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1 Florida concedes that *Ring* required a jury to find every fact necessary  
2 to render Hurst eligible for the death penalty. But Florida argues that when  
3 Hurst’s sentencing jury recommended a death sentence, it “necessarily included  
4 a finding of an aggravating circumstance.” Brief for Respondent 44. The State  
5 contends that this finding qualified Hurst for the death penalty under Florida  
6 law, thus satisfying *Ring*. “[T]he additional requirement that a judge also find  
7 an aggravator,” Florida concludes, “only provides the defendant additional  
8 protection.” Brief for Respondent 22.

9 The State fails to appreciate the central and singular role the judge plays  
10 under Florida law. As described above and by the Florida Supreme Court, the  
11 Florida sentencing statute does not make a defendant eligible for death until  
12 “findings by the court that such person shall be punished by death.” Fla. Stat.  
13 §775.082(1) (emphasis added). The trial court *alone* must find “the facts . . .  
14 [t]hat sufficient aggravating circumstances exist” and “[t]hat there are  
15 insufficient mitigating circumstances to outweigh the aggravating  
16 circumstances.” §921.141(3); see *Steele*, 921 So. 2d, at 546. “[T]he jury’s  
17 function under the Florida death penalty statute is advisory only.” *Spaziano v.*  
18 *State*, 433 So. 2d 508, 512 (Fla. 1983). The State cannot now treat the  
19 advisory recommendation by the jury as the necessary factual finding that *Ring*  
20 requires. . . .

21 . . .  
22 “Although ‘the doctrine of stare decisis is of fundamental importance  
23 to the rule of law[,]’ . . . [o]ur precedents are not sacrosanct.’ . . . ‘[W]e have  
24 overruled prior decisions where the necessity and propriety of doing so has  
25 been established.’” *Ring*, 536 U.S., at 608, 122 S. Ct. 2428, 153 L. Ed. 2d 556  
26 (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 172, 109 S. Ct.  
27 2363, 105 L. Ed. 2d 132 (1989)). And in the *Apprendi* context, we have found  
28 that “stare decisis does not compel adherence to a decision whose  
‘underpinnings’ have been ‘eroded’ by subsequent developments of  
constitutional law.” *Alleyne*, 570 U.S., at \_\_\_, 133 S. Ct. 2151, 186 L. Ed. 2d  
314 (SOTOMAYOR, J., concurring); see also *United States v. Gaudin*, 515  
U.S. 506, 519-520, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995) (overruling  
*Sinclair v. United States*, 279 U.S. 263, 49 S. Ct. 268, 73 L. Ed. 692 (1929));  
*Ring*, 536 U.S., at 609, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (overruling *Walton*,  
497 U.S., at 639, 110 S. Ct. 3047, 111 L. Ed. 2d 511); *Alleyne*, 570 U.S., at  
\_\_\_, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (overruling *Harris v. United States*,  
536 U.S. 545, 122 S. Ct. 2406, 153 L. Ed. 2d 524 (2002)).

Time and subsequent cases have washed away the logic of *Spaziano*  
and *Hildwin*. The decisions are overruled to the extent they allow a sentencing  
judge to find an aggravating circumstance, independent of a jury’s factfinding,  
that is necessary for imposition of the death penalty.

*Hurst v. Florida*, 577 U.S. \_\_\_, \_\_\_ S. Ct. \_\_\_, \_\_\_ L. Ed. 2d \_\_\_, 2016 U.S. LEXIS 619 (No.  
14-7505, Jan. 12, 2016), Slip Op. at 6-7, 9 (emphasis in original).

1           2.       In support of Mr. Gregory's argument that RCW 10.95.130's assignment of  
2 proportionality review to this Court violates the Eighth and Fourteenth Amendments, Mr.  
3 Gregory cites:

4           *Hurst v. Florida, supra* (Breyer, J., concurring)

5           DATED this 19<sup>th</sup> day of January 2016.

6           Respectfully submitted,

7           \_\_\_\_\_  
8           /s/ Neil M. Fox  
              WSBA No. 15277

9           \_\_\_\_\_  
10           /s/ Lila J. Silverstein  
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STATE OF WASHINGTON,  
Respondent,  
v.  
ALLEN EUGENE GREGORY,  
Appellant.

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)  
) NO. 88086-7  
)  
) CERTIFICATE OF SERVICE  
)

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9 I certify or declare under penalty of perjury under the laws of the State of  
10 Washington that the foregoing is true and correct.

11 DATED this 19<sup>th</sup> day of January 2016, at Seattle, WA,

12 /s/ Neil M. Fox

13 \_\_\_\_\_  
14 WSBA NO. 15277