

IN THE SUPREME COURT OF FLORIDA  
CASE NOS. SC16-8 & SC16-56

CARY MICHAEL LAMBRIX,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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CARY MICHAEL LAMBRIX,

Petitioner,

v.

JULIE L. JONES, etc.

Respondents.

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**MOTION REQUESTING THE OPPORTUNITY TO SUPPLEMENTAL  
BRIEF THE IMPACT OF THE ENACTMENT OF HOUSE BILL 7101 ON  
APPELLANT'S DEATH SENTENCE AND CLAIM I OF APPELLANT'S  
REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW the Appellant, CARY MICHAEL LAMBRIX, by and through undersigned counsel, and herein respectfully requests that this Court grant him the opportunity to submit a supplemental brief addressing the impact of the enactment of House Bill 7101 on his death sentences and Claim I of his reply to response to petition for writ of habeas corpus in the above-entitled appeal. In support of this

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motion, he states:

1. Mr. Lambrix is a death-sentenced inmate who raised in his habeas proceeding in this Court a claim premised upon *Hurst v. Florida*, 136 S. Ct. 616 (2016). After briefing by the parties, this Court heard oral argument on February 2, and shortly thereafter stayed Mr. Lambrix's execution, which had been set for February 11.

2. Thereafter, House Bill 7101 was signed into law by Governor Scott on March 7, 2016. The final Staff Analysis of the Criminal Justice Subcommittee accompanying the bill explained its purpose as "amend[ing] Florida's capital sentencing scheme to comply with the United States Supreme Court's ruling" in *Hurst*, which it summarized as: "the United States Supreme Court held Florida's capital sentencing scheme unconstitutional."<sup>1</sup> House Bill 7101 substantially alters Florida's capital sentencing scheme in the wake of the decision in *Hurst v. Florida*. These changes became effective when Governor Scott signed the bill on March 7, 2016.

3. One of the changes to Florida's capital sentencing scheme made by House Bill 7101 is the requirement that the jury return a unanimous verdict finding

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<sup>1</sup> House of Representatives Final Bill Analysis to HB 7101, at 1 (March 17, 2016), <https://www.flsenate.gov/Session/Bill/2016/7101/Analyses/h7101z.CRJS.PDF>.

at least one aggravating factor and identifying all aggravating factors found to exist. House Bill 7101 states that the jury's determination that one aggravating factor exists renders the defendant eligible for a death sentence: "If the jury . . . Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death . . . ." H.B. 7101, at 6, Ins. 145-49, Chapter No. 2016-13 (March 7, 2016). Since prior to the enactment of House Bill 7101 Florida's capital sentencing scheme did not contain a provision that a finding of one aggravating factor rendered a defendant eligible for a death sentence, this change appears to be a substantive change in the law as to what fact or facts must be found to authorize a death sentence. This change would appear to support Mr. Lambrix's argument that the capital sentencing scheme in effect in 1984 under which he was prosecuted did not provide that the finding of one aggravating factor rendered a defendant eligible for a death sentence.

4. House Bill 7101 also changes the number of jurors who must vote in favor of a death sentence and the effect that a failure of the requisite number to vote for a death sentence has on whether a death sentence can be imposed. Under House Bill 7101, at least 10 jurors must determine that the defendant should be sentenced to death before a death sentence can be imposed. If 3 or more jurors vote against the imposition of a death sentence, the defendant cannot be sentenced to death. House Bill 7101 demonstrates a consensus within the State of Florida and an absolute

national consensus against imposing a death sentence when 3 or more jurors vote against a death sentence.<sup>2</sup> Accordingly, the imposition of death sentences in cases such as Mr. Lambrix's where 4 jurors voted against the imposition of death, arguably violates the Eighth Amendment. *See Wright v. State*, 586 So. 2d 1024, 1032 (Fla. 1991) (because "the constitutional protection against double jeopardy provides that if a defendant has been in effect 'acquitted' of the death sentence," a jury's vote in favor of a life recommendation has double jeopardy protection). The same analysis would not apply to Mr. Lambrix's 10-2 death sentence, which would still require resentencing under arguments previously put forth by Mr. Lambrix in briefing.

5. However, the question arises whether House Bill 7101 made substantive changes to Florida's capital sentencing scheme such that it cannot be applied retroactively to Mr. Lambrix's case, should this Court determine that a resentencing is required. The Fifth District Court of Appeal concluded that House Bill 7101 made no substantive changes, but certified the issue as one of great public importance that should be decided by this Court in *State v. Perry*, Case No. 5D16-

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<sup>2</sup> Only Alabama and Delaware do not require unanimity: Alabama requires death pursuant to 10-2 jury recommendations, Ala. Code § 13A-5-46(f), and Delaware requires unanimity on aggravating factors but not sentencing recommendations, Del. Code Ann. Title 11, § 4209.

516 (5th DCA March 16, 2016).<sup>3</sup>

6. These and other questions raised by the enactment of House Bill 7101 warrant briefing by the parties. This Court recognized as much when on March 11, 2016, it ordered supplemental briefing in *Hurst v. State*, Case No. SC12-1947, and directed the parties to discuss in their briefing the effect of the new statute on Mr. Hurst's death sentence and/or on whether a resentencing should one be ordered. Similarly on March 15, 2016, this Court entered a similar order in *Jackson v. State*, Case No. SC13-1232. Mr. Lambrix seeks the opportunity that this Court accorded Mr. Hurst and Mr. Jackson.

WHEREFORE, for the reasons discussed in this motion, Appellant respectfully requests that this Court order supplemental briefing in the above-entitled appeal and direct the parties to brief the impact of the enactment of House Bill 7101.

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<sup>3</sup> To the extent that *State v. Perry* holds that House Bill 7101 now applies to cases involving homicides committed in 1983, the jury's 8-4 sentencing recommendation in Mr. Lambrix's case should require that his death sentences be vacated.

Respectfully submitted,

NEAL A. DUPREE  
Capital Collateral Regional  
Counsel - South  
Fla. Bar No. 311545

Respectfully submitted,

/s/ William M. Hennis, III  
WILLIAM M. HENNIS, III  
Florida Bar No. 0066850  
Litigation Director CCRC-South  
*hennisw@ccsr.state.fl.us*

MARTIN J. MCCLAIN  
Florida Bar No. 0754773  
Special Assistant CCRC-South  
*martymcclain@earthlink.net*

M. CHANCE MEYER  
Florida Bar No. 0056362  
Staff Attorney CCRC-South  
*meyerm@ccsr.state.fl.us*

JESSICA HOUSTON  
Florida Bar No. 0098568  
Staff Attorney CCRC-South  
*houstonj@ccsr.state.fl.us*

Capital Collateral Regional Counsel-South  
1 E. Broward Blvd., Suite 444  
Fort Lauderdale, Florida 33301  
(954) 713-1284

COUNSEL FOR MR. LAMBRIX

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing has been provided to: Scott A. Browne, Assistant Attorney General, Office of the Attorney General, 3507 East Frontage Road, Ste. 200, Tampa, FL 33607-7013, *Scott.Browne@myfloridalegal.com*; Capital Appeals Intake Box, *capapp@myfloridalegal.com*; via email service at *warrant@flcourts.org* this 28th day of March 2016.

/s/ William M. Hennis, III  
WILLIAM M. HENNIS, III  
Florida Bar No. 0066850  
Litigation Director CCRC-South