No. 21-442

In the Supreme Court of the United States

RODNEY REED, PETITIONER

v.

BRYAN GOERTZ

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

Texas has established specific parameters, codified in Chapter 64 of the Texas Code of Criminal Procedure, to guide trial courts in considering motions for postconviction DNA testing of crime-scene evidence. In 2014, a Texas trial court denied a motion filed by petitioner Rodney Reed for such testing of dozens of pieces of evidence. Reed appealed to the Texas Court of Criminal Appeals (CCA), which directed the trial court to make further findings under Chapter 64. The trial court did so, entering further findings in support of its denial of DNA testing in September 2016. In April 2017, the CCA issued an opinion interpreting Chapter 64 and affirming the trial court's order. Reed filed a motion for rehearing, which the CCA denied in October 2017 through a one-sentence order. In August 2019, Reed sued the district attorney in the county of his conviction under 42 U.S.C. § 1983, challenging the constitutionality of Chapter 64 "as interpreted, construed and applied by the Texas courts." It is undisputed that this type of suit is subject to a two-year statute of limitations.

The questions presented are:

1. Whether Reed's suit is time-barred.

2. Whether Reed's suit is subject to dismissal based on lack of standing, sovereign immunity, or the *Rooker–Feldman* doctrine.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Cases (ctd.)

Page(s)

Cases (ctd.)

Page(s)

Cases (ctd.)

Page(s)

Cases (ctd.)

Page(s)

Cases (ctd.)

Page(s)

Cases (ctd.)

Constitutional Provisions, Statutes and Rules

Page(s)

Constitutional Provisions, Statutes and Rules (ctd.)

Other Authorities

Page(s)

Other Authorities (ctd.)

STATEMENT

I. Factual Background and Previous Litigation

A. Reed's capital-murder conviction

Stacey Stites, a 19-year-old woman recently engaged to police officer Jimmy Fennell, was reported missing in April 1996 after she failed to report for her morning shift at a grocery store. 43.RR.96, 101-02; Joint Appendix (JA) 17.[1] A passerby found her partially clothed body later that day in the brush alongside a backroad in Bastrop County, Texas. 44.RR.18, 21; JA.17. Her shirt and a torn piece of her belt were nearby. 44.RR.113, 115; JA.17. Fennell said that Stites had likely left their apartment alone in his truck before dawn to drive to work. 45.RR.72, 81, 83. The truck was later found in a high-school parking lot. 43.RR.117-18. The other half of Stites's belt lay outside the truck with the buckle intact. 43.RR.118-21.

The medical examiner determined that Stites had been strangled with her belt. JA.18. The examiner also found intact sperm in Stites's vagina. 48.RR.121-22. He concluded that Stites had likely been sexually assaulted at the time of her death. 48.RR.126-27. The police tested the DNA found in Stites against DNA obtained from 28 men, but none matched. 46.RR.111-13; 49.RR.114-19. The investigation proceeded for nearly a year. 46.RR.111-13; 49.RR.114-19. Eventually, the police learned information that made Reed a suspect and tested the DNA acquired from Stites against a sample of Reed's DNA, which they had on file. 46.RR.122; 50.RR.104. Reed was a match. 49.RR.118, 122; 50.RR.144-45.

[1] "RR," preceded by volume number and followed by page numbers, refers to the court reporter's record of Reed's capital-murder trial.

In 1997, a grand jury charged Reed with capital murder. Pet. App. 16a. Reed acknowledged that his DNA had been found in Stites. Pet. App. 17a. He claimed at trial that this resulted from a consensual sexual relationship that he and Stites had carried on in secret. Pet. App. 16a. But he contended that someone else—possibly Fennell—murdered Stites. Pet. App. 16a. The jury rejected Reed's explanation and convicted him of Stites's murder. Pet. App. 17a.

At the punishment phase of the trial, the State introduced substantial evidence that Reed had sexually assaulted multiple other women, including one woman who was mentally disabled, and that Reed also blindfolded, beat, and raped a 12-year-old girl. Pet. App. 17a; 58.RR.36-51; 60.RR.38-65. The State further introduced evidence that Reed physically abused Lucy Eipper, with whom Reed had two children. 59.RR.13-14, 19-20. The State's evidence indicated that Reed abused Eipper while she was pregnant and that he raped her "all the time," including in front of their two children. 59.RR.13-32. Finally, the State provided evidence that, six months after Stites's murder, Reed convinced Linda Schlueter, a 19-year-old, to give him a ride home at approximately 3:30 a.m. 62.RR.9-10, 37-47. According to the State, Reed then led her to a remote area, attacked her, and demanded that she perform oral sex on him or be killed. 62.RR.47-60. Before Reed could follow through on this threat, however, a car drove by and Reed fled. 62.RR.62-64.

Reed's trial counsel, assisted by his investigators, a forensic psychologist, and a neuropsychologist, presented a case to mitigate punishment. 46.RR.8; 64.RR.35; 64.RR.56-57. The jury rejected that mitigation defense, and Reed was sentenced to death. Pet. App. 17a.

B. Reed's direct appeal and habeas petitions

More than 25 years of litigation followed. The CCA affirmed Reed's conviction on direct appeal, *Reed v. State*, No. AP-73,135 (Tex. Crim. App. Dec. 6, 2000), and this Court denied certiorari, *Reed v. Texas*, 534 U.S. 955 (2001).

Reed then began a string of serial state habeas applications, 11 as of the time of this filing, Pet. App. 3a, 17a (ten applications); *Ex parte Reed*, No. WR-50,961-11 (Tex. Crim. App. Dec. 22, 2021) (eleventh), which the CCA has described as "piecemeal," *Ex parte Reed*, Nos. WR-50,961-04, WR-50,961-05, 2009 WL 97260, at *1 (Tex. Crim. App. Jan. 14, 2009) (per curiam), and often abusive, *Ex parte Reed*, Nos. WR-50,961-08, WR-50,961-09, 2019 WL 2607452, at *1-2 (Tex. Crim. App. June 26, 2019) (per curiam).

Reed filed his federal habeas petition after the CCA denied his first state habeas application and dismissed his second. Pet. App. 3a. The district court initially permitted limited discovery, including depositions, and then stayed the federal habeas proceedings to allow Reed to return to state court to exhaust several claims based on evidence obtained after he filed his federal petition. Pet. App. 3a.

During the stay, Reed continued filing unsuccessful state habeas applications. Pet. App. 3a. He returned to federal court several years later, amending his habeas petition to assert that he was actually innocent of Stites's murder. Pet. App. 3a. The federal district court denied Reed's petition, *see* Pet. App. 18a, the Fifth Circuit affirmed, and this Court denied certiorari. *Reed v. Stephens*, 739 F.3d 753, 761 (5th Cir. 2014), *cert. denied*, 574 U.S. 973 (2014). Collectively, Texas state courts have provided no fewer than three evidentiary hearings on his claims, but "neither the trial court nor the CCA [has] ever seriously question[ed] the integrity of [Reed's] conviction." Pet. App. 17a-18a.

C. Chapter 64 and proceedings on Reed's motion for DNA testing

1. Texas was among the first group of States to establish a process for postconviction DNA testing. *See* Act of Apr. 3, 2001, 77th Leg., R.S., ch. 2, § 2, 2001 Tex. Gen. Laws 2, 2-4. But "DNA evidence creates special opportunities, risks, and burdens that implicate important state interests." *Dist. Att'y's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 79 (2009) (Alito, J., concurring). Consistent with this Court's direction in *Osborne* that States have broad latitude to structure DNA-testing procedures so long as those procedures do not "transgress[] any recognized principle of fundamental fairness in operation," *id.* at 69, Texas requires convicted individuals seeking DNA testing to make several showings before receiving such testing.

Chief among these requirements—codified in Chapter 64 of the Texas Code of Criminal Procedure—is that the applicant must show by a preponderance of the evidence that he "would not have been convicted if exculpatory results had been obtained through DNA testing." Tex. Code Crim. Proc. art. 64.03(a)(2)(A); *id.* art. 64.04.[2] Once an applicant makes that showing, a Texas state trial court may order DNA testing if it further determines that "identity was or is an issue in the [convicted person's] case," that the evidence to be tested still exists, that it can be tested for DNA, and that it "has been

[2] The Texas Code of Criminal Procedure is divided into chapters, but within each chapter, separate sections are labeled "Articles."

subjected to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect." *Id.* art. 64.03(a)(1). Finally, the state trial court must find that the request for testing was not made to "unreasonably delay the execution of sentence or administration of justice." *Id.* art. 64.03(a)(2)(B).

When the trial court receives a motion for DNA testing, it must send the motion to "the attorney representing the state," who, in turn, is required to either "deliver the evidence to the court, along with a description of the condition of the evidence," or to "explain in writing to the court why the state cannot deliver the evidence to the court." *Id.* art. 64.02(a)(2)(A), (B). The State's attorney may reach an agreement with a defendant to allow DNA testing at any time, *see, e.g.*, *Skinner v. State*, 484 S.W.3d 434, 436 (Tex. Crim. App. 2016), or a prevailing defendant can obtain testing through an order by the trial court, Tex. Code Crim. Proc. art. 64.03. If the trial court refuses to order testing, the convicted person may appeal. *Id.* art. 64.05. In a capital case, the appeal is direct to the CCA. *Id.*

2. Reed's Chapter 64 motion, filed in July 2014, followed months of negotiations with the State, which was represented by Bastrop County Criminal District Attorney Bryan Goertz. *See* Pet. App. 72a, 132a. The State agreed to test "a few hairs found on Stites's body as well as swabs and other evidence collected from Stites as part of the sexual assault examination," but it did not agree to test a variety of other items found at the crime scene that Reed asserted might exonerate him. Motion for Post-Conviction DNA Testing at 1, *Reed v. State*, No. 8701 (21st Jud. Dist. Ct. of Bastrop County July 14, 2014). It is undisputed that, even after Reed secured the State's

agreement to test certain evidence, he waited four months to submit his own reference sample, which was necessary for the testing to proceed. Pet. App. 73a.

At an evidentiary hearing on his motion in July 2014, Reed asserted that DNA testing would be warranted for "a large number of items." Pet. App. 42a. But he did "not clearly or consistently identif[y] items he s[ought] to test." Pet. App. 42a.

In November 2014, the trial court denied Reed's motion from the bench. Pet. App. 133a. The next month, it issued findings of fact and conclusions of law. Pet. App. 119a-30a. Relevant here, the trial court found that Reed "failed to prove by a preponderance of the evidence" either "that his Chapter 64 motion [wa]s not made to unreasonably delay the execution of sentence" or "that he would not have been convicted but for exculpatory results from DNA testing." Pet. App. 122a, 128a.

Reed appealed, and the CCA remanded the case to the trial court to make additional factual findings. Pet. App. 105a-106a. The trial court made those supplemental findings in September 2016, concluding that many items did not meet Chapter 64's chain-of-custody requirement, did not contain biological material suitable for testing, or both. Pet. App. 93a, 95a-97a. For the few items that met those requirements, the court adopted its prior conclusions of law rejecting Reed's request for testing. Pet. App. 103a.

In April 2017, the CCA affirmed the trial court's denial of DNA testing. After discussing the evidence adduced at the live hearing, the CCA agreed with the State that Reed failed to show a sufficient chain of custody for many of the items he sought to have tested. Pet. App. 45a-49a, 52a-55a. The court based its conclusion on testimony that the exhibits "were handled by ungloved attorneys, court personnel, and possibly the jurors," and were "not separately packaged, but instead commingled in a common repository." Pet. App. 53a-54a. Reed's witnesses even "conceded that the manner of the trial exhibits' handling contaminated or tampered with the evidence." Pet. App. 54a. The CCA held that the hearing evidence "demonstrate[d] that the manner in which the [trial] evidence was handled and stored casts doubt on the [trial] evidence's integrity, especially for the specific testing" Reed sought. Pet. App. 54a.

The CCA then concluded that other items (those that were subject to a sufficient chain of custody) likely contained biological material suitable for DNA testing. Pet. App. 59a-60a. But the court found that Reed had not proven by a preponderance of the evidence that he would not have been convicted had those items been tested. That was because Reed failed to show that some of the items were "connected to Stites's capital murder" and because those items were not "relevant to establishing Stites's murderer." Pet. App. 64a, 65a. In any event, the testing results that Reed was hoping to obtain would "not affect the State's [timeline] supporting its theory tying the murder to the rape" or "support Reed's consensual-relationship defense." Pet. App. 67a. Even assuming the DNA results would match Jimmy Fennell, Stites's fiancé, "the jury would most likely not be surprised to learn that [his] profile was found on his own truck or on items found in his truck." Pet. App. 69a.

The CCA also affirmed the trial court's finding that Reed failed to prove that his DNA-testing request was not made to unreasonably delay the execution of his sentence or the administration of justice. The CCA held that Reed's "untimely request to test a significant number of items, including some items the State ha[d] agreed to test and others whose relevance to the crime are unknown," demonstrated that the motion was intended to delay his then-impending execution date. Pet. App. 71a. It observed that "Chapter 64 had existed with only slight variations for over thirteen years at the time Reed filed his motion, and there d[id] not appear to be any factual or legal impediments that prevented [him] from availing himself of post-conviction DNA testing earlier." Pet. App. 73a (footnote omitted). Reed filed a motion for rehearing, which the CCA denied in October 2017 through a one-sentence order: "On this day, [Reed's] motion for rehearing has been denied." Pet. App. 135a.

Reed then petitioned this Court for a writ of certiorari, arguing that the CCA's construction of Chapter 64's chain-of-custody and unreasonable-delay requirements violated his due-process rights. Petition for a Writ of Certiorari at i, ii, *Reed v. Texas*, No. 17-1093 (U.S. Feb. 1, 2018). The CCA, he asserted, had improperly adopted a "fundamentally unfair and novel interpretation of Chapter 64's chain-of-custody requirement" and "a subjective, arbitrary and fundamentally unfair interpretation of Chapter 64's 'unreasonable delay' element." *Id.* This Court denied certiorari. *Reed v. Texas*, 138 S. Ct. 2675 (2018) (mem.).

II. Reed's Section 1983 Lawsuit

Reed filed suit under 42 U.S.C. § 1983 in the United States District Court for the Western District of Texas in August 2019. Pet. App. 4a. He initially brought claims against both Goertz and three other defendants, each of whom he claimed was a custodian of some of the physical evidence that he sought to have tested. ROA.10.[3] He

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[3] "ROA" refers to the electronic record on appeal in *Reed v. Goertz*, No. 19-70022 (5th Cir.).

dropped his claims against these three other defendants in his amended complaint, leaving Goertz as the sole defendant. Pet. App. 4a n.1.

The amended complaint alleged that Goertz "directed or otherwise caused each of the non-party custodians of the evidence [that Reed seeks] to refuse to allow Mr. Reed to conduct DNA testing" and that Goertz had "the power to control access" to that evidence. JA.15-16. The complaint said nothing more about either Goertz's alleged action or inaction, or how Goertz could require these other custodians to provide access to the evidence Reed sought to have tested.

In both his original and amended complaints, Reed indicated that he intended to challenge Chapter 64 "both on its face and as interpreted, construed and applied by the CCA." JA.14; ROA.8. He claimed that Chapter 64 violated the Due Process Clause of the Fourteenth Amendment because, among other reasons, the CCA incorrectly interpreted—and grafted new barriers onto—the statute's chain-of-custody requirement. JA.31-33. Reed also asserted that the CCA erroneously found that he unreasonably delayed seeking DNA testing. JA.33.[4]

Goertz moved to dismiss Reed's complaint, asserting sovereign immunity, the limitations period, and the *Rooker–Feldman* doctrine barred Reeds' claims. ROA.357-60. Goertz also argued that Reed failed to state a plausible due-process claim. ROA.360-72.

[4] In counts two through five of his amended complaint, Reed contended that he had been denied access to the courts, subjected to cruel and unusual punishment, denied the opportunity to prove his actual innocence, and that he had been denied the due course of law under the Texas Constitution. JA.45-49. Reed does not discuss those claims in his opening brief or suggest that they might differ from his due-process claim for limitations purposes.

The district court granted Goertz's motion, concluding that Reed had "no colorable claim" that Chapter 64 was unconstitutional. Pet. App. 29a. But the court rejected Goertz's arguments that the suit was barred by the *Rooker–Feldman* doctrine and sovereign immunity, Pet. App. 21a-24a, and did not address Goertz's limitations argument, ROA.360.

The Fifth Circuit affirmed the district court's dismissal based on the statute of limitations, holding that Reed "first became aware that his right to access th[e] evidence" that he wanted tested "was allegedly being violated when the trial court denied his Chapter 64 motion in November 2014." Pet. App. 9a. The court of appeals concluded that "[b]ecause Reed knew or should have known of his alleged injury in November 2014, five years before he brought his § 1983 claim, his claim is time-barred." Pet. App. 10a.

This Court granted Reed's petition for a writ of certiorari.

SUMMARY OF ARGUMENT

I. In August 2019, Reed asserted two section 1983 claims regarding Chapter 64—a facial claim and an as-applied, "authoritative construction" claim. Following certiorari, he expressly abandoned his facial claim in this Court. Pet. Br. 17, 23, 26. Both claims are untimely.

Reed's authoritative-construction claim is untimely whether this Court concludes that claim arose when the trial court denied Reed's motion following a remand from the CCA to make specific findings (September 2016) or when the CCA affirmed that denial (April 2017). Indeed, Reed can avoid a limitations bar only if the Texas courts authoritatively construed Chapter 64 in his case—and thus his claim arose—when the CCA *denied rehearing* in October 2017. Principles governing the accrual of claims, traditional understandings of how judicial decisions work, and interests in federal–state comity foreclose that extraordinary result.

The gravamen of Reed's authoritative-construction claim is that "[t]he Texas courts' arbitrary construction and application of [Chapter] 64's statutory requirements . . . unconstitutionally denied Mr. Reed his due process rights." JA.38. The state trial court, no less than the CCA, imposed the chain-of-custody requirements that Reed claims violate due process. Pet. App. 93a-95a. His claim therefore arose—and the limitations period began to run—when the state courts *first* imposed those requirements through the trial court's September 2016 order. After all, trial courts, no less than appellate courts, authoritatively construe statutes as between the parties to litigation. A trial court's decisions are final and may be immediately enforced absent the extraordinary appellate remedies of a stay or injunction pending appeal.

But even if this Court accepts Reed's contention that his claim could not have accrued until the CCA affirmed the trial court's chain-of-custody ruling, the result would not change. The CCA issued its decision in April 2017, making Reed's August 2019 authoritative-construction claim untimely under the applicable two-year limitations period. The CCA's April 2017 decision bound not only Reed, but all other similarly situated DNA applicants and all lower courts in Texas on the day it was issued. To the extent Reed complains of "[t]he CCA's unprecedented interpretation and application of [Chapter] 64," JA.39, that interpretation and application occurred when the CCA issued its April 2017 decision—not when, six months later, it denied Reed's petition for rehearing in a one-line order.

That conclusion is consistent with how both federal and Texas courts understand the authority of appellate-court opinions. It is the CCA's opinion, not its order denying rehearing, that binds lower courts and the parties to the case. Likewise, federal–state comity demands that federal courts recognize the authority of the CCA's state-law constructions when they are pronounced, just as federal courts immediately recognize this Court's federal-law decisions. Federal courts should not ascribe less authority to a CCA decision than Texas courts do.

Insofar as Reed might try to renew his expressly abandoned challenge to Chapter 64 "on its face," that claim fares no better. His facial challenge to Chapter 64 accrued no later than when the state trial court initially denied his Chapter 64 motion in November 2014. Section 1983 lacks a state-court exhaustion requirement. In any event, no provision of Texas law requires an applicant to appeal a denial of DNA testing in state court. Reed knew that he was injured when he was denied testing, and he could have pursued a facial challenge in federal court on due-process grounds immediately after that denial. And again, Reed's facial claim falls within the limitations period only if it accrued when the CCA denied rehearing.

II. Reed's claim is jurisdictionally barred for three independent reasons. *First*, Reed lacks standing to sue district attorney Goertz, who does not enforce Chapter 64 and cannot redress Reed's injuries by unilaterally authorizing DNA testing. *Second*, Reed's claim is barred by sovereign immunity because Goertz lacks the requisite enforcement connection to Chapter 64. *Third*, the *Rooker–Feldman* doctrine prevents a federal district court from reviewing the CCA's judgment. Reed's complaint is replete with arguments that the CCA erred in construing Chapter 64 as applied to him. That is exactly the kind of claim that *Rooker–Feldman* precludes.

Reed cannot avoid those jurisdictional barriers by tying his injury to Goertz's refusal to release certain evidence for testing, rather than the CCA's decision, because doing so only worsens his limitations problem. Reed knew about Goertz's refusal by the time he filed his state-court motion for testing in July 2014. Therefore, if Goertz caused Reed's injury by denying him DNA testing, then Reed's claim is untimely by more than three years. If, instead, Texas courts caused his injury by construing Chapter 64, then Reed lacks standing to sue Goertz, his claim is barred by sovereign immunity, and *Rooker–Feldman* applies—and his claim is still untimely. Either way, the court of appeals' judgment should be affirmed.

ARGUMENT

I. Reed's Suit Is Untimely.

Statutes of limitations encourage plaintiffs "to pursue diligent prosecution of known claims." *Cal. Pub. Emps' Ret. Sys. v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2049 (2017). They "promote justice by preventing surprises through [plaintiffs'] revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014) (citation omitted). Thus, a limitations period starts running "when the cause of action accrues"—that is, "when the plaintiff can file suit and obtain relief." *Id.* at 7-8 (quotation marks omitted). Framed another way, a limitations period commences once a plaintiff has a "complete and present cause of action." *Merck & Co. v. Reynolds*, 559 U.S. 633, 644 (2010). So, in "a personal-injury or property-damage action, for example, more often than not this will be when the injury occurred or was discovered." *ANZ Sec.*, 137 S. Ct. at 2049 (quotation marks omitted). A cause of action can accrue "even though the full extent of the injury is not then known or predictable." *Wallace v. Kato*, 549 U.S. 384, 391 (2007) (quoting 1 C. CORMAN, LIMITATION OF ACTIONS § 7.4.1 (1991)).

Reed waited too long to file suit after his claims accrued. His authoritative-construction claim accrued either when the trial court first interpreted Chapter 64 as including a chain-of-custody requirement that Reed believes violates due process or, at latest, when the CCA issued its decision agreeing that such a requirement is a necessary showing for relief under Chapter 64. Reed filed his section 1983 suit more than two years after either date, and he did not need to await the CCA's ruling on his motion for rehearing for his claim to have accrued.

Even if Reed's challenge to Chapter 64 "on its face" were still live, it would be time-barred, too. In fact, that claim accrued in November 2014, as the Fifth Circuit correctly held before Reed changed tack in this Court.

A. Reed has abandoned his facial claim, leaving only his "authoritative construction" claim.

Reed was "the master of [his] complaint." *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002). And from the time of his initial section 1983 filing in district court to the certiorari stage in this Court, Reed advanced both a challenge to Chapter 64 "on its face" and a challenge to Chapter 64 as the Texas courts authoritatively construed it. JA.14 (amended complaint); *accord* ROA.8 (original complaint); *see* Pet. 14 (explaining that Reed's complaint "challenged Article 64 both facially and as interpreted and applied" by the CCA). The Fifth Circuit likewise understood Reed to have brought both claims, noting that "Reed's amended complaint challenges the constitutionality of Chapter 64, both on its face and as applied to him." Pet. App. 4a.

But after this Court granted certiorari, Reed unequivocally abandoned his facial challenge to Chapter 64. He now asserts that his "complaint isn't with Article 64's procedures 'on their face,' but with how, as authoritatively construed, they 'work in practice.'" Pet. Br. 26; *see also id.* at 17 (describing "the CCA's authoritative construction of Article 64" as the basis of his section 1983 claim); *id.* at 23 ("Reed alleges that the CCA's authoritative construction of Article 64 violates due process."); *id.* at 26 ("Reed's claim specifically attacks the authoritative construction of Article 64 by the CCA, 'Texas' court of last resort in criminal cases.'"); *id.* at 29 ("Reed's claim shows just how different construction and statute can be."); *id.* at 48 (asserting that his "challenge turns on the CCA's authoritative construction").

That strategic shift is evident from the first page of Reed's merits brief, which revised the question that his petition presented and that this Court agreed to review. Reed's petition asked the Court to grant certiorari to decide when the statute of limitations "for a § 1983 claim seeking DNA testing of crime-scene evidence" begins to run. Pet. i. Reed's merits brief, by contrast, presents a different question: when the limitations period begins to run for "a § 1983 claim bringing a due process challenge to a state's DNA testing procedures, as authoritatively construed by the state court of last resort." Pet. Br. i.; *see* S. Ct. R. 24(1)(a).

Reed has even walked back how he describes the claims that appear in his complaint. *Compare* Pet. 14 (explaining that Reed's complaint "challenged Article 64 both facially and as interpreted and applied" by the

CCA), *with* Pet. Br. 14 (stating that Reed's complaint challenged "Article 64 as authoritatively construed by the CCA"). And his merits brief does not even cite either *Savory v. Lyons*, 469 F.3d 667 (7th Cir. 2006), or *Van Poyck v. McCollum*, 646 F.3d 865 (11th Cir. 2011) (per curiam), which he previously asserted formed the basis of the circuit split that necessitated this Court's review. Pet. 19-21; *cf. Madison v. Alabama*, 139 S. Ct. 718, 732 (2019) (Alito, J., dissenting) (noting that the Court has dismissed a writ as improvidently granted when counsel "obtain[ed] review of one question and then switch[ed] to an entirely different question after review [wa]s granted" (citing *Visa, Inc. v. Osborn*, 137 S. Ct. 289 (2016); *City and County of San Francisco v. Sheehan*, 575 U.S. 600 (2015))).

But Reed is also the master of his merits brief, so Goertz takes him at his word that he is no longer challenging Chapter 64 "on [its] face." Pet. Br. 26. This Court should therefore consider only Reed's claim "specifically attack[ing] the authoritative construction" of Chapter 64. Pet. Br. 26; *e.g.*, *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 96 n.1 (1978) (Rehnquist, J., concurring) (noting that a party "explicitly abandoned" one of its claims in its brief on the merits).

Reed devotes the bulk of his opening brief to refuting the Fifth Circuit's analysis that his suit accrued when the trial court first denied his motion for testing. Pet. Br. 24-39. He insists, for example, that "[o]utside of a Kafka novel," he "could not have brought that claim before the CCA authoritatively construed Article 64." Pet. Br. 26. But the reasoning that Reed attacks depended in part on the then-accurate understanding that Reed was pressing a facial challenge to Chapter 64. *See* Pet. App. 8a-10a. Indeed, a due-process claim challenging Chapter 64 on its face would have accrued when the trial court first denied Reed testing—as the Fifth Circuit held. *See infra* Part I.C.

The bulk of Reed's arguments therefore do not address the question relevant to his only remaining claim: whether his authoritative-construction claim accrued when the state trial court first interpreted Chapter 64 to contain a chain-of-custody requirement that Reed believes violates due process; when the CCA, as the relevant court of last resort, affirmed that interpretation; or when the CCA denied Reed's motion for rehearing. The answer to that question is dispositive of the only claim that Reed now advances.

B. Reed's authoritative-construction claim accrued before the CCA denied rehearing.

There is no dispute that, when determining the applicable statute of limitations, "federal law looks to the law of the State in which the cause of action arose," *Wallace*, 549 U.S. at 387, and that Texas law limited Reed's time to pursue his claim to two years after his claim accrued, Tex. Civ. Prac. & Rem. Code § 16.003(a). But Reed filed his section 1983 claim in August 2019, ROA.7-37, nearly three years after the trial court first construed Chapter 64 as containing the requirements Reed believes violate due process, Pet. App. 93a-95a, and more than two years after the CCA issued its published opinion affirming that interpretation of Chapter 64 in April 2017, Pet. App. 36a-75a.

Reed had a complete claim under section 1983 when the trial court imposed, in his view, an unconstitutional requirement on Chapter 64 relief, and surely no later than when the CCA issued its opinion affirming the trial court's order. Reed therefore had everything he needed to bring his federal action under section 1983 and *Skinner v. Switzer*, 562 U.S. 521 (2011).

Recognizing that his claim would be time-barred if the limitations period began to run on either of those dates, Reed tries to push the date forward even further. He argues that the statute of limitations did not begin to run until the CCA denied his motion for rehearing because that is when the CCA's decision became "final." Pet. Br. 27. But the relevant question is not when the CCA's decision became procedurally final, but when Reed had notice of the chain-of-custody requirement that he views as unconstitutional. He had that notice—and a complete cause of action—when the trial court issued its September 2016 order, and he surely had it no later than the CCA's April 2017 decision. Either way, his authoritative-construction claim is time-barred.

1. Reed had a complete cause of action when the trial court issued its amended findings and conclusions.

Reed's authoritative-construction claim accrued when the trial court issued supplemental findings of fact and conclusions of law in September 2016. Pet. App. 88a-103a. Those supplemental findings and conclusions introduced the harm Reed complains of—namely, the interpretation of Chapter 64 as containing a "no contamination" requirement. Pet. App. 94a. The limitations period for his authoritative-construction claim began then.

Reed's arguments to the contrary lack merit. He insists (at 28-29) that he could not have raised at least one of his procedural-due-process objections—that Chapter 64 does not impose a "no contamination" requirement—in 2014 because the trial court did not initially render findings on that issue. *See* Pet. App. 105a-06a (CCA's remand to the trial court for additional findings). Perhaps so. But even if Reed could not have brought his contamination claim in 2014, he could have done so in 2016 when the trial court recognized such a requirement. That is when the trial court issued amended findings specifically addressing all aspects of the Chapter 64 analysis, including whether the evidence had been maintained in a sufficient chain of custody. Pet. App. 88a-103a.

Reed could have brought his authoritative-construction claim following that decision. For example, Reed could have claimed that the trial court's findings on chain-of-custody issues "resulted in the erroneous exclusion from eligibility for testing the majority of key pieces of evidence introduced at trial." JA.41. Indeed, that is essentially what he did in his operative complaint, which includes multiple allegations specifically attacking the trial court's findings and conclusions. *E.g.*, JA.33 (alleging that "the Texas courts" misconstrued Chapter 64's unreasonable-delay provision to add requirements that violate Reed's due-process rights); JA.34 ("The CCA, and the District Court, denied DNA testing based, in part, on factual assertions from trial that have since been disproven."); JA.44 ("The District Court and the CCA also violated Mr. Reed's due process rights by relying on trial evidence that has since been recanted, discredited and proven false, to deny his request for DNA testing under Article 64.").

Reed asserts (at 21-22) that an authoritative-construction claim can accrue only following a state high court's decision. But *Skinner* provides no basis for that limitation; *Skinner* merely determined that such a claim was cognizable under section 1983, as opposed to only through habeas relief. 562 U.S. at 531. It did not resolve when such a claim would arise—indeed, to the extent

Skinner spoke to the question, it referred to Chapter 64's interpretation by "the Texas courts," not just the CCA. *Id.* at 530 (quoting oral-argument transcript). Such "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004).

Nor would such a limitation be compatible with the diversity of approaches the States have taken in structuring their postconviction DNA-testing regimes. In Alabama, for example, no statute or rule authorizes an appeal from the denial of a postconviction motion for DNA testing. *Searcy v. State*, 77 So.3d 174, 177 (Ala. Ct. Crim. App. July 8, 2011) (per curiam). In other States, such appeals to their high courts are discretionary. *See, e.g.*, *State v. Cahill*, 972 N.W.2d 19, 27 (Iowa 2022); *State v. Alexander*, 869 S.E.2d 215, 223 (N.C. 2022); *Cromartie v. Shealy*, 941 F.3d 1244, 1250 (11th Cir. 2019) (Georgia). If a plaintiff can receive an actionable authoritative construction for section 1983 purposes only from a State's high court, then individuals in these jurisdictions would either rarely or never be able to advance such claims. That cannot be right. There, as here, such a claim would arise when a State's courts first interpret the State's DNA-testing regime as requiring some condition that a plaintiff believes violates due process. For Reed, as for plaintiffs in States without appellate review or where discretionary appellate review has been denied, that interpretation occurred in the trial court.

To this, Reed responds with the specter of unwieldy concurrent litigation in state and federal courts. Pet. Br. 37-39. But that counterargument does not track how this Court has understood principles of federalism and comity in the limitations context. For instance, in *Wallace*, 549 U.S. at 396, the Court held that the statute of limitations for a section 1983 claim seeking damages for false arrest runs from when the claimant is detained pursuant to legal process, not from when the State drops any charges against him. *Id.* at 391. The Court disagreed with the dissent's suggestion that the accrual period should be equitably tolled, explaining that "[e]quitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs." *Id.* at 396. And the Court observed that even if such tolling applied, "some (if not most) plaintiffs will nevertheless file suit before or during state criminal proceedings," so the dissent's proposed rule would also require "a system of stays and dismissals." *Id.*

Trial courts, just like appellate courts, construe statutes. *E.g.*, *Herndon v. Lowry*, 301 U.S. 242, 246 (1937). These interpretations are final, binding, and authoritative as between the parties absent reversal on appeal. *Scurlock Oil Co. v. Smithwick*, 724 S.W.2d 1, 6 (Tex. 1986) (adopting "[t]he established rule in federal courts . . . that a final judgment retains all of its res judicata consequences pending decision on appeal, except in the unusual situation in which the appeal actually involves a full trial de novo"); *cf. Musacchio v. United States*, 577 U.S. 237, 245 (2016) (noting that the law-of-the case doctrine binds parties to earlier decisions regarding a legal issue except upon appellate review). When the trial court construed Chapter 64 in September 2016 and denied Reed's motion for DNA testing, Reed's limitations clock began. His August 2019 claim is therefore untimely.

2. At the latest, Reed's claim accrued when the CCA construed Chapter 64 in its decision.

If only the CCA can provide the requisite authoritative construction required for Reed's claim, however, that court did so when it handed down its April 2017 decision—not when it denied rehearing nearly six months later. That conclusion is consistent with how both federal courts and Texas courts treat appellate decisions, and federal–state comity is best served by treating decisions of federal and state appellate courts similarly.

a. An appellate court's opinion is authoritative when issued.

Reed received the CCA's authoritative construction of Chapter 64's requirements when that court handed down its opinion. Opinions of the CCA, just like opinions of this Court and of the courts of appeals, are immediately authoritative and binding. Reed's limitations period therefore started no later than when the CCA issued its decision in April 2017.

This Court has long recognized that its opinions, like all appellate opinions, are authoritative upon issuance, not upon denial of a motion for rehearing. An opinion is an authoritative construction of the law. *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312-13 (1994). In a statutory-construction case, an opinion declares "what the statute has meant continuously since the date when it became law." *Id.* at 313 n.12 (noting that the Court's prior "opinion finally decided what" the statute "had *always* meant"). Such an opinion is immediately authoritative. *See id.* at 311 (noting that the effective date of the Court's decision was the date of the opinion). Reed thus cannot plausibly contend that he needed to wait until his petition for rehearing had been denied to claim that the

CCA had violated his due-process rights in its interpretation of Chapter 64.

That is why when this Court issues an opinion, it promptly grants writs of certiorari in related cases, vacates the lower courts' judgments, and remands the cases for further consideration in the light of that opinion. *See, e.g.*, U.S. Supreme Court, *Order List* (June 30, 2022), https://tinyurl.com/orders-6-30-22 (summarily disposing of more than 30 certiorari petitions in the light of recent opinions) (all websites last visited Aug. 23, 2022). The Court does so without waiting for any motions for rehearing to be filed or disposed of. Nor does the Court wait for its mandate or a certified copy of the judgment to issue before doing so. *See* Sup. Ct. R. 45(3). It treats its opinion as immediately binding on the parties and the lower federal courts—just as the CCA's was upon Reed.

Lower federal courts also recognize that appellate opinions are immediately authoritative, even though they may yet be altered or withdrawn. For example, just a few days after this Court decided *New York State Rifle and Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Ninth Circuit vacated a district court's judgment and remanded the case for further proceedings consistent with this Court's opinion. *McDougall v. County of Ventura*, 38 F.4th 1162 (9th Cir. 2022) (en banc) (per curiam); *see also United States v. Wilson*, No. 20-1610, 2022 WL 2919959 (7th Cir. July 22, 2022) (vacating the district court's judgment on agreement of the parties and remanding the case following *Concepcion v. United States*, 142 S. Ct. 2389 (2022)); *In re Zermeno-Gomez*, 868 F.3d 1048, 1052 (9th Cir. 2017) (per curiam) (recognizing that, even before a court of appeals' mandate has issued, its "published decision is 'final for such purposes as stare decisis, and full faith and credit, unless it is withdrawn by the court'" (quoting *Wedbush, Noble, Cooke, Inc. v. SEC*, 714 F.2d 923, 924 (9th Cir. 1983))); *Glob. Naps, Inc. v. Verizon New England, Inc.*, 489 F.3d 13, 19 (1st Cir. 2007) (noting that a party "could have been expected to treat" the court's prior decision "as good law, notwithstanding the ministerial fact that the mandate had not yet issued").

Reed, on the other hand, mistakenly conflates the procedural finality of an appeal, which is marked by the exhaustion of any post-decisional motions or the lapse of the time period for further review or reconsideration, with a judicial decision's authoritative effect, which occurs immediately on the decision's issuance. Per Reed, an appellate court has not given a statute an "authoritative construction[] . . . until after the denial of rehearing" because, until then, that court could "always change its interpretation." Pet Br. 27. Leaving aside that a court can always change its interpretation of a statute even after a motion for rehearing is decided in a particular case, this Court should reject Reed's argument for two reasons.

First, Reed was a party to the case in which the CCA affirmed the trial court's denial of relief under Chapter 64, and a party cannot disregard an appellate court's published opinion just because it might be subject to modification or withdrawal on rehearing. That is because, generally speaking, "mere leave to file a motion for rehearing d[oes] not and could not affect the vitality and efficacy of" an appellate court's decision, which remains "conclusive upon the parties to it" until "set aside by" the court. *In re Craig*, 32 S.W. 1121, 1122 (Mo. 1895); *see also, e.g.*, *State v. Harris*, 741 N.W.2d 1, 10 & n.2 (Iowa 2007); *Riley v. Northland Geriatric Ctr.*, 391 N.W.2d 331, 334-35 (Mich. 1986); *Smithwick*, 724 S.W.2d at 6; *State v. Chauvin*, 955 N.W.2d 684, 689-90 (Minn. Ct. App. 2021); *Donado v. PennyMac Corp.*, 174 So. 3d 1041, 1043-44 (Fla. App. Ct. 2015); *accord* STEPHEN M. SHAPIRO ET AL., SUPREME COURT PRACTICE 849 (10th ed. 2013). That is why a party aggrieved by an appellate court's decision must seek a stay of that decision pending further review to prevent it from binding that party in the meantime.

Second, Reed's proposed rule is inconsistent with other timeliness principles. As this Court has recognized, limitations periods serve the strong interests that sovereigns have in "regulating the work of [their] courts and determining when a claim is too stale to be adjudicated." *Sun Oil Co. v. Wortman*, 486 U.S. 717, 730 (1988). Such interests are incompatible with the notion that a plaintiff can effectively choose when the limitations period on his claim will begin; after all, these periods cannot begin to run "only after a plaintiff became satisfied that he has been harmed enough," as that would impermissibly "plac[e] the supposed statute of repose in the sole hands of the party seeking relief." *Wallace*, 549 U.S. at 391. Likewise, in the context of determining whether a federal habeas petitioner timely pursued his claims for purposes of avoiding procedural default, this Court asks "whether [the] petitioner possessed, or by reasonable means could have obtained, a sufficient basis to allege a claim in the first petition and pursue the matter through the habeas process." *McCleskey v. Zant*, 499 U.S. 467, 498 (1991).[5]

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[5] It is possible that the outcome of a rehearing petition might change the contours of an authoritative-construction claim, but it should rarely fundamentally change the injury that gives rise to that claim. After all, "[t]he object of a petition for rehearing is to point out *mistakes* of law or of fact, or both, which it is claimed the court

In each of these contexts, the timeliness touchstone is whether a plaintiff has diligently pursued his claim as measured against a real-world event, the notice he has obtained, or the notice he should have obtained—not his litigation decisions. Under his theory, Reed was actually injured by, and surely had notice of, the CCA's April 2017 decision; his claim therefore accrued no later than then.

b. Texas appellate procedure confirms that the CCA's decision, not its rehearing denial, authoritatively construed Chapter 64.

Reed's argument (at 27) that the CCA's "authoritative constructions . . . don't become final until after the denial of rehearing" is equally unfounded as a matter of Texas law. Because Reed claims that his injury arose from Texas courts' authoritative construction of Chapter 64, Texas law governs when that authoritative construction occurred. Under Texas law, the CCA's interpretation was binding, and thus Reed was injured and his claim accrued, when the CCA released its opinion—not when it denied Reed's petition for rehearing.

The CCA's interpretation of Texas law becomes authoritative the moment the CCA issues its opinion, as the CCA itself has recognized.[6] For instance, on January 12,

made in reaching its conclusion." *Lesh v. Johnston Furniture Co.*, 13 N.E.2d 708, 709 (Ind. 1938) (emphasis added). And parties generally may not use rehearing motions to raise new issues. *E.g.*, *Morrison v. Chan*, 699 S.W.2d 205, 206-07 (Tex. 1985).

[6] The same is true in the Texas Supreme Court. *See, e.g.*, *Brazos Elec. Power Coop., Inc. v. Tex. Comm'n on Envtl. Quality*, 576 S.W.3d 374, 383 (Tex. 2019) ("Certainly we would expect the courts of appeals to treat our opinions as binding precedent even while a motion for rehearing is pending."); *Nealon v. Williams*, 332 S.W.3d

1994, the CCA issued its opinion in *Green v. State*, 872 S.W.2d 717 (Tex. Crim. App. 1994) (per curiam). On the same day, it decided *Oliver v. State*, 872 S.W.2d 713 (Tex. Crim. App. 1994). And in *Oliver*, the CCA vacated the court of appeals' judgment and remanded the case for further consideration because the court of appeals "did not have the benefit of our opinion delivered this day in *Green*." *Id.* at 716. The CCA thus considered *Green* to be authoritative on the very day it was issued. That court did not wait for a motion for rehearing to be filed, much less disposed of, before treating *Green* as binding on the lower courts. Indeed, a motion for rehearing was later filed—and denied—in *Green*. *See* Docket, *Green v. State,* No. PD-1388-91 (Tex. Crim. App. Mar. 30, 1994), *available at* https://tinyurl.com/cca-green.

Texas courts of appeals likewise treat CCA opinions as binding when issued. "[U]nder the dictates of vertical stare decisis," those courts adhere to the CCA's interpretations in criminal matters immediately "under the dictates of vertical stare decisis." *Mason v. State*, 416 S.W.3d 720, 728 n.10 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd). And they do so even when the CCA has not yet denied rehearing or issued its mandate.

For example, in *Brooks v. State*, the CCA held that the legal-sufficiency standard that this Court articulated in *Jackson v. Virginia*, 443 U.S. 307 (1979), "is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt." 323 S.W.3d 893,

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364, 365 (Tex. 2011) (per curiam) (reversing court of appeals' judgment and remanding for further proceedings in light of *Franka v. Velasquez*, 332 S.W.3d 367 (Tex. 2011), which was decided the same day).

895 (Tex. Crim. App. 2010) (plurality op.); *accord id.* at 926 (Cochran, J., concurring). The controlling opinion in *Brooks* issued on October 6, 2010. *Id.* at 893. But the CCA did not deny rehearing until November 17. *Id.* And it did not issue its mandate until December 2. *See* Mandate, *Brooks v. State,* No. PD-0210-09 (Tex. Crim. App. Dec. 2, 2010), *available at* https://tinyurl.com/cca-brooks. Yet on October 26, an intermediate court of appeals responded to *Brooks* by withdrawing an opinion in which it had applied a different standard. *Griego v. State*, No. 07-09-00206-CR, 2010 WL 4225863, at *1 (Tex. App.—Amarillo Oct. 26, 2010) (per curiam) (not designated for publication). That intermediate appellate court ordered supplemental briefs addressing *Brooks* even though the CCA had not yet denied rehearing.[7] *Id.*; *see also Ervin v. State*, 331 S.W.3d 49, 52-53 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (applying *Brooks* before the CCA ruled on the then-pending rehearing motion and issued its mandate).

That Reed does not take his procedural-finality principles to their logical conclusion underscores the flaws in his argument to the contrary. After all, if procedural finality were the touchstone for when a court has authoritatively construed a statute, it is unclear why Reed could

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[7] Aside from vertical-stare-decisis obligations, this approach makes sense as a practical matter. The CCA rarely grants rehearing: in fiscal year 2021, it granted rehearing in only three of the 43 cases in which rehearing was sought, and none of those three arose from a direct appeal (like Reed's). *Court of Criminal Appeals Activity Detail: FY 2021* at 8, https://tinyurl.com/cca-fy21. It likewise granted none of the 44 motions for rehearing filed in 2020, *Court of Criminal Appeals Activity Detail: FY 2020* at 6, https://tinyurl.com/cca-fy20, and just one of the 80 motions for rehearing filed in 2019, *Court of Criminal Appeals Activity Detail: FY 2019* at 8, https://tinyurl.com/ccafy2019.

not insist that his limitations period began when the time to seek certiorari from the CCA's decision expired—or, for a different applicant, why it would not begin when this Court denied a motion for rehearing from the denial of a petition for a writ of certiorari. If Reed were correct, plaintiffs bringing DNA-testing claims under section 1983 would be able to control through motions practice in this Court and elsewhere when their limitations periods begin through motions practice in this Court and other courts. That approach is incompatible with this Court's direction that a personal-injury limitations period (such as that under section 1983) is not "left in the sole hands of the party seeking relief," *Wallace*, 549 U.S. at 391, but instead begins when a plaintiff has been injured or when he discovers his injury, *ANZ Sec.*, 137 S. Ct. at 2049.

Nor does Reed suggest that the statute of limitations runs from the issuance of the CCA's mandate—again for good reason. Like most appellate-court mandates, the CCA's mandate is its "official notice, directed to the court below, advising it of the appellate court's decision and directing it to have the appellate court's judgment duly recognized, obeyed, and executed." *Ex parte Webb*, 270 S.W.3d 108, 109 n.2 (Tex. Crim. App. 2008). But the mandate does not construe any law. In this instance, the mandate states that the cause was "determined" on April 12, 2017—the date of the CCA's opinion. *See* Mandate at 2, *Reed v. Texas*, No. AP-75-804 (Tex. Crim. App. Oct. 10, 2017), *available at* https://tinyurl.com/reed-mandate. The CCA's mandate thus confirms what Texas law makes clear: the CCA's opinion was authoritative when issued.

c. Recognizing that a CCA decision is authoritative as soon as it is issued advances federal–state comity.

Reed argues that his proposed rule "respects the structure and operation of the state judiciary." Pet. Br. 27. But the CCA's determinations of Texas criminal law should be entitled to the same respect as this Court's pronouncements on federal law—including the same recognition that these decisions are immediately binding when issued. After all, this Court "repeatedly has held that state courts are the ultimate expositors of state law and that [federal courts are] bound by their constructions except in extreme circumstances." *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (citations omitted). As just explained, Texas's judiciary, like the federal judiciary, treats a high court's opinion as authoritative when issued. And as Reed acknowledges (at 27), "the views of the state's highest court with respect to state law are binding on the federal courts." *Wainwright v. Goode*, 464 U.S. 78, 84 (1983) (per curiam) (quotation corrected, emphasis removed); *see Wilbur*, 421 U.S. at 691.

Federal courts should regard Texas court decisions as immediately authoritative on matters of state law in the same way. To do otherwise would violate federal–state comity, as a federal court would regard a state high court's decision on a matter of state law as nonbinding while state courts simultaneously recognized it as binding. Once a State's highest court has interpreted state law, federal courts should be ready to accept and apply that determination—not to wait until rehearing is denied or a mandate issues before honoring the state court's interpretation of state law. Far from respecting Texas's judiciary, holding that the CCA's interpretation of Chapter 64 was not an "authoritative construction" until rehearing was denied would undermine the CCA and harm federal–state relations. *Cf. Shinn v. Ramirez*, 142 S. Ct. 1718, 1730-31 (2022) (recognizing the delicate balance of power between the federal courts and the States).

Reed's amici purport to defend judicial federalism—a laudable goal. Br. of Fed. Cts. Scholars 6. But their concerns have little purchase here, where a State's highest court has issued an opinion authoritatively construing state law. Concerns about "parallel litigation" are hardly mitigated by encouraging federal plaintiffs to seek and be denied rehearing after receiving an adverse opinion on the merits. If anything, such a rule would encourage litigants to forestall their limitations periods or the execution of their sentences by seeking rehearing, which is rarely granted in the CCA. *See supra* n.7.

In any event, even if a plaintiff filed a section 1983 claim the same day the CCA issued an opinion, the CCA's mandate will issue, and that litigation will end, in the early stages of the federal litigation in the overwhelming majority of cases. The possibility that a section 1983 plaintiff will base his or her claim on an interpretation of Texas law that is later changed on rehearing, as Reed's amici warn, Br. of Fed. Cts. Scholars 21, is miniscule. And in the unusual event that a plaintiff files a section 1983 claim before the CCA grants rehearing, the plaintiff can take the common step of amending or dismissing his complaint. But the minimal "risk of concurrent litigation" does not justify the "rare remedy" of equitable tolling (or, as relevant here, a delay of the accrual date), which "is to be applied in unusual circumstances" and not as "a cure-all for an entirely common state of affairs." *Wallace*, 549 U.S. at 396. Reed's case demonstrates the point. Had Reed filed his section 1983 claim immediately after the CCA issued its opinion, the "parallel litigation" about which the amici scholars express concern would have continued for less than six months.[8]

Nor would starting the limitations period at the date of the CCA's opinion "require that federal courts make guesses as to the meaning of state law." Br. of Fed. Cts. Scholars 21. As already noted, both federal and Texas courts treat appellate opinions as authoritative when issued. Here, the CCA authoritatively construed Chapter 64 in April 2017. After that, no guesswork was required.

Finally, "[i]t should not be forgotten that time-limitations provisions themselves promote[] important interests." *Del. State Coll. v. Ricks*, 449 U.S. 250, 259 (1980). Reed was convicted of capital murder in 1998. *Ex parte Reed*, No. WR-50961-03, 2005 WL 2659440, at *1 (Tex. Crim. App. Oct. 19, 2005) (per curiam) (unpublished). But he did not file his section 1983 claim until August 2019, ROA.7-37, more than two decades after his conviction, and that claim is still being litigated years later. Like all States, Texas has a strong interest in the finality of its convictions and in the execution of its sentences. *See Shinn*, 142 S. Ct. at 1739 (noting "the essential need to promote the finality of state convictions") (quotation marks omitted). "Serial relitigation of final convictions undermines the finality that is 'essential to both the retributive and deterrent functions of criminal law.'" *Id.* (quoting *Calderon v. Thompson*, 523 U.S. 538, 554 (1998)). Reed is not entitled to extend section 1983's two-year limitations period through motions practice before the CCA or any other court.

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[8] If Reed had filed his complaint the day before the statue of limitations *lapsed* (as he could have done), there would never have been parallel state-court litigation because his request for rehearing had long since been rejected.

C. Reed's abandoned challenge to Chapter 64 "on its face" accrued when the state trial court denied his motion in 2014.

This Court granted review to address when the statute of limitations "for a § 1983 claim seeking DNA testing of crime-scene evidence" begins to run. Pet. i. That formulation of the question presented is consistent with a facial challenge to Chapter 64—which Reed has since expressly abandoned. JA.14; ROA.8; Pet. Br. 26; *see supra* Part I.A. But even if Reed were to shift course once again and reassert that his challenge to the statute "on its face" is still live, his facial challenge would also be time-barred because any facial challenge would have accrued no later than when the CCA issued its opinion affirming the denial of Chapter 64 relief.

But, for two reasons, Reed's facial challenge accrued even earlier for two reasons. *First*, Reed was aware that he was injured, and in a position to seek redress for that injury, when the trial court denied his motion in 2014. Section 1983 does not impose any exhaustion requirements on plaintiffs challenging state statutes, as Reed concedes in his opening brief. It therefore offers no support for the timeliness of Reed's facial challenge. *Second*, the possibility that a state court might resolve a sensitive state-law question is no reason to delay the accrual date of a facial claim.

1. Reed's facial claim accrued when he was first denied access to DNA testing.

A claim accrues when a plaintiff is "armed with the facts about the harm done to him"—at that point, he is expected to "protect himself" by taking prompt steps to remedy his injury. *United States v. Kubrick*, 444 U.S. 111, 123 (1979). Accordingly, for purposes of his challenge to Chapter 64 "on its face," JA.14; ROA.8, Reed was injured when the state trial court denied his motion for DNA testing on November 25, 2014. Pet. App. 133a. At that point, his injury "occurred or was discovered." *ANZ Sec.*, 137 S. Ct. at 2049. He was subjected to Chapter 64's allegedly deficient process, resulting in a "complete and present cause of action" for which he could "file suit and obtain relief." *CTS Corp.*, 573 U.S. at 8. The mere *potential* of changed circumstances did not eliminate the existence of his initial injury for limitations purposes. *ANZ Sec.*, 137 S. Ct. at 2049; CORMAN, *supra*, at 526-27.

The structure of the Texas Code of Criminal Procedure confirms that Reed could have filed suit in 2014 to challenge Chapter 64 on its face. The Code contains no provision *requiring* a defendant seeking DNA testing to appeal the denial of a Chapter 64 motion. There was thus no barrier to Reed "fil[ing] suit and obtain[ing] relief" on a challenge to the constitutionality of Chapter 64 once the state trial court denied his motion. *ANZ Sec.*, 137 S. Ct. at 2049. Perhaps for that reason, Reed does not dispute that his claim would have accrued when the trial court denied access to testing had he never sought review in the CCA.

The immediate availability of a section 1983 claim following the trial court's denial of Reed's application for DNA testing comports with this Court's longstanding admonition that section "1983 contains no judicially imposed exhaustion requirement; absent some other bar to the suit, a claim is either cognizable under § 1983 and should immediately go forward, or is not cognizable and should be dismissed." *Edwards v. Balisok*, 520 U.S. 641, 649 (1997); *see also Savory*, 469 F.3d at 674 (explaining that, "[u]nlike habeas corpus, § 1983 does not require exhaustion in state courts"). Plaintiffs can, and often do, bring facial challenges to statutes under section 1983 *before* any governmental action, so long as they have established a "credible threat of prosecution." *E.g.*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014); *Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 625-26, n.1 (1986).

Reed acknowledges that "[t]here's no exhaustion requirement barring a § 1983 plaintiff from 'sidestep[ping] state process' and challenging state law as written." Pet. Br. 48 (quoting *Osborne*, 557 U.S. at 71). But that concession gives away his facial claim: if he could have pursued a facial section 1983 claim in federal court without going through the "state process" at all, then his facial claim surely did not have to traverse the entire state appellate process to accrue.

In the same vein, this Court has confirmed that an appeal does not toll the limitations period for a civil-rights plaintiff. *Ricks*, 449 U.S. at 261. In *Ricks*, the board of trustees of a college denied the plaintiff's tenure application, after which the plaintiff filed an internal grievance. *Id.* at 252-53. While his grievance was pending, the college offered him a one-year "terminal" contract. *Id.* at 254. After the board notified him that his grievance had been denied, he filed an employment-discrimination charge with the Equal Employment Opportunity Commission. *Id.*

The issue presented was whether the plaintiff's claims were timely. The Court first "identif[ied] precisely the 'unlawful employment practice'" at issue, which the Court described as the wrongful denial of tenure. *Id.* at 257 (quoting 42 U.S.C. § 2000e-5(e)(1)). The Court determined that the date the college "established its official position" by offering a one-year terminal contract marked the beginning of the limitations period. *Id.*

at 262. Crucially, the Court explained that "entertaining a grievance complaining of the tenure decision does not suggest that the earlier decision was in any respect tentative." *Id.* So the "pendency of a grievance" did not affect when the plaintiff's claim accrued—namely, when the college offered the terminal contract. *Id.* at 261.

Just so with Reed. When the trial court refused his application for DNA testing, he suffered an injury, and any facial challenge to Chapter 64 could have been raised no later than then. That a higher court may have reviewed that denial did not prevent Reed from immediately (or at least timely) bringing his facial claim.

2. The possibility of new state-court interpretations of state law does not prevent a claim from accruing.

Reed notes (at 20) that federal courts can avoid difficult constitutional questions by allowing state courts to weigh in on state law first. *See R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 501 (1941). He cites no authority, however, for the remarkable proposition that the possibility of *Pullman* abstention—or any other form of federal abstention—would justify delaying a plaintiff's accrual period for limitations purposes. And to the extent Reed was concerned that state courts should be allowed to weigh in on tricky state-law issues before federal courts do, the Texas Constitution already provides an avenue for that review: certification of a question of state law from a federal appellate court to the Texas Supreme Court or the CCA. TEX. CONST. art. V, § 3-c.

Thus, if Reed's facial due-process challenge to Chapter 64 implicated sensitive state-law questions, Reed could have apprised the Fifth Circuit of that fact, and the CCA very well may have weighed in. Alternatively, the federal district court could have stayed proceedings in deference to the state-court appeal. *Wallace*, 549 U.S. at 396-97. But again, Reed cites no authority for the notion that the speculative need for state-court input delays the accrual of a federal constitutional claim.

The general rule is that the limitations period starts when a plaintiff can "file suit and obtain relief." *CTS Corp.*, 573 U.S. at 8. That rule applies "[u]nless Congress has told [the federal courts] otherwise in the legislation at issue." *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997). Because nothing in section 1983 alters the applicable statute of limitations, Reed's facial challenge to Chapter 64—setting aside, once again, that he abandoned it before this Court—accrued in 2014, and it is thus untimely.

II. Reed's Suit Is Jurisdictionally Barred.

In addition to the timeliness grounds upon which the Fifth Circuit relied, this Court may "choose among threshold grounds for denying audience to a case on the merits." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999). Here, there are three such grounds beyond the limitations bar already addressed, and crediting Reed's efforts to avoid two of them—standing and sovereign immunity—would give rise to a different limitations bar.

A. Either Reed lacks standing, or his claim comes years too late.

To have Article III standing, a plaintiff must "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *California v. Texas*, 141 S. Ct. 2104, 2113 (2021). Reed fails to identify how his injury is traceable to Goertz or redressable by a declaratory judgment against him.

No state actor enforces Chapter 64. That statute embodies a comprehensive postconviction scheme that Texas courts construe and apply. As in *California*, "there is no action—actual or threatened—whatsoever. There is only the statute[]." *Id.* at 2115. Goertz did not deprive Reed of DNA testing under Chapter 64. Instead, Texas courts independently determined that he failed to meet Chapter 64's requirements. Reed thus has not shown that his injury is traceable to Goertz, the sole defendant.

Reed's prayer for relief in his amended complaint confirms this traceability problem. It asks for a declaration regarding the "CCA's interpretation and application of Article 64." JA.49. Indeed, the complaint asserts that the CCA itself violated Reed's constitutional rights. *E.g.*, JA.14 (stating that "this action raises the constitutional violations that flow from the extra-statutory conditions that the CCA imposed on Article 64"); JA.32 (arguing that "the CCA . . . arbitrarily grafted non-statutory barriers onto Article 64 that have deprived Mr. Reed of his liberty interest in proving his innocence with new evidence under state law"). By contrast, Reed has not proffered any allegations tying the CCA's actions—which he claims to be the source of his injury—to Goertz.

Relatedly, Reed must connect "'the judicial relief requested' and the 'injury' suffered." *California*, 141 S. Ct. at 2113. Even if Reed were to obtain the relief he requested in the district court, that would "amount to no more than a declaration that the statutory provision [he] attack[s] is unconstitutional, i.e., a declaratory judgment. But once again, that is the very kind of relief that cannot alone supply jurisdiction otherwise absent." *Id.* at 2116. In other words, the relief Reed seeks would not require any change in conduct from district attorney

Goertz, nor is it likely to bring about such change. His injury would therefore not be redressed by the relief he has sought.

Reed's preemptive response to these points fails. Reed invokes *Skinner* to defend his standing to sue the district attorney. He points out, for instance, that *Skinner* also involved a plaintiff's claim against a district attorney concerning Texas's DNA-testing statutes. Pet. Br. 23-24. But *Skinner* did not address standing (or, for that matter, sovereign immunity), and thus offers no guidance. *See Cooper Indus., Inc.*, 543 U.S. at 170; *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998) (explaining that "drive-by jurisdictional ruling[s]" carry no precedential weight).

In any event, if Goertz were the proper defendant, Reed would have a different, but equally fatal, limitations problem. Reed must show that his injury is "fairly traceable to the defendant's allegedly unlawful conduct." *California*, 141 S. Ct. at 2113. The only "unlawful conduct" that Reed alleged with respect to Goertz is the withholding of DNA evidence for testing. JA.15-16. Reed was aware of Goertz's decision not to allow open-ended access to DNA testing by no later than July 2014, when he filed his Chapter 64 motion. *See supra* pp. 5-6. So if Goertz's refusal injured Reed, that injury occurred in 2014—five years before he filed his section 1983 claim. It cannot be the case that Goertz injured Reed for standing purposes, but the CCA injured him for limitations purposes; Reed must choose, and his claim fails under either possibility.

B. Either sovereign immunity bars Reed's claim, or his claim comes years too late.

Reed's live section 1983 claim against Goertz is also barred by sovereign immunity, which prohibits suits against public officials when "the state is the real, substantial party in interest." *Ford Motor Co. v. Dep't of Treasury of Ind.*, 323 U.S. 459, 464 (1945), *overruled in part on other grounds by Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 623 (2002). A Texas criminal district attorney such as Goertz is an agent of the State when acting in a prosecutorial role and is thereby entitled to its immunity. *See, e.g.*, *Esteves v. Brock*, 106 F.3d 674, 678 (5th Cir. 1997) (applying Texas law); *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 843-44 (Tex. 2007). Reed does not disagree that Goertz is entitled to immunity, *see* Pet. Br. 23, 42-44; instead, Reed contends that he has sufficiently met the requirements to invoke the *Ex parte Young* exception to that immunity. 209 U.S. 123 (1908). Pet. Br. 22-23.

He has not. The *Ex parte Young* exception is premised on a state official's "connection with the enforcement of the act"—*i.e.*, "the right and the power to enforce" the "act alleged to be unconstitutional." 209 U.S. at 157. But Chapter 64 "is simply a procedural vehicle for obtaining certain evidence." *Ex parte Gutierrez*, 337 S.W.3d 883, 890 (Tex. Crim. App. 2011). Goertz, like all Texas district attorneys, lacks any control over whether a movant qualifies for DNA testing under Chapter 64; a trial court makes that determination as a matter of law.

Reed argues that the declaratory judgment he seeks would "bar Goertz from relying on the CCA's unconstitutional construction of Article 64 to continue denying testing." Pet. Br. 23. But that contention still fails to state the requisite enforcement connection between Chapter 64—or the CCA's construction of Chapter 64—and any actions that Goertz has taken. In other words, Reed does not dispute that courts, rather than district attorneys, adjudicate the merits of Chapter 64 claims and order or withhold DNA testing accordingly. "[N]o case or controversy" exists, however, "between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute." *Whole Women's Health v. Jackson*, 142 S. Ct. 522, 532 (2021) (citation omitted). Reed cannot avoid that problem by suing a different state official who does not enforce Chapter 64.

Moreover, as with standing, Reed faces an insoluble problem. If he is correct that Goertz enforces Chapter 64, and thus his claim falls within *Ex parte Young*'s ambit, then that claim arose when Goertz refused to consent to the full array of DNA testing that Reed demanded. JA.15-16. Reed did not allege that Goertz ever modified that decision or that Goertz's refusal amounted to an ongoing violation of his constitutional rights. If the refusal amounted to an enforcement of Chapter 64—a condition necessary to Reed's invocation of *Ex parte Young*—then that enforcement occurred in 2014, which would render Reed's claim long since time-barred. To avoid this limitations problem, Reed must claim—as his complaint repeatedly does, *e.g.*, JA.14, 38-40—that the CCA, rather than Goertz, injured him. But if that is the case, then Goertz has not enforced anything, *Ex parte Young* is unavailable, and Goertz is entitled to sovereign immunity. Once again, Reed's claim fails under either possibility.

C. The *Rooker–Feldman* doctrine precludes Reed's claim.

Finally, the *Rooker–Feldman* doctrine, which emerged from this Court's decisions in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), prohibits "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejections of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). When *Rooker–Feldman* applies, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (per curiam).

Both the district court and the Fifth Circuit found *Rooker–Feldman* inapplicable because they understood Reed to be pursuing challenges to a state *statute*, rather than a state-court *judgment*. Pet. App. 6a, 22a. And, to be sure, Reed previously argued that Chapter 64 facially violates the Due Process Clause. JA.14. He also contended that this violation was compounded by the CCA's construction of it. JA.14.

Reed mistakenly urges the same theory in this Court. Pet. Br. 22. Although *Skinner* confirmed that a claim against Chapter 64 itself would not be barred by *Rooker–Feldman*, Reed, unlike the plaintiff in *Skinner*, "challenge[s] the adverse CCA decision" in his case. 562 U.S. at 532. His operative pleading is rife with complaints that the CCA's decision *itself* violated his due-process rights. *See, e.g.*, JA.39-40, 42 (arguing that "[t]he CCA's tortured, results-driven and utterly unfair interpretation and application of Article 64 deny Mr. Reed basic constitutional protections under both the United States Constitution and the Texas Constitution" and that "the manner in which the CCA adjudicated Mr. Reed's appeal was arbitrary"); JA.37 ("The CCA's opinion denying DNA testing arbitrarily fails to take account of any of the foregoing newly discovered evidence, which negates the State's evidence against Mr. Reed."); JA.37-38 ("The CCA further fails to recognize the exculpatory potential of crime scene evidence by summarily dismissing the mountain of evidence of third-party guilt Mr. Reed has presented linking Fennell to the murder."); JA.44 ("The District Court and CCA also violated Mr. Reed's due process rights by relying on trial evidence that has since been recanted, discredited and proven false, to deny his request for DNA testing under Article 64."). The plaintiff in *Skinner*, by contrast, expressly disclaimed any such arguments, clarifying that he did "not challenge the . . . decisions reached by the CCA in applying Article 64 to his motions." 562 U.S. at 530. That difference is dispositive for *Rooker–Feldman* purposes.

If the allegations in Reed's complaint were not enough, two other tactical choices Reed made indicate that his claim is barred by *Rooker–Feldman*: (1) Reed asked the district court to hold that "the CCA's interpretation and application of Article 64 . . . is unconstitutional," JA.49; and (2) in his prior petition in this Court for a writ of certiorari to the CCA, Reed invoked precisely the same due-process theories he raises now, *see supra* p. 8. In other words, Reed "seek[s] what in substance would be appellate review of the state judgment in a United States district court, based on [his] claim that the state judgment itself violates [his] federal rights.'" *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994); *see also, e.g.*, *Cooper v. Ramos*, 704 F.3d 772, 780-81 (9th Cir. 2012); *Alvarez v. Att'y Gen. for Fla.*, 679 F.3d 1257, 1263-64 (11th Cir. 2012).

In short, Reed had an opportunity to seek this Court's review of the CCA's judgment, and he took advantage of that opportunity by filing a petition for a writ of certiorari raising the same due-process arguments he now asserts under section 1983. *See supra* p. 8; *Reed*, 138 S. Ct. at 2675. *Rooker–Feldman* precludes his section

1983 claim, which effectively asked a federal district court to sit as an appellate court over the CCA.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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