# SUPREME COURT OF THE UNITED STATES

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## MORGAN *v.* ILLINOIS

CERTIORARI TO THE SUPREME COURT OF ILLINOIS

No. 91–5118. Argued January 21, 1992—Decided June 15, 1992

The trial of a capital offense in Illinois is conducted in two phases, with the same jury determining both a defendant's guilt and whether the death penalty should be imposed. In accordance with state law, the trial court conducted the *voir dire* to select the jury for petitioner Morgan's capital murder trial. The State requested, pursuant to *Witherspoon* v. *Illinois,* 319 U.S. 510, that the court ask the jurors whether they would automatically vote against the death penalty no matter what the facts of the case were. However, the court refused Morgan's request to ask if any jurors would automatically vote to impose the death penalty regardless of the facts, stating that it had asked substantially that question. In fact, every empaneled juror was asked generally whether each could be fair and impartial, and most were asked whether they could follow ``instructions on the law.'' Morgan was convicted and sentenced to death. The State Supreme Court affirmed, ruling that a trial court is not required to include in *voir dire* a ``life qualifying'' or ``reverse-*Witherspoon*'' question upon request.

*Held:* The trial court's refusal to inquire whether potential jurors would automatically impose the death penalty upon convicting Morgan is inconsistent with the Due Process Clause of the Fourteenth Amendment. Pp.6–20.

(a)Due process demands that a jury provided to a capital defendant at the sentencing phase must stand impartial and indifferent to the extent commanded by the Sixth Amendment. See, *e. g., id.,* at 518. Pp.6–9.

(b)Based on this impartiality requirement, a capital defendant may challenge for cause any prospective juror who will automatically vote for the death penalty. Such a juror will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require. Cf., *e. g., Wainwright* v. *Witt,* 469 U.S. 412, 424. Pp.9–10.

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(c)On *voir dire* a trial court must, at a defendant's request, inquire into the prospective jurors' views on capital punishment. Part of the guaranty of a defendant's right to an impartial jury is an adequate *voir dire* to identify unqualified jurors. Morgan could not exercise intelligently his challenge for cause against prospective jurors who would unwaveringly impose death after a finding of guilt unless he was given the opportunity to identify such persons by questioning them at *voir dire* about their views on the death penalty. Cf. *Lockhart* v. *McCree,* 476 U.S. 162, 170, n. 7. Absent that opportunity, his right not to be tried by those who would *always* impose death would be rendered as nugatory and meaningless as the State's right, in the absence of questioning, to strike those who *never* do so. Pp.10–14.

(d)The trial court's *voir dire* was insufficient to satisfy Morgan's right to make inquiry. The State's own request for questioning under *Witherspoon* and *Witt* belies its argument that the general fairness and ``follow the law'' questions asked by the trial court were enough to detect those in the venire who would automatically impose death. Such jurors could in all truth and candor respond affirmatively to both types of questions, personally confident that their dogmatic views are fair and impartial, while leaving the specific concern unprobed. More importantly, the belief that death should be imposed *ipso facto* upon conviction reflects directly on an individual's inability to follow the law. Pp.15–17.

(e)A juror to whom mitigating evidence is irrelevant is plainly saying that such evidence is not worth consideration, a view which has long been rejected by this Court and which finds no basis in Illinois statutory or decisional law. Here, the instruction accords with the State's death penalty statute, which requires that the jury be instructed to consider any relevant aggravating and mitigating factors, lists certain relevant mitigating factors, and directs the jury to consider whether the mitigating factors are ``sufficient to preclude'' the death penalty's imposition. Since the statute plainly indicates that a lesser sentence is available in every case where mitigating evidence exists, a juror who would invariably impose the death penalty would not give the mitigating evidence the consideration the statute contemplates. Pp.17–20.

142 Ill.2d 410, 568 N.E. 2d 755, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, O'CONNOR, KENNEDY, and SOUTER, JJ., joined. SCALIA, J., filed

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a dissenting opinion, in which REHNQUIST, C. J., and THOMAS, J., joined.