EFiled: Mar 09 2016 09:32AM EST
Filing ID 58690981
Case Number 39,2016

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN RAUF,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 39, 2016
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON CERTIFICATION OF QUESTIONS OF LAW
FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF DELAWARE AND THE AMERICAN CIVIL LIBERTIES UNION CAPITAL PUNISHMENT PROJECT AS AMICI CURIAE, IN SUPPORT OF APPELLANT

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March 7, 2016

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Statement of Interest

The American Civil Liberties Union (ACLU) of Delaware is dedicated to the principles of liberty and equality embodied in the United States Constitution and the Delaware Constitution, and seeks to defend the rights granted to individuals and groups of individuals by the United States Constitution and its Amendments, including the Bill of Rights, the Delaware Constitution and the statutes effectuating those constitutional provisions. The ACLU Capital Punishment Project focuses on upholding those rights in the context of death-penalty cases. Both the ACLU-DE and the ACLU-CPP have long been committed to protecting the constitutional rights of persons facing the death penalty.

ARGUMENT

The jury's role under the Delaware capital sentencing statute is insufficient by itself to determine the facts necessary for a death sentence. After the jury finds that an enumerated statutory aggravator exists, Del. Code Ann tit. 11, § 4209(d) (West 2016), it makes a non-binding, non-unanimous recommendation based on a weighing of aggravating and mitigating circumstances. *Id.* Even if that recommendation is for death, there can no death sentence unless trial judge independently acts. *Id.* First, the judge must determine the existence of aggravating circumstances. Second, the judge must determine the existence or non-existence of mitigating circumstances. And finally, the judge must decide by

a preponderance that the aggravators outweigh the mitigators. Unless and until the judge takes these three steps, there can be no death penalty.

This scheme is in clear contravention of the holding of *Hurst v. Florida*, that the Sixth Amendment to the United States "requires a jury, not a judge, to find each fact necessary to impose a sentence of death." __ U.S. __, 136 S. Ct. 616, 619 (2016). Amici submit this brief to address why the history of the jury trial right under the United States Constitution requires both that the juries find all the facts necessary for a death sentence, and that such findings be unanimous.

A. *Hurst* instructs that Delaware's requisite sentencing findings constitute fact-finding necessary for a death sentence and thus are reserved for the jury.

This Court certified multiple questions about the fact finding roles of the judge and jury with respect to capital sentencing in Delaware, including ones about who may make the finding of aggravating circumstances and who may determine whether the aggravating circumstances outweigh the mitigating circumstances. Both these questions are answered by the language of *Hurst* itself. *Hurst* squarely requires juries to find "each fact necessary to impose a sentence of death." *Id*. Previously, state courts, including this one, divided over whether weighing determinations in capital sentencing increased the maximum possible punishment, or were merely a discretionary act, choosing between the authorized penalties. *Compare, e.g., Brice v. State,* 815 A.2d 314, 322 (Del. 2003) (concluding that the

trial judge's weighing determination is not the "determination that increases the maximum punishment"); *with State v. Whitfield,* 107 S.W.3d 253 (Mo. 2003) (en banc) (holding that whether aggravation evidence outweighs mitigation evidence is a question of fact necessary to a finding that a defendant was death eligible).

Hurst resolved this debate when it held that Florida's requirement that the judge "determine whether sufficient aggravating circumstances existed to justify imposing the death penalty" is unconstitutional. 136 S. Ct. at 619, 624. The Supreme Court has previously recognized this command as a guided, weighing exercise. *See generally Proffit v. Florida*, 428 U.S. 242, 257-58 (1976) (concluding that Florida's directive to decide whether aggravating circumstances "were sufficient" when weighed against the mitigating circumstances provided adequate narrowing of the fact finders' discretion). Delaware's weighing scheme, which requires the trial judge to determine whether "the aggravating circumstances found by the Court [] outweigh the mitigating circumstances found by the Court to exist" cannot be distinguished from Florida's unconstitutional weighing scheme. Both require the trial courts to limit death sentences to those cases where the court by itself finds sufficient aggravating circumstances to outweigh the mitigating circumstances.

The Sixth Amendment equally bars the trial judge alone from finding the aggravating factors that must be weighed under 11 Del. Code. Ann. § 4209(d)

before a defendant is eligible for the death penalty. *Hurst,* 136 S. Ct. at 621 (citing *Ring* and *Apprendi* for the proposition that a state may not allow "a judge to find the facts necessary to sentence a defendant to death"); *see also Kansas v. Carr*, __ U.S. __, 136 S. Ct. 633, 642 (2016) (findings about aggravating factors are "purely factual determination[s]"). No death sentence in Delaware, Florida or elsewhere can be predicated on judicial fact finding under *Hurst, Apprendi*, and *Ring*. *Hurst*, 136 S. Ct. at 619 ("The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death."); *Apprendi v. New Jersey,* 530 U.S. 466, 494 (2000) (each fact that exposes a defendant to a greater punishment must be submitted to a jury); *Ring v. Arizona*, 536 U.S. 584, 589 (2002) (applying *Apprendi* to capital cases); *cf, Hurst*, 136 S. Ct. at (Alito, J., dissenting) (arguing that the "findings authorizing" a death sentence need not be "be made by a jury").

B. Historical evidence supports the conclusion that a capital defendant's jury trial right encompasses the right to have the jury find every fact necessary for the death sentence, including the requisite weighing.

The conclusion that a jury, rather than a judge, must find all of the aggravating factors and must determine whether they outweigh the mitigating ones is buttressed by the historical role of juries in capital cases and the Eighth Amendment's demand that the jury "express the conscience of the community on the ultimate question of life or death.'" *See Ring*, 536 U.S. at 615-16 (Breyer, J.,

concurring) (quoting *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1968); *Sanders v. State*, 585 A.2d 117, 133 (Del. 1990) (quoting same).

This Court previously ruled that a jury's constitutional role in capital cases is limited to the question of guilt or innocence. *See e.g., State v. Cohen*, 604 A.2d 846, 851-52 (Del. 1992). These decisions, however, rested largely on the United States Supreme Court's rulings about the limited role of the jury in *Walton v. Arizona*, 497 U.S. 639, 647-49 (1990) (upholding judge determinations of aggravating factors), *Hildwin v. Florida*, 490 U.S. 638, 640-41, (1989) (holding that "the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury"); and *Spaziano v. Florida*, 468 U.S. 447, 459 (1984) (upholding the practice of judicial override of jury sentencing determinations because it did not consider the penalty trial similar enough to a guilt phase trial "in respects significant to the Sixth Amendment's guarantee of a jury trial"). *Walton* was expressly overruled by *Ring,* 536 U.S. at 589, and "[t]ime and subsequent cases [including *Apprendi* and *Ring*] have washed away the logic of *Spaziano* and *Hildwin*." *Hurst,* 136 S. Ct. at 624.

These more recent cases*, Apprendi*, *Ring*, and *Hurst,* restore the historical role of the jury in capital sentencing that the earlier decisions eroded. *Id.; Ring*, 536 U.S. at 599 ("Moreover, the [English] jury's role in finding facts that would determine a homicide defendant's eligibility for capital punishment was . . . well

established."); *Apprendi*, 530 U.S. at 477 ("[T]he historical foundation for our recognition of these principles extends down centuries into the common law.").

A close review of historical cases demonstrates that English juries in fact played a pivotal role in deciding if the accused would live or die. Historian Thomas Green has proven, in his authoritative analysis of early English juries, that, as early as the thirteenth century, jurors refused to convict on capital charges when they believed the crimes were unworthy of execution. Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 1200-1800* 28-64 (1985);[1] *see also* Jeffrey Abramson, *We, The Jury: The Jury System and the Ideal of Democracy* 217 (BasicBooks 1994) (citing Green). *Cf. Jones v. United States*, 526 U.S. 227, 246 (1999) (citing Green's work); *Walton v. Arizona*, 497 U.S. 639, 711 n.3 (1990) (Stevens, J., dissenting) (citing Green's work), *overruled by Ring*, 536 U.S. at 589.

Green's analysis begins with thirteenth century English juries. Their "power to determine the defendant's fate was virtually absolute." Green*, supra,* at 19. Those acquitted were released. *Id.* "The guilty were hanged almost immediately." *Id.* Indeed, the judgment of conviction was termed "'*suspendatus est*,' ('he is hanged.')." Green, *The Jury and the English Law of Homicide, 1200-1600*, 74

[1] *See also* Thomas Green, *The Jury and the English Law of Homicide, 1200-1600*, 74 Mich. L. Rev. 413 (1976). For clarification, cites to "Green," *supra*, continue to refer to Green's book, while subsequent cites to this article will employ its short form.

Mich. L. Rev. at 424. Juries in effect were deciding the "appropriate circumstances under which a person's life might be surrendered to the Crown." *Green, supra,* at 20; s*ee also Apprendi*, 530 U.S. at 479-80 (showing that laws "prescrib[ing] a particular sentence for each offense" limited authority of English judges).

One of the tools at the jury's disposal in the Middle Ages was to decide if a homicide was committed in self-defense, a powerful means of saving the accused given that era's lack of gradations of homicide. Green, *The Jury and the English Law of Homicide*, 1200-1600, 74 Mich. L. Rev. at 415, 427-36. Examining the ancient verdicts, Green found that "the frequent recourse to such findings resulted mainly from the jury's desire to save the lives of defendants who had committed simple homicide." *Id.* at 431. The juries did so to limit homicide convictions to the "most culpable homicides." *Id*. at 432. *see also id.* at 416 (finding "the local community considered" execution "appropriate mainly for the real evildoer: the stealthy slayer who took his victim by surprise and without provocation"); *McGautha v. California*, 402 U.S. 183, 197-98 (1971) (recounting this history), *overruled on other grounds by Furman v. Georgia*, 408 U.S. 238 (1972).

The jury later found a tool in the "benefit of clergy," originally designed to try and punish ordained clergy in the Church rather than the courts, but eventually extended (in the courts) to anyone literate enough to recite a Bible verse. Green,

supra, at 117. The jury's role was to decide if the crime committed qualified for the benefit, which would result in branding of the convicted and a year's imprisonment. *Id.* at 118. In the case of homicide, that meant deciding whether the crime was manslaughter or murder. *Id.* at 121-22. As jurors "recogniz[ed] that benefit of clergy provided an alternative sanction [to execution] for simple homicide," the conviction rate went up, and the previously high rate of self-defense verdicts went down. *Id.* at 122. The percentage of offenders condemned to death, over this period, "remained about the same," *id.* at 122, preserving over time the jury's unique role as arbiter of community sentiment. *See Ring*, 536 U.S. at 615 (Breyer, J., concurring). *See also McGautha*, 402 U.S. at 197-98 (recounting this same history).

In the sixteenth and seventeenth centuries, new legal distinctions between capital and non-capital alternatives allowed the jury to do the work of deciding whom was fit for execution:

> Many of those indicted for grand larceny were, by virtue of the jury's undervaluation of the goods stolen or their own plea of guilty to a lesser offense, convicted of petty larceny, which was not capital, just as some of those indicted for murder were mercifully convicted of manslaughter. Convictions were high in those capital felonies that had long been viewed as particularly heinous and in those non-capital offenses that had come to serve as catchalls much as self defense had in earlier times.

Green*, supra,* at 107. Thus, in common-law England, the jury played the role, still relevant today, of deciding whether the "culpability of the prisoner is so serious

that the ultimate penalty must be sought and imposed." *Kennedy v. Louisiana*, 554 U.S. 407, 442 (2008) (internal citation and quotation marks omitted).

During the founding era and before, English society generally saw the jury's exercise of merciful discretion as appropriate, rather than a nefarious species of nullification. Green, *supra*, at 311-15. In fact, while the jury held the ultimate power, the bench itself frequently encouraged juries to "undervalue goods and convict the defendant of a clergyable offense. . . out of compassion, to do rough justice in cases where the punishment would have appeared disproportionate to the culpability of the offender." *Id.* at 149; *see also id.* at 286 (recounting similar judicial encouragement).

This role of jurors as the arbiters of capital sentences continued in the early years of our nation. *See Woodson v. North Carolina,* 428 U.S. 280, 289-93 (1976); *McGautha v. California*, 402 U.S. 183, 197-201 (1971); *see also Dennis McGautha v. California*, Nos. 203 & 204 (Oct. 15, 1970) *Brief for the United States as Amicus Curiae,* 1970 WL 122026*,* at 32-55 (arguing that jury sentencing discretion in capital cases is firmly established in American law and tracing its history to the common law). In *Woodson*, the Supreme Court observed that at "least since the Revolution, American jurors have, with some regularity, disregarded their oaths and refused to convict defendants where a death sentence was the automatic consequence of a guilty verdict." 428 U.S. at 293. Juries'

refusals to return verdicts of guilty to avoid the consequence of execution drove the movement behind reducing "the number of capital offenses and to separate murder into degrees." *Id.*

The first reform was for the state to limit "classes of capital offenses." *Id.* at 290 (footnote omitted). Even then, juries would refuse to "convict murderers rather than subject them to automatic death sentences." *Id.* The next step, led by Pennsylvania in 1794, was to separate murder into degrees and confine mandatory execution to deliberate and premeditated killings. *Id.* Other states followed until the practice became nearly universal. *Id.*

Juries nonetheless "continued to find the death penalty inappropriate in a significant number of first-degree murder cases and refused to return guilty verdicts for that crime." *Id.* at 291. The next set of reforms allowed juries deciding guilt also to recommend mercy. *Id.* This included Delaware. *See State v. Dickerson,* 298 A.2d 761, 764 n.6 (1972) ("In [1911], the General Assembly amended the rape statue by providing a limited discretion permitting the jury to recommend mercy, in which event the court could impose the sentence of life imprisonment."). By the turn of the twentieth century, 23 states plus the federal government had adopted the practice. *Woodson*, 428 U.S. at 291.

The United States Supreme Court's interpretation of an 1897 federal statute highlighted the singular role of juries in capital sentencing. *See Winston v. United*

States, 172 U.S. 303 (1899). There, the Court reversed a murder conviction because the trial judge had instructed the jury that a mercy recommendation was warranted only if it found mitigating circumstances. *Id.* at 313. The Court found this charge thwarted Congress's design to commit the question of execution to the "judgment and the consciences of the jury." *Id.* at 312-13. The question of mercy was thus exclusively reserved for the jury. The Court relied in part on the consistent practices of the states interpreting similar schemes. *Id.* (collecting state cases from the era).

By the end of World War I, "all but eight States, Hawaii, and the District of Columbia either had adopted discretionary death penalty schemes or abolished the death penalty altogether." *Woodson*, 428 U.S. at 291. "By 1963, all of these remaining jurisdictions had replaced their automatic death penalty statutes with discretionary jury sentencing." *Id.* at 291-92.

Thus, as in England, American juries' decisions have long been conclusive as to which people and which crimes are deserving of society's most severe punishment. *See also* Lectures of Justice James Wilson (1791) in 2 *Collected Works of James Wilson* 1008-09 (K. Hall & M. Hall eds., 2007) (hereafter Wilson) (arguing that the power to decide if a "fellow citizen shall live or die" is a burden and responsibility too great for any one person). Juries speak for society and the local community in particular. They serve as a critical barometer. When a capital

sentencing scheme relegates jurors to an advisory role, retribution cannot be properly served, *Kennedy*, 554 U.S. at 442, the requisite reliability cannot be achieved, *Beck v. Alabama*, 447 U.S. 625, 638 (1980), and the scheme falls outside of a consensus for determining a death sentence that is humane and just. *Hall v. Florida*, 134 S. Ct. 1986, 1998 (2014).

Delaware's death penalty scheme thus impermissibly diminishes the role of the jury from its form at common law as the arbiter of facts and mercy in capital cases, in violation of the Sixth and Eighth Amendments of the United States Constitution,[2] as well as Article I, Section 4 of the Delaware Constitution.[3] With *Spaziano* and *Hildwin* as its starting point, this Court in *Cohen* ruled out a historically protected jury role in capital sentencing on two other grounds, neither of which should be persuasive today. 604 A.2d at 852. First, *Cohen* stressed that the historical right to a jury included only its role as a trier of "facts." *Id*. As the United States Supreme Court has now acknowledged, the finding of aggravating and mitigating factors constitutes fact-finding, and demands a jury role. *See Hurst*, 136 S. Ct. at 622 (striking Florida's death scheme because jury not required to make findings requisite for execution," including "specific factual findings regarding the existence of mitigating or aggravating circumstances"); *Ring*, 536

[2] Before *Hurst*, only Alabama, Delaware and Florida tolerated judicial fact finding and weighing in capital cases. As Rauf's briefing demonstrates, judicial sentencing also violates the Eighth Amendment's evolving standards of decency.

[3] In many areas of the law, Delaware citizens "enjoy more rights, more constitutional protections, than the Federal Constitution extends to them." *Sanders*, 585 A.2d at at 145.

U.S. at 609 (holding that the finding of an aggravated circumstance was a factual determination that must be made by the jury); *Carr*, 136 S. Ct. at 642 (finding of aggravating factors is "a purely factual determination" but finding of mitigating factors is mixed and "mostly a question of mercy").[4]

Second, the authority relied upon by this court for the holding that juries did not consider punishment in capital cases, *Boatson v. State*, 457 A.2d 738 (Del. 1983), and *Smith v. State*, 317 A.2d 20 (Del. 1974), are inapposite when examined closely. *Boatson* expressly acknowledged that juries in capital cases, "in sharp contradistinction to noncapital cases," will necessarily have knowledge regarding the possible penalties when deciding capital cases. *Boatson v. State*, 457 A.2d at 741. *Smith* involved a noncapital case and stood only for the proposition that a jury should not be informed regarding the possibility of pardon or parole. *Smith v. State,* 317 A.2d at 25.

This Court should hold, consistent with the historic jury trial right, that capital juries alone have the power to find aggravating and mitigating circumstances, and assign them weight.

C. Unanimity is constitutionally required.

Since the weighing and finding of aggravating circumstances must be reflected in a jury verdict, the question of whether the U.S. Constitution would

[4] The Court's characterization of mitigation as "mostly" a question of mercy is an implicit acknowledgement that it is also a factual question.

require that verdict to be unanimous is academic in Delaware because the Delaware Constitution unequivocally requires jury verdicts to be unanimous, consistent with the common law rule. *Claudio v. State,* 585 A.2d 1278, 1301 (Del. 1991) (citing *Fountain v. State*, 275 A.2d 251 (Del. 1971) ("[U]nanimity of the jurors is required to reach a verdict since such was the common law rule.")); *see also State v. Porter*, 4 Del. 556 (1844) (dismissing jurors and charges after jury failed to reach a unanimous verdict). Article I, Section 4 of the Delaware Constitution guarantees "[t]rial by jury shall be as heretofore." Delaware has repeatedly recognized that this provision protects the common law features of the jury trial right, including unanimity. *Claudio*, 585 A.2d at 1289-90.

In any case, history teaches that the Sixth-Amendment jury right implicitly *also* encompasses the right to a unanimous jury. The Framers knew of no other jury right than a unanimous one, which would have made including the word "unanimous" in the Sixth Amendment inelegant redundancy. *See* ACLU Amicus Brief in *Hurst v. Florida*, avail at http://sblog.s3.amazonaws.com/wp-content/uploads/2015/06/Hurst-ACLU-amicus-brief.pdf (citing the united views of the constitutional framers, founding era legislators, judges, and commentators). The right to a unanimous jury in criminal cases had been an established part of English common law for centuries before the Sixth Amendment was ratified.

In *Apodaca v. Oregon*, 406 U.S. 404 (1972), four justices of the United States Supreme Court permitted a non-unanimous verdict in a non-capital case. *Id.* at 411-12. As Rauf's briefing demonstrates, this case has not withstood time and should not be relied upon. But more to the point of this history brief, the *Apodaca* plurality's conclusions about the history of the Sixth Amendment and the framers' understanding of the jury right were simply incorrect. The plurality acknowledged but then rejected the possibility that Congress "eliminated references to unanimity" not for substantive effect, but "because [it was] thought already to be implicit in the very concept of jury." *Apodaca*, 406 U.S. at 409-10 (emphasis added). As shown below, the plurality chose the wrong alternative. Framers, judges, and scholars writing before, during, and after the Bill of Rights was written and ratified all agreed that the jury right our founders fought for was the English common-law right. That right indisputably encompassed unanimity. *See*, *e.g.* 4 Blackstone Commentaries *343; *see also*, *Claudio*, 585 A.2d at 1289-90.

By the founding of our nation, unanimity had been integral to the English jury right for centuries. *See*, *e.g.*, 4 Blackstone Commentaries *343; Green, *supra*, at 18; Abramson, *supra,* at 72; John Guinther, *The Jury in America* 12 (1988).

Early Framers believed that unanimity was an inherent part of the Sixth Amendment jury right. This included Justice James Wilson, a Founder who taught the importance of unanimity. Lecturing on the Constitution as the Bill of Rights

was still being ratified Justice Wilson repeatedly stated that unanimity was of "indispensable" significance in criminal cases.[5] 2 Wilson, *supra*, at 954-1011.

The ratification debate surrounding the original Constitution reflects a similar understanding. When North Carolina, Pennsylvania, Rhode Island, and Virginia separately suggested (among other alterations) that Art. III, § 2 be amended to make clear that the criminally accused has a right to a jury "without whose unanimous consent he cannot be found guilty," The Foreign Spectator, whose commentaries on the Constitution and amendment processes were widely read, described the amendments as unnecessary because all "these particulars are included in the *usual trial by jury*."[6] (emphasis added).

Early court decisions from the United States Supreme Court and several state high courts express particular concern for unanimity in capital cases. *See United States v. Perez*, 22 U.S. 579, 580 (1824) (stating regarding hung juries that "in capital cases especially, Courts should be extremely careful how they interfere with any of the chances of life, in favour of the prisoner"); *Atkins v. State*, 16 Ark. 568, 578 (1855) (encouraging caution before discharge of hung juries and quoting

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[5] Before President Washington appointed him to the United States Supreme Court, Justice Wilson helped to shape both the Declaration of Independence and the original Constitution. He was one of few to sign both documents. *See* 1 Wilson, *supra*, xi. He is widely recognized as an architect of our republic. *Id.* His Philadelphia lectures on the Constitution were attended by the Nation's founders, including the President. *Id.* at 403.

[6] The Foreign Spectator, *Remarks on the Amendments to the Federal Constitution, Proposed by the Conventions . . . by a Foreign Spectator*, THE FED. GAZ. & PHILADELPHIA EVENING POST, Dec. 2, 1788, at 2 (emphasis added).

Perez); *Monroe v. State*, 5 Ga. 85, 153 (1848) (reversing capital murder conviction due to sequestration arrangements that undermined unanimity); *Nomaque v. People*, 1 Ill. 145, 148-50 (1825) (similar concern about practice promoting non-unanimous verdict in capital case); *Ned v. State*, 7 Port. 187, 216 (Ala. 1838); *Commonwealth v. Roby*, 29 Mass. 496, 519-20 (1832); *State v. Garrigues*, 2 N.C. 241, 241-42 (Super. L. & Eq. 1795); *Commonwealth v. Cook*, 6 Serg. & Rawle 577, 585 (Pa. 1822); *State v. McLemore*, 20 S.C.L. 680, 683 (S.C. L. & Eq. 1835).

The early scholars interpreting the Sixth Amendment jury right echoed this understanding that it required unanimity. In 1803, just after passage of the Bill of Rights, St. George Tucker wrote that the Sixth Amendment secured the trial by jury described by Blackstone, and stated that no person could be "condemned of any crime" without a jury's "unanimous verdict, or consent." 1 St. George Tucker, *Blackstone's Commentaries App.* 34 (Birch & Small eds. 1803); *id.* at Vol. 5, at 348-49 n.2 (citing 4 Blackstone Commentaries *349-50).

The courts, judges, and scholars of the era, then, shared in the understanding that the right to a jury meant the right to a unanimous jury. This was so since the founding and through the ratification of the Fourteenth Amendment. As those who ratified the Constitution understood, nothing in these authorities permitted bare majority jury decisions in serious criminal matters, much less determinations of facts necessary for a death sentence.

Consistent with the historical record, this Court should hold that both the Delaware and United States Constitutions require unanimous decision making by juries in capital cases in order to impose a sentence of death.

Respectfully submitted,

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