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ABIDE WITH ME: *RAMIREZ V. COLLIER* AND THE LEGAL RIGHT TO
RELIGIOUS COMFORT IN EXECUTIONS

Conner White*

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I. INTRODUCTION

More than eighty-five nations have abolished the death penalty since the 1970s,¹ but the United States is not one of them.² The continued use of this controversial practice naturally raises many legal and logistical questions, and nothing typifies this more than the debate over death-row inmates' exercise of religious freedom during their execution. This debate is unsurprising because of the unavoidable clash between the state's administration of lawful punishment and the desires and rights of a person enduring a situation that most of the population can scarcely imagine. This issue has received increased attention from state courts and the Supreme Court in recent years,³ which culminated in the 2022 *Ramirez v. Collier*⁴ decision.

On July 19, 2004, in Corpus Christi, Texas, two men approached Pablo Castro, a father of nine and grandfather of fourteen, while he was closing the Times Market convenience store for the evening.⁵ One of the men, John Ramirez, stabbed Castro twenty-nine times, searched his pockets, and fled with \$1.29.⁶ Castro died, and Texas charged Ramirez with the capital offense of murder in the course of committing or attempting to commit robbery.⁷ Although Ramirez admitted to killing Castro, he denied involvement in the robbery that made the murder a capital crime.⁸ He was unable to persuade a jury, and he was found guilty and sentenced to death.⁹

Ramirez petitioned Texas prison authorities to allow his pastor to enter the execution chamber to pray aloud and lay hands on him during the execution.¹⁰ Texas denied the prayer and physical touch requests, so Ramirez sued under the First Amendment¹¹ and the Religious Land Use and Institutionalized Persons Act

1. *Countries That Have Abolished the Death Penalty Since 1976*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/policy-issues/international/countries-that-have-abolished-the-death-penalty-since-1976> (last visited Jan. 3, 2023).

2. *See id.*

3. *See infra* pp. 10–14.

4. *Ramirez v. Collier*, 142 S. Ct. 1264 (2022).

5. *Id.* at 1272.

6. *Id.*

7. *Id.* (citing TEX. PENAL CODE ANN. § 19.03(a)(2) (West 2019)). Ramirez was finally apprehended after evading capture in Mexico for almost four years. *Id.*

8. *Id.* at 1272–73.

9. *Id.* at 1273 (citing *Ramirez v. State*, No. AP–76100, 2011 WL 1196886, at *1 (Tex. Crim. App. Mar. 16, 2011)). His conviction was affirmed on appeal. *Id.*

10. *Id.* at 1272. Ramirez's pastor was Dana Moore of the Second Baptist Church in Corpus Christi. *Id.* at 1273.

11. *See infra* pp. 3–7 and notes 17–47.

of 2000 (RLUIPA).¹² The case eventually reached the Supreme Court, which held that Texas had indeed violated Ramirez's rights by banning physical touch¹³ and audible prayer in the execution chamber.¹⁴

Ramirez did not emerge in a vacuum; it resulted from decades of common law and statutory evolution that had enormous significance for John Ramirez. This note examines the development of two rights that underpin and inform the Court's decision in *Ramirez*: the right to the free practice of religion and the prohibition of cruel and unusual punishments. Next, this note considers Supreme Court decisions preceding *Ramirez* on the question of religious observances during executions. This note then examines the majority and dissent's reasoning in the *Ramirez* opinion. To conclude, this note argues that the Court's decision may be partially attributable to the psychological response to the suffering of others, and that the decision should be codified.

II. RAMIREZ'S RIGHTS

To appreciate the Supreme Court's final disposition of Ramirez's appeal, one must first understand that the decision results from the intersection of two fundamental constitutional rights: the First Amendment guarantee that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."¹⁵ and the Eighth Amendment assurance that "cruel and unusual punishments [shall not be] inflicted."¹⁶

A. Freedom of Religion

The free practice of religion is one of the most cherished and closely guarded rights in American history.¹⁷ Its celebrated history predates the founding of the nation,¹⁸ and some of the earliest American intellectuals were among its most vocal advocates: Thomas Jefferson drafted a bill protecting the freedom of religion in

12. *Ramirez*, 142 S. Ct at 1273; see *infra* p. 7 and notes 42–43.

13. *Ramirez*, 142 S. Ct. at 1281.

14. *Id.* at 1280.

15. U.S. CONST. amend. I.

16. U.S. CONST. amend. VIII.

17. See, e.g., Mark Trainer, *Why Religious Freedom Matters to Americans*, SHARE AM. (Feb. 4, 2019), <https://share.america.gov/why-religious-freedom-matters-to-americans> ("The central place of religion in Americans' lives and the diversity of religions practiced is a testament to the value placed on religious freedom.").

18. See Michael Rieger, *Soul Liberty, Toleration, and the Emergence of Religious Freedom in the Colonies*, LIBERTARIANISM (July 5, 2017), <https://www.libertarianism.org/columns/soul-liberty-toleration-emergence-religious-freedom-colonies> ("By the dawn of the American Revolution, the concept of religious toleration in the colonies was no longer a fringe belief.").

Virginia as early as 1779.¹⁹ Jefferson said his law was “meant to comprehend, within the mantle of its protection, the Jew, the Gentile, the Christian and the Mahometan, the Hind[u] and Infidel of every denomination.”²⁰ Six years later,²¹ while the Virginia legislature considered a proposed bill to grant state support to Christian teachers, Jefferson’s friend and fellow Virginian, James Madison, penned *Memorial and Remonstrance Against Religious Assessments*, in which he argued against such state meddling in religion.²² Ultimately, the bill failed to pass the legislature and did not become law.²³ The First Amendment emerged from this atmosphere, and by the end of 1791, enough states ratified it to formally include it in the Constitution as part of the Bill of Rights.²⁴ However, it did not immediately apply to *state laws*.²⁵ This hardline stance against applicability to state law shifted

19. Kenneth C. Davis, *America’s True History of Religious Tolerance*, SMITHSONIAN MAG. (Oct. 2010), <https://www.smithsonianmag.com/history/americas-true-history-of-religious-tolerance-61312684/>. Jefferson was the governor of Virginia at the time. *Id.* And he was so pleased with the burgeoning freedom of religion that he included his legislation on his tombstone while omitting any reference to his presidency. Miriam Wasser, *Bringing Thomas Jefferson’s Battered Tombstone Back to Life*, SMITHSONIAN MAG. (July 2, 2015), <https://www.smithsonianmag.com/smithsonian-institution/leveraging-material-science-restore-thomas-jeffersons-battered-tombstone>.

20. Davis, *supra* note 19.

21. See James Madison, *Memorial and Remonstrance Against Religious Assessments*, [ca. 20 June] 1785, FOUNDERS ONLINE, <https://founders.archives.gov/documents/Madison/01-08-02-0163> (last visited Oct. 23, 2022).

22. Davis, *supra* note 19.

23. *Id.*

24. *The Bill of Rights: How Did It Happen?*, NAT’L ARCHIVES, <https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen> (last visited Jan. 3, 2023). The Constitution requires three-fourths of the states to ratify a proposed amendment before it becomes law. U.S. CONST. art. V.

25. In *Barron v. City of Baltimore*, 32 U.S. (7 Pet.) 243, 250 (1833), Chief Justice John Marshall wrote, “These amendments contain no expression indicating an intention to apply them to the state governments. This court cannot so apply them.” In the wake of the Civil War, the Fourteenth Amendment “appeared to require that states honor constitutional liberties, by declaring that ‘[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.’” *Now Cherished, Bill of Rights Spent a Century in Obscurity*, U.S. COURTS (Dec. 12, 2019), <https://www.uscourts.gov/news/2019/12/12/now-cherished-bill-rights-spent-century-obscurity> (quoting U.S. CONST., amend. XIV). However, an extension of the Bill of Rights to state law was further delayed by the *Slaughter-House Cases*, 83 U.S. 36, 37 (1872) (holding that the main purpose of the Fourteenth Amendment was limited to protecting the “freedom of the African race, the security and perpetuation of that freedom, and their protection from the oppressions of the white men who had formerly held them in slavery”). The façade began to crack over the course of the intervening decades, see *Twining v. New Jersey*, 211 U.S. 78, 99 (1908) (“[I]t is possible that some of the personal rights safeguarded by the first eight Amendments against national action may also be safeguarded against state action, because a denial of them would be a denial of due process of law.”) (emphasis added), and the Court finally signaled its assent to applying the Bill of Rights to state action in *Gitlow v. New York* when it “assume[d] that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and ‘liberties’ protected by the due process clause of the Fourteenth Amendment from impairment by the States.” *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

over the course of several decades until “federal courts—first in a trickle and then in a flood—expanded the Bill of Rights’ reach.”²⁶

*Cantwell v. Connecticut*²⁷ was the first case in which the Supreme Court applied the First Amendment’s protection of freedom of religion to a state law via the due process clause of the Fourteenth Amendment.²⁸ In *Cantwell*, the defendants were Jehovah’s Witnesses proselytizing in a predominantly Catholic neighborhood, and they used methods that were openly hostile to the Roman Catholic Church.²⁹ State officials charged the men with violating a Connecticut law prohibiting solicitation for religious causes without prior official approval, and the trial court found the defendants guilty.³⁰ The Connecticut Supreme Court affirmed their conviction and the constitutionality of the statute.³¹

On appeal, the Supreme Court unanimously overruled the Connecticut court and declared the statute unconstitutional for depriving the defendants of their constitutional liberty without due process.³² The Court held the Fourteenth Amendment “has rendered the legislatures of the states as incompetent as Congress to enact” laws respecting an establishment of religion or prohibiting its free exercise.³³ In the Court’s view, the constitutional protection of religion has two components: freedom to believe and freedom to act.³⁴ The way to protect the individual’s right to their religious practices *and* respect the need for boundaries in society is to ensure that “the power to regulate [is] . . . so exercised as not, in attaining a *permissible* end, unduly to infringe the protected freedom.”³⁵ The Court

26. U.S. COURTS, *supra* note 25.

27. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

28. John R. Vile, *Cantwell v. Connecticut (1940)*, FIRST AMEND. ENCYCLOPEDIA, <https://www.mtsu.edu/first-amendment/article/273/cantwell-v-connecticut> (last visited Oct. 23, 2022).

29. *Cantwell*, 310 U.S. at 301. The defendants used a “phonograph record, describing a book entitled ‘Enemies,’ includ[ing] an attack on the Catholic religion.” *Id.* Each of the defendants would ask a person for permission to play the record, and, if “permission was granted he asked the person to buy the book described and, upon refusal, he solicited such contribution towards the publication of the pamphlets as the listener was willing to make.” *Id.*

30. *Id.* at 301–02 (quoting CONN. GEN. STAT. § 6294 (amended 1937), *invalidated* by *Cantwell v. Connecticut*, 310 U.S. 296 (1940)).

31. *Id.* at 302.

32. *Id.* at 303.

33. *Id.*

34. *Id.* The Court parsed the distinction thus: freedom to believe “forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship,” while freedom to act protects the “free exercise of the chosen form of religion.” *Id.* Given the practical realities of living in a society, shoulder to shoulder with those with whom we may have serious disagreements, the freedom of belief is absolute but the freedom to act must necessarily have some limitations. *Id.* at 303–04.

35. *Id.* at 304 (emphasis added). *The Cantwell* Court sanctioned practical social restrictions on religious practice only insofar as it is necessary to protect the “peace, good order and comfort of the

felt that the law amounted to a censorship of religion, and thus infringed upon a First Amendment freedom, because it required approval from a state official empowered to make fact-specific assessments.³⁶ *Cantwell* established the modern approach to individual religious exercise: an individual's religious rights should be protected as long as they do not harm or infringe on the rights of others.³⁷

Cantwell was a major victory for the protection of the freedom of religious belief and practice, and this freedom has been repeatedly strengthened. In *Prince v. Massachusetts*, the Court affirmed *Cantwell's* principle that each American has a right to practice their religion freely, although the government may enforce some practical boundaries on religious exercise if doing so is in the public interest.³⁸ In *Wisconsin v. Yoder*, the Court held that "only those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion."³⁹ In the landmark case *Obergefell v. Hodges*, the Court noted that the First Amendment ensures that religious Americans have "protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths."⁴⁰ In *Masterpiece Cake Shop, Ltd., v. Colorado Civil Rights Commission*, the Court held that the government "cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices."⁴¹

In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA).⁴² RLUIPA prohibits any government from imposing "a substantial

community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment." *Id.*

36. *Id.* at 305.

37. Emily London & Maggie Siddiqi, *Religious Liberty Should Do No Harm*, CTR. FOR AM. PROGRESS (Apr. 11, 2019), <https://www.americanprogress.org/article/religious-liberty-no-harm/>.

38. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

39. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). In *Yoder*, the Supreme Court held that Wisconsin's interest in universal compulsory education had to give way to the well-demonstrated conclusion that forcing Amish parents to enroll their children in secular secondary schools "contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child." *Id.* at 218.

40. *Obergefell v. Hodges*, 576 U.S. 644, 679–80 (2015).

41. *Masterpiece Cake Shop, Ltd., v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719, 1731 (2018) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993)).

42. See Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc–2000cc-5. Congress passed the law to strengthen the rights of incarcerated individuals that assert and observe their religious principles. John R. Vile, *Religious Land Use and Institutionalized Persons Act of 2000 (2000)*, FIRST AMEND. ENCYC., <https://www.mtsu.edu/first-amendment/article/1093/religious-land-use-and-institutionalized-persons-act-of-2000> (last visited Jan. 19, 2023). The impetus for this congressional action was *City of Boerne v. Flores*, which struck down a requirement that government actions affecting the practice of religion meet a compelling interest standard. *City of Boerne v. Flores*

burden on the religious exercise of a person residing in or confined to an institution” unless the government demonstrates the burden furthers a compelling government interest and is the least restrictive way of doing so.⁴³ RLUIPA protects persons who are unable to freely attend to their religious needs because they are incarcerated and are therefore dependent on the government’s accommodation for exercise of their religion.⁴⁴ In a 2020 report, the Department of Justice noted that RLUIPA has helped them “reach voluntary compliance or court-ordered resolution in cases related to religious diet, access to religious texts and articles, the opportunity to participate in religious group meetings, religious headwear, and accommodation of religious grooming practices.”⁴⁵ The Department of Justice has conducted sixty-eight investigations, initiated three lawsuits, filed eight statements of interest, and filed thirteen amicus briefs involving RLUIPA and institutionalized persons.⁴⁶

B. Prohibition of Cruel and Unusual Punishment

Equally important to Ramirez’s case is the Eighth Amendment, which reads in full: “Excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishments inflicted.*”⁴⁷ The prohibition of cruel and unusual punishments mirrors the English Bill of Rights in 1689 and some of the early colonial legislation that came before the ratification of the Eighth Amendment in 1791.⁴⁸ In the nineteenth and early twentieth century, American courts generally understood the Eighth Amendment “as prohibiting torture and particularly

521 U.S. 507 (1997), *superseded by statute*, Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc–2000cc-5, *as recognized in* Ramirez v. Collier, 142 S. Ct. 1264 (2022).

The Supreme Court has noted that Congress enacted RLUIPA to offer broad protection to religious freedom. *See* Holt v. Hobbs, 574 U.S. 352, 356 (2015) (quoting Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 693 (2014)).

43. 42 U.S.C. § 2000c-1(a). The legislative history of RLUIPA cited examples of government action that infringed on religious observation such as officials denying Jewish prisoners matzo bread at Passover, denying prisoners the chance to wear small religious symbols such as a cross, and a Catholic prisoner whose confession to a priest was recorded by officials. 146 CONG. REC. 16698, 16701 (2000).

44. Cutter v. Wilkinson, 544 U.S. 709, 721 (2005).

45. DEP’T. OF JUST., REPORT ON THE TWENTIETH ANNIVERSARY OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT 25 (2020).

46. *Id.*

47. U.S. CONST. amend. VIII (emphasis added).

48. *Cruel & Unusual Punishment - Conversation Starter*, AM. BAR ASS’N, https://www.americanbar.org/groups/public_education/programs/constitution_day/conversation-starters/cruel-and-unusual-punishment (last visited Oct. 28, 2022). The Eighth Amendment is included in the U.S. Bill of Rights. *Id.*

barbarous punishments,”⁴⁹ but the Supreme Court later interpreted it to prohibit any punishment out of proportion to the offense.⁵⁰

The Supreme Court’s landmark decision, *Furman v. Georgia*,⁵¹ was a major comment on the prohibition of cruel and unusual punishment. *Furman* was a consolidation of three different criminal cases: one murder and two rapes.⁵² All three defendants were sentenced to death, and the issue on appeal was whether the use of the death penalty in the cases before the court constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.⁵³ The Court answered in the affirmative and reversed the sentences.⁵⁴

Between *Furman*’s five concurring opinions,⁵⁵ one commonality would later be of great significance to Ramirez: the recognition that the defendants—men convicted of heinous crimes—have some humanity that the Court dare not encroach on. Justice Douglas reasoned that the objective of the cruel and unusual punishment prohibition is to “require judges to see to it that general laws are not applied sparsely, selectively, and spottily to *unpopular groups*.”⁵⁶ Justice Brennan believed that a state must always respect its people, even while punishing them, and that all punishment must align with innate human dignity.⁵⁷ Justice Stewart—although confronted with the offensive and ugly crimes of the defendants—expressed concern with the uneven application of capital punishment to the men:

49. *Id.*

50. *Weems v. United States*, 217 U.S. 349, 385 (1910) (“[T]he court interprets the inhibition against cruel and unusual punishment as imposing upon Congress the duty of proportioning punishment according to the nature of the crime, and casts upon the judiciary the duty of determining whether punishments have been properly apportioned in a particular statute, and if not, to decline to enforce it.”).

51. *Furman v. Georgia*, 408 U.S. 238 (1972) (per curiam).

52. *Id.* at 240 (Douglas, J., concurring). Twenty-one-year-old Lucious Jackson, an escaped convict, held scissors to a woman’s throat and raped her shortly after her husband left the house for work. *Id.* at 252. Elmer Branch entered the home of a sixty-five-year-old widow, held his arm to her throat, raped her, demanded all the money she had, threatened to return if she told anyone, and then fled. *Id.* at 253. William Henry Furman attempted to enter another man’s home at night, and fatally shot the homeowner through a closed door. *Id.* at 252.

53. *Id.* at 239.

54. *Id.* at 240. *Furman* held that the death penalty statutes at the time were unconstitutional because they “gave juries unhindered discretion to impose or withhold the death penalty.” *United States v. Arnold*, 412 F. Supp. 3d 732, 734 (E.D. Mich. 2019).

55. The Court issued a short opinion *per curiam*, but it was unable to achieve a consensus on the rationale. *See* 408 U.S. at 239–41. The five justices of the majority each filed a separate concurring opinion. *Id.*

56. *Id.* at 256 (Douglas, J., concurring) (emphasis added).

57. *Id.* at 270 (Brennan, J., concurring). Brennan felt that “[a]t bottom . . . the Cruel and Unusual Punishments Clause prohibits the infliction of uncivilized and inhuman punishments.” *Id.*

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as *reprehensible* as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed.⁵⁸

Similarly, Justice White cautioned against the inconsistent application of the death penalty, and he worried there was not a meaningful reason to impose it in some cases but not others.⁵⁹ And even in the face of “ugly, vicious, [and] reprehensible acts,” Justice Marshall also concurred in vacating the death sentences.⁶⁰ He noted that the “sheer brutality [of the crimes] cannot and should not be minimized,” but that the Court’s job was to examine separately the penalty imposed on the human being on the other side of the bench.⁶¹

Furman was a major judicial acknowledgement that, no matter how shocking or severe a defendant’s crime may be, they maintain an essential humanity with which the Court will not interfere.⁶² The Court reiterated this principle in its subsequent jurisprudence: in *Gregg v. Georgia*, the Court affirmed that a “penalty also must accord with the ‘dignity of man,’ which is ‘the basic concept underlying the Eighth Amendment.’”⁶³ Punishment must avoid “the unnecessary and wanton infliction of pain.”⁶⁴ In *Hutto v. Finney*, the Court held that the inmates’ diet, an overcrowded facility, vandalized cells, and unprofessional prison personnel all constituted cruel and unusual punishment.⁶⁵ In *Rhodes v. Chapman*, the Court recognized a minimal standard of acceptable treatment that an institution must observe in the course of punishment.⁶⁶ These holdings are inexplicable without the

58. *Id.* at 309–10 (Stewart, J., concurring) (emphasis added).

59. *Id.* at 313 (White, J., concurring) (emphasis added).

60. *Id.* at 315 (Marshall, J., concurring).

61. *Id.* (Marshall, J., concurring) (“But, we are not called upon to condone the penalized conduct; we are asked only to examine the penalty imposed on each of the petitioners and to determine whether or not it violates the Eighth Amendment. The question then is not whether we condone rape or murder, for surely we do not; it is whether capital punishment is ‘a punishment no longer consistent with our own self-respect’ and, therefore, violative of the Eighth Amendment.” (citation omitted)).

62. *Id.* at 371 (Marshall, J., concurring) (“We . . . join the approximately [seventy] other jurisdictions in the world which celebrate their regard for civilization and *humanity* by shunning capital punishment.” (emphasis added)).

63. *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 100 (1958) (plurality opinion)).

64. *Id.* (citing *Furman*, 408 U.S. at 392–93).

65. *Hutto v. Finney*, 437 U.S. 678, 687 (1978) (quoting *Finney v. Hutto*, 410 F. Supp. 251, 277–78 (E.D. Ark. 1976)).

66. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

same bedrock assumption: *every* human being has rights, and these rights do not disappear or diminish once the human being enters the criminal justice system.

III. RECENT SUPREME COURT DECISIONS PRECEDING *RAMIREZ*

The question of permissible religious observance during execution rests squarely at the intersection of the two preceding doctrines: a person's right to practice their religion and the legal recognition that every crime—even the most loathsome—was committed by a person with “inalienable rights.”⁶⁷ Collectively, two states brought the issue before the Supreme Court four times in the last four years,⁶⁸ thus setting the stage for a definitive answer in *Ramirez*.

A. *Dunn v. Ray: An Imam is Denied*

In 2019, Alabama denied Dominique Ray's request to bring his imam, a Muslim cleric,⁶⁹ in the chamber with him at the moment of his execution,⁷⁰ even though Alabama regularly allowed a state-employed Christian chaplain to be present in the chamber for prayer.⁷¹ Ray's legal team filed a motion to stay the execution, reasoning that the courts must be able to consider the request fully.⁷² Ray appealed the denial, the Eleventh Circuit entered an order staying the execution, and then the State of Alabama appealed this order to the Supreme Court.⁷³ The Supreme Court sided with Alabama solely because Ray waited until a mere ten days before his scheduled execution to seek relief.⁷⁴ Justice Kagan dissented, calling Alabama's policy “religious discrimination” and noting “Ray has put forward a powerful claim that his religious rights will be violated at the moment the State puts

67. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

68. See *infra* pp. 11–14.

69. An imam leads Muslim worshippers in prayer. *Imam*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/imam> (last visited Jan. 3, 2023).

70. Lauren Gill, *Dominique Ray Is Set to Be Executed Thursday. Did He Ever Really Have a Chance at Being Spared?*, PROPUBLICA (Feb. 4, 2019, 3:10 PM), <https://www.propublica.org/article/domineque-ray-execution-alabama-death-penalty>. In July of 1999, twenty-two-year-old Dominique Ray was convicted of raping and killing a fifteen-year-old girl in a cotton field in Dallas County, Alabama, and the jury sentenced him to death after less than two hours of deliberation. *Id.* This verdict was a mere five and a half months after Ray's conviction for murdering two teenage boys, also in Dallas County. *Id.*

71. *Supreme Court to Decide Boundaries for Chaplains at Executions*, ALA. BAPTIST (Sept. 15, 2021), <https://thealabamabaptist.org/supreme-court-to-decide-boundaries-for-chaplains-at-executions/>.

72. Gill, *supra* note 70.

73. *Dunn v. Ray*, 139 S. Ct. 661, 661 (2019).

74. *Id.* (citing *Gomez v. United States Dist. Court for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam) (“A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief.”)).

him to death.”⁷⁵ Alabama executed Ray on February 7, 2019, without his imam in the chamber.⁷⁶

B. *Murphy v. Collier: A Buddhist is Permitted*

The month after Ray’s execution, the Supreme Court considered the religious rights of prisoners on death row again, but with a different result.⁷⁷ Patrick Murphy was a Buddhist who requested his spiritual advisor be allowed to accompany him into the execution chamber.⁷⁸ Texas officials denied the request, but the Supreme Court prohibited the execution unless the state permitted Murphy’s Buddhist spiritual advisor or a Buddhist reverend, chosen by Texas, to accompany him into the execution chamber.⁷⁹ The Court offered no formal explanation for its decision or its conflict with the *Dunn* case.⁸⁰ However, Justice Kavanaugh issued a statement outlining factors that differentiated the two cases: Ray’s decision to bring an Establishment Clause claim rather than relying on the Equal Protection Clause⁸¹ and the fact that Murphy’s claim was filed further in advance of his execution.⁸² In his formal concurrence, Justice Kavanaugh noted that while Texas could make its own choices in lawfully regulating executions, the state is expressly prohibited from

75. *Id.* (Kagan, J., dissenting).

76. Eric Lewis, *Dominique Ray Died Alone on Death Row – If He Hadn’t Been a Muslim, It Would Never Have Happened*, INDEP. (Feb. 11, 2019, 10:20 PM), <https://www.independent.co.uk/voices/dominique-ray-execution-muslim-alabama-death-row-inmate-religion-christian-a8774526.html>. In 2022, Ray’s imam filed a lawsuit in the Southern District of Alabama seeking a declaration that Alabama’s execution policies are unlawful, an injunction allowing him access to future executions of Muslim inmates, and damages for his exclusion from previous executions. *Maisonet v. Comm’r, Ala. Dep’t of Corr.*, 2022 WL 4283560, at *1 (11th Cir. 2022). The district court dismissed the case for lack of standing, and the Eleventh Circuit affirmed the dismissal, although it disagreed with some of the lower court’s reasoning. *Id.* at *2.

77. Robert Barnes, *Supreme Court Stops Execution Because of Religious Concerns, A Contrast to Last Month*, WASH. POST (Mar. 28, 2019, 10:17 PM), https://www.washingtonpost.com/politics/courts_law/supreme-court-stops-execution-because-of-religious-concerns-a-contrast-to-last-month/2019/03/28/1c9e3fa6-51a0-11e9-a3f7-78b7525a8d5f_story.html.

78. *Id.* Murphy was a member of a gang of escaped inmates known as the “Texas Seven” who killed a police officer in Irving, Texas, in 2000. Jolie McCullough, *Federal Judge Delays Execution of “Texas Seven” Prisoner Over Claims of Religious Discrimination*, TEX. TRIB. (Nov. 12, 2019), <https://www.texastribune.org/2019/11/07/texas-execution-halted-patrick-murphy-buddhist/>.

79. *Murphy v. Collier*, 139 S. Ct. 1475 (2019) (mem.). Texas authorities denied his initial request because it was their policy only to allow state employees into the chamber, and the state only employed Christian and Muslim clerics. McCullough, *supra* note 77.

80. *See Murphy*, 139 S. Ct. at 1475.

81. *Id.* at 1476 (Kavanaugh, J., statement); The Establishment Clause is the portion of the First Amendment prohibiting the government from making a law “respecting an establishment of religion,” U.S. CONST. amend. I, and the Equal Protection Clause is the portion of the Fourteenth Amendment guaranteeing all American citizens “the equal protection of the laws.” *Id.* amend. XIV, § 1.

82. *Murphy*, 139 S. Ct. at 1477 (Kavanaugh, J., statement).

allowing Christian or Muslim inmates to have a religious adviser in the execution room but not Buddhists.⁸³ Shortly after this decision, Texas took Justice Kavanaugh's words to heart and simply banned *all* chaplains from its execution chamber, regardless of religion or denomination.⁸⁴ As of September 2022, Murphy remained on death row.⁸⁵

C. *Gutierrez v. Saenz: A Priest is Permitted*

Confronting the intersection of religion and capital punishment in Texas again, the Court stayed the execution of convicted murderer Ruben Gutierrez in June of 2020.⁸⁶ In the wake of Texas's ban on all religious figures in the execution chamber enacted after *Murphy*, Gutierrez, a Roman Catholic awaiting capital punishment, filed suit alleging that the policy violated both the Constitution and RLUIPA.⁸⁷ While a federal district court in Texas agreed with Gutierrez, the Fifth Circuit did not, and it lifted the lower court's stay of execution.⁸⁸ The Supreme Court stayed the execution long enough for the district court to consider the security implications of allowing a chaplain to be in a prisoner's immediate presence during an execution.⁸⁹ Framing the question in terms of security suggests that "at least some justices regard as central to the case the question whether Texas'[s] policy of excluding spiritual advisers from the execution chamber stems from *genuine security concerns* or instead was adopted . . . to avoid charges that the state had discriminated against Murphy, the Buddhist inmate."⁹⁰ As of March 2022, Gutierrez remained on death row.⁹¹

83. *Id.* at 1476 (Kavanaugh, J., concurring).

84. Jolie McCullough & Elizabeth Byrne, *Texas Bans Chaplains from Its Execution Chamber*, TEX. TRIB. (Apr. 3, 2019, 2:00 PM), <https://www.texastribune.org/2019/04/03/texas-ban-chaplains-execution-chamber-death-row/>.

85. Ryan Osborne & Jason Whitely, *Prosecution Agrees That 'Texas 7' Death Row Inmate Should Get a New Trial Because of Judge's Biases*, WFAA (Sept. 27, 2022, 7:53 PM), <https://www.wfaa.com/article/news/local/texas-7-death-row-inmate-could-get-new-trial/287-fb8146d8-4a2d-48c2-a746-351615177bbb>.

86. Amy Howe, *Justices Block Texas Execution*, SCOTUSBLOG (June 16, 2020, 7:03 PM) (originally published at Howe on the Court), <https://www.scotusblog.com/2020/06/justices-block-texas-execution/>. Gutierrez and an accomplice robbed, beat, and repeatedly stabbed eighty-five-year-old Escolastica Harrison with a screwdriver. *Id.*

87. *Id.*

88. *Id.*

89. *Gutierrez v. Saenz*, 141 S. Ct. 127, 128 (2020) (mem.).

90. Howe, *supra* note 86 (emphasis added).

91. Karina Vargas, *Ruben Gutierrez Files Appeal, Victim's Family Speaks*, VALLEY CENT. (Mar. 25, 2022, 11:05 AM), <https://www.valleycentral.com/news/local-news/victims-family-speaks-on-ruben-gutierrezs-latest-appeal/>.

D. Dunn v. Smith: A Pastor is Permitted

In the case immediately preceding *Ramirez*, Willie Smith sought to have his pastor present in the execution chamber with him, but Alabama, closely following Texas's lead, also banned chaplains of all faiths from the execution chamber.⁹² The Eleventh Circuit required prison officials to honor Smith's request, and the State of Alabama appealed to the Supreme Court.⁹³ The Supreme Court disagreed with Alabama, and affirmed the circuit court.⁹⁴ In Justice Kagan's concurring opinion, she noted that RLUIPA "sets a high bar for Alabama to clear," and the state's "policy substantially burdens Smith's exercise of religion."⁹⁵ She additionally asserted that Alabama's categorical ban on chaplains is not necessary to further its legitimate interest in secure executions.⁹⁶ Ultimately, the "law guarantees Smith the right to practice his faith free from unnecessary interference, including at the moment the State puts him to death."⁹⁷ Against the backdrop of these four cases—*Ray*, *Murphy*, *Gutierrez*, and *Smith*—the Supreme Court decided *Ramirez*.

IV. RAMIREZ V. COLLIER

After finding that the suit was timely, and thus avoiding the issue that stymied Dominique Ray in *Dunn*⁹⁸, the Supreme Court addressed his request to have his pastor laying hands on and praying aloud.⁹⁹ This note will also not address the concurring opinions filed by Justices Kavanaugh and Sotomayor.¹⁰⁰

92. Adam Liptak, *Supreme Court Rebuffs Alabama's Effort to Bar Pastor from Execution Chamber*, N.Y. TIMES (Sept. 9, 2021), <https://www.nytimes.com/2021/02/12/us/supreme-court-alabama-execution.html>. Smith was convicted of the 1991 murder of Sharma Ruth Johnson and sentenced to die. *Dunn v. Smith*, 141 S. Ct. 725 (2021) (Kavanaugh, J., dissenting).

93. *Dunn*, 141 S. Ct. at 725, 726 (Kagan, J., concurring).

94. *Id.*

95. *Id.* Regarding Alabama's total ban on chaplains of any faith, Justice Kagan wrote that until "two years [earlier], Alabama required the presence of a prison chaplain at an inmate's side. (It gave up the practice only when this Court barred States from providing spiritual advisors of just one faith.)" *Id.*

96. *Id.*

97. *Id.*

98. *Ramirez v. Collier*, 142 S. Ct. 1264, 1275. The majority also found Ramirez's suit was timely, *Id.* at 1276, thus avoiding the issue that stymied Dominique Ray in Alabama. *Dunn v. Ray*, 139 S. Ct. 661, 662 (2019). This note will not address the procedural questions to which the Court gave considerable space beyond a succinct acknowledgement that the majority found Ramirez "properly exhausted ... [the internal] administrative remedies" he was required by law to try before filing a lawsuit.

99. *Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022).

100. Justice Sotomayor joined the majority's opinion "in full," but wrote to expand on the question of the broader legal obligations of prison officials, *Id.* at 1284 (Sotomayor, J., concurring), which is beyond the scope of this note. Justice Kavanaugh also joined the majority's reasoning in full. *Id.* at

Less than a week before Ramirez's scheduled execution on February 2, 2017, he filed a petition to stay the execution on the grounds that he had received ineffective assistance of counsel.¹⁰¹ The district court rejected his claim, and the Fifth Circuit did not hear an appeal.¹⁰² Texas reset Ramirez's execution for September 9, 2020, and seemingly accepting his fate, he asked that his pastor be allowed to accompany him into the execution chamber.¹⁰³ Texas prison authorities denied the request because the new execution protocol prohibited all spiritual advisors from entering the chamber; therefore, Ramirez sued Texas for violating his rights under the First Amendment and RLUIPA.¹⁰⁴ Before the suit proceeded any further, Texas withdrew the death warrant, and the parties mutually agreed to dismiss the suit without prejudice.¹⁰⁵ Texas informed Ramirez that his new execution date would be September 8, 2021.¹⁰⁶

Ramirez filed a grievance motion with Texas prison officials, again requesting they permit his pastor to accompany him into the execution chamber.¹⁰⁷ Prison officials initially denied his request, but after revising the state's execution policies in light of *Gutierrez* and *Dunn*, they ultimately assented.¹⁰⁸ Following this victory, Ramirez filed another grievance on June 11, 2021, requesting that his pastor be allowed to lay hands on him and audibly pray over him during the execution.¹⁰⁹ Texas prison officials denied this request: they argued that ministers were now allowed to be present in the chambers, but that there was no statutory or judicial authority to permit touching and audible prayer.¹¹⁰ Ramirez appealed this decision

1285 (Kavanaugh, J., concurring). His concurrence was not an ideological difference from the majority, but rather three observations: (1) recent cases on the same question gradually shifted from religious equality to religious freedom, *Id.* at 1285–86, (2) *Ramirez* illustrates the difficulty of the Court's assessment of how compelling a state interest is, *Id.* at 1286, and (3) the *Ramirez* holding offers guidance to the states on what they may or may not do in executions. *Id.* at 1288–89. None of these points differ substantively from the majority to justify deeper examination in a note on this topic.

101. *Id.* at 1273 (majority opinion).

102. *Id.* (citing *Ramirez v. Davis*, 780 Fed. App'x 110 (5th Cir. 2019)).

103. *Id.*

104. *Id.* The protocol banning chaplains was enacted in the wake of *Murphy v. Collier*. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* Texas's new policy allowed spiritual advisors to be in the chamber, but subject to strict protocols: the prisoner must notify officials of their choice of minister within thirty days of learning their execution date, the minister must pass a background check and undergo training, and they are subject to immediate removal if they are disruptive. *Id.* at 1274.

109. *Id.*

110. *Id.*

to the Supreme Court, which stayed the execution, granted certiorari, and heard arguments on an expedited basis.¹¹¹

A. *The Majority*

Writing for the majority and joined by all of the other justices except Justice Thomas,¹¹² Chief Justice Roberts first reiterated the framework of the claim: under RLUIPA, a prisoner must first demonstrate the government has substantially burdened their sincerely held religious belief.¹¹³ The majority was satisfied that Ramirez would succeed in proving his requests were “sincerely based on a religious belief.”¹¹⁴ Both of Ramirez’s requests—the laying on of hands and audible prayer—were traditional forms of religious exercise, and neither of the lower courts questioned the sincerity of his request.¹¹⁵ Having established Ramirez’s beliefs were sincere, the readily answered whether Texas’s policy was a *substantial* burden was answered in the affirmative because prison officials did not dispute that any burden their policy imposed on Ramirez’s religious exercise would be substantial.¹¹⁶

Having proven the prison policy substantially burdened his exercise of a sincerely held religious belief, the burden then shifted to Texas prison officials to prove their policy furthered a compelling government interest and was the least restrictive means of doing so.¹¹⁷ To meet this burden, prison officials relied on two arguments to support their ban on audible prayer, but the Court rejected both as insufficient to overcome the strong presumption in favor of Ramirez’s rights.¹¹⁸

First, prison officials claimed absolute silence was necessary in the execution chamber to monitor the inmate through a microphone.¹¹⁹ The Court went so far as to acknowledge that monitoring was a compelling government interest, and audible prayer *could* interfere with executions in this way.¹²⁰ However, the Court was so

111. *Id.* Before reaching the Supreme Court, the Fifth Circuit also affirmed the sentence. *Id.*

112. *See id.* at 1271.

113. *Id.* at 1277 (quoting *Holt v. Hobbs*, 574 U.S. 352, 360–61 (2015)).

114. *Id.* (quoting *Holt*, 574 U.S. at 360–61).

115. *Id.* (citing Brief Amicus Curiae of the Becket Fund for Religious Liberty in Support of Petitioner at 3–19, *Ramirez v. Collier*, 142 S. Ct. 1264 (2022) (No. 21-5592)).

116. *Id.* at 1278.

117. *Id.* (citing 42 U.S.C. § 2000cc-1(a)).

118. *Id.* at 1279–80. The Court also gives considerable space to the long and established history of chaplains praying at executions “dating back well before the founding of our Nation.” *Id.* at 1278.

119. *Id.* at 1279.

120. *Id.*

reluctant to overcome the presumption of religious freedom that it rejected the argument for less than absolute proof.¹²¹

Second, prison officials argued that permitting audible prayer could allow a chaplain to exploit the opportunity by making traumatic statements to the inmate's family or personally interfering with the execution.¹²² Again, the Court conceded the government had a legitimate interest in prohibiting interruptions of this kind, but carefully monitoring Ramirez's rights, it rejected this argument for lack of proof.¹²³ The Court had no reason to believe that Ramirez's pastor would interfere, and the argument was therefore based only on conjecture.¹²⁴

What is noteworthy about the manner in which the Court dismissed both of these arguments is that while the Court validated the prison officials' argument, it was conscious not to infringe on Ramirez's rights without convincing and legitimate proof. The Court trusted the validity of the officials' concerns and suggested ways by which they could be accomplished within the bounds of the law,¹²⁵ but it took care not to paint with too broad of a brush. However legitimate their concerns were, the officials did not carry their burden, and the Court was duty-bound to protect Ramirez and his religious rights.¹²⁶

The officials made similar arguments to support their ban on religious touching in the chamber such as maintaining security in the execution chamber, preventing unnecessary suffering, and avoiding further emotional trauma to the victim's family members.¹²⁷ The Court called these goals "commendable," but ultimately rejected them.¹²⁸ Like the interests asserted against audible prayer, the Court conceded the officials presented legitimate state interests; however, the Court that a categorical ban as a quick-fix and without more consideration was not justified.¹²⁹ Again, the

121. *See id.* ("Instead, they ask that we simply defer to their determination. That is not enough under RLUIPA.").

122. *Id.* at 1280.

123. *See id.*

124. *Id.*

125. *Id.* ("What's more, there appear to be less restrictive ways to handle any concerns. Prison officials could impose reasonable restrictions on audible prayer in the execution chamber—such as limiting the volume of any prayer so that medical officials can monitor an inmate's condition, requiring silence during critical points in the execution process (including when an execution warrant is read or officials must communicate with one another), allowing a spiritual advisor to speak only with the inmate, and subjecting advisors to immediate removal for failure to comply with any rule. Prison officials could also require spiritual advisors to sign penalty-backed pledges agreeing to abide by all such limitations.").

126. *Id.* at 1283.

127. *Id.* at 1280.

128. *Id.*

129. *Id.*

Court went so far as to make suggestions about how the officials' interests could be served in an acceptable way.¹³⁰ Metaphorically, the Court used one hand to offer suggestions and used the other to keep Texas at arm's length from Ramirez. This balancing act was a direct result of the intersection of his right to religious freedom and the longstanding understanding that—even though he pled guilty to a heinous crime—he still retained some element of humanity and was therefore deserving legal protection.¹³¹

Having established Ramirez would prevail on the RLUIPA claims, the Court decided an injunction provided the most appropriate relief.¹³² The Court held “Ramirez is likely to suffer irreparable harm in the absence of injunctive relief because he will be unable to engage in protected religious exercise in the final moments of his life.”¹³³ This holding is perhaps the clearest articulation of how religious liberty intersects with the prohibition of cruel and unusual punishment: Ramirez was going to be executed for a horrible crime that he admitted to; however, the Court's idea of “irreparable harm” was *not* the death penalty itself but rather neglect of his fundamental, American rights during his last moments on Earth. The Court revered its responsibility to Ramirez—a convicted murderer who took the life of a working man with fourteen grandchildren¹³⁴—so much so that it found “the balance of equities and public interest tilt in [his] favor.”¹³⁵ Even though the State and the victims of crime both have an important interest in the timely enforcement of punishment, incarcerated people like Ramirez “have a strong interest in avoiding substantial burdens on their religious exercise, even while confined.”¹³⁶ The Court ultimately held Ramirez was likely to prevail on his RLUIPA claims, and a preliminary injunction was therefore appropriate.¹³⁷ In summation, the majority unmistakably guarded Ramirez's humanity and inalienable religious rights.¹³⁸

130. *Id.* at 1280–81.

131. *See supra* pp. 3–10.

132. *Ramirez*, 142 S. Ct. at 1282.

133. *Id.*

134. *Id.* at 1272–73.

135. *Id.* at 1282.

136. *Id.* (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)).

137. *Id.* at 1284.

138. *See id.* at 1282. Chief Justice Roberts noted that the harm that Ramirez would suffer if he were denied religious comfort in the final moments of his life would be “spiritual rather than pecuniary.” *Id.*

B. The Dissent

Justice Clarence Thomas was the sole dissenter.¹³⁹ His objections centered around the roundabout manner in which Ramirez made his request, not the substance of the action as it related to the religious rights of death row inmates.¹⁴⁰ Thomas's argument was not an attack on the idea that even criminals guilty of the most heinous crimes will have their religious and personal rights protected. Rather, he dissented because he thought Ramirez's claims did not deserve equitable relief and they were procedurally barred.¹⁴¹ Crucial to Justice Thomas's rationale was that "[a]n 'equitable remedy,' such as a stay of execution or a preliminary injunction, is 'not available as a matter of right.'" ¹⁴² He noted that two components of the equitable balance were especially relevant to Ramirez: (1) federal courts should be extremely wary of abusive litigation designed merely to delay punishment and (2) courts should consider the interest of the State and victims in carrying out capital sentences in a timely manner.¹⁴³

On the question of litigation designed to stall imposition of capital punishment, Justice Thomas was suspicious that Ramirez's true intention in filing this appeal was *not* to have a spiritual advisor with him at the moment of death, but to stall the judicial process and further delay his execution.¹⁴⁴ He referred to Ramirez's changing demands¹⁴⁵ as "a textbook example of dilatory and abusive" litigation.¹⁴⁶ To support this, Justice Thomas cited Ramirez's evasive behavior on the night of the murder,¹⁴⁷ his attempts at stalling the execution in Texas state courts,¹⁴⁸ his shift to an attack through federal habeas proceedings,¹⁴⁹ a certificate of appealability

139. *Id.* at 1289.

140. *See id.* at 1291–92 (Thomas, J., dissenting). His reasoning is peculiar, considering Justice Thomas often calls for evaluating, and potentially abandoning, long-accepted legal principles. *See, e.g., Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2301 (2022) (Thomas, J., concurring) ("[I]n future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*.").

141. *Ramirez*, 139 S. Ct. at 1289 (Thomas, J., dissenting).

142. *Id.* at 1291 (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)).

143. *Id.* at 1291–92 (citations omitted).

144. *Id.* at 1293 (quoting *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam)).

145. *Id.* at 1274 (majority opinion) ("Having successfully petitioned the State to allow his pastor into the execution chamber, he requested that his pastor be permitted to 'lay hands' on him and 'pray over' him while the execution was taking place.").

146. *Id.* at 1293 (Thomas, J., dissenting).

147. *Id.*

148. *Id.* at 1293.

149. *Id.*

through the Court of Appeals,¹⁵⁰ an eleventh hour motion to stay the execution,¹⁵¹ and a Rule 60(b) motion.¹⁵² Justice Thomas would have had the Court interpret Ramirez's actions "in light of that history, recognize that his shifting in-chambers-touching claim is just another chapter in that history, and reject his most recent attempt to delay his execution."¹⁵³ He did not dare suggest Ramirez lacked the rights to his religious practice or a protection from cruel and unusual punishment, even though he seemed to go out of his way to underscore just how horrified he was by Ramirez's crimes.¹⁵⁴

Justice Thomas's second reason to dissent was that the Court should be more dedicated to protecting the "State's interest in the timely execution of a lawful sentence,"¹⁵⁵ which he noted is "'magnified' when the offense is of a 'heinous nature.'"¹⁵⁶ He did not assert that allowing chaplains into execution chambers would stymie this interest, but rather that Ramirez specifically has used his requests to frustrate the process in a manner that does not warrant equitable relief.¹⁵⁷ Justice Thomas worried that the majority's ruling would incentivize prisoners on death row to file bad faith petitions for accommodations they know the courts will reject, thus stalling the execution.¹⁵⁸

Additionally, Justice Thomas believed Ramirez's RLUIPA claims would fail for being insincere and designed to stall the execution¹⁵⁹ as well as defects in Ramirez's use of the internal prison grievance system.¹⁶⁰ Ultimately, none of the lone dissenter's arguments had anything to do with religious liberty or a protection from cruel and unusual punishment, and it is entirely possible to adhere to Justice Thomas's views and *simultaneously* honor the First and Eighth Amendments. Those protections are so deeply entrenched in the American legal landscape that Justice Thomas filed this substantial dissent and did not attempt to argue that *those* were the reasons he disagreed, instead, he merely relied on judicial mechanics of equity and prison procedural niceties.¹⁶¹

150. *Id.* at 1294.

151. *Id.*

152. *Id.* Rule 60 offers a variety of avenues for relief from a judgment or order. FED. R. CIV. P. 60.

153. *Ramirez*, 139 S. Ct. at 1294 (Thomas, J., dissenting).

154. *See id.* at 1289–90.

155. *Id.* at 1295.

156. *Id.* (quoting *In re Fed. Bureau of Prisons' Execution Protocol Cases*, 955 F.3d 106, 127 (C.A.D.C. 2020) (Katsas, J., concurring)).

157. *Id.*

158. *Id.* at 1297.

159. *Id.* at 1297–98.

160. *Id.* at 1299.

161. *See id.* at 1301.

V. THE PSYCHOLOGY AT WORK IN *RAMIREZ V. COLLIER*

The majority decision in *Ramirez* relies on statutory interpretation and the common law,¹⁶² but the decision also aligns with what society knows about the psychology of death row, the solace of religion, and human empathy. Most of the prisoners on death row in the United States spend twenty-two to twenty-four hours a day in small cells with hardly any human contact or natural light.¹⁶³ In Texas specifically, death row inmates are kept in solitary confinement in eight-by-twelve cells with only one hour a day allowed for recreation, which only happens in a slightly larger cell.¹⁶⁴ They are not allowed to watch television, use a phone, or have visitors.¹⁶⁵ In Texas, mental healthcare is limited to providing prisoners with medicines meant to induce sleepiness, while the “stress of awaiting execution causes mental health issues for many.”¹⁶⁶ Unsurprisingly, those who are on death row commonly experience a wide range of emotions that can have a detrimental effect on their mental health, including suicidal ideation, delusions, and a loss of sanity.¹⁶⁷ Anthony Graves, who was on death row in Texas before being exonerated, referred to being sentenced to death in the state as a double punishment because of the suffering that is endured along the way.¹⁶⁸ Graves explained, “We spent years

162. See *supra* pp. 16–19.

163. AM. CIV. LIBERTIES UNION, A DEATH BEFORE DYING: SOLITARY CONFINEMENT ON DEATH ROW, 2 (2013), <https://www.aclu.org/report/death-dying-solitary-confinement-death-row?redirect=death-dying-solitary-confinement-death-row-report>.

164. Matthew Clarke, *Reports Finds Texas Death Row Conditions Violate Basic Human Rights*, PRISON LEGAL NEWS (Mar. 6, 2018), <https://www.prisonlegalnews.org/news/2018/mar/6/report-finds-texas-death-row-conditions-violate-basic-human-rights/>. Texas has been called “a leader in the use of prolonged solitary confinement.” Adam Liptak, *27 Years in Solitary Confinement, Then Another Plea for Help in Texas*, N.Y. TIMES (Feb. 14, 2022), <https://www.nytimes.com/2022/02/14/us/supreme-court-solitary-confinement.html/>.

165. Clarke, *supra* note 164.

166. *Id.*

167. *Time on Death Row*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row> (last visited Jan. 14, 2023). Acts of self-harm are also widespread. AM. CIV. LIBERTIES UNION, *supra* note 163, at 7.

168. Anthony Graves, *When I Was on Death Row, I Saw a Bunch of Dead Men Walking. Solitary Confinement Killed Everything Inside Them*, AM. CIV. LIBERTIES UNION (July 23, 2013), <https://www.aclu.org/news/smart-justice/when-i-was-death-row-i-saw-bunch-dead-men-walking-solitary/>. In 1994, Graves was convicted of murdering six family members in Somerville, Texas, based on the false testimony of his codefendant Robert Carter. *Anthony Graves*, NAT'L REGISTRY EXONERATIONS (Feb. 10, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3253>. Carter later recanted his testimony in front of a grand jury and then again as his last words during his own execution. *Id.* Graves ultimately spent eighteen years on death row before his release. Lise Olsen, *'Being a Prisoner During Covid is a Death Sentence,'* TEXAS OBSERVER (Jan. 1, 2021), <https://www.texasobserver.org/anthony-graves-death-row-covid/>.

locked alone in a tiny, concrete cage in solitary confinement, with guys going insane, dropping their appeals, doing everything they could to check out of this place before we were ever strapped to an execution gurney. All because of the conditions.”¹⁶⁹

Graves identifies a common theme in death row cases: oftentimes the prisoners are so demoralized by “helplessness, despair, and the anxiety and the anguish of waiting to die” that they simply stop pursuing appeals, which the American Civil Liberties Union decries as volunteering for execution.¹⁷⁰ Part of the trauma caused by time on death row is traceable to one of the most common fears to plague all people: death itself.¹⁷¹ According to research, “when considering our own death, we are most concerned about potential pain, helplessness, dependency, and the well-being of our loved ones,”¹⁷² all of which are implicated by a capital sentence.

Facing such a turbulent world, many turn to religion for solace,¹⁷³ and death row inmates are no exception.¹⁷⁴ The National Alliance on Mental Illness identified some of the mental health benefits of religion: having something to believe in, a sense of structure, and community.¹⁷⁵ Religion initiates social connections, helps

Whether he knew it or not, Graves was echoing sentiments expressed by the Supreme Court when it called solitary confinement “an additional punishment of such a severe kind.” *In re Medley*, 134 U.S. 160, 170 (1890).

169. Graves, *supra* note 168.

170. AM. CIV. LIBERTIES UNION, *supra* note 163, at 8.

171. See *Thanatophobia (Fear of Death)*, CLEV. CLINIC, <https://my.clevelandclinic.org/health/diseases/22830-thanatophobia-fear-of-death> (last visited Nov. 3, 2022) (“Research suggests that death anxiety is common, though people tend not to report their feelings. One study shows that between 3% and 10% of people feel they’re more nervous than others about the thought of dying.”).

172. *Dealing With Your Own Imminent Death*, MENTALHELP.NET, <https://www.mentalhelp.net/death-and-dying/dealing-with-your-own-imminent-death/> (last visited Feb. 12, 2023). See also Jonathan Jong, *Why Contemplating Death Changes How You Think*, BBC (Feb. 8, 2016), <https://www.bbc.com/future/article/20160208-why-contemplating-death-changes-how-you-think> (citing Trinda L. Powers & Steven M. Smith, *Predictors of Fear of Death and Self-Mortality: An Atlantic Canadian Perspective*, 32 DEATH STUD. 253 (2008)) (“[S]tudies . . . show we worry more about the dying process – the pain and loneliness involved, for example – than about the end of life itself.”).

173. See *The Changing Global Religious Landscape*, PEW RSCH. CTR. (Apr. 5, 2017), <https://www.pewresearch.org/religion/2017/04/05/the-changing-global-religious-landscape/>. In 2017, approximately 84% of the global population had a religious affiliation. See *id.*

174. Alex Hannaford, *Letters from Death Row: Faith Behind Bars*, TEX. OBSERVER (June 12, 2015, 9:00 AM), <https://www.texasobserver.org/death-row-inmates-religion/>. A study of religious conversion in prison that found that “many inmates turned to religion for a worldview that fostered belonging, identity and management of life.” *Id.* (internal quotation marks omitted).

175. *The Mental Health Benefits of Religion & Spirituality*, NAT’L ALL. MENTAL ILLNESS (Dec. 21, 2016), <https://www.nami.org/Blogs/NAMI-Blog/December-2016/The-Mental-Health-Benefits-of-Religion-Spiritual>. NAMI defines religion as “an organized, community-based system of beliefs, while spirituality resides within the individual and what they personally believe.” *Id.*

people cope with difficult experiences, and identifies life lessons in challenging circumstances.¹⁷⁶ Studies have also linked Buddhist meditation with kindness,¹⁷⁷ observing the Sabbath with enhanced mental and physical health,¹⁷⁸ and regular church attendance with a decrease in depressive symptoms.¹⁷⁹ Moreover, spirituality (which often goes hand in hand with religion) provides individuality and mindfulness;¹⁸⁰ therefore, it is easy to see why the characteristics of religion would be appealing to John Ramirez as he lived among the nearly two hundred prisoners on death row in Texas.¹⁸¹ Other inmates on Texas's death row profess that their faith is what sustains them in a prison, and that it provides a foundation to ward off mental torment.¹⁸² Willie Trott, a Texas inmate on death row for killing his ex-girlfriend and her brother, said that it was his Bible that kept him "spiritually uplifted and encouraged despite the grim circumstances."¹⁸³

The foregoing analysis may explain why Ramirez was drawn to religion and argued for his constitutional protections, but is there more at work here? Why are people in our society (including Supreme Court justices) willing to make such accommodations for people convicted of the most heinous crimes in our justice system? A partial explanation may come from the human ability to share the feelings of another by imagining what it would be like to be in that situation, or empathy.¹⁸⁴ Humans are biologically programmed for empathy, and it is something that simply cannot be suppressed.¹⁸⁵ For example, newborn infants reflexively cry

176. *Id.*

177. David Destend, *Psychologists Are Learning What Religion Has Known for Years*, WIRED (Sep. 14, 2021, 9:00 AM), <https://www.wired.com/story/psychologists-religion-how-god-works/>; see also Nicole F. Roberts, *Science Says: Religion Is Good For Your Health*, FORBES (Mar. 29, 2019, 2:44 AM), <https://www.forbes.com/sites/nicolefisher/2019/03/29/science-says-religion-is-good-for-your-health/?sh=17a2a43a12c7>.

178. Emily McFarlan Miller, *The Science of Sabbath: How People Are Rediscovering Rest – and Claiming Its Benefits*, WORD AND WAY (Jan. 28, 2019), <https://wordandway.org/2019/01/28/the-science-of-sabbath-how-people-are-rediscovering-rest-and-claiming-its-benefits/>.

179. Cheryl Platzman Weinstock, *How Church May Boost Mental Health*, AARP (Sep. 9, 2019), <https://www.aarp.org/health/healthy-living/info-2019/religion-and-mental-health.html>.

180. NAT'L ALL. MENTAL ILLNESS, *supra* note 175.

181. See *Death Row*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/death-row/overview> (last visited Jan. 14, 2023).

182. Hannaford, *supra* note 174.

183. *Id.* Trott was executed on September 10, 2015. *Id.*

184. *Empathy*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/empathy> (last visited Jan. 15, 2023). Empathy has also been described "as feeling with a person rather than [just] for them." Katie Bohn, *The Empathy Option: The Science of How and Why We Choose to Be Empathetic*, PENN STATE (Dec. 9, 2019), <https://www.psu.edu/news/research/story/empathy-option-science-how-and-why-we-choose-be-empathetic/>.

185. Katherine Ellison, *Five Things Worth Knowing About Empathy*, WASH. POST (Jan. 17, 2021, 10:00 AM), <https://www.washingtonpost.com/health/empathy-what-to-know/2021/01/15/b3c7665c->

when they hear another infant cry, and empathy “inspires us to take care of friends and relatives, encouraging cooperation that helps our tribe survive.”¹⁸⁶ When we see another suffering, we “activate our own emotions and sensations as if we felt the same.”¹⁸⁷

Given its ubiquity, empathy has naturally affected the American judiciary: in 2009, while considering a replacement for outgoing Supreme Court Justice David H. Souter, President Barack Obama emphasized that he was looking for a judge who could demonstrate empathy rather than just toeing an ideological line.¹⁸⁸ Obama echoed the sentiment of one of his predecessors, Theodore Roosevelt, who had articulated the same criterion in his own search for a Supreme Court Justice in 1902.¹⁸⁹ Both Roosevelt and Obama tacitly acknowledged the natural confluence of a judge’s role with their own human nature: being an effective judge “requires sensitivity to a wide range of experiences. It is relatively easy for judges, like other human beings, to relate to experiences *and perspectives they have shared*.”¹⁹⁰

Empathy may help explain why eight out of nine Justices¹⁹¹ on the Court of last resort in the country¹⁹² erred on the side of allowing Ramirez access to the comfort of a minister in his final moments.¹⁹³ All nine Justices that decided *Ramirez* profess a religious affiliation,¹⁹⁴ so it is not too much of an extrapolation to suggest they understand the solace that can be found in religion and how it could be helpful at

4ea4-11eb-bda4-615aaefd0555_story.html; see also *The Psychology of Emotional and Cognitive Empathy*, LESLEY UNIV., <https://lesley.edu/article/the-psychology-of-emotional-and-cognitive-empathy> (last visited Jan. 15, 2023).

186. Ellison, *supra* note 185.

187. Kim Armstrong, ‘I Feel Your Pain’: The Neuroscience of Empathy, ASS’N FOR PSYCH. SCI. (Dec. 29, 2017), <https://www.psychologicalscience.org/observer/neuroscience-empathy>.

188. Janet Hook & Christi Parsons, *Obama Says Empathy Key to Court Pick*, L.A. TIMES, (May 2, 2009, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2009-may-02-na-court-souter2-story.html>. Obama’s search culminated in the appointment of Justice Elena Kagan. Joel K. Goldstein, *How Empathy Makes Superior Judges – and Justice*, OHIO STATE UNIV.: ORIGINS (Aug. 2010), <https://origins.osu.edu/history-news/how-empathy-makes-superior-judges-and-justice>.

189. Damon Root, *Judicial Empathy and Justice Oliver Wendell Holmes*, REASON (June 3, 2009, 5:35 PM), <https://reason.com/2009/06/03/judicial-empathy-and-justice-ol/>. President Roosevelt believed it was “eminently desirable that our Supreme Court should show in unmistakable fashion their entire sympathy with all proper effort to secure the most favorable possible consideration for the men who most need that consideration.” *Id.* Roosevelt’s search culminated in the appointment of Justice Oliver Wendell Holmes. *Id.*

190. Goldstein, *supra* note 188 (emphasis added).

191. *Ramirez v. Collier*, 142 S. Ct. 1264, 1271 (2022).

192. U.S. CONST. art. III.

193. *Ramirez*, 142 S. Ct. at 1284.

194. Frank Newport, *The Religion of Supreme Court Justices*, GALLUP (Apr. 8, 2022), <https://news.gallup.com/opinion/polling-matters/391649/religion-supreme-court-justices.aspx>. Six are Roman Catholic, one is Episcopalian, and two are Jewish. *Id.* Chief Justice Roberts, who penned the majority opinion, is Catholic. *Id.*

the moment of execution, especially after the trauma that accompanies life on death row. Indeed, *Ramirez* is the latest of a many examples of judicial, religious sympathy at the moment of execution, and as much is noted by the majority.¹⁹⁵ Even one of London's most infamous jails, Newgate Prison, allowed an Anglican priest to "pray with the condemned in their last moments."¹⁹⁶ Courts in the American colonies frequently allowed prayer during executions,¹⁹⁷ and even George Washington—charged with law enforcement in the ranks of his men—required his subordinates to make provisions for the attendance of chaplains at executions if the prisoner desired.¹⁹⁸ American authorities allowed the attendance of clergy at the executions of the conspirators who plotted the assassination of President Abraham Lincoln¹⁹⁹ and even Nazi war criminals.²⁰⁰ By and large, empathy for death row inmates goes beyond religious observance: courts and legislatures often permit death row inmates to make a variety of choices, including the method of their death, the presence of witnesses, their last words, and perhaps most famously, their last meal.²⁰¹ Many of these entitlements are not required by law but are simply traditions that authorities continue to allow.²⁰² The choices given to those on death row may be analogized to some of the most basic human rights, including the right to food,²⁰³

195. See *Ramirez*, 142 S. Ct. at 1278–79.

196. *Id.* at 1278 (citing ANDREA MCKENZIE, TYBURN'S MARTYRS: EXECUTION IN ENGLAND, 1675–1775, at 9–14 (2007)).

197. *Id.*

198. *Id.* at 1279.

199. Michael E. Ruane, *One of the Last Grim Scenes of the Civil War Was Caught on Camera*, WASH. POST (July 4, 2015), https://www.washingtonpost.com/local/four-people-were-hanged-for-lincolns-assassination—and-it-was-caught-on-camera/2015/07/03/377614d4-1905-11e5-ab92-c75ae6ab94b5_story.html.

200. *Ramirez*, 142 S. Ct. at 1279 (citing Henry Gerecke, *I Walked to the Gallows with the Nazi Chiefs*, SATURDAY EVENING POST, Sept. 1, 1951, at 58).

201. Keri Blakinger & Maurice Chamamah, *From Last Meals to Last Words, What Can Death Row Prisoners Request Before They Die?*, THE MARSHALL PROJECT (Sep. 7, 2021, 6:00 AM), <https://www.themarshallproject.org/2021/09/07/from-last-meals-to-last-words-what-can-death-row-prisoners-request-before-they-die>. American prisoners do not have a legal right to speak last words, but they have traditionally been allowed to do so. *Id.* The practice is not without controversy: an Ohio man audibly prayed for seventeen minutes, which lead the state to implement a policy allowing officials "to cut off any statements they decided were too long or too offensive." *Id.* Texas historically allowed both written and oral final words until a state senator—feeling that one prisoner's final words were too flippant—demanded the state end the process. *Id.* As a compromise, the state stopped reading written final statements. Andrew Wilson, *Texas Death Row Inmates' Last Written Words to No Longer Be Read to the Media*, KVUE (Apr. 30, 2019), <https://www.kvue.com/article/news/texas-death-row-inmates-last-written-words-to-no-longer-be-read-to-the-media/>.

202. Blakinger & Chamamah, *supra* note 201.

203. *The Right to Food*, FOOD & AGRIC. ORG. OF U.N., <https://www.fao.org/right-to-food/en/> (last visited Jan. 15, 2023) (explaining the right to food is "a long-standing international human right").

free speech,²⁰⁴ and freedom from needless cruelty,²⁰⁵ and reflect yet another systemic acknowledgement that a minimum threshold of humane treatment exists that courts will not go beneath.²⁰⁶

Beyond the words of their opinion, we cannot definitively declare the thought process of the *Ramirez* majority. But naturally, the known horrors of death row, the comfort of religion, and human, judicial empathy all suggest that the Court was motivated by more than its constitutional duties.²⁰⁷

VI. CODIFYING *RAMIREZ*

As the glut of cases in state and federal courts that address chaplains in execution chambers in recent years—far beyond those briefly outlined here²⁰⁸—proves, it is a controversial issue. However, now is the perfect time to strike while the iron is hot and codify the *Ramirez* decision. Capital punishment is deeply entrenched in human history, with the oldest recorded death penalties dating to the eighteenth-century B.C. in the Code of Hammurabi.²⁰⁹ In the North American colonies, the first recorded execution was in Jamestown, Virginia, in 1608, when Captain George Kendal was executed for spying for Spain.²¹⁰ Four years later, Governor Sir Thomas Dale enacted the Divine, Moral and Martial Laws, which used the death penalty for even minor offenses such as stealing grapes, killing chickens, and trading with Indians.²¹¹ The Massachusetts Bay Colony executed citizens before its laws even authorized it to do so, and New York punished striking one's parents and denying the "true God" with death.²¹² However, even though capital punishment has deep roots in history, the American view of capital punishment is evolving.²¹³ In 2021, opposition to the death penalty in America was

204. U.S. CONST., amend. I.

205. U.S. CONST., amend. VIII.

206. *See supra* pp. 3–10.

207. *See supra* Part V.

208. *E.g.*, Michael Baker, *Oklahoma Death Row Inmate Wants Buddhist Adviser in Death Chamber*, OKLAHOMAN (Oct. 13, 2010, 12:00 AM), <https://www.oklahoman.com/story/news/religion/2010/10/13/oklahoma-death-row-inmate-wants-buddhist-adviser-in-death-chamber/61207759007/>.

209. *Early Death Penalty Laws*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty> (last visited Nov. 3, 2022).

210. *Id.*

211. *Id.*

212. *Id.*

213. *2021 Gallup Poll: Public Support for Capital Punishment Remains at Half-Century Low*, DEATH PENALTY INFO. CTR. (Nov. 19, 2021), <https://deathpenaltyinfo.org/news/2021-gallup-poll-public-support-for-capital-punishment-remains-at-half-century-low>.

at its highest level since 1966,²¹⁴ and, in a 2019 Gallup survey, a majority of Americans believed life imprisonment was a better punishment for murder than the death penalty.²¹⁵ Capital punishment's public perception is changing, and more Americans are inclined to express concerns over its administration and skepticism about its effectiveness as a deterrent.²¹⁶

If ever there is a time to codify the *Ramirez* Court's sanctioned right to religious touch and audible prayer in the execution chamber, it is now. In the wake of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,²¹⁷ the use of codification to settle hotly contested questions is at the forefront of the national discussion. For example, 59% of respondents were in favor of a nationwide law permitting a woman to have an abortion *as a response* to the Supreme Court overturning *Roe v. Wade*.²¹⁸ Similarly, in an "unexpected consequence of the Supreme Court's reversal of the *Roe v. Wade* decision," Congress codified same-sex and interracial marriage.²¹⁹ After Justice Thomas implied in his *Dobbs* concurrence that *Obergefell v. Hodges*²²⁰ should be overturned,²²¹ Representative Jerry Nadler introduced a federal bill to "ensure respect for State regulation of marriage."²²² The law is intended to "address a national patchwork of marriage laws"²²³ that may be analogized to the inconsistent state approaches to chaplains in death chambers.

214. *Id.* In 2021, 43% of respondents told Gallup they were opposed to capital punishment. *Id.*

215. *Gallup Poll – For the First Time, Majority of Americans Prefer Life Sentence to Capital Punishment*, DEATH PENALTY INFO. CTR. (Nov. 25, 2021), <https://deathpenaltyinfo.org/news/gallup-poll-for-first-time-majority-of-americans-prefer-life-sentence-to-capital-punishment>. Sixty percent of the survey respondents favored a life sentence over the use of capital punishment, even in murder cases. *Id.*

216. *Most Americans Favor the Death Penalty Despite Concerns About Its Administration*, PEW RSCH. CTR. (June 2, 2021), <https://www.pewresearch.org/politics/2021/06/02/most-americans-favor-the-death-penalty-despite-concerns-about-its-administration/>.

217. *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

218. *Roe v. Wade*, 410 U.S. 113 (1973) (overturned by *Dobbs*, 142 S. Ct.); *Two-Thirds Support Codifying Abortion Rights As Court Favorability Continues Decline*, NAVIGATOR (July 8, 2022), <https://navigatorresearch.org/two-thirds-support-codifying-abortion-rights-as-court-favorability-continues-decline/>.

219. Amy B. Wang et al., *House Passes Landmark Legislation to Protect Same-Sex, Interracial Marriages*, WASH. POST (Dec. 8, 2022 2:11 PM), <https://www.washingtonpost.com/politics/2022/12/08/respect-for-marriage-act-house-vote/>.

220. *Obergefell v. Hodges*, 576 U.S. 644 (2015).

221. *Dobbs*, 142 S. Ct. at 2301 (Thomas, J., concurring).

222. Respect for Marriage Act, H.R. 8404, 117th Cong. (2022).

223. Brooke Migdon, *Voters in Key Battlegrounds More Likely to Back Senators That Support Respect for Marriage Act, Poll Shows*, THE HILL (Oct. 6, 2022), <https://thehill.com/changing-america/respect/equality/3676728-voters-in-key-battlegrounds-more-likely-to-back-senators-that-support-respect-for-marriage-act-poll-shows/>.

There has never been a better time to enshrine the right to religious touch and audible prayer in the execution chamber. The *Ramirez* decision's unambiguous holding is recent, the American opinion on the death penalty is changing, and the public has become more aware than ever of the option to remove controversial questions from the judiciary via the legislature.

VII. CONCLUSION

Texas executed John Ramirez on October 5, 2022.²²⁴ As the “lethal drug coursed through [his] veins . . . Pastor Dana Moore laid his hands on the Texas death row inmate’s chest” as a “prayer rang out . . . in a small room known as the death chamber.”²²⁵ Ramirez may have died a convicted murderer, but he did not die alone.²²⁶ When the Supreme Court handed down its decision in *Ramirez v. Collier*, it was not doing anything radical. It was merely acting on two quintessential American rights: the freedom of religion and the protection from cruel and unusual punishment, and the unavoidable recognition by the Court that Ramirez was a human being with unassailable rights. This hard-won decision should unquestionably be codified to ensure protection for future people in Ramirez’s position. It may seem galling to advocate for the people who do such terrible things, but as Justice Marshall said in *Furman v. Georgia*, “In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute.”²²⁷

224. María Luisa Paúl, *Texas Executes John Henry Ramirez, Who Won Religious Rights Supreme Court Case*, WASH. POST (Oct. 6, 2022, 4:36 AM), <https://www.washingtonpost.com/nation/2022/10/06/john-henry-ramirez-executed-texas/>.

225. *Id.*

226. *Id.*

227. *Furman v. Georgia*, 408 U.S. 238, 371 (1972) (Marshall, J., concurring). See also WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* act IV. sc. 1. l. 184–87 (“The quality of mercy is not strained / It droppeth as the gentle rain from heaven / Upon the place beneath. It is twice blest: / It blesseth him that gives and him that takes.”).

