No. 21-442

IN THE
Supreme Court of the United States

RODNEY REED,
Petitioner,
v.
BRYAN GOERTZ,
Respondent.

On Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

BRIEF OF FEDERAL COURTS SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

The question presented is whether the statute of limitations for a § 1983 claim bringing a due process challenge to a state's DNA-testing procedures begins to run at the end of state-court litigation denying DNA testing, including any appeals, or whether it begins to run at the moment the state trial court denies DNA testing, despite any subsequent appeal.

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INTEREST OF *AMICI CURIAE*[1]

This brief is filed on behalf of legal scholars who study federal jurisdiction, federal procedure, and constitutional law, and who have taught and written on the interplay between proceedings in state and federal courts.

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[1] Pursuant to Rule 37.6, amici certify that no counsel for a party has authored this brief in whole or in part and that no one other than amici and their counsel has made any monetary contribution to the preparation and submission of this brief. All parties have consented to the filing of this brief.

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SUMMARY OF ARGUMENT

The Court should hold that § 1983 claims challenging the constitutionality of state post-conviction DNA testing statutes do not accrue until the end of state-court litigation denying DNA testing. That is the only rule that comports with principles of federalism and comity, which favor sequencing federal litigation after related state proceedings. Unnecessary co-pendency of state and federal litigation invites unnecessary intrusions into state processes. If a federal court need not exercise jurisdiction under § 1983, then an accrual rule should not force it to do so.

I. Federalism and comity principles are fixtures of our constitutional tradition. State and federal sovereigns coexist in our system of government, and *judicial* federalism and comity help preserve the delicate balance of power between them. Judicial authority is divided between federal and state courts, and federal courts respect the important role of state courts in the constitutional scheme.

These principles are engrained in this Court's jurisprudence. They animate numerous abstention doctrines and other judicially created mechanisms that prevent federal courts from interfering with state judicial power. While those mechanisms safeguard federalism and comity interests across a range of potential state-federal interactions, they are especially critical in the criminal law context, where states perform an essential function. Doctrines such as *Younger* abstention have been developed to ensure the appropriate sequencing of litigation relating to criminal proceedings.

Under 42 U.S.C. § 1983, federal courts may redress constitutional violations by state actors, including violations that relate to state criminal proceedings. But federal litigation challenging the constitutionality of a state court's authoritative construction of a state criminal statute, or a statute adjacent to criminal process, invites the exercise of federal jurisdiction in an area of particular sensitivity. In this context, the federalism- and comity-driven need to avoid co-pendency is particularly acute. A federal court should not proceed with adjudication before state courts have had their say.

II. The rule adopted by the Fifth Circuit and defended by respondent upends those principles. This Court's precedents demand that comity and federalism inform the development of accrual rules. The Fifth Circuit's accrual rule places state and federal courts on a needless collision course instead: litigants must rush to the federal courthouse before state courts have authoritatively construed state law in their cases. That approach undermines federalism and comity, and it creates a host of inefficiencies, administrative burdens, and other practical problems. This Court should steer clear of that morass and adopt the rule that comports with our constitutional tradition: § 1983 claims seeking post-conviction DNA testing accrue only after state proceedings, including appeals, conclude. State courts should have a full opportunity to construe their own laws before federal courts exercise their jurisdiction.

ARGUMENT

I. Federalism And Comity Principles Disfavor Co-Pendent State And Federal Proceedings

This case asks the Court to devise an accrual rule for § 1983 claims that challenge the constitutionality of state-court orders denying post-conviction access to DNA testing. That accrual rule should reflect federalism and comity interests, which discourage unnecessary incursion on state prerogatives. Those foundational interests are particularly strong in contexts with a close nexus to the enforcement of a state's criminal judgment. Rules that disfavor co-pendency in such areas maintain respect for the role of state courts as the definitive interpreters of state law.

A. Longstanding Federalism And Comity Principles Require Careful Sequencing Of Litigation That Moves Across State And Federal Courts.

1. Federalism and comity are bedrock interests that influenced how the Framers structured our constitutional system. "The Constitution limited but did not abolish the sovereign powers of the States, which retained 'a residuary and inviolable sovereignty.'" *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475 (2018) (quoting The Federalist No. 39, at 245 (James Madison) (Clinton Rossiter ed., 1961)). This dual sovereignty was a feature, not a bug: "By 'split[ting] the atom of sovereignty,' the Founders established 'two orders of government, each with its own direct` relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.'" *Alden v. Maine*, 527 U.S. 706, 751 (1999) (quoting *Saenz v. Roe*, 526 U.S. 489, 504 n.17 (1999)). The Framers "rejected both" a "blind deference to 'States' Rights'" and the "centralization of control over every important issue in our National Government and its courts." *Younger v. Harris*, 401 U.S. 37, 44-45 (1971). Instead, the Framers pursued what this Court has characterized as "Our Federalism": "[A] system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.*

Though the term "federalism" typically evokes the relationship between the federal and state governments writ large, it encompasses the relationship between the state and federal judiciaries. That relationship, too, reflects the "dual sovereignty" set forth in the Constitution. *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). "Paramount among the States' retained sovereign powers is the power to enact and enforce any laws that do not conflict with federal law." *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1010-11 (2022). Because a State "clearly has a legitimate interest in the continued enforceability of its own statutes," *Maine v. Taylor*, 477 U.S. 131, 137 (1986), this Court has established that federal courts must "respect ... the place of the States in our federal system," *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 75 (1997).

This narrower aspect of federalism has been characterized as *judicial* federalism: the "view that federal courts must regard their power as tempered by a keen appreciation of the essential role of the states and their judicial systems in our constitutional universe." Laurence H. Tribe, American Constitutional Law § 3-28, at 196 (2d ed. 1988); *see* Matthew S. Brogdon, *The Formation of Judicial Federalism in the United States*, 48 J. of Federalism 269, 273-80 (2017) (tracing the origins and historical development of judicial federalism beginning with the framing of Articles III and VI of the Constitution at the Convention of 1787 and the debate over the Judiciary Act of 1789 in the First Congress). The concept of "Our Federalism" has now "become synonymous with judicial federalism, the notion that federal courts must wield their power with a sensitivity to

its impact on the balance of power between Nation and States." Mary Brigid McManamon, *Felix Frankfurter: The Architect of "Our Federalism,"* 27 Ga. L. Rev. 697, 703 (1993). In short, this concept is a species of comity—not merely "a proper respect for state functions," *Younger*, 401 U.S. at 44-45, but a proper respect for the role of state courts in particular.

2. These principles underlie numerous legal doctrines that safeguard the role of state courts at points of interaction between the state and federal judicial systems by ensuring the proper sequencing of state and federal proceedings.

a. Abstention doctrines provide one example. Chief among these is *Younger* abstention, which began as a restraint against using § 1983 to enjoin already-commenced state criminal prosecutions, *see Younger*, 401 U.S. at 41, and has since expanded to require certain civil state litigation to precede federal litigation as well, *see, e.g.*, *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604-05 (1975) (expanding *Younger* to state civil proceedings analogous to criminal prosecutions); *Juidice v. Vail*, 430 U.S. 327, 335 (1977) (expanding *Younger* to state civil proceedings involving functions "at the core of the administration of a [s]tate's judicial system"); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 433-34 (1982) (expanding *Younger* to state administrative proceedings implicating significant state interests).

Younger is a quintessential sequencing rule that "accords broad protection to pending state proceedings" and "illustrates a pervasive theme in our judicial federalism: state court respect for federal law is

inextricably linked to federal court respect for state court proceedings." Sandra Day O'Connor, *Our Judicial Federalism*, 35 Case W. Rsrv. L. Rev. 1, 9 (1984).

Pullman abstention likewise ensures proper sequencing as a means to ensure respect for the state judiciary. Developed in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 501 (1941), that doctrine holds that "[i]f there are unsettled questions of state law in a case that may make it unnecessary to decide a federal constitutional question, the federal court should abstain until the state court has resolved the state questions," 17A Charles A. Wright et al., Federal Practice & Procedure § 4241 (3d ed. Apr. 2022 update). That holding was driven in part by the Court's understanding of (and respect for) the distinctive role of state courts. The Court explained that "[r]eading the Texas statutes and the Texas decisions as outsiders without special competence in Texas law, we would have little confidence in our independent judgment regarding the application of that law to the present situation," and noted that "[t]he reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court." *Pullman*, 312 U.S. at 499-500. *Pullman* abstention "serves the dual aims of avoiding advisory constitutional decisionmaking, as well as promoting the principles of comity and federalism by avoiding needless federal intervention into local affairs." *Pustell v. Lynn Pub. Sch.*, 18 F.3d 50, 53 (1st Cir. 1994).[2]

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[2] Along similar lines, the doctrine of *Burford* abstention, which takes its name from this Court's decision in *Burford v.*

Complementing these comity-driven abstention doctrines, *Colorado River* abstention authorizes federal courts, in limited circumstances and to promote judicial economy, to dismiss federal cases that are co-pending with related state litigation. As described in the eponymous case of *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), this doctrine recognizes that "dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration" is proper in certain "limited … circumstances," *id.* at 818. As with other abstention doctrines, *Colorado River* abstention promotes comity and federalism by sequencing litigation that crosses the divide between the two judicial systems.

b. Certification of questions to state courts is another mechanism by which courts preserve the delicate state-federal balance. Certification procedures allow a federal court to put novel state-law questions directly to the State's highest court, thereby saving "time, energy, and resources and help[ing] build a cooperative judicial federalism." *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974). Like the abstention doctrines described above, certification ensures proper sequencing by permitting the state to provide its authoritative determination of state law before

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Sun Oil Co., 319 U.S. 315 (1943), encourages federal courts to abstain from exercising their jurisdiction when doing so would risk assuming the functions of state courts in the development and implementation of a state's public policies, *see id.* at 332-34. Such abstention is proper "on grounds of comity with the States when the exercise of jurisdiction by the federal court would disrupt a state administrative process." *Allegheny Cnty. v. Frank Mashuda Co.*, 360 U.S. 185, 189 (1959).

federal proceedings implicating that state law resume. Certification enables federal courts to avoid "friction-generating error" in the interpretation of state law, and its availability makes "[s]peculation by a federal court about the meaning of a state statute in the absence of prior state court adjudication … particularly gratuitous." *Arizonans*, 520 U.S. at 79 (internal quotation marks and citation omitted).

Accommodations ensuring proper state-federal sequencing and due respect for state judicial power are firmly engrained in this Court's jurisprudence. Sensitivity to a proper distribution of responsibility between federal and state courts is foundational to our system of government, "born in the early struggling days of our Union of States," and "occup[ying] a highly important place in our Nation's history and its future." *Younger*, 401 U.S. at 44-45.

B. Federalism And Comity Concerns Are Acute In The Criminal Law Context.

1. The interest against co-pending litigation is particularly important in the context of criminal law, where states play a central role.

"From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States, and that remains true today." *Kansas v. Garcia*, 140 S. Ct. 791, 806 (2020). Because "[o]ur national government is one of delegated powers alone," federalism teaches that "the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States." *Screws v. United States*, 325 U.S. 91, 109 (1945) (plurality opinion). "Under our federal sys-

tem, the 'States possess primary authority for defining and enforcing the criminal law.'" *United States v. Lopez*, 514 U.S. 549, 561 n.3 (1995) (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 635 (1993)). Indeed, as this Court has recognized, "[t]he power to convict and punish criminals lies at the heart of the States' 'residuary and inviolable sovereignty.'" *Shinn v. Ramirez*, 142 S. Ct. 1718, 1730-31 (2022) (quoting The Federalist No. 39, at 245 (James Madison) (Clinton Rossiter ed., 1961)).

Interactions between the federal and state judicial systems in the criminal law context thus call for heightened sensitivity, respect for state interests, and especially strong rules that sequence state-court litigation before Article III proceedings.

2. *Younger* works alongside principles of federal habeas law to accommodate federalism and comity interests when a state's criminal conviction is at stake.

a. As noted above, *Younger* abstention doctrine shields state criminal prosecutions from injunctions entered by federal courts pursuant to § 1983. *Supra* at 7. Even though § 1983 is an "expressly authorized" exception to the Anti-Injunction Act, which generally bars federal courts from enjoining ongoing state court proceedings, *Mitchum v. Foster*, 407 U.S. 225, 242-43 (1972), *Younger* equitably restrains the use of § 1983 to enjoin already-commenced state criminal cases. That restraint is compelled, *Younger* held, by a "vital consideration, the notion of 'comity,' that is, a proper respect for state functions," which gives rise to "the fundamental policy against federal

interference with state criminal prosecutions," 401 U.S. at 44-46.

b. The same policy interests have contributed to the development of federal habeas corpus principles. Two aspects of federal habeas review are salient here: the habeas exhaustion doctrine and habeas exclusivity.

The federal habeas statute has long included an exhaustion requirement: the sequencing rule that federal habeas review of state criminal convictions or custody must await completion of state proceedings. That principle dates back to at least 1886, and is justified in large part by the distribution of responsibility between federal and state courts under our system of government. In *Ex parte Royall*, 117 U.S. 241 (1886), the Court explained this rule "in the light of the relations existing … between the judicial tribunals of the Union and of the states, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the constitution," *id.* at 251-52.

The Court has repeatedly reaffirmed habeas exhaustion requirements—and the comity-based rationale that underlies them. At bottom, "[t]he exhaustion doctrine is principally designed to protect the state courts' role in the enforcement of federal law and prevent disruption of state judicial proceedings." *Rose v. Lundy*, 455 U.S. 509, 518 (1982); *see also, e.g.*, *Duncan v. Walker*, 533 U.S. 167, 179 (2001) (noting that "[t]he exhaustion rule promotes comity"); *Coleman v. Thompson*, 501 U.S. 722, 731 (1991) (exhaustion requirement is "grounded in principles

of comity; in a federal system, the States should have the first opportunity to address and correct alleged violations of state prisoner's federal rights").

Critically, exhaustion affords states "an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights," *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981) (per curiam), since "it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without [giving] an opportunity to the state courts to correct a constitutional violation," *Shinn*, 142 S. Ct. at 1732 (quoting *Darr v. Burford*, 339 U.S. 200, 204 (1950)).

Courts similarly reinforce federalism and comity interests by applying the principle that federal habeas corpus is the exclusive avenue for federal challenges to state criminal proceedings, convictions, and custody. *See, e.g.*, *Fay v. Noia*, 372 U.S. 391, 399-406 (1963). Like exhaustion, exclusivity ensures the orderly sequencing of state and federal proceedings and prevents "the derailment of a pending state proceeding by an attempt to litigate constitutional defenses prematurely in federal court." *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 488-93 (1973).

c. These principles underlie the *Preiser-Heck* cases, which dictate that § 1983 claims are not cognizable if they necessarily imply the invalidity of an existing state criminal judgment or state confinement. By ensuring that claims sounding in habeas are subject to exhaustion and other habeas limitations regardless of their label, the *Preiser-Heck* doctrine promotes judicial federalism and the orderly sequencing of state and federal litigation.

In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Court held that a § 1983 claim for injunctive relief, brought by state prisoners who sought to restore good-time credits and secure release from custody, improperly intruded upon the exclusive domain of habeas corpus. *See id.* at 500. In so doing, the Court explained that a contrary rule "would wholly frustrate explicit congressional intent" by allowing individuals to "evade [the habeas exclusivity] requirement by the simple expedient of putting a different label on their pleadings," *id.* at 489-90, and reiterated that the "rule of exhaustion in federal habeas corpus actions is rooted in considerations of federal-state comity" as "defined in *Younger*," *id.* at 491.

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Court expanded *Preiser*'s logic to § 1983 damages claims. The plaintiff in *Heck* sought damages under § 1983 separately from his claim for habeas relief, contending that due process violations had infected his state criminal proceedings and caused his wrongful conviction. *Id.* at 478-79. Drawing an analogy to common-law malicious prosecution, where "[o]ne element that must be alleged and proved … is termination of the prior criminal proceeding in favor of the accused," the Court held that a § 1983 damages action necessarily implying the invalidity of a state conviction or confinement must await the invalidation of that conviction or confinement. *Id.* at 483-87. This conclusion was bolstered by the now-familiar themes of federalism and comity: The Court noted that the favorable termination requirement "avoids parallel litigation over the issues of probable cause and guilt," and noted that the Court "has long expressed similar concerns for finality and consistency

and has generally declined to expand opportunities for collateral attack." *Id.* at 484-85. The Court has subsequently made clear that *Heck*'s holding applies "no matter the relief sought (damages or equitable relief)"—either way, "a state prisoner's § 1983 action is barred (absent prior invalidation) … if success in that action would necessarily demonstrate the invalidity of confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005) (emphasis omitted). The *Heck* bar thus enforces federalism-based sequencing by ensuring that attacks on a conviction are subject to habeas law's exhaustion requirement.

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Each of these doctrines sequences federal litigation after proceedings in state court conclude, because parallel litigation relating to state criminal convictions disserves fundamental comity and federalism interests.

C. *Skinner* Challenges Warrant A Sequencing Rule That Safeguards Federalism and Comity.

In *Skinner v. Switzer*, 562 U.S. 521 (2011), the Court sanctioned the species of § 1983 claim at issue in this case. Because a constitutional challenge to a state's post-conviction DNA testing regime does not *necessarily* imply the invalidity of the corresponding state conviction, such claims are properly pursued under § 1983. *See id.* at 525.

While *Skinner* claims avoid the *Heck* bar, they still implicate federalism and comity interests. As the cases expanding *Younger* abstention beyond its original scope have recognized, federalism and comi-

ty concerns are "fully applicable to noncriminal judicial proceedings when important state interests are involved," including when "noncriminal proceedings bear a close relationship to proceedings criminal in nature." *Middlesex Cnty.*, 457 U.S. at 432. That is true here because, as *Skinner* recognizes, challenges to statutes governing a state's post-conviction DNA proceedings are intimately bound up with the ultimate question of the state conviction's validity: "test results might prove exculpatory," though they might also "prove inconclusive or they might further incriminate [the defendant]." 562 U.S. at 534; *see also id.* at 541 (Thomas, J., dissenting) (characterizing such claims as challenges to "[c]ollateral review procedures," which, "like trial and direct appellate procedures … concern the validity of the conviction"). The nexus to state criminal proceedings is especially close because, heeding this Court's guidance in *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52 (2009), *Skinner* claims are not pure facial attacks on a DNA testing statute in the abstract; instead, they challenge the statute's construction in a particular case after the claimant has invoked state procedures, *see id.* at 71.

Thus—while *Heck* does not prevent the criminal defendant from proceeding under § 1983 because the invalidation of the conviction is not an inexorable outcome—core state interests remain on the line when a criminal defendant pursues a *Skinner* claim. Federalism and comity concerns are accordingly at their height, requiring robust protections against the ongoing danger of co-pendency—the possibility that litigation in federal court would start before litigation in state court ends. This circumstance calls for

an accrual rule that sequences federal litigation after state-court proceedings conclude.

That sequencing is especially critical because *Skinner* claims assert constitutional error in state post-conviction DNA statutes "'as construed' by the [state] courts." *Skinner*, 562 U.S. at 530.[3] Such claims thus necessarily implicate "the respect due state courts as the final arbiters of state law in our federal system," *United States v. Taylor*, 142 S. Ct. 2015, 2025 (2022). When the state law interpretation in question is of a state statute that forms part of a state's collateral review process and is closely related to criminal enforcement, heightened respect for "the final authority [of state courts] to interpret and, where they see fit, to reinterpret that State's legislation" is warranted. *Garner v. Louisiana*, 368 U.S. 157, 169 (1961). Federalism and comity concerns and the risk of disrupting the federal-state balance are thus at their peak in the context of this case.

II. The Fifth Circuit's Decision Upends The Bedrock Principles Of Comity And Federalism By Encouraging The Co-Pendency Of State and Federal Litigation

As explained above, the unique nature of *Skinner* claims calls for the utmost caution to avoid unneces-

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[3] This feature of a *Skinner* claim independently compels the conclusion that the claim does not accrue until after state proceedings, including any appeals, have ended, since there is no relevant violation of due process until the state courts have authoritatively construed the statute. *See* Br. of Petitioner at 26-27, 30-34, 46-49. The federalism and comity concerns detailed here simply reinforce that outcome.

sary state-federal friction in an especially fraught context. Far from the requisite light touch, however, the Fifth Circuit rule defended by respondent needlessly risks conflict between federal and state judiciaries by encouraging co-pendency of litigation over the application of a state law. This Court should instead adopt petitioner's rule, which avoids friction and honors the prerogative of state courts to definitively construe their statutes before federal courts start issuing orders regarding their constitutionality.

A. This Court Has Recognized That Federalism And Comity Concerns, Including The Interest In Avoiding Co-Pendency, Properly Inform The Accrual Analysis.

As this Court explained in *McDonough v. Smith*, 139 S. Ct. 2149 (2019), "federalism, comity, consistency, and judicial economy" are properly taken into account in determining accrual rules and weigh in favor of accrual rules that avoid parallel litigation in state and federal courts, *id.* at 2158.

In *McDonough*, the Court considered a § 1983 claim alleging the taint of fabricated evidence and held that the limitations period did not "begin to run until the criminal proceedings against the defendant (*i.e.,* the § 1983 plaintiff) have terminated in his favor." *Id.* at 2154-55. As the Court explained, that conclusion followed in part from "practical considerations" sounding in principles of federalism and comity. *Id.* at 2155.

Specifically, the Court reasoned that deferring accrual would, as *Heck* counsels, "avoid[] parallel criminal and civil litigation over the same subject matter and the related possibility of conflicting civil

and criminal judgments," *id.* at 2157 (citing *Heck*, 512 U.S. at 484-85). This preference for sequential litigation is grounded in the need "to avoid … unnecessary friction between the federal and state court systems" noted in *Preiser*, *id.* at 2157 (quoting *Preiser*, 411 U.S. at 490), and "Congress['s] … manifest[] … desire to permit state courts to try state cases free from interference by federal courts" highlighted in *Younger*, *id.* (quoting *Younger*, 401 U.S. at 43). Allowing earlier accrual would unacceptably encourage "parallel civil litigation" that "would run counter to core principles of federalism, comity, consistency, and judicial economy." *Id.* at 2158.

Applying those principles here, *McDonough* teaches that the accrual rule for *Skinner* claims should also reflect the heightened concerns about federalism and comity that dominate in the criminal context. And *McDonough* teaches that those interests are best honored by accrual rules that avoid needless co-pendency.[4] The possibility of inconsistent state and federal judgments, the pointlessness of assessing the constitutionality of a provisional interpretation of a state statute, and the heightened federalism and comity interests associated with state convictions all favor an accrual rule that avoids needless co-pendency. Such a rule obviates the possibility that a federal court could evaluate the constitutionality of a state-court denial of DNA testing access before state courts have been afforded the op-

[4] While both of the co-pending suits in the *Skinner* claim context would be civil in nature, similar "concerns for finality and consistency" are at issue. *McDonough*, 139 S. Ct. at 2157 (quoting *Heck*, 512 U.S. at 485).

portunity to definitively construe the state statute at issue.

B. The Fifth Circuit's Rule Contravenes These Principles.

1. The Fifth Circuit's rule in this case encourages co-pendency, undermining the federalism and comity interests that this Court has repeatedly emphasized. On the Fifth Circuit's telling, petitioner's § 1983 claim was untimely because the statute of limitations—two years, borrowed from Texas's limitations period for personal-injury claims—began to run "when the [Texas] trial court denied [petitioner's] Chapter 64 motion in November 2014." Pet. App. 9a. In the court's view, the statute of limitations ran from "the moment" that petitioner "first became aware that his right to access that evidence was allegedly being violated." *Id.* at 9a-10a. That means that defendants in petitioner's position would be obliged to race into federal court as soon as a trial court denied their motion for DNA testing. But just as *McDonough* rejected a rule that "would impose a ticking limitations clock on criminal defendants as soon as they become aware that fabricated evidence has been used against them," 139 S. Ct. at 2158, the Court should reject a rule that would start the clock as soon as defendants become aware that their "right to access [DNA testing] evidence was allegedly being violated," Pet. App. 9a-10a.

A rule requiring claimants to file § 1983 suits asserting constitutional violations caused by provisional interpretations of state law upends the federalism principles discussed above. Instead of allowing state courts to interpret that state's legislation,

as they "have the final authority" to do, *Brown v. Ohio*, 432 U.S. 161, 167 (1977), the Fifth Circuit's rule would "unduly interfere with the legitimate activities of the States," *Younger*, 401 U.S. at 44-45, by forcing the issue into federal court prematurely. The Fifth Circuit approach would invite federal courts to disrupt the ordinary balance of federal-state judicial power, achieved through sequenced litigation. And it would require that federal courts make guesses as to the meaning of state law in order to determine whether a federal constitutional violation occurred—even as the authoritative interpretation of that law remains pending in state courts. By encouraging parallel litigation, the Fifth Circuit's rule would thus increase conflict between federal and state courts and erode the "proper respect for state functions," *Younger*, 401 U.S. at 43-44, that is "a bulwark of [our] federal system" of government, *Allen v. McCurry*, 449 U.S. 90, 96 (1980). This Court's precedents counsel against accrual rules that would needlessly create such tension. *See Arizonans,* 520 U.S. at 75 (explaining that "[i]n litigation generally, and in constitutional litigation most prominently," courts must engage in "close consideration" of the "core question" of whether a "conflict [is] really necessary," particularly "[w]hen anticipatory relief is sought in federal court against a state statute" given the need for "respect for the place of the States in our federal system"); *see also id.* ("[N]ormally this Court ought not to consider the Constitutionality of a state statute in the absence of a controlling interpretation of its meaning and effect by the state courts." (quoting *Poe v. Ullman*, 367 U.S. 497, 526 (1961) (Harlan, J., dissenting))).

2. Numerous practical problems flow from the Fifth Circuit's approach. Co-pendency forces criminal defendants and state officials into protracted federal litigation that might have been unnecessary if the state proceedings had run their course, including time-intensive tasks such as responding to subpoenas and sitting for depositions; imposes an administrative burden by requiring the state to litigate two cases simultaneously; and consumes federal judicial resources to resolve a case that might otherwise have never materialized. And in light of the extended length of time it takes for a Chapter 64 proceeding to work its way through Texas courts to finality, there is a significant risk that state appeals may become distorted by the specter of a first-in-time § 1983 judgment.

To be sure, procedural devices such as stays and ad hoc abstention could alleviate some of the ills of the Fifth Circuit's rule. Yet, as in *McDonough*, there is "no reason to put the onus to safeguard comity on district courts exercising case-by-case discretion—particularly at the foreseeable expense of potentially prejudicing litigants and cluttering dockets with dormant, unripe cases." 139 S. Ct. at 2158. A blanket accrual rule "respects the autonomy of state courts and avoids these costs to litigants and federal courts." *Id.* at 2159. By adopting the rule that § 1983 claims challenging state post-conviction DNA testing statutes accrue at the end of state-court litigation denying DNA testing, including any appeals, the Court would advance federalism and comity values and "avoid[] the hazard of friction in federal-state relations," *Allegheny Cnty.*, 360 U.S. at 191.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed and this case remanded for further proceedings.

Respectfully submitted,

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