
IN THE SUPREME COURT OF MISSISSIPPI

No. 2026-DR-01039-SCT

WILLIE JEROME MANNING

Petitioner,

v.

STATE OF MISSISSIPPI

Respondent.

**PROPOSED BRIEF OF AMERICAN CIVIL LIBERTIES UNION
AND AMERICAN CIVIL LIBERTIES UNION OF MISSISSIPPI
AS AMICI CURIAE IN SUPPORT OF PETITIONER**

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INTRODUCTION

“Equal justice under law requires a criminal trial free of racial discrimination in the jury selection process.” *Flowers v. Mississippi*, 588 U.S. 284, 301 (2019). The constitutional commitment to equal justice protects not only the rights of criminal defendants, but also the rights of eligible members of the community to participate fully in jury service, and the integrity of the system as a whole. *See Powers v. Ohio*, 499 U.S. 400, 411-12 (1991). In *Batson v. Kentucky*, 476 U.S. 79 (1986), the United States Supreme Court sought to “end[] the widespread practice in which prosecutors could (and often would) routinely strike all black prospective jurors in cases involving black defendants,” *Flowers*, 588 U.S. at 301, through the creation of a now-familiar three-step procedure. Despite the promise of *Batson* and its progeny, racial disparities in jury selection remain a persistent problem, especially in death penalty cases, where their effects are the most devastating. In recent years, the U.S. Supreme Court has underscored the importance of eradicating discrimination in jury selection in two capital cases from this State: *Flowers, supra*, and *Pitchford v. Cain*, 608 U.S. 391 (2026). These intervening decisions demand that this Court revisit its treatment of Willie Manning’s *Batson* claim stemming from his 1994 capital trial.

Willie Manning, a Black man, faced the death penalty in Oktibbeha County for the murder of two white Mississippi State University students. During jury selection, District Attorney Forrest Allgood used six of nine peremptory challenges to remove Black potential jurors. In the end, Mr. Manning had a jury with only two Black jurors, though 28 of the 85 veniremembers (33%) were Black, which closely corresponded with the percentage of the Black population in the county at the time.¹ This disparity alone is “remarkable.” *See Miller-El v. Dretke (Miller-El II)*, 545 U.S. 231, 240 (2005).

¹ *See* U.S. Census Bureau, *1990 Census, General Population Characteristics: Mississippi* 16 (1990), <https://perma.cc/Z8QZ-CVLX>.

Following defense counsel's objection, the trial court declined to find a *prima facie* case of discrimination but nonetheless required the prosecution to give reasons for its strikes. When pressed, the prosecution cited race-based or stereotypical attributes as explanations for striking the jurors, even going so far as to disqualify jurors simply for listing on their questionnaires that they read *Ebony* or *Jet*—publications with predominantly Black readership. Despite these clearly race-based reasons for excluding Black potential jurors, the trial court repeatedly frustrated defense counsel's efforts to object to the prosecutor's strikes and, at the conclusion of jury selection, to renew the objection. The court accordingly never got to *Batson*'s third step—*i.e.*, evaluating the persuasiveness of the justifications offered by the prosecution, alone or as compared with non-Black jurors—and never considered whether the prosecution's purportedly race-neutral reasons were a pretext for discrimination.

On direct appeal, this Court ruled that Mr. Manning's *Batson* claim was procedurally barred, because defense counsel had not attempted to rebut the prosecution's reasons for its strikes, even though the trial court refused to conduct any step-three inquiry and told defense counsel it had already made its argument. *See Manning v. State*, 726 So. 2d 1152, 1183 (Miss. 1998). But then, during post-conviction proceedings, when Mr. Manning raised a claim that his trial counsel was ineffective in failing to rebut the prosecution's reasons, this Court denied it on the grounds that his trial counsel *had* raised a *Batson* claim. *See Manning v. State*, 929 So. 2d 885, 904 (Miss. 2006). In other words, Mr. Manning was prevented from pursuing this claim on direct appeal because this Court held that it was waived, but Mr. Manning was similarly prevented from pursuing the claim in post-conviction because this Court held that his counsel had raised the claim. The result is that no court has seriously considered the merits of Mr. Manning's *Batson* claim, and specifically, its critical third-step analysis.

The U.S. Supreme Court’s recent decision in *Pitchford* now makes clear that this Court’s imposition of a procedural bar on Mr. Manning’s *Batson* claim was in error. The trial court had a duty to consider the ample evidence demonstrating that the prosecutor’s supposedly race-neutral justifications for striking each of the six Black prospective jurors were pretextual, and any suggestion that defense counsel had waived a pretext argument “slices *Batson* way too thin.” *Pitchford*, 608 U.S. at 400. And if the trial court had considered that ample evidence, it would have exposed the prosecution’s strikes as discriminatory. As a result, the prosecution’s systematic and unconstitutional removal of Black individuals from Mr. Manning’s jury for race-based reasons created a jury primed to wrongfully convict and sentence him to death. This Court must intervene.

INTEREST OF AMICI CURIAE

The ACLU is a nationwide, nonprofit, nonpartisan organization with millions of members and supporters dedicated to the principles of liberty and equality embodied in the state and federal Constitutions and our nation’s civil rights laws. The ACLU of Mississippi, founded in 1969, is the ACLU’s statewide affiliate and is committed to the same mission. Amici have a longstanding interest in defending the constitutional rights of both defendants in the criminal legal system and all eligible members of the community to serve on juries.

ARGUMENT

I. This Court Must Re-Examine Willie Manning’s *Batson* Claim in Light of the U.S. Supreme Court’s Decisions in *Flowers* and *Pitchford*.

A. *Flowers* and *Pitchford* emphasized the importance of *Batson*’s crucial third step—the step the trial court ignored in Mr. Manning’s case.

In two recent capital cases arising out of Mississippi, the U.S. Supreme Court has underscored that “the job of enforcing *Batson* rests first and foremost with trial judges.” *Pitchford*, 608 U.S. at 398-99 (quoting *Flowers*, 588 U.S. at 302). The heart of that job is at step three. Indeed, at step one, “*Batson* intended for a *prima facie* case to be simple and without frills”—“a light

burden.” *Price v. Cain*, 560 F.3d 284, 287 (5th Cir. 2009) (citing *Johnson v. California*, 545 U.S. 162, 170, 172 (2005)). And at step two, a prosecutor need only articulate a “nondiscriminatory reason.” *Purkett v. Elem*, 514 U.S. 765, 769 (1995) (per curiam). Accordingly, the trial judge’s “job of enforcing *Batson*” lies principally at step three, where “[t]he trial judge *must* determine whether the prosecutor’s proffered reasons are the actual reasons, or whether the proffered reasons are pretextual and the prosecutor instead exercised peremptory strikes on the basis of race.” *Flowers*, 588 U.S. at 302-03 (emphasis added). To carry out step three, the trial judge must (a) “afford [defense] counsel a sufficient opportunity to rebut the prosecutor’s proffered race-neutral reason[]” and then (b) “decide[] whether the prosecutor’s race-neutral reason for striking a juror is pretextual in light of all evidence with a bearing on it.” *Pitchford*, 608 U.S. at 394, 399 (citation modified).

Step three did not happen in Terry Pitchford’s case, *id.*, and it did not happen in Mr. Manning’s. Omitting step three guts *Batson*’s protections.

The significance of *Batson*’s third step—identified as early as the issuance of the decision itself²—has only become more prominent in *Batson*’s wake. Forty years of *Batson* and related state-court jurisprudence have demonstrated the “disturbing ease with which a prosecutor can defeat a *prima facie* discrimination case” by offering purportedly race-neutral reasons. Jonathan B. Mintz, Note, *Batson v. Kentucky: A Half Step in the Right Direction (Racial Discrimination and Peremptory Challenges Under the Heavier Confines of Equal Protection)*, 72 Cornell L. Rev. 1026, 1037 (1987). In fact, to this day, some prosecutors are “explicitly trained to provide ‘race-neutral’ reasons for strikes against people of color” to evade detection when faced with a

² See *Batson*, 476 U.S. at 106 (Marshall, J., concurring) (noting that “[a]ny prosecutor can easily assert facially neutral reasons for striking a juror,” potentially circumventing *Batson*’s core protections); *Purkett*, 514 U.S. at 773 (Stevens, J., dissenting) (noting that “rote neutral explanations” that “bear facial legitimacy but conceal a discriminatory motive” threaten to turn *Batson* into a “charade” (citation modified)).

defendant's *Batson* challenge. Equal Just. Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection* 43 (2021) ("EJI Report"), <https://perma.cc/WXV9-Q6QK>. This Court, too, has recognized the challenges posed under *Batson*: "prosecuting and defending attorneys alike have manipulated *Batson* to a point that in many instances the voir dire process has devolved into an exercise in finding race neutral reasons to justify racially motivated strikes." *Flowers v. State*, 947 So. 2d 910, 937 (Miss. 2007) (plurality opinion) (citation modified).

Studies have echoed these judicial observations, showing that, despite the clear holdings of *Batson* and its progeny, prosecutors continue to exercise peremptory challenges in a racially discriminatory manner, especially in death penalty cases. A study of more than 200 trials over multiple decades in the Fifth Judicial Circuit demonstrated significant disparities in the prosecution's jury selection practices there. See Will Craft, *Peremptory Strikes in Mississippi's Fifth Circuit Court District*, APM Reports (2018), <https://perma.cc/D4TY-27FV> (studying the district where both Curtis Flowers and Terry Pitchford were prosecuted).³ Looking specifically at the capital context, the study concluded that "black jurors in capital murder trials were more than eight times as likely to be struck than white jurors," and "[b]eing black was the greatest predictor of being struck in capital trials, even more than expressing hesitation about imposing the death

³ While amici are not aware of a similar study of cases in the neighboring Sixteenth Judicial Circuit, where Mr. Manning was prosecuted, many published opinions reference concerning patterns from the prosecution that suggest, as in *Flowers*, "the State's relentless, determined effort to rid the jury of black individuals." *Flowers*, 588 U.S. at 306; see, e.g., *Harper v. State*, 510 So. 2d 530, 531-32 (Miss. 1987) (remanding for trial court to determine whether defendant had made a prima facie case under *Batson*, in case involving then-Assistant District Attorney Allgood, when parties had stipulated on appeal that "the district attorney, by exercise of his peremptory challenges, eliminated the black members of the jury panel so as to result in a[n] all-white jury for the trial of the black appellant"); *Porter v. State*, 616 So. 2d 899, 907 (Miss. 1993) (upholding trial court's findings that prosecution's peremptory strikes were race-neutral, but noting that "the call is a very close one"); *Henderson v. State*, 641 So. 2d 1184, 1185 (Miss. 1994) (affirming trial court's decision that prosecution had not violated *Batson*, but observing that "some of the reasons appear weak, at best"); *Brewer v. State*, 725 So. 2d 106, 122-23 (Miss. 1998) (trial court initially found prosecutor's reason for striking Black juror insufficiently race-neutral, but later reversed course); *Batiste v. State*, 121 So. 3d 808, 847 (Miss. 2013) (prosecution struck all Black people on panel, which resulted in Black defendant being tried by an all-white jury).

penalty.” *Id.* at 12. Across all 225 trials (including non-capital cases), the study revealed that prosecutors exercised peremptory strikes against Black prospective jurors at a rate nearly 4.5 times greater than that for prospective white jurors. *Id.* at 2. A review of a subset of 89 voir dire reports showed that “no variable explained away the importance of race.” *Id.* at 2, 13. The existence of persistent race disparities in jury selection in capital trials only amplifies the importance of ensuring that reviewing courts apply *Batson* consistent with Supreme Court precedent, to protect the defendant, the potential jurors, and the integrity of the justice system, as the U.S. Supreme Court has made abundantly clear in both *Pitchford* and *Flowers*.

This Court should take particular care with Mr. Manning’s *Batson* claims where both the stakes and the legal errors in his case closely mirror those in *Pitchford*. In this case, as in *Pitchford*, the trial court entertained no third-step *Batson* analysis at all, much less in light of all relevant circumstances. *See Pitchford*, 608 U.S. at 396 (“[T]he trial court did not afford defense counsel an opportunity to rebut as pretextual the prosecutor’s race-neutral reasons . . . , nor did the trial court make any findings regarding whether the prosecutor’s stated reasons were pretextual.”). As in *Pitchford*, the trial court prevented defense counsel from making further arguments. *Compare* T. 550-60, with *Pitchford*, 608 U.S. at 399 (noting that trial court had cut off counsel’s attempts to make further *Batson* arguments by noting that they were already ruled upon). And, as in *Pitchford*, counsel’s *Batson* claim evaded fulsome appellate review when it was found to be waived. *See Manning*, 726 So. 2d at 1183; *Pitchford*, 608 U.S. at 399 (finding it “unreasonable for the Mississippi Supreme Court to conclude that Pitchford waived the *Batson* argument”).

The damaging consequences of discriminatory strikes are particularly acute in death penalty cases, considering the incalculable stakes and the countless studies showing that diverse juries are best positioned to engage in fair deliberation regarding both guilt and sentencing. It

therefore falls on this Court to apply *Batson* faithfully, including by undertaking a review of all facts and circumstances bearing on discrimination at the third step of the analysis.

B. The prosecution’s proffered reasons for its strikes expose discriminatory intent, particularly where all circumstances are considered under *Batson*.

“The Constitution forbids striking even a single prospective juror for a discriminatory purpose.” *Flowers*, 588 U.S. at 303 (citing *Foster v. Chatman*, 578 U.S. 488, 499 (2016)). In Mr. Manning’s case, however, District Attorney Allgood gave reasons for striking *multiple* Black jurors that at a minimum, are highly indicative of discrimination, if not outright based on race. The prosecution’s reasons also cannot hold up to a comparison between struck Black jurors and accepted white jurors. While these issues have been recounted in Mr. Manning’s motion in great detail, amici discuss some examples below, as indicative of the prosecution’s racial discrimination in jury selection that this Court can no longer sanction in light of *Flowers* and *Pitchford*.

1. The prosecution’s reasons for striking Black potential jurors were highly indicative of discrimination, if not outright motivated by race.

District Attorney Allgood struck two prospective jurors, James Graves, a Black man, and Joyce Merritt, a Black woman, for reading publications such as *Jet* and *Ebony*—magazines with predominantly Black audiences. District Attorney Allgood unabashedly went so far as to justify striking Graves because he read publications that “have lately been carrying a lot of articles on the O.J. Simpson trial espousing O.J. Simpson’s innocence.” T. 536; *see also* T. 537 (similar reason for Merritt). As Justice King previously observed, “[t]o accept that reason as lacking pretext absolutely strains credulity. Indeed, it is about as preposterous as suggesting that a judge who reads the American Bar Association Journal should be disqualified from sitting on civil or criminal appeals.” Order at 16, *Manning v. State*, No. 2013-DR-00491-SCT (Miss. Apr. 25, 2013) (King, J., objecting); *see also Hernandez v. New York*, 500 U.S. 352, 371 (1991) (voir dire criterion

closely associated with “certain ethnic groups” “may well be . . . treated as a surrogate for race under an equal protection analysis”). Allgood also claimed he struck a third juror, Christi LaMarque Robertson, a Black man, for the same reason as Graves and Merritt, because he “reads those same magazines, the—the press which has had those articles on O.J. Simpson and things of that nature in it—contained in it.” T. 544. On his questionnaire, Robertson had listed *Gentlemen’s Quarterly*, *Time*, and *Newsweek* as the publications he read—not *Jet* or *Ebony*. C.P. 1579.

Allgood never bothered to ask these jurors if they had even read articles about the O.J. Simpson trial in those publications, and if so, if they had thoughts about the articles or the case generally. “A State’s failure to engage in any meaningful voir dire examination on a subject the State alleges it is concerned about is evidence suggesting that the explanation is a sham and a pretext for discrimination.” *Flowers*, 588 U.S. at 312 (citation modified). The prosecution’s great leap from the jurors merely listing certain magazines on their questionnaires to the conclusion that they had known positions about the O.J. Simpson trial that would make them less desirable jurors to the prosecution reeks of discrimination.⁴

Similarly, “in the context of all the facts and circumstances,” *Flowers*, 588 U.S. at 314-15, the prosecution’s proffered reason for striking potential juror Robertson because “he lives in an extremely bad neighborhood,” T. 544, should also be viewed with skepticism, as it is a familiar pretext for discrimination. “Prosecutors frequently claim to strike African Americans because they live in a ‘high crime area’ (meaning a predominantly black neighborhood).” EJI Report at 44.

⁴ Members of the U.S. Supreme Court expressed significant skepticism during oral argument in *Snyder* that the prosecutors were not using the O.J. Simpson trial as a proxy for race. Justice Souter in particular took issue with Louisiana’s position that the prosecution’s repeated references to the O.J. Simpson trial were race-neutral simply because neither Simpson’s nor the defendant’s race was mentioned. *See, e.g.*, Transcript of Oral Argument at 36-37, *Snyder v. Louisiana*, 552 U.S. 472 (2008) (No. 06-10119). Justice Souter described such a notion as “highly unlikely” and “not [evidence of] a critical mind at work.” *Id.*

While Mississippi appellate courts have found, on occasion, that residency in a high crime area can be a race-neutral reason, *see, e.g., Lynch v. State*, 877 So. 2d 1254, 1271 (Miss. 2004), courts have also appropriately found this reason suspect, considered with the totality of the circumstances. In *Bogan v. State*, 811 So. 2d 286, 288 (Miss. Ct. App. 2001), for instance, the Court of Appeals remanded the case to the trial court to conduct a *Batson* hearing to determine whether the prosecutor's reasons for striking Black jurors were race-neutral, when they included, among other things, the assertion that struck Black jurors lived in a "high crime area." In *Robinson v. State*, 773 So. 2d 943, 949 (Miss. Ct. App. 2000), the Court of Appeals held that the trial court failed to conduct *Batson*'s step three, and thus did not assess whether "it appeared likely that the State was voicing reasons [including living in a high crime area] that appeared race neutral on their face but which were intended to disguise the State's true purpose of excluding, to the maximum extent possible, members of the African-American community from service on this jury." The court observed, "[W]e find the countering evidence that the juror was a steadily employed family man with no other disqualifying traits to weigh heavily in favor of a finding that this potential juror's street address was nothing more than a readily-available pretext to exclude him because of his race." *Id.* at 950. Here, Mr. Robertson voiced strong support for the death penalty on his questionnaire, C.P. 1581, and Allgood never sought to voir dire him individually. That he would in other respects be "an ideal juror in the eyes of a prosecutor seeking a death sentence," *Miller-El II*, 545 U.S. at 247, renders the prosecution's reason for striking him for living in a high crime area a highly suspicious pretext for discrimination, as it was in *Robinson*.

2. The prosecution's purported race-neutral reasons also collapse under comparative juror analysis.

Comparing the responses of white jurors the prosecution accepted with the responses of Black jurors the prosecution struck also reveals that the reasons for the prosecution's strikes

against Black potential jurors were not race-neutral. *See, e.g., Snyder*, 552 U.S. at 483 (finding a prosecutor’s explanation that he chose to strike one Black juror because he had a conflicting obligation “implausib[le],” given that several white jurors had similar or more serious conflicts). Here, there were multiple instances in which the prosecution struck a Black juror whose responses or behavior were the same as or more helpful to the prosecution than a white juror whom the prosecution accepted. For instance, District Attorney Allgood claimed as an additional reason for striking potential juror Robertson was that he had not filled in much of his juror questionnaire. First, this was not true. Robertson had filled out most of his questionnaire; he simply left blank questions that did not apply to him. *See* C.P. 1574-81. Second, this reason smacks of pretext, as white jurors accepted by the prosecution left as many if not more blanks in the form. *See Manning v. Epps*, 695 F. Supp. 2d 323, 351-52 (N.D. Miss. 2009) (“agree[ing] that Robertson did not leave an inordinate number of blanks compared to some jurors found acceptable by the prosecution”).

As another example, while discussing the prosecution’s reasons for striking potential juror Graves, the court interjected that he did not have an occupation. District Attorney Allgood readily agreed that Graves’s unemployment was an additional reason he struck Graves. T. 536. At the outset, this was wrong: Graves listed that he was employed at Forrest General Hospital. C.P. 1338-39. Still, even if he had been unemployed, this reason cannot be race-neutral, as white jurors accepted by the state had no occupation. *See* C.P. 1298 (Dearman); C.P. 1130 (Bolinger, who served as a juror); C.P. 1567 (Roberts); C.P. 1122 (Blakeney).

These are just a few examples of the unlawful manner in which the prosecution struck Black potential jurors. The evidence is overwhelming. Simply put, when the evidence on the issue is “viewed cumulatively[,] its direction is too powerful to conclude anything but discrimination.” *Miller-El II*, 545 U.S. at 265.

II. The Prosecution's Racially Discriminatory Strikes Created a Jury Primed to Wrongfully Convict and Sentence Mr. Manning.

A cloud of prosecutorial misconduct also continues to hover over this case, and amici urge the Court to reconsider its denial of Mr. Manning's motion for leave to file a successive petition based, among other things, on the prosecutor's misconduct in this case, currently pending on rehearing. *See* Motion for Rehearing, *Manning v. State*, No. 2023-DR-01076-SCT (Miss. Oct. 30, 2024); Brief of Amici Curiae American Civil Liberties Union et al. in Support of Rehearing, *Manning*, No. 2023-DR-01076-SCT (Miss. Nov. 22, 2024); *see also* Jerry Mitchell & Claudia Amendoeira, *Willie Manning awaits his execution. Can new evidence halt it?*, Miss. Today (Aug. 27, 2026), <https://mississippitoday.org/2026/08/27/willie-manning-execution-new-evidence/>.

District Attorney Allgood, who prosecuted Mr. Manning, achieved notoriety for his prosecution of innocent people, over his decades of tenure in the Eastern Central Mississippi Circuit. Allgood is prominently featured in the documentary film *Mississippi Innocence*⁵ and Netflix's *The Innocence Files*, which both chronicle the wrongful convictions of Kenney Brewer and Levon Brooks.⁶ Kenney Brewer, convicted of the sexual assault and murder of his girlfriend's three-year-old daughter, was the first person in Mississippi to be exonerated through the use of DNA evidence. He spent seven years on death row, and eight years incarcerated pretrial. Innocence Project, *Kennedy Brewer*, <https://perma.cc/2L4Y-36JX>. Allgood also secured a conviction against Levon Brooks for the murder and sexual assault of another three-year-old girl. Brooks was sentenced to life in prison, and was later exonerated on the basis of DNA evidence, after 16 years of incarceration. Innocence Project, *Levon Brooks*, <https://perma.cc/G5JZ-LLNT>.

⁵ Angela J. Davis, *Film Review: "Mississippi Innocence and the Prosecutor's Guilt"*, 25 Geo. J. of Legal Ethics 989, 1008 (2012).

⁶ John Anderson, *'The Innocence Files' Sees the Devil in the Details of Criminal Injustice*, Am. Mag. (Apr. 17, 2020), <https://perma.cc/KK5Z-Q8GH>.

Beyond these high-profile exonerations, this Court has repeatedly held Allgood accountable for his misconduct. *See Holliman v. State*, 79 So. 3d 496, 500 (Miss. 2011) (reversing conviction in murder case, in which Allgood repeatedly made impermissible “golden rule” arguments in closing). In *Holliman*, while this Court stopped short of imposing sanctions on Allgood for his “blatant violation,” it felt the need to “restate its admonition to counsel,” in which the Court “caution[ed] the bench and bar of a growing number of reversals caused by inefficient, ineffective or unprofessional conduct by counsel.” *Id.* (quoting *Stringer v. State*, 627 So. 2d 326, 330 (Miss. 1993)); *see also Edmonds v. State*, 955 So. 2d 787, 792 (Miss. 2007) (reversing capital murder conviction of Tyler Edmonds, for, among other reasons, the prosecution’s presentation of a pathologist’s unreliable evidence that was central to the conviction); *Butler v. State*, 608 So. 2d 314, 318-19 (Miss. 1992) (reversing capital murder conviction, finding that Allgood committed “egregious” misconduct by arguing to the jury that defendant’s failure to testify was an indication of guilt); *see also Hodges v. Epps*, No. 1:07-CV-66, 2010 WL 3655851, at *14 (N.D. Miss. Sep. 13, 2010) (“[T]he State, seemingly unconcerned with the accuracy of the testimony to be given in a trial where the result could be death, provided the jury with false information.”). This Court also recognized Allgood’s misconduct against Mr. Manning himself in another murder case, which this Court reversed due to Allgood’s deluge of *Brady* errors concerning issues with a key witness’s testimony. *See Manning v. State*, 158 So. 3d 302, 305-07 (Miss. 2015).

In Mr. Manning’s 1994 trial, District Attorney Allgood’s conduct purging Black people from the jury created fertile ground for a false conviction and Mr. Manning’s death sentence. Significant research shows that more diverse juries are more apt to reach evidence-based conclusions, as they “deliberate[] longer” and “consider[] a wider range of information.” *See Samuel R. Sommers, On Racial Diversity and Group Decision Making: Identifying Multiple*

Effects of Racial Composition on Jury Deliberations, 90 J. Personality & Soc. Psych. 597, 606 (2006). These juries in turn “ma[k]e fewer factual errors.” *Id.* The differences in deliberation quality are particularly marked in cases involving Black defendants, as the deliberations of non-diverse juries have been found to be “overall of lower quality (i.e., fewer factual statements, decreased accuracy, and fewer novel contributions) when the defendant was Black (vs. White).” Liana Peter-Hagene, *Jurors’ Cognitive Depletion and Performance During Jury Deliberation as a Function of Jury Diversity and Defendant Race*, 43 L. & Hum. Behav. 232, 244 (2019). The difference between diverse and non-diverse juries does not come solely from Black jurors; white jurors were also found to process “trial information more systematically” and were “less likely to believe the defendant was guilty when they were in a diverse group.” Sommers, *supra*, at 607.

Lack of jury diversity presents concerns in the sentencing phase of capital trials as well. Studies have shown, for instance, that there are “racial differences in the use and misuse of mitigating evidence” and that this gap is wider for white jurors considering the punishment for Black defendants. Mona Lynch & Craig Haney, *Capital Jury Deliberation: Effects on Death Sentencing, Comprehension, and Discrimination*, 33 L. & Hum. Behav. 481, 494 (2009). This gap widens further where the victim in the case is also white, as the two victims were here. *Id.*; see also William J. Bowers et al., *Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors’ Race and Jury Racial Composition*, 3 U. Pa. J. Const. L. 171, 193 (2001) (“The presence of five or more white males on the jury dramatically increased the likelihood of a death sentence in the [Black defendant, white victim] cases.”).

Nowhere are these harms clearer than across the six capital trials of Curtis Flowers in the neighboring Fifth Judicial Circuit. “Sixty-one of the 72 jurors in Flowers’ trials were white, and all 61 voted for guilt.” Dave Mann, *Did jury makeup decide Curtis Flowers’ fate and send him to*

death row?, Clarion Ledger (June 24, 2018), <https://perma.cc/4VX6-MRPF>. Only two of the six trials resulted in hung juries—both where at least 25% of the jury was non-white. *See id.*; *Flowers*, 588 U.S. at 287-92; Alicia Arman et al., *Flowers Case: Effects of Racial Makeup of Juries*, Cornell L. Sch., <https://perma.cc/8MFL-NKTK>. Ultimately, Mr. Flowers was exonerated after decades on death row. *After Twenty-Three Years, Mississippi Drops All Charges Against Curtis Flowers*, ABA (Oct. 30, 2020). Mr. Flowers’s case provides a powerful example of the grave harms to the legal system in sanctioning discrimination in jury selection. These harms surfaced in Mr. Manning’s case, but have yet to be remedied.

Diverse juries are better at processing information concerning race or controversial issues and considering evidence lacking in reliability. *See* Samuel R. Sommers, *Determinants and Consequences of Jury Racial Diversity*, 2 Soc. Issues & Pol’y Rev. 65, 86-87 (2008). Irreparably, Mr. Manning’s trial lacked this critically needed diverse jury (a diverse jury he was deprived of based on the prosecution’s illegal strikes). Had the jury been more representative of Starkville, it would have been better equipped to evaluate the unreliable and tampered-with testimony collected by the sheriff and put on by the prosecutor, *see* Brief of Amici Curiae American Civil Liberties Union et al., *Manning*, No. 2023-DR-01076-SCT (Miss. Nov. 22, 2024), and at the very least, to ensure the protection of Mr. Manning’s constitutional rights, the rights of Black community members to participate in jury service, and the integrity of the justice system as a whole.

CONCLUSION

For the reasons set forth above, this Court should grant Petitioner’s motion for leave to file a successive petition in light of *Pitchford* and *Flowers*.

THIS the 11th day of September 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Anna Arceneaux, hereby certify that I electronically filed the foregoing document using the Court's MEC system which sent notification of such filing to all counsel of record on this 11th day of September 2026.

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