

No. 25-\_\_\_\_\_  
(CAPITAL CASE)

---

IN THE  
**Supreme Court of the United States**

---

TAYLOR RENE PARKER, PETITIONER,

*v.*

THE STATE OF TEXAS, RESPONDENT.

---

**ON PETITION FOR WRIT OF CERTIORARI TO THE  
TEXAS COURT OF CRIMINAL APPEALS**

---

**PETITION FOR WRIT OF CERTIORARI**

---

Caitlin Halpern\*  
Connor Burwell  
Denise Drake  
GIBBS & BRUNS LLP  
1100 Louisiana St, Suite 5300  
Houston, TX 77002  
Telephone: 713-650-8805  
Facsimile: 713-750-0903  
chalpern@gibbsbruns.com  
cburwell@gibbsbruns.com  
ddrake@gibbsbruns.com

*\*Counsel of Record*

*Counsel for Taylor Rene Parker*

## CAPITAL CASE QUESTIONS PRESENTED

This petition presents the following questions:

1. To protect the right to an impartial jury, the Sixth Amendment requires transferring venue when there is extensive and prejudicial pretrial publicity. Social media is now the dominant forum for pretrial publicity, but the court below—like courts across the country—refused to meaningfully analyze it. Was the lower court required to consider “smoking gun” confessions published on Facebook by local news groups and inflammatory Facebook commentary calling for Petitioner’s death without a fair trial?
2. This Court recently reaffirmed in *Andrew v. White* that the erroneous admission of prejudicial, irrelevant evidence about a capital defendant’s sex life, failings as a mother, and demeanor as a wife can render a trial fundamentally unfair. In the sentencing phase of Taylor Parker’s capital murder trial, the State spent weeks eliciting irrelevant, salacious testimony rooted in these same sex stereotypes. Does the Due Process clause require vacatur and remand for a new sentencing proceeding?

## LIST OF PARTIES AND RELATED CASES

### Parties

The petitioner is Taylor Rene Parker.

The respondent is the State of Texas.

### Related Cases

- *The State of Texas v. Taylor Rene Parker*, Trial Court Cause No. 20F1345-202, In the 202nd District Court of Bowie County, Texas. Judgment entered Nov. 9, 2022.
- *Taylor Rene Parker v. The State of Texas*, No. AP-77,110, In the Court of Criminal Appeals of Texas. Judgment entered Nov. 6, 2025.
- *Ex Parte Taylor Parker*, Habeas Court Cause No. 20F1345-202 In the 202nd District Court of Bowie County, Texas, proceedings pending.

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
LIST OF PARTIES AND RELATED CASES.....	ii
INDEX OF APPENDICES.....	v
TABLE OF AUTHORITIES.....	vi
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
STATEMENT OF THE CASE.....	2
A.    Introduction.....	2
B.    The venue was saturated with pretrial publicity.....	3
C.    The motion for change of venue was wrongly denied.....	7
D.    Parker’s guilt-phase trial was tainted with prejudice.....	8
E.    Salacious gender-discriminatory evidence pervaded the penalty phase.....	8
F.    The TCCA affirmed Parker’s conviction and death sentence despite these and other grievous errors.....	11
I.    THIS COURT HAS NEVER ADDRESSED HOW SOCIAL MEDIA COVERAGE MUST BE ANALYZED UNDER THE SKILLING TEST FOR PRESUMED PREJUDICE.....	13
A.    The decision below deepens a nationwide conflict on how courts analyze social media’s impact on the right to an impartial jury.....	14
B.    The Sixth Amendment requires courts to consider the impact of pretrial social media publicity in all forms.....	15
1.  Traditional news articles are now shared on social media, which must be accounted for in viewership calculations.....	17
2.  Comments and posts by social media users are a form of pretrial publicity.....	18

3.	Facebook groups are a new town hall for community discussion of cases before trial. ....	19
4.	Algorithms compound the reach and problems of all forms of social media. ....	20
C.	This case is an ideal vehicle because pretrial social media publicity supported finding a presumption of prejudice.....	21
1.	Size and Characteristics of the Community.....	22
2.	Nature of the Publicity.....	23
3.	Time Between Media Attention and Trial.....	29
4.	Whether the Jury’s Decision Indicates Bias.....	30
D.	The actual prejudice revealed in this case—which was not analyzed by the court below—independently warrants reversal. ....	30
II.	DUE PROCESS PROHIBITS THE INTRODUCTION OF IRRELEVANT, UNDULY PREJUDICIAL SEX-STEREOTYPING EVIDENCE IN CAPITAL SENTENCING PROCEEDINGS.....	32
A.	The State’s reliance on gender-discriminatory evidence to sentence Parker to death rendered her trial fundamentally unfair in violation of due process. ....	33
B.	Such reliance on prejudicial, gender-discriminatory evidence at trial routinely deprives women of due process. ....	35
C.	The TCCA’s reliance on the preservation rule is no bar to Supreme Court review.....	38
	CONCLUSION.....	40

## INDEX OF APPENDICES

Appendix A	Decision of the Texas Court of Criminal Appeals
Appendix B	Decision of State Trial Court

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>In re A.D.</i> , 287 S.W.3d 356 (Tex. App. 2009) .....	40
<i>Ake v. Oklahoma</i> , 470 U.S. 68 (1985) .....	39, 40
<i>Andrew v. Tinsley</i> , 164 F.4th 789 (10th Cir. 2026).....	37
<i>Andrew v. White</i> , 604 U.S. 86 (2025) .....	i, 32, 33, 34, 35, 36, 37
<i>Baldwin v. Alabama</i> , 472 U.S. 372 (1985) .....	34
<i>Beck v. Alabama</i> , 447 U.S. 625 (1980) .....	14
<i>Briggs v. State</i> , 789 S.W.2d 918 (Tex. Crim. App. 1990).....	40
<i>Buck v. Davis</i> , 580 U.S. 100 (2017) .....	33, 35
<i>Burger v. Kemp</i> , 483 U.S. 776 (1987) .....	35
<i>Commonwealth v. Czerkawski</i> , 242 N.E.3d 1144 (Mass. App. Ct. 2024), review denied, 495 Mass. 1101, 245 N.E.3d 1044 (2024) .....	14
<i>Commonwealth v. Toolan</i> , 951 N.E.2d 903 (Mass. 2011) .....	30, 31
<i>Crowell v. State</i> , No. 11-13-00376-CR, 2016 WL 191915 (Tex. App. Jan. 14, 2016).....	39
<i>Davidson v. State</i> , No. E201900541CCAR3PD, 2021 WL 3672797 (Tenn. Crim. App. Aug. 19, 2021).....	19

<i>Derosa v. Workman</i> , No. CIV05-0213, 2010 WL 3894065 (E.D. Okla. Sept. 27, 2010), <i>aff'd</i> , 679 F.3d 1196 (10th Cir. 2012) .....	27
<i>Enter. Irrigation Dist. v. Farmers Mut. Canal Co.</i> , 243 U.S. 157 (1917) .....	39
<i>Faulkner v. State</i> , 65 S.W. 1093 (Tex. Crim. App. 1901).....	31
<i>Gardner v. Florida</i> , 430 U.S. 349 (plurality opinion).....	14
<i>Henley v. State</i> , 576 S.W.2d 66 (Tex. Crim. App. 1978) (en banc) .....	31
<i>Herb v. Pitcairn</i> , 324 U.S. 117 (1945) .....	39
<i>Irvin v. Dowd</i> , 366 U.S. 717 (1961) .....	16, 17, 18, 21, 26, 31, 32
<i>J.E.B. v. Alabama ex rel. T.B.</i> , 511 U.S. 127 (1994) .....	32
<i>Marin v. State</i> , 851 S.W.2d 275 (Tex. Crim. App. 1993).....	39
<i>Marshall v. United States</i> , 360 U.S. 310 (1959) .....	19
<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024) .....	16
<i>Mu’Min v. Virginia</i> , 500 U.S. 415 (1991) .....	23
<i>Packingham v. North Carolina</i> , 582 U.S. 98 (2017) .....	16, 17
<i>Parker v. State</i> , 727 S.W.3d 38 (Tex. Ct. Crim. App. 2025).....	1, 2, 11, 12, 22, 30
<i>Patterson v. Colorado ex rel. Att’y Gen. of Colo.</i> , 205 U.S. 454 (1907) (Holmes, J.).....	15

<i>Patton v. Yount</i> , 467 U.S. 1025 (1984) .....	30
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991) .....	34, 40
<i>People v. Hogrefe</i> , No. 2D CRIM. B279107, 2019 WL 2281264 (Cal. Ct. App. May 29, 2019).....	15
<i>People v. King</i> , 50 N.E.3d 869 (N.Y. 2016).....	37
<i>Rideau v. Louisiana</i> , 373 U.S. 723 (1963) .....	12, 13, 17, 18, 23, 24
<i>Skilling v. United States</i> , 561 U.S. 358 (2010) .....	11, 12, 13, 15, 16, 21, 22, 23, 24, 30
<i>State v. Ianniciello</i> , 582 P.3d 372 (Wash. Ct. App. 2026) .....	36
<i>State v. Komisarjevsky</i> , 258 A.3d 1166 (Conn. 2021) .....	29
<i>State v. Lodzinski</i> , 265 A.3d 36 (N.J. 2021) .....	37
<i>State v. Wilhite</i> , 55,023 (La. App. 2 Cir. 5/17/23), 361 So. 3d 1246, <i>writ denied</i> , 2023-00847 (La. 3/5/24), 379 So. 3d 1271 .....	15, 18
<i>Tracy v. State</i> , 597 S.W.3d 502 (Tex. Crim. App. 2020).....	29
<i>Turner v. Murray</i> , 476 U.S. 28 (1986) .....	33, 35
<i>United States v. Arzola-Amaya</i> , 867 F.2d 1504 (5th Cir. 1989) .....	30
<i>United States v. Casellas-Toro</i> , 807 F.3d 380 (1st Cir. 2015).....	22, 23, 29, 32
<i>United States v. Cox</i> , 536 F.2d 65 (5th Cir. 1976) .....	36

<i>United States v. Diehl-Armstrong</i> , 739 F. Supp.2d 786 (W.D. Pa. 2010) .....	15
<i>United States v. Warren</i> , 989 F. Supp. 2d 494 (E.D. La. 2013) .....	27
<i>United States v. White</i> , No. 2:22-CR-029-01, 2023 WL 4670335 (W.D. Va. July 20, 2023) .....	15, 19
<i>Wearry v. Cain</i> , 577 U.S. 385 (2016) .....	40
<i>Zant v. Stephens</i> , 462 U.S. 862 (1983) .....	34
<b>Constitutional Provisions</b>	
U.S. Const. amend. VI .....	i, 1, 2, 11, 13, 15
U.S. Const. amend. XIV .....	1, 2, 11, 13, 15
U.S. Const. amend. XIV, § 1 .....	i, 1, 32, 40
<b>Statutes</b>	
28 U.S.C. § 1257(a) .....	1
Tex. Code Crim. Pro. art. 37.071 § 2(b)(1) .....	9, 33
Tex. Code Crim. Pro. art. 37.071 § 2(e)(1) .....	9, 33
Tex. Code Crim. Proc. art. 37.071, § 2(h) .....	1, 11, 12, 13, 15, 18, 22, 23, 29, 30, 38, 40
Tex. Penal Code § 19.03(a)(2) .....	2
Tex. Penal Code § 20.01(5) .....	2
<b>Other Authorities</b>	
1 Burr’s Trial 416 (1807) .....	16
A.S. Kumpel, <i>The Issue Takes All? Incidental News Exposure and News Engagement on Facebook</i> , 7(2) DIGIT. JOURNALISM 165 (2019).....	17
Anamaria Segesten et al., <i>The Cueing Power of Comments on Social Media: How Disagreement in Facebook Comments Affects User Engagement With News</i> , 25:8 INFO. COMM’N & SOCIETY 1115 (2022).....	21

Andreu-Casero-Ripollés et al., <i>Digital Public Sphere and Geography: The Influence of Physical Location on Twitter’s Political Conversation</i> , 8(4) MEDIA & COMM’N 96 (2020) .....	25
Elizabeth M. Reza, Note, <i>Gender Bias in North Carolina’s Death Penalty</i> , 12 DUKE J. GENDER L. & POL’Y 179 (2005) .....	38
Kristin R. Brown, <i>Somebody Poisoned the Jury Pool: Social Media’s Effect on Jury Impartiality</i> , 19 TEX. WESLEYAN L. REV. 809 (2013).....	20
Leslie Y. Garfield Tenzer, <i>Social Media, Venue, and the Right to A Fair Trial</i> , 71 BAYLOR L REV. 421 (2019).....	21
Lili Levi, <i>Real “Fake News” and Fake “Fake News”</i> FIRST AMEND. L. REV. 232 (2017) .....	20
Matteo Cinelli et al., <i>The Echo Chamber Effect on Social Media</i> , 118(9) PROC. NAT’L ACAD. SCIS. 1 (Mar. 2021) .....	21
Michael Bailey et al., <i>Social Connectedness: Measurement, Determinants, and Effects</i> , 32(3) J. ECON. PERSPS. 259 (2018).....	25
Nic Newman et al., <i>Reuters Institute Digital News Report 2025</i> , REUTERS INST. FOR STUDY JOURNALISM 119 (2025) .....	17
Nicholas M. Anspach et al., <i>What to Believe? Social Media Commentary and Belief in Misinformation</i> , 42 POL. BEHAV. 697 (Sep. 2020) .....	19
Sandra Babcock, <i>Gendered Capital Punishment</i> , WM. & MARY J. RACE, GENDER & SOC. JUST. 1 (2024) .....	38
Sandra Babcock, Nathalie Greenfield, Kathryn Adamson, <i>Women on Death Row in the United States</i> , 46 CARDOZO L. REV. 1 (2024) .....	37
Sherice Gearhart et al., <i>Hostile Media Bias on Social Media: Testing the Effect of User Comments on Perceptions of News Bias and Credibility</i> , 2 HUMAN BEHAV. & EMERGING TECHS. 140 (2020).....	19

## **OPINIONS BELOW**

Parker sought relief from her death sentence by filing a direct appeal to the Texas Court of Criminal Appeals (“TCCA”). Tex. Code Crim. Proc. art. 37.071, § 2(h). The TCCA affirmed Parker’s conviction and death sentence in a published opinion. *See Parker v. State*, 727 S.W.3d 38 (Tex. Ct. Crim. App. 2025) (Appendix A). The unpublished order of the lower state court entering judgment on Parker’s conviction by jury appears as Appendix B.

## **JURISDICTION**

This Court’s jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a). The TCCA issued its decision on November 6, 2025. On January 20, 2026, Justice Alito extended the time to file the petition until March 6, 2026, so this petition is timely.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fourteenth Amendment of the United States Constitution provides in relevant part:

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 the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

The Sixth Amendment of the United States Constitution provides:

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 the assistance of counsel for his defense.

U.S. Const. amend. VI.

## STATEMENT OF THE CASE

### A. Introduction

Taylor Parker was charged with capital murder in connection with the October 9, 2020, death of Reagan Hancock and her unborn child, Braxlynn, in Bowie County, Texas. 1 CR 40–41. The State’s theory of the case at trial was that Parker, who faked a pregnancy following an unplanned hysterectomy that rendered her unable to bear children, 28 RR 24–25, 74, killed Hancock and then performed a crude C-section to kidnap the unborn child. 28 RR 23, 26. Characterizing the case as a “fetal abduction,” 28 RR 23, the State charged Parker with committing the murder of an individual in the course of committing or attempting to commit a kidnapping. Tex. Penal Code § 19.03(a)(2). This kidnapping-related aggravating factor was the only theory of capital murder advanced at trial. *See, e.g.*, 40 RR 7.

At trial, Parker did not dispute that she had committed murder. Parker’s guilt-phase defense was primarily directed at the aggravating factor underlying the capital murder charge. 39 RR 238–42. Under Texas law, an unborn child cannot be the subject of a kidnapping or attempted kidnapping. *See* Tex. Penal Code § 20.01(5) (defining “individual” in the kidnapping statute as one who “has been born and is alive”). Parker argued the evidence was insufficient to prove Braxlynn was born alive. *See* Appellant’s Reply Br. at 13, *Parker*, 727 S.W.3d 38. To the contrary, the evidence tended to show that Braxlynn was not born alive: the medical examiner concluded

that Braxlynn died before or during extraction, not afterward, 49 RR 51–52, 59–64; the placenta and umbilical cord were seriously injured, indicating death in utero, 49 RR 59–64; Braxlynn’s lungs sank during a “float test,” revealing that no breath was ever taken, State’s Punishment Ex. 241 at 4; and no independent sign of life was ever recorded during medical revival efforts, 35 RR 22, 36 RR 25–26, 43–44. Parker argued, therefore, that no kidnapping occurred as a matter of law. 39 RR 238–42.

However, due process errors spanning from the pretrial proceedings through the guilt-phase and penalty-phase trials deprived Parker of a fair chance for her defenses to be considered. Two especially grievous constitutional violations are now presented to this Court. First, Parker was convicted and sentenced to death by a partial jury in a small-town venue that had been exposed to pervasive and inflammatory pretrial social media publicity, including (i) news articles containing “smoking gun” prejudicial confessions published to Facebook groups or pages with follower counts exceeding the entire county’s population, and (ii) inflammatory Facebook comments and posts calling for Parker to be deprived of a fair trial and killed. Second, Parker was sentenced to death following the introduction of highly prejudicial and irrelevant gender-discriminatory evidence that rendered the penalty phase of her trial fundamentally unfair.

**B. The venue was saturated with pretrial publicity.**

Bowie County, where Parker was tried, was inescapably saturated with unfair prejudice. The County had a population of only 92,893 in 2020. App. 32a n.4. It is, in its own residents’ terms, a “small village community.” 18 RR 155; 26 RR 342.

Any murder in Bowie County would be newsworthy, given that homicides in the area are rare. *See, e.g.*, 35 RR 156. But when a local mother who was 35 weeks pregnant with her second child was murdered in her home, the community’s interest in the case soared in a unique and all-consuming way. Members of the jury pool testified that, in Bowie County, “[e]verybody knows the accusation” against Parker, 26 RR 33, and “everybody was going to talk about it” because “[i]t was a small town.” 26 RR 342; *see also, e.g.*, 21 RR 243 (“everyone” in town was following the case through news outlets and social media). In every facet of Bowie County life, this case grabbed attention: from “workplace gossip and word of mouth, numerous schools that are in Bowie County, hospitals, et cetera.” 27 RR 58 (describing testimony of potential jurors). A local high school class even did a report on the trial for their whole semester grade. 46 RR 169. The news was “everywhere.” 27 RR 58. And nowhere was the news more extensively disseminated, nor more heatedly discussed, than on Facebook—where users called for Parker’s death and lamented the burden of a fair trial, and where many potential jurors learned about the case before trial began. *E.g.*, 18 RR 323; 24 RR 57; 25 RR 112.

In the 16 months between the offense and the change of venue hearing, two local news entities—TXK Today and the Texarkana Gazette—published 27 articles about the allegations against Parker. 9 RR 21, 49. The fact investigator appointed for Parker testified that he had “never worked on a case [with] 17 Gazette articles to cover it.” 9 RR 199. These two news organizations posted their articles on Facebook, where they had follower counts of 76,402 (TXK) and 23,951 (the Gazette). And a local

news aggregation page, Metro Texarkana News & Reports, shared 9 articles about Parker to its 23,900 Facebook followers. 56 RR 324. Parker’s fact investigator also testified that most residents in Bowie County get their news through electronic media like these sources, rather than from a print newspaper. 9 RR 12.

Two of the articles shared on Facebook by traditional media entities included reports that Parker confessed to the phony pregnancy and admitted to using a small scalpel to remove the unborn infant from Hancock’s body. 56 RR 137 (TXK); 55 RR 47 (Gazette). Bowie County residents responded to these articles on Facebook with inflammatory comments detailing the punishments they sought to inflict upon her, including, for example:

- “her ass need to be UNDER THE CEMETERY.” 56 RR 55.
- “A rope is a lot cheaper than electricity.” 56 RR 73.
- “This woman deserves nothing less than death, period!! Evil, evil, evil!!!” 56 RR 233.
- “Should have already been tried and hanged!” 56 RR 274.
- “As a human you have rights, sure... But I Don’t think she’s a human.” 56 RR 103.<sup>1</sup>

In sharing or commenting on the articles, and in two Facebook groups dedicated to discussion of the case (“Updates from the Brookes” and “Reagan Hancock Case Discussion,” 9 RR 10–11, 14, 21–22, 49, 83), Facebook users who identified themselves as Bowie County residents repeatedly called for Parker’s death. Those posts were publicly visible to the thousands or tens of thousands of followers of the

---

<sup>1</sup> Additional examples of such comments are reproduced *infra* pp. 26–27.

relevant Facebook pages and/or Facebook groups. *E.g.*, 56 RR 233, 262, 274, 287.

Members of the victim's family ran one of these groups, providing real-time updates of their (sometimes mistaken) understanding of the case and the facts, as well as non-public information. *E.g.*, 56 RR 275 (family member sharing non-public information about additional indictments); 56 RR 291 (stating incorrectly that "you cannot plead guilty in a capital murder" to explain Parker's not-guilty plea). Reagan Hancock's husband, Homer Hancock, actively commented on one page, calling Parker "a mental facility" who "took my wife and my unborn" and resolving that Parker "will get what she deserves." 56 RR 268. He urged the 23,900 followers of that page to "get justice for my wife and my baby!" 56 RR 291.

Bowie County residents not only used Facebook to discuss their opinions on Parker's guilt and deserved punishment, they also intentionally tried to influence the proceedings. Another Bowie County resident commented on an article in the same Facebook page as Homer Hancock, encouraging others to "Share Share Share yall. (Especially my Texas friends) Jus[t] in case they try and move the trial, we need everyone to know what [Parker] did to our Reagan Hancock and Braxlynn!!" 56 RR 308; *see also, e.g.*, 9 RR 117 (another family member of victim commenting, "they are wanting to move the case to Houston. ... If you live near or know anyone from anywhere in Texas, please ask them to share this."). Another visitor to the Facebook page commented, "[e]veryone needs to share this. By the time of this evil monsters [sic] trial, everyone will know what she did." 56 RR 320. These calls for publicizing the case over social media and by word of mouth caught the attention of the page's

moderator, who presciently warned: “Publicity. *Move the trial so there cannot be an appeal.*” 56 RR 319 (emphasis added).

**C. The motion for change of venue was wrongly denied.**

Based on the evidence of extensive, inflammatory traditional and social media publicity, Parker moved for a change of venue. She introduced the aforementioned evidence and argued at her hearing that it was “the commentary and opinion of a whole lot of folks that obviously reside here in Bowie County ... that [Parker was] not only guilty already, but [that she] deserve[d] a certain punishment.” 9 RR 131–32. At the close of the hearing, the trial court declared it would wait to rule on the motion until during or after voir dire. 9 RR 283.

On August 16, the final day of voir dire proceedings, Parker renewed her motion for change of venue. 27 RR 56. By that time, following two days of juror qualification and 12 days of voir dire, the defense had read hundreds of questionnaires and examined 81 potential jurors. About 80% of the potential jurors admitted to having heard about the case, 27 RR 57, with multiple stating they learned about it exclusively through Facebook, 18 RR 323; 21 RR 56; 25 RR 112; 26 RR 336. Several potential jurors confirmed that the news was “everywhere.” 27 RR 58. Particularly significant, eight of the twelve seated jurors and both alternates had knowledge of the case. 19 RR 82; 22 RR 28; 23 RR 8, 321, 376; 24 RR 194; 26 RR 167; 27 RR 31, 81, 162. Even so, the court denied Parker’s renewed motion. 27 RR 61.

After the jury was impaneled, Parker objected to its composition based on the same venue issues. 27 RR 191. Parker again renewed her objection on the first day

of trial. 28 RR 7–8. The court denied each objection. *See id.*

**D. Parker’s guilt-phase trial was tainted with prejudice.**

Parker’s guilt-phase trial lasted 13 working days, during which the prosecution presented 67 witnesses and introduced more than 600 exhibits. Over defense counsel’s objections, the State introduced extensive character evidence, including testimony from two of Parker’s ex-husbands and a former mother-in-law. 28 RR 162–78; 30 RR 88–104; 31 RR 22–37; 2 CR 732–37. The State’s theory was that Parker faked a pregnancy because she was “obsessed,” “besotted,” and determined not to “lose her boyfriend.” 28 RR 24. According to the prosecution, Parker was “an actress . . . of the highest order,” and a “fraud” who claimed she was an “heiress to [a] syrup fortune.” 28 RR 32; 30 RR 19. After the prosecution rested, defense counsel moved for a directed verdict, arguing that there was insufficient evidence that Braxlynn had been born alive, and therefore insufficient evidence of kidnapping or attempted kidnapping. 39 RR 238–242; *see also* 39 RR 247 (renewed motion). The motion was denied. 39 RR 244, 247. On October 3, 2022, the jury returned a verdict finding Parker guilty of capital murder, rather than guilty of murder. 40 RR 45.

**E. Salacious gender-discriminatory evidence pervaded the penalty phase.**

At the penalty phase, jurors were charged with answering two special issues to determine whether the death penalty would be imposed: (1) “[W]hether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society;” and (2) “Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant’s

character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.” Tex. Code Crim. Pro. art. 37.071 § 2(b)(1), (e)(1); 55 RR 7–9.

In the 15 working days of the penalty phase, the State called 59 witnesses during its case-in-chief, including 14 former co-workers, three ex-boyfriends, an ex-boyfriend’s mother, an ex-husband’s current wife, and an ex-husband’s divorce lawyer. *See* RR Vols. 41–50. This testimony fed into the State’s theme that Parker was “a con, an actress, and a fraud” as well as an unfit mother. 41 RR 9, 16. In short, the State spent weeks eliciting testimony to portray Parker as the worst things a woman can be: a “sexual deviant” and a “terrible mother.” 48 RR 49; 41 RR 9.

**“Sexual Deviant.”** The State made no secret of its intention to cast Parker in the role of promiscuous temptress by introducing entirely irrelevant evidence that, as the State described in a pretrial notice, Parker “was wild and moving from man to man.” 3 CR 954. During the penalty phase of the trial, witness after witness testified about Parker’s clothing, behavior with men, and sexual history. Among other things, the State presented evidence that Parker went to work “dressed like she was headed to the club” in “clothing [that] was either too tight or way too revealing,” 41 RR 119; complained when her boyfriend did not want to have sex, 44 RR 89; read books and watched videos that a “normal person would consider maybe [to be] sexual deviant,” 48 RR 49; failed to “act like she was married” even when she was, 48 RR 72; and flirted with other inmates and modified her jail uniform to be a provocative “halter

top,” 47 RR 16, 198–200. The State stressed that Parker was “more interested” and wanted “more sex” than her boyfriend, who said he would “pass” and “just wasn’t attracted to her.” 39 RR 76–77, 89–90.

The State also repeatedly harped on Parker’s infidelity, eliciting salacious testimony about Parker having an affair with a married man and sneaking into his tent during a group camping trip. 44 RR 146–49. Worse, Parker’s ex-husband testified that he discovered Parker having sex with another man in a truck near a public park, and that “even [his] children knew she was cheating on [him].” 43 RR 145–46.

“*Terrible Mother.*” Evidence about Parker’s appearance and sexuality set up the State’s ultimate attack—that Parker failed to meet societal expectations as a mother, the most important role a woman can stereotypically have. Again, the initial pretrial notice made clear what the State intended to convey: that Parker was “more concerned with her boyfriends and her social life than [with] taking care of” her children. 3 CR 982.

Evidence introduced to show that Parker was a bad mother who avoided the “household duties that a wife and mother would have” was pervasive during the penalty phase. 41 RR 57. At the State’s urging, witnesses recounted their perceived failings of Parker as a mother, including sending her kids to relatives so she could go out with her husband, 41 RR 61–62; allowing her daughter to walk home from the school bus alone, 41 RR 62; using her children as an excuse to ask for money, 41 RR 74–75; sleeping in a bed while her children slept on a couch, 45 RR 16–18; excluding her children from a photograph with her boyfriend, 45 RR 12; and failing to fight her

ex-husband for custody, 45 RR 164. The jury heard extensively from Parker’s ex-husband’s current wife, who kept a journal chronicling every visit Parker canceled, every promise she broke, and every child-support payment she missed. 43 RR 87–136. In opening and closing, the State declared that Parker was “an absolutely terrible mother” and “not fit to call [herself] a mother.” 41 RR 9; 55 RR 61.

At the close of the penalty phase on November 9, 2022, the jury answered the special issues in favor of the death penalty, and the trial court sentenced Parker to death. 55 RR 86. The trial court denied Park’s motion for a new trial. 3 CR 1151.

**F. The TCCA affirmed Parker’s conviction and death sentence despite these and other grievous errors.**

In her appeal to the TCCA, Parker raised 25 points of error, including that the trial court’s denial of a change of venue violated her rights to an impartial jury and due process under the Sixth and Fourteenth Amendments, and that the introduction of evidence invoking gender stereotypes violated due process. Appellant’s Br. at 39–45, 53–62, *Parker*, 727 S.W.3d 38 (venue); *id.* at 78–83, 94–99 (gender stereotypes). The TCCA overruled all 25 points of error and affirmed Parker’s conviction and sentence of death. App. 2a.

**Venue:** The TCCA overruled Parker’s venue-related constitutional arguments after addressing the four factors for presumed prejudice outlined by this Court in *Skilling v. United States*, 561 U.S. 358 (2010). In analyzing factor two—nature of the publicity—the TCCA dismissed social media publicity. It discounted the “smoking gun” confessions published by news organizations on Facebook, as well as the attendant inflammatory commentary, by asserting that Parker did not dispute the

accuracy of the articles, that Parker did not prove that the news group's followers read the articles, and that Parker's fact investigator did not verify "the actual identities" of the Facebook commenters. App. 33a.

The TCCA also addressed the other *Skilling* factors. The TCCA held that factor one, size and character of the community, weighed against a transfer, even though Bowie County has fewer residents than the 150,000-person Parish in *Rideau v. Louisiana*, 373 U.S. 723 (1963), wherein a transfer was required. App. 32a. It found that factor three, the time between media attention and trial, was "neutral as to presuming juror prejudice," based on the sub-two-year gap between the offense and trial. App. 34a. According to the TCCA, only factor four, whether the jury's decision indicated bias, "weighs in favor of presuming juror prejudice" because there was no split verdict. App. A at 34a–35a. Evaluating these factors together, the TCCA determined that prejudice should not be presumed. App. 35a. It did not independently review whether there was actual bias under the standard set forth in *Skilling*.

***Gender Stereotyping:*** The TCCA overruled Parker's gender-discrimination point of error without reaching the merits, dismissing the issue as unpreserved in a single paragraph of analysis. It held that, despite defense counsel's contemporaneous objections to the introduction of inadmissible character evidence and pre-trial oral motion regarding same, 2 CR 733, and despite the fundamental and non-waivable nature of this error, Appellant's Br. at 94, *Parker*, 727 S.W.3d 38; Appellant's Reply Br. at 15, *Parker*, 727 S.W.3d 38, Parker "did not preserve any error for appellate review" on this point. App. A at 49.

Parker’s state habeas proceeding was filed in June 2025 and remains ongoing.

## REASONS FOR GRANTING THE PETITION

### I. THIS COURT HAS NEVER ADDRESSED HOW SOCIAL MEDIA COVERAGE MUST BE ANALYZED UNDER THE *SKILLING* TEST FOR PRESUMED PREJUDICE.

The Constitution guarantees the right to an impartial jury. U.S. Const. amend. VI. This does not require jurors to be ignorant of factual pretrial reporting. But when a small community has been bombarded with “smoking-gun” pre-trial publicity of the defendant’s confession, or publicity that is so inflammatory as to invite “prejudgment of [the defendant’s] culpability,” due process requires a change of venue on the *presumption* that any seated jury will be unable to be impartial. *Skilling*, 561 U.S. at 383–84. This presumption of prejudice is independent from any actual prejudice that may be revealed by the partiality of seated jurors. *Id.* at 377; *Rideau*, 373 U.S. at 726–27 (presuming prejudice based on televised confession “without pausing to examine a particularized transcript of the voir dire examination”).

When this Court announced the four-factor *Skilling* test in 2010, social media had not yet become a dominant source of news. That has changed. Just as the advent of television introduced new constitutional risks for defendants, social media’s growth presents the pernicious specter that online publicity will prevent a fair trial. And yet, courts across the country—like the TCCA here—have repeatedly refused or been unable to meaningfully incorporate prejudicial social media and online publicity into the *Skilling* test.

This case presents an ideal vehicle for this Court to answer the important and

recurring question presented: How must courts consider social media’s prejudicial effects on a defendant’s ability to be tried before an impartial jury? Parker has a fully developed record of pretrial social media publicity that should have generated a presumption of prejudice, including: two “smoking gun” confessions published by local news organizations on Facebook to combined follower counts that exceeded the entire population of Bowie County; a mob of residents posting prejudicial, demeaning, and non-factual commentary calling for Parker’s death and for her to be deprived of a fair trial; and the dramatic warping of small-town interest in her case through Facebook groups dedicated to discussing the charges against her. The importance of answering this recurring, national question is magnified here, where the petitioner faces a death sentence. *See Beck v. Alabama*, 447 U.S. 625, 637 (1980) (“[D]eath is a different kind of punishment from any other which may be imposed in this country.”) (quoting *Gardner v. Florida*, 430 U.S. 349, 357 (plurality opinion)).

**A. The decision below deepens a nationwide conflict on how courts analyze social media’s impact on the right to an impartial jury.**

The TCCA committed three errors in discarding Parker’s record evidence of social media influence, each of which is representative of the errors courts across the country make when confronted with the post-*Skilling* dominance of social media.

First, the TCCA discounted the traditional news disseminated on social media on grounds that Parker failed to fully investigate the “actual identities” or actual readership of users who interacted with or were exposed to traditional media on Facebook. App. 33a; *see also, e.g., Commonwealth v. Czerkowski*, 242 N.E.3d 1144, 1144 (Mass. App. Ct. 2024), review denied, 495 Mass. 1101, 245 N.E.3d 1044 (2024);

*United States v. Diehl-Armstrong*, 739 F. Supp.2d 786, 800 (W.D. Pa. 2010).

Second, the TCCA disregarded the vitriolic comments posted about Parker on Facebook. In holding that it was not possible to determine whether the comments accurately measured community sentiment, the TCCA treated the Facebook comments only as evidence of the effects of pretrial publicity, instead of treating them as a form of publicity in their own right. App. 33a; *see also, e.g., People v. Hogrefe*, No. 2D CRIM. B279107, 2019 WL 2281264, at \*6 (Cal. Ct. App. May 29, 2019); *State v. Wilhite*, 55,023 (La. App. 2 Cir. 5/17/23), 361 So. 3d 1246, 1254, *writ denied*, 2023-00847 (La. 3/5/24), 379 So. 3d 1271.

Third, the TCCA ignored the impact of Facebook groups created not only to discuss the case, but to actively impact how the case would proceed through the judicial process. 9 RR 10–11, 117; *see also, e.g., United States v. White*, No. 2:22-CR-029-01, 2023 WL 4670335, at \*3 (W.D. Va. July 20, 2023) (noting existence of “inflammatory” comments in Facebook group).

As detailed below, each of these errors violates *Skilling* and exposes the need for guidance from this Court on how to apply *Skilling* in a social media era.

**B. The Sixth Amendment requires courts to consider the impact of pretrial social media publicity in all forms.**

“The theory of our trial system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, *whether of private talk or public print.*” *Skilling*, 561 U.S. at 378 (alteration omitted) (emphasis added) (quoting *Patterson v. Colorado ex rel. Att’y Gen. of Colo.*, 205 U.S. 454, 462 (1907) (Holmes, J.)). *Skilling* recognized that this fundamental

premise requires courts to consider the effects of pretrial publicity on the jury pool, and to presume prejudice when such publicity has poisoned that pool. 561 U.S. at 379–383. As Chief Justice Marshall recognized during Aaron Burr’s trial, jurors cannot be impartial after exposure to “strong and deep impressions, which will close the mind against the testimony that may be offered in opposition to them.” *Irvin v. Dowd*, 366 U.S. 717, 722 n.3 (1961) (quoting 1 Burr’s Trial 416 (1807)). The proper inquiry examines the effect of such out-of-court influences, regardless of their source.

Although the technology for publishing news and opinions has changed, the right to a fair trial has not. In the internet era, a jury pool is most likely to see prejudicial content on social media, especially in a small community. As this Court has noted in cases since *Skilling*, social media sites are now “the principal sources for knowing current events,” and for “speaking and listening in the modern public square.” *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). They “structure how we relate to family and friends, as well as to businesses, civic organizations, and governments.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024). Social media has changed how individuals find, interact with, and share information.

However, “social media” is a broad category with varied attributes that have caused confusion among the lower courts, as detailed above. This Court should clarify that three different forms of social media are relevant for change of venue: (1) social media used to publicize traditional media articles; (2) social-media native publicity, in the form of users’ creating, commenting on, “liking,” and sharing posts, without the editorial constraints that impose factual guardrails on traditional newsrooms;

and (3) social media “groups,” which function as virtual town halls where community members can congregate and coordinate. For all these forms of publicity, this Court should recognize that the algorithmic nature of social media exacerbates the negative effects of pretrial publicity.

**1. Traditional news articles are now shared on social media, which must be accounted for in viewership calculations.**

Americans consume news on social media more than any other medium. Nic Newman et al., *Reuters Institute Digital News Report 2025*, REUTERS INST. FOR STUDY JOURNALISM 119 (2025); *see also* 9 RR 12 (fact investigator’s testimony that the “main way” that people Bowie County get their news is through electronic media). For many users of social media, what is promoted in their newsfeed or app may be the *only* news they encounter. *See, e.g.*, A.S. Kumpel, *The Issue Takes All? Incidental News Exposure and News Engagement on Facebook*, 7(2) DIGIT. JOURNALISM 165, 170 (2019) (describing how incidental exposure to news on Facebook is “not the best place to gain factual knowledge” but often engages those who would not otherwise encounter the news); *cf. Packingham*, 582 U.S. at 104 (describing “social media in particular” as one of “the most important places (in a spatial sense) for the exchange of views”).

Cases examining traditional publicity use circulation metrics as a proxy for viewership. In *Irvin*, for example, this Court used newspaper circulation as a proxy for readership, without any proof that recipients actually read the stories in question. 366 U.S. at 725 (noting circulation of newspapers to 95% of households in the county). And in *Rideau*, this Court accepted an “estimated audience” of television viewership when the defendant’s recorded confession was broadcast on three separate occasions

to a maximum combined count of 106,000 persons in a 150,000-person Parish, without further evidence to verify actual viewership. 373 U.S. at 724; *see also* Brief for the Petitioner at 3–4, *Rideau*, 373 U.S. 723.

Today, many newspapers rely on digital distribution to share their work. *E.g.*, 9 RR 268–69 (noting the *Texarkana Gazette* is primarily offered online and only physically delivered to readers on Sundays); 9 RR 21, 49 (noting Facebook distribution of Bowie County news entities). But the TCCA rejected online circulation proxies outright, demanding readership proof that is not required in cases involving newspaper or television viewership. In this changed media landscape, courts should look to the social media following of news organizations as proxies for reach.

**2. Comments and posts by social media users are a form of pretrial publicity.**

Courts, including the TCCA, err by focusing only on the news articles posted on social media and disregarding the content of comments accompanying them, often due to an inability to conclusively determine the identities of all commenters. *See* App. 28a–29a; *see also, e.g., Wilhite*, 361 So. 3d at 1254. Courts including the TCCA further err by treating social media commentary merely as evidence of the *effect* of pretrial publicity, rather than as constituting pretrial publicity itself.

This approach suffers from legal and factual defects. Legally, this Court has pointed to individual commentary embedded in news articles in its analysis of pretrial publicity. *See Irvin*, 366 U.S. at 725 (noting reporting and radio broadcasting of “curbstone opinions” solicited from individuals as to “petitioner’s guilt [and] even as to what punishment he should receive”). And factually, this approach ignores the

reality that social media users regularly form their understanding of news articles from the comments, often without reading the articles themselves. As a result, users “tend[] to report the factually-incorrect information relayed in the comments rather than the factually-correct information embedded within the article preview.” Nicholas M. Anspach et al., *What to Believe? Social Media Commentary and Belief in Misinformation*, 42 POL. BEHAV. 697, 697 (Sep. 2020); *see also* Sherice Gearhart et al., *Hostile Media Bias on Social Media: Testing the Effect of User Comments on Perceptions of News Bias and Credibility*, 2 HUMAN BEHAV. & EMERGING TECHS. 140, 145 (2020) (“[I]ndividuals are primed by comments to make judgments about news content *before* they encounter the news content.”).

Social media comments create the risk of even more prejudice than the community commentary captured in traditional media reporting because those online comments are “not tempered by protective procedures” like a newspaper editor’s oversight. *Marshall v. United States*, 360 U.S. 310, 313 (1959).

### **3. Facebook groups are a new town hall for community discussion of cases before trial.**

In addition to social media posts by traditional news organizations, or comments by users on such posts, Facebook groups have become common sites of discussion about criminal cases, including Parker’s. 9 RR 10–11, 21–22, 49, 83; *see also e.g., Davidson v. State*, No. E201900541CCAR3PD, 2021 WL 3672797, at \*8 (Tenn. Crim. App. Aug. 19, 2021). Courts often wrongly dismiss the relevance of such groups or refuse to analyze their effect. *White*, 2023 WL 4670335, at \*3 (finding that “inflammatory” comments in Facebook group were irrelevant because they were “not

broadcast to the community as a whole”); *see also* App. 32a–33a (not including Facebook groups dedicated to Parker’s case in analysis of presumed prejudice).

Dismissal of these virtual town halls ignores the impact of peer-to-peer conversation on community perceptions. Research shows all ages place heightened trust in “word of mouth” news, with individuals being 78% to 83% more likely to “believe what they see, read or hear” if someone they know has already mentioned it. Kristin R. Brown, *Somebody Poisoned the Jury Pool: Social Media’s Effect on Jury Impartiality*, 19 TEX. WESLEYAN L. REV. 809, 820 (2013); *see also* Lili Levi, *Real “Fake News” and Fake “Fake News”*, 16 FIRST AMEND. L. REV. 232, 317 (2017) (noting increased trust in Facebook “friends” as opposed to “authoritative institutions”).

Even more troubling, Facebook groups can be coordination focal points used to simultaneously intensify and hide the effect of pretrial publicity. For example, interested individuals can use Facebook groups to encourage others to share publicity across their own newsfeeds to intentionally prejudice non-local jury pools when a change of venue motion is being heard, as happened in the “Reagan Hancock Case Discussion” group here. 9 RR 117. And yet, this influence is hidden because the groups themselves—where the coordination occurs—can be set to “private.” Although the posts and comments within groups may therefore be viewed by fewer individuals than public newsfeed posts, such groups can be used to disproportionately influence potential juror perceptions of a defendant.

**4. Algorithms compound the reach and problems of all forms of social media.**

To make matters worse, the algorithmic nature of social media sites creates an

“echo chamber” effect whereby users are less likely to encounter opposing viewpoints, further cementing the influence of initial opinions. *See* Matteo Cinelli et al., *The Echo Chamber Effect on Social Media*, 118(9) PROC. NAT’L ACAD. SCIS. 1, 1 (Mar. 2021); *cf. Irvin*, 366 U.S. at 727 (“The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man.”). Biased echo chambers have a vicious impact on perceptions of publicity because negative comments “adversely affect users’ attitudes,” while “positive comments have no effect.” Anamaria Segesten et al., *The Cueing Power of Comments on Social Media: How Disagreement in Facebook Comments Affects User Engagement With News*, 25:8 INFO. COMM’N & SOCIETY 1115, 1117 (2022).

Taken together, these factors illustrate the shaping effect of social media publicity. As studies confirm, “news spread through social media has a profound ability to manipulate individual thought.” Leslie Y. Garfield Tenzer, *Social Media, Venue, and the Right to A Fair Trial*, 71 BAYLOR L REV. 421, 457 (2019).

\* \* \*

As the trial court below acknowledged, “lots of cases were decided before we had a thing called Facebook.” 9 RR 141. This Court must clearly announce that the Constitution requires courts to consider the impact of *all forms* of publicity, including social media, and that social media publicity is a relevant component of *Skilling’s* test for presumptive prejudice based on pretrial publicity.

**C. This case is an ideal vehicle because pretrial social media publicity supported finding a presumption of prejudice.**

The due-process impact of social media was raised and addressed on the merits

at every stage of the proceedings below. *E.g.*, 1 CR 114–15 (motion for change of venue); 9 RR 8–284 (change of venue hearing); 16 RR 89 (voir dire); 18 RR 11–13, 43, 187–88, 313, 322–23 (voir dire); Appellant’s Br. at 53–62, *Parker*, 727 S.W.3d 38; App. 30a–35a (TCCA Opinion). The issue is therefore well-framed for this Court.

Additionally, this Court should take up the question because resolving it here would be dispositive in overturning the TCCA’s change-of-venue holding. This Court has identified “four factors relevant to presuming prejudice: the size and characteristics of the community, the nature of the publicity, the time between the media attention and the trial, and whether the jury’s decision indicated bias.” *United States v. Casellas-Toro*, 807 F.3d 380, 386 (1st Cir. 2015) (citing *Skilling*, 561 U.S. at 379, 382–84).

The record in this case shows that, had the TCCA properly included social media in its *Skilling* analysis, prejudice would have been presumed on each of the four *Skilling* factors. First, *Parker* was tried in a small county with characteristics that made its residents especially susceptible to social media influence. Second, circulation proxies of traditional news shared on social media reveal that a vast majority of the population was exposed to “smoking gun” confessions, the prejudicial effect of which was confirmed by the inflammatory social media commentary surrounding those articles and in Facebook groups run by the family of the victims. Third, there was no “cooling off” period for social media publicity to recede before trial. And fourth, the jury’s decision was consistent with bias.

### **1. Size and Characteristics of the Community**

At the time of *Parker*’s trial, Bowie County had a population of 92,893. App.

32a n.4. In *Rideau*—where this Court held that a transfer was required—“the murder was committed in a parish of only 150,000 residents.” *Skilling*, 561 U.S. at 382. Given that Bowie County does not have even two-thirds the population of the parish in *Rideau*, this factor numerically favored a transfer of Parker’s trial.

The characteristics of Bowie County, completely ignored by the TCCA, also weigh in favor of a change of venue. App. 32a. It is a “small village community,” 18 RR 155, where “everybody was going to talk about” the case, 26 RR 342. It has such a close-knit community that trial ended early on Fridays for high school football games. 23 RR 84. And a local class was doing a report on the trial for their entire semester grade. 46 RR 169. Unlike in a major metropolitan area, newsworthiness in Bowie County has a distinctly local focus, where discussion of a homicide involving a pregnant woman was guaranteed to be “everywhere.” 27 RR 58. *Compare Mu’Min v. Virginia*, 500 U.S. 415, 429 (1991) (potential for prejudice mitigated by the size of the Washington D.C., “which has a population of over 3 million, and [where] . . . hundreds of murders are committed each year”), *with Casellas-Toro*, 807 F.3d at 386 (noting Puerto Rico is “a compact, insular community” and “highly susceptible to the impact of local media,” despite having a population of over 3 million (citation omitted)).

## **2. Nature of the Publicity**

All forms of potentially prejudicial social media publicity pervaded this case: traditional news shared via social media, community commentary on such articles, and coordinated efforts against the defendant on Facebook groups.

***Traditional Media Shared on Social Media.*** Here, two traditional media

entities—TXK Today and the Texarkana Gazette—extensively covered Parker’s case, publishing 27 articles combined. 56 RR 324. Both TXK and the Gazette published articles on Facebook that contained the “smoking gun” confessions *Skilling* warned of. A TXK article reported that Parker “confessed to the phony pregnancy and admitted to using a small scalpel to remove the unborn infant from Hancock’s body.” 56 RR 137. And a Gazette article reported that Parker “confessed to an investigator with the Oklahoma State Bureau of Investigation that she was not pregnant and admitted to having been in an ‘altercation’ with Hancock,” and quoted a probable cause affidavit that said “Parker used a small scalpel to remove the unborn infant from the body.” 56 RR 47.

Purported accuracy of a confession is not relevant to the prejudice analysis. *Rideau* never discussed it, and *Skilling* clarified that although Rideau in fact killed a bank employee, his televised confession was still prejudicial. *See Rideau*, 373 U.S. at 723–27; *Skilling*, 561 U.S. at 379. In any event, Parker’s confessions were not “accurate” for purposes of her trial. Although Parker did not contest the murder of Reagan Hancock, she vigorously contested the kidnapping aggravating factor that converted the crime from murder to capital murder. The community’s exposure to her confessions of murder could not be put out of mind when they were so interwoven with the capital murder Parker was charged with, especially since the publicity did not explain that the kidnapping aggravated factor depended on entirely different facts (i.e., whether the unborn baby was ever independently alive).

Using viewership proxies for Facebook publication that are analogous to

traditional media metrics, those confession-containing articles reached nearly every person in Bowie County. At the relevant time, TXK and the Gazette had Facebook followings of 76,402 and 23,951 people, respectively. 9 RR 49 (TXK); 9 RR 21 (Gazette). Even allowing for some overlap between followings, the TXK follower count alone—which was exposed to the more egregious of the two confessions—equates to over 82% of Bowie County’s population in 2020.

The TXK and Gazette articles were also “shared” by hundreds of people to all their Facebook “friends.” 56 RR 321–22. While a user’s number of Facebook “friends” is not always listed publicly, it can be reasonably assumed that these hundreds of “shares” resulted in thousands of additional views beyond the Facebook users who follow TXK and the Gazette. These additional views are likely to be concentrated in Bowie County, since data shows that people overwhelmingly tend to be Facebook friends with people who live near them. *See, e.g.,* Michael Bailey et al., *Social Connectedness: Measurement, Determinants, and Effects*, 32(3) J. ECON. PERSPS. 259, 260 (2018); Andreu-Casero-Ripollés et al., *Digital Public Sphere and Geography: The Influence of Physical Location on Twitter’s Political Conversation*, 8(4) MEDIA & COMMC’N 96, 99 (2020) (discussing proximity as conditioning the “ability to influence public debate online”).

During voir dire, many potential jurors confirmed that they learned about the case solely by reading articles, posts, or comments on Facebook. *E.g.*, 18 RR 322 (“I’m sure I got my information from Facebook.”); 21 RR 56 (Q: “What’s your main source of news?” A: “I just look on Facebook[.]”); 24 RR 57; 25 RR 112 (Q: “You said you had

heard the basic information about this case on Facebook or from some other source?”

A: “Just Facebook.”); 26 RR 336 (A: “[I]f you read the Internet every single day, you’re going to believe everything on the Internet, and that’s where, you know—” Q: “Is that where you got your information?” A: “Good old Facebook.”).

***Inflammatory Social Media Commentary.*** In addition to confessions, publicity reflecting “so huge a wave of public passion” that it veers out of the realm of fact can also create a presumption of prejudice. *Irvin*, 366 U.S. at 728. This was true in the case below, where a mob of Bowie County residents poisoned all discussion about the case, posting, for example:

- “she kinda hung herself when she outright confessed.” 56 RR 291.
- “her ass need to be UNDER THE CEMETERY.” 56 RR 55.
- “A rope is a lot cheaper than electricity.” 56 RR 73.
- “This woman deserves nothing less than death, period!! Evil, evil, evil!!!” 56 RR 233.
- “Should have already been tried and hanged!” 56 RR 274.
- “As a human you have rights, sure... But I Don’t think she’s a human.” 56 RR 103.
- “She doesn’t deserve a fair trial anywhere. There aren’t even words for what kind of person could do what she did....” 56 RR 262.
- “Won’t be a fair trial really???? Bury her under the jail.” 56 RR 316.
- “Share Share Share yall. (Especially my Texas friends ) Jus[t] in case they try and move the trial , we need everyone to know what she did to our Reagan Hancock and Braxlynn!!” 56 RR 308.

In addition to the many comments made by users who identified themselves as Bowie County residents, other posters whose locations could not be confirmed made

comments that would still be seen by Bowie County residents who follow the TXK and Gazette Facebook pages. *See, e.g.*, 56 RR 132 (“I say just go ahead and kill the psycho bitch.”); 56 RR 245 (“[S]he doesn’t stand a chance in Bowie County.”); 56 RR 254 (“She doesn’t deserve a fair trial . . . .”); 56 RR 274 (“Should let an inmate cut her to her death!”); 56 RR 274 (“I hope they kill her in jail!!!!!!”); 56 RR 287 (“She deserves to be ble[]d out slowly and painfully.”). Discounting social media comments because their authors’ locations cannot be verified ignores that they will be *read* by local residents, the people who will ultimately comprise the jury pool.

This inflammatory commentary is not accurate, objective, or neutral. And unlike cases featuring balanced community discussion, *none* of the comments came from mediating voices asking readers to trust the process, nor did any comments express doubt about Parker’s guilt. *See* 56 RR 1–339; *cf. United States v. Warren*, 989 F. Supp. 2d 494, 502 (E.D. La. 2013) (noting comments on articles from “many passionate advocates of defendants’ innocence” as being indicative of no prejudice); *Derosa v. Workman*, No. CIV05-0213, 2010 WL 3894065, at \*11 (E.D. Okla. Sept. 27, 2010), *aff’d*, 679 F.3d 1196 (10th Cir. 2012) (similar).

This user-created publicity had similarly pervasive reach as the articles shared by traditional news media because it appeared as comments attached to the very same articles published to TXK’s and the Gazette’s 76,402-person and 23,951-person follower lists, in addition to being algorithmically programmed to appear on the newsfeeds of any Facebook friends of the commenters.

***Facebook Group Discussion.*** Three Facebook groups were also used as focal

points for shaping public opinion about the case and attempting to either prevent a change of venue or nullify the curative effects of a changed venue. In the Metro Texarkana News and Reports group, which had 23,900 followers and nine Parker-related articles posted in it, commenters pronounced Parker guilty and explicitly called for her death. *E.g.*, 56 RR 268, 274. Worse, the victim’s widowed husband posted that Parker was a “mental facility” who “took my wife and my unborn,” and urged the group members to “get justice for my wife and my baby!” 56 RR 268, 291. Other members of the victims’ family shared non-public information about additional indictments, 56 RR 275, and a correctional officer shared untrue and non-public statements about her experience guarding Parker in jail, 56 RR 293–294. The victim’s husband also shared the untrue statement that “you cannot plead guilty in a capital murder,” by way of explaining Parker’s “not guilty” plea to group members so pre-committed to belief in her guilt that her plea was otherwise incomprehensible. 56 RR 291. Members of the group coordinated to spread their belief in Parker’s guilt for capital murder as widely as possible before trial so that “[b]y the time of this evil monster[’]s trial, everyone will know what she did.” 56 RR 320.

Facebook users organized two other groups to discuss the case against Parker and encourage the spread of pretrial publicity, so as to ensure a death sentence: “Updates from the Brookes” and “Reagan Hancock Case Discussion.” 9 RR 10–11. When members of the “Reagan Hancock Case Discussion” group, which had about 5,000 members, 56 RR 331, learned about the motion for change of venue, they encouraged other members to share news with friends across Texas to attempt to

nullify the curative effects of a changed venue. *E.g.*, 56 RR 335. The “Updates from the Brookes” group, which was followed by 6,463 people, 56 RR 329, was run by the victims’ family and used as another hub for organizing the dissemination of pretrial publicity, with further encouragement to “FIND JUSTICE,” 56 RR 328.

### 3. Time Between Media Attention and Trial

The TCCA determined that this factor was “neutral as to presuming prejudice” by examining only the two-year “gap between the offense and [Parker’s] trial.” App. 34a. But the proper focus of this factor is on the gap between *publicity* and trial, not the time between the *offense* and trial. *See State v. Komisarjevsky*, 258 A.3d 1166, 1197 (Conn. 2021) (holding that this factor favored defendant despite *four-year* gap between offense and trial because ongoing media coverage “operated to revive any dissipation that had taken place”); *Casellas-Toro*, 807 F.3d at 388 (similar).

Here, in the year before Parker’s change of venue hearing on February 10, 2022,<sup>2</sup> three traditional or online local news sources—the Gazette, TXK, and Metro Texarkana News & Reports—shared 21 articles on Facebook about the allegations against Parker. 56 RR 321–23. This was over half of the 36 total articles shared by those sources between the offense and hearing, showing that the media attention was still strong preceding the change of venue hearing and did not have time to diminish,

---

<sup>2</sup> Petitioner focuses on the date of the change of venue hearing, as that is the only date through which the record evidence catalogues the amount, nature, and sources of pretrial publicity, and it is the record upon which the TCCA ruled, given that the trial court carried Parker’s original change of venue motion until voir dire, pursuant to *Tracy v. State*, 597 S.W.3d 502 (Tex. Crim. App. 2020). 9 RR 283. In any event, trial began just six months later, in August 2022. *See* 28 RR 1.

unlike in *Skilling* and *Patton v. Yount*, 467 U.S. 1025, 1032–33 (1984).

#### 4. Whether the Jury’s Decision Indicates Bias

A jury’s delivery of a mixed verdict can reflect “fair minded consideration of the issues” and counsel against a presumption of prejudice. *Skilling*, 561 U.S. at 384 (quoting *United States v. Arzola-Amaya*, 867 F.2d 1504, 1514 (5th Cir. 1989)). Here, by contrast, the jury delivered the single result most consistent with bias: conviction of capital murder and a sentence of death. 40 RR 45; 55 RR 86. The TCCA correctly determined “this factor weighs in favor of presuming juror prejudice.” App. 35a.

#### D. The actual prejudice revealed in this case—which was not analyzed by the court below—independently warrants reversal.

Under *Skilling*, a change of venue is constitutionally required when there is either presumed *or* actual prejudice. *Skilling*, 561 U.S. at 377, 385. By contrast to presumed-prejudice’s focus on whether “community prejudice existed in [the venue] generally,” actual prejudice is judged by whether the seated jurors were “under its sway.” *Skilling*, 561 U.S. at 391. Although Parker argued for both forms of prejudice, Appellant’s Br. at 54–62, *Parker*, 727 S.W.3d 38; Appellant’s Reply Br. at 19–20, *Parker*, 727 S.W.3d 38, the TCCA did not address or rule on her actual-prejudice arguments. App. 30a–35a. This alone warrants reversal because even without presumed prejudice, actual prejudice requires trial in a new venue. *See Commonwealth v. Toolan*, 951 N.E.2d 903, 918 (Mass. 2011).

Actual prejudice was present here. Not only did voir dire reveal that 80% of the multi-hundred-person jury pool had knowledge of the case, 27 RR 57, it also showed that ten of the fourteen seated or alternate jurors knew about the case. 19 RR

82; 22 RR 28; 23 RR 8, 321, 376; 24 RR 194; 26 RR 167; 27 RR 31, 81, 162. One seated and one alternate juror stated they already believed Parker was guilty. 23 RR 331; 27 RR 81. Another seated juror would “have some hesitation” presuming Parker to be innocent. 22 RR 44–45. While some seated jurors claimed to be able to set aside their knowledge, “[w]here so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight.” *Irvin*, 366 U.S. at 728. The law recognizes that “[p]rejudice is a sinister quality” because “[i]t may possess a man and he not be aware of it; or, being aware of it, he may purposely conceal it, in order that he may vent his revenge.” *Henley v. State*, 576 S.W.2d 66, 71 (Tex. Crim. App. 1978) (en banc) (quoting *Faulkner v. State*, 65 S.W. 1093 (Tex. Crim. App. 1901)). Small wonder that Parker’s jury took only one hour and 11 minutes to deliberate on guilt, 40 RR 44, and one hour and 34 minutes to sentence Parker to death, 55 RR 74–78.

The actual prejudice in this case resembles that of *Commonwealth v. Toolan*, 951 N.E.2d 903 (Mass. 2011). In *Toolan*, the court did not presume prejudice but still identified actual prejudice based largely on the “small, socially interconnected community of Nantucket, in which many prospective jurors knew the victim, her family, or witnesses.” *Id.* at 918. As the State here recognized, “Bowie County, fairly small community. I mean, it’s not Dallas. It’s not Houston. The odds that somebody knows a party, maybe one of the attorneys, or a witness, is pretty high.” 20 RR 114. And in *Tooley*, “mass media coverage overlapped with, and was reinforced by, informal interactions and conversations,” as occurred here. 951 N.E.2d at 918.

Had Parker been tried in Houston or Dallas, she would not have faced such actual prejudice. *Cf. Casellas-Toro*, 807 F.3d at 388 (“Casellas would be relatively unknown outside Puerto Rico. . . . Instead, he was tried in Puerto Rico, in an atmosphere that prejudiced the trial’s fundamental fairness.”). With Parker’s life at stake in her trial, her right to an impartial jury demanded more than the proceedings she received in Bowie County. *Cf. Irvin*, 366 U.S. at 728 (“With his life at stake, it is not requiring too much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion . . .”).

## **II. DUE PROCESS PROHIBITS THE INTRODUCTION OF IRRELEVANT, UNDULY PREJUDICIAL SEX-STEREOTYPING EVIDENCE IN CAPITAL SENTENCING PROCEEDINGS.**

“[T]he Due Process Clause forbids the introduction of evidence so unduly prejudicial as to render a criminal trial fundamentally unfair.” *Andrew v. White*, 604 U.S. 86, 96 (2025). As this Court recently recognized in *Andrew*, irrelevant evidence introduced to show a defendant is a “bad wife, a bad mother, and a bad woman” can generate such prejudice. *Id.* at 90 (citation omitted). The risk of sex-stereotyping prejudice in criminal trials has long been recognized to pose similar constitutional concerns as racially discriminatory prejudice. *See J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 128 (1994) (explaining cases “involv[ing] alleged racial discrimination in the exercise of peremptory challenges” were “premised on equal protection principles that apply equally to gender discrimination”).

The harms of such invidious discrimination are amplified in capital sentencing. As this Court noted in the analogous context of racial prejudice, “[b]ecause of the

range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected.” *Turner v. Murray*, 476 U.S. 28, 35 (1986). Just as evidence that “appeal[s] to a powerful racial stereotype” and “provide[s] support for making a decision on life or death on the basis of race” is “deadly in small doses,” *Buck v. Davis*, 580 U.S. 100, 121–22 (2017), so too can sex-stereotyping evidence be fatal. The irrelevant, discriminatory evidence against Parker in this case “trivialize[d] the value of her life in the minds of the jurors.” *Andrew*, 604 U.S. at 90 (alteration in original) (citation omitted). This was grave error.

Granting review in this case is imperative not only to ensure that the death sentence was imposed in accord with due process in Parker’s case, but also to correct the nationwide practice of sex-stereotyping against female criminal defendants.

**A. The State’s reliance on gender-discriminatory evidence to sentence Parker to death rendered her trial fundamentally unfair in violation of due process.**

At sentencing, the State flooded the jury with irrelevant and unduly prejudicial evidence about Parker’s “sex life and about her failings as a mother and wife.” *See Andrew*, 604 U.S. at 87. The State’s relentless focus on Parker’s clothing, sexual history, and parental shortcomings were irrelevant to the questions the jury was asked to answer: (1) whether Parker posed “a continuing threat to society,” and (2) whether her “personal moral culpability” and “character and background” presented “sufficient mitigating circumstance[s]” to warrant a sentence of life in prison instead of death. Tex. Code Crim. Pro. art. 37.071 § 2(b)(1), (e)(1). Instead, by

introducing this evidence and returning to it during closing arguments, the State in effect urged that Parker deserved to die because she failed to comport with gender stereotypes—or in the State’s words, failed to fulfill the “household duties that a wife and a mother would have.” 41 RR 57. The State’s reliance on gender stereotypes to secure a death sentence skirted the “*individualized* determination on the basis of the character of the individual and the circumstances of the crime” this Court requires. *Zant v. Stephens*, 462 U.S. 862, 879 (1983). As this Court has stated repeatedly, “a death sentence based upon consideration of ‘factors that are constitutionally impermissible or totally irrelevant to the sentencing process, such as for example the race, religion, or political affiliation of the defendant,’ would violate the Constitution.” *Baldwin v. Alabama*, 472 U.S. 372, 382 (1985) (quoting *Zant*, 462 U.S. at 885)).

In short, evidence that Parker is a “bad woman”—including that she left her children with relatives while she went out, 41 RR 62; had been divorced multiple times, 31 RR 26, 28 RR 176–77; was sexually active outside of wedlock, 43 RR 145–46, 44 RR 146–49; read and watched “sexual[ly] deviant” content, 48 RR 49; did not dress professionally at work, 41 RR 119, 44 RR 243–44; and enjoyed flirting, showing off her body, and having sex, 41 RR 119–20, 44 RR 89; 47 RR 16, 198–200—served no legitimate purpose in answering the “future dangerousness” and “mitigation” special issues. The admission of this “irrelevant evidence was so ‘unduly prejudicial’ as to render [Parker’s] trial ‘fundamentally unfair.’” *See Andrew*, 604 U.S. at 96 (quoting *Payne v. Tennessee*, 501 U.S. 808, 825 (1991)).

Gender discrimination is odious in any criminal proceeding, but the prejudicial

errors are magnified in Parker’s case “in light of the complete finality of the death sentence.” *Turner*, 476 U.S. at 35. Accordingly, this Court’s “duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case” like this one. *Burger v. Kemp*, 483 U.S. 776, 785 (1987).

This Court has explained that in the penalty phase of a capital trial, the “toxin[]” of prejudicial, discriminatory evidence “pertinent on the question of life or death . . . can be deadly in small doses.” *Buck*, 580 U.S. at 122. Here, the Court need not look hard for “small doses.” The State egregiously engaged in prejudicial error after prejudicial error, collecting *weeks* of irrelevant, salacious testimony to portray Parker as a sexual deviant and a bad mother. In doing so, the State sought—successfully—to condemn Parker to die, not only based on the merits of the “future dangerousness” and “mitigation” special issues, but also because the State deemed her the wrong kind of woman. The frequency and gravity of these errors mandate another opportunity for Parker to have a fair trial on the “question of life or death.” *Id.* at 122.

**B. Such reliance on prejudicial, gender-discriminatory evidence at trial routinely deprives women of due process.**

The impact of granting review would extend beyond Parker’s case because gender-based discrimination routinely deprives women of fair trials in criminal proceedings. This Court has long recognized that criminal convictions grounded in the introduction of prejudicial, irrelevant evidence—such as the gender-discriminatory evidence introduced against Parker below—are abhorrent to the constitutional mandate of due process. *See Andrew*, 604 U.S. at 92–94 (collecting

cases). Nevertheless, fundamentally unfair convictions plagued with such prejudicial evidence and overbroad stereotypes occur with disturbing frequency.

For instance, in *State v. Ianniciello*, 582 P.3d 372 (Wash. Ct. App. 2026), the court considered whether to remedy the introduction of “approximately 800 pages of e-mails detailing [the female defendant’s] extramarital sexual conduct” in a murder trial. *Id.* at 374. The emails, which the trial court admitted, contained details about the appellant’s “extramarital sexual conduct, including how often she and [a man] had sex, how often that occurred in their cars, the specific acts they performed during sexual encounters, the anatomical areas involved, and the corresponding sexual fetishes.” *Id.* at 379. Citing *Andrew*, the court declined to decide whether this constituted “unduly prejudicial evidence” that would “render [her] trial fundamentally unfair,” whether “the State violated her right to a fair trial by employing gender-based stereotypes at trial,” or whether “gender-based misconduct should be analyzed under the heightened standard for prosecutorial misconduct,” instead reversing on other grounds. *Id.* That the appellate court remanded for a new trial without instructing the court below as to whether the admission of the same evidence invoking gender stereotypes would render the retrial fundamentally unfair indicates that further instruction from this Court is needed.

Irrelevant evidence detailing a female defendant’s sexual history is among the most obvious examples of appealing to sex-based stereotypes. *See, e.g., United States v. Cox*, 536 F.2d 65, 71 (5th Cir. 1976) (reversing and remanding district court’s admission of evidence of prostitution to establish guilt of a drug charge). But courts

also allow juries to convict female defendants based on other forms of sex stereotyping. One woman was convicted after the prosecutor claimed “[o]nly a woman would inflict this kind of beating” and “hell hath no fury as a woman scorned.” *People v. King*, 50 N.E.3d 869, 877 (N.Y. 2016) (alteration in original). Another was convicted following the introduction of “questionable tropes and stereotypes about single working mothers,” including that the defendant “was a young struggling mother” who “changed jobs with some frequency” and “once called herself a ‘weekend mom.’” *State v. Lodzinski*, 265 A.3d 36, 58 (N.J. 2021) (granting relief to appellant because “[s]tereotypes associated with single-parent women cannot substitute for an absence of evidence relating to an essential element of the offense of murder,” *id.* at 59).

And often, prosecutors will combine multiple stereotypes—as was done here—to fashion an image of a woman whose sexual deviancy renders her unable to be a good housewife or mother. *See, e.g., Andrew*, 604 U.S. at 87 (discussing the introduction of evidence about the appellant’s “sex life and about her failings as a mother”); *see also Andrew v. Tinsley*, 164 F.4th 789, 792–93, 799, 803 (10th Cir. 2026) (declining to grant relief to appellant despite the introduction at trial of “evidence of a gender stereotype and promiscuity,” including that she “dressed sexy,” “flirted,” “once left her house with rolled hair and revealing clothes,” entered a restaurant with “Gothic, long black hair,” “changed her hair color to match a man’s preference,” and “brought men into the home while the children were there”).

Scholars have also catalogued cases involving gender-discriminatory evidence against female defendants and have confirmed that it is widespread. *E.g.*, Sandra

Babcock, Nathalie Greenfield, Kathryn Adamson, *Women on Death Row in the United States*, 46 CARDOZO L. REV. 1, 50 (2024) (“[R]esearch indicates that the dehumanization of women [on death row] is often deeply gendered.”); Elizabeth M. Reza, Note, *Gender Bias in North Carolina’s Death Penalty*, 12 DUKE J. GENDER L. & POL’Y 179, 209–10 (2005) (finding convictions tainted by evidence that women “rejected the stereotype of the ‘gentler sex’” and “‘stepped outside the bounds of normative femininity’ and no longer conformed to society’s gender stereotypes”) (citations omitted); see also Sandra Babcock, *Gendered Capital Punishment*, 31 WM. & MARY J. RACE, GENDER & SOC. JUST. 1, 12–13 (2024) (collecting cases).

Despite the grave due process concerns posed by the introduction of prejudicial, sex-stereotyping evidence, courts across the country deprive women of due process by allowing the improper admission of this evidence at trial. This case presents a prime opportunity to emphasize that arguments and convictions premised on irrelevant, prejudicial, sex-stereotyping evidence violate due process and have no place in the American court system and must especially be eliminated in capital cases.

**C. The TCCA’s reliance on the preservation rule is no bar to Supreme Court review.**

At trial, Parker’s defense counsel objected to the introduction of evidence of “legal, non-criminal acts that the State apparently deems to be morally transgressive or simply inappropriate,” 2 CR 733. Because counsel did not use the phrase “gender stereotypes” in this objection, the TCCA held that Parker “did not preserve any error for appellate review” with respect to improper sex-stereotyping evidence. App. 49a. Accordingly, the court overruled her claim that the introduction of reams of this type

of evidence caused her sentence to be fundamentally unfair in contravention of due process. App. 49a.

But this Court granted review—and reversed—when presented with the same procedural posture in *Ake v. Oklahoma*, 470 U.S. 68, 74 (1985). There, the State had secured a capital conviction without providing an indigent defendant with access to a competent psychiatrist in violation of the defendant’s due process rights. *Id.* at 86–87. The Oklahoma Court of Criminal Appeals held that the defendant had waived the issue by failing to appropriately raise it below. *Id.* at 74. This Court held that it nevertheless had jurisdiction because Oklahoma “does not apply” its preservation rule “to fundamental trial error” such as the “federal constitutional error[]” at issue. *Id.* at 74–75. “Thus, the State has made application of the procedural bar depend on an antecedent ruling on federal law, that is, on the determination of whether federal constitutional error has been committed.” *Id.* at 75. Because “resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court’s holding is not independent of federal law, and our jurisdiction is not precluded.” *Id.* (first citing *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945); and then citing *Enter. Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164 (1917)).

So too here. Texas law mandates that courts review absolute rights such as due process regardless of whether such issues were preserved. *Marin v. State*, 851 S.W.2d 275, 278–79 (Tex. Crim. App. 1993). As Texas law recognizes, “[a]bsolute rights’ are not optional, cannot be waived or forfeited by the defendant, and include such issues as jurisdiction and due process.” *Crowell v. State*, No. 11-13-00376-CR,

2016 WL 191915, at \*2 (Tex. App. Jan. 14, 2016). Further, Texas courts must review evidentiary issues that render a criminal conviction fundamentally unfair, procedural defaults notwithstanding. *See, e.g., In re A.D.*, 287 S.W.3d 356, 362 (Tex. App. 2009); *see also Briggs v. State*, 789 S.W.2d 918, 921 (Tex. Crim. App. 1990). Here, reversal is required because the sex-based evidence was “so unduly prejudicial that it render[ed] the trial fundamentally unfair” under the Due Process Clause. *See Payne*, 501 U.S. at 825.

Because resolving the substance of Parker’s federal constitutional claim was a necessary antecedent to the application of Texas’s procedural bar, the TCCA’s “judgment does not rest on an independent state ground and [this Court’s] jurisdiction is therefore properly exercised.” *Ake*, 470 U.S. at 74. Accordingly, this Court can and should grant review and reverse that egregious error.

### **CONCLUSION**

The petition for a writ of certiorari should be granted. Alternatively, summary reversal would also be warranted. *See Wearry v. Cain*, 577 U.S. 385, 395 (2016) (noting this Court “has not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law”).

Respectfully submitted,

Caitlin Halpern\*  
Connor Burwell  
Denise Drake  
GIBBS & BRUNS LLP  
1100 Louisiana St, Suite 5300  
Houston, TX 77002  
Telephone: 713-650-8805  
Facsimile: 713-750-0903  
chalpern@gibbsbruns.com  
cburwell@gibbsbruns.com  
ddrake@gibbsbruns.com

*\*Counsel of Record*

COUNSEL FOR PETITIONER

March 6, 2026