No. 24-6042

IN THE

Supreme Court of the United States

DAVID LEONARD WOOD,
Petitioner,

v.

STATE OF TEXAS
Respondent.

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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This is a capital case.

QUESTION PRESENTED

The Honorable Bert Richardson, the judge currently presiding over David Wood's postconviction proceedings, ran for and won election to the Texas Court of Criminal Appeals in 2014. During his campaign, Judge Richardson linked to his campaign website, a news story about a 2013 ruling denying Wood's claim of intellectual disability. Wood waited until 2017 to seek disqualification of Judge Richardson from presiding over his then pending request for DNA testing, citing the campaign's use of this adverse ruling. Disqualification was denied. Judge Richardson did not deny Wood's DNA motions until 2022—eight years after he won his 2014 campaign.

Did the Texas Court of Criminal Appeals err in applying this Court's controlling precedent and concluding there was no violation of Wood's right to due process under the Fourteenth Amendment and no need for disqualification of Judge Richardson for relying on his judicial record in his election campaign, which included a ruling in Wood's case, where Wood failed to demonstrate that Judge Richardson had any direct or personal interest in Wood's postconviction proceedings and Judge Richardson was already elected to office when he made further rulings on Wood's case?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

Over thirty years ago, Petitioner David Leonard Wood was convicted and sentenced to death for the murders of Ivy Williams, Dawn Smith, Karen Baker, Desiree Wheatley, Angelica Frausto, and Rosa Maria Casio. His state and federal habeas appeals were ultimately unsuccessful.

Wood now petitions this Court for a writ of certiorari from the Texas Court of Criminal Appeals's (CCA) opinion affirming the trial court's denial of Wood's motion for DNA testing filed pursuant to Chapter 64 of the Texas Code of Criminal Procedure. However, rather than challenging the CCA's de novo determination that Wood did not meet the requirements under the statute, Wood challenges the court's ancillary holding that the trial judge was not disqualified from presiding over the Chapter 64 issue. According to Wood, because the trial judge included a link to a news story about a ruling he issued in Wood's case on his campaign website years before the DNA motion was decided, the judge should have been disqualified from continuing to sit on the case. Wood claims that in deciding the ancillary disqualification issue, the CCA refused to apply applicable Supreme Court precedent. Wood now asks this Court to "grant certiorari to correct the TCCA's open defiance of its precedent." Pet. at 2.

However, because the CCA reviewed the denial of Wood's Chapter 64

motions de novo, any review of the judicial disqualification issue would not resolve any injury to Wood and would be purely advisory by the Court. Regardless, the CCA applied the correct legal standard. Therefore, Wood offers no compelling reason to grant certiorari review and his petition should be denied.

STATEMENT OF JURISDICTION

The Court generally has jurisdiction to consider a petition for a writ of certiorari seeking review of the judgment of a state court of the highest review when "any title, right, privilege, or immunity is specially set up or claimed under the Constitution." 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

I. Facts of the Crime

On federal habeas review, Magistrate Judge Paul Stickney summarized the relevant facts of the crime as follows:

> Six women disappeared from the El Paso area between May 13, 1987 and August 27, 1987. Between September 4, 1987 and March 14, 1988, the bodies of these women were found buried in shallow graves in the same desert area northeast of El Paso. The first body discovered was that of Rosa Casio, age 23, who worked in a topless club. On the evening of her disappearance, she was seen holding hands with a man who could have been [Wood]. The second body found was that of Karen Baker, age 21, who lived at a hotel on Dyer. The day of her disappearance, she was seen by Charles Lloyd riding a red Harley Davidson with [Wood]. She told Lloyd that [Wood] would be back to pick her up for a date at midnight. At midnight, Lloyd saw a man pull up in a white or beige pickup. The man got out and walked toward Karen, who was standing nearby. This was the last time Karen was seen. The third

body recovered was that of Dawn Smith, age 14. This victim was well-acquainted with [Wood] and there was testimony that she would have accepted a ride with him. The fourth body was that of Desiree Wheatley, age 15. Desiree was last seen near a Circle K store, getting into the passenger side of a small beige truck driven by [Wood]. The fifth body was that of Angelica Frausto, age 17, who was a dancer at a topless bar. She was last seen going for a ride with a man on a red Harley-Davidson. The sixth body recovered was that of Ivy Williams, age 23, a prostitute and exotic dancer. She was seen with [Wood] shortly before her disappearance.

Five of the bodies were located in the same one by one- half mile area; the sixth was three-quarters of a mile away. All of the bodies were approximately 30 to 40 yards from one of the dirt roadways in the desert. Four of the bodies were in various states of undress, indicating that the killer had sexually abused them. [Wood's] former girlfriend and others testified that he owned a beige pickup. He also drove a red Harley-Davidson. [Wood's] girlfriend testified that he had several tattoos on his body and that he owned both a burnt orange blanket and some shovels, all of which he kept in the back of his pickup. A forensic chemist testified that orange fibers found on the clothing of one of the victims matched orange fibers taken from a vacuum cleaner bag which [Wood] and his girlfriend had left in their old apartment.

Randy Wells testified that he shared a cell with [Wood] for two and a half months in 1989. [Wood] told him about the murders, describing his victims as topless dancers or prostitutes. [Wood] told him that he would lure each girl into his pickup with an offer of drugs. Then he would drive out to the desert, tie her to his truck and dig a grave. Next he would tie the victim to a tree and rape her. Wells also testified that he covered over some of [Wood's] tattoos with new ones. He said [Wood] told him he wanted the tattoos covered up because one girl who had seen the tattoos had gotten away from him.

Both Karen Baker and Desiree Wheatley were with [Wood] when they were last seen alive. Ivy Williams was seen with [Wood] shortly before her disappearance. In the case of the victim Desiree Wheatley, a witness who knew [Wood] before the incident identified him as the man driving the pickup that Wheatley

climbed into. All of the murders took place between May 30, 1987 and August 28, 1987.

. . .

[Judith Kelly], a prostitute and a heroin addict testified that the following occurred in July of 1987:

Kelly was walking outside of a Circle K located on Kemp and Dyer in the northeast part of El Paso. A tattooed man driving a tan pickup stopped and asked her if she needed a ride. Kelly identified [Wood] in court as the driver of the pickup. She accepted his offer, climbed into his vehicle, and told [Wood] where she was going. When [Wood] passed up the turn she had directed him to take, he explained that he would take her back after first stopping by the house of a friend. He stopped at an apartment complex and went inside. When he returned about three minutes later, a piece of narrow rope was hanging from one of his pockets.

[Wood] drove northeast of town toward the desert, in the direction opposite Kelly's friend's apartment. He explained that he was going there to recover some cocaine he had buried in the desert. He stopped first at a gate in the desert area east of Dyer. Finding the gate locked, he crossed back west into the desert area located between Dyer and McCombs. After driving around the area for a good while, [Wood] finally stopped his truck, got out, and ordered Kelly out as well. She saw him get a "brownish red" blanket and a shovel from the back of his truck and take them behind some bushes. After tying her to the front of his truck with the rope, [Wood] proceeded to dig a hole behind the bushes. Ten or fifteen minutes later, he returned with the blanket and began ripping her clothes and forcing her to the ground. Suddenly hearing voices, [Wood] ordered Kelly to get back in the truck.

[Wood] drove across to the desert on the west side of McCombs, where he stopped his vehicle again. He ordered her out, spread the blanket on the ground and forced her to remover her clothes. He gagged her and tied her to a bush. While he had her on the ground attempting to rape her, he ordered her to say that she was 13; she refused to do so, saying she was 27 or 28 years old. Ultimately, [Wood] did rape Kelly. Immediately afterwards,

> [Wood] stated that he heard voices. He hastily threw the blanket and Kelly's clothing into the back of his truck and drove away, leaving her naked in the desert. His final words to her were, "[A]lways remember, I'm free."
>
> There was also testimony presented at [Wood's] trial from his former cellmate Carl Sweeney. Sweeney testified that [Wood] hired him to write and file a federal suit against the El Paso Police Department on [Wood's] behalf asserting that that department had violated [Wood's] civil rights. Sweeney further testified that [Wood] showed him numerous newspaper clippings about the El Paso desert murders and confessed to Sweeney that he was the one who had committed the murders.

Wood v. Dretke, 3:01-CV-2103-L, 2004 WL 1243169, *4-*6 (N.D. Tex. 2006) (citations omitted).

II. Procedural History

Wood was convicted of murder and sentenced to death in 1992. The CCA affirmed his conviction and sentence in 1995. *Wood v. State*, No. 71,594 (Tex. Crim. App. Dec. 13, 1995). The CCA denied Wood's state habeas application in 2001. *Ex Parte Wood*, No. 45,746-01 (Tex. Crim. App. Sept. 19, 2001).

The district court denied habeas relief and denied a certificate of appealability (COA). *Wood v. Dretke*, No. 3:01-CV-2103-L, 2006 WL 1519969 (N.D. Tex. Jun. 2, 2006). The Fifth Circuit denied his application for a COA, *Wood v. Quarterman*, 503 F.3d 408 (5th Cir. 2007), and this Court denied certiorari review, *Wood v. Quarterman*, 552 U.S. 1314 (2008). Shortly thereafter Wood's habeas counsel withdrew, and his execution was set for August 20, 2009.

Just prior to the scheduled execution date, Wood filed a subsequent state application for writ of habeas corpus. *See Ex parte Wood*, No. WR-45,746- 02, 2009 WL 10690712, at *1 (Tex. Crim. App. Aug. 19, 2009). The CCA granted a stay of execution so that he could raise a claim pursuant to *Atkins v. Virginia,* 536 U.S. 304 (2002) in the trial court. *Id.*

While that matter was being litigated, Wood filed a motion for DNA testing, and pursuant to an agreement by the State, the trial court granted the motion. CR at 148. Before the *Atkins* litigation was complete, on February 24, 2011, Wood filed another motion requesting DNA testing to which the State objected. CR at 149.

In early January 2011, before a decision was made on either issue, the case was transferred from Judge Peca to Judge Bert Richardson. *See* CR at 1296. On October 1, 2013, Judge Richardson entered findings of fact and conclusions of law (FFCL) recommending that Wood be denied relief on his *Atkins* claim. *See* CR at 1298. On November 26, 2014, the CCA adopted Judge Richardson's findings and conclusions and denied Wood habeas relief with respect to his *Atkins* claim. *See* CR at 1298.

At the end of 2014, after the CCA denied Wood's state habeas application, Wood filed a motion for authorization to file a successive federal habeas corpus petition asserting his *Atkins* claim in the Fifth Circuit. *In re*

Wood, 648 Fed. Appx. 388, 389-90 (5th Cir. 2016). The Fifth Circuit denied the motion on May 12, 2016. *Id.*

After Judge Richardson issued his FFCL on the *Atkins* issue, Wood filed additional motions for DNA testing.[1] *See* CR at 202, 513, 588, 752, 1156. A hearing to address the DNA issues was scheduled for March 8, 2017. CR at 1300. After the March hearing, on April 18, 2017, Wood filed a motion seeking to disqualify Judge Richardson from the case, claiming that the judge "tied his success in the election for a seat on the CCA to a particular outcome in David Wood's death penalty case." CR at 1245. The motion was filed more than two years after Judge Richardson was elected to the CCA and nearly four years after Judge Richardson found that Wood was not intellectually disabled—the decision Judge Richardson referenced in his campaign ad. *See* CR at 1298. The presiding judge of the administrative district denied Wood's motion on June 12, 2017. CR at 1399. The CCA denied Wood's petition for leave to file a writ of mandamus on the issue on July 26, 2017. Notice, *In re Wood*, No. WR-45,746-03 (Tex. Crim. App. July 26, 2017).

On March 3, 2022, Judge Richardson denied Wood's Chapter 64 motions for DNA testing.[2] CR at 1488–89, 1492. Ten days later, on March 18, 2022,

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[1] These motions were filed on October 11, 2011; April 08, 2015; November 2, 2015; January 19, 2016; and March 13, 2017.

[2] That same day Judge Richardson also denied a variety of other motions Wood filed while the DNA litigation was pending. CR at 1487, 1490, 1492.

Wood filed a motion to rescind the March 3, 2022 DNA order. CR at 1514. The trial court did not rule on this motion.

Wood filed a notice of appeal in the CCA from the trial court's denial of his motion for forensic DNA testing pursuant to Chapter 64 of the Texas Code of Criminal Procedure. During the time the appeal was pending, Wood filed a variety of motions in the CCA some of which were entirely unrelated to the DNA appeal. On May 22, 2024, the CCA affirmed the trial court's denial of Wood's DNA motion. *Wood v. State*, 693 S.W.3d 309, 319 (Tex. Crim. App. 2024). Wood filed a motion for rehearing which the CCA denied on August 21, 2024. *Id.* Wood filed his petition for a writ of certiorari in this Court on November 19, 2024.[3]

REASONS FOR DENYING THE WRIT

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. No compelling reason exists in this case. Wood gives

[3] In separate litigation, on September 9, 2024, Wood filed a complaint pursuant to 42 U.S.C. § 1983 in the Western District of Texas, Austin Division, alleging that the CCA's authoritative construction of Chapter 64 violated his Fourteenth Amendment Due Process Rights. Complaint, *Wood v. Patton,* 1:24-CV-1058DII (W.D. Tex. Sept. 9, 2024). Defendant Patton filed a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim for which relief can be granted. Motion, *Wood v. Patton,* 1:24-CV-1058DII (W.D. Tex. Nov. 8, 2024). Plaintiff Wood responded and Defendant Patton replied. On January 23, 2025, Plaintiff Wood filed a motion for preliminary injunction staying his execution scheduled for March 13, 2025. Motion, *Wood v. Patton,* 1:24-CV-1058DII (W.D. Tex. Mar. 13, 2025). Defendant Patton's response is currently due on February 6, 2025.

two reasons for granting review in this case: "(1) to address the TCCA's open defiance of binding precedent; and (2) to correct the TCCA's failure to acknowledge uncomfortable truths." Pet. at 20. However, neither is an adequate, much less compelling reason, for this Court to exercise its discretion and hear this case. Essentially, Wood asks this Court to use its limited resources to rebuke the CCA for its application of properly recognized precedent. But this is a facially inadequate justification for this Court's review. Sup. Ct. R. 10.

Further, this Court lacks jurisdiction to review this issue because any opinion on the ancillary issue of Judge Richardson's removal from the Chapter 64 proceeding would be advisory. The CCA has already reviewed de novo Judge Richardson's rejection of Wood's Chapter 64 motions. Further, Wood did not present the issue about Judge Richardson's disqualification to the CCA in a procedurally correct manner. Nonetheless, the CCA addressed the issue and correctly determined that the Judge Richardson was not disqualified from presiding over Wood's Chapter 64 proceedings. Wood fails to establish that the CCA erred or why any such error is so compelling that this Court's intervention is necessary. Wood does not assert that there is a conflict among state or federal courts that will be addressed by a decision in this case. He argues, erroneously, that the CCA's adjudication of the issue is in direct conflict with

this Court's precedent. However, Wood's arguments are merely complaints about how the CCA applied this Court's precedent to the facts in this case.

Wood presents no compelling reason for granting review. Sup. Ct. R. 10. His petition should therefore be denied.

ARGUMENT

I. The Court Does Not Have Jurisdiction Over This Issue.

The CCA considered Judge Richardson's denial of Wood's Chapter 64 motions de novo. Therefore, this Court's review of the disqualification issue would not remedy any alleged injury to Wood, i.e., Judge Richardson's denial of his motions, and any opinion by this Court on that issue would be purely advisory. This Court lacks jurisdiction to issue what would be nothing more than an advisory opinion. *See Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990); *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (a case is moot when a court cannot grant any "effectual relief" to the prevailing party).

The only issue Wood presents in his petition—whether the Due Process Clause required Judge Richardson's disqualification from presiding over Wood's Chapter 64 proceedings, *see* Pet. at i—is entirely ancillary to the merits of the issue ultimately decided by the CCA. But the main issue on appeal in the CCA was whether the trial court erred in denying Wood's motion for DNA

testing under Chapter 64 of the Texas Code of Criminal Procedure.[4] *Wood,* 693 S.W.3d at 311. The CCA conducted its own de novo analysis of whether Wood met the statutory requirements to be entitled to testing, concluding he did not. *Id.* at 328–40 ("In light of all of this discussion, we conclude that Appellant has not met his burden to show that his request for DNA testing has not been made to unreasonably delay the execution of sentence."). Because the CCA has already independently found that Wood's motion sought to unreasonably delay the execution of his sentence and should be denied, a favorable decision by this Court would not benefit Wood even if it determined that the CCA's decision about the trial judge's alleged disqualification was improper.[5] Therefore, any review of the disqualification issue would not remedy any alleged injury to Wood, and this Court lacks jurisdiction to issue what would be nothing more than an advisory opinion. *See Lewis*, 494 U.S. at 477.

This Court has held that the jurisdiction of a federal court depends on

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[4] Wood raised other issues before the CCA, but they were raised in an improper procedural manner and were not relevant to the appeal. *Wood,* 693 S.W.3d at 311 ("[Wood] has appealed the 2022 denial of testing and now raises six issues, only two of which directly address the question of whether he should have been granted DNA testing of biological evidence.")

[5] Wood may argue that the decision would be useful in any future motions filed in the trial court. However, this is mere speculation and cannot serve to convey jurisdiction in a case that is otherwise moot. "Federal courts may not "decide questions that cannot affect the rights of litigants *in the case before them*." *United States v. Juvenile Male*, 564 U.S. 932, 937 (2011) (per curiam) (a judgment's possible benefit in a future lawsuit does not preserve standing); *Lewis,* 494 U.S. at 477 (emphasis added).

whether the party is suffering from "an actual injury" that is "likely to redressed by a favorable judicial decision." *Chafin*, 568 U.S. at 172 (quoting *Lewis,* 494 U.S. at 477). In the absence of such an injury, an opinion would essentially be an advisory decision "advising what the law would be upon the hypothetical state of facts." *Id.*

Wood does not suggest how a favorable decision would redress any alleged injury to him. Wood only gives one reason to grant certiorari–so this Court can rebuke the CCA for what Wood sees as exercising "open defiance" of this Court's precedent. Pet. at 2. But, "[i]n the exercise of [] jurisdiction, [this Court] is bound by two rules, to which it has rigidly adhered: one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other, never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *United States v. Raines*, 362 U.S. 17, 21 (1960) (citing *Liverpool, New York, and Philadelphia S.S. Co. v. Commissions of Emigration*, 113 U.S. 33, 39 (1885)). This Court does not render advisory opinions and should decline to do so now. *See United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947) ("As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory opinions.").

Regardless of how the disqualification issue would be decided, the outcome of Wood's case would not change—he is not entitled to DNA testing.

Therefore, there is "no case or controversy" because Wood has "no legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). There is no reason to grant the petition, much less a compelling reason, in light of Wood's lack of interest in the outcome in the case.

II. Wood Fails to Justify this Court's Attention to this Issue Because his Appeal Was Procedurally Improper in the Court Below.

While the CCA discussed Wood's argument that Judge Richardson was disqualified and decided that the argument was without merit, the court's discussion of the procedural history demonstrates that the appeal of the denial of a Chapter 64 motion was not the appropriate way to present the argument regarding the disqualification of a judge to the CCA. *See Wood,* 693 S.W.3d at 311.

In Texas, there is a proper procedure for challenging a judge's qualifications to sit in a case. If a defendant wishes to have a particular judge disqualified from sitting in a case, he must first file a motion to disqualify "as soon as practicable after the movant knows of the ground stated in the motion." Tex. R. Civ. P. 18a. When such a motion is filed, the clerk must deliver a copy of the motion to the judge at issue and the administrative judge for the region. Tex. R. Civ. P. 18a(e). The administrative judge "must" rule on the motion. Tex. R. Civ. P. 18a(g)(1). If the motion is granted, the administrative judge must

appoint another judge or transfer the case to a different court. Tex. R. Civ. P. 18a(g)(7).

If a motion to disqualify a trial judge is denied in district court, a defendant may seek review from an appellate court under limited circumstances. Tex. R. Civ. P. 18a(j)(2). "An order granting or denying a motion to disqualify may be reviewed by mandamus and may be appealed in accordance with other law." *Id.*

In this case, Wood followed the procedure to challenge Judge Richardson, and was unsuccessful. *See Wood,* 693 S.W.3d at 311; *In re David Leonard Wood,* WR-45,746-03 (Tex. Crim. App. Jul. 26, 2017). His attempt to re-raise the issue five years later was improper. First, the matter was raised in an appeal of a separate ruling in a post-conviction proceeding. Second, the CCA did not even have the authority to grant the relief Wood was requesting–"The [CCA] should assign a new judge to preside over the Chapter 64 proceedings in the convicting court." Br. of App. at 46. As described above, the appointment of a new judge is a responsibility for the administrative judge for the appropriate judicial region. The fact that the CCA chose to address the issue and the related request to "Disqualify Judge Richardson and Request Governor to Appoint Replacement Judge, Under Texas Constitution and Tex. Gov't Code § 22.105" does not change the fact that the matter was not presented in a

procedurally correct manner in the first place. For this reason, this petition is not the proper vehicle for this Court to exercise certiorari review.

III. The CCA Correctly Applied Supreme Court Authority to the Denial of Wood's Disqualification Request.

Even if the Court could address the propriety of the CCA's review and rejection of Wood's request to remove Judge Richardson, Wood's petition should be denied because the CCA properly applied this Court's precedent in rejecting Wood's request. The basis of Wood's arguments to this Court is his complaint that the CCA improperly determined that allowing Judge Richardson to rule on Wood's DNA motion did not violate his due process rights. *See* generally Pet. According to Wood, in deciding the issue, the CCA openly defied this Court's precedent. Pet. at 2. Wood is wrong.

The CCA identified Wood's claim as a challenge under both the Texas Constitution and the Fourteenth Amendment Due Process Clause and noted that the question was, among other things, whether there was "an appearance of impropriety and an impression of possible bias." *Wood*, 693 S.W.3d at 318. Contrary to Wood's assertion, the CCA discussed the standard for evaluating whether a judge should be removed under the Due Process Clause of the Fourteenth Amendment. *Compare Wood*, 693 S.W.3d at 319, *with* Pet. at 2 ("In the opinion below, the TCCA refused to apply that standard *or even acknowledge it*.") (emphasis added). In fact, the CCA quoted the section of this

Court's opinion in *Caperton* that Wood places so much emphasis on: "Whether a financial interest or a conflict of interest is at issue, due process forbids a judge from presiding over a case if doing so 'would offer a possible temptation to the average man as a judge ... not to hold the balance nice, clear and true between the State and the accused.'" *Wood*, 693 S.W.3d at 317 (quoting *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 876–81 (1986)).

As a preliminary matter, Wood argues that, refusing to apply this Court's precedent, the CCA "made up its own standard—misinterpreting this Court's precedent to claim that only two rigidly defined situations require disqualification." Specifically, if there exists: "(1) a substantial, non-remote financial interest; or (2) a conflict of interest from prior participation in a proceeding." Pet. at 2. Wood also asserts that the CCA "refused to acknowledge the hard truth that election campaigns put political pressure on judges in high profile death penalty cases." Pet. at 2. According to Wood, in order to properly apply this Court's precedent, the CCA had to "recognize the uncomfortable relationship between death penalty decisions and judicial election campaigns" instead of "applying more comforting assumptions with no basis in fact." Pet. at 2-3.

Wood asserts that "[i]nstead of assessing whether the circumstances would offer a possible temptation that might tempt the average person in Judge Richardson's position to disregard neutrality, *see Caperton*, 868 U.S. at

878, the TCCA considered *only* whether Judge Richardson had a substantial financial interest or prior participation conflict." Pet. at 18 (emphasis added). Wood also says that "the TCCA held that due process does not require disqualification 'where a judge appears likely to be tempted to rule a certain way due to external factors.'" *Id.* at 319 (emphasis in original). The TCCA never considered whether the circumstances created an appearance or probability of bias, stating only that it saw no actual impropriety in Judge Richardson's actions. *Id.* at 320." Pet. at 19. This is a misrepresentation of the CCA's opinion.[6]

First, as Wood later actually acknowledges, the CCA did not limit its analysis to financial or prior participation concerns. Wood says that the CCA improperly determined that Judge Richardson did not have a significant financial, non-remote interest because the election ended before the DNA ruling was issued. Pet. at 18-19 (citing *Wood,* 693 S.W.3d at 317). But this statement proves that the CCA did not limit its consideration to financial interests. Rather, the court focused on the judge's campaign, which he won two

[6] Wood takes some time discussing the concurring and dissenting opinions in a more recent CCA decision addressing the standard for judicial disqualification. Pet. at 17 n.6. He appears to suggest that this Court should use these non-binding opinions in a completely separate case as evidence of the fact that some of the judges on the CCA either misunderstand or misapply this Court's precedent. The Court should decline to read anything in those opinions as relevant to the analysis in this case. Indeed, in cited case, the issue before the CCA was actual bias by the trial court judge against the defendant at the time of trial because he was Jewish. *See Ex parte Halprin,* No. 2024 WL 4702377, *4 (Tex. Crim. App. Nov. 6, 2024). As Wood admits, the issue of actual bias is not even alleged in this case. Pet. at 2. Therefore, these footnotes from concurring and dissenting opinions of an unrelated case on an unalleged subject, discussing nuances of *Caperton* are not relevant to these proceedings.

years prior to the disqualification motion and long before he ruled on the DNA motion. *Wood,* 693 S.W.3d at 317. Unlike *Caperton,* 556 U.S. at 886 (discussing "extraordinary contributions: made at a time when donor had "vested stake in the outcome"), the concerns over Judge Richardson's campaign were not financial donations, but whether his judicial record might influence voters. This was a concern any judge seeking election might have. *See Wood,* 693 S.W. at 318–19.

Second, the court's lengthy discussion about the facts surrounding the judge's campaign and his decision on the DNA motion demonstrates that the court was not limiting the analysis to whether there was a financial or prior relationship interest at issue. There are numerous instances where the CCA found that the circumstances surrounding Judge Richardson's campaign did not create an objective probability of bias. For example, the court noted that the matter at hand was the ruling on Wood's DNA motion and the campaign ad discussed a finding in Wood's subsequent habeas suit. *Wood*, 693 S.W.3d at 318. Related to that discussion, the CCA addressed the effect of rulings in death penalty cases on political aspirations–the "hard truth" Wood says the court ignored:

> [T]he intellectual-disability habeas action and the DNA proceedings involve widely divergent inquiries—whether an admitted serial killer should be spared the death penalty versus whether a convicted person might be innocent—and the political

> implications of those two types of proceedings are not necessarily the same.

Wood, 693 S.W.3d at 318. This was an analysis of the matter from the point of view of an objective decision maker, not merely Judge Richardson.

The CCA also looked at the fact that the campaign had long since concluded before Judge Richardson ruled on the DNA motion–"A ruling on the DNA motion could not affect a campaign that was already over." *Wood*, 693 S.W.3d at 317. Again, this clearly applied to Judge Richardson in this case specifically, but it was stated with an eye toward the hypothetical objective judge.

The fact that Judge Richardson presided over multiple proceedings was also addressed. *Wood*, 693 S.W.3d at 318. Noting that trial court judges are expected to preside over trial and post-conviction proceedings, the CCA found no conflict of interest in a judge sitting in a post-conviction proceeding after denying relief in a prior post-conviction proceeding "and the act of placing a link to a media article about a judge's decision in one of the post-conviction proceedings does not by itself change that." *Wood*, 693 S.W.3d at 318. Again, addressing the hypothetical case, the CCA noted that the posting of a link to a news story "could be seen as a reaffirmation of the correctness of the trial judge's decision, but that is not unusual or unexpected and does not create a conflict between the proceedings." *Id.* Wood complains that this finding

"def[ies] reality" by referencing the news clip that was cited on Judge Richardson's campaign website. Pet. at 34. However, in this, Wood is using a subjective analysis rather than the objective one he claims should be used. Whether Wood believes that the finding is absurd in Judge Richardson's case is irrelevant.

The CCA recognized that a judge's record is always relevant in an election even when the candidate does not "highlight" particular decisions. Citing this Court's decision in *Aetna Life Ins. Co. v. Lavoie*, the CCA noted that "[a]n interest that would disqualify everyone is not a disqualifying interest at all." 475 U.S. 813, 825 (1986) ("[A]ccepting appellant's expansive contentions might require the disqualification of every judge in the State. If so, it is possible that under a 'rule of necessity' none of the judges or justices would be disqualified.").

Wood fails to demonstrate any error in the CCA's application of Supreme Court precedent in its review of the judicial disqualification issue. The court correctly applied *Caperton* in concluding there was no need for Judge Richardson's removal from Wood's case because there was no impropriety in his linking his judicial record on his website, where he had already won the election and any additional ruling in Wood's case after election would have no impact. The CCA's ruling did not violate Wood's right to due process and this Court should deny certiorari review.

CONCLUSION

The CCA correctly identified and applied the relevant precedent from this Court and determined that the trial judge was not disqualified from hearing Wood's case. For all the reasons discussed above, the Court should deny Wood's petition for a writ of certiorari.

Respectfully submitted,

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