

No. 13-5769

In the Supreme Court of the United States
at Washington, District of Columbia

DALE FULMER

Petitioner

vs.

TEXAS

Respondent

On Petition for a Writ of Certiorari to the
Fourth Court of Appeals at San Antonio, Texas

PETITIONER'S PETITION FOR REHEARING

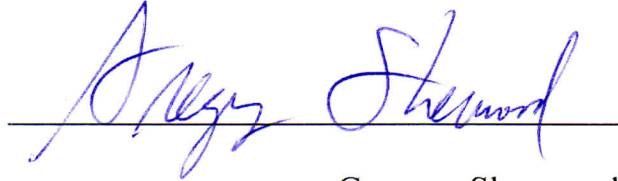
TO THE HONORABLE UNITED STATES SUPREME COURT:

Petitioner Dale Fulmer files his petition for rehearing pursuant to Sup. Ct. Rule 44.2, because the first issue presented in Mr. Fulmer's certiorari petition, denied October 15, 2013, is identical to the only issue presented in No. 13-5714; *Joseph Anthony Kennedy v. Texas*, a case in which this Court requested a Brief in Opposition, which was filed October 28, 2013, and the undersigned attorney mailed a Reply Brief to this Court for filing on October 31, 2013. Both Mr. Kennedy and Mr. Fulmer were convicted under the same statute, Tex. Pen. Code § 21.02, which criminalizes continuous abuse

of a child under age 14. The second issue presented in *Fulmer* is not raised in *Kennedy*, only the first issue. This petition for rehearing is timely since it is mailed on October 31, 2013, well before the deadline of Tuesday, November 12, 2013. Sup. Ct. Rule 44.2.

The *Kennedy* certiorari petition and related paperwork should be circulated to this Court shortly, with a decision on whether to grant certiorari possibly made in late November or December, 2013. If this Court grants review in *Kennedy v. Texas*, and then holds the Texas continuous abuse statute unconstitutional, Mr. Fulmer's conviction would also be subject to reversal since the same constitutional attack is being made in both cases. Accordingly, Fulmer asks this Court to hold this case on petition for rehearing while this Court decides whether to grant certiorari in *Kennedy v. Texas*, and if certiorari is granted and Mr. Kennedy obtains a favorable result, then Mr. Fulmer asks this Court to vacate the opinion of the Fourth Court of Appeals at San Antonio, Texas, and remand this case to that court for reconsideration in light of the opinion this Court reaches in *Kennedy*.

Respectfully submitted,

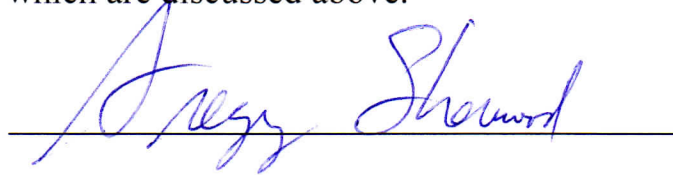


Gregory Sherwood
Attorney
P. O. Box 200613
Austin, Texas 78720-0613
(512) 484-9029
Texas Bar # 18254600
email: gsherwood@mail.com

Counsel of Record for
Petitioner Dale Fulmer

CERTIFICATE OF COUNSEL PURSUANT TO SUP. CT. R. 44.2

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and is based upon intervening circumstances of a substantial or controlling effect, which are discussed above.



Gregory Sherwood
Counsel of Record for
Petitioner Dale Fulmer

October 31, 2013