No. 15-650

IN THE SUPREME COURT OF THE UNITED STATES

SHONDA WALTER,

Petitioner

v.

PENNSYLVANIA,

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE CASE

> Not once in the history of the American Republic has this Court ever suggested the death penalty is categorically impermissible. The reason is obvious: It is impossible to hold unconstitutional that which the Constitution explicitly *contemplates.*

Glossip v. Gross, 135 S. Ct 2726, 2747 (2015) (Scalia, J., concurring)

In her *Petition for Writ of Certiorari,* Petitioner, Shonda Walter, ("Petitioner"), seeks this Court's review in an effort to abolish the death penalty in all cases. The Commonwealth of Pennsylvania submits this brief in opposition.

I. A PROPER CONTEXT OF THE CRIME FOR THE PETITION

A. First Degree Murder Conviction

On March 31, 2003, James Sementelli, a World War II veteran who had survived the bombing at Pearl Harbor, was found butchered in

his home at 17 North Summit Street, Lock Haven, Clinton County, Pennsylvania. N.T. (4/11/05) at 86. Forensic Pathologist Dr. Wayne Ross testified that he performed an autopsy on the victim on April 2, 2003. N.T. (4/13/05) at 47. Dr. Ross counted 66 areas of sharp force trauma to the victim's body. *Id.* at 50. This included seventeen cuts to the left side of the victim's face and neck, nine to the top of the head, four to the front of the face, three to the abdomen, eighteen to the left arm, three to the back of the right hand, and twelve to the lower legs. *Id.* at 50. Dr. Ross also noted 18 bone fractures to the victim's head, nasal bone, jaw, ribs, wrist, and lower left leg. *Id.* at 51. Dr. Ross opined that the sharp force trauma was caused by a sharp instrument, such as a knife or hatchet. *Id.* at 49.

Circumstantial evidence introduced by the Commonwealth established that the murder took place on Tuesday, March 25, 2003. William Sementelli, the victim's brother, testified that he last saw his brother alive at the Sons of Italy on the Friday before the murder, which would have been Friday, March 21, 2003. N.T. (4/11/2005) at 43. Officer Thomas Winters testified that he received a call on March 29, 2003, at approximately 9:25 a.m. from the victim's sister Rhoda Powers, who said she had not seen or heard from her brother for several days. *Id.* at 56. When Winters arrived at Sementelli's residence, he discovered that his house was locked and closed up, his white Toyota Camry was missing, and that newspapers from Wednesday, March 26, 2003 through Saturday, March 29, 2003, were piled up on the porch. *Id.* at

56-58. Officer Keith Kibler testified that two days later, on March 31, 2003, at approximately 8:00 p.m., he and Detective Charles Shoemaker of the Lock Haven Police Department responded to a 911 call of a possible murder at the Sementelli residence. *Id.* at 81-83. When they arrived, they discovered that the house was locked up with no signs of forced entry. *Id.* at 83. The officers forced their way into the residence, and discovered Sementelli on the floor of his living room. *Id.* at 86. Blood that had spilled onto the carpet, couch, and end tables was dried, and Sementelli's body appeared bloated. *Id.* at 99. There was also a very foul odor in the residence. *Id.* at 86. A newspaper near the victim's body was dated March 25, 2003. *Id.* at 96.

The evidence established that the murder weapon was a hatchet. Glenn Thomas testified that he discovered a bloody hatchet on March 28-29, 2003, near his property on Maybee Hill Road in Williamsport. *Id.* at 68-69. Thomas kept the hatchet for a few days or possibly a week until he heard of the murder on the news. *Id.* at 74. He then called the State Police. *Id.* at 74. The blood recovered from the hatchet was later identified as the victim's blood. *Id.* at 77-78.

Substantial evidence was introduced linking the Petitioner to the bloody hatchet. Daniel Gerlach testified that back in 1998, while he was 19 years old, he had a party at his home without his parents' permission. *Id.* at 63. The Petitioner was present during the party. *Id.* at 64. A hatchet owned by Gerlach's parents was later discovered

missing. *Id.* Police later showed Daniel Gerlach's father, Carl Gerlach, the bloody hatchet, which he positively identified as the one stolen from his residence in 1998. *Id.* at 77. Michelle Reed of Williamsport testified that in early March 2003 the Petitioner had came to her home to visit carrying a hatchet on her belt. *Id.* at 130-131. She would later identify the murder weapon as the hatchet she observed in the Petitioner's possession. *Id.* at 132. Judith Walter, the Petitioner's mother, testified that she lived across the alley from the Sementelli residence in March 2003. *Id.* at 137-138. The Petitioner was living in her mother's residence at that time. *Id.* Judith Walter testified that when she moved the Petitioner into her residence, she observed the Petitioner in possession of the hatchet, which she kept in the kitchen

drawer. *Id.* at 139. On the day the Petitioner was arrested, the police and Judith Walter searched her residence for the hatchet, but it was missing. *Id.* at 140.

Ample evidence was introduced identifying the Petitioner as the murderer. Shanee Gaines testified that on March 25, 2003, at approximately 9:45 p.m., the Petitioner appeared at her house in Williamsport. *Id.* at 153-154. The Petitioner had blood on her forehead, and was wearing rubber gloves with blood on them. *Id.* at 154. The Petitioner told Gaines that if Michelle Mathis came over, that the Petitioner would be in the shower. The Petitioner then went upstairs and got into the shower. *Id.* at 154. Mathis then arrived and went upstairs. *Id.* Later that evening, Gaines took a ride with Mathis and the Petitioner to Lock Haven.

Id. at 156. The Petitioner was driving a white Toyota. *Id.* at 155. On the way over, Mathis asked the Petitioner what happened. The Petitioner replied:

> And she said that the man – the older man, Mr. Semenelli [sic], had invited herself over to watch movies, and they were sitting there watching movies. And he asked her if she wanted something to drink. And she said, yes. And she said that when he got up and went to get something to drink is when she hit him the first time with the hatchet. And she said that he turned around, and she hit him again. And it caused his ear to dangle, hang off his face and that she hit him again here and she hit again right here. And this part of his nose fell. And she said that he asked her, why are you doing this? And she said, because I can. And then she said that he asked her to call 911. And she said, no; would you just die already.

Id. at 156-157. When they arrived at the Sementelli residence, the Petitioner parked the white Toyota in the carport and entered the house

using a key. *Id.* at 157-158. Gaines and Mathis followed and at first waited in the kitchen area. *Id.* at 158. Approximately two minutes later, the Petitioner called them upstairs, where they observed Mr. Sementelli's body sitting on the floor. *Id.* Gaines returned to the car, and the Petitioner came out later with a plastic container full of quarters. *Id.* at 159. The Petitioner put the quarters into the back seat of the car and went across to her mother's house to leave her a note and get a change of clothes. *Id.* The group then returned to Williamsport, and the Petitioner threw the hatchet out of the car into the woods. *Id.* at 160-161. They then went to Wegmans in Williamsport where they took the quarters and redeemed them in a Coin Star machine. *Id.* at 162. The quarters totaled $510.00. *Id.* at 166. The

group then returned to Gaines' residence, where the smoked marijuana. While there, the Petitioner asked Mathis and Gaines if they wanted to watch a movie. *Id.* at 166. When they replied yes, the Petitioner went to the victim's car and retrieved two trash bags filled with videos. *Id.* at 167. The Petitioner and Mathis then left the Gaines residence. *Id.* at 168.

The testimony of Gaines was corroborated by physical evidence collected by police and the testimony of additional witnesses. Police seized a videotape taken from a Wegmans' surveillance camera, which recorded the visit to Wegmans. *Id.* at 163-164; N.T. (4/12/05) at 3-4. A receipt generated by the machine recorded the time as 2:24 a.m. on March 26, 2003. N.T. (4/11/05) at 194. Detective Charles Shoemaker of the Lock Haven

Police Department testified that he conducted a search of the Petitioner's bedroom pursuant to a search warrant on January 9, 2004, and seized a gold tone shark bottle opener. N.T. (4/13/05) at 11. That item was previously identified as belonging to the victim. N.T. (4/12/05) at 7. Further corroboration also came from witnesses Coran Freeland and Amanda Horner, both of whom testified that the Petitioner confessed in great detail and with great enthusiasm to the murder.

The evidence introduced at trial established that the Petitioner's motive for the murder was two-fold: (1) theft of the victim's car and other possessions; and (2) a desire to prove herself worthy of membership in the Bloods' street gang. Coran Freeland testified that the Petitioner confessed to the murder while they were in prison, and that the

Petitioner indicated she killed the victim because she wanted to get into the Bloods street gang. N.T. (4/12/05) at 19-20. Similarly, Amanda Horner testified that while she was incarcerated with the Petitioner, the Petitioner told her she killed the victim in order to steal his car, that she needed money to pay her fines, and that she wanted to become known as a Bloods street gang member. *Id.* at 57. This testimony was corroborated by evidence from several witnesses that the Petitioner attempted to sell the victim's car in Philadelphia shortly after the murder. Shanee Gaines testified that on Saturday night, March 29, 2003, Gaines accompanied the Petitioner to Philadelphia. N.T. (4/11/05) at 171. The Petitioner was driving the victim's car. *Id.* at 172. Mathis, Aaron Jones, and Emma (age 14 or 15) were also in the vehicle. *Id.*

at 170. The Petitioner lied to Jones and told him that her father had purchased the vehicle for her, and that she wanted to sell it because he had recently passed away. *Id.* at 173, 205; N.T. (4/12/05) at 46. The group arrived in Philadelphia at midnight, and the Petitioner attempted to sell the car to members of Jones' family. N.T. (4/11/05) at 174-175, 204-206. The Petitioner's efforts to sell the car in Philadelphia were unsuccessful, however, and the group left because Emma had to go to Sunday School the next morning. *Id.* at 175.

B. Facts for Jury's Determination of Death Sentence

During the penalty phase, the Commonwealth identified one aggravating circumstance: that the Petitioner committed the killing while in the perpetration of a felony. 42 Pa.C.S. § 9711(d)(6). In support of that

aggravating circumstance, the Commonwealth incorporated the evidence introduced during the guilt phase. The Commonwealth also called one witness, Karin Young. Young identified herself as the victim's niece, and testified about how the murder negatively impacted her and her family. N.T. (4/19/05) at 15-20.

The Petitioner identified three mitigating circumstances, specifically: (1) age of the Petitioner; (2) that the Petitioner had no significant history of prior criminal convictions; and (3) any other evidence of mitigation concerning the character and record of the Petitioner and the circumstances of her offense. 42 Pa.C.S. § 9711(e)(1)(4)(8). In support of those mitigating circumstances, the defense called four witnesses. Jennifer Brininger testified that she attended school with the

Petitioner, that she was a very good student, never had any problems, and supported her when her son had a kidney transplant. N.T. (4/19/05) at 21-24. Linda Moyer testified that she worked with the Petitioner at Wal-Mart, was incarcerated with her at the Clinton County Jail, and that the Petitioner would help her when she was having seizures and carried her food tray during meals in the prison. *Id.* at 27-28. Linn Talbot testified that she was a teacher at Lock Haven High School, taught the Petitioner English in both 10th and 12th grades, and that the Petitioner was a good student and did not present any disciplinary problems. *Id.* at 31. Finally, Judith Walker, the Petitioner's mother, testified that the Petitioner was a good child growing up, earned good grades in school, was active in extracurricular activities, and is good to

her daughter. *Id.* at 40-43. The parties also stipulated that the Petitioner was 23 years old at the time of her crime, that she was a good student, and that her only criminal conviction was for conspiracy to commit theft and insurance fraud. *Id.* at 29-30.

At the conclusion of the testimony, the sentencing jury found that the Commonwealth had proven the sole aggravating circumstance and that the Petitioner had proven none of her mitigating circumstances. As a result, the jury rendered a verdict of death.

C. Procedural History of the Case

The Pennsylvania Court system afforded the Petitioner representation and appeal rights at every stage. Pennsylvania courts have granted multiple *nunc pro tunc* requests by Petitioner to

assure the opportunity for her legal challenges in the appellate courts. In the end, the Pennsylvania Supreme Court has twice affirmed the conviction and the sentence of death.

On April 18, 2005, after a trial by jury, the Petitioner Shonda Dee Walter was found guilty of murder in the first degree for the killing of James Sementelli, 18 Pa.C.S. § 2502 (a), and felony theft by unlawful taking, 18 Pa.C.S. § 3921. The following day, the jury returned a verdict of death on the first-degree murder charge. On May 18, 2005, the trial court sentenced Petitioner to a term of imprisonment on the theft charge. On May 19, 2005, the Petitioner filed a post-sentence motion, which was denied on May 26, 2005.

The Petitioner filed her notice of appeal on June 16, 2005. On direct appeal from the judgment

of sentence, the Supreme Court of Pennsylvania affirmed. *Commonwealth v. Walter*, 966 A.2d at 560 (Pa. 2009). However, in affirming, the Supreme Court of Pennsylvania criticized the Brief filed on behalf of Walter. *Id.* at 563 ("Appellant raises four issues on appeal, none of which [is] completely clear in [its] rationale and some of which are unintelligible."), *Id.* at 565 (noting failure to conform argument to standard set forth in authority cited), *Id.* 566 (noting lack of development of argument relating to claims of constitutional violations), *Id.* at 567 (noting failure to preserve claim and to develop argument relating to alleged failure to establish requisite state of mind, as well as citation of inapposite opinions). This Court denied a petition for writ of certiorari on November

30, 2009. *Walter v. Pennsylvania,* 130 S. Ct. 743 (2009).

On March 19, 2010, Walter, acting *pro se*, filed a petition for relief under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. On March 2, 2011, a counseled, amended PCRA petition was filed on Walter's behalf. On November 29, 2011, the PCRA court granted relief in the form of reinstatement of the right to direct appeal *nunc pro tunc* based on the inadequacy of the brief filed on direct appeal.

On December 28, 2011, Walter filed her notice of direct appeal from the May 26, 2006 judgment of sentence to the Supreme Court of Pennsylvania. Thereafter at her request, the matter was remanded for the appointment of new counsel. With new counsel, Walter filed her Brief

on October 5, 2012. The Commonwealth filed a brief. The Supreme Court of Pennsylvania granted Walter's *nunc pro tunc* motion for additional time to file a reply brief. Walter's counsel filed a motion to withdraw. The motion was denied on November 15, 2013. Walter filed a supplemental brief on December 5, 2013. The Commonwealth filed a supplemental reply brief on January 6, 2014. On July 20, 2015, for the second time, the Supreme Court of Pennsylvania affirmed the conviction and the sentence of death. *Commonwealth v. Walter,* 119 A.3d 255 (Pa. 2015).

This *Petition for Writ of Certiorari* followed in which, Petitioner does not challenge any specific legal issues in her case, rather she baldly challenges the death penalty is inappropriate in

every case in the United States. This Brief in Opposition is submitted in response to the Petition.

II. PENNSYLVANIA'S DEATH PENALTY

As of December 1, 2015 there are 181 individuals sentenced to death in Pennsylvania. Contrary to Petitioner's representation, there are two women on Pennsylvania's death row; the petitioner and another female, who is white.[1] Of the 181 inmates on Pennsylvania's Death Row, the breakdown by Race is as follows[2]:

Hispanic	18
Asian	2
Black	95
White	66

[1] Petition at 3 ("Shonda Walter is an African American female, and the last woman on Pennsylvania's death row.") Pennsylvania Department of Corrections website at www.cor.pa.gov list of death row inmates.

[2] Pennsylvania Department of Corrections website at www.cor.pa.gov list of death row inmates.

Capital sentencing in Pennsylvania is conducted by a jury under Pennsylvania's death penalty scheme at 42 Pa.C.S. §9711, and *Ring v. Arizona,* 536 U.S. 584 (2002), aggravating facts must be proven to outweigh any mitigating factors to subject a person to the death penalty. The Commonwealth must prove every element necessary to establish murder of the first degree and every element necessary to establish one or more aggravating circumstance which the legislature has determined and is enumerated by statute is of a sufficiently heinous nature as to require imposition of the death penalty. The accused is then given the opportunity to prove, by a preponderance of the evidence, that there are mitigating circumstances that might convince the

jury that the sentence should nevertheless be set at life imprisonment.

In all cases where a death sentence has been imposed, the Supreme Court of Pennsylvania "is required to conduct an independent review of the sufficiency of the evidence supporting a first-degree murder conviction." *Commonwealth v. Chamberlain,* 30 A.3d 381, 393 (Pa. 2011) (citations omitted) and 42 Pa.C.S. §9711 as follows:

> **(h) Review of death sentence.--**
>
> (1) A sentence of death shall be subject to automatic review by the Supreme Court of Pennsylvania pursuant to its rules.
>
> (2) In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate the sentence of death and remand for further proceedings as provided in paragraph (4).

(3) The Supreme Court shall affirm the sentence of death unless it determines that:

(i) the sentence of death was the product of passion, prejudice or any other arbitrary factor; or

(ii) the evidence fails to support the finding of at least one aggravating circumstance specified in subsection (d).

(4) If the Supreme Court determines that the death penalty must be vacated because none of the aggravating circumstances are supported by sufficient evidence, then it shall remand for the imposition of a life imprisonment sentence. If the Supreme Court determines that the death penalty must be vacated for any other reason, it shall remand for a new sentencing hearing pursuant to subsections (a) through (g).

42 Pa.C.S. §9711 (h)

In *Blystone v. Pennsylvania,* 494 U.S. 299, 110 S.Ct. 1078, 108 L.Ed.2d 255 (1990) this Court

held that Pennsylvania's death penalty scheme passes constitutional muster and satisfies the requirement of individualized sentencing by permitting capital juries "to consider and give effect to any mitigating evidence relevant to a Petitioner's background and character or the circumstances of the crime." *Id.* at 494 U.S. 299, 304–05 (quotation and quotation marks omitted). Further, Pennsylvania's death penalty scheme, does not "limit the sentencer's consideration of any relevant circumstance that could cause it to decline to impose the [death] penalty." *Id.,* 494 U.S. at 309, (quotation and quotation marks omitted).

III. REASONS FOR DECLINING THE WRIT

In her *Petition for Writ of Certiorari,* Petitioner does not challenge anything specific to the facts and procedure of her conviction in

Pennsylvania, rather, petitioner baldly asserts that we have come to a time and place where the "death penalty in all cases, violates the Eighth Amendment" for two reasons:

> First, our standards of decency have evolved to the point where the institution is no longer constitutionally sustainable; .... and,
>
> Second, the assumptions underlying this Court's reinstitution of the death penalty after *Furman* (citation omitted) have proved wrong, flawed, or illusory. ....

(Petition at 2).

Nothing could be further from the truth. To abolish the death penalty in the United States would ignore the language of the Constitution, overrule decades of this Court's decisions, and place this Court in the shoes of the jury and the electorate.

A. Petitioner Fails To Demonstrate That The Issue She Presents Warrants Discretionary Review By This Court.

It is well-established, as this Court's procedural rules reiterate, that "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." U.S. Sup. Ct. R. 10. *See also Fay v. Noia*, 372 U.S. 391, 436 (1963) (same, citing former Rule 19(1)), *overruled in part on other grounds*, *Wainwright v. Sykes*, 422 U.S. 72 (1977). Considerations supporting review by this Court, as relevant to this case, include a state supreme court deciding an important federal question in a manner that conflicts with a decision of this Court, other state supreme courts, or a federal court of appeals. Rule 10(b), (c). Petitioner does not indicate that these circumstances are

involved here. The ruling by the Supreme Court of Pennsylvania does not reflect a conflict with this Court, but is an application of established law to specific circumstances.

B. This Court Has Repeatedly Held That The Death Penalty Is Not *Per Se* Unconstitutional.

Less than six months ago, this Court opined:

> But we have time and time again reaffirmed that capital punishment is not *per se* unconstitutional. See, *e.g.*, *Baze*, 553 U.S. at 47, 128 S.Ct 1520; *id.*, at 87-88, 128 S.Ct. 1520 (Scalia, J. concurring in judgment); *Gregg*, 428 U.S., at 187, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and Stevens, JJ.); *id.*, at 226, 96 S.Ct. 2909 (White, J., concurring in judgment); ; *Resweber*, 329 U.S., at 464, 67 S. Ct. 374; *In re Kemmler*, 136 U.S., at 447, 10 S.Ct 930; *Wilkerson*, 99 U.S., at 134-135.
>
> We decline to effectively overrule these decisions.

Glossip at 2739 (emphasis added).

Petitioner does not point to anything that has changed since this Court's Opinion on June 29, 2015 that would warrant this Court to overrule decades of decisions regarding the constitutionality of the death penalty.

In the *Glossip* Opinion, Justice Scalia, joined by Justice Thomas filed a concurring opinion which opens with "Welcome to Groundhog Day." *Glossip* at 2746. That is because this Court has heard many a debate on the constitutionality of the death penalty and Justice Scalia was responding to a plea to abolish the death penalty, this time by Justice Breyer in his dissent. Petitioner's *Writ* reasserts the arguments of Justice Breyer's dissenting opinion[3] in *Glossip*.

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[3] "Today's administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in

Nothing has changed in six months or that is included in Petitioner's *Writ of Certiorari* that would cause this Court to overrule decades of its decisions.

C. The Majority Of The States And The Federal Government Authorize The Death Penalty.

The Petitioner acknowledges, that thirty-one states, that is over half of the United States, and the federal government still permit death sentence. (Petition at 10). Hence, for over a majority of the United States, the death penalty continues to be a viable and proper sentence for those like the Petitioner who commit heinous crimes and qualify as the worst of the worst.

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application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use." P. 2755-2756.

The death penalty was an accepted punishment at the time of the adoption of the Constitution and the Bill of Rights. *Glossip* at 2731, 2747. ("The Fifth Amendment provides '[n]o person shall be held to answer for a capital ... crime, unless on a presentment or indictment of a Grand Jury,' and that no person shall be 'deprived of life ... without due process of law.'"). Now 230 years later, the death penalty is still a part of the United States criminal justice system. This is not to say that then as today; it brings strong opinions as to its need and efficacy. There will always be voices who oppose the death penalty no matter what the crime or circumstances.

Capital punishment is not a recent phenomenon, nor has a new method of execution or category of offender been proposed to warrant

review. Throughout our history, this Court has thoroughly reviewed each method of execution as well as procedural safeguards which affords the offender that a jury processes all information. Never has this Court said the penalty is not constitutional. Rather, this Court has worked to ensure the penalty is applied in legal manner and means.

Although, Petitioner suggests that there is a "trend" to abolish the death penalty because a few states have recently decided to no longer utilize the death penalty, this Court has previous observed that states that have abolished the death penalty have thereafter reinstated it. *Furman v.* Georgia, 408 U.S. 238, 339-340 (1972) (Marshall concurring) ("By 1917, 12 states had become abolitionist jurisdictions. But, under the nervous tension of

World War I four of these Sates reinstituted capital punishment...). The same holds true in more recent history. For example, Oregon abolished the death penalty in 1964 by public referendum but reinstated it in a 1984 by an even higher margin.[4] The fact that one or two states have changed their minds in the past few years, does not make a

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[4]http://www.deathpenaltyinfor.org/oregon-1#history (last visited December 5, 2015). Oregon abolished the death penalty in 1914 via popular vote. It was reinstated again in 1920, also by popular vote. In 1964, Oregon voters once again voted to repeal the death penalty. On Nov. 5, 1964, two days after Oregon voters abolished the death penalty for the second time, then-Gov. Mark O. Hatfield commuted the death sentences of the three inmates on death row, including the only woman ever to be sentenced to death in Oregon. The death penalty was reinstated by popular vote in 1978. In 1981, the Oregon Supreme Court declared the death penalty unconstitutional, but Oregon voters reinstated capital punishment in 1984. On November 22, 2011, Governor John Kitzhaber declared a moratorium on executions because of his personal convictions about the morality of capital punishment.

"trend" to cause a knee jerk reaction as the voice for the entire country. Simply, Petitioner's suggestion of a "trend" defies the history of our nation.

The abolitionist argument has not changed from the debate of our Founding Fathers through this Court's decision in *Furman v. Georgia* to today. What has changed is the level of procedures and state appellate review of the convictions and the implementation of the sentence. In her *Writ,* Petitioner does not challenge her underlying conviction or the method of execution in Pennsylvania.

1. The Death Penalty Does Not Violate Standards of Decency

In *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct 2009, 49 L.Ed.2d 859 (1976) when this Court affirmed the constitutionality of the death penalty it specifically rejected the argument that the death

penalty violates "standards of decency," finding that "a large proportion of American society continues to regard it as an appropriate and necessary criminal sanction." *Gregg* 428 U.S. at 179.

More importantly, in *Gregg* this Court reasserted that it is the role of the legislator to respond to the wills and the morals of the people, not the courts:

> 'In a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people.' (citation omitted). The deference we owe to the decision of the state legislatures under our federal system (citation omitted) is enhanced where the specification of punishments is concerned, for 'these are peculiarly questions of legislative policy.' (citations omitted). Caution is necessary lest this Court become, 'under the aegis of the Cruel and Unusual Punishment Clause, the ultimate arbiter of the standards of criminal responsibility . . . through the

> country.' (citation omitted). A decision that a given punishment is impermissible under the Eighth Amendment cannot be reversed short of a constitutional amendment. The ability of the people to express their preference through the normal democratic processes, as well as through ballot referenda, is shut off. Revision cannot be in the light of further experience (citation omitted).

Gregg at175-176.

In its analysis in *Gregg,* this Court then concluded that capital punishment does not violate the Eighth Amendment. *Gregg* at 177-81 (joint opinion by Stewart, Powell, and Stevens, JJ.) (recognizing and rejecting the argument that "evolving standards of decency" barred the death penalty under the Eighth Amendment's "cruel and unusual" clause); *Gregg* at 187 (holding "that the death penalty is not a form of punishment that may never be imposed, regardless of the circumstances

of the offense, regardless of the character of the offender, and regardless of the procedure followed in reaching the decision to impose it").

Today, the death penalty is constitutional and available to the states and the federal government to so utilize if they choose. With time and circumstances, the death penalty may be more widely used or less widely used, and states may change their minds accordingly, but neither change the legal fact that the penalty, itself, is constitutional.

Lastly, Petitioner's suggestion that the United States should look to other countries or is out of step with other countries is not persuasive. The United States of America was founded on independence. Americans fought for their independence. Crimes which occur on American

soil will be adjudicated by the American people. By majority, the citizens of the United States remain steadfast that the death penalty is a viable punishment for the worst offenders.

The question need not be debated and decided by this Court again.

D. The Death Penalty Is Not Unreliable

Petitioner suggests that there is a risk for wrongful execution. As Justice Scalia noted, it is the convictions, not punishments that are unreliable. *Glossip* at 2747. The same risk of wrongful conviction would exist no matter the sentence. Yet, a death sentence permits a microscopic review in the appellate process and the offender a chance for his conviction to be overturned. Petitioner touts exonerations. (Petition at 20). But, Petitioner fails to realize that

exonerations come from the procedural safeguards and microscopic review of the conviction afforded the offender in capital cases. Exoneration focuses on the evidence for the conviction of the crime and has nothing to do with the sentence imposed. It can be said that for those offenders that ultimately are executed, the conviction is reliable having passed under the microscope. The exonerations prove the system in place is working. As Justice Breyer noted, "courts (or State Governors) are 130 times more likely to exonerate a Petitioner where a death sentence is at issue." *Glossip* at 2757 (Breyer dissenting).

There is no need to abolish the death penalty to assure the reliability of a conviction.

E. The Death Penalty Is Not Arbitrary Nor Discriminatory

It is offensive that Petitioner suggests that her heinous actions do not warrant the death penalty because she only stole the victim's car after the murder. (Petition at 19, Fn 41). The facts of the case are set forth *supra* and there is no doubt of Petitioner's intent to kill during this robbery. The Petitioner suggests that this is on the "low end of the aggravation scale." (Petition at 19, Fn 41). An "aggravation scale" is an imaginary concept in Petitioner's mind. Would the "aggravation scale" be different if the victim was a man of material wealth that the victim could steal more from? Under the Petitioner's "aggravation scale" does a rich victim deserve the murderer to receive the death penalty more than someone with less economic means? The Pennsylvania legislator

enumerated the aggravating circumstances to warrant the death penalty. 42 Pa.C.S. §9711. There is no scale which places one circumstance more egregious than another. Each aggravating circumstance proven by admissible evidence is equally available to a jury to weigh in its determination of the sentence of death. As Justice Scalia noted:

> We rely on juries to make judgements about people and crimes before them. The fact that these judgments may vary across cases is in inevitable consequences of the jury trial, that cornerstone of Anglo-American judicial procedure. But when a punishment is authorized by law – if you kill you are subject to death – the fact that some Petitioners receive mercy from their jury no more renders the underlying punishment "cruel" than does the fact that some guilty individuals are never apprehended, are never tried, are acquitted, or are pardoned.

Glossip at 2748 (Scalia concurring).

Here, a jury made a judgment about Petitioner's crime but only after, receiving evidence of the aggravating factor as well as evidence of all the mitigating factors put forth by the Petitioner.

The sentence of death was warranted.

F. The Delays In Executions Are At The Offenders Request And Benefit As Appellate Reviews Have Become Part Of The Safeguards That Have Evolved

For penological effect, a quick punishment would be more suitable. The victims' families would surely agree. However, this Court has created a system in which that is not possible. As noted above, a sentence of death is thereafter placed under a microscope in our appellate system. This only benefits the offender. However, even in our system, deterrence is achieved. For these heinous cases, the media reports after each round of appeals as the offender inches closer to

execution. With each execution the news media reports the event with a review of the facts to remind all this behavior is not acceptable and the resulting punishment is the ultimate penalty. The individual who receives a life sentence is long forgotten when the trial ends. A life sentence deters only the offender not the community.

Studies and statistics to determine penological effects of the death penalty are meaningless this Court has observed:

> Statistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. The results simply have been inconclusive. As one opponent of capital punish has said:
>
> > After all possible inquiry, including the proving of all possible methods of inquiry, we do not know, and for systematic and easily visible reasons cannot know, what the truth

> about this deterrent effect may be. . . . The inescapable flaw is . . . that social conditions in any state are not constant through time, and that social conditions are not the same in any two states. If an effect were observed (and the observed effects, one way or another, are not large) then one could not at all tell whether any of this effect is attributable to the presence or absence of capital punishment. A 'scientific' that is to say, a soundly based conclusion is simply impossible, and no methodological path out of this tangle suggests itself." (citation omitted).

Gregg at 184-185.

In conclusion, this Court found that the "value of capital punishment as a deterrent of crime" rests with the legislatures. *Gregg at* 186.

As far as the suggestion that delay in execution voids any penological effect to the point where the death penalty must be abolished, Justice

Scalia summed up the ridiculous nature of the argument: "it calls to mind the man sentenced to death for killing his parents, who pleads for mercy on the ground that he is an orphan." *Glossip* at 2749 (Scalia concurring).

The death penalty is a justified punishment if the people of the individual states so choose.

G. Lethal Injection Does Not Violate The Eight Amendment

Pennsylvania utilizes lethal injection as it method of execution. This Court has held that lethal injection is not cruel and unusual in violation of the Eight Amendment.) *Baze v. Rees,* 553 U.S. 35, 62, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) (holding Kentucky's three-drug method of lethal injection does not violate Eighth Amendment). *Glossip* 135 S.Ct 2726 (2015) (substituting the drug

midazolam, a sedative, as part of the three-drug protocol does not violated the Eight Amendment).

Although Petitioner claims that lethal injection results in an "unnecessarily painful death," she does not adhere to a proper challenge to the method of execution by establishing the state's lethal injection protocol creates a demonstrated risk of severe pain, and demonstrate that the risk is substantial when compared to the known and available alternative. *Id.* Petitioner makes no attempt at discussing the Pennsylvania protocol. Rather, she remains under the umbrella of the general blanket assertion of her *Writ*, which opposes the death penalty in all cases.

H. Petitioner, Nor Her Crime, Is Precluded From The Death Penalty

This Court has restricted the death penalty based upon the characteristic of the offender or the

nature of the offense. Individuals under eighteen years of age when the murder is committed are not eligible for the death penalty. *Roper v. Simmons,* 543 U.S. 551, 564 (2005). Intellectually disabled individuals are not eligible for the death penalty. *Atkins v. Virginia,* 536 U.S. 304, 316 (2002). The death penalty is not applicable to the crime of rape. *Coker v. Georgia,* 433 U.S. 584 (1977); *Kennedy v. Louisiana,* 554 U.S. 407 (2008).

Petitioner was not under the age of eighteen at the time of the crime, nor does she contend that she is intellectually disabled. She and her crime of murder placed her as a candidate for the death penalty and a jury decided the punishment was appropriate.

Petitioner has offered no issue that conflicts with this Court's holdings or that warrants

discretionary review by this Court of the death penalty.

CONCLUSION

For these reasons, the Court should deny the petition.

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No. 15-650

IN THE SUPREME COURT OF THE UNITED STATES

SHONDA WALTER,

Petitioner

v.

PENNSYLVANIA,

Respondent

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing **Brief In Opposition To Petition For Writ Of Certiorari** upon the persons and in the manner indicated below:

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