**IN THE FLORIDA SUPREME COURT**
**CASE NO. SC18-1999**

**PETITIONER'S EXECUTION SCHEDULED**
**FOR DECEMBER 13, 2018 AT 6:00 PM**

**JOSE ANTONIO JIMENEZ,**

**Petitioner,**

**v.**

**JULIE L. JONES,**

**Respondent.**
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**MOTION FOR STAY OF EXECUTION**

COMES NOW, **JOSE JIMENEZ**, by and through undersigned counsel and respectfully requests that this Court grant a stay of his execution currently scheduled for Thursday, December 13, 2018. As grounds for his request Mr. Jimenez submits:

1. On November 15, 2018, the Governor scheduled Mr. Jimenez's execution for December 13, 2018 at 6:00 PM.. On December 3, 2018, Mr. Jimenez filed his Petition for Writ of Habeas Corpus in the above-entitled matter.

2. As this Court explained in granting a stay of Jerry Correll's execution, a stay of execution is warranted when the capital defendant facing execution presents a claim or claims that demonstrate a significant possibility of relief. *See Correll v. State*, Case No. SC15-147, Order Issuing Stay of Execution (February 17, 2015).

3. Furthermore, as this Court noted in *Tompkins v. State*, SC08-992 (Oct. 6, 2008), a stay is appropriate when necessary for this Court to "conduct meaningful review" of the issues

then pending before it. In *Tompkins*, the notice of appeal was filed on May 29, 2008. The record on appeal was not filed until October 3, 2008. The day before the record was received, the Governor on October 2, 2008, scheduled Mr. Tompkins' execution for October 28, 2008. On October 6, 2008, this Court issued its stay of Mr. Tompkins' execution until November 18, 2008 so that meaningful review of the issues could be conducted.

4. As Mr. Jimenez's petition demonstrates, the claim presented in the petition arises from the November 6, 2018, general election and the voter's approval of Amendment 11 to the Florida Constitution. This claim is based upon the results of the election just over a month ago. The claim contained therein while showing a significant possibility Mr. Jimenez is entitled to a resentencing proceeding, certainly warrants meaningful review of the claim.

5. It is important to note that just last week in *Boyd v. State*, the State filed a reply to a response to an order to show cause in which it relied on the Savings Clause as precluding the revised § 921.141 from applying to Boyd's case arising from a 1999 homicide. *See Boyd v. State*, Case No. SC18-1589, Reply to response at 3 ("The fact that a new sentencing statute is enacted does not require resentencing on cases final on appeal See Article X, section 9 of the Florida Constitution."), Reply to response at 15 ("The new statute does not apply to Boyd. See Article X, section 9, Florida Constitution.").[1] This confirms the basis of Mr. Jimenez's claim, that the

[1]The State's reliance on the Savings Clause is not only significant in light of the effect of Amendment 11, but it is also odd in the context of the *Boyd v. State* arising from a 1999 homicide. In *Hurst v. State*, the homicide occurred May 2, 1998. So under the Savings Clause the governing law as to Tim Hurst's prosecution and punishment was the version of § 921.141 in effect on May 2, 1998. And of course, it was that version of the statute that was construed by this Court in *Hurst v. State*, and thus this Court's construction of § 921.141 in *Hurst v. State* would have to mean under the Savings Clause that on May 2, 1998, § 921.141 contained statutorily identified facts that so like elements that the right to a unanimous jury find all of the elements established before a conviction of the offense could be entered also applied to those facts. Surely

approval of Amendment 11 demonstrates the will of the people that the Savings Clause no longer preclude the retrospective application of statutory changes that benefit criminal defendants by imposing a greater burden on the State to prove the necessary facts before death sentence can be imposed. In fact, the approval of Amendment 11 demonstrates that the voters want such changes applied retrospectively.

^6. The effect of the approval of Amendment 11 will not be a matter limited to Mr. Jimenez or other inmates on death row. Already before this Court is another case surely to be impacted. In *Love v. State*, SC18-747, this Court accepted jurisdiction to determine "[w]hether section 776.032(4) applies to cases pending at the time of the law's enactment or only to those cases whose underlying facts arose after the statute's effective date." *See Love v. State*, SC18-747 (Initial Brief of Petitioner). Specifically, the petitioner addresses the retroactive application of the newly expanded stand your ground law. In 2017, the Florida Legislature amended the statute providing for the stand your ground defense and placed the burden on the State to prove by clear and convincing evidence that the defendant was not standing his ground. Ms. Love, like Mr. Jimenez, seeks to apply substantive changes to the criminal law that work to each petitioner's benefit's. The State's Answer Brief specifically relies on the Savings Clause as one of its arguments (probably the strongest argument) for why the 2017 statutory change to the stand your ground law could not be applied retrospectively to events that occurred before the statutory change was enacted.

7. Ms. Love's position is supported by the National Rifle Association (NRA) which

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if that is what § 921.141 provided on May 2, 1998, it provided the same thing in 1999 at the time of the murder at issue in *Boyd v. State*.

not only filed an amicus brief in *Love v. State*,[2] but also provided significant back and support to the approval of Amendment 11. A ruling in Mr. Jimenez's case will have consequences as to the NRA's position in *Love v. State*, and many other circumstances as well. The demise of the Savings Clause with the voters approval of Amendment 11 has made the will of the people clear. There should no longer be an obstacle to applying the statutory changes retrospectively in order to insure that defendants are treated equally across time. Statutory amendments enacted to reduce unduly harsh punishment or to require the State to prove more in order to justify a particular sentence are meant to apply retrospectively as shown by the approval of Amendment 11 and what the voters were told the benefits of the amendment were. The approval of Amendment 11 and the demise of the Savings Clause show that the voters have resoundingly called for the statutory changes which impose increase burdens of proof on the State be applied to Ms. Love and Mr. Jimenez and many others who received sentences greater than the law now calls for. When the legislature recognizes that a criminal law has been unduly harsh or the State's burden of proof too lax, that worse were victims of the old law should not be grandfathered in and able to benefit from the legislature decision to enact a change in the criminal law.

WHEREFORE, Mr. Jimenez respectfully requests that this Court issue an order staying

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[2]The NRA's amicus brief was filed in *Love* on August 24, 2018. In its amicus brief, the NRA set forth its argument as to why the amendment to the "stand your ground" law contained in Chapter 2017-72, Laws of Florida, should be applied retroactive to events occurring before the effective date of the 2017 amendment. The NRA asserted that applying the amendment retroactively advanced very important societal values. Amicus Brief of the NRA, *Love v. State*, Case No. SC18-747 at 19 ("The core value of presuming innocence is the primary factor that informs the allocation of burdens in the criminal law, but it is not the only one. Especially '[i]n cases involving individual rights, whether criminal or civil, the standard of proof . . . reflects the value society places on individual liberty.' *Addington*, 441 U.S. at 425 (quotation marks and brackets omitted).").

his execution so that his claims for relief can be fully and properly briefed and meaningfully considered without the exigencies that accompany a pending execution date.

Respectfully submitted,

/s/ Martin J. McClain
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the motion has been furnished by electronic mail to Lisa-Marie Lerner, Assistant Attorney General, on this 10th day of December, 2018.

/s/ Martin J. McClain
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