

IN THE MISSOURI SUPREME COURT

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STATE OF MISSOURI ex rel. )  
CHRISTOPHER SIMMONS, )  
 )  
Petitioner, )  
 )  
vs. ) No. 84454  
 )  
AL LUEBBERS, )  
 )  
Respondent. )

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Brief on Petition for Original Writ of Habeas Corpus  
To the Missouri Supreme Court

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**PETITIONER'S REPLY BRIEF**

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## JURISDICTIONAL STATEMENT

Mr. Simmons relies on the jurisdictional statement in his opening brief.

## STATEMENT OF FACTS

Mr. Simmons relies on the statement of facts contained in his opening brief.

## POINT RELIED ON

CHRISTOPHER SIMMONS IS ENTITLED TO A WRIT OF HABEAS CORPUS RELIEVING HIM FROM HIS SENTENCE OF DEATH BECAUSE THE EIGHTH AND FOURTEENTH AMENDMENTS, AS WELL AS ARTICLE 1, SECTION 21 OF THE MISSOURI CONSTITUTION, AS INTERPRETED BY SOCIETY'S "EVOLVING STANDARDS OF DECENCY," RENDER THE EXECUTION OF JUVENILES CRUEL AND UNUSUAL PUNISHMENT IN THAT REVIEW OF THOSE FACTORS DETERMINED TO BE BENCHMARKS OF CURRENT "STANDARDS OF DECENCY" BY THE COURT IN *ATKINS V. VIRGINIA* SHOWS THAT (1) JUVENILES, AS A CLASS, DO NOT POSSESS THE LEVEL OF CULPABILITY REQUIRED TO BE ELIGIBLE FOR THE DEATH PENALTY, (2) THERE IS A SIGNIFICANT TREND AGAINST EXECUTING JUVENILES IN THIS COUNTRY, (3) EXPERT AND RELIGIOUS ORGANIZATIONS OPPOSE JUVENILE EXECUTIONS, (4) PUBLIC OPINION WEIGHS HEAVILY AGAINST SUCH

EXECUTIONS, AND (5) INTERNATIONAL NORMS PRECLUDE THE EXECUTION OF JUVENILES.

*Atkins v. Virginia*, 122 S.Ct. 2242 (2002)

*Thompson v. Oklahoma*, 487 U.S. 815 (1988)

Eighth Amendment, United States Constitution

Article I, Section 21, Missouri Constitution

### ARGUMENT

CHRISTOPHER SIMMONS IS ENTITLED TO A WRIT OF HABEAS CORPUS RELIEVING HIM FROM HIS SENTENCE OF DEATH BECAUSE THE EIGHTH AND FOURTEENTH AMENDMENTS, AS WELL AS ARTICLE 1, SECTION 21 OF THE MISSOURI CONSTITUTION, AS INTERPRETED BY SOCIETY'S "EVOLVING STANDARDS OF DECENCY," RENDER THE EXECUTION OF JUVENILES CRUEL AND UNUSUAL PUNISHMENT IN THAT REVIEW OF THOSE FACTORS DETERMINED TO BE BENCHMARKS OF CURRENT "STANDARDS OF DECENCY" BY THE COURT IN *ATKINS V. VIRGINIA* SHOWS THAT (1) JUVENILES, AS A CLASS, DO NOT POSSESS THE LEVEL OF CULPABILITY REQUIRED TO BE ELIGIBLE FOR THE DEATH PENALTY, (2) THERE IS A SIGNIFICANT TREND AGAINST EXECUTING JUVENILES IN THIS COUNTRY, (3) EXPERT AND RELIGIOUS ORGANIZATIONS OPPOSE JUVENILE

EXECUTIONS, (4) PUBLIC OPINION WEIGHS HEAVILY AGAINST SUCH EXECUTIONS, AND (5) INTERNATIONAL NORMS PRECLUDE THE EXECUTION OF JUVENILES.

**I. Mr. Simmons' Claim is Not Procedurally Barred<sup>1</sup>**

A. Cause and Prejudice

Relying primarily on *State v. Wilkins*, 736 S.W.2d 409 (Mo. 1987), respondent first argues that Mr. Simmons cannot prove “cause” for his procedural default of this issue because the legal basis for his claim was available prior to the Supreme Court’s decision in *Atkins v. Virginia*, 122 S.Ct. 2242 (2002). (Respondent’s Brief, pp. 16-17)<sup>2</sup> Citing to *Wilkins*, respondent asserts that “Heath Wilkins made his Eighth Amendment claim over fifteen years ago.” (Resp. Br., p. 16) In response to Mr. Simmons’ showing that new research reveals that the lack of brain development in children makes them less culpable than adults, respondent further claims that “youth and cognitive function are discussed extensively” in *Wilkins*. (Resp. Br., p. 17). Both of these assertions by respondent are untrue, and the first is irrelevant.

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<sup>1</sup> Respondent divides Mr. Simmons’ single point relied on into three points and adopts a different system of numbering the claims. For consistency, Mr. Simmons retains his initial format. This point replies to respondent’s Point I.

<sup>2</sup> Citations to Respondent’s Brief will be abbreviated as “Resp. Br.”

In *State v. Wilkins*, 736 S.W.2d 409 (Mo. 1987), Wilkins raised only the complaint that the death penalty in general violated the Eighth Amendment, not the specific challenge to the juvenile death penalty advanced by Mr. Simmons. Obviously then, there was no “extensive” discussion of youth and cognitive function as alleged by respondent. In fact, the only mention of such issue was during the discussion of Mr. Wilkins’ competency to waive his constitutional rights. In rejecting a per se rule that juvenile defendants should require a heightened level of competency, the court noted that “an incompetent, as a juvenile, may be impaired by his limited cognitive and social capacities, . . .” *Id.* at 415. This passing comment by the court is irrelevant to Mr. Simmons’ argument. The research referenced in Mr. Simmons’ brief, reproduced in part in the appendix, and uncontradicted by respondent, shows that the new information related to child brain development gives Mr. Simmons a legal basis for his claim that did not previously exist.

It is the new legal bases that form this claim (as detailed in Mr. Simmons’ brief) that make it irrelevant whether Mr. Wilkins previously raised the constitutionality of the juvenile death penalty before this Court. Wilkins did in fact take the issue to the United States Supreme Court in *Stanford v. Kentucky*, 492 U.S. 361 (1989). As this Court is well aware, that litigation was not successful.

But Mr. Simmons does not bring the same claim Messrs. Wilkins and Stanford brought in 1989.

“Cause” is established “[w]here a constitutional claim is so novel that its legal basis is not reasonably available to counsel.” *Reed v. Ross*, 468 U.S. 1, 16 (1984). “Novelty” is determined by “a common sense view of what reasonably diligent counsel would have been aware of,” and considers whether the “tools were available” to make the claim before the default. *Leggins v. Lockhart*, 822 F.2d 764, 766 (8<sup>th</sup> Cir. 1987). “‘Unavailability,’ the Supreme Court has indicated, might be shown by the ‘absence of any factually or legally analogous precedents’ such that there was no reason to believe the claim would ‘find favor in the federal courts’ at the time.” *Hulsey v. Sargent*, 868 F.Supp. 1090, 1097 (E.D. Ark. 1993). Because the bases now asserted by Mr. Simmons justifying relief on this claim were in fact not available at the time of his direct appeal before this Court in 1997, it cannot be said that defense counsel had the “tools” necessary to formulate the claim. Of course, Mr. Simmons could have at any time claimed that his execution violated the prohibition against cruel and unusual punishment, but without the “legally analogous precedent” in *Atkins*, as well as the factual information

supporting the theory in *Atkins*, defense counsel had no “tools” with which she could effectively build such argument.<sup>3</sup> Therefore, cause is established.

A lengthy reply to respondent’s assertion that petitioner has not established prejudice is not warranted. Simply, respondent states that “[p]etitioner only argues that capital punishment for a juvenile offender is an incorrect social policy, not that his trial was unfair.” (Resp. Br., p. 18) Obviously to the contrary, Mr. Simmons’ position throughout his brief is not that this Court should make “social policy,” but that juvenile executions violate the Missouri and United States Constitutions. Under these circumstances, Mr. Simmons’ entire trial was infected with “error of

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<sup>3</sup> Rule 55.03(b) provides that arguments must be “warranted by existing law or nonfrivolous argument for the extension, modification, or reversal of existing law, and have evidentiary support or are likely to have support after a reasonable opportunity for further investigation or discovery.” In *State v. Simmons*, 955 S.W.2d 752, 771 (Mo. banc 1997) this Court upheld sanctions against PCR counsel for raising claims related to the reasonable doubt instruction, the death penalty constitutionality, and juror disqualification, on the grounds that the claims “have been firmly and uniformly rejected by previous decisions of this Court and the federal courts.” Undoubtedly, appellant counsel here could have faced similar sanctions under this standard.

constitutional dimensions,” thereby establishing prejudice. *Covey v. Moore*, 72 S.W.3d 204, 210-11 (Mo. App. W.D. 2002).

B. Manifest Injustice

Respondent asks this Court to interpret *Sawyer v. Whitley*, 505 U.S. 333 (1992), to mean something other than what the plain language of the Court states. In *Sawyer*, the Court held that “[s]ensible meaning is given to the term ‘innocent of the death penalty’ by allowing a showing in addition to innocence of the capital crime itself a showing that there was no aggravating circumstance **or** that some other condition of eligibility had not been met.” *Id.* at 345 (emphasis added). For reasons untold, respondent asserts that this language refers only to statutory aggravating circumstances. (Resp. Br., p. 19). Respondent apparently seeks support for this contradiction in the words of the footnote following the quoted language, which states:

Louisiana narrows the class of those eligible for the death penalty by limiting the type of offense for which it may be imposed, and by requiring a finding of at least one aggravating circumstance. See *supra*, at 2520. Statutory provisions for restricting eligibility may, of course, vary from State to State.

*Id.* at 345, n. 12. This footnote obviously does not state that the “or” used by the Court in defining eligibility for the death penalty means anything other than “or,” and does therefore not aid respondent’s argument.

Mr. Simmons asks only that the Court read the clear, unequivocal language of *Sawyer* that allows innocence of the death penalty to be proven by showing that some “other” condition of the eligibility -- i.e. “other” than an aggravating circumstance -- has not been met. Such interpretation is in line with the Court's language and the Eighth Circuit’s construction of the language in *Lingar v. Bowersox*, 176 F.3d 453, 462 (8<sup>th</sup> Cir. 1999).

**III. The Supreme Court’s Interpretation of the Eighth Amendment in *Atkins v. Virginia*, When Applied to the Issue of Juveniles, Compels the Conclusion That Juvenile Executions Likewise Offend the Constitution<sup>4</sup>**

Respondent first advocates that this Court put the issue to rest by simply stating that *Stanford v. Kentucky*, 492 U.S. 361 (1989), is controlling precedent. (Resp. Br., pp. 20-21) Respondent quotes from *Stanford*: “We discern neither a historical nor a modern societal consensus forbidding the imposition of capital punishment on any person who murders at 16 or 17 years of age.” *Stanford*, at 380. The problem with such reliance, of course, is that the findings of the Court in 1989 cannot be said to represent “a modern societal consensus.” For this reason,

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<sup>4</sup> Replies to respondent’s Points II and III.

Mr. Simmons urges this Court to examine what consensus exists some 13 years after *Stanford*.

Respondent next advocates that this Court is bound by the Court's holding in *Stanford* because *Atkins* does not directly overrule *Stanford*. (Resp. Br., pp. 21-22) The problem with *Stanford* is that due to its age, it cannot be considered definitive as to the "evolving standards of decency" by which the Eighth Amendment and Article 1, Section 21 Cruel and Unusual Punishment Clauses are measured. The real query then, is what process this Court must go through in measuring those standards of decency.

In *Atkins*, the Court considered several factors in determining that the Eighth Amendment is violated by the execution of the mentally retarded, including: relative culpability, legislative trends, opinions of organizations with germane expertise, opinions of religious communities, world opinion, and public opinion within this country. To the extent that the Court in *Atkins* determined Eighth Amendment jurisprudence through the use of factors rejected by *Stanford*, the *Atkins* Court does overrule the *Stanford* opinion. Any other construction of the two cases defies logic and ignores previous Court precedent. First, it does not make sense that there would be one set of determiners of "evolving standards of decency" when looking at the Eighth Amendment and mentally retarded persons

and yet another set of determiners when looking at the Eighth Amendment and juveniles.

Second, the Court does not have to rely on common sense to reach this conclusion, but instead can see this fact in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), which held the execution of a 15-year-old offender violative of the Eighth Amendment. In *Thompson*, the Court used the same standards advanced by the *Atkins* Court to determine the parameters of the Cruel and Unusual Punishment Clause. The *Thompson* Court considered legislative enactments, jury determinations, views of respected professional organizations and of other Anglo-American and Western European nations, and relative culpability in determining the “evolving standards of decency.” *Thompson*, at 822-23, 830 & n.31, 833-38. In *Atkins*, therefore, the Court does nothing more than reiterate that the process for defining the Eighth Amendment established in *Thompson* is in fact “good law.” Indeed, the four dissenters in *Stanford* were puzzled by the Court’s break from the *Thompson* approach by four of the plurality Justices in *Stanford*. *Stanford*, 492 U.S. at 383-405. The analysis in *Atkins* merely puts the Court back on track.

Respondent’s next attack posits that Mr. Simmons offers no authority for his argument that juvenile executions also violate the Cruel and Unusual Punishment Clause of Article 1, Section 21 of the Missouri Constitution. (Resp. Br., p. 22-23) This position ignores the point. It is not that a separate analysis is needed to

conclude that the Missouri Constitution is violated by Mr. Simmons' execution. All of the arguments in Mr. Simmons' brief support the fact that both the Eighth Amendment and Article 1, Section 21 are violated by juvenile executions. The point is merely that the Court does not have to go so far as to decide the issue on Eighth Amendment grounds, but can find only that the Missouri Constitutional provision is violated.

Citing *State v. Newlon*, 627 S.W.2d 606, 612 (Mo. banc 1982), respondent concludes that this Court will not use the Missouri Constitution to go "beyond the protection provided by the Eighth Amendment." (Resp. Br., p. 22) *Newlon* is not dispositive. First, Mr. Simmons is not asking that the Court "go beyond" the protections provided by the Eighth Amendment. Instead, Mr. Simmons suggests only that the Court's holding can rest on Missouri law rather than federal constitutional law.

In *Newlon*, the issue was whether this Court would go beyond clear Supreme Court federal precedent finding that the death penalty in general does not violate the Eighth and Fourteenth Amendments. No clear precedent exists as to the juvenile death penalty issue. Furthermore, in *Newlon* the Court exhibited a willingness to examine death penalty issues under Missouri Constitutional principles independent of federal constitutional considerations. In doing so, the Court concluded that the clear intent of the Missouri Constitution showed that

Article I, Sections 2, 10, and 21 were not violated by Missouri's statutory law authorizing the death penalty as a punishment. *Id.* at 613. Here, Mr. Simmons asks the Court to conduct an analysis of the juvenile death penalty under the Missouri Constitution, which is clearly authorized by *Newlon*.

Respondent's final defense alleges that even under the analysis employed by the *Atkins* Court, objective factors show that current standards of decency are not violated by the execution of juvenile offenders. (Resp. Br., pp. 24-31) The majority of respondent's argument focuses on the activity of the states' legislatures in abolishing the juvenile death penalty. (Resp. Br., pp. 24-28) Mr. Simmons has addressed the issue of legislative movement away from authorization and use of the juvenile death penalty at length in his opening brief<sup>5</sup> and will not repeat the facts here. However, respondent's claims warrant a brief reply in part.

First, in all of its discussion, respondent ignores the ultimate fact -- that 28 states prohibit the execution of juvenile offenders, compared to 30 states that prohibit the execution of the mentally retarded. In *Atkins*, the Court found this number to be "powerful evidence" of the reduced culpability of the mentally retarded. *Atkins*, 122 S.Ct. at 2249. It defies logic to suggest that while 30 states provide "powerful evidence," 28 states do not.

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<sup>5</sup> See Opening Brief of Petitioner, pp. 75-83.

Respondent also cites to the *Stanford* Court's calculations of the state of the legislature and argues that developments since that time do not constitute the dramatic shift in state legislation relied on by the *Atkins*' Court. (Resp. Br., pp. 24-25) It is important to note, however, that the Court has changed the way it looks at state legislation. In *Stanford*, the Court considered only the laws of the 37 states that authorized capital punishment and concluded that only 12 of those states prohibited the execution of juveniles. *Stanford*, 492 U.S. at 370. In *Atkins*, the Court instead found that all states must be included in the mix, not just those that authorize the death penalty. Under this analysis, the Court is now looking at **28** states rejecting the juvenile death penalty, compared to only **12** such states under the old *Stanford* method. Certainly, this represents a dramatic shift, even if the shift in part is due to the Court clarifying the way the issue should be analyzed.

Respondent invokes the decision to try the juvenile Washington sniper, John Malvo, in Virginia where he can be subject to the death penalty as evidence that there is no consensus against the juvenile death penalty. (Resp. Br., pp. 26-27) Respondent believes that if such consensus existed, there would have been some public outcry against the decision. However, respondent cites to no study or poll indicating support for this decision. Indeed, opinion polls on the issue show that approximately 69% of Americans oppose the practice of executing juveniles.<sup>6</sup>

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<sup>6</sup> See Petitioner's Opening Brief, pp. 97-99.

Respondent speculates that the “lack of change” in state juvenile death penalty law “may reflect societal concern about the exploding homicide rate of juvenile offenders.” (Resp. Br., p. 26) Again, this ignores the fact that the change has not been as dramatic in juvenile death penalty laws as it has recently in mental retardation death penalty laws because juvenile death penalty laws have already been in place, leaving mental retardation laws in the position of “catching up.” If respondent’s theory were true, we would see states moving in the opposite direction and lowering the death eligible age to 16 as they were given the green light to do by the Court’s decision in *Stanford*. In fact, no state has taken the opportunity to do so, or is even entertaining legislation to this effect.

Respondent’s assertion to the contrary, citing to legislative and Court action in Florida, is incorrect. (See Resp. Br., pp. 27-28) In *Brennan v. State*, 754 So.2d 1 (Fla. 1999), the Florida Supreme Court raised the age of death penalty eligibility to 17 years old. Citing to the Florida state constitution, which prohibited cruel or unusual punishment at the time, the court found the execution of those under 17 years of age to be “unusual” and therefore violative of the Florida Constitution. Since this decision, the Florida Constitution has been amended to preclude “cruel and unusual punishment,” rather than “cruel or unusual punishment.” Wrongly, and without any pretense of authority, respondent concludes that “[a]doption of this provision repudiated Brennan and reflected a decision that the minimum age of

commission of a capital offense for which one may be executed in Florida should be lowered from seventeen to sixteen years of age.” (Resp. Br., p. 28)

In fact, the court’s decision in *Brennan* still stands and is not being reviewed by any court. Furthermore, Senator Victor Crist, R-Tampa, the sponsor of the constitutional amendment, made clear that the intent of the amendment was not to overturn the *Brennan* decision. Incidentally, Crist is also the sponsor of Senate Bill 1070, which has been pre-filed in the Florida legislature this year, that would increase the death eligible age to 18 in Florida. Speaking as to the constitutional amendment and the same bill filed last year to eliminate the juvenile death penalty, Crist stated “it was never our intent to execute minors in Florida and this puts that in statute.”<sup>7</sup> This fact lays to rest respondent’s speculation.

Respondent also cites the Senate’s ratification of the International Covenant on Civil and Political Rights in 1992 as evidence of legislative movement in the opposite direction. Upon ratification, the United States reserved the right, subject to its Constitutional constraints, to inflict the death penalty upon persons under the age of eighteen, an action forbidden by the ICCPR. There are several problems with respondent’s contention that this shows a trend towards decreasing the death eligible age. First, the action took place over ten years ago (only three years after

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<sup>7</sup> Clark, Lesley, “*Bill Would Prohibit Death Sentences for Minors*,” The Miami Herald, February 5, 2002, Local Section, Page 5B. (Attached here as **Exhibit P**)

*Stanford*) and does not reflect current standards of decency or current trends.

Second, although the purpose behind making such reservation is unclear, what is clear is that the reservation does not reflect a trend in federal legislation towards decreasing the death eligible age. In fact, federal legislative trends reflect just the opposite. The Anti-Drug Abuse Act of 1988 and the Federal Death Penalty Act of 1994 both establish a minimum age of eighteen to be eligible for the death penalty in federal court.<sup>8</sup> Third, the ICCPR reservation does not represent “movement” to lower the death eligible age, but rather was merely an attempt to reserve the right to maintain the status quo as it existed shortly after *Stanford*. And finally, the United States’ continued maintenance of this reservation violates international law, is heavily criticized by the international community, and should, under the *Atkins*’ analysis, come to an end.<sup>9</sup>

After attempting to circumvent the clear legislative majority among the states towards abolition of the juvenile death penalty, respondent finally argues against each of the other factors identified by *Atkins* as relevant to the determination. (Resp. Br., pp. 29-31) Respondent wants this Court to believe that

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<sup>8</sup> See Petitioner’s Opening Brief Appendix, p. A196-A197.

<sup>9</sup> See Petitioner’s Opening Brief at pp. 87-96 for a detailed argument of how the United States’ continued use of the juvenile death penalty violates international law and accepted *jus cogens* norms.

these additional factors are merely afterthoughts that confirm the legislative evidence relied on in *Atkins*. (Resp. Br., p. 29) The *Atkins* Court, however, did not see it this way. Instead, the Court stated that independent weight should be given to the additional factors as follows:

Although these factors are by no means dispositive, their consistency with the legislative evidence lends further support for our conclusion that there is a consensus among those who have addressed the issue.

*Atkins*, 122 S.Ct. at 2249 n.21.

Furthermore, contrary to respondent's analysis, the issue of diminished culpability is not one of the non-dispositive factors identified by *Atkins* as playing only a "supporting" role. Instead, the Court relied heavily on the relative culpability of the mentally retarded, independent of legislative considerations, to invalidate the execution of this class of people. *See Atkins*, at 2250-52.

Respondent refers to the uncontroverted research on child brain development presented by Mr. Simmons as "rhetoric" without even venturing to contest the validity of the research. Instead, respondent urges this Court to reject the scientifically conducted and accepted research because petitioner has not undertaken the task of establishing exactly at what age the brain is developed to the extent of mandating adult culpability levels. (Resp. Br., pp. 29-30) This Court should reject respondent's attempts to draw the Court off task. The issue is

whether any person under the age of eighteen can possess the brain development seen in a normal, culpable adult. The answer is no. While the law in non-capital areas allows for varying degrees of culpability (i.e. adjudication in juvenile versus adult courts) for non-capital crimes, such fact is irrelevant when the issue is whether the state can kill a child whose biological development beyond his control necessarily makes him less culpable. This is exactly the action precluded by the *Atkins* Court.

In *Atkins*, one factor relied on by the Court was that executions of the mentally retarded had become unusual. *Atkins*, at 2249. Mr. Simmons has shown that executing juveniles has also become an unusual practice. Again, the only available line of defense for respondent is to murky the waters. Respondent insists that for the statistics showing the unusual nature of juvenile executions to be relevant, Mr. Simmons must also show how many 19, 34 or 70 year olds are on death row. (Resp. Br., p. 30) If a petitioner somewhere can show this Court, for example, that the execution of 19-year-old murderers rarely ever happens, then that petitioner will have established one factor towards abolition of the death penalty for 19-year-olds. Obviously, that is irrelevant to Mr. Simmons' argument. Petitioner here has established that the execution of juveniles is unusual in this country -- i.e. it doesn't happen very often. Respondent doesn't contest this. In

combination with the other factors established in Mr. Simmons' opening brief, this fact supports abolition of the juvenile death penalty.

The *Atkins* Court identified as a relevant consideration the positions of organizations with germane expertise on the propriety of the juvenile death penalty. *Atkins*, at 2249, n.21. Without any citation to authority, respondent states that these groups represent the minority view. (Resp. Br., p. 30) Respondent offers not even one organization with germane expertise that espouses its alleged "majority" view. Instead, respondent merely concludes that this is an unreliable factor. The apparent basis of this conclusion is respondent's opinion. Mr. Simmons urges this Court to follow the mandate of *Atkins* in considering this factor as applied to the juvenile death penalty issue, rather than the opinion of respondent.

Finally, respondent challenges Mr. Simmons' citation to international law by concluding that such consideration is irrelevant because most other countries don't have the death penalty at all for ordinary crimes. (Resp. Br., pp. 30-31) Of course, despite this fact, the *Atkins* Court found international disapproval for the execution of the mentally retarded to be a relevant consideration, thereby abating respondent's attempted defense here. *See Atkins*, at 2249, n.21. Furthermore, respondent ignores the fact that the Inter-American Commission on Human Rights, a court this country helped to create, condemns juvenile executions. Respondent

also ignores the fact that of those countries that *have* executed juveniles, all but the United States have virtually ended the practice. This fact is powerful support for the evolving standard of decency against such practice.

Instead, respondent relies on the *Stanford* Court's view that conceptions of decency must be based on practices found in America only, and not those found in other countries. (Resp. Br., p. 31) This narrow conception of relevant standards of decency was unequivocally overruled in *Atkins*, which returned to the *Thompson* Court's construction of "evolving standards of decency" to include standards established in other countries. *See Atkins*, at 2249, n.21, *Thompson*, 487 U.S. at 830 & n.31.

### CONCLUSION

Based upon all of the foregoing reasons, and upon the reasons set forth in petitioner's opening brief, petitioner Christopher Simmons requests that this Court order that he be discharged from his sentence of death and that a sentence of life imprisonment without parole be imposed.

RESPECTFULLY SUBMITTED,

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**CERTIFICATE OF COMPLIANCE**

I, Jennifer Brewer, hereby certify that:

The attached brief complies with the limitations contained in this Court's Special Rule 1(b). The brief was completed using Microsoft Word 97, in Times New Roman size 14-point font. Excluding the cover page, the signature block, this certification, and the certificate of service, the brief contains 4,387 words, which does not exceed the 7,750 words allowed for a reply brief.

The floppy disk filed with this brief contains a copy of this brief. The disk has been scanned for viruses using Norton AntiVirus 2003 program. According to that program, the disk is virus-free.

\_\_\_\_\_  
Jennifer Brewer

**CERTIFICATE OF MAILING**

I, Jennifer Brewer, certify that on February 26, 2003, two true and correct copies of the Petitioner's Reply Brief and a floppy disk containing a copy of this brief were mailed by UPS overnight mail to Stephen D. Hawke, Assistant Attorney General, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102.

\_\_\_\_\_  
Jennifer Brewer