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Page 1 of 2

Attorney General Steve Marshall: Alabama Makes Strong Case Defending the Capital Punishment System Before the U.S. Supreme Court

(Washington, D.C.) – Alabama Attorney General Steve Marshall appeared before the U.S. Supreme Court in *Hamm v. Smith* to defend the State’s ability to enforce lawful capital sentences by preventing the unjustified expansion of a limited exception for capital offenders who are truly intellectually disabled.

The case addresses the lawful capital conviction of Joseph Clifton Smith for the brutal murder of Durk Van Dam on November 25, 1997. Just two days after being released on a work release while serving sentences for burglary and receiving stolen property, Smith and an accomplice lured Van Dam to a remote wooded area under the guise of offering him a ride. There, they beat him to death with a hammer and saw, inflicting thirty-five blunt force injuries, rib fractures, brain swelling, a collapsed lung, and deep saw-marks across his body. They stole \$140, pawned Van Dam’s tools, and left him to die, which he did. Despite Smith’s initial attempts to deceive investigators, he ultimately confessed to the robbery and murder and was sentenced to death.

In an attempt to halt the enforcement of his sentence, Smith claimed that he is intellectually disabled and that the State therefore cannot execute him. In 2002, the Supreme Court established in *Atkins v. Virginia* that States cannot impose the death penalty on offenders who are intellectually disabled. Following that decision, Alabama implemented a widely accepted three-part definition for determining whether an offender has an intellectual disability: he must show that he has (1) significantly subaverage intellectual functioning as evidenced by an IQ of 70 or below; (2) substantial deficits in adaptive functioning; and (3) onset of the disability during childhood. The burden of proof rests with the offender, not the State.

Smith had three full opportunities in state and federal courts to prove his claim that he is intellectually disabled. Yet across five separate tests, his IQ scores have consistently ranged from 72 to 78, well above the legal threshold of 70. Nevertheless, relying on broad assumptions about margins of error and favoring the lowest theoretical estimate rather than the actual test results, the Eleventh Circuit ignored the cumulative effect of the five scores, focused on just one of Smith’s scores that was “close to 70,” held that the score considered in isolation could be treated as effectively equivalent to 70, and granted Smith relief. Alabama sought review of the decision from the Supreme Court.

During oral argument today, Alabama’s Principal Deputy Solicitor General Robert Overing argued that Smith’s defense ignores statistical reality. He argued that a sound determination of intellectual disability must be reflective of actual evidence, including the cumulative effect of multiple IQ scores. If the federal court had done that, he argued, it could not have found that Smith had carried his burden of proving that he was intellectually disabled.

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“Today, we defended Alabama’s lawful sentence and the basic principle that facts – not ideology – must continue to guide constitutional law. Joseph Smith is not intellectually disabled. Five independent IQ tests placed him well above the legal threshold, and no amount of judicial creativity can change that,” stated Attorney General Marshall. “The Eleventh Circuit’s approach would require states to ignore clear evidence to indulge hypotheticals designed to delay a convicted capital murderer from accountability after 27 years. The people of Alabama have the right to enforce the punishment chosen by their laws and juries, and our team has presented a strong case before the Justices to hold the line against criminals who have committed heinous murders.”

The Attorney General continued: “I am extraordinarily proud of Principal Deputy Solicitor General Bob Overing for the clarity and conviction he brought to the Court today. His arguments made unmistakably clear that Alabama’s capital punishment system is both lawful and essential to the enforcement of justice. Because of his work, the Court now has before it a rigorous defense of the State’s authority to enforce capital sentences without being undermined by shifting and unscientific standards – standards that have nothing to do with the Constitution. The stakes extend far beyond this case, and his exceptional arguments ensure that Alabama and our sister States can continue to uphold criminal justice and the rule of law for all Americans.”

For background on the case, read Alabama’s [opening brief](#) filed in August, and the State’s [reply brief](#), filed in October.