

No. 07-343

IN THE
Supreme Court of the United States

PATRICK KENNEDY,

Petitioner,

v.

LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari
to the Louisiana Supreme Court

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The State does not dispute that this case, in which petitioner stands to be the first and only person in this country in over forty-three years to be executed for rape, presents two Eighth Amendment issues of exceptional importance – namely (1) whether the Eighth Amendment permits child rape to be punished by death; and (2) even if so, whether Louisiana’s capital child-rape law genuinely narrows the class of such offenders eligible for the death penalty. Nor does the State contest that the Louisiana Supreme Court’s resolution of these questions conflict with all six decisions from other state courts of last resort to address the same or similar issues. Nor does the State dispute that this case presents an ideal vehicle for resolving the questions presented. Nor does the State take issue with any of the arguments that petitioner (now supported by *amici* from various perspectives) advances with respect to why it is so vital that this Court resolve the questions presented now.

The only argument the State offers for denying certiorari is a recitation of the Louisiana Supreme Court’s decision. Petitioner already has explained why that decision contravenes this Court’s precedent, *see* Pet. for Cert. 12-16 & 22-25, and petitioner will not repeat those explanations here. It suffices to reiterate that even the Louisiana Supreme Court conceded that its ruling was in serious tension with this Court’s decision in *Coker v. Georgia*, 433 U.S. 584 (1977), *see* Pet. App. 54a-56a, and that “the ambiguity over whether *Coker* applies to all rape or just adult rape has left other states unsure of whether the death penalty for child rape is unconstitutional.” Pet. App. 55a, *quoted in* BIO at 20. Only this Court can resolve that supposed ambiguity over this tremendously important issue. This Court should do so now, making clear that child rape cannot be punished by death and that even if it could, the Louisiana Supreme Court’s rendering of the Eighth Amendment’s “narrowing” requirement as a nullity cannot stand.

CONCLUSION

For the foregoing reasons as well as those in the petition for certiorari, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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