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IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA
CASE NO. SC16-547
Lower Tribunal No. 492013CF000612XXXAXX

LARRY DARNELL PERRY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____/

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF BY THE AMERICAN CIVIL LIBERTIES UNION CAPITAL PUNISHMENT PROJECT AND AMERICAN CIVIL LIBERTIES UNION OF FLORIDA IN SUPPORT OF PETITIONER

The American Civil Liberties Union Capital Punishment Project (ACLU-CPP) and the American Civil Liberties Union of Florida (ACLU-FL), as amici curiae, respectfully move for leave to file the accompanying brief in support of Petitioner Larry Darnell Perry, whose oral argument is scheduled for June 7, 2016.

The ACLU is a nationwide nonpartisan organization of nearly 500,000 members dedicated to protecting the fundamental liberties and basic civil rights guaranteed by the state and federal Constitutions, while the ACLU-CPP focuses on upholding those rights in the context of death penalty cases. The ACLU-FL is the

ACLU's state affiliate and has approximately 15,000 members in the State of Florida equally dedicated to the principles of liberty and equality embodied in the U. S. Constitution and the Florida Constitution.

Both the ACLU-CPP and the ACLU-FL have long been committed to protecting the constitutional rights of persons facing the death penalty. The ACLU-CPP has litigated issues of constitutional significance to capital punishment in numerous state courts. Both have filed amicus curiae briefs in the U.S. Supreme Court in recent death penalty cases, as well as in this Court. *See, e.g.*, *Hurst v. Florida*, 136 S. Ct. 2016 (2016); *Holland v. Florida*, 560 U.S. 631 (2010); *Lawrence v. Florida*, 549 U.S. 327 (2007); *Lambrix v. Jones*, No. 16-56 (Fla. filed Jan. 21, 2016). Jointly, both currently represent a Florida death row prisoner on direct appeal.

The proposed amicus curiae brief would address a question this Court has asked the parties to brief in this case — "whether the provisions within" the new capital sentencing statute "requiring that 'at least 10 jurors determine that the defendant should be sentenced to death' is unconstitutional under the Florida and Untied States Constitutions." Although other amicus curae briefs have been filed in this action, none address the significant history in Florida, nationally, and at common law,bearing on whether the Florida Constitution (rather than the U.S.

Constitution) bars the non-unanimous jury sentencing provided for in the new statute. Further, the State has addressed the history in an incomplete (and potentially misleading) fashion that must be corrected, and this brief would fill that gap. The brief outlines the Florida statutes, legal decisions, and historical precedent demonstrating that the jury right at the time the original Florida Constitution took effect derived directly from British common law, which required unanimous consent of the jury to sustain a a death sentence.

Amici recognize this motion and proposed amicus brief are out of time. See Fla. R. App. Proc. 9.370. Regrettably, prior personal and professional obligations have kept Amici from submitting this filing earlier. Amici apologize and ask the Court to accept this late filing owing to the overriding importance of this issue for every future person facing capital sentencing in this State and to the important arguments that would be missing but for the filing of this amicus curiae brief.

Counsel for Petitioner consents to the filing of the accompanying brief, but counsel for respondent does not.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a true and correct copy of the foregoing has been furnished to Carol Marie Dittmar, counsel for respondent, and to counsel for Petitioner Perry, through the Florida Electronic Portal, this the 3rd day of June, 2016.

/s/ N. ADAM TEBRUGGE