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 PETITIONER

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CAPITAL CASE

QUESTION PRESENTED

In *Skinner v. Switzer*, 562 U.S. 521, 524-25 (2011), this Court held that state prisoners may pursue post-conviction claims for DNA testing of crime-scene evidence under 42 U.S.C. § 1983. The Court made clear that a prisoner bringing such a § 1983 claim may seek "to show that the governing state law denies him procedural due process" after he has unsuccessfully sought DNA testing under available state procedures. *Id.* at 525, 530.

The question presented is whether 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, accrues (a) at the end of state-court litigation denying DNA testing, including any appeals, or (b) at the moment the state trial court denies DNA testing, despite any subsequent appeal and authoritative judicial construction of the state's DNA-testing procedures.

PARTIES TO THE PROCEEDING

Petitioner Rodney Reed was the plaintiff in the district court and the appellant in the court of appeals. Respondent Bryan Goertz, in his official capacity as the District Attorney of Bastrop County, Texas, was a defendant in the district court (along with other state officials who were dismissed as defendants in Reed's amended complaint and are no longer parties to the proceeding, *see* Pet. App. 4a n.1) and the appellee in the court of appeals.

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INTRODUCTION

This case raises a question of claim accrual under 42 U.S.C. § 1983. In *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52, 68-71 (2009), the Court recognized that where state law gives prisoners the right to prove their innocence with new DNA evidence, the state's procedures for obtaining DNA testing must be fundamentally fair. And in *Skinner v. Switzer*, 562 U.S. 521, 524-25, 530-32 (2011), the Court held that a prisoner may bring a due process claim under § 1983 challenging a state's DNA-testing procedures as authoritatively construed by the state court of last resort. Here, the question is when such a § 1983 claim accrues. The answer is at the end of the state-court litigation, after the state high court issues the challenged authoritative construction and denies rehearing. Rodney Reed brought his § 1983 claim within two years of that date, meaning the Fifth Circuit erred in dismissing it as untimely.

Reed is on death row for a murder he steadfastly maintains he did not commit. He brought a § 1983 claim, modeled on *Skinner*, after the Texas Court of Criminal Appeals (CCA) denied him testing under Texas' DNA-testing law, Article 64 of the Texas Code of Criminal Procedure. He claims that Article 64, as authoritatively construed by the CCA, violates due process. But the Fifth Circuit dismissed his suit as untimely under the two-year limitations period borrowed from Texas law. The court held that Reed's § 1983 claim accrued when the state trial court denied relief, *years before* the CCA issued the very authoritative construction that Reed challenges. In the court's view, the limitations period expired while Reed was waiting for the CCA to issue its authoritative construction.

That makes no sense. Reed's claim accrued at the end of the Article 64 litigation, after the CCA issued its authoritative construction and denied rehearing. All indications show that Reed's claim could not have accrued before the CCA issued the interpretation he challenges: the nature of Reed's claim, the context in which it arises, and the fundamental due-process interests at stake, plus core principles of federalism, comity, judicial economy, and fairness. The Fifth Circuit's contrary approach makes *Osborne* and *Skinner* "a sham," "effectively prevent[ing] an inmate like [Reed]" from bringing "the kind of [due process] claim this Court told prisoners they could bring." *Nance v. Ward*, No. 21-439, 2022 WL 2251307, at *8 (U.S. June 23, 2022).

1. Reed has been on death row since 1998 for the murder of Stacey Stites. Unwavering in asserting his innocence, Reed has discovered over the last two decades a "considerable body of evidence" showing he didn't commit the crime. *Reed v. Texas*, 140 S. Ct. 686, 687 (2020) (statement of Sotomayor, J., respecting the denial of certiorari). That evidence "casts doubt on the veracity and scientific validity" of the state's theory of guilt, which, as one expert said, is "medically and scientifically impossible." *Id.* at 687, 689. All told, the evidence indicates that Reed, a Black man, and Stites, a white woman, were having an affair, and that Stites' white fiancé, a local police officer named Jimmy Fennell, murdered Stites for "f***king a n***er." *Id.* at 688.

To prove his innocence, Reed seeks to DNA test key crime-scene evidence, including the belt used to strangle Stites. For example, the killer's hands may have left sweat or skin cells on the belt as he struggled for several minutes to apply the "great force" needed

to kill her. *Ex parte Reed*, 271 S.W.3d 698, 705 (Tex. Crim. App. 2008); *see* Pet. App. 310a, *Reed v. Texas*, No. 19-411, 140 S. Ct. 686 (2019 App.). And it's undisputed that Texas has the belt and it can be tested. Pet. App. 51a-55a. But Respondent Bryan Goertz, the district attorney who controls access to that evidence, won't let Reed test it. So Reed invoked Article 64 and headed to state court.

Reed was no more successful there, but it wasn't because he failed to comply with Article 64 on its face. Instead, he lost, more than two years after the trial court denied relief, because the CCA, Texas' highest criminal court, authoritatively construed Article 64 to include fundamentally unfair requirements that Reed couldn't have known about before. For example, the CCA added a non-contamination requirement to the statute's chain-of-custody inquiry that makes the statute's promise illusory: a new test requiring denial of DNA testing based on Texas' own past policies for handling evidence that *it controls*. Since the Article 64 litigation ended, Goertz has not permitted DNA testing because Reed has not satisfied the CCA's authoritative interpretation of Article 64.

2. Reed then sued in federal court under § 1983, within the limitations period as run from the CCA's denial of rehearing. He claims that the CCA's construction of Article 64 violates due process, *see Skinner*, 562 U.S. at 529-30, because it conditions his protected liberty interest in using DNA testing to prove his innocence on compliance with unconstitutional procedures, *see Osborne*, 557 U.S. at 68-70. For instance, Reed contends that the CCA's extratextual non-contamination requirement makes Article 64's procedures fundamentally unfair because it is impossible to meet for prisoners convicted when officials

followed certain handling and storage protocols. He also contends, for example, that the CCA's interpretation unfairly excludes consideration of discredited trial evidence and exculpatory posttrial evidence.

3. Because Reed assails the CCA's authoritative construction of Article 64, his claim must have accrued after the that construction became final. That commonsense conclusion is the one this Court's decisions demand. Accrual dates for § 1983 claims depend on the constitutional right at issue and the nature of the claim invoking it. *See McDonough v. Smith*, 139 S. Ct. 2149, 2155, 2160 (2019). The default rule is that a claim accrues "when the plaintiff has 'a complete and present cause of action,' that is, when 'the plaintiff can file suit and obtain relief.'" *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (citations omitted). Because Reed's claim is based on the CCA's authoritative construction of Article 64, it did not exist until the end of state-court litigation, after the CCA issued that construction. Only then could Reed file his claim seeking prospective declaratory relief from Goertz's enforcement of the CCA's authoritative construction.

Several other considerations confirm that accrual date. For instance, fundamental due process values show that Reed's claim couldn't have accrued when the state trial court denied relief, because the mere deprivation of a protected interest doesn't trigger a due process claim. Such a claim is not "complete," *see Wallace*, 549 U.S. at 388, until the deprivation occurs "*without due process of law*," *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). Because the *process* that Reed challenges turns on the authoritative construction of Article 64, which only the CCA can provide, Reed's claim accrued after that construction became final, not before. Analogous claims—traditional due process

claims challenging state court interpretations of state law, challenges to legislation and agency action, and the common-law torts of malicious prosecution and false arrest—reinforce Reed's rule.

What's more, principles of federalism, comity, judicial economy, and fairness require the same result. Each of these essential components of the § 1983 accrual inquiry shows that Reed's claim was not realistic or workable until the end of the Article 64 litigation.

4. The Fifth Circuit kicked Reed out of court because it thought he should have known about his specific due process claim when the trial court denied relief, *before* the CCA had authoritatively spoken. That arbitrary decision cannot stand.

The Fifth Circuit ignored this Court's express instructions for how to resolve § 1983 accrual cases. It didn't analyze the constitutional right Reed invokes and the context in which it arises. Nor did it tailor the accrual date to the due process interests at stake. The court also failed to ask whether federalism, comity, judicial economy, or fairness supports a later date. Instead, it started and ended its analysis by asking when Reed might have suffered an injury. That misguided analysis ignores what Reed (like Henry Skinner before him) actually claims: he's challenging the CCA's authoritative construction of Article 64, which he couldn't have done without knowing what that construction would be. A prisoner's ability to bring the § 1983 claim this Court encouraged in *Osborne* and *Skinner* "cannot reasonably turn on the fortuity of whether" the state-court litigation ends before the clock expires. *Thompson v. Clark*, 142 S. Ct. 1332, 1340 (2022). The Court should reverse.

OPINIONS BELOW

The Fifth Circuit's opinion (Pet. App. 1a-10a) is reported at 995 F.3d 425. The district court's order (Pet. App. 11a-35a) is unreported but available at 2019 WL 12073901. The CCA's opinion (Pet. App. 36a-75a) is reported at 541 S.W.3d 759, and the CCA's earlier remand order (Pet. App. 104a-18a) is unreported but available at 2016 WL 3626329. The relevant orders of the Texas trial court are reproduced in the petition appendix.

JURISDICTION

The court of appeals entered its judgment on April 22, 2021. Reed timely filed his petition for a writ of certiorari on September 20, 2021, and the Court granted review on April 25, 2022. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Section 1983 of Title 42, U.S. Code, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an

> action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable ….

STATEMENT

A. Legal background

1. Federal law governs the accrual date for § 1983 claims. *McDonough*, 139 S. Ct. at 2155. The clock generally starts running "when the plaintiff has 'a complete and present cause of action.'" *Id.* But because accrual is claim- and context-specific, courts must tailor the analysis to "the specific constitutional right" at issue, attending to factors that might delay accrual. *Id.* (quoting *Manuel v. City of Joliet*, 137 S. Ct. 911, 920 (2017)). For instance, if "a particular claim may not realistically be brought while a violation is ongoing, such a claim may accrue at a later date." *Id.* Considerations like federalism, comity, and judicial economy may also warrant a later accrual date. *Id.* at 2158.

The specific right here is procedural due process. The context is a challenge to a state's DNA-testing procedures as authoritatively construed by the state court of last resort.

2. "Modern DNA testing can provide powerful new evidence unlike anything known before." *Osborne*, 557 U.S. at 62. It "has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty." *Id.* at 55. It also "has the potential to significantly improve both the criminal justice system and police investigative practices." *Id.* In short, DNA

testing both before trial and after conviction makes our Nation more just.

Recognizing that potential, the states and federal government have enacted laws allowing prisoners to access evidence for DNA testing. *Id.* at 62-63. Here, the relevant Texas law is Article 64. *See* Pet. App. 3a; Tex. Code Crim. Proc. art. 64. Those laws establish certain conditions that prisoners must meet before they can obtain access to evidence. *See Osborne*, 557 U.S. at 62-63. Legislation, however, is "not always" the relevant source of law. *Id.* at 55. State courts will sometimes construe the text in a way that creates new or different conditions that prisoners must satisfy and state officials must uphold. *See, e.g.*, *Skinner*, 562 U.S. at 530-31 (Texas Court of Criminal Appeals); *Osborne*, 557 U.S. at 65 (Alaska Court of Appeals).

Whatever specific procedures govern, if they are satisfied, then the prisoner is entitled to DNA testing. *See, e.g.*, *Skinner*, 562 U.S. at 527-28. If the results "prove exculpatory," then the prisoner can use them to prove his innocence. *Id.* at 525.

3. This Court has made two things clear about state DNA-testing laws and § 1983 claims.

First, if state law so provides, a prisoner has "a liberty interest in demonstrating his innocence with new evidence." *Osborne*, 557 U.S. at 68. The question is "what procedures are needed in the context of post-conviction relief" to protect that right. *Id.* at 69. After all, state-created rights "trigger due process protection," *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 463 (1981), and thus sometimes "beget yet other rights to procedures essential to the realization of the parent right," *Osborne*, 557 U.S. at 68; *see also Skinner*, 562 U.S. at 529-30. To be sure, states can

place some conditions on the state-created right. But the procedures may not "'offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or 'transgress[] any recognized principle of fundamental fairness in operation.'" *Osborne*, 557 U.S. at 69 (quoting *Medina v. California*, 505 U.S. 437, 446, 448 (1992)).

Second, as the Court held in *Skinner*, prisoners may use § 1983 to challenge DNA-testing procedures on due process grounds. *See* 562 U.S. at 525. Henry Skinner asked Texas for DNA testing and invoked Article 64 in state court. Unsuccessful, he then brought a § 1983 action in federal court, (a) suing the district attorney who controlled access to the evidence, (b) challenging the CCA's authoritative construction of Article 64, and (c) alleging a due process violation. *Id.* at 527-29. This Court first rejected Texas' jurisdictional objections under *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), because Skinner challenged Article 64 as construed by the CCA, not the state-court judgment. *Skinner*, 562 U.S. at 532. Next, the Court rejected Texas' argument under *Heck v. Humphrey*, 512 U.S. 477 (1994). Skinner's claim was cognizable under § 1983, the Court held, because merely gaining access to DNA testing, which ultimately "might prove inconclusive," "would not 'necessarily imply' the invalidity of his conviction." *Skinner*, 562 U.S. at 534. The Court remanded for the lower courts to consider Skinner's claim on the merits. *Id.* at 525, 537.

B. Factual background

Rodney Reed has been fighting for more than twenty years to prove that he didn't murder Stacey Stites. Reed's efforts have produced a "considerable body of evidence" casting doubt on his conviction. *Reed*, 140 S. Ct. at 687 (statement of Sotomayor, J., respecting the denial of certiorari). This case centers on Reed's request to DNA-test crime-scene evidence that could definitively prove his innocence. To this day, several key items have never been tested. Pet. App. 45a-46a, 84a.

1. In 1996, Stites, a 19-year-old white woman, was found dead on the side of a country road. *Ex parte Reed*, 271 S.W.3d at 702. Her fiancé, a white man and local police officer named Jimmy Fennell, was the last person known to have seen her alive. *Reed*, 140 S. Ct. at 686 (statement of Sotomayor, J., respecting the denial of certiorari). After Stites disappeared, Fennell's pickup truck was discovered in a school parking lot. Pet. App. 37a. It contained a shoe matching the one found on Stites' body. *Id.*

Fennell was an early suspect. *Ex parte Reed*, 271 S.W.3d at 708. He "shared an apartment" with Stites and was supposed to drive her to work the day she went missing. *Id.* at 702. And "when he was asked if he strangled, struck, or hit Stacey" during polygraph tests, he proved "deceptive." *Id.* at 738. Even so, "authorities never made an effort to search [his] apartment." *Id.* at 708.

Instead, they targeted Reed after finding intact sperm matching Reed's DNA in inside Stites' vaginal tract. *Id.* at 705, 710. Reed, a Black man, protested his innocence, explaining that he and Stites were having an affair and that he didn't kill her. *Reed*, 140 S. Ct.

at 686 (statement of Sotomayor, J., respecting the denial of certiorari). But Texas said he was the one who did the deed and the all-white jury agreed. 2019 App. 57a, 66a-67a.

A key issue at trial was the timeline. Fennell testified that he and Stites had watched television together the night before the murder "before going to sleep, and that Stites had left for work at her usual time around 3 a.m." *Reed*, 140 S. Ct. at 687 (statement of Sotomayor, J., respecting the denial of certiorari). The prosecution argued that Stites was killed while driving to work at around 3:00 a.m. 2019 App. 316a. The state also argued, based on expert testimony that sperm remains intact inside a vaginal tract for no longer than 26 hours, that the sperm recovered from Stites' body must have been deposited no earlier than the night before. *Reed*, 140 S. Ct. at 687 (statement of Sotomayor, J., respecting the denial of certiorari). "This evidence thus tended to inculpate Reed (by suggesting that he must have had sex with Stites very soon before her death) and exculpate Fennell (by indicating that Stites died after Fennell claimed to have seen her last)." *Id.*

The jury convicted Reed and sentenced him to death. The CCA affirmed. 2019 App. 56a-57a. This Court denied review. *Reed v. Texas*, No. 01-5170, 534 U.S. 955 (2001).

2. For nearly twenty-five years, Reed has fought in both state and federal court to prove his innocence. Those efforts have produced extensive evidence calling Reed's conviction into doubt. For example:

- Witnesses not connected to Reed but known to Stites have confirmed Reed and Stites' relationship. 2019 App. 422a-34a.

- Several experienced and respected pathologists all found the prosecution's theory medically and scientifically false because the forensic evidence showed that (a) Stites likely was murdered before midnight (when Fennell said they were together); (b) Stites was not sexually assaulted; and (c) Reed's sperm was deposited at least a day before her murder. 2019 App. 202a-07a.
- The state's medical examiner retracted his testimony, declaring that it "should not have been used at trial as an accurate statement of when Ms. Stites died" or to indicate that "Stites died within 24 hours of the spermatozoa being deposited." 2019 App. 198a-99a.
- At trial, Fennell testified that he and Stites were together the night before she was found dead and that they showered together before she went to sleep. 2019 App. 293a. But a fellow officer testified at a postconviction hearing that after Stites was reported missing, but before her body was found, Fennell said he went out drinking with colleagues and stayed out late that night. 2019 App. 328a-31a, 344a-46a. Called as a witness at the same hearing, Fennell invoked the Fifth Amendment. 2019 App. 325a-26a.
- Officers at the time of Stites' murder swore that (a) a month before the murder, Fennell said Stites was "f***king a n***r" and (b) at Stites' funeral, Fennell said to Stites' body, "You got what you deserved." *Reed*, 140 S. Ct. at 688 (statement of Sotomayor, J., respecting the denial of certiorari).

- In 2008, Fennell was sentenced to 10 years in prison for kidnaping and sexually assaulting a woman while on police duty. *Id.*
- According to a fellow inmate, Fennell confessed that he "had to kill [his] n***r-loving fiancé[e]" because she was "sleeping around with a black man." *Id.*

In 2019, the CCA stayed Reed's execution, remanding for consideration of his actual innocence claim. The state trial court recommended denying relief. That case is before the CCA. *See* Pet. App. 4a.

C. Procedural background

1. In 1999, Reed unsuccessfully sought DNA testing. J.A. 25. In 2001, Texas enacted Article 64. (Article 64 is reproduced at J.A. 53-69.)

In 2014, Reed's counsel asked Texas to consent to DNA testing of certain evidence and offered to pay for it. Pet. App. 43a, 112a. The state refused testing on most of the items and moved to set an execution date. J.A. 13; Pet. App. 42a. Reed then filed an Article 64 motion in state court, seeking to test key evidence like the belt used to strangle Stites and the shoe found in Fennell's truck. Pet. App. 3a, 42a.

The Article 64 proceedings lasted more than three years. In November 2014, the trial court denied Reed's motion as untimely and for failing to show a reasonable probability that Reed would not have been convicted had the evidence been available at trial. Pet. App. 4a, 133a. Reed appealed to the CCA.

In June 2016, the CCA remanded for additional factfinding because the trial court did not address every element of Article 64. Pet. App. 104a-06a.

In September 2016, the trial court signed and docketed with the CCA both Reed's *and* Texas' contradictory proposed findings of fact and conclusions of law. *See* Pet. App. 76a. Reed's findings explained that he fulfilled each element of Article 64, thus triggering the requirement that the court "order … DNA testing." Tex. Code Crim. Proc. art. 64.03(c); *see* J.A. 29. The trial court later emailed the CCA that it meant to adopt only Texas's submission. Pet. App. 76a-103a.

In April 2017, the CCA affirmed. Pet. App. 36a-75a. After construing Article 64, it held that Reed had failed to "establish that exculpatory DNA results would have resulted in his acquittal." Pet. App. 37a. On October 4, 2017, the CCA denied rehearing and its authoritative construction of Article 64 became final. Pet. App. 135a.

On June 25, 2018, this Court denied review. *Reed v. Texas*, No. 17-1093, 138 S. Ct. 2675 (2018).

2. a. On August 8, 2019, Reed sued in federal court under 42 U.S.C. § 1983. Pet. App. 11a-35a. He challenges Article 64 as authoritatively construed by the CCA, raising several constitutional claims including a due process claim like the one in *Skinner*. Pet. App. 4a, 20a, 25a-32a. Reed's due process claim contends that the CCA's authoritative construction of Article 64 is unconstitutional because it conditions his state-created liberty interest—proving his innocence with DNA evidence—on compliance with fundamentally unfair procedures.

Reed's amended complaint (J.A. 12-52) identifies several due process problems with the CCA's construction of Article 64. Article 64 requires DNA testing where (among other things) (1) evidence "has been subjected to a chain of custody sufficient to

establish that it has not been substituted, tampered with, replaced, or altered in any material respect" and (2) the prisoner "establishes by a preponderance of the evidence" that (a) he "would not have been convicted if exculpatory results had been obtained through DNA testing"; and (b) the testing request "is not made to unreasonably delay the execution of sentence or administration of justice." Tex. Code Crim. Proc. art. 64.03(a)(2)(B). As the complaint alleges, however, the CCA's construction of the statute adds to and modifies those requirements, violating due process by making relief under Article 64 illusory. Pet. App. 20a, 25a-32a.

For example, the CCA construed the chain-of-custody requirement to include a non-contamination requirement not found on the statute's "face." J.A. 31-32. That extratextual requirement forecloses "relief to any person convicted before rules governing the State's handling and storage of evidence were put in place," the complaint explains, because it renders insufficient "the then-customary storage of evidence together in a box by state officials, and the routine handling of such evidence by trial officials." J.A. 31-32, 39. Then there is the exoneration inquiry. The CCA construed Article 64 to unfairly allow both consideration of discredited trial evidence and dismissal of exculpatory posttrial evidence inculpating someone else. J.A. 42-44.

Reed's complaint also explains that the CCA's reading of "the Article 64 element of unreasonable delay" is fundamentally unfair. J.A. 33. For one thing, its interpretation permits a finding that a prisoner's "request for DNA testing was brought for an improper purpose" just because the inmate previously "litigate[d] his innocence based on other evidence." *Id.*; *see* J.A. 34-38. For another, it imposes an unfair hindsight

requirement by allowing *later* amendments to Article 64 to support a finding that a prisoner should have known *earlier* that certain testing was available. *See* J.A. 33, 43; Pet. App. 25a n.6.

b. The district court ruled that it had jurisdiction over Reed's § 1983 claims. Pet. App. 22a. Citing *Skinner*, the court rejected Goertz's *Rooker-Feldman* argument "[b]ecause Reed is not challenging the adverse state-court decisions themselves but rather the validity of the Texas DNA statute they authoritatively construe." *Id.* On the merits, the court dismissed Reed's complaint for failure to state a claim. Pet. App. 25a-32a.

3. Without reaching the merits, the Fifth Circuit affirmed on the alternative ground that Reed's action is untimely. Pet. App. 8a-10a. The court first agreed with the district court's *Rooker-Feldman* analysis, finding Reed's case "no different than *Skinner*." Pet. App. 6a-7a. The court also rejected Goertz's Eleventh Amendment immunity argument. Pet. App. 5a-6a n.2. Reed seeks "prospective relief," the court explained, and "Goertz has the necessary connection to the enforcement of the statute" because he controls access to the evidence yet refuses to allow DNA testing. *Id.*

The Fifth Circuit then held Reed's suit untimely and affirmed. Pet. App. 10a. After setting the clock to two years based on Texas' limitations period for personal-injury claims, Pet. App. 8a-9a, the court addressed the question presented here: when did Reed's claim accrue? The court's answer: November 2014, "when the [Texas] trial court denied his Chapter 64 motion," because that's when "Reed first became aware that his right to access [certain] evidence was allegedly being violated." Pet. App. 9a-10a. Reed's

later appeal to the CCA made no difference, the court said, because "§ 1983 contains no judicially imposed exhaustion requirement." *Id.*

SUMMARY OF ARGUMENT

I. Reed's § 1983 claim, which challenges the CCA's authoritative construction of Article 64 on due process grounds, accrued at the end of the Article 64 litigation, after the CCA issued its authoritative construction and denied rehearing. Only then could Reed have filed suit and obtained relief. Because Reed timely brought his claim within two years of that date, the Fifth Circuit's decision must be reversed.

A. First things first: The Court has jurisdiction. *First*, there is no *Rooker-Feldman* problem because Reed, like Skinner, challenges a state law, not a state-court judgment. *See Skinner*, 562 U.S. at 532-33. *Second*, under *Ex parte Young*, 209 U.S. 123 (1908), Reed may sue Goertz, the official who controls access to DNA evidence, because prospective declaratory relief will stop him from denying Reed DNA testing based on the CCA's unconstitutional construction of Article 64. *Finally*, Reed has Article III standing. His injury is his inability to vindicate his state-created liberty interest in using DNA testing to establish his innocence. *See Skinner*, 562 U.S. at 529-30; *Osborne*, 557 U.S. at 68. And prospective relief likely will redress that injury by preventing Goertz from relying on the CCA's construction of Article 64 to continue denying testing.

B. Reed's § 1983 claim accrued at the end of the state-court litigation, because the basis for his claim—the CCA's authoritative construction of Article 64—did not exist beforehand.

1. The accrual date for § 1983 claims depends on the nature of the claim and the constitutional right it

invokes. *See McDonough*, 139 S. Ct. at 2155, 2160. Under long-established common-law and equitable principles, a claim accrues "when the plaintiff has 'a complete and present cause of action,' that is, when 'the plaintiff can file suit and obtain relief.'" *Wallace*, 549 U.S. at 388 (citations omitted). That rule reflects common sense: claims don't accrue *before* they exist. *Gabelli v. SEC*, 568 U.S. 442, 448 (2013).

While the constitutional right and its context drive the claim-specific accrual analysis, analogous claims, like common-law torts, can also "guide" courts. *Manuel*, 137 S. Ct. at 921. But because constitutional claims aren't always analogous to common-law torts, courts must tailor the accrual date "to the interests protected by the particular right in question." *Carey v. Piphus*, 435 U.S. 247, 259 (1978).

2. General accrual principles show that Reed did not have a complete and present cause of action until the end of state-court litigation. Reed's § 1983 claim "targets as unconstitutional" the CCA's authoritative construction of Article 64. *Skinner*, 562 U.S. at 532. That claim was not "complete," *Wallace*, 549 U.S. at 388, meaning it did not "come[] into existence," *Gabelli*, 568 U.S. at 448, until the CCA's authoritative construction became final, which happened only at the end of the Article 64 litigation.

Common sense points to the same conclusion. Without a crystal ball, Reed could not have foreseen that the CCA would interpret Article 64 to include extratextual requirements like the non-contamination element for the chain-of-custody inquiry. Nor could he have predicted whether those procedures would be adequate to protect his state-created right to prove his innocence through DNA testing. He thus couldn't

have brought the particular due process claim he presses the moment the trial court denied relief. Only the CCA can authoritatively speak on criminal matters in Texas, and that's what it did here.

3. Reed's accrual date also makes sense given the nature of his claim. Rather than rush to federal court, Reed followed this Court's guidance and used the state procedures available to him. *See Osborne*, 557 U.S. at 70-71; *Skinner*, 562 U.S. at 530-31 & n.8. And now, Goertz is denying Reed DNA testing because Reed has not satisfied the CCA's authoritative interpretation of Article 64. That authoritative word did not exist, of course, until the end of the state-court litigation that *Osborne* and *Skinner* encouraged.

4. Tying accrual to the end of the Article 64 litigation also promotes due process values. Because due process guards not against deprivations, but against deprivations without due process of law, *Zinermon*, 494 U.S. at 125, it only makes sense to start the clock once the relevant procedures are authoritatively established. That accrual date also promotes the due process interest in adjudicative accuracy by permitting prisoners to seek DNA testing through available state procedures.

5. Analogous claims likewise show that Reed could not have brought his § 1983 claim until the end of the state-court litigation. For instance, traditional due process claims challenging state supreme court interpretations of state law, challenges to legislation and agency action, and common-law torts all support a later accrual date.

C. Reed's accrual rule also promotes federalism, comity, judicial economy, and fairness. *See McDonough*, 139 S. Ct. at 2155, 2158-60. It allows

prisoners to avoid parallel litigation, benefiting the courts and parties alike. Federal courts, for instance, may avoid difficult constitutional questions and the perception that they are supervising state courts. And prisoners will have a fair chance to vindicate their rights by bringing the specific claim that this Court expressly left "room" for in *Skinner*, 562 U.S. at 525.

II. The court of appeals' decision is wrong, and Goertz's counterarguments are no better.

A. Faced with Reed's commonsense accrual rule, Goertz mainly fights jurisdiction. But this Court can easily reject his arguments.

First, Goertz cannot distinguish this case from *Skinner*, which held that a functionally identical claim was not barred by *Rooker-Feldman*. 562 U.S. at 532-33. Nor can Goertz rewrite or cherrypick from Reed's complaint to create a *Rooker-Feldman* problem.

Second, Goertz cannot circumvent *Ex parte Young*. He has the power to control access to DNA testing and the responsibility to administer Texas' criminal justice system before and after conviction. Thus, by denying Reed access to DNA testing unless he complies with the CCA's construction of Article 64, Goertz is enforcing and upholding that construction. *Ex parte Young* is Reed's only remedy, and Goertz's contrary arguments would bar the very claim the Court suggested in *Osborne* and greenlit in *Skinner*.

Finally, Goertz's attempt to recast his *Ex parte Young* arguments as Article III standing problems fails. Reed has standing. Goertz's refusal to allow testing is causing Reed's injury, and a declaratory order will stop Goertz from relying on the CCA's authoritative interpretation of Article 64.

B. The court of appeals' decision is wrong. Contrary to this Court's instructions, the court of appeals did not address the specific constitutional right Reed invokes, much less tailor the accrual date to the context giving rise to Reed's claim. It instead focused on the moment Reed suffered *an* injury, no matter the constitutional right at stake. But accrual is pinned not to the moment a plaintiff suffers *some* harm, but to the time the claim becomes complete. And a due process claim is complete when a deprivation of a protected right coincides with a denial of due process, not simply when some deprivation occurs.

C. The court of appeals also failed to consider whether federalism, comity, judicial economy, or practical reality support a particular accrual date. They do, and the date they support is Reed's. Contrary to what Goertz has argued, those "core principles" are essential to the question presented, and they resolve it in Reed's favor. *McDonough*, 139 S. Ct. at 2158.

ARGUMENT

I. Reed's § 1983 claim accrued at the end of the state-court litigation, after the Court of Criminal Appeals authoritatively construed Article 64.

Reed's § 1983 due process claim accrued at the end of the Article 64 litigation, after the CCA's authoritative word became final. Reed couldn't have brought his claim any earlier, because the authoritative construction he challenges *did not exist* until the state-court litigation ended. Every consideration in the claim- and context-specific accrual analysis—general rules, common sense, fundamental due process values, analogous claims, and principles of federalism,

comity, and judicial economy, not to mention practical reality and fairness—supports that accrual date.

A. The federal courts have jurisdiction over Reed's § 1983 claim.

Despite *Osborne* and *Skinner*, Goertz continues to insist that the federal courts lack jurisdiction over Reed's claim. Although those questions come first, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998), they shouldn't detain the Court long. *Skinner* already rejected *Rooker-Feldman* objections to a claim challenging Article 64 as authoritatively construed by the CCA. Prospective declaratory relief is available under *Ex parte Young* because it will stop Goertz from using the CCA's unconstitutional construction to deny Reed DNA testing. Finally, Reed has Article III standing. Declaratory relief will redress his injury—the inability to vindicate his state-created liberty interest in using DNA evidence to prove his innocence—because Goertz, the gatekeeper of that evidence, refuses to let Reed test it.

1. Reed's due process claim challenges a state law, not a state-court judgment.

Skinner proves that the lower courts had jurisdiction over Reed's § 1983 claim. While only this Court can review a state-court judgment, lower federal courts can review whether the "statute or rule governing the [state-court's] decision" violates federal law. *Skinner*, 562 U.S. at 532. That's this case. Like Skinner, Reed "does not challenge the adverse CCA decision[] [itself]; instead, he targets as unconstitutional the Texas statute [it] authoritatively construed." *Id.*; *see* Pet. App. 8a, 22a, 25a & n.6. Reed's claim is functionally "no different than" Skinner's. Pet. App. 7a. It presents no *Rooker-Feldman* problem.

2. *Ex parte Young* authorizes Reed's claim for prospective equitable relief.

The Eleventh Amendment doesn't bar Reed's claim either. Under *Ex parte Young*, federal courts may hear a claim against a state official if it "alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *See Verizon Md. Inc. v. Public Serv. Comm'n*, 535 U.S. 635, 645 (2002). Reed satisfies that "straightforward inquiry." *Id.* Like Skinner, Reed alleges that the CCA's authoritative construction of Article 64 violates due process because it conditions his state-created liberty interest, *see Osborne*, 557 U.S. at 68, on compliance with constitutionally inadequate procedures. *See Skinner*, 562 U.S. at 530-31; Pet. App. 25a & n.6; J.A. 40-45. And Goertz "has the power to control access" to the evidence Reed wants to test but will not "allow" DNA testing unless Reed satisfies Article 64. Pet. App. 5a-6a n.2 (quoting J.A. 15-16). The declaratory relief Reed requests is prospective because it would bar Goertz from relying on the CCA's unconstitutional construction of Article 64 to continue denying testing.

3. Reed has Article III standing.

Finally, Reed has Article III standing. He has plausibly alleged (1) an injury in fact, (2) fairly traceable to Goertz, (3) that is likely to be redressed by a declaratory judgment. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Like Skinner and Osborne, Reed has alleged that the state's procedures for DNA testing are fundamentally inadequate to vindicate his liberty interest in proving his innocence. *Skinner*, 562 U.S. at 529-30; *Osborne*, 557 U.S. at 68-69. That injury is fairly traceable to Goertz, who, like the district attorney in *Skinner*, controls access to the

evidence but refuses to allow testing. Pet. App. 5a-6a n.2; *see also Skinner*, 562 U.S. at 529. And declaratory relief would redress Reed's harm by barring Goertz from relying on Article 64's unconstitutional procedures to justify denying access to DNA testing.

B. Reed's § 1983 claim accrued at the end of state-court litigation.

Reed's § 1983 claim accrued only after the CCA's authoritative construction of Article 64 became final. The analysis turns on the nature of Reed's claim and the right it invokes. Reed claims that Texas' procedures for DNA testing, as authoritatively construed by the CCA, violate due process because they are "fundamentally inadequate to vindicate" his state-created "substantive right[]" in proving his innocence. *Osborne*, 557 U.S. at 69. Under the default accrual rule, that claim didn't exist, meaning the clock didn't start running, until the CCA's authoritative interpretation of Article 64 became final. Common sense, fundamental due process values, analogous claims, and principles of federalism, comity, judicial economy, and fairness all confirm that conclusion.

1. The accrual analysis for § 1983 claims starts with the specific constitutional right and the context for invoking it.

Federal law governs the accrual date for § 1983 claims. *McDonough*, 139 S. Ct. at 2155. The analysis "begins with" "the specific constitutional right" that the claim invokes, *id.*, and "closely attend[s] to [its] values and purposes," *Manuel*, 137 S. Ct. 921. So understanding both the specific right and specific "nature of [the plaintiff's] claim" is crucial. *McDonough*, 139 S. Ct. at 2160.

The common law often serves as a useful "guide," too. *Id.* at 2156. That's because Congress enacted § 1983 against well-settled "common-law principles." *Kalina v. Fletcher*, 522 U.S. 118, 123 (1997). Under general "common-law tort principles," "accrual occurs when the plaintiff has 'a complete and present cause of action,' that is, when 'the plaintiff can file suit and obtain relief.'" *Wallace*, 549 U.S. at 388 (alteration adopted; citations omitted). The equitable rule is the same. *See, e.g.*, *Cope v. Anderson*, 331 U.S. 461, 463-64 (1947). Those rules reflect common sense: a claim does not accrue *before* "it comes into existence." *Gabelli*, 568 U.S. at 448.

When possible, the Court supplements these rules of accrual with "the most analogous common-law tort." *McDonough*, 139 S. Ct. at 2156. At all times, however, the accrual inquiry centers on the constitutional right invoked. *See id.*; *Manuel*, 137 S. Ct. at 920-21. That's because "the interests protected by a particular constitutional right may not also be protected by an analogous branch of the common law of torts," *Carey*, 435 U.S. at 258, which serve "more as a source of inspired examples than of prefabricated components" for § 1983 claims, *Manuel*, 137 S. Ct. at 921. Indeed, § 1983 "reaches constitutional and statutory violations that do not correspond to any previously known tort." *Rehberg v. Paulk*, 566 U.S. 356, 366 (2012). That potential gap, especially when combined with the remedial purpose of § 1983, *see Monell v. Department of Soc. Servs.*, 436 U.S. 658, 684-86, 700-01 (1978), underscores the importance of tailoring the accrual analysis "to the interests protected by the particular right in question." *Carey*, 435 U.S. at 259; *see also Manuel*, 137 S. Ct. at 920-21.

2. General accrual rules and common sense show that Reed's claim accrued only after the CCA's construction of Article 64 became final.

a. Under the general common-law rule that a claim accrues when the plaintiff has a complete and present cause of action, Reed's claim accrued only at the end of the state-court litigation, after the CCA's authoritative construction of Article 64 became final. That's because Reed's claim—just like Skinner's—"targets as unconstitutional" the CCA's construction of Article 64. *Skinner*, 562 U.S. at 532. Outside of a Kafka novel, Reed could not have brought that claim *before* the CCA authoritatively construed Article 64.

Context is key. Again, Reed's claim specifically attacks the authoritative construction of Article 64 by the CCA, "Texas' court of last resort in criminal cases," *Moore v. Texas*, 137 S. Ct. 1039, 1044 n.1 (2017). Reed's complaint isn't with Article 64's procedures "on their face," but with how, as authoritatively construed, they "work in practice." *Osborne*, 557 U.S. at 71; *see Skinner*, 562 U.S. at 530-32.

b. What the common law indicates, common sense confirms. Reed isn't Nostradamus. He could not have predicted that the CCA would authoritatively interpret Article 64 to include procedures not reflected in the statutory text. Nor could Reed have foreseen whether those not-yet-authoritatively-identified procedures would be adequate to protect his right to establish his innocence through DNA testing. With so much unknown, including the unconstitutional procedures Texas might use to deny him access to DNA evidence, Reed's context-specific § 1983 claim simply did not exist *before* the CCA had authoritatively

spoken. So it makes little sense to start the clock before the end of the Article 64 litigation, unless the goal is just to make it more "difficult … to invoke the protection of the civil rights statutes." *Green v. Brennan*, 578 U.S. 547, 557 (2016).

c. Only this commonsense view respects the structure and operation of the state judiciary. "[T]he 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) (emphasis added). For Texas criminal matters, that court is the CCA. *See* Tex. Const. art. 5, § 5; *Watkins v. Texas*, 619 S.W.3d 265, 281 (Tex. Crim. App. 2021). And the CCA's procedures, unsurprisingly, provide for rehearing as an integral part of the judicial process. The CCA's mandate doesn't issue, and the time for this Court's review doesn't begin running, until after the CCA's denial of rehearing. *See* Sup. Ct. R. 13.3; Tex. R. App. Proc. 18.1(b). In other words, the CCA's rulings—and thus its authoritative constructions—don't become final until after the denial of rehearing. Until then, the CCA can always change its interpretation.

Because Reed's claim assails the *authoritative* construction of Article 64, it could not have accrued before the CCA authoritatively construed the statute and denied rehearing, no matter the trial court's view of Texas law. Until then, the CCA could have granted rehearing and adjusted its authoritative construction of Article 64. It thus makes little sense to start the § 1983 clock before the CCA denies rehearing and its authoritative construction becomes final. That approach would also raise the same concerns as starting the clock when the trial court denies relief. *See infra* pp. 36-39.

3. *Osborne*, *Skinner*, and the nature of Reed's claim show that accrual occurred at the end of state-court litigation.

a. The "nature of [Reed's] claim" and the "specific constitutional right" he invokes likewise support Reed's accrual rule. *McDonough*, 139 S. Ct. at 2155, 2160. Reed's claim is just like Skinner's: the CCA's authoritative construction of Article 64 violates due process. *See Skinner*, 562 U.S. at 530-31. Reed's claim is the direct result of his adherence to this Court's repeated guidance to use "the state-law procedures available" for seeking DNA testing before rushing to federal court. *Osborne*, 557 U.S. at 70-71; *see Skinner*, 562 U.S. at 530-31 & n.8. That claim, along with the values and purposes of the right to due process, supports one conclusion: Reed's § 1983 claim accrued at the end of state-court litigation.

Under *Osborne*, prisoners challenging a state DNA-testing law on due process grounds must "demonstrate the inadequacy of the state-law procedures available to [them] in state postconviction relief." 557 U.S. at 71. *Osborne* and *Skinner* instruct that the best way to meet that burden will often be to invoke the state's procedures rather than facially challenging them in federal court. *Id.* at 70-71; *Skinner*, 562 U.S. at 530-31 & n.8.

"If [a prisoner] simply seeks the DNA through the State's discovery procedures," *Osborne* explained, "he might well get it." 557 U.S. at 71. But if he doesn't try those procedures, he "can hardly complain that they do not work in practice." *Id. Skinner* doubled down, emphasizing that Skinner was "better positioned" than Osborne to challenge the state-law procedures in

federal court because, unlike Osborne, he invoked the state's procedures before bringing his § 1983 claim. 562 U.S. at 530 & n.8.

Following this Court's guidance, Reed "tried to use the process provided to him by the State." *Osborne*, 557 U.S. at 70. This context defines the nature of Reed's due process claim and informs when it should accrue. Reed is challenging Article 64 as authoritatively construed by the CCA, *see Skinner*, 562 U.S. at 532, because that construction, and not the statute on its face, is the "established state procedure," *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982), that Goertz is using to deny Reed access to DNA evidence. *See supra* pp. 14-16. And the CCA's authoritative construction did not exist until the end of the state-court litigation that *Osborne* and *Skinner* encouraged.

b. Given *Osborne* and *Skinner*, invocation of state procedures warrants accrual at the end of state-court litigation no matter the daylight between the CCA's construction and Article 64's text. After all, the prisoner doesn't know what the CCA will ultimately say. But Reed's claim shows just how different construction and statute can be. For example, the statute says that a prisoner must show that the evidence has "not been substituted, tampered with, replaced, or altered in any material respect." Tex. Code Crim. Proc. art. 64.03(a)(1)(A)(ii) (2007); Pet. App. 52a. But the CCA adopted a non-contamination requirement, concluding that "contaminat[ion]" from "the manner in which the evidence was handled and stored" can defeat chain of custody if it "casts doubt on the evidence's integrity." Pet. App. 54a; *see supra* pp. 14-15. Reed could not have anticipated, much less challenged, that construction before it existed.

Sure, maybe Reed could have tried challenging Article 64 without invoking it. After all, § 1983 doesn't contain any exhaustion requirement that would bar such a suit. *Osborne*, 557 U.S. at 71; *see infra* pp. 48-49; *cf. Wallace*, 549 U.S. at 390 n.3. But a pure facial challenge is a different claim with a different accrual date than a claim challenging, based on *Osborne* and *Skinner*, the state court of last resort's authoritative construction.

4. Reed's accrual rule promotes due process purposes and values.

Tying accrual to the end of state-court litigation also promotes fundamental purposes and values underlying the right to due process. *First*, a due process claim is complete not when a deprivation occurs, but when the state fails to provide *due process* for that deprivation. *Second*, due process promotes adjudicative accuracy. Tying accrual to the end of the state-court litigation both promotes clarity about a state's procedures—as necessary to evaluate whether they provide due process—and facilitates DNA testing.

a. The Fourteenth Amendment Due Process Clause "imposes procedural limitations on a State's power to take away protected entitlements." *Osborne*, 557 U.S. at 67. While every procedural due process claim requires the deprivation of a protected interest, the deprivation "is not in itself unconstitutional." *Zinermon*, 494 U.S. at 125. What's "unconstitutional is the deprivation of such an interest *without due process of law*." *Id.* Thus, a due process violation "is not complete when the deprivation occurs" but when the state "fails to provide due process." *Id.* at 126; *accord Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (considering postdeprivation remedies). That's because due

process "protect[s] persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey*, 435 U.S. at 259.

In the criminal context, due process promotes adjudicative accuracy to guard against the "dire" "consequences of an erroneous determination." *Cooper v. Oklahoma*, 517 U.S. 348, 363-64 (1996). Due process requires the prosecution to disclose evidence favorable to the accused or undermining witness credibility. *Wearry v. Cain*, 577 U.S. 385, 392 (2016) (per curiam). It provides a check on unreliable identifications resulting from "improper police conduct." *Perry v. New Hampshire*, 565 U.S. 228, 239 (2012). It bars the state from "knowingly us[ing] false evidence" to obtain a conviction. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). And, of course, it requires proof of each element of a crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970).

b. Those fundamental constitutional purposes and values confirm that due process claims like Reed's must accrue at the end of state-court litigation.

First, before bringing a due process claim, a prisoner needs to know whether and, if so, *why* state law bars testing. But with state DNA-testing laws, there's paper and then there's practice. Sometimes the laws give prisoners testing; sometimes they don't. *See Osborne*, 557 U.S. at 70-71. It would make little sense to require inmates to rush to federal court based on speculation that state law might violate due process in practice. That's all the more true because a state court of last resort could reverse the trial court or, at the very least, provide the missing justification. *See, e.g.*, *Smith v. State*, 165 S.W.3d 361, 364-65 (Tex. Crim. App. 2005).

Second, a later accrual date advances adjudicative accuracy by promoting DNA testing. As this Court has explained, DNA testing offers an "unparalleled ability" to identify wrongful convictions. *Osborne*, 557 U.S. at 55. Reed's accrual rule encourages prisoners to first try available state procedures, meaning they may "well get" the testing they seek, *id.* at 71—and more quickly, too. And if not, Reed's accrual rule enables § 1983 claims tailored to the construction of state law that frustrated DNA testing. Holding otherwise would frustrate prisoners' ability to ensure "the basic fairness" of the state's procedures, *Cooper*, 517 U.S. at 364, by priming the limitations period to expire while the prisoner is still seeking relief in state court. It would thus severely undercut prisoners' ability to show, for example, that a state procedure "transgresses any recognized principle of fundamental fairness in operation." *Osborne*, 557 U.S. at 69. There is no reason to make that showing harder, especially when the consequences of denying an innocent person his liberty are enormous. Section 1983 and the Fourteenth Amendment cannot guard against erroneous deprivations of liberty, overriding "state laws when necessary," *Nance*, 2022 WL 2251307, at *2, if a prisoner can't get through the courthouse doors.

5. Analogous claims show that Reed's claim accrued at the end of the state-court litigation.

The claims most analogous to Reed's—traditional due process claims, challenges to legislation and administrative action, and the common-law torts of malicious prosecution and false imprisonment—all support Reed's common-law, commonsense, and contextual argument. Without supernatural foresight, a

prisoner cannot challenge a state court's authoritative construction of state law *before* the court has spoken.

a. While due process claims like Reed's arise in a unique context, they resemble traditional due process claims challenging state court interpretations of state law. Over the years, state courts have violated litigants' due process rights in several ways. For instance, they have failed "to provide the essential ingredients of a fair hearing" and altered individual rights "without providing adequate notice and opportunity to defend." *Shelley v. Kraemer*, 334 U.S. 1, 16 (1948). State courts have also interpreted state laws in ways that "result in the denial of rights guaranteed by the Fourteenth Amendment." *Id.* at 17; *see also Rogers v. Tennessee*, 532 U.S. 451, 462 (2001); *Bouie v. City of Columbia*, 378 U.S. 347, 354-55 (1964). Those due process violations typically ripen only *after* a state high court authoritatively speaks.

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930) (Brandeis, J.), is a good example. The Court held that the Missouri Supreme Court violated due process because its authoritative construction of a state law stripped the plaintiff of a remedy for its equal protection claim without giving the plaintiff "an opportunity to present its case and be heard." *Id.* at 681. Analogizing the state court's authoritative construction of state law to a legislative enactment, the Court reasoned that the due process violation "would be obvious" if the same result "were attained by an exercise of the State's legislative power." *Id.* at 679-80. The Court also explained that the due process claim—which the plaintiff did not raise until *after* the state court had spoken—"was timely, since it was raised *at the first opportunity*." *Id.* at 678 (emphasis added).

Other decisions from this Court point in the same direction. Both *Bouie* and *Rogers*, for example, involved due process claims stemming from state supreme courts' authoritative construction of state law. In each case, the core allegation was that the state supreme court's authoritative construction of state law was unexpected and its retroactive application was unconstitutional. *See Bouie*, 378 U.S. at 350, 353-55; *Rogers*, 532 U.S. at 453, 462-63. Those claims didn't exist, of course, until the state high courts had spoken.

Bouie also shows that an authoritative construction of state law can give rise to a due process claim *after* the individual has been deprived of a protected interest. *See also supra* pp. 30-31. In *Bouie*, after two defendants appealed their trespass convictions, the state supreme court "unexpectedly broaden[ed]" the state statute and "applied [it] retroactively," giving rise to a *new* due process claim based on the existing convictions. 378 U.S. at 353. This Court reversed the convictions, because the state supreme court's interpretation and retroactive application of state law "deprived [the defendants] of liberty and property without due process of law." *Id.* at 363.

b. Challenges to legislation also provide helpful analogies, as *Brinkerhoff-Faris* shows.

Litigants cannot challenge unenacted bills. After all, Article III's case-or-controversy requirement bars interference "with legislative and executive functions which have not yet proceeded so far as to affect individual interests adversely." *Communist Party of U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 72 (1961). Similarly, "state legislation that has been

proposed but not yet enacted" doesn't count as authority. *Kennedy v. Louisiana*, 554 U.S. 407, 431 (2008).

As *Brinkerhoff-Faris* observed, an authoritative judicial construction of state law is like legislation. 281 U.S. at 679-80. If Article III and separation of powers bar challenges to unenacted laws, then Article III and federalism foreclose challenges to unissued authoritative judicial constructions of state law. *See infra* pp. 36-39.

Challenges to administrative action provide a similar analogy. Federal courts typically can review only "final agency action." 5 U.S.C. § 704; *see also, e.g.*, 28 U.S.C. § 2342. For "agency action to be 'final,'" it must (among other things) "mark the 'consummation' of the agency's decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Same idea here. A § 1983 plaintiff can challenge the authoritative construction of state law only after the state court of last resort has spoken.

c. To the extent common-law torts, although "imperfect" analogues, *Wilson v. Garcia*, 471 U.S. 261, 272 (1985); *see supra* p. 25, serve as an additional "guide," *McDonough*, 139 S. Ct. at 2156, they "confirm[]" Reed's "conclusion," *Nieves v. Bartlett*, 139 S. Ct. 1715, 1726 (2019).

Take malicious prosecution. Like Reed's due process claim, malicious prosecution is process-oriented. The tort "accrues only once the underlying criminal proceedings have *resolved* in the plaintiff's favor," even though the plaintiff must also show "that a defendant *instigated* a criminal proceeding with improper purpose and without probable cause." *McDonough*, 139 S. Ct. at 2156 (emphases added). Favorable termination may not occur until "the

conviction or sentence has been reversed on direct appeal." *Heck*, 512 U.S. at 487. So would-be plaintiffs don't have "a complete and present cause of action" "while [their] criminal proceedings are ongoing." *McDonough*, 139 S. Ct. at 2158.

Reed's due process claim is similar. He didn't have a complete and present cause of action until the end of state-court litigation because he didn't yet know, and so couldn't contest, the authoritative construction Goertz would rely on to deny him DNA testing. *See Osborne*, 557 U.S. at 71.

Or consider false imprisonment, which focuses on "detention without legal process." *Wallace*, 549 U.S. at 389. A false imprisonment claim accrues not when the detention begins, but when "the victim becomes held *pursuant to such process*." *Id.* The claim is "complete" once the victim is no longer held without legal process. The corollary "legal process" here, of course, is the CCA's authoritative construction of Article 64, not the trial court's initial denial of DNA testing. Reed's claim thus became "complete" once the Article 64 litigation ended, just as a victim's false imprisonment claim is "complete" once he is no longer deprived of a liberty interest "*without legal process*." *Id.*

C. Reed's accrual rule promotes core accrual principles.

Common law and common sense show that Reed's claim accrued at the end of the state-court litigation, after the CCA authoritatively interpreted Article 64 and denied rehearing. But that's the right conclusion for other reasons too. Reed also wins because core principles of federalism, comity, judicial economy, and fairness—each an essential consideration in the § 1983 accrual analysis—show that Reed could not

have realistically brought his claim until the end of state-court litigation.

1. Accrual may also turn on federalism, comity, judicial economy, fairness, and practical reality.

Even when the "standard rule" suggests an early accrual date, *Wallace*, 549 U.S. at 388 (citation omitted), "the answer is not always so simple," *McDonough*, 139 S. Ct. at 2155. Because accrual dates may implicate "core principles of federalism, comity, consistency, and judicial economy," courts should consider whether a proposed accrual rule "respects the autonomy of state courts" and avoids unnecessary "costs to litigants and federal courts." *Id.* at 2158-60. Practical reality and fairness can also justify a still later accrual date, because some claims "may not realistically be brought" earlier. *Id.* at 2155.

2. Those core principles show that Reed's claim did not accrue before the end of state-court litigation.

a. Pinning the accrual date to the end of state-court litigation promotes federalism, comity, and judicial economy. For starters, it avoids parallel litigation, because prisoners will not need to preemptively file federal § 1983 suits lest their due process claims expire during the state-court litigation. *Cf. id.* at 2158. Both state and federal courts will benefit as a result. State courts will retain the "autonomy" to construe state law free from a cloud of unconstitutionality, *id.* at 2159—or, for that matter, perceived "superintendence of federal courts," *Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 369 n.16 (1990).

Meanwhile, tying accrual to the end of the state-court litigation will avoid "cluttering [federal courts']

dockets" and the unnecessary "costs" such filings impose on everyone involved. *McDonough*, 139 S. Ct. at 2158-59. Federal courts won't need to use "stays and ad hoc abstention" "to safeguard comity" while litigation proceeds in state court. *Id.* at 2158. They will not be forced to guess what procedures state law actually provides or whether the plaintiff will need to supplement his complaint as the state-court litigation unfolds. Perhaps most importantly, they will avoid "premature adjudication of constitutional questions" and the acute risks of "friction-generating error" in construing and possibly invalidating state law before it is "reviewed by the State's highest court." *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 79 (1997).

Like the standard accrual rule, these considerations show that Reed's accrual rule is the right one. Invoking state procedures before rushing to federal court benefits courts and litigants alike. *Supra* pp. 28-29. On the one hand, it may obviate the need for federal review, thereby preserving state sovereignty. On the other hand, it may sharpen the prisoner's § 1983 claim, thereby promoting judicial economy and fundamental fairness. For all these reasons, Reed's accrual rule is the better option.

b. Because Reed could not have realistically brought his § 1983 claim before the state-court litigation ended, it wouldn't make "practical sense" to set an earlier accrual date. *Green*, 578 U.S. at 557. Nor would it be fair. Even setting aside the fact that *Osborne* and *Skinner* "told prisoners," *Nance*, 2022 WL 2251307, at *2, to first try their hand in state court, adopting an early accrual rule requiring parallel litigation would force prisoners to litigate against themselves. In federal court, a prisoner would have to sue the district attorney, alleging ways that the state

court of last resort *might* unconstitutionally construe state law. *Cf. McDonough*, 139 S. Ct. at 2158 (describing how a defendant in a similar scenario "risks tipping his hand as to his defense strategy"). At the same time, the prisoner would be trying to persuade the state court and district attorney to allow DNA testing. That "two-track litigation" situation would be "fraught with peril." *Id.*

* * *

Reed's § 1983 claim accrued at the end of the state-court litigation, after the CCA issued its authoritative construction and denied rehearing. Only then could Reed have filed his specific due process claim seeking relief from the CCA's authoritative interpretation of Article 64. Because Reed filed suit within two years of that date, his claim is timely.

II. The decision below is wrong, and Goertz's counterarguments lack merit.

In holding that Reed's § 1983 claim accrued when the state trial court denied DNA testing, the court of appeals ignored this Court's framework for resolving § 1983 accrual questions. The court didn't even try, for instance, to tailor the accrual date "to the interests protected by the particular right in question." *Carey*, 435 U.S. at 259. Nor did the court assess whether federalism, comity, judicial economy, or fairness demands a particular accrual date. *Supra* pp. 36-39.

Unable to salvage the court's erroneous decision, Goertz turns to jurisdiction. But those arguments didn't mislead the lower courts, Pet. App. 5a-8a, 21a-24a, and they shouldn't fool this Court either.

A. Goertz's jurisdictional complaints fail.

1. *Rooker-Feldman* does not bar Reed's § 1983 claim.

Although Goertz may try to revive his *Rooker-Feldman* argument, *Skinner* puts it to rest. *Supra* pp. 16, 22. That "narrow" doctrine does not bar § 1983 claims challenging DNA-testing procedures because such claims are "independent" of the state-court judgment and do not "invit[e] district court review and rejection" of that judgment. *Skinner*, 562 U.S. at 532. As the court of appeals held, "[t]his case is no different than *Skinner*" because Reed has "asserted an 'independent claim' that would not necessarily affect the validity of the state-court decision." Pet. App. 7a-8a.

Goertz may contend that, unlike in *Skinner*, Reed attacks the CCA's application of Article 64 to his case. *See* Opp. 21. But that argument misunderstands *Rooker-Feldman* and Reed's complaint.

First, district courts have "original jurisdiction" to decide whether state laws violate the Constitution. 28 U.S.C. § 1331. A § 1983 plaintiff can thus challenge in district court the way a state court of last resort has authoritatively construed state law. *Skinner*, 562 U.S. at 530-32; *see Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 285-86 (2005). That's why district courts have jurisdiction to hear constitutional challenges to state laws even though 27 U.S.C. § 1257 reserves for this Court alone the jurisdiction to review the state courts' application of those laws. *See Exxon Mobil*, 544 U.S. at 283-86.

That's what *Feldman* was all about. Although *Rooker* barred the plaintiffs' challenge to the D.C. Court of Appeals' denial of their waiver applications, it *did not* bar their "general challenge to the

constitutionality" of the underlying rule. 460 U.S. at 482-83. Courts may "lack jurisdiction over one matter," but that "does not affect their jurisdiction over another." *Mata v. Lynch*, 576 U.S. 143, 148 (2015). Goertz can't avoid federal review by cherrypicking language from Reed's complaint.

Second, Goertz ignores key language from Reed's complaint. For example, Reed alleges that Article 64, as interpreted by the CCA, violates due process because it:

- "will automatically deny Article 64 relief to any person convicted before rules governing the State's handling and storage of evidence were put in place, and preclude such persons from proving innocence through newly available DNA analysis," J.A. 39;
- limits "'exculpatory results' to be considered," thus "ignor[ing] the clear inculpatory inferences from identifying DNA of a known offender on the evidence or finding the same unidentified DNA profile on both properly stored items and those which could have been contaminated," J.A. 42;
- "excludes from consideration evidence tending to inculpate third parties," even though this Court "holds that evidence of third-party guilt *is* exculpatory," J.A. 43-44; and
- permits a finding that a prisoner's "request for DNA testing was brought for an improper purpose" just because the inmate previously "litigate[d] his innocence based on other evidence," J.A. 33, and it imposes an unconstitutionally unfair hindsight requirement by allowing *later* amendments to Article

64 to support a finding that a prisoner should have known *earlier* that certain testing was available, *see* J.A. 33, 43.

In short, the lower courts had jurisdiction over Reed's claim that the CCA's authoritative construction of Article 64 violates due process.

2. Goertz doesn't have Eleventh Amendment immunity.

Goertz may also renew his Eleventh Amendment immunity arguments. But the lower courts rejected his erroneous view of *Ex parte Young*, and this Court should, too. *Supra* pp. 16, 23.

a. Contrary to Goertz's contention (Opp. 22-23), an *Ex parte Young* plaintiff may "seek injunctive *or declaratory* relief." *Berger v. North Carolina State Conf. of the NAACP*, No. 21-248, 2022 WL 2251306, at *3 (U.S. June 23, 2022) (emphasis added). While *Ex parte Young* involved an injunction, the doctrine is not limited to that "form of … relief." *Papasan v. Allain*, 478 U.S. 265, 279 (1986). The Eleventh Amendment does not bar "relief that serves directly to bring an end to a present violation of federal law." *Id.* at 278. *Ex parte Young* thus permits plaintiffs to seek "relief properly characterized as prospective," whether declaratory or injunctive. *Verizon*, 535 U.S. at 645. Either way, the point is that ongoing enforcement of an unconstitutional law "is a proceeding without the authority of and one which does not affect the State in its sovereign or governmental capacity"—it's "simply an illegal act upon the part of a state official." *Ex parte Young*, 209 U.S. at 159.

Reed seeks prospective declaratory relief for an ongoing constitutional violation. Reed alleges that Goertz is denying him DNA testing because he cannot

satisfy the unconstitutional conditions that the CCA read into Article 64. *See* Pet. App. 8a, 25a & n.6. A declaration that those procedures violate due process would "serve[] directly to bring an end to" that ongoing violation, *Papasan*, 478 U.S. at 278, redressing Reed's injury by eliminating Goertz's justification for denying testing. That declaration, moreover, would not subject Texas to any monetary loss, *see Verizon*, 535 U.S. at 646, for "the prosecutor's conduct" or otherwise, *Skinner*, 562 U.S. at 530. Because Reed has "asserted a claim for prospective declaratory relief," *Ex Parte Young* "permits him to bring his claim." Pet. App. 5a-6a n.2.

b. Goertz might claim that *he* won't "behave unconstitutionally in the future" because Article 64 "isn't a regulation or penal statute to be *enforced*" by him. Opp. 23. That's wrong.

Goertz is refusing to permit DNA testing unless Reed satisfies Article 64 as construed by the CCA, meaning Goertz is upholding the unconstitutional procedures Reed challenges here. Just as Skinner sued the district attorney who controlled access to DNA evidence, *see Skinner*, 562 U.S. at 529, Reed alleges that Goertz "has the power to control access" to evidence and "has '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.'" Pet. App. 5a-6a n.2. Goertz is thus enforcing, implementing, or upholding (choose your synonym) the unconstitutional strictures of Article 64 by refusing to release evidence until Reed satisfies them.

That makes sense. As the district attorney, Goertz has much more than a tangential "connection with" Article 64. *See Ex parte Young*, 209 U.S. at 156-59. He

is responsible for the administration of justice in criminal cases, and his duty "to see that justice is done," Tex. Code Crim. Proc. art. 2.01, "does not end upon conviction," *Ex parte Chaney*, 563 S.W.3d 239, 291 n.12 (Tex. Crim. App. 2018) (Newell, J., concurring). For example, even after conviction Goertz must allow a prisoner to inspect tangible items in the state's possession, Tex. Code Crim. Proc. art. 39.14(a), and turn over any potentially exculpatory evidence, *id.* art. 39.14(h). *Cf. Ex parte Young*, 209 U.S. at 157 (enforcement duties need not "be declared in the same act which is to be enforced"). It's little surprise, then, that sometimes Texas prosecutors agree to DNA testing. *See, e.g.*, *Ewere v. State*, No. 05-17-00125, 2017 WL 5559585, at *1 (Tex. App. Nov. 16, 2017); *Brewer v. State*, No. 05-16-01147, 2017 WL 3392719, at *1 (Tex. App. Aug. 8, 2017).

In sum, *Ex parte Young* permits Reed's suit because Goertz is "sufficiently connected" to Article 64. 209 U.S. at 161. He is the "official[] most responsible for enforcing" that law (and related postconviction duties). *Berger*, 2022 WL 2251306, at *3. And if Reed secures declaratory relief, Goertz will no longer be permitted to deny testing based on the CCA's unconstitutional construction of Article 64.

3. Goertz's standing arguments fail.

Goertz may also renew his standing arguments, but they're no better than his other jurisdictional grumblings. Goertz hasn't contested Reed's injury—his inability to vindicate his state-created liberty interest in proving his innocence through DNA evidence. That was Skinner's and Osborne's injury, too. *Supra* pp. 23-24.

Goertz has, however, repackaged his *Ex parte Young* argument as Article III causation and redressability problems. Opp. 24-25. They warrant the same handling: return to sender.

Causation is clear: Reed cannot perform DNA testing to vindicate his state-created liberty interest because Goertz, who controls the evidence, won't allow testing based on the CCA's unconstitutional reading of Article 64. *See* Pet. App. 5a-6a n.2. True, Goertz didn't enact or judicially interpret Article 64. But Reed's injury is still fairly traceable to Goertz, who is denying testing because he thinks Reed can't satisfy Article 64.

California v. Texas, 141 S. Ct. 2104 (2021), doesn't suggest otherwise. *See* Opp. 24. The statute there had no consequences because it "ha[d] no means of enforcement." *California*, 141 S. Ct. at 2114. "With the penalty zeroed out, the IRS [could] no longer seek a penalty from those who fail to comply." *Id.* But here, the CCA's authoritative construction of Article 64 has real consequences fairly traceable to Goertz: Reed's inability to access evidence that Goertz controls.

Redressability is also clear. A declaration that the CCA's authoritative construction of Article 64 violates due process will eliminate Goertz's justification for denying testing. That relief will "likely" redress Reed's harm, *FEC v. Cruz*, 142 S. Ct. 1638, 1646 (2022), because "it is substantially likely that [Goertz] would abide by" that "authoritative" holding "by the District Court," *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992). *See generally Larson v. Valente*, 456 U.S. 228, 243-44 & n.15 (1982) (plaintiff "need not show that a favorable decision will relieve his *every* injury" or that relief on ultimate litigation goals is "*certain*").

B. Reed's claim did not accrue before the state-court litigation ended.

Both the court of appeals and Goertz reason that Reed's claim accrued the moment the state trial court first denied DNA testing. Their arguments disregard this Court's clear instructions for determining when a § 1983 claim accrues.

1. In the court of appeals' view, the clock began to run "as soon as the trial court denied" relief because that's when Reed "first became aware that his right" to DNA testing "was allegedly being violated." Pet. App. 9a. That analysis flouted this Court's precedents.

The court of appeals did not address "the specific constitutional right" Reed invokes, *McDonough*, 139 S. Ct. at 2155, much less tailor the accrual date "to the interests" due process protects, *Carey*, 435 U.S. at 259; *see also Manuel*, 137 S. Ct. at 920-21. Nor did the court start its analysis with the presumptive rule that a claim accrues "when the plaintiff has 'a complete and present cause of action.'" *McDonough*, 139 S. Ct. at 2155. Instead, the court looked at the bare deprivation of DNA testing, thought it resolved the case, and started the clock at the trial court's decision.

Wrong. Reed's claim challenging Article 64 *as construed by the CCA* was not "complete and present" before the CCA authoritatively construed Article 64. *Supra* pp. 26-27. An unconstitutional deprivation "is not complete unless and until the State fails to provide due process," *Zinermon*, 494 U.S. at 126; *supra* pp. 30-31, and here it's the CCA's authoritative word that spells out the procedures that must meet that test. Indeed, until the CCA construed Article 64 and denied rehearing, there was still a chance that Reed "might well get" DNA testing. *Osborne*, 557 U.S. at 71.

2. Goertz accuses Reed of picking and choosing his injury, when "the true harm" is "the denial of post-conviction DNA testing." Opp. 30. But a due process "violation actionable under § 1983 … is not complete unless and until the State fails to provide due process," *Zinermon*, 494 U.S. at 126, so the inquiry here turns on "the 'established state procedure'" for accessing DNA testing, *Logan*, 455 U.S. at 436. And (again), the CCA, not the trial court, authoritatively determines the established state procedure. *Supra* p. 27. Before the CCA interprets the statute, it's impossible to assess whether those procedures provide due process or even whether there's any deprivation. *See Smith*, 165 S.W.3d at 364-65 (reversing lower court and remanding for DNA testing).

Goertz also invokes *Wallace*, Opp. 30, but that decision supports *Reed*. *First*, *Wallace* reaffirmed the traditional rule that a § 1983 claim accrues when the plaintiff has "a complete and present cause of action." 549 U.S. at 388. As explained, Reed didn't have a complete cause of action until the CCA authoritatively construed Article 64. *Second*, *Wallace* set an *even later* accrual date based on the "reality" about when a § 1983 plaintiff can sue. *Id.* at 389. The question was when a Fourth Amendment claim for damages resulting from false imprisonment accrues. Although the Court recognized that a prisoner may sue from the moment he is detained, it held that the claim does not accrue until the "false imprisonment ends," meaning the victim becomes held pursuant to "legal process." *Id.* at 389-90 & n.3. That's because the law the recognizes "the reality that the victim may not be able to sue while he is still imprisoned." *Id.* Here, reality supports Reed, who could not know what process Article

64 provides until the CCA authoritatively construed it and denied rehearing.

3. The court of appeals also thought that "Reed did not need to wait until he had appealed the trial court's decision to bring his § 1983 action" because § 1983 contains no exhaustion requirement. Pet. App. 9a-10a. Yes, *Osborne* clarified that plaintiffs like Reed do not need to "exhaust state-law remedies." 557 U.S. at 71. But that principle doesn't answer the accrual question presented here.

First, exhaustion generally means bringing the *same claim* somewhere else before bringing it in federal court. *See, e.g.*, *Woodford v. Ngo*, 548 U.S. 81, 92 (2006). But a prisoner like Reed or Skinner brings a *different claim* in federal court than he did in state court. In state court, he seeks DNA testing under the state's procedures. *Skinner*, 562 U.S. at 527-29. In federal court, he claims that those state procedures, as authoritatively construed by the state court of last resort, violate due process. He is bringing new claims, not old ones.

Second, a due process claim challenging the state's procedures as authoritatively construed by the CCA is not the same as a due process claim challenging Article 64 on its face. *Supra* pp. 29-30. There's no exhaustion requirement barring a § 1983 plaintiff from "sidestep[ping] state process" and challenging state law as written. *Osborne*, 557 U.S. at 71. But that's not the claim Reed brings. His challenge turns on the CCA's authoritative construction, so it couldn't accrue *before* the CCA spoke. The court of appeals' contrary reasoning turns *Osborne* and *Skinner*'s guidance "into a sham," "effectively prevent[ing] an inmate like [Reed]" from bringing "the kind of [due process]

claim this Court told prisoners they could bring." *Nance*, 2022 WL 2251307, at *8.

C. The decision below contravenes core principles of federalism, comity, judicial economy, and fairness.

Despite *McDonough*'s guidance, the Fifth Circuit did not even mention federalism, comity, judicial economy, or practical reality. *See* 139 S. Ct. at 2155, 2158-59. Those principles all show that Reed's accrual rule is correct. *Supra* pp. 36-39.

Goertz's response is that *McDonough* "has no application" beyond collateral attacks on criminal convictions. Opp. 31. But these principles aren't limited to *McDonough*. Federalism and comity have guided federal courts "[s]ince the beginning of this country's history," *McDonough*, 139 S. Ct. at 2157 (quoting *Younger v. Harris*, 401 U.S. 37, 43 (1971)), and they apply broadly. For instance, under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), federal courts abstain where state law is uncertain and a state court's construction might make a constitutional ruling unnecessary. *See, e.g.*, *Arizonans for Off. English*, 520 U.S. at 75-76.

Same idea here. Goertz doesn't dispute that the Fifth Circuit's rule will require prisoners to file protective actions in federal court while still seeking relief in state court. Nor does he dispute that the Fifth Circuit's rule burdens prisoners with the impossible task of anticipating how state courts of last resort will unconstitutionally interpret state law. That rule thus "is poorly suited" to claims like Reed's, *McDonough*, 139 S. Ct. at 2158, because it conditions the availability of § 1983 relief "on the fortuity" of when the state-court litigation ends, *Thompson*, 142 S. Ct. at 1340. In

short, the Fifth Circuit's rule is unpredictable and unadministrable—the antithesis of due process. Reed's accrual rule, in contrast, avoids all those problems.

CONCLUSION

The Court should hold that Reed's § 1983 claim accrued after the CCA issued its authoritative construction and denied rehearing and remand for the court of appeals to address the merits.

Respectfully submitted.

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