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 AMICI CURIAE STATE OF MONTANA AND 9 OTHER STATES SUPPORTING RESPONDENT

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INTERESTS OF *AMICI CURIAE*

Amici Curiae States of Montana, Alabama, Alaska, Arkansas, Idaho, Louisiana, Mississippi, Oklahoma, South Carolina, and Utah ("the States"), represented by their respective Attorneys General, submit this brief as *amici curiae* in support of Respondent.

Plaintiffs often bring actions against the States' officials under 42 U.S.C. § 1983. But subjecting States to suit in federal courts implicates the States' sovereign interests. Clarity, therefore, in the law governing § 1983 claims is an institutional imperative for the States. For like reasons, the States also depend upon clear rules governing when these constitutional claims accrue and become time-barred.

For these reasons, the States urge the Court to hold that the Eleventh Amendment bars Reed's claim. In the alternative, the States ask the Court to affirm the Fifth Circuit's determination that Reed's claim accrued when he had a "complete and present cause of action," which happened when the Texas state trial court denied his motion for post-conviction DNA testing.

INTRODUCTION

The Civil Rights Act of 1871 provides that any person who, under color of state law, deprives any person of "any rights … secured by the Constitution of the United States, shall … be liable to the party injured." 17 Stat. 13 (1871), Rev. Stat. § 1979 (1875). Later codified as 42 U.S.C. § 1983, this provision persists in bedeviling courts, advocates, commentators, and public officials. *Wilson v. Garcia*, 471 U.S. 261, 266 (1985)

(describing § 1983 as a source of "conflict, confusion, and uncertainty").

Before reaching the merits of a § 1983 claim, a party must satisfy important procedural requirements, which ensure that a court has jurisdiction to consider the claim. First, the party must ensure that the official—as opposed to the State—is the real party in interest and that the Eleventh Amendment doesn't otherwise require dismissal. Second, the party must establish that his claims are timely.

Petitioner Rodney Reed has spent 25 years litigating his capital-murder conviction. Here, he sought a court order requiring post-conviction DNA testing under Chapter 64 of the Texas Code of Criminal Procedure, which establishes the process for seeking DNA testing. Tex. Code Crim. Proc. art. 64.03(a)(2)(A). Under this provision, the State's attorney may—of his own accord—choose to allow DNA testing; but nothing in Chapter 64 requires the State's attorney to release evidence and permit DNA testing absent a court order. Tex. Code Crim. Proc. art. 64.03. The convicted person may appeal a denial of a motion for DNA testing to Texas's Court of Criminal Appeals ("CCA"), the State's court of last resort for criminal cases. Tex. Code Crim. Proc. art. 64.05.

Reed filed his motion for post-conviction DNA testing in July 2014. The trial court held an evidentiary hearing, and on November 25, 2014, the trial court denied Reed's motion from the bench. The trial court then issued a written order on December 12, 2014. The CCA ultimately affirmed the trial court in an April 2017 published opinion. Reed then filed a

motion for rehearing, which the CCA denied in October 2017. Reed filed a petition for a writ of certiorari in February 2018, which this Court denied.

In August 2019, Reed brought a separate § 1983 challenge in federal court, asserting that Chapter 64 violated his due-process rights "both on its face and as interpreted, construed and applied by the CCA." J.A.14. Respondent Goertz moved to dismiss for numerous reasons, including the doctrine of sovereign immunity and because the applicable statute of limitations barred Reed's claims. The district court granted Goertz's motion but rejected his sovereign immunity argument and declined to address the statute of limitations issue. The Fifth Circuit then affirmed the dismissal of Reed's claims based on the applicable statute of limitations, finding that Reed's claim accrued when the trial court denied his motion for post-conviction DNA testing in November 2014. The Fifth Circuit likewise rejected Goertz's sovereign immunity argument.

SUMMARY OF ARGUMENT

I. The Eleventh Amendment bars Reed's claim because his challenge takes aim at the State—not Goertz. Reed's real attack focuses on Texas's statutorily prescribed scheme, which requires Texas courts to order post-conviction DNA testing only if a movant—like Reed—satisfies certain criteria. Reed's challenge takes issue with the Texas trial court's and then the CCA's denials of his Chapter 64 motion. He takes aim, therefore, at the State, not its officer. Texas enjoys sovereign immunity in a case like this.

II. And even if the Eleventh Amendment does not bar Reed's claim, the statute of limitations does. Reed's § 1983 claim accrued when the trial court denied his motion for post-conviction DNA testing, which was the time when he had a "complete and present cause of action." As soon as the Texas trial court denied his motion, he knew or should have been aware of the alleged violation of his constitutional rights.

Under either theory, Reed's claims are barred, and this Court should affirm the Fifth Circuit's judgment.

ARGUMENT

I. The Eleventh Amendment bars Reed's claims.

The Constitution's design—both before and after the ratification of the Eleventh Amendment—affirms two essential principles: "that each State is a sovereign entity in our federal system; and second, that it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) (citation, quotation marks omitted). As the history of State sovereign immunity jurisprudence demonstrates, a broad view of such immunity is implicit in "our constitutional design" and reflects "the understanding of sovereign immunity shared by the States that ratified the Constitution." *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1492 (2019).

The Eleventh Amendment bars lawsuits against the States, affirming this "fundamental principle of sovereign immunity" and "limit[ing] the grant of judicial authority in Art. III." *Pennhurst State Sch. &*

Hosp. v. Halderman, 465 U.S. 89, 98 (1984). And it prohibits suits against public officials when the State is the real party in interest. *Id.* at 100–02; *see also Hans v. Louisiana*, 134 U.S. 1, 16 (1890) ("The suability of a State without its consent was a thing unknown to the law."). A lawsuit against the State masquerades as a lawsuit against an officer when the relief sought against the officer "would operate against the [sovereign]." *Hawaii v. Gordon*, 373 U.S. 57, 58 (1963); 17A James Wm. Moore et al., Moore's Federal Practice ¶ 123.40 (3d ed. 2021) ("The critical inquiry is who may be legally bound by the court's adverse judgment …."). This jurisdictional bar applies regardless of the relief sought. *Missouri v. Fiske*, 290 U.S. 18, 27 (1933). And to overcome this bar, sovereign immunity must be either waived or abrogated.

The Court won't identify waiver or abrogation short of rock-solid grounds. "Our reluctance to infer that a State's immunity from suit in the federal courts has been negated stems from recognition of the vital role of the doctrine of sovereign immunity in our federal system." *Pennhurst*, 465 U.S. at 99. Few exceptions exist. The State can "unequivocally express[]" its consent to suit. *Id.* Or Congress can abrogate immunity, but again, only if it does so "unequivocal[ly]." *Id.*; *see also Allen v. Cooper*, 140 S. Ct. 994, 1003 (2020) ("*Congress* must speak, and indeed speak unequivocally, to abrogate sovereign immunity.") (emphasis in original). Either way, sovereign immunity may only be extinguished in unequivocal terms.

Ex Parte Young provides a narrow exception to the doctrine of sovereign immunity, permitting federal courts to grant prospective, injunctive relief against a

state official who violates federal law. 209 U.S. 123, 155–56 (1908); *see also Idaho v. Coeur D'Alene Tribe of Idaho*, 521 U.S. 261, 269 (1997). Suits seeking to prevent an officer from violating federal constitutional rights are not considered suits against the State. *Ex Parte Young*, 209 U.S. at 160, 166.

Ex Parte Young applies when several factors coalesce. The party must be seeking prospective—not retroactive—relief. *Coeur D'Alene Tribe of Idaho*, 521 U.S. at 270. The violation of federal law must be ongoing. *Verizon Md. Inc. v. PSC*, 535 U.S. 635, 645 (2002). And the state official must "have some connection with the enforcement of the act." *Ex Parte Young*, 209 U.S. at 157. Whether this connection "arises out of the general law, or is specially created by the act itself, is not material so long as it exists." *Id.*

Ex Parte Young's factors reaffirm that limitations on State's sovereign immunity implicate delicate federalism principles. As Justice Powell wrote, "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Pennhurst*, 465 U.S. at 106. A claim falling within *Ex Parte Young*, then, must be one that "vindicate[s] the supreme authority of federal law." *Id.* Claims that a state official violated *state* law fall outside of the exception.

In this case, Reed sued Goertz in his official capacity, challenging Chapter 64 "on its face and as interpreted, construed and applied by the CCA." J.A.14. Because Goertz is an agent of the State of Texas acting in a prosecutorial role, Reed's claim triggers the

doctrine of sovereign immunity. Absent the State's consent or Reed's satisfaction of *Ex Parte Young*'s factors, the Eleventh Amendment bars his claim.

Because Texas did not consent to suit, the question remains whether the *Ex Parte Young* exception nevertheless permits it. The Fifth Circuit said it does. *Reed v. Goertz*, 995 F.3d 425, 429 n.2 (5th Cir. 2021). The court noted that Reed's amended complaint stated that Goertz caused the non-party custodians to refuse to allow Reed to conduct DNA testing. *Id.* Taking this as true, the court concluded that these facts established the "necessary connection" between Goertz and "the enforcement of the statute"—placing this case within *Ex Parte Young*'s exception. *Id.*

But this fact fails to establish the requisite connection under *Ex Parte Young*. Chapter 64 only requires a court to order post-conviction DNA testing of biological materials when *the court* finds specific conditions met. Tex. Code Crim. Proc. art. § 64.03. Although Goertz has the discretion to allow post-conviction DNA testing absent a court order, Reed's claims focus solely on Chapter 64 "on its face and as interpreted, construed and applied by the CCA." J.A.14. Goertz played no role in issuing the judicial decisions Reed now attacks. Goertz has an insufficient connection with the enforcement of the act. It seems Reed "is merely making [Goertz] a party as a representative of the State, and thereby attempting to make the State a party." *Ex Parte Young*, 209 U.S. at 157. That, of course, falls outside *Ex Parte Young*'s exception.

It's telling that Reed fails to mention Goertz a single time in his claims for relief. The most Reed says is

that "Defendant Goertz has the power to control access to the evidence that Mr. Reed seeks to test." J.A.16. He asserts that Goertz opposed Reed's requests to conduct DNA testing and directed non-party custodians to also refuse to conduct DNA testing. J.A.15. But the relief he requests in this case is not targeted at Goertz. He seeks relief in the form of a declaration that the CCA interpreted and applied Chapter 64 in an unconstitutional manner.[1]

Reed fails to demonstrate how Goertz possesses a sufficient connection to the enforcement of the purportedly unconstitutional act. Under Chapter 64, Goertz may choose to make evidence available for post-conviction DNA testing. But he need not do so. And in any event, Reed's present § 1983 action doesn't challenge Goertz's denial. He challenges the Texas courts' follow-on adjudications of his Chapter 64 motion. It was the state courts—not Goertz—who determined he couldn't meet the standards necessary to justify post-conviction DNA testing. Reed doesn't argue that Goertz unconstitutionally withheld evidence from DNA testing. To the contrary, Reed completely fails to show that Goertz committed or had a sufficient connection to this alleged constitutional violation. For these reasons, Reed cannot establish this necessary

[1] This is particularly true now that Reed has apparently dropped his facial challenge to Chapter 64. What's left is his challenge to the way Texas state government—not any single officer—executed the law. The resulting attack on a state court judgment interpreting Chapter 64 obviously implicates sovereign immunity. And it also runs afoul of the *Rooker-Feldman* doctrine. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (discussing *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923) and *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983)).

component of the *Ex Parte Young* test, the exception doesn't apply, and the Eleventh Amendment bars his claims against the State of Texas.

To the extent *Ex Parte Young*'s inapplicability remains a close call, the tie should redound toward sovereign immunity. Where a case does not fall squarely within an exception, this Court has expressed "reluctance" not to apply the doctrine of sovereign immunity. *Pennhurst*, 465 U.S. at 99. Only where the State "unequivocally" consents to suit or where Congress "unequivocally" abrogates a State's immunity will the Court allow a suit against the State to proceed. Neither Texas nor Congress has done so here, and to expand the applicability of the *Ex Parte Young* doctrine to these facts undermines "the principles of federalism that underlie the Eleventh Amendment." *Id.*

II. Reed's claim is barred by the relevant statute of limitations.

The Civil Rights Act of 1871 established § 1983, which provides a "remedy for the violation of constitutional rights." *Wilson v. Garcia*, 471 U.S. 261, 277 (1985). But the Civil Rights Act omitted a specific statute of limitations governing these types of actions. *Id.* at 266. This means that in each case, a court must determine when the claim accrued and what limitations period applies. *CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014).

Federal law governs the time at which a § 1983 claim accrues, which is when the party has "'a complete and present cause of action.'" *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (quoting *Rawlings v. Ray*, 312

U.S. 96, 98 (1941)). But "where … a particular claim may not realistically be brought while a violation is ongoing, such a claim may accrue at a later date." *McDonough v. Smith*, 139 S. Ct. 2149, 2155 (2019).

To determine when a plaintiff "has a complete and present cause of action," courts must first determine what elements constitute a "complete" cause of action. *Wallace*, 549 U.S. at 388. The thrust of the accrual analysis, therefore, depends on the "specific constitutional right alleged to have been infringed." *McDonough*, 139 S. Ct. at 2155. Because § 1983 is not "a federalized amalgamation of pre-existing common-law claims," courts must analogize between the constitutional and similar common-law claims to identify the applicable elements. *Id.* at 2156. This, in turn, informs the applicable accrual date. *Id.*

Examples abound. In *Heck v. Humphrey*, the Court analogized a § 1983 wrongful conviction and confinement claim—predicated on the destruction of exculpatory evidence—to a common-law malicious prosecution claim. 512 U.S. 477, 478–79 (1994). The Court considered that a malicious prosecution claim requires a favorable termination of the prosecution before the claim accrues; so likewise, a wrongful conviction claim requires that the "conviction or sentence has … been invalidated." *Id.* at 487. The wrongful conviction claim thus accrues at the time the conviction is invalidated just like a malicious prosecution claim accrues after favorable termination. The Court held the same to be true for a § 1983 "fabricated-evidence" claim. *McDonough*, 139 S. Ct. at 2156. That is, the plaintiff could not bring this claim "prior to favorable termination of his prosecution." *Id.*

Regarding unconstitutional arrest, the Court noted that the common-law claims of false arrest and false imprisonment provided "the closest analogy." *Wallace*, 549 U.S. at 388 (quotations omitted). The Court concluded that an unconstitutional arrest claim accrues at the time of the wrongful arrest but that the limitations period doesn't begin to run until the "false imprisonment came to an end." *Id.* at 389.

Ultimately, these analogies are imperfect, and this Court has cautioned repeatedly that "[c]ommon-law principles are meant to guide rather than to control the definition of § 1983 claims, serving 'more as a source of inspired examples than of prefabricated components.'" *Manuel v. Juliet*, 137 S. Ct. 911, 920 (2017). Regardless of the constitutional claim or the analogized common-law claim, claim accrual still occurs when the party has "'a complete and present cause of action.'" *Wallace v. Kato*, 549 U.S. at 388 (quoting *Rawlings*, 312 U.S. at 98). Analogies may help identify that moment, but they aren't dispositive.

Reed argues that these common-law analogies lead to the conclusion that Reed's claim accrued at the end of the state-court litigation when the CCA denied his petition for rehearing. Pet. Br. 26. He asserts that he could not have brought a claim before the CCA authoritatively construed Chapter 64. *Id.*[2] But this argument fails for two reasons.

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[2] Reed repeatedly asserts that his § 1983 claim couldn't have accrued before "the state court of last resort has spoken." Pet. Br. 35. But the CCA spoke authoritatively when it affirmed the denial of his Chapter 64 motion and even that date would place his current suit outside the limitations period. So Reed subtly—and

First, framing the issue this way fails to comport with Reed's insistence that he "challenges a state law, not a state-court judgment." Pet. Br. 22. If Reed challenges Chapter 64 on its face, as he originally claimed, then he knew—or should have known—of his injury when the state trial court denied his request for post-conviction DNA testing. *See Wallace*, 549 U.S. at 388. His alleged injury (the violation) would have manifested long before the CCA affirmed the trial court's application of Chapter 64.

Second, if Reed challenges "the manner in which" the CCA "authoritatively interpret[ed] Article 64," then this squarely raises *Rooker-Feldman* issues. *See* Pet. Br. 36; J.A.42; *see also* Resp. Br. 31–33; *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (when the *Rooker-Feldman* doctrine applies, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments."). Reed compares his claim to the one in *Skinner* where the plaintiff challenged "as unconstitutional the Texas statute [the CCA] authoritatively construed." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011). But Skinner made clear in that case that he wasn't challenging the prosecutor's conduct or the CCA decisions. *Id.* at 522. The target of his claim was the statute itself. *Id.* In Skinner's first motion for post-conviction DNA testing, the CCA determined that Skinner failed to meet his burden showing one element required under Chapter 64. *Id.*

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without support—adds to his proposed rule: the "§1983 claim accrued … after the CCA issued tis authoritative construction *and denied rehearing*." Pet. Br. 39 (emphasis added). There's no support for Reed's conflation of the two judicial actions, and good reason to reject it. Resp. Br. at 22–32.

at 528. In his second motion, the CCA determined that Skinner failed to meet his burden of showing a second element required under Chapter 64. *Id.* While Skinner disagreed with how the law applied to him, again, his challenge centered on the unconstitutionality of the law itself. *Id.* at 532.

Reed here seeks to parrot *Skinner*'s claim, but his arguments suggest otherwise. *Compare* Pet. Br. 17 ("Reed, like Skinner, challenges a state law, not a state-court judgment.") *with* J.A.39–40 ("The CCA's tortured, results-driven and utterly unfair interpretation and application of Article 64 deny Mr. Reed basic constitutional protections …"). And his assertion that his claim only accrued after the CCA "authoritatively interpret[ed]" Chapter 64 further underscores this distinction. If the claim itself only accrued because of the CCA's interpretation, then Reed's grievance lies with the CCA's interpretation—not the statute itself. Here, the trial court denied his motion for post-conviction DNA testing, which he considers a constitutional deprivation. The CCA's manner of affirmance doesn't alter this fact. His claim accrued when the Texas trial court denied his motion. The CCA's decision, therefore, could start the accrual clock only if Reed challenges the CCA's application and interpretation of the law, something *Rooker-Feldman* otherwise prohibits. *See Johnson v. De Grandy*, 512 U.S. 997, 1005–06 (1994). Reed can't have it both ways.

If Reed challenges Chapter 64 on its face, as he initially articulated in his petition for writ of certiorari, then the accrual period began when the trial court denied his motion for DNA testing. At that time, he became aware of the purported unconstitutionality of

Chapter 64 and had a "complete and present cause of action." *Wallace*, 549 U.S. at 388. He knew that Chapter 64 allegedly violated his due process rights. Had Reed chosen not to appeal the trial court's decision, there would now be no serious question about this. That Reed *could* appeal this decision doesn't impact the accrual date. After all, "§ 1983 contains no judicially imposed exhaustion requirement." *Edwards v. Balisok*, 520 U.S. 641, 649 (1997). The Texas trial court denied his Chapter 64 claim in its published opinion in April 2017. He filed this action more than two years after that date. This action should be barred by the statute of limitations.

Skinner, upon which Reed relies, didn't address timeliness—the primary issue here. This Court in *Skinner* merely concluded that a challenge to an "authoritative construction" of a post-conviction DNA testing statutory scheme was cognizable under § 1983. 562 U.S. at 531. That is not this case. But even if it was, this case would be time-barred.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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