks jurisdiction because an adequate and independent basis grounded in Florida state procedural law supports the Florida Supreme Court's resolution of Petitioner's *Roper* claim. When both state and federal questions are involved in a state court proceeding, this Court has no jurisdiction to review the case if the state court judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the court's decision. *Foster*

v. Chatman, 578 U.S. 488, 497 (2016). This "independent and adequate state ground" rule stems from the fundamental principle that the Court lacks jurisdiction to review matters of state law. *See Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945). This Court has explained that "[o]ur only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions" or enter advisory opinions. *Id.* "[I]f the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Id.* If a state court's decision is based on separate state law, this Court "of course, will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010). This Court should not review the Florida Supreme Court's decision when Ford's claim was deemed untimely under state law.

Florida has strict time limitations for the filing of successive postconviction motions. In order to be considered timely filed, one of the following circumstances must exist:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2). "It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Mungin v. State*, 320 So. 3d 624 (Fla.

2020). Ford failed to allege and establish that his *Roper* claim fell under any of the enumerated categories above that would render his successive motion timely.

In finding Ford's claim untimely, the Florida Supreme Court explained that the claim was filed "nearly twenty-three years after his convictions and sentences became final. And even assuming that Ford could not have raised the legal basis of this claim until *Roper* was issued in 2005, his claim is still nearly two decades too late." *Ford*, 2025 WL 428394, at *3. Thus, the state court's ruling involves a state law determination on the issue of a time bar.

The Florida Supreme Court's determination that the claim was time barred is based on independent and adequate state grounds that is independent of any federal question. *See, e.g., Walker v. Martin*, 562 U.S. 307, 316–17 (2011) (finding California's time bar qualified as an adequate state procedural ground); *Sochor v. Florida*, 504 U.S. 527, 534 (1992) (holding this Court lacked jurisdiction to decide a federal claim that the Florida Supreme Court decided both on the merits and on preservation grounds); *Wainwright v. Sykes*, 433 U.S. 72, 86–87 (1977) (concluding that Florida procedure regarding preservation amounted to an independent and adequate state procedural ground which prevented review); *see also Johnson v. Lee*, 578 U.S. 605, 609 (2016) (acknowledging that state postconviction court is generally not used to litigate claims that were or could have been raised at trial or direct appeal, and finding that the procedural bar "qualifies as adequate to bar federal habeas review"). Federal courts must not lightly "disregard state procedural rules that are substantially similar to those to which we give full force in our own courts." *Lee*, 578

U.S. at 609.

This Court has long recognized that where a state court judgment rests on non-federal grounds, where the non-federal grounds are an adequate basis for the ruling independent of the federal grounds, "our jurisdiction fails." *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Coleman v. Thompson*, 501 U.S. 722, 729 (1991); *Michigan v. Long*, 463 U.S. 1032, 1038, 1041-42 (1983). Given that the Florida Supreme Court's denial of this claim rests on an adequate and independent state law ground, this Court lacks jurisdiction, and the petition for writ of certiorari should be denied.

B. The Case Presents No Conflict.

There is no conflict between this Court's Eighth Amendment jurisprudence and the Florida Supreme Court's decision in this case. There certainly is no conflict with *Roper*. Nor is there any conflict between the Florida Supreme Court's decision and the decision of another state supreme court or a United States appellate court.

As this Court has observed, a principal purpose for certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991); *see also* Sup. Ct. R. 10(b) (listing conflict among federal appellate courts and state supreme courts as a consideration in the decision to grant review). Issues that have not divided the courts or are not important questions of federal law do not merit this Court's attention. *Rockford Life Ins. Co. v. Ill. Dep't of Revenue*, 482 U.S. 182, 184 n.3 (1987). In the absence of such conflict, certiorari is rarely warranted.

Ford cites to no case—federal or state—expanding *Roper* to an individual who

was eighteen or older at the time of the capital offense. No compelling reasons exist in this case to warrant this Court's exercise of review.

C. The Florida Supreme Court's Resolution Of This Claim Was Correct.

Ford was thirty-six when he committed the brutal murders of Kimberly and Greg Malnory. He insists that he is exempt from execution under *Roper*. In *Roper*, this Court drew a categorical line at the age of 18 and held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. *Roper v. Simmons*, 543 U.S. 551, 574-78 (2005). In its alternative ruling addressing the merits of Ford's claim, the Florida Supreme Court held that "because Ford was thirty-six at the time of the murders, it is impossible for him to demonstrate that he falls within the ages of exemption, rendering his claim facially insufficient and therefore properly summarily denied." *Ford*, 2025 WL 428394, at *4.

This Court has consistently denied certiorari review of similar claims in which Florida death row inmates who committed murder as an adult unsuccessfully sought exemption from execution under *Roper*. *See, e.g.*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023); *Zack v. Florida*, 144 S. Ct. 274 (2023); *Sliney v. Florida*, 144 S. Ct. 501 (2023); *Branch v. Florida*, 583 U.S. 1153 (2018). Ford has failed to point to any opinion from this Court in which the line in *Roper* was expanded to other circumstances, such as when an adult offender has a lower developmental age. Indeed, this Court recognized in *Roper* that "[d]rawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish

juveniles from adults do not disappear when an individual turns 18." *Id.* at 574. Yet the line was drawn at 18. Ford was not under the age of eighteen when he committed the murders. *Roper* does not apply to him, and the Florida Supreme Court correctly determined as much.

Ford's contention that this Court should follow the latest expert trends in determining Eighth Amendment law should be rejected. Any analysis under the "evolving standards of decency" should be limited to consideration of statutes enacted by elected legislatures rather than the views of unelected and unrepresentative experts. *Miller v. Alabama*, 567 U.S. 460, 510-12 (2012) (Alito, J., dissenting) (observing that the "evolving standards of decency" test was "problematic from the start" but, at least, when it is based on the positions taken by state legislatures, it may be characterized as a "national consensus"). It is further worth pointing out that Ford's support for this point relies exclusively on intellectual disability cases, not cases, like this one, in which adult offenders who are not intellectually disabled claim that *Roper* should be extended to them. Ford has not pointed to any authority suggesting "society's acknowledgement" that capital defendants who committed murder as an adult, but who have a lower developmental age, must be exempt from execution.

Other indicia of societal values—some of which this Court relied on in *Roper*—indicate eighteen is the appropriate age for death eligibility. Eighteen is the age when an individual may voluntarily join the military and when males must register for the draft. 10 U.S.C. § 505(a); 50 U.S.C. § 3803. It is the age of voting eligibility, the age

one may be summoned to sit on a jury and decide whether to impose death on a defendant, and the age one acquires the unrestricted right to marry. In some jurisdictions, women of eighteen (and in some circumstances younger) are deemed sufficiently mature to decide to terminate an unborn child. Since eighteen is the age at which our society deems an adult capable of making these decisions, it is the highest age at which death-eligibility for the much simpler decision *not* to kill someone should rest. *See Roper*, 543 U.S. at 619 (Scalia, J., dissenting with Rehnquist, C.J., and Thomas., J.) ("Serving on a jury or entering into marriage also involve decisions far more sophisticated than the simple decision not to take another's life.").

In sum, not much has changed since *Roper*. This Court should not consider Ford's last-ditch effort to delay his execution. This is especially true given that the vehicle in which this issue reaches this Court is unworkable—Ford failed to raise his challenge to Florida's conformity clause below, and the Florida Supreme Court had an independent and adequate basis to reject Ford's *Roper* claim based on it being untimely under state law. For all these reasons, this Court should deny certiorari review.

CONCLUSION

Ford has advanced no compelling reason for this Court to grant his petition for writ of certiorari. To the contrary, this Court is without jurisdiction where the conformity clause challenge was neither presented nor passed upon below, and the *Roper* issue was deemed untimely based on an independent and adequate separate

state law ground. This case is an exceptionally poor vehicle for this Court's review. Accordingly, Respondent respectfully requests that this Honorable Court deny the petition for a writ of certiorari.

Respectfully submitted,

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