

**09-9000 SKINNER V. SWITZER**

DECISION BELOW: 2010 WL 338018

LOWER COURT CASE NUMBER: 10-70002

**QUESTION PRESENTED:**

For ten years, Henry W. Skinner has sought access to DNA testing that could prove him innocent of the murders that landed him on Death Row. After the Texas courts arbitrarily turned back his diligent attempts to take advantage of state statutes affording such relief, he sued in federal court under 42 U.S.C. § 1983 to vindicate his due process right to "'fundamental fairness in [the] operation'" of Texas's scheme. *Dist. Att'y's Office v. Osborne*, 129 S. Ct. 2308, 2320 (2009) (citation omitted). The district court dismissed Mr. Skinner's § 1983 suit solely on the ground that his claim sounded only in habeas corpus, and the Fifth Circuit summarily affirmed. The question presented is the same one the Court granted certiorari in *Osborne* to decide, but left unresolved:

May a convicted prisoner seeking access to biological evidence for DNA testing assert that claim in a civil rights action under 42 U.S.C. § 1983, or is such a claim cognizable only in a petition for writ of habeas corpus?

CERT. GRANTED 5/24/2010