No. 19-5783

ORIGINAL

In the Supreme Court of the United States

MONICA TOWNSEND, PETITIONER

v.

ERIK VASQUEZ, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the State of Texas contravene the Fourteenth Amendment of the United States Constitution Due Process and Equal Protection Clauses by ignoring Texas Family Code 201.005, and not following case law or procedure regarding voided orders and judgments?

2. Did the State of Texas contravene the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution by basing its opinion on fabricated facts, evidence not entered in discovery, and evidence not found in the trial court record?

3. Did the State of Texas contravene the Fourteenth Amendments of the United States Constitution Due Process and Equal Protection Clauses by ignoring criminal convictions for the purposes of rendering a civil court decision?

4. Did the State of Texas contravene the Fourteenth Amendment of the United States Due Process Clause of the Constitution by not following case law or procedure for determining via a challenge that the evidence was legally and factually sufficient to support to the best interests finding of the trial court?

5. Did the State of Texas contravene the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution by fabricating case law?

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The opinion of the Texas Supreme Court to review the merits appears at Appendix C to the petition and is unpublished. The Texas Supreme court Denied Review of the petition for review. The order of the Texas Supreme Court denying Rehearing can be found in Appendix D. The opinion of the First Court of Appeals affirms trial court judgment can be found in Appendix A. The opinion and the order of the First Court of Appeals Houston Texas is reported 569 S.W.3d 796, 12-20-19. Monica Nicole Townsend v. Erik Allen Vasquez, 01-17-00436-CV (Tex. App. 2017). The trial court order of the 300th District Court of Brazoria County can be found in Appendix B.

JURISDICTION

The date the Texas Supreme Court denied my Petition for Review was March 22, 2019. A copy of that decision appears at Appendix C. A timely petition for rehearing was thereafter denied on the following date: May 31, 2019, and a copy of the order denying rehearing appears at Appendix D. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

STATEMENT OF CASE

Listing of the texts of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Fifth Amendment to the United States Constitution

> *"No person shall be held to answer for a capital, or otherwise infamous crime, unless a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation".*

Sixth Amendment to the United States Constitution

> *"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense".*

Fourteenth Amendment to the United States Constitution

> *"Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws. Section 2:*

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives' in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for the participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state. Section 3: No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may be a vote of two-thirds of each House, remove such disability. Section 4: The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. Section 5: The Congress shall have power to enforce, by appropriate legislation, the provisions of this article".

Under the Fifth and Fourteenth Amendments, prior to deprivation of "Life, liberty, or property" the government must provide a **fair** legal proceeding. In the 1923 case, Meyer v. Nebraska 262 U.J. 390 (1923), Justice James Reynolds introduced a broad definition of the term "Liberty". Justice Reynolds wrote, "without doubt, liberty denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God without according to the

dictates of his own conscience, and generally to enjoy the privileges long recognized to common law as essential to the orderly pursuit of happiness by freeman."

There are substantive due process rights for any deprivation of rights which include: an unbiased tribunal, notice of the proposed action and the grounds asserted for it, opportunity to present reasons why the proposed action should not be taken, the right to present evidence including the right to call witnesses, the right to know opposing evidence, the right to cross-examine adverse witnesses, an opportunity to be represented by counsel and requirement that the tribunal prepare a record of the evidence presented.

In Matthews v. Eldridge 1424 U.S. 319, 335 (1976), the Supreme Court established a three-part test to determine the appropriate level of due process for a deprivation:

(1) Analyze the private interests affected by the official action. The greater the value of deprivation, the greater the due process that must be affected.

(2) Evaluate the risk of an erroneous deprivation of the private interest through the procedures used and the probable value of additional or substitute procedural safeguards. This requires a court to examine the risk of wrongful deprivation of an interest and the likelihood that an important interest will be erroneously deprived without safeguards. A court will prescribe additional procedural safeguards if there is a greater possibility that an interest will be wrongfully deprived.

(3) Analyze the government's interest in administrative and fiscal efficiency factor. As additional procedural safeguards require more time and money, they become less

likely to be required. The government has an interest in efficiency to not only avoid a backlog of appeals, but also avoid increased litigation expenses and time-consuming hearings. Procedural due process prevents the deprivation of one's life, liberty, or property without appropriate procedures to safeguard one's interests. See Mathews v. Eldridge 424 U.S. 319, 334 (1976) establishing a three-part test to determine the process due when government action threatens liberty or property.

Procedural due process is a United States Constitutional guarantee that a person may not be deprived of "life, liberty or property" by governmental action without notice and a meaningful opportunity to be heard.

See Mullane v. Cent. Hanover Bank & Trust CO., 339 U.S. 306, 313 (1950).

There is no doubt that at a minimum a deprivation of life, liberty or property should be preceded by notice and opportunity for hearing appropriate to the nature of the case.

See also Armstrong v. Manzo, 380 U.S. 545, 550 (1965); Fuentes v. Shevin, 407 U.S. 67, 80 (1972) noting that the "central meaning of procedural due process" is the "right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner". The Supreme Court recognizes the core rights of due process are notice and hearing. Procedural due process, applied in civil trials, grants a right to notice and a hearing whenever government action threatens a loss.

See Fuentes, 407 U.S. at 80 noting that the "central meaning of procedural due process" is the "right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner".

See United States v. Salerno 481 U.S. 739, 746 (1987) states that "*the Due Process Clause protects individuals against two types of government action through substantive due process and procedural due process doctrines*".

See Rochin v California 342 U.S. 170, 208 (1952) "*describing the Due Process Clause as the least specific and most comprehensive protection of liberties*".

See Mullane v. Cent. Bank & Hanover Trust Co. 339 U.S. 306, 313 (1950) states "*Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case*".

The notice-and-hearing principle can be found in the Supreme Court's decision in Fuentes v. Shevin 407 U.S. 67 (1972). The court emphasized that "*for more than a century the central meaning of procedural due process has been clear. Parties whose rights are to be affected are entitled to be heard, and in order that they may enjoy that right they must be notified*".

For the civil model of procedural due process there are four distinct elements of procedural due process: participatory procedures that the affected party is present; an

unbiased adjudicator that the decision-maker is a neutral nonparty; prior process the hearing precedes that adverse action; and continuity hearing rights attach at all stages.

Under Equal Protection the State must treat all individuals in the same manner as others in similar conditions and circumstances. The Fifth Amendment's Due Process Clause requires the United States government to practice equal protection. The Fourteenth Amendment's Equal Protection Clause requires States governments to practice equal protection. Equal Protection mandates that the State not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.

Before the Fourteenth Amendment's Equal Protection Clause the Bill of Rights was arguably limited to guarantee civil protection of individuals from the depredations of the Federal Government. When the Fourteenth Amendment was ratified the rights of the Constitution were extended to provide individuals Constitutional protection by State governments as well.

The Fourteenth Amendment was implemented in 1868 after the tumultuous and devastating American Civil War. The Fourteenth Amendment was directly preceded the Thirteenth Amendment which abolished slavery. To combat the Black Codes enacted in Southern states Congress implemented the Civil Rights Act of 1866. This Civil Rights Act required that all citizens regardless of race and color have the equal benefit of laws. When the Southern States raised doubts about whether civil rights extended to former slaves under the United States Constitution, a disagreement which in large part was the

cause of the American Civil War, Congress and the States mandated the Equal Protection Clause of the Fourteenth Amendment.

In order to ensure the fair practice of the Equal Protection Clause, the United States Supreme Court scrutinizes distinctions when it encounters suspect classifications or when there is clear intent and / or evidence by the State to discriminate. It is by this means that the Equal Protection Clause ensures the fair treatment of all legal citizens of the United States.

In Townsend versus Vasquez the Petitioner will show, based on the trial court record, that the Petitioner did not receive a fair, just or impartial trial from the judiciary. In Townsend versus Vasquez the State of Texas clearly violated the Constitutional guarantees of the 5th, 6th and 14th Amendments of the United States Constitution. If Townsend versus Vasquez is allowed to stand, not only are there many substantial Texas and United States cases that will become direct jeopardized but if this ruling is left to stand, based on this ruling, the Constitutional guarantees provided to United States citizens are so severely abrogated that the judiciary role of providing fair and impartial review and implementation of laws and legal rules will be rendered moot.

In Townsend versus Vasquez the Trial Court contravened the Petitioner's Constitutional Rights by making errors in law, fabricating and misrepresenting facts and evidence, using insufficient evidence to support a best interest finding and using insufficient evidence to support the trial court judgment.

In Townsend versus Vasquez the Appellant Court's contravened the Petitioner's Constitutional Rights when the decisions made the same fundamental errors as the trial court and added a series of false allegations and fabricated facts and evidence not supported in the trial court record

In Townsend versus Vasquez the Texas Supreme Court contravened the Petitioners Constitutional rights by not following procedure or case law in violation of the 14th amendment of the United States Constitution.

The Petitioner presented to both the First Court of Appeals and the Texas Supreme Court arguments backed with relevant case law and evidence based in the trial court record which showed that the underlying orders were void and needed to overturned and remanded back to the trial court. Both the appellate court and the Texas Supreme Court did not follow correct procedure or law. Neither the Texas First Court of Appeals nor the Texas Supreme Court overturned the decision and therefore both courts violated the petitioners 14th Amendment rights of due process and equal protection of law.

The trial court violated Texas Family Code Section 201.005. The Petitioner filed a written objection to the referral of the case to another judge on October 27, 2016. The objection was filed on the same day the referral was received therefore it was within the required ten days. Based on this objection the presiding Judge of the 300th District Court of Brazoria County should have been the judge for the trial on the merits. Judge Warren of the County Court of Law # 3 presided over the trial on the merits when a timely objection was filed. No other judge had the power to render judgment and so any other

judgment should have been rendered was void. Based on a Texas State Court decision rendered by a judge that was not the judge that presided on the merits of the case the Appellate Court and the Texas Supreme Court did not have jurisdiction to consider the merits of the appeal on a voided judgment and were therefore required to overturn the decision. By not following procedure or law both the Texas Appeals Court and the Texas Supreme courts are violating the Fourteen Amendment Due Process and Equal Protection of law.

The Petitioner showed the Texas Appellate Court and the Texas Supreme Court that the underlying judgments were void because courts do not have jurisdiction to decide the merits of an appeal from a voided judgment. The Petitioner's case was a non jury trial where Judge Warren of the County Court of Law # 3 presided over the bench trial, and Judge H uffstetler of the 300th District court signed the final order on March 13, 2017 without being present at the bench trial to hear the disputed facts, the contested evidence, or the witnesses' testimonies. Since the trial court's judgment was rendered by a judge other than the one who presided over the bench trial and heard the evidence the judgment is void. A judgment rendered by a judge who has not heard any evidence on which the judgment is based is void.

See Masa Custom Homes, LLC v. Shahin, 547 S.W. 3d 332, 335 (Tex. App.-Dallas 2018, no pet.); Cooper v. Campbell, No. 05-17-00878-CV,2018 WL 3454756, at*3; (Tex. App.-Dallas July 18, 2018, no. pet. h).

The court lacks jurisdiction to address the merits of an appeal arising from a void judgment. Masa Custom Homes, 547 S.W. 3d 621, 624 (Tex. 2012) (stating that "appellate courts do not have jurisdiction to address the merits of appeals from void orders or judgments)".

On November 6, 2018 the Texas First Court of Appeals issued a judgment in Thomas Malone vs. PLH Group, Inc. and Power Line Services Inc. "Appellate courts have an obligation to consider their jurisdiction even if not raised by the parties. We have determined that we have no jurisdiction to consider the merits of this appeal because the parties engaged in a non jury trial, one judge heard all the contested evidence, and another judge signed the final judgment, making the final judgment void. We set aside the judgment and remand the case". The order also states "Appellate courts are required to consider their jurisdiction sua sponte. Freedom Commc'ns v. Coronado, 372 S.W. 3d 621, 624 (Tex. 2012). They always have jurisdiction to determine their jurisdiction. Houston Mun. emps. Pension Sys. v. Ferrell, 248 S.W. 3d 151, 158 (Tex 2007). The Dallas Court of Appeals has addressed the issue whether an appellate court has jurisdiction over an appeal of a judgment entered by a judge other than the one who received the evidence during the bench trial. See Masa Custom Homes, 547 S.W. 3d at 338; Cooper, 2018 WL 3454756, at *3. In both cases, the court held that the judge who did not receive evidence lacked the power to render judgment so rendered was void.

See Masa Custom Homes, 547 S.W. 3d at 338; Cooper, 2018 WL 3454756, at *3.

In both cases the court held that it did not have jurisdiction to address the merits of the appeal arising from a void judgment. Masa Custom Homes, 547 S.W. 3d at 338; Cooper, 2018 WL 345756, at *3;

See Freedom Commc'ns, 372 S.W. 3d at 623 (stating that "appellate courts do not have jurisdiction to address the merits of appeals from void orders or judgments").

Since both the underlying judgments were void both the First Court of Appeals and the Texas Supreme Court were required to overturn and remand back to the trial court. Neither court did what was required despite relevant arguments, case law and evidence in the trial court record. The failure to provide consistent decisions with same set of legal circumstances violates the guarantees of due process of the Fourteenth Amendment of the United States Constitution since despite identical legal circumstances and identical case law the outcome was different in Petitioners case then in the Thomas Malone vs. PLH Group Inc. case. Even when substantially identical legal circumstances and identical case law was pointed out the same judge used a different procedure and came to a different decision in Petitioners case. Despite substantially identical legal circumstances the outcome was different in the Petitioner's case which is the definition of biased and violates due process. This issue of bias and the impact of this decision on all Texas case law by allowing Texas judges to make different judgements based on the same sets of legal circumstances is why it is critical for the United States Supreme Court to pick up this case and issue a clear ruling that reinforces the Due Process Clause of the United States Constitution Fourteenth Amendment.

The Texas Court of Appeals violated the Fifth, Sixth and Fourteenth Amendments of the United States Constitution by basing its decisions on fabricated facts, evidence not entered in discovery and evidence not found in the trial court record. When the appeals courts create false facts that are not in the trial court record the legal and governmental decision making process is totally clearly contrary to any reasonable law and legal process and any and all guarantees of the rights of citizens by the United States Constitution.

The fabricated facts are too many to enumerate here but a few of the critical ones are listed.

The Texas First Court of Appeals stated that that Vasquez and his current wife have 'two **biological** sons' together. Since the issue of parental rights is the basis of the Townsend versus Vasquez case this fabricated case is central to the understanding and decision making for this case. If Vasquez had two biological as well as C. V. than Vasquez would have established a pattern of being an engaged father. However there was no evidence presented for this bizarre 'fundamental fact' in the trial record. News of the additional **biological** children should be very surprising news to the State of Texas since Vasquez has claimed in all his legal filings that the children living with him are **not** his biological children. The trial court record shows that Vasquez stated that he lives with his wife and three **step children**, two boys and a girl. Vasquez's current wife also stated that the children that live with them are Vasquez's **step children** and that each of the three step children have a different biological father. C.V. is the only biological child to Vasquez. The fabricated fact is used as the basis for the First Court of Appeals decision

but the first time it shows up is in the decision. Creating facts for the purposes of a court decision violates not only any reasonable legal procedure but a common sense understanding of reality.

Another fabricated fact used as a basis for the appeals court decision was its claim that Vasquez initiated a suit seeking to modify the **conservatorship** order to grant him the exclusive right to determine C.V's domicile. The trial court record reflects that Vasquez initiated the suit by filing a modification r**equesting the exchange location be changed** to the Missouri City Police Station. **No change in conservatorship** was requested in the initial filing of the modification. Vasquez requested the exchange to be at the Missouri City Police Station a second time in a motion to modify temporary orders. Townsend was falsely accused by both the trial court and the appellate court of forcing the exchanges to be at a police station and demanding the police to be present. However there is no evidence in the trial court record that **Townsend** forced for the exchange location to be at the police station. There is also no evidence in the legal trial court record that Townsend demanded or forced police officers to be present at the exchanges before or after Vasquez requests for the police station. On the contrary the trial court record instead shows that Vasquez requested on two separate occasions to exchange at the Missouri City Police Station. Exchanges done at a police station are **standard procedure** and standard recommendations for domestic violence cases as that location gives protection for everyone involved.

The appeals court opinion had a lengthy discussion about the idea that Townsend was untruthful about the physical abuse done to her by Vasquez. However Vasquez is a

twice convicted domestic violence felon. Both criminal convictions had an affirmative finding for family violence. Vasquez plead guilty to both convictions making the convictions final and indisputable fact. Vasquez admitted on the stand that he was convicted of domestic violence. A copy of Vasquez's Texas Department of Public Safety Criminal History can be found in the trial court record to confirm his domestic violence convictions against Townsend. Vasquez's criminal convictions are the salient factor of this case. Judges can not ignore Vasquez's criminal convictions for the purposes of a civil court decision since that violates the fundamental guarantees of the United States Constitution including the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

The appeals court opinion was based on the false claim that Townsend did not provide documentation to prove her traumatic brain injury. The trial court record shows a letter from a physician stating that Townsend has been diagnosed with Post Traumatic Stress Disorder, Generalized Anxiety Disorder and that Townsend has a history of both concussions and traumatic brain injury from domestic violence. The trial court record provided proof that Townsend was currently enrolled in a case study for individuals with traumatic brain injury through TIRR Memorial Hermann Hospital and The University of Texas. The trial court record also reflects that both Townsend and C.V. were documented by CPS as victims of family violence and that Vasquez was documented as the perpetrator of the violence. The trial court record shows Townsend and C.V. were put in a domestic violence victim escape program upon Townsend leaving the relationship and filing for divorce. Judges cannot ignore salient facts that are in the

record for the purposes of creating a decision, that idea violates the purpose of the legal system and renders the judgements of a court irrelevant since without following the proper legal process the court process would be become a judge making a decision based on reading the patterns of the coffee grounds in their daily cup of coffee.

The appeals court opinion was largely based on the fabricated fact that Townsend has troubling pathologies and was untruthful and was trying to hide the pathologies. The trial court record does not reflect this. The only expert's opinion that the appeals court decision took into consideration was Dr. Alvarez opinion yet Dr Alvarez was only one of the mental health professionals that evaluated Townsend. When another licensed psychologist conducted a second psychological evaluation on Townsend the results were "It appears also that Ms Townsend has been motivated for treatment and has consequently engaged in appropriate help-seeking behavior, to the end, current assessment results do not find Ms Townsend to be "unstable" rather, test findings and diagnostic impressions are consistent with the reported history of abuse. No evidence of psychopathology with the aforementioned diagnosis is supported at this time". The evaluator also stated that "upon greeting the clinician, she was pleasant. Ms Townsend's mood was reported as good and her affect was appropriate to content. She was corporative and forthcoming during the evaluation". The court ordered substance evaluator stated "the client is motivated to complete the requirements of the court, and she appeared honest and open throughout the clinical interview". Two other evaluators found that Townsend was in fact being truthful and the other psychologist did not see troubling psychopathologies; she found Townsend diagnosis to be a direct result of the

abuse Townsend endured from Vasquez. Townsend had been under the care of a Psychiatrist for five years that had diagnosed her with Post Traumatic Stress Disorder, Generalized Anxiety Disorder which can be found in the trial court record in both a letter from the physician and from a diagnostic form from Texana Center confirming the diagnosis signed by the physician. The physician that had been treating Townsend for year's diagnosis and clinical opinion did not agree with Dr. Alvarez's findings. A physician's opinion carries more weight than a licensed psychologist opinion and the psychologist licensure requires that the psychologist uphold the physician's diagnosis.

Another fabricated fact is that the appeals court decision was based on states that Townsend's mother testified that C.V. increasingly looks forward to seeing Vasquez. The appeals court opinion further claims that C.V. comes back to Townsend a happy child after the visits with Vasquez. The trial court record does not reflect any of these statements. The appeals court decision also made the false fact that Townsend claimed that Dr Alvarez report was issued a **year** before trial. This statement is not reflected in the trial court record The trial court record shows that in her report Alvarez last contact was August 20, 2015, the trial court record reflects that the date of trial was January 31, 2017 and February 1,3 and 8 2017 which was an **eighteen month** period since Dr. Alvarez had any contact.

The appeals court opinion was based on the fabricated fact that the trial court record does not reflect C.V. having a witness to whom the child wishes to live with. The trial court record reflects there are **three witnesses** to whom C.V. wanted to live with. Townsend stated that C.V. wanted to stay living with the mother. C.V. therapist also

stated that C.V. wishes were that he wanted to live with his mother and that he was concerned about having to go and live with his father. Dr Alvarez also was a witness to whom the child wanted to live with, she stated that when the child was asked to pick the barn that the child wanted to go to C.V. asked if this was asking who he wanted to live with and the child picked the mothers barn. C.V. wishes were to live with his mother.

Another fabricated fact that the appeals court decision was based on that is not reflected in the trial court record is Townsend forced Vasquez to undergo ETG testing. The appeals court decision also claims that Vasquez passed all the ETG tests. The appeals court decision claims Townsend was untruthful about Vasquez alcohol consumption and C.V.'s reported fearfulness of Vasquez's drinking. **The trial court record does not support these claims.** Townsend did not cause or require Vasquez to undergo ETG testing since ETG testing was a mutually agreed upon in an agreed temporary order. Both parties agreed to both undergo ETG testing. The court ordered substance abuse evaluator stated that "There is a discrepancy in the time frame of his reported alcohol use, and identifies with the behavior and symptoms associated with an alcohol use problem". The evaluator findings were that Vasquez had a current problem with alcohol and one of her recommendations was that he submits to random ETG testing. Vasquez admitted to drinking on the stand and admitted to leaving C.V. and another small child in a travel trailer alone while Vasquez was drinking outside for hours. The trial court record reflects that in both C.V. therapist deposition and case notes safety plans were implemented because C.V. did not feel safe with Vasquez because of drinking. Both the court ordered evaluator, C.V.'s therapist and Townsend all shared concerns in

regard to Vasquez's drinking and C.V.'s welfare. It was falsely claimed that Townsend agreed that Vasquez passed all ETG tests. This statement in the appeals court decision is not reflected in the trial court record. Townsend's attorney objected during trial to the ETG tests results being used as evidence since Townsend never received or saw any of the test results despite requesting copies of the test results. The ETG tests results were never entered as evidence never entered in discovery and cannot be found in the trial court record. Vasquez's ETG test results cannot be used as a deciding factor in the appeals court decision on appeal.

Townsend challenged the court's finding that the change in conservatorship is in C.V.'s best interest. The appellate court reviews the record in deciding a challenge to the courts best interest finding. In re E.C.R., 402 S.W. 3d 239, 250 (TEX. 2013). In determining the best interests of children a court may consider: (1) the desires of the child (2) the emotional and physical danger to the child now and in the future (3) the emotional and physical danger to the child now and in the future (4) the parenting abilities of the individuals seeking custody (5) the programs available to assist those individuals to promote the best interest of the child (6) the plans for the child by those individuals or the agency seeking custody (7) the stability of the home or proposed placement (8) the acts or omissions of the parent which may indicate that the existing parent child relationship is not a proper one (9) any excuse of the acts or omissions of the parent. Holly v. Adams, 544 S.W. 2d 367, 371' B72 (Tex. 1976). In our review of the trial court findings, we apply a hybrid abuse of discretion analysis to determine whether the trial court (1) had sufficient information on which to exercise its discretion, and (2)

erred in its application of the discretion. See In re C.A.M.M., 243 S.W. 211, 220 (TEX. App. Houston [14th Dist.] 2007, pet. filed); see also Sotelo v. Gonzales, 170 S.W. 3d 783, 787 (Tex. App.- El Paso 2005, no pet.). Thus, legal and factual sufficiency is not independent grounds for reversal, but instead are factors to be considered in determining whether the trial court abused its discretion. Zeifman v. Michels, 212 S.W. 3d 582, 587 (Tex. App. Austin 2006), pet. denied. To determine if the evidence is legally sufficient, we review the entire record, considering evidence favorable to the finding if a reasonable fact finder could and disregarding evidence contrary to the finding unless a reasonable fact finder could not. City of Keller v. Wilson, 168 S.W. 3d, 828 (Tex. 2005). The evidence is factually insufficient if the finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W. 2d 175, 176 (Tex. 1986). After assessing the sufficiency of the evidence, we determine whether based on elicited evidence, the trial court made a reasonable decision. See Zeifman, 212 S.W. 3d at 588.

Townsend contended that the evidence is legally and factually insufficient to support the judgment of the trial court. Legal and Factual insufficiency are not independent grounds for reversal, but instead are factors considered in determining whether the trial court abused its discretion. See Zeifman v. Michels, 212 S.W. 3d 582, 587 (Tex. App. Austin 2006, pet. denied). To determine if the evidence is legally sufficient, we review the entire record considering evidence favorable to the finding if a reasonable factfinder could, and disregarding evidence contrary to the finding unless a reasonable fact finder could not. City of Keller v. Wilson, 1688 S.W. 3d, 828 (Tex. 2005). When a party attacks the factual sufficiency of the evidence supporting an adverse finding on which it bore the

burden of proof, it must demonstrate on appeal that the finding was against the great weight and preponderance of the evidence. See Dow Chem. Co. v. Francis, 46 S.W. 3d 237, 241 (Tex. 2001). As with any factual sufficiency challenge, a court of appeals will review the evidence to determine if the finding is so against the great weight and preponderance of the evidence that it is manifestly unjust, shocks the conscience, or clearly demonstrates bias. See In re C.H., 89 S.W. 3d 17, 25 (Tex. 2002).

The trial court decision did not meet the requirements of the legal and factual sufficiency challenges made for the best interest finding or the legal and factual sufficiency challenge that the trial court had enough evidence to support its decision. The Texas First Court of Appeals did not follow case law or procedures for the legal and factual sufficiency challenges made for both the best interest finding or the legal and factual sufficiency challenge that the trial court had enough evidence to support its decision. The failure to follow the rules for the sufficiency challenge is a Due Process violation of the 14th Amendment of the United States Constitution.

The Texas State Courts fabricated evidence in their decisions.

The Texas State Courts decision did not examine and review the entire trial court record and it did not weigh the evidence that is in the trial court record since no record references were made and no relevant facts to the case were given or stated.

The Texas State Courts background did not take into account the totality of the expert witnesses' testimony or evidence that was in the legal trial court record.

The Texas State Courts relied on a diagnosis of parental alienation as the basis for their rulings. There is no diagnosis of parental alienation syndrome or parental alienation in the DSM IV. Court cannot use invalid diagnosis as the basis of judicial rulings.

The First Court of Appeals erred in its opinion that Judges have the discretion to ignore criminal convictions for the purposes of a civil court judgment. If a criminal conviction is not a legal fact then the United States court process serves no purpose since the judicial role as "triers of facts" becomes irrelevant. Judges must consider relevant evidence in the trial court record when making a ruling. The decisions that the appeals court judges made in Petitioners case are based on ignoring criminal conviction yet Vasquez criminal convictions are the salient factors of the case since Vasquez is a twice convicted domestic violence felon with a history and pattern of abuse. The Texas State Courts violated Texas State law by granting Vasquez the exclusive right to designate primary residence and by granting joint managing conservators. Texas Family Code 153.004 (b) The Court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child, including a sexual assault in violation of section 22.011 or 22.021, Penal Code, that results in the other parent becoming pregnant with the child. A history of sexual abuse includes a sexual assault that results in the other parent becoming pregnant with the child, regardless of the prior relationship of the parents. It is a rebuttable presumption that the appointment of a parent as the sole managing conservator of a child or as the conservator who has the exclusive right to determine the primary residence of a child is

not in the best interest of the child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse or a child. (2)(e) It is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child. Single act of violence or abuse can constitute a "history" of physical abuse for purposes of statute providing that a court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent or child. In re L.C.L.(App. 5 Dist. 2013) 396 S.W. 3d 712. The ruling is a clear violation of both due process clause and the equal protection of laws clause of the Fourteenth Amendment of the United States Constitution.

The First Court of Appeals violated the fifth, sixth and fourteenth amendments by fabricating case law for the purposes of their decision. The First Court of Appeals used case law in the opinion that was not relevant to the arguments or issues that were being made. The appeals court judgment used case law that supported the overturning of the order and did not support maintaining the decision. The case law supported the underlying judgment to be overturned and remanded to the trial court. The appeals court opinion stated that "A narrow exception exists when one judge presides over the entire bench trail and another judge, who heard no evidence, renders the final judgment based on disputed facts. See id. at * 2, Masa Custom Homes. 547 S.W. 3d at 335-336; W.C.

Banks, Inc. v. Team, Inc. 783 S.W. 2d 783, 785-786 (Tex. App.-Houston [1st Dist] 1990, no writ)". This is a fabrication of case law, the statement cannot be found anywhere in either of the cases. In actuality both of the cases affirm Petitioners argument that the trial courts judgments are void and the appellate court did not have jurisdiction to decide the merits of the appeal. In the appeals court judgment there is repeated instances of fabricated and misrepresented case law for the purposes of crafting a legal decision. The decision further ignored relevant case law for the purposes of a decision. This is a clear violation of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

The appeals court judges violated the Due Process Clause of the Fourteenth Amendment by not considering Petitioner's Reply Brief and evidence that was entered for a Motion for a New Trial hearing which is what the appeal was based on. The appeals court opinion did not take into consideration the Petitioner's Reply Brief that was filed within the specified time limits. The appeals court judges were required to consider the arguments, case law and evidence in consideration for the decision therefore it is a due process violation since the judges did not follow the required procedure. The appeals court decision also claimed that some of the evidence that Petitioner referred to was evidence that was entered for a court reporters contest hearing to Petitioner's affidavit of inability to pay court costs and further claimed that the record suggests they were not. This is both a due process violation and another example of fabrication of the trial court record. The record shows that on the same day of the court reporters hearing there was

also a hearing for A Motion for A New Trial which is what the evidence referred to was entered for and is in the record and able to be used on appeal.

REASONS FOR GRANTING THE PETITION

In Townsend versus Vasquez the State of Texas violated the Constitutional guarantees of the 5th, 6th and 14th Amendments of the United States Constitution. If Townsend versus Vasquez is allowed to stand, not only are there many substantial Texas and United States cases that become directly jeopardized, the Constitutional guarantees provided to United States citizens are so severely abrogated that the judiciary role of providing fair and impartial review and implementation of laws and legal rules will be rendered moot.

The United States Constitution was designed to provide a government framework that had as its basis the application of fair rules and procedures. The United States Constitutional Amendments were implemented to place limits on government overreach. The United States government is comprised of citizens who act as legislators and judges. Any judge or a legislator is also a citizen and therefore the American governmental model is based on the idea that any and all citizens have the same rights that are independent of their role in American society so that no person is above or below the law. To reinforce the idea that governmental powers are a part of a permanent ruling class judges and legislators are often elected to terms of office, whereupon they can choose to stay or leave. Once they have left office they leave the trappings and privileges

of their office aside but they retain their fundamental and powerful rights as American citizens. When the judicial process ignores hard fought Constitutional guarantees legal decisions become words without meaning on paper, backed by no governmental or official processes. Without a Constitutional framework for legal decisions the risk is not only to the average citizen but the rights of the legal and legislators themselves since anyone could become subject to arbitrary legal decisions that would jeopardize the foundation of American governmental processes.

The American government was founded on a lie. The lie was the rights of the government were given to all its citizens when in fact African Americans were not given the rights of American citizens. The United States Supreme Court was historically complicit in perpetuating that lie that rights were dependent on standing or race or sex or class. The result of that lie was that the American Civil War was fought to establish whether any man should have more or less intrinsic rights backed by the United States Constitution. The Fifth and Sixth Amendments of the United States Constitution provided the framework for the Criminal and Civil legal systems. The Fourteenth Amendment was added to the United States Constitution after the American Civil War to make clear to rogue States that the United States affirmed its guarantees of rights applied to the rights of all its citizens. The American Civil War and its immediate aftermath made clear that the Constitution is and remains the final arbiter of laws and rules so that State Courts don't create new legal ideas or precedents and thereby legal and governmental systems descend into meaningless chaos.

The United States Supreme Court must ensure that Texas State Court legal decisions follow Constitutional and legal precedent and that the rulings rest firmly within the framework of the American governmental system. When decisions are made like the one in Townsend versus Vasquez it is imperative that the Supreme Court assert to the lower courts the importance of making fair, reasonable and consistent legal decisions. If Townsend versus Vasquez were allowed to stand the standard legal decision process would be that for any case, after potentially millions of dollars of effort are spent as they were in Thomas versus Malone, there would be a random legal decision making process, a free for all, where courts decisions are unknown and unknowable. No governmental system can function when the rules and laws are haphazard and implemented based on unseen influences.

State laws heavily impacts Federal law. As goes Texas there goes the nation would, in the case of Townend versus Vasquez, be an unfortunate precedent to set since it creates the presumption that for any legal decision judges can: manufacture facts that are not in evidence; ignore facts that are in evidence on the record; overturn previous judicial rulings to create inconsistent judgments; introduce fabricated case law for the purposes of crafting a legal decision, and ignoring criminal conviction for the purposes of a civil court judgment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, Monica Townsend

Date: August 27, 2019

PROOF OF SERVICE

I, Monica Townsend, do swear or declare that on this date, August 28, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORRI on each party to the above proceeding or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid.

The names and addresses of those served as follows: Victor A. Sturm, attorney of respondent, 2420 S. Grand Blvd Pearland Texas 77581.

I declare under penalty of perjury that the foregoing is true and correct.

Monica Townsend

Executed on August 27, 2019

CERTIFICATE OF COMPLIANCE

No.

Monica Townsend Petitioner

v.

Erik Vasquez Respondent

As required by Supreme Court Rule 33.1 (h), I certify that the petition for writ of certiorari contains 8493 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1 (d).

I declare under penalty of perjury that the foregoing is true and correct.

Monica Townsend

Executed on August 27, 2019