No. 06-8273

IN THE

Supreme Court of the United States

STEPHEN DANFORTH,
Petitioner,
v.
STATE OF MINNESOTA,
Respondent.

On Writ of Certiorari to the Supreme Court of Minnesota

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether *Teague* v. *Lane*, 489 U.S. 288 (1989), which provides a "retroactivity" rule for federal habeas actions, deprives States and state courts of authority to decide what remedial effect "new" constitutional rules should be given in their own state post-conviction proceedings.

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INTEREST OF *AMICUS CURIAE*

National Association of Criminal Defense Lawyers (NACDL) is a nonprofit national bar association that works in the interest of criminal defense attorneys and their clients. NACDL was founded to ensure justice and due process for persons accused of crimes and to foster the integrity, independence, and expertise of the criminal defense profession. NACDL has more than 12,500 members—joined by 90 affiliate organizations with 35,000 members—including criminal defense lawyers, U.S. military defense counsel, law professors, and judges committed to preserving fairness within America's criminal justice system. NACDL and its members have a strong interest in ensuring that state courts are not precluded from applying, in their own post-conviction proceedings, broader remedial

principles than those that constrain federal courts in reviewing the legality of state-court convictions.[1]

STATEMENT OF THE CASE

This case concerns whether the State of Minnesota has authority, when adjudicating a claim for post-conviction relief under a state-law cause of action, to give the claimant the benefit of developments in constitutional law that occurred after his conviction became final.

1. In 1996, petitioner Stephen Danforth was tried in Minnesota state court for first-degree criminal sexual conduct, Minn. Stat. § 609.342, subd. 1(a)(1994), based on the alleged sexual abuse of a minor. J.A. 6-7. At trial, the court concluded that the minor was incompetent to testify and admitted, over Danforth's objection, a videotaped interview in which the minor accused Danforth of the abuse. J.A. 7.

Danforth challenged the admission of the videotaped statement on appeal, urging that it violated his Sixth Amendment right to confront the witnesses against him. J.A. 32. The court of appeals affirmed, J.A. 29, and the Minnesota Supreme Court denied further review, J.A. 30. On September 9, 1999, Danforth filed a petition for state post-conviction relief, which was also denied. J.A. 32-34.

2. Four years later, this Court decided *Crawford* v. *Washington*, 541 U.S. 36 (2004), holding that the Sixth Amendment "impose[s] an absolute bar to [the admission of] statements that are testimonial, absent a prior opportunity to cross examine [the declarant]." *Id.* at 60. Danforth

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[1] This *amicus* brief is filed with the consent of the parties, and letters of consent are being filed with the Clerk of the Court in accordance with this Court's Rule 37.3(a). Pursuant to Rule 37.6, the *amicus* submitting this brief and its counsel represent that neither party to this case nor their counsel authored this brief in whole or in part, and that no person other than *amicus* paid for or made a monetary contribution toward the preparation and submission of this brief.

filed a second petition for state post-conviction relief, citing *Crawford*. J.A. 34. The district court denied the petition, J.A. 35, and the Minnesota Court of Appeals affirmed, J.A. 41.

The Minnesota Supreme Court granted Danforth's petition for review, but upheld the denial of relief. J.A. 44. The Minnesota court did not reach the merits of Danforth's Confrontation Clause claim under *Crawford*, holding that *Teague* v. *Lane*, 489 U.S. 288 (1989), precluded it from applying *Crawford*'s "new" rule retroactively in state post-conviction proceedings. The court rejected Danforth's contention that state courts have authority to offer their citizens greater protections than those that would be available in a federal habeas action, and that state courts therefore can apply *Crawford* to a broader class of cases than those eligible for relief under *Teague*. The court recognized that the *Teague* framework "is based, in part, on concerns unique to federal habeas corpus." J.A. 47. But it concluded that it was "compelled to follow the lead of [this] Court in determining when a decision is to be afforded retroactive treatment," J.A. 45, and that it was "not free to fashion [its] own standard for retroactivity for *Crawford*." J.A. 47. The court then concluded that *Crawford* qualifies as a "new" rule under *Teague* that cannot be given retroactive effect. J.A. 51-54.[2]

On May 21, 2007, this Court granted Danforth's petition for a writ of certiorari to determine whether the rule established in *Teague* v. *Lane* is concerned solely with the scope of federal habeas or instead limits the authority of

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[2] After the Minnesota Supreme Court issued its decision, this Court decided *Whorton* v. *Bockting*, 127 S.Ct. 1173 (2007)—a case arising in the federal habeas context—which likewise concluded that *Crawford* does not qualify for retroactive treatment under *Teague*. Consequently, the only issue in this case is whether *Teague* precludes state courts from choosing to apply *Crawford* in state habeas proceedings to convictions that became final before *Crawford* was decided.

state courts to grant relief in their own post-conviction proceedings. 127 S.Ct. 2427.

SUMMARY OF ARGUMENT

The sole question in this case is whether federal law requires States to apply *Teague* v. *Lane*, 489 U.S. 288 (1989), to narrow the relief they can offer their own prisoners in their own post-conviction proceedings. It does not.

I. *Teague* is a remedial principle that regulates the scope of the *federal* habeas writ. *Teague* itself, this Court's decisions applying it, the decisions on which *Teague* is based, and the history of the Court's habeas jurisprudence all make that clear.

A. *Teague* does not purport to announce a constitutional rule. Rather, *Teague* makes plain that it establishes a remedial principle that, for reasons of equity, limits the relief a *federal* habeas court may provide. *Teague* attempts to accommodate the particular equitable concerns that arise when a federal court is asked to intrude upon an otherwise final state-court conviction. Citing these concerns, *Teague* concludes that where a state court has provided a reasonable (albeit mistaken) application of then-existing constitutional precedent, the extraordinary remedy of a federal habeas writ is not warranted. The concerns of comity and respect for state interests that undergird *Teague* cannot justify imposing its rule on unwilling States, forcing them to displace the remedial principles they would otherwise apply in their own courts when considering whether to grant post-conviction relief from their own criminal judgments.

B. History confirms that *Teague* is meant to apply to federal habeas only. Indeed, while this Court has continually refined the scope of the *federal* habeas writ, it has only in the rarest of circumstances had anything to say about the appropriate scope of *state* post-conviction relief. It is

improbable in the extreme that *Teague* would have deviated from that longstanding practice without even acknowledging that it intended to do so.

II. Even if the Court were inclined to extend *Teague* beyond its original meaning and to force the States to deny relief for putatively "new" rules of constitutional law, there would be no federal-law basis for doing so.

A. One searches in vain for any constitutional grounding for the *Teague* rule. Indeed, any attempt to characterize *Teague* as a constitutional rule that describes what the substance of federal law is, or was, at any particular time would require this Court to adopt a nakedly positivist understanding of constitutional law—namely, that this Court actually *makes* that law rather than merely *discovers* what it is and always has been. That is a view that this Court has never embraced and which many of its members have roundly rejected. *Teague* cannot and need not be read as incorporating it. Instead *Teague* is properly understood as a rule that distinguishes those convictions that warrant the remedy of federal habeas from those that do not.

B. Nor does *Teague* identify any federal interests that would warrant displacing a State's own judgment about the scope of constitutional violations it wishes to remedy in its own post-conviction processes. To the contrary, *Teague*'s principal concerns are comity and respect for the States. It is hard to see how those interests are furthered by prohibiting a State that chooses to do so from giving full remedial effect to this Court's decisions. Allowing a state court the liberty to apply its best and most current understanding of federal law in its own state post-conviction proceedings is a triumph of comity, not a defeat.

C. Finally, contrary to the conclusion of the Minnesota Supreme Court, this Court's jurisprudence on questions of civil retroactivity actually confirm that *Teague* is best understood *not* as a constitutional rule with which the

States must comply, but as a remedial principle that limits, for reasons of equity, the relief a federal habeas court can provide.

ARGUMENT

Teague v. *Lane*, 489 U.S. 288 (1989), narrows the circumstances in which federal courts, acting under the federal habeas statute, 28 U.S.C. § 2254, may overturn an otherwise final state court conviction. Invoking the retroactivity formulation proposed by Justice Harlan for federal habeas cases in *Mackey* v. *United States*, 401 U.S. 667, 688-695 (1971) (concurring in part and dissenting in part), and *Desist* v. *United States*, 394 U.S. 244, 262-269 (1969) (dissenting opinion), *Teague* ruled that federal courts should neither announce nor apply "new" constitutional rules of criminal procedure on federal habeas. Under *Teague*, a rule is deemed "new" and therefore unavailable on federal habeas unless the rule was "*dictated* by precedent" when the petitioner's conviction became final. 489 U.S. at 301; *Graham* v. *Collins*, 506 U.S. 461, 467 (1993).

Contrary to the decision below, *Teague* is not a rule of federal law that binds state courts and precludes them from offering more generous relief in their own post-conviction proceedings. It is instead a federal remedial rule specifically adapted to the *federal* habeas statute, 28 U.S.C. § 2254, in an attempt to reflect the principles of equity that govern the availability of relief under that statute. That is clear from the reasoning of *Teague* and from the separate opinions of Justice Harlan in *Mackey* and *Desist*, on which *Teague*'s framework is based. It is also clear from the principles *Teague* invokes, including federalism, comity, and respect for States and state courts. Those principles counsel respect for the choices States make when calibrating their own post-conviction remedies—not the establishment of a federal rule to supersede legitimate state choices among competing remedial policies.

History likewise confirms that *Teague* announces a remedial principle that governs *federal* habeas and not state proceedings. This Court has, throughout its history, adjusted the scope of federal habeas in light of its equitable origins in an effort to ensure that the writ serves its highest purposes without undue intrusion into state processes. The Court has never, however, taken it upon itself to impose federal principles of equity to preclude States from offering their citizens more generous post-conviction remedies in their own courts under state causes of action.

There is, moreover, no plausible federal-law basis for imposing *Teague* on the States. The only arguable *constitutional* basis for *Teague* is a positivist view that this Court's decisions, rather than "finding" and "articulating" the law, actually "make" it. Many members of this Court have resisted that understanding of the judicial role, and *Teague* cannot and need not be read as incorporating it. Rather, the language of "retroactivity" in *Teague* is best understood not as a retroactivity rule, but as a method (however effective) for distinguishing state-court decisions that deserve respect as good-faith applications of constitutional law from those that, based on the equities, truly warrant federal relief. Indeed, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which largely incorporates *Teague*'s standard, does so without using the language of retroactivity at all.

I. *TEAGUE* IS A REMEDIAL PRINCIPLE DESIGNED TO REGULATE THE SCOPE OF THE *FEDERAL* HABEAS WRIT

This Court has long broadened and narrowed the scope of *federal* habeas relief in an attempt to accommodate equitable considerations—including fundamental fairness, comity, federalism, and the States' interest in the finality of their criminal judgments. Invoking those principles, *Teague* attempts to honor the basic purpose of the federal habeas writ as an instrument of justice while accounting for

the unique concerns that arise when a federal court is asked to disturb a state-court conviction long since final on direct review. But nothing in *Teague* or its progeny suggests that it establishes, under the guise of equity, a rule that operates beyond the confines of federal habeas. Nor does *Teague* suggest that, far from accommodating state interests, it is meant to displace the States' remedial discretion in state post-conviction proceedings. In fact, the opposite is true.

A. *Teague* By Its Terms Represents An Adjustment To The Availability Of *Federal* Habeas Relief

Teague is a rule governing the scope of relief available under the *federal* habeas writ. That is apparent from *Teague*'s origins, its reasoning, and its progeny. As explained in greater detail below, this Court has long exercised the authority to adjust the scope of the *federal* writ in light of the equitable principles that govern its application. It has no such authority where state habeas is concerned.

1. *Teague* itself (like every decision of this Court applying *Teague*) arose on federal habeas under 28 U.S.C. § 2254. That procedural posture was not merely a background fact. It was the "frame of reference" that dictated the rule *Teague* announced. See *Teague*, 489 U.S. at 306 (quoting *Mackey*, 401 U.S. at 682 (Harlan, J., concurring in part and dissenting in part)). As the *Teague* plurality explained, "[t]he relevant frame of reference" for determining the appropriate "retroactivity" rule for federal habeas is "*the purposes for which the writ of habeas corpus* is made available." *Ibid.* (emphasis added). As Justice Harlan put it, "the problem of retroactivity is in truth none other than one of *resettling the limits of the reach of the Great Writ*." *Mackey*, 401 U.S. at 701-702 (emphasis added).

Those observations make clear that *Teague* was developed in an attempt to ensure that relief granted under *federal* habeas would be consistent with the purposes of and

the equitable considerations governing the availability of the *federal* writ. It is improbable that this Court would have presumed to "resettl[e] the limits" of *state writs* based on its own assumptions about the "purposes for which" the *States* make those writs available as a matter of *state law*. *Mackey*, 401 U.S. at 701; *Teague*, 489 U.S. at 306. The Court certainly would not have done so without any briefing from the affected States, an examination of state precedents, or an analysis of the history of state habeas. *Teague* thus "adopt[ed] Justice Harlan's view" about "the limits of the reach of" *federal* habeas. *Teague*, 489 U.S. at 310; *Mackey*, 401 U.S. at 702. It had nothing to say about what "the limits of the reach of" state post-conviction relief should be.

That *Teague* is addressed to federal habeas alone is clearer still from *Teague*'s progeny. Since adopting the rule set forth by the *Teague* plurality, *Saffle* v. *Parks*, 494 U.S. 484 (1990), this Court has repeatedly characterized it as a standard that limits the scope of *federal* habeas relief. See, *e.g.*, *Beard* v. *Banks*, 542 U.S. 406, 412 (2004) ("*Teague*'s non-retroactivity principle acts as a limitation on the power of *federal courts* to grant habeas relief to state prisoners.") (emphasis added) (internal quotation marks, citation, and alterations omitted); *Caspari* v. *Bohlen*, 510 U.S. 383, 389 (1994) ("The [*Teague*] nonretroactivity principle *prevents a federal court* from granting habeas corpus relief to a state prisoner based on a rule announced after his conviction and sentence became final.") (emphasis added). This Court has never applied *Teague*'s limitation to cases arising on review of state habeas proceedings.[3]

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[3] Notably, in *Horn* v. *Banks*, 536 U.S. 266 (2002), this Court held that federal courts were obliged to apply *Teague* since it was properly raised by the State in response to a federal habeas petition, even though the Pennsylvania state courts had reached the merits of Banks's claim. *Id.* at 272. The Court gave no indication that the Pennsylvania courts themselves had erred in failing to apply *Teague*. Likewise, in *Bustillo* v.

2. *Teague* quite clearly is limited to federal habeas for yet another reason: the Court nowhere identified a constitutional principle, or some overriding federal interest, sufficient to justify imposing *Teague* on the States—much less for displacing the remedial rules the States might otherwise choose to apply in their own state proceedings. Instead, the Court based its new rule on equitable concerns that would seem to preclude—not mandate—forcing *Teague* upon unwilling States.

a. Foremost among the equitable concerns invoked by *Teague* are comity, federalism, and respect for the States. "State courts," *Teague* observed, "are understandably frustrated when they faithfully apply existing constitutional law *only to have a federal court discover*, during a [habeas] proceeding, new constitutional commands." 489 U.S. at 310 (emphasis added) (internal quotation marks and citation omitted). *Teague* chose to "foster[] comity between federal and state courts," *Gilmore* v. *Taylor*, 508 U.S. 333, 340 (1993), by seeking to "validat[e] reasonable, good-faith interpretations of existing precedents made by state courts," *O'Dell* v. *Netherland*, 521 U.S. 151, 156 (1997) (citation omitted). Such comity-related concerns are, of course, entirely absent in state post-conviction proceedings, where state courts review their own judgments. It would make no sense to invoke principles of "federalism" and "comity"—which counsel respect for state policy determinations—as a reason to supersede a State's own determination about the scope of relief it wishes to grant in its own collateral proceedings.

Nevada's Supreme Court has, for example, chosen as a matter of policy *not* to apply *Teague* because it believes that applying its best understanding of current federal law in its

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Johnson, 126 S.Ct. 2669 (2006), this Court addressed an arguably novel interpretation of a federal treaty, even though that case arose on review of state collateral proceedings.

own collateral proceedings will better serve its interest in "encouraging the district courts of [Nevada] to strive for perspicacious, reasonable application of constitutional principles in cases where no precedent appears to be squarely on point." *Colwell* v. *Nevada*, 59 P.3d 463, 471 (2002). The federal interest in maintaining good relations with the States (in this case Nevada) would be undercut—not furthered—by forcing them to subjugate their balance of competing interests to a balance this Court has chosen.

The Court's opinion in *Johnson* v. *Fankell*, 520 U.S. 911 (1997), is instructive. In that case, the Idaho courts refused to allow state officials sued under 42 U.S.C. § 1983 to take an interlocutory appeal of an order denying summary judgment on qualified immunity grounds. *Id.* at 916. Relying on decisions of this Court authorizing interlocutory appeals of qualified immunity issues, *e.g.*, *Mitchell* v. *Forsyth*, 472 U.S. 511, 524-530 (1985), the officials argued that federal law should preempt Idaho's rule to protect the substantive right to immunity and "to avoid different outcomes in § 1983 litigation based solely on whether the claim is asserted in state or federal court." *Id.* at 918 (internal quotation marks and citations omitted). This Court rejected those arguments. It explained that "the ultimate purpose of qualified immunity is to *protect a State* and its officials from overenforcement of federal rights." *Id.* at 919 (emphasis added). That Idaho did not follow federal law in allowing interlocutory appeals was "less an interference with *federal* interests than a judgment about how best to balance the competing *state* interests of limiting interlocutory appeals and providing state officials with immediate review of the merits of their defense." *Id.* at 919-920 (emphasis in original). *Teague* is likewise intended primarily for the benefit of the States. As with the rules that attend the qualified immunity doctrine, if a State determines it is in its best interests to forgo *Teague*'s protections in its own courts, it should be permitted to do so.

b. In adopting *Teague*, the Court also invoked the States' interests in finality. Allowing "new" federal rules to be enforced in federal habeas, the Court believed, would "*continually* force[] the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." 489 U.S. at 310. *Teague* noted the "costs imposed on the State[s] by retrospective application of new rules of constitutional law on habeas corpus." *Id.* (quoting *Solem* v. *Stumes*, 465 U.S. 638, 654 (1984) (Powell, J., concurring in the judgment)). *Teague* is meant to "reflect [the Court's] enduring respect for the *State's* interest in the finality of convictions that have survived direct review within the state court system." *Calderon* v. *Thompson*, 523 U.S. 538, 555 (1998) (quotation marks and citation omitted) (emphasis added).

The federal policy of "respect for the *State's* interest in * * * finality" cannot justify overturning the *State's judgment* as to the strength of that interest in the State's own post-conviction proceedings. Justice Harlan explained:

> The interest in leaving concluded litigation in a state of repose * * * may quite legitimately be found *by those responsible for defining the scope of the writ* to outweigh in some, many, or most instances the competing interest in readjudicating convictions according to all legal standards in effect when a habeas petition is filed.

Mackey, 401 U.S. at 683 (emphasis added). *Teague* reflects *this* Court's judgment as to when finality should prevail under the federal habeas statute that this Court administers. But state courts and legislatures are "responsible for defining the scope of the writ[s]" they provide. *Ibid.* Accordingly, state courts and legislatures may determine for themselves when the interest of "repose * * * outweigh[s] * * * competing interests" in the context of state post-conviction proceedings. *Ibid.* If a State is willing to

sacrifice finality to achieve other, competing state interests, it is hard to see why this Court should stand in its way.

c. *Teague* also identifies a federal interest in uniform treatment of prisoners *by federal courts*. See 489 U.S. at 305 (noting that, under the ad-hoc approach to retroactivity that *Teague* replaced, "lower *federal* courts" had "come to opposite conclusion[s]" about whether habeas petitioners in *federal* court should receive the benefit of a "new" rule). But the Court has never invoked a federal interest in establishing uniformity among state post-conviction procedures.

Of course, States that choose to provide post-conviction remedies must meet certain constitutional minimums. See *Yates* v. *Aiken*, 484 U.S. 211, 217-218 (1988); *Pennsylvania* v. *Finley*, 481 U.S. 551, 556-557 (1987). But, beyond that, a State has always been free to adopt more protective rules than those employed by its sister States or by the federal courts. See *Ramdass* v. *Angelone*, 530 U.S. 156, 177 (2000) ("State trial judges and appellate courts remain free, of course, to experiment by adopting rules that go beyond the minimum requirements of the Constitution."). Nothing in *Teague* or its progeny suggests that the Court intended anything different.

Indeed, even in the federal context, the Court has allowed *dis*uniformity where a State would prefer to waive *Teague* and test its convictions against current constitutional understanding. See *Collins* v. *Youngblood*, 497 U.S. 37, 41 (1990); see also *Hopkins* v. *Reeves*, 524 U.S. 88, 94 n.3 (1998) (holding that *Teague* protection may be forfeited if not asserted in a timely manner); *Godinez* v. *Moran*, 509 U.S. 389, 397 n.8 (1993) (same); *Schiro* v. *Farley*, 510 U.S. 222, 229 (1994) (same). It would be odd in light of that allowance in *federal* court to require uniformity across state court systems by forcing the States to adhere to *Teague* in their *own* post-conviction proceedings.

B. History Demonstrates That *Teague* Is Part Of This Court's Longstanding Practice Of Adjusting The Scope Of *Federal*—Not State—Habeas Relief Based On Principles Of Equity

History confirms that *Teague* represents an adjustment to the scope of the federal habeas writ—not an effort to circumscribe state-court authority to grant relief in state post-conviction proceedings. This Court has repeatedly adjusted the scope of federal habeas by invoking principles of equity in order to govern the availability of relief under that writ. *Teague* fits comfortably within that practice. This Court has, by contrast, never taken it upon itself to adjust the scope of *state* writs, much less to cabin state authority in those state proceedings.

1. The habeas writ began in English Law as a "prerogative writ" that could not issue unless a prisoner showed "why the extraordinary power of the crown is called in to the party's assistance." 3 William Blackstone, Commentaries *132 (1768). Since its early days, this Court has asked a similar question. In determining the scope of relief federal habeas should provide, the "Court uniformly has been guided by the proposition that the writ should be available to afford relief to those persons whom society has grievously wronged in light of modern concepts of justice." *Kuhlmann* v. *Wilson*, 477 U.S. 436, 447 (1986) (opinion of Powell, J.) (internal quotation marks and citation omitted). The Court has recognized that the writ is "an extraordinary remedy, a bulwark against convictions that violate fundamental fairness." *Brecht* v. *Abrahamson*, 507 U.S. 619, 633-634 (1993) (quotation marks and citations omitted).

Consistent with the writ's origins as an extraordinary remedy for "intolerable restraints," *Fay* v. *Noia*, 372 U.S. 391, 401-402 (1963), the Court's habeas jurisprudence has, over the centuries, attempted to fine-tune the scope of federal habeas relief to identify those restraints that are indeed "intolerable." For the most part, those adjustments

have had nothing to do with the federal courts' *power* to issue the writ; that power is broad. See *Ex Parte Watkins*, 28 U.S. (3 Pet.) 193, 201 (1830) (Marshall, C.J.) (noting that "[n]o doubt exists respecting the power" of this Court to issue the writ; rather "the question is, whether this be a case in which it ought to be exercised."). Instead, the adjustments have been based on principles of equity. That is consistent with the terms of the statute codifying federal habeas authority, which directs federal courts to dispose of petitions "as law *and justice* require," 28 U.S.C. § 2243 (emphasis added), and the nature of the writ itself, which "has traditionally been governed by equitable principles," *Fay*, 372 U.S. at 438; see also *Withrow* v. *Williams*, 507 U.S. 680, 699 (1993) (O'Connor, J., concurring in part and dissenting in part) ("[T]he Court has long recognized that habeas corpus is governed by equitable principles.") (quotation marks and citation omitted); *id.* at 718 (Scalia, J., dissenting) ("[T]his Court's jurisprudence has defined the scope of habeas corpus largely by means of * * * equitable principles.").

The Court acknowledged its authority to adjust the scope of federal habeas in light of equitable principles—including fairness and the federalism principles that govern the "relations existing, under our system of government, between the judicial tribunals of the Union and the states"—over a century ago, in *Ex Parte Royall*, 117 U.S. 241, 251 (1886). In that case, one of the first interpreting the 1867 Habeas Corpus Act (which extended the writ to state prisoners), the Court concluded that federal courts could pay due respect to federalism and comity concerns by declining to provide habeas relief until *after* state proceedings were complete. *Id.* at 251-253.

Since then, the Court has repeatedly determined when, based on those considerations, federal courts should "forgo the exercise of [their] habeas corpus power." *Francis* v. *Henderson*, 425 U.S. 536, 539 (1976). Each time, the Court

has attempted to balance the basic purpose of the writ—to remedy fundamental defects in criminal trials—against countervailing interests held by the State. In *Brecht*, 507 U.S. at 637-639, for example, the Court "balanced" the costs and benefits of applying two different harmless-error standards in federal habeas: the harmless-beyond-a-reasonable-doubt standard of *Chapman* v. *California*, 386 U.S. 18, 24 (1967), and the substantial-and-injurious-effect test of *Kotteakos* v. *United States*, 328 U.S. 750, 776 (1946). The Court chose the more forgiving *Kotteakos* standard, based on its concern for the State's interest in finality and the risk of "frustrating the State's sovereign power to punish offenders and their good-faith attempts to honor constitutional rights." *Brecht*, 507 U.S. at 635. The Court stated that reversing convictions based on a "reasonable possibility" that trial error affected the verdict would be inconsistent with the federal writ's "historic" purpose of offering relief to those "society has 'grievously wronged.'" *Id.* at 637.

That very same Term, in *Withrow* v. *Williams*, *supra*, the Court balanced the very same interests but concluded that they did *not* justify restricting the scope of the writ. The question in *Withrow* was whether *Miranda* claims should be cognizable on federal habeas. The Court held that they should be cognizable both because *Miranda* "serves some value[s]" that are not "necessarily divorced from the correct ascertainment of guilt," 507 U.S. at 692, and because excluding *Miranda* claims would not lessen the "federal-state tensions" created by federal habeas "to an appreciable degree," *id.* at 695.

That sort of balancing of interests, consistent with the equitable nature of the federal habeas writ, is a recurring theme. See, *e.g.*, *McCleskey* v. *Zant*, 499 U.S. 467, 493 (1991) (limiting federal habeas review of claims first raised in a second or successive petition in order to "lessen the injury to a State that results through reexamination of a

state conviction" and "to vindicate the State's interest in the finality of its criminal judgments"); *Wainwright* v. *Sykes*, 433 U.S. 72, 90 (1977) (requiring petitioners to demonstrate cause and prejudice to obtain review of claims defaulted in state court in order to ensure that the "state trial on the merits [remains] the 'main event,' so to speak, rather than a 'tryout on the road' for what will later be the determinative federal habeas hearing"). As the Court summarized in *Reed* v. *Ross*:

> [The Court's] decisions have uniformly acknowledged that federal courts are empowered under 28 U.S.C. § 2254 to look beyond a state procedural forfeiture and entertain a state prisoner's contention that his constitutional rights have been violated. * * * The more difficult question * * * is: What standards should govern the exercise of the [federal] habeas court's equitable discretion in the use of this power?

468 U.S. 1, 9 (1984).

2. This Court's decision in *Teague* fits comfortably within that practice of recalibrating and refining the scope of the federal habeas writ in light of equitable considerations. As *Teague*'s author has explained (without disagreement from any member of this Court), *Teague*'s rule barring the application of "new" "constitutional rules of criminal procedure * * * on habeas" was derived from the "prudential concerns" of "equity and federalism" that "resonate throughout" the Court's federal habeas jurisprudence. *Withrow*, 507 U.S. at 699 (O'Connor, J., joined by Rehnquist, C.J., concurring in part and dissenting in part); see *id.* at 717 (Scalia, J., joined by Thomas J., dissenting) ("In fashioning this Court's retroactivity doctrine, the plurality in *Teague* * * * relied on equitable considerations."). In particular, *Teague*'s rule about new constitutional rules "validate[s]" state courts' "reasonable interpretations of existing precedents," *Stringer* v. *Black*, 503 U.S. 222, 237 (1992), while attempting to honor the purpose of federal

habeas. By holding States accountable to the constitutional standards recognized at the time the original proceedings took place, *Teague* attempts to leave intact the writ's capacity to deter willful disregard of federal requirements. See *Desist*, 394 U.S. at 263 (Harlan, J., dissenting) ("In order to perform [its] deterrence function, * * * the habeas court need only apply the constitutional standards that prevailed at the time the original proceedings took place."). And by providing limited exceptions for watershed rules and those that ban the criminalization of protected conduct, *Teague* seeks to ensure that the Writ is available for those cases presenting truly "grievous wrongs."

3. The principles of equity that have justified this Court's adjustment of the scope of the federal habeas writ have never been thought to give this Court authority to regulate the scope of *state* post-conviction proceedings. To the contrary, the relevant equitable principles—invoked from *Ex Parte Royall* to *Teague* and its progeny—derive from the equitable nature of the *federal* writ. They cannot justify federal alterations to the scope of state procedures, which may be governed by distinct *state*-law principles.

In fact, any attempt to impose a mandatory federal recalibration of the scope of *state* habeas relief—such as imposing *Teague* on state court proceedings—would be contrary to historical practice. The longstanding history of *state* habeas has been that the States themselves—acting as independent laboratories for justice—set the terms of their post-conviction remedies without interference by this Court. See generally Dallis H. Oaks, *Habeas Corpus in the States*, 32 U. Chi. L. Rev. 243 (1965). It is singularly unlikely that *Teague*—an opinion premised on *respect* for States and state courts—silently transgressed that long-standing practice and broadly constrained state remedial authority under state causes of action. Indeed, given that the States have principal authority for the implementation of their own criminal laws, it is questionable whether this

Court even has authority to limit the States' power to provide relief from their own convictions in the interests of justice—at least not absent a conflict with a recognized constitutional protection for individual liberty (*e.g.*, due process or equal protection).

As *Teague* observed, "retroactivity for cases on collateral review c[an] 'be responsibly [determined] only by focusing, in the first instance, on the nature, function, and scope of the adjudicatory process in which such cases arise.'" 489 U.S. at 305-306 (quoting *Mackey*, 401 U.S. at 682 (Harlan, J., concurring in judgments in part and dissenting in part)). Where the "adjudicatory process" is federal habeas, this Court is adequately situated to establish a remedial "retroactivity" rule based on its own assessment of the federal habeas writ's "nature, function, and scope." But where the adjudicatory process is a *state* post-conviction process, in a *state* court, and is governed by *state* law, the "nature, function, and scope" of that process—and the propriety of a "retroactivity" or any other relief-limiting rule—is a matter for the States, not the United States, to resolve.

II. THERE IS NO FEDERAL-LAW BASIS FOR REQUIRING APPLICATION OF *TEAGUE* IN STATE POST-CONVICTION PROCEEDINGS

As the foregoing makes clear, *Teague* and the history of state and federal habeas belie the notion that *Teague* was meant to regulate the relief available in state post-conviction proceedings. But even if the Court were now inclined to extend *Teague* that far, it would have no federal-law basis for doing so. "From the beginning of the federal Union, state courts have * * * formulate[d] 'authoritative laws, rules, and remedies' for the trial of * * * [federal] issues." *Chapman*, 386 U.S. at 47 (Harlan, J., dissenting). Setting aside statutory preemption, this Court may not require States to substitute federal rules for their own unless the Constitution requires it, or it is necessary to promote or protect important federal interests. See, *e.g.*,

Dickerson v. *United States*, 530 U.S. 428, 438-439 (2000) ("[F]ederal judges * * * may not require the observance of any special procedures in state courts except when necessary to assure compliance with the dictates of the Federal Constitution.") (internal quotation marks and citation omitted); *Monessen Sw. Ry. Co.* v. *Morgan*, 486 U.S. 330, 336 (1988); *Dice* v. *Akron, Canton & Youngstown R.R. Co.*, 342 U.S. 359, 361-363 (1952). Here, there is no plausible constitutional or other federal-law basis for imposing *Teague* to displace state authority over the scope of state collateral relief.[4]

A. Any Effort To Ground *Teague* In The Constitution Contravenes A Traditional View Of The Judicial Power

The *Teague* plurality did not purport to ground the *Teague* rule in the Constitution. Any effort to do so now would require this Court to abandon a traditional understanding of the judicial power under the Constitution.

1. For much of its history, this Court automatically gave its constitutional decisions full effect in criminal cases—both on direct review and in federal habeas proceedings—without any indication that the Constitution might constrain its power to do so. See, *e.g.*, *Jackson* v. *Denno*, 378 U.S. 368 (1964); *Doughty* v. *Maxwell*, 376 U.S. 202 (1964); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); *Reck* v. *Pate*, 367 U.S. 433 (1961); *Eskridge* v. *Wash. State Bd. of Prison Terms & Paroles*, 357 U.S. 214 (1958); see also Paul J. Mishkin, *The Supreme Court, 1964 Term—Foreword: the High Court, the Great Writ, and the Due Process of Time and Law*, 79 Harv. L. Rev. 56, 78 (1965). That practice is consistent with a particular notion of the judicial function—

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[4] There is likewise no basis for concluding that the federal habeas statute that codifies *Teague*, 28 U.S.C. § 2254(d)(1), preempts state law on this issue. That provision, along with the rest of the habeas statute, is addressed exclusively to *federal* habeas.

namely, that judicial decisions do not "make law" as a legislature does, but rather articulate and expound law that already exists. To the extent one accepts the view that constitutional law is immutable, and that it is only the courts' *articulation* of it that changes, it makes no sense to speak of retroactivity as an issue of substantive law. As Justice Scalia has explained in cases addressing retroactivity in the civil context: "Since the Constitution does not change from year to year, since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense." *American Trucking Assn's* v. *Smith*, 496 U.S. 167, 201 (1990) (Scalia, J., concurring in the judgment). In other words (*id.*):

> The very framing of the issue [as whether a constitutional rule] shall "*apply*" retroactively * * * presupposes a view of [the Court's] decisions as *creating* the law, as opposed to *declaring* what the law already is. Such a view is contrary to that understanding of "the judicial power," U.S. Const., Art. III, § 1, which is not only the common and traditional one, but which is the only one that can justify courts in denying force and effect to the unconstitutional enactments of duly elected legislatures * * *.

The Court has endorsed that understanding of the judicial function. In *Harper* v. *Virginia Department of Taxation*, 509 U.S. 86 (1993), for example, the Court stated that "[n]othing in the Constitution alters the fundamental rule of 'retrospective operation' that has governed '[j]udicial decisions * * * for near a thousand years.'" *Id.* at 94 (quoting *Kuhn* v. *Fairmont Coal Co.*, 215 U.S. 349, 372 (1910) (Holmes, J., dissenting)). In fact, the Court based the "retroactivity" rule that *Harper* announced for civil cases—that "a rule of federal law, once announced * * * must be given full retroactive effect by all courts

adjudicating federal law," 509 U.S. at 96—on the premise that this Court does not enjoy the "quintessentially legislat[ive] prerogative to make rules of law retroactive or prospective as [it] see[s] fit." *Id.* at 95.

2. *Teague*'s ban on "retroactive" application of "new" constitutional rules in federal habeas is consistent with that view of the judicial function *only if* one recognizes that *Teague* is a remedial rule—that it identifies the extraordinary cases that warrant federal post-conviction relief—not a constitutional principle for discerning what the law "was" at some earlier point in time. The plurality in *Teague* itself acknowledged as much when it observed that the question was "*not so much* one of prospectivity or retroactivity of the rule but rather *of the availability of collateral attack* * * * to go behind the otherwise final judgment of conviction." 489 U.S. at 309-310 (emphasis added) (quoting Mishkin, 79 Harv. L. Rev. at 77-78). Thus, *Teague* is best understood as a remedial rule intended to govern the "availability of collateral attack." It does so by foreclosing challenges to otherwise final convictions if the convictions rest on applications of federal law that were objectively reasonable (even if mistaken) in light of the standards recognized at the time.

By contrast, the position advanced by respondent—which seems to assume that *Teague* establishes the substance of federal law at any particular point in time—is directly contrary to a traditional understanding of the judicial function. Noting that a State is forbidden from giving federal constitutional rights any broader meaning than this Court says they have, *Oregon* v. *Hass*, 420 U.S. 714, 719 (1975), respondent insists that *Teague* requires state habeas courts to apply the substantive federal law that existed at the time the conviction became final. See Supp. Br. in Opp. 4. But that view of *Teague*—that it in fact identifies what the law "was"—cannot possibly be reconciled with a view of "the judicial power," U.S. Const.

Art. III, § 1, under which the Court's decisions do not "creat[e] the law" but simply "declar[e] what the law already is"—and always has been. *Smith*, 496 U.S. at 201 (Scalia, J., concurring in the judgment).

To be sure, the members of this Court have not always uniformly endorsed the traditional understanding of the judicial function described by Justice Scalia in *Smith*, *supra*. See, *e.g.*, *Harper*, 509 U.S. at 116-117 (O'Connor, J., dissenting) (urging that the Court ought not "indulge in the fiction that the law now announced has always been the law") (quoting *Griffin* v. *Illinois*, 351 U.S. 12, 26 (1956) (Frankfurter, J., concurring in the judgment)); *James B. Beam Distilling Co.* v. *Georgia*, 501 U.S. 529, 546 (1991) (White, J., concurring in the judgment) (rejecting the notion that judges do not "in a real sense 'make' law"). For present purposes, however, it is sufficient that respondent's position appears to rely on a view—that this Court's decisions make law rather than discern it—that has been rejected by many of the Court's members. Given that, it is unlikely that *Teague* was or should be understood as articulating a rule about what the substance of federal law is or was at any point in time. Instead, *Teague* is best understood as a remedial principle federal courts use to identify those convictions that present such an "intolerable restraint" that the extraordinary remedy of federal habeas is warranted.

There is no general provision of the Constitution that says that "new" rules of criminal procedure cannot be given retroactive effect unless they meet the circumscribed criteria set forth in *Teague*. Nor is there anything about the substantive rights themselves that would seem to require that certain violations may be remedied and others may not, depending on when they occurred or the posture in which they are raised. Nowhere, for example, does the Sixth Amendment say that the right of confrontation has different meanings at different times or stages of litigation.

Rather, this Court has chosen, *in an exercise of discretion*, to limit the relief that will be provided in *federal* habeas proceedings for "new" rule violations. See pp. 8-19, *supra*. Nothing in the Constitution, however, prohibits the *States* from "provid[ing] greater protections in their criminal justice system" if they so choose. *California* v. *Ramos*, 463 U.S. 992, 1014 (1983).

Teague, in short, is not a substantive rule for deciding whether constitutional error occurred. No one would deny, for example, that Danforth's Confrontation Clause rights *were in fact violated* by the admission of the videotaped statement against him. Rather, *Teague* is a rule that seeks to determine whether a constitutional error is of the sort that should be *remedied* on federal habeas. No aspect of federal law precludes States from using a different rule for that purpose in their own post-conviction proceedings.

3. The history of "retroactivity" in federal habeas confirms that *Teague* represents a remedial, not a constitutional rule. As noted above, until the 1960s, this Court applied—and required federal courts to apply—their best current understanding of federal law when resolving federal habeas claims. See generally Mishkin, 79 Harv. L. Rev. at 78 ("[P]rior to *Linkletter*, the criteria applied in federal habeas corpus proceedings were uniformly the constitutional standards in effect at the time of those proceedings, regardless of when the conviction was actually entered."). It was only the broadened scope of federal habeas ushered in by *Fay* v. *Noia*, *supra*, and the rapid expansion of federal constitutional rights during that era, that caused this Court to reconsider whether federal habeas relief should be available for all violations of "new" constitutional rules. But the Court never intimated that the limitations on "retroactivity" ultimately imposed were mandated by previously overlooked provisions of the Constitution.

To the contrary, when the Court announced its first retroactivity rule in *Linkletter* v. *Walker*, 381 U.S. 618 (1965), the Court declared that "the Constitution neither prohibits nor requires retrospective effect," *id.* at 629, and that its decision was based instead on "the accepted rule today * * * that in appropriate cases the Court may *in the interest of justice* make the rule prospective [only]." *Id.* at 628 (emphasis added). *Teague* eventually discarded the *Linkletter* standard for Justice Harlan's approach. But in so doing the Court never suggested that it adopted a new approach to "retroactivity" because the Constitution commanded it.

B. There Are No Federal Interests That Warrant Imposition Of *Teague* Upon The States

Even in the absence of constitutional command, this Court has the authority to limit the scope of state habeas where necessary to protect federal interests. The Court has, for example, held that state courts may not issue writs of habeas corpus for federal prisoners. See *Ableman* v. *Booth*, 62 U.S. (21 How.) 506 (1858); *Tarble's Case*, 80 U.S. (13 Wall.) 397 (1871). But neither *Teague* nor its progeny identifies any *federal* interest for its "retroactivity" rule that would displace the States' remedial principles with one of this Court's choosing. See pp. 10-14, *supra*. To the contrary, the purpose of *Teague* is to protect state interests *from* federal-court interference. See pp. 10-12, *supra*. Forcing state courts to apply *Teague* against their will cannot possibly be reconciled with that rationale. A State might well give concerns regarding finality and uniformity the same weight this Court did in *Teague* and, as a result, adopt a *Teague*-like rule for its own post-conviction proceedings. But, consistent with *Teague*'s purpose of protecting States *from* federal intrusions, whether and how to strike the balance for state writs in state courts is for the States themselves to decide.

C. The Court's Civil Retroactivity Jurisprudence Does Not Compel Application Of *Teague* In State-Court Proceedings

The Minnesota Supreme Court, for its part, recognized that "*Teague*'s framework is based, in part, on concerns unique to federal habeas corpus proceedings." J.A. 47. And it noted that, for that reason, numerous state courts have concluded that *Teague* does not apply in state post-conviction proceedings. *Ibid.* Nonetheless, it construed this Court's civil retroactivity cases as compelling it to apply *Teague* on state habeas. It relied in particular on the plurality opinion in *American Trucking Assn's* v. *Smith*, *supra*, and the plurality's statement that this Court has "consistently required that state courts adhere to [its] retroactivity decisions." J.A. 45 (quoting 496 U.S. at 178 (opinion of O'Connor, J.)).

That reliance was misplaced. The plurality in *Smith* did conclude that state courts conducting *direct review in civil matters* were bound to apply the "retroactivity" standard this Court had articulated in *Chevron Oil* v. *Huson*, 404 U.S. 97 (1971). Under the *Chevron Oil* test, courts were to consider equitable factors, such as reasonable reliance on then-existing precedent, when resolving whether to give retroactive effect to a decision announcing a "new" principle of law. See *id.* at 106-108. The plurality in *Smith* noted that "[t]he determination [of] whether a constitutional decision of this Court is retroactive—that is whether [it] applies to conduct or events that occurred before the date of the decision—is a matter of federal law." 496 U.S. at 177. And, it characterized *Chevron Oil* as establishing a mandatory choice-of-law rule that required all courts, state and federal, to weigh the equities in deciding whether old or new federal law should apply. *Id.* at 177-178, 191.

But that conclusion was not endorsed by a majority of this Court. And it was not long thereafter that the plurality's position in *Smith* was rejected. As noted above,

Harper v. *Virginia Department of Taxation* rejected the plurality's view in *Smith* and overruled *Chevron Oil*, declaring that "[w]hen this Court applies a rule of federal law to the parties before it, that rule * * * must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule." 509 U.S. at 97. In so holding, the Court adopted Justice Souter's position in *James B. Beam Distilling Co.* v. *Georgia*, *supra*, that "the substantive law [cannot be permitted to] shift and spring" according to "the particular equities" of a case. *Id.* at 97 (quoting *James B. Beam Distilling Co.*, 501 U.S. at 543 (opinion of Souter, J.)). Finally, the Court indicated that equitable factors are properly considered (if at all) *at the remedial stage*, at which point state law (subject to certain constitutional minimums) controls. See *Harper*, 509 U.S. at 100-102; cf. *United States* v. *Estate of Donnelly*, 397 U.S. 286, 295-297 (1970) (Harlan, J., concurring)) ("To the extent that equitable considerations, for example, 'reliance,' are relevant, I would take this into account in the determination of what relief is appropriate in any given case.").

Given *Harper* and related developments in this Court's retroactivity jurisprudence, *Teague* is most naturally understood not as a "retroactivity decision" that the States are required to follow, but as a remedial rule—derived from equitable considerations governing federal habeas—that binds federal courts alone. *Teague* does, no doubt, speak in terms of retroactivity. But in *Teague* itself, the plurality acknowledged that the problem it confronted was "not so much" one of "retroactivity" as when "collateral attack[s]" should be permitted in federal court. 489 U.S. at 310-311; see p. 22, *supra*; see also Richard H. Fallon, Jr. *et al.*, *Hart & Wechsler's The Federal Courts and the Federal System* 74 (5th ed. 2003) ("After a conviction has been obtained, aren't questions of entitlement to reversal, on the basis of newly propounded rules or otherwise, questions about the

necessary or appropriate availability of constitutional remedies?"). And when Congress enacted AEDPA, codifying (in part) *Teague*'s limit on the scope of federal habeas relief, it found no need to replicate the language of retroactivity. Instead, it merely specified (as *Teague* had in defining "new" rules) that federal habeas relief is available only if a state-court adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law * * *." 28 U.S.C. § 2254(d)(1); see *Williams* v. *Taylor*, 529 U.S. 362, 380 (2000) ("AEDPA codifies *Teague* to the extent that *Teague* requires federal habeas courts to deny relief that is contingent upon a rule of law not clearly established at the time the state conviction became final.") (opinion of Stevens, J.).

Moreover, as Justice Stevens observed in his *Smith* dissent, the term "retroactivity" has had *two* meanings in this Court's jurisprudence: "retroactivity" as a choice-of-law rule and "retroactivity" as a remedial principle. 496 U.S. at 210-211; see also *James B. Beam Distilling Co.*, 501 U.S. at 534-535 (opinion of Souter, J.); *Harper*, 509 U.S. at 95 n.9. Choice-of-law rules address substantive federal law—*i.e.*, what the law is—and are binding on state courts. Remedial principles, which limit the *relief* a federal court should provide, generally are not. *Smith*, 496 U.S. at 210-211 (Stevens, J., dissenting). Instead, "[t]he remedial effect a decision of federal constitutional law should be given is in the first instance a matter of state law." *Id.* at 210.[5]

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[5] While federal law "does not ordinarily limit the State's power to give a decision [of this Court] remedial effect *greater* than that which a federal court would provide," it does "constrain[] the *minimum* remedy a State may provide." *Smith*, 496 U.S. at 210 (Stevens, J., dissenting) (emphasis added) (citing cases). The Court has no need in this case to decide whether the exceptions to *Teague*'s general rule are a "constrain[t] on the minimum remedy a State may provide" in its habeas actions. It bears noting, however, that where a State chooses to provide a habeas remedy, those proceedings must comply with norms of due process, see

Far from rejecting the basic distinction between choice-of-law rules and remedial principles, *Harper* confirms that *Teague* is best understood as falling into the latter category. *Harper* rejects the notion implicit in the *Smith* plurality opinion that the substance of the law can "shift and spring" based on equitable considerations. 509 U.S. at 97; see *Smith*, 496 U.S. at 219 (Stevens, J., dissenting) (rejecting as anomalous the notion that the "law applicable to a particular case is that law which the parties believe in good faith to be applicable to the case"). Given *Harper*, the Minnesota Supreme Court erred in invoking a conception of retroactivity from the *Smith* plurality opinion; that plurality view, quite simply, has long since been rejected by the Court as a whole.[6]

To be clear, States may *choose* to limit the availability of their own post-conviction remedies in their own courts, as this Court has limited the availability of federal habeas relief. But history, this Court's precedents, and the reasoning of *Teague* itself all make clear that any such decision is for the States themselves to make.[7]

Yates, 484 U.S. at 217-218, upon which the *Teague* exceptions appear to be based, see *Mackey*, 401 U.S. at 692-693 (Harlan, J., concurring in part and dissenting in part).

[6] In *Reynoldsville Casket Co.* v. *Hyde*, 514 U.S. 749 (1995), the Court stated (in dictum) that *Teague* "does not involve a special 'remedial' limitation on the principle of 'retroactivity' as much as it reflects a limitation inherent in the principle itself." *Id.* at 758. But if the law always has been what it is today—and the courts declare it rather than make it—then the only reason for limiting the "retroactivity" of any particular decision is the conclusion that certain violations, for reasons of fairness, do not warrant a remedy. In any event, *Reynoldsville Casket* recognized that *Teague* "embodies certain special concerns * * * related to collateral review of state criminal convictions." *Id.* As noted above, *supra* pp. 10-14, those "special concerns" cut against, not in favor of, imposing *Teague* on the States.

[7] The Minnesota Supreme Court also relied on *Michigan* v. *Payne*, 412 U.S. 47 (1973). As Justice Stevens explained in his dissent in *Smith*,

CONCLUSION

For the foregoing reasons, the judgment of the Minnesota Supreme Court should be reversed.

Respectfully submitted.

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"*Payne* does not stand for the expansive proposition that federal law limits the relief a State may provide [for constitutional violations], but only for the more narrow proposition that a state court's decision that a particular remedy is *constitutionally required* is itself a federal question." 496 U.S. at 210 n.4 (emphasis added). In *Payne*, the state court had concluded on direct review that it was bound, as a matter of federal law, to give retroactive effect to the prophylactic rule announced in *North Carolina* v. *Pearce*, 395 U.S. 711 (1969). This Court—which had not yet decided *Griffith* v. *Kentucky*, 479 U.S. 314 (1987)—held that retroactivity was not required under federal law. As the Minnesota Supreme Court acknowledged, *Payne* did not "explicitly address[] retroactivity principles in state postconviction proceedings." J.A. 46. And *Payne* certainly did not hold that federal law restricts the relief state habeas courts may choose to provide under state law for past violations of "new" constitutional rules.