

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2025-1915

Lower Tribunal Case Number 1987-CF-000856

FRANK ATHEN WALLS

Appellant

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE FIRST
JUDICIAL CIRCUIT, IN AND FOR OKALOOSA COUNTY, STATE
OF FLORIDA**

INITIAL BRIEF OF APPELLANT
**EXECUTION SCHEDULED FOR DECEMBER 18, 2025 AT 6:00
PM**

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REQUEST FOR ORAL ARGUMENT

Undersigned counsel for the Appellant respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case, the resolution of the issues presented will determine whether Frank Walls will live or die, and a complete understanding of the complex factual, legal, and procedural history of this case is critical to the proper disposition of this appeal.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court's final order denying a successive motion for postconviction relief from a judgment and sentence of death. This court has plenary jurisdiction over death penalty cases. Fla. Const. Art. V., §_3(b)(1); *Orange County v. Williams*, 702 So. 2d 1245 (Fla. 1997).

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STATEMENT OF THE CASE

Frank Athen Walls was convicted of two counts of capital murder and sentenced to death on one count. This Court reversed the judgement due to State-sponsored “illegal subterfuge” in eliciting incriminating information from Mr. Walls, which tainted his pre-trial competency hearing. *Walls v. State*, 580 So. 2d 131, 133 (Fla. 1991). It ordered that “any further psychiatric or psychological evaluations... shall not rely to any degree directly or indirectly, on the information obtained [from the subterfuge].” *Id.* at 135. On retrial, Mr. Walls was again convicted and sentenced to death, and this Court affirmed. *Walls v. State*, 641 So. 2d. 381, 391 (Fla. 1994).

After *Atkins v. Virginia*, 536 U.S. 304 (2002), Mr. Walls filed an intellectual disability (ID) claim in his initial postconviction proceedings, which this Court denied because he did not present a measured IQ score below 70, as required by the then-existing precedent. See *Walls v. State*, 3 So.2d 1248 (Fla. 2008)(citing *Cherry v. State*, 959 So.2d 702 (Fla. 2007)). Mr. Walls renewed his ID claim after *Hall v. Florida*, 572 U.S. 701, 704 (2014) (holding *Cherry*’s strict cut-off of 70 unconstitutional). This Court ordered the circuit court to hold an evidentiary hearing and adjudicate the ID claim on the

merits consistent with *Hall*. *Walls v. State*, 213 So. 3d 340, 347 (Fla. 2016). This Court held that *Hall* applies retroactively because *Hall* limited “the power to impose a certain sentence – the sentence of death for individuals within a broader range of IQ scores than before.” *Id.* at 346. The State did not seek certiorari review of this Court’s *Hall* retroactivity ruling. See 2017 WL 2665654 (petition raising other issues); *Florida v. Walls*, 138 S. Ct. 165 (2017) (denying certiorari).

On remand in the circuit court, Mr. Walls unsuccessfully moved for a jury determination of his ID claim, R. 546-48¹; for a finding that Florida’s clear and convincing standard of proof for ID claims is unconstitutional, R. 6274-75. Following this Court’s decision in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020), which overruled its 2016 holding in Mr. Walls’ case that *Hall* is retroactive, the State moved for a summary denial of Mr. Walls’ ID claim on non-retroactivity grounds. R. 3560-76. The circuit court rejected the State’s motion, reasoning that despite the *Phillips* holding as to *Hall* generally, this Court’s final judgement and mandate prohibited using

¹ References to the record on appeal for Mr. Walls’ ID successive are designated as “R.#” for court filings and “T.#” for transcripts of proceedings. References to the record on appeal for the death warrant litigation will be designated as “W.#”.

the unconstitutional pre-*Hall* cutoff against Mr. Walls on remand. R. 3784-89 (citing *State v. Okafor*, 306 So. 3d 930 (Fla. 2020)).

The circuit court held an evidentiary hearing on the matter in June and July 2021. After the hearing, the circuit court denied relief on two grounds. Relying on this Court's intervening decision in *Nixon v. State*, 327 So. 3d 780 (Fla. 2021), the circuit court ruled that Mr. Walls' ID claim was barred on non-retroactivity grounds, despite this Court's 2017 mandate to the contrary and the circuit court's own ruling in February 2021 that the 2017 mandate must be followed. R. 6277. On the merits, the court ruled that Mr. Walls could not prove by clear and convincing evidence prongs one and three. R. 6276. The circuit court denied Mr. Walls' timely motion for rehearing. R. 6324-26. This Court affirmed Mr. Walls' denial of his ID claim on the basis that *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020) was the controlling law and *Hall* was not retroactive. See *Walls v. State*, 361 So. 3d 231 (Fla. 2023). This Court did not rule on the merits of Mr. Walls' intellectual disability claim.

Governor DeSantis signed a death warrant for the execution of Mr. Walls on November 18, 2025, setting the execution of Mr. Walls for December 18, 2025, at 6:00 P.M. Mr. Walls' successive 3.851

under warrant was timely filed on November 25, 2025. In his successive, Mr. Walls raised that (1) his death sentence is unconstitutional due to intellectual disability; (2) he is categorically prohibited to be executed by the Eighth Amendment under *Roper*; and (3) the 37-year delay caused by the State's multiple breaches of Mr. Walls' constitutional rights violates the Eighth Amendment because it strips the scheduled execution of any penological justifications for the death penalty. The State responded to Mr. Walls' successive on November 26, 2025. The trial court held a *Huff* hearing and denied an evidentiary hearing on December 1, 2025. An order denying Mr. Walls' successive 3.851 motion was entered on December 5, 2025. This appeal timely follows.

Arguments:

CLAIM ONE

Due to his intellectual disability, Mr. Walls' death sentence is unconstitutional. Without court intervention, he will be executed in violation of the United States Constitution

Frank Walls, an intellectually disabled man, will be executed in violation of the United States Constitution. This Court has never reviewed Mr. Walls' intellectual disability claim on the merits in the

post-*Hall*² era, despite having two qualifying scores, 72 and 74, obtained 15 years apart and adaptive deficits in thirteen medically recognized categories³.

In 2014, the United States Supreme Court expanded the class of intellectual disabled persons who may be executed to include persons with IQ scores between 70 and 75. *Hall v. Florida*, 572 U.S. 701, 714-23 (2014) (holding that “objective indicia of society’s standards in the context of the Eighth Amendment” showed a “consensus” against executing intellectually disabled persons who fail the “strict cutoff” in *Cherry*)(quoting *Roper v. Simmons*, 543 U.S. 551, 563 (2005)). The United States Supreme Court in *Hall* ruled that Florida’s strict cut-off of a 70 or below IQ in determining whether an individual is intellectually disabled creates an “unacceptable risk that persons with intellectual disability will be executed and thus is unconstitutional. *Hall v. Florida*, 572 U.S. 701, 704 (2014). Because of Mr. Walls’ intellectual disability, he belongs to a class of

² *Hall v. Florida*, 572 U.S. 701 (2014).

³ These categories include fine motor skills, social interaction, language comprehension, language expression, eating and meal preparation, toileting, dressing, personal self-care, domestic skills, time and punctuality, money and value, work skills, and home/community orientation. PCR-2.155

individuals constitutionally prohibited from execution under the Eighth Amendment. *See Atkins v. Virginia*, 536 U.S. 304 (2002). Mr. Walls had diligently raised an *Atkins* claim at every available juncture. Yet, a litany of wrongly-decided state court precedents and convoluted procedural hurdles have thus far prevented a merits-determination on whether Mr. Walls is categorically prohibited from being executed.

A. Hall applied the Atkins Definition of Intellectual Disability

The question before the United States Supreme Court in *Hall* was unambiguously stated in the opinion: “The question this case presents is how intellectual disability must be defined in order to implement...this holding of *Atkins*.” *Hall*, 572 U.S. at 709.” “If the States were to have complete autonomy to define intellectual disability as they wished, *The Court’s decisions in Atkins could become a nullity, and the Eighth Amendment’s protection of human dignity would not become a reality.*” *Id.* 720-21 (emphasis added). It has been acknowledged repeatedly that *Atkins* “did not give States unfettered discretion to *define the full scope of the constitutional protection.*” *Id.* at 719 (emphasis added). In Mr. Walls’ case, the fears

expressed by the *Atkins* and *Hall* courts will become a certain reality in Florida, as this State is set to execute an intellectually disabled man.

The ruling in *Hall* is retroactive because it qualified and expanded the class of persons exempt from execution. *Atkins*, as previously understood in Florida Courts, only covered a sub-group among the intellectually disabled. To qualify for protection, a person must be “so impaired as to fall within the range of mentally retarded offenders about whom there is a national consensus.” *Atkins*, 536 U.S. at 317. This key sentence meant that less-impaired persons might not be protected if their impairment falls short of the “national consensus,” even if they are also in the “range of mentally retarded offenders.” *Id.* In *Hall*, the Supreme Court revisited the consensus and refined its definition of who is “so impaired...within the range of mentally retarded offenders,” *Hall*, 572 U.S. at 719, to include a broader set of IQ scores, i.e. those scores within the +/- 5 standard error of measurement (SEM). The *Hall* court went further and explained that States, including Florida, needed to take a more holistic approach to the determination of intellectual disability in a defendant. “Intellectual disability is a condition, not a number.” *Hall*

at 723, citing American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013) or DSM-5, at 37. “It is not sound to view a single factor as dispositive of a conjunctive and interrelated assessment.” *Id.*

Hall recognizes that intellectual disability “is a condition, not a number.” This Court, at one point in time, appeared to understand the ruling of *Hall*, “[i]n applying *Hall* to Florida, we have recognized the Supreme Court’s mandate that all three prongs of the intellectual disability test be considered in tandem and that the conjunctive and interrelated nature of the test requires *no single factor to be dispositive.*” *Walls v. State*, 213 So.3d 340, 346-7 (Fla. 2016) (emphasis added). Thus, an intellectual disability claim may not be legally insufficient or positively refuted by the record even if the defendant's IQ scores are higher than 70. This further ruled that although Mr. Walls was previously able to present evidence of his intellectual disability, “he did not receive the type of holistic review” that he was entitled to. *Id.* at 347.

In *Hall*, the Supreme Court revisited the consensus and refined its definition of who is “so impaired...within the range of mentally retarded offenders,” 572 U.S. at 719, to include a broader set of IQ

scores. As required by Eighth Amendment precedent, the Court surveyed “the legislative policies of various States, and the holdings of state courts” for the existence of “consensus” as to IQ score minimums. *Id.* at 709. The Court explained the national surveying was doctrinally necessary because “[t]his calculation provides ‘objective indicia of society’s standards in the context of the Eighth Amendment.’” *Id.* at 714. (quoting *Roper v. Simmons*, 543 U.S. 551, 563 (2005)). The Court concluded that both the “aggregate number” of state laws, and the “[c]onsistency of the direction of change” informed its “determination of consensus” that imposing a cutoff at 70 was cruel and unusual. *Id.* at 717. The Court thus concluded that “our society does not regard this strict cutoff as proper or humane.” *Id.* at 718. Applying its “independent judgement,” *id.* at 721-23, the Court affirmed the consensus and held Florida’s cutoff unconstitutional.

The above proves that *Hall* was a substantive decision, i.e., a decision as to the scope of the class of defendants who are not death-eligible due to “society’s standards” of decency. *Hall* at 714; *Jones v. Mississippi*, 141 S. Ct. 1307, 1315 (2021) (noting this method as

being reserved for establishing Eighth Amendment eligibility criteria) (citing *Graham*, 560 U.S. at 61, and *Roper*, 543 U.S. at 563).

If there is any doubt about the substantive nature of the *Hall* rule, this Court can look to the fact that the Supreme Court itself, implicitly, suggested that it warrants retroactive application. Mr. Hall's sentence was already long final when the Supreme Court reviewed it following a successive postconviction proceeding. This means that before the Court could grant him relief it had to be sure, "as a threshold matter," that doing so would not create a new nonretroactive rule. See *Penry v. Lynaugh*, 492 U.S. 302, 313 (1989).

There is more than just granting relief in *Hall*. The Supreme Court granted relief in *Moore v. Texas*, 137 S. Ct. 1039 (2017), confirming that *Hall* is retroactive. The defendant in *Moore* was on collateral review with a sentence final long before *Hall*, just as Mr. Walls and Mr. Hall. The Supreme Court reversed *Moore*'s case on collateral review as contrary to *Hall*. *Id.* at 1049 (concluding that the Texas court's conclusion that *Moore*'s IQ scores established that his is not intellectually disabled is irreconcilable with *Hall*"). Additionally, *Moore* cited yet another case where the Supreme Court applied *Hall* to an *Atkins* claim on collateral review. *Id.* at 1049 (noting that in

Brumfield v. Cain, 576 U.S. 305, 316 (2015), the Court “rel[ie]d] on *Hall* to find unreasonable a state court’s conclusion that a score of 75 precluded an intellectual-disability finding.”) For retroactivity purposes, there is no difference between this case and *Hall*, *Moore*, and *Brumfield* - they are all cases with convictions that were final well before *Hall*. The *Hall* rule must apply to Mr. Walls too. See *Collins v. Youngblood*, 497 U.S. 37, 40-41 (1990) (“[O]nce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situation.”).

As it already has in Mr. Walls’ case, this Court should hold that *Hall* applies to him and all other individuals regardless of the date of their conviction and sentence. This Court, choosing to accept United States Supreme Court precedent, should follow the dictates of *Hall*, *Moore*, and *Brumfield* and find that Mr. Walls is intellectually disabled and barred from execution.

B. Intellectual Disability Should Not Be Subject to Procedural Bars

“The Eighth Amendment prohibits certain punishments as a categorical matter.” *Hall v. Florida*, 572 U.S. 701, 708 (2014).

Categorical bans exist to protect both the individual as well as the interests of society. See *e.g. Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (finding Eighth Amendment based categorical exemption not only protects the death exempt individual but also protects “the dignity of society itself from the barbarity of exacting mindless vengeance[.]”).

The United States Supreme Court has never suggested that the Eighth Amendment prohibition on executing an intellectually disabled person is subject to any sort of waiver or procedural bar or default. Just as it would be illegal to execute a person who was convicted of committing a murder as a fifteen-year-old and who failed to raise an Eighth Amendment challenge at the appropriate time, see *Roper*, 543 U.S. at 568-69, or to execute a person who was convicted of rape but not murder and failed to raise a challenge at the appropriate time, see *Kennedy v. Louisiana*, 554 U.S. 407 (2008), so too would it be illegal to execute an intellectually disabled person who failed to raise his claim at the appropriate procedural time. See, *e.g.*, *State ex re. Clayton v. Griffith*, 457 S.W.3d 735, 757 (Mo. 2015) (Sith, J., dissenting) (“[I]f [petitioner] is intellectually disabled, then the Eighth Amendment makes him ineligible for execution...[I]f a 14-

year-old had failed to raise his age at trial or in post-trial proceedings then would [it] be permissible to executed him for a crime he committed while he was a minor? Of course not; his age would make him ineligible for execution. So too, here, if [petitioner] is intellectually disabled, then he is ineligible for execution”). Notwithstanding any waiver or provision or Florida law, the Eighth Amendment required that persons “facing the most severe sanction...have a fair opportunity to show that the Constitution prohibits their execution.” *Hall*, 572 U.S at 724; *see also Walls v. State*, 213 So. 3d 340, 348 (Fla. 2016) (Pariente, J., concurring) (“More than fundamental fairness and a clear manifest injustice, the risk of executing a person who is not constitutionally able to be executed trumps any other considerations that this Court looks to when determining if a subsequent decision of the United States Supreme Court should be applied.”). Although the Florida Supreme Court failed to address the trial court’s assessment of the merits of Mr. Walls’ disability in 2023, there is a final opportunity for Mr. Walls’ claim to be heard and fully appealed now. Multiple state courts have considered an *Atkins* claim under warrant, including at least one state supreme court that has held that an intellectual disability claim

only ripens when a warrant is signed. *See Lard v. State*, 595 S.W.3d 355, 357 (Ark. 2020) (explaining that the issue of “whether Lard can be executed due to an intellectual disability” ripens only once an execution date has been set).

Lard’s holding inherently recognizes that any colorable *Atkins* claim must be considered before an execution is carried out because the execution of an intellectually disabled is constitutionally prohibited. *Id.* While not under warrant, the Mississippi Supreme Court similarly rejected the State’s argument that an *Atkins* claim could not be raised on procedural grounds in *Clark v. State*, reasoning that “the Constitution ‘restrict[s]...the State’s power to take the life of *any* intellectual disabled individual” because “[a]pplying the waiver bar to such a claim carries with it the risk that an intellectually disabled individual will be executed[.]” 418 So. 3d 1226, 1230 (Miss. 2025) (internal citations omitted). Despite *Lard’s* holding and the United States Supreme Court never suggesting claims raising intellectual disability be subject to any type of bar, procedural or otherwise, the State, in response to Mr. Walls’ successive motion, argue that Mr. Walls is barred from raising intellectual disability. W250.

Similarly, and as contemplated by *Lard*, because Mr. Walls is intellectually disabled and thus categorically excluded from the class of individuals a State may constitutionally execute, the merits of his claim must be heard at this junction. As the State conceded below, Mr. Walls has not received his full appellate review on this issue. W286. Further, unlike the circuit court's view of this issue, this is not meritless, but a denial of due process. Mr. Walls cannot constitutionally be executed before this court has made a merits determination as to whether he is intellectually disabled.

C. The merits of Mr. Walls' intellectual disability claim

Mr. Walls has demonstrated by clear and convincing evidence that he has significantly subaverage general intellectual function. Mr. Walls has two scores on individualized, standardized intelligence testing instruments – the Weschler Adult Test Revised (“WAIS-R”) and the Weschler Adult Intelligence Test – Third Edition (“WAIS-III”) – that fall in the accepted range of intellectual disability. T350-351. The Full Scale IQ (“FSIQ”) scores that Mr. Walls obtained on these tests – 72 and 74, respectively – meet the legal definition of significantly subaverage general intellectual functioning. *Id.*

There is evidence that these impairments were present from birth, but after Mr. Walls contracted meningitis in his youth, his conceptual skills diminished even further. T639. Dr. Daniel Martell testified at Mr. Walls' evidentiary hearing that the records he reviewed showed that Mr. Walls may have been hypoxic, meaning that he was deprived of oxygen, shortly after birth, experienced high fevers that required hospitalization at the age of 2, and again at the age of 3 or 4. Mr. Walls was referred for "possible mental deficient or possible minimal brain damage" at age 5. T641-42. R4617. Mr. Walls' US Air Force Clinic Spangdahlem records indicate that Mr. Walls was "delayed in learning to walk at one and a half years, that he only began to say words at two and a half years, and that he was late to speak in complete sentences." T641-642. These are some of Mr. Walls' earliest deficits noted. Mr. Walls' father also reported that Mr. Walls was "slow to talk, hesitant, slow to answer, and could not form words." Then, he "spoke more than he understood." T642; R5738.

When Mr. Walls was 8 years old and in the 3rd grade, he was sent for an evaluation as part of an Individualized Education Plan ("IEP"), which included a Wide Range Achievement Test ("WRAT"). T644. At this time, Mr. Walls was functioning at a full grade level

lower in reading, spelling, and math. Mr. Walls was scoring at a second grade level in all of these areas. *Id.* The reading portion of this WRAT was only testing his ability to pronounce words. *Id.*

After Mr. Walls suffered from his first bout of meningitis in 1979, he was tested at age 12. At this time, Mr. Walls was in the sixth grade and was tested using the WRAT. Dr. Martell testified that the records show that Mr. Walls' "spelling was at the third-grade level, his arithmetic was at the fourth-grade level, and his reading was at the fifth-grade level, so was *still* at least a full school year behind in each area." T645 (emphasis added).

After Mr. Walls' second bout of meningitis in 1980, his teacher, Bruce Ravan, who taught the emotionally handicapped class at Max Bruner Junior High, noted "[h]e also struggled with multistep activities and had to be reminded of the next step and stay on task. Frank had to be constantly reminded of daily activities of the class despite how structured it was." T647. Mr. Ravan also noted "Frank was not caught up to the other students. He had a fifth grade brain when he was in seventh grade." T747. R5755. Finally, Ms. Schwenke reported in her 2019 affidavit that while he was her student in the eighth grade, "Frank was well below his peers in the domains of

academics, judgement, problem solving, self-care, like hygiene and grooming.” T652; R5764-68. These deficits continued well into his teens and adulthood.

The State, in response, arguing that Mr. Walls’ claim of intellectual disability is meritless, misconstrues United States Supreme Court’s ruling and plainly ignores evidence to Mr. Walls’ intellectual disability in their efforts to execute Mr. Walls. The State points out three IQ scores that Mr. Walls received as a minor – 88, 102, and 101 – pointing out an average of 97⁴, stating this reflects “normal intelligence.” W256. The State’s argument, solely relying on IQ scores, is a misinterpretation of the Supreme Court’s holding in *Hall*. “Florida’s rule disregards established medical practice in two interrelated ways. It takes an IQ score as final and conclusive evidence of a defendant’s intellectual functioning, when experts in the field would consider other evidence. It also relied on a purportedly scientific measurement of the defendant’s abilities, his IQ score,

⁴ This issue of “whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claims” is currently pending before the United States Supreme Court and is currently set for oral argument on December 10, 2025. *Hamm v. Smith*, Docket No. 24-872.

while refusing to recognize that the score is, on its own terms, imprecise.” *Hall v. Florida*, 572 U.S. 701, 712 (2014). In other words, the State resting wholly on IQ scores and ignoring evidence of Mr. Walls’ issues with adaptive function, does not accord with Supreme Court precedent.

The record is rich with evidence of Mr. Walls’ intellectual disability. Not only does Mr. Walls have qualifying IQ scores, but there is also evidence of his subaverage functioning and issues with adaptive functioning. This Court should not ignore this evidence. Mr. Walls’ Eighth Amendment *Atkins* claim cannot be impeded by state procedural barriers because it concerns categorical exemptions guaranteed by the United States Constitution. The Eighth Amendment categorically prohibits states from executing intellectually disabled persons. *Graham v. Florida*, 560 U.S. 48, 59-61 (2010). An individual who is categorically ineligible for execution because of his intellectual disability must have his *Atkins* claim heard before an execution warrant is carried out.

D. Due to Florida’s recent and inconsistent changes to the law regarding intellectual disability, Florida currently applies the law in an arbitrary and capricious manner.

The bedrock Eighth Amendment principle by which all state rules of law governing capital punishment is judged is that they must distinguish among cases in such a way as to serve the purpose of ensuring that the death penalty is predictably inflicted only on the more morally culpable criminals. *See Godfrey v. Georgia*, 446 U.S. 420, 428 (1980) (“[I]f a State wishes to authorize capital punishment it has a constitutional responsibility to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty.”). A State rule that will frequently and predictably cause a factfinder to determine that an individual who in fact is intellectually disabled is not, manifestly does not meet the command of the Eighth Amendment.

In *Hall v. Florida*, 572 U.S. 701 (2014), the United States Supreme Court found this Court’s interpretation of its intellectual disability statute unconstitutional under *Atkins v. Virginia*, 536 U.S. 304 (2002). In *Walls v. State*, 213 So. 3d 340 (Fla. 2016) (*per curiam*). This Court agreed that its prior statutory interpretation had unconstitutionally restricted *Atkins* claims to a smaller subgroup of individuals than recognized by the medical community and determined *Hall* to be retroactive. As a result, capital defendants who

were denied under the unconstitutional pre-*Hall* framework were entitled to new, “holistic” review of their *Atkins* claims. However, a mere four years later, this Court backpedaled from the *Walls* decision and determined that *Hall* announced a new non-watershed rule for Eighth Amendment purposes and thus was not retroactive. *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020).

Mr. Walls has been pulled dead center into the crosshairs of this Court’s wholly inconsistent interpretations of United States Supreme Court precedent. Mr. Walls has two scores on individualized, standardized intelligence testing instruments which fall in the accepted range of intellectual disability. T350-51. The FSIQ scores that Mr. Walls obtained were 72 and 74, respectively. These scores meet the legal definition of significantly subaverage general intellectual functioning. *Id.* Mr. Walls has always demonstrated deficits in reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience. T412. These deficits are further confirmed by both clinical assessment and individualized, standardized testing. T409,412. Further, Mr. Walls’ deficits in this area were consistently documented prior to the age of 18. Finally, Mr. Walls has demonstrated multiple adaptive deficits

throughout his lifetime, rendering him incapable of functioning in society without the assistance of others.

The conclusion of *Phillips* and *Hall* announced a new non-watershed rule of federal Eighth Amendment law for purposes of *Teague v. Lane*, 489 U.S. 288 (1989) was error. In *Walls*, the court clearly articulated that its rationale stemmed from the analysis conducted in *Falcon v. State*, 162 So. 3d 954 (Fla. 2015) (rejecting the State’s argument that *Miller v. Alabama*, 567 U.S. 460 (2012) only invalidated the statute as applied to a subgroup of people and this constituted a procedural refinement that did not warrant retroactive application). Guided by *Miller*, the *Walls* court concluded that similarly identified and prohibited a penalty (a death sentence) for an exempt class of offenders (individuals with IQ scores ranging above 70). The court recognized that while *Atkins* gives States the discretion to craft the procedures to determine intellectual disability, courts cannot ignore the medical community’s diagnostic framework. Thus, at bare minimum, a court must not “view a single factor as dispositive of the conjunctive and interrelated assessment.” *Hall*, 572 U.S. 701.

In *Miller v. Alabama*, 567 U.S. 460 (2012), the United States Supreme Court explained that its opinion did not categorically bar a

particular penalty for a class of offenders or type of crime, rather it only mandated that the sentencer follow a certain process before imposing a particular penalty. Following this ruling, a Louisiana petitioner filed a motion for postconviction relief asserting *Miller* was substantive law. The Louisiana court disagreed with and held *Miller* was not retroactive. In addressing the retroactive implications of *Miller* in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the United States Supreme Court acknowledged the procedural component of *Miller* as a procedural rule “conflates a procedural requirement necessary to implement a substantive guarantee with a rule that ‘regulate[s] only the manner of determining the defendant’s culpability.’” 136 S. Ct. at 734,35. This Court concluded *Miller* was inherently substantive as it implicated a line of precedent concerned with the proportionality of certain punishments. In light of *Miller* recognizing the grave risks of exposing a defendant to a “punishment that the law cannot impose,” this Court held retroactive application was warranted. *See Id.* at 735. (“There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show he falls within the category of persons whom the law may no longer punish...see, e.g., *Atkins*... Those

procedural requirements do not, of course, transform substantive rules into procedural ones.”) (internal citation omitted).

As illustrated by *Miller* and *Montgomery*, the “[p]rotection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and *goes far beyond the manner of determining a defendant’s sentence.*” *Id.* at 733. (emphasis added). Under this Court’s jurisprudence, it follows that the same logic applies to intellectual disability claims. Given that *Hall*, like *Miller*, contains a procedural component, and is ultimately rooted in the Eighth Amendment’s prohibition against imposing a particular sentence on a class of offenders, the procedures imposed by Florida Courts cannot impede the enforcement of the substantive constitutional rule announced in *Atkins*. Thus, the procedures used to determine intellectual disability must allow for the consideration of other evidence, beyond IQ scores, to enable a court to resolve the question of whether an offender is, or is not, a member of the eligible class. *See e.g., Moore v. Texas*, 137 S. Ct. 1039, 1051 (2017). (“Mild levels of intellectual disability...nevertheless remain intellectual disabilities”).

Hall v. Florida undeniably mandated the expansion of *Atkins* claims under Florida law to reduce the risk of executing an intellectually disabled defendant. While *Atkins* announced a categorical rule forcing the sentencer to consider intellectual disability before determining the permissibility of a death sentence, *Hall* built upon *Atkins* framework and forced Florida to broaden the definition of those who would be considered intellectually disabled individuals. Consequently, retroactivity is necessarily invoked as the Constitution deprives States of the power to impose a death sentence when a rule has altered the definition of those eligible for such sanction. Despite the *Walls* court identifying and understanding this principle, because of the decision in *Phillips*, it was determined that Mr. Walls would not receive the same “benefits” from *Hall v. Florida* as other similarly situated capital defendants on collateral review received.

Claim Two:

Mr. Walls’ execution is categorically prohibited by the Eighth Amendment under *Roper v. Simmons*

The *Roper* Court states that “[c]apital punishment must be limited to those offenders who commit “a narrow category of the most

serious crimes” and whose extreme culpability makes them “most deserving of execution.”” Frank Walls was nineteen years old at the time of the offense and does not fit these criteria to be executed. *Roper*, in accordance with the Eighth Amendment of the United States Constitution’s ban against “cruel and unusual” punishment, created a categorical exemption from the death penalty for offenders who were under the age of eighteen at the time of the offense. The Supreme Court acknowledged that “[w]hile the State has the power to punish, the [Eighth] Amendment stands to reassure that this power be exercised within the limits of civilized standards.” Additionally, the Supreme Court has long held that “punishment for crime should be graduated and proportioned to the offense.” The United States Supreme Court in *Roper* carried the constitutional requirements of *Atkins* in banning juveniles from being condemned to death.

“[P]unishment is justified under one or more of three principal rationales: rehabilitation, deterrence, and retributions.” *Kennedy v. Louisiana*, 554 U.S. 407,420 (2008). The United States Supreme Court applied this principle in *Roper* and *Atkins*, finding that “the execution of juveniles and mentally retarded persons are

punishments violative of the Eighth Amendment because the offender had diminished personal responsibility for the crime. *Id.* There have been advancements in scientific research to show that adolescents between the ages of 18 and 22 are, developmentally, no different from juveniles under the age of 18. These adolescents should also be categorically exempt from the death penalty, just as juveniles are.

The scientific community's uncontroverted findings regarding adolescent brain development were published by the American Association on Intellectual and Developmental Disabilities ("AAIDD") in its updated manual on January 14, 2021. The update clearly stated for the first time that the human brain is not developed until the age of 22. Specifically, the manual stated that adolescents, such as Mr. Walls, who was 19 at the time of the offense, are found to exhibit the exact deficiencies enumerated in *Roper* as the legally cognizable characteristics which define the exempt class. As explained by Dr. Laurence Steinberg, a neuropsychologist who reviewed Mr. Wall's case, the scientific consensus understands that a 19-year-old's brain is not yet fully formed, and is neurobiologically similar to adolescent teenagers. This is particularly true in the areas

of impulsivity and risk taking. See W221-228. Today’s developmental science “does not support the bright-line boundary that is observed in criminal law under which 18-year-olds are categorically deemed to be adults.” *Id.* at 5.

As with *Atkins* claims, Mr. Walls’ Eighth Amendment *Roper* claim cannot be impeded by state procedural barriers because it is a categorical exemption guaranteed by the federal Constitution. And, where the federal Constitution and state law conflict, state law must always yield. See *Reynolds v. Sims*, 377 U.S. 533, 584 (“When there is an unavoidable conflict between the Federal and State [law], the Supremacy Clause of course controls.”).

A. A review of objective indicia of society’s standards of decency shows that American society has almost entirely rejected the imposition of the death penalty on a 19-year-old.

When the Supreme Court of the United States held that the Eighth Amendment forbids the imposition of the death penalty on adolescents in *Roper*, it recognized that the Eighth Amendment prohibits execution for a category of young defendants whose brains are insufficiently developed because such a punishment was too unusual and lacking in penological justification, as evidenced by the

morals and neuroscience of 2005 America. *Roper*, 543 U.S. at 574-74. In the twenty years since *Roper*, our society's standards of decency have evolved to recognize that execution of late adolescents is unconstitutional for the same reasons that execution of individuals under the age of 18 was held unconstitutional in *Roper*.

On a macro level, a review of objective indicia of society's standards of decency demonstrates that an even stronger national consensus against the death penalty as a whole exists today than there was against the juvenile death penalty in 2005. *See Roper*, 543 U.S. at 564 (finding a national consensus against the juvenile death penalty because "30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach"). In total, a majority of American jurisdictions—34—have abolished, enacted a moratorium upon, or abandoned the death penalty as a matter of practice for all criminal defendants, including late adolescents. Twenty-three states and the District of Columbia have outright abolished the death penalty. *See* Death Penalty Information Center, *State by State*, deathpenaltyinfo.org, <https://deathpenaltyinfo.org/state-and->

federal-info/state-by-state (last visited November 6, 2025). Governors of California, Pennsylvania, Oregon, and Ohio have imposed moratoriums. *Id.* Of the jurisdictions with the death penalty, the following have not carried out an execution in decades; Kansas, Nebraska, Nevada, New Hampshire, Pennsylvania, Wyoming, and the U.S. Military. Death Penalty Information Center, *Death Penalty on Hold in Most of the Country*, deathpenaltyinfo.org, <https://deathpenaltyinfo.org/death-penalty-on-hold-in-most-of-the-country> (last visited November 6, 2025). This rejection of the death penalty entirely also encompasses a rejection of the execution of late adolescents.

The minority of American society that still tolerates the death penalty has increasingly rejected the imposition of the death penalty upon and execution of late adolescents. The execution of late adolescents “has become truly unusual, and it is fair to say that a national consensus has developed against it.” *Roper*, 543 U.S. at 563 (citing *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)). Looking again to the practices of our justice system since *Roper*, late adolescents make up a tiny minority of death penalties and executions. Between 2005 and 2009, courts imposed the death penalty on 92 late adolescents;

between 2020 and 2024, this number dropped to a mere five. See Death Penalty Information Center, *Immature Minds in a “Maturing Society”*: *Roper v. Simmons* at 20, 17-21 (2025) available at <https://deathpenaltyinfo.org/research/analysis/reports/in-depth/immature-minds-in-a-maturing-society>. Between 2005 and 2009, late adolescents made up just over 13 percent of new death sentences; but between 2020 and 2025, that number shrank to a mere four percent of all new death sentences. *Id.* While 50 late adolescents were executed between 2005 and 2009, only 19 were executed between 2020 and 2024. *Id.* These facts, “coupled with the trend toward abolition of the [late adolescent] death penalty, carries special force in light of the general popularity of anticrime legislation . . .” *Roper*, 543 U.S. at 566 (citations omitted).

Since *Roper*, criminal law has further delineated between the relative culpability of late adolescents and adults. In 2020, a Kentucky court found that “the current national consensus and more recent scientific research now support raising the age for death-penalty eligibility to twenty-one.” *Commonwealth v. Bredhold*, 599 S.W.3d 409, 412 (Ky. 2020). While the Kentucky Supreme Court overturned the lower court on an unrelated standing issue, it did not

disagree with the lower court's decision on the merits. *See generally id.* In Massachusetts, the imposition of a life sentence without parole on individuals under 21 is unconstitutional. *Commonwealth v. Mattis*, 224 N.E.3d 410, 428 (Mass. 2024). The same goes for mandatory life sentences without parole in Washington and Michigan. *Matter of Monschke*, 482 P.3d 276, 288 (Wash. 2021); *People v. Taylor*, Nos. 166428 and 166654, 2025 WL 1085247, at *16 (Mich. Apr. 10, 2025). Illinois and Connecticut have outlawed life sentences without parole for individuals under 21. 730 ILCS 5/5-4.5-115 (2025 State Bar Edition), Conn. Gen. Stat. § 54-125a (2024). The trend is clear; evolving standards of decency recognize that late adolescents are comparatively less culpable than their adult counterparts due to their developing brains, so sentences that do not reflect this ability to reform are unacceptable.

B. Neuroscience advancements demonstrate that the 19-year-old brain is most similar to that of a juvenile and, for that reason, cannot be reliably classified amongst the worst offenders.

In addition to the law and the views of society, evolving neuroscience of the last 10 years has provided more evidence that “aspects of psychological and neurobiological immaturity

characteristic of early adolescents and middle adolescents are also characteristic of late adolescents.” W219.

The Supreme Court relied on three general differences between juveniles and adults, as evidenced by the consensus of “scientific and sociological studies” in 2005, to hold that “juvenile offenders cannot with reliability be classified among the worst offenders.” *See Roper*, 543 U.S. at 569. These three differences were: (1) “[a] lack of maturity and an underdeveloped sense of responsibility” resulting in “impetuous and ill-considered actions and decisions,” (2) juveniles’ vulnerability to “negative influences and outside pressures, including peer pressure,” and (3) the “more transitory, less fixed” personality traits of juveniles. *Id.* at 569-70.

Modern neuroscientific studies demonstrate that the same three traits that differentiate juvenile offenders from adults enough to categorically prohibit the imposition of the death penalty are also present in late adolescents. See Death Penalty Information Center, *Immature Minds in a “Maturing Society”: Roper v. Simmons at 20, 42-48* (2025) *available at* <https://deathpenaltyinfo.org/research/analysis/reports/in-depth/immature-minds-in-a-maturing-society>; *see also* W220-231.

First, “study of brain maturation conducted after *Roper* has revealed that several aspects of brain development affecting judgment and decision-making are not only ongoing during early and middle adolescence but continue at least until late adolescence; in other words, up to age 21.” See W221. Further stated, at 19-years-old, Mr. Walls’ brain was still developing. Late adolescents’ brains are more likely to underestimate the risk of a given situation, struggle more to control their impulses and predict the future consequences of a given action and exhibit less self-control. *Id.* at 8-10. Like adolescents, these qualities in late adolescents’ “often result in impetuous and ill-considered actions and decisions.” *Roper*, 543 U.S. at 569. Second, late adolescents are extra vulnerable to negative external influences. Steinberg Declaration at 10-13. They are more likely to overvalue the immediate material rewards and “social rewards (e.g., praise, the admiration of others)” of an action at the expense of the future costs of that action. *Id.* at 13. Third, the character and personality of a late adolescents are more transitory and less fixed than an adult’s. This is evidenced by late adolescents’ tendency to “age out” of crime as they enter their late twenties. W232-233. As late adolescents’ brain develop and personalities form, they are less susceptible to the crime

inducing factors of peer pressure, risk-taking, and pleasure-seeking. *Id.* The increased criminality of late adolescents is caused by “transient developmental immaturity rather than irreparably bad character.” *Id.* at 19.

There is a national and global consensus regarding the science behind brain development and the non-imposition of the death penalty on 18 to 22 year olds. The science is now more sophisticated and provides a comprehensive understanding of the deeper functioning of the brain and of brain development with it comes to decision-making.

In sum, the law and science are not clear; under the principles in *Roper*, society’s standards of decency in 2025 disavow the execution of late adolescents, and an ever-growing body of neuroscientific evidence proves that the death penalty is a disproportionate punishment for late adolescents. The science of today tells us the same things about late adolescents that the science of 2005 did about adolescents. Late adolescents are immature and have an underdeveloped sense of responsibility, resulting in impetuous and ill-considered decisions, more vulnerable to negative outside influences like peer pressure, and their personality traits are

transitory. *See Roper*, 543 U.S. at 569-70. Accordingly, the diminished capacity of late adolescents shows that “the penological justifications for the death penalty apply to them with lesser force than to adults.” *Roper*, 543 U.S. at 571.

At the time of the offense, Mr. Walls was 19 years old. Just as in *Roper*, the science of today tells us that his brain was underdeveloped. Executing Mr. Walls is unconstitutional.

C. Mr. Walls’ claim is timely under state law

The circuit court hinged its summary denial of Mr. Walls’ *Roper* claim on two findings: that the claim is untimely and that the court lacked authority to extend *Roper*. Order Denying Defendant’s Successive Motion to Vacate Judgement and Conviction of Sentence of Death, Case No. 1987-CF-856-A, at 8 (Fla. 1st Cir. Ct. Dec. 3, 2025) (“Circuit Court Order”) W306-316. Both findings are erroneous and should be reversed by this Court.

I. The circuit court erred in finding Mr. Walls’ claim untimely.

First, Mr. Walls’ claim is timely. As Mr. Walls argued below, the federal constitutional categorical exemption at the heart of his claim cannot be frustrated by state procedural bars. But even if they could

be, the circuit court’s timeliness analysis was wrong. Although the circuit court was correct that this Court “has routinely held that resolutions, consensus opinions, articles, research, and the like, do not constitute newly discovered evidence,” *id.* (citing *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023)), the circuit court wrongly characterized the basis for Mr. Walls’ newly discovered evidence, which is highly distinguishable from the cases it relied upon.

For instance, the movants in *Branch v. State*, 236 So. 3d 981 (Fla. 2018), and *Foster v. State*, 258 So. 3d 1248 (Fla. 2018), cited to years-old articles and studies that detailed the specific vulnerability to impulsivity and risk-taking that is characteristic of individuals between eighteen and twenty-one.⁵ *Foster* additionally cited to an American Bar Association resolution and an assertion that “recent actions by state legislatures support[ed] the prohibition of death sentences” to those under age twenty-two—but conceded that “no state [had] passed a law specifically geared toward that age group.” *Id.* at 1253. Similarly to *Foster*, the movant in *Barwick* relied on a

⁵ *Schwab v. State*, 969 So. 2d 318 (Fla. 2007), involved a similar finding that new scientific articles regarding brain anatomy and sexual offending did not, in and of themselves, constitute newly discovered evidence.

resolution from the American Psychological Association which “appear[ed] to be the association’s official or public stance that the death penalty should be banned in cases where the offender was under twenty-one years of age at the time of the capital offense.” *Barwick*, 361 So. 3d at 793.

Unlike these cases, Mr. Walls did not rely upon a restatement or collection of old evidence, or a professional association’s resolution on *Roper*. Instead, Mr. Walls’ claim of newly discovered evidence is based not only on (1) a specific new expert report establishing the existence of a sociolegal tipping point requiring a categorical exemption from execution for death-sentenced offenders who committed the offense at the age of 19; but also (2) a watershed legal decision rendered within the past year, which demonstrates the judicial system’s recognition of the aforementioned sociological tipping point.

One component of Mr. Walls’ newly discovered evidence is an expert report written by Dr. Laurence Steinberg, a neuropsychologist retained by counsel to review Mr. Walls’ case and interview Mr. Walls. The report is dated November 18, 2025. In his expert report, Dr. Steinberg explained that, today, there exists a scientific

consensus that 19-year-olds' brains are neurobiologically similar to adolescent teenagers', particularly with regards to impulsivity and risk-taking, and cognitively underdeveloped. Accordingly, today's developmental science does not support the *Roper* court's bright-line 18-year-old cut-off for exemption from execution, and due to 19-year-olds' neurobiological lack of development, *Roper's* categorical exemption from execution should include them for the same reasons it includes adolescents.

The circuit court offered no explanation for why Dr. Steinberg's report specifically did not constitute newly discovered evidence, despite acknowledging that the report asserts that the scientific consensus it is premised upon "was not available at the time of [Mr. Walls'] sentencing in 1992." W313. Instead, the circuit court simply seemed to imply that because Dr. Steinberg's expert report referenced multiple studies to support its proposition that science had reached a sufficient consensus on 19-year-old brain development, it was the kind of restatement or resolution relied upon in *Barwick*. See W313 (citing *Barwick*, 361 So. 3d at 793). This is incorrect.

As discussed above, Dr. Steinberg's report is readily distinguishable from the collective statement of a professional association discussed in *Barwick*, or the general studies cited in *Branch* and *Foster*. While Dr. Steinberg's report did reference multiple studies, it is not a mere collection, consensus, resolution, or regurgitation of those studies—it is Dr. Steinberg's expert opinion. That Dr. Steinberg's conclusions took into consideration the gradually emerging scientific understanding of juvenile brain development does not render his opinion less authoritative or particular to Mr. Walls.

Mr. Walls' newly discovered evidence is closer to the evidence that the *Roper* petitioner presented to the United States Supreme Court, and the Supreme Court itself relied on in crafting *Roper*'s categorical exemption, than *Barwick*. In *Roper*, the petitioner did not rely on one expert report or scientific study but on the consensus of neuroscience and psychology in the year 2005, which included references to individual reports as far back as 1992. *See Roper*, 543 U.S. 551, 569 (2005) (citing Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339 (1992)). This is precisely the kind of consensus discussed in Dr.

Steinberg’s report to explain how, today, neuroscience has reached a sufficient consensus that acknowledges 19-year-olds’ brains are sufficiently like adolescents’ brains so that *Roper* categorically exempts 19-year-olds from the death penalty. The circuit court failed to address this similarity entirely. *See generally* Circuit Court Order, W306-316.

Moreover, the district court failed to engage with the significant evidence of state practice indicating that the execution of late adolescents “has become truly unusual, and it is fair to say that a national consensus has developed against it.” *Roper*, 543 U.S. at 563 (citing *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)). Between 2005 and 2009, courts imposed the death penalty on 92 late adolescents; between 2020 and 2024, this number dropped to a mere five. *See* Death Penalty Information Center, *Immature Minds in a “Maturing Society”*: *Roper v. Simmons* at 20, 17-21 (2025), *available at* <https://deathpenaltyinfo.org/research/analysis/reports/in-depth/immature-minds-in-a-maturing-society>.

Consistent with this trend, between 2005 and 2009, late adolescents made up just over 13 percent of new death sentences—but between 2020 and 2025, that number shrank to merely four

percent of all new death sentences. *Id.* And, while 50 late adolescents were executed between 2005 and 2009, only 19 were executed between 2020 and 2024. *Id.* These facts, “coupled with the trend toward abolition of the [late adolescent] death penalty, carries special force in light of the general popularity of anticrime legislation...” *Roper*, 543 U.S. at 566 (citations omitted).

Critically—and wholly ignored by the circuit court—the percolating legal trends have culminated in state supreme court decisions recognizing that late adolescents should be treated differently from their older peers when facing life or death sentences. In 2020, a Kentucky court found that “the current national consensus and more recent scientific research now support raising the age for death-penalty eligibility to twenty-one.” *Commonwealth v. Bredhold*, 599 S.W.3d 409, 412 (Ky. 2020). While the Kentucky Supreme Court overturned the lower court on an unrelated standing issue, it did not disagree with the lower court’s decision on the merits. *See generally id.* More recently, additional courts have applied similar reasoning to restrict the implementation of life without parole for late adolescents. In recent years, numerous states have outlawed the imposition of life without parole on individuals

under 21. *See Commonwealth v. Mattis*, 224 N.E.3d 410, 428 (Mass. 2024); *see also* Conn. Gen. State. §54-125a (2024) (Connecticut legislation prohibiting life without parole sentences for those under 21); 730 ILCS 5/5-4.5-115 (2025 State Bar Edition) (Illinois doing same). And, as of this year, two state supreme courts have deemed mandatory life without parole sentences unconstitutional for late adolescents. *See Matter of Monschke*, 482 P.3d 276, 288 (Wash. 2021); *People v. Taylor*, Nos. 166428 and 166654, 2025 WL 1085247 at *16 (Mich. Apr. 10, 2025).

Far from the isolated legal and legislative decisions prior to this year, in 2025 there is a clear consensus—not just among scientific articles but practices of state courts and legislatures—that because late adolescents are comparatively less culpable than their adult counterparts due to their developing brains, sentences that do not reflect this lessened moral culpability are unacceptable. This scientific and legal consensus of 2025 could not have reasonably been known to Mr. Walls or his counsel, nor ascertained by the exercise of due diligence until this very year. Thus, Mr. Walls’ *Roper* claim is timely and premised upon newly discovered evidence worthy of this Court’s review.

II. The circuit court erred when it refused to engage with the merits of Mr. Walls' *Roper* claim and found that it lacked the authority to extend *Roper*.

The circuit court's ruling that Mr. Walls' *Roper* claim is "without merit" wholly depended on its finding that it "lacks the authority to extend *Roper*" based on this Court's precedent in *Barwick*, 361 So. 3d at 794. Circuit Court Order at 8, W306-316. In *Barwick*, this Court rejected a death-sentenced prisoner's *Roper* extension argument because it found that art. I, section seventeen of the Florida Constitution, otherwise known as "the conformity clause," means that "the Supreme Court's interpretation of the Eighth Amendment is both the floor and ceiling for protection from cruel and unusual punishment in Florida," and Florida courts may not provide any further protections than those the Supreme Court has explicitly enumerated. 361 So. 3d at 794. Thus, because the Supreme Court has not yet required states to apply *Roper* to individuals who were over eighteen at the time of their crime, under this Court's conformity clause precedent the circuit court "simply does not have the authority to extend *Roper* to [Mr. Walls] based on his age of nineteen at the time of the murder." Circuit Court Order at 8, W306-316, (quoting *Barwick*, 361 So. 3d at 794).

As explained below, this Court should reconsider its conformity clause precedent because it effectively forecloses evolving standards of decency in Florida and prevents litigants from meaningfully accessing the courts with respect to their Eighth Amendment claims. This Court should reverse.

A. Florida’s Eighth Amendment conformity clause is unconstitutional because it defies United States Supreme Court precedent requiring state courts to participate in Eighth Amendment analysis and precludes meaningful Eighth Amendment litigation.

Although Florida’s Eighth Amendment conformity clause—the only clause of its kind in any state constitution—purports to require Florida to decide Eighth Amendment claims “in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment,” in reality it violates the Eighth Amendment rights of all who attempt to litigate under its yoke. The conformity clause prevents development of Eighth Amendment jurisprudence in the manner mandated by United States Supreme Court case law. The conformity clause states:

The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition

against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution....This Section shall apply retroactively.

FLA. CONST. art. I, § 17. But, by construing this clause as requiring Florida courts to treat the United States Supreme Court's Eighth Amendment decisions as both the "floor" and "ceiling" of protections against cruel and unusual punishment, this Court's conformity clause precedent wholly repudiates a critical aspect of Eighth Amendment determinations: consideration of ever-evolving societal, legal, and scientific standards. Indeed, this Court itself first recognized the conformity clause's stifling effect on the Eighth Amendment—a constitutional amendment whose body of law relies on developing case law to ensure the rights guaranteed therein are in tune with society's evolving standards of decency—twenty-five years ago when this Court overturned the original proposed amendment to the Florida Constitution that sought to create the conformity clause. *See Armstrong v. Harris*, 773 So.2d 7, 18 (Fla. 2000) (noting that although Florida's system of constitutional government was "grounded on a principle of 'robust individualism'" and often provided greater freedom from "governmental intrusion" than federal law, the

conformity clause would “nullify a longstanding constitutional principle that applies to all criminal punishments, not just the death penalty”; the confusing amendment could trick a Floridian into voting in favor of “protecting constitutional rights when in fact the citizen was doing *the exact opposite*”) (emphasis in original).

The ballot summary preceding the amendment’s 2002 adoption more clearly explained that the conformity clause would curtail the Eighth Amendment:

The amendment would prevent state courts, including the Florida Supreme Court, from treating the state constitutional prohibition against cruel or unusual punishment as being more expansive than the federal constitutional prohibition against cruel and unusual punishment or United States Supreme Court interpretations thereof. The amendment effectively nullifies rights currently allowed . . . which may afford greater protections for those subject to punishment for crimes than will be provided by the amendment.

Fla. HJR 951 (2001) at 2-3 (ballot summary regarding proposed amendment to FLA. CONST. art. I, § 17).

In the ensuing years since Florida’s singular conformity clause ultimately became part of its state constitution, it has been increasingly utilized to force Florida courts to opt out of critical Eighth Amendment analyses, including judicial determinations

related to evolving standards of decency. *See, e.g., Gudinas v. State*, 412 So.3d 701, 713 (Fla. 2015) (rejecting *Roper* and *Atkins* extension arguments, explaining that the conformity clause forbids the Florida Supreme Court from interpreting the Florida Constitution); *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019) (relying on the conformity clause to refuse any consideration of whether national death penalty trends warranted exemption from execution under the Eighth Amendment); *Lawrence v. State*, 308 So. 3d 544, 545 (Fla. 2020) (relying on the conformity clause to eliminate Eighth Amendment proportionality review); *Hart v. State*, 246 So. 3d 417, 420-21 (Fla. 4th DCA 2018) (relying on the conformity clause in a non-capital context to refuse to consider whether a juvenile sentence violated *Graham v. Florida*, 560 U.S. 48 (2010); *see also Covington v. State*, 348 So. 3d 456, 479-80 (Fla. 2022) (relying in part on conformity clause to refuse to consider whether defendant's alleged insanity at the time of the crime rendered his death sentence cruel and unusual); *Allen v. State*, 322 So. 3d 589, 602 (Fla. 2021) (seemingly implying that the conformity clause may justify limiting a mitigation presentation in certain cases involving waiver).

Paradoxically, Florida’s purported “conformity” with the Eighth Amendment actually violates it. Supreme Court precedent makes clear that the Eighth Amendment is “not static” and “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958). And, to determine whether our society’s evolving standards of decency prohibit a challenged punishment, the Supreme Court looks to trends in the development of state laws. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 314-18 (2002) (evaluating different state law to determine whether the Eighth Amendment forbids the execution of the intellectually disabled). In turn, state courts must necessarily develop that law and engage in analyzing Eighth Amendment challenges under the framework provided by the Supreme Court. This state participation plays a “critical role in advancing protections and providing [the United States Supreme Court] with information that contributes to an understanding” of how Eighth Amendment protections should be applied. *Hall v. Florida*, 572 U.S. 701, 719 (2014). Thus, although the federal constitution does not require a state court to offer more protection in a particular case than this Court’s jurisprudence has established, a state cannot prohibit itself

wholesale from independently considering evolving standards of decency.

Yet Florida courts, as demonstrated by the litany of examples above, consistently deem themselves unable to engage in any kind of analysis of Eighth Amendment claims at all, due to the conformity clause's vast restrictions on independent court determinations." The circuit court below is no exception; without ever engaging with any of the merits of Mr. Walls' *Roper* claim, it decided that the "claim is without merit because this Court lacks the authority to extend *Roper*." Circuit Court Order at 8, W306-316, (citing *Barwick*, 361 So. 3d at 794).

Just as troubling, this Court's construction of the conformity clause implicates due process concerns by depriving Eighth Amendment litigants of meaningful access to the courts, because it precludes state courts from conducting any independent merits review of their constitutional claims. The circuit court's order clearly demonstrates this, wholly failing to engage with Mr. Walls' significant evidence and argument—including the extension of *Roper*'s principles to late adolescents in other state-court cases outside of Florida—for the sole reason that, under this Court's interpretation of

the conformity clause, it necessarily “lacks the authority to extend *Roper*.” Circuit Court Order at 8, W306-316. This goes against this Court’s own decree that state courts are meant to “function daily as the prime arbiters of personal rights.” *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992). *Cf.* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977) (“decisions of the [United States Supreme] Court are not, and should not be . . . mechanically applicable to state law issues, and state court judges and members of the bar seriously err if they so treat them.”); *id.* at 503 (explaining that under federalist principles, “[a]dopting the premise that state courts can be trusted to safeguard individual rights, the [United States] Supreme Court has gone on to limit the protective role of the federal judiciary . . . our liberties cannot survive if the states betray the trust the Court has put in them.”).

B. The conformity clause conflicts with Eighth Amendment jurisprudence and must yield under the Supremacy Clause.

Where a state constitution conflicts with the federal constitution or the Supreme Court’s interpretive jurisprudence, the state constitution must yield. *Reynolds v. Sims*, 377 U.S. 533, 584 (1964)

(“When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls.”).

And although it is “fundamental that state courts be left free and unfettered by [this Court] in interpreting their state constitutions,” it is equally important that those state adjudications

do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action....For no other course assures that important federal issues, such as have been argued here, will reach this Court for adjudication; that state courts will not be the final arbiters of important issues under the federal constitution; and that we will not encroach on the constitutional jurisdiction of the states.

Minnesota v. National Tea Co., 309 U.S. 551, 557 (1940).

Florida has—through its implementation of the conformity clause and abdication of any judgment apart from the Supreme Court’s verbatim holdings—purportedly interwoven its determinations regarding cruel and unusual punishment with the Supreme Court’s Eighth Amendment jurisprudence. Paradoxically, by virtue of this inflexible binding process, Florida has wholly repudiated a critical aspect of Eighth Amendment determinations: consideration of ever-evolving societal, legal, and scientific standards. Thus, Florida does not actually treat the Supreme Court’s

holdings as the floor of protections against cruel and unusual punishment. In reality, Florida falls below the floor established by Supreme Court jurisprudence by failing to adhere to that Court's minimum prescribed standards for evaluating the applicability of Eighth Amendment protections. Simply put, Florida's so-called "conformity" with the Eighth Amendment actually violates it. Article I, section 17 of the Florida State Constitution must therefore yield to the U.S. Constitution and the Supreme Court's jurisprudence.

Florida's use of the conformity clause to ostensibly bind itself to the Supreme Court of the United States has resulted in Florida acting as a flawed "final arbiter[] of important issues under the federal constitution[.]" *National Tea Co.*, 309 U.S. at 557. This Court's revisitation of its conformity clause is necessary to prevent this upending of federalism and to prevent Mr. Walls from being executed by Florida's systemically defective implementation of Supreme Court Eighth Amendment jurisprudence.

C. The Florida legislature has abandoned the conformity clause and so too should Florida courts.

The Florida legislature's recent changes to its death penalty statutes demonstrate that Florida no longer has any interest in even

appearing to conform to Supreme Court Eighth Amendment jurisprudence, let alone actually following said jurisprudence. This recent legislation not only confirms that the conformity clause is unworkable and unconstitutional but also obsolete in the eyes of the very legislative body that created it. Further, it underscores the arbitrary deprivation of due process that occurs by relying on the conformity clause to prevent litigants from meaningfully accessing judicial review of their potentially meritorious Eighth Amendment claims.

In 2023, Florida did away with its jury unanimity requirement for the death penalty, permitting courts to impose death when a mere eight out of twelve jurors recommend death – despite, of course, the constitution requiring jury unanimity in all state felony convictions. Fla. Stat. § 921.141(2)(a)(2); *see also Ramos v. Louisiana*, 590 U.S. 83, 111 (2020). While the Supreme Court relied on the Sixth Amendment for its analysis in *Ramos*, § 921.141(2)(a)(2)’s departure from the federal constitution’s floor for constitutional rights was the first step in the Florida legislature’s abandonment of the conformity clause.

Then, in 2025, Florida authorized the use of the death penalty against defendants convicted of sexual battery on a child under the age of 12, despite unequivocal Supreme Court precedent holding that the imposition of the death penalty for the rape of a child where the crime did not result, and was not intended to result, in the death of the victim violates the Eighth Amendment. *See Kennedy v. Louisiana*, 554 U.S. 407, 413 (2008) (finding Louisiana statute “authorizing capital punishment for the rape of a child under 12 years of age” unconstitutional under the Eighth Amendment). Florida also authorized the imposition of the death penalty for human trafficking of vulnerable persons for sexual exploitation. *See Fla. Stat. § 921.1427* (2025). Neither of these crimes result in death, meaning that these statutes are exactly the kind of punishment that the United States Supreme Court has recognized that the Eighth Amendment forbids.

Flouting well-established Eighth Amendment jurisprudence even further, Florida then passed a mandatory death penalty statute, requiring the imposition of the death penalty on a defendant who is “an unauthorized alien and who is convicted or adjudicated guilty of capital felony to a sentence of death,” without consideration of any

individualized sentencing factors. Fla. Stat. § 921.1426 (2025). There is no question that the Eighth Amendment forbids mandatory death penalty statutes. *Woodson v. North Carolina*, 428 U.S. 280, 304-305 (1976).

The conformity clause would, ostensibly, render the statutes discussed above unconstitutional in Florida – but the Florida Legislature passed the statutes without so much as a passing reference to the conformity clause.⁶ Neither did the Florida Legislature attempt to introduce an amendment to the Florida Constitution to undo the conformity clause and allow its recent statutes to take effect; presumably because the Florida Legislature has tacitly abandoned the conformity clause. Indeed, even Governor Ron DeSantis has clearly stated his intent to challenge the Eighth Amendment with the passage of the statutes described above. See Death Penalty Information Center, *Florida Prosecutors Seek First Death Sentence Under New Child Sex Abuse Law*, DEATH PENALTY INFO

⁶ Tellingly, during the January 28, 2025, Senate Special Session B discussion of mandatory death penalty for “unauthorized aliens,” then-Senator Randy Fine explicitly stated: “In fact in this legislature, we have chosen to pass things that we knew were unconstitutional at the time that we passed them because we believed that the Supreme Court would change their mind[.]”

(March 14, 2025), <https://deathpenaltyinfo.org/florida-prosecutors-seek-first-death-sentence-under-new-child-sex-abuse-law>. In sum, Florida's legislative and executive branches have made clear that they are no longer interested in designing its death penalty scheme in conformity with the baseline protections provided by the Eighth Amendment.

Put simply, Florida's legislative and executive branches no longer treat the Eighth Amendment as the constitutional floor of capital defendants' rights and are therefore no longer bound by the State constitution's conformity clause. Neither should Florida's judicial branch be. Accordingly, this Court should declare the conformity clause unconstitutional and fulfill its critical role to consider Eighth Amendment challenges based on evolving standards of decency. Because Mr. Walls presents a timely and compelling *Roper* claim that was not analyzed on the merits below, this case is an ideal opportunity to visit the unconstitutionality of the conformity clause.

Claim Three:

The 37-year delay in Mr. Walls' execution constitutes cruel and unusual punishment in violation of the Eighth Amendment

Mr. Walls has been on Florida's death row for 37 years. Executing him after such a needless and prolonged incarceration is violative of his Eighth Amendment constitutional rights against cruel and unusual punishment. In *Lackey v. Texas*, Justice Stevens noted that the Court has previously recognized "when a prisoner sentenced by a court to death is confined in the penitentiary awaiting the execution of the sentence, one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it." 514 U.S. at 1045 (1995)(quoting *In re Medley*, 134 U.S. 160 (1890)).

In the case of Mr. Walls, this anguish has been exacerbated by Florida's unwillingness to recognize his cognitive deficits and intellectual disability. During the pendency of his case, the courts have recognized intellectual disability as a bar to the death penalty and at one point, the Florida Supreme Court recognized that Mr. Walls deserved to have the retroactive benefit of *Hall*⁷. However, that

⁷ "Reviewing this case, it is clear that although Walls has had an earlier evidentiary hearing as to intellectual disability and was allowed to present evidence of all three prongs of the test, he did not receive the type of holistic review to which he is now entitled." *Walls v. State*. 213 So.3d 340 (Fla. 2016).

was arbitrarily reversed by this Court in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020). This has caused anguish and confusion for a man who has always demonstrated deficits in reasoning, problem solving, planning, abstract thinking, judgement, academic learning, and learning from experience. T412.

At this point executing Mr. Walls is senseless and had reduced the death penalty's "deterrent effect." *Barr v. Purkey*, 140 S.Ct 2594, 2595 (2020)(Breyer, J and Ginsburg, J., dissenting). "The delay itself undermines penological rationales for the death penalty: deterrence and retribution." *Id.* To execute Mr. Walls at this juncture serves no purpose. The rationales for the existence of the death penalty, as it relates to Mr. Walls, have vanished given the amount of time that Mr. Walls has spent on death row.

CONCLUSION

The circuit court erred as a matter of fact and law in summarily denying Mr. Walls' claim that his execution would violate the Eighth Amendment based on his intellectual disability. This Court has never ruled on the merits as it relates to Mr. Walls' intellectual disability. This Court must do so now as Mr. Walls faces irreparable harm – his unconstitutional execution. Mr. Walls' execution is further barred by

the Eighth Amendment under *Roper*, as Mr. Walls was only 19-years-old at the time of the crime. This Court should remand to the circuit court for further proceedings in accordance with federal constitutional protections.

CERTIFICATE OF COMPLIANCE AND FONT

I hereby certify that the foregoing was generated in Bookman Old Style 14-point font and otherwise formatted in compliance with Florida Rules of Appellate Procedure 9.045 and 9.210, and the Florida Supreme Court’s Scheduling Order. Counsel further certifies that this entire Brief contains 11,534 words.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief has been electronically filed with the Clerk of the Florida Supreme Court, and electronically served upon Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com, capapp@myfloridalegal.com) on December 6, 2025.

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