No. _____
(CAPITAL CASE)

IN THE
Supreme Court of the United States

BRYAN CHRISTOPHER BELL and ANTWAUN KYRAL SIMS, PETITIONERS,

v.

STATE OF NORTH CAROLINA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE
QUESTIONS PRESENTED

Courts have long recognized and honored their duty to root out the impacts of stereotype-based decision-making wherever it arises. They have not hesitated to overturn criminal convictions upon discovering discrimination on the basis of race or gender in jury selection. In contrast the North Carolina courts have abdicated their responsibilities, leaving the state to run roughshod over the equal protection rights of its citizens. Here, there is no question that the prosecutor struck a potential juror because she was a woman. Instead of remedying the odious error, the Supreme Court of North Carolina rewrote the state's postconviction statutes to bar relief.

At the petitioners' joint trial, the prosecutor responded to a *Batson* objection for the juror in question. He offered a single explanation: her arthritis. During unrelated proceedings in another case, the same prosecutor was asked to explain his strike of that juror. He insisted the strike was not because she was Black; it was because she was a woman. When Petitioners then raised a claim of gender-based discrimination based on this new revelation, the post-conviction court, after an evidentiary hearing, found that the strike was based on intentional discrimination. However, the Supreme Court of North Carolina refused to grant relief on novel procedural grounds, continuing a long line of decisions nullifying this Court's cases on discrimination in jury selection.

Two justices issued a blistering concurrence, affirming on stare decisis grounds, but explaining that they could not discern what the petitioners "could have done differently to achieve relief under our precedents, even . . . where a prosecutor has admitted under oath that he struck a juror based on her gender." In their view, the state has "effectively overruled *Batson* and *J.E.B.*"

This case presents the following question:

Whether this Court may review the merits of an undisputable violation of *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) where the state court applied a procedural bar that is neither independent of federal law nor adequate to bar review.

PARTIES TO THE PROCEEDING

All the parties to the proceeding are listed in the caption.

The petitioner is not a corporation.

RELATED PROCEEDINGS

State v. Bell:

State v. Bell, No. 01 CRS 2989-2901 (Onslow County), Superior Court of North Carolina. Judgement entered on August 24, 2001.

State v. Bell, No. 86A02, Supreme Court of North Carolina. Judgment entered on October 7, 2004.

Bell v. North Carolina, No. 04-9255, Supreme Court of the United States. Certiorari denied on May 23, 2005.

State v. Bell, No. 01 CRS 2989-2990 (Onslow County), Superior Court of North Carolina. Judgment entered on December 13, 2012, and order on remand entered on January 25, 2023.

State v. Bell, No. 86A02-2, Supreme Court of North Carolina. Judgment entered on March 21, 2025.

State v. Sims:

State v. Sims, 01 CRS 2993-2995 (Onslow County), Superior Court of North Carolina. Judgment entered on August 24, 2001 and judgment on resentencing entered on March 21, 2014.

State v. Sims, No. COA02-1262, Court of Appeals of North Carolina. Judgment entered on November 18, 2003.

State v. Sims, No. COA17-45, Court of Appeals of North Carolina. Judgement entered on August 7, 2018.

State v. Sims, No. 297PA18, Supreme Court of North Carolina. Judgment entered on March 21, 2025.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Bryan Christopher Bell and Antwaun Kyral Sims petition for a writ of certiorari to review the judgment of the Supreme Court of North Carolina.

INTRODUCTION

The Supreme Court of North Carolina has rewritten its postconviction rules to deny relief from the uncontestable finding of gender discrimination in this case with the highest of stakes. Mr. Bell, age 18 at the time of the offense, faces execution. Mr. Sims, age 17, faces life without the possibility of parole.

There is smoking gun evidence that the prosecutor discriminated on the basis of gender when he struck a Black woman from the venire. In his own words, when he struck the potential juror, he was "looking for male jurors" and was in need of a "potential foreperson." There is an undisturbed factual finding of intentional gender-based discrimination.

Instead of granting the relief the constitution requires, the Supreme Court of North Carolina did what it has always done: covered for the prosecution. The North Carolina appellate courts have *only once* granted a defendant *Batson* or *J.E.B.* relief where the State has offered a race- or gender-neutral explanation for its strike.

This time, Supreme Court of North Carolina avoided granting relief by holding that its postconviction relief statute would not accommodate the claim. Unlike most states, North Carolina's postconviction statute does not generally require an objection to be raised a trial to preserve a claim in postconviction. Instead, a claim cannot be

raised in postconviction if the record at trial was adequate to raise the issue on appeal. And North Carolina requires a trial objection in order to raise a *Batson* or *J.E.B.* claim on appeal. In this case, where the damning evidence of discrimination arose only after the appeal was completed, there was no *J.E.B.* objection at trial, meaning it could not have been raised on appeal, as North Carolina has also repeatedly held. But the Supreme Court of North Carolina rewrote its statute to, yet again, deny relief.

The Supreme Court of North Carolina's decades-long practice cannot stand. This Court should grant certiorari and make clear that the state and federal courts alike will not tolerate intentional discrimination in the administration of criminal law.

OPINIONS BELOW

The Supreme Court of North Carolina's March 21, 2025 opinions in the cases of both Mr. Bell and Mr. Sims are published. *State v. Bell*, 913 S.E.2d 142 (N.C. 2025), App. 2a; *State v. Sims*, 912 S.E.2d 767 (N.C. 2025), App. 53a.[1] The consolidated order in the Superior Court of North Carolina, dated January 25, 2023, is unpublished. App. 93a.

[1] Most of the relevant record is available on the Supreme Court of North Carolina's website. For Mr. Bell, that is here: https://tinyurl.com/State-v-Bell. For Mr. Sims, it is here: https://tinyurl.com/State-v-Sims. Additional court files from their respective cases are available at https://www.phillipsblack.org/bell-and-sims-v-north-carolina.

JURISDICTION

The North Carolina Supreme Court entered judgment in both cases on March 21, 2025. App. 2a, 53a. On May 21, 2025, Chief Justice Roberts granted an application for extension of time to file this Petition until on or before August 18, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).[2]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides in relevant part that the state may not "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

North Carolina General Statute section 15A-1419(a)(3) provides "grounds for the denial of post-conviction relief," including, as relevant here, the following: "Upon a previous appeal the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so." N.C. Gen. Stat. § 15A-1419(a)(3).

STATEMENT

A. Mr. Bell and Mr. Sims Are Charged with Murder

According to the State's evidence at trial, Chad Williams, Bryan Bell, and Antwaun Sims met at a game room in Newton Grove, North Carolina on January 3, 2000. At the time, Mr. Bell and Mr. Williams were both 18 years old; Mr. Sims was

[2] As discussed further below, no adequate and independent state ground bars this Court's review.

17. App. 3a–4a, 53a; Tr. 3341. Later that evening, the three of them hung out at a traffic circle where Mr. Bell stated he wanted to steal a car so he could leave town and avoid a probation violation hearing. *State v. Sims*, 588 S.E.2d 55, 57 (N.C. Ct. App. 2003). That ill-conceived plan resulted in the theft of Elleze Kennedy's car, her kidnapping, and, ultimately, her death. 4a.

The State indicted Mr. Bell, Mr. Sims, and Mr. Williams for multiple charges, including first-degree murder. App. 56a. Mr. Williams, eighteen years old at the time of the homicide, pled guilty, and agreed to testify against the other two and was ultimately sentenced to life without the possibility of parole. *Sims*, 588 S.E.2d at 59–60. The State then tried Mr. Bell and Mr. Sims at a joint trial in July 2001.

B. In Jury Selection, the State Explains Its Strike of a Potential Juror, Who Was Black and Female

Jury selection lasted approximately two weeks and involved 92 potential jurors. The State of North Carolina was represented by the elected District Attorney, Dewey Hudson, as well as Assistant District Attorneys Greg Butler and Robert Roupe. App. 94a. On the fourth day of jury selection, potential juror John Lain gave the bailiff a note saying he had vacation plans during a portion of jury selection. In response, Mr. Hudson suggested that Mr. Lain could return during a later portion of jury selection. He stated, "I mean, I'd like to have [a] few men. I would like to have a representative jury. There ain't no men." App. 100a, Trial Tr. 576–78. The court then

instructed Mr. Lain to return the following day, but he was never called again. Trial Tr. 580, App. 100a.

On the seventh day of jury selection, counsel for Mr. Sims used peremptory strikes on a male juror and a female juror. In response, the State, through Mr. Roupe, raised a *J.E.B.* objection to the strike of the male juror. Trial Tr. 1160; App. 105a. In support of the objection, the State argued that the attorneys for Mr. Sims had challenged all of the male jurors that had been passed to them. The attorneys for Mr. Sims explained that they struck the male juror because, among other things, he wanted someone to "pay" for the crimes, did not indicate that he could recommend a sentence of life without parole, and stated he would have financial problems if he had to serve on the jury and miss work. Trial Tr. 1161–64.

A few moments later, DA Hudson argued,

> [W]e are entitled to have a jury that's representative of the community. As the Court is aware, we have nothing but seven white women – seven women on the jury now, and we are entitled to have a jury that's representative of the community. I don't think it's fair for them to be able to take off all the men off the jury, and the case law supports that.

Trial Tr. 1164, App. 105a.

DA Hudson acknowledged that the attorneys for Mr. Sims had provided gender-neutral reasons for the strike. However, he said that he wanted to "put them on notice" of his concerns. Trial Tr. 1165. The trial court then stated, "All right. Since the State has withdrawn its motion, the Court will make no ruling on it . . . ." Trial Tr. 1165; App. 103a.

On the ninth day of jury selection, the clerk called Viola Morrow for voir dire. Under questioning by Mr. Butler, she explained that she was a housewife, that she had four children who were grown, and that her husband was a staff sergeant at Camp Lejeune. App. 109a; Trial Tr. 1626–27.

Mr. Butler also asked about an "illness" listed on Ms. Morrow's jury questionnaire. She explained that she had rheumatoid arthritis and that she was taking medication for it. Mr. Butler then asked about the church Ms. Morrow attended and magazines she read. App. 110a; Trial Tr. 1628–29. Mr. Butler then returned to the topic of the arthritis, asking whether it would prevent her from giving her "total, undivided attention" to the case. Ms. Morrow responded that her arthritis was unpredictable. She explained, "I don't know which day it's going to be." She said her arthritis could be incapacitating and that she did not know when it would affect her. She also explained that stress could affect her arthritis. App. 110a; Trial Tr. 1629–30.

Mr. Butler then asked whether "sitting in a trial . . . three or four weeks long" looking at "pictures that are very graphic and all" would affect her medical condition. Ms. Morrow responded, "I don't know. It could. I don't know." App. 111a; Trial Tr. 1630. A moment later, Mr. Butler said, "Your Honor, in light of Ms. Morrow's medical situation and her concerns about that, Your Honor, the State would like to thank and excuse her for the purposes of this trial . . . ." Trial Tr. 1631. The defense attorneys made a *Batson* objection. Trial Tr. 1632. The trial court found that the defense

attorneys had not made a prima facie case of discrimination. The court also asked whether Mr. Butler wanted to put a reason for the peremptory strike on the record, but he declined. App. 114a; Trial Tr. 1634.

The following day, Mr. Butler struck another juror and the defense attorneys again raised a *Batson* objection. The court again found that the defense attorneys had not made a prima facie case and, again, asked Mr. Butler for his reason for striking the juror. Mr. Butler said he was not required to give a reason under *Batson*. App. 113a; Trial Tr. 1724–25. The court responded that it would be a "good idea" to have the State's reason in order to preserve the issue for appeal given that the cases were being tried capitally. The court explained that its concerns involved Ms. Morrow, as well. App. 114a; Trial Tr. 1727–28.

DA Hudson then argued with the court about the necessity of providing a reason for striking the juror. He eventually said, "We'll do it," but the court responded, "I am now going to order you to give an explanation." Trial Tr. 1729. Mr. Butler then said that Ms. Morrow "indicated that she has rheumatoid arthritis" and that she "didn't know when she would get that sick and get to the point that she could not come to court." He also said that Ms. Morrow had "flare-ups" that "would affect her ability" to serve as a juror and that he believed she would "have a difficult time medically to sit on the jury." App. 114a; Trial Tr. 1731–32. After, the trial court overruled the *Batson* objections raised by the defense attorneys, including reaffirming its overruling of the objection to the strike of Ms. Morrow, and the

proceedings continued. Trial Tr. 1733. Ms. Morrow was later replaced by Phillip Griffith, a male juror, who was accepted by the State and seated by the court to serve on the jury. Trial Tr. 2058, 2075.

The jury later convicted Mr. Bell and Mr. Sims of first-degree murder. After a capital sentencing hearing, the jury recommended a sentence of death for Mr. Bell and life without the possibility of parole for Mr. Sims. Each defendant appealed. Because Mr. Bell was sentenced to death, he appealed directly to the Supreme Court of North Carolina. As part of his appeal, he raised several *Batson* arguments, including an argument that involved potential juror Morrow. However, the Court affirmed his convictions, *State v. Bell*, 359 N.C. 1 (2004), and this Court denied review, *Bell v. North Carolina*, 544 U.S. 1052 (2005).

Mr. Sims separately appealed to the North Carolina Court of Appeals, challenging the admission of evidence and portions of the State's argument in which the prosecutor compared Mr. Bell and Mr. Sims to "predators of the African [plain]." The Court of Appeals affirmed his convictions. *Sims*, 588 S.E.2d at 62.

C. An Affidavit Emerges Admitting to Discrimination

Both Mr. Bell and Mr. Sims sought post-conviction relief. While Mr. Bell's case was pending before the Superior Court and Mr. Sims' case was before the North Carolina Supreme Court, an affidavit from Mr. Butler emerged. In a separate case, he had been asked to explain his peremptory strikes against a number of Black potential jurors in capitally charged cases, including the strike of Ms. Morrow. App.

8a, 137a. Mr. Butler provided an affidavit for two cases, signing them under oath on January 9, 2012.

In his statement about the joint trial of Mr. Bell and Mr. Sims, Mr. Butler explained in a sworn statement his reasons for striking Ms. Morrow:

> Has 2 children age of Defendants. Has an illness rheumatoid arthritis. Can flare up any time and incapacitate her. State had only used 12 of its 28 preempts and 10 jurors were seated, all female. State was looking for male jurors and potential foreperson. Was making a concerted effort to send male jurors to the Defense as they were taking off every male juror.
>
> Batson motion denied, no PF case but allowed state to give on the record. (Did on p. 1731) P. 1634.

App. 216a.

The state's notes on Ms. Morrow's questionnaire also emerged in post-conviction proceedings. It included the following marking: "no men yet on panel, & we've already seated 10 jurors!" App. 220a.

In an affidavit for the other case, Mr. Butler stated that he struck another potential juror because he was looking for "strong male jurors" and wanted to "get someone stronger." He also said he used a peremptory strike on another potential female juror because he wanted "strong unequivocal jurors and a potential foreman." App. 218a.

On April 13, 2012, Mr. Bell amended his postconviction pleadings to add a *J.E.B.* claim. On December 13, 2012, the Superior Court Judge summarily denied his *J.E.B* claims.

In the meantime, on April 4, 2013, Mr. Sims filed his own postconviction claims, alleging a violation of *Miller v. Alabama*, 567 U.S. 460 (2012). App. 57a. The trial court granted the motion and, after resentencing, impose another sentence of life without the possibility of parole. He appealed, but the North Carolina Court of appeals affirmed. *See State v. Sims*, 818 S.E.2d 401 (N.C. App. 2018).

On December 5, 2018, the Supreme Court of North Carolina granted discretionary review in Mr. Sims case. However, on October 8, 2019, while the appeal was pending, Mr. Sims filed a postconviction petition raising a *J.E.B.* claim related to Mr. Butler's affidavit and notes. In response, that court entered an order remanding the case of an evidentiary hearing.

On September 20, 2019, Mr. Bell filed a limited petition for writ of certiorari seeking review of the *J.E.B.* claim. However, on February 17, 2022, it remanded Mr. Bell's case to the superior court for a joint evidentiary hearing with Mr. Sims, allowing the State's motion for such. App. 9a–10a.

D. A Trial Judge Finds Intentional Discrimination, but the Supreme Court of North Carolina Denies Relief

The evidentiary hearing was held on December 6–7, 2022 before Judge Henry. The State did not call Dewey Hudson or Greg Butler to testify. App. 129a. Mr. Sims presented a witness who described the proceedings in which Mr. Butler produced an affidavit. Hearing Tr. 11–25. Mr. Bell presented the testimony of Dr. Frank Baumgartner, an expert in statistical analysis. He reviewed the State's peremptory

strikes and determined that the State's strike rate for female jurors was 3.67 times higher than its strike rate for male jurors. App. 152a. He also testified that the State's peremptory strikes transformed the pool of eligible jurors from majority female to majority male. Hearing Tr. 93, 95.

On January 25, 2023, Judge Henry issued an order finding that the State's strike of Ms. Morrow was motivated in substantial part by discriminatory intent in violation of the Fourteenth Amendment to the United States Constitution and Article I, §§ 19 and 26 of the North Carolina Constitution. App. 156a. He also found that there was "no attempt by the State, through the testimony of the attorneys representing the State in that capital trial, to modify, correct or explain [Mr. Butler's] affidavit" and that Mr. Butler "was not called to testify in order to give him an opportunity to revise or provide an explanation." App. 139a.

On appeal, the Supreme Court of North Carolina did not disturb Judge Henry's finding that the State's strike of Ms. Morrow violated the Equal Protection Clause. However, the Court declined to grant relief based on the reasoning that Mr. Bell "failed to raise a *J.E.B.* objection during jury selection and 'was in a position to adequately raise' a *J.E.B.* claim on direct appeal," and therefore the claim was procedurally barred under North Carolina's post-conviction statute because it had not been raised previously. App. 30a–31a (citing N.C. Gen. Stat. § 15A-1419(a)(3)). The Court also held that Mr. Bell failed to establish good cause to overcome the procedural bar in N.C. Gen. Stat. § 15A-1419(a)(3). App. 29a. Although the appeal did

not involve any argument or finding that the *defense* violated *J.E.B.* by using peremptory strikes to remove male jurors, the Court stated that "[n]othing in this opinion commends the defense's practice of systematically eliminating men from the jury." App. 29a. The Court then applied the same reasoning to deny relief from the finding of *J.E.B.* error in Mr. Sims's case. App. 59a.

Justice Anita Earls issued a separate opinion stating that she concurred in the result only because she could not "discern what Bell or his counsel could have done differently to achieve relief under [North Carolina] precedent, even in this extraordinary instance where a prosecutor has admitted under oath that he struck a juror based on her gender." App. 32a. In her view, prior court decisions in North Carolina had "effectively overruled *Batson* and *J.E.B.* for post-conviction relief even before today's decision." App. 32a. She also noted that North Carolina was an "outlier even among southeastern states" on *Batson* arguments. App. 35a.

In Justice Earls's view, the lack of successful *Batson* claims was "not because discrimination is magically absent from North Carolina's legal system." App. 36a. Instead, the Court had "construct[ed] a fortress of procedural barriers to deny" defendants like Mr. Bell and Mr. Sims any remedy. App. 39a. She noted that the majority opinion engrafted a "general preservation requirement" onto North Carolina's procedural bar statute and had created a "shell game" that rendered relief under *Batson* a "mirage." App. 43a. She also observed that the majority opinion "even

shames defense counsel for what it perceives to be that side's practices of gender discrimination . . . ." App. 40a.

This Petition follows.

REASONS FOR GRANTING THE PETITION

This is a case where the merits are not in dispute—only whether North Carolina courts will grant relief. The prosecutor admitted to striking a juror on the basis of her gender, as found by the post-conviction court. The judge presiding over that proceeding was the same judge who had denied Mr. Bell's prior *J.E.B.* claim—which lacked the Butler affidavit—in 2012. Yet the North Carolina Supreme Court left that finding untouched, instead contorting its post-conviction statute to impose a novel procedural bar.

When states open their courthouse doors to constitutional claims for relief, they are obligated to provide relief the constitution requires. *See Yates v. Aiken*, 484 U.S. 211, 218 (1988); *Testa v. Katt*, 330 U.S. 386, 393 (1947). Likewise, states may neither refuse to consider a particular category of constitutional claims nor turn their judicial process into a series of unpredictable "traps for the unwary." *Tucker v. Alexander*, 275 U.S. 228, 231 (1927). Indeed, absent a substantial and clearly articulated state-law basis for procedurally barring relief on a federal claim, the federal courts have the power to ensure the enforcement of the constitution.

In this case, North Carolina courts have refused to provide appellate review of federal equal protection claim involving jury selection, as two members of the

Supreme Court of North Carolina explained. App. 32a, 40a. The state courts have done so both by erecting "a fortress of procedural barriers"—which are themselves inextricably intertwined in federal law—and by imposing lawless requirements for obtaining relief on *Batson* and *J.E.B.* claims. App. 39a. The merits of the equal protection claim are not in question: the North Carolina Supreme Court did not disturb the finding of intentional gender-based discrimination in the selection of this jury. This Court should grant review and provide the relief the related claim requires

I. THERE IS NO QUESTION THE PEREMPTORY STRIKE AT ISSUE IS UNLAWFUL

This is a rare case in which there is smoking gun evidence of gender-based discrimination in jury selection. The elected District Attorney, speaking in general terms during jury selection, acknowledged that gender influenced decisions that he made during jury selection. However, he was not the one who struck the juror in this case. Instead, an assistant district attorney exercised the strike and, in response to a *Batson* objection, offered a gender-neutral reasons for the strike. After the prosecutor's avowal, the defense did not raise a *J.E.B.* objection. They had no basis to; the prosecutor had stated non-discriminatory reasons for the strike.

But then, in later proceedings, the prosecutor, seeking to prove he had not stricken this juror on the basis of her race, offered a sworn affidavit averring he had stricken her based on her gender—and thus not her race. As the prosecutor himself explained in his affidavit, the State "[w]as making a concerted effort to send male jurors to the defense" and was "looking for male jurors and [a] potential foreperson."

App. 216a. His notes, also disclosed after the conviction was final, confirmed the same regarding the juror in question. His noted reasons for striking the juror included "no man on panel, + we've already seated 10 jurors!" App. 38a.

In another case, the same prosecutor demonstrated a similar practice of striking female potential jurors based on their gender. He admitted to "looking for strong male jurors" and "someone stronger" than a female potential juror. App. 37a. He also admitted to striking another female potential juror because "he wanted 'strong unequivocal jurors and a potential foreman.'" App. 37a.

In light of the post-trial disclosures, Mr. Bell and Mr. Sims each raised claims of gender discrimination in separate postconviction motions. At the request of the State, a trial judge held an evidentiary hearing on whether the prosecution discriminated on the basis of gender. App. 10a. That court found he did, indeed, discriminate on that basis. App. 10a. On review of that finding, the Supreme Court of North Carolina left the finding of gender discrimination untouched and denied relief solely on procedural grounds. App. 19a. App. 29a (noting the merits of the *J.E.B.* violate were "moot").

There is no question that the only remedy for this violation is a new trial, free of gender discrimination. *See Weaver v. Massachusetts*, 582 U.S. 286, 301 (2017) (citing *Batson v. Kentucky*, 476 U.S. 79, 100 (1986) and *J.E.B.*, 511 U.S. 127, 145–46 (1994)). Instead, each Petitioner faces death in prison—one by execution, the other via a sentence of life without parole—because of newly minted rules involving a

procedural bar seemingly invented solely to deny relief in this case. App. 2a; App. 53a. This Court should accept review and grant the relief the Constitution requires.

II. NORTH CAROLINA'S "JURISPRUDENTIAL SHELL GAME TRANSMOGRIFIES CONSTITUTIONAL PROTECTIONS INTO A MIRAGE"[3]

North Carolina has refused to grant relief on this claim on a basis that does not appear to exist in North Carolina post-conviction law for any claim other than jury selection discrimination: a failure to preserve the claim at trial. While a preservation rule exists for direct appeal, there has never been such a rule for claims dependent on extra-record evidence that cannot be raised in an appeal. The North Carolina Court appears to have invented such a rule solely for the purpose of denying *Batson* and *J.E.B.* claims.

A state must have a substantial basis to preclude federal review of a meritorious federal constitutional claim on state law grounds. "[I]t is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded." *Broad River Power Co. v. South Carolina ex rel. Daniel*, 281 U.S. 537, 540 (1930).

The principles underlying this doctrine are fairness and predictability in the application of federal constitutional law. *See Walker v. Martin*, 562 U.S. 307, 320 (2011). And procedural bars must also not place an undue burden on the assertion of

[3] App. 43a.

federal constitutional rights. *See Lee v. Kemna*, 534 U.S. 362, 376 (2002) ("[An] exorbitant application of a general sound rule renders the state ground inadequate to stop consideration of a federal question."). Nothing about North Carolina's novel invocation of a procedural rule to shield relief is reasonable, and this Court should reach the merits, particularly in light of both North Carolina's hostility to *Batson* and *J.E.B.* claims and the undeniable gender discrimination. This Court must prohibit the North Carolina Supreme Court allowing a situation like the one here where e "discriminatory behavior by the State faces no consequences, even in this most extraordinary of cases with direct evidence of intentional discrimination. App. 43a.

A. A Procedural Bar Must Be Both Independent of Federal Law and Adequate to Support the Underlying Judgment

"The question whether a state procedural ruling is adequate [and independent] is itself a question of federal law." *Beard v. Kindler*, 558 U.S. 53, 60 (2009). A rule is not independent of federal law where it "depend[s] on a federal holding." *Glossip v. Oklahoma*, 145 S. Ct. 612, 624 (2025). Likewise, it is not independent when it is "intertwined with questions of federal law." *Id.* (citing *Michigan v. Long*, 463 U.S. 1032, 1040–41 (1983)).

This Court has generally "framed the adequacy inquiry by asking whether the state rule in question was 'firmly established and regularly followed.'" *Beard* v. *Kindler*, 558 U.S. 53, 60 (2009). (quoting *James v. Kentucky*, 466 U.S. 341, 348

(1984)). If a bar is either dependent on federal law or inadequate, federal courts have jurisdiction to review the underlying claim.

When a state also demonstrates hostility to a federal right, the federal courts are particularly apt to reach the merits of an otherwise barred claim. *See Cruz v. Arizona*, 598 U.S. 17, 33-35 (2023). (Barrett, J., dissenting). This Court has recently deemed a rule inadequate where the state's procedural rules create a "catch-22" for those wishing to assert a federal right. *Id.* at 29. It has also done so where a state court decision reveals the state's hostility to important civil rights. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 456–57 (1958). And it has held a rule inadequate because the rule in question was inapplicable "by its own terms." *See Ford v. Georgia*, 498 U.S. 411, 425 (1964); *see also Cruz*, 598 U.S. at 33–35 (describing each of these instances).

B. The Plain Text of the Procedural Bar and Prior Practice Render It Inapposite

The text of the procedural bar at issue provides that a claim cannot be raised where "[u]pon a previous appeal the defendant was in a position to adequately raise the ground or issues underlying the present [post-conviction petition] but did not do so." App. 19a (quoting N.C. Gen. Stat. § 15A-1419(a)(3)). This is a generous provision that allows post-conviction review of claims that could not have been presented on appeal.

The breadth of post-conviction proceedings fits within the structure and purposes of North Carolina's mechanisms for reviewing criminal cases. To preserve a claim for direct review, the party must have presented it to the trial court, absent limited circumstances which do not apply here. N.C. Rule App. P. 10(a). By contrast, postconviction provisions lack the preservation requirements in place for direct review. N.C. Gen. Stat. § 15A-1415(b). The absence of such a requirement for postconviction review where one is clearly provided in the rules governing appellate procedure is evidence that the omission was intentional. *See State v. Benton*, 174 S.E.2d 793, 804 (N.C. 1970) ("It is always presumed that the legislature acted with care and deliberation and with full knowledge of prior existing law.").

The court below noted that it is well settled that constitutional matters that are "not raised at trial will not be reviewed for the first time on appeal." App. 18a (quoting *State v. Garcia*, 597 S.E.2d 724, 745 (N.C. 2004)).[4] But that rule has never applied to prevent postconviction review where the trial record was, as a matter of law, insufficient to present a claim on direct review.

Indeed, North Carolina has long limited section 15A-1419's application dating to at least 2001. In *State v. Fair*, the Supreme Court of North Carolina explained how the statute works: "[I]t is not a general rule that any claim not brought on directed review is forfeited on state collateral review. Instead, the rule requires North Carolina courts to determine wither the claim at issue *could have been brought on*

[4] *Garcia* was on direct review, not in post-conviction. *See Garcia*, 597 S.E.2d at 730.

direct review." *State v. Fair*, 557 S.E.2d 500, 525 (N.C. 2001) (quoting *McCarver v. Lee*, 221 F.3d 583, 589 (4th Cir. 2000)).

Several years before the decision in this case, the Supreme Court of North Carolina again held that section 15A-1419(a)(3) does not bar postconviction review of claims simply because they were not included in an appeal. *See State v. Allen*, 861 S.E.2d 273, 289 (N.C. 2021) (rejecting "the State's invitation to construe N.C.G.S. § 15A-1419(a)(3) broadly as a general prohibition on post-conviction review of any claim not raised on direct appeal."). In that case, the defendant's post-conviction claim that he was shackled at trial was not barred, despite his failure to make an objection at trial. *Id.* at 290. The court reasoned that because the "central facts" had not been developed at trial, as they would have been if there had been an objection the defendant was not in a position to adequately raise it on appeal—and thus it was not barred in postconviction proceedings. *Id.* It explained that the "legislature did not include any language suggesting that defendant's failure to object at trial at trial triggers application of the procedural bar." *Id.* at 311.

In North Carolina, for a defendant to be in "a position to adequately raise" a claim based on *Batson v. Kentucky*, 476 U.S. 79 (1985) or *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) on appeal, there must have been an objection on that basis at trial. That is logical; if there is no objection, no record will be created of the reason for the strikes, and the record will be insufficient for appellate review. *See State v. Best*, 467 S.E.2d 45, 52 (N.C. 1996) (refusing to consider a claim of race and gender

discrimination in jury selection because "the defendant did not object to any of the peremptory challenges" on that basis); *State v. Clay*, 355 S.E.2d 510, 512 (N.C. App. 1987) (same). Thus, there are no circumstances, such as plain error or instances of a manifest injustice, permitting appellate review of such a claim absent an objection. *See State v. Maness*, 677 S.E.2d 796, 804 (N.C. 2009) (holding unpreserved *Batson* and *J.E.B.* claims are not reviewable under North Carolina's "exceptional circumstances" provisions); *State v. Anderson*, 558 S.E.2d 87, 93 (N.C. 2002) (noting "plain error" review in North Carolina is limited to jury instructions and evidentiary matters). Therefore, for a defendant to be in "a position to adequately raise" a *J.E.B.* claim in a prior appeal, there must have been a trial objection. N.C. Gen. Stat. § 15A-1419(a)(3). Because of this requirement, the *J.E.B.* claim at issue here was not available on direct review, and was thus squarely in the category of claims not barred under section 15A-1419.

C. The North Carolina Supreme Court Applied the Procedural Bar

Nonetheless, here, the state court read into section 15A-1419 requirements absent from the text to avoid reviewing the *J.E.B.* claim. App. 19a. According to the court, it applied because "the record contained 'sufficient information to permit the reviewing court to make all the factual *and legal* determinations necessary to allow a proper resolution of the claim in question'" during direct appeal proceedings. App. 25a (emphasis added). It reached that conclusion even though there was no ruling on a *J.E.B.* objection at trial that could have been reviewed on appeal. This holding

marked a sharp departure from the court's precedents and practices. *See, e.g.*, *Best*, 467 S.E.2d at 52; *Clay*, 355 S.E.2d at 512.

D. The Procedural Bar Is Neither Adequate to Bar Review Nor Independent of Federal Law

For myriad reasons, the procedural bar here does not preclude review and, therefore, relief in federal court. The Court need only find one of these reasons to overcome the procedural bar and grant relief on the underlying, undisturbed claim of intentional discrimination on the basis of gender in jury selection.

Dependence

To start, the basis for denial is not independent because the procedural ruling is intertwined with federal law, in much the same way as the states' respective procedural bars in *Foster v. Chatman*, 578 U.S. 488 (2016) and *Glossip v. Oklahoma*, 145 S. Ct. 612 (2025).

In *Foster*, the Georgia courts barred review of a *Batson* claim on res judicata grounds. *Id.* at 497–98. There to assess whether there was a "sufficient change in the facts" to overcome the state-law res judicata bar the state court engaged in a four-page "*Batson* . . . analysis" and concluded the new claim was "without merit." *Id.* at 498. This Court held the emphasis on the merit-worthiness of the *Batson* claim rendered the res judicata bar intertwined with federal law. *Id.* Therefore, the state rule posed "no impediment to [its] review of Foster's *Batson* claim." *Id.*

Similarly, in *Glossip* the state procedural ruling—refusing to give effect to the State's waiver of procedural bars and confession of *Napue* error in a successive state post-conviction petition—was intertwined with federal law. *Glossip*, 145 S. Ct. at 625. As confirmed in the state court's opinion its decision on whether to accept a prosecutor's waiver of procedural defenses depends on whether the court views the underlying federal claim as meritorious. *Id.* Where the claim is not meritorious, it rejects the waiver as "not based in fact or law." *Id.* Thus, the application of the procedural bar in *Glossip* was a function of the underlying federal claim's worthiness. *Id.*

The heart of the procedural bar here is whether the trial record was sufficient for the defendants to raise their *J.E.B.* claim on appeal. After a nine-page discussion, the Supreme Court of North Carolina concluded the record was adequate to raise a *J.E.B.* claim on appeal. App. 18a–26a. It did so by analyzing the strength of the record as it related to the elements of such a claim.

Put a different way, had the record not presented the elements of the federal claim, petitioners could have had their claim considered in postconviction proceedings. But the record was adequate for such a claim. Therefore, the claim was procedurally barred. As such, the procedural bar is intertwined with federal law, and this Court should grant review and relief on that basis alone.

Inadequacy

The bar is also inadequate to foreclose review for several reasons. Even "by its own terms" it does not apply. *Ford*, 498 U.S. at 425. On its face, North Carolina's procedural bar does not apply if the claims could not be raised on appeal—no matter the reason for the unavailability. Instead, the rule applies only when a claim was available in the defendant's "previous appeal." N.C. Gen. Stat. § 15A-1419(a)(3); *see also* N.C. Gen. Stat. § 15A-101(1) (defining "appeal" as involving "appellate review"). The rule the court below relied on does not refer to trial or even a prior postconviction proceeding. It references appeal. Because the plain language of the statute does not support its application, it is not adequate to foreclose relief here.

The Supreme Court of North Carolina's application of the bar was also novel, warranting review on this basis as well. Prior to this case, it was clear that errors unpreserved at trial could be raised in postconviction proceedings if they could not be raised on appeal. Claims such as unconstitutional shackling—which would require an objection at trial to preserve it on appeal—were endorsed as available in postconviction in a case decided only a few years ago, even though the defendant could have but did not object at trial. *See Allen*, 861 S.E.2d at 289 ("Subsection 15A-1419(a)(3) contains no language restricting post-conviction review to claims that were preserved at trial.").

Further the court remade the rules of post-conviction review without any discussion of its prior decisions in *Fair* or *Allen*. This change was so stark that shortly

after the decision, a leading commentor on North Carolina criminal law observed that "[t]o the extent *Bell* overrules *Allen*" on the requirement of preservation, "it does so implicitly. Indeed, *Allen* is not cited in *Bell* at all." Joseph L. Hyde, *Preservation Reservations in* State v. Bell, NORTH CAROLINA CRIMINAL LAW, UNC SCHOOL OF GOV'T (Apr. 8, 2025), https://tinyurl.com/UNCCrimLaw. The same comment noted a "curious" aspect of North Carolina's review process: "our [post-conviction] statutes provide no provision regarding preservation." *Id.*

The ruling here—that there could be no POSTCONVICTION review because there was no objection at trial—is thus an atextual, novel about-face that upset the settled expectations of North Carolina litigants. *Lee*, 534 U.S. at 378 (reaching the merits in spite of a procedural bar due to its "unforeseen" application). They are left only to guess whether the state courts would review their *Batson* or *J.E.B.* claims any place other than at the trial court. App. 32a, 40a; *see also Davis v. Weschler*, 263 U.S. 22, 24 (1923) (Holmes, J.) ("Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.").

Undue Burden and Hostility

But there are still more reasons the statute cannot bar review and relief. The bar, as recently interpreted, places an undue burden on an important constitutional right. *Lee*, 534 U.S. at 376. The burden on a constitutional right could not be more

manifest. There is an undisturbed and undeniable claim of intentional and blatant discrimination, proven by a sworn affidavit from the relevant party, being papered over by a procedural bar. Such a holding flies in the faces of the of the state and federal courts' obligation to undertake "unceasing efforts" to root out discriminatory practices in the administration of criminal law. *Batson*, 476 U.S. at 85.

In this case, there is not merely a "constitutionally unacceptable" risk that discrimination affected the proceedings. *Turner v. Murray*, 476 U.S. 28, 36 n.8 (1986). It unquestionably did affect the proceedings. Over the years, this "Court's cases have vigorously enforced and reinforced [*Batson*], and guarded against any backsliding. *Flowers v. Mississippi,* 588 U.S. 284, 301 (2019) (citing *Snyder v. Louisiana*, 552 U.S. 472 (2008); *Miller-El v. Dretke*, 545 U.S. 231 (2005)). As part of that enforcement and reinforcement, the Court has extended *Batson*, including by clarifying that it includes a prohibition on gender discrimination in jury selection. *Flowers*, 588 U.S. at 301 (citing *J.E.B.*, 511 U.S. at 129). Undoubtedly, the vigorous enforcement is a corollary to the importance of this right to equal protection in jury selection.

Likewise, the critical role of gender and race neutrality in our society undermines any state interest in the procedural bar in question, especially one applied on such baseless grounds as here. *See Students for Fair Admissions, Inc. v. President and Fellows of Harv. Coll.*, 600 U.S. 181, 242 (2023) (Thomas, J., concurring). The state, after all, has no legitimate interest in "enforcing [convictions] obtained on so flawed a basis." *Buck v. Davis*, 580 U.S. 100, 126 (2017). This Court

has been quick to recognize as much in a variety of contexts. It has set aside state bars to relief in the context of admitting evidence of discrimination on the basis of race in jury deliberations—at least twice in recent years. *See Foster*, 570 U.S. at 498; *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 225 (2017).

North Carolina's long-standing hostility to claims of intentional discrimination in jury selection further highlight the burden at issue. In their concurring opinion, two justices on the Supreme Court of North Carolina described the many ways in which North Carolina has "abandon[ed] its responsibility to enforce constitutional guarantees of equal justice under the law" related to *Batson* and *J.E.B.* claims. App. 43a n.3. In their view, "the jurisprudence of [North Carolina] has effectively overruled *Batson* and *J.E.B.*" App. 32a.

The concurrence noted North Carolina's "extreme outlier" status among Southern states in failing to grant relief on such claims. App. 36a (citing James E. Coleman Jr. & David C. Weiss, *The Role of Race in Jury Selection: A Review of North Carolina Appellate Decisions*, THE NORTH CAROLINA BAR JOURNAL, 13, 14 (Fall 2017). "Between 1986 and 2016, North Carolina's appellate courts collectively decided 114 *Batson* challenges on the merits. But they did not find a single violation where a prosecutor articulated a race-neutral reason for striking the juror." App. 35a (citation omitted).

At the same time, North Carolina appellate courts upheld relief that the trial courts gave under *Batson* to the State. That is, they agreed with the State in the only

two reported "reverse" *Batson* cases that reached the North Carolina appellate courts. *See State v. Hurd*, 784 S.E.2d 528, 537 (N.C. App. 2016); *State v. Cofield*, 498 S.E.2d 823, 831 (N.C. App. 1998). It is "disturbing" that these two cases are the only found *Batson* violations where attorneys have offered reasons for the strikes, particularly in light of North Carolina's history of discrimination. Daniel Pollitt & Brittany Warren, *Thirty Years of Disappointment: North Carolina's Remarkable Appellate* Baston *Record*, 95 N.C. L. REV. 1957, 1962 (2016).

The concurring justices made clear that North Carolina's lack of successful claims was "not because discrimination is magically absent from North Carolina's legal system." App. 36a. Rather, "state-wide jury data show that prosecutors struck Black jurors twice as frequently as their white counterparts." App. 36a (citing Ronald F. White, et al., *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, 2018 ILL. L. REV. 1407 (2018)). They also noted that "*J.E.B.* claims alleging gender discrimination in jury selection have been similarly unsuccessful." App. 36a. This is but the most recent—and blatant—instance of the North Carolina Supreme Court refusing relief on a jury discrimination claim. App. 36a (collecting cases).

Next, the concurrence highlighted the ways in which North Carolina has created substantive and procedural barriers to obtaining relief on such claims. It noted "heightened" pleading requirements, the inability of a postconviction petitioner to examine the prosecutor about his motives, and a refusal to consider new evidence probative of discriminatory intent.

There are least two additional indicia of North Carolina's hostility to *Batson* and *J.E.B.* claims in this case. Although the prosecutor provided a gender-neutral reasons for striking the juror in question, the Supreme Court of North Carolina implied that trial counsel should have disbelieved the prosecutor and raised a *J.E.B.* objection in addition to the *Batson* objection. To be sure, there was evidence in the record that the prosecutor held gender bias generally. But as it related to this juror, at trial he offered only one reason for striking her: her arthritis. Tr. 1731–32. Requiring defense counsel to raise an additional objection premised on disbelieving the prosecutor's proffered reasons for the strike is contrary to the expectation that the government acts in good faith. *See Leete v. County of Warren*, 462 S.E.2d 476, 478 (N.C. 1995) (quoting *Huntley v. Potter*, 122 S.E.2d 681, 687 (N.C. 1961) and citing *Painter v. Board of Education*, 217 S.E.2d 650, 658 (N.C. 1975)). And it is further evidence of North Carolina's hostility to *Batson* and *J.E.B.* claims.

Similarly, despite the prosecutor's admission to removing Ms. Morrow because she was a woman and the trial court's undisturbed finding that the strike of Ms. Morrow was based on discriminatory intent, the Supreme Court of North Carolina did not express disapproval of the State's strategy in jury selection. Instead, the majority trained its criticism only on the "defense's practice of systematically eliminating men from the jury. App. 29a. As the concurrence explained, the majority "even shames defense counsel for what it perceives to be that side's practices of gender discrimination." App. 40a. The court did so on its own—without any argument from

the state and without a finding from the trial judge. Moreover, to the extent that the prosecutor's reason for striking Ms. Morrow was a reaction to gender discrimination by the defense, the majority ignored controlling authority from this Court: "Discrimination against one defendant or juror on account of [gender] is not remedied or cured by discrimination against other defendants or jurors on account of [gender]." *Flowers*, 588 U.S. at 299. This case demonstrates that North Carolina exhibits hostility to *Batson* and *J.E.B.* claims.[5]

Cause and Prejudice

Trial counsel's ineffectiveness and the merit of the *J.E.B.* claim provides cause and prejudice yet another way to overcome the procedural bar. *See Coleman v. Thompson*, 501 U.S. 772 (1991). Trial counsel's deficient performance is among the "causes" for excusing a procedural bar. *See* James Liebman & Randy Hertz, 2 Federal Habeas Corpus Practice and Procedure § 26.3 (2025). And prejudice is established upon a showing of either "actual prejudice . . . or a fundamental miscarriage of justice." *Coleman*, 501 U.S. at 750. A meritorious *Batson* or *J.E.B.* claim is sufficient to establish prejudice. *See, e.g.*, *Mitchell v. Genovese*, 974 F.3d 638, 651–52 (6th Cir. 2020).

Although the "cause and prejudice" standard is most often applied to procedural defaults at issue in federal habeas corpus proceedings, the doctrine is part

[5] This effective nullification of *Batson* and *J.E.B.* is also grounds for relief as a violation of the Supremacy Clause. U.S. Const. art. VI, ¶ 2; *Yates*, 484 U.S. at 218; *Testa*, 330 U.S. at 393.

and parcel of this Court's adequate and independent state ground jurisprudence. *Coleman* itself situated its holding within that doctrine, and case after case cites *Coleman*, while explicating precisely that jurisprudence. *See Coleman*, 501 U.S. at 729–30; *see also Cruz*, 598 U.S. at 25; *Lee*, 534 U.S. at 375. There are some differing considerations between this Court's direct review of state court decisions and collateral review via federal habeas corpus review, but the underlying equitable considerations are part of the same analytical framework. *Coleman*, 501 U.S. at 729–30.

Trial counsel's ineffectiveness in failing to raise a *Batson* or *J.E.B.* objection in particular meets *Coleman*'s cause and prejudice standard. *See Mitchell*, 974 F.3d at 651–52. Ineffectively failing to raise a *Batson* or *J.E.B.* meets the *Coleman* standard.

In light of the majority's accounting, trial counsel's deficient performance was manifest. The court below spent nearly ten pages explaining just how obvious the *J.E.B.* violation was. App. 18a–26a. Particularly trial counsel's having raised a *Batson* objection, there could be no reasonable strategic decision for failing to also raise one based on *J.E.B.* Trial counsel performed deficiently. *See Ex Parte Yelder*, 575 So. 2d 137, 138 (Ala. 1991) ("failure of trial counsel to make a timely *Batson* objection when a prima facie case exists of purposeful discrimination by the State" is presumptively prejudicial); *Triplett v. State*, 666 So. 2d 1356, 1362–63 (Miss. 1995) (same).

There is no question that trial counsel's failure to raise an objection prejudiced Mr. Bell and Mr. Sims. That is because of the unquestionable merit of the claim. Cause and prejudice excuse the procedural bar.

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North Carolina's procedural bar lacks any substantial basis sufficient to preclude federal review of—and a grant of relief on—the *J.E.B.* claim here. The procedural bar is intertwined with federal law and is inadequate to bar review. Its application is contrary to the plain text of the bar and is novel as a matter of practice. And its application here is the result of trial counsel's inexplicable and unreasonable failure to raise a *J.E.B.* objection.

III. THIS COURT'S INTERVENTION IS WARRANTED NOW

The abrogation of *Batson* and *J.E.B.* in North Carolina is an important question, warranting review on its own. The Court should grant review now and not await litigation of this claim after further proceedings in the state and federal courts for several reasons. The questions presented—in essence, whether petitioners are entitled to appellate or federal review of their *J.E.B.* claims—are not going away, are squarely presented now, and fairness and finality both weigh heavily in favor of intervention now. Finally, the pending proceedings in Mr. Bell's case, as well as any speculative proceedings either petitioner may undertake, will not remedy the violation at issue here.

A. This Court Should Review the State Court's Decision

Just as decisions from state courts that "conflict with relevant decisions of this Court" warrant review, the decision below, which is part of a larger practice of denying appellate relief for virtually every *Batson* or *J.E.B.* claim, warrants relief. Sup. Ct. R. 10(c); *see also*, *supra*, § II.D. This latest chapter in North Carolina's sorry saga involves the appellate courts refusing to grant relief in spite of an uncontestable *J.E.B.* violation.

Beyond the compelling case- and jurisdiction-specific reasons for granting review, reasons of uniformity and enforcement of federal constitutional supremacy also weigh heavily in favor of review. *See* U.S. Const. art. VI; *Kansas v. Marsh*, 548 U.S. U.S. 163, 183 (2006) (Scalia, J., concurring) ("Our principal responsibility under current practice, however, and a primary basis for the Constitution's allowing us to be accorded jurisdiction to review state-court decisions is to ensure the integrity and uniformity of federal law."). But so do comity and deference to state court criminal proceedings: this Court, rather than the federal habeas courts should correct the state court's error. *See Kansas v. Carr*, 577 U.S. 108, 118 (2016) (explaining that this Court's intervention to correct a misapplication of federal law protects interests in state autonomy). Granting review here would make clear that *Batson* and *J.E.B.* apply with equal force in North Carolina courts as they do in any other court in the United States. That would be in keeping with the core obligations of this Court. *See Martin v. Hunter's Lessee*, 1 Wheat 304, 348 (1816) (Story, J.) (explaining that absent

this Court's review of state court decisions, "the laws, the treaties, and the Constitution of the United States would be different in different states[, which would be] deplorable.").

Moreover, the relative infrequency of this Court's review of state court decisions in criminal cases has, historically, stymied the development of the law in an area—constitutional regulation of state criminal cases—that consumes a huge portion of the courts' dockets nationwide. Jeffrey S. Sutton & Brittany Jones, *The Certiorari Process and State Court Decisions*, 131 HARV. L. REV. 167, 176–77 (2018). Granting review now would provide those courts both with guidance and a reminder of the relief that *J.E.B.* requires.

That reminder is, itself, a worthy reason to grant review. The prosecutor in this case himself raised a *J.E.B.* claim against defense counsel. App. 22a. He nonetheless later offered a gendered reason to explain why he did not discriminate on the basis of race when he struck the juror in question. Granting review and relief will prevent such brazen use of gender discrimination with an apparent belief that it will go uncorrected.

And there is no reason to subject Mr. Bell and Mr. Sims to the extensive and byzantine process of federal habeas corpus review, particularly given the indisputable merits of the claim at issue here.[6] Eve Primus, *Equitable Gateways: Toward*

[6] Those obstacles present additional potential sources of error, which often require this Court's intervention on purely procedural questions. *See, e.g.*, *Andrew v. White*, 145 S. Ct. 75, 81–82 (2025) (per curiam).

Expanded Federal Habeas Corpus Review of State Court Criminal Convictions, 61 ARIZ. L. REV. 291, 296 (2019); James N.G. Cauthen & Barry Latzer, *Why So Long? Explaining Processing Time in Capital Appeals*, 29 JUST. SYS. J. 298, 300 (2008).

Finally, neither Mr. Bell and Mr. Sims nor the State of North Carolina should be made to wait for a final resolution of this issue. Federal habeas corpus proceedings take years to resolve. *See* Mark D. Falkof, *The Hidden Costs of Habeas Delay*, 83 COLO. L. REV. 339, 381 (2012). Mr. Bell and Mr. Sims would endure the human costs of that delay. *See* Payvand Ahdout, *Direct Collateral Review*, 121 COLUM. L. REV. 159, 174 (2021). The victims would also be deprived of finality throughout that process. *Peyton v. Rowe*, 391 U.S. 54, 62–63 (1968) (noting interest in finality). Waiting for federal habeas corpus proceedings to address this issue also creates needless waste in the lower courts and would strain their scarce resources. *See McCleskey v. Zant*, 499 U.S. 467, 491 (1991) ("Federal collateral litigation places a heavy burden on scarce federal judicial resources, and threatens the capacity of the system to resolve primary disputes."). The Court should act now to bring a final resolution to the important issues presented.

B. Further State Proceedings Will Not Remedy the *J.E.B.* Violation

Mr. Sims has no claims pending in state court and is presently unaware of any that may allow him to avail himself of any remedy in state court. Although Mr. Bell has other claims pending in state court, this is his last opportunity to obtain relief on this claim without resorting to federal habeas corpus review.

C. The Public and the Juror Should Not Be Made to Wait

Discrimination in jury selection "undermine[s] the confidence in the fairness of our system of justice" and harms the entire community. *Batson*, 476 U.S. at 87. Exclusion from jury service on the basis of discrimination inflicts a "profound personal humiliation" on the excluded jurors. *Powers v. Ohio*, 499 U.S. 400, 425 (1991). Such state practice effectively labels protected classes "inferior" and not worthy to participate in the state's legal system. *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879). The damage to the public—the implication that half of the population is unworthy for jury service—also demands immediate correction.

Mr. Butler's discriminatory intent remained hidden for decades. Ms. Murrow, the public, and the parties should not be made to wait another decade to obtain the relief it demands.

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North Carolina has refused to do so and on the thinnest possible of procedural grounds. Access to justice must include more than an endless series of traps and pitfalls with the ideal of equal protection under the law being forever placed beyond reach.

CONCLUSION

The petition for a writ of certiorari should be granted.

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