

IN THE SUPREME COURT OF FLORIDA

Case No. SC2026-0617
LT Case Nos. 1998-CF-005355-A-O; 1998-CF-005356-A-O

WILLIAM THOMAS ZEIGLER,
Appellant/Cross-Appellee,

v.

STATE OF FLORIDA,
Appellee/Cross-Appellant.

**AMICI CURIAE BRIEF OF FLORIDA DEATH-ROW EXONEREES
CLEMENTE JAVIER AGUIRRE-JARQUIN, ROBERT EARL
DUBOISE, RUDOLPH HOLTON, HERMAN LINDSEY, JOAQUÍN
JOSÉ MARTÍNEZ PERÉZ, JUAN ROBERTO MELENDEZ-COLON,
SETH PENALEVER & RALPH DANIEL WRIGHT, JR.,
FLORIDIANS FOR ALTERNATIVES TO THE DEATH PENALTY,
INNOCENCE PROJECT OF FLORIDA, CONSERVATIVES
CONCERNED, FLORIDA CONFERENCE OF CATHOLIC BISHOPS,
THE FAITH LEADERS OF COLOR COALITION, FLORIDA
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, CRAIG
TROCINO, ESQ., PHILLIPS BLACK, INC., FLORIDA JUSTICE
INSTITUTE, FLORIDA PUBLIC DEFENDER ASSOCIATION,
ADVANCING REAL CHANGE, INC., ACLU CAPITAL PUNISHMENT
PROJECT, ACLU OF FLORIDA, DEATH PENALTY POLICY
PROJECT, THE U.S. CAMPAIGN TO END THE DEATH PENALTY
& WITNESS TO INNOCENCE IN SUPPORT OF
APPELLANT/CROSS-APPELLEE**

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STATEMENT OF IDENTITY AND INTEREST

Amici submit this Brief in support of Appellant/Cross-Appellee, William Thomas Zeigler, to highlight the significance and meaning of DNA evidence in identifying wrongful capital convictions.

Florida death-row exonerees Clemente Javier Aguirre-Jarquín, Robert Earl DuBoise, Rudolph Holton, Herman Lindsey, Joaquín José Martínez Pérez, Juan Roberto Melendez-Colon, Seth Penalever, and Ralph Daniel Wright, Jr. were all wrongly convicted of first-degree murder and sentenced to death in Florida.

Floridians for Alternatives to the Death Penalty is a statewide nonprofit organization working to end the death penalty in Florida, including through education.

The Innocence Project of Florida (IPF) provides pro bono legal services to indigent individuals whose actual innocence may be established through post-conviction DNA testing or other evidence. The work of *amicus*, affiliated organizations and independent advocates has led to the exoneration of 648 individuals nationwide based in whole or in part on new DNA evidence.

Conservatives Concerned is a network of political and social conservatives who question the alignment of capital punishment with conservative principles and values.

Florida Conference of Catholic Bishops (FCCB) is the agency through which the Catholic Bishops of Florida speak on matters of concern to the Church and the three branches of Florida's government.

The Faith Leaders of Color Coalition is a multifaith national network of more than 800 faith and community leaders dedicated to advancing justice, equity, and a critical examination of the American capital punishment system.

The Florida Association of Criminal Defense Lawyers is a statewide nonprofit organization of criminal defense lawyers, including capital defense practitioners, whose mission includes protecting the rights of the accused.

Craig Trocino, Esq. is an Associate Professor and the director of the University of Miami School of Law's Innocence Clinic.

Phillips Black, Inc. is a nonprofit, public interest law practice dedicated to providing the highest quality of legal representation to

incarcerated individuals in the United States sentenced to the severest penalties under law.

Florida Justice Institute is a nonprofit public interest law firm that uses impact litigation to improve the lives of poor and disenfranchised Floridians, including through criminal justice reform.

The Florida Public Defender Association is a nonprofit corporation that assists Florida's elected Public Defenders in fulfilling their constitutional duty to ensure equal justice for all.

Advancing Real Change, Inc. (ARC) is a nonprofit organization that provides mitigation investigations throughout the United States and trains and educates criminal defense practitioners on the effective collection and presentation of mitigating evidence.

The ACLU of Florida is the state affiliate for the American Civil Liberties Union (ACLU), which is a nationwide nonpartisan organization dedicated to protecting the fundamental liberties and basic civil rights guaranteed by the state and federal constitutions.

The ACLU Capital Punishment Project focuses on upholding the fundamental liberties and basic civil rights guaranteed by the state and federal constitutions in death penalty cases.

The Death Penalty Policy Project is a non-profit organization founded by former Death Penalty Information Center (“DPI”) Executive Director Robert Dunham in 2023 to provide information, analysis, and critical commentary on the administration of the death penalty in the United States.

The U.S. Campaign to End the Death Penalty coordinates national, state, and local partners seeking repeal and reduced use of the death penalty by working to change the public discourse about capital punishment.

Witness to Innocence is a non-profit organization led by death-row exonerees that works to empower exonerees to end the death penalty and reform the U.S. justice system.

SUMMARY OF ARGUMENT¹

“It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible.” *Herrera v. Collins*, 506 U.S. 390, 415 (1993). Unfortunately, Florida’s death penalty manifests that reality with a long history of exonerations (more than any other state in the country) and unconstitutional death sentences.

When the system malfunctions, there must be a workable mechanism for correction. A critical component of correcting the inevitable faults of our justice system is understanding the significance of DNA evidence—like that presented in Mr. Zeigler’s case below and at issue in this appeal—in identifying wrongful convictions. Further, our courts should properly contextualize other indicia of a wrongful conviction, including official misconduct and a jury’s nonunanimous sentencing recommendation—or, as in Mr. Zeigler’s case, a jury override. Courts should also be careful to not heighten the standard for establishing a right to relief based on new DNA evidence.

¹ The Record on Appeal is cited as “R.” The Trial Transcript is cited as “TT.” The *Initial Brief of Appellant* filed June 29, 2026, is cited as “Zeigler Br.”

ARGUMENT

This Court and the U.S. Supreme Court have long recognized that “death is different.” *Swafford v. State*, 679 So. 2d 736, 740 (Fla. 1996) (Harding, J., specially concurring) (quoting *California v. Ramos*, 463 U.S. 992, 998-99 (1983)).

I. Above all else, death sentences must be reliable.

Due to the uniqueness of death as a punishment, the Eighth Amendment inures a “heightened ‘need for reliability in the determination that death is the appropriate punishment in a specific case.’” *Caldwell v. Mississippi*, 472 U.S. 320, 340 (1985) (quoting *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976)); *see also* U.S. Const. amend. VIII; art. I, § 17, Fla. Const. Accordingly, this Court “affords a correspondingly greater degree of scrutiny to capital proceedings.” *Swafford*, 679 So. 2d at 740 (Harding, J., specially concurring).

In some instances, “the concept of finality must sometimes yield to the fact that ‘execution is the most irremediable and unfathomable of penalties.’” *Id.* (quoting *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (Marshall, J., plurality opinion)); *id.* at 741 (“While finality is important in all legal proceedings, its importance must be tempered

by the finality of the death penalty.”). One instance where that is appropriate is to avoid “executing the innocent.” *Herrera*, 506 U.S. at 419 (O’Connor, J., concurring).

II. Florida has a long history of wrongful capital convictions.

Florida “leads the nation in exonerations from death row.” *Jackson v. State*, 430 So. 3d 64, 94 (Fla. 2025) (Labarga, J., concurring in result). Since the institution of modern capital punishment fifty years ago,² thirty people have been exonerated from Florida’s death row. *Id.*; see also *Innocence Database*, Death Penalty Info. Ctr., <https://deathpenaltyinfo.org/facts-and-research/data/innocence?state=Florida> (last visited June 16, 2026) (full list of Florida’s death row exonerees).

A. Most of Florida’s death-row exonerations followed a jury’s recommendation for a life sentence or nonunanimous recommendation for death.

Nationally, jury overrides were present in “the vast majority of death-row exonerations in the three states—Florida, Alabama, and Delaware—that permitted these practices” before 2016. *DPIC Special Report: The Innocence Epidemic*, Death Penalty Info. Ctr., at 15 (Feb.

² See generally *Gregg v. Georgia*, 428 U.S. 153 (1976); *Furman v. Georgia*, 408 U.S. 238 (1972).

2021), [https://files.deathpenaltyinfo.org/documents/pdf/The-Innocence-Epidemic.pdf] [hereinafter *Innocence Epidemic*]. The same is true in Florida specifically. The table below summarizes the jury’s sentencing recommendation in Florida’s twenty-five capital exoneration cases for which the jury vote is known:³

	Number of Cases	Percentage of Cases
Jury Override	5	20%
Nonunanimous Recommendation for Death	18	72%
Unanimous Recommendation for Death	2	8%

To summarize, 92% of Florida’s exoneration cases in which the jury vote is known involved either a jury override or a nonunanimous recommendation for death. *See id.* at 5 (“More than 15[%] of all death-row exonerations in the U.S. are in cases in which trial judges

³ See Robert Dunham, *Death-Row Exonerations — Cases Involving Non-Unanimous Jury Sentencing Votes or Judicial Override of Jury Votes for Life*, Death Penalty Pol’y Project (June 19, 2026), <https://tinyurl.com/4n9nhhjw>; *DPIC Analysis: Exoneration Data Suggests Non-Unanimous Death-Sentencing Statutes Heighten Risk of Wrongful Convictions*, Death Penalty Info. Ctr. (last updated Mar. 14, 2025), <https://tinyurl.com/37ky32x4> [hereinafter *Exoneration Data*]. The jury vote is unknown in five of Florida’s death-row exoneration cases. *See Innocence Epidemic, supra*, at 8.

overruled jury recommendations for life or imposed the death penalty based on non-unanimous jury votes for death. At least 23 exonerations in Florida . . . involved this outlier practice.”); *id.* at 8 (same).

B. To properly understand its significance, courts should review new DNA evidence in conjunction with other indicia of a wrongful conviction.

The advent of modern DNA testing provided a critical new tool for the American justice system, both in solving cold cases and identifying wrongful convictions. *See Dist. Att’y’s Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 55, 62 (2009). In fact, the first American courtroom to use DNA evidence in 1987 was *in the same County* where, ten years earlier, Mr. Zeigler was convicted and sentenced to death. *See* Greg Fox, *WESH 2 Investigates: How Florida prosecutors used forensic science in Tommie Lee Andrews’ case*, WESH2 (Nov. 7, 2022), <https://www.wesh.com/article/florida-dna-science-andrews-case/41877068>.

The key to reviewing new DNA evidence in a case like Mr. Zeigler’s is doing so in conjunction with the entire circumstances of the case, which lend critical context to the analysis. In 2021, DPI found that data from capital exonerations around the country “show

that most wrongful capital convictions and death sentences are not merely accidental or the result of unintentional errors. Instead, they are overwhelmingly the product of police or prosecutorial misconduct or the presentation of knowingly false testimony. More likely than not, they involve a combination of the two.” *Innocence Epidemic*, *supra*, at 3; *accord id.* at 17.

More specifically, DPI found that “[o]fficial misconduct and perjury/false accusation are by far the leading causes of wrongful capital convictions.” *Id.* at 17. “Misconduct was present in 85.7[%] of the cases in which DNA evidence contributed to proving a death-row exoneree’s innocence, suggesting that the denial of DNA testing or absence of DNA evidence has caused innocence to be undetected or contributed to the denial of relief in other innocence cases.” *Id.* at 4. Further, the prevalence of misconduct increases the longer an exoneration takes:

Misconduct occurred in 55.6[%] (55 cases) of the 99 cases in which exoneration took a decade or less, rising to 81.1[%] (43 of 53 cases) in exonerations taking 11-20 years, 88.0[%] (22 of 25) in the cases in which exoneration took 21-30 years, and *in all 8 of the exonerations that took more than three decades.*

Id. (emphasis added).

The second-leading cause of wrongful convictions is “false accusation or perjury,” which was present in 67.6% of exoneration cases. *Id.* at 4. Third is “[f]alse or misleading forensic evidence,” which was “present in 31.9% (59) of exoneration cases” *Id.* at 4-5. Further, in “more than a quarter of the exonerations (25.4%), inadequate legal representation failed to present key defense evidence or failed to contest erroneous or improper prosecution evidence or argument.” *Id.* at 17.

These factors usually do not travel alone. *See id.* Rather, “the combination of these factors often go hand-in-hand as part of a prosecutorial strategy to convict.” *Id.*

Florida’s death-row exonerations are consistent with national data. Eleven of the twenty-three cases (47.8%) involving non-unanimous jury recommendations for death or jury override involved more than one of the contributing factors discussed above. Dunham, *supra* note 3. More specifically:

- 19 of 23 (82.6%) cases involved official misconduct or perjury/false accusation.
- 9 of 23 (39.1%) cases involved false or misleading forensic evidence.
- 4 of 23 (17.4%) cases involved inadequate legal defense.

Id.

Indeed, DNA has been used to identify wrongful capital convictions in Florida cases with these factors. Robert DuBoise (*Amicus* in this Brief) is Florida's most recent death-row exoneree, and his case presents several of these factors: official misconduct, perjury/false accusation, and false or misleading forensic evidence. *See id.* DuBoise was convicted of raping and murdering Barbara Grams in 1983. *DuBoise v. State*, 520 So. 2d 260, 261 (Fla. 1988). His case was tainted from the beginning when he was illegally arrested "based on bite mark identification made from a beeswax impression" that was not "scientifically reliable." *Id.* at 262. Later, a jury convicted DuBoise based on the testimony of several witnesses, including a jailhouse informant. *See id.* at 263; *see also Lightbourne v. State*, 841 So. 2d 431, 443 (Fla. 2003) (Pariente, J., concurring) (highlighting the unreliability of "jailhouse informants"). The trial court sentenced DuBoise to death by jury override, which this Court vacated on direct appeal. *DuBoise*, 520 So. 2d at 262, 266.

After serving over thirty-five years in prison, DuBoise was finally exonerated through DNA evidence. Robert Duboise, *Innocence Project*, <https://innocenceproject.org/cases/robert-duboise/> (last

visited June 30, 2026). The evidence that led to his exoneration had been held at the medical examiner's office for decades without ever being tested. *Id.*

Clemente Javier Aguirre-Jarquin (also *Amicus* in this Brief) is Florida's 28th death-row exoneree, and his case follows the same pattern. In 2006, Aguirre was convicted of two counts of first-degree murder and sentenced to death following the jury's nonunanimous recommendations for death by votes of 7-5 and 9-3. *Aguirre-Jarquin v. State*, 202 So. 3d 785, 788 (Fla. 2016). His case involved perjury/false accusation, false or misleading forensic evidence, and inadequate legal defense. Dunham, *supra* note 3.⁴

Ten years after his conviction, this Court vacated Aguirre's convictions and sentences, which it had affirmed on direct appeal years before,⁵ and remanded for a new trial based on "DNA and testimonial evidence that strongly pointed to Aguirre's innocence and

⁴ Aguirre's "initial trial counsel never investigated his claim of innocence, never hired forensic experts, and never tested for DNA the 150+ items that police collected from the crime scene." *Bradley Team Helps Save the Life of Our Pro Bono Client – Clemente Javier Aguirre-Jarquin*, Bradley, <https://tinyurl.com/muub7tet> (last visited July 9, 2026) [hereinafter *Bradley*].

⁵ *Aguirre-Jarquin v. State*, 9 So. 3d 593 (Fla. 2009).

to the involvement of an alternative suspect.” *Bradley*, *supra* note 4; *accord Aguirre-Jarquin*, 202 So. 3d at 790. On remand, the State not only “planned to retry Aguirre” but, also, “to pursue the death penalty.” *Bradley*, *supra* note 4. However, on “the eve of opening statements” for his retrial, the State dismissed all charges. *Id.*⁶

Ultimately, when reviewing DNA evidence, factfinders must consider the other case circumstances, especially those regularly correlated with a wrongful conviction. Isolating DNA evidence precludes the factfinder from adequately understanding the significance of the DNA evidence.

C. Florida’s troubled history bears a heightened risk of the intolerable result of executing the innocent.

Despite its troubled history, Florida continues conducting executions at a record pace⁷ and sentencing people to death using

⁶ Paul Hildwin’s case is similar to Aguirre’s but ended in a “no-contest plea deal to secure his immediate release” in March 2020, so he is not considered an exoneree. *See Hildwin v. State*, 141 So. 3d 1178 (Fla. 2014); *Paul Hildwin Released from Florida Prison 34 Years After Being Sentenced to Death*, Death Penalty Info. Ctr. (last updated Mar. 14, 2025), <https://deathpenaltyinfo.org/paul-hildwin-released-from-florida-prison-34-years-after-being-sentenced-to-death>.

⁷ Pamela Colloff, *Florida Is Executing Prisoners at a Record Pace, Even as Most of the U.S. Abandons the Death Penalty*, ProPublica (June 30, 2026), <https://www.propublica.org/article/florida-death-penalty-executions-ron-desantis>; Melanie (Kalmanson) Verdecia, *Florida hits*

the nation’s lowest standard for imposing a death sentence⁸—creating an increased risk of the constitutionally intolerable event of “executing the innocent.” *Herrera*, 506 U.S. at 419 (O’Connor, J., concurring). This is especially concerning considering that 11.6% of Florida’s current death-row prisoners were convicted before DNA testing was even introduced in the United States (including Mr. Zeigler). See *Death Row Roster*, Fla. Dep’t Corrs., <https://pubapps.fdc.myflorida.com/OffenderSearch/deathrowroster.aspx> (last visited July 8, 2026).

Indeed, several of Florida’s death-row prisoners maintain and have raised colorable claims of their innocence. For example, Henry Sireci was convicted and sentenced to death just months after Mr. Zeigler in the same County based on now-discredited hair

all-time high for executions, Tracking Fla.’s Death Penalty (Sept. 18, 2025), <https://fladeathpenalty.substack.com/p/historical-rate-of-executions-in>.

⁸ *Jackson v. State*, 430 So. 3d 64, 93 (Fla. 2025) (Labarga, J., concurring in result) (“Florida now has the lowest standard in the nation, requiring the fewest number of jurors to recommend the death penalty.”); *Hunt v. State*, 428 So. 3d 43, 59 (Fla. 2025) (Labarga, J., concurring in result) (“[T]he statutory amendment . . . renders Florida’s requirement the least demanding nationally and establishes Florida as the state with the least rigorous requirement among states that impose the death penalty.”).

comparison analysis. See Leonora LaPeter Anton, *Second man on Florida's death row to have DNA testing after prosecutor signs off*, Tampa Bay Times (May 25, 2021), <https://tinyurl.com/3zy42wyd>; see also *Death Row Roster*, *supra*. Sireci has maintained his innocence for the past four decades; a few years ago, this Court denied the State's efforts to block DNA and fingerprint testing. *State v. Sireci*, No. SC21-1467, 2022 WL 2387754, at *1 (Fla. July 1, 2022).

James Dailey's "conviction and sentence of death exist under a cloud of unreliable inmate testimony." *Dailey v. State*, 329 So. 3d 1280, 1289 (Fla. 2021) (Labarga, J., dissenting). "[T]here was *no* forensic evidence linking Dailey to [the crime]." *Id.*

Kenneth Hartley was also convicted without any physical evidence connecting him to the crime based primarily on the testimony of a confidential informant known to lie. Nichole Manna, *How a Florida prosecutor fixed a 'weak' case using a liar and 3 jailhouse snitches to send a man to Death Row*, Fla. Trib (Mar. 17, 2025), <https://tinyurl.com/ruf763sx>. Decades later, Hartley is still trying to prove his innocence. See *id.*

Robert Trease is currently litigating an actual innocence claim in federal court—almost three decades after being convicted and

sentenced to death. *See generally Trease v. Sec’y, Fla. Dep’t of Corrs.*, No. 24-11135, 2026 WL 508474 (11th Cir. Feb. 24, 2026).

Especially on the heels of Florida’s history of wrongful capital convictions, courts should be diligent to ensure that Florida does not continue the trend of wrongfully imprisoning innocent people.

D. Taxpayers and the judicial system bear the burden of wrongful convictions.

Wrongful convictions impose enormous costs on Florida’s taxpayers and judicial system. Capital cases are significantly more expensive than non-capital cases at every stage, from investigation and trial through decades of appellate and postconviction litigation. *E.g.*, Colloff, *supra* note 7 (“The steep cost of capital prosecutions has forced many prosecutors to think twice before seeking death; the years of litigation required to obtain and defend a death sentence can add millions of dollars to a case.”). Death-row housing is substantially more expensive than general-population housing due to heightened security requirements, single-cell occupancy, and restricted movement protocols. *See Pam Quanrud, What to Know: Costs and the Death Penalty*, Death Penalty Info. Ctr. (last updated

May 14, 2026), <https://deathpenaltyinfo.org/what-to-know-costs-and-the-death-penalty>.

Each wrongful conviction generates years, often decades, of postconviction motions, evidentiary hearings, appeals, and federal habeas proceedings. *See, e.g.,* Sarah Ryan Hartung, *Federal Habeas Corpus and the Piecemeal Problem in Actual Innocence Cases*, 10 Stan. J.C.R. & C.L. 55, 57–58 (2014) (describing the successive stages of post-conviction review through direct appeal, state collateral proceedings, and federal habeas corpus). These extensive proceedings consume substantial judicial resources, require the time of state attorneys and public defenders, and divert courts from other matters.

When capital convictions are overturned, the public expenditure is not merely wasted but compounded by the costs of unwinding the conviction, compensating the wrongfully convicted, and re-investigating the original crime. *See, e.g.,* *City of Tampa Agrees to Pay Exoneree Robert DuBoise \$14 Million in Wrongful Conviction Settlement*, Death Penalty Info. Ctr. (last updated Mar. 14, 2025), <https://tinyurl.com/3vsfyjan>.

This is not reason to turn a blind eye to indicia of a wrongful conviction. Instead, this reality should be motivation for ensuring that capital convictions are reliable in the first instance—to protect the rights of the accused and the public’s interest in the efficient administration of justice.

III. Mr. Zeigler’s case bears several indicia of a wrongful conviction that must be considered in conjunction with the new DNA.

The DNA evidence in this case, which the circuit court acknowledged could cause a jury to acquit Mr. Zeigler on retrial (R. 10627), must be viewed in the appropriate context of the other issues in Mr. Zeigler’s case that indicate a wrongful conviction.

A. Mr. Zeigler’s jury did not vote for a death sentence.

Mr. Zeigler is one of two prisoners on Florida’s death row sentenced to death by jury override. *Asay v. State*, 210 So. 3d 1, 29 (Fla. 2016) (Labarga, C.J., concurring). After the jury recommended that Mr. Zeigler be sentenced to life rather than death (TT. 2824), the trial judge opted to disregard the jury’s recommendation and, instead, sentence Mr. Zeigler to death. (TT. 2863-66; R. 9276.)⁹ Mr.

⁹ After a death warrant was signed and his execution stayed, this Court vacated Mr. Zeigler’s sentence of death and remanded for

Zeigler's jury's sentencing recommendation should also be considered when reviewing the new DNA evidence.

Capital juries are "death-qualified," meaning jurors are screened to ensure they are at least willing to impose a death sentence. *See, e.g.,* ACLU, *Fatal Flaws: Revealing the Racial and Religious Gerrymandering of the Capital Jury* 5-6 (June 2025), <https://www.aclu.org/publications/fatal-flaws-revealing-the-racial-and-religious-gerrymandering-of-the-capital-jury> [hereinafter *Fatal Flaws*]; *see also* *Lockhart v. McCree*, 476 U.S. 162, 176 (1986); *Witherspoon v. Illinois*, 391 U.S. 510, 512, 522 n.21 (1968). If not, they are stricken from the venire. *Fatal Flaws, supra*, at 6.

Death-qualified juries are more prone to convict, including as a result of the death-qualification process itself. *E.g.,* Susan D. Rozelle, *The Principled Executioner: Capital Juries' Bias and the Benefits of True Bifurcation*, 38 Ariz. S.L.J. 769, Part III (2006); Claudia L. Cowan, et al., *The effects of death qualification on jurors'*

resentencing. (R. 9277-78.) At resentencing, the trial court repeated the jury override. (R. 9279.) Had Mr. Zeigler been tried after 2016, he would not be on death row because Florida law now bars jury overrides. *See* § 921.141(3)(a), Fla. Stat. (2025); *see also* *Hurst v. Florida*, 577 U.S. 92, 102–03 (2016).

predisposition to convict and on the quality of deliberation, 8 L. & Hum. Behav. 53 (1984). In turn, prosecutors sometimes seek the death penalty so they can proceed with a death-qualified jury and, in turn, increase the chances of a conviction. See Rozelle, *supra*, at 778, 786.

Capital jurors often compromise between guilt and sentencing—voting to convict but using any residual doubt of the defendant’s guilt as mitigation for sentencing and then voting for life rather than death. See Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?*, 98 Colum. L. Rev. 1538, 1563 (1998). In fact, the record in Mr. Zeigler’s case suggests this happened with at least one juror. After the jury completed deliberations and returned its verdict, one juror told the trial court that “one of the Jurors felt if [the jury] didn’t find [Mr. Zeigler] guilty how was he going to be punished.” (TT. 2843.) That juror went on: “[W]ouldn’t it be nice if each of them believed in God?” (TT. 2844.) Another juror then asked the Court to “make inquiry” of the other juror “as to whether any members of the Jury formed or expressed an opinion prior to the case being submitted for deliberation,” which the trial court refused. (TT. 2844.)

Mr. Zeigler's jury's recommendation for life suggests that the jury had reservations about his guilt. *See* Garvey, *supra*, at 1563. The record affirms this is true. After the trial, one juror told the trial court she had reservations about Mr. Zeigler's guilt. (TT. 2838 ("I still feel he's innocent."); TT. 2841 ("I still don't feel like he's guilty.")) The juror said she felt "pressured into" reaching the verdict and "couldn't take any more." (TT. 2839, 2838.) This, especially when considered in conjunction with the new DNA evidence, raises grave concerns about the reliability of Mr. Zeigler's conviction and death sentence.

B. There are several indications of official misconduct in Mr. Zeigler's case.

As explained above, official misconduct is one of the most significant indicia of a wrongful conviction. (*See* Part II.B *supra*.) Mr. Zeigler's case is wrought with indications of misconduct from the one person who was supposed to be without fervor: the trial judge.

Over forty years ago, this Court reversed the circuit court's denial of Mr. Zeigler's initial postconviction motion related to "possible bias on the part of the trial judge in sentencing Zeigler" based on a report that the judge told prosecutors: "[Y]ou get me one

first-degree murder conviction and I'll fry the son of a bitch." *Zeigler v. State*, 452 So. 2d 537, 539-40 (Fla. 1984).¹⁰

Later, in a successive postconviction motion, Mr. Zeigler argued that his conviction was "tainted by judicial intervention into [the jury's] deliberations tantamount to coercion" because, after a juror fainted in the jury room, the trial judge "telephoned [the juror's] doctor and arranged for her to receive a prescription for valium." *Zeigler v. State*, 632 So. 2d 48, 51 (Fla. 1993). On appeal, this Court affirmed the circuit court's summary denial of this claim. *Id.* at 52 ("Rather than judicial misconduct, this allegation simply reflects judicial concern for the well-being of one of the jurors who had fainted earlier in the trial.").

In addition to suggestions of bias by the trial court, the State has now admitted that "critical aspects of the case it presented to the jury [at trial] and to the Court on appeal are not true." (Zeigler Br., at 7; *see also id.* at 11-13; R. 9310 (circuit court agreeing that "the new DNA evidence clearly refutes" the State's theory at trial, which "could not be argued at any retrial").)

¹⁰ After a hearing on remand, the statement was determined not credible. *See Zeigler v. State*, 473 So. 2d 203, 204 (Fla. 1985).

IV. Capital defendants like Mr. Zeigler should not be held to a higher standard than Florida law requires in seeking relief based on exculpatory DNA evidence.

To ensure all wrongful convictions can be identified, it is critical that courts properly apply the standard for relief based on new DNA evidence. Unfortunately, Mr. Zeigler's case illustrates confusion surrounding this standard.

Under Florida law, a defendant is entitled to a new trial based on newly discovered evidence if he meets two requirements: (1) the evidence was not "known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence," and (2) the evidence "would probably produce an acquittal on retrial." *Hildwin*, 141 So. 3d at 1184. The circuit court concluded that the first factor is established in Mr. Zeigler's case. (R. 9308-09.)

As to the second factor, Florida law does not require conclusiveness that the defendant would be acquitted on retrial. *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (overruling the "conclusiveness test" from *Hallman v. State*, 371 So. 2d 482 (Fla. 1979), which required the defendant to prove the newly discovered evidence would conclusively establish innocence). Rather, the

“probable acquittal” standard is satisfied where the newly discovered evidence “weakens the case against [the defendant] *so as to give rise to a reasonable doubt as to his culpability.*” *Hildwin*, 141 So. 3d at 1184 (emphasis added). In other words, the court need only find that a jury, considering the newly discovered evidence alongside all other admissible evidence, would not be convinced of the defendant’s guilt beyond a reasonable doubt. *See id.*

The “beyond a reasonable doubt” standard is well-established and quite demanding. Florida courts have described this standard as interchangeable with “moral certainty.” *Thomas v. State*, 220 So. 2d 650, 651 (Fla. 3d DCA 1969). Indeed, certitude of guilt is constitutionally required to support a guilty verdict. *See Jones v. State*, 656 So. 2d 489, 490 (Fla. 4th DCA 1995); *Bove v. State*, 670 So. 2d 1066, 1069 (Fla. 4th DCA 1996). *See generally Ramos*, 590 U.S. 83 (discussing the significance of jury unanimity in convictions). Thus, anything less than unwavering certainty does not satisfy the “beyond a reasonable doubt” standard.

In Mr. Zeigler’s case, the circuit court expressly found “that there are enough evidentiary issues in this case that a jury *might* acquit” Mr. Zeigler. (R. 10626-27.) In doing so, the circuit court

necessarily recognized that the evidence could cause a jury's conviction of guilt to waver. A conviction that "might" not hold is, by definition, one that falls short of moral certainty and lacks the certitude constitutionally required to justify a conviction.

The circuit court also determined that "the new DNA evidence *clearly refutes*" the State's theory of the case that was presented at trial, on which the jury convicted Mr. Zeigler. (R. 9310.) In other words, the State would have to present an entirely new theory at a retrial, where the circuit court determined a jury "*might* acquit" Mr. Zeigler. (R. 10627.) Thus, the circuit court necessarily found that the newly discovered evidence "give[s] rise to a reasonable doubt of" Mr. Zeigler's guilt—satisfying Florida's standard for a new trial. *Hildwin*, 141 So. 3d at 1184.

By holding that the jury "*might* acquit" and yet denying Mr. Zeigler a new trial (R. 10626-27), the circuit court impermissibly applied a standard more demanding than Florida law requires, effectively reimposing the conclusiveness test that this Court expressly rejected. *Jones*, 591 So. 2d at 915; see *Zeigler Br.*, Part I.

CONCLUSION

This Brief is filed days after the fiftieth anniversary of *Gregg v. Georgia*, 428 U.S. 153, which instituted the modern death penalty. Since then, Florida has executed 134 people. *Execution List: 1976-Present*, Fla. Dep’t Corrs., <https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present> (last visited June 21, 2026). In the same time, Florida has exonerated 30 people from death row—more than any other State in the country. That’s one exoneration for every 4.5 executions—an intolerably high risk of wrongful execution.

In *Gregg*, the Supreme Court declared: “There is no question that death as a punishment is unique in its severity and irrevocability.” 428 U.S. at 187 (citing *Furman*, 408 U.S. at 286-91 (Brennan, J., concurring)). As a result, courts should be “particularly sensitive to insure that every safeguard is observed.” *Id.* Florida has failed at this task.

Mr. Zeigler’s case illustrates what happens when the system fails—when, in a case with several indicia of error, exculpatory DNA evidence that “clearly refutes” the State’s case and “might” produce

an acquittal on retrial is not enough to obtain a new trial that could be the difference between freedom and death.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this *Amici Curiae* Brief complies with the applicable font and word-count requirements in Florida Rules of Appellate Procedure 9.210(b) and 9.370(b). It was prepared in Bookman Old Style 14-point font and contains 4990 words, excluding “[t]he cover sheet, the tables of contents and citations, the certificates of service and compliance, and the signature block for the brief’s author.” Fla. R. App. P. 9.210(a)(E).

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2026, a true and correct copy of the foregoing *Amici Curiae* Brief was filed electronically with the Court via the Florida E-Filing Portal, which provides notice to all parties.

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