Filing # 224064988 E-Filed 05/28/2025 05:07:30 PM

ACTIVE WARRANT CASE NO. SC2025-0709
EXECUTION SCHEDULED FOR JUNE 10, 2025, AT 6:00 P.M.

In the

Florida Supreme Court

ANTHONY WAINWRIGHT,

PETITIONER,

v.

SECRETARY, DEPARTMENT OF CORRECTIONS

RESPONDENT.

ON ORIGINAL PETITION FOR HABEAS RELIEF

RESPONSE TO EMERGENCY MOTION FOR REHEARING

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INTRODUCTION

Anthony Wainwright, a Florida prisoner under an active warrant for a 1994 murder, kidnapping, and rape, has two counsel who do not agree whether the recently filed habeas petition should ever have been filed. Lead counsel Baya Harrison, who refused to adopt the petition, has been Wainwright's lead postconviction counsel since 2014. Second-chair Terri Backhus, a former federal counsel for Wainwright in federal court, intruded into his warrant proceedings a week after the warrant was signed and has been trying to usurp lead counsel's role ever since.

The Circuit Court held a comprehensive hearing and reaffirmed that Baya Harrison was lead state postconviction counsel with sole decision-making authority but permitted Ms. Backhus to appear exclusively as second-chair counsel. That ruling was never appealed.

Undeterred, Ms. Backhus filed a habeas petition that Mr. Harrison refused to sign as lead counsel, along with a motion for stay. This Court entered an order requiring Mr. Harrison to adopt the filings or the pleadings would be stricken. Mr. Harrison refused, and Ms. Backhus moved for rehearing of this Court's order. The State urges this Court to strike the unauthorized petition.

RELEVANT FACTS

Death Warrant and Scheduling Conference

Governor Ron DeSantis signed a death warrant for Wainwright on Friday, May 9, 2025. Mr. Harrison was appointed to represent Wainwright as lead postconviction counsel on February 14, 2014, and continues to serve in that role in these warrant proceedings. *See* Fla. R. Crim. P. 3.851(b)(4)-(6).[1]

Mr. Harrison represented Wainwright at the warrant conference, where the parties finalized the warrant-litigating schedule. (WPCR:78-83, 251-62).[2] Katherine Blair, Federal Public Defender – Capital Habeas Unit, attended as Wainwright's federal habeas counsel. (WPCR:251-62).

[1] Mr. Harrison was admitted to the Florida Bar in 1967; is death qualified under Rule 3.112(k); and has handled at least three prior warrant proceedings, litigated numerous other capital appeals, and postconviction motions. *See e.g. Rolling v. State*, 944 So. 2d 176, 177 (Fla. 2006) (warrant co-counsel); *Henry v. State*, 141 So. 3d 557, 557 (Fla. 2014) (sole warrant counsel; *Dillbeck v. State*, 357 So. 3d 94 (Fla. 2023) (warrant co-counsel); *Johnson v. Wainwright*, 463 So. 2d 207, 209 (Fla. 1985); *Noetzel v. State*, 328 So. 3d 933, 936 (Fla. 2021).

[2] The State will cite the record from Wainwright's post-warrant, Eighth Successive Postconviction Appeal as WPCR:[page].

Backhus Substitution Litigation

Mr. Harrison filed Wainwright's timely Florida Rule of Criminal Procedure 3.851 Eighth Successive Motion for Postconviction Relief. (WPCR:96-120.) Hours later, proposed pro bono counsel for Wainwright, Terri Backhus, filed: (1) a Motion for Substitution of Counsel; (2) a Request for Substitution of Counsel by Wainwright; and (3) a competing and unauthorized Eighth Successive Motion for Postconviction Relief. (WPCR:136-64.)

The State quickly filed an objection to the Motion to Substitute Counsel. (WPCR:125-135.) The State argued: (1) Wainwright failed to demonstrate that an actual conflict of interest existed with Mr. Harrison, as required by Rule 3.851(b)(6) before Ms. Backhus could be substituted as state postconviction counsel; and (2) the Sixth Amendment provided no right to postconviction counsel of choice.

The State also filed an Emergency Motion for Hearing on Status Counsel/Motion to Strike Ninth Successive Postconviction Motion.[3] (WPCR:165-69.)

[3] The State referred to Ms. Backhus' postconviction motion as "Ninth Successive" because Mr. Harrison properly filed the Eighth Successive and Ms. Backhus' motion raised two new issues.

The postconviction court held an emergency hearing the next day. The court conducted inquiries of Ms. Backhus and Mr. Harrison to understand the underlying facts and circumstances giving rise to the request for substitution and how Ms. Backhus both became involved in Wainwright's state postconviction case and filed the Rule 3.851 successive motion so quickly. (WPCR:368-408.)

Ms. Backhus informed the court that she represented Wainwright in his federal court proceedings during her tenure at the Federal Capital Habeas Unit for the Northern District of Florida (CHU-N), which concluded in 2020. (WPCR:372, 375.) She further stated that her representation of Wainwright continued "after my tenure ended in 2020." (WPCR: 375.)

Ms. Backhus advised that she filed the substitution motion because:

> It came to my attention from Mr. Wainwright that he was concerned . . . he had no communication from Mr. Harrison before he began waiving things, such as public records, an evidentiary hearing, his presence at any evidentiary hearing, and had filed a postconviction motion, a 3.851 motion, without consulting him. That's the only reason I got involved.
>
> . . . . once he realized that his ability to be heard on some of his claims may be jeopardized, he contacted me and I agreed to file a motion to substitute counsel so that I could

> assist him in obtaining public records and making sure that his issues were being heard by the Court, and that's my purpose.

(WPCR:372-73.)

The postconviction court then asked whether Ms. Backhus spoke to or consulted with Mr. Harrison "prior to your filing," to which she responded, "No." The court replied, "No?" (WPCR:374.) The fact that Ms. Backhus had not contacted Mr. Harrison in advance to discuss Wainwright's case or that she spoke with him, was raised multiple times throughout the hearing.[4]

The court also inquired about the investigation undergirding the claims Ms. Backhus raised. (WPCR:374-77.) Ms. Backhus indicated

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[4] Florida Bar Rule 4-4.2 Communication with Person Represented by Counsel provides:

> (a) In representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, a lawyer may, without such prior consent, communicate with another's client to meet the requirements of any court rule, statute or contract requiring notice or service of process directly on a person, in which event the communication is strictly restricted to that required by the court rule, statute or contract, and a copy must be provided to the person's lawyer.

the work was done "by the federal public defender's office," but her responses were continually equivocal. (WPCR:374-77.) Two reports mentioned in the (belatedly) filed attachments were prepared at the behest of CHU-N, not Ms. Backhus. (WPCR:235-38, 392-93.)

The court expressed concern that Ms. Backhus had been keeping up to date on Wainwright's proceedings but never attempted to join the case until after a warrant was signed. (WPCR:377-79.) Ms. Backhus reverted back to not knowing about Wainwright's "concern" that issues were being waived, asserted there was no reason to contact Mr. Harrison until she learned issues were waived, and confirmed she had not "even contacted him yesterday." (WPCR:379, 393-94.)

Ms. Backhus also argued that there would be no disruption in the state warrant proceedings. The postconviction court definitively disagreed and stated, "you do understand that this 11th hour appearance of yours has absolutely disrupted the scheduling of this case?" (WPCR:380-81.)

Mr. Harrison then addressed the court. He noted that Ms. Backhus effectively wanted him "to move over and have her come into the case and effectively be lead counsel." (WPCR:382.) Mr. Harrison

informed the court that "simply would not work" and that he has dealt with CHU-N for many years and had "already dealt with them in" Wainwright's case. (WPCR:382.) He then pointedly stated:

> . . . . *I can tell you, from my understanding of the way she proceeds, and this situation here is a good example, her way of proceeding and my way of proceeding are just in opposite* [sic]. I don't think we could spend one day as co-counsel in a case without getting into an argument. . . *I just don't agree with her approach, something that I've experienced over the years* . . . I don't say I'm right, I'll just say they are completely, completely different and I worry how this would affect Mr. Wainwright.
>
> . . . .
>
> There are other aspects of this that I should let you know about. Ms. Backhus has just told you that I've failed to communicate with Mr. Wainwright, that he's just kind of learning . . . that I didn't do this or did do that or I waived this or I waived that. *That is simply incorrect.*

(WPCR:382-83) (emphasis added).

Mr. Harrison then recounted CHU-N's initiated participation in Wainwright's state postconviction proceedings. CHU-N Chief Linda McDermott contacted Mr. Harrison when the death warrant was signed. She told him, she had had continued contact with Wainwright and as such, "she would act as kind of the intermediary" so Mr. Harrison "could concentrate on this very short notice to prepare a 3.851 petition . . . and she would facilitate advising Mr.

Wainwright of various things, okay, and that is how we proceeded." (WPCR:383-84.) Because Mr. Harrison understood that Ms. McDermott would relay information to Wainwright, he took issue with and found "troubling" that Ms. Backhus would assert lack of communication with Wainwright. (WPCR:384.)

He also responded to the allegation that issues or other things such as Rule 3.852 demands for additional public records were improperly waived, stating,

> . . . all I've waived is the public records aspect of this. I have been dealing with public records for decades and the federal public defender wanted me to seek certain public records. *I examined them, I studied them and I advised Ms. McDermott, so that she could advise Mr. Wainwright, that I thought that was a complete and total waste of time.*
>
> Here we are at the 11th hour. This is after I have filed many postconviction claims for Mr. Wainwright over the years, and they want records as if this case was just first being tried. I mean *it was frankly ridiculous. There was no need for these documents whatsoever. If there had been some positive aspect of these public records that would help Mr. Wainwright, of course, of course I would have sought it.* But I had discussions with Ms. McDermott, we had differences, yes, but I told her emphatically I'm not filing this stuff that you have presented to me . . . *I did not feel it would help Mr. Wainwright and I was assured that that communication would go to Mr. Wainwright.*
>
> When it comes to issues such as public records, that's my call, that's the lawyer's call, that's not the client's call. There was nothing in those public record requests from

> the federal public defender that I felt would be of any help
> to Mr. Wainwright.

(WPCR:384-85) (emphasis added).

Mr. Harrison did not recall ever having a personal conversation with Ms. Backhus. (WPCR:385.) He rhetorically questioned, why "for gosh sakes, couldn't she have contacted me" to work out any issues and possibly proceed as co-counsel, instead of interjecting at the eleventh hour in active warrant proceedings. (WPCR:383, 385.)

The State vehemently objected to any substitution of counsel based on Rule 3.851(b)(6), the fact that the Sixth Amendment did not afford Wainwright the right to postconviction counsel, much less postconviction counsel, and no due process violation has occurred. (WPCR:387-89.) Nonetheless, the State proposed that, at most, Ms. Backhus should be permitted to appear as second-chair counsel with Mr. Harrison having sole decision-making authority. (WPCR:389.)

The postconviction court ruled from the bench, distinguished the caselaw Ms. Backhus relied on, and permitted Ms. Backhus to appear solely as second-chair counsel for Wainwright "with the clear understanding, very clear understanding, that Mr. Harrison is lead

counsel. He's first chair and lead counsel, which means that he has the final say in anything filed or argued." (WPCR:398-401.)

The court subsequently issued a written order and ruled: (1) no conflict existed to remove Mr. Harrison as counsel of record, pursuant to Rule 3.851(b)(6); (2) Ms. Backhus was permitted to appear as co-counsel, citing *Bates v. Jones,* 2016 WL 6205332, at *1 (Fla. July 18, 2016); and (3) Mr. Harrison will remain lead counsel in accordance with Rule 3.851(b)(4) ("In every capital postconviction case, one lawyer shall be designated as lead counsel for the defendant. The lead counsel shall be the defendant's primary lawyer in all state court litigation.") (WPCR:327-330.)

The postconviction court also granted the State's motion to strike Ms. Backhus' successive postconviction motion, without prejudice, recognizing at the time she filed the motion "*she was not counsel of record*" and because of that, "*the motion was not authorized.*" (WPCR:402, 331-34.)

Unauthorized Habeas Petition

Ms. Backhus subsequently filed a habeas petition and motion for stay. The State replied to that petition and noted the Petition was unauthorized because Mr. Harrison had not agreed to the filing. This

Court subsequently issued an order requiring Mr. Harrison to either adopt the Petition and accompanying stay motion or they would be stricken as unauthorized. Mr. Harrison affirmatively declined to adopt the habeas petition and added Ms. Backhus, "who filed the habeas petition and stay motion, was advised of this as soon as the undersigned learned of the filings."

Emergency Motion for Rehearing

Moments later, Ms. Backhus filed an emergency motion for rehearing arguing: (1) the petition and stay motion were authorized by this Court's warrant scheduling order and opening the case; (2) this circuit court's order confining Ms. Backhus to second-chair counsel is irrelevant to an independent appellate proceeding before this Court; (3) striking the Petition would violate Wainwright's right to due process; (4) striking the Petition would violate Wainwright's right to equal protection; (5) the State should not be allowed any say in this Court's rehearing decision; and (6) Wainwright had no notice or opportunity to respond to the counsel issue.

The State now responds and urges this Court to adhere to its order and strike the unauthorized Petition filed by second-chair

counsel Terri Backhus with the express disapproval of lead postconviction counsel Baya Harrison.

ARGUMENT

This Court should strike Wainwright's Petition because it was filed by second-chair counsel Terri Backhus and lead postconviction counsel Baya Harrison refused to adopt it. Ms. Backhus' Emergency Motion for Rehearing provides no reason to deviate from this Court's order. The petition should be stricken as this Court has done in the past when unauthorized pro bono counsel seek to usurp lead postconviction counsel's role. *See Bates v. Jones*, No. SC16-1199, 2016 WL 6205332, at *1 (Fla. July 18, 2016) (striking a habeas petition filed by pro bono counsel without prejudice to refile with lead postconviction counsel's signature).

As a threshold issue, the State is entitled to be heard on Wainwright's motion for rehearing despite his conclusory arguments to the contrary. Florida's Attorney General has standing because it represents the Secretary of the Florida Department of Corrections, a "party" in these habeas proceedings. *Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 283 (Fla. 2013) (holding State has standing to oppose a motion to withdraw "because the State is a party to criminal cases and the state attorney has a statutory obligation to prosecute or defend on behalf of the State.").

Furthermore, the Attorney General of Florida is the State's chief legal officer. Art. IV, §§ 4, 5, Fla. Const. He is statutorily required to appear in all "suits" in which the State of Florida has an interest. He has "discretion to litigate, or intervene in, legal matters deemed" by her "to involve the public interest" and her standing "cannot be challenged or adjudicated." *State ex rel. Shevin v. Yarborough*, 257 So. 2d 891, 895 (Fla. 1972) (Ervin, J., concurring).

Florida's Attorney General has an undeniable interest in capital litigation. He represents the State before the Florida Supreme Court in all capital cases, including all warrant litigation. For that reason, he has a particular interest in enforcing state rules related to capital litigation, such as Rule 3.851(b)(4). The Attorney General's Office has standing to argue Ms. Backhus is actively violating Florida law governing capital postconviction counsel and usurping lead postconviction counsel's role with impunity.

The Petition Ms. Backhus filed was indeed unauthorized under Florida's postconviction system. Florida Rule of Criminal Procedure 3.851(b)(4) provides: "In every capital postconviction case, ***one lawyer*** *shall be designated as lead counsel for the defendant. The lead counsel shall be the defendant's primary lawyer in* ***all*** *state court*

litigation." (emphasis added). Lead state postconviction counsel must "represent the defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out." Fla. R. Crim. P. 3.851(b)(5). The "*only* basis for a defendant who has been sentenced to death to seek to discharge postconviction counsel in state court must be pursuant to statute due to an actual conflict of interest." Fla. R. Crim. P. 3.851(b)(6); *Rogers v. State*, No. SC2025-0585, 2025 WL 1341642, at *4 (Fla. May 8, 2025).

A habeas petition filed by pro bono postconviction counsel without lead postconviction counsel's signature is an unauthorized filing that can be stricken. *See Bates v. Jones,* No. SC16-1199, 2016 WL 6205332, at *1 (Fla. July 18, 2016). This Court has stricken an unauthorized habeas petition without prejudice to: (1) it either being refiled with lead counsel's approval; or (2) a proper order of substitution being entered by "*the circuit court.*" *Id.* (citing *Suggs v. State,* 152 So. 3d 471, 472 (Fla. 2014) (dismissing "without prejudice *for the circuit court to consider appointment of new counsel*").[5]

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[5] Second-chair Backhus argues that the Petition was a separate proceeding in an appellate court and therefore not subject to the circuit court's order. Her argument misses the point that this Court routinely delegates to the circuit court the decision of who

Both of those routes are foreclosed to Ms. Backhus. Lead postconviction counsel affirmatively refused to sign the Petition (likely because it is a quintessential shotgun pleading) and the circuit court has already determined no actual conflict exists and refused to substitute Ms. Backhus as lead counsel. (WPCR:327-330, 398-401.) Ms. Backhus, who has only been granted second-chair status in state court, is not authorized to file a pleading that lead state postconviction counsel does not believe should be filed. The responsibility for directing "all state court litigation" cannot be usurped by second-chair counsel. *See* Fla. R. Crim. P. 3.851(b)(4). The Petition filed by Ms. Backhus with the express disapproval of Mr. Harrison should be stricken. *See Bates*, 2016 WL 6205332, at *1.

Neither the Sixth Amendment, nor due process, nor equal protection requires this Court to override Florida's system for having a singular lead postconviction counsel responsible for directing all

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postconviction counsel should be and then reviews that decision on appeal. *Cf. Merck v. State*, 216 So. 3d 1285 (Fla. 2017) (reversing the denial of counsel substitution on appeal from that decision). The circuit court's reaffirmance that Baya Harrison is lead postconviction counsel was a decision on who was lead counsel in "all state court litigation" under Rule 3.851(b)(4). That includes the Petition before this Court.

state-court litigation. The Sixth Amendment is entirely inapplicable to these postconviction proceedings and Ms. Backhus' continued reliance on it is untenable. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (holding there is no constitutional right to counsel when mounting collateral attacks; rather, the right to counsel extends to the first appeal of right, and no further); *Bonin v. Vasquez*, 999 F.2d 425, 430 (9th Cir. 1993) (holding the protections of the Sixth Amendment right to counsel do not extend to either state collateral proceedings or federal habeas corpus proceedings); *Barbour v. Haley*, 471 F.3d 1222, 1229 (11th Cir. 2006) (holding "death-sentenced inmates have no federal constitutional right to postconviction counsel").[6]

There is, accordingly, no right to counsel of choice in postconviction proceedings. *Hamm v. State*, 913 So. 2d 460, 467, 470-73 (Ala. Crim. App. 2002) (rejecting a counsel-of-choice

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[6] *See also Melton v. State*, 56 So. 3d 868, 872 n.11 (Fla. 1st DCA 2011) (explaining "the Sixth Amendment affords no right to appointed counsel in a postconviction proceeding" and citing cases); *Jones v. State*, 69 So. 3d 329, 333 (Fla. 4th DCA 2011) ("Neither the Fifth nor the Sixth Amendment rights of a criminal defendant apply in postconviction relief proceedings.") (collecting cases).

argument in a capital case where the state postconviction court refused to allow substitution with pro bono counsel of choice because there is no right to counsel of choice in postconviction). As the Alabama Court of Appeals put it, Wainwright has "no right to counsel" in postconviction, and "he clearly" has "no right to counsel of his own choice." *See id.* at 473.[7]

Due process does not require this Court to override Florida's postconviction counsel system because due process does not provide Wainwright with the right to postconviction counsel. *Barbour v. Haley*, 471 F.3d 1222, 1229 (11th Cir. 2006) ("States have no obligation to provide postconviction review, and when they do, neither the Due Process Clause nor the Equal Protection guarantee of meaningful access requires states to provide indigents legal representation to pursue those claims."). It is, therefore, impossible for due process to provide a right to pro bono counsel of choice, a

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[7] *See also Hamm v. Allen*, No. 5:06-CV-00945-KOB, 2013 WL 1282129, at *28 (N.D. Ala. Mar. 27, 2013) (reaffirming *Hamm*'s holding and recognizing a "petitioner has no constitutional right to an attorney in state post-conviction proceedings, much less counsel of choice."); *United States v. $281,355.78 Seized from Buffalo Drug, Inc.*, No. 7:20-cv-80-KKC, 2022 WL 2600160, at *4 (E.D. Ky. July 8, 2022) (ruling the defendant had "no right to counsel of choice in a post-conviction § 2255 proceeding").

step beyond providing counsel to begin with. Florida's creation of a statutory system for appointment of capital postconviction counsel does not automatically create a due process right to counsel of *choice*.

Ms. Backhus' reliance on *Melton v. State*, 56 So. 3d 868, 872 (Fla. 1st DCA 2011) is woefully misplaced because there was no question there of pro bono counsel usurping lead postconviction counsel's role. In *Melton*, capital postconviction counsel filed a 3.850 motion in a *non-capital* case used as an *aggravator* in the capital case. *Id.* The trial court ruled counsel could not appear in the aggravator case under § 27.711(11), Florida Statutes, which precluded an appointed capital postconviction attorney from representing a capital defendant in "a proceeding challenging a conviction or sentence" other than the capital one. *Melton*, 56 So. 3d at 870-71. The First District reversed and noted the there is a broad right for litigants to retain and choose counsel for their cases *where no counsel has been appointed. Id.* at 870-73.

Melton is inapplicable to the issue before this Court. Florida does not provide defendants in non-capital cases covered by Florida Rule of Criminal Procedure 3.850 with counsel as a matter of right. There was no question in *Melton* about new pro bono counsel taking

the place of lead postconviction counsel. *See Melton*, 56 So. 3d at 872 (quoting *Steele v. Kehoe,* 724 So. 2d 1192, 1194 n. 3 (Fla. 5th DCA 1998) for the premise that: "a defendant has the right in all 3.850 cases to employ counsel *if one is not appointed.*") (Emphasis added.)

Nor were Wainwright's due process rights violated by this Court's order indicating it would strike the habeas petition if Mr. Harrison did not adopt it. Ms. Backhus asserts a due process violation occurred due to the lack of notice and an opportunity to be heard on the counsel issue. That position is belied by the fact that she was able to file an Emergency Motion for Rehearing that this Court will consider before striking the petition. *See Link v. Wabash R. Co.*, 370 U.S. 626, 631-32 (1962) (holding the power to sua sponte dismiss a case does not violate due process in part because the party can subsequently move to reopen).

This Court's order, and the Emergency Motion for Rehearing, are sufficient notice and opportunity to be heard. Moreover, the counsel issue was fully argued below, and the circuit court's decision was not appealed to this Court in the successive postconviction appeal. *Cf. Merck v. State*, 216 So. 3d 1285 (Fla. 2017) (reversing the

denial of counsel substitution on appeal from that decision). There was no due process violation.

Equal protection does not provide Wainwright a right to counsel of choice either. Initially, Ms. Backhus' equal protection argument is wholly conclusory. Her argument is entirely comprised of a string cite of cases where she suggests this Court has come to different results from the one it has decided is appropriate in this case. (See Rehearing at 15-18.) The argument cites no equal protection caselaw and should be rejected as entirely conclusory. *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024).

But the equal protection argument fails on the merits too. Wainwright appears to be raising a class-of-one equal protection argument under *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). To prevail on a "class of one" equal protection claim, he must show he has been: (1) "*intentionally* treated differently from" (2) others *similarly situated* and" (3) "there is *no rational basis for the difference in treatment.*" *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (emphasis added).

"Negligent or accidental differential treatment does not count." *Fares Pawn, LLC v. Indiana Dep't of Fin. Institutions*, 755 F.3d 839,

846 (7th Cir. 2014). *See also Rickett v. Jones*, 901 F.2d 1058, 1060-61 (11th Cir. 1990) (explaining negligence, mistakes, and unintentional errors in state law do not support "a claim for denial of equal protection").[8] Likewise, the "similarly situated" requirement "must be rigorously applied in the context of 'class of one' claims." *E.g., Leib v. Hillsborough Co. Pub. Transp. Commn.*, 558 F.3d 1301, 1307 (11th Cir. 2009).

Ms. Backhus' argument is woefully deficient to show a violation of equal protection. No one could rationally suggest Wainwright is being intentionally singled out for disparate treatment by this Court, particularly since this is not the first time it has stricken an unauthorized habeas petition. *Bates v. Jones,* 2016 WL 6205332, at *1 (Fla. July 18, 2016). Wainwright can hardly argue he is a class of one when this Court has previously stricken a habeas petition in *Bates*. This is a class of at least two, if not more.

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[8] *Cernuda v. Neufeld*, 307 F. App'x 427, 433-34 (11th Cir. 2009) (Mere "inconsistency does not state a constitutional violation" unless the inconsistency is "for the purpose of discriminating."); *Levin v. City of Palm Beach Gardens City Attorney's Off. ex rel. Tatum*, 303 F. App'x 847, 851 (11th Cir. 2008).

It is also not clear any of the cases Ms. Backhus cites are on all fours with this one, where second-chair counsel is attempting to usurp assigned lead postconviction counsel's role in violation of the circuit court's decision on who lead counsel is. The equal-protection argument is both insufficiently pleaded and meritless on its face.

Finally, Ms. Backhus also obliquely argues that Wainwright does not have the time to avail himself of procedures to remove Mr. Harrison through complaints about his representation. *But see* Fla. R. Crim. P. 3.851(b)(6) ("The only basis for a defendant who has been sentenced to death to seek to discharge postconviction counsel in state court must be pursuant to statute due to an actual conflict of interest."); *Rogers v. State*, No. SC2025-0585, 2025 WL 1341642, at *4 (Fla. May 8, 2025) (holding an "'actual conflict' is the *only* basis for moving to discharge *postconviction* counsel in a capital case.").

Mr. Harrison's conduct in this case has been above reproach. He has failed to waste the court's and State's time litigating public records production and refused to sign a kitchen-sink habeas petition. That conduct does not subject him to removal; he has provided more than quality representation in these proceedings. To the extent this argument relates to pre-warrant conduct, it is far too

late to assert Mr. Harrison should be removed for that now. *See Rogers v. State*, No. SC2025-0585, 2025 WL 1341642, at *4 (Fla. May 8, 2025). "If this Court were to allow the last-minute substitution of counsel to create a situation in which the entire case could be relitigated at the time the death warrant was signed . . . this could become a standard delay tactic in any death warrant case." *Howell v. State*, 109 So. 3d 763, 775 (Fla. 2013).

This is not the first time Ms. Backhus' actions in a post-warrant capital case have raised "the proverbial judicial eyebrow." *Tanzi v. Desantis*, No. 4:25CV144-TKW-MAF, 2025 WL 1006585, at *2 (N.D. Fla. Apr. 3, 2025). These tactics will continue and worsen if this Court permits her and, in reality, CHU-N, to continue usurping capital postconviction proceedings in violation of state and federal law. *Hartley v. Sec'y, Fla. Dep't of Corr.*, No. 3:08-CV-962-MMH-LLL, 2024 WL 1156546, at *3 (M.D. Fla. Mar. 18, 2024) ("Attempts to usurp active state court proceedings without the knowledge of state postconviction counsel does not serve the purpose for which NDFL-CHU was created. NDFL-CHU must cooperate with state postconviction counsel in the future.").

The bottom line is Ms. Backhus had no authority to independently file a Petition without express approval of lead postconviction counsel. She filed it anyway, in direct disregard of the postconviction court's order and this Court's caselaw delegating to the circuit court the decision of who will be lead postconviction counsel even in original habeas cases. This Court should strike the Petition as an unauthorized attempt to usurp lead state postconviction counsel's role and authority under Florida law.

CONCLUSION

This Court should adhere to its order and strike the Petition Ms. Backhus filed without the authorization or approval of Mr. Harrison. Mr. Harrison, an experienced capital attorney, has expressly and reasonably declined to adopt that shotgun pleading as lead postconviction counsel and Ms. Backhus cannot be allowed to usurp his role.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to all counsel of record via the e-portal.

Respectfully submitted and certified,

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